

Privy Council Appeal No. 85 of 1919.

In the matter of His Majesty's Submarine Ship "E 14" (Prize Bounty).

The Commander, Officers and Crew of His Majesty's Submarine

"E 14" - - - - - *Appellants*

v.

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

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 8TH DECEMBER, 1919.**

Present at the Hearing :

LORD SUMNER.
LORD PARMOOR.
THE LORD JUSTICE CLERK.
SIR ARTHUR CHANNELL.

[Delivered by LORD SUMNER.]

In this appeal the Commander, Officers and crew of His Majesty's Submarine "E 14" seek, pursuant to 27 & 28 Vict. c. 25, section 42, and the Order in Council dated the 2nd March, 1915, to establish their right to a grant of £5 per head of the 6,000 Turkish troops, and of the 200 ship's complement, who were on board of the "Guj Djemal," when they destroyed her with a torpedo in the Sea of Marmora, near Kalolimno Island, on the 10th May, 1915. The troops had their rifles and ammunition, and with them were six Krupp 75-mm. field guns, also with ammunition, and so disposed on the ship's deck astern that at suitable ranges they could have been used against the "E 14" with effect. The

ship herself was part of the Ottoman naval force, a fleet auxiliary manned by naval ratings and commanded by officers of the Navy of the Sublime Porte, and she carried a few light quickfiring guns as part of her regular equipment, with which she could defend herself, if necessary. At the time in question she was acting as a troop transport, and this would appear to have been her regular employment. She was on her way to the Dardanelles, and it was known to the Turkish Government that British submarines had passed up the Straits for the purpose, among others, of interfering with that traffic.

By section 42 of the Naval Prize Act, 1864, the right in question would attach if the "Guj Djemal" was, in the words of the section, "an armed ship of any of His Majesty's enemies." This is entirely a matter of construction of the section in its application to the facts of this case, and no other question was raised in the appeal. Little assistance, if any, is to be derived from prior decisions or earlier legislation. No decision before the war turned on or touched this section, and in the cases decided during the war the present contention had not been raised. The older Acts go back for many generations. At one time the number of guns, and not of men, carried by the ship destroyed, was the measure of the grant, and until the Crimean War the expression "armed ship" was not used. No settled practice was shown to have existed in the grant of "head money," as it was called, that could be regarded as affecting the ordinary meaning of the words of the section, and no reasons of policy were suggested, which would point to an intention to use those words in one sense rather than in another.

It is plain on the facts that the "Guj Djemal" was a ship, and a large one; that she was a ship of His Majesty's enemies, a unit in the Turkish Fleet; and that she was armed. If then these single and undisputed facts are put together, she was in fact "an armed ship of His Majesty's enemies." Why was she not so within section 42? It is true that she was used to transport troops. It is true also that she got no chance to use her arms, or at least none that Turkish troops or seamen were minded to take; such is the nature of an injury by a well-placed torpedo. It is true that she did not go forth to battle, nor was she in any case fit to lie in the line, but the section says nothing about this. It may be that her regular service consisted in carrying troops and stores, and that her combatant capacity was not high, but it can hardly be doubted that, if a suitable opportunity had occurred, it would have been her duty to fight and even to attack a hostile submarine.

The contention presented on behalf of the Crown was, that her main character was that of a transport, and that the fact that she was armed was only an incident. The section, however, does not distinguish between the purposes for which the armed ship is armed, nor does it confer or withhold the grant according as the armament carried is the main or an incidental characteristic of the Enemy Sovereign's ship. The contention prevailed

with the late President, who gave effect to it in the following words :—

“ An armed ship, within the meaning of the section to be construed, is a fighting unit of the fleet, a ship commissioned and armed for the purpose of offensive action in a naval engagement.”

Evidently this proposition is open to several objections. It makes the rights of His Majesty's forces depend on the purpose with which his enemies may have despatched their vessel, on what either way is a warlike service. It employs a term—“ offensive action ”—which in practice is of indefinite meaning, and in any case involves an inquiry into the state of mind of the hostile commander. Sir Samuel Evans elucidated his meaning thus in another passage :—

“ In my opinion, if it were proved that she carried a few light guns, that would not constitute her an armed ship any more than a merchant vessel armed for self-defence ; nor would the fact that she carried troops armed with rifles and some field guns and other ammunition intended to be used after the landing of the troops.”

Their Lordships are unable to accept these propositions. Of the case of a merchant ship they say nothing, for this is a question on the meaning of the words “ ship of the enemy,” and the appellants did not contend, nor needed they to do so, that any ship but one in State service would be covered by those words. There is again no evidence that the rifles and field pieces were not intended to be used at sea under any circumstances, little as any occasion for their use was to be looked for, and it must be recollected that defence is not confined to taking to one's heels or even to returning a blow, but, in the jargon of strategy, may consist in an offensive-defensive, or in plain words in hitting first. No criteria would more embarrass the application of the enactment than these, and to introduce the test of the ship's commission is to introduce something which involves a re-writing of the section. Their Lordships are of opinion that the words of the section are plain, and that the facts fit them, and accordingly the appellants are entitled to succeed ; that the decree appealed against should be set aside ; and that this appeal should be allowed with costs, and that the case should be remitted to the Prize Court to make such formal decree in favour of the appellants as may be required. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

IN THE MATTER OF HIS MAJESTY'S SUBMARINE
SHIP "E 14" (PRIZE BOUNTY).
THE COMMANDER, OFFICERS AND CREW OF
HIS MAJESTY'S SUBMARINE "E 14"

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY LORD SUMNER.

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