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## JAPANESE PRIZE CASES

### THE GERMAN STEAMSHIP "ZUIMO" AND ITS CARGO

Nov. 21, 1914, March 29, 1915

(Japanese supreme prize court and prize court at Sasebo)

Decision, concerning the case of the seizure of the German steamship *Zuimo* and its cargo in the supreme prize court and the prize court at Sasebo.

#### A

Concerning the case of the seizure of the German steamship *Zuimo* and its cargo, the prize court at Sasebo rendered the decision on the 21st day of November of the third year of Taisho (A. D. 1914) as follows:

#### DECISION

Petitioner: Hamburg-Amerikanische Packetfahrt Actiengesellschaft, of Hamburg, Germany.

Representative: George Bohlsen, Hamburg-American Line, Shanghai, China.

Deputy: Robert Copus, Kitanomachi, Kobe.

Counsellor for petitioner: Jōei Hirata, counsellor at law.

The prize court at Sasebo renders the decision concerning the case of the seizure of the German steamship *Zuimo* and its cargo, as follows: Judgment of Sasebo prize court.

#### TEXT

The German steamship *Zuimo* and its cargo on board, consisting of 600 tons of Miike coal, 900 tons of Cardiff coal, 60 barrels of machine oil, and 3 cases of medical supplies shall be condemned as prize.

#### FACTS AND REASONS

The steamship *Zuimo* is owned by the Hamburg-American Steamship Co. of Germany, registered at Hamburg, Germany, having its seat at Shanghai, China, and is a merchantman solely engaged in transportation of goods, under the German flag. Statement of fact.

When the war broke out between Germany, on one hand, and Russia, France, and Great Britain, on the other, in the early period of August, the third year of Taisho (A. D. 1914) the ship was laden at Shanghai, by the order of the said steamship company, with 600 tons of Miike coal, 900 tons of Cardiff coal, 60 barrels of machine oil, and 3 cases of medical supplies, all of which belonged to the same company.

The ship left Shanghai on the 7th of that month in order to supply the German fleet which was cruising in the southern Pacific, though feigning to be heading toward Kobe, Japan, as its destination; and reached, after direct voyage, on August 14, the Pagan Island, of German possession, where it stayed at anchorage or in cruising around there. On the 23d day of that month the war broke out between this country and Germany, but the ship remained in the same condition until September 7, when it sailed farther south to the Saipan Island, of German possession, where it stayed for several days in a port of the island named Tanapag. Thus it expected to furnish the German fleet with the supplies on board. But, as it had no opportunity as yet in meeting the said fleet, it decided to sail for the "disguising" destination in order to supplement food-stuffs. Leaving the port Tanapag of the said Saipan Island on September 8, it made a stop at the Pagan Island, after which it sailed on toward Kobe.

It was about 2 o'clock in the morning of the 15th day of September when the said ship with its cargo was captured at sea by the *Hatsuharu*, a destroyer of the Imperial Japanese Navy, at about 400 meters north of Tomogashuna of the Kidan-Strait.

The above facts were clearly established by the report of the acting commander, Bunichi Harada, of the destroyer *Hatsuharu*, lieutenant of the Imperial Japanese Navy; by the statements made by Capt. Fritz von Bilgrim of the steamship *Zuimo*, Chief Mate Johann Nansch, and one of the crew, a Li Yao Cheng; by the report of the examination of the log book provided in the said ship; by the nature of the cargo itself; and also by the incompleteness of the records related to the ship.

Argument  
for plaintiff.

The points maintained by the counsellor for the petitioners are as follows: That the steamship *Zuimo* and its cargo on board are altogether possessed by the petitioners; that since the ship was entirely ignorant of the



outbreak of the war between Japan and Germany until it was captured on September 15 at the Kidan-Strait, after leaving Shanghai, as its "last starting port," release of the ship should be made by virtue of the imperial ordinance No. 163, article 5; that the fact that the ship made temporary anchorages at the Pagan and Saipan Islands amounts to no more than that it cast anchor at the "no-man's island of an unknown sea"; it should not, therefore, be considered in its later relationships as its "last starting port" or the so-called "the national port of the ship" or "the neutral port" as is mentioned in the last section of the said article; that, as the ship is solely used for the regional, limited navigation, it should be released, together with its cargo, by virtue of the naval order No. 8, article 25, and that, since the cargo was not carried with the view of belligerent purposes, the ship and its cargo on board should be released.

On the other hand, the public procurator of the prize court maintains, in brief, that the ship and its cargo should be seized because they are clearly "enemy ship and enemy cargo," and, furthermore, they do not come under the provisions which are provided for special exemption.

Argument of  
condemnation.

This court is of opinion that at the present generation the precedents and established rules of the international law justly recognize the right of a belligerent power to seize any enemy ship and enemy goods on the sea in time of war, except those which are exempted by virtue of international law, or those which come under the provisions specifically providing for such exemption between the participating belligerents; and our laws and regulations concerning the maritime capture are nothing but the adoption of these principles.

Capture of  
private property  
at sea.

Now as to this case, it is the opinion of this court that there is scarcely any doubt about the enemy character of the ship and cargo, for the steamship *Zuimo* is justly entitled to fly the German flag, and the cargo on board is possessed by a company of German nationality. The imperial ordinance No. 163, article 5, section 1, of the third year of Taisho (A. D. 1914) should be interpreted as being without applicability to a ship which, though ignorant of the fact of the existence of war, sailed from its last port after the outbreak of war. It can not be denied that the ship was at anchor at Tanapag Harbor of the Saipan Island of German possession after the declara-

Ignorance of  
hostilities.

tion of the war between Japan and Germany, and did not leave there until September 8, making it clear that Shanghai, its port before the declaration of war, was nothing but its very first starting port. Consequently, the provision of article 5, section 1, should not be applied in this case. Obviously, neither section 3 of the same article, nor the same imperial ordinance, nor any other exceptions, providing for exemption, should be applied.

Exemption  
small boats.

of Furthermore, the so-called "enemy ships engaged in the regional, limited navigation" mentioned in the naval order No. 8, article 25, of the third year of Taisho (A. D. 1914), should be interpreted so as to mean nothing more than the small craft engaged in shipping of the marine and agricultural products, and in general transportation with and among the neighboring islands; no steamship engaged in the coastal navigation should be included. It is clear that the ship under consideration belongs to a powerful German joint-stock company, tonnage being about 1,903, engaged always in the transportation of goods, navigating along the Yangtse River and the far eastern coast, with Shanghai as its base. It does not, therefore, come under the rules providing for exemption. It should also be considered that the ship did sail with the definite purpose of furnishing the supplies to the German fleet which was cruising in the southern Pacific at that particular time. However, it is quite a useless task to inquire whether it did so for belligerent purposes or not, since they have already been decided to be "enemy ship and enemy goods."

Decision.

Such being the case, it is the opinion of the court that the seizure of the said steamship and cargo on board is justifiable and they ought to be condemned as stated in the text.

At the prize court at Sasebo the 21st day of November of the third year of Taisho (A. D. 1914).

Decision rendered in the presence of Matsukichi Koyama, public procurator.

Taro Tezuka, president, the prize court at Sasebo; Shizen Komaki, counsellor, the prize court at Sasebo; Tsutsumu Hirose, counsellor, the prize court at Sasebo; Sadayoshi Asaki, secretary, the prize court at Sasebo.



## B

Upon appeal from the above decision the supreme prize court has rendered its decision on the 29th day of last month (March 29, 1915) as follows: Appeal.

## DECISION

Petitioner: Hamburg-Amerikanische Packetfahrt Actiengesellschaft, of Hamburg, Germany.

Representative: George Bohlsen, Hamburg-American Line, Shanghai, China.

. Deputy: Robert Copus, Kitanomachi, Kobe.

Counsellor for petitioner: Jōei Hirata, counsellor at law.

The supreme prize court considers, in the presence of the procurators, Hideyoshi Arimatsu and Kisaburo Suzuki, J. D., the appeal from a decision of the prize court at Sasebo rendered on the 21st day of November of the third year of Taisho (A. D. 1914), which authorized the condemnation of the German steamship *Zuimo* and its cargo consisting of 600 tons of Miike coal, 900 tons of Cardiff coal, 60 barrels of machine oil, and 3 cases of medical supplies, all of which were captured at sea by the *Hatsuharu*, of the Imperial Japanese Navy, on the 15th day of September of the third year of Tashio (A. D. 1914), at about 400 meters north of Tomogashima at the Kidan Strait; the appeal being made by the petitioner Hamburg-Amerikanische Packetfahrt Actiengesellschaft; representative George Bohlsen, Deputy Robert Copus, and his counsellor, Jōei Hirata, counsellor at law.

The points of the protest presented by Jōei Hirata, counsellor for the petitioners, can be summarized as follows: Argument for plaintiffs.

That the captain and the crew of the ship were entirely ignorant of the outbreak of the war between Japan and Germany until they were captured;

That the cargo was not transported for any belligerent purpose;

That the ship should be released by virtue of the imperial ordinance No. 163, article 5, of the third year of Taisho (A. D. 1914), because it put to sea from its last starting port of Shanghai without any knowledge of the existence of war between Japan and Germany;

That the fact that the ship made temporary anchorages at the Pagan and Saipan Islands amounts to no more

than that it cast anchor at "a no-man's island of an unknown sea," it should not, therefore, be considered in its later relationships, as its "last starting port," as stated in the imperial ordinance No. 5, article 1, or "the national port of the ship" or "the neutral port," as is mentioned in section 3 of the same article;

That, as the ship has solely been used for the regional, limited navigation, it should be released, together with its cargo, by virtue of the naval order No. 8, article 25;

That, for these reasons, it is urged the steamship *Zuimo* and its entire cargo on board should be released, reversing the original decision.

Argument for  
condemnation.

On the other hand, Matsukichi Koyama, procurator of the prize court at Sasebo, maintains:

That the ship under consideration belongs to the enemy and the cargo on board is "enemy goods on an enemy ship;" it is therefore clear that even the appellant does not dispute this point;

That the enemy ship may be exempted from capture at the time of outbreak of war only when it comes under the rules of the exemption expressly declared by the belligerent power; the simple fact that it lacks the knowledge of the outbreak of war does not itself exempt it from seizure;

That even admitting what the appellant contends that the captain and his crew were ignorant of the outbreak of the war, attention must be called to the fact that there is no provision in the imperial ordinance No. 163 of the third year of Taisho which relates to a ship like this one that left the Saipan Island of German possession after the outbreak of war between this country and Germany, namely, on September 8;

Enemy destination.

That as to the belligerent purpose of the transportation, there is no room for doubt when we come to consider the following facts: first, the cargo was war supplies; secondly, there were two German warships (*Scharnhorst* and *Gneisenau*) cruising in the southern Pacific at that particular time;

Thirdly, the fact that the captain, leaving the Pagan Island for the Saipan, left two letters in the charge of the administrator of the said island, which were very likely addressed to the captains of the German warships. But it is immaterial to investigate whether or not the ship transported the cargo for belligerent purposes, since it is enough to condemn it as prize when they are proved to be "enemy ship and enemy cargo";



That it is clear that Shanghai was its first port of departure and the Saipan Island was its last port of departure—this can be established judging from the fact that it was laden at Shanghai with coal and other war supplies for the German fleet of the southern Pacific—then sailing for the Pagan Island on August 7 where it cruised about three weeks around there, but failing to meet the fleet moved to the Saipan Island on September 4, where it remained until the 8th, when it decided to sail for Kobe in order to supplement the foodstuffs;

That the Saipan can not be considered as “a no-man’s island of an unknown sea”; because, according to the statements made by the first mate, Johann Hansch, and by Elbert Rosche, a passenger from the Saipan Island, there is Lau-Lau Bay in the east of Saipan, and in the west of Tanapag Harbor there are some habitations counting 2,400 natives, 15 Germans, and 8 Japanese; and not only that, but the map shows there is a harbor in the Tanapag Bay which bears the same name.

That, as stated in the original paper of decision, it is clear that the ship is not the “enemy ship used in the regional, limited navigation,” within the meaning of the naval order No. 25 of the third year of Taisho (A. D. 1914).

That in the whole view of the case it is proper that the original court condemned the ship and its cargo; and since there is no foundation for claim, it should be dismissed.

The following is the opinion of this court:

That, since there is no dispute as to the right of the ship in flying the German flag, since its cargo on board belongs to a German trading company, and since the ship and its cargo are of enemy character, there is no question about the condemnation even though the cargo were not for belligerent use;

That the exemption of such ship and cargo can be made only when they fulfilled the conditions provided by the express terms of the treaty No. 11 of the forty-fifth year of Meiji, the imperial ordinance No. 163, of the third year of Taisho, or the naval order No. 8 of the same year. Nevertheless, the fact that the ship set sail from Tanapag Harbor of the Saipan Island of German possession, on the 8th day of the third year of Taisho, which is proved by the log book of the ship and other documents, can not be denied. Therefore, the ship does

Saipan as a port.

Judgment.

Enemy vessel and cargo.



not come under the provision of the so-called "Imperial German ships which left their last starting port before the outbreak of war," of the imperial ordinance No. 163, article 5, of the third year of Taisho.

Port of departure.

It is clear, therefore, that they can not be exempted from seizure by virtue of the said provision, even though we accept the fact that the crews were ignorant of the outbreak of the war.

Though the appellant urges that the ship left its last starting port of Shanghai on the 7th day of August, of the third year of Taisho, and that its temporary anchorages at the Pagan and Saipan Islands are nothing more than its stoppages at "the no-man's island of an unknown sea," the logbook and other documents clearly show that it stayed for several days at Tanapag Harbor; and sent a second engineer ashore for medical treatment, while loading with some foodstuffs and taking a passenger aboard. Therefore, it can not be considered an anchorage at "the no-man's island of an unknown sea."

The so-called "last starting port," provided in the said imperial order No. 5, does not mean the base of the starting port of a voyage, but it simply means the last port during its navigation. This can be clearly seen in the cause of its origin, the treaty No. 6 of the forty-fifth year of Meiji, article 3. Therefore, the protest against this point has no foundation.

Local traffic.

Again, it can not be denied that the ship, possessing a tonnage of 1,903, was engaged in navigation for transportation of goods along the Yangtse River and the far eastern coast, with Shanghai as its base; this is proved by the builder's certificate of the S. S. *Zuimo* and other documents, and by the actual fact that the ship made voyages from Shanghai to Kobe. Therefore, the ship does not come under the provision "the enemy ship used for regional, limited navigation" of the naval order No. 8, article 25, of the third year of Taisho. Therefore, it can not be released by virtue of the said provision.

The so-called "enemy ships used in the regional-limited navigation" means simply those small craft used for the coastal transportation of a limited area; and this is clearly shown in the cause of the enactment of the treaty No. 11 of the forty-fifth year of Meiji. Again, therefore, this point has no foundation.

As stated above, there is no ground for appeal.

The court, therefore, is of opinion that the appeal should be dismissed.

At the supreme prize court, the 29th day of March of the fourth year of Taisho (A. D. 1915).

Baron Junjiro Hosokawa, Litt. D., president, the supreme prize court; Baron Koroku Tsutsuki, J. D. counsellor, the supreme prize court; Genji Baba, counsellor, the supreme prize court; Joichiro Tsuru; counsellor, the supreme prize court; Hideo Yokota, J. D. counsellor, the supreme prize court; Kajkuichi Murakamu, counsellor, the supreme prize court; Sakuei Takahashi, J. D. counsellor, the supreme prize court; Jujiro Sakata, counsellor, the supreme prize court; Chōzo Koike, counsellor, the supreme prize court; Mayuki Akiyama, counsellor, the supreme prize court; Jōji Matsumoto, J. D. counsellor, the supreme prize court.

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### THE SEIZURE AND DESTRUCTION OF THE GERMAN SAILING VESSEL "EORUS"

Jan. 9, 1915

(Prize court at Sasebo)

#### DECISION

Examining the statement of the procurator concerning the seizure of the German sailing vessel *Eorus*, the court renders the decision as follows:

The sailing vessel *Eorus* is decreed seized.

#### FACTS AND REASONS

The sailing vessel under our consideration is a possession of a Yaluit Joint-stock Co. of Hamburg, Germany, registered at Hamburg. Under German flag, the ship engaged in the transportation of goods among the islands of the southern Pacific. Statement of fact.

When the state of war was established between this country and Germany on the 23d day of August of the third year of Taisho (A. D. 1914), the ship sailed, without cargo, from the Yaruit Island, of the German Marshall Archipelago, for Honolulu, of the Hawaiian Islands of the United States, apparently in order to avoid capture in a neutral port. It was when the ship was passing a point on the sea on a course 75° west of north near the Diamond Head lighthouse, about 21° 12' 30''



north latitude; and  $157^{\circ} 55' 30''$  west longitude, on October 24 of the same year, that she was captured by the H. I. S. *Hizen*, which sent her to the bottom at a point 7.5 miles southwest of the lighthouse (that is, 7.5 miles from the coast), at 8.09 p. m. (Honolulu standard time), of the same day.

The above fact is well established by the document called "Captain's statement," the list of crew, the log book, the certificate of the nationality of the ship, a letter of Jansen Menke, of the branch office of the Yaluit Co., dated September 9, 1914, addressed to Harhachfeldt & Co. another letter of the same person, dated September 3, 1914, addressed to the base of the German Asiatic Fleet, the joint report by Lieut. Bikei Imaizumi and Capt. C. Friedrichsen on the seizure, and the report of Capt. Yasukata Kawanami, commander of the H. I. S. *Hizen*.

Destruction of  
prize.

The court is of opinion that a belligerent power can capture any enemy merchantman which navigates in the public sea, knowing the outbreak of war; and it is also a well-established rule of the international law, recognized by the theory and precedents, that the captor can destroy the prize in case it hinders the military action to take the captured ship into the captor's port.

Therefore, we are inclined to justify the action of the H. I. S. *Hizen* which captured the enemy ship as such when the latter was sailing toward Honolulu in order to avoid capture.

According to the statement made by Commander Kawanami of the H. I. S. *Hizen*, his warship was watching the German warship *Geier* which was sheltering itself in the port of Honolulu, and it was also preventing the northward movement of the powerful enemy fleet. Under these circumstances, it is quite obvious that the effect of the military action might have been hindered, if they transported the prize; therefore it is also lawful that they destroyed it.

Hence, the court decrees as stated in the text.

At the prize court at Sasebo, the 9th day of January of the fourth year of Taisho (A. D. 1915).

Taro Tezuka, president, the prize court at Sasebo; Fushi Inuru, counsellor, the prize court at Sasebo; Otojiro Ito, counsellor, the prize court at Sasebo; Terufusa Hori, counsellor, the prize court at Sasebo; Shunichi Nagaoka, J. D., counsellor the prize court at Sasebo; Yuichiro Kuma, secretary, the prize court at Sasebo.

THE SEIZURE OF THE NORWEGIAN STEAMSHIP  
"CHRISTIAN BOLES" AND ITS CARGO

(Prize court at Sasebo)

DECISION

Examining the statement of the procurator concerning the seizure of the Norwegian steamship *Christian Boles* and its cargo, the court renders the decision as follows:

TEXT

The steamship and its cargo on board should be released.

FACTS AND REASONS

The steamship under our consideration is a merchant-<sup>Statement of fact.</sup>man belonging to a Christian Boles Co. of Norway, and is registered at Bergen, Norway. Under the Norwegian flag, it has been engaged in transportation of goods. The said company has rented it to the J. J. Moore Co., of San Francisco, United States of America, which in turn rented the same to the Robert Dollar Co., of San Francisco, United States of America. Under that contract, the ship has been engaged in navigation between Shanghai, China, and the Pacific ports of the United States.

On the 27th day of January of the fourth year of Taisho (A. D. 1915) the ship put to sea from Shanghai for San Pedro, United States of America, laden with cotton oil, cowhides, eggs, poppy seeds, wool, pig iron, and other commodities. It carried aboard a passenger, one G. Blumenstock, a reserve surgeon of the German Army, who assumed a Swiss name of L. Belnasconie, under the status of supercargo.

Arriving at Kobe, via Karatsu, Japan, on February 1,<sup>Unneutral service.</sup> and being laden with corn and other goods, the ship was searched by the H. I. S. *Tatsuta*, and on the 5th of the same month it was declared seized on the grounds that the ship had aboard a man who most likely could help the military affairs against our country; that the captain's statement did not agree with the log book of the ship; and that the log book was disarranged.

The above facts are clearly established by the report of the acting commander, Saisuke Koizumi, H. I. J. N., lieutenant of the H. I. S. *Tatsuta*, the examinations of Capt. J. Hiller, the crew, and G. Blumenstock, the certificate of nationality of the ship, the certificate of registration of the ship, the list of crew, the charter party, the log book, the inventory, and the bill of lading.

The procurator urges that the capture of the said steamship was lawful, but that the ship and its cargo should be released immediately.



The court is of opinion that the captain did not present all the lists of crew when searched; and even those presented later do not coincide with the actual staff; moreover, the records are disarranged; and the captain's statement differs from the list of crew.

It was clearly learned by the dispatch from our consul general at Shanghai to the commander of the H. I. S. *Tatsuta* that one L. Belnasconie of Switzerland, registered in the list of crew as a supercargo has been dead for some four months. Again it is plain fact that the very ship secretly carried Von Hinsze, the German minister to China, under the false name of W. Rogers when it sailed on December 5, 1914, from Everett, United States of America, to Shanghai.

Under these circumstances, and judging from this man's conduct it is quite natural that the acting commander of the H. I. S. *Tatsuta* suspected him as a German officer in command of the ship in behalf of Germany for her military aim.

Therefore, we consider that the capture of the ship and its cargo was lawful.

Suspicion not  
well founded.

Despite all these facts it is the opinion of this court that the ship and its cargo should be released immediately on the following grounds:

Because the difference in the registered and actual number of the crew was only due to the fact that some of the crew went ashore at Karatsu on January 30—this fact was not reported to the searching officers:

Because the person who assumed the name Belnasconie was really a German surgeon, a reserve German Army surgeon, who had been practicing medicine in Shanghai, and was returning home in order to join the military force of his country, and traveled under a false name in order to avoid detention by the British authorities but was not commanding the ship for belligerent purposes; and,

Vessel restored.

Because the cargo on board is not contraband of war.

We decide, therefore, as stated in the text. At the prize court at Sasebo, the 26th day of February of the fourth year of Taisho (A. D. 1915).

Taro Tezuka, president, the prize court at Sasebo; Fushi Inuru, counsellor, the prize court at Sasebo; Thunichi Nagaska, J. D., counsellor, the prize court at Sasebo; Kai Matsuoka, counsellor, the prize court at Sasebo; On Hirose, counsellor, the prize court at Sasebo; Katsuji Kitamura, secretary, the prize court at Sasebo.