Privy Council Appeal No. 96 of 1915.

In the matter of the Steamship "Concadoro."

FROM

HIS BRITANNIC MAJESTY'S SUPREME COURT FOR EGYPT IN PRIZE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 14TH APRIL, 1916.

Present at the Hearing:

LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR SAMUEL EVANS.

[*Delivered by* LORD PARMOOR.]

The steamship "Concadoro" is an Austrian vessel (1,813 tons gross and 1,198 tons net register) registered at Trieste. On the 1st August, 1914, the "Concadoro" left the port of Cardiff under charter to Messrs. D. L. Flack and Son, with a cargo of patent fuel destined for consignees at Port Soudan. She arrived at Port Said on the 18th August, 1914, her master being ignorant that war had broken out between Great Britain and Austria-Hungary. Owing to the outbreak of war, the master was not provided by the managing owner with funds to enable him to continue his voyage, and decided to remain at Port Said, fearing to put to sea lest he should be captured by British men-of-war. The master says that he believed Port Said to be a neutral port. Their Lordships have already found that Port Said was not at this date in fact a neutral port, and that, under the Suez Convention, the ships of belligerents had no right to make it a port of refuge. It is only because Port Said has at the said date to be regarded as an enemy, and not a neutral, port, that the appellants are able to found their case on the application of Articles 1 and 2 of The Hague Convention No. 6 of 1907, assuming for

the purposes of the appeal that the Hague Convention applies, as their Lordships have done in other appeals from the Egyptian Court.

Immediately on arrival the "Concadoro" came under the general precautionary order issued by the General Officer Commanding British troops, that no enemy vessel was to enter the Canal. The "Concadoro" was free to return to the Mediterranean. On the 22nd September, 1914, the master of the "Concadoro" was offered a safe-conduct to Port Soudan, and thence to Basra, on the terms comprised in the following following:—

"Sir,

"I am instructed to inform you as follows:—

"The coal cargo of the 'Concadoro' being required at Port Soudan, you are requested to proceed to that port and discharge it to the consignees' order.

"If you will agree to do so, the Egyptian Government is authorised by the British Foreign Office to grant you a safe-conduct to the said port, and from thence to the port of Basra, a neutral port, on the following conditions:—

"1. The 'Concadoro' must leave Port Said on or before the 27th September, and must proceed direct to Port Soudan, arriving there not later than six days from date of departure from Port Said.

"2. She must discharge without delay the 1,900 tons of patent fuel to the consignees, Messrs. Contomichalos, Darke, and Co., and forty-eight hours after completion must leave Port Soudan for the neutral port named above.

"3. The 'Concadoro' will be liable to capture in the event of any infringement of the foregoing conditions.

"You are requested to give me a written answer to this letter as soon as possible, and, in the event of your acceptance of the conditions named, you will be good enough to apply to this office for the safe-conduct referred to, at the same time informing me of the date and time you propose to enter the Canal.

"(Signed) C. E. D. TRELAWNEY,
"Captain of Port."

On the 23rd September the master replied: "I beg to thank you for your letter of the 22nd, but in reply I regret to inform you that, on account of the present political situation, I cannot see my way to undertake the voyage to Port Soudan before the end of hostilities. I can only deliver the cargo here against original bill of lading and signature of bond with deposit for general average."

Their Lordships would not desire to place undue weight on this letter, but the claim of the master not to prosecute the voyage to Port Soudan before the end of hostilities in substance amounts to a claim to use Port Said as a port of refuge. It is material that at this date the master of the "Concadoro" had received an offer by the consignees of the cargo to advance the sum of 530*l*. for the canal dues and

disbursements at Port Said. On the 22nd October the "Concadoro" was taken out to sea, under instruction from the Director-General to the Port and Lights Administration of Egypt, and steered northwards towards a British destroyer which was lying outside the harbour. The vessel was boarded by officers and crew of the destroyer, brought back to the point from which she had started in the morning, and was then taken over by a crew from H.M.S. "Warrior." The next day the "Concadoro," in charge of a crew from the "Warrior," left Port Said for Port Soudan. The cargo was discharged at Port Soudan and the "Concadoro" was taken to Alexandria, where she arrived on the 17th November. The "Concadoro" was subsequently condemned as an enemy ship properly seized as prize, and this appeal is against the order for condemnation.

On the hearing of the appeal, two arguments were urged on behalf of the "Concadoro" as differentiating her case from that of the other appeals from His Britannic Majesty's Supreme Court of Egypt in Prize, which had come before their Lordships. In the first place, it was argued that the words in article 1 :

> "il est désirable qu'il lui soit permis de sortir librement, immédiatement ou après un délai de faveur suffisant, et de gagner directement, après avoir été muni d'un laissez-passer, son port de destination ou tel autre port qui lui sera désigné,"

entitled the master to receive a pass, and more than that, a wholly unconditional pass, direct to the port of destination or any other port indicated, and that by reason of the conditions attached to the offer made on the 22nd September, 1914, the safe-conduct was not a proper pass within the meaning of Article 1. Their Lordships agree with the view of Mr. Justice Grain, that the conditions attached under the circumstances were manifestly reasonable. The conditions were that the master of the "Concadoro" should discharge his cargo at the port to which it was consigned, arriving there after the allowance of a sufficient time for the voyage from Port Said; that she must discharge her cargo without delay, and that forty-eight hours after completion she must leave Port Soudan for Basra, a neutral port, to which the master had originally intended to proceed after discharging the cargo at Port Soudan. Their Lordships hold that manifestly reasonable conditions do not invalidate a pass offered under Article 1. To adopt so narrow a construction of the article would, in their opinion, unduly restrict the benefits intended to be conferred for the protection of mercantile international operations undertaken in good faith, and in process of being carried out before the outbreak of hostilities.

In the second place, it was argued that the inability of the master to procure the necessary funds for his voyage brought the "Concadoro" under Article 2, and that she was unable to leave the enemy port within the days of grace "par suite de

circonstances de force majeure." In their Lordships' opinion, this contention cannot be maintained. The *force majeure* contemplated in the article is one which renders the vessel unable to leave the port, and cannot be construed to include the circumstance that the master has not been provided by the owners with sufficient financial resources to continue his voyage. Moreover, in the present case, the master of the "Concadoro" was offered a loan of 530*l.*, which was a sufficient sum, to enable him to pay the charges at Port Said and of the Suez Canal, and to take his vessel to Port Soudan.

Their Lordships are of opinion that the order appealed against was properly made, and will humbly advise His Majesty that the appeal be dismissed with costs. The order should be varied, however, so as to run "and as such or otherwise subject and liable to confiscation and condemned the said ship as good and lawful prize seized on behalf of the Crown," and in other respects should be in the form under appeal.

In the Privy Council.

IN THE MATTER OF

THE STEAMSHIP "CONCADORO."

DELIVERED BY

LORD PARMOOR.

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1916