

committee upon membership presented the following statement of his career and of his services:

Born at Terlizzi in the Province of Bari, April 8, 1837; educated in the University of Naples; professor of philosophy in the Liceo di Cremona, 1861-63, of international law in the University of Urbino, 1863-65, University of Pisa, 1865-75, University of Torino, 1875-80. Author of the following publications: *Constitutional and Administrative Law*, 1 vol., 1862; *Modern International Public Law*, 1 vol., 1865 (translation into French by Pradier, 1868); *Elements of International Private Law*, 1869 (translation into French with annotations and preface by Pradier, 1875; translation into Spanish by A. Garcia Moreno, with preface by C. Martos, 1878, 6th Italian edition, 1905); *Bankruptcy According to International Private Law*, 1873; *International Effects of Civil Judgments*, 1874; *International Effects of Penal Decisions and of Extradition*, 1877; *Treatise dealing with International Penal Law and Extradition*, 2 vols., 1880 (translation into Spanish); *The European Question, A Solution*, 1890; *Treatise upon International Public Law*, 3 vols., 1879, 4th edition, 1904 (translation into French with annotations by C. Antoine, 2d edition, 1885; translation into Spanish); *General Rules upon the Publication of the Laws*, 2 vols., 1886-87; *Treatise upon International Private Law*, 4 vols., 1888, 4th edition; *General Rules for the Publication, Application and Interpretation of Laws*, vol. II, 1890; 2d edition, 1908; *Citizenship and Marriage*, 1 vol., 1909; *International Law Codified*, 1 vol., 1890, 4th edition, 1909 (translation into French, 1st edition, 1890, 2d edition, 1911); *Questions of Law with reference to Controverted Cases*, 1904; *Monographs dealing with Adoption, Diplomatic Agents, Divorce, Juridical Personality of the State, etc.*, etc.

The Committee has felt that in proposing a name it should be that always of a man who has performed eminent distinguished services in the development of international law rather than a man whose fame was perhaps based upon a single instance. We have therefore felt amply justified in presenting the name of Signor Pasquale Fiore.

The works of Professor Fiore have been translated into French and Spanish but not into English. It is therefore a pleasure to state that his "International Law Codified," a fifth edition of which was passing through the press at the time of his death, and which has twice been translated into French, is shortly to appear in an English translation. The value of this work lies not merely in the fact that it gives the latest expression of his views but that it is a very successful example of the codification of international law.

#### THE WILLIAM P. FRYE CASE

The *William P. Frye*, a steel sailing vessel owned by American citizens and sailing under the American flag, carrying a cargo of 186,950 bushels of wheat on a voyage from Seattle, Washington, to Queenstown, Falmouth or Plymouth for orders, was encountered on the high seas on

January 27, 1915 by the *Prinz Eitel Friedrich*, an auxiliary cruiser of the Imperial German Navy, which compelled her to stop and sent on board an armed boarding party who took possession. After an examination of the ship's papers the commander of the cruiser directed that the cargo be thrown overboard, but subsequently decided to destroy the vessel and on the following morning, by his order the *Frye* was sunk.

The United States on April 3, 1915, presented a claim for the value of the ship and the damages involved in its destruction amounting to \$228,059.54. No claim was made for the cargo, which before the destruction had apparently ceased to be American property.

The German Government promptly replied on April 4, 1915, assuming liability for the claim. There was no dispute as to the facts in the case. Germany defended the action of her commander as in accordance with the Declaration of London, but admitted liability under the treaties of 1799 and 1828 between the United States and Prussia. In view of the repeated and urgent protests of Germany against the action of Great Britain in preventing the entry of foodstuffs into Germany for practically the same reasons that Germany gives in justification for the sinking of the *Frye*, and of the drastic action which Germany had already taken by enforcing her submarine blockade policy in retaliation for England's action, her defense of the German commander's action in the *Frye* case is interesting and worth quoting:

The ports of Queenstown, Falmouth and Plymouth whither the ship visited was bound are strongly fortified English coast places which moreover serve as bases for the British naval forces. The cargo of wheat being food or foodstuffs was conditional contraband within the meaning of Article 24 number one of the Declaration of London and Article 23 number one of the German prize ordinance, and was therefore to be considered as destined for the armed forces of the enemy pursuant to Articles 33 and 34 of the Declaration of London and Articles 32 and 33 of the German prize ordinance and to be treated as contraband pending proof to the contrary. This proof was certainly not capable of being adduced at the time of the visiting of the vessel since the cargo papers read to order. This, however, furnished the conditions under which, pursuant to Article 49 of the Declaration of London and Article 113 of the German prize ordinance the sinking of the ship was permissible, since it was not possible for the auxiliary cruiser to take the prize into a German port without involving danger to its own security or the success of its operations. The duties devolving upon the cruiser before destruction of the ship pursuant to Article 50 of the Declaration of London and Article 116 of the German prize ordinance were fulfilled by the cruiser in that it took on board all the persons found on the sailing vessel as well as the ship's papers.

Germany's admission of liability under the treaties with Prussia reads as follows:

However, the legal situation is somewhat different in the light of the special stipulations applicable to the relations between Germany and the United States since Article 13 of the Prussian-American treaty of friendship and commerce of July 11, 1799, taken in connection with Article 12 of the Prussian-American treaty of commerce and navigation of May 1, 1828, provides that contraband belonging to the subjects or citizens of either party cannot be confiscated by the other in any case but only detained or used in consideration of payment of the full value of the same. On the ground of this treaty stipulation, which is as a matter of course binding on the German prize court, the American owners of ship and cargo would receive compensation even if the court should declare the cargo of wheat to be contraband.

Notwithstanding this admission however, Germany proposed to refer the case to the prize court at Hamburg for examination of the legality of the capture and destruction according to the Declaration of London and for inquiry into the standing of the claimants and the amount of the indemnity. Under this theory the German prize court would examine the question in the light of the Declaration of London and of the German instructions based upon it, and, regarding the Declaration of London as binding and its interpretation thereof as correct, would absolve the government from liability as in accord with the Declaration of London, which the government apparently views as international law. That is to say, the sinking of the *Frye* would be justifiable according to the Declaration of London, which is regarded by Germany as international law, unless there were a treaty between Germany and the United States inconsistent with the provisions of the Declaration of London.

The American answer wastes no time over the Declaration of London which it states the Government of the United States does not regard as in force. Germany's admission of liability under the treaty stipulations between the United States and Prussia is accepted, but the United States points out that since the only questions remaining to be settled are the status of the claimants and the amount of the indemnity, which lend themselves to diplomatic negotiation between the two governments, it would be inappropriate to submit the case to a prize court.

From the American point of view it is unnecessary to discuss whether or not neutral prizes can be sunk in accordance with the Declaration of London, or whether they can or cannot be sunk in accordance with international law, inasmuch as the treaty with Prussia of May 1, 1828, which the German Government admits is binding upon the German Empire, forbids American vessels circumstanced as was the *Frye* from

being treated or sunk as neutral prize. Article 12 of this treaty provides that "the twelfth article of the treaty of amity and commerce, concluded between the parties in 1785, and the articles from the thirteenth to the twenty-fourth, inclusive, of that which was concluded at Berlin in 1799, \* \* \* are hereby revived with the same force and virtue as if they made part of the context of the present treaty."

The treaty of 1785 is a very famous document. The King of Prussia therein referred to was none other than the great Frederick. The American plenipotentiaries were among the founders of the Republic,—John Adams, Benjamin Franklin, and Thomas Jefferson.

Article 12 reads:

If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other; and the same freedom shall be extended to persons who shall be on board a free vessel, although they should be enemies to the other party, unless they be soldiers in actual service of such enemy.

Turning now to the articles of the treaty of 1799 which were revived by the treaty of 1828, and which have reference to the case in point, it is seen that Article 13 is directly in point. This article deals with trade in contraband, and the material portion of it is therefore quoted:

And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandise of contraband, such as arms, ammunition, and military stores of every kind, no such articles, carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

It will be observed that, under Article 12 of the treaty of 1785, American citizens may trade with Germany's enemy "as in full peace." Article 13 of the treaty of 1799 permits trade "as in full peace," but permits the contracting party at war to preempt the articles of contraband upon payment of their value at the place of destination. This proceeding involves a detention and loss of time which, however, has to be compensated. The last sentence of the quoted article obviates all delay and inconvenience by providing that "if the master of the vessel stopped will deliver out the articles supposed to be of contraband nature he shall be admitted to do it," with the result that "the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage."

Under this article it is not necessary to determine whether the articles be contraband or not. It is enough if they be supposed to be contraband. Article 14 of the treaty of 1799 is also in point, as it provides the means of identifying the vessels of the contracting parties. To quote the treaty:

To ensure to the vessels of the two contracting parties the advantage of being readily and certainly known in time of war, it is agreed that they shall be provided with the sea-letters and documents hereafter specified.

These are the passports and charter party, and list of the ship's company.

Article 15 is likewise in point, so much in point that it is quoted in full:

And to prevent entirely all disorder and violence in such cases, it is stipulated that when the vessels of the neutral party, sailing without convoy, shall be met by any vessel of war, public or private, of the other party, such vessel of war shall not send more than two or three men in their boat on board the said neutral vessel, to examine her passports and documents. And all persons belonging to any vessel of war, public or private, who shall molest or insult in any manner whatever the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

In view of the treaties between Prussia and the United States, which the German Government admits are binding upon the Empire, it is believed that the United States is justified in requesting that the case of the *William P. Frye* be settled through diplomatic channels without subjecting the owners of the *Frye* to the delay involved in proceedings before a prize court. The question is not one of prize or no prize; it is not one of contraband or no contraband. It is one of the admitted de-

struction of an American vessel by a German auxiliary cruiser, in the very teeth of a treaty providing that an American vessel, supposed to have on board a cargo of contraband, would be released, not destroyed, upon willingness to "deliver out the goods supposed to be of contraband nature."