

[COLONIAL COURT OF ADMIRALTY.]

1940

Present : Moseley S.P.J.

In re m.v. "MARO Y".

In Prize No. 5 of 1940.

Writ—Condemnation of cargo as lawful prize—Application for amendment of writ.

The writ issued in this case asked for the condemnation of the cargo as good and lawful prize. In order to bring the cargo within the ambit of a certain Order-in-Council, the Attorney-General moved to amend the writ by describing the cargo as "required to be discharged at the said port" and by adding to the claim a prayer for an order for the "detention and/or sale of the cargo".

The motion was opposed on the ground that the Prize Court Rules of 1939, did not contain any provision for the amendment of a writ.

Held, that the amendment should be allowed.

THIS was an application for condemnation of certain cargo in a ship as good and lawful prize.

J. W. R. Illangakoon, K.C., A.-G. (with him M. Pulle, C.C.), for the Crown.

H. V. Perera, K.C. (with him M. Manikavasagar), for the Master.

E. F. N. Gratiaen, for the shippers.

Cur. adv. vult.

October 31, 1940. MOSELEY J.—

The writ in this cause is in the form prescribed for the condemnation of a ship by Order II., rule 5, of the Prize Court Rules, 1939. The term "ship" it should be stated, includes "cargo". The writ merely asks for the condemnation of the cargo as good and lawful prize and as *droits* and *perquisites* of His Majesty.

It is claimed on behalf of the Master of the ship that the goods in question are not contraband. Assuming this to be so, it is contended by the Attorney-General that the goods are enemy property and as such are liable to the provisions of the Order-in-Council, dated November 27, 1939, framing reprisals for restricting German commerce. Article 2 of the Order provides that any vessel, which has on board goods which are enemy property, may be required to discharge such goods in a British port. Article 3 provides that such goods shall be sold or detained under the direction of the Court. By article 4 the law and practice to be followed in cases arising under the Order is the law and practice in Prize. It should be noted that the relevant articles of this Order, and particularly those referred to above, follow closely the provisions of the Reprisals Order-in-Council of March 11, 1915.

It is now sought, in order that the cargo may be brought within the ambit of the Order of November 27, 1939, to amend the writ by describing the cargo as "required to be discharged at the said port", *i.e.*, Colombo, and by adding to the claim for condemnation a prayer for an order for the "detention and/or sale of the cargo". The motion sets out the manner in which it is desired that the writ shall be amended.

It will be observed that while the Prize Court Rules, 1939, provide for the amendment of pleadings by consent or by order, there is no express provision for the amendment of a writ. Counsel for the Master of the ship relied upon this absence of provision in opposing the motion. He pointed out further that under Order XI., Rule 1 of the Rules the cargo may be ordered to be sold and that under Order XXVIII., Rule 1, an order for detention may be made. In regard to the provision contained in Order XLV. that "in all cases not provided for by these rules the practice of the late High Court of Admiralty of England in prize proceedings shall be followed, or such other practice as the President may direct", Counsel referred me to *Colombos' Law of Prize*, p. 305, where it is observed that the inherent power of the Prize Court to regulate its own practice must not be used to increase the burden of neutral claimants. Neither Counsel for the Master nor Counsel for the shippers was able to suggest any way in which the parties whom they represented might be prejudiced if the amendments should be allowed.

It is true, as contended by Mr. Perera, that the Attorney-General made no reference to the practice of the late High Court of Admiralty. The latter, however, relied upon the case of "*The Oscar II.*",¹ in which it appears that the writ had been amended in proceedings brought under the Reprisals Order-in-Council of March 11, 1915. It does not appear whether, in that case, the application to amend the writ was opposed or

¹ (1921) 1 A. C. 467.

not. It seems, however, safe to assume that Their Lordships of the Privy Council would have commented upon any irregularity in the procedure even if such irregularity had been the subject of agreement.

The Attorney-General also referred to the case of *The Antares* in which Sir Samuel Evans P. clearly indicated the attitude of the Prize Court to those who asked for a meticulous observance of the rule of procedure. "It has been pointed out", he said, "over and over again that the procedure in Prize Court is—and is properly—very different from the procedure in the Municipal Courts. I am not going to be a party, except in extremely special cases—there may be some—to the introduction of pleadings, summonses for particulars, &c., into these Prize Court proceedings".

The Attorney-General submitted that the effect of the amendment, if allowed, would be to place the whole matter in issue before the Court, and it seems to me that I have the power, on the authority of *The Antares* (*supra*), to order the writ to be amended.

The motion is, therefore, allowed. In regard to costs, in view of the absence of express provision for amending a writ in such proceedings, I think that the action of the parties who have appeared to oppose the motion is not unreasonable. Their costs will be paid by the Attorney-General.

Application allowed.
