

1916
Feb. 21.

NOVA SCOTIA ADMIRALTY DISTRICT.

(IN PRIZE.)

In re THE STEAMSHIP HAMBORN (NO. 2.)*Prize—Ship and appurtenances—Coal.*

Bunker coal does not pass as part of a ship brought in as a prize.

CLAIM for coal, or value thereof, on board of ship taken as prize.

The Ship "Hamborn" was seized by His Majesty's Ship "Melbourne" whilst on a voyage from New York to a port in the Island of Cuba and brought as lawful prize into the Port of Halifax, where proceedings were instituted against her for condemnation as lawful prize on November 2, 1915, by the Crown at the instance of *Edmund L. Newcombe*, K.C., Procurator-General.

An appearance was entered for the said ship by *A. G. Morrison*, K.C.

An appearance was also entered by *W. H. Fulton*, K.C., for the Munson Steamship Lines of New York, who claimed to be owners of 225½ tons of bunker coal which was on the said steamer when she was so seized and brought to Halifax.

The claim of the Crown as to the "Hamborn" being a lawful prize was not tried here, but it was intended that the trial thereof should take place later on in the High Court of Justice, Probate, Divorce and Admiralty Division (Admiralty) In Prize in London, G. B., and the papers transmitted there.

The Munson Steamship Lines' claim was as follows:

"The claim of the Munson Steamship Lines, of New York, who are the time charterers of the Steamship "Hamborn," now in prize, and who are an incorporated company, whose head office is in the State of New York, and subject to the jurisdiction of the Government of the United States, is for the return of 225½ tons of bunker coal, or the value thereof, at \$4.90 per ton.

The said Munson Steamship Lines are and were the true and lawful owners of the said bunker coal, at the time the "Hamborn" was captured by H.M.S. "Melbourne," on Wednesday, October 27th, 1915, and ordered to proceed to Halifax, where the Steamship "Hamborn" was ordered to be held as a prize. Under a time charter with the owners of the "Hamborn," she was to take a general cargo of freight to Caibarien, in the Island of Cuba, and under the terms of the charter, the said Munson Steamship Lines were to furnish the bunker coal.

The trial took place before the Local Judge in Admiralty at Halifax, N. S., on January 7th, 1916. *H. McInnes*, K.C., appeared for the claimants, the Munson Steamship Lines, and *W. A. Henry*, K.C., for the Crown. The evidence for the claimants showed that the Munson Steamship Lines were the owners of the coal and that they had supplied the number of tons claimed. The appraisement at Halifax fixed its value at \$4.90 per ton.

McInnes, K.C., asked for judgment for the amount claimed.

Henry, K.C., contended that the Crown was not liable unless it had been finally determined that the

1916

RE THE
"HAMBORN."
(No. 2.)Argument
of Counsel.

1916

RE THE
"HAMBORN."
(No. 2.)

Reasons for
Judgment.

defendant ship was not liable to be condemned in prize.

This could not be ascertained until the main trial of the action took place and the claimants' trial herein for the coal was premature.

Judgment was reserved, and on February 21st, 1916, the Honourable Mr. Justice Drysdale, Local Judge of the Nova Scotia Admiralty District, delivered the following judgment:

DRYSDALE, L. J., now (February 21, 1916) delivered judgment.

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, brought into the Port of Halifax and on November 2nd, 1915, taken charge of by the marshal of this court, and this action to condemn the said ship as lawful prize is now pending. At the time of the seizure there was on board the said Steamer "Hamborn" 225½ tons of bunker coal, the property of the Munson Steamship Lines, the charterers of the "Hamborn." A claim has been asserted in this court by the said Munson Steamship Lines as against the Crown to recover the value of such coal and a claim herein duly filed under date of 29th November, 1915. A hearing was had before me as to this claim without pleadings, and I am asked to decide the question whether or not under the circumstances the Crown is liable for the coal in the bunkers on board at the time of the seizure. I note that at the time the vessel was seized by the "Melbourne" the coal on board amounted to 225½ tons, but as the "Hamborn" was directed to Halifax and came here under her own steam, more or less coal was used in steaming here, so that at the time of the

appraisement we found the actual coal on board reduced to 182 tons. I think that if there is liability here on the part of the Crown it must be for the coal on board at the time of seizure, viz., 225½ tons. The Crown officers do not admit liability in this respect. They do not question the amount claimed as a reasonable charge or price for the coal and simply submit the question of liability. As the action respecting condemnation of the "Hamborn" has not yet come on for hearing, and I am asked by the parties interested to dispose of this claim for coal at this stage, I think I can only do so on the assumption that the Ship "Hamborn" was lawful prize at the time of seizure. Assuming this to be so, the question presents itself, does the coal pass as part of the ship? It is common ground that the "Hamborn" was under time charter to the Munson Line at the time of the seizure and it is not disputed that by the terms of the charter the charterers were to supply the bunker coal used by the "Hamborn" and that the coal in question was placed on board the "Hamborn" by the Munson Line for the intended voyage to Cuba. If the ship at the time of the seizure on said voyage was lawful prize, can it be said under these circumstances the coal on board passes with the ship simply because the ship is lawful prize?

Counsel for the Crown relied upon the disallowance of a claim for coal made in connection with the condemnation of the cargo of the Steamship "*Roumanian*,"¹ which, he submitted, had some bearing. An examination of the facts in that case, however, satisfied me it is no authority here and has no application under the circumstances of this case. The

1916

RE THE
"HAMBORN."
(No. 2.)Reasons for
Judgment.

1916

RE THE
"HAMBORN."
(No. 2.)

Reasons for
Judgment.

right of the Crown to the bunker coal here must depend on what properly passes as the ship. I am assuming the ship was properly taken. It is true, I think, that a transfer of a ship passes not only the ship but the ship and its appurtenances. It would, I think, include spare machinery, duplicate anchors, anything in fact which a prudent owner had on board for the purposes of the ship and without which it would not be prudent to go to sea. But here the Munson Line that put on the coal is not the owner and not even temporary owner, but simply time charterer, and I do not think it can be reasonably said that even a transfer by the "Hamborn" owners of the ship would pass the charterers' coal. What passes by a simple transfer of the ship is discussed and considered in the case of *Coltman v. Chamberlain*.¹ In that case Charles, J., had occasion to consider what passed under a mortgage of a ship simply by a conveyance of the ship, and his opinion is concurred in by Vaughan Williams, J. I take that decision to be an authoritative declaration on the subject and instructive in considering the question submitted here.

With this ship, the "Hamborn," the Crown took the coal and cannot, I think, retain it without paying its value simply because the ship was lawful prize. The coal under the circumstances here cannot, I think, be said ever to have become a part of the ship, and I feel obliged to hold that the Crown must pay for the coal at the price claimed, that is to say, for the amount on board at the time of the seizure.

Judgment for claimant.

¹ 25 Q.B.D. 328.