

1916
Feb. 24.

NOVA SCOTIA ADMIRALTY DISTRICT.

(IN PRIZE.)

Re THE SHIP "HOCKING."*Prize Courts—Transfer of cause.*

By virtue of the provisions of the *Imperial Prize Courts Act, 1915, c. 57*, a Canadian Prize Court will order, at the instance of the Crown, the transfer of a prize case to an English Prize Court for the purpose of the more convenient conduct of the proceedings.

MOTION on behalf of the Crown for the transfer of prize proceedings to an English Prize Court.

The S.S. "Hocking" was brought into the Port of Halifax, N. S., as a Prize by His Majesty's Ship "Calgarian," and proceedings were taken in this court at Halifax by Edmund L. Newcombe, K.C., the Procurator-General, on behalf of the Crown, to have her condemned as good and lawful prize.

Later a motion was made on behalf of the Crown to have all proceedings in this action transferred to the High Court of Justice, Probate, Divorce and Admiralty (Admiralty) In Prize, in London, G. B.

This motion came on for argument before the Honourable Mr. Justice Drysdale, Local Judge for the Nova Scotia Admiralty District, on January 23, 1916.

W. A. Henry, K.C., for the Crown, read an affidavit made by himself which referred to 3 exhibits, the latter being copies of the correspondence between the Honourable Bonar Law, the Colonial Sec-

retary to our Governor-General, copies of which follow. He also read an affidavit of Sir William Graham Greene, Secretary to the Admiralty in London, a copy of which follows. The grounds of the application are fully set out in said correspondence and affidavit.

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H. McInnes, K.C., in reply, read affidavit of Richard G. Wagner, of New York, U.S.A., a copy of which is attached hereto.

I, *Sir William Graham Greene*, Secretary to the Admiralty, make oath and say as follows:

1. It is the desire of His Majesty's Government that the proceedings against the S.S. "Hocking" should be transferred to the English Prize Court under the *Prize Courts Act*, 1915, (5 & 6 George 5, Ch. 57).

2. Amongst other reasons for such transfer I may mention the following:

(1) His Majesty's Government decided to seize and take proceedings against the "Hocking" under the Declaration of London Order-in-Council dated the 20th day of October, 1915, on the ground that though flying a neutral flag the ship had an enemy character and was liable to condemnation in accordance with the rules and principles formerly observed in the British Prize Courts. The "Hocking" was accordingly seized on the instructions of His Majesty's Government. She was brought into Halifax because that was the nearest convenient port to which to take her.

(2) No case has yet been decided under the said Order-in-Council. It is of the utmost pub-

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lic and international importance that the rules and principles formerly observed in British Prize Courts, which are to be applied in the case of the "Hocking," should be laid down by the English Prize Court. The English Prize Court has access to records which explain or illustrate the rules and principles formerly observed in such court, but the Prize Court in Halifax would not have this assistance.

(3) All, or most of the evidence in support of the claim for condemnation of the "Hocking" is in London.

(4) The proceedings would be more conveniently conducted on behalf of the Crown in the Prize Court in England owing to the information and materials being in the possession of the Officers of the Crown in London and to the complicated and difficult nature of the investigation which the case involves.

(5) The case will be ready for trial in the Prize Court in England and can be decided sooner than if the case is tried in Halifax.

(6) The Claim of the alleged owners to release of the steamship to them would be heard in the English Prize Court on affidavit evidence and they would not be prejudiced in any way in relation to the preparation of such evidence or the presentation of their case or otherwise by the findings being remitted to the Prize Court in England.

Sworn at the Admiralty, London, S.W., by the said Sir William Graham Greene, the 11th day of January, 1916. Before me, Arthur L., a Commissioner of Oaths.

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(Sgd.) W. Graham Greene.

*From Mr. Bonar Law to the Governor-General.
(Telegram. Code.)*

London, October 26th, 1915.

Official news, 26th October. Following Order-in-Council published second supplement "London Gazette," 22nd October. *Begins.*

At the court at Buckingham Palace, the 20th day of October, 1915. Present, the King's Most Excellent Majesty in Council. Whereas, by the Declaration of London Order-in-Council No. 2, 1914, His Majesty was pleased to declare that during the present hostilities the provisions of the said Declaration of London should, subject to certain exceptions and modifications therein specified, be adopted and put in force by His Majesty's Government, and whereas by Article 57 of the said Declaration it is provided that the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly, and whereas it is no longer expedient to adopt the said article now, therefore His Majesty, by and with the advice of his Privy Council, is pleased to order, and it is hereby ordered, that from and after this date Article 57 of the Declaration of London shall cease to be adopted and put in force. In lieu of the said article British Prize Courts shall apply the rules and principles formerly observed in such

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courts. This order may be cited as the Declaration of London Order-in-Council, 1915.

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty and each of His Majesty's principal Secretaries of State, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts and all Governors, Officers and authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain. *Ends.*

(Signed) Bonar Law.

From Colonial Secretary to the Governor-General.

London, February 16th, 1916.

With reference to your telegram 5th February, "Hocking." No further affidavit necessary on behalf of the Crown. Court should be pressed with argument that case of "Genesee," in which same company are claimants, has been transferred to United Kingdom and will shortly be heard, so that company will have to submit continuation "Hocking" proceedings Halifax would cause duplication, trouble and expense all parties; moreover, purchase of ship by company and all previous transfers mentioned Wagner's affidavit took place in Europe. Court prefers evidence by affidavit, so no commission New York necessary. Entries in company's books can be proved by certified copies. Application by Crown under *Prize Court Act, 1915*, should not be determined on similar grounds to those of application

change venue in civil proceedings. If court refuses transfer, leave to appeal should be asked for. Despatch follows.

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(Signed) Bonar Law.

From Colonial Secretary to the Governor-General.

London, February 17th, 1916.

With reference to my telegram 16th February, "Hocking" counsel advises as follows: It is true that defendant may apply to change venue in civil action on grounds that owing to local feeling it will not have fair trial, or owing to expense of bringing witnesses where oral evidence necessary. These grounds do not apply to prize case. Moreover, in civil case Crown has by virtue of prerogative right to select venue. It follows that Crown has the right to transfer under *Prize Court Act*, 1915, if it can thus conduct proceedings more conveniently. Moreover, prize is Imperial matter, and on Imperial grounds may be held responsible to neutral governments for result of proceedings. Imperial authorities therefore have the right to select court before which they can put their case to the best advantage.

(Signed) Bonar Law.

I, Richard G. Wagner, of Whitehall Building, 17 Battery Place, New York City, make oath and say as follows:

I. I am President and the organizer of the American Transatlantic Company, the owners of the above named Steamship "Hocking."

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I am fifty-three years of age, and I am a native-born American citizen. In my earlier years I was a contractor in a large way, but latterly I am engaged in the manufacture of beet sugar.

2. In February of this year I went to Denmark; my object was to buy in Europe beet sugar. While there I met Albert Jensen, coal merchant, of Copenhagen, who is a Danish subject, and whom I had previously known in a business way. In conversation with Jensen in reference to business matters he made an attractive statement to show that profits would be realized in purchasing and operating ships, as freights were likely to be very, very high. As a business speculation I decided to interest myself in the ship-owning business, and on my return to the United States I caused a company to be organized, under the laws of the State of Delaware, known by the name of the American Transatlantic Company. This company was organized the 22nd March, 1915, and among the ships that it purchased was the "Hocking," a British ship, built at West Hartlepool in the year 1895. She was registered at first in Great Britain, under the name of the "Parklands," and I believe the following to be a correct statement of her owners.

3. A Dutch firm by the name of W. Ryus & Zonan, Rotterdam, then purchased her, and she was registered as the "Ameland." The firm of W. Ryus and Zonan sold her on the 4th day of March, 1915, to the Aktieselskabet Dampskabet Gronland. The American Transatlantic Company purchased her at Copenhagen, and the bill of sale bears date the 9th day of June, 1915.

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4. Some difficulties were experienced in securing the American registry, but finally she was registered under the American flag on the 27th day of October, 1915.

5. The shareholders of the said American Transatlantic Company are all American citizens.

6. The capital of the American Transatlantic Company has all been subscribed by citizens of the United States. I myself am a large shareholder and the money I have put in this company was all my own, and I am not trustee for any funds belonging to other people, and I believe that no other person other than American citizens has any interest, directly or indirectly, in the capital stock of the company, and that no subject of any power at war with Great Britain, has any interest, directly or indirectly, in the said ship, or in the stock of the company that is her owner.

7. The said ship when seized was under Charter Party to proceed to Norfolk, Virginia, and there to load coal for the Argentine Republic.

8. The books of the said American Transatlantic Company and the records pertaining to the ownership of the "Hocking" are at the office of the American Transatlantic Company, New York City, and all material documents relating to the ownership of the "Hocking," and all material witnesses, so far as the defendants are concerned, are in said New York City, which is only two days by rail from the City of Halifax. A commission could be issued from the Prize Court at Halifax, and evidence all taken and returned to the said court in one week.

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9. My solicitor practises in Halifax, and my counsel in New York and Washington, and I would say that the balance of convenience in favour of trying the cause at Halifax, instead of London, preponderates in favour of Halifax. The evidence that is in London can only be documents, and these can be transmitted to Halifax in due course of mail, and I am willing to instruct my counsel to proceed with the trial of the action at once, and will undertake that no technical objection as to admissibility of evidence be raised at the trial; however, reserving all rights and not consenting or admitting that any Prize Court has jurisdiction of these vessels, and always contending that the seizure and all proceedings thereunder were and are without cause or justification and in violation of established international law.

10. I am disclosing my case fully on the records, and it will be unfair to me to have this case tried in London, where evidence cannot be quickly obtained to substantiate my case and meet the case of my opponents, and the delays must therefore of necessity be very great.

11. It is a great loss to the company, of which I am a large shareholder, to have the "Hocking" requisitioned, as freights are excessively high, and now is the time I want to build up the business of my company, and I am therefore desirous of such action as will secure the immediate release of this vessel.

(Signed) Richard G. Wagner.

DRYSDALE, Loc. J. (February 24, 1916) delivered judgment.

A summons was taken out on December 3rd, 1915, for an order that the proceedings herein be transmitted to the High Court of Justice, Probate and Admiralty Division, the Prize Court in England. The motion was made by counsel for the Crown and is based on the *Imperial Act*, cap. 57 of the Acts of 1915.

That Act specially provided for an order remitting proceedings in Prize when it is made to appear that the proceedings can be more conveniently conducted in any other Prize Court. When the motion first came on for hearing the argument stood over pending conferences between counsel, representing all parties, with a view to some agreement between the parties as to the disposition of the motion. The parties having failed to agree, the argument was continued before me, and concluded yesterday, and I have now to determine whether a case has been made within the terms of the Act, cap. 57, that justifies an order to transmit the proceedings to the English Prize Court as contemplated by that Act.

The Ship "Hocking" was brought into this jurisdiction as a Prize and proceedings to condemn her taken by the Crown in this court. In the ordinary course these proceedings should proceed to their legitimate conclusion and such proceedings would be as of course unless this motion is well formed under sec. 1 of the Act, cap. 57. The question is, has it been established on the material before me that the proceedings can be more conveniently conducted in another Prize Court? The motion as launched was not based upon any material, other than a desire

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on the part of Crown officers to have the case remitted, and if at that stage the motion had been concluded, the Crown officers had not, I think, made a case within the Act. It is not the mere desire of one side or the other as to where the case should be disposed of that is covered or intended to be covered by the Act, but the convenient conduct of the proceedings that is, I take it, the convenience of all the parties should be the test.

I heard a good deal on the argument about the great importance of the proceedings, as well as of the Crown's prerogative rights, matters that I think have no bearing on the motion, at least matters not touched upon by the Act in question, and for very obvious reasons not intended to be touched upon, matters that I pay no attention to in endeavouring to come to a decision on this motion. As I have already intimated, I should be guided by ascertaining the proper solution on the question of convenience, that is, the convenience of all the parties.

The owners of the defendant ship reside in New York and they naturally insist that a disposition of the cause here would be much more convenient to them than a disposition in London. *Primâ facie*, this is so, but on the argument it appeared that another ship of the same owners was lately taken into a Prize Court on this side of the Atlantic and that proceedings in respect to such ship have been remitted to the Prize Court in London. It also was made to appear that the material for the defence of said owners' position in that case is in all respects practically the same as the material they require for defence in this case, and under such circumstances it occurs to me that it will be a convenience for the defence to have the proceedings in this case

proceed in the London Court when such owners are there defending the case already so remitted. This point is the determining factor with me. If proceedings here are not remitted, the defence must at practically the same time, or on or about the same time, make their defence both in London and here, and to obviate this I have determined to remit the proceedings as provided for in the Act mentioned to the Admiralty Division as Prize in London, England.

Motion granted.

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