persuade; and yet he could be charming and persuasive on occasion. He compelled attention, and there could be but one master in his presence. The Honorable John W. Foster said all in a single phrase when following him at the first meeting of the American Society of International Law: "What shall the man say who comes after the king?"

JAMES BROWN SCOTT.

THE KRONPRINZESSIN CECILIE AND THE HAGUE CONVENTION VI

The decision in the case of the *Kronprinzessin Cecilie* given by the Supreme Court of the United States on May 7, 1917, may properly call to mind the work of the Hague Conference in 1907. At this Second Conference at The Hague in 1907, the American delegates endeavored to secure by international agreement immunity from capture for merchant vessels at sea on the outbreak of hostilities.

The Conference drew up Convention VI relative to the status of enemy merchant vessels at the outbreak of war. The delegates of the United States, however, did not sign, and the Government of the United States has not ratified this convention. The report of the delegates says of the convention:

> At the first reading, the convention seems to confer a privilege upon enemy ships at the outbreak of war. Free entry and departure are provided for, ships are not to be molested on their return voyages, and a general immunity from capture is granted to vessels from their last port of departure, whether hostile or neutral. But all these immunities are conditioned upon ignorance of the existence of hostilities on the part of the ship. This condition forms no part of the existing practice, and it was the opinion of the delegation that it substantially neutralized the apparent benefits of the treaty and puts merchant shipping in a much less favorable situation than is accorded to it by international practice of the last fifty years. * * *
>
> As the freight trade of the world is carried on in steamers which habitually carry only enough coal to reach their destination, the operation of the treaty is to render them instantly liable to capture, the alternative being to continue to the hostile destination and surrender. * * *
>
> The effects upon the practice of marine insurance are also important. The ordinary contract does not cover a war risk. The operation of a war risk is simple because its conditions and incidents are fully known. But a policy calculated to cover the contingency of capture, the risk depending upon the chance or possibility of notification, would introduce an element of uncertainty into marine risks which, in view of the interests at stake, should not be encouraged.

The eventualities for which the American delegates endeavored to provide are in part illustrated in the case of the *Kronprinzessin Cecilie.*

This vessel sailed from New York for Bremerhaven via Plymouth on July 28, 1914. She carried among other cargo 93 kegs of gold valued at nearly $5,000,000. The prepaid freight on this gold was $9,268. On July 31st, when more than 1000 miles from Plymouth, she turned back and later entered Bar Harbor. Here on August 8th, the shippers, the Guaranty Trust Company of New York, accepted redelivery.

The vessel had turned back on receipt of a code message from the directors: "War has broken out with England, France and Russia. Turn back to New York."

On account of the failure to deliver the 93 kegs of gold, the shippers libeled the vessel, claiming damages of more than one and three quarters million dollars. In the Massachusetts District Court the libel was dismissed "for the reason that the master was justified in his action by the duty imposed upon him under the maritime law." Other cases against the *Kronprinzessin Cecilie* were similarly dismissed. 238 Fed. Rep. 946 (Feb. 1, 1916).

In the Circuit Court of Appeals on November 17, 1916, the decision of the District Court as to the shipment of gold was reversed (Putnam, J., dissenting).

The Supreme Court handed down its opinion on the case brought before it on writ of certiorari on May 7, 1917. Mr. Justice Holmes delivered the opinion of the court, Mr. Justice Pitney and Mr. Justice Clarke dissenting. The question considered was whether the turning back was justified by facts, even though the *Kronprinzessin Cecilie* might possibly have reached her destination had she continued her voyage. The court said:

> But if it be true that the Master was not bound to deliver the gold in England at the cost of capture it must follow that he was entitled to take reasonable precautions to avoid that result, and the question narrows itself to whether the joint judgment of the Master and the owners in favor of return was wrong. It was the opinion very generally acted upon by German shipowners. The order from the Imperial Marine Office if not a binding command at least shows that if the Master had remained upon his course one day longer and had received the message it would have been his duty as a prudent man to turn back. But if he had waited till then there would have been a question whether his coal would hold out. Moreover if he would have been required to turn back before delivering, it hardly could change his liability that he prophetically and rightly had anticipated the absolute requirement by twenty-four hours. We are wholly unable to accept the argument that although a shipowner may give up his voyage to avoid capture after war is declared he never is at liberty to anticipate war. In this case the anticipation was correct, and the Master is not to be put in the wrong by nice

calculations that if all went well he might have delivered the gold and escaped capture by the margin of a few hours. In our opinion the event shows that he acted as a prudent man.

The decree of the Circuit Court of Appeals was accordingly reversed.

The doctrine advocated by the United States at the Second Hague Conference in 1907 was that days of grace for enemy merchant vessels should be obligatory. The Conference agreed to a convention expressing the opinion that it was "desirable" that days of grace be allowed for the departure of enemy merchant vessels in port at the outbreak of war, or for enemy merchant vessels which had sailed before the war and entered an enemy port or were met at sea "while still ignorant that hostilities had broken out."

The aim of this convention was shown in the declaration that the forty-four states, in the language of the preamble, were

Anxious to insure the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect as far as possible operations undertaken in good faith and in process of being carried out before the outbreak of hostilities.

The Supreme Court in its decision as to the carriage of the gold said "neither party to the contract thought that it would not be performed." It would have been, therefore, an operation, in the words of the Hague Convention, "undertaken in good faith and in the process of being carried out before the outbreak of hostilities."

Further, it may be said that Great Britain and Germany had mutually proposed allowance of certain days of grace for merchant vessels of each in the ports of the other at the outbreak of war. No agreement was reached, owing apparently to misunderstanding rather than to intention. France and Germany, France and Austria, and Great Britain and Austria did, however, allow days of grace.

It is true that Italy, Servia, Turkey, and other states now belligerents did not ratify Hague Convention VI, and that Germany and Russia ratified with reservations. It is also possible that the *Kronprinzessin Cecilie* may not have been entitled to exemptions because by Article 5 of Convention VI "The present Convention does not affect merchant ships whose build shows that they are intended for conversion into war-ships." If not liable under this Article 5, the other Articles of Convention VI would seem to justify the attitude of the Government of the United States in 1907, and the opinion of the

Supreme Court in 1917, that under the existing international agreements and practice the captain of the *Kronprinzessin Cecilie*, in the words of the court, "acted as a prudent man."

GEORGE GRAFTON WILSON.

LESTER H. WOOLSEY, THE NEW SOLICITOR FOR THE DEPARTMENT OF STATE

On June 27, 1917, Lester H. Woolsey, Esquire, of New York, was appointed Solicitor for the Department of State. His name had previously been sent to the Senate for confirmation and the Senate has duly confirmed the appointment. Mr. Woolsey has entered upon the performance of the duties of the office and it is to be hoped that he will long continue to perform these duties, not merely in his own behalf, but in the interest of the Government, of which he is a faithful and competent, upright and loyal servant.

The duties of the Solicitor are technical. They require a broad knowledge of international law, not merely as found in the books, but in the actual and shifting practice of nations. The Solicitor must be versed in diplomacy, for the questions arise for the most part in diplomatic intercourse. They must be considered in the light of diplomacy; they must be determined with a full knowledge of the aims and purposes of governments, for a suggestion proper enough in theory is often unacceptable or unworkable in practice, and tact as well as law often determines the method and solution. Experience and temperament, judgment and learning, are indispensable for the successful performance of the duties of this office.

Mr. Woolsey possesses these qualities in abundant measure and his appointment is because of their possession, not because of influence in his behalf. He entered the Department of State almost ten years ago as a clerk in the Solicitor's Office, of which he is now the head. He learned at first hand its duties and performed them with skill and devotion. He was appointed Assistant Solicitor in 1913. He was appointed Law Adviser to the Department of State on July 1, 1916, an office especially created for him by Secretary Lansing, and since the outbreak of the European War he has, by his skill and devotion, amply justified the confidence of his chief — to such a degree, indeed, that the Secretary recommended his appointment as Solicitor to the Attorney General, who makes the appointment. In fact, the Solicitor