

## PROPERTY IN NAVAL CAPTURES

There is so much confusion in the public mind as to procedure in prize cases that it seems advisable, without, however, entering into details, to offer some observations on the subject of a kind calculated to put it in its true light.

The law of nations allows enemy property upon the high seas to be taken wherever found. A man-of-war or a public vessel, unless it be engaged in scientific pursuits, is liable to capture. Private property of the enemy, that is to say, property on the high seas owned by citizens or subjects of the enemy, may likewise be captured; and the neutral property of neutral citizens or subjects directed to a blockaded port or of the kind known as contraband in voyage to a neutral port from which it may be transferred to the enemy, is liable to capture under certain conditions.

Now, there is a very essential difference between these different cases. The enemy man-of-war or public vessel may be captured, and it is not necessary, so far as the question of title is concerned, to pass it before a prize court of the captor, because the capture of enemy property passes title. Municipal statute may indeed require for certain purposes that the capture may be passed upon by a prize court, but this is a purely municipal, not an international, regulation, in order to entitle the captors, according to the municipal law of most countries, to share in the prize. In the case of a man-of-war or of a public vessel, neutral interests are not involved.

The case, however, is different when property belonging to private owners is captured, because in this case neutral interests may be involved, and for the protection of neutral interests in such cases it has become the practice of nations to have the capture passed upon by a prize court of the captor, even although the vessel or property may have been destroyed or sold by the captor or for some other reason is not brought before the court.

As between the enemy governments or the enemy citizens or subjects, the decision of a prize court is not necessary, because the law of nations allows innocent unoffending property belonging to enemy citizens or subjects, that is to say, enemy property that cannot be used for a warlike purpose, to be captured. Thus Mr. Hall says, in his masterly treatise on international law, 4th edition, pp. 474-475:

As the property in an enemy's vessel and cargo is vested in the state to which the captor belongs so soon as an effectual seizure has been made, they may in strictness be disposed of by him as the agent of his state in whatever manner he chooses. So long as they were clearly the property of the enemy at the time of capture, it is immaterial from the point of view of international law whether the captor sends them home for sale, or destroys them, or releases them upon ransom. But as the property of belligerents is often much mixed up with that of neutrals, it is the universal practice for the former to guard the interests of the latter, by requiring captors as a general rule to bring their prizes into port for adjudication by a tribunal competent to decide whether the captured vessel and its cargo are in fact wholly, or only in part, the property of the enemy. And though the right of a belligerent to the free disposal of enemy property taken by him is in no way touched by the existence of the practice, it is not usual to permit captors to destroy or ransom prizes, however undoubted may be their ownership, except when their retention is difficult or inconvenient.

In this case, it is not necessary to discuss the policy of destroying prizes in which neutral persons are interested, because wanton destruction of the property does not free the captor from liability to the neutral if his property was unlawfully destroyed. In the case of an enemy ship or property, the prize proceeding is required in the interest of the neutral. In the case of neutral vessel or neutral property upon such a vessel, the necessity for a judicial proceeding is all the more evident because the enemy possesses but a limited right to seize a neutral ship or neutral property, and the decision of a prize court is requisite in order clearly to ascertain that the seizure of neutral property was in accordance with the law of nations, and therefore justifiable.

It will be observed that the court to which the validity of the capture is submitted is the court of the captor, and the question arises whether this tribunal is to be considered as a municipal court or as a court of international law, because, although sitting within the jurisdiction of the captor, it is supposed to administer the law of nations, or at least it is by virtue of a principle of international law that the capture of enemy property or the seizure of neutral property upon the high seas is permitted. It is frequently said, and maintained, that the prize court, although sitting within the captor's country, is international — not municipal; and it becomes necessary to consider this question with some care, because if it should turn out that the court sitting within a particular country is municipal, it would follow that its judges are municipal judges, and that as such they are bound by municipal law and that in fact they administer

municipal law when it differs from the law of nation. Now, it would appear that if a court is created by a particular nation, if that court sits within the jurisdiction of this nation, and if the judges, like other judges, are appointed by this nation, and, like other judges, take the oath of allegiance to the nation appointing them, it would seem that such courts are municipal in fact, although they may be international in theory.

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