

year with another, produces more than is sufficient for the support of her inhabitants, the superfluity will still be sent abroad: but it will be sent at a higher and fairer price.

(31) As to the subject of this chapter, see further authorities, Chitty's Commercial Law, vol. i. chap. 1. — C.

(32) In England there are few legislative enactments respecting the cultivation of the soil or employment of its produce, each individual being left to his own discretion; but to prevent the injurious sale of farming produce, thereby impoverishing the land, there is an express enactment enforcing public policy in that respect. See 56 Geo. III. c. 50, and its recitals. In France there are express provisions punishing individuals who suffer injurious weeds to seed on land to the injury of their neighbors, a regulation which would be exceedingly salutary if introduced into this country. — C.

CHAP. VIII. OF COMMERCE(33)

§ 83. Of home and foreign trade.

IT is commerce that enables individuals and whole nations to procure those commodities which they stand in need of, but cannot find at home. Commerce is divided into *home and foreign* trade. (34) The former is that carried on in the state between the several inhabitants; the latter is carried on with foreign nations.

§ 84. Utility of the home trade.

The *home* trade of a nation is of great use; it furnishes all the citizens with the means of procuring whatever they want, as either necessary, useful, or agreeable; it causes a circulation of money, excites industry, animates labour, and, by affording subsistence to a great number of people, contributes to increase the population and power of the state.

§ 85. Utility of foreign trade.

The same reasons show the use of *foreign* trade, which is moreover attended with these two advantages: — 1. By trading with foreigners, a nation procures such things as neither nature nor art can furnish in the country it occupies. And secondly, if its foreign trade be properly directed, it increases the riches of the nation, and may become the source of wealth and plenty. Of this the example of the Carthaginians among the ancients, and that of the English and Dutch among the moderns, afford remarkable proofs.

Carthage, by her riches, counterbalanced the fortune, courage, and greatness of Rome. Holland has amassed immense sums in her marshes; a company of her merchants possesses whole kingdoms in the East, and the governor of Batavia exercises command over the monarchs of India. To what a degree of power and glory has England arrived! Formerly her warlike princes and inhabitants made glorious conquests, which they afterwards lost by those reverses of fortune so frequent in war; at present, it is chiefly commerce that places in her hand the balance of Europe.

§ 86. Obligation to cultivate the home trade.

Nations are obliged to cultivate the home trade, — first, because it is clearly demonstrated from the law of nature, that mankind ought mutually to assist each other, and, as far as in their power, contribute to the perfection and happiness of their fellow-creatures: whence arises, after the introduction of private property, the obligation to resign to others, at a fair price, those things which they have occasion for, and which we do not destine for our own use. Secondly, society being established with a view that each may procure whatever things are necessary to his own perfection and happiness — and a home trade being the means of obtaining them — the obligations to carry on and improve this trade are derived from the very compact on which the society was formed. Finally, being advantageous to the nation, it is a duty the people owe to themselves, to make this commerce flourish.

§ 87. Obligation to carry on foreign trade.

For the same reason, drawn from the welfare of the state, and also to procure for the citizens every thing they want, a nation is obliged to promote and carry on a foreign trade. Of all the modern states, England is most distinguished in this respect. The parliament have their eyes constantly fixed on this important object; they effectually protect the navigation of the merchants, and, by considerable bounties, favour the exportation of superfluous commodities and merchandises. In a very sensible product,¹ may be seen the valuable advantages that kingdom has derived from such judicious regulations.

§ 88. Foundation of the laws of commerce: — right of purchasing.

Let us now see what are the laws of nature and the rights of nations in respect to the commerce they carry on with each other. Men are obliged mutually to assist each other as much as possible, and to contribute to the perfection and happiness of their fellow-creatures (Prelim. § 10); (35) whence it follows, as we have said above (§ 86), that, after the introduction of private property, it became a duty to sell to each other, at a fair price, what the possessor himself has no occasion for, and what is necessary to others; because, since that introduction of private property, no one can, by any other means, procure the different things that may be necessary or useful to him, and calculated to render life pleasant and agreeable. Now, since right springs from obligation (Prelim. § 3), the obligation which we have just established gives every man the right of procuring the things he wants, by purchasing them at a reasonable price from those who have themselves no occasion for them.(36)

We have also seen (Prelim. § 5) that men could not free themselves from the authority of the laws of

nature by uniting in civil society, and that the whole nation remains equally subject to those laws in its national capacity; so that the natural and necessary law of nations is no other than the law of nature properly applied to nations or sovereign states (Prelim. § 6): from all which it follows, that a nation has a right to procure, at an equitable price, whatever articles it wants, by purchasing them of other nations who have no occasion for them. This is the foundation of the right of commerce between different nations, and, in particular, of the right of buying.(36)

§ 89. Right of selling

We cannot apply the same reasoning to the right of *selling* such things as we want to part with. Every man and every nation being perfectly at liberty to buy a thing that is to be sold, or not to buy it, and to buy it of one rather than of another' the law of nature gives to no person whatsoever any kind of right to sell what belongs to him to another who does not wish to buy it; neither has any nation the right of selling her commodities or merchandise to a people who are unwilling to have them.

§ 90. Prohibition of foreign merchandise.

Every state has consequently a right to prohibit the entrance of *foreign merchandises*; and the nations that are affected by such prohibition have no right to complain of it, as if they had been refused an office of humanity.(37) Their complaints would be ridiculous, since their only ground of complaint would be, that a profit is refused to them by that nation who does not choose they should make it at her expense, It is, however, true, that if a nation was very certain that the prohibition of her merchandises was not founded on any reason drawn from the welfare of the state that prohibited them, she would have cause to consider this conduct as a mark of ill-will shown in this instance, and to complain of it on that footing. But it would be very difficult for the excluded nation to judge with certainty that the state had no solid or apparent reason for making such a prohibition.

§ 91. Nature of the right of buying,

By the manner in which we have shown a nation's right to buy of another what it wants, it is easy to see that this right is not one of those called *perfect*, and that are accompanied with a right to use constraint. Let us now distinctly explain the nature of a right which may give room for disputes of a very serious nature. You have a right to buy of others *such things as you want*, and of which they themselves have no need; you make application to me: I am not obliged to sell them to you, if I myself have any occasion for them. In virtue of the natural liberty which belongs to all men, it is I who am to judge whether I have occasion for them myself, or can conveniently sell them to you; and you have no right to determine whether I judge well, or ill, because you have no authority over me. If I, improperly, and without any good reason, refuse to sell you at a fair price what you want, I offend against my duty: you may complain of this, but you must submit to it: and you cannot attempt to force me, without violating my natural right, and doing me an injury. The right of buying the things we want is then only an *imperfect* right, like that of a poor man to receive alms of the rich man; if the latter refuses to bestow it, the poor man may justly complain: but he has no right to take it by force.

If it be asked, what a nation has a right to do in case of extreme necessity, — this question will be answered in its proper place in the following book, Chap. IX.

§ 92. Every nation is to choose how far it will engage in commerce.

Since then a nation cannot have a natural right to sell her merchandises to another that is unwilling to purchase them, since she has only an imperfect right to buy what she wants of others, since it belongs only to these last to judge whether it be proper for them to sell or not; and finally, since commerce consists in mutually buying and selling all sorts of commodities, it is evident that **it depends on the will of any nation to carry on commerce with another, or to let it alone.** If she be willing to allow this to one, it depends on the nation to permit it under such conditions as she shall think proper. For in permitting another nation to trade with her, she grants that other a right; and every one is at liberty to affix what conditions he pleases to a right which he grants of his own accord.(38)

§ 93. How a nation acquires a perfect right to a foreign trade.

Men and sovereign states may, by their promises, enter into a perfect obligation with respect to each other, in things where nature has imposed only an *imperfect* obligation. A nation, not having naturally a perfect right to carry on a commerce with another, **may procure it by an agreement or treaty.** This right is then acquired only by treaties, and relates to that branch of the law of nations termed *conventional* (Prelim. § 24). The treaty that gives the right of commerce, is the measure and rule of that right.

§ 94. Of the simple permission of commerce.

A simple permission to carry on commerce with a nation gives no perfect right to that commerce. For if I merely and simply permit you to do any thing, I do not give you any right to do it afterwards in spite of me: — you may make use of my condescension as long as it lasts; but nothing prevents me from changing my will. As then every nation has a right to choose whether she will or will not trade with another, and on what conditions she is willing to do it (§ 92), if one nation has for a time permitted another to come and trade in the country, she is at liberty, whenever she thinks proper, to prohibit that commerce — to restrain it — to subject it to certain regulations; and the people who before carried it on cannot complain of injustice.

Let us only observe, that nations, as well as individuals, are obliged to trade together for the common benefit of the human race, because mankind stand in need of each other's assistance (Prelim. §§ 10, 11, and Book I. § 88): still, however, each nation remains at liberty to consider, *in particular cases*, whether it be convenient for her to encourage or permit commerce; and as our duty to ourselves is paramount to our duty to others, if one nation finds herself in such circumstances that she thinks foreign commerce dangerous to the state, **she may renounce and prohibit it.** **This the Chinese have done for a long time together.** But, again, **it is only for very serious and important reasons that her duty to herself should dictate such a reserve; otherwise, she could not refuse to comply with the general duties of humanity.**

§ 95. Whether the laws relating to commerce are subject to prescription. (39)

We have seen what are the rights that nations derive from nature with regard to commerce, and how they may acquire others by treaties: let us now examine whether they can found any on long custom. To determine this question in a solid manner, it is necessary first to observe, that there are rights which consist in a simple *power*: they are called in Latin, *jura meræ facultatis*, rights of mere ability. They are such in their own nature that he who possesses them may use them or not, as he thinks proper — being absolutely free from all restraint in this respect; so that the actions that relate to the exercise of these rights are acts of mere free will, that may be done or not done, according to pleasure. It is manifest that rights of this kind cannot be lost by prescription, on account of their not being used, since prescription is only founded on consent legitimately presumed; and that, if I possess a right which is of such a nature that I may or may not use it, as I think proper, without any person having a right to prescribe to me on the subject, it cannot be presumed, from my having long forborne to use it, that I therefore intend to abandon it. This right is then imprescriptible, unless I have been forbidden or hindered from making use of it, and have obeyed with sufficient marks of consent. Let us suppose, for instance, that I am entirely at liberty to grind my corn at any mill I please, and that during a very considerable time, a century if you please, I have made use of the same mill: as I have done in this respect what I thought proper, it is not to be presumed, from this long-continued use of the same mill, that I meant to deprive myself of the right of grinding at any other; and, consequently, my right cannot be lost by prescription. But now suppose, that, on my resolving to make use of another mill, the owner of the former opposes it, and announces to me a prohibition; if I obey his prohibition without necessity, and without opposition, though I have it in my power to defend myself, and know my right, this right is lost, because my conduct affords grounds for a legitimate presumption that I chose to abandon it. — Let us apply these principles. — Since it depends on the will of each nation to carry on commerce with another, or not to carry it on, and to regulate the manner in which it chooses to carry it on (§ 92), the right of commerce is evidently a right of mere ability (*jus merae facultatis*), a simple power, and consequently is imprescriptible. Thus, although two nations have treated together, without interruption, during a century, this long usage does not give any right to either of them; nor is the one obliged on this account to suffer the other to come and sell its merchandises, or to buy others: — they both preserve the double right of prohibiting the entrance of foreign merchandise, and of selling their own wherever people are willing to buy them. Although the English have from time immemorial been accustomed to get wine from Portugal, they are not on that account obliged to continue the trade, and have not lost the liberty of purchasing their wines elsewhere. (40) Although they have, in the same manner, been long accustomed to sell their cloth in that kingdom, they have, nevertheless, a right to transfer that trade to any other country: and the Portuguese, on their part, are not obliged by this long custom, either to sell their wines to the English, or to purchase their cloths. If a nation desires any right of commerce which shall no longer depend on the will of another, she must acquire it by treaty. (40)

§ 96. Imprescriptibility of rights founded on treaty.

What has been just said may be applied to the rights of commerce acquired by treaties. If a nation has by this method procured the liberty of selling certain merchandises to another, she does not lose her right, though a great number of years are suffered to elapse without its being used; because this right is a

simple power, *jus merae facultatis*, which she is at liberty to use or not, whenever she pleases.

Certain circumstances, however, may render a different decision necessary, because they imply a change in the nature of the right in question. For instance, if it appears evident, that the nation granting this right granted it only with a view of procuring a species of merchandise of which she stands in need, and if the nation which obtained the right of selling neglects to furnish those merchandises, and another offers to bring them regularly, on condition of having an exclusive privilege, — it appears certain that the privilege may be granted to the latter. Thus the nation that had the right of selling would lose it, because she had not fulfilled the tacit condition.

§ 97. Of monopolies, and trading companies, with exclusive privileges. (41)

Commerce is a common benefit to a nation; and all her members have an equal right to it. *Monopoly*, therefore, in general, is contrary to the rights of the citizens. However, this rule has its exceptions, suggested even by the interest of the nation: and a wise government may, in certain cases, justly establish monopolies. There are commercial enterprises that cannot be carried on without an energy that requires considerable funds, which surpass the ability of individuals. There are others that would soon become ruinous, were they not conducted with great prudence, with one regular spirit, and according to well-supported maxims and rules. These branches of trade cannot be indiscriminately carried on by individuals: companies are therefore formed, under the authority of government; and these companies cannot subsist without an exclusive privilege. It is therefore advantageous to the nation to grant them: hence have arisen, in different countries, those powerful companies that carry on commerce with the East. When the subjects of the United Provinces established themselves in the Indies on the ruin of their enemies the Portuguese, individual merchants would not have dared to think of such an arduous enterprise; and the state itself, wholly taken up with the defence of its liberty against the Spaniards, had not the means of attempting it.

It is also certain beyond all doubt, that, whenever any individual offers, on condition of obtaining an exclusive privilege, to establish a particular branch of commerce or manufacture which the nation has not the means of carrying on, the sovereign may grant him such privilege.

But whenever any branch of commerce may be left open to the whole nation, without producing any inconvenience or being less advantageous to the state, a restriction of that commerce to a few privileged individuals is a violation of the rights of all the other citizens. And even when such a commerce requires considerable expenses to maintain forts, men of war, &c., this being a national affair, the state may defray those expenses, and, as an encouragement to industry, leave the profits of the trade to the merchants. This is sometimes done in England.

§ 98. Balance of trade, and attention of government in this respect.

The conductor of a nation ought to take particular care to encourage the commerce that is advantageous to his people, and to suppress or lay restraints upon that which is to their disadvantage.(42) Gold and

silver having become the common standard of the value of all the articles of commerce, the trade that brings into the state a greater quantity of these metals than it carries out, is an advantageous trade; and, on the contrary, that is a ruinous one, which causes more gold and silver to be sent abroad, than it brings home. This is what is called the balance of trade. The ability of those who have the direction of it, consists in making that balance turn in favour of the nation.

§ 99. Import duties. (43)

Of all the measures that a wise government may take with this view, we shall only touch here on *import* duties. When the conductors of a state, without absolutely forcing trade, are nevertheless desirous of diverting it into other channels, they lay such duties on the merchandises they would discourage as will prevent their consumption. Thus, French wines are charged with very high duties in England, while the duties on Portugal are very moderate, — because England sells few of her productions to France, while she sells large quantities to Portugal. There is nothing in this conduct that is not very wise and extremely just; and France has no reason to complain of it — every nation having an undoubted right to make what conditions she thinks proper, with respect to receiving foreign merchandises, and being even at liberty to refuse taking them at all.

(33) See the authorities and doctrines on the advantage of commerce and commercial regulations, 1 Chitty's Commercial Law, 1 to 106. — C.

(34) To these are to be added the *carrying trade*, formerly one of the principal sources of British wealth and power. See authorities, 1 Chitty's Commercial Law, 7, 8, &c. — C.

1. Remarks on the Advantages and Disadvantages of France and Great Britain with respect to Commerce.

(35) See also s. 13, and *Id.* note. ante. — C.

(36) The *moral* obligation of a nation, in time of peace, to permit commercial intercourse with other states, and to allow other states to buy her surplus produce, or to sell or exchange their own surplus produce, is illustrated in Mr. Pitt's celebrated speech in concluding the commercial treaty with France in 1786, &c., 2 Smith's W. of N, 226 to 252; Tucker's Pamphlet *Cui Bono*, and 1 Chitty's Commercial Law, 73 to 79. It seems to be considered by the ablest writers on the law of nations, to be a *moral* duty but of *imperfect* obligation, so that in truth each state has a right, when so disposed, to decline any commercial intercourse with other states. *Id. ibid et supra.* — C.

(37) When such a prohibition has been established, any violation of it in general subjects the ship and goods to seizure and confiscation, as in case of smuggling, whether by exporting or importing prohibited goods, or permitted goods without paying imposed duties, *Bird v. Appleton*, 8 Term Rep. 562; *Wigmore*

v. Reed, 5 Term Rep. 599; *Holman v. Johnson*, Cowp. 344. — C.
(*Church v. Hubbard*, 2 Cranch. 187.)

(38) With respect to commercial intercourse with the *colonies* of a parent state of Europe, all the European nations which have formed settlements abroad have so appropriated the trade of those settlements to themselves, either in *exclusively* permitting their own subjects to partake of it, or in granting a monopoly to trading companies, that the colonies themselves cannot legally carry on hardly any *direct trade* with *other* powers: consequently the commerce in those possessions is not free to foreign nations; and they are not even permitted to land in the country, or to enter with their vessels within cannon shot of the shore, except only in cases of urgent necessity. This has now become generally the understanding and law of nations as regards colonies; and the ships, &c. violating the rule are liable to seizure. Marten's Law of Nations, 150 to 152; *Bird v. Appleton*, 8 Term Rep. 562; 1 Chitty's Commercial Law, 79, 211 to 244, 470, 631. — C.

(39) See further, Grotius, 158; Puffendorf, B. 4. chap. 5, s. 10, p. 168; 1 Chit. Com. Law, 80, 81. — C.

(40) The perpetual obligation to purchase Port wines from Portugal in exchange for British woollen cloths was established by the celebrated treaty of Methuen, A.D. 1703 (so called because concluded by Sir P. Methuen): with Portugal: a treaty which has been censured by some as evidently advantageous to Portugal and disadvantageous to Great Britain. 2 Smith, W.N. 338 to 341; Tucker on Trade, 356; and 1 Chitty's Commercial Law. 619. — C.

(41) See the advantages and disadvantages resulting from *commercial companies* and *foreign monopolies*, and upon colonization in general. 1 Chitty's Commercial Law, 631 to 689; and see some sensible observations on the impolicy of Exclusive Companies, Evans on Statutes, Class III. title Insurance, p. 231. Dr. Adam Smith, in his Wealth of Nations, book iv. c. 7, p. 379, &c. and Dean Tucker, in his Essay on Trade, 67 to 71 (but see Id. 40, 41), admit, that, to induce speculating and enterprising individuals to embark their capitals in expensive undertakings, probably generally beneficial in the result, but which could not be pursued by single individuals, it may be expedient originally to afford them a monopoly; but that, after they have acquired a liberal profit, the trade ought to be thrown open. Again, when a country becomes too densely populated, and many subjects are out of employ and restless, then there may be another reason for encouraging the creation of foreign companies. A celebrated diplomatist, and an acute observer of human nature (M. Talleyrand), has justly said, that the *art of putting* men into their proper places is, perhaps, the first science of government, but that of finding the proper place for the *discontented* is assuredly the *most difficult*: and the presenting to their imagination in a distant country, perspective views, on which their thoughts and desires may fix themselves, is one of the solutions of this difficulty. In the development of the motives which determined the establishment of the *ancient colonies* we easily remark, that, at the very time they were indispensable, they were voluntary; that they were presented by the governments as an allurements, not as a punishment. Bodies politic ought to reserve to themselves the means of placing to advantage, at a distance from their immediate seat, that superabundance of citizens who from time to time threaten their tranquillity. Thus, with *new views* of life, and the content springing from the full employment of the *aspiring mind* of man, and under the influence of renewed hope, the bad, the idle, and the turbulent may

be rendered useful members of society. Our *colonies*, then, present such a field for the promotion of human happiness, such a scope for the noblest purposes of philanthropy, that we cannot be led to think their interests will be overlooked by a wise legislature or government. — C.

(42) This is a *questionable* policy. It has been laid down by some of the most eminent writers on political economy, that every active interference or the legislature with its subjects, by prohibiting or restraining any particular branch of honest labour, or by encouraging any particular branch at the expense of the others, whether in agriculture or commerce, has uniformly retarded the advances of public opulence, and that the sound policy of a legislator is not to impose restrictions or regulations upon domestic industry, but rather to prevent them from being imposed by the contrivance or folly of others. See 2 Smith, W.M. 118, 125, 201, 204; 3 Id. 183; Malthus. 196; 2 Paley, Mor. Phil. 400, 402; 3 Hume, Hist. 403; Sir J. Child on Trade, 2d part, 46, 81, 86, 132, 154 to 164: and Buchanan's Observations on Smith's W. of N. 2d ed. vol. 4, page 156, 157; Introduc. 3 Lord Sheffield's Strictures on Navigation System, 3 Adolph. 163, and see *ante*, chap. 6, and 1 Chitty's Commercial Law, 4 to 7.

But as regards the encouragement or discouragement of any particular branch of trade, there is another motive for interference which powerfully influences, viz, the *increase of revenue*, for whenever the luxury or other wish of the people introduces a foreign, or even a domestic article to greater consumption, a moderate charge upon the same, though in a degree restrictive upon the consumption, will in general be a proper tax. Ibid. — C.

CHAP. IX.

OF THE CARE OF THE PUBLIC WAYS OF COMMUNICATION, AND THE RIGHT OF TOLL.

§ 100. Utility of highways, canals, &c.

THE utility of highways, bridges, canals, and, in a word, of all safe and commodious ways of communication, cannot be doubted. They facilitate the trade between one place and another, and render the conveyance of merchandise less expensive, as well as more certain and easy. The merchants are enabled to sell at a better price, and to obtain the preference; an attraction is held out to foreigners, whose merchandises are carried through the country, and diffuse wealth in all the places through which they pass. France and Holland feel the happy consequences of this from daily experience. (44)

§ 101. Duty of government in this respect.

One of the principal things that ought to employ the attention of the government with respect to the welfare of the public in general, and of trade in particular, must then relate to the highways, canals, &c., in which nothing ought to be neglected to render them safe and commodious. France is one of those

The sovereign may forbid the entrance of his territory either to foreigners in general or in particular cases, or to certain persons or for certain particular purposes, according as he may think it advantageous to the state. There is nothing in all this that does not flow from the rights of domain and sovereignty: every one is obliged to pay respect to the prohibition; and whoever dares to violate it, incurs the penalty decreed to render it effectual. But the prohibition ought to be known, as well as the penalty annexed to disobedience: those who are ignorant of it, ought to be informed of it when they approach to enter the country. Formerly the Chinese, fearing lest the intercourse of strangers should corrupt the manners of the nation, and impair the maxims of a wise but singular government, forbade all people entering the empire: a prohibition that was not at all inconsistent with justice, provided they did not refuse human assistance to those whom tempest or necessity obliged to approach their frontiers. It was salutary to the nation, without violating the rights of any individual, or even the duties of humanity, which permits us, in case of competition, to prefer ourselves to others.

§ 95. A country possessed by several nations at the same time.

If at the same time two or more nations discover and take possession of an island or any other desert land without an owner, they ought to agree between themselves, and make an equitable partition; but, if they cannot agree, each will have the right of empire and the domain in the parts in which they first settled.

§ 96. A country possessed by a private person.

An independent individual, whether he has been driven from his country, or has legally quitted it of his own accord, may settle in a country which he finds without an owner, and there possess an independent domain. Whoever would afterwards make himself master of the entire country, could not do it with justice without respecting the rights and independence of this person. But, if he himself finds a sufficient number of men who are willing to live under his laws, he may form a new state within the country he has discovered, and possess there both the domain and the empire. But, if this individual should arrogate to himself alone an exclusive right to a country, there to reign monarch without subjects, his vain pretensions would be justly held in contempt: — a rash and ridiculous possession can produce no real right.

There are also other means by which a private person may found a new state. Thus, in the eleventh century, some Norman noblemen founded a new empire in Sicily, after having wrested that island by conquest from the common enemies of the Christian name. The custom of the nation permitted the citizens to quit their country in order to seek their fortune elsewhere.

§ 97. Independent families in a country.

When several independent families are settled in a country, they possess the free domain, but without sovereignty, since they do not form a political society. Nobody can seize the empire of that country; since this would be reducing those families to subjection against their will; and no man has a right to

command men who are born free, unless they voluntarily submit to him.

If those families have fixed settlements, the place possessed by each is the peculiar property of that family: the rest of the country of which they make no use, being left in the primitive state of communion, belongs to the first occupant. Whoever chooses to settle there, may lawfully take possession of it.

Families wandering in a country, as the nations of shepherds, and ranging through it as their wants require, possess it in common: it belongs to them to the exclusion of all other nations; and we cannot, without injustice, deprive them of the tracts of country of which they make use. But, let us here recollect what we have said more than once (Book I. §§ 81 and 209, Book II. § 69). The savages of North America had no right to appropriate all that vast continent to themselves; and since they were unable to inhabit the whole of those regions, other nations might, without injustice, settle in some parts of them, provided they left the natives a sufficiency of land. If the pastoral Arabs would carefully cultivate the soil, a less space might be sufficient for them. Nevertheless, no other nation has a right to narrow their boundaries, unless she be under an absolute want of land. For, in short, they possess their country; they make use of it after their manner; they reap from it an advantage suitable to their manner of life, respecting which they have no laws to receive from any one. In a case of pressing necessity, I think people might, without injustice, settle in a part of that country, on leading the Arabs the means of rendering it, by the cultivation of the earth, sufficient for their own wants, and those of the new inhabitants.

§ 98. Possession of certain places only, or of certain rights, in a vacant country.

It may happen that a nation is contented with possessing only certain places, or appropriating to itself certain rights, in a country that has not an owner, without being solicitous to take possession of the whole country. In this case, another nation may take possession of what the first has neglected; but this cannot be done without allowing all the rights acquired by the first to subsist in their full and absolute independence. In such cases, it is proper that regulations should be made by treaty; and this precaution is seldom neglected among civilized nations.

1. See the report made to the King of Great Britain by Sir George Lee, Dr. Paul, Sir Dudley Ryder, and Mr. Murray. It is an excellent piece on the law of nations.

(107) This principle appears to be now settled by the law and practice of nations; but, nevertheless, subject to certain general wholesome rules, essential to be adhered to in order to prevent the effect of partial and unjust sentences and decisions. The respected decisions which have given rise to discussion, have principally been in foreign Courts of Admiralty, or Prize Courts; and the law respecting them has been better settled by the decisions of Sir W. Scott and Sir J. Nichol, so universally respected than at any other period of history. By the long established doctrine in England, and by the more recent general