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3. Besides the above two cases, when as the result of visitation or search there is sufficient suspicion to justify capture according to articles from XXXV to XXXVII.—Jap. Reg. 1904.

ART. LXV. After visit and search has been made, if the captain of the man-of-war still has suspicion of the vessel, he shall order the boarding officer to hear the explanation of her master; and if after those explanations there still appear to be grounds for capturing her, such vessel shall be captured.—Jap. Reg. 1904.

ART. LXVI. In deciding whether a vessel is to be captured or not, the nature of the vessel, her equipments, cargo, and papers, the master and crew and their testimony, etc., shall be taken into consideration.—Jap. Reg. 1904; art 151, Reg. 1914.

Neutral property, under enemy flag.

(3) Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.—D. of P. 1856.

68. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.—U. S. Ins. 1917.

ART. 3. (b) Neutral goods, 'except contraband of war, are not liable to confiscation under the enemy's flag.—Spain, Dec. 1898.

TRANSFER OF FLAG

Transfer of flag.

108. Lorsqu'il résulte de l'examen des pièces de bord que le navire est passé récemment sous pavillon neutre, il y a lieu de procéder avec la plus grande attention et de s'inspirer des règles suivantes.—Fr. Ins. 1912.

Before war.

ART. 55. The transfer of an enemy vessel to a neutral flag, effected before the opening of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences which the enemy character of the vessel would involve. There is, however, a presumption that the transfer is void if the bill of sale is not on board in case the vessel has lost her belligerent nationality less than 60 days before the opening of hostilities. Proof to the contrary is admitted. There is absolute presumption of the validity of a transfer effected more than 30 days before the opening of hostilities if it is absolute, complete, conforms to the laws of the countries concerned, and if its effect is such that the control of the vessel and the profits of her employment do not remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than 60 days before the opening of hostilities, and if the bill of sale is not on board, the capture of the vessel would not give a right to compensation.—D. of L. 1909.

ART. 52. *Du transfert du pavillon.*—Le transfert sous pavillon neutre d'un navire ennemi, effectué avant l'ouverture des hostilités, est valable, à moins qu'il soit établi que ce transfert a été effectué en vue d'éluider les conséquences qu'entraîne le caractère de navire ennemi. Il y néanmoins présomption de nullité si l'acte de transfert ne se trouve pas à bord, alors que le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités; la preuve contraire est admise. Il y a présomption absolue de validité d'un transfert effectué plus de trente jours avant l'ouverture des hostilités, s'il est absolu, complet, conforme à la législation des pays intéressés, et s'il a cet effet: que le contrôle du navire et le bénéfice de son emploi ne restent pas entre les mêmes mains qu'avant le transfert. Toutefois, si le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités, et si l'acte de transfert ne se trouve pas à bord, la saisie du navire ne pourra donner lieu à des dommages et intérêts.—Institut, 1913.

57. The transfer of a vessel from one flag to another is valid when completed previous to the outbreak of war in which the State of the vendor is a belligerent, provided the transfer is made in accordance with the laws of the State of the vendor and the State of the vendee.—U. S. Ins. 1917.

109. Le transfert sous pavillon neutre d'un navire ennemi, effectué avant l'ouverture des hostilités, est valable à moins qu'il ne soit établi que ce transfert a été effectué en vue d'éluider les conséquences qu'entraîne le caractère de navire ennemi. Il y a néanmoins présomption de nullité si l'acte de transfert ne se trouve pas à bord, alors que le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités; la preuve contraire est admise.—Fr. Ins. 1912.

110. Il y a présomption absolue de validité d'un transfert effectué plus de trente jours avant l'ouverture des hostilités, s'il est complet, absolu, conforme à la législation des pays intéressés et s'il a cet effet que le contrôle du navire et le bénéfice de son emploi ne restent pas entre les mêmes mains qu'avant le transfert. Toutefois, si le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités et si l'acte de transfert ne se trouve pas à bord, la saisie du navire ne pourra donner lieu à des dommages et intérêts.—Fr. Ins. 1912.

13. When the transfer to a neutral flag has taken place within 30 days before the outbreak of war the ship is to be treated as hostile, provided—

(a) The legal requirements necessary to the validity of the transfer have not been fulfilled so that an actually valid transfer to the neutral flag has not taken place.

(b) Or there is good reason to believe that it can be proved before the prize court that the transfer took place to relieve the ship of the consequences of her character as an enemy ship, so especially when the ship after the transfer is further employed on the same route as before.

(c) Or the transfer document is not on board, unless sufficient evidence is shown that the transfer would also have taken place without war; the seizure of the ship in such a case gives rise to no claim for damages.—Ger. O. 1909.

14. When the transfer to a neutral flag took place earlier than 30 days before the outbreak of hostilities the ship is to be treated as hostile only when—

(a) The transfer took place later than 60 days before the outbreak of hostilities.

(b) The transfer is only conditional or incomplete or not in conformity with the legal requirements of the participant countries, or the result is that the control of the ship or the earnings from her employment remain in the same hands as before.

(c) Grounds exist for the belief that it can be proved before the prize court that the transfer was effected in order to relieve the ship of the consequences of her character as an enemy ship.

This especially may be taken for granted when the transfer document is not found on board; the bringing in of the ship in such case never gives rise to a claim for damages.—Ger. O. 1909.

ART. 22. The transfer of an enemy vessel to a neutral flag, effected before the opening of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences which the enemy character of the vessel would involve. There is, however, a presumption that the transfer is void if the bill of sale is not on board in case the vessel has lost her belligerent nationality less than 60 days before the opening of hostilities. Proof to the contrary is admitted. There is absolute presumption of the validity of a transfer effected more than 30 days before the opening of hostilities if it is absolute, complete, conforms to the laws of the countries concerned, and if its effect is such that the control of the vessel and the profits of her employment do not remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than 60 days before the opening of hostilities, and if the bill of sale is not on board, the capture of the vessel would not give a right to compensation.—Jap. Reg. 1914.

During war.

ART. 56. The transfer of an enemy vessel to a neutral flag, effected after the opening of hostilities, is void unless it is proved

that such transfer was not made in order to evade the consequences which the enemy character of the vessel would involve.

There is, however, absolute presumption that a transfer is void:

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If there is a right of redemption or of revision.

(3) If the requirements upon which the right to fly the flag depends according to the laws of the country of the flag hoisted have not been observed.—D. of L. 1909.

ART. 52. Le transfert sous pavillon neutre d'un navire ennemi, effectué après l'ouverture des hostilités, est nul, à moins qu'il soit établi que ce transfert n'a pas été effectué en vue d'éluder les conséquences qu'entraîne le caractère de navire ennemi. Toutefois, il y a présomption absolue de nullité: 1. Si le transfert a été effectué pendant que le navire est en voyage ou dans un port bloqué. 2. S'il y a faculté de réméré ou de retour. 3. Si les conditions auxquelles est soumis le droit de pavillon d'après la législation du pavillon arboré, n'ont pas été observées.—Institut, 1913.

58. The transfer of a private vessel of a belligerent to a neutral flag during war is valid if in accordance with the laws of the State of the vendor and of the vendee, provided that it is made in good faith and is accompanied by a payment sufficient in amount to leave no doubt of good faith; that it is absolute and unconditional, with a complete divestiture of title by the vendor, with no continued interest, direct or indirect, of the vendor, and with no right of repurchase by him; and that the ship does not remain in her old employment.—U. S. Ins. 1917.

112. Le transfert sous pavillon neutre d'un navire ennemi, effectué après l'ouverture des hostilités, est nul, à moins qu'il ne soit établi que ce transfert n'a pas été effectué en vue d'éluder les conséquences qu'entraîne le caractère de navire ennemi, par exemple par suite d'héritage.

113. Toutefois il y a présomption absolue de nullité:

1. Si le transfert a été effectué pendant que le navire est en voyage ou dans un port bloqué.

2. S'il y a faculté de réméré ou de retour.

3. Si les conditions auxquelles est soumis le droit de pavillon, d'après la législation du pavillon arboré, n'ont pas été observées.—Fr. Ins. 1912.

12. As enemy ships, are further to be treated those which after the beginning of hostilities have been transferred from a hostile to a neutral flag, provided—

(a) Either the captain is not convinced that the transfer would have been made had there been no outbreak of war, as, for instance, in case of inheritance, or building contract.

(b) Or the transfer is effected while the ship was in passage or in a blockaded port.

(c) Or a repurchase or return agreement is reserved.

(d) Or the conditions are not fulfilled upon which the right to carry the flag depends, according to the legal requirements of the State concerned.—Ger. O. 1909.

24. A ship which has been transferred from an enemy to a neutral flag since the outbreak of war is to be treated as an enemy vessel, unless the commanding officer is convinced that the transfer would have been made even had the war not broken out; for example, in the way of inheritance. In other respects, where a transfer of flag is in question the provisions of Prize Regulations Nos. 10–15 are to be applied. Former German ships, condemned as prizes in an enemy country and afterwards sold to neutrals, are liable to capture, as the transfer of flag took place after the outbreak of war. These ships, if possible, should be brought into port. If this is impossible, they must be destroyed.—Ger. P. C. 1916.

7. The nationality of a vessel is determined according to the laws of the nation under whose flag it sails or to whose navy it claims to belong. Merchant vessels acquired from a hostile power or its subjects by persons of neutral nationality are acknowledged to be hostile vessels unless it is proven that the acquisition must be considered, according to the laws of the nation to whom the purchasers belong, as having actually taken place before the purchasers received news of the declaration of war, or that the vessels acquired in the manner mentioned, although after the receipt of such news, were acquired quite conscientiously and not for the purpose of covering hostile property.—Rus. Reg. 1895.

ART. 23. The transfer of an enemy vessel to a neutral flag, effected after the opening of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences which the enemy character of the vessel would involve. There is, however, absolute presumption that a transfer is void—

1. If the transfer has been made during a voyage or in a blockaded port.

2. If there is a right of redemption or of reversion.

3. If the requirements upon which the right to fly the flag depends according to the laws of the country of the flag hoisted have not been observed.—Jap. Reg. 1914.

Following capture.

114. Ces règles ne sont, bien entendu, pas applicable lorsque la vente du navire ennemi à un sujet neutre a été effectuée par les autorités françaises, à la suite d'une prise.—Fr. Ins. 1912.

Liability of vessel.

111. Si, d'après ces considérations, vous estimez suffisante la présomption de nullité de l'acte de transfert, vous capturerez le navire suspect.—Fr. Ins. 1912.

SUBMARINES

Regulation in commercial war.

41. Submarines are to be guided in the first instance by the special order which they receive. If they are waging war on commerce in accordance with the Prize Regulations, they are to observe the foregoing articles, except where articles 42 and 43 below permit a different procedure to submarines.—Ger. P. C. 1916.

Visit and search by.

42. When holding up a ship, submarines, instead of firing blank rounds, may at once fire live shells across her bows, as it is generally impossible to distinguish blank rounds at any great distance.

P. O. 81. Submarines have the right to order the ship's papers of any vessel held up to be brought alongside in a boat. Prize regulation No. 81 no longer applies in the case of submarines.—Ger. P. C. 1916.

Destruction of enemy vessel.

43. *Holding up, examination, etc.*—(a) P. O. 112. If it is established without doubt that the ship held up is an enemy vessel and can not be brought in, a search of the ship is unnecessary. She can simply be informed by signal that within a reasonable time the crew must abandon her with the papers. After being abandoned, the ship is to be sunk. When the commanding officer has satisfied himself that his order has been understood but nevertheless the crew have not obeyed it, he will compel them to do so by using force.

P. O. 123. If possible, the ship's papers and cargo papers should afterwards be secured.—Ger. P. C. 1916.

Destruction of neutral vessel.

43. (b) In the case of a neutral ship the ship's papers and cargo papers should be examined after they have been brought alongside before any further action is taken. If the commanding officer is satisfied that his order to bring the ship's papers and cargo papers alongside has been understood, but it is not complied with by the neutral ship, he is justified in threatening to use force.

If the neutral ship still fails to obey, she is to be treated as an enemy vessel which has offered active resistance, provided that the commanding officer has satisfied himself that the refusal to obey orders can not be due to a misunderstanding.

NOTE.—Instances have occurred where, after holding up a ship, the submarine has dived in order to approach nearer to her, submerged, and the ship