

General BOTHA—*cont.*

captured legally when they are shown to be destined for the armed forces or Government Departments of the enemy. It is true certain presumptions of such destination are created by subsequent articles, but these cannot, in my opinion alter the general principle. I fail to see how it could ever be held that foodstuffs consigned to an ordinary trader (who does not fall within the terms of Article 34, as one who as a matter of common knowledge supplies articles of this kind to the enemy) in any part of the Union, were legally liable to capture. It seems to me that Article 34 is not doubtful, and when, as Sir Edward Grey has promised, it is made clear on the ratification of the Declaration by Great Britain that she agreed that the word "enemy" in this article should mean "enemy Government," any possible doubt which may have existed on this score will be removed.

I cannot conceive how any International Prize Court could, according to the rules laid down in the Declaration, ever hold that an enemy of Great Britain has acted legally when such enemy has captured foodstuffs in neutral bottoms which were addressed to, say, an ordinary trader in any of our harbours in the Union, and of which there could be no reasonable suspicion that they were not intended for the peaceful population. I should like to point out further that whatever importance may be attached to the authoritative General Report of the Drafting Committee, the "Renault Report"—and we have now heard that it is of the greatest importance—this Report, I submit, fully bears out my interpretation of Article 33. The Report reads as follows: "War may be waged in such circumstances that destination for the use of a civil department cannot be suspect, and consequently cannot make goods contraband." For instance, there is war in Europe, and the Colonies of the belligerent countries are not in fact affected by it. Foodstuffs or other articles in the list of conditional contraband destined for the use of the Civil Government of a Colony would not be held to be contraband of war, because the considerations adduced above do not apply to their case; the resources of the Civil Government cannot be drawn on for the needs of the war.

In the case presupposed by the Committee, therefore, even foodstuffs destined for the Civil Government in a Colony could not be legally captured as contraband. Under which circumstances, then, could foodstuffs in neutral bottoms consigned to ordinary traders or private persons, and clearly destined for the peaceful population of the country, be legally captured as contraband? Even if the war were to be actually carried on in South Africa, I submit that foodstuffs consigned to ordinary traders in the harbours of the Union and destined for the peaceful population could not legally be captured. If there is any doubt about ports like Cape Town and Durban, that they might be considered to fall within the scope of Article 34 as fortified places belonging to the enemy, or places used as a base of operations or supply, there could, I submit, be no possible doubt about harbours like Port Elizabeth, Mossel Bay, East London, and others.

Now, I am aware that the argument of those who are opposed to the Declaration is that a commander of an enemy cruiser would only be doing his duty towards his own country if he were to capture every neutral ship carrying foodstuffs to any British harbour, on the ground that they are consigned to a fortified place belonging to the enemy, or a place serving as a base for the armed forces of the enemy; that, in fact, commanders of the enemy cruisers would consider these words as applicable to practically every port in the Empire. They argue that in ratifying the Declaration of London neutral Powers would relinquish their power to remonstrate. Great Britain herself could, of course, in any case only protest in these circumstances by pushing on the war as hard as possible, and that the only appeal would lie to an international court after the war would be over and the mischief had been done, which may have caused disaster to Great Britain.

With this argument I cannot at all agree. If a belligerent during the course of a war were to put such, to my mind, utterly wrong interpretation on the Declaration of London, there is nothing whatever to prevent the neutral Government concerned from protesting in a most emphatic manner. If such a belligerent were to handle neutral shipping so unfairly this Declaration of London will, in my opinion, probably make a combined protest on behalf of all important neutral Powers much more likely than would otherwise be the case.