

THE FRENCH LAW OF PRIZE

The Declaration of March 1, made by the governments of Great Britain and France, which vitally affect American commerce and shipping, and the capture of the now famous *Dacia* by a French war vessel, serve to increase public interest in the United States in the law of prize in force in the French Republic. It is proposed to give here a brief account of the legislative measures enacted in France since the outbreak of the present war, and to mention briefly the cases that have been decided thus far by the French Prize Court.

The French prize law as it existed prior to the present war differed in material respects from the Anglo-American law. But by the adoption of the Declaration of London by France, as well as by Great Britain, and the promulgation of identical lists of contraband by France and Great Britain, some uniformity in the prize law of the two countries is secured. This uniformity of legislation, however, does not extend to the legislative measures adopted to carry out the policy of the Declaration of March 1. Even where identical provisions of law have been adopted in the two countries former judicial precedents will undoubtedly consciously or unconsciously affect the decisions of the tribunals.

It must be borne in mind that the Declaration of London leaves many important questions of prize law undetermined. For example, it contains no provisions in reference to the destruction of enemy prizes or the determination of the enemy character of cargoes. While the English and American law determines the enemy character of cargoes by the domicile of the owner or the location of his house of trade, the French law determines this question solely by reference to nationality.

At the outbreak of the present war France accorded days of grace to enemy merchant vessels in French ports at the outbreak of hostilities. By Decree of August 4, 1914,¹ it was provided that German merchant vessels in French ports prior to August 3, 1914, at 6.45 P. M., or thereafter entering such ports in ignorance of the outbreak of the war, should be given seven clear days from the date of the Decree to leave such ports, and be given a pass to reach their port of destination or such other port as might be designated by the maritime authorities. The privilege did not

¹ Journal Officiel, August 6, 1914.

extend to vessels which by reason of their construction or armament are susceptible of being transformed into vessels of war or which were built with a view to their public service. Mail matter on board such vessels was to be sent to destination by the quickest route. In view of the fact that Germany ratified the Sixth Hague Convention relative to the status of enemy merchant ships at the outbreak of hostilities, with certain reservations in respect of Article 3 and Article 4, Section 2, the Decree provides that German vessels captured at sea, and in ignorance of the outbreak of the war, are to be subject to condemnation.

This latter point came up for decision in the cases of the *Frieda Mahn* and the *Martha Bockhahn*. A more detailed consideration of this question is to be found in the decision in the case of the *Czar Nicolai II*. In this case it was argued on behalf of the owners that in spite of the reservations made by Germany in respect of Article 3 of the Convention, it should none the less be given a limited application, in view of the motives of policy actuating Germany in making her reservations. It was held, however, that the motives for the reservation were immaterial, and that as the reservations bore on the whole purport of Article 3, and the same was an indivisible whole, Germany had, under the principle of reciprocity, deprived her subjects of every right to claim the benefit of the article and, in consequence, also of the benefit of the second section of Article 4.

The question came up again in the cases of the *Porto* and the *Barmbek*, and it was held that in spite of Section 6 of the Instructions of the Minister of Marine, which provides that "enemy merchant vessels which have left their last port of sailing before the commencement of the war, and which are encountered at sea, not being aware of the opening of hostilities, can not be captured," does not apply to German vessels. The court held that the sole object of this provision in the Instructions was to insure the application of Article 3 of the Convention in respect of vessels under the flag of a state that had adopted the article without reservation.

In all of the above mentioned cases the court decreed condemnation of the vessel together with enemy cargo on board. The personal effects of the passengers and crew were declared exempt from condemnation.

By a Decree of August 13, 1914,² a similar term of grace was

² Journal Officiel, August 14, 1914.

accorded to Austrian and Hungarian vessels in French ports prior to midnight of August 12, 1914. As Austria-Hungary had ratified the Sixth Hague Convention without reservations, Austrian and Hungarian vessels captured at sea and in ignorance of the outbreak of hostilities were ordered to be released. Turkey not having ratified the Hague Convention above named, no days of grace or other privileges were accorded to Turkish ships.

The Decree of August 25, 1914,³ provides for the application during the present war of the Declaration of London of 1909. The Decree is identical in phraseology with the English Order in Council of August 20, 1914,⁴ and provides for the substitution of new lists of contraband in lieu of those contained in Articles 22 and 24 of the Declaration and makes important modifications in Articles 33-35 of the same. The General Report of the Drafting Committee presented to the London Conference was not adopted by the French Government as an authoritative interpretation of the Declaration.

This Decree of August 25, 1914, was repealed by the Decree of November 6, 1914,⁵ which contains a new list of absolute and conditional contraband, identical with the list contained in the English Proclamation of October 29, 1914,⁶ and adopts the Declaration of London, subject to the following modifications:

1. A neutral vessel, with papers indicating a neutral destination, which, notwithstanding the destination shown on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage.
2. The destination referred to in Article 33 of the said Declaration shall (in addition to the presumptions laid down in Article 34) be presumed to exist if the goods are consigned to or for an agent of the enemy state.
3. Notwithstanding the provisions of Article 35 of the Declaration of London, conditional contraband shall be liable to capture on board a vessel bound for a neutral port if the goods are consigned "to order" or if the ship's papers do not show who is the consignee of the goods or if they show a consignee of the goods in territory belonging to or occupied by the enemy.

³ Journal Officiel, August 26, 1914.

⁴ London Gazette, August 21, 1914, First Supplement.

⁵ Journal Officiel, November 7, 1914.

⁶ London Gazette, October 27, 1914, Second Supplement.

4. In the cases covered by the preceding paragraph it shall lie upon the owners of the goods to prove that their destination was innocent.

5. Where it is shown to the Government of the Republic that an enemy government is drawing supplies for its armed forces from or by way of transit through a neutral country the necessary measures shall be taken that in respect of ships bound for a port in such country Article 35 of the Declaration of London shall not apply. Such measure shall be published in the Journal Officiel and shall remain in force until the same is revoked. During such time vessels carrying conditional contraband to a port in such neutral country shall not be exempt from capture.

Lists of contraband have been notified from time to time. The first list is contained in the Notification of August 11, 1914.⁷ Additional articles were placed on the list of conditional contraband by the Note of October 3, 1914,⁸ and a revised list in the Decree of November 6, 1914, already referred to. The list of contraband now in force is set forth in an undated Notification published in the Journal Officiel of January 2-3, 1915, which is identical with the English list contained in the Proclamation of December 23, 1914.⁹ This list has been slightly amended by the Notification of March 11, 1915,¹⁰ identical with those contained in the English Proclamation of the same date.¹¹

In the case of the *Nieuw Amsterdam* recently decided, the doctrine of continuous voyages received an important and interesting application. The question involved was whether articles set forth in the French list of conditional contraband were subject to condemnation, where the same were consigned to "order" to the port of Rotterdam. The court held that in view of the Convention relating to Rhine Shipping of 17th October, 1868, which provides that goods may be transshipped at Dutch ports for transportation to points on the Rhine, the port of Rotterdam must be regarded as "assimilated to enemy ports," and that the goods were subject to condemnation. The question involved in the case of the *Nieuw Amsterdam* arises in a number of other cases pending before the court.

⁷ Journal Officiel, August 11, 1914.

⁸ Journal Officiel, October 3, 1914.

⁹ London Gazette, December 25, 1914.

¹⁰ Journal Officiel, March 12, 1915.

¹¹ London Gazette, March 12, 1915.

The most important enactment is the Decree of March 13, 1915,¹² designed to carry out the policy announced in the Anglo-French Declaration of March 1, 1915. The Decree provides that all cargoes belonging to subjects of the German Empire or coming from or destined for Germany or territory occupied by the armed forces of Germany shall be subject to detention. All articles and merchandise bearing German marks or of German manufacture, or the product of German soil, as well as all articles on merchandise shipped directly or indirectly from Germany come within the definition of goods of German origin. The Decree does not apply to articles or merchandise which a citizen of a neutral¹³ state has in good faith imported into a neutral state prior to the promulgation of the Decree, or in which he has bona fide acquired property before such promulgation.

All articles sent directly or in transit to Germany, or to a country bordering on Germany, is deemed to have a German destination, unless the documents accompanying the articles or merchandise show a true and final destination to a neutral country.

Neutral vessels carrying prohibited articles may be deviated to a French or allied port for the purpose of unloading the prohibited part of the cargo. The vessel is then set free. Merchandise belonging to German subjects is placed under sequestration, or sold and the amount realised placed in the Caisse de Dépôts et Consignations until the conclusion of the war, for the account of whom it may concern. Merchandise belonging to neutrals and coming from Germany shall be left at the disposal of the neutral owners for the purpose of being reshipped to the port of origin¹⁴ within a specified time. If the goods are not reshipped within the period specified they are subject to requisition or may be sold for the account and at the cost and risk of the owners.

Merchandise belonging to neutrals and consigned to Germany shall be placed at the disposal of the neutral owners for the purpose of being returned to the port of origin, or to be sent to such other French, allied or neutral port, as may be determined. Should the goods not be so reshipped within the period fixed the

¹² Journal Officiel, March 16, 1915.

¹³ Quære as to allied states?

¹⁴ A curious situation arises if such port of origin is German. Such goods will be subject to detention under article 1 of the English Order in Council, if the vessel on the way to such German port is captured by a British war vessel.

merchandise is subject to requisition or sale as in the preceding case. In exceptional cases exemptions from the operations of the Decree may be granted.

The Decree presents essential points of difference from the English Order in Council of March 11, 1915,¹⁵ arising in part under the terms of the two enactments, in part under the different views prevailing in France and England in regard to the principles determining enemy character of goods. It is to be noted that the French Decree does not prohibit, as does the English Order in Council, the sailing of merchant vessels to German ports. Furthermore, the French Decree is directed exclusively against Germany and her subjects, and not against Austria-Hungary and Turkey. Questions of joint capture by the French and British naval forces are regulated by a Convention of November 9, 1914.¹⁶

Jurisdiction in prize cases is vested in the Conseil des Prises, sitting in Paris with jurisdiction throughout France and the French possessions.

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¹⁵ London Gazette, March 16, 1915.

¹⁶ Journal Officiel, December 28, 1914.