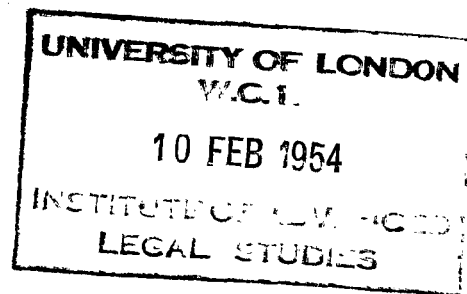


In the Privy Council.

**ON APPEAL**  
FROM THE HIGH COURT OF JUSTICE, PROBATE, DIVORCE  
AND ADMIRALTY DIVISION (IN PRIZE).

33532

HULL 507.  
HULL 508.  
FLENDERWERKE 347.  
FLENDERWERKE 348.  
m.v. "HERMES".



10

BETWEEN—

SCHIFFAHR-TREUHAND G.m.b.H.,  
LUBECKER FLENDER-WERKE A.G. and  
DAMPSCHIFFAHR-TS-GESELLSCHAFT  
"NEPTUN" *Appellants*

— AND —

HIS MAJESTY'S PROCURATOR  
GENERAL - *Respondent.*

**CASE FOR THE APPELLANTS.**

RECORD.

20 1. This is an appeal brought by the above named Appellants  
against a Judgment and Orders dated the 10th May, 1951, whereby  
the Right Honourable the Lord Merriman, President, dismissed the  
respective claims of the Appellants for (*inter alia*) the release of the  
above mentioned vessels and condemned the said vessels as good  
and lawful prize. The said claims were heard together before the  
learned President on the 5th, 6th, 7th, 8th and 9th February, the  
14th, 15th, 16th and 19th March and the 3rd and 4th April, 1951.  
The learned President admitted an Appeal by the Appellants subject  
to the payment into Court of £500 as security for the costs of the  
30 Appeal. That payment has duly been made.

pp. 90 et seq.

p. 119.

p. 120, l. 10.

pp. 10 &amp; 20.

2. Hull 507 and Hull 508 were contracted to be built for the Appellants Schiffahrt-Treuhand G.m.b.H. (hereinafter called "the Shipping Trust Company Limited") by Flensburger Schiffsbau-Gesellschaft (hereinafter called "the Flensburg Shipbuilding Company") under two agreements made in November, 1943. Each ship was to be a merchant ship of 5,000 tons. By Clause 13 of each of the agreements the property in the materials procured for building the two ships and the parts of the construction built therewith were vested in the Shipping Trust Company Limited.

p. 7, l. 35.

p. 17, l. 22.  
p. 12.

3. In pursuance of the said agreements, the Flensburg Ship- 10  
building Company commenced building Hull 507 and Hull 508 in their yards at Flensburg, but by May, 1945, neither was sufficiently advanced to be launched and both were on land on the stocks of the Flensburg Shipbuilding Company. In the case of Hull 507, the ribs were up and half the plating of the Hull was completed; in the case of Hull 508 the double bottom had been laid and half the ribs were up. However, practically the whole of the steel required for the completion of the two vessels had been procured by the Flensburg Shipbuilding Company and was at the shipbuilding yard, separated from other stocks. In accordance with Clause 13 of the building 20  
agreements the property in this steel had vested in the Shipping Trust Company Limited.

p. 26, l. 8.

p. 34, l. 5.

p. 26, l. 14 &  
p. 34, l. 12.

4. Flenderwerke 347 was contracted to be built for the Hamburg-Amerika Line by the Appellants Lubecker Flender-Werke A.G. (hereinafter called "Flender-Werke") under an agreement dated the 6th November, 1943. Flenderwerke 348 was contracted to be built by Flenderwerke for the North German Lloyd Shipping Company by a similar agreement made on the same date. Each ship was to be a merchant ship of 9,000 tons. Neither agree- 30  
ment contained any provision for the passing to the shipowners of the property in materials procured for the construction or in the parts of the vessels as they were constructed, and the materials and parts of the constructions remained vested in Flender-Werke.

p. 26, l. 21.

p. 34, l. 19.

5. The construction of these two vessels was undertaken by Flender-Werke at their shipyards at Lubeck. By May, 1945, neither vessel had been launched and each was still on land on the stocks of Flender-Werke. In the case of Flenderwerke 347, the Hull was almost ready for launching, but had not been painted: in that of Flenderwerke 348, some seventy per cent. of the work on the Hull had been completed, but the outer sides and decks were only partly 40  
rivetted.

6. m.v. "Hermes" is one of two merchant ships of 3,100 tons ordered on the 22nd May, 1938, by the Appellants Dampfschiffahrts Gesellschaft "Neptun" (hereinafter called "the Neptune Steamship

Company'') to be built by the Vulkan Shipyards, Bremen-Vegesack. By reason of the outbreak of War the Vulkan shipyards were unable to complete the construction of these ships. The Neptune Steamship Company therefore paid for work already done and materials supplied, so as to obtain the property in the incomplete constructions and in September, 1942, entered into an agreement for the completion of the "Hermes" by N.V. Scheepsbouwwerf Gebroeders Pot of Bolnes, Holland. At the time of the Allied landings in Normandy in June, 1944, about four-fifths of the construction of the "Hermes" had been completed. The Neptune Steamship Company then decided to have the "Hermes" towed to Emden for completion there and in order to obtain the transfer of the property in the vessel paid the full agreed building price to N.V. Scheepsbouwwerf Gebroeders Pot. In October, 1944, the "Hermes" was towed to Emden and shortly after arrival there she suffered considerable bomb damage during an air raid. No further steps to complete her were taken and in May, 1945, she lay damaged grounded and still incomplete in the harbour at Emden.

7. Of the three ports with which the present cases are concerned, the first to be occupied by Allied Forces was Lubeck, which was occupied by armoured detachments of His Majesty's Army on the 2nd May, 1945. Naval forces arrived in the port on the following day. On the 4th May, 1945, the German Command agreed to surrender to Field-Marshal Montgomery all German armed forces in Holland, in North West Germany (including the Frisian Islands, Heligoland and all other islands), in Schleswig-Holstein and in Denmark. The area comprised in this surrender included the ports of Emden and Flensburg and the whole German seaboard still in German hands. On the 6th May, 1945, British and Canadian Forces entered Emden and took the formal surrender of that port. On the 7th May, 1945, at Rheims, the German High Command surrendered unconditionally to the Allied Powers all forces on land, sea and in the air at that date under German control, and a further act of surrender in similar terms was entered into at Berlin on the 8th May, 1945. The acts of surrender of the 7th and 8th May both provided for the cessation of active operations by all forces under German control at 2301 hours Central European time on the 8th May, 1945. On the 10th May, 1945, Flensburg was occupied by a Military Government detachment of His Majesty's Army, and British naval forces arrived in the port on the same day.

8. On the 5th June, 1945, the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic issued a Declaration regarding the defeat of Germany whereby they assumed supreme legislative and executive authority

p. 41, l. 38.

p. 41, l. 39.

p. 42, l. 1 *et seq.*

p. 42, l. 7.

p. 42, l. 9 *et seq.*

p. 42, l. 18

p. 79, l. 24 &  
l. 30.

p. 85, l. 4.

p. 59, l. 26.

p. 86, l. 13 &  
p. 89, l. 20.

p. 60, l. 20.

p. 61, l. 21.

p. 79, l. 25 &  
l. 32.

p. 85, l. 9.

Pocket.

with regard to Germany. On the hearing of the Appellants' claims before the learned President, it was admitted on behalf of the Respondent that this Declaration precluded future seizures in prize as from the 5th June, 1945.

9. By Article 5 of this Declaration the four Governments required that:—

“(a) All or any of the following articles in the possession of the German armed forces or under German control or at German disposal will be laid intact and in good condition at the disposal of the Allied Representatives for such purposes and at such times and places as they may prescribe:—

\* \* \* \* \*

“(ii) all naval vessels of all classes, both surface and submarine, auxiliary naval craft and all merchant shipping, whether afloat, under repair or construction, built or building;

\* \* \* \* \*

“(vi) all factories, plants, shops, research institutions, laboratories, testing stations, technical data, patents, plans, drawings and inventions designed or intended to produce or facilitate the production or use of the articles . . . . . referred to in sub-paragraph . . . . . (ii) . . . . . above or otherwise further the conduct of war.

“(b) At the demand of the Allied Representatives the following will be furnished:—

“(i) the labour, services and plant required for the maintenance or operation of any of the . . . categories mentioned in Paragraph (a) above;”

\* \* \* \* \*

10. On the occupation of the ports of Lubeck, Emden and Flensburg, no overt act was performed on behalf of the Crown to take possession as prize of the structures with which the present case is concerned, nor were any steps taken to bring in any of the structures for adjudication or otherwise to comply with the provisions of Sections 16 or 17 of the Naval Prize Act, 1864. In the case of Hulls 507 and 508, the Flensburg Shipbuilding Company continued until July, 1945, when the supply of certain materials ceased, with the construction of these vessels in pursuance of their agreements with the Shipping Trust Company Limited. Between the respective dates of the occupation of the three ports and the summer of 1947, the only acts done by or on behalf of the Crown specifically in relation to the present structures were that on the 5th August, 1945, the Naval Officer in Charge, Flensburg, instructed the Flensburg Shipbuilding Company to complete Hulls 507 and 508, and that on the 27th

p. 7, l. 39 &  
p. 17, l. 25.

p. 11, l. 24.

August, 1945, similar instructions were given to Flender-Werke by the Base Engineer Officer, Lubeck acting on behalf of "Military Government" in relation to Flenderwerke 347 and Flenderwerke 348. The Appellants submit that these instructions were in no way derived from or referable to an exercise of prize rights, but were an exercise of the powers conferred by Article 5 of the Declaration of the 5th June, 1945. p. 29, l. 2.

11. On the 2nd August, 1945, the heads of government of the U.S.S.R., United States and United Kingdom agreed that the German Merchant Marine surrendered to the Three Powers and wherever located, save for inland and coastal ships determined to be necessary for the maintenance of the German peace economy, should be divided equally between the U.S.S.R., the United Kingdom and United States. They further agreed to constitute a tripartite merchant marine commission to submit agreed recommendations to the three governments for the allocation of specific merchant ships. The Commission so constituted made its report on the 7th December, 1945, and under the heading of "Uncompleted Vessels" recommended the allocation to the United Kingdom of, *inter alia*, the five structures with which this appeal is concerned. The recommendations of the Commission were accepted by the U.S.S.R. on the 31st December, 1946, and by the United Kingdom on the 18th January, 1946, and by the United States on the 2nd February, 1946. Pocket.

12. Shortly before the 30th June, 1947, when Hull 507 had been completed in accordance with the instructions given by the Naval Officer in Charge Flensburg, and was on the point of undergoing her final trials, a seizure of the vessel in prize was made by H.M.S. "Royal Harold". On the 10th July, 1947, the vessel satisfactorily completed her trials and was handed over by the Flensburg Shipbuilding Company to the British Ministry of Transport. On the 22nd July, 1947, the Writ for condemnation of the vessel, based on the seizure of June, 1947, was issued. On the 21st August, 1947, seizure of Hull 508 in prize was similarly made by H.M.S. "Royal Harold". The vessel was then still in the course of completion. On the 23rd August, 1947, the Writ for condemnation of the vessel, based on the seizure of the 21st August, 1947, was issued. On the 14th January, 1948, the vessel satisfactorily completed her trials and was handed over by the Flensburg Shipbuilding Company to the British Ministry of Transport. p. 3, l. 19 *et seq.*  
p. 13, l. 2 *et seq.*  
p. 1, l. 21.  
p. 14, l. 20 *et seq.*  
p. 14, l. 33.  
p. 13, l. 21.  
p. 21, l. 2 *et seq.*

13. Shortly before the 22nd July, 1947, a seizure of Flenderwerke 347 in prize was made by H.M.S. "Royal Harold". On the 5th August, 1947, the vessel satisfactorily completed her trials and was handed over to representatives of the British Ministry of Transport. On the 6th August, 1947, the Writ for the condemnation of the vessel, based on the seizure in July, 1947, was issued. p. 22, l. 18 *et seq.*  
p. 29, l. 15 *et seq.*  
p. 21, l. 17.

In the case of Flenderwerke 348, a seizure in prize was made shortly before the 26th August, 1947, at which date the vessel had not been launched. The Writ for condemnation, based on the seizure in August, 1947, was issued on the 1st September, 1947, and the vessel was launched on the 7th October, 1947.

p. 31, l. 2 *et seq.*  
p. 30.  
p. 35, l. 15.

14. In the case of the "Hermes", the Neptune Steamship Company were informed by the R.D. & R. Division of the Control Commission for Germany, by a letter dated the 7th November, 1946, that the vessel had been allocated as reparations to the United Kingdom. On the 21st July, 1947, a seizure of the vessel in prize was made and one Klaus Dehde was appointed master of the vessel for the purpose by the Port Controller at Emden. On the 13th August, 1947, the Writ for condemnation of the vessel, based upon the seizure of the 21st July, 1947, was issued. After the 21st July, 1947, certain temporary repairs to the vessel were carried out, and on the 8th December, 1947, instructions for her completion by Deutsche Werft A.G., Hamburg, were given on behalf of the British Ministry of Transport.

p. 46, l. 2.

p. 46, l. 27.

p. 37.

p. 42, l. 26.

p. 48, l. 20.

Pocket.

15. On 29th April, 1948, the applications for condemnation of all the above mentioned vessels came on for hearing in the Prize Court. No acts of seizure other than those in 1947, referred to in paragraph 12 to 14 hereof, were relied upon by the Crown and the vessels or structures other than Flenderwerke 348 were actually condemned on the basis of these seizures. No appearance had at that time been entered by the Appellants but the German attorney of one of the Appellants had written a letter to the Admiralty Registrar protesting against the seizure of Flenderwerke 348 in 1947 long after hostilities had ceased. This letter was drawn to the attention of the learned President, who after reading it cancelled his condemnations of the other vessels or structures and adjourned all the cases generally. Thereafter the Appellants entered appearances.

p. 50.

pp. 5, 15, 24, 32  
& 40.

p. 55.

p. 58, l. 26.

pp. 3, 14, 22,  
30 & 37.

16. By a letter dated the 8th July, 1949, in the case of the "Hermes", and by a letter dated the 20th January, 1951, in the case of the four other vessels, the Respondent intimated that he would not rely upon any seizures effected in 1947, but would contend that the vessels were seized in prize when the ports of Emden, Lubeck and Flensburg respectively were occupied in May, 1945. At the hearing of the Appellants' claims, the learned President gave leave for the Writs in each case to be amended to allege seizure in prize at the date of the occupation of the relevant port. No objection to this course was taken by the Appellants.

17. At the hearing before the learned President, the Appellants submitted, and will submit before your Lordships' Board, first, that there were no seizures in prize of any of the vessels before the summer of 1947, by which time, as was admitted by the Crown, no

valid seizures in prize could be effected; secondly, that in the case of Hulls 507 and 508, no valid seizure in prize could have been effected at the date of the occupation of Flensburg; and thirdly, that the four vessels other than the "Hermes" were not at the date of the occupation of the ports the proper subject of maritime prize.

18. With regard to the first of these contentions, the Appellants submitted that seizure in prize requires a conscious act of volition or intention; that there is no such doctrine as that the capture of a port necessarily involves the seizure in prize of any subject matter  
10 of prize therein; and that there was no evidence of any intention to seize any of the present structures in prize before the summer of 1947. The learned President accepted on the evidence that at the time of the occupation of the ports no particular attention was paid to the question whether the structures were being captured in prize, and that there was no act of conscious volition to seize them in prize  
p. 108, l. 5.  
p. 106, l. 16.  
before the 5th, June, 1945. But he held that seizure in prize does not necessarily involve any act of conscious volition at all and that, conversely, the occupation of the ports involved the seizure of the structures in prize.

20 19. The Appellants submit that this view of the learned President is wrong and that seizure in prize does in every case require conscious volition or intention, even though only slight proof of this intention is ordinarily required. Thus, where all that appears is that a port has been captured and that ships or other objects found therein have without more been brought before the Court for adjudication, the Appellants concede that there may arise an inference as to the intention of the captors of the port at the time of its capture. But it is submitted that no such inference can be drawn when there is interposed between the capture of the port and the  
30 bringing in for adjudication an overt act of seizure to which the bringing in for adjudication is referable. In such a case, the inference is that there was no intention to seize in prize before the overt act. Accordingly, where, as here, the Respondent seeks to rely upon alleged seizure prior to the overt act, it is submitted that positive evidence of intention to seize in prize at the earlier date must be adduced before the Court is entitled to pronounce a decree of condemnation based upon the alleged prior seizure. No such evidence was adduced in the present case.

40 20. The Appellants submit further that in any case in inference which, without more, might be drawn as to the intention of captors of a port to seize in prize any appropriate subject matter therein, is capable of being rebutted by evidence. In the present cases it is submitted that in addition to the overt act of seizure in 1947 there were both contemporary and subsequent facts and circumstances which also negated any inference of intention to seize before that

date. Thus at the date of the occupation of the ports the nature of the structures was such that they would not commonly have been regarded as the subject matter of prize, nor could they have been rendered serviceable for use in maritime commerce during hostilities which, if they had not already concluded, were manifestly on the point of concluding in the collapse or surrender of Germany. Further, the disintegration of the German state and the impotence of Germany in the hands of the Allied Powers tended, at the date of the occupation of the ports, to diminish the necessity for the Crown to seek acquisition of title to German ships through the medium of prize seizure. In addition, the requirement imposed on Germany by Article 5 (a) (ii) of the declaration of the 5th June, 1945, is inconsistent with all German shipping, including vessels under construction, having been seized in prize on the occupation of the various German ports. So also, it is submitted, is the Protocol of the Proceedings of the Berlin Conference, which treats the German merchant marine in general as having been surrendered to the Three Powers jointly. 10

21. The conduct of officers of the Crown and the contemporary instructions given by the Combined Chiefs of Staff and by the Admiralty, deposed to in the affidavit of Mr. Herbert Dawkin Samuel are also significant of the Crown's intention. So far as concerns the conduct of officers of the Crown, no act was done by the Crown in relation to any of these structures between the date of the occupation of the respective ports and June 1947, in any way indicative of an earlier intention to seize in prize, and no steps were taken during that period to comply with the provisions of the Naval Prize Act, 1864. By contrast, steps were taken to comply with that Act immediately after the seizures in June, July and August, 1947. The affidavit of Mr. Samuel shows that no instructions as to seizure in prize of enemy vessels captured or found in ports were given by the Combined Chiefs of Staff until the 14th May, 1945, that is, until after the occupation of all the ports with which the present case is concerned. The policy current until that date and agreed in December, 1944, was directed only to the operational use of such captured enemy ships and to their disposal to the Combined Shipping Adjustments Board when not required for operational purposes. When instructions for seizure in prize were given on the 14th May, 1945, it was already, in the submission of the Appellants, too late to effect valid seizures in prize, by virtue of the surrender of Germany. Moreover, those instructions did not deal with anything other than ships, a term which could not be taken to comprehend the structures at Lubeck and Flensburg, and, in fact, no steps were taken in pursuance of those instructions to seize in prize any of the structures in the present case. 20 30 40

22. The instructions sent to General Eisenhower on the 14th May, 1945, were that (a) unless otherwise directed the policy of 40



December, 1944, should be applied to all shipping captured by forces under his command before the surrender or declaration of defeat of Germany; and (b) captured ships were to be seized in prize except for fishing craft, inland water craft and vessels needed for local service with German crews. Seizure was to be effected in Bremen and Bremerhaven by the United States Navy and in other ports by the Royal Navy. Further instructions were to follow regarding the treatment of shipping falling into the hands of the Allied Expeditionary Force upon surrender or declaration of defeat of Germany. The Appellants submit that a distinction is here drawn between vessels falling into Allied hands before and after the surrender of Germany and that such distinction and the direction that certain classes of vessels should not be seized in prize, are wholly inconsistent with there having been a prior general intention to seize in prize any appropriate subject matter in German ports at the date of their capture or occupation. p. 81, l. 1.

23. On the 8th June, 1945, a signal was made by the Admiralty to the Naval Authorities in Germany referring to the seizure of German ships in prize. A paraphrase of this signal is set out in Exhibit A to Mr. Samuel's affidavit, as follows:— p. 81, l. 33 *et seq.*

“Subject German Ships seized in prize. Vessels are to be seized in ports of Germany or in ports occupied recently. Vessels to be accompanied to U.K. with Affidavits of Seizure in hands of Officer Commanding Armed Guard. These Affidavits to be delivered to N.O.I.C. at arrival port. At such port affidavit to be delivered by N.O.I.C. to Customs Officer. Vessels not to be seized until at point of departure for U.K. by reason uncertainty regarding arrangements for refitting”.

This signal, it is submitted, treats seizure in prize as something to be carried out in the future and is wholly inconsistent with the existence of an intention to seize in prize at the date of the occupation of the ports. Further, so far from manifesting a present intention to seize in prize the structures with which the present case is concerned, the signal in terms confines the subject matter of seizure not only to ships, but to ships at the point of departure for the United Kingdom. It is to be observed that at the time the signal was made, valid seizures in prize, as the Respondent now admits, could no longer be effected, and it is submitted that the signal demonstrates that the Crown was both unaware of this cessation of prize rights and also regarded such rights as being exercisable in the future at convenience. The learned President, forming as he did, the view that there was no conscious volition to seize the structures in prize at any time before the 5th June, 1945, would, it is submitted, have found in favour of the Appellants if he had considered that intention was relevant to the question of seizure.

p. 110, l. 26.

p. 108, l. 18.

24. In reaching his conclusion that the structures were seized in prize at the date of the occupation of the ports, the learned President followed his earlier decision in *The Bellaman* (1948) 2 All E.R. 679, from which he considered the present cases indistinguishable. The Appellants will submit that *The Bellaman* is distinguishable on the ground that there was there, in contradistinction to the present cases, some evidence that the Crown treated the vessels (which were without doubt a proper subject-matter of prize) as already within the jurisdiction of the Court at a date long before the overt acts of seizure in 1947. If your Lordships should, however, consider that the *The Bellaman* is indistinguishable from the present cases, the Appellants will submit that in so far as it decided that there was a seizure in prize of the vessels with which the case was concerned at the date of the capture of the port of Tripoli in January, 1943, *The Bellaman* was wrongly decided. 10

p. 102, l. 14.

25. With regard to the Appellants' contention that the port of Flensburg was occupied after prize rights had ceased to be exercisable, the learned President held that the surrender of Germany on the 8th May, 1945, did not bring about the cessation of rights of prize. In reaching this conclusion, the learned President examined authorities relevant to the surrender of individual ships and fortresses during the continuance of wider hostilities, and declined to accept the Appellants' submission that wholly different considerations applied in the case of surrender of the whole of the military forces of the enemy, involving accordingly a total cessation of hostilities. The Appellants will submit before your Lordships' Board that upon a correct view seizures in prize can, apart from express stipulation only validly be made during the continuance of actual hostilities; and further that, since after the 8th May, 1945, there was no person entitled to wage war on behalf of the German state, war with Germany then came to an end and further rights of prize, being an incident of war, simultaneously terminated. 20 30

p. 114, l. 18.

p. 111, l. 26.

26. With regard to the Appellants' third contention that the Flensburg and Lubeck structures were not ships and were not the proper subject-matter of prize at the date of the occupation of the port, the learned President held that, assuming that they were not ships, they were nevertheless of such a character and so situated as to make their capture a justifiable means of coercing the enemy and accordingly were things which were by the course of Admiralty and the law of nations were the subject of adjudication in prize. In coming to this conclusion the learned President appears to have considered that he was dealing with property captured on land by naval forces or upon surrender to naval forces, either solely or by joint operations with land forces. The Appellants submit that this was a misconception of the evidence, which showed that Lubeck 40

was captured by land forces and that Flensburg, though occupied on the same day by naval and military forces, was occupied after a surrender to land forces. As the Lubeck and Flensburg structures were private property and were on land at the relevant date, the Appellants submit that they were protected from seizure by Article 46 of Hague Convention IV concerning the Laws of Customs of War on Land, 1907, and that such protection cannot be defeated by the mere presence of a Naval Officer or the subsequent arrival of naval forces at the place where the property happens to be. In any event the

10 Appellants submit that whatever may have been the law of the 18th Century the learned President erred in holding that at the present time the subject-matter of prize extends to things which are not ships and have never been sea-borne.

The Appellants therefore humbly submit that the judgment appealed from is wrong and should be set aside for the following among other

#### REASONS.

- 20 1. BECAUSE none of the vessels or structures was seized in prize before the month of June, 1947, by which time rights of seizure in prize had ceased to be exercisable.
2. BECAUSE the vessels or structures were not seized in prize when the ports of Flensburg, Lubeck and Emden respectively were occupied.
3. BECAUSE conscious volition or intention is necessary for seizure in prize and the Crown had no intention to seize any of the vessels or structures in prize before the month of June, 1947.
- 30 4. BECAUSE in the case of Hulls 507 and 508 rights of seizure in prize had ceased before the occupation of the port of Flensburg.
5. BECAUSE in the cases of Hulls 507 and 508 and of Flenderwerke 347 and 348, the structures were never at any time before the 5th June, 1945, the subject of maritime prize.
6. BECAUSE the said four structures were not liable to seizure, being private property on land, and are not liable to condemnation.
7. BECAUSE the judgment of the learned President was wrong.

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KENNETH DIPLOCK.

R. I. THRELFALL.

In the Privy Council.

**ON APPEAL**

FROM THE HIGH COURT OF JUSTICE,  
PROBATE, DIVORCE AND ADMIRALTY  
DIVISION (IN PRIZE).

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HULL 507.

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FLENDERWERKE 348.

M.V. HERMES.

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**SCHIFFAHRT TREUHAND G.m.b.H.,  
LUBECKER FLENDERWERKE A.G. and  
DAMPFSCHIFFAHRTS-GESELLSCHAFT  
"NEPTUN".**

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**CASE FOR THE APPELLANTS.**

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FRESHFIELDS,  
1, Bank Buildings,  
Princes Street,  
London, E.C.2,  
*Appellants' Solicitors.*