

termination of enemy character, by a decree of September 27, 1914, forbade trade not only with enemy subjects wherever residing but also with non-enemy subjects residing in enemy country, thus combining both the principles of nationality and domicile. Likewise, the British Parliament by its so-called "black list" legislation extended the prohibition in respect to trading with the enemy to apply to persons not resident in enemy territory whenever *by reason of the enemy nationality or enemy association of such persons* it appeared expedient to do so. Sir Edward Grey in a communication of October 10, 1916, to the American ambassador at London,<sup>1</sup> thus stated the old practice and the reason for departing from it during the world war:

"As the United States government are well aware, the Anglo-American practice has in times past been to treat domicile as the test of enemy character, in contradistinction to the continental practice, which has always regarded nationality as the test. The Anglo-American rule crystallized at the time when means of transport and communication were less developed than now, and when in consequence the actions of a person established in a distant country could have but little influence upon a struggle. To-day the position is very different. The activities of enemy subjects are ubiquitous, and under modern conditions it is easy for them, wherever resident, to remit money to any place where it may be required for the use of their own government, or to act in other ways calculated to assist its purposes and to damage the interests of the powers with whom it is at war. No elaborate exposition of the situation is required to show that full use has been and is being made of these opportunities."

The American government after having as a neutral protested against the British "black list" measures adopted a similar policy upon the entrance of the United States into the war. The new policy was contrary to the traditional English rule enunciated during the war in the case of *Porter v. Freudenberg*, where it was said: "it is clear that the test is not nationality but the place of carrying on the business."<sup>2</sup> It is not unlikely that in future wars belligerents will not be content to rely entirely upon one or the other tests but will combine the two and apply both as their national interests may require.

**Sec. 330. Burden and Nature of Proof.** The rule laid down in Article 59 of the Declaration of London and embodied in the prize regulations of many states, that in the absence of proof of the neutral character of goods found on board an enemy

<sup>1</sup> Spec. Supp. to 11 *Amer. Jour. of Int. Law*, 45.

<sup>2</sup> As to this see my *International Law and the World War*, Vol. I, Ch. 8.