

*Privy Council Appeal No. 1 of 1919.*

IN THE MATTER OF PART CARGO EX STEAMSHIP "KRONPRINZESSIN  
CECILIE."

The Vacuum Oil Company of Rochester, U.S.A. - - - *Appellants*

*v.*

H.M. 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 JULY, 1919.

---

*Present at the Hearing :*

LORD PARMOOR.

LORD WRENBURY.

LORD STERNDALE.

SIR ARTHUR CHANNELL.

[*Delivered by* LORD PARMOOR.]

---

The appellants are a corporation incorporated according to the laws of the State of New York in the U.S.A., with registered office and place of business at Rochester, in the State of New York. In July, 1914, the appellants shipped certain barrels of oil, and one box of brass stencils, on the S.S. "Kronprinzessin Cecilie," a ship which belonged to the Hamburg–America Steamship Company, incorporated under the law of the German Empire, and having its registered office at Hamburg. There are three bills of lading, one in respect of 1,619 barrels of oil consigned to a German Company and carrying on business in Germany, and the other two bills of lading were severally in respect of 65 barrels of oil, and in respect of 130 barrels of oil, and one box of brass stencils consigned to an Austrian Company, registered and carrying on business in Vienna. In all cases the goods were shipped f.o.b., and at the time of seizure were the property of the German and Austrian Companies respectively. It was stated by counsel that the shares in the German and Austrian Companies were wholly owned by the New York Company. The evidence is that with the exception of two small shareholders, who were respectively citizens of Denmark and Italy, all the shareholders

in both Companies are citizens of the U.S.A. The appellants undertook with both the German and Austrian Companies to bear the loss by failure of either of them to receive any consignment by reason of the seizure thereof, but the liability to seizure depends on the ownership of the property, and not on the risk of loss from failure of the adventure.

The S.S. "Kronprinzessin Cecilie" was diverted to Falmouth on the 3rd August, 1914, and on the 5th August the ship and goods were seized. When the case of the ship came before the Prize Court, the late President, Sir Samuel Evans, condemned her on the ground that the provisions as to detention in the Hague Convention did not apply. This Board, however, decided on appeal that the proper order to make was an order for detention, and the order for condemnation was set aside. The question of the condemnation of the goods was heard by the late President on the day after the condemnation of the ship, and their condemnation followed as a necessary consequence. The appellants claim that they are entitled to a detention order in the same form as that which has been made in the case of the ship, and there is no reason to doubt that such an order would have been made if this case had stood over until after the decision by this Board on appeal had been given in the case of the ship.

The first point, however, to be decided is whether the appellants, not being at the time of seizure owners of the goods, have any interest in the goods such as would entitle them to be heard on the appeal. Their Lordships are of opinion that the appellants, not being owners of the goods, have no such interest, and that on this ground alone the appeal must be dismissed. It was, however, argued before their Lordships that either an amendment should be allowed to enable the owners of the goods to be made parties to the proceedings, or that their Lordships would correct an error in the order of the Court below, in whatever way it had been brought to their notice. Their Lordships intimated during the hearing that an application for amendment could not be entertained at the instance of appellants who had themselves no interest which entitled them to be heard. The same principle applies to the argument that their Lordships should correct an error brought to their notice by the appellants, in the order made in the Prize Court. The appellants having no such interest in the goods as would entitle them to be heard are in the position of mere outsiders and have no *locus standi* either to criticise the order of the Court below, or to ask that such order should be varied or set aside. In "*The Proton*" (1918 A.C. 578) it was held that the claimant was not at the time owner of the vessel and consequently could not maintain the appeal. Lord Sumner, in delivering their Lordships' judgment, says:—

"If the learned Judge's first finding is right, this appeal fails, for M. Kouremetis (the appellant) has no character except that of owner in which he can claim to have the ship released to him, and, if not her owner, has no *locus standi* to criticise or complain of her condemnation."

In "*The Antilla*" (1919 A.C. 250) it was held that the appellants were not entitled as of right to appeal under section 5 of the Naval Prize Act 1864. The following passage occurs in the judgment of their Lordships :—

"Although it be the case that the effect of the adjudication, which was ultimately arrived at, was to bar the further chance of the claimants obtaining the goods, apart from the bar imposed by the fact that the appellants were silenced by being struck out of the case, their Lordships think upon the true view that they cannot be heard to question on appeal a final decree for condemnation, which, however it may affect their interests, was made after they had been validly dismissed from the proceedings and were no longer before the Court."

There is no difference in principle between hearing a party validly dismissed from a suit, and a party who has no interest in the goods condemned and has failed to establish any right to appear or be heard.

In "*The Palm Branch*" (1919 A.C. 272) an order was made by consent of the Crown that the condemnation should be set aside and the proceeds of the goods remain in the Prize Court. In the present case, the Attorney-General, who appeared on behalf of the Crown, was asked to consider whether, under the special conditions, the consent of the Crown might not be given as in the case of "*The Palm Branch*," but it was stated to their Lordships that there were reasons which prevented the Crown adopting this course. The decision of their Lordships in this case has reference to the hearing of a case on appeal, and has no reference to procedure in the Prize Court.

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

---

In the Privy Council.

---

---

IN THE MATTER OF PART CARGO EX STEAM-  
SHIP "KRONPRINZESSIN CECILIE."  
THE VACUUM OIL COMPANY OF ROCHESTER,  
U.S.A.

v.

H.M. PROCURATOR-GENERAL.

---

---

DELIVERED BY LORD PARMOOR.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1919.