

*Privy Council Appeal No. 101 of 1916.*

**In the matter of the Yacht "Germania"  
(Claim of Gustav Krupp von Bohlen)**

FROM

**THE HIGH COURT OF JUSTICE (ENGLAND), PROBATE, DIVORCE, AND  
ADMIRALTY DIVISION (IN PRIZE).**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 20TH MARCH, 1917.**

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*Present at the Hearing:*

LORD PARKER OF WADDINGTON.

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

SIR ARTHUR CHANNELL.

[*Delivered by LORD PARMOOR.*]

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The "Germania" is a sailing schooner racing yacht of 366 tons Y.M., 191 tons gross and 123 tons net register, built and registered at the port of Kiel. She was built in 1908 and belonged to Gustav Krupp von Bohlen. In the claim of Baron Friedrich von Bülow, on behalf of the owner, she is described as a racing sailing yacht of no value or utility for any commercial, naval, or military purpose, nor adaptable for any such purpose, and as being no part of the commercial, naval, or military resources of the enemy.

On the 27th July, 1914, the "Germania" arrived at Southampton to take part in the Cowes Regatta, and was dry-docked for the purpose of repairs, cleaning, and painting. On the outbreak of war she was in the yard of Messrs. Summers and Payne, at Southampton, and was seized and detained by the Officer of Customs. A decree of detention, until further order of the Court, was made on the 24th September, 1914. Subsequently, on the 23rd September, 1915, notice was sent to the appellant's solicitors that an application would be made to the Prize Court to condemn the "Germania." The application was made on the 28th October, 1915, and on the same day a decree was made condemning the "Germania" as lawful prize.

It is against this decree that the appeal, on behalf of the owner of the "Germania," is brought.

Two contentions were raised before their Lordships at the hearing of the appeal. In the first place, it was said that a racing yacht, such as the "Germania," should not be regarded as property liable to confiscation and condemnation, as *droits of Admiralty*. No authority was adduced in support of this contention. In the opinion of their Lordships, there is no principle in Prize Law which would place a racing yacht in a special category, or exempt it, from the ordinary rule, that enemy property seized in port, after the outbreak of war, is liable to confiscation and condemnation as *droits of Admiralty*.

It was contended, secondly, and to this point the argument of the counsel for the appellant was mainly directed, that the "Germania" was "un navire de commerce" within the meaning of article 2 of the Sixth Hague Convention, and as such was not liable to confiscation. If the "Germania" is not "un navire de commerce," it is not within the protection of article 2, and it is unnecessary to consider the further conditions specified in the article. In order to make good his contention that the "Germania" was "un navire de commerce," Mr. Bateson argued that any private vessel should be regarded as "un navire de commerce," and that every vessel is included within that designation which is not "un navire d'État." There is nothing in the context of article 2 which would suggest that the expression "un navire de commerce" includes every class of private vessel; but reference was made to the proceedings of the International Naval Conference held in London on the 25th February, 1909, and to an extract from a Prize Court order published in Berlin on the 15th April, 1911. The object of these references was apparently to suggest that there was some ambiguity in the language of article 2, but their Lordships do not find that the language is ambiguous, and quotations from documents published subsequently to the Sixth Hague Convention, and dealing with a different subject in another context, cannot affect the question of construction which comes before their Lordships for decision in this appeal.

The preamble of the Sixth Hague Convention states that the signatory Powers—

"anxious to ensure the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect as far as possible operations undertaken in good faith and in process of being carried out before the outbreak of hostilities, have resolved to conclude a convention to this effect."

These words clearly indicate that the purpose of the convention is the security of international commerce, and that the operations undertaken in good faith and in process of being carried out are operations of a commercial character. It is in accordance with this purpose that article 2 protects under the specified conditions "le navire de commerce," or, to use the English translation, "a merchant ship." A vessel, which is

described in the claim, as a vessel of no value or utility for any commercial purpose, nor adaptable for such purpose, and not any part of the commercial resources of the enemy, is not in any sense a merchant ship or entitled to the protection of article 2 of the Sixth Hague Convention.

The appellant further asked that an order should be made in the same form as in the case of the "Gutenfels" [1916] 2 A.C. 112, but their Lordships are of opinion that that form of order is not applicable to the case of a vessel which is clearly not comprehended within the class of vessels to which alone the Sixth Hague Convention affords protection.

In the result the appeal fails and should be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council.

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IN THE MATTER OF THE YACHT  
"GERMANIA."

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DELIVERED BY LORD PARMOOR.

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1917