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International Law Decisions and Notes

U.S. Naval War College (Editor)

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The proper course, therefore, in the present case is to declare that upon the evidence before the president he was not justified in making the order the subject of this appeal and to give the appellants leave in the event of their ultimately succeeding in the proceedings for condemnation to apply to the court below for such damages, if any, as they may have sustained by reason of the order and what has been done under it.

Their lordships will humbly advise His Majesty accordingly, but inasmuch as the case put forward by the appellants has succeeded in part only, they do not think that any order should be made as to the costs of the appeal.

“COMTE DE SMET DE NAEYER.”

November 17, 1916.

[1] Entscheidungen des Oberprisengerrichts, 209.

In the prize matter concerning the Belgian full-rigged ship *Comte de Smet de Naeyer*, Antwerp being her home port, the imperial superior prize court of Berlin, in the sitting of November 17, 1916, has found as follows:

Decision.

“As a result of the appeal of the imperial commissary the decision of the Hamburg Prize Court of May 20, 1916, is annulled. The ship is to be condemned. The claim is refused. The plaintiff must bear the costs of both instances.”

REASONS.

Statement of the case.

After the capture of Antwerp, along with other Belgian ships lying in that port, the full-rigged ship *Comte de Smet de Naeyer* was seized by the German military forces.

The ship was built of steel in 1877 and until 1906 was used as a freight ship. In the latter year she was acquired by the Belgian company, “Association Maritime Belge, S. A.,” of Antwerp, with a capital of 500,000 francs, the aims and purposes of which are stated as follows:

l’armement, l’exploitation, l’affrètement, l’achat, la location et vente de navires à voile et à vapeur et toutes les opérations de commerce, d’industrie et de finances se rattachant à quelque titre que ce soit à la navigation maritime et fluviale, etc.

Le ou les navires de la société pourront être affectés à l’enseignement professionnel maritime, etc.

The company has repeatedly obtained subventions from the Belgian Government which is in possession of obligations of the company to the amount of 412,000 francs. The school of navigation established by the company is under the supervision of the State.

After the company had secured the ship the latter did not again leave the harbor of Antwerp. She was used as a school ship and was supplied with special equipment for purposes of instruction, which would have to be removed should she again serve for ocean-going purposes. Her last certificate of classification is dated October, 1910. For sea trips the school owns the four-masted bark *l'Avenir*. School ship.

Upon notification by the imperial prize court of Hamburg, the owner has submitted a claim for the release of the ship.

The prize court found for the release of the ship. The appeal from this decision entered by the imperial commissary is well founded.

As has been explained in detail in the decision of the competent court of October 6, 1916, in the matter of the *Primavera*, the prize regulations in agreement with the London declaration are to be understood to mean by the expression "Merchant ships" any ocean-going ship that is not the property of the State. If this results distinctly from article 2 of the prize court regulations according to which only neutral public ships are excepted from the exercise of the prize law, it is also explicitly stated in the London conference that the expression "navire de commerce" includes all ships that are not public ships, and, accordingly, in article 6 of the prize regulations, it was regarded as necessary by way of exception to exempt certain ships from seizure that are not built to enter ocean service for gain, and, therefore, would not be regarded as merchant ships in the narrower sense. Therefore, application of the prize law to a school ship can not be objected to. "Merchant ship."

The ship is owned by a Belgian joint-stock company whose purposes are commercial enterprises of every sort. Therefore, it is not a public ship. It does not require further exposition to show that this is in no way changed by the fact that the Belgian State occasionally grants subventions to the corporation and has taken over a considerable number of bonds of the said company. Nor is it of importance that for years, or since she be- Owner.

came a school ship, the ship has no longer gone on ocean trips, but has been lying at anchor in the port of Antwerp. It is true that as stated by the plaintiff, lighters, small tug boats and similar craft, which merely serve for port traffic, are not subject to the rules of maritime warfare (Cf. decision of this court of June 27, 1916).

On the other hand, the ship in question did not cease, even in the office it was fulfilling at that time, to be a seagoing ship; she can, moreover, easily be retransformed into a seagoing freight ship, while it does not matter what it would have been necessary to do to make her seaworthy for any and all purposes.

Port of Antwerp.

We need not discuss whether or not at the time of the seizure, the port of Antwerp was a place of maritime war operations. The right of prize is not exercised merely in a place of war operations, but wheresoever sea navigation takes place, and, accordingly, not simply on the high seas, but also in bays and ports that serve as bases for ocean-going traffic. This is no less true as regards the port of Antwerp because the mouth of the Escaut is not in Belgian jurisdiction.

Hague Convention XI.

Finally it can also not be admitted that, as the lower instance assumed, school ships belong to those ships which, according to article 4 of the XI convention of the Second Hague Conference are intrusted with scientific missions.

Scientific purposes.

Whether this article 4, according to its purport, is to be interpreted rather in an extensive than in a restrictive sense, as the judge of first instance believes, need not here be discussed, because its text is clear and requires no special interpretation. It is evident that a school ship serves no scientific purposes. To be sure, to the thorough training of a ship's officer and ship's captain, a certain scientific basis is necessary, and it can not be gainsaid that at naval schools instruction is imparted in scientific subjects, mathematics, astronomy, etc. It may even be admitted that not only the research but also the instruction is a problem of science. The latter, however, only in so far as science as such is taught, as the distinct and definite science, as one in all its branches, and in so far as it serves for the development of scholars or as a preliminary study for one of the learned professions. Seamanship is not a scholarly, but a practical profession. The naval school is not a school for the sciences, but a professional school. It can no more be said of such a school than of a mining school in which also a theoretical

and, therefore, scientific basis is laid, that it concerns itself with scientific problems.

If, therefore, the plaintiff can not justify his appeal upon the exception specified under article 6 of the prize regulations, because the seized ship is a school ship, it requires no further examination to see whether the application of this same article 6 would also be excluded on the ground that after the capture of Antwerp, as must be assumed, the operation of the naval school came to an end, so that at the time of the seizure the ship, at all events, no longer served purposes of instruction.

THE "APPAM."

March 6, 1917.

243 U. S. Reports, 124.

Mr. Justice Day delivered the opinion of the court:

These are appeals from the District Court of the United States for the Eastern District of Virginia, in two admiralty cases. No. 650 was brought by the British & African Steam Navigation Co. (Ltd.), owner of the British steamship *Appam*, to recover possession of that vessel. No. 722 was a suit by the master of the *Appam* to recover possession of the cargo. In each of the cases the decree was in favor of the libellant.

The facts are not in dispute, and from them it appears: That during the existence of the present war between Great Britain and Germany, on the 15th day of January, 1916, the steamship *Appam* was captured on the high seas by the German cruiser, *Moewe*. The *Appam* was a ship under the British flag, registered as an English vessel, and is a modern cargo and passenger steamship of 7,800 tons burden. At the time of her capture she was returning from the West Coast of Africa to Liverpool, carrying a general cargo of cocoa beans, palm oil kernels, tin, maize, 16 boxes of specie, and some other articles. At the West African port she took on 170 passengers, 8 of whom were military prisoners of the English Government. She had a crew of 160 or thereabouts, and carried a 3-pound gun at the stern. The *Appam* was brought to by a shot across her bows from the *Moewe*, when about a hundred yards away, and was boarded without resistance by an armed crew from the *Moewe*. This crew brought with them two bombs, one of which was

Facts of case,