Privy Council Appeal No. 58 *of* 1915.

In the matter of the Steamship "Pindos."

Privy Council Appeal No. 73 *of* 1915.

In the matter of the Steamship "Helgoland."

Privy Council Appeal No. 74 *of* 1915.

In the matter of the Steamship "Rostock."

FROM

HIS BRITANNIC MAJESTY'S SUPREME COURT FOR EGYPT (IN PRIZE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH APRIL, 1916.

Present at the Hearing:

LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR SAMUEL EVANS.

[*Delivered by* LORD SUMNER.]

These are three appeals from three decrees of His Majesty's Court of Prize in Egypt, condemning these vessels as lawful prize. In view of the fact that reliance was placed on immunities alleged to be claimable under international conventions, no objection has been raised, such as was raised in the "Möwe" (1915, P. 1), to the presence of enemy owners to be heard before their Lordships on appeal.

The steamship "Pindos" is a steamship of 2,933 tons gross, which belonged to the Deutsches Levant Linie, of Hamburg. In the course of a round voyage from Antwerp to Eastern Mediterranean ports she entered Port Said at 2 A.M. on the 1st August, 1914. Her next port would have been on the Syrian coast. Through her agents at Port Said she "received orders not to proceed until further instructions." She discharged her Port Said cargo and continued to lie in her berth. On the 14th August the captain was informed by the authorities that he was free to sail and would receive a pass, if he would call for it at the port-office. This he did not do, having been informed

by someone, but inaccurately, that the harbour of Port Said had been declared neutral. In fact, by that date Egypt was in a state of hostility *de facto* to the German Empire. On the 22nd August a pass for Beirut was actually delivered to him. He says that he doubted its validity—which, in truth, he had no grounds for doing—but, since he was advised by his agents to stay in Port Said as it was a neutral port, his reasons for staying there are clear.

On the 15th October he was taken outside the limits of Port Said and of territorial waters in charge of persons appointed for the purpose by the Egyptian authorities, and then was captured by H.M.S. "Warrior" in latitude 31° 24¼′ north and longitude 32° 20¾′ east. Upon these facts a decree of condemnation as prize was pronounced in His Majesty's Supreme Court for Egypt in Prize on the 17th February, 1915, from which this appeal is brought.

The steamship "Helgoland" is a steamship of 5,666 tons gross, which belonged to the Norddeutscher Lloyd, of Bremen. On the 29th July, 1914, she entered the Suez Canal bound with general cargo from Singapore to Rotterdam and Bremen, and reached Port Said on the 30th July. Her captain had made preparations to continue his voyage and leave Port Said on the 31st July, but on his arrival he received instructions from his owners to stay there. He recorded in his log on that day "German mobilization," and on the 17th and 18th August he paid off a large number of his crew. A pass was offered to him in the same way as to the captain of the "Pindos," but he did not avail himself of the offer. Another was actually delivered, also as in that case, of which, though it was valid, no use was made. The reason for this again was that the captain, on the same pretext, had definitely decided, in accordance with his owners' instructions, to stay where he was. Subsequently the "Helgoland" also was taken outside Egyptian territorial waters by persons employed by the Egyptian authorities, and there captured by H.M.S. "Warrior" on the 15th October at about the same place. She was duly condemned as prize on the 17th February, 1915.

The "Rostock" was a steamship of 4,957 tons gross, which belonged to the Deutsche-Australische Dampfschiffsgesellschaft, of Hamburg. She came through the Suez Canal from Eastern ports with general cargo, bound, no doubt, for a home port, and arrived at Port Said on the 31st July and began to discharge such part of her cargo as was deliverable there. While doing so her captain received a cablegram from his owners at Hamburg to wait further orders. His log records on the 1st August: "In order to protect ship and cargo from the attacks of the enemy, shall remain until further notice in Port Said, as the harbour is neutral." On the 17th to 19th August the ship discharged her cargo of frozen meat. After the 31st July the captain received no further communication from his owners. He was treated by the Egyptian authorities in

respect of the offer of a pass, the actual delivery of a valid pass subsequently, and the removal of his ship outside Egyptian territorial waters, exactly as the captains of the "Pindos" and the "Helgoland" were treated. He behaved in the same way and for the same reasons. The "Rostock" was captured by the "Warrior" on the 15th October, and was condemned as prize on the 17th February, 1915.

The claimants in their petitions formally relied on what in each case were substantially the same defences, namely: (1) the benefit of the VIth Hague Convention of 1907, Articles 1 and 2; (2) the benefit of Article 4 of the Suez Canal Convention of 1888, confirmed by Article 6 of the Anglo-French Agreement of 1904; (3) the formal invalidity and the practical inefficiency of the passes which were offered by the Egyptian authorities; (4) considerations of equity and natural justice arising out of the circumstances under which the ships were ejected from Egyptian waters.

Of these points the first has already been dealt with sufficiently by their Lordships in the case of the "Gutenfels," and the third in that of the "Achaia." Of the second all that need be said is this: Whatever questions can be raised as to the parties, to and between whom the Suez Canal Convention, 1888, is applicable and as to the interpretation of its articles, one thing is plain, that the convention is not applicable to ships which are using Port Said not for the purposes of passage through the Suez Canal or as one of its ports of access, but as a neutral port in which to seclude themselves for an indefinite time, in order to defeat belligerents' rights of capture, after abandoning any intention there may ever have been to use the port as a port of access in connection with transit through the Canal. Those responsible for the ships took their course deliberately, and took it before the 14th August. The captains appear, as was only natural, to have consulted together and to have acted in concert. In the case of the "Helgoland," her owners in Bremen, doubtless well-informed persons, as early as Thursday, the 30th July, 1914, if not earlier, were so assured, though no ultimatum had then been issued, that Germany would shortly be at war, and England and Egypt would be neutral, that they ordered her captain to stop in Port Said instead of trying to reach a Turkish, a Greek, an Italian, or an Austrian port. It is no light responsibility to stop a ship of over 5,000 tons with general cargo in midvoyage for an indefinite period, and thus to imperil insurances alike on ship and cargo, and to incur heavy expenses and probably heavy claims from cargo-owners as well; but this responsibility was taken. Their Lordships are of opinion that the evidence amply justified the decision of the Prize Court in each case, that the ships were using Port Said simply as a port of refuge, and therefore without any right or privilege arising out of the Suez Canal Convention, 1888. Hence their expulsion by the Egyptian authorities, when it had become plain that they

would not leave of themselves, affords no answer to the claim for condemnation in natural justice, or equity, or law. In view of their common election to remain, no distinction can be drawn between the ships which had used the Canal and the "Pindos," which never meant to use it at all. By the 14th August liability to capture and condemnation had accrued in each case, and no circumstance then existing or arising thereafter annulled that liability. The general question of costs has been dealt with in the case of the "Zamora."

Their Lordships will humbly advise His Majesty that in each of these three cases the appeal should be dismissed with costs.

The orders should in each case be varied, however, so as to run, "and as such or otherwise subject and liable to confiscation and condemned the said ship as good and lawful prize seized on behalf of the Crown," and in other respects should be in the form of the orders under appeal.

In the Privy Council.

IN THE MATTER OF THE STEAMSHIPS "PINDOS," "HELGOLAND," AND "ROSTOCK."

DELIVERED BY LORD SUMNER.

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