

3rd Day.]

DECLARATION OF LONDON.

[1 June, 1911.]

Sir EDWARD GREY—*cont.*

Now let us see how we stand with regard to foodstuffs. Mr. Batchelor said, quite truly, that the provisions of the Declaration are rather vague, and that Article 34 leaves it rather vague what is a contractor. But Article 34 is not the article which determines whether food is or is not to be contraband of war. It determines only this: whether the onus of proof is to be on the captor or on the captain of the merchant ship interfered with. That is the only point determined by Article 34. I am informed that the general practice hitherto has been that in all cases when a belligerent captures a merchant vessel the burden of proof that the vessel does not carry contraband of war rests on the merchant vessel. That has been the general practice hitherto. The Declaration of London lays it down that the general practice, on the contrary, is to be that the onus of proof is to be not on the merchant vessel, but on the captor, and Article 34 makes an exception to that in saying that in certain cases, which are those contemplated by Article 34, the onus of proof is still to remain as it has heretofore been, on the merchant vessel. So that it does not settle really when food is to be contraband of war; it settles in what cases the onus of proof is to remain as it now is, on the merchant vessel. That gives Article 34 a very limited application.

I quite admit that we say the terms could be made less vague, but you must remember the terms cut both ways, and that if the terms are vague when we are neutrals, and give, as you consider, an undue latitude to the belligerent or, when we are the belligerent, give an undue latitude to the Power who is our enemy, that same latitude is also, of course, allowed to the British fleet; and when terms are vague and when you are at war the vagueness of the terms has generally heretofore been an advantage to the stronger fleet rather than to the inferior fleet.

Mr. BATCHELOR: Would not your practice be to maintain the position that we take up with regard to these matters?

Sir EDWARD GREY: We should maintain the Declaration of London after it is ratified.

Mr. BATCHELOR: Taking the fullest advantage of every liberty although we disagree with it.

Sir EDWARD GREY: Whatever liberties we have agreed under the Declaration of London to concede to enemies, we should of course use for ourselves. It is not a one-sided Declaration, and whatever advantages or disadvantages it has extend equally to both.

Mr. BATCHELOR: I quite understand that, but what I am putting is this: that we have contended that it is not a proper thing to convert merchantmen on the high seas into vessels of war; we have full liberty to do so, but it is quite possible that we would not take advantage of our liberty in view of the fact that we have always held that is practically an act of piracy.

Sir EDWARD GREY: That is a point not touched by the Declaration of London.

Mr. BATCHELOR: I put that forward as an illustration.

Sir EDWARD GREY: I do not think it is an illustration, because it is not affected by the Declaration of London at all. My whole point with regard to the conversion of merchantmen is that we remain exactly as we were, and whatever we do to-morrow with regard to the conversion of merchantmen is exactly what we should have done before the Declaration of London was passed, because it does not touch that point at all.