

The Register
Sept. 4th 1914

The ceremony associated with the investiture of Dr. William Barlow with insignia of C.M.G. by His Excellency Governor-General was made the occasion of a reception at Government House last evening. The Military Secretary (Capt. Foster) escorted Dr. Barlow to the dais, and his sponsors were Sir John Downer



DR. BARLOW, C.M.G.

and Professor Stirling, C.M.G. All who wore orders occupied positions to the left of the dais. Capt. Foxton read the proclamation, after which Sir Ronald Munro-Ferguson pinned the decoration upon Dr. Barlow. The guests were received by His Excellency the Governor and Lady Galway and His Excellency the Governor-General and Lady Helen Munro-Ferguson. The Hon. J. Mulholland and Mr. Bentley Connor were in attendance.

The Register
September
5th 1914

INTERNATIONAL LAW IN TIME OF WAR.

Territory Occupied by the Enemy.

[VIII.—By W. Jethro Brown, LL.D.,
Litt. D.]

The rights of a belligerent when in occupation of enemy territory are defined by rules of international law. But these rules share with the rules of municipal law the liability to an extensive or restrictive interpretation. Naturally, a belligerent is disposed to take a liberal view of his rights. Naturally, the inhabitants of the occupied territory are disposed to place upon them a restrictive interpretation. Recent cables report "violations" of international law by Germany within Belgian territory. But, even if the statements of fact be correct, they often disclose no more than the exercise of powers which existing usage accords to a belligerent. Although international law tends ever towards the goal of exempting the person and property of non-combatants from attack, that goal is yet far from being attained. It can indeed never be attained in completeness until war is abolished. I have spoken in previous articles of the liability of private property at sea to capture, and of the risks to persons and property involved in a bombardment. I wish now to deal with the liabilities of citizens in occupied territory. Although these liabilities are not what they once were, although the inhabitants are no longer subject to pillage and slaughter, the liabilities are such as to lead the Australian citizen to pray God his country may never be occupied by an enemy.

Just as a blockade to be real must be effective, so occupation, to confer the belligerent rights incidental thereto, must involve the substitution of belligerent for the national authority. "Practically," says Dr. Pearce Higgins, "occupation amounts to this—that the Territorial Government can no longer exercise its authority within the area of invasion, and the invader can set up his own governmental organization, or continue in office those of the expelled Government who are willing to serve." This is in accordance with Art. XLII. of the Hague Convention, which declares that the occupation applies only to the territories where such authority is established and can be exercised.

—Duties of An Occupant.—

Frederick the Great taught that the business of an invader in winter quarters was to raise recruits from among the citizens of the invaded territory by compulsion. This practice was, as a matter of fact, observed in the wars of the Austrian Succession and the Seven Years' War. But existing usage distinguishes between conquest and occupation. The honour and rights of the family, the lives of individuals, and private property, as well as religious convictions and public worship, must be respected. Private property cannot be confiscated, although it may be requisitioned. Pillage is formally prohibited. Art. XLIII. of the Hague Convention of 1907 requires the occupant to take all steps in his power to re-establish and ensure public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

—Martial Law.—

An occupant issues notices prohibiting all offences against the army in occupation, and every act which may endanger the security of his troops. The rules issued by the occupant are rules of martial law, and they are generally enforced by military tribunals. The penalties for disobedience are often, and even necessarily, draconic. All acts of disobedience or hostility, writes Hall, are regarded as punishable, and by specific rules the penalty of death is incurred by persons who give information to the enemy or who serve as guides to the troops of their own country, or who destroy telegraphs, roads, bridges, &c. "Whoever," proclaimed Gen. von Kurnmer at Metz on October 30, 1870, "shall destroy canals, railways, or telegraph wires; whoever shall render the roads impracticable; whoever shall take up arms against the German troops, will be punished by death." During the Boer War, the humane Lord Roberts ordered the burning of farms for acts of treachery, or when troops had been fired at from farm premises. In so acting, he was well within belligerent rights. In the present war, Germany is reported to have shot innocent private citizens at Louvain in squads of 10 for every attempt made on the life of a German soldier. Presuming the report to be correct, Germany has, *prima facie* at least, exceeded her rights as occupant. The line, however, is difficult to draw. This much may be said, that it is good policy on the part of an invader to keep well within his generally recognised rights. Gross inhumanity is likely to do more harm in arousing the fighting instincts of the enemy, and in alienating neutral sympathies, than it does good to the invader in promoting the success of the military operations in which he is immediately engaged.

—Taxes, Requisitions, Contributions, Services.—

While an occupant may collect taxes which have been imposed by the State whose territory is in occupation, he must do so as far as possible in accordance with the rules in existence and the assessments in force. He must also defray the expenses of administration. He may levy contributions in money, but only for the military necessities of the army in occupation, or for the administration of the territory. No collective penalty, pecuniary or other, can be inflicted on a population on account of the acts of individuals, for which it cannot be regarded as collectively responsible. Requisitions must be in proportion to the resources of the district, and of such a nature as not to imply for the population the obligation to take part in the operations of war against their own country. What is furnished in kind should be paid for as far as possible in ready money; if not, the fact of furnishing must be recorded by receipts, and the sums due be paid "as soon as possible." The individual who furnishes requisitions in kind, and does not receive payment before the war is over, must patiently

wait the course of events. After the Franco-German war of 1870, Germany repaid out of the war indemnity from France the exactions which she had imposed on the territory ceded to her. In 1871 the French Legislature, while expressly repudiating liability, voted a large sum of money, but not equal to the amount of the German exactions, for those who had suffered from them. Apart from requisitions and contributions, an occupant may demand services. These services are ill defined, but they may appear to include forced labour for the repair of roads, railways, and bridges. The services of professional men and tradesmen may be commandeered. As analogous to the services which may be commandeered, Hall and Westlake affirm the liability of the inhabitants to serve as hostages—(1) to ensure prompt payment of contributions or compliance with requisitions; (2) as a guarantee against insurrection; and (3) as a protection against special dangers, which it is supposed cannot otherwise be met. Both of the authorities cited, however, condemn the practice of the Germans in 1870 of placing on the railway engines notable inhabitants of districts in which the lines had been frequently damaged. But even British authorities concede that private citizens are liable to have troops billeted on them, or sick or wounded placed in their houses. Finally, while the power of an occupant to levy contributions is restricted to his military necessities, and does not include a right to exact money payments for the purpose of enriching the National treasury, fines may be imposed by way of punishment for breaches of the laws of war.

—Seizure of Property.—

By Art. LIII. of the Hague Convention an army (1) can only seize cash, funds, and realizable security belonging strictly to the State; (2) can seize depots of arms, means of transport, stores, supplies, and generally all movable property of the State of a nature to be used in the operations of war. Most of the items mentioned in Class 2, however, may be seized though belonging to private persons; but in this case they must be restored and the indemnities for them regulated at the peace. This article involves the exemption of savings bank funds and debts due to the State not falling under the description of realizable securities.

—Conclusion.—

From the foregoing brief summary it will appear that, when all allowance is made for the many qualifications of belligerent Powers which have come to be recognised by international law, the position of the inhabitants of a territory in occupation of the enemy is appalling. The invader is in possession; and while immediate policy as well as international law may dictate a humane exercise of belligerent rights, those

rights are such as to involve a reduction of the citizen to a condition bordering on privation unmitigated by the security which is the general accompaniment of servitude. Further, as regards the qualifications of belligerent rights, the invader is nearly to a large extent the sole judge of their operation and scope. All this France has had only too great reason to know from her tragic experience in the year of 1870. Among the many surprises of the present situation, few things have surprised me more than that France, with the assistance of Russia, Belgium, and Great Britain, should, at this early stage of the war, have to be engaged in preparing Paris for an imminent siege! The present situation really means that France is being invaded, or about to pay, the bill of costs involved in her invasion. Lest I should think to conclude this article on too pessimistic a note, I may add that, so far as I judge the military situation, the real troubles of Germany are about to begin. I lay opinion at that, the invasion of France is an accomplished fact. A week before the war broke out, the French Minister of War admitted that France was unprepared to meet Germany in a contest of arms. But I think few people could have realized the extent of unpreparedness which has been revealed by the sternness of the invading hosts.

- ARTICLES PREVIOUSLY PUBLISHED.
- International Law—Its Binding Force, p. 17.
 - Liability of Private Property to Capture, p. 19.
 - Blockade, August 22.
 - Contraband of War, August 25.
 - The Declaration of London, August 26.
 - Mines at Sea, August 23.
 - Bombardment, September 2.