

"When doubtful whether enemy property and impossible to bring in . . . the safe and proper course is to dismiss.

"When it is neutral the act of destruction cannot be justified to the neutral owner by *the gravest importance of such an act to the public service of the captor's own State*. To the neutral it can only be justified under any such circumstances by a full restitution in value."

I also quote some observations of Dr. Lushington in giving judgment in the case of the "Leucade" in 1855 (2 Spinks, 231) :—

"It is the right of the neutral to be brought in to adjudication. . . . No excuse for him (the captor) as to inconvenience or difficulty can be admitted between captors and claimants. . . . *If the ship be destroyed for reasons of policy alone, as to maintain a blockade or otherwise*, the claimant is entitled to costs and damages."

Is not the real conclusion that circumstances must occasionally arise in which it would be the clear duty of a naval officer to destroy a neutral prize—that this possibility is recognised by our Courts, but the neutral must not suffer, and it is for his Government to decide whether the officer should be indemnified at the public expense?

Thus the real outcome is that even our position is not that destruction is necessarily a breach of the laws of war, but that, when it is justified, the condition is attached that a neutral victim of the necessities of war shall not suffer.

As matters now stand, we, as neutrals so victimised, might suffer without redress at the hands of those States which do not follow our rule, while, when belligerent, we should have to compensate those who suffered at our hands.

Now what is the position created by Articles 48-54 of the Declaration?

Under these articles we have obtained a general recognition of the principle that neutral vessels should not be destroyed.

We are said to have made a concession of principle in admitting that, in some exceptional cases, destruction is permissible.

It is obvious that cases might in fact arise in which, whatever the rule, and whatever the consequences, it might be the clear duty of a naval commander to destroy a neutral vessel which he could not take into a prize port.

The provisions of the Declaration are directed to securing that, if on examination the conditions justifying destruction did not exist, neutrals should always be compensated, and that even when they may be found to have existed, if it be not found on further enquiry that the vessel was in fact liable to condemnation, neutral owners of ship and cargo shall be compensated, and that in any case neutral owners of innocent cargo shall be compensated. It really comes very much to our own rule in practice, if not in theory, and removes the disadvantages to which we are now subject. Thus, before destruction, the captor would know that if he acted without military necessity he would involve himself or his country in damages, and that he would run the same risk if he did not further satisfy himself that the ship was liable to condemnation.

To do this would involve an examination of the cargo to ascertain whether there was the proper proportion of contraband on board to lead to condemnation, an examination very difficult to make while at sea, and, under most conditions, impracticable in the case of a vessel carrying a large or mixed cargo.

The provision as to placing all the persons on board the neutral vessel in safety is a further practical check on destruction. The deck of a war-ship likely to be in action could hardly be held to be a place of safety, and the accommodation in any event in such vessels of the crew, and perhaps passengers, of a large vessel, including women and children, would be no easy task. Under the Declaration it is, therefore, to the interest of the captain to avoid destruction except in cases of overwhelming necessity, and, so far from the Declaration facilitating destruction, the nations which now claim the right will find it almost impossible, except on rare occasions, to resort to it, whilst those nations which in such cases now always compensate the injured neutrals will, as neutrals, be entitled to the same redress which as belligerents they at present afford without reciprocity.

CONVERSION ON THE HIGH SEAS OF MERCHANT-SHIPS INTO WAR-SHIPS.

It is much to be regretted that no agreement could be reached as to this question, either at the Hague Conference or at the London Naval Conference. The absence of agreement leaves open a question of great importance, and one which is of special interest to Great Britain, whether as a neutral or a belligerent.