Privy Council Appeal No. 3 of 1920.

In the matter of the Steamship "Edna," ex "Mazatlan."

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

v.

Sudden and Christenson - - - - - - - *Respondents*

Sudden and Christenson - - - - - - - *Appellants*

v.

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

(*Consolidated Appeals.*)

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 10TH MARCH, 1921.

Present at the Hearing:

LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

These are consolidated appeals from a decree of Lord Sterndale, President, ordering the release of the "Edna." Her owners, the claimants, ask for costs and damages as well: the Crown asks for condemnation.

The "Edna" changed hands and flags and names several times in about eighteen months. Before March, 1914, she was the "Jason," a Norwegian ship belonging to the Aktieselskabet Dampskibet "Jason." Then a Mexican Company, the Lloyd Mexicano Societa Anonyma, bought her, and she became the "Mazatlan" on the Mexican Register. The moving spirit in this transaction was a German named Friedrich Jebsen, who had incorporated the Lloyd Mexicano. His interest in its capital was

so preponderant and his control over it and the " Mazatlan " was so complete that she thereby became a ship of enemy character on the outbreak of the war. The learned President's finding of this fact is not now contested. In October, 1914, the " Mazatlan " was requisitioned as a military transport in Mexican waters by persons acting on behalf of a Government, whether existing *de facto* or *de jure*, on some part of the Pacific coast of Mexico, and they had possession of her for about a year. Meantime there was in San Francisco a company called the International Banking Corporation, managed by a Mr. Wilson, which had lent money to the Lloyd Mexicano in 1913 and 1914, and a company called the Executive Company had also been in existence there since 1907, which was not a shipowning company, whatever else it may have been, and had a paid up capital of only $300. In February, 1915, Jebsen agreed to sell the " Mazatlan " to this Executive Company for $1,000 down and $114,000 payable by instalments, when the ship could be got out of Mexican hands and delivered at San Francisco. While awaiting that event the Executive Company by amending its articles took powers to own a ship and manage her. Not satisfied with this, Jebsen in May founded a company in San Francisco called the Western Pacific Steamship Company, with the above-mentioned Mr. Wilson as its treasurer. In April the Lloyd Mexicano transferred the ownership of the " Mazatlan " to him for a purported consideration of $115,000 then paid, and in July he re-transferred her to this Western Pacific Steamship Company for a nominal consideration of $10. He was also allotted all the last-named Company's share capital except three shares of $100 each. Somehow or other the authorities in Mexico who had control of the " Mazatlan " were then induced to release her. If, as is probable, somebody had to be paid a consideration for this purpose, the money seems to have come, not from the Executive Company or the Western Pacific Steamship Company, but from the International Banking Corporation.

In October, 1915, the " Mazatlan," still flying the Mexican flag, returned to San Francisco. By this time an agreement had been arrived at with the present claimants, a firm of United States citizens carrying on business there, for the purchase of the vessel at the price of $125,000, and eventually a bill of sale in their favour from the Executive Company was duly executed and recorded. They received possession of the ship, changed her name to the " Edna," placed her on the United States Register of Shipping, and paid over their purchase money, of which the Executive Company got $11,000 and the Lloyd Mexicano $114,000. $50,000 of this were promptly remitted to Germany on Jebsen's account. The " Edna " thereafter traded under charter for the benefit of the claimants till January, 1916, when she was captured at sea by H.M.S. " Newcastle." She was afterwards duly requisitioned for the use of His Majesty by order of the Prize Court.

How the Mexican steamship " Mazatlan " became in 1915

the United States steamship "Edna" would have involved a critical examination were it not that the Crown does not now dispute that the claimants bought and paid for the ship in entire good faith. This view was only adopted at a late stage. After a member of the claimants' firm had been eventually called as a witness at the trial and had been cross-examined, the advisers of the Crown confessed themselves satisfied. Accordingly two grounds only are now relied on for the captors, both going to the validity of the title acquired by the claimants - first, that such a transfer cannot be valid unless the claimants show that not only they, but also their transferor acted in good faith, that is, without any purpose of defeating the belligerent rights of the Crown; second, that in the autumn of 1914 the "Mazatlan" was not only a ship of enemy character, but also stood in such a relation to the enemy Government that during the war no transfer of her at all would be competent or recognisable in a Court of Prize.

It is not enough to show that she was then engaged in carrying contraband of war or in rendering services to His Majesty's enemies, which, if followed sufficiently closely by capture, would have made her liable to condemnation in spite of her Mexican registry. Many months had passed since the autumn of 1914 before she was seized, and that chapter in her adventures had long been closed. Of course, if she still bore an enemy character in January, 1916, that in itself made her good prize, but neutrals like the claimants are entitled to purchase and take delivery of a private enemy merchantman in a neutral port, and if the transaction is complete and without reservation, as this transaction was, it stands and the ship is thereafter neutral. Accordingly the curious intervention of the companies above described between Jebsen and the claimants before the "Mazatlan" was sold in 1915 and her adventures in 1914 are relied on as showing the imperative reasons which Jebsen had for getting rid of her, and the consequence is said to be that while his object was to defeat the capture, which he knew to await her, that object was itself defeated by the fact that she had been in 1914 part of the enemy's resources for war.

There is evidence given by Admiral Sir W. R. Hall, then Director of the Intelligence Division of the Admiralty, that :-

> "before the outbreak of the present war the German Government had made plans and arrangements whereby at various ports on the western coast of North and South America merchant ships were to be provided to act as fleet auxiliaries to the German cruisers operating in the Pacific,"

and it is contended that Jebsen was a German agent, who arranged that the "Mazatlan" should so act. No definition is given of a "fleet auxiliary," nor is it shown to be a term of art. It does not appear to have been considered by any Court before this case. Doubtless a fleet auxiliary renders help to a fleet, but what help, or what fleet, is in this connection another matter. The evidence above quoted is not contradicted and is entirely probable in itself.

Jebsen was a person of zeal and ability. He was determined to help his country in the war and was not too particular how he did it. It is, however, by no means obvious that such a determination involved his making his own ship a " fleet auxiliary " and taking the consequences himself, nor is it clear that to do so was the best way of giving assistance. The story begins with a German consul in San Francisco overreaching himself. The German cruiser " Leipzig," then operating in the North Pacific, came into San Francisco to bunker. The Consul, unwarrantably presuming on the indifference of the United States officials, ordered for her the very large quantity of 1,000 tons of coal, but they refused to allow more to be shipped than enough to take her directly to Apia, the nearest German port. The " Leipzig," however, was not bound for Apia. She was cruising in search of British merchantmen, a much longer voyage. At this point Jebsen showed himself a man of resource. The " Mazatlan " was then engaged in trading down the coast, calling at Mexican and other ports, where it was hoped (though doubtless without justification) that the local officials might be less incorruptible or more supine than those of the United States. In addition to her general cargo she obligingly loaded 500 tons of this coal for Guaymas, and also took on board what was believed to be a wireless telegraphic apparatus, with its operator, a German naval reservist, and some bags of letters. On her way down she called at San Pedro and there picked up Jebsen and some ladies, and three days later she happened to find the " Leipzig " in Ballenas Bay, anchored near her, and transferred to her the operator and the apparatus, the reservist and the bags. At Guaymas she found a German vessel called the " Marie," which belonged to a relative of Jebsen's and was clearly a tender to the " Leipzig." Here Jebsen went ashore and the coal was discharged into lighters, and no doubt has been suggested that it was duly transferred, directly or indirectly, to the " Leipzig." The " Mazatlan " then proceeded to her next port of call, Topolobampo, where Jebsen again joined her, and soon afterwards she was requisitioned for a short time for Mexican use. Attempts had been made by him and by her captain to get into wireless communication with the " Leipzig " throughout the voyage, which the English operator thwarted by putting the apparatus out of order. His courage and resource no doubt deprived the " Leipzig " of much information, and his vigilance in communicating with the British consular authorities as opportunity served had probably the result that the operations of the " Mazatlan " were well known on the station and long remembered against her.

Jebsen was obviously a willing party throughout to the assistance that was being arranged for the " Leipzig," and no doubt the proceedings were concerted with the " Leipzig's " officers, for otherwise they might have proved abortive. There is, however, no ground for supposing that the " Mazatlan " was under the orders of the " Leipzig " or was otherwise connected with her than as rendering the service of placing coals and other things

where she or the "Marie" could get them, and as volunteering information, of which it was hoped that she would make use. Had the "Mazatlan's" character been Mexican, as her legal ownership was, what she did would have been a highly unneutral service. It is, however, a totally different thing to establish that these proceedings, which *primâ facie* were those of a private merchantman, though controlled by a person of accommodating and zealous disposition, really prove that she was a ship which could not be transferred to neutrals at all during the war, any more than a German man-of-war or a mail-steamer owned by the German Government or any other portion of the public property of the German Empire destined to its public use, *Parlement Belge* (5 P.D. 197). It must be possible to draw a line between unneutral service and "fleet auxiliaries" and between the cases in which neutrals can validly buy and take delivery of enemy ships and the cases in which they cannot; otherwise transactions which are expressly permitted to neutrals might be invalidated by circumstances of which they had no notice and could form no estimate.

That a vessel which is or has been a portion of the armed forces of a belligerent cannot by a mere private transaction be placed beyond the reach of capture on the high seas is well settled (*The Minerva*, 6 C. Rob. 396: *U.S.* v. *Etta*, 4 Am. Law Rep. N.S. 387; *The Georgia*, 7. Wallace 32), and there is authority for the proposition that while a vessel formally incorporated in the enemy forces is and continues to be, for this and cognate purposes, a public ship of war, her mere actual employment in that capacity without formal incorporation or commission will also bring upon her the like disability (*The Ceylon*, 1 Dods. 105: and *cf. H.M. Submarine E* 14, 1920, A.C. 403). Various reasons have been given for this rule, as that transferability is an exception granted to enemy property in favour of commerce and that ships of war are not articles of commerce, or that such transfers would enable a belligerent to rescue himself from the disadvantage into which he has fallen and so to shift the disadvantage to his opponent, or that the ship sold might afterwards find its way back into the service of the flag to which she had belonged. If a public man-of-war remains in a neutral port for more than the limited time permitted to her by recognised rules, she has to be interned, for otherwise the neutral State would be rendering an indirect service to a belligerent as such. If it were open to a subject of that State to buy her under such circumstances, the payment of the price would be a direct service to the belligerent of a very real character, for instead of a ship which he could not use, he would get cash, which he could. The precise foundation of the rule, however, need not now be determined.

In the case of a ship which is not and never has been a part of the armed forces of a belligerent, other tests may be applicable. Ships which enlist in the service of such armed forces,

though not armed themselves, may naturally be the subject of rules more stringent than those which govern ordinary merchantmen. The forces assisted may consist of single ships or of whole fleets. Assistance may be rendered when in company or when detached; it may consist in the supply of coal and stores, or in the collection and forwarding of information. An unarmed ship may be of service as a decoy or as a screen: the assistance may be rendered casually or on a system, voluntarily or under orders, gratuitously or for hire. Such service is not necessarily confined to ships of the country to which the fleet assisted belongs or of a country engaged in the war at all. Again, such a ship may be captured *in delicto* and while rendering the service or after the service has come to an end. In the latter case different considerations may well arise, unless she is to be clogged perpetually for a single transgression and be incapable of valid transfer however long she may have mended her ways.

There seems to be no authority in point. Their Lordships considered the case of the *Alwina* (1918, A.C. 444) as one of the carriage of contraband only. The neutral vessel there was released and not treated as if she were a fleet auxiliary, although it was not disputed that the ship and her cargo had been despatched with the object of succouring a German squadron at sea, and if no services were actually rendered this was due to circumstances equally unforeseen and unwelcome, so far as her Dutch owners were concerned. The case, however, at most throws light on the liability of such an assistant to be subsequently captured while in the same ownership, and does not purport to decide anything as to the validity of an intervening change of ownership.

So much for the character of the assistance, which is material. Regarding the "Mazatlan" as a ship of enemy character, those in command of her nevertheless held no personal commissions from the German Government; she was not even such a "private ship of war" as was commissioned in the days of privateering; she took no direct part in hostilities; it is not shown that she was under the orders or control of any agent placed on board by the enemy Government; she was not even in the employment, still less in the exclusive employment, of such Government; she was not under requisition to them; she did not fly the colours of the German Navy, nor were her crew subject to military law. Regarded as a vessel on the Mexican register she had no immunity from visit and search or from arrest by appropriate legal proceedings in a municipal Court, say of the United States, nor in such proceedings could the German Government, if they had chosen to submit to the jurisdiction, have been made liable for private civil wrongs done by those on board of her.

Their Lordships are not prepared to entertain a proposition so wide as that any help whatever rendered to a German man-of-war by a German merchantman, would disable her owners from validly transferring ownership to a neutral under all circumstances for the remainder of the war. Such a proposition would

go far to make the term "unneutral service" a mere name and to enhance to a surprising extent the consequences hitherto imposed on that form of misconduct. The communication to the "Leipzig" of the movements of British vessels by wireless telegraphy, in itself one of the gravest of offences, rested in intention only; the achievement was frustrated, and mere intention without more cannot in principle be followed by any such disabling consequence. Furthermore, the services actually rendered were confined to what passed at Ballenas Bay and at Guaymas, and were put an end to at any rate by the requisitioning of the ship a little later on the same voyage.

It is probable enough that, if things had prospered with the "Leipzig," Jebsen meant the "Mazatlan" to render similar services on future voyages, but such services would be most usefully, because most unobtrusively, rendered by a peaceful merchantman continuing her regular voyages under the Mexican flag. Besides, whatever the title "fleet auxiliary" may mean, it seems to fit the "Marie" better than the "Mazatlan," and Jebsen may have thought that in exposing his relative's ship to peril he had done enough. Two "fleet auxiliaries" were not needed nor was it indispensable that the "Mazatlan," having once engaged in such services, should be always so engaged. With the "Marie" serving as a link between the "Leipzig" and the shore, it might well be safest to employ now this ship and now that, as opportunity served, to bring the required cargo to the appointed rendezvous.

Their Lordships have accordingly come to the same conclusion on this point as the President. Though the captors had a case of substance, affording ground for inquiry, they did not show that the "Mazatlan" could not be validly sold to the claimants at the time when she was transferred.

In the alternative, the captors allege that the sale was one which, if not incompetent, yet ought not to be sustained. It is said that such a transaction must be tested by the state of mind in which it is conceived and carried through, and that in the nature of things the relevant state of mind is that of the transferor. The transferee's mind may be honest and yet the impropriety of the transferor's motives may defeat the whole transaction. For this authority is sought in Article 56 of the Declaration of London as being a considered and correct formulation of the law of nations on the point. Articles 55 and 56 deal with transfers of enemy ships before and after the outbreak of war respectively. In the first case the transfer of an enemy ship is declared to be valid, unless it is proved to have been made in order to evade the consequences, to which as an enemy ship the outbreak of war would expose her. In the second the transfer is declared to be void, unless it is proved that it was not made in order to evade those consequences. Transfers are effected by the combined action of two parties, the seller and the buyer, and the word "evade" suggests something more than "escape," for the

latter is a result, while the former is a means by which a result is brought about. These considerations, coupled with the fact that Article 56 is linked with Article 55, point to the conclusion of Lord Sterndale that the article deals only with colourable or fictitious transfers, devised by both parties in combination. If, then, as the learned President thought, Article 56 does not conflict with the decision of this Board in the *Baltica* (11 Moore, P.C. 141), it does not affect the present case, for, apart from the burden of proof, which does not now matter since the evidence is complete, there was an actual transfer, not colourable nor subject to any reservation, and this in the case of a private merchantman is sufficient when completed by delivery. The contention, however, is that the claimants have to prove that the transfer was made by the transferor, the person who makes it, otherwise than for the purpose of evading capture and condemnation. If this construction is the true one, the Article very considerably alters the law as laid down in decisions which bind or have been accepted by this Board, and the alteration is an enhancement and not a waiver of belligerent rights. If pressed to its logical results, it would in practice invalidate most transfers to neutrals, for how could a neutral command the evidence of his transferor, who alone could make a clean breast of his motives and objects in entering into the transaction? If the enemy's testimony were not forthcoming, how could it ever be inferred from circumstances alone that among the many objects with which men sell their chattels, the object of escaping the harassing peril of capture may not have been one? If, on the other hand, that evidence was given, what is the state of facts in which any Court would believe that the vendor was wholly innocent of such a desire? It is better to adhere to the settled rules laid down in the *Ariel* (11 Moore, P.C. 119). and the *Baltica* (*supra*). Of course, a vendor may be shown to be so interested in getting rid at all hazards of the appearance of ownership as to lead to the conclusion of fact that he really did what he was most interested in doing, and shed the apparent title while retaining the property. A Court would then hold that there was no real sale, not that the sale was real and effectual, but that the vendor's reprehensible state of mind caused the buyer to lose the ship for which he had paid his money. The article is in all probability an endeavour to find an acceptable compromise between English and Continental views on the point, and if so, is not an authority to be followed now.

The claimants, on the other hand, contend that it is the state of mind of the buyer that alone can matter. If he honestly intends to buy and does buy, the seller's reasons for selling are immaterial. He has his reasons or he would not sell, but what they are is of no consequence. This again will not do. To say that no regard need be had to the mind of the seller goes too far. No doubt, when once the question, whether the sale is a real sale, is answered in the affirmative, the prior motives and objects

of both parties become merely antecedent and preliminary matter, but in ascertaining how that question is to be answered great light is thrown on the transaction by considering the situation of both parties, so as to test what they purported to do by what they must really have intended. Plainly, however, the mere fact that to uphold the sale might prevent the Crown from obtaining a condemnation cannot affect the matter, for that would mean that a judgment upon a question of fact should be given one way or another, according as the upshot affected the interest of the British Crown.

In the present case it is now clear that what the claimants meant to do was what they purported to do, namely, to buy the ship without reservation, and what they did was to perform their part of the contract so made by paying the price and taking delivery. Beyond the fact that they changed her name, a circumstance immaterial as things stand, though had other facts been proved against them it might have had some importance, nothing has been done on their side to raise any doubt against them. The ship was not left in Jebsen's service or at his disposal, but was chartered to third parties for account of the claimants. Their evidence is that when they bought her they had heard nothing of the earlier adventures of the " Mazatlan." On Jebsen's side there were circumstances which give rise to much suspicion, but it is now accepted that the claimants had no cognisance of or participation in them. Their Lordships are of opinion that the evidence, viewed as a whole, disclosed no ground on which it could have been held that the " Edna " was, when captured, still a ship of enemy character. There is no other way in which the captors' appeal can be supported. The interval which elapsed between the carriage of contraband and the conduct, which in a vessel of neutral character would have been unneutral service, and the capture of the " Edna," viz., from the autumn of 1914 to January, 1916, would have been too great and the change of circumstances too complete to support a condemnation, if the " Mazatlan " were regarded as not being of enemy character in 1914. As, however, her enemy character down to the sale to the claimants in 1915 is not now in dispute, the whole question turns on the validity and on the competence of the sale. In their Lordships' opinion the appeal fails.

The cross-appeal depends on the question whether there was adequate ground for seizing the " Edna " and pressing the claim for her condemnation till the trial. All the proceedings were in themselves regular. The ship was requisitioned pursuant to the rules, and it is not suggested that the case was persisted in for the purpose of prolonging the period of profitable requisition. Their Lordships cannot regard so improper a course as anything but a theoretical possibility, which in the present case has, fortunately, not even been discussed.

The law relating to claims for costs and damages against captors was fully stated by their Lordships' Board in the *Ostsee* (9 Moore, P.C. 150), when all the authorities were

considered. There no question of the reality or validity of a transaction or of its good faith arose, and against the ship and her conduct and that of her owners, who had been her owners all through, nothing was alleged. The ground given for seizing her, in fact, did not exist, and it was held that the actual captors' honest belief that it did could not by itself serve as a probable cause for seizure. Here the acts of the ship, which are relied on, were real enough, though they ceased before the title of the claimants arose and without their participation or knowledge, but they are material to the critical question whether the ship could validly be seized. It was suggested that in the present case the seizure was due to the captors' mistake of law, namely, as to the nature of those public ships of war which are not transferable during war; while in the *Ostsee* (*supra*) it was due to the captors' mistake of fact, namely, as to the issue of a proclamation of a blockade, and that equally in either case the owner of the ship captured should not suffer for their mistake. This is really fallacious. On the question of the existence of the blockade there was nothing to be inquired into; on the question what the character of the "Mazatlan" was, her undisputed action raised a real subject for inquiry. There can be no doubt that when the ship was taken, those, at any rate, who directed the action of the cruiser, had substantial ground for questioning her neutral or her private character. She had been so employed on the voyage above described as to justify inquiry, and after the first and before the second requisitioning by the Mexican authorities she was sent on another voyage along the same coast. Either requisitioning might under the circumstances have been really not unwelcome to her owners, for, till things had blown over, it would afford an unobtrusive seclusion for a ship that had earned for herself a certain amount of evil notoriety. The termination of this retreat was quickly followed by a transfer to the United States Registry, and an intercepted letter revealed the fact that a German Government official had forwarded to Germany part of the purchase money paid for her. It is quite impossible to say that there was not probable cause for supposing that she had been a German "fleet auxiliary" and so was liable to seizure with a view to condemnation.

It has long been assumed as good law that captors can rely at the trial on facts unknown to them at the time of capture (the *Elise*, Spink 88), nor did the respondents attempt to contest this. The evidence as it developed showed much that was provocative of doubt and suspicion. The financial circumstances preceding and attending her sale showed a reasonable case for believing that Jebsen was engaged in creating a screen of United States intermediaries between himself and the actual buyers, such as would disarm the suspicions or defeat the investigations of a captor and make it possible to find a complaisant neutral, who would willingly and successfully act for his protection. Even when the claimants came to give their own

account of the matter on affidavit, they did not explain away this mystification, but only disclaimed participation in it. It is true that they proved actual payment of the price, but cross-examination might prove that they had a greater connection with Jebsen's acts than was consistent with good faith or the reality of the sale. The captors might well desire to have their evidence given orally in open Court. Furthermore, although the oral evidence given in 1919 ultimately confirmed the account of their conduct which the claimants had given in affidavits before the end of 1916, they also put forward numerous other affidavits so flagrantly false that the learned President expressed his surprise at their using them at all. Instead of contenting themselves with a completed title as neutral buyers and with proving their independence and ignorance of the "Mazatlan's" earlier proceedings, they advanced a case, which was really Jebsen's case, and was untrue. The captors could not be expected to sift out the false affidavits from the true and apply for the release of the ship on a case better than that which, as a whole, the claimants made for themselves. Those who put forward a case of which so large a part was disingenuous, must not complain if the whole of it, with their own oral evidence, was submitted to the judgment of the learned President, as a matter which only the Court could decide. It is true that he states that he arrived at his conclusion in favour of the captors with much doubt, though his examination of the facts was careful and thorough. It is not necessary for their Lordships to indicate whether they have shared his doubts or not. If it were so, that would be no reason for reversing his decree. Similarity of doubt is not a ground for dissimilarity in conclusion. The allowance of damages and costs is largely a question of discretion, which in past times has but rarely been answered unfavourably to captors, and it is enough to say that their Lordships see no sufficient reason for differing from his opinion.

The claimants further indicated a somewhat singular argument, namely, that the "Edna" should not have been detained at all, for her papers were in order, nothing on board of her or connected with her then ownership or employment awakened any just suspicion, and those who seized her are not shown to have had at the time any knowledge of such circumstances of suspicion as have since been elicited on a scrutiny of the evidence. Their Lordships think that such a contention unduly narrows the right and utility of seizure as a preliminary to trial and condemnation. Even under the old practice the allowance of further proof rested in the discretion of the Court. It is true that it was not the practice to exercise that discretion in favour of such an order under the circumstances prevailing in the wars at the end of the eighteenth and beginning of the nineteenth centuries. The likelihood of further evidence of value being obtainable was so small in proportion to the delay that it would involve, as to disincline the Court to allow a more remote investigation than the examination

of the ship's papers and the administration of the standing interrogatories already provided for. Now, however, under modern conditions, when the facilities for ascertaining the truth by subsequent investigation and the introduction of various kinds of evidence make even a considerable delay so well worth incurring, it can hardly be doubted that the same judges would have freely exercised their discretion in the contrary direction. This would be peculiarly so if the question in debate were the validity and genuineness of the ship's apparent nationality. If inquiry on such a subject were to be limited to the regularity of her papers and register, it would not be worth while to embark upon it, for nowhere would it be less likely that captors would find proof of or even ground for suspecting the unreality of a transfer to a neutral flag than among the formal documents required to protect and conceal it. Unless search after the truth is to be abandoned in such cases or denied altogether, it must follow that, on grounds wider than the mere practice of the Prize Court as settled under the authority of the present statute, captors are entitled to justify detention of a ship, even though she is ultimately released, on grounds only made apparent upon an examination of subsequent evidence given on either side.

The conclusion therefore must be that on no ground are the captors liable in damages or costs. The claim for something in the nature of an account of profits, earned by the use of the vessel while under requisition, is equally unsustainable. There is no theory of the relations between captors and claimants, still less between His Majesty, for whose use the ship was requisitioned, and the shipowners, which would support a claim of such a kind. No issue has been raised as to unrepaired injury sustained by the ship: the claim, if any, must be for damages and costs only. It is right to recognise that a result which restores the ship to her owners but leaves them without recompense of any kind for the loss of the use of her between 1916 and 1919 must be profoundly disappointing to them, and may seem to be not without some suspicion of paradox in law. It would be unsatisfactory that so long a time should have elapsed before this cause could be brought to an issue, were it not that the claimants do not seem to have taken any active steps to accelerate it and may well be supposed to have recognised that the delay was one which they could not fairly complain of. It is to be hoped, however, that, whatever the conditions of future wars may be, this case may never be regarded as anything but highly exceptional in this particular.

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

In the Privy Council.

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