

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Owners of and parties interested in the Steamship "Maori King" v. His Britannic Majesty's Consul-General at Shanghai, Sir Pelham L. Warren, K.C.M.G., from His Majesty's Supreme Court for China and Corea; delivered the 11th May, 1909.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal from a Judgment and Decree of His Majesty's Supreme Court for China and Korea at Shanghai, which declared the Steamship "Maori King" to be forfeited for improperly carrying British colours.

Several grounds of objection to that Judgment and Decree were urged upon the argument of the Appeal. The principal ground of objection went to the jurisdiction of the Court; and as, in the opinion of their Lordships, that objection is sufficient to dispose of the Appeal, they deem it unnecessary to consider the other points argued.

The facts so far as they are material for the present purpose, can be briefly stated:—The "Maori King" was purchased in March 1906 in

the name of one Dow, and registered at Shanghai in Dow's name; but he executed a declaration of trust in favour of a Russian firm, Ginsburg & Company, who have been found to be the real owners.

On the 24th January 1908 the Respondent, His Majesty's Consul-General at Shanghai, filed two petitions, founded on two writs, dated respectively the 4th and 6th January, 1906, which he had caused to be issued against the Appellants. Of these petitions the second is the more material. It was based upon Sections 69 and 76 of the Merchant Shipping Act 1894. It stated that the Plaintiff, as Consular Officer within the meaning of Section 76, had seized and detained the ship, as liable to forfeiture under Section 69, for having used the British flag without authority to do so; and the Petition asked (amongst other things) for a declaration and judgment that the ship had become forfeited to His Majesty.

Certain defences were raised which it is not necessary to examine on the present occasion.

On the 23rd April 1908 a Decree was passed declaring the forfeiture of the ship as prayed. That is the Decree appealed against.

The Sections which it is important to notice for the present purpose are as follows :—

Merchant Shipping Act, 1894.

Section 69 (1).—If a person uses the British flag and assumes the British national character on board a ship owned in whole or in part by any persons not qualified to own a British ship, for the purpose of making the ship appear to be a British ship, the ship shall be subject to forfeiture under this Act, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

Section 76 (1).—Where any ship has either wholly or as to any share therein become subject to forfeiture under this Part of this Act

- (a) any commissioned officer on full pay in the military or naval service of Her Majesty;
- (b) any officer of customs in Her Majesty's dominions; or
- (c) any British Consular officer,

may seize and detain the ship, and bring her for adjudication before the High Court in England or Ireland, or before the Court of Session in Scotland, and elsewhere before any Colonial Court of Admiralty or Vice-Admiralty Court in Her Majesty's dominions, and the Court may thereupon adjudge the ship with her tackle, apparel and furniture to be forfeited to Her Majesty.

Merchant Shipping Act, 1906.

Section 51 (1). Where it appears to the Commissioners of Customs that there is any doubt as to the title of any ship registered as a British ship to be so registered, they may direct the registrar of the port of registry of the ship to require evidence to be given to his satisfaction that the ship is entitled to be registered as a British ship.

(2) If within such time, not less than 30 days, as the Commissioners fix, satisfactory evidence of the title of the ship to be registered is not so given, the ship shall be subject to forfeiture under Part I. of the principal Act.

(3) In the application of this Section to a port in a British possession, the Governor of the British possession, and, in the application of this Section to foreign ports of registry, the Board of Trade, shall be substituted for the Commissioners of Customs.

The question of jurisdiction which has been raised is this :—The jurisdiction to entertain and deal with the petitions before the Supreme Court, if it possesses that jurisdiction, depends upon Section 76 just cited. It is contended, however, for the present Appellants that that section

confers authority upon no Court excepting those within the dominions of the Crown, whereas the Court at Shanghai is not within British territory. That contention on the part of the Appellants, in their Lordships' opinion, must prevail, for the language of the section is express, and there appears to their Lordships to be no other statutory authority extending the jurisdiction under this section to the Shanghai Court.

For the foregoing reasons their Lordships are of opinion that the Appeal should prevail. They will humbly advise His Majesty that the Decree of the 23rd April 1908 should be set aside, and the Respondent's petitions dismissed without costs.

There will be no order as to the costs of the Appeal.