

BRITISH SHIPPING CONTROLLER ASSUMED TOO WIDE A POWER.

Court Ruling That While He Had Power to Requisition Ships He Could Not Command the Services of Owners—Now Requisitioning in Ordinary Form on the Basis of Blue-Book Rates.

(The London "Economist.")

The defense of the Realm Act—commonly known as "Dora"—is the most remarkable instrument ever known in British legislation. The original act could be printed on half a sheet of notepaper—it should be turned up and read to be thoroughly appreciated—yet it has produced offspring in the form of regulations and orders which would fill a moderately-sized library. There is no better evidence of the essential patriotism of the British people than that the legitimacy of Dora's children should have been so very rarely challenged. Men have grumbled and threatened to appeal to the courts, but with the one exception of the recent shipping litigation, they have forborne. We are not sorry that R. D. Holt should have successfully challenged in one instance the proceedings of the executive, who have been too ready to assume that the mantle of Dora will cover everything which they are pleased to do. If the result of the judgment in the case of the "China Mutual Steamship Company vs. Maclay" were to embarrass the Shipping Controller in the exercise of his vital functions, then the matter would be serious. But, as we understand the issue, nothing has happened except that the Shipping Controller is compelled to put his requisition of liners in a regular form, and to ask, rather than to command, the services of their owners in working the ships for him. Those liner owners—not excepting the litigious Mr. Holt—are as patriotic as the rest of us. They will do everything that is in them for the service of the State, and perhaps do it the more readily when much which they are asked to do cannot be legally required of them.

There would have been no trouble and no litigation if the original letter to the owners of liners had been drafted in a less mandatory form. Sir Joseph Maclay—a highly skilled manager of ships, but no lawyer, and in this instance rather badly advised by lawyers—did not requisition the liners in legal form, but instructed them by letter to carry on as agents for the Government. He wrote: "You are to continue to manage and run those vessels as if they were not requisitioned in exactly the same way as if this letter had never been written. The only difference is that as you complete their voyages you will hand over to the Government the profits you make." This was unquestionably a command addressed to the owners of liners to work their ships on account of the Government, to whom the profits made should be handed over. There is no doubt that Sir Joseph Maclay had power requisition the ships, and to provide by negotiation for their working in any way which he thought fit; but Justice Bailhache has been obliged to rule in the China Mutual case that the Shipping Controller could not command the services of the owners. If he wanted their co-operation in running the ships he obtain them in the ordinary course by negotiation.

This judicial decision has the unusual merit of being in accordance with law and with common sense, and Sir Joseph Maclay himself accepts it in the spirit and in the letter. Writing to the "Times" on November 16 in explanation of his action, he says: "It has never been claimed or supposed by myself, or by anyone in my department, that the Shipping Controller had the power to requisition not only ships, but the services and profits of shipowners, and this was formally stated by the Attorney General in court." If that were so, why, we may ask, was the China Mutual case allowed to come into court at all? Could it not have been settled easily outside by withdrawing the famous letter of command and substituting for it one of request? Why not do before litigation that which the Shipping Controller has been obliged to do after litigation has gone against him? The explanation will, we expect, be found to be in the exaggerated view taken by law officers of the powers of the executive under regulations and orders. The mandatory letter had been issued, most of the shipowners had accepted it as legal, and those who declined were regarded as nuisances who must be taught a lesson in the limitless fertility of Dora's productive capacity. So the letter, which now Sir Joseph Maclay is advised to throw over, was stuck to, and the China Mutual case went on its appointed way. We do not blame the Shipping Controller, an intensely busy man, who naturally took the quickest

route toward a desired end, but some blame must fall on those legal advisers who in this instance advised him so very badly.

Sir Joseph Maclay has done now what he should have done as soon as the legality of his letter of command was challenged. He has requisitioned the liners in ordinary form on the basis of blue book rates and conditions, subject to any modifications which may be agreed upon. In a covering letter the Controller states that he "feels he can rely upon the willing co-operation of owners in managing their vessels so requisitioned," and requests a formal assurance on this point at the earliest possible moment. On receipt of this assurance the owners will be invited to sign, if they have not already done so, the heads of the arrangement which has been accepted by the chairman of the Liner Conference, "with the exception of Mr. Holt." If any owner does not fall in with this suggestion, then the Controller, as charterer of the vessels, will be obliged "to make such alternative arrangements as may be necessary." This may be presumed to mean that the requisitioned vessels of any obdurate owner will be handed over to a more complaisant owner to be run in terms of the arrangement with the Liner Conference. The Shipping Controller, as the charterer, can make the best terms possible with anyone who will run the vessels for him.

So all's well that ends well. The comedy of Sir Joseph Maclay, the Attorney General, and R. D. Holt comes to an end, and the shipping business of the country continues to be carried on under the his country with admirable skill, and, upon the whole, effective direction of the Controller, who has served with no less admirable discretion. It has been an amusing comedy, and even Mr. Holt should rest content with his exploit of proving that our pervasive Dora is something less than the omnipotent goddess we thought her to be. He is willing to run his ships for the Shipping Controller on a scheme of his own, which he claims would effect "an immense saving in accountancy and administration expenses." If Sir Joseph Maclay will not allow of exceptions to his general plan, which has been agreed to by other owners, then we may hope that R. D. Holt will no longer prove to be obdurate. He has gained a legal victory; he has shown that after all, he was right in his interpretation of the Controller's powers, he can now well afford to be generous, and fall in with his colleagues of the Liner Conference. There is sometimes a greater virtue in acceptance than in rejection, and the stage has now been reached when acceptance would be both graceful and wise.

SHIPBUILDING PLANS IN CANADA.

The Government shipbuilding plans as outlined by the Hon. C. C. Ballantyne, are shown to be on an ambitious scale. These plans are designed to utilize to the fullest capacity the Canadian yards and to establish rolling mills as essential to the industry. Speaking at Ottawa, last week, the Hon. C. C. Ballantyne said:

"The Government has reached a decision to utilize the full capacity of existing shipyards in Canada in the production of modern steel cargo steamers of the most approved types for the use of the Government and for registry in Canada.

"The productive capacity of these yards, which at present are engaged in the construction of ships for the British Government, for local interests and for foreign account—the latter almost exclusively for Norwegian registry—may be roughly estimated at from 275,000 to 300,000 tons annually. During the continuation of the war and for some time thereafter, the construction of steel ships in Canadian yards for foreign registry will not be permitted. This policy is in line with that adopted by both Great Britain and the United States.

"The naval constructor's branch of the Department of Marine and Fisheries is busily engaged in the development of the details of the contemplated programme. The work has not sufficiently advanced to enable a definite statement to be made, but the construction of three different types of ships is under consideration. One type will comprise vessels of approximately 3,000 tons. These may be built in shipyards situated on the Great Lakes. Another type will comprise ships of from 5,000 to 7,000 tons, while yet another will be a type with a dead weight capacity of from 8,000 to 10,000 tons.

"The Government, in the consideration of this question, recognize that the chief difficulties in the way of successfully carrying on a construction program arises from the fact that steel plates and shapes are not now manufactured in Canada. The overwhelming advantage to Canadian industry, as well as to the general cause, of making Canada self-contained in this regard is obvious. To overcome this difficulty,

RAILROAD EQUIPMENT ORDERED.

Orders for railroad equipment placed in the U.S. during 1917 follow:

	Loco-motives.	Freight cars.	Pass. cars.
U. S. railroads	2,325	50,000	495
U. S. in. railroads	35	6,520	...
U. S. government	2,014	22,879	...
England	275
France	140	23,000	...
Russia	695	22,000	...
Total	5,485	124,399	495

It is stated that only twice before have locomotive orders exceeded those of 1917.

SHIPPING LOSSES.

London, January 2.—Eighteen British merchantmen of 1,600 tons or over have been sunk by mine or submarine during the past week, according to the Admiralty statement to-night. Three merchantmen under 1,600 tons were also sunk. This is a material increase over the previous week, when the sinkings numbered 12, of which eleven were more than 1,600 tons.

The summary:

Arrivals, 2,111; sailings, 2,074.

British merchantmen of 1,600 tons or over sunk, 18, including two previously; under 1,600 tons, 3; fishing vessels, none.

Vessels unsuccessfully attacked, 8.

The Times naval correspondent, commenting on this week's submarine figures, says:—

"It is useful to show the relation between the figures of December and those of the earlier months of the year. From March to November, a period of 40 weeks, 677 vessels of over 1,600 tons were sunk. The average for four weeks was 64, which exceeds by nine the number of big vessels sunk in the month of December. In the first nine months covered by the returns, the total number of vessels attacked, including fishing boats, was 1,636, of which 550 escaped, or about a third. It is interesting to note that in December the number of ships escaping bears about the same proportion to the number ships attacked. That 959 British vessels of all classes were sunk in nine months by mine or submarine enables one to get a conception of the damage the enemy has inflicted on the mercantile mariner of this country. It is only, however, by having the figures of tonnage before one that an extent of the depredations of the U-boat is realized.

and to meet the situation in an efficient manner, negotiations are now under way with responsible persons with the object of establishing at some suitable place or places in Canada, mills for the rolling of ships' plates and shapes to provide the maximum requirements."

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