

CHAPTER IX

DETERMINATION OF NATIONAL CHARACTER OF SHIPS

I

ARTICLE 57 OF THE DECLARATION OF LONDON

Sec. 275. Rule of Article 57. The determination of the liability of a ship to capture and confiscation involves the determination of the preliminary question of its national character. The liability of the cargo to capture may also depend upon the national character of the ship, as where its non-enemy character cannot be established, since in that case the cargo is presumed to have an enemy character if the ship which carries it is an enemy ship. There are two rules by which the enemy or non-enemy character of ships may be determined. The first is the nationality of the flag which the ship flies, or rather that which it is legally entitled to fly; the second is the nationality of the owners of the ship. The first rule is that which is enunciated in Article 57 of the Declaration of London which declares that "the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly."¹ It will be observed

¹ Prior to the enunciation of this rule there had been a divergence of opinion and practice between Great Britain and continental Europe regarding the test of enemy character. Great Britain had maintained that while a vessel sailing under an enemy flag was always good prize the nationality or rather the domicile of the owner in the case of ships flying neutral flags was the true test. In other words, the flag was conclusive only when it was an enemy flag; if it was a neutral flag it was not conclusive. In the latter case the Prize Court might go behind the flag and ascertain who was the owner and if it found that he was an enemy or was domiciled in enemy country the ship might be confiscated in spite of the fact that it flew, and had a right to fly, a neutral flag. If the owner, though an enemy subject, was domiciled in neutral territory his ship, unless flying an enemy flag, must be treated as a neutral ship; on the other hand, if he was a neutral subject but domiciled in enemy country his ship was regarded as an enemy ship. Continental opinion and practice, however, regarded nationality rather than domicile as the test. If the owner of the ship was an enemy subject, irrespective of his domicile, his ship was treated as an enemy ship; if he was a neutral subject, no matter where domiciled, his ship was neutral. Compare as to this Bentwich, *The Declaration of London*, p. 109.