

NOVA SCOTIA ADMIRALTY DISTRICT.

(IN PRIZE.)

1916

Jan. 7.

In re THE STEAMSHIP "HAMBORN" (No. 1).*Prize—Appraisement—Ship—Coal.*

In appraising a ship brought in as a prize the coal in the bunkers is not to be appraised as part of the ship; it should be inventoried separately. Where the appraisers have acted in good faith the Court will not interfere with their judgment.

MOTION to set aside appraisement of ship taken as prize.

This ship was seized by H.M.S. "Melbourne" whilst on a voyage from New York to a port in the Island of Cuba. The said steamer was seized as lawful prize and brought into the port of Halifax on or about November 2nd, 1915, where she was taken possession of by the marshal, and an action began against her in this court as lawful prize at the suit of the Crown at the instance of *Edmund L. Newcombe*, K.C., the Procurator-General.

An appearance was entered by *A. G. Morrison*, K.C., for the owners of the defendant ship; the *Maatschappij, Stoomtoot, Hamborn Company*, a body corporate, incorporated under Dutch law on October 23rd, 1913, with its head office at Rotterdam, Holland, a corporation of a neutral State.

By an order of the court a commission of appraisement was issued to Samuel M. Brookfield and Neil Hall, of Halifax, to appraise the ship and her cargo. These appraisers reported that they valued the

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Steamer "Hamborn," 1229 tons register, including her outfit, special parts and what is on board, which they considered additional to her outfit as per inventory attached (the latter included the 182 tons of bunker coal claimed to be owned by the Munson Company, of New York) at £28,700.

A. G. Morrison, K.C., for the owners of the Steamship "Hamborn," took out a chamber summons to set aside this appraisal and to have the steamer re-appraised.

This motion came up for argument before the Local Judge in Admiralty on January 6th, 1916.

W. A. Henry appeared for the Crown and *A. G. Morrison*, K.C., and *H. McInnes*, K.C., for the Steamer "Hamborn" and her cargo. *Morrison*, K.C., read affidavits of Willem Van Eyken, the master of the steamer, and exhibits referred to therein and an affidavit of his own with exhibits referred to in it. These affidavits showed that the Steamship "Hamborn" was built in Antwerp, 1229 tons gross, 742 tons net. The owners valued her at £50,000. A mercantile publication in England called "Fair-play" was quoted which gave a number of record sales of steamers in England, some of which were about the same age and tonnage as the "Hamborn," but they sold for a much larger sum than the appraisal of this steamer. Amongst the sales mentioned were the Norwegian Steamer "Hilda Lee" (ex Cyquers), 1185 tons gross, 713 tons net, built by Wood Lhinney Co., Newcastle, 1906—sold November 11th, 1915, for £35,750.

The Danish Steamer "Active," 1291 tons gross, 763 tons net, built and engined in Copenhagen in 1900—sold November 11th, 1915, for £38,500.

The Dutch steel Steamship "Ottoland" (ex Maassted), 1574 tons gross, 978 tons net, built by N. W. Schiepswerf, at Alclassertlam in 1901—sold on October 14th, 1915, for £41,250.

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The Norwegian steel Steamship "Asturia," 1185 tons gross, 741 tons net, built and engined by the Mylande, Vaerkstad, Christiana in 1905—sold on December 2nd, 1915, for about £37,000.

The steel Steamship "Winnfield" (ex "Louis Botha"), 3433 tons gross, 2205 tons net, built by W. Gray & Co., West Hartlepool, in 1901, was absent December 2nd, 1915, for £56,500 for February delivery. This vessel was sold in 1907 for £22,300, in May, 1915, for about £38,000, and in June, 1915, for about £41,000.

He also submitted that the price for prompt steamers was steadily going upward and that the number for sale was steadily decreasing owing to the large number requisitioned by the Government and sunk by mines, etc.

The earning capacity was greatly increased by the excessive rates now being offered for the carrying of freight to all ports.

He also contended that it being admitted that the bunker coal, owned by the Munson Steamship Lines, of New York, having been included in the valuation of the steamer and her cargo, and not being appraised separately, made the whole appraisement bad.

W. A. Henry, K.C., in reply, read affidavits of the appraisers.

These showed that they not only consulted "Fairplay," a shipping journal, but also the "Shipbuild-

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ing and Shipping Record," also published in England, the latest available issues of the latter available when they made the appraisal being those of November 11th and 18th, 1915. From these they extracted essential particulars for the purpose of intelligent comparison, and prepared a table of sales, tonnage and prices realized. From this table they figured out the selling prices of the several steamships which they found reported in the said issue of November 11th, 1915, per dead weight ton. The highest price so ascertained was about £13 per dead weight ton for a steamship, the "Cadmus," built in 1911. They then ascertained the dead weight tonnage of the "Hamborn" to be 1975 tons. Dividing that figure into £28,700, the appraised value of the "Hamborn," it worked out at over £14 per dead weight ton.

The reported sale price of the "Hilda Lee" they regarded as a special price due to special considerations. For greater certainty they obtained the opinion of C. W. Kellock & Co., of London, England, as to the value of the Steamship "Hamborn," which was £27,000, providing she was in good sea-going condition and fully equipped.

The appraisers placed the value of the "Hamborn" at £28,500 and the value of the coal and other stores on board the steamship at £200.

Mr. Henry also submitted the fact that the bunker coal being appraised with the steamer did not vitiate the appraisal, but that the court could order the appraisal to be amended by the appraisers and the correction made.

Judgment was reserved. On January 7th, 1916, the Honourable Mr. Justice Drysdale, Local Judge of the Nova Scotia Admiralty District, delivered the following judgment:

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DRYSDALE, L. J., now (January 7, 1916) delivered judgment.

By an order made herein on December 1st, 1915, a Commission was directed for the appraisement of the above named ship, a Commission duly issued and a return made by the Marshal and appraisers in and by which it appears the law ship "Hamborn" was appraised at £28,700, including her outfit as per inventory attached to said return. It appears that coal in the bunkers of the steamer mentioned in said inventory was put on board by the Munson Steamship Line, who are making a claim therefor, and that the value of the coal is included in the valuation of £28,700 returned as the value of the ship.

Counsel for the Munson Steamship Line desire that the value of the coal be appraised separately from the value of the ship, and on December 30th a summons was taken out herein by the Munson Line's solicitor calling upon the proper officer of the Crown and the solicitor for said ship to shew cause why an order should not be granted herein that the appraisement made should not be set aside and an order granted that the 182 tons of coal in the bunkers of the "Hamborn" be appraised separately and apart from the steamer.

The putting in the coal in the inventory of the ship's filings and including the same in the ship's valuation seems to have arisen by mistake and now all the parties desire that the appraisement be sent back to have a separate valuation and appraisement

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made of the coal mentioned. This will be granted and is a matter easily adjusted.

A more serious attack is, however, made on the appraisalment by Mr. Morrison, solicitor for the said ship, and on December 31st, 1915, such solicitor took out a summons calling upon all parties to shew cause why an order should not be granted to set aside the appraisalment made herein under order of 1st December, and all the proceedings had thereunder on the ground that the appraisalment was too low in amount, that the appraisers had acted on a wrong principle in making the appraisalment and in arriving at the ship's value and that the return to the Commission disclosed a valuation of the "Hamborn" very much less than her real value. In support of this application were read the following affidavits:

1. Affidavit of William Van Eyken sworn December 21st.
2. Affidavit of William Van Eyken sworn December 31st.
3. Affidavit of A. G. Morrison sworn December 21st.
4. Affidavit of A. G. Morrison sworn December 31st.
5. Affidavit of A. G. Morrison sworn January 6th, 1916.
6. Affidavit of William Van Eyken sworn January 6th, 1916.

Cause was shewn on this summons, Mr. Henry, K.C., heard on behalf of the Crown, who submitted the affidavits of Captain Neil Hall and Samuel M. Brookfield, sworn respectively on the 5th and 6th of January.

The argument submitted by counsel in support of this motion seemed to me to disclose and to disclose

only an attack on the judgment of the appraisers selected by the Marshal in arriving at the valuation returned, and such an attack cannot prevail in a motion against the appraisement. The appraisers selected were men of high standing, thoroughly capable for the work they undertook and I have little doubt respecting the accuracy of the return. They seem to have acted upon the proper principle and in my opinion no case is made to authorize or enable me to interfere. An order will go directing appraisement of the coal and ship separately, but the motion attacking the appraisement under the summons taken out by Mr. Morrison will be dismissed with costs.

Motion dismissed.

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