

1923.

IN THE COLONIAL COURT OF ADMIRALTY OF THE ISLAND OF
CEYLON IN PRIZE.

Present : The Hon. Mr. T. E. de Sampayo, President of
Prize Court.

THE SS. "STEINTURM."

Cause No. 4.

Condemnation of ship and cargo—Lawful prize—Order that ship be in possession of the Government of Ceylon on behalf of Crown—Undertaking by Crown to restore ship whenever called upon—Application that order for redelivery be discharged, and for an order directing the delivery of ship to His Majesty's Government on behalf of Reparation Commission—Peace Treaty.

A merchant ship belonging to a German corporation was at the port of Colombo at the outbreak of war and was seized by the Collector of Customs on behalf of the Crown.

On August 25, 1914, the Court ordered the Marshal to let the Government of Ceylon on behalf of the Crown have possession of the ship on the Crown undertaking to restore the ship whenever it might be called upon to do so by the Court. The ship was subsequently on December 19 declared by Court to be lawful prize, and ordered to be detained subject to the order of August 25. The Attorney-General moved after the Treaty of Peace that the order providing for the redelivery of the ship be discharged, and that an order be made directing delivery of the ship to His Majesty's Government on behalf of the Reparation Commission. The German corporation opposed the application, and made a counter-claim *inter alia* for the ship or its value.

Held, that the Court had jurisdiction to order delivery of the ship to the Crown for the purpose of handing the same over to the Commission.

THE facts are set out in the judgment. For previous order in this case see 18 N. L. R. 127.

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The Hon. the Attorney-General (with Solicitor-General and Jansz, C.C.), for the Crown.

Hayley (with him Canakeratne), for the Deutsche Dampfschiff-fahrt-Gesellschaft "Hansa."

May 15, 1923. DE SAMPAYO A.C.J. and P.—

The ss. "Steinturm" was a German merchant ship of the "Hansa" line of steamers, of which the proprietors were the German corporation, the Deutsche Dampfschiffahrt-Gesellschaft "Hansa." At the outbreak of the war between Great Britain and Germany, the "Steinturm" was at the port of Colombo, and was on August 5, 1914, seized by the Collector of Customs on behalf of the Crown. These proceedings were instituted on August 17, 1914, by the Crown for the condemnation of the "Steinturm" and her cargo. The matter of the cargo has been already dealt with, and there is no need to refer to it now. In respect of the ship a writ was issued, and the other usual steps were duly taken. On December 19, 1914, this Court on the application of the Attorney-General on behalf of the Crown pronounced the "Steinturm" to have belonged at the time of the seizure thereof to enemies of the Crown, and as such to have been lawfully seized by the Principal Collector of Customs at the port of Colombo as good and lawful prize and as droits and perquisites of His Majesty the King in his office as Admiralty, and the Court ordered the said ship, subject to a certain order of August 25, 1914, to be detained till further orders. This is exactly in the form of the order made in *The Chile*, 84 L. J. Pro. p. 1, and since known as the "Chile Order." The order of August 25 referred to above was one made on an application of the Attorney-General by which the ship was requisitioned, and the Marshal was ordered to let the Government of Ceylon on behalf of the Crown have possession of the ship, the Crown undertaking to restore the ship whenever it might be called upon to do so by the Court. The ship appears to have remained under requisition up to the time of the present application, which is, that the order of August 25 providing for the redelivery of the "Steinturm" to the Court be discharged now, and that an order be made directing delivery of the ship to His Majesty's Government on behalf of the Reparation Commission free of any obligation to redeliver the said ship to the Court.

The Deutsche Dampfschiffahrt-Gesellschaft "Hansa" have appeared and opposed the application and have also made a counter-claim, and prayed that the "Steinturm" be restored to them or its assessed value paid to them, that the full market freight for the use of the said ship from the date of her delivery to the Crown be

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paid to them, and that for that purpose an inquiry be ordered as to the amount of freight due, and that all proper directions be given for the same.

In regard to this matter the effect of the Hague Convention of 1907 and the Treaty of Versailles entered into at the conclusion of the war has to be considered. Article 1 of the Hague Convention was as follows :—

“ When a merchant ship belonging to one of the belligerent powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated to it.”

“ The same principle applies in the case of a ship which has left its last port of departure before the commencement of the war and has entered a port belonging to the enemy while still ignorant that hostilities had broken out.”

Article 2 of the same Convention was as follows :—

“ A merchant ship which owing to circumstances beyond its control may have been unable to leave the enemy port within the period contemplated in the preceding article, or which was not allowed to leave, may not be confiscated.”

“ The belligerent may merely detain it on condition of restoring it after the war, without payment of compensation, or he may requisition it on condition of paying compensation.”

For the reasons fully discussed by the Privy Council in the prize case which will be mentioned later, it must be noted that Great Britain, notwithstanding the outrages committed by Germany during the war and the violation by Germany of the Hague Convention in various ways, has loyally considered itself bound by the Hague Convention which must therefore be given effect to by any British Court, so far as it is applicable to a particular case. The order made by this Court on December 19, 1914, for the detention of the “ Steinturm ” is quite in accordance with the provisions of Articles 1 and 2 of the Hague Convention. That being so, it is contended for the German corporation that the title to the ship is still in them, and the Court must now restore it to them *in specie*, or order its assessed value to be paid to them. With regard to this, however, certain provisions of the Treaty of Versailles must be taken into account. By Article 1 of Annexe III. of Part VIII. of the Treaty, Germany ceded to the Allied and Associated Powers all vessels of 1,600 tons gross and upwards, and by Article 8 she further “ waived all claims of any description against the Allied and Associated Governments or their nationals in respect of the detention, employment, loss, or damage of any German ships,” and

by Article 440 Germany recognized as valid and binding all decrees and orders concerning German ships and goods made by any Prize Court of any of the Allied and Associated Powers.

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The provision of the Treaty with regard to the session of merchant ships is applicable to the present case, because the "Steinturm" is a vessel of 5,266 tons gross. As regards the question of title, "*The Blonde, The Hercules, The Prosper,*" 91 L. J. Pro. 91 is an authoritative interpretation of the effect of the provisions of the Treaty. The Privy Council observed "There can be no doubt that Germany was competent on behalf of those nationals who were German subjects within the operation of the Treaty to make cessions which would bind them and effect a transfer of their rights of property if the cession has been made personally by the owner concerned." But their Lordships of the Privy Council, while they held that the Treaty operated to transfer the property in all ships of 1,600 tons gross and upwards, did not apply the Treaty to that case, because the vessels with which it was concerned were each of them much below, 1,600 tons gross. It is true that the "Steinturm" was owned, not by an individual German national, but by a German corporation, of which the Directors are German nationals, but the Treaty provides for such a case, and declares by Article 3 of Annexe III. that the ships to be ceded "include all ships and boats which fly or may be entitled to fly the German merchant flag or are owned by any German national, company or corporation, or by a company or corporation belonging to a country other than an Allied or Associated country and under the control or direction of German nationals." Mr. Hayley for the "Hansa" corporation which owned the "Steinturm" contended that there would be no change of title unless a bill of sale or other document of title were executed and delivered, and relied on Article 4 of the Annexe, which provided as follows:—

"For the purpose of providing documents of title for the ships and boats to be handed over as above mentioned, the German Government will (a) deliver to the Reparation Commission in respect of such vessel a bill of sale or other document of title evidencing the transfer to the Commission of the entire property in the vessel free from all encumbrances, charges, and liens of all kinds, as the commission may require; (b) take all measures that may be indicated by the Reparation Commission for ensuring the ships themselves shall be placed at its disposal."

It is, however, clear that this provision imposes a further obligation on the German Government, and does not restrict the right of the Allied and Associated Governments to enforce a cession of the ships. Moreover, the present application is that the "Steinturm"

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may be delivered to the British Government on behalf of the Reparation Commission. If the Reparation Commission, when the delivery has been made, require a document, the German Government may be compelled to grant one in pursuance of Article 3, but that Article does not affect the power of this Court to order delivery. In this connection a further objection taken by Mr. Hayley may be noticed. It is asked, what right the Crown has to make an application on behalf of the Reparation Commission and what jurisdiction this Court has to make the order asked for. The Treaty of Versailles is an international agreement, and each party to it must fulfil its terms so far as each party may. The "Steinturm" was seized by an officer of the Crown, and is now under the control of this Court which is His Majesty's Court of Admiralty in Ceylon, and the cause itself was initiated by and carried through by the British Crown. The Reparation Commission was constituted by the powers concerned, and I think that the British Crown, so far as regards the delivery of the German vessels already brought within the jurisdiction of British Courts, represents and can act for the Reparation Commission. I think for similar reasons that this Court has jurisdiction to order delivery of the "Steinturm" to the Crown for the purpose of handing the same over to the Reparation Commission. After all, if as I hold the "Hansa" corporation have no longer any interest in the "Steinturm," they are not concerned with the particular form of order which this Court may make, and I do not think they ought to be allowed to object to the present application on mere abstract grounds.

The counter claim for the restoration of the "Steinturm" to the "Hansa" corporation or for the payment of its value must, for the above reasons, be rejected. The claim for freight while the ship was under requisition appears to be equally ill-founded. The "Hansa" corporation appears to rely on the term "compensation" in Article 2 of the Hague Convention. But that term has been interpreted by the Privy Council in the "*Blonde*" case (*supra*) as referring to the value of the ship which is to be substituted for the ship when the ship itself cannot for any reason be restored *in specie* and not to any hire or freight during requisition. Moreover, as pointed out above, Germany by the Treaty waived all claims of any description "in respect of the detention, employment, loss, or damage of any German ships or boats." The claim in this case for freight must therefore also be rejected.

The application of the Attorney-General on behalf of the Crown is allowed, with costs.

Application allowed.