Privy Council Appeal No. 21 *of* 1915.

In the Matter of the Cargo *ex* Steamship "Roumanian"

FROM

THE HIGH COURT OF JUSTICE (ENGLAND) PROBATE, DIVORCE, AND ADMIRALTY DIVISION (IN PRIZE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH NOVEMBER 1915.

Present at the Hearing.

LORD MERSEY.
LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
SIR EDMUND BARTON.

[*Delivered by* LORD PARKER OF WADDINGTON.]

This appeal relates to the cargo ex steamship "Roumanian." The relevant facts are quite simple and are not in dispute.

The "Roumanian" is a British ship, and on the 4th August 1914, the day on which war broke out between this country and Germany, was on a voyage from Port Arthur (Texas) to Hamburg with a cargo of some 6,264 tons of petroleum belonging to the Europaische Petroleum Union, a German company. On the same day the Admiralty through the Secretary of Lloyds suggested to the owners that the ship should be diverted to some port in the United Kingdom, and the owners accordingly instructed the master to proceed to Dartmouth for orders. The ship arrived at Dartmouth on the 14th August 1914.

On the 15th August the Board of Trade issued a notice containing recommendations

with regard to the treatment of cargoes belonging to an enemy in ships diverted from their original ports of destination. These recommendations appear to their Lordships to be so conceived as in no way to prejudice the liability (if any) of such cargoes to be seized as prize. It was recommended that the cargo should be landed at a dock, legal quay or sufferance wharf, either in the port at which the steamer had arrived or in some other safe port, and warehoused subject to shipowners' and other charges until sale or disposal could be arranged for. If sold, the proceeds should be held for subsequent distribution to those entitled to the cargo, subject to shipowners' and other charges which might at law have priority to the claims of the persons entitled to the cargo or its proceeds. Obviously, if the cargo were liable to seizure as prize, seizure followed by condemnation in the Prize Court would entitle the Crown either to the cargo itself or the proceeds thereof, subject to such shipowners' or other charges as might, by law, take precedence of the Crown's interest.

On the 20th August the "Roumanian" proceeded to London, arriving at Purfleet at noon on the 21st August. Before her arrival arrangements had been made to warehouse the petroleum in the tanks of the British Petroleum Company, Limited, at Purfleet, and permission had been obtained from the Custom House authorities for its discharge into these tanks. When so discharged the petroleum would be in the custody of the Custom House authorities in the sense that it could not be removed therefrom without their sanction.

The work of discharge accordingly commenced at 12.15 p.m. on the 21st August, the petroleum being pumped into the tanks, which

were situated some 100 to 150 yards from the wharf at which the vessel lay. Meanwhile the Custom House authorities took samples in order to test the specific gravity of the oil and ascertain whether or not it was dutiable.

About 7 p.m. on the 22nd August a letter from the Custom House at Gravesend was delivered on board the "Roumanian," addressed to the master, stating that the cargo of about 6,264 tons of petroleum was placed under detention. This letter was not received by the master till 11 p.m. Roughly speaking about 1,140 tons of oil remained undischarged at 7 p.m. and 570 tons at 11 p.m. on the 22nd August. Notwithstanding the letter above referred to, the work of discharging the oil continued. It was completed long before the writ in these proceedings, which did not issue until the 19th September, and was served by affixing the same to the tanks in which the petroleum was then warehoused.

It will be observed that the letter giving notice of the detention of the cargo did not refer to its detention as prize, and it was accordingly argued on behalf of the appellants that there was no effectual seizure as prize until the writ in these proceedings was affixed to the tanks containing the petroleum. It is clear, however, that the Custom House is the proper authority to seize or detain, with a view to its condemnation as prize, any enemy property found in a British port. It is equally clear that the letter in question was intended to operate, and must have been understood by all concerned as intended to operate, as such a seizure. No other possible intention was suggested. Under these circumstances their Lordships are of opinion that the cargo was effectually seized as prize upon the delivery of the letter. The

point, however, is of little importance in the view their Lordships take of the points of law, which will be dealt with presently, for if there was no seizure by delivery of the letter, there was admittedly a good seizure when the writ was served.

Under these circumstances three points were raised by counsel for the appellants.

They contended, first, that so far as the petroleum was not afloat at the date of seizure, the Prize Court had no jurisdiction; secondly, that even if the Prize Court had jurisdiction, it ought not to have condemned the petroleum so far as at the date of seizure it was warehoused in the tanks of the British Petroleum Company, Limited, and no longer on board the "Roumanian"; and, thirdly, that enemy goods on British ships at the commencement of hostilities either never were or, at any rate, have long ceased to be liable to seizure at all.

Obviously, if the last point is correct, it is unnecessary to decide the first two points. Their Lordships, therefore, think it desirable to deal with it at once.

The contention that enemy goods on British ships at the commencement of hostilities are not the subject of maritime prize was not argued before the President in the present case. It had already been decided by him in the "Miramichi" (P.D., 1915, p. 71). Their Lordships have carefully considered the judgment of the President in the last-mentioned case, and entirely agree with it. The appellants' counsel based their contention on three arguments. First, they relied on the dearth of reported cases in which enemy goods on British ships at the commencement of hostilities have been condemned as prize, emphasizing the fact that in the case of the "Juno" (1 B. & C. Prize

Cases, 151) no authority could be found for the right of the master of a British ship on which enemy goods were seized as prize to compensation in lieu of freight, though if such goods were properly the subject of prize, the question must constantly have arisen. Secondly, they laid stress on certain general statements contained in text-books on international law as to what enemy goods can now be seized as prize. Thirdly, they called in aid that part of the Declaration of Paris which affords protection to enemy goods other than contraband on neutral ships and the principle underlying or supposed to underlie such Declaration.

With regard to the dearth of reported decisions, it is to be observed that the plainer a proposition of law, the more difficult it sometimes is to find a decision actually in point. Counsel are not in the habit of advancing arguments which they think untenable, nor as a general rule do cases in which no point of law is raised and decided find their way into law reports. If, on the one hand, it be difficult to find a case in which enemy goods on British ships at the commencement of hostilities have been condemned as prize, it is, on the other hand, quite certain that no case can be found in which such goods have been held immune from seizure. Further, inasmuch as by international comity British Prize Courts have in general extended to neutrals the privileges enjoyed by British subjects, we should, if this contention be correct, expect to find that enemy goods on neutral ships at the commencement of hostilities were alike immune from seizure. Their Lordships have been unable to find any authority which gives colour to this suggestion. There appears, indeed, to be no case in which for this purpose any distinction has been drawn between goods on

board a neutral vessel at the outbreak of hostilities and goods embarked on a neutral vessel during the course of a war.

Their Lordships, therefore, are not impressed by the argument based on the dearth of actual decisions on the point. Moreover, the decisions, such as they are, certainly do not support but, indeed, contradict the appellants' contention. It is clear, from the cases cited in the "Miramichi," that enemy goods embarked on British ships during the hostilities are the subject of prize. See, in particular, the "Conqueror" (2 C. Rob. 303). In these cases the sole question decided has been the enemy character of the goods, and no stress has been laid on the time at which they were embarked, or on whether any person concerned had or had not been guilty of the common law offence of trading with the enemy. Further, there is the case of the "Venus," referred to in Rothery's Prize Droits at p. 129.

Their Lordships have thought it desirable to examine the papers preserved in the Record Office in connection with this case, the facts of which are as follows: The "Venus" was a British ship which at the outbreak of hostilities was on a voyage to Hamburg. Its cargo had been shipped at Genoa, Ancona, and Mentone. The master, hearing of the outbreak of war and desiring to avoid the risk of his ship being captured by the enemy, put into Plymouth. The Receiver of Admiralty droits at Plymouth, suspecting upon information given by the master that part of the cargo belonged to enemy subjects, seized both ship and cargo. The shipowners put in a claim for the release of the ship on the ground that it was British and also for freight expenses and demurrage. The ship was ordered to be released. The

claim for freight and expenses was allowed, there being a reference to the Proctor to ascertain the proper amount, which was declared a charge on the cargo. The claim for demurrage was disallowed. The amount to be allowed for freight and expenses was in due course certified by the Proctor, and apparently paid out of the proceeds of the cargo which had been appraised and sold under the direction of the court. Parts of the cargo or its proceeds were subsequently claimed by and released in favour of neutrals. The residue of the cargo was condemned as the property of enemy subjects.

The case of the "Venus" appears, therefore, to be an authority against the appellants' contention. They say, truly, that the point does not seem to have been raised, but it is far more likely that the point was not raised because it was thought to be untenable than that the court overlooked what, according to the appellants' contention, must have been a well-known principle of prize law. Further, the "Venus" is certainly an authority in support of the President's decision in the "Juno." Curiously enough, the master of the "Venus," though a British subject, is in the Proctor's report in the last-mentioned case referred to as the "neutral master," a fact which is only consistent with the practice of the court in allowing freight being the same whether the enemy goods were seized on neutral or on British ships.

With regard to the general statements contained in text-books on international law, it is to be observed that none of those cited in support of the appellants' contention appears to have been based on any discussion of the point in issue. On the contrary, they are for the most part based on a discussion of

the effect of the Declaration of Paris. Their Lordships do not think that any useful purpose would be served by examining these statements in detail. They will take one example only, that cited from Westlake's "International Law," Part II., p. 145. The author has been discussing the effect of the Declaration of Paris, and sums up as follows :—

> "We may therefore conclude that enemy ships and "enemy goods on board them are now by international law the "only enemy property which as such is capturable at sea."

In their Lordships' opinion the meaning of such statements must be judged by the context. They cannot be taken apart from the context as intended to be an exhaustive definition of what is or is not now the subject of maritime prize. It might just as well be argued that because the writer in the present case uses the expression "capturable at sea," he must have thought that enemy goods in neutral ships lying in British ports or harbours were, notwithstanding the Declaration of Paris, still subject to capture.

Such statements are in any case more than counterbalanced by statements contained in other well-recognised authorities. Thus, in addition to the passages quoted in the "Miramichi" from Dana's edition of Wheaton's "International Law," it will be found that Halleck ("International Law," Vol. III., p. 126) states that whatever bears the character of enemy property (with a few exceptions not material for the purpose of this case), if found upon the ocean or afloat in port, is liable to capture as a lawful prize by the opposite belligerent. It is the enemy character of the goods and not the nationality of the ship on which they are embarked or the date of

embarkation which is the criterion of lawful prize. This is in full accordance with Lord Stowell's statement in the "Rebeckah" (1 C. Rob. 227), of the manner in which the order of 1665 defining Admiralty droits has been construed by usage.

Passing to the appellants' third argument, that based on the Declaration of Paris or the principle supposed to underlie such Declaration, it may be stated more fully as follows: Enemy goods on neutral territory were never the legitimate subject of maritime prize. Such goods could not be seized without an infringement of the rights of neutrals. The rights of neutrals are similarly infringed if enemy goods be seized on neutral ships, but the law of prize having for the most part been formulated and laid down by nations capable of exercising and able to exercise the pressure of sea power, the rights of neutrals have been ignored to this extent, that the capture of enemy goods in neutral vessels on the high seas or in ports or harbours of the realm has been deemed lawful capture. The Declaration of Paris is in fuller accordance with principle; it recognises that no distinction can be drawn between neutral territory and neutral ships. To use Westlake's expression (p. 145, Int. Law, Part II.), it assimilates neutral ships to neutral territory, recognising that on both the authority of the neutral state ought (except possibly in the case of contraband) to be exclusive. So far, the argument proceeds logically, but its next step is, in their Lordships' opinion, open to considerable criticism. If, say the appellants, neutral ships are assimilated, as on principle they should be, to neutral territory, British ships ought to be in like manner assimilated to British territory. Whatever may have been the case in earlier

times, no one will now contend that the private property of enemy subjects found within the realm at the commencement of a war can be seized and appropriated by the Crown. The same ought, therefore, to hold of enemy goods found in British ships at the commencement of war. This part of the argument is, in their Lordships' opinion, quite fallacious. The Declaration of Paris, in effect, modified the rules of our Prize Courts for the benefit of neutrals. It was based on international comity, and was not intended to modify the law applicable to British ships or British subjects in cases where neutrals were not concerned. Its effect may possibly be summed up by saying that it assimilates neutral ships to neutral territory, but it is impossible to base on this assimilation any argument for the immunity of enemy goods in British ships.

The cases are not *in pari materia*. If the Crown has ceased to exercise its ancient rights to seize and appropriate the goods of enemy subjects on land, it is because the advantage to be thus gained has been small compared with the injury thereby entailed on private individuals, or in order to ensure similar treatment of British goods on enemy territory. But one of the greatest advantages of sea power is the ability to cripple an enemy's external trade, and for this reason the Crown's right to seize and appropriate enemy goods on the high seas or in territorial waters or the ports or harbours of the realm, has never been allowed to fall into desuetude. In order in the fullest degree to attain this advantage of sea power our courts have always upheld the right of seizing such goods even when in neutral bottoms, and neutrals have always admitted or acquiesced in the exercise of that right, either because it was

deemed to be a legitimate exercise of sea power in time of war or because on some future occasion they themselves might be belligerents and desire to exercise a similar right on their own behalf. Those who were responsible for the Declaration of Paris had not to weigh the advantage to be gained by the seizure of enemy goods on neutral ships against the injury thereby inflicted on private owners, but against the demands of international comity. The fact that we sacrificed on the altar of international comity a considerable part of the advantages incident to power at sea is no legitimate reason for making a further sacrifice where no question of international comity can possibly arise.

Their Lordships hold therefore, on this part of the case, that enemy goods on British ships whether on board at the commencement of the hostilities or embarked during the hostilities, always were, and still are, liable to be seized as prize, either on the high seas or in the ports or harbours of the realm. It follows that the petroleum seized on board the "Roumanian" was properly condemned as prize.

The next point to be considered is the jurisdiction of the Prize Court so far as the petroleum in question was, when seized as prize, warehoused in the tanks of the British Petroleum Company, Limited, and no longer on board the "Roumanian." The appellants contended that it is the local situation of the goods seized as prize which determines the jurisdiction of the Prize Court. If such goods be, at the time of seizure, on land and not afloat, it is not, they contended, the Prize Court but some court of Common Law which has jurisdiction to determine the rights of all parties interested. In their Lordships' opinion, this contention also fails. The chief function of a Court of Prize is

to determine the question, "prize or no prize," in other words whether the goods seized as prize were lawfully so seized, so as to raise a title in the Crown. In determining this question, the local situation of the goods at the time of seizure may be of importance, but it is the seizure as prize and not the local situation of the goods seized which confers jurisdiction. If authority be needed for this proposition, it may be found in Lord Mansfield's judgment in the Case of *Lindo* v. *Rodney*, reported in a note to *Le Caux* v. *Eden* in 2 Douglas at page 612. It must be remembered that the jurisdiction of the Prize Court is based in every case upon a commission under the Great Seal. Lord Mansfield pointed out that in the case before him, the commission under which the court derived jurisdiction conferred jurisdiction in all cases of prize whether the goods sought to be condemned were taken on land or afloat. The same may be said of the commission in the present case. In his opinion, however, it was necessary to draw a distinction in this connection between the jurisdiction of the Court of Admiralty as a Court of Prize and its jurisdiction apart from the commission which constitutes it a Court of Prize. To give the Court of Admiralty as such jurisdiction, the matter complained of must have occurred on the high seas, but in all matters of prize it was not the Court of Admiralty as such, but the Court of Admiralty by virtue of the commission which had jurisdiction, and this jurisdiction was exclusive, whether the goods seized as prize were on land or afloat. The only authority which, at first sight, appears to be in conflict with Lord Mansfield's decision is the case of the "Ooster Eems," to which, for the reasons hereinafter mentioned, no great weight can be given.

Their Lordships will now proceed to consider the appellants' contention that even if the Prize Court had jurisdiction it ought nevertheless to have decided against the condemnation of the petroleum in question so far as it was not actually afloat on board the "Roumanian" at the time of seizure. They admitted that during the war no order for restitution or release could properly be made in favour of the German owners, but they suggested that the proper course was to hand the petroleum over to the Public Trustee or some other official for safe custody until the restoration of peace. No case where any such course has been pursued was cited.

The real question is whether the petroleum in question is, according to the law administered by Prize Courts in this country, properly the subject of maritime prize, although locally situated on shore. All enemy ships and cargoes which may, after the outbreak of the war, be found afloat on the high seas or in territorial waters or in the ports or harbours of the realm are liable to seizure as maritime prize. The petroleum in question was undoubtedly enemy property. It was undoubtedly on the high seas at and after the declaration of war. It became liable to seizure as prize as soon as war was declared. It did not cease to be so liable by being carried into Dartmouth or thence to Purfleet. It clearly remained so liable while still afloat. Did it cease to be so liable when pumped into the tanks of the British Petroleum Company, Limited? In the course of the argument counsel were asked to suggest some intelligible reason why it should cease to be so liable. No satisfactory reason was suggested, and their Lordships have been unable to discover one for themselves. The argument of

counsel was based on the assumption that no enemy goods not actually afloat at the time of seizure could be lawfully seized as prize, unless possibly they could be considered as locally situate within a port or harbour, and that the tanks of the British Petroleum Company, Limited, could not be considered as part of the Port of London. There is, in their Lordships' opinion, no ground for this assumption. The test of ashore or afloat is no infallible test as to whether goods can or can not be lawfully seized as maritime prize. It is perfectly clear, for instance, that enemy goods seized on enemy territory by the naval forces of the Crown may lawfully be condemned as prize.

The same is true of goods seized by persons holding letters of marque, and even of goods seized by persons having no authority whatever on behalf of the Crown, when the Crown subsequently ratifies the seizure. This is clear from the case of *Brown and Burton* v. *Franklyn*, quoted in Lord Mansfield's judgment above referred to. Brown and Burton, the masters of a vessel belonging to the East India Company, seized enemy goods on land. They had no letters of marque. The King's Proctor instituted proceedings in the Prize Court, and having obtained a condemnation of the property as prize proceeded against Brown and Burton for an account. The latter instituted proceedings at Common Law for a prohibition on the ground that the goods taken were on land, but relief was refused. Moreover, Lord Mansfield, in *Lindo* v. *Rodney*, expressly approves an admission made by counsel in that case to the effect that it would be "spinning very nicely" to contend that if the enemy left their ship and got on shore with money and were followed on land and

stripped of their money this would not be a lawful maritime prize. If this be, as it seems to their Lordships to be, good law, the present is an *a fortiori* case. In the case put by counsel the landing of the goods was made by the enemy with the object of escaping capture afloat. In the present case such landing was by British subjects who had the enemy goods in their possession and did not know what else to do with them, and were pursuing a course recommended by the Board of Trade, and in no way intended to prejudice the Crown's rights.

With regard to the authorities quoted in this connection they have, in their Lordships' opinion, with one possible exception, no real bearing on the point. In the "Hoffnung "(No. 3)" 1 Eng. Prize Cases, 583, the cargo seized on shore had been landed and sold prior to the declaration of war. These goods, therefore, even if enemy goods at all, were never liable to seizure as prize. They were not, in fact, seized, nor was any proceeding taken against them, but an attempt was made to recover against the ship which had brought them the value of the goods so sold, the ship itself belonging to a neutral. This claim was rejected by the court. It was held that unless it could be shown that the hand of capture had been employed on these goods in quality of cargo the court could not go back to affect them in any other character. The same principle was recognised in the "Charlotte" (1 Eng. Prize Cases, 585, *note*), in which it was held that the proceeds of goods landed and sold prior to the seizure of the ship, and never themselves seized, were not amenable to the jurisdiction of the court.

In *Brown* v. *The United States* (8 Cranch, 110) it was decided on the facts that the goods in question were in the position of enemy goods found on American soil at the commencement of the hostilities and not, therefore, the subject of maritime prize. That case, therefore, is clearly distinguishable from the present.

The only case which raises any difficulty is that of the "Ooster Eems." There is no satisfactory report of this case. It is mentioned in the note on p. 284 of 1 C. Rob. and in the preface to Hay and Marriott's Decisions, p. xxvii. Their Lordships have, however, examined the papers relating to it preserved in the Record Office. The "Ooster Eems" was a Prussian and therefore a neutral vessel. It was stranded on the Goodwin Sands on a voyage from Texel to the East Indies. Before it broke up, part of its cargo was sent ashore including some boxes of silver coin. The latter were deposited by the master with the Prussian Consul at Deal. One Jeremiah Hartley, an officer of the Court of the Cinque Ports, acting under an order of attachment issued by such court sitting as an Admiralty Court, seized and obtained possession of the goods so landed, including the boxes of silver, on behalf of the Warden of the Cinque Ports. The seizure may have been intended to be a seizure of enemy goods as maritime prize, though their Lordships have been unable to ascertain that the Court of the Cinque Ports had any jurisdiction in prize. The Warden took no proceedings either in his own or any other court with a view to having the goods lawfully condemned. The master, therefore, obtained from the High Court of Admiralty in England a monition requiring Jeremiah Hartley and the

Warden and all others whom it might concern to appear and proceed to the legal adjudication in that court whether the goods seized were lawful prize or not. The King's Proctor subsequently intervened. Certain depositions were filed which appear to raise some suspicion that the goods were Dutch and therefore enemy goods, but there was no real evidence to that effect. The master deposed that he did not know to whom the goods belonged, and under these circumstances one would have expected that the court would have acted on the presumption arising from the fact that the ship was a neutral ship. The court, however, made an interlocutory decree condemning the goods on the ground that the goods which apparently were assumed to be enemy goods were not at the time of seizure "in a privileged "vehicle or on neutral territory."

All questions between the Crown and the Warden were reserved. The master appealed to the Lords Commissioners of Appeal in Prize, and on such appeal the order for condemnation was discharged, not on the merits but, in the words of the Privy Council Journals, on the ground that:—

"the High Court of Admiralty in England, the court "appealed from, had not a jurisdiction over the goods "seized and proceeded against in this cause."

The records of the Privy Council do not contain any note of the reasons which led to this decision. It would appear, however, from the case of the "Two Friends" (1 C. Robinson, 271) that Lord Stowell had before him some note of these reasons, for he represents Lord Thurlow as saying that:—

"the goods in question had never been taken on the high "seas, but had only passed in the way of civil bailment "into civil hands, and were afterwards arrested as prize."

If this be correct it may mean that in the opinion of the Lords Commissioners it is the local situation of the goods seized as prize, and not the seizure as prize which determines the jurisdiction of the Prize Court, a decision diametrically opposed to the judgment of Lord Mansfield in *Lindo* v. *Rodney*, which had been pronounced only three years previously. On the other hand, it may mean that the goods in question were not liable to seizure as prize because they were not on the high seas but on land, in which case Lord Thurlow was deciding the very point which he held the Court of Admiralty had no jurisdiction to decide, and he ought to have ordered the restitution of the goods to the master instead of leaving that somewhat hardly-used individual to his remedies at common law, in the assertion of which he would have in some way or other to get over Lord Mansfield's judgment to the effect that prize or no prize could only be determined in a Prize Court.

Moreover, it is almost impossible to suppose, in the then state of the authorities, that Lord Thurlow thought that to constitute lawful prize the seizure must have been on the high seas. It was already well settled that enemy ships and goods in the ports or harbours of the realm were the subject of maritime prize. It was equally well settled that enemy goods on enemy territory seized by the maritime forces of the Crown, or persons having letters of marque, could properly be condemned as prize. If, therefore, he used the expressions attributed to him by Lord Stowell some other explanation must be found.

In their Lordships' opinion a reasonable explanation of the case and of Lord Thurlow's

words may be found in the following consideration. It appears that the Court of the Cinque Ports in its capacity as an Admiralty Court had taken possession of the goods at the instance of the Lord Warden. There was, therefore, a matter pending in the Cinque Ports which, so far as their Lordships can discover, was not a Court of Prize. The effect of the monition was to remove this matter to the High Court of Admiralty for trial there. In so trying it the High Court would be exercising an Admiralty and not a prize jurisdiction. As appears by Lord Mansfield's judgment in *Lindo* v. *Rodney*, in order to found an Admiralty jurisdiction the complaint must be made of something done on the high seas. This explanation would fully account for the words used by Lord Thurlow, though it must be admitted that Lord Stowell took a different view as to what he meant.

In any event their Lordships do not consider that the "Ooster Eems" has any value as an authority. It has never been followed, and, apparently, has been cited twice only, and in each case distinguished. It is so cited and distinguished in the "Two Friends" above referred to and also in the "Progress" (Edwards's Admiralty Reports 210).

In the last-mentioned case certain British ships with their cargoes had been captured by the French. It is not clear whether they were captured at sea and taken into Oporto after the French occupation, or whether the French found them in the harbour of Oporto when they took possession of it. The French appear to have landed part of the cargoes which was warehoused on shore at the time when the military forces of the Crown took Oporto. It was, however, held upon the facts that there

had been a capture by the French and a re-capture by the military forces of the Crown of both ships and cargoes.

Lord Stowell allowed a claim for salvage on the part of the military authorities in respect of that portion of the cargoes which had been landed as well as of the ships and that portion of the cargoes remaining on board. He distinguished the "Ooster Eems" on the ground, as their Lordships understand the decision, that the master of the "Ooster Eems," in landing the goods, was acting within his authority derived from the owners of the goods, whereas the landing in the case he was considering had been effected by persons acting without authority from and contrary to the interests of the owners. The same ground of distinction would appear to be applicable to the case their Lordships are considering. The petroleum was not warehoused pursuant to any authority given by the owners, but in breach of the contract for its carriage to Hamburg, and so far as the owners were concerned this was as much a hostile act as the landing of the goods by the enemy captors in the case of the "Progress." In neither case, to use Lord Stowell's expression, was the continuity of the character of the goods landed as cargo in any way interrupted.

There are only two other cases which need to be referred to in this connection. The first is that of the "Marie Anne," cited in Rothery's Prize Droits at p. 126. In this case, at the outbreak of the war with France on the 16th May 1803, the "Marie Anne," a French ship, was under repair at Ramsgate, and certain parts of her cargo had been landed and were warehoused. Both the ship and the goods so landed were seized as prize, and in due course

condemned as such. There is no record of the reasons which influenced the court. It may be that the warehouses in which the goods were deposited were considered as part of a harbour or port of the realm, so as to bring the case within the ordinary definition of goods liable to seizure as prize. It may be that the goods having been temporarily landed while the vessel was repaired, were still considered as part of the cargo though not actually on board. The case, however, is clearly inconsistent with the proposition that goods seized on land cannot be lawful prize. The same may be said of the case of the "Berlin Johannes" (Rothery, p. 125), if, as would appear to be the case, the goods already landed were seized and condemned as prize.

If these decisions turned on the question whether the goods though landed were still in port they are authorities against the appellants, for no valid distinction can be suggested between a warehouse for the receipt of goods brought into harbour by sea and the tanks in which, in the present case, the petroleum was stored.

Their Lordships, therefore, have come to the conclusion that the petroleum on board the "Roumanian," having from the time of the declaration of the war onwards been liable to seizure as prize, did not cease to be so liable merely because the owners of the vessel, not being able to fulfil their contract for delivery at Hamburg, pumped it into the tanks of the British Petroleum Company, Limited, for safe custody, and that therefore its seizure as prize was lawful. They see no reason to dissent from the judgment of the President to the effect that these tanks constituted part of the Port of London for the purpose of applying the rule relating to the liability to seizure of enemy's

goods in the ports and harbours of the realm, but it is unnecessary to decide this point.

For the reasons hereinbefore appearing their Lordships are of opinion that the appeal should be dismissed, and they will humbly advise His Majesty accordingly.

In the Privy Council.

IN THE MATTER OF THE CARGO *ex* STEAMSHIP "ROUMANIAN"

DELIVERED BY

LORD PARKER OF WADDINGTON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1915.