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## THE HISTORY OF CONTINUOUS VOYAGE

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### I

An article contributed to the *British Year Book of International Law for 1927* by Mr. Mootham, M. Sc., has always appeared to the present writer so inconclusive as to demand no animadversion. But as it seems to be on the way to be treated as an authority, and is cited, for instance, by Dr. McDiarmid in a recent issue of the *American Journal of International Law*,<sup>1</sup> a few remarks on its propositions may not be out of place. The subject is still a vital one, for the Civil War doctrine of "Continuous Voyage" was the thin end of the wedge which has now made it possible to interdict all trade with the enemy. It is the object of the present paper to show that it was not a well-known doctrine established since 1756.

The immediate occasion of Mr. Mootham's work appears to have been the discovery in 1923<sup>2</sup> of several bundles of notes respectively made by Doctors Nicholl and Arnold of prize causes alike in the English Admiralty Court and on appeal therefrom. Mr. Mootham, except in a few cases, does not cite the *ipsissima verba* of these rough notes, which he sometimes dignifies with the name of reports; and when he does, their fragmentary and allusive character is manifest. Counsel's note is made to assist his own memory, a memory which has a background of

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1. McDiarmid, *American Civil War Precedents* (1940) 34 *AM. J. INT. L.* 220.  
2. *BRIT. YEAR BK. OF I. L.* (1923-4).

multitudinous detail that cannot exist in any other brain. The danger of relying on such memoranda is obvious.

But we need not be alarmed. The notes contain nothing to impeach the classical doctrine on the subject of Continuous Voyage.

## II

Mr. Mootham sets out to demolish the classical doctrine, and to show that its application in order not to piece two admitted voyages together, so as to make one "continued voyage" of them, but to regard an inferred eventual ulterior destination of ship or goods in a supposed future transit as a conclusive ground of condemnation, while on an otherwise innocent voyage, is and always has been correct in principle and followed in practice.

He is singularly unsuccessful. A lawyer surely ought to be impressed by the entire absence of all cases proceeding on such a principle, throughout the Revolutionary and Napoleonic wars. He should surely be impressed by the perfect unanimity of all English authors, including such anti-neutral ones as Ward and Harcourt, throughout the nineteenth century, against the asserted doctrine. He should surely be impressed by its absence from the practice of the Crimean War (with one solitary exception<sup>3</sup>). And he should be impressed by the yielding of Lord Salisbury to German insistence in the case of the *Bundesrath*<sup>4</sup> at the close of that century. But all that our author observes is that "several distinguished jurists" are against him. He mentions only W. E. Hall,<sup>5</sup> which seems to argue that he has not consulted the primary source on the subject, the elaborate monographs of Sir Travers Twiss.<sup>6</sup> Hall's condemnation of the American Civil War Cases is, indeed, emphatic and vigorous, not to say peremptory, but it is grounded on Twiss's work which remains the standard and reasoned authority.<sup>7</sup>

Still, Hall's opinion is worth quoting as an exordium to our research. The principle according to which the English courts held that a neutral's admitted voyage from a colony to the belligerent mother-country was not broken by landing and reshipping the cargo at a neutral port—the true "continuous voyage" principle—Hall says, "was seized upon by the American Courts, and applied to cases of contraband and blockade. Vessels were captured while on their voyage from one neutral port to another, and were then condemned as carriers of contraband or for intent to break blockade. They were thus condemned, not for

3. *The Frau Howina*, CALVO, DROIT INTERNATIONAL (1855) § 2676, a French case.

4. Cited in 2 OPPENHEIM, INTERNATIONAL LAW (5th ed. 1937) 675.

5. HALL, INTERNATIONAL LAW (8th ed. 1924).

6. In (1877) LAW MAGAZINE AND REVIEW 9, 271.

7. Corroborated as it is by L. Gessner in his JURIDICAL REVIEW OF THE SPRING-BOX CASE.

an act—for the act done was in itself innocent, and no previous act existed with which it could be connected so as to form a whole—but on mere suspicion of intention to do an act. Between the grounds upon which these and the English cases were decided there was of course no analogy.”<sup>8</sup>

Hall proceeds: “The American decisions have been universally reprobated outside the United States, and would probably now find no defenders in their own country.”<sup>9</sup>

Let us further cite the crucial sentence from Sir W. Scott’s judgment in the case of the *Imina Baumann*.<sup>10</sup> Spars were going to Emden, and our bright moderns would have been certain that the neutral owners ought to be forced to prove that they were not going to be shipped across the water into enemy territory, four or five miles away, to fit out the navies of Holland. Scott knew better.

“The rule respecting contraband, as I have always understood it, is that the articles must be taken *in delicto*, in the actual prosecution of the voyage to an enemy’s port.”

What does Mr. Mootham do, in the face of that? He digs up the case of the *Jesus, Maria and Joseph*, which had been peacefully reposing since 1756 in Burrell’s Reports,<sup>11</sup> and points to it as “the earliest case of the . . . doctrine of continuous voyage,” careless of the fact that, if it was, it had no companion or successor, and that it must have been perfectly well known to Sir William Scott. But what he does not tell us about the *Jesus* is that in that case *the Master swore that the voyage on which he was taken was to have ended in France!*<sup>12</sup> Therefore we have a perfect case for condemnation: the primary evidence shows that the voyage was one of contraband saltpetre to France. It does not matter where the saltpetre came from, and there is not the least necessity to invoke the doctrine of continuous voyage, for it was an admitted single voyage. In fact, the head-note says nothing about continuity, but states only with sweet simplicity, “*Saltpetre is contraband of war.*”<sup>13</sup>

With this unhappy beginning, Mr. Mootham proceeds to demolish the classical doctrine. He evinces, however, no notion of the nature of

8. HALL, INTERNATIONAL LAW (5th ed.) 668.

9. It may be added that the leading decision was one of 5 judges to 4; and that Nelson, J., wrote subsequently that “the court was not then familiar with the Law of blockade”. He was one of the minority: Wayne, Swayne, Nelson and Clifford, JJ. The majority consisted of Grier and Davis, JJ., and the three most recently appointed members of the Court, Miller and Field, JJ., and Chase, C. J.

10. (1800) 3 Christopher Robinson’s Reports (cited hereafter as C. R.) 168; often inaccurately cited as the *Imina*.

11. P. 164, *sub nom.* the *Jesus*.

12. Four other mariners corroborated him, not that it matters.

13. On appeal, the Lords, with great leniency, allowed the claimant to prove that the master was wrong, and that the voyage was not farther than San Sebastian, where the asserted consignee lived. But in the end the decree was sustained.

evidence in prize proceedings, which have, according to Phillimore, "nothing in common with those of the common law"; while Judge Story remarks that "It is a great mistake to admit the common-law notions in respect to evidence to prevail in proceedings which have no analogy to those of common law."<sup>14</sup> Why does this peculiarity exist in prize proceedings? Very simply: in prize proceedings the belligerent is prosecutor, judge and jury all in one, and it was always thought unreasonable that he should be witness too! The great *Memorandum of the English Law Officers*, Lee, Murray, Paul and Ryder<sup>15</sup>—called a *réponse sans réplique*,—which formed a record for all time of the nature and course of prize proceedings in Europe (and was the basis of Judge Story's learning in Prize), laid the principle clearly down that the evidence must come from the captured ship. As Sir James Marriott afterwards put it neatly, the principle is "*ex ore tuo judicaberis.*"<sup>16</sup> The ship's papers (indeed, every scrap of paper on board, the "search" for which constitutes the principal element in what is called "visit and search") and the sworn answers of the ship's company to standing interrogatories, constitute the sole admissible evidence. It will be seen that this is only fair, when the trial is in a hostile court, the prosecutor a powerful Government, and the difficulties of distance, language and expense enormous. The ship had to be released at once, and enabled to earn profits; the whole thing must be summary; it was a patent interference with a friendly flag; it must be justified up to the hilt. It was not sufficient to give the neutral the opportunity of conducting an expensive lawsuit (with the dice loaded against him). The means of securing all this was to rest the whole case on the ship's own account of herself.

That may be all forgotten nowadays; but as a historian, Mr. Mootham ought not to ignore it when dealing with the past. His essay gives no hint that he has ever perused the Lee-Murray Memorandum,<sup>17</sup> or Story's writings on Prize;<sup>18</sup> for he quotes numerous cases which may appear to the tyro to be cases in which an ultimate unlawful destination or origin was inferred for ships and goods whose immediate origin and destination was lawful, but which are really cases in which the ultimate origin or destination was *apparent* from the evidence of the ship's own papers and people (the evidence "*in preparatorio*"). Such

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14. Note to 1 Wheaton's Reports.

15. (1753). Probably drafted by Murray (Lord Mansfield), and reprinted with other documents on Continuous Voyage, by the writer in PRIZE LAW AND CONTINUOUS VOYAGE (1915).

16. See his MÉMOIR JUSTIFICATIF.

17. LEE, PAUL, RYDER AND MURRAY, MEMORIAL ON PRIZE PROCEDURE (REPORT ON PROCEDURE IN PRIZE CASES) (1753) in BATY, PRIZE LAW AND CONTINUOUS VOYAGE (1915), cited note 15 *supra*.

18. STORY, NOTES ON THE PRINCIPLES AND PRACTICE OF PRIZE COURTS (1854).

cases are those of the *Lisette*,<sup>19</sup> the *Charlotte Sophia*,<sup>20</sup> the *Maria (Monses)*,<sup>21</sup> and the *Juno*,<sup>22</sup> cases of exit from a blockaded port in lighters, where the transit of the impeached goods was accomplished in accordance with a detailed scheme *apparent on the face of the primary evidence*, making the nature of the voyage clear on the ship's own showing. This the present writer pointed out forty years ago in the first chapter of *International Law in South Africa*.<sup>23</sup> If the evidence *in preparatorio* shows an illegal voyage, there is no reason why condemnation should not ensue; and in the leading case (the *Maria (Monses)*) it is clear that the ship's papers did show it. "The charter-party was made in Bremen," which was blockaded, and must have shown the nature of the voyage. Ship, cargo and lighters were at Bremen; ship and cargo came out separately and were combined outside.

The ship had come out from a blockaded area.<sup>24</sup> The goods had broken that blockade and were liable to confiscation; at some moment that liability would disappear, but certainly not when they were put on board a sea-going ship for America! All this must have been apparent from the evidence *in preparatorio*. We know it must, because in the *Haabet*<sup>25</sup> and the *Glierktigkeit*,<sup>26</sup> Sir Wm. Scott had twice already in this very year of Trafalgar refused, with forcible emphasis, to listen to captors' evidence. It is inconceivable that he should have received it in the *Maria*<sup>27</sup> without any comment or argument. The same explanation applies to the case of the *Charlotte Sophia*.<sup>28</sup> The *Lisette*<sup>29</sup> shows exactly how the fact of the unity of the voyage came before the judge in the regular evidence: the charter-party showed it—"a charter-party, to take on board a cargo of goods from Malaga,<sup>30</sup> *which were to be sent from the Elbe in lighters.*" Nothing could be more explicit; it is fortunate that in these very summary reports of cases, we have this of the *Lisette* which happens to show exactly how the facts came before the court. Sir William Scott speaks of the ship being taken on "a voyage from Tonnigen to Malaga, but a voyage accompanied with the fact

19. 6 C. R. 387, 165 Eng. Rep. R. 972 (Adm. 1807).

20. 6 C. R. 204 n., 165 Eng. Rep. R. 902 n. (a)<sup>2</sup> (Adm. 1806).

21. 6 C. R. 201, 165 Eng. Rep. R. 901 (Adm. 1805).

22. 2 C. R. 116, 165 Eng. Rep. R. 258 (Adm. 1799).

23. BATY, INTERNATIONAL LAW IN SOUTH AFRICA (1900).

24. In the *Charlotte Sophia* the Lords made a great point of the fact that the ship herself had come through the blockade.

25. 6 C. R. 54, 165 Eng. Rep. R. 848 (Adm. 1805).

26. 6 C. R. 58 n., 165 Eng. Rep. R. 849 n. (Adm. 1805).

27. 6 C. R. 204 n. (1806).

28. 6 C. R. 203 (1805).

29. 6 C. R. 387, 165 Eng. Rep. R. 972 (1806).

30. This must certainly be a misprint for "for Malaga". The judgment (*id.* at 393, 165 Eng. Rep. R. at 974) commences "This ship was taken on a voyage from Tonnigen to Malaga." And the King's Advocate and Dr. Lawrence (on the same side for once) speak of "the destination of the vessel to the enemy's port . . . the effect of such a destination to Spain." (*id.* at 388, 165 Eng. Rep. R. at 972.) Italics in the text added.

that she had gone from Hamburg to Tonningen *under a charter-party formed at Hamburg for this ulterior voyage.*"

A somewhat different case is presented by the *Vier Gebroeders*.<sup>31</sup> It is not essentially different. Goods were captured when in transit to Tonningen just outside the limits of the blockade of the Elbe, to be taken on through the blockade in another and more suitable vessel. This was held a single voyage in breach of the blockade, and the ship and goods were condemned, although no entry had been made upon the second part of the voyage. But how did the Court get to know that the second part was intended? Simply because, as in the *Jesus* and the *Lisette*, it must have been so stated in the primary evidence.

If Sir Wm. Scott had said in the *Maria*: "Now, I am satisfied that these goods must have come from Bremen; the charter-party was made there, and the goods were no part of the commerce of Varel at all. I find they came from Bremen and I condemn the adventure," there would have been some analogy with the American Civil War Cases. If Sir William had said in the *Vier Gebroeders*, "These goods were not needed at Tonningen; they must have been meant to go to the Elbe, where they were needed," there would again have been some analogy with these cases. But certainly he did nothing of the sort. The history of the shipments is presented in the reports as a thing admitted and declared in the ordinary evidence in the ordinary way. And if the ship's own evidence, taken in the ordinary way, shows the unity of an intended importation in breach of blockade, there is no reason why it should not be acted upon.

The case is different with regard to contraband. Here, the law requires a physical destination of the vessel to a belligerent port or fleet so that no amount of evidence on the ship's papers and declarations as to an intended hostile use can make the goods subject to confiscation.<sup>32</sup> Consequently, the cases which are relied on in the paper under examination, in which the ship was hoist with her own petard, are mainly cases of blockade. In all of them, as we have seen, there is nothing like inference or suspicion: nothing to support the kernel of the Civil War cases, viz., that "Intention is everything." On the contrary, the principle is maintained that "Objective fact is everything." Only when the facts *prima facie* condemn, can we begin to talk about "intentions" in explanation or excuse. The *Schoone Sophie*<sup>33</sup> is highly

31. (1786). Unreported. Cited in BRIT. YEAR BOOK from note by Dr. Nicholl (V. 324). Also see *The Gratitude*, 3 C. R. 240, 270, 165 Eng. Rep. R. 450 (Adm. 1801), where it is cited.

32. It may be a question whether a destination of the goods to an enemy's fleet or port, through the medium of transshipment to another vessel, if apparent on the ship's papers, or the declarations of the ship's company, would be sufficient to condemn. So far as appears, no such clear case has ever arisen in the history of contraband.

33. 6 C. R. 138, 165 Eng. Rep. R. 878 (Adm. 1805).

instructive in this regard. Colonial produce was going to Antwerp from Emden in a neutral Prussian vessel. They had evidently come from the West Indies, and indeed from neutral St. Bartholomew (then Swedish). It was sought "*on grounds of probability and suspicion,*" to argue that they came originally from an enemy (French) island. Sir Wm. Scott declined to act on this attractive hypothesis, and refused to order "further proof" of innocence, but restored the cargo *simpliciter*. It had lain five weeks at Emden, but that factor is not represented as decisive. The words, "as it was argued on grounds of probability and suspicion", are italicized in the report, suggesting that there was something sinister, or at least peculiar, about them.

So far as the writer is aware, nobody ever was concerned to maintain that a voyage, admitted on the primary evidence to be *prima facie* illegal, was innocent merely because it was made in two sections. What the classical doctrine of Continuous Voyage maintains is that the voyage must be proved—and proved on the ship's own evidence. Mr. Pares' recent book on *Colonial Blockade and Neutral Rights*<sup>34</sup> will show to the sceptic that seamen quite frequently did make admissions useful to the captors. Sailors do not like their wages and liberties to be imperiled by concealed illegal adventures.

### III

It will be at once apparent how all these cases presented in the *Year Book*<sup>35</sup> as precedents to the contrary differ from the American cases reprobated by Gessner, Twiss and Hall. In the former, there is a single adventure proved and documented as such on the ship's papers, or sworn to by some of the ship's company. In the latter, there are mere inferences of intention based on surmise and on captors' evidence. Captors' evidence does not seem to have been admitted in the Civil War cases: the court appears to have acted on its own suspicions, at any rate in the *Springbok*.<sup>36</sup> It was reserved for Great Britain, by the Naval Prize Act,<sup>37</sup> to formally adopt this illegal course of procedure.

Nor is it possible to justify this reliance on well-grounded suspicions and captors' evidence by adducing the precedent of the colonial and coasting voyage cases. For there, without captors' evidence, or surmise of any sort, the court had, on the ships' own showing, the plain objective certainty of two facts: that the vessel was taking cargo to a European hostile port and that she had brought it from a colony of a

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34. PARES, COLONIAL BLOCKADE AND NEUTRAL RIGHTS (1938) 206.

35. *Op. cit. supra* note 2.

36. 5 Wall. 1 (U. S. 1866).

37. Naval Prize Act, 1914, 4 & 5 GEO. V, c. 13, § 1.

belligerent country.<sup>38</sup> That was enough to condemn; but the ship went on to say that she had played about with this cargo in an intermediate neutral place, and the question was then whether this explanation would be sufficient upon which to ground release. We need not here consider the circumstances in which it was variously held that it would or would not avail. "Further proof" was allowed to the ship as an indulgence, to explain her real intentions regarding the shipment. But it should be plain that the decision differs *toto coelo* from cases such as those of the American Civil War, in which there was no such certain and admitted ultimate destination. In other words, the English court found enough to condemn (the colonial transit), and the question of intention was immaterial except as a possible excuse: the American courts rested the whole case on an inferred and conjectural "intention".

With these colonial voyage cases may be classed the coasting voyage cases which the *Year Book* cites. The *Ebenezer*<sup>39</sup> was an ordinary case of continuous coasting voyage in which "it came out" *in the depositions*, that the cargo before leaving for Antwerp had come straight from Bordeaux with the cargo, and had spent only a pleasant three days at Emden, the asserted port of departure. Thus the vessel was captured on the second half of the voyage, when all the facts were ascertained. It was the usual case of piecing together the two admitted sailings, proceeding simply on the primary evidence. Goods had admittedly come from enemy Bordeaux in the *Ebenezer*, and were admittedly going in the *Ebenezer* to enemy Antwerp. That was a clear participation in the coasting trade of the enemy; the only question was whether it was excused by a call at Emden. The court found that it was not excused; and why should it have found otherwise? The *Juno* (1808) is cited merely from the rough notes of Doctor Nicholl<sup>40</sup> and the meager scrap—if it may respectfully be so styled—tells us plainly that the voyage was "From Havana to Providence *and Europe*"—therefore a simple illegal colonial voyage, and there was no need to style it "continuous" merely because "it was intended to call in America". The ship was taken, and quite properly taken, before she made that "call", on her own admission of an illegal voyage. No doubt the charter-party was the same as that in the *Enoch*,<sup>41</sup> viz., "For a voyage to the colony of the

38. See Note II in the Appendix to 6 C. R. (Adm. 1808), where the nature of the "Continuous Voyage" principle is clearly brought out: "It was *in the first instance* adopted as a rule of equitable construction *in favor of neutral trade*." A cargo going from Bordeaux to a French colony was allowed to show that it had really come from Hamburg. (Italics added.) (Just so, by indulgence, the claimants in the case of the *Jesus*, note 13 *supra*, were allowed to show, if they could, that the shipmaster was wrong in stating the destination of his voyage to be for France.)

39. 6 C. R. 250, 165 Eng. Rep. R. 920 (Adm. 1806).

40. Appx. 104.

41. Discussed in the *Maria*, 5 C. R. 365, 370, 165 Eng. Rep. R. 806, 808 (Adm. 1805).



enemy, and back to America, and from thence to the Mother-Country in Europe." In the *Maria (Jackson)* <sup>42</sup> Scott examines minutely a variety of cases in which different circumstances were alleged to break the continuity of an admitted voyage from a belligerent colony to the mother-country. Given the damning fact of an admitted transit which would, if unexplained, be illegal, the court was at liberty to accept or refuse the excuse that there had been an intermediate call. It refused it where there was a through charter-party,<sup>43</sup> other writings in evidence,<sup>44</sup> instructions in evidence showing a similar course of dealing,<sup>45</sup> where the goods had never been landed,<sup>46</sup> and so forth. But, as in the *Maria (Jackson)*, the *Eagle (Weeks)*<sup>47</sup> and the *Respect*,<sup>48</sup> it sometimes allowed it, and admitted the claimants to make further proof of the innocence of their conduct.<sup>49</sup>

It may be added that in his examination of the circumstances which from time to time were considered to break the continuity of an otherwise admitted colonial voyage, the *Year Book* author does not consider it worth while to mention that the British Government in 1801 explicitly told the United States that the payment of duties in the intermediate port would be sufficient, as it had been so decided in the *Polly (Lasky)* <sup>50</sup>—and that the Vice-Admiralty Courts had been officially instructed in that sense; nor that the United States were considerably astonished when the Court of Appeal revolutionized this, and talked about disregarding such steps on the part of neutral merchants—"however operative"! <sup>51</sup> "Perhaps the mere touching in the Neutral Country to take Fresh Clearances may properly be considered as a fraudulent evasion, and is in effect the Direct Trade: but the High Court of Admiralty has decided, (*and I see no reason* to expect that the Court of Appeal will vary the rule) that the landing the goods and paying the duties in the Neutral Country breaks the continuity of the voyage, and is such an importation as legalizes the trade." So ran the report of the King's

42. 5 C. R. 365, 165 Eng. Rep. R. 806 (Adm. 1805).

43. The *Enoch*, discussed in the *Maria*, 5 C. R. 365, 370, 165 Eng. Rep. R. 806, 808 (Adm. 1805), cited note 41 *supra*.

44. The *Essex*, discussed in the *Maria*, 5 C. R. 365, 368, 165 Eng. Rep. R. 806, 808 (Adm. 1805); the *William*, 5 C. R. 385, 399, 165 Eng. Rep. R. 817, 822 (Adm. 1806).

45. The *Rowena*, discussed in the *Maria*, 5 C. R. 365, 370, 165 Eng. Rep. R. 806, 808 (Adm. 1805).

46. The *Mercury* (1802), discussed in the *William*, 5 C. R. 385, 400, 165 Eng. Rep. R. 817, 823 (1806).

47. (1803). Discussed *id.* at 401, 165 Eng. Rep. R. at 823.

48. (1805). Discussed in the *Maria*, 5 C. R. 365, 370, 165 Eng. Rep. R. 806, 808.

49. In the *Maria*, 5 C. R. 365, 165 Eng. Rep. R. 806, the proof was successful, as also in the *Eagle (Weeks)*, discussed in the *William*, 5 C. R. 385, 401, 165 Eng. Rep. R. 817, 823 (1803).

50. 2 C. R. 361, 165 Eng. Rep. R. 344 (1800).

51. See 1 BRIT. STATE PAPERS (Monroe & Pinkney to Holland & Auckland, Aug. 20, 1806) 1204 and *Baty, The Portland Ministry and Continuous Voyage* (1922) 38 L. Q. REV. 359, where the report, as Mr. Gaskoin has pointed out, is mistakenly attributed by the present writer to Robinson instead of Nicholl.

Advocate (Dr. Nicholl) in 1801, and the Duke of Portland, as Prime Minister, instructed the Admiralty to communicate it to the colonial Courts and to the Government of the United States, who published it broadcast. But in 1805 the American property at sea on the faith of that publication was subjected to confiscation by the Lords of Appeal in the case of the *Essex*.<sup>52</sup> Monroe and Pinkney complained of all this to the British Government in 1806, but they appear to have obtained no redress.<sup>53</sup>

The *Year Book* learned contributor's conclusions may therefore be flatly traversed, with the partial exception of the fourth.

1. The doctrine of continuous voyage was *not* applied in the case of the *Jesus*.

2. The doctrine with which the courts were concerned was one of "continuous transport rather than continuous voyage": they did not look to ultimate destination beyond the completion of an admitted voyage, shown to be one voyage by the ship's papers and the sworn depositions of her people.

3. The doctrine of requiring a person who alleged the discontinuity of an *admitted voyage* to establish its innocence was familiar to the Judges of the United Kingdom long before 1805. It was applied in the Monte Ciste cases<sup>54</sup> in the War of 1756.<sup>55</sup>

4. That doctrine was not first applied in 1756 to the case of contraband; nor in 1804 to that of blockade; nor in 1806 to that of coasting trade, so far as our materials serve.

In short, as was pointed out in papers read before the International Law Association at Christiania in 1905 and London in 1910, the neutral merchant, through the distortion of the doctrine, has in the twentieth century exchanged his clean *habeas corpus* for a ruinous process of common law litigation. Non-lawyers like the late honored Professor Garner may be content with this, but those who are anxious to see the affairs of nations regulated on a basis of law and order may well think otherwise.

52. See note 44 *supra*.

53. 1 BRIT. STATE PAPERS 1203 *et seq.* Probably Scott's rule in the *Polly* making the payment of duties conclusive, was rendered nugatory by a system of drawbacks. So the departure from it is not quite as unfair as it seems. See Grant, M. R., in the *William*, 5 C. R. 385, 403, 165 Eng. Rep. R. 817, 824 (1806), referring to the *Essex*.

54. Discussed in 4 C. R. Appendix 5, reporting the case of the *Wilhelmina*.

55. It is in fact inherent in the theory of prize procedure, according to which a claimant who is on the evidence liable to condemnation may be allowed to explain himself. See BATY, *Lee-Murray Memorial* in PRIZE LAW AND CONTINUOUS VOYAGE (1915) 116.

See also the *Wilhelmina*, 2 C. R. 101, n. (1801), cited from Dr. Nicholl's Notes by Mr. Gaskoin in *Prize Case Notes in the Days of Stowell* (1923) BRITISH YEAR BOOK OF INTERNATIONAL LAW 89. (The writer is indebted to him for his kind correction of the attribution of the Report by the King's Advocate to Christopher Robinson.)