A MANUAL OF NAVAL PRIZE LAW: FOUNDED UPON THE MANUAL PREPARED IN 1866 BY GODFREY LUSHINGTON. LATE FELLOW OF ALL SOULS COLLEGE, OXFORD AND OF THE INNER TEMPLE BARRISTER-AT-LAW NOW UNDER-SECRETARY OF STATE FOR THE HOME DEPARTMENT

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649513888

A Manual of Naval Prize Law: Founded upon the Manual Prepared in 1866 by Godfrey Lushington. Late Fellow of All Souls College, Oxford and of the Inner Temple Barrister-At-Law Now Under-Secretary of State for the Home Department by Thomas Erskine Holland

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

THOMAS ERSKINE HOLLAND

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BY

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Issued by authority of the Lords Commissioners of the Admiralty.

LONDON:
PRINTED FOR HER MAJESTY'S STATIONERY OFFICE,
BY DARLING & SON, LTD., 1-3, GREAT ST. THOMAS APOSTLE, E.C.

And to be purchased, either directly or through any Bookseller, from
EYRE & SPOTTISWOODE, EAST HARDING STREET, FLEET STREET, E.C.; or
ADAM AND CHARLES BLACK, 6, NORTH BRIDGE, EDINBURGH; or
HODGES, FIGGIS, & Co, 104, GRAFTON STREET, DUBLIN.

1888.

Price Three Shillings.

PREFACE.

The objects aimed at in the present work cannot be better stated than in the following extract from the Preface to Mr. Lushington's Manual.

"THIS BOOK is designed for the use of Officers of Her "Majesty's Navy in time of war. The Commander of a "belligerent Cruiser often finds himself in a perplexity in "dealing with a suspected Vessel. The authorities for his "conduct are only too numerous; Admiralty Orders, "Royal Proclamations, Orders in Council, Acts of Parlia-"ment, Treaties, and, last and not least, the International "Law, written and unwritten, of Maritime Warfare. The "Commander is no lawyer himself, has no lawyer by his "side, and has scarcely even time to reflect. He is dis-"tracted by different considerations. There is his duty to "prosecute the war to the uttermost against the Enemy "and the aiders and abettors of the Enemy: there is his "interest too to secure a valuable prize under his eye and "within his grasp. On the other hand there is the risk "of a mistake. A false step may cost him something of "both fortune and professional position; nay, may even

" involve his Country in a dispute with another Power. " In such an emergency an Officer would welcome a Book " which directed him, briefly and clearly, what to do, what " not to do. It is this service which this little Volume " aspires to render. More it does not attempt. Questions " which will ultimately have to be disposed of by the " Prize Court, but which do not concern the Officer's duty " of the place and hour, are not treated of here. For a " like reason, argument and illustration by cases, such as " are convenient for a lawyer's handbook, are here dis- " pensed with as out of place; and it has been thought " enough to give in the shape of foot-notes the reference " to the authorities on which the statements in the body " of the text are founded."

The Manual now issued embodies as much as possible of the valuable materials first collected by Mr. Lushington, but the text has been largely rewritten, and the whole has been arranged upon a new method.

It has been assumed that the attention of Commanders of Cruisers will be directed, in the first instance to the Nationality of the Vessel visited. The causes which may lead to her detention have accordingly been classified with reference to this characteristic. It will, however, be observed that in many cases when a Commander is in doubt as to the true Nationality of a Vessel, he will be relieved of the necessity of further enquiry on this point, by discovering she is engaged in a trade which is sufficient of itself to justify her detention.

Thus, should it be uncertain whether a given Vessel belongs to Enemies or to British subjects, she may be

safely detained if engaged in a trade which is unlawful for British subjects. Again, should it be doubtful whether the Vessel be British or Neutral, she must be detained if her trade is one which is prohibited even to the Ships of Neutrals.

It has been thought desirable to give information as to certain belligerent rights against Neutral Vessels which are more or less dormant, and must not now be exercised without special instructions. This information is given in Chapters IX. X. and XI., which, it will be remarked, are enclosed within brackets [ ].

The Treaties which affect the exercise by Great Britain of her belligerent rights at sea, as against particular Nations, are passed over in silence, as being properly the subject of special instructions.

The Manual is a statement of existing law and practice. Any discussion of doubtful questions has been avoided; nor has any attempt been made to forecast the view which British Prize Courts may take of the effect upon the right of capture of the changes which have been introduced into the conduct of modern warfare.

The Author has much pleasure in expressing his thanks to Mr. Bathurst, the Admiralty Registrar, for kindly reading through the completed proof of the work, and favouring him with several suggestions of practical importance.

T. E. H.

31*st December*, 1887.