

1915
Jan. 20.

NOVA SCOTIA ADMIRALTY DISTRICT.

(IN PRIZE.)

In re CARGO *ex.* THE SHIP "SANDEFJORD."*Prize—Cargo—Pleadings.*

Where parties appear and make claim to a cargo seized as a prize, the claimants are to commence their action by a petition or statement of claim, in the form of pleadings, to which the Crown pleads by what is technically called under the rules an answer.

MOTION for the filing of pleadings in an action for the condemnation of a cargo as a prize.

Alfred Whitman, K.C., solicitor for the Guarantee Trust Company, of New York, William T. Baird and Frederick Karl Fritsch, claiming to be the owners of 36 cases of rubber marked "(B) Copenhagen" and of 85 cases of rubber marked "B. Copenhagen," which were laden on board the ship "Sandefjord" at the time she was taken and seized as a prize off the coast of New York, of the United States of America, by His Majesty's ship "Suffolk," Bentick J. D. Yelverton, commander, and brought into the port of Halifax, Nova Scotia, and which is sought to be condemned in this action as good and lawful prize, after entering an appearance for said owners, took out a chamber summons requiring that Edmund L. Newcombe, K.C., the proper officer of the Crown, appointed in that behalf to attend before the Local Judge in Admiralty, at the County Court House in Halifax, N. S., on the 15th day of January, A.D. 1915, at 3 o'clock in the afternoon, to show cause why the above named Edmund

L. Newcombe, K.C., the proper officer of the Crown, should not deliver pleadings in the action by filing a petition or statement of claim setting forth the facts on which the said officer bases his claim herein in the Registry of this Honourable Court, and serve a copy of said petition or statement of claim on the other parties in this action, and that an order do pass accordingly.

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of Counsel.

On the return of this chamber summons on January 15th, 1915, *A. Whitman*, K.C., for the petitioner, asked that such order be granted by the judge.

A party instituting a cause or making a claim shall, if ordered by the judge, file a petition in the Registry, etc. *Tiverton's Prize Law*, pp. 79 and 80. Order 7, rule 1 to 5.

A party instituting a cause or making a claim includes the "proper officer of the Crown" and the party's solicitor. Order I., see "Party."

Thus under Order I. interpretation makes the word "party" used in Order 7, rule 1, apply to the "proper officer of the Crown." See also the interpretation of the word "claimant" and "solicitor" and "party."

Mr. Newcombe is a party instituting a cause as he issues a writ. Order 2, rules 1 and 2.

If the contention of the other side is correct, the party for whom I am acting cannot rest satisfied by simply resisting the claim for condemnation. By his contention they must set up a claim for damages or otherwise before they can present a petition. Suppose my clients did not wish to put in any claim for damages at all, they would practically be out of court.

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The true construction of the rules is that the claim or petition must be put in by the "proper officer of the Crown."

W. A. Henry, K.C., for the "proper officer of the Crown," contra.

In this case we have issued a writ of summons against the cargo for condemnation as lawful "prize" on behalf of the "proper officer of the Crown."

The owners of the cargo, the claimants, and not the Crown, are the proper parties to put in the claim and petition. See Order 7 and Order 13. See also *Tiverton*, page 55, "(c) Forms of Claim." See also *Tiverton*, page 53, "II. Procedure."

All the rules contemplate that the claimants shall put in their claim and petition, otherwise they have no status in the action and will not be before the court.

DRYSDALE, Loc. J. (January 20, 1915) delivered judgment.

The writ issued herein on December 31st, 1914, for the condemnation as prize of gum or rubber and hog casings. Appearance was entered by Mr. Whitman as solicitor for the Guarantee Trust Company, *et al.*, as owners of that portion of the cargo marked "Gum," under date of 7th January, 1915; appearance also being entered by Mr. Fulton on the same day as solicitor for Sulzberger & Co., owners of the hog casings. The writ herein was issued at the instance of E. L. Newcombe, the proper officer of the Crown. On the 12th of January Mr. Whitman took out a summons calling upon Mr. Newcombe to show

cause why he should not deliver pleadings in the action by filing a petition or statement of claim setting forth the facts on which the Crown bases its claim herein for condemnation.

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Mr. Henry, acting for Mr. Newcombe, does not object to pleadings in the action, but contends that the claimants are the parties to commence the pleadings by filing a petition and that the place of the Crown is to answer such petition. A claim has not yet been filed by the parties appearing, but I am informed by counsel that counsel for Mr. Fulton, the solicitor appearing for owners of the casings, desires to join in this application for pleadings, and that claims on behalf of the respective owners of cargo will be filed under the rules forthwith. I will direct pleadings in the action as a matter of course and this is not objected to, but parties desire my ruling as to the proper party to begin such pleading. An examination of the rules of 1914 and the prescribed forms issued therewith convinces me that Mr. Henry's point is well taken. By Order 3 a party appearing may make a claim in respect to all or any of the cargo and forms therein are provided. I am informed claims are to be filed. By Order 7 a party instituting a cause or making a claim shall, if ordered, file a petition, and forms are provided. I think it is the plain intention of the rules that where a party appears and makes a claim, if pleadings are directed, the claimant should begin by filing his petition, to which the Crown answers and on the petition and answer the cause goes down to trial in the absence of any further order.

The party instituting the cause may be ordered to file a petition, and in a proper case this could be

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done; but when parties appear and make a claim, I think the rules contemplate a petition or statement of claim of such parties in the form of pleadings, to which the Crown pleads by what is technically called under the rules an answer. This will be my direction in this case, and after the claim or claims be duly made herein, an order will pass for pleadings.

Judgment accordingly.