

CHAPTER IV.—PRINCIPLES OF CONSTRUCTION APPLICABLE TO THE RULES OF THE TREATY.

The two questions last considered (that of the supposed obligation of Great Britain, under the First Rule, to seize or detain such vessels as the Alabama or the Florida, when they came into British ports as duly commissioned public ships of war of the Confederate States—and as to her supposed obligation, under the Second Rule, either not to permit at all, or by an exact supervision to limit, the coaling of Confederate steam-vessels of war in British ports) involve points of such grave importance as to the principles of construction to be applied to those Rules for the purpose of the present controversy, that some further general observations on that subject seem to be imperatively called for.

Among the rules for the interpretation of Treaties, laid down by Vattel (Articles 262-310), are found the following:—

“(1.) Since the lawful interpretation of a contract ought to tend only to the discovery of the thoughts of the author or authors of that contract, as soon as we meet with any obscurity, we should seek for what was probably in the thoughts of those who drew it up, and interpret it accordingly. This is the general rule of all interpretations. It particularly serves to fix the sense of certain expressions, the signification of which is not sufficiently determined. In virtue of this rule, we should take those expressions in the most extensive sense, when it is probable that he who speaks has had in his view everything pointed out in this extensive sense; and, on the contrary, we ought to confine the signification, if it appears that the author has bounded his thoughts by what is comprehended in the more limited sense.” (Art. 270.)

“(2.) In the interpretation of Treaties, pacts, and promises, we ought not to deviate from the common use of the language; at least, if we have not very strong reasons for it. In all human affairs, where there is a want of certainty, we ought to follow probability. It is commonly very probable that they have spoken according to custom; this always forms a very strong presumption, which cannot be surmounted, but by a contrary presumption that is still stronger.” (Art. 271.)

“(3.) Words are only designed to express the thoughts; thus the true signification of an expression, in common use, is the idea which custom has affixed to that expression. It is then a gross quibble to affix a particular sense to a word, in order to elude the true sense of the entire expression.”

“(4.) When we manifestly see what is the sense that agrees with the intention of the Contracting Powers, it is not permitted to turn their words to a contrary meaning. The intention, sufficiently known, furnishes the true matter of the Convention, of what is perceived and accepted, demanded, and granted. To violate the Treaty, is to go contrary to the intention sufficiently manifested, rather than against the terms in which it is conceived; for the terms are nothing, without the intention that ought to dictate them.” (Art. 274.)

“(5.) We ought always to give to expressions the sense most suitable to the subject, or to the matter to which they relate. For we endeavour, by a true interpretation, to discover the thoughts of those who speak, or of the Contracting Powers in a Treaty. Now it ought to be presumed, that he, who has employed a word capable of many different significations, has taken it in that which agrees with the subject. In proportion as he employs himself on the matter in question, the terms proper to express his thoughts present themselves to his mind; this equivocal word could then only offer itself in the sense proper to express the thought of him who makes use of it, that is, in the sense agreeable to the subject.” (Art. 280.)

“(6.) Every interpretation that leads to an absurdity ought to be rejected; or, in other words, we should not give to any piece a sense, from which follows anything absurd; but interpret it in such a manner, as to avoid absurdity. As it cannot be presumed that any one desires what is absurd, it cannot be supposed, that he who speaks has intended that his words should be understood in a sense, from which that absurdity follows. Neither is it allowable to presume that he sports with a serious act; for what is shameful and unlawful is not to be presumed. We call absurd not only that which is physically impossible, but what is morally so; that is, what is so contrary to right reason, that it cannot be attributed to a man in his right senses. . . . The rule we have just mentioned is absolutely necessary, and ought to be followed, even when there is neither obscurity nor anything equivocal in the text of the law, or the Treaty itself. For it must be observed, that the uncertainty of the sense, that ought to be given to a law or a Treaty, does not merely proceed from the obscurity, or any other fault in the expression: but also from the narrow limits of the human mind, which cannot foresee all cases and circumstances, nor include all consequences of what is appointed or promised; in short, from the impossibility of entering into this immense detail. We can only make laws or Treaties in a general manner; and the interpretation ought to apply them to particular cases, conformably to the intention of the legislature, or of the Contracting Powers. Now it cannot be presumed that, in any case, they would lead to anything absurd; when, therefore, their expressions, if taken in their proper and ordinary sense, lead to it, it is necessary to turn them from that sense, just so far as is sufficient to avoid absurdity.” (Article 282.)

“(7.) If he, who has expressed himself in an obscure or equivocal manner, has spoken elsewhere more clearly on the same subject, he is the best interpreter of himself. We ought to interpret his obscure or vague expressions in such a manner, that they may agree with those terms that are clear and without ambiguity, which he has used elsewhere, either in the same Treaty or in some other of the like kind. In fact, while we have no proof that a man has changed his mind, or manner of thinking, it is presumed that his thoughts have been the same on the same occasions; so that, if he has anywhere

1. Importance of the second and third questions, as to the principles of construction applicable to the three Rules.

2. Rules for the interpretation of public Conventions and Treaties.