

In the Matter of the Steamship "Hillerod."

Brix-Hansen and Co. - - - - - Appellants,

v.

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

In the Matter of Cargo *ex* Steamship "Hillerod."

Joseph Westerberg - - - - - Appellant,

v.

Same - - - - - 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 11TH DECEMBER, 1917.

Present at the Hearing:

LORD PARKER OF WADDINGTON.

LORD SUMNER.

LORD WRENBURY.

[*Delivered by* LORD SUMNER.]

On the 4th November, 1915, the Danish steamship "Hillerod," bound from Philadelphia to Trondhjem and Gothenburg with a cargo of lubricating oil, was stopped in latitude 58° 28' N. and longitude 17° 4' W. by H.M.S. "Teutonic," and was sent into Kirkwall. Ultimately both ship and cargo were condemned in prize by the learned President, from whose judgment the present appeals are brought by Mr. Joseph Westerberg, of Malmö, claiming the cargo, and Messrs. Brix-Hansen and Co., of Copenhagen, claiming the ship herself. The ship is now represented by a bond for 47,500*l.* In August 1915 Messrs. Brix-Hansen and Co. resold her, about five weeks after they bought her, to Dampskibsselskabet Atlanterhavet A/S, of Copenhagen, and

they in turn resold her in about two months to Messrs. Finn Friis and C. O. Lund, of Drammen, who gave the bond. Her price at the end of June 1915 was 30,750*l*.

The "Hillerod" was a steamer of 2,942 tons gross and 1,913 net, twenty-three years old, built at West Hartlepool and recently Greek-owned. In addition to documents relating to the ship, there were found on board of her, when she was detained, a charter-party, captain's copies of two bills of lading, a manifest, and a certificate by the consignee of the cargo that it was purchased for consumption in Norway and Sweden and would not be re-exported directly or indirectly from Norway or Sweden. Lubricating oil was then an article of industrial consumption in both Norway and Sweden, but there was no lack of lubricants there. On the other hand, the shortage in Germany was very acute, particularly in the case of such oil as the "Hillerod" carried. Since the outbreak of the war its price in Germany had multiplied between seven and eight times. There can be no doubt that large quantities of lubricating oil, imported into Norway and Sweden, were being re-exported to Germany, or that the traffic, when successful, was lucrative and worth some risk to all concerned. In both bills of lading Mr. Joseph Westerberg was named as the consignee; one provided for the delivery of 1,000 barrels, containing 49,615 gallons of refined lubricating petroleum, at Trondhjem, and the other for the delivery of 13,665 barrels, containing 680,504 gallons, at Gothenburg, in each case against payment of freight "on discharge in accordance with charter-party." The charter-party (which is not fully set out in the record) was in English, and was made between Mr. Westerberg and the Dampskibsselskabet Sjælland, of Copenhagen, for whom, apparently, Messrs. Brix-Hansen and Co. act, and in whose name the bill of sale was taken. It provided, rather ungrammatically, that the "Hillerod," or substitute, now lying at Liverpool, after having completed a voyage from England to Sweden and Denmark and return to England, should "proceed to one charterer's option, two loading ports between Boston and Philadelphia," and there load a full cargo of oil in barrels and proceed to Drontheim and thereafter to Gothenburg for discharge. The charterer had the option of cancelling the charter if the ship was not ready to load on or before the 1st October. The cargo was to be taken from alongside the steamer at the ports of discharge at merchant's risk and expense. The ship was to be consigned to the charterer's agents at the ports of discharge, and they were to pay the cost of discharging, pilotage, and all port charges, and to provide an agent for custom-house business at their expense. Lay days at port of discharge were to commence on the day following receipt by charterer's agents of captain's written notice of readiness, discharging in fifteen running days, Sundays and holidays excepted. If the cargo was not discharged within the stipulated time, the charterer

was to pay demurrage at the rate of 100l. per running day. Bills of lading were to be "issued to name of consignees" (though no consignee was named in the charter), and were not to be made out to order. The master was to have a lien on the cargo for all freight and demurrage. The charterer was to undertake to provide and forward certificate, duly legalised, from receivers of the cargo, that no transshipment of the cargo will take place. Finally, the provision as to freight, which was inserted after the description of the voyage and the stipulation for delivery of the cargo as customary, ran as follows: "In consideration whereof, the vessel shall be paid freight as follows: lump sum, 300,000 kronor, Danish currency"; and there was a clause providing for cesser of the charterer's liability, when the cargo was shipped.

Both Mr. Westerberg and Messrs. Brix-Hansen and Co. filed affidavits, the former in answer to interrogatories. Both disclosed a certain number of documents. Their admissions are remarkable, but their Lordships are inclined to think that their omissions are more remarkable still.

Mr. Westerberg was by birth a Swede. At the age of 27 he became a citizen of the United States of America and resided at Chicago, Illinois, "engaged in the practice of the law," till, at the age of 52, he was appointed American consular agent at Malmö in Sweden, where he entered upon his duties in December 1913. The duties of this office not apparently occupying the whole of his time, he proposed to carry on business also as an importer of American goods, but down to June 1915 he had not entered into any actual transactions either in petroleum or in anything else. In June 1915 Consul Westerberg conceived the idea of importing American petroleum into Scandinavia. He did not do things by halves. His first venture was to be a whole shipload, and it involved over 40,000l. With such spirit did he plunge into it that he chartered the ship before he had so much as begun to negotiate for a cargo. Nor did he go about the matter by the somewhat tedious processes of mercantile correspondence. He sent an agent to America to buy the oil and he found the ship and negotiated the charter in his own person. There was a Mr. H. C. Hansen, who lived at an hotel in Stockholm, the Hotel Terminus, and Consul Westerberg gave this gentleman by word of mouth full power and authority to act for him. They seem to have had entire trust in one another, for Mr. Hansen received no written instructions or credentials, and for his part was content to engage himself in extensive transactions in the United States in full reliance on the consul's mere word. Mr. Hansen departed for New York in the latter part of June.

The firm of shipbrokers with whom Mr. Westerberg dealt were Messrs. Brix-Hansen and Co., of Copenhagen. It is suggested that there was some relationship or connection between Mr. H. C. Hansen and Mr. Brix-Hansen, but their

Lordships attach no importance to this. They might have been brothers and yet not have been friends, nor does their common patronymic necessarily indicate that they were even compatriots. Here too the consul eschewed correspondence and carried on his negotiations verbally, it would seem in Copenhagen, till the 22nd June. Presumably the American consulate at Malmö was not busy at the time. Mr. Westerberg swears that the charter was signed on the 22nd June. Mr. Stannow, a partner in Messrs. Brix-Hansen and Co.'s firm, gives the date as on or about the 22nd June. The document itself bears date the 22nd June, but from the other documents it is plain that the true date cannot be earlier than the 24th June. On the 22nd June Messrs. Brix-Hansen and Co. wrote from Copenhagen to Mr. Westerberg at Malmö, "Hereby we beg to confirm the fixture of steamship 'Hillerod,'" setting out the essential terms, and adding, "we shall to-morrow send you charter." This letter is acknowledged by Consul Westerberg, from Malmö, on the following day. The letter in which the charter was sent is not forthcoming, and indeed Mr. Westerberg's case is that the charter was signed by both parties at Copenhagen. Assuming this to be so, a curious incident then took place.

According to the "fixing" letter of the 22nd June freight was "payable when the steamer is ready to load," which could not be for another three months or so. Mr. Westerberg swears that on the 24th June he paid to Messrs. Brix-Hansen and Co. 300,000 kronor in cash for the freight of the "Hillerod," and he produces their receipt, in which they undertake to pay 5 per cent. interest on the money "till the ship is cleared on the loading place," and declare that they are depositing at the same time as security the "Hillerod's" insurance policy. The document seems to imply a promise to repay the money in some event, but what that event may be is not stated.

No explanation of this transaction was vouchsafed by anybody. Consul Westerberg had the letter of the 23rd, which postponed his obligation to make payment of the freight until the ship should be ready to load; nevertheless, without any request, so far as the evidence shows, and without any advantage to himself, except 5 per cent. interest, he anticipated his obligation and paid over 16,500*l.* in cash. There is neither document nor affidavit to explain how he came to have this sum available. He may have had the money by him; he may have realised investments. It may have represented those savings of his active years, with which he had proposed to support the evening of his days in the land of his birth and in the service of the land of his adoption. On the other hand, the money may have been furnished by some third party, whose interest in the venture was more active than his own. Mr. Westerberg's evidence inevitably raises the question and deliberately leaves it unanswered.

Here ends the consul's active participation in the matter, but the transactions, which took place in the United States,

as it is alleged, on his behalf, are equally puzzling. Mr. H. C. Hansen bought the oil from the Pure Oil Company of Philadelphia about the 29th July. The terms were net cash, not bills, against documents. The invoices were made out to Mr. Westerberg as seller, and are dated the 16th October. The amount was over 117,000 dollars, say 23,000*l*. The bills of lading were dated the 19th October. According to Consul Westerberg, "upon the presentation of the shipping documents of the oil by the Pure Oil Company, Philadelphia, to my bankers at New York, Kuhn Loeb and Co., the payment was made by them." Presumably this means that Kuhn Loeb and Co. did so on instructions received from Mr. Hansen, for Mr. Westerberg did not write to them, and that they paid the amount of the invoices, 117,783 dollars, and of the insurance broker's premium account, 9,562 dollars, on behalf of Mr. Westerberg, against the two bills of lading and the certificates of insurance for 220,000 dollars, so valued, which are produced. No bill was drawn on Mr. Westerberg. No statement of account was rendered to him. In what sense Kuhn Loeb and Co. were his bankers is not stated, but they must have paid over 25,000*l*. on his behalf on the mere oral instructions of Mr. Hansen, who had no signed authority from him, and then have sent him the bills of lading and insurance certificates without receiving any repayment from him, so far as any statement of his or any document shows. Of course, it is possible that as a capitalist Mr. Westerberg may have kept a credit balance in New York of tens of thousands of pounds, but one does not see why he should be so reserved about it. The circumstance would be an honourable one. At any rate, whether Kuhn Loeb and Co. were the consul's bankers or not, they were a firm much concerned in financing and facilitating trade with Germany, and have two partners who are associated with a house in Hamburg. When or why they sent the bills of lading to Mr. Westerberg he does not say, nor does he produce any covering letter from them; it may only have been after the capture of the "Hillerod" was known, and for the purposes of the proceedings in prize. If it was before, then he did nothing with them till afterwards.

At some date in October, which is not given, and may have been before the oil was paid for, Mr. Hansen returned to Sweden, and then for the first time Consul Westerberg was told of that purchase of oil for the sake of which he had hired the "Hillerod" and paid his 16,500*l*. Mr. Hansen was not given to writing letters any more than Consul Westerberg. He rendered his account by word of mouth, and handed over the letter of July, embodying his contract with the Pure Oil Company, to Mr. Westerberg in person. Mr. Westerberg was not inquisitive. He did not get any document from Mr. Hansen showing how the cargo was insured or what the premiums amounted to. So unconcerned was the consul that in January 1916 he could not say from memory whether war risk was effected on the cargo.

This, too, is odd, for when he despatched his emissary he told him to insure it in America, and the certificate of insurance had by this time passed through his hands, and the oil itself was in jeopardy of being lost by capture and condemnation. If he had taken enough interest in this, his first, venture to ask Mr. Hansen about the insurance, he might have learnt how it came about that, as early as the latter part of August, insurance brokers in New York were asking authority from the Mannheimer Versicherungs-Gesellschaft, of Mannheim, by a wireless message which was intercepted, to cover lubricating oil per the "Hillerod" to Gothenburg, F.P.A., including war risk up to 350,000 dollars, and why they got that authority through the Mannheim Company's agent in Christiania. Furthermore, on the 21st October (misprinted "10th" in the Record, p. 76) "Egberts," of New York, sent a wireless message to Warburg, of Hamburg, saying, in reference to a certain letter and number: "Representative gone, steamer is ready to sail, but we refused paying as policies do not cover risk. . . . Shipper insists on prompt payment under confirmation given by us as authorised by you"; and another message, intercepted on the 25th October, from "Lamsvelt," New York, to Warburg, of Hamburg, referred to the same letter and said: "Have paid 118,000 dollars for merchandise, 9,000 dollars for insurance." Now "Egberts" and "Lamsvelt" are stated, on evidence which the learned President accepted, to be aliases for Kuhn Loeb and Co. On the 21st October the "Hillerod" was ready to sail and Mr. Hansen probably had gone, since he was in Sweden before the end of the month. Of the 220,000 dollars insurance on the "Hillerod's" cargo only 120,000 dollars covered war risk. The Pure Oil Company had no discoverable means of getting paid unless a banker's confirmation had been given, and was not likely to have shipped any oil until it was given, or to waive prompt payment when they had shipped it; and, finally, Kuhn Loeb and Co. did, according to Mr. Westerberg, pay for him 117,783 dollars for the oil and 9,562 dollars for the insurances. If he had ever troubled to ask his bankers, Kuhn Loeb and Co., anything about his own business he might have ascertained whether these messages related to the "Hillerod" without naming her, or whether the appearance of some connection is due to a mere coincidence.

Though Mr. Westerberg is reticent, it is fair to assume that he asked Mr. Hansen something about the "Hillerod's" probable sailing date, and if so, he would have learnt enough to perceive that she might be at Trondhjem about the middle of November. In fact, when stopped on the 4th November, she was apparently about 900 miles off, and not until after the 7th November, when she reached Kirkwall, could the consul have had reason to suppose that she would not reach Trondhjem at all. Now he had no agents either at Trondhjem or at Gothenburg, and he took no steps to appoint any. He had not sold his cargo in advance, thinking, as he says, that a cargo of

“spot” oil would go off at once, and he had made no arrangements for doing the ship's business, taking delivery overside, or securing wharfage or warehouse accommodation, though she might arrive almost any day. If he exceeded the time allowed him by the charter, which began the day after the captain had delivered a notice of readiness to discharge, he was liable for heavy demurrage day by day. Furthermore, either he received the bills of lading in good time or he did not. In the first event he must have seen that, according to them, freight was payable on discharge in accordance with the charter-party, yet, according to him, he had already paid freight, according to the charter-party, in full. In the second event he would not be entitled to delivery unless he produced the bills of lading, and he ran the risk of heavy demurrage, through the unaccountable delay of his bankers in forwarding them. Nevertheless, he remained calm. He took no steps. As a lawyer, he would appreciate his contractual obligations; as a merchant, engaged, and pretty deeply too, in his first venture, he would be concerned about his profits and uneasy about his liabilities. If the transaction was what he says it was, why did he not communicate with either Messrs. Brix-Hansen and Co. about the form of the bills of lading, or with Kuhn Loeb and Co. as to their whereabouts? Why did he take no steps to be ready to receive his cargo and land it? His serene composure may have been due to a *mens conscia recti*, but it may also have been due to the consciousness that when he had secured his charter and despatched his agent, his part in the transaction had been played.

Two things are throughout characteristic of Consul Westerberg's first appearance as a merchant: the first is a notable indisposition to commit himself in black and white, and the second is an equally notable indifference to all but the first stage of his adventure. If his traffic was what it professed to be, namely, importation into Scandinavia for Scandinavian consumption, the explanation of the first peculiarity may simply be a dislike to having his private correspondence read by British Government employees, natural enough, no doubt, but hardly a sufficient reason for complicating a 200,000-dollar transaction. Of the second, the explanation must be his perfect trust in Mr. Hansen, of the Terminus Hotel, Stockholm. It seems a little hard that Mr. Hansen should have requited his confidence by not coming forward to clear up a mystery, of which no doubt he has the key.

The case of Messrs. Brix-Hansen and Co. involves somewhat different considerations. The President gave judgment against them on two grounds. The first was that as their ship was carrying goods, made contraband by the proclamation of the 11th March, 1915, and having an ulterior destination in Germany, the shipowners must be presumed to be parties to that ulterior voyage, since the goods amounted to more than half of the cargo. As to this topic the opinion of their Lordships has

been recently expressed in the case of the steamship "Hakan," and it need not be pursued further. The President's second ground was that Messrs. Brix-Hansen and Co. were directly concerned and associated with Mr. Westerberg in attempting to carry absolute contraband to the enemy, and that the case was one of an attempt to mislead the Court of a glaring character. The evidence for this conclusion must now be examined.

Messrs. Brix-Hansen and Co. presented a petition to their Lordships for leave to adduce further evidence explanatory of some of the matters upon which the learned President had animadverted. Their Lordships intimated during the hearing that this petition could not be entertained. Some observations seem to have been made at the hearing by the appellants' counsel, to the effect that the evidence for the Crown raised points, for which the appellants were not prepared owing to lack of notice, but, whether there was any real grievance in this respect or not, no adjournment was asked for, as might and should have been done if further evidence was desired. The learned Judge was struck by the unsatisfactory character of some of Messrs. Brix-Hansen and Co.'s evidence, and commented pointedly on the omissions. To permit them to make a general reply upon his judgment by filing fresh evidence on the hearing of the appeal would open the door to grave abuses. It cannot be doubted that, as intelligent men advised by competent English solicitors, they must have appreciated the points in their case, which would be the better for full explanation, and have known that, in the candour which they owe to the Court, it behoved them to keep back nothing which was relevant to the issue. A claimant cannot be allowed to say "My conduct may in some respects be ambiguous and my explanations may be chiefly marked by economy of statement, but so long as I leave matters involved in sufficient doubt nothing is proved to my detriment, for nothing definite can be proved. The Court may not be able to make out exactly what has happened. It is better not to supply the clue: 'Not proven' will serve my turn."

Messrs. Brix-Hansen and Co. are, however, entitled to say that when it comes to affecting them with knowledge or notice of the ulterior destination of the cargo, this must be done upon consideration of matters which were before their minds. This, then, is the next question.

In what guise did Mr. Westerberg come to Messrs. Brix-Hansen and Co. in the first instance, and how did he comport himself? He was not known to them as a merchant, for he had had no previous mercantile transactions. As a social acquaintance or even as a subordinate official of the United States of America (with a salary of 200*l.* a year) he was hardly a person to whom, in the ordinary course of business, they would charter a ship at a freight of 16,500*l.* It is natural to expect that he came with some introduction, but as the evidence both of Consul Westerberg and Messrs. Brix-Hansen and Co. is silent on the point, it is natural also to infer that the introduction

was one, which it would do neither of them any good to mention. By the 23rd June the substance of the transaction had been agreed. No difficulty was anticipated in framing the general terms of the charter, and the matter might well have been conducted by post. Nevertheless, on the 24th June Mr. Westerberg returned from Malmö to Copenhagen. What for? His purpose appears to have been twofold. One was merely to obtain an option to discharge at a further port or ports for a suitable additional freight; the other was to undo to his own disadvantage the important stipulation relating to the lump-sum freight, which, as it stood, was in his favour.

The result of the consul's visit on the latter point was this. He paid over, then and there, in cash, on the 24th June, 16,500*l.*, which he need not have paid till the end of September. If it was regarded as a loan, he did not think fit to ask for any express promise to repay it, or any definition of the event, in which the money would be repayable. It is true that he got not only a receipt for his money but also security, but the security consisted of the simultaneous deposit of "the ship's insurance policy," a policy, therefore, under which there might never be any insurable interest, since the ship was one which, at that time, Messrs. Brix-Hansen and Co. had not even contracted to buy. If Messrs. Brix-Hansen and Co. failed to buy this ship, and exercised their right under the charter to tender a substitute, this policy would be no security and of no use to him; if they bought it, but utilised the ship in some other employment, in which the ship took no harm, the policy would be a security of no value, for there would be no claim upon it. As it happened Mr. Westerberg's 16,500*l.* came in very conveniently for Messrs. Brix-Hansen and Co. when they bought the ship, afterwards renamed the "Hillerod," as they did a little later. The price paid was 30,750*l.* Thus on her first charter their new purchase would bring them in 53½ per cent. of her cost, and their new customer put them in funds to that extent three months before any freight was payable for the modest consideration of 5 per cent. on the amount of it. They, for their part, were free to complete her current voyage and to take a cargo outwards for their own account, and it is difficult to suppose that the freight so earned would not exceed the 200*l.*, for which they would be liable as interest, nor is there one word in the evidence to show that Mr. Westerberg ever got, or even asked for, his 200*l.* at all. It must have seemed to Messrs. Brix-Hansen and Co. uncommonly good-natured of the consul.

When Messrs. Brix-Hansen and Co. came to draw up the charter, which was to be one of the documents carried on board the vessel, it was so drawn up as to express the real bargain only loosely. It was dated the 22nd June, and chartered the "Hillerod," "or substitute," though the "Hillerod," and nothing but the "Hillerod," had been the subject of the negotiation. It omitted to mention that in addition

to Trondhjem and Gothenburg there were options for other ports, of course ports in Sweden, and it represented that the freight was not yet paid, though it had been paid already. It is not necessary that the Court should be able to see for itself precisely how these discrepancies might subserve the shipowners' interests, if any question with captors should arise. It is for the shipowners to explain the matter. They may reasonably be supposed to have seen, or to have thought they saw, something to be gained by these departures from accuracy.

When Messrs. Brix-Hansen and Co. thought that the "Hillerod" was nearing the United States they wrote to the captain, under date the 16th September, enclosing the charter and pointing out that her ports of discharge were Trondhjem and Gothenburg. They said nothing about the option for further ports, of which the captain was apparently ignorant. It is true that, according to Mr. Westerberg, this option was abandoned by him four days later; but if the transaction was not a sham, Messrs. Brix-Hansen and Co., on the 16th September, were leaving their captain in the dark as to the charterer's right to send the vessel to a further port and his obligation to pay further freight, and were thus preparing for dispute and delay. The natural inference is that, at any rate the option for additional ports, though given by them in writing by a confirmatory letter dated the 17th July, was in fact fictitious.

It is impossible to avoid some misgiving also as to the truthfulness of the alleged prepayment of freight. The 16,500*l.* may have been paid not as freight, but as a loan to enable the "Hillerod" to be bought at all. At any rate, in their letter of instructions to their captain, Messrs. Brix-Hansen and Co. told him nothing about this prepayment of freight, nor did Messrs. Flint, Goering, and Co., of Philadelphia, when they wrote to him on the 15th September that his owners had instructed them to look after the outward business of his ship. If the captain acquainted himself with the contents of his charter, as his owners' letter told him to do, he would see that it was his business to refuse to sign bills of lading unless they reserved at least 300,000 kronor, payable on delivery of the cargo, and to exercise his lien on the cargo at ports of discharge until that sum was paid, a course which should greatly have upset the consul. This was in substance what he did in America. How, again, did it come about that Kuhn Loeb and Co. were content with bills of lading under which, apparently, 300,000 kronor were payable in Scandinavia? Since no correspondence is forthcoming or accounted for, their instructions must have come from Mr. H. C. Hansen by word of mouth. Either Mr. Hansen did not know of the prepayment or else he forgot to tell them. Consul Westerberg's imports of oil into Scandinavia, strictly for Scandinavian consumption, seem, even for a first essay, to have been loosely conducted. It is equally difficult to understand why,

if their entire chartered freight was prepaid in June, before the voyage began, Messrs. Brix-Hansen and Co. were at the pains and expense to insure it against marine risks for 100,000 kronor, which is what they certify that they did in a statement signed by them on the 22nd December, 1915. Their office seems to have overlooked or to have misunderstood the transaction.

There were at this time two kinds of importation into Scandinavia, one as well known as the other : namely, importation for Scandinavian consumption only, and importation for ulterior transmission to Germany. The former was matter-of-course and involved no mystery. The latter had its perils, but also its commensurate profits, and mystery was one of its natural incidents, for, no doubt, the less the carrier could manage to know about it the better for him. In the absence of explanations from Messrs. Brix-Hansen and Co., which at the proper time they might have offered but did not, the conclusion from the facts is clear that, as reasonable men, they knew that this business was not the ordinary kind of importation, and if they knew no more, it was because they did not need and did not choose to ask questions. Even that knowledge is enough.

Their Lordships have no doubt that this cargo of contraband had an ulterior destination in Germany and that, when they carried it, Messrs. Brix-Hansen and Co. were fully alive to the fact.

As for Consul Westerberg, their Lordships entertain no doubt upon the evidence that he never was the owner of the cargo ; that he was Mr. H. C. Hansen's agent and not his principal ; that he lent for hire his respectable name and office as bonnet to cover a traffic the nature of which must have been apparent to him ; that he did as he was told, took what was given him, and concerned himself no further in the matter.

Their Lordships will accordingly humbly advise His Majesty that these appeals should be dismissed with costs.

In the Privy Council.

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BRIX-HANSEN AND CO.

v.

HIS MAJESTY'S PROCURATOR-
GENERAL.

In the Matter of
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WESTERBERG

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SAME.

DELIVERED BY LORD SUMNER.