THE GENEVA AWARD: INSURANCE CLAIMS AND ESPECIALLY THE CLAIMS OF MUTUAL INSURANCE COMPANIES

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AND

ESPECIALLY THE CLAIMS

OF

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THE courses pursued and opinions expressed upon these topics compel a review of them.

The graphic words of Mr. Cushing in his history of "The Treaty of Washington," and the discussions, widely read, will dispense with many citations and reflections.

To insurers, the origin of the whole was *the destruction* at sea of unarmed merchant vessels and their cargoes by armed cruisers—the Alabama and others of her class.

The cruisers were built, fitted out, armed, supplied, and manned in England, and generally by Englishmen and with English funds, and they sailed from English ports after notice to the Government of their character. They received their captains on

board in England or soon after sailing, and sometimes a few other officers, who claimed to be appointed by the late Confederate organization, and who carried its assumed flag—but sometimes used the English flag. They acted by arrangement and with the plan and object fully known; and, with the exception of these officers and flag, the whole maritime part was substantially English.

By whomsoever owned, there was governmental negligence in letting the cruisers sail, as they did, from English ports, without check or restraint.

None of the vessels or cargoes destroyed were ever brought into port for condemnation after seizure. It was known that they could not be. There were no open ports.

No investigation was had during the war as to the rightfulness of the captures, nor opportunity allowed for it, or for the separation of neutral or friendly property from hostile, nor was it contemplated that there would be any. There was no such necessity nor danger, even if the vessels were regularly captured, as by settled rules, permitted or justified their *destruction*. The vessels destroyed were not warlike nor dangerous.

If an enemy could hold them until trial and condemnation by regular authority, he might do so. If not, he must let them go. Neither vessels nor cargoes could be *sold* or disposed of without a formal condemnation. A purchaser for full value would get no title. Modern rules do not permit such destruction. (Note A, in appendix.)

By departing in this particular from principles of public law, all persons concerned in the affair, all who contemplated, assisted, or connived at it (whether English or Confederate) were responsible to the sufferers for the injury sustained. The destruction was illegal and unauthorized. Neither the flag, nor the authority of any naval officer, was sufficient to authorize the *destruction* of such unarmed vessels and cargoes.

The seizure failed, and must necessarily fail, because the war must end, and did end, without any condemnation or sanction by legitimate authority. The actors were in no way shielded nor protected from personal responsibility. The English Government was especially responsible for the acts of Englishmen; but, also (whether the cruisers were English or Confederate in ownership or origin) for its neglect to restrain them, being well informed of the *destructive* plan, the intention, the object, and the danger, and practically doing nothing to stop them.

The difference between the rules on land and those at sea are important to be noticed, because so many of our citizens, and so many in Congress and in office, have but recently come from our civil war in districts proclaimed hostile on land. Officers and soldiers deeply engaged in that war may be unacquainted with the rules at sea, except, perhaps, by a very hurried and general view, and they are apt to overlook the fact that rules to prevent the destruction of vessels and cargoes at sea are very well settled, however different may be the law or the

practice about "booty" or destruction on land. The military officer—supposed a General, or within reach of general orders; and if a subordinate, under control—may be allowed a certain *discretion* in ordering property to be destroyed, or permitting its destruction when simply in his way, or when protecting or likely to protect, or directly strengthening a hostile force, as well as when of itself immediately dangerous or contraband of war. He is not bound to have any trial or decision by others, to determine the rightfulness of his captures, when secure of the approval of his General. Accordingly, his order to *destroy* protects the subordinate, and he, acting judicially, is himself protected from direct responsibility in many instances.

Destructions of this character, however great the private loss, become one of the disasters of war, for which no compensation can ordinarily be recovered by private sufferers. The actors cannot be prosecuted. But even these destructions are too often wanton or unnecessary, and in modern times have received some check in favor of non-combatants. (Note B.)

The rule is different at sea, in respect to the destruction of unarmed merchant vessels and cargoes, not of themselves dangerous; and for several good reasons. Cruisers at sea, in charge of inferior officers, traversing a public highway, must meet and examine many neutral and unarmed vessels of different nationalities far from succor or observation, and must therefore be controlled by such public

laws and rules as will prevent a reckless officer from secretly committing trespasses upon the defenceless.

A large proportion of armed vessels were private, at least up to Queen Elizabeth's time, and have often been so since. They had not such officers, discipline, and pay, as could be relied on to control their greed or prevent them, far away from home and out of sight at sea, from destroying neutrals or threatening destruction, unless paid. This was shown by the Algerines and by the great number of privateers who turned pirates—seizing the property of friend or foe, and continuing to cruise and seize long after the regular war was terminated. Captain Kidd made this course famous, by being commissioned to cruise against such privateers turned pirates, and then by turning pirate himself. (See *Howell's State Trials*, vol. 14, p. 147.)

Another reason, perhaps, was that many were interested in vessels and cargoes, as sellers, by credits, by joint ownership, by insurance, and otherwise. The loss, by destruction, or sale would seldom fall upon the enemy alone, and might injure friends more than foes. Captures at sea, especially when involving neutral property which might be insured by any one, friend or foe, frequently came before sovereign authorities capable of enforcing their rights and the rights of their citizens; who insisted upon, and could not safely be denied, a judicial investigation and decision before a tribunal of character and intelligence *whose opinions settled the law.* These and the like reasons have doubtless occasioned

the marked difference between the courses and rules on land and at sea. But whatever the reasons, or the absence of reason for the difference, the law is very well settled for the sea. It was invoked by the English Government and admitted by ours in the affair of the Trent. And it is very important to be borne in mind, because it shows beyond question that the Alabama claims came within the rules and principles of claims for private injuries—for destruction of private property—not authorized by national law, as arising from war, under any flag, and not protected by a flag or any officer's order, and not within any rule of judgment or discretion which might prevent direct responsibility to the owner.

The Confederate officer and flag were attempted to be held out as if alone responsible; but they were a mere pretence and cover, besides being insufficient for the object. It was the unsound claim of the English government that the mere officer and flag made all the results a part of the civil war. This was not true, and it was repudiated by the decision at Geneva. On the contrary, the abuse of English neutrality entitled *the owners* of the captured vessels and cargoes *to a restoration at the hands of the English Government.* Our highest Court, reviewing the general law and acting impartially, had clearly expressed this in 4th *Wheaton's Reports*, p. 298. (See note A.)

What did the Confederacy gain or contemplate gaining by destroying non-combatant or neutral