

Privy Council Appeal No. 33 of 1917.

In the matter of the Steamship "Alwina."

His Majesty's Procurator-General - - - *Appellant,*

v.

Holland Gulf Stoomvaart Maatschappij - - *Respondents.*

Holland Gulf Stoomvaart Maatschappij - - *Appellants.*

v.

His Majesty's Procurator-General - - - *Respondent.*

Consolidated Appeals

FROM

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

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 22ND JANUARY, 1918.**

Present at the Hearing:

LORD PARKER OF WADDINGTON.

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

SIR ARTHUR CHANNELL.

[Delivered by LORD SUMNER.]

This is the Crown's appeal for the condemnation of the steamship "Alwina," on the ground that she was when seized or had been engaged in unneutral service. She was owned by the N.V. Holland Gulf Stoomvaart Maatschappij, which is managed by Mr. Jos. de Poorter, a subject of the Queen of the Netherlands. On the 26th October, 1914, she cleared from Newport (Mon.) for Buenos Ayres via Teneriffe with a cargo of coals, and put into Teneriffe on the 6th November ostensibly to bunker. There seems to have been something suspicious about her from the first, and, in fact, bunker coals were refused her. Somehow the notion got about that her cargo was being exported for the supply of the German squadron in the South

Atlantic. Eventually the captain himself came to the conclusion that this was probably true. There was on board a man called Van Dongen, of whom Mr. Jos. de Poorter says, "the nationality of the said Van Dongen is supposed to be Dutch, but I cannot say anything as to that with any degree of certainty." In the ship's papers he figured sometimes as steward, sometimes as a passenger, though the ship had no quarters for passengers, and sometimes not at all. Mr. Jos. de Poorter knew nothing about him, and thinks he must have arranged his passage with the captain. As to that the captain maintains an impenetrable reserve. When the "Alwina" arrived at Teneriffe, Van Dongen at once went on board the steamship "Cap Ortegá," and subsequently took up his quarters on shore. Now the steamship "Cap Ortegá" was a German armed cruiser, which, as it happened, was at Teneriffe when the "Alwina" arrived. In the long run Captain Glashouwer of the "Alwina" came to the conclusion that Van Dongen must be a supercargo, and a supercargo let him be.

According to the ship's papers the time-charterers of the ship and consignees named in the bill of lading were Messrs. A. M. Delfino y Hermanos of Buenos Ayres. The hire of the ship was paid in advance up to the 17th January, 1915. The price of the cargo was paid to Mr. Jos. de Poorter by Messrs. Delfino y Hermanos before the ship left Newport. Such was Mr. Jos. de Poorter's case. When, however, no bunker coals could be got at Teneriffe, Captain Glashouwer and Mr. Jos. de Poorter seem to have come to the conclusion that they must bring the adventure to an end then and there. Though Messrs. Delfino y Hermanos had paid in advance for the ship's hire and, as owners of her cargo, might have ordered part of it to be burnt in her furnaces in prosecuting the voyage to Buenos Ayres, no letter or telegram was sent to them in South America. Captain Glashouwer and Mr. Jos. de Poorter set about finding buyers, who would take delivery at Teneriffe, the one in Holland, the other on the spot. On a letter from Van Dongen the captain opened negotiations with a Spanish buyer, but, as this buyer resold to the "Cap Ortegá," the bargain was cancelled by the Spanish authorities. Then Mr. Jos. de Poorter wrote that he had sold the coals to the owners of a German ship, the "Krefeld," but she was unable to take delivery until the end of the war. He also telegraphed to Captain Glashouwer, that he was to sell the coals, as the hire had not been paid and the charter was therefore cancelled. This was untrue. The hire had been paid. The charter was cancelled at Mr. Jos. de Poorter's verbal request. His manager happened to meet Messrs. Delfino y Hermanos of South America somewhere in Europe and arranged with them, also verbally, to have the coal sold at Teneriffe. Eventually sold it was and discharged, the captain assuring the buyer that it was the entire property of his owners, the firm of Jos. de Poorter, and the "Alwina," thus relieved of an embarrassing burden, made for home in ballast viâ Madeira on the 30th

December. The German cruiser squadron had been destroyed off the Falkland Islands on the 8th December.

Off Madeira the "Alwina" was visited by British officers and ordered to proceed to Gibraltar. Some time afterwards it was found that several pages from her harbour log, covering part of her stay at Teneriffe, were missing. Of this Captain Glashouwer says: "I made the discovery of the said removal on the 15th day of January, 1915, after the said ship had left Huelva, and I have never been able to solve the mystery of their disappearance," and he entered in his log that this was "probably at Gibraltar." but this hardy suggestion is contradicted by all the officials concerned. The Chief Examining Officer of Shipping at Gibraltar allowed her to proceed to Huelva, and there she loaded a cargo of washed sulphur ore *smalls* in bulk for Rotterdam. A voyage charter and bill of lading for this are produced. On her way to Rotterdam she put into Falmouth owing to engine trouble, and there was detained and ultimately seized on the 23rd January, 1915.

The opinion of the learned President about the whole matter is expressed as follows:—

"The correct finding, in my view, is that the vessel, being a neutral vessel, was carrying contraband, viz., coal, intended to be delivered to enemy agents or enemy vessels of war encountered on the voyage, and that she was so carrying the contraband with false papers, with a suspicious supercargo, with a false destination, and in circumstances amounting to fraud in regard to belligerents. . . . What is clear is that De Poorter, the shipowner himself, was an active party in the attempt to convey the contraband to the enemy by the false and fraudulent tricks and devices which were adopted."

On grounds of law he released the ship, but he ordered that the owner by reason of his conduct do bear and pay the costs and expenses of and incident to the capture and detention, and also of and incident to these Prize proceedings.

From this decision there are two appeals, which have been consolidated, the Crown claiming condemnation, Mr. Jos. de Poorter, or the Holland Gulf Stoomvaart Maatschappij, claiming that the costs and expenses ought to be borne by the Crown. This cross-appeal, however, the shipowners have withdrawn without attempting to argue it, and no doubt in this were well advised. Their Lordships think that a conclusion on the facts adverse to Mr. Jos. de Poorter was inevitable, but, after carefully reconsidering the evidence, they are not minded to carry their view beyond the point reached by the President. The case is one of contraband.

Mr. Jos. de Poorter claims the benefit of the Declaration of London, as modified when it was adopted by the Orders in Council, dated the 20th August and 29th October, 1914. By article 38, "a vessel may not be captured on the ground that she has carried contraband on a previous occasion, if such carriage is in point of fact at an end," and this, as modified, becomes, under the first Order, "a neutral vessel which succeeded

in carrying contraband to the enemy with false papers may be detained for having carried such contraband if she is encountered before she has completed her return voyage," and, under the second, "a neutral vessel with papers indicating a neutral destination, which, notwithstanding the destination shown on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage."

In the "Zamora" (1916, 2 A.C., at p. 97) their Lordships had occasion to observe:—

"It does not follow that because Orders in Council cannot prescribe or alter the law to be administered by the Prize Court, such Court will ignore them entirely. On the contrary, it will act on them in every case in which they amount to a mitigation of the Crown rights in favour of the enemy or neutral, as the case may be."

There can be no doubt, from the recitals contained in these instruments and otherwise, that the provisions above quoted were meant to operate in favour of neutrals, and to be a restrictive definition of the rights which His Majesty would exercise as a belligerent sovereign in the present war, so long as they remained unrescinded. Whether the difference between these provisions and the general rules of international law, as laid down before the outbreak of this war, be great or small, or takes one form or another, it is not necessary to enquire. Unless this neutral vessel falls within the cases specified, it is enough for present purposes to say that "she may not be captured," that is, in the course of her voyage from Huelva to Rotterdam, "on the ground that she has carried contraband on a previous occasion," to wit, coal on an outward voyage from Newport (Mon.) as far as Teneriffe, "if such carriage is at an end," as it was as soon as the coal was safely landed there. Now, she never succeeded in carrying contraband to the enemy, and she never proceeded to an enemy port, and so she has the good fortune to fall outside the cases specified and to escape condemnation. Such was the President's decision, and their Lordships think it was right. They will humbly advise His Majesty that both these appeals should be dismissed with costs.



In the Privy Council.

IN THE MATTER OF THE STEAMSHIP
"ALWINA."

HIS MAJESTY'S PROCURATOR-
GENERAL

"

HOLLAND GULF STOOMVAART
MAATSCHAPPIJ.

HOLLAND GULF STOOMVAART
MAATSCHAPPIJ

"

HIS MAJESTY'S PROCURATOR-
GENERAL.

DELIVERED BY LORD SUMNER.