

“ Any seizure or destruction of, or wilful damage to, institutions of this character, historic monuments and works of science and art, is forbidden, and should be made the subject of legal proceedings.”

It is on the ground of this rule that the 1919 Commission on Responsibilities included the above offence in its list of war crimes, under Item XX, which it described as “ wanton destruction of religious, charitable, educational and historic buildings and monuments ”.

The accused was charged and convicted under the terms of Article 257 of the French Penal Code, which punishes the same type of offence, and thus covers in French municipal law the case dealt with in Article 56 of the Hague Regulations. It runs as follows:

“ He who destroys, pulls down, mutilates or damages monuments, statues or other objects dedicated to public utility or embellishment, and erected by public authority, or with their permission, shall be punished with imprisonment from one month to two years, and with a fine of 1,200 to 6,000 francs.”

In respect of the removal of horses and vehicles belonging to the owner of the farm “ Bello ”, the Court came to the conclusion that it did not amount to pillage, as provided against in Article 221 of the Code of Military Justice and Article 2, paragraph 2, of the Ordinance of 28th August, 1944, concerning the Suppression of War Crimes, but constituted a case of theft falling under the terms of Articles 379 and 401 of the Penal Code.⁽¹⁾ The punishment to be imposed was therefore limited to a term of imprisonment instead of hard labour. As is the case with all French judgments, no reasons were given for such findings in this case. It may well be that the decision was reached on the basis of the fact that no violence was used by the accused when removing the horses and vehicles. The fact that he did not belong to the category of military personnel, to whom Article 221 of the Code of Military Justice is restricted, may have also been relevant.⁽²⁾

CASE No. 52

TRIAL OF CHRISTIAN BAUS

PERMANENT MILITARY TRIBUNAL AT METZ
JUDGMENT DELIVERED ON 21ST AUGUST, 1947

Theft and “ Abuse of Confidence ” as War Crimes

A. OUTLINE OF THE PROCEEDINGS

The accused, Christian Baus, a German transport contractor from Neuenkirchen, the Saar, was, in 1940, appointed by the German authorities

⁽¹⁾ Regarding the distinction between theft and pillage in French law, see p. 63.

⁽²⁾ On the question how theft is or may be regarded as a war crime in addition to pillage, see p. 64.

land superintendent (Bauerfuehrer) in occupied France, at Tragny, Moselle. He was charged with theft and "abuse of confidence" (abus de confiance).

The accused's assignment was to control the management of a number of French farms in the area. He himself managed one farm and supervised the management of five other estates. From the indictment and judgment it appears that some of the moveable property from one of these farms had been given him by the owner, Joseph Hocquart, for his personal use during his assignment. This included pieces of furniture, crockery and bed linen. It was shown that, before going back to Germany as a result of the German retreat, Baus discovered at the farm run by him and at that of Hocquart, hidden places containing various belongings of the two farms' owners. It was further shown that during the retreat he took with him to Germany a large amount of the property, including that lent him by Hocquart. Most of it was found at his home in Germany.

The accused confessed to the charges, but alleged in his defence that part of the furniture had been given him by the German custodian in charge of the farms, and that he had been under the obligation to pay damages in case of loss of the furniture. He alleged that some German soldiers occupying Hocquart's house had told him to take away two pieces of furniture belonging to Hocquart and used by him with Hocquart's consent, and had said that otherwise it would have to be destroyed. He was, however, unable to prove either point.

The Court passed a sentence of two years' imprisonment.

B. NOTES ON THE NATURE OF THE OFFENCE

The first Count on which the accused was convicted, was that of theft under the terms of Articles 379 and 401 of the French Penal Code. In regard to the goods stolen by him, the accused was also found guilty under Article 2, paragraph 8, of the Ordinance of 28th August, 1944, which treats as pillage any "removal" of goods from French territory in time of war. A comment on these two offences and their place within the field of war crimes has already been made in connection with another trial.⁽¹⁾

The second Count on which the accused was found guilty was that of "abuse of confidence" (abus de confiance) as covered by Article 406-408 of the Penal Code. The Code provides for several different types and cases of "abuse of confidence". Under Article 408 the offence is committed when a person "misappropriates or dissipates" belongings, goods, moneys or documents entailing financial rights or obligations which were entrusted to him on the basis of various legal acts or contracts, such as for hire, for use free of charge, for legal representation, for safe-keeping, whereby the recipient was under an obligation to return the object or to make a definite use of it. In French penal law whenever such "misappropriation or dissipation" takes place the perpetrator is guilty of abusing the confidence of the

(1) See pp. 62-65.

person who gave him any of the above objects for the purpose agreed between the parties. The maximum penalty in such cases is two years' imprisonment and/or a fine not exceeding 120,000 francs; in certain cases, involving public confidence, the penalty can be increased to a maximum of 10 years and/or a fine of up to 600,000 francs.

In the case of Baus, the offence was committed in respect of the goods lent to him by Hocquart, for which he could not, in the circumstances, have been prosecuted as a thief. The decision of the Court on this Count is an illustration of how offences of this nature may fall within the purview of war crimes. Technically speaking, in French law their formal link with war crimes is established in the Ordinance of 28th August, 1944, concerning the Suppression of War Crimes. Under Article 2, paragraph 8, any "removal" of French property from France in time of war, be it as a result of theft, "abuse of confidence" or any other act, is treated as pillage. This rule was applied by the Court not only in respect of the goods technically "stolen" by Baus, but also in respect of those misappropriated by "abusing the confidence" of their owner. Consequently, in French law the case against Baus under this Count was only a case of "pillage" in the wider sense, brought within the terms of the Penal Code as having been committed by abusing the confidence of the victim of the crime. From the viewpoint of international law, it amounts to a specific type of pillage as developed by the laws and jurisprudence of one nation.

The interesting point, however, is that when passing sentence, the Court did not apply the penalty provided for pillage⁽¹⁾ but that for "abuse of confidence". This procedure would tend to indicate that the Court had taken the view that misappropriation by abuse of confidence was in itself a war crime, and that, consequently, the accused would have been held responsible even if he had not removed the property from French territory. In such case the trial would evidence a further illustration of war crimes against property, and of the laws and customs of war as understood by one nation. A justification for such a legal approach could then be founded on the terms of the preamble of the IVth Hague Convention and the claim made that it amounted to no innovation but only to the application of the general principles of penal law.⁽²⁾ On the other hand it may well be that such a decision was due only to the French courts' tradition of subjecting war crimes to provisions of common penal law, instead of satisfying itself with implementing special war crimes legislation, as do certain other nations.

Sentences passed against war criminals for "abuse of confidence" are to be found in a number of other trials held by French courts.

In one case, the accused, Heinrich Weber, a German farmer who settled in France during the war, was charged with having abused his lodger's confidence by removing the latter's wireless set to Germany. He was convicted under Article 408 of the Penal Code and Article 2, paragraph 8,

(1) Article 2, paragraph 8, of the Ordinance of 28th August, 1944, prescribes the penalty provided in Article 221 of the French Code of Military Justice, dealing with pillage in time of war. The penalty is hard labour and not imprisonment, as provided for "abuse of confidence" under Article 408 of the Penal Code.

(2) See p. 64.

of the Ordinance of 28th August, 1944, the penalty being a short term of imprisonment as provided in the Penal Code (six months).⁽¹⁾

In a similar case,⁽²⁾ the accused, Elisa Kesar, wife of a German settler in France, removed to Germany the furniture of the French family whose dwelling she occupied with her husband. She was convicted for abuse of confidence and sentenced to imprisonment for four months.

In another case the accused was a German engineer who rented a French enterprise. He was convicted for abusing the owner's confidence by selling a horse belonging to the enterprise and "dissipating" the money received from the sale. Here again the conviction was made under Article 408 of the Penal Code and Article 2, paragraph 8, of the Ordinance of 28th August, 1944, the sentence being, as in the previous case, set out in the Penal Code (six months' imprisonment).⁽³⁾

CASE No. 53

TRIAL OF PHILIPPE RUST

PERMANENT MILITARY TRIBUNAL AT METZ
JUDGMENT DELIVERED ON 5TH MARCH, 1948

Illegal and Abusive Requisitioning

A. OUTLINE OF THE PROCEEDINGS

The accused, Philippe Rust, an S.S. Obersturmfuehrer serving in occupied France, district of Moselle, was charged with "abusive and illegal requisitioning" of French property and with "employing French subjects on military works".

It was alleged by the Prosecution that in September, 1944, a local inhabitant, Marcel Schmitt, was ordered and forced by the accused to supply horses and vehicles with which he had to carry German ammunition, and that he was compelled to repair German military bicycles, motor-cycles and electrical installations. It was also alleged that several other French civilians had been subjected to the same treatment, and that the acts of requisitioning were illegally effected in that no receipts were delivered to the owners of horses and vehicles.

The accused pleaded not guilty. He claimed to have acted under superior orders and to have omitted to deliver receipts because the requisitions were in conformity with "usages".

(1) Judgment of the Permanent Military Tribunal at Metz, delivered on 21st August, 1947.

(2) Judgment of the Permanent Military Tribunal at Metz, delivered on 6th April, 1948.

(3) Judgment of the Permanent Military Tribunal at Metz, delivered on the 25th November, 1947.