

Privy Council Appeal No. 124 of 1915.

In the matter of the Steamship "Belgia."

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 7TH APRIL, 1916.**

Present at the Hearing :

LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR ARTHUR CHANNELL.

[Delivered by LORD PARMOOR.]

The question raised in this appeal is whether the steamship "Belgia" is entitled to the benefit of the 1st and 2nd Articles of the 6th Convention of the 2nd Hague Peace Conference, 1907. The appellants are a German company, known as the Hamburg-Amerika Line. The master of the "Belgia," which was bound from Boston to Hamburg, received information at about 9 P.M. on the 3rd August, 1914, when off the Scilly Isles, that war had broken out between Germany and France. The master decided to deviate from the voyage to Hamburg, and to go to the Bristol Channel, on the ground, as stated in his evidence, "because I was afraid of being captured by a French man-of-war." When off Trevose Head, a Newport pilot was taken on board. The "Belgia" arrived off Newport in the afternoon of the 4th August, 1914, and, at about 5.50 P.M., proceeded as far as the Bell Buoy at the entrance to the River Usk. Among other places vessels are discharged at the port of Newport in the Alexandra Dock, which is approached by a dredged channel, at the entrance to which is the Bell Buoy.

At this point the "Belgia" was stopped by the dockmaster, and ordered to anchor off the English and Welsh lightship, in a position alleged to be within the fiscal port of Newport. On the afternoon of the 4th August war had not broken out between Germany and England, and Newport was not an enemy port to a German vessel. Articles 1 and 2 of the 6th Convention only apply to merchant-ships at the commencement of hostilities in an enemy port, or entering an enemy port whilst still ignorant that hostilities have broken out. Their Lordships, therefore, cannot hold that, when the steamship "Belgia" reached Newport on the afternoon of the 4th August, the 1st and 2nd Articles of the 6th Convention had any application. It was argued by Sir Robert Finlay that the dockmaster had no right to stop the "Belgia" at the Bell Buoy, but in the opinion of their Lordships the dockmaster was not exceeding the limits of his authority. There was no obligation to admit the "Belgia" to the Alexandra Dock, admission being a matter of courtesy and not of right.

On the morning of the 5th August, and after war had broken out between Germany and England, the "Belgia" was captured in the position described in paragraph 6 of the affidavit of the dockmaster as follows:—

"The position of the 'Belgia' was then as follows: The English and Welsh light vessel bearing about E.S.E. $\frac{3}{4}$ of a mile, and the Spit lay about N.E. 1 mile. She was, therefore, $3\frac{3}{4}$ miles from the Somersetshire coast, and 5 miles from the Bell Buoy (marking the mouth of the River Usk)."

It is proved in evidence that the position, in which the "Belgia" was anchored at the time of capture, is in an open roadstead, and that no cargoes are ever discharged or unloaded at or near this position, and that the only places at Newport where cargoes are discharged or unloaded are in the docks, or at wharves up the River Usk. In ordinary mercantile language, a merchant-vessel in such a position would not be within the port of Newport. A port denotes a place to which merchant-vessels are in the habit of going to load or discharge cargo, and not a place in an open roadstead at which no cargoes are ever discharged or unloaded. It was, however, argued on behalf of the appellants that the word "port" in Articles 1 and 2 of the 6th Convention included not only a port in the ordinary mercantile sense, but a fiscal port, and that at the time of capture the "Belgia" was within the fiscal port of Newport.

It is not necessary to determine whether the "Belgia" at the time of capture was, in fact, within the fiscal port of Newport, since, in the opinion of their Lordships, Articles 1 and 2 of the 6th Convention do not include vessels merely within a fiscal port. These articles are limited to merchant-ships, and refer to commercial transactions, not to fiscal regulations. The word "port" is used not only in the collocation "enemy port," but of "a port of destination" and "a port of departure"—well recognised terms in the language of commerce. To extend the

benefit of Articles 1 and 2 of the 6th Convention to vessels within a fiscal port would be not only to interpolate a word not used in the Articles, but to introduce a new test not relevant to their subject-matter and involving different considerations. That the scope of Articles 1 and 2 is commercial and not fiscal is further confirmed by the language of the preamble of the Convention. The parties to the Convention are not concerned with the fiscal regulations in any particular country, but anxious to ensure the security of international commerce against the surprises of war, and to protect, as far as possible, operations undertaken in good faith and in process of being carried out before the outbreak of hostilities.

It is not necessary in this appeal to consider the questions which have arisen as to the conditions under which the provisions of Articles 1 and 2 of the 6th Convention become applicable, since, assuming their applicability, the facts do not bring the "Belgia" within their benefit. In the opinion of their Lordships, the "Belgia" was captured at sea, and is not entitled to the benefit of Articles 1 and 2. They will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

IN THE MATTER OF
THE STEAMSHIP "BELGIA."

DELIVERED BY LORD PARMOOR.

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