

been regarded as though it embodied a completely new code of maritime law, with the result that any provisions which did not appear to the critics to be of advantage to Great Britain were condemned as inadmissible as propositions of international law.

The Declaration is an attempt to apply fairly and equitably broad principles of international law more or less generally recognised, and to reconcile conflicting and divergent practices of different nations in the application of those principles, by mutual agreement. The test cannot be whether in all respects the provisions of the Declaration are those we should have desired had we been formulating a new law, but whether they constitute an advance in the right direction and an improvement on the existing rules, whether they be those hitherto adopted by our own Prize Courts or by the Prize Courts of other nations, subject always to the governing factor that they do not operate for practical purposes to the detriment of the interests of the trade of this country when neutral, or diminish its offensive or defensive power when belligerent.

For this purpose, what has to be done is not merely to consider what rules might be better generally, or from the British point of view, but, by comparison of the existing position with that which would be created by the Declaration, to consider whether its provisions are in the main an improvement on existing conditions, and in what respects we should gain or lose thereby—not losing sight of the fact that practical certainty would be substituted for uncertainty, and almost chaotic conditions reduced to order.

It is from this point of view that I have ventured to make the foregoing observations on some of the most important matters dealt with in the Declaration.

DESART.

December 14, 1910.

No. 2.

NOTES BY THE EARL OF DESART RESPECTING THE DECLARATION OF LONDON.

The principal matters which have been the subjects of controversy in the press and in the recent debate in the House of Lords are—

(A.) The value of the provision in the Declaration under which food is excluded in all circumstances from bearing the character of absolute contraband.

(B.) The effect of the provisions of the Declaration respecting conditional contraband—

(i.) As to its possible effect on our food supply during war.

(ii.) As to the effect of the provision excluding the applicability of the doctrine of continuous voyage to conditional contraband.

(iii.) As to the bearing of the provision as to destruction of neutral vessels or carriers of cargo to this country.

(A.) It is said that this is the existing rule, that it is our rule, that the prize law of the world is really the British prize law, and that if any belligerent attempted to treat food-stuffs as absolute contraband the pressure of neutrals would compel him to abandon that intention.

It is surely quite clear that there is no such existing rule generally accepted. Not only did we ourselves declare food generally contraband in 1793, but in two of Lord Stowell's decisions he recognises that in some circumstances food going to an enemy's country without special Government or military destination may be treated as contraband. Generally speaking, food was not treated as contraband, but there was then no specified distinction between absolute and conditional contraband, and the question in each case was whether the articles carried were contraband having regard to the particular circumstances and conditions of the war.

It is doubtless now the view of most countries that food cannot be what is called absolute contraband, that is, when it is destined for the general use of the population, but to say that this is accepted as the law by the world in general is a statement that is inconsistent with the position that has been taken up by other countries, and has not been abandoned by them.

It is known that France in 1885 declared rice absolute contraband, and that Prince Bismarck considered her within her rights in doing so. Her declaration produced the effect she desired by stopping the shipment of rice, and whatever might have been the ultimate result of our protest had the war continued or of any concrete