

**PLAIN DIRECTIONS TO NAVAL
OFFICERS AS TO THE LAW OF
SEARCH, CAPTURE AND PRIZE:
UNDER THE LATE CONVENTION,
ORDERS IN COUNCIL, PRIZE ACT, &C.**

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Sir H. Berkeley Milne Bart.

PLAIN DIRECTIONS

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THE LATE CONVENTION, ORDERS IN COUNCIL,
PRIZE ACT, &c.

BY

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LAW OF SEARCH, CAPTURE, AND PRIZE.

CHAPTER I.

EXEMPTIONS UNDER ORDERS IN COUNCIL.

FIRST as to Russian merchant vessels sailing from any port of Great Britain or the British possessions.

By an order in council bearing date the 29th day of March, 1854, it is provided, that Russian merchant vessels in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May, 1854, for loading their cargoes and departing from such ports or places, and that such vessels if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear, that their cargoes were taken on board before the expiration of the above term : provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian government. By another order bearing date the 7th day of April, 1854, the same exemption from capture, subject to the same exceptions, is extended to Russian merchant vessels being at the date of publication of the last mentioned order in any ports or places in her Majesty's East Indian territories under the Government of the East India Company, or within any of her Majesty's foreign or colonial possessions, if on examination of their papers it shall appear that their cargoes were taken on board

before the expiration of thirty days from the time of the publication of this order in such Indian territories or foreign or colonial possessions.

Secondly as to Russian merchant vessels sailing from foreign ports.

By orders in council bearing date the 29th day of March and the 7th day of April, 1854, it is provided that any Russian merchant vessel which, prior to the 29th day of March 1854, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions or in any of her Majesty's Indian territories or foreign or colonial possessions shall be permitted to enter such port or place and to discharge her cargo and afterwards forthwith to depart without molestation: and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

By another order in council bearing date the 15th day of April, 1854, this indulgence is extended in respect of vessels sailing from the Baltic or White Sea, and it is provided that any Russian merchant vessel, which prior to the fifteenth day of May, one thousand eight hundred and fifty-four shall have sailed from any port of Russia situated either in or upon the shores of the Baltic Sea or of the White Sea bound for any port or place in her Majesty's dominions, shall be permitted to enter such last mentioned port or place and to discharge her cargo and afterwards forthwith to depart without molestation: and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

These orders being in the nature of a general licence to all merchant vessels of the enemy falling within their terms are to be construed upon the same principles of construction as licences. They are consequently not to be extended beyond the plain intention of the grantor. The plain intention of

the orders is to relieve enemy's merchant vessels falling within their terms from liability to capture arising from their national character. They are placed upon the same footing, but upon no better footing, than neutral vessels: and they would be liable to capture under the same circumstances, that would render neutral vessels liable. Thus any such vessel attempting a breach of blockade would be liable to capture notwithstanding the order. In addition to this the terms imposed by the order must be strictly complied with.

Russian merchant vessels having sailed from any port other than those of the Baltic or White Sea are not protected, unless they have sailed before the 29th March, 1854. Such vessels sailing from the Baltic or White Sea are not protected unless they have sailed before the 15th May, 1854. They are not protected in any breach of blockade; nor if they have on board contraband or enemy's despatches or naval or military officers of the enemy: nor are they protected unless at the time of sailing they were bound to some port in her Majesty's territories or possessions: nor even in sailing to any such port not being the port of their destination: nor are they protected on their return voyage unless in ballast, for the licence implied in the order does not extend to a return cargo; to protect such a cargo there must be a special licence.

Thirdly, as to neutral or friendly vessels.

By an order in council bearing date the 15th day of April, 1854, after reciting that her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the law of nations; it is provided that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in her Majesty's dominions all goods and merchandize whatsoever, to whomsoever the same may belong; and to export to any port or place in her Majesty's dominions to any port not blockaded any cargo or goods, not being contraband of war, or not requiring

a special permission, to whomsoever the same may belong: and that save and except only as aforesaid all the subjects of her Majesty and the subjects or citizens of any neutral or friendly state shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places wheresoever situate which shall not be in a state of blockade, save and except that no British vessel shall under any circumstances whatsoever, either under or by virtue of this order or otherwise, be permitted or empowered to enter or communicate with any port or place which shall belong to or be in the possession or occupation of her Majesty's enemies.

The effect of this order is to relieve neutral or friendly vessels, having enemy's property on board, from being captured and sent into port for the adjudication of their cargoes. It also puts aside, during the present war, all those delicate and difficult distinctions which arise by the law of nations from the circumstance of a neutral vessel being engaged in the coasting, fishing, or other privileged trade of the enemy. Under this order such circumstances cease, during the present war, to impress a hostile character upon a neutral ship; for such trade is expressly sanctioned by the terms of the order. But the order does not waive any belligerent right in respect of breach of blockade, or the carriage of contraband or enemy's despatches, or military or naval officers of the enemy.

In order to entitle a vessel to the benefit of this order, it is necessary not only that it should be sailing under a neutral or friendly flag, but also that it should be neutral or friendly property. The questions which the belligerent rights waived by this order leave to be considered, are:— first, the law in respect of search and capture; secondly, of the national character of vessels; thirdly, of blockade; fourthly, of contraband; fifthly, of licences; sixthly, of ransom; seventhly, of the rights of captors.

These appear to be the only subjects which fall within the

scope of a work which is confined to the law of prize, as far as it regards the duties of naval officers. For the purposes of the present inquiry these subjects may be concisely treated; for it is unnecessary to consider those circumstances which are sufficient to relieve from confiscation a vessel which is liable to capture. Such circumstances are matters of further proof, and concern not the captors, but the prize court. All that a naval officer has to consider is, first, whether the ship's papers are genuine; and, secondly, whether upon examination of those papers there be probable grounds for believing the ship to be liable to capture. If there be such grounds apparent on the face of the papers, supposing them to be genuine, or if there be probable ground for believing them to be spurious, or for suspecting that there has been subtraction or spoliation of papers, the capture is justifiable, although the owner may be entitled to restitution upon proof of facts not appearing upon the ship's papers.