

**In the matter of the Steamship "Sudmark."**

**The Hamburg-Amerika Line - - - Appellants,**

*v.*

**His Majesty's Procurator in Egypt - - Respondent,**

FROM

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

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 3RD AUGUST, 1917.**

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*Present at the Hearing:*

LORD PARKER OF WADDINGTON.

LORD WRENBURY.

SIR SAMUEL EVANS.

SIR ARTHUR CHANNELL.

*[Delivered by LORD PARKER OF WADDINGTON.]*

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A German vessel being on a voyage from Colombo to Antwerp via the Suez Canal was on the 15th August, 1914, stopped by H.M.S. "Black Prince" in the Red Sea and ordered to proceed to Suez. It is not disputed that this amounted to a seizure as prize. The vessel arrived in the roadstead at Suez at 1 A.M. on the 17th August, and at 9 A.M. on the 18th left for Alexandria in charge of a prize crew. She arrived at Alexandria on the 20th August. The writ in the present proceedings was issued on the 23rd October, 1914, on behalf of His Majesty's Procurator in Egypt asking for condemnation of the vessel as lawful prize.

It was not disputed before their Lordships' Board that the seizure of the vessel on the 15th August in the Red Sea was a lawful seizure as prize, such as in ordinary course would justify an order for condemnation. The appellant, however, relied on what happened after the seizure, coupled with the provisions of the Suez Canal Convention, 1888, as entitling the vessel to be released.

The first article of the Suez Canal Convention, 1888, provides that the Suez Maritime Canal shall be free and open in time of war as in time of peace to every vessel of commerce or of war without distinction of flag. The fourth

article provides that vessels of war of belligerents shall not revictual or take in stores in the Canal or its ports of access except in so far as may be strictly necessary, and that their stay at Port Saïd or in the roadstead at Suez shall not exceed twenty-four hours except in case of distress. The sixth article provides that prizes shall be subjected in all respects to the same rules as the vessels of war of belligerents. It is said that the "Sudmark" stayed in the roadstead at Suez for more than twenty-four hours, and thereby committed a breach of these provisions, in consequence of which she ought to be released.

That the vessel did remain in the roadstead at Suez for more than twenty-four hours is certain; but their Lordships entertain some doubt whether in so doing she committed a breach of the convention. The captain, in his affidavit of the 18th October, 1914, says that on reaching Suez he went to the British Consulate and requested leave to take in provisions and water, which leave was given. He also says that he was ordered by the captain of H.M.S. "Chatham," then at Suez, to leave for Alexandria the next morning, but refused unless he were allowed to proceed with his own officers and crew. It is ~~at least arguable that under these circumstances there was such~~ a case of necessity or distress as would render the twenty-four hours rule inapplicable. Their Lordships' will, however, assume that the rule was broken, and will proceed to consider the consequences of such breach.

The convention, which is an international agreement, imposes on the contracting Powers a number of obligations which, except in the case of the Egyptian Government and the Imperial Ottoman Government, are purely negative. On the Egyptian Government and the Imperial Ottoman Government alone is any positive obligation imposed. By Article IX the Egyptian Government is within the limits of its powers resulting from the firmans to take the necessary measures for insuring the execution of the convention, and in case it has not the necessary means at its disposal, is to call on the Imperial Ottoman Government, and the latter Government is then to take the necessary measures, giving notice thereof to and concerting with the Powers therein referred to. But for the fact that the Egyptian Government was *de facto* controlled by the Government responsible for the breach in question, the fact that neither the Egyptian Government nor the Imperial Ottoman Government intervened would have been sufficient proof that the breach (if any) was purely technical, and did not call for any action on their part.

But even if this inference does not under the circumstances arise, the question remains as to whether a Court of Prize can ~~properly constitute itself the guardian of the convention and~~ invent and exact penalties for its non-observance, although no such penalties are imposed by the convention itself. In their Lordships' opinion this question can only be answered in the negative. The jurisdiction of a Court of Prize does not embrace

the whole region covered by international law. It is confined to taking cognisance of and adjudicating upon certain matters (including capture at sea), which in former times were enumerated in the Royal Commissions under which the Court was constituted and are now defued both by statute and by the Royal Commission issued at the beginning of the war (see Naval Prize Act, 1864, section 55 (5); Jud. Act, 1891, section 4 (1); and Royal Commission of the 6th August, 1914). It is true that the Court must adjudicate on these matters in accordance with international law, including international agreements. But the international law which the Court is to enforce is that branch of international law (including international agreements) which relates to matters of which the Court is to take cognisance and upon which it is to adjudicate. It has no such roving jurisdiction as suggested by the appellant's counsel.

Considerable stress was laid in argument upon the recent decision of the Supreme Court of the United States in the case of the steamship "Appam." In their Lordships' opinion that decision has no application to the present case. According to the rules of international law, a prize may under certain circumstances be taken into a neutral port, but its right to remain there is limited by the continued existence of these circumstances. When these circumstances cease to exist it is the duty of the neutral to order it to leave forthwith, and if it fail to leave to cause its release.

If the neutral allow the prize to remain longer than is warranted by the circumstances it is no doubt guilty of an unneutral act, which may well be made the subject of diplomatic complaint. But their Lordships cannot think that the captor's Prize Court has any jurisdiction to entertain the question, or is bound, if it consider that there has been an unneutral act, to release the prize on that account.

Assuming that in the present case the Egyptian Government or the Imperial Ottoman Government may be looked upon as a neutral Power which has allowed a prize to remain in one of its ports longer than is warranted by international law or international agreement, their Lordships cannot hold that the Prize Court has on that account any power or duty to release the prize.

Their Lordships will therefore humbly advise His Majesty that the appeal fails, and should be dismissed with costs.

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In the Privy Council.

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HIS MAJESTY'S PROCURATOR IN  
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DELIVERED BY  
LORD PARKER OF WADDINGTON.