

**THE RIGHTS OF BRITISH AND
NEUTRAL COMMERCE, AS
AFFECTED BY RECENT ROYAL
DECLARATIONS AND ORDERS IN
COUNCIL**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649540556

The Rights of British and Neutral Commerce, as Affected by Recent Royal Declarations and Orders in Council by John Hosack

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JOHN HOSACK

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OF
BRITISH AND NEUTRAL COMMERCE,
AS AFFECTED BY
RECENT ROYAL DECLARATIONS
AND
ORDERS IN COUNCIL.

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^{of}
LONDON:
S. SWEET, 1, CHANCERY LANE, FLEET STREET,
Late Bookseller and Publisher.

1854.

THE importance, as well as the novelty of the concessions made to the interests of commerce in the present war, have induced me to endeavour to explain in a concise form their legal effects. And, in order that the reader may the more readily comprehend the nature and extent of these concessions, I have prefixed a summary of the rights of maritime war which had previously been both claimed and exercised by Great Britain.

5, ESSEX COURT, TEMPLE,
12th June, 1854.

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CHAPTER I.

RIGHTS OF MARITIME WARFARE HITHERTO CLAIMED AND EXERCISED BY GREAT BRITAIN.

That certain rights may be justly exercised by nations in time of war, to which they can lay no claim in time of peace, is an axiom universally received; and it requires little reflection to perceive that the exercise of these rights is the inevitable consequence of a state of hostility. A strict observance of the precepts of humanity and equity is incompatible with the systematic violence sanctioned by the usages of war; and when nations decide upon settling their differences by force of arms, not only the parties engaged, but others who have no interest in the quarrel, must of necessity be affected by the results. Rights of war.

To define the rights which thus appertain to belligerent powers is the province of the Law of Nations—a branch of jurisprudence recognised in every civilized state, and authoritatively declared to be a part of the common law of this kingdom (a). In practice, however, it has been found a task of much greater difficulty to define the rights of naval than those of territorial warfare. The questions arising out of the latter are comparatively few in number, and generally capable of solution, according to principles long established; but the discussions to which the rights of maritime warfare have given rise, during the last two centuries, are of endless Naval war.

(a) Blackstone Commen. Book 4, c. 5.

variety, and the speculations of jurists upon the subject have been no less conflicting than the policy of rival states. During the progress of the last general war these questions became the frequent subject of dispute between different powers, and the rights claimed and exercised by Great Britain were objects of especial controversy both in Europe and America. Many and formidable were the efforts made to induce her to relinquish a portion of these rights, but she continued, nevertheless, to maintain and to exercise them until the termination of the war. It is important, therefore, to ascertain the nature and extent of these rights; and we find that in the year 1801 they were formally declared and defined in the following terms (a):—

Rule of
1756.

1. That it is not lawful to neutral nations to carry on in time of war, for the advantage or on the behalf of one of the belligerent powers, those branches of its commerce from which they are excluded in time of peace.

Capture of
enemy's
property.

2. That every belligerent power may capture the property of its enemies wherever it shall be met with on the high seas, and may, for that purpose, detain and bring into port neutral vessels laden wholly or in part with any such property.

Contraband.

3. That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent powers, the law of nations (if not restrained by special treaty) includes all naval as well as all military stores; and generally all articles serving principally, according to the circumstances of the war, to afford to one belligerent power the instruments and means of annoyance to be used against the other.

Blockade.

4. That it is lawful to naval powers, when engaged in war, to blockade the ports of their enemies by cruising squadrons *bonâ fide* allotted to that service, and fairly competent to its execu-

(a) See Parliamentary History, vol. 36, p. 211.