

1914.

IN THE COLONIAL COURT OF ADMIRALTY OF THE ISLAND OF
CEYLON IN PRIZE.

Present: The Hon. Mr. A. Wood Renton, President of Prize Court.

THE SS. "MOLTKEFELS."

Cause No. 6.

Vessel captured with cargo consigned to different ports—Power of Court to authorize the Crown to deliver the cargo at the different ports to consignees on payment of freight and agency charges.

The Colonial Court of Admiralty made an order authorizing the Crown to deliver the different consignments of cargo in a vessel captured on the high seas at their respective destinations, subject to the payment of freight and agency charges on delivery.

THE facts appear from the judgment.

The Hon. the Attorney-General. Akbar, C.C., and Obeysekere, C.C., for the Crown.

Allan Driberg for interested consenting parties.

November 19, 1914. WOOD RENTON C. J. and P.—

This is a motion by the Crown, consented to by the interested parties before the Court, with respect to the recovery of freight and agency charges in connection with the disposal of the cargo of the ss. "Moltkefels." The vessel was captured on the high seas in August last by H. M. S. "Fox," and brought to Colombo for adjudication. The cargo, which is multifarious in character, is consigned to Madras, Calcutta, and Chittagong. On September 2 this Court, on

the motion of the Crown, made an order authorizing the Marshal, for the purpose of the warehousing of the cargo, to put the cargo in the hands of the Crown, the Attorney-General undertaking on behalf of the Crown that in the event of the cargo, or any part of it, being for the purpose removed out of the jurisdiction of the Court, it should be brought back within the jurisdiction on the order of the Court to that effect. The Crown now proposes, acting under this order, to deliver the different consignments of cargo at their respective destinations, subject to the payment of freight and agency charges on delivery. The adoption of this course is obviously in the interest of the consignees, and, as I have said, is consented to by all those who are represented here. Prize Courts have from time to time acted upon the maxim *boni judicis est ampliare jurisdictionem* in its true meaning. In the *Polka*,¹ for instance, Dr. Lushington held that, although the general rule of prize law is that a prize shall be brought into a port belonging to the captor's country, under special circumstances a prize which has been taken into and lies in a neutral port might be condemned and allowed to be sold there.

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In the circumstances of this case, I hold that I have power to make the order prayed for by the Crown. Mr. Eric Chapman's affidavit shows that the charge of Rs. 15.50 per ton in respect of freight is reasonable.

I make order in terms of the motion, with the addition to clause (a) of the words "weight or measure," and with the following proviso, which I have expressed in language somewhat different from that used in the motion, in the hope of making its meaning clearer:—

"This order shall not apply to goods in respect of which freight has not been prepaid and still remains due on delivery at the port of destination, and in respect of which the captors are entitled to complete their title to the freight by conveying the goods to such port."

The only point remaining for consideration is the question what steps should be taken so as to enable the parties interested to insure the cargo. The best course will be to direct that the departure of the vessel shall be delayed for a period sufficient to permit of the date of her sailing being communicated to the consignees, and of the effectuation of the requisite insurances. It was agreed at the argument yesterday that a period of three weeks from the date of this order would suffice for this purpose, and I accept the agreement of parties on that point. A statement of the substance of this order will be prepared by the Registrar and supplied to the Attorney-General, who will undertake the responsibility of securing its adequate advertisement in India.

1914. The formal order of the Court was as follows: —

WOOD
RENTON (J.)
and P. The Hon. Mr. Anton Bertram, K.C., Attorney-General, and Mr. S. Obeysekere, Crown Counsel, appearing for the Crown.

The ss.
"Moltkefels" The President of the Prize Court made order in the following terms:—

Whereas by an order dated the 2nd day of September, 1914, the Court made order and decree that the Marshal be authorized, for the purpose of the warehousing of the cargo, to put the cargo in the hands of the Crown, the Attorney-General undertaking on behalf of the Crown that in the event of the cargo, or any part of it, being for this purpose removed out of the jurisdiction of the Court, it shall be brought back within the jurisdiction upon the order of the Court:

And whereas, the said steamer, except so far as relates to cargo consigned to Colombo, is still unloaded, and contains general cargo consigned to Madras, Calcutta, and Chittagong:

And whereas it is for the interest of all persons concerned that the cargo entitled to release which is consigned to Madras should be there delivered, and the cargo entitled to release which is consigned to Calcutta and Chittagong should be delivered at Calcutta:

It is hereby ordered that, in the event of the Crown in the exercise of its power under the said order of the Court conveying the said cargo to Madras and Calcutta respectively, the Crown be authorized to recover against all cargo released and delivered at Madras and Calcutta the following expenses, that is to say:—

- (a) In respect of freight Rs. 15.50 per ton, weight or measure.
- (b) In respect of agency charges, such reasonable expenses as may be incurred.

Provided that this order shall not apply to goods in respect of which freight has not been prepaid and still remains due on delivery at the port of destination, and in respect of which the captors are entitled to complete their title to the freight by conveying the goods to such port.

It is further ordered that the steamer shall not depart from Colombo until the expiration of 21 days from this date.

It is further ordered that a statement of the substance of this order be prepared by the Registrar and supplied to the Attorney-General, who will undertake the responsibility of securing its adequate advertisement in India.

G. HAZLERIGG.
Registrar.