

## THE STATUS OF THE FRYE CASE

Over a year has now elapsed since Germany, on April 4, 1915, assumed liability for the sinking of the American vessel *William P. Frye* by a German auxiliary cruiser on January 27, 1915, but the case still remains a subject of diplomatic negotiations between the two governments. Germany's prompt admission of liability gave rise to the belief that the matter would be speedily adjusted, but the obstacles which that government has since placed in the way of settlement cannot help but create the feeling that the admission of liability was made more for the purpose of allaying public indignation in the United States, which it succeeded in doing, than with any immediate intention of making the reparation which such an admission called for.

Germany's refusal to settle through diplomatic channels the amount of damages due to the owners of the *Frye* and its proposal that these questions, together with the question of the legality of the capture and destruction according to the Declaration of London, be referred to her own prize court at Hamburg, are stated in our comment in the April, 1915 number, page 497. The technical discussions which then ensued over the interpretation of the century-old treaties between the United States and Prussia were likewise set out in our issue of July, 1915, page 703. It appeared at that time that a settlement was in sight, according to which damages would be decided by experts to be appointed by the two governments and the question of interpretation submitted to arbitration. Since then, however, additional differences of opinion on minor points have been interjected which seem to make the solution as far off as ever.

In the first place, with reference to the ascertainment of the amount of damages by experts, one to be appointed by each government, the United States proposed the selection of an umpire to whom the matter might be referred in case of a disagreement between the two national experts. This was a simple and ordinarily unobjectionable proposal, but Germany objected on the ground that "in the cases of the ascertainment of damages hitherto arranged between the German Government and a neutral government from similar causes, the experts named by the two parties have always reached an agreement as to the amount of damages without difficulty; should it not be possible, however, to reach an agreement on some point it could probably be settled by diplomatic negotiation." (German note of September 19, 1915.) It will be

remembered that a settlement of the amount of damages through diplomatic channels was first suggested by the United States as the proper course to pursue, but the suggestion was given up in favor of Germany's counter-proposal for a commission of experts. The United States is now asked to return to its original proposal, after the delay and expense of trying Germany's method of settlement by experts in case it fails merely because of the lack of the ordinary precaution of providing an umpire.

In response to the German objection to an umpire the United States waived the nomination of such an official in advance, but insisted that "in agreeing to this arrangement it should be understood in advance that in case the amount of indemnity is not settled by the joint commission of experts or by diplomatic negotiation, the question will then be referred to an umpire if that is desired by the Government of the United States." (American note of October 12, 1915.) Germany still demurred, however, stating that "the consultation of an umpire would depend materially upon whether the differences of opinion between the two experts pertained to questions of principle or merely to the appraisal of certain articles. The consultation of an umpire could only be considered at all in the case of appraisements of this nature." (German note of November 29, 1915.)

A second disagreement has arisen over the place of meeting of the commission of experts. The United States in its note of October 12 proposed that "its meetings should be held in the United States because \* \* \* any evidence which the German Government may wish to have produced is more accessible and can more conveniently be examined there than elsewhere." To this Germany replied on November 29 as follows:

The German Government regrets that it cannot comply with the wish of the American Government to have the experts meet in Washington, since the expert nominated by it, Dr. Greve, of Bremen, director of the North German Lloyd, is unable to get away from here, and furthermore would be exposed to the danger of capture during a voyage to America in consequence of the conduct of maritime war by England contrary to international law. Should the American expert likewise be unable to get away, the two experts might perhaps get in touch with each other by correspondence.

In the same note Germany added:

Should the American Government insist on its demands for the meeting of the experts at Washington or the early choice of an umpire, the only alternative would

be to arrange for fixing the damages by diplomatic negotiation. In such an event the German Government begs to await the transmission of a statement of particulars of the various claims for damages accompanied by the necessary proofs.

A further difference exists as to the form of the arbitration under the Hague Conventions to determine the question of interpretation of the Prussian-American treaties. The United States agreed to Germany's request that the negotiations over the form of the agreement of arbitration be conducted in Berlin upon a draft to be submitted by Germany, but suggested that the arbitration should be by the summary procedure provided for by the Hague Convention rather than by the longer form of arbitration. To this suggestion Germany again demurred, holding that "the summary procedure is naturally intended only for differences of opinion of inferior importance, whereas the German Government attaches very particular importance to the interpretation of the Prussian-American treaties which have existed for over 100 years." (German note of November 29, 1915.)

To the American Government's inquiry as to whether Germany would govern its naval operations in accordance with the German or American interpretation of the treaty stipulations pending the arbitral proceedings, Germany replied, on September 19, 1915, that it had "issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband, even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port. On the other hand it must reserve to itself the right to destroy vessels carrying absolute contraband wherever such destruction is permissible according to the provisions of the Declaration of London." (German note of September 19, 1915.) The American answer to this note had apparently in view not only the *Frye* case, which involves the sinking of a merchant ship by a surface warship, but Germany's warfare against merchant vessels by submarines. On October 12, 1915, Mr. Lansing replied as follows:

Without admitting that the Declaration of London is in force, and on the understanding that the requirement in Article 50 of the Declaration that "before the vessel is destroyed all persons on board must be placed in safety" is not satisfied by merely giving them an opportunity to escape in life boats, the Government of the United States is willing, pending an arbitral award in this case, to accept the Declaration of London as the rule governing the conduct of the German Government in relation to the treatment of American vessels carrying cargoes of absolute contraband.

The German note of November 29, 1915, contains the following answer on this point:

The German Government quite shares the view of the American Government that all possible care must be taken for the security of the crew and passengers of a vessel to be sunk. Consequently, the persons found on board of a vessel may not be ordered into her lifeboats except when the general conditions, that is to say, the weather, the condition of the sea, and the neighborhood of the coasts afford absolute certainty that the boats will reach the nearest port. For the rest the German Government begs to point out that in cases where German naval forces have sunk neutral vessels for carrying contraband, no loss of life has yet occurred.

No further correspondence upon the *Frye* case has been made public up to the date of the present writing.

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#### THE GROTIUS SOCIETY

The papers read before the Grotius Society in the year 1915, which is the first year of its existence, deal with the problems of the war, and the volume containing the papers, which is the first, it is to be hoped, of a series, might properly be made the subject of a book review. It is believed, however, better to devote a short comment to the Society and the nature of its work, allowing the papers to speak for themselves and to leave the interested reader free to form his own judgment upon them. The point to bear in mind is that leaders of thought in Great Britain have been minded to form a society of international law, which, in the language of the rules, "shall be a British Society and its meetings are intended to take place in the United Kingdom." In the very interesting introduction, written by Henry Goudy, the distinguished Regius Professor of Civil Law in the University of Oxford and Vice President of the Society, the reason for this action is thus stated:

The object of founding the Society has been to afford an opportunity to those interested in international law of discussing from a cosmopolitan point of view the acts of the belligerent and neutral states in the present war, and the problems to which it is almost daily giving birth. Had the International Law Association, whose seat is in London, been able to carry on its work, there would hardly have been need for such a society, but that influential body embraces among its members a considerable number of foreigners of different nationalities, both belligerent and neutral, and its activity is for the time being embarrassed. Even could it meet, its discussions would probably be embittered or wanting in that spirit of harmony essential to any satisfactory result.