In the High Court of Justice.

PROBATE, DIVORCE, & ADMIRALTY DIVISION.

ADMIRALTY.

(In Prize.)

THE KIM.

THE ALFRED NOBEL.

THE BJORNSTERJNE BJORNSON.

THE FRIDLAND.

BEING THE ARGUMENTS IN THE ABOVE CASES

AND

THE JUDGMENT

OF

SIR SAMUEL EVANS.

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England.

IN THE HIGH COURT OF JUSTICE.

PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

ADMIRALTY.

[In Prize.]

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July 12, 15, 16, 20, 21, 22, 23, 26, 27, 28, 29, 30;
Aug. 2, 3;
Sept. 16.

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THE ALFRED NOBEL.
THE BJORNSTERJNE BJORNSON.
THE FRIDLAND.

[1914 Nos. 405, 395, 342, 384.]

Prize Court—Evidence in Prize Cases—Contraband, Absolute and Conditional—Continuous Voyage—Ultimate Hostile Destination—Orders in Council of August 20 *and October* 29, 1914.

In prize proceedings the Court is not governed or limited by the strict rules of evidence which bind our municipal courts, as it has always been deemed right to recognize well-known facts which have come to light in other cases or as matters of public reputation: see per Lord Stowell in *The Rosalie and Betty* (1800) 2 C. Rob. 343, and the judgment in an American authority, *The Stephen Hart* (1863) Blatch. Prize Cases, 387, at p. 403; but when any presumptions or inferences have to be considered, any concealment or misdescription, or device calculated and intended by neutrals to deceive and to hamper belligerents in their undoubted right of search for contraband, will press heavily against those adopting such courses. Neutrals are expected to conduct their neutral trade during war not only without having recourse to fraud or false papers, but with candour and straightforwardness, that is to say (in the words of the American Supreme Court), "Belligerents are entitled to require of neutrals a frank and bona fide conduct." Hence the Court came to the conclusion that the use of the word "gum," in the papers of one of the above ships, was not an accurate commercial description, and its use in the manifest instead of the appropriate commercial description of "rubber," or various qualities of rubber by their commercial names, was adopted in order to avoid the inconvenience or difficulties which would result from a search and possible capture. The Court further found that the charterers of the vessel were responsible for the misdescription and that the sale of the goods in question to one consignee and the purchase and payment for them by him were honest business transactions; but, in respect of another parcel, the Court held that the alleged purchaser had not made out his claim to be the owner of the goods, that he knew of the description "gum" being applied to them, that the rubber was on its way to enemy

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territory through the German Consul at Landskrona in Sweden, and that rubber having been declared absolute contraband the parcel in question was confiscable.

The doctrine of continuous voyage or transportation, both in relation to carriage by sea and to carriage over land, became part of the law of nations prior to the commencement of the present war, and, in applying the principles of international law to the doctrine, regard must be had to the circumstances of the times, including "the circumstances arising out of the particular situation of the war, or the condition of the parties engaged in it": see *The Jonge Margaretha* (1799) 1 C. Rob. 189. Accordingly the Court, in respect of the present cases before it, was not restricted in its vision to the primary consignment of goods from New York to the neutral port of Copenhagen, but was entitled and bound, when the doctrine was applied to the carriage of contraband, to take a more extended outlook in order to ascertain whether this neutral destination was merely ostensible, and, if so, what the real ultimate destination was: see *The William* (1806) 5 C. Rob. 385; *The Bermuda* (1865) 3 Wall. 514; for according to the view of Bluntschli, "If the ships or goods are sent to the destination of a neutral port only the better to come to the aid of the enemy, there will be contraband of war, and confiscation will be justified."

The consignment to "order or assigns," without naming any consignee, is a circumstance which has been regarded as important *in time of war* in determining the real or ostensible destination at the neutral port.

Guided by the above considerations, the President (Sir Samuel Evans) held that the cargoes of the four vessels before the Court (other than the portions acquired by persons in Scandinavia whose claims were allowed) were not destined for consumption or use in Denmark or intended to be incorporated into the general stock of that country by sale or otherwise; that Copenhagen was not the real bona fide place of delivery, but that the cargoes were, by the intention of the shippers, on their way, at the time of capture, to German territory as their actual and real destination, and that, in the circumstances, the cargoes must be condemned as lawful prize: for, from the facts proved, and the reasonable inferences from them, it was to be presumed (whether either or both the Orders in Council of August 20 and October 29, 1914, were deemed effective and binding, or not) that these goods were destined for the use of the German Government or its naval or military forces, and, further, that if the conclusions arrived at were only accurate as to a substantial proportion of the goods the whole would be affected, because contraband articles are said to be of an infectious nature, and contaminate the whole cargo belonging to the same owners.

THE above named four vessels, of which the first three were Norwegian, and the fourth Swedish, were, when captured by British forces, under time charters to an American corporation,

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the Gans Steamship Line, of which company the president, John H. Gans, was a German, and the general agent of the company in Europe was also a German. The four vessels started within a period of three weeks in October and November, 1914 (the last three on October 20, 27, and 28 respectively, the first on November 11), on voyages from New York to Copenhagen, with very large cargoes of lard, hog and meat products, oil stocks, wheat and other foodstuffs. Two of them (the *Fridland* and the *Kim*) were in part laden with rubber, and one of them (the *Kim*) with hides. The total cargoes of the four vessels amounted to 73,237,796 lbs. in weight, and the claims covered 32,312,479 lbs., exclusive of the rubber and hides. The vessels were captured on the voyage (the *Alfred Nobel* on November 5, the *Fridland* on November 10, the *Bjornsterjne Bjornson* on November 11, and the *Kim* on November 28, 1914), and their cargoes were seized on the ground that they were conditional contraband, with the exception of one parcel of rubber on the *Kim* which under the Order in Council of October 29, 1914, was seized as absolute contraband.

The questions before the Court related only to the cargoes. Questions as to the capture and confiscation of the ships were reserved for argument hereafter.

An Order in Council adopting with modifications the provisions of the instrument known as the "Declaration of London" was promulgated on August 20, 1914, and another on October 29. Proclamations as to contraband, absolute and conditional, were issued on August 4, September 21, and October 29, 1914. By the Proclamation of August 4 all the goods now claimed (other than rubber and hides) were declared to be conditional contraband.

The Attorney-General (*Sir Edward Carson*), *the Solicitor-General* (*Sir F. E. Smith*), *Cave, K.C., R. A. Wright, Pearce Higgins*, and *J. Wylie*, for the Crown.

Sir Robert Finlay, K.C., Laing, K.C., and *W. N. Raeburn*, for Armour & Co.

Sir Robert Finlay, K.C., Leslie Scott, K.C., and *W. N. Raeburn*, for various Danish consignees.

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Leslie Scott, K.C., and *C. R. Dunlop*, for American shippers, Morris & Co. and Stern & Co.

Leslie Scott, K.C., and *R. H. Balloch*, for the owners of the *Fridland*.

Maurice Hill, K.C., and *A. Neilson*, for Sulzberger & Co.

Maurice Hill, K.C., and *J. B. Aspinall*, for the Cudahy Packing Company.

Ernest Pollock, K.C., and *C. F. Lowenthal*, for Swift & Co. and Hammond & Co.

F. D. MacKinnon, K.C., and *W. N. Raeburn*, for Fearon, Brown & Co.

A. D. Bateson, K.C., and *D. Stephens*, for Fearon, Brown & Co. (wheat cargo).

Adair Roche, K.C., and *R. H. Balloch*, for the owners of the *Kim*, the *Alfred Nobel*, and the *Bjornsterjne Bjornson*.

Dawson Miller, K.C., and *A. Neilson*, for Ullman & Co. (consignees of rubber).

E. W. Brightman, for claimants of rubber on the *Kim*.

Douglas Hogg, for W. T. Baird.

H. C. S. Dumas, for the Guaranty Trust Company of New York and other shippers of grain, and for various consignees.

The Attorney-General for the Procurator-General on behalf of the Crown, in the case of the *Kim*, suggested that it would be convenient if the cases of the *Alfred Nobel*, the *Bjornsterjne Bjornson*, and the *Fridland* were dealt with at the same time, as with some minor distinctions the main points at issue, as regards the claimants, the nature of the cargoes, and their destination, were practically the same, and in fact there were some thirty-eight ships whose cargoes involved similar points to be decided.

The Court assented to the suggestion, and in opening all four cases the Attorney-General pointed out that an explanation of the situation was derived from the consideration that, on the war breaking out, Copenhagen was turned into a depot for the feeding of the enemy's troops and garrisons all along the coast, as the Germans were unable to carry on their trade, in the way it had been done, from Hamburg or from Stettin, and, that trade being

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stopped, it was diverted to Copenhagen with a view to regard, and to use, that port as being—as it was in fact—a neutral port, and that there were neutral subjects in America dealing with this neutral port in neutral ships. The arguments of the Attorney-General based upon this assumption and applied to the details of each parcel of goods will be found fully stated in the judgment.

As to the claimants, the facts as to their cases may be shortly summarized thus:

Four large American firms were consignors of goods on each of the four vessels, and a fifth on two of them, the total amount of lard and meat products being 23,274,584 lbs. These five claimants, as shippers and consignors of the goods, alleged that the goods had remained their property, and based their claims upon ownership at the time of seizure. The other claimants were persons or firms chiefly in Denmark. They claimed that they had become the purchasers of goods (lard, cotton oil, beef casings, oleo stock, fat backs, smoked bacon and beef tongues) laden on the various vessels. A firm of Ullman & Co. claimed rubber on the *Fridland* and the *Kim* alleged to have been bought from a firm of E. Maurer & Co. W. T. Baird claimed rubber on the *Kim* amounting to 29,771 lbs. A firm of Marcus & Co. claimed hides on the *Kim* amounting to 18,968 lbs. The Guaranty Trust Company of New York claimed wheat and flour on the *Bjornsterjne Bjornson* and the *Fridland*. Armour & Co.'s direct claim was to nearly eight million lbs. of foodstuffs, chiefly lard, and adding the amounts of their alleged vendee's claims, the total was over 9½ million lbs. This large quantity was consigned to their agent at Copenhagen within one month, being about twenty times the quantity of lard exported from the United States to all Scandinavia in the corresponding period of the previous year, and Armour & Co.'s shipments to Copenhagen of hog products from October to December, 1914, were approximately equivalent to their total shipments to Copenhagen during the whole preceding eight years. The claim of Armour & Co. was based on the ground that the goods were their property as neutrals, shipped on neutral vessels, and consigned to neutrals at a neutral port, and that the goods were not intended for sale

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to or use by or on behalf of an enemy government or the armed forces of an enemy, the affidavit filed in support of the claim stating that "the whole of the said goods were shipped to the order of the agent in Copenhagen for sale in the agent's own district in the ordinary course of business." The portion of the shipments consisting of canned beef in tins was not suitable for civilian markets, and could only have been intended for the use of troops in the field.

As to the claims of Cudahy & Co. in respect of 176,559 lbs. of lard and beef casings shipped (before the Order in Council of October 29) on the *Alfred Nobel* and the *Fridland*, the Court came to the conclusion that these goods were on their way to Denmark as their real and bona fide destination, and were intended to be imported on their arrival into the common stock of the country. Further details in respect of each separate parcel of goods will be found fully set out in the judgment.

Cur. adv. vult.

Sept. 16. THE PRESIDENT (SIR SAMUEL EVANS). The cargoes which have been seized, and which are claimed in these proceedings, were laden on four steamships belonging to neutral owners, and were under time charters to an American corporation, the Gans Steamship Line. John H. Gans, the president of the company, is a German. He has resided in America for some years; but he has not been naturalized. The general agent of the company in Europe was one Wolenburg of Hamburg.

The four ships were the *Alfred Nobel* (Norwegian), the *Bjornsterjne Bjornson* (Norwegian), the *Fridland* (Swedish), and the *Kim* (Norwegian). They all started within a period of three weeks in October and November, 1914, on voyages from New York to Copenhagen with very large cargoes of lard, hog and meat products, oil stocks, wheat and other foodstuffs; two of them had cargoes of rubber, and one of hides. They were captured on the high seas, and their cargoes were seized on the ground that they were conditional contraband, alleged to be confiscable in the circumstances, with the exception of one cargo of rubber which was seized as absolute contraband.

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The Court is now asked to deal only with the cargoes. All questions relating to the capture and confiscability of the ships are left over to be argued and dealt with hereafter.

It is necessary to note the various dates of sailing and capture. They are as follows :—

	Date of sailing.	Date of capture.
Alfred Nobel	October 20, 1914	November 5, 1914
B. Bjornson	,, 27, ,,	,, 11, ,,
Fridland	,, 28, ,,	,, 10, ,,
Kim	November 11, ,,	,, 28, ,,

Upon some of these dates may depend questions touching what Orders in Council are applicable. One Order in Council adopting with modifications the provisions of the Convention known as the "Declaration of London" was promulgated on August 20, 1914, and another on October 29, 1914. Proclamations as to contraband, absolute and conditional, were issued on August 4, September 21, and October 29, 1914.

It is useful to note here, in order to avoid any possible misconception or confusion, that the later Order in Council of March 11, 1915 (somtimes called the Reprisals Order), does not affect the present cases in any way.

Before proceeding to state the result of the examination of the facts relative to the respective cargoes and claims, a general review may be made of the situation which led up to the dispatch of the four ships with their cargoes to a Danish port.

Notwithstanding the state of war, there was no difficulty in the way of neutral ships trading to German ports in the North Sea, other than the perils which Germany herself had created by the indiscriminate laying and scattering of mines of all description, unanchored and floating outside territorial waters in the open sea in the way of the routes of maritime trade, in defiance of international law and the rules of conduct of naval warfare, and in flagrant violation of the Hague Convention to which Germany was a party. Apart from these dangers neutral vessels could have, in the exercise of their international right, voyaged with their goods to and from Hamburg, Bremen, Emden, and any other ports of the German Empire. There was no blockade involving risk of confiscation of vessels running or

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attempting to run it. Neutral vessels might have carried conditional and absolute contraband into those ports, acting again within their rights under international law, subject only to the risk of capture by vigilant warships of this country and its allies. But the trade of neutrals—other than the Scandinavian countries and Holland—with German ports in the North Sea having been rendered so difficult as to become to all intents impossible, it is not surprising that a great part of it should be deflected to Scandinavian ports from which access to the German ports in the Baltic and to inland Germany by overland routes was available, and that this deflection resulted, the facts universally known strongly testify. The neutral trade concerned in the present cases is that of the United States of America; and the transactions which have to be scrutinized arose from a trading, either real and bona fide, or pretended and ostensible only, with Denmark, in the course of which these vessels' sea voyages were made between New York and Copenhagen.

Denmark is a country with a small population of less than three millions; and is, of course, as regards foodstuffs, an exporting, and not an importing, country. Its situation, however, renders it convenient to transport goods from its territory to German ports and places like Hamburg, Altona, Lübeck, Stettin, and Berlin.

The total cargoes in the four captured ships bound for Copenhagen within about three weeks amounted to 73,237,796 lbs. in weight. (These weights and other weights which will be given are gross weights according to the ships' manifests.) Portions of these cargoes have been released, and other portions remain unclaimed. The quantity of goods claimed in these proceedings is very large. Altogether the claims cover 32,312,479 lbs. (exclusive of the rubber and hides). The claimants did not supply any information as to the quantities of similar products which they had supplied or consigned to Denmark previous to the war. Some illustrative statistics were given by the Crown, with regard to lard of various qualities, which are not without significance, and which form a fair criterion of the imports of these and like substances into Denmark before the war; and they give a

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measure for comparison with the imports of lard consigned to Copenhagen after the outbreak of war upon the four vessels now before the Court.

The average annual quantity of lard imported into Denmark during the three years 1911—1913 from all sources was 1,459,000 lbs. The quantity of lard consigned to Copenhagen on these four ships alone was 19,252,000 lbs. Comparing these quantities, the result is that these vessels were carrying towards Copenhagen within less than a month more than thirteen times the quantity of lard which had been imported annually to Denmark for each of the three years before the war.

To illustrate further the change effected by the war, it was given in evidence that the imports of lard from the United States of America to Scandinavia (or, more accurately, to parts of Europe other than the United Kingdom, France, Belgium, Germany, the Netherlands, and Italy) during the months of October and November, 1914, amounted to 50,647,849 lbs. as compared with 854,856 lbs. for the same months in 1913—showing an increase for the two months of 49,792,993 lbs.; or in other words the imports during those two months in 1914 were nearly sixty times those for the corresponding months of 1913.

One more illustration may be given from statistics which were given in evidence for one of the claimants (Hammond & Co. and Swift & Co.): In the five months August—December, 1913, the exports of lard from the United States of America to Germany were 68,664,975 lbs. During the same five months in 1914 they had fallen to a mere nominal quantity, 23,800 lbs. On the other hand, during those periods, similar exports from the United States of America to Scandinavian countries (including Malta and Gibraltar, which would not materially affect the comparison) rose from 2,125,579 lbs. to 59,694,447 lbs. These facts give practical certainty to the inference that an overwhelming proportion (so overwhelming as to amount to almost the whole) of the consignments of lard in the four vessels we are dealing with was intended for, or would find its way into, Germany. These, however, are general considerations, important to bear in mind in their appropriate place; but not in any sense conclusive upon the serious questions of consecutive voyages

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of hostile quality, and of hostile destination, which are involved before it can be determined whether the goods seized are confiscable as prize.

The dates of sailing and capture have been given with an intimation that they may have a bearing upon the law applicable to the cases.

The *Alfred Nobel*, the *Bjornsterjne Bjornson*, and the *Fridland* started on their voyages in the interval between the making of the two Orders in Council of August 20 and October 29. The *Kim* commenced her voyage after the latter Order came into force.

By the Proclamation of August 4 all the goods now claimed (other than the rubber and the hides) were declared to be conditional contraband. The cargoes of rubber seized were laden on the *Fridland* and the *Kim*. Rubber was declared conditional contraband on September 21, 1914, and absolute contraband on October 29. Accordingly the rubber on the *Fridland* was conditional contraband; and that on the *Kim* was absolute contraband.

The hides were laden on the *Kim*. Hides were declared conditional contraband on September 21, 1914. No contention was made on behalf of the claimants that the goods were not to be regarded as conditional or absolute contraband, in accordance with the respective Proclamations affecting them, that is to say, it was admitted that the goods partook of the character of conditional or absolute contraband under the said Proclamations, and were to be dealt with accordingly.

The law can best be discussed and can only be applied after ascertaining the facts. The details relating to the ships and their cargoes which it has been necessary to examine are very voluminous. I must try to summarize them for the purposes of this judgment, in order to make it intelligible in principle, and in the results. To attempt to give even a moderate proportion of the details would tend to bewildering confusion.

The number of separate bills of lading covering the cargoes on the four vessels is about 625.

Four large American firms were consignors of goods on each of the four vessels; and a fifth on two of them.

According to the figures given to the Court, those five American

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firms were consignors of lard and meat products to the following extent :—

	Lbs.
Armour & Co.	9,677,978
Morris & Co. (with Stern & Co.) . .	6,868,213
Hammond & Co. (with Swift & Co.) . .	3,397,005
Sulzberger and Sons Co.	2,602,009
Cudahy & Co.	729,379
This makes up a total of . .	23,274,584

These figures I accept as substantially correct. They were given by the law officers of the Crown. The other figures in my judgment I am responsible for.

Those portions of the cargoes which have been released, and those which have not been claimed, will be dealt with in a separate judgment. There is some overlapping, as some parts of the cargoes have been claimed by the consignors, and also by some alleged vendees. For these and other reasons some corrections in the figures which follow may become necessary; but they are substantially correct as they stand in the various documents, and as they were dealt with at the hearing; and certainly sufficiently accurate for the purpose of determining all questions relating to the rights of the Crown to condemnation, or of the various claimants to release.

An analysis of the claims shows the following results :—

I.—MORRIS & Co. (with STERN & Co.).

	Lbs.
Direct claims by these companies to goods laden on the four ships amounting to	5,176,327

Other sub-claims by claimants who allege that they had bought and had become owners of goods consigned by the above companies :—

	Lbs.
(1.) Pay & Co.—	
Goods on the *A. Nobel* and the *B. Bjornson* . . .	411,660
(2.) Christensen and Thoegersen—	
Goods on the *A. Nobel* and the *B. Bjornson* . . .	110,428

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(3.)	Brödr Levy—		
	Goods on the *A. Nobel*, the *B. Bjornson*, and the *Kim* .	Lbs. 132,036	Lbs.
(4.)	J. O. Hansen—		
	Goods on the *B. Bjornson*, *Fridland*, and *Kim* . . .	196,873	
(5.)	Segelcke—		
	Goods on the *B. Bjornson* and the *Kim*	275,297	
(6.)	Pedersen—		
	Goods on the *B. Bjornson* .	45,219	
(7.)	Henriques and Zoydner—		
	Goods on the *B. Bjornson* .	81,096	
(8.)	Korsor Margarin Fabrik—		
	Goods on the *Fridland* and the *Kim*	26,639	
(9.)	Margarin Fabrik Dania—		
	Goods on the *Fridland* . . .	9,004	
(10.)	Erik Valeur—		
	Goods on the *Kim* . . .	106,155	
		——	1,394,407
	Total . . .		6,570,734

II.—ARMOUR & Co.

Direct claims by this company to goods laden on the four ships amounting to	Lbs. 7,819,003

Other sub-claims by claimants who allege that they bought and became owners of goods consigned by Armour & Co. as follows:—

(1.)	Provision Import Company—	
	Goods on the *A. Nobel* and the *Fridland*	Lbs. 1,176,050
(2.)	Christensen and Thoegersen—	
	Goods on the *Fridland* . .	244,000
(3.)	Brödr Levy—	
	Goods on the *Kim* . . .	231,391

	Lbs.	Lbs.
(4.) J. O. Hansen—		
Goods on the *Kim* . . .	203,752	
(5.) Frigast—		
Goods on the *B. Bjornson* .	15,750	
		1,870,943
Total . . .		9,689,946

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III.—SWIFT & Co. and HAMMOND & Co.

	Lbs.
Direct claims by these companies to goods laden on the four ships	2,512,912

Other sub-claims by claimants who allege that they had bought and had become the owners of goods consigned by the above companies:—

	Lbs.	
(1.) Buch & Co.—		
Goods on the *B. Bjornson*, the *Fridland*, and the *Kim* .	752,908	
(2.) Bunchs Fedevare Forretning—		
Goods on the *Fridland* . .	3,371	
		756,279
		3,269,191

IV.—SULZBERGER AND SONS COMPANY.

	Lbs.
Direct claims by this company to goods laden on the four ships	1,700,281

Other sub-claims by claimants who allege that they had bought and had become the owners of goods consigned by the above company:—

	Lbs.	
(1.) Pay & Co.—		
Goods on the four ships . .	845,783	
(2.) V. Elwarth—		
Goods on the *A. Nobel* . .	88,618	
		934,401
		2,634,682

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V.—CUDAHY & Co.

Direct claims by this company to goods laden on the *A. Nobel* and the *Fridland* . . . . . Lbs. 176,559

Other sub-claims by claimants who allege that they had bought and had become the owners of goods consigned by the above company:—

(1.) Christensen and Thoegersen—
Goods on the *A. Nobel* and the *Fridland* . . . . . Lbs. 594,682

(2.) V. Elwarth—
Goods on the *A. Nobel* . . . 61,000

655,682

832,241

These five claimants were the shippers and consignors of the goods; they allege that the goods had remained their property, and base their claims upon ownership at the time of seizure.

The other claimants are persons or firms chiefly in Denmark, who claim that they had become the purchasers of goods laden on the various vessels. They are as follows:—

A.—Pay & Co. claim goods laden on the four vessels amounting to . . . . . Lbs. 1,710,868

They claim as having bought from:—

(1.) Morris & Co.
(2.) Sulzberger and Sons Co., and
(3.) The South Cotton Oil Co.

1,710,868

The goods these claimants say they bought were:—

Lard, cotton oil, beef casings, and oleo stock.

B.—The Provision Import Company claim goods on the *A. Nobel* and the *Fridland* amounting to . Lbs. 1,176,050

They claim as having bought from Armour & Co.

The goods consist of:—

Lard and oleo stock.

C.—Christensen and Thoegersen claim goods on the *A. Nobel*, the *B. Bjornson*, and the *Fridland* amounting to 949,110

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They claim as having bought from :—
(1.) Morris & Co.
(2.) Cudahy & Co., and
(3.) Armour & Co.
The goods consist of :—
Lard and casings.

	Lbs.
D.—Brödr Levy claim goods on the *A. Nobel*, the *B. Bjornson*, and the *Kim* amounting to . . .	363,427

They claim as having bought from :—
(1.) Morris & Co. and
(2.) Armour & Co.
The goods consist of :—
Lard and fat backs.

E.—Vilhelm Elwarth claims goods on the *A. Nobel* amounting to	149,618

He claims as having bought from :—
(1.) The Consolidated Rendering Co. and
(2.) Cudahy & Co.
The goods consist of :—
Lard and oleo stock.

F.—Buch & Co. claim goods on the *B. Bjornson*, the *Fridland*, and the *Kim* amounting to . . .	752,908

They claim as having bought from Hammond & Co.
The goods consist of :—
Lard, fat backs, and smoked bacon.

G.—J. O. Hansen claims goods on the *B. Bjornson*, the *Fridland*, and the *Kim* amounting to . . .	400,625

He claims as having bought from :—
(1.) Morris & Co. and
(2.) Armour & Co.
The goods consist of :—
Lard and fat backs.

H.—Segelcke claims goods on the *B. Bjornson* and the *Kim* amounting to	275,297

He claims as having bought from Morris & Co.
The goods consist of :—
Lard and fat backs.

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J.—Pedersen claims (for the Faellesforingen Company) goods on the *B. Bjornson* amounting to . . Lbs. 45,219
He claims as having bought from Morris & Co.
The goods consist of:—
Lard.

K.—Henriques and Zoydner claim goods on the *B. Bjornson* amounting to 81,096
They claim as having bought from Morris & Co.
The goods consist of:—
Lard.

L.—Frigast claims goods on the *B. Bjornson* amounting to 15,750
He claims as having bought from Armour & Co.
The goods consist of:—
Lard.

M.—Korsor Margarin Fabrik claim goods on the *Fridland* and the *Kim* amounting to 26,639
They claim as having bought from Morris & Co.
The goods consist of:—
Oleo stock.

N.—The Margarin Fabrik Dania claim goods shipped on the *Fridland* amounting to . . . 9,004
They claim as having bought from Morris & Co.
The goods consist of:—
Lard.

O.—Bunchs Fed. claim goods on the *Fridland* amounting to 3,371
They claim as having bought from Christensen and Thoegersen goods shipped by Hammond & Co.
The goods consist of:—
Beef tongues.

P.—Erik Valeur claims goods on the *Kim* amounting to 106,155
He claims as having bought from Morris & Co.
The goods are:—
Oleo stock.

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Q.—Christian Loehr claims goods on the *A. Nobel* amounting to	41,952	The Kim.
He claims as having bought from the Provision Import Company goods shipped by Rumsay & Co.		The Alfred Nobel.
The goods consist of:—		The Bjornsterjne Bjornson.
Lard.		The Fridland.
R.—J. Ullman & Co. claim rubber on the *Fridland* and the *Kim* amounting to	137,637	The President.
They claim as having bought the rubber from E. Maurer & Co.		
S.—W. T. Baird claims rubber on the *Kim* amounting to	29,771	
He claims the rubber which he himself had consigned to Fritsch, of Landskrona.		
T.—Marcus & Co. claim hides on the *Kim* amounting to	18,968	
They claim as having bought the hides from Amsinck & Co. or, through them, from Goldtree and Liebes, of Santa Ana.		
U.—The Guaranty Trust Company of New York claim (with Newman) goods on the *A. Nobel*, and (with Morris & Co.) goods on the *B. Bjornson*, and the *Fridland*, amounting to	8,795,108	
They claim as consignors of goods which consist of:—		
Wheat and flour.		

The first steamship which sailed was the *Alfred Nobel*. The chief shippers on this vessel were:—

(1.) Morris & Co.; and

(2.) Armour & Co.

The direct claims of these two companies in respect of goods laden by them on this vessel are:—

Morris & Co. . . . . 1,574,091 lbs.

and

Armour & Co. . . . . 1,537,913 ,,

It will be convenient to investigate the cases of these shippers first in this order, both as regards the *Alfred Nobel* and the

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other three steamers, upon all of which these two companies were heavy consignors.

As to Morris & Co.'s Claim.

This meat packing company of Chicago and New York at the beginning of the war had a large business with Germany, which they carried on, at the Europe end, at Hamburg. They had in their employ at Hamburg two persons named McCann and Fry. Fry was their manager. They appear to have had an agent also at Copenhagen of the name of Conrad Bang. The transactions relating to their shipments of between six-and-a-half and seven million lbs. of products on the four vessels were carried through by McCann and Fry, and not by Bang. Not long after the war began McCann and Fry left Hamburg and took up their quarters at Copenhagen. McCann was named in hundreds of the bills of lading in which Morris & Co. were the shippers' as the "party to be notified." He was so named in all, with a few exceptions which are insignificant.

He had no business at Copenhagen or in Denmark before the war. He had apparently no office in Copenhagen. His address was "the Bristol Hotel."

The instructions to him from Morris & Co. as to the change from Hamburg to Copenhagen, and as to the initiation and progress of the business transactions carried on either at or through Copenhagen, must have been in writing unless he visited America, or some one from America visited him. No such instructions were produced in evidence and no explanation was given of them. Not a single letter passing between Morris & Co. and McCann or Fry was produced. A few telegrams were in evidence, but that was due to their having been intercepted by the British Censor, and they were put before the Court by the Procurator-General. McCann did not even make an affidavit in explanation of his own part of the transactions. Nor did Fry. Affidavits from them, if they comprised a complete and truthful statement of the facts within their knowledge, would have been of value and assistance to the Court.

On November 28 McCann and Fry together formed a company in Copenhagen under the name of the "Dansk Fed. Import

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Kompagnie." Its capital was only about 120*l.* (2000 kronen); but it imported lard and meat by the end of the year (i.e., in about five weeks) to the value of about 280,000*l.* (5,000,000 kronen). Later on, McCann is cabling from Copenhagen to Morris & Co. in New York, "Don't ship any lard Copenhagen, export prohibited."

Afterwards, goods like lard and fat backs were consigned by Morris & Co. to Genoa—Italy had not then joined in the war.

The evidence put forward in support of the direct claim of Morris & Co. was an affidavit of Mr. Harry A. Timmins which was sworn in Chicago on May 27, 1915. Mr. Timmins is the assistant secretary and treasurer of the company. The case which he there makes is that the goods had been sent to Copenhagen in the ordinary course of the business of the company in Denmark itself.

It is advisable to set out the main paragraphs verbatim:—

"2. The claimant (Morris & Co.) has for many years shipped considerable quantities of its products to Denmark, both directly to Copenhagen and through adjacent branch houses. The sale of such products for several years was made either through the Morris Packing Company, a corporation of Norway, or an individual salaried employee of the claimant. Said Morris Packing Company or said salaried individual employee of claimant always had strict instructions from the claimant to confine sales to Denmark, Scandinavian countries, and Russia, and not to sell to any other countries owing to the fact that the claimant has agents in other countries, and it is essential that said agent's operations be strictly confined to his own district.

"4. In the month of October, 1914, the claimant shipped on board the Norwegian steamship *Alfred Nobel* [the paragraphs in the affidavits relating to the other three steamships are identical] the goods particulars of which are set out in the schedule to this affidavit. The whole of said goods was shipped 'to order' Morris & Company, notify claimant's agent in Copenhagen (said agent being a native born citizen of the United States of America) for sale on consignment in the agent's own district in the ordinary course of business. The standing instructions to the agent that

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no sales were to be made outside the agent's district were never withdrawn by the claimant."

The deponent refrains from giving any particulars or even summaries of the "considerable" quantities of the company's products shipped to Copenhagen or Denmark for the years before the war; he does not even say what the "products" shipped were; but the impression clearly intended to be produced was that the goods on the four ships in question were sent in the Denmark business, and were not to be sold by the "salaried employee" or "agent" in other countries "outside the agent's district."

There is no reference to any German market to be supplied from Denmark. Germany is not even mentioned.

The "agent" in Copenhagen is carefully described as "a native born citizen of the United States of America," but otherwise he is left shrouded in anonymity. Mr. McCann was his name. His collaborator, Fry, is not mentioned. Nor is the company (the Dansk Fed. Kompagnie) which they formed in November, 1914, disclosed. For aught the affidavit says or suggests, the business attentions of Mr. McCann might have been confined for many years before the war to the comparatively humble and quiet Danish or Scandinavian district of the claimant's business. His and Fry's real business activity up to October, 1914, (we now know) was in the great centre of Hamburg.

The solicitors for the claimants had been instructed soon after the seizure to put forward the same kind of case, although more limited, because the authority was then said to be to sell only in Denmark to the exclusion of the rest of Scandinavia and Russia; for in a letter to the Procurator-General in December, 1914, they wrote: "The duty of the consignor's representative in Copenhagen was to sell only for delivery in Copenhagen against cash (except as to 800 tierces of lard shown in the table set out in our letter to you of the 11th inst. which were going to Christiania) and it was never the intention of the consignor's agent, nor had he any authority, to reship the goods from Copenhagen to another port." When Mr. Timmins swore his affidavit, that of the Procurator-General had not been filed, and Mr. Timmins had probably little

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or no idea of the information which had been gleaned for the Crown by the intercepted telegrams, letters, and otherwise. No further affidavit has been made by Mr. Timmins or any one else on behalf of these claimants, and no attempt has been made to deal with the materials which raise suspicion, or to elucidate circumstances involving doubt, in relation to the bona fides of the transactions and claim. Not a single original book of account, letter book, or any other of the usual commercial documents which must have been kept by or for Mr. McCann in Copenhagen has been produced.

This Court has on various occasions during the present war pointed out the importance of producing original documents fully and promptly when a claim is made, and particularly where the bona fides of the claim is put in question. In the circumstances I say without hesitation that the bare account given of the transactions in Mr. Timmins's affidavit is not only wholly insufficient, but is also disingenuous and misleading. The picture exhibited of the ordinary regular Danish trade carried on by Morris & Co., through Mr. McCann, is marred when alongside of it is seen the shipment and transport towards Copenhagen by this company of lard and meat products in less than a month more than quadrupling the annual quantity imported into Denmark from all sources for a year on the average of three years before the war.

In a letter dated November 25 in the "Ascher" correspondence (hereinafter referred to in connection with the claim of Cudahy & Co.), a firm of dealers in Hamburg well acquainted with the trade wrote from Hamburg: "We met Mr. McCann of the Morris Provision Company on 'Change to-day [that was at Hamburg] back from Copenhagen. He was very sceptical with regard to the *Alfred Nobel* affair, and rather inclined to the opinion that the provisions on board of that steamer would never be allowed to reach Copenhagen, because it was too open-faced a case of the lard being intended for Germany to expect any other result." This was disclosed to the claimants a couple of months before the conclusion of the trial, but they did not deem it necessary, or perhaps expedient, to trouble themselves to contradict or explain the statement. The only way it was dealt

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with at the trial was by their counsel submitting that the letter was not evidence. I will deal with this question later, when the correspondence will be more fully referred to.

From other parts of the case it is shown that one Erik Valeur also claimed to be an agent of Morris & Co. for Denmark, and to have acted as such in the sale of considerable quantities of the goods shipped on these vessels by Morris & Co. I will for convenience deal with this subject when I come to Valeur's claim. I note this, because the facts which will be there referred to have a bearing also upon the claim of Morris & Co., and also on their statement that their sole agent in Denmark was Mr. McCann.

I have already referred to a cablegram dispatched by McCann from Copenhagen to Morris & Co., at New York, on January 24, 1915. "Don't ship any lard Copenhagen, export prohibited." The export had been prohibited by the Danish Government on January 11.

This cablegram was of course subsequent in date to the seizure of the cargoes in these cases. Nevertheless it is neither immaterial nor unimportant. It testifies clearly to two things: that lard was not required by or for Denmark, and that the previous importation into Copenhagen was in the main, at any rate, a mere stage in its passage into Germany.

In connection with the prohibition against exportation of foodstuffs it is well known, as a matter of public reputation, that in order to avoid international difficulties the Scandinavian countries as neutrals, from good political motives, issued orders from time to time, prohibiting the export from the respective countries of goods like lard, smoked meat, and other foodstuffs, oleo stock, hides, and rubber. For details of such prohibitions reference may be made to the affidavit of Mr. Henry Fountain, of the British Board of Trade, sworn on June 1, 1915.

These are matters also which tend to throw light upon the question of the real destination of the goods nominally consigned to Copenhagen; and the Court is entitled to take them into consideration and to place them in the scales when weighing all the evidence.

In the course of the trial, upon the facts which had then been given in evidence, I addressed some questions to Mr. Leslie Scott,

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counsel for Morris & Co. I asked him whether in respect of the foodstuffs which Morris & Co. consigned to their own order, or to that of their agent at Copenhagen, and not to any independent consignee, he contended that they were "intended for a Danish market or for the German market."

His answer was: "My submission is that there is no evidence as to which they were intended for in regard to any specific consignment, but that it was expected that the great bulk would find its way to Germany ultimately is obvious." And that it was so expected by his clients, he said, was obvious.

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Then I observed, "In other words, those goods would not have been sent to Denmark if the Germans were not close by?" and Mr. Scott answered, "That is obvious."

I then asked for information as to any merchant or person in Germany with whom Morris & Co. were in communication with reference to the shipments in question, which they expected would find their way into Germany.

The answer of their counsel was as follows. I will give the exact words, because there was some discussion as to what was said:—

"It must depend upon the facts, as to which I have no instructions or evidence. The position seems a fairly clear one—that before the war, Hamburg, of course, was the great centre of importation, not only for Germany, but for Denmark, and also probably largely for Norway and Sweden. Hamburg is the great free port of Northern Europe, and the bulk of the American foodstuffs went there, as your Lordship sees from the figures which were given in consequence of your question. After the war, and importation with that port stopping, two results happened—one was that the German demand for the civil population as before the war has to be met, and the neutral country, the United States, in the ordinary course of business, sets out to supply that demand. The second point is that the supply of Denmark and the other Scandinavian countries has to be met; but the particular importing ports of Germany being closed, the difference is that the great stream of produce going to Germany and the three Scandinavian countries goes to Scandinavian ports. Before the war, in the case of Morris &

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Co., they had agents in Germany. On the war breaking out, it is no use the agents remaining in Germany, but they go to Denmark. Mr. McCann goes to Denmark, and there is no question about that. They receive the consignments. That they should not be in communication at all with Germany and German buyers under those circumstances is obviously a ridiculous idea. No one would imagine it, and I do not suppose, apart altogether from any evidence in the case, that your Lordship, dealing with inferences of fact, would come to the conclusion that the representatives of Morris in Denmark were not in communication with any one in Germany. I am not here to put forward that suggestion."

At a later stage the learned counsel said, "It may be perfectly true that [the shippers] may have thought that the whole was intended—we know that the whole was not intended—for German consumption. I have never disputed it. I have always said the market through Copenhagen was Germany."

In connection with these statements, it is important to emphasize the point, which has already been adverted to, that the claimants, and McCann their representative, did not give the Court any information—all of which was within their power to give—as to the arrangements made for sending the "great bulk," or the "greater part," of the cargoes to Germany; as to who were the consignees, or the intended consignees; or as to what ports or places in Germany the cargoes were intended or expected to be sent.

In the course of a discussion at the trial (more particularly to be referred to in Armour's case) counsel for Morris & Co. expressed his readiness to produce evidence as to the amount of lard, bacon, and other products of the kind in question which Morris & Co. had supplied to Germany during the two or three years before the war.

No such evidence has since been produced, although any necessary adjournment for the purpose was offered.

Before concluding the statement of facts as to Morris & Co., two other matters have to be mentioned.

The first is that Stern & Co., in whose name certain goods were shipped, is a subsidiary company of Morris & Co., and

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the case of Stern & Co., by the request of counsel, was taken with Morris's claim, and treated as identical with it. The second is that the claims of ten claimants to certain parcels of goods shipped by Morris & Co. who allege they were owners of such goods as purchasers from the shippers will have to be dealt with; and that facts affecting Morris & Co.'s position relating to those sub-claims must be taken as supplemental to those already adverted to in dealing with their direct claim.

The legal questions which arise with regard to the real destination of the goods claimed by Morris & Co. are identical with those arising in other claims.

I will deal with these legal questions after the examination of the facts in all the cases.

As to Armour & Co.'s Claim.

This American company had before the war a subsidiary company—Armour & Co., Aktieselskab—at Copenhagen acting as agents. These agents (it is said) had always had strict instructions from the claimants to confine their sales to Denmark, other Scandinavian countries, Finland and Russia, and not to sell to any other countries, as the claimants had agents in other countries and the operations of each agent were to be strictly confined to his particular district.

The Copenhagen office was a small one; the staff consisted of a manager, clerk, office boy, and typist, according to the evidence of the Procurator-General; or of a manager, assistant salesman, chief accountant, assistant accountant, and office boy, according to the affidavit of Mr. Urion.

Before the war, the claimants' principal branch was at Frankfort, where their German business was carried on.

No information was given by the claimants as to what became of, or as to what was done at, this branch after the war.

As to the Copenhagen office, not even the name of the manager was given to the Court. No one from Copenhagen favoured the Court with any evidence as to the extensive transactions involved in the shipments by these claimants.

Armour & Co.'s direct claim is to nearly eight million lbs. of foodstuffs. When the amounts of their alleged vendees' claims

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are added, the total is over nine and a half million lbs. This enormous quantity was consigned to their agents at Copenhagen within one month. How came it to be sent? What were the instructions of the anonymous manager at the Copenhagen office with regard to its disposal? With the exception of comparatively small quantities of casings, canned beef, and fat backs, it was all lard of various qualities. The average monthly quantity of lard exported from the United States to all Scandinavia in October and November, 1913, was 427,428 lbs.; a year later, in about three weeks (from October 20 to November 11, 1914), it is shown that this one company was shipping to Copenhagen alone considerably over twenty times that quantity.

It was deposed by the Procurator-General that Armour & Co.'s shipments to Copenhagen of hog products from October to December, 1914, were approximately equivalent to their total shipments to Copenhagen during the whole preceding eight years. These figures were not contradicted or contested. In the course of the hearing an opportunity was given to the claimants to deal with these facts, and to produce evidence of what the imports into Germany by or through Armour & Co. of similar products were during the two or three years before the war. The Crown did not oppose any adjournment which might be necessary for this purpose. Sir Robert Finlay, as counsel for Armour & Co., said: "We will get that statement without delay as to the amount of those articles (namely, lard, bacon and other foodstuffs) exported in three years before the war into Germany by Messrs. Armour & Co." No such statement was produced; and therefore (as I intimated during the discussion) I have to decide upon the materials which had been placed before me at the conclusion of the hearing. The claim of Messrs. Armour & Co. (dated April 21, 1915) was made on the ground that the goods were their property as neutrals shipped on neutral vessels, and consigned to neutrals at a neutral port; and that the goods were not intended for sale to or use by or on behalf of an enemy Government, or the armed forces of an enemy. The main evidence in support of the claim was an affidavit sworn May 27, 1915, by Mr. Meeker, one of the vice-presidents and managers of Armour & Co. It is

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practically in the same terms as the affidavit sworn in support of the claim of Morris & Co. It is indeed a "common form" affidavit. The pith of it is that "the whole of the said goods were shipped to the order of the agent in Copenhagen for sale in the agent's own district in the ordinary course of business. The standing instructions to the agent that no sales were to be made outside the agent's district were never withdrawn by the claimants, and the agent had no authority to sell the goods except to firms established in Denmark, other Scandinavian countries, Finland, or Russia."

Germany is not named; and the impression conveyed, and clearly intended to be conveyed, was that the goods were shipped and consigned for purely Scandinavian business, as if the war had not intervened.

As to the shipment on the *Kim*, however, there was this additional paragraph:

"The s.s. *Kim* sailed from the port of New York on November 10, and up to that time the claimants had no knowledge whatever of the Order in Council of the British Government of October 29, 1914, which was not received by the State Department at Washington until after the said vessel had sailed."

That is not in accordance with the facts; for the Order in Council had been notified to the American Ambassador on October 30, and was published in New York on November 2.

Further affidavits were filed.

One was by Mr. Finney, which is wholly immaterial. Another was by Mr. Garside, dealing only with that part of the shipment which consisted of canned beef; to which reference will be made hereafter.

The last was by Mr. A. R. Urion, and was sworn about a week after the hearing in Court had commenced.

Mr. Urion deals with various matters before the war, but as to transactions after the outbreak of war he deposes as follows:

"Par. 6. None of the goods shipped by Armour & Co. to the Copenhagen Company subsequent to the outbreak of war were sold to the armed forces or to any Government department of Germany or to any contractor for such armed forces or

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Government department. About ninety per cent. of the goods were sold to firms who had been customers of the company and established in Denmark and Scandinavia for many years. These sales were all genuine sales, and payment was made against documents in the ordinary way, and on delivery Armour & Co.'s interest in the goods absolutely ceased."

It is to be observed that he does not specify what the goods were, or to whom or when they were sold. The statement about the genuine sales of 90 per cent. cannot refer to the goods in the four ships in question. Such a statement as to those goods would be wholly untrue; and when he talks about payment and delivery of the goods, that must refer to some other goods, because those now in question never were delivered. It is significant that in this last affidavit filed for the claimants Mr. Urion avoids altogether any explanation of the shipment, or sale, of the goods which his company now claim.

Part of the shipments consisted of canned beef in tins. The quantity was 5600 dozen tins of 24 oz. each net, equal to 100,800 lbs. There was evidence before me, on behalf of the Crown, that cases of this size were not usual for civilian markets; that large quantities of this particular brand of tinned meat in tins of that size had been offered for use in the British Army; and that these packages could only have been intended for the use of troops in the field.

Evidence was given for the claimants to the contrary. But it is important to observe that no evidence was given that a single tin of that kind had ever been sent by Armour & Co. into Denmark before the war; nor, indeed, that any had been sent theretofore to Germany for the civilian population.

I do not say that it was proved that none were so sent. But it was not proved that any had been sent. Mr. Garside's affidavit, dealing with this matter, is vague, and supplies no evidence that a single pound of canned meat in these tins had ever been sent before the war to Denmark or to Germany. This was pointed out to Sir Robert Finlay during the argument, and, in consequence, the promise (already mentioned) to supply a statement as to this was made.

Although the claim, which had formally been put forward upon

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the affidavits, was that the goods shipped by Armour & Co. were sent in the ordinary course of the Danish or Scandinavian business, it is significant that at the hearing the ground adopted by Sir Robert Finlay was not the same. I will not paraphrase his statement of this ground, but will give his exact words:

"My case is not that they were all to be consumed in Denmark or Norway; my case is that they were not consigned to the German forces, and it was almost certain there was no continuous voyage."

Upon this the Solicitor-General intervened and said:

"I think I heard my learned friend say a moment ago that his case was not that these goods were destined for Danish consumption but for German civilian consumption."

Then Sir Robert Finlay answered:

"No; I said that our case was not that the goods were intended for consumption in Denmark, but that the persons to whom they were consigned sold them to Germany."

But as will be seen from the figures already given of the goods shipped by Armour & Co., less than one-fifth were said to have been sold to consignees; and the undisputed fact is that more than four-fifths had not been sold; and these are in fact claimed by Armour & Co. as having remained their property.

There are several references to Armour & Co. in the Ascher correspondence, but one passage refers to them alone and specially, and some explanation of it might have been expected. It relates to another vessel; but it illustrates the nature of Armour's business with countries contiguous to Germany in November, 1914.

On November 11 E. Ascher writes to Cudahy & Co.:

"Mr. Boerenbrink had a conversation with the representative of Armour & Co., in Rotterdam, who assured him that his principals had booked several parcels of stuff intended for German buyers on the steamship *Maartensdyk* without being compelled to sign a declaration; and if this is according to fact, we cannot explain why Messrs. Armour & Co. should be in a position to accomplish what you cannot."

More facts relating to the shipments of Armour & Co. will be stated when I deal with the claims of their alleged vendees,

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namely, the Provision Import Company, Christensen and Thoegersen, Brödr Levy, Hansen, and Frigast; and the present statements as to their direct claim must be supplemented by any material facts emerging from the consideration of the sub-claims.

Finally, I note that the claimants did not produce any letter, telegram, contract, or any other document passing between them and their agents in Copenhagen touching any part of the enormous quantities of goods shipped; and not one single book of account, or commercial document of any kind kept by their agents in Copenhagen, dealing with the goods claimed, was disclosed.

AS TO THE CLAIM OF SWIFT & CO. AND HAMMOND & CO.

These two firms are connected, and their claims were taken as one. Together, the goods they shipped amounted to over $3\frac{1}{4}$ million lbs.; Swift & Co. consigning over two million, and Hammond & Co. over one million lbs. In all cases the consignments were to their own order. No part of Swift's two million lbs. had been sold, or contracted to be sold, to any one at the time of seizure. (It had been alleged and sworn by Mr. Edward Swift that a portion had been sold to one Dreyer of Aarhuus; but at the hearing this was not relied on.) But it was alleged that a considerable part of Hammond's goods had been sold to two firms, Buch & Co. and Bunchs Fed., whose sub-claims will be dealt with hereafter.

The affidavit in support of the claim was in the same common and perfunctory form as those in the last two cases.

The unnamed "salaried employee" and "agent," and the standing "instructions" to the agent to confine his sales to his district (in this case "Denmark"); the consignment "for sale in Denmark," and "only to firms established in Denmark," have become stereotyped. At the hearing it transpired that the person to whom the two companies entrusted the transaction of the business was one Peterman, their manager at Hamburg. After the war began an intercepted cablegram showed that on September 1, 1914, Swift instructed their agents at Rotterdam to ask their Hamburg office if it recommended consignments of meats

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and lards to a bank at Copenhagen, and if so what quantities, and who would sell, and what percentage of invoice value they could draw. The Court was not informed what answer was given by Peterman. At an early date, September 16, 1914, Peterman advised the companies to discontinue consigning their products, nevertheless later it is found that they cabled to Peterman to make sure to arrange proper storage at Copenhagen for their consignments, in view of the possible large number of consignments by other parties.

Again Peterman is asked if he can insure against war risk by other than German companies; and if not, to give name and financial standing of German companies, and to get assurance that losses would be promptly paid without complications. Before the war, a person of the name of Stilling Andersen of Copenhagen seems to have been entrusted with whatever business the claimants had in Denmark. After the seizure of the first three vessels, and after the sailing of the fourth, Swift & Co. write to Lane & Co. (who represented them in London) a letter (November 17) in which they say: "If it is necessary for you to obtain proofs of our ownership, will you kindly apply to Mr. H. Peterman, Copenhagen, at which point we have opened an office, in order to facilitate the handling of our business in Denmark, under the existing disadvantageous conditions. For your guidance, it might be well for us to mention that our business in Denmark for many years past has been carried on under the jurisdiction of our Hamburg office, Mr. Peterman there having charge of same."

Neither Mr. Peterman, nor any one acting for Swift & Co. or Hammond & Co., in Copenhagen, nor any one from their Copenhagen bankers made any affidavit, or gave any evidence relating to the business in which the large shipments in question were made.

The situation was described by counsel for Swift & Co. as follows:

"It comes to this, Stilling Andersen was the agent in Copenhagen. He was under the control of Peterman in Hamburg. The business that was done in Denmark was handled from Hamburg, Stilling Andersen being the local agent. Then when

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Peterman came across to Copenhagen Peterman would be the person still in control, although I daresay Stilling Andersen would still be the agent, though probably under the control of Peterman."

Later on (but before December 10) Peterman's name was entirely dropped out; and in the cablegrams relating to the business the name of "Davis" was used for Peterman. No evidence was given to explain why this "alias" of Peterman was adopted and used; nor was any evidence produced to show how the "alias" had been communicated to the Copenhagen or Hamburg offices.

No book of account, or correspondence or document of any kind kept by Peterman or any other agent of the claimants at Copenhagen relating to the business, was disclosed.

Thus was the case of Swift & Co. and Hammond & Co. left.

AS TO THE CLAIM OF SULZBERGER & SONS COMPANY.

This company's direct claim relates to close on $1\frac{3}{4}$ million of lbs. Their goods were shipped on all the vessels. There is a sub-claim by Pay & Co. for over 800,000 lbs. The consignments, Sulzbergers claim, were all to their own order—Leopold Gyth, of Copenhagen, being the party to be notified. It was said that Gyth was since August 1, 1914, the agent of the company for the sale of its products in Denmark. For some years before that Pay & Co. were the agents; and there was a controversy as to whether their agency had really ceased at the time of the seizure.

In a letter written by Pay & Co. to Sulzbergers on July 20, 1914 (about a fortnight before the war), they explain that the sales for the company had been retrograding owing to the manufacture of vegetable margarine having become predominant in Denmark, 80 per cent. of the produce being vegetable. In these circumstances it is strange that no evidence was forthcoming from Gyth, or any one else, to explain these large shipments.

It was put forward in the affidavit that the bills of lading had been dispatched through a bank to Copenhagen—I assume to a bank there—and that they had been returned. No corre-

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spondence was produced as to this; nor was there any evidence from any Copenhagen bank.

There is very little trace of anything which Gyth, the alleged agent, really did. I think there is only one cablegram to him at Copenhagen in 1914 amongst those intercepted. That was sent on October 16.

Other people connected formerly, and probably at the time, with Sulzbergers' Hamburg office were much more active. The earliest record of the Sulzberger transactions after the war began which was produced to the Court was a letter of September 21, written by Sulzbergers from Hamburg to Pay & Co. It is an important letter, showing what Sulzbergers' business projects at the time were, and to what devices they were willing to descend in order to get goods into Germany. It is best to set it out verbatim:—

"Hamburg, September 21, 1914.

"Messrs. Pay & Co., Copenhagen.

"Dear Sirs,

"We acknowledge receipt of your esteemed favour of 17th instant, contents of which duly noted.

"It is possible for us to buy great quantities of oleo and lard, &c., from America c.i.f. Stettin.

"We beg to ask you whether it is possible to send the goods from America, via Copenhagen to Stettin, if the bill of lading bears the following inscription, 'Party to be notified, Order Pay & Co.,' so that you stand quasi as consignee. You had then to transmit the goods for us to Stettin, for which we are willing to pay you a small allowance. We await your kind news as to this point.

"Concerning Mr. Leopold Gyth is at present nothing to be done with this gentleman, which is not astonishing under the critical circumstances prevailing.

"Very truly yours,

"Sulzberger & Sons Co."

Here are the claimants, through their Hamburg office, scheming to do what the Crown contend they intended to do in relation to the goods seized. Pay & Co. declined to comply. Whether Pay & Co., or Gyth, afterwards did what they were

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asked to do is another matter. But Gyth is afterwards named in all the bills of lading as the party to be notified. No explanation of this circumstance was vouchsafed.

Two German representatives of Sulzbergers, namely, Christiensen and Saemann, are afterwards at a Copenhagen hotel and are active over the cables. One of them shows that Christiensen, and not Gyth, was dealing with the war risk of the *Fridland*. Saemann in another (his twentieth) cable suggests the discontinuance of selling until cargoes seized should be released; and again he cables that he could ship to Sweden, "but that guarantee was required," which of course meant guarantee against exportation.

In connection with this it may be noted that Saemann cabled, again from Copenhagen, in January, that exportation of lard, casings, and fat backs from Norway had been prohibited; and Pay & Co. also cabled to them "Don't ship any lard Copenhagen" (after exportation from Denmark had been prohibited); in what capacity, whether as agents or not, was not explained.

It is interesting to note that Sulzbergers of Liverpool, in reference to these prize proceedings, ask the claimants over the cable, "Will it be convenient call witnesses from port destination show goods not intended enemy use?"

Whether there was an answer to that question I do not know, but the practical answer at the hearing was that it could not have been deemed convenient, as no witness from Copenhagen gave evidence either verbally or by affidavit.

In November, a cablegram shows that Sulzbergers had also supplied, or offered to supply, their corned beef to the French Government.

This they had a perfect right to do, subject to any risk of capture by enemy ships. It would be strange if they had been unwilling to do the same for Germany. The risk of capture of goods sent to France was very small compared with the risk of goods consigned to Germany. Dealings with the French Government could accordingly be had direct with practical safety. If there were to be transactions with the German Government, a much more indirect and involved plan may well have been deemed expedient.

No particulars were given of any business carried on by the claimants at Copenhagen before the war. As in other cases, no books of account or any documents from the Europe end were disclosed; nor indeed any documents except the bills of lading and insurances.

No evidence was given by Sulzbergers touching the goods alleged to have been sold to Pay & Co.

Further facts relating to the claimants will be given in dealing with the claim of Pay & Co.

As to the Claim of Cudahy & Co.

The direct claim of this company is in respect of 176,559 lbs. of lard and beef casings shipped on the *Alfred Nobel* and the *Fridland*, to their own order—party to be notified Schaub & Co. The shipments were before the Order in Council of October 29.

The grounds of their claim are that they had sold the goods to Schaub & Co., for the Danish business of their firm at Esbjerg; that they had drawn upon them for the price, but that the drafts were not accepted by reason of the seizure; and that the goods remained the property of the claimants.

The claimants were dealing with the French Government (see Exhibit J.P.M. 2, pp. 1 and 8); and they were in close communication with E. Ascher & Co. of Hamburg, with reference to their trade with Germany, as the Ascher correspondence (J.P.M. 10) so clearly shows.

The claimants were quite open to carry on a trade in contraband with the enemy, as the facts clearly show; but the question as to the goods they now claim is whether they steered clear of dangers by a bona fide sale to Schaub & Co. of Copenhagen for use in Denmark. It was said that as to the lard (which was the chief consignment) it was to go through a refining process at Esbjerg. Whether afterwards the refined lard would have been sent to Germany is immaterial upon the question now before the Court, if it was at the time of seizure on its way to Denmark to a purchaser who intended to put it through a manufacturing process there.

The documents in this case were put fairly before the Court; and—although there are circumstances of suspicion—the

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conclusion to which I have come is that there were bona fide contracts of sale of the particular goods claimed by Cudahy & Co. to Schaub & Co. of Copenhagen, and that these goods were on their way to Denmark as their real and bona fide destination, and were intended to be imported on their arrival into the common stock of the country. The larger proportion of Cudahy's shipments is the subject of claims by Christensen and Thoegersen, and Elwarth, which will be dealt with in their appropriate places.

I have now stated the separate facts affecting the cases of the American shippers, and before proceeding to the cases of the alleged Scandinavian purchasers, I will refer shortly to what I have called the "Ascher" correspondence, which will be found in Exhibit J.P.M. 10 to the affidavit of the Procurator-General. This was a series of intercepted letters written from Hamburg by Ascher & Co. to the last-named claimants—Cudahy & Co.—some before the seizures, and others afterwards.

I read them for general information as to the circumstances in which it was known the trade in conditional contraband was carried on; and I find in them cogent corroboration of many facts and inferences already I think sufficiently established without them.

They sound almost like a talk between merchants "on 'Change" relating to a trade rendered interesting through the commercial risks which its manipulation involved. If the correspondence could have been completed by the inclusion of the letters from America in reply, it would have been still more elucidating.

The letters show an intimate knowledge of what was being done by the various shippers in reference to consignments of foodstuffs to Copenhagen; of the difficulty of exportation from Denmark to Germany; and of the probable fate of some of the cargoes now before the Court.

It was objected that they could not be evidence against any persons other than Ascher & Co. and Cudahy & Co., and that they ought not to be read in any of the other cases. If they stood alone, I should not act upon them as affecting those cases. But it must be remembered that Prize Courts are not governed or limited by the strict rules of evidence which bind, and some-

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times unduly fetter, our municipal courts. Such strict evidence would often be very difficult to obtain, and to require it in many cases would be to defeat the legitimate rights of belligerents.

Prize Courts have always deemed it right to recognize well-known facts which have come to light in other cases, or as matters of public reputation.

In the case of *The Rosalie and Betty* (1) Lord Stowell discussed the subject generally, and said: "In considering this case I am told that I am to set off without any prejudice against the parties, from anything that may have appeared in former cases; that I am not to consider former cases, but to consider every case a true one, until the fraud is actually apparent. This is undoubtedly the duty in a general sense of all who are in a judicial situation; but at the same time they are not to shut their eyes to what is generally passing in the world." Then he refers to well-known facts and expedients relating to illegal trading and fraudulent practices during war, and adds: "Not to know these facts as matters of frequent and not unfamiliar occurrence would be not to know the general nature of the subject upon which the Court is to decide; not to consider them at all would not be to do justice."

I will pause only to give one illustration from the American authorities. In the judgment in *The Stephen Hart* (2) the Court read from a statement by the Solicitor-General (Sir Roundell Palmer) in the House of Commons relating to the contraband trade between England and America by way of Nassau in the following passage:—

"The then Solicitor-General of England (Sir Roundell Palmer) stated in the House of Commons on June 29 last, referring to the cases of *The Dolphin* and *The Pearl*, decided by the District Court for Florida . . . . that it was well known to everybody that there was a large contraband trade between England and America by way of Nassau; that it was absurd to pretend to shut their eyes to it; and that the trade with Nassau and Matamoras had become what it was in consequence of the war"; and the learned judge in the same case in another passage said: "The cases of *The Stephen Hart*, *The Springbok*, *The Peterhoff*

(1) (1800) 2 C. Rob. 343. (2) (1863) Blatch. Pr. Cas. 387, at pp. 403, 404.

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and *The Gertrude* illustrate a course of trade which has sprung up during the present war, and of which this Court will take judicial cognizance, as it appears from its own records and those of other Courts of the United States, as well as from public reputation."

The "Ascher" letters having been written to one of the big shippers about, and with intimate knowledge of, this trading and being obviously genuine, and indeed never intended to see the light in this Court, I consider that on general principles the Court was entitled to read them and so to inform itself as to this trade generally, without, of course, allowing any statements in them to injuriously affect any claimant, especially if there was no opportunity for him to deal with them. It is right to add, that if I had not been made acquainted with their contents, my decision in every case would have been the same; but they do give a sense of mental satisfaction in regard to inferences which have been drawn.

I will now proceed with the cases of the alleged purchaser claimants.

As to the Claim of Pay & Co.

This firm claims goods to the extent of 1,710,818 lbs., shipped on the four vessels.

The shippers were Sulzberger & Sons Company, Morris & Co., and the South Cotton Oil Company.

The consignments were to the order of the shippers, and in the case of Sulzberger & Co., the parties to be notified were Pay & Co.; in the case of Morris & Co., the parties to be notified were Morris & Co. of Christiania; and in the case of the South Cotton Oil Company no parties to be notified were named.

The substantial question in this case is whether Pay & Co. were merely agents of the consignors, or independent purchasers.

Pay & Co. say they were for many years before the war, and remained after the war, agents for Sulzbergers.

There is a conflict between their statement and that of Sulzbergers as to the agency. The latter say the agency of Pay & Co. ceased after August 1, 1914. No contracts for the purchase of the goods claimed by Pay & Co. were produced; but certain

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invoices were sent by them to the Procurator-General; and they allege that they paid for the goods. Except as to a small portion of the goods shipped by Sulzbergers on the *B. Bjornson*, and of the goods shipped by the Southern Cotton Oil Company on the *Fridland* (of the alleged sub-sales of which no particulars or satisfactory evidence were given), the goods they claim were not sold before the seizure, but were, according to their account, bought for the purpose of adding to their stock to be sold and consumed in Scandinavian countries.

In the affidavits filed on behalf of the claimants it was deposed that the "drafts for all the goods were duly paid" by them.

None of the drafts were produced.

At the hearing certain letters from the bankers were produced in order to establish that payments had been made.

These documents referred to some arrangements made after the seizure. They do not show what, if any, sums were paid, but refer to certain arrangements to debit, which were only book entries. I saw none of the books.

No evidence has been adduced from the bankers themselves, nor was any explanation given of the communications from Pay & Co. which led to the bankers writing the letters referred to.

It ought to have been easy for the claimants to show by documents when and how, and at what price and on what terms, they purchased the goods, if they really were purchasers on their own account, and to prove, if that was the fact, that payment was made as alleged.

The claimants aver that when the war broke out they received letters from the American slaughtering firms asking them to assist the American houses in sending goods to German buyers, but that they refused to entertain the proposition.

They do not say whether the request came from the shippers of any of the goods they now claim. They ought to have done so. The not unnatural inference is that it did.

No evidence whatever has been given by any of the consignors in regard to the goods claimed by Pay & Co.

After a careful consideration of all the circumstances, I have come to the conclusion that the claimants have not shown that

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the goods were sent to them as purchasers, but that they were sent to them as agents for the consignors. Even if they had intended to purchase the goods for themselves, they have entirely failed to satisfy me that they had become the owners of the goods.

AS TO THE CLAIM OF THE PROVISION IMPORT COMPANY.

This is a Danish company carrying on business in Copenhagen as importers and dealers in lard stock, &c.

Their direct claim is to 1,176,050 lbs. of lard and oleo stock shipped on the *A. Nobel* and the *Fridland*. The shippers were Armour & Co.—the consignees Armour & Co. of Copenhagen —and the parties to be notified were the Provision Import Company.

The case for the claimants is that they bought and paid for the goods from the shippers through their agents at Copenhagen in the ordinary course of business, and that the goods were intended to and would have been disposed of in their business in Scandinavia if they had been delivered. They give particulars of sub-sales in Denmark and Sweden to margarine manufacturers before the seizure. These sub-sales comprise over 200,000 lbs. of the goods—the other portion, over 900,000 lbs., they say had not been sold at the time of seizure.

The Crown's case was that the sales were not real sales, but that the Provision Import Company were merely to deal with these goods as agents for the shippers.

There is evidence that before the war they bought goods from Armours; there is no evidence that they were ever agents for them. In the affidavit of the Procurator-General the Provision Import Company were said to be the representatives of Hammond & Co. in Copenhagen; but they are not in these cases involved in any of the Hammond shipment transactions. I only find them once mentioned in the intercepted Armour cablegrams. That is on October 29, a date subsequent to those given for the purchases of the goods in question, but anterior to any seizures. That cablegram is consistent, and I think only consistent, with their being the purchasers in the case it refers to.

The documents were fairly completely produced to the Court

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by the claimants. In my opinion the right conclusion is that the Provision Import Company were bona fide purchasers of the goods they claim.

AS TO THE CLAIM OF CHRISTENSEN AND THOEGERSEN.

This claim is in respect of goods shipped by Morris & Co. on the *A. Nobel* and the *B. Bjornson;* by Cudahy & Co. on the *A. Nobel* and the *Fridland;* and by Armour & Co. on the *Fridland.* The shipments were all, therefore, before the Order in Council of October 29, 1914.

The main question as to these goods is whether they were sent to the claimants as selling agents for the shippers, or as purchasers on their own account.

The affidavits of Mr. Thoegersen, the sole proprietor of the firm, acknowledge that they sometimes acted as agents, but say that these particular goods were sold to, and bought by, them as purchasers, and that as to the greater part of the goods, the claimants had sold them to their own customers in Denmark, Sweden, and Norway, some before the sea voyage commenced, and others during transit. Particulars of these sub-sales were given.

The Ascher correspondence throws some light on the situation as between Christensen and Thoegersen and Cudahy & Co.

I am now going to refer to the Ascher correspondence as being helpful to some of the claimants

In a letter dated November 25, 1914, Ascher writes: "We are glad you have been able to do so heavy a business with Messrs. Christensen and Thoegersen, and of a portion of it they have already reaped the benefit, for we have been informed that heavy lines of lard of your brand have been already distributed amongst German buyers, particularly in the east by way of Stettin. How they will fare with subsequent shipments is problematical, for the fate of the s.s. *A. Nobel* is still quite uncertain."

And in a later letter (January 6 last): "As for Christensen and Thoegersen they are said to have made so much money out of the war, that even a big loss would not be greatly felt by them, if the *Nobel* should be permanently lost. This, however, we think is out of the question so far as neutral owners of the cargo are concerned."

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I cannot doubt that Christensen and Thoegersen did sell large quantities to Germany of goods imported from the American meat packers.

It is sworn that the drafts which appear by the documents to have been drawn by the shippers on the claimants were duly paid. I should have desired better evidence upon this point; but the dispute really is not whether the title to the ownership of the goods had passed, but whether in these particular transactions the claimants were acting merely as agents, or intermediaries for the consignors, or were purchasers. The passages I have read from the Ascher letters are more consistent with their being purchasers; and upon the whole the conclusion to which I have come is that the goods claimed were shipped to them as bona fide purchasers, and not as agents.

AS TO THE CLAIM OF BRÖDR LEVY.

This firm of merchants ("dealers in herrings, codfish, and provisions") claims lard and fat backs, shipped by Morris & Co. to their own order respectively.

The proofs in this case are not satisfactory. The goods comprised in bill of lading 11 on the *Kim* are also claimed by Morris & Co.; and those in bill of lading 62 on the *Kim* are also claimed by Armour & Co. The goods claimed from the *A. Nobel* are said to have been bought from Conrad Bang, an agent for Morris & Co. at Copenhagen, and from Backstrom, their agent at Stockholm.

An alleged copy of invoice, dated October 26, 1914, was exhibited, which says the goods were intended for the *A. Nobel* (which had sailed six days before), and that they had been war-insured at Copenhagen. In relation to all the goods claimed there is a bare statement that payment was made without any dates, amounts, or particulars whatsoever. The claimants did not produce any of the shipping documents. No affidavits were made by Bang or Backstrom or by any one from Armour's Copenhagen office. The claimants do not say whether they had dealt in lard or fat backs before or not. No dates appear on the invoices. The shippers who are said to have been paid also lay claim to close on half of the goods. Altogether the proofs are

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deficient, and I am not satisfied that the goods claimed were sold to the claimants, or that they had paid for the goods, or become the owners thereof; and the claim fails.

As to the goods also comprised in the claims of Morris & Co. and Armour & Co., they must be treated, therefore, as having been shipped by the shippers to their own order, and remaining their property at the time of seizure.

As to the Claims of Vilhelm Elwarth.

Mr. Elwarth has put forward two claims: (1.) one dated April 10, 1915, to 61,000 lbs. of lard shipped by Cudahy & Co. on the *A. Nobel*—to their own order—party to be notified, Ernst Ascher & Co. of Rotterdam; and (2.) the other dated June 1, 1915, to 88,618 lbs. of oleo oil, shipped on the same vessel by the Consolidated Rendering Company, of Brightwood, Massachusetts—to their own order—with the same party to be notified.

It is necessary to investigate closely the position of Vilhelm Elwarth. He was described in the affidavit of the Procurator-General as the agent in Copenhagen of E. Ascher & Co. of Hamburg. In his affidavit in reply he does not deny that, although he denies agency qua the particular transaction. In his affidavit of May 15, in support of the first claim, he said he carried on business in Copenhagen as a provision merchant with a large number of retail dealers as customers. In that of June 14, in support of the second claim, he has become an import merchant frequently importing into Denmark, among other things, oleo oil. His case is that he bought both the lard and the oleo oil at different times from Ernst Ascher & Co. of Rotterdam. The latter are agents for E. Ascher & Co. of Hamburg. He alleges that he bought the lard verbally on September 26 on a personal visit of some one to him at Copenhagen; that payment was to be by draft against documents; and that "in due course" he paid for the said goods and took up the documents. The draft was not produced and no dates or further particulars of payment are given. The oleo oil he says he bought verbally at Rotterdam on July 25 and 28, 1914; and that payment was to be by net cash. The documents purporting

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to be invoices for all the goods bear date November 3. No explanation was given of how the claim to the goods comprised in the earlier contract was not made till a couple of months after the claim to the goods the subject-matter of the later contract.

The Ascher letters, written by his principals, throw light upon the lard transaction, and upon the rest of Elwarth's claim. It will be remembered that evidence was given, and not contradicted, that he was Ascher's agent at Copenhagen. In a letter to Cudahy of November 7, Ascher & Co., of Hamburg, appear to treat the lard as having been their property. They say, "Nor are we sure that the war-risk on the 500 half-barrels of pure lard on board the steamship *Alfred Nobel* had been taken out by your good selves, not having received a debit note of the charge up to the present." Later, in the same letter, they say that it had been sold by their Rotterdam office "to a Danish firm." These were the consignments of lard claimed by Elwarth.

Elwarth is not named, although he was well known; and it is doubtful whether he was the person referred to, as he does not appear to be a member of any "firm."

After the capture of the *A. Nobel* they write (November 20) that they were interested both in the lard and oleo oil: "We are watching the development with much interest, although we ourselves are interested only with those 500 half-barrels of lard of yours, and a couple of hundred tierces of oleo, both of which we are happy to say are fully covered against war risk, so that in the worst of cases we cannot lose much." Those were all the goods claimed by Elwarth. They had in the meantime also suggested that consignments to them should be made ostensibly to Elwarth. They wrote: "We suppose if Rotterdam were to cable you 'Ship sales Elwarth,' you would understand that this meant a request to have our purchases forwarded to Copenhagen either to the address of our agent at that city, Mr. Vilhelm Elwarth, or to your order, party to be notified, Vilhelm Elwarth, Copenhagen. It might be right also in that case for you to invoice the goods to Mr. Elwarth, handing on a copy of the invoice simultaneously."

The correspondence refers frequently to Elwarth, and it

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contains a testimonial to his assiduity and fidelity as an instrument of Ascher & Co., Hamburg, since the beginning of the war in these words:

"We repeat that we consider ourselves responsible for any shipments you may be making to Mr. Elwarth during this period, and we are glad to say he has proved himself entirely reliable in all transactions which we had to let go through his hands since the beginning of the war."

I have come to the conclusion that the claim made by Elwarth is not a bona fide claim on his own behalf. He was not a purchaser from Ascher & Co. of Rotterdam, or of Hamburg. He was merely a nominee of theirs. The goods are not claimed by any person entitled to them, and therefore they stand to be treated as goods unclaimed.

AS TO THE CLAIM OF PETER BUCH & CO.

A claim was put in on behalf of this firm to goods covered by bills of lading on three of the vessels, as follows:

On the *B. Bjornson*, BB/L. 178 to 186, and 188;

On the *Fridland*, BB/L. 62 to 65, and 78; and

On the *Kim*, BB/L. 95 to 97, and 128—131.

The total quantity of the goods thus claimed was 752,908 lbs. They were all shipped by Hammond & Co. to their own order.

Although the claim was entered, no evidence whatsoever was adduced, nor was any document produced in support of it. Counsel appeared for some underwriters in the names of Buch & Co., but had not been supplied with any documents or materials. (It should be noted that when Mr. Cave referred to an affidavit relating to goods on the *Fridland* (B/L. 61) as if it was one by the present claimants, there is a confusion: that affidavit related to another claim by C. Bunchs, Fedevareforretning.)

The evidence for the Crown was that Peter Buch & Co., of Copenhagen, were very large exporters of provisions to Germany, and were a branch of the firm of that name in Hamburg. The shippers gave no evidence as to these shipments.

As no evidence was adduced in support of the claim, it necessarily fails.

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AS TO THE CLAIM OF J. O. HANSEN.

The subject-matter of this claim is a quantity of lard and fat backs amounting to 400,625 lbs. Mr. Hansen says he is a Danish dealer in such goods.

He claims four parcels of goods—one parcel each on the *B. Bjornson*, *Fridland*, and *Kim*, consigned by Morris & Co. to their own order; and another parcel on the *Kim* consigned by Armour & Co. to their own order.

The goods shipped by Morris he alleges he bought from Erik Valeur; those by Armours from their Copenhagen office. He adds a schedule purporting to give a list of his alleged purchases and resales; but he did not produce a single document relating to any of the transactions; no contract, invoice, bill of lading, draft, receipt, account, or anything else. No explanation or excuse was made for this. Erik Valeur was the representative in Copenhagen of Morris & Co. He made an affidavit in support of his own claim, to which reference may be made by way of criticism of this claim. He alleged that he bought some goods for Morris on his own account, and sold others as agent. How he came to decide which was which he did not explain. The goods claimed by Hansen on the *B. Bjornson*, Valeur says, he bought on his own account. The sale to Hansen, he says, was on September 30—although Valeur himself says he only bought on October 6.

Hansen has entirely failed to show that he was the purchaser or owner of any of the goods. His claim is quite unsupported, and I cannot accept it.

AS TO THE CLAIM OF SEGELCKE & CO.

Mr. Eilert Segelcke, the sole proprietor of this firm of wholesale dealers in lard and bacon in Copenhagen, claims 275,297 lbs. of lard and fat backs shipped by Morris & Co. on the *B. Bjornson* and the *Kim* to their own order. The claimants say they bought the goods partly through Valeur, and partly through Conrad Bang (agents for Morris & Co.).

According to the affidavit of Eilert Segelcke sworn May 18, 1915, the various goods were paid for at different times.

I am prepared to accept the account given by Segelcke as

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accurate. Accordingly I find that his firm were bona fide purchasers of the goods they claim.

AS TO THE CLAIM OF PEDERSEN FOR THE FAELLESFORENINGEN FOR DENMARKS BRUGSFORENINGER.

This is a claim to 45,219 lbs. of neutral lard shipped on the *B. Bjornson* by Morris & Co. to their own order.

The goods are also claimed by Morris & Co. themselves.

In the affidavit of Pedersen of March 19 it is deposed that the goods were bought for the purpose of keeping up the stock so that the firm could comply with orders for margarine "from the members."

No document is produced. The deponent does not even state from whom the goods were bought, or what the date of the alleged purchase was; and he does not allege that any payment was made. In a subsequent formal claim (April 9, 1915) the grounds of claim state that the goods were bought from Erik Valeur, who in the first instance had himself bought the goods at an agreed price, c.i.f. Copenhagen, and had taken up the documents and paid for the goods. On looking at Valeur's own account in his affidavit the statement is, not that he had bought or paid for the goods, but that he sold them to Pedersen's firm as agent for Morris & Co.

In these circumstances the claimant's proof is quite unsatisfactory; and accordingly, particularly as Morris & Co. themselves also claim the goods, I decide that Pedersen's firm have failed to establish their claim. So far as they are comprised in the claim of Morris & Co. they fall to be treated as goods which remain unsold.

AS TO THE CLAIM OF HENRIQUES AND ZOYDNER.

This firm claims 81,096 lbs. of lard shipped on the *B. Bjornson* by Morris & Co. to their own order. The affidavit in support of the claim contains the bare statement that this lot was purchased for the purpose of keeping up the firm's stock. There is no statement as to the persons from whom the purchase was made, what its terms were, what the purchase price was, or that the price, whatever it was, was ever paid. In a subsequent formal

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claim (unsworn) the grounds of claim state that the goods were purchased from Mr. Erik Valeur; that Valeur had in the first instance purchased the goods at an agreed price, c.i.f. Copenhagen, and that the documents therefor had been previously taken up and paid for by him. This statement is in direct contradiction to that of Valeur himself (in the affidavit already referred to), where he says he sold these goods merely as agent for Morris & Co.

My conclusion is that the claim of this firm has not been established.

AS TO THE CLAIM OF FRIGAST.

This is a claim to 15,750 lbs. of lard shipped by Armour & Co. on the *B. Bjornson*, and consigned to their own order. Mr. Frigast is a provision merchant at Copenhagen, and claims the goods under purchase through Armour & Co., of Copenhagen, on November 19 for the purpose of his business. He produced satisfactory documents, and I accept his account of the transaction as a real and bona fide transaction of purchase, and find that he had become the owner of the goods, and that he purchased them to be used in his own business.

AS TO THE CLAIM OF THE KORSOR MARGARIN FABRIK. A/S.

This firm claims one lot of thirty tierces of oleo stock laden on the *Fridland*, and another lot of thirty tierces of oleo oil laden on the *Kim*. The shippers were Morris & Co. to their own order at Christiania. They themselves also claim the first lot. The claimants say the goods were first bought by Erik Valeur, at an agreed price c.i.f. Copenhagen, and that they in turn bought from Valeur. They do not say when they bought, what the price was, or that any payment has been made. Valeur himself does not say he purchased the goods and resold them, but that he sold as agent for Morris & Co. A declaration of the claimants of March 19, 1915, that the goods would be consumed in Denmark states that they were purchased from Morris & Co. through Erik Valeur. The evidence in support of the claim is quite unsatisfactory, and I find the claim has not been established. The result is that the goods on the *Fridland* which are also claimed

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by Morris & Co. must be treated as goods of Morris & Co. unsold; and the goods on the *Kim* as goods unclaimed by any person entitled as owner.

AS TO THE CLAIM OF THE MARGARINEFABRIK DANIA.

This is a small claim to 9004 lbs. of lard on the *Fridland*, shipped by Morris & Co. and consigned to their own order at Christiania. The goods are also claimed by Morris & Co. themselves.

The case is to all intents identical with the Korsor claim just dealt with, except that in this case Valeur states he bought them first on his own account and sold them on the same day. They were invoiced after the seizure.

I find that the claim has not been established.

THE CLAIM OF C. BUNCHS FED.

The claimants are a Danish company. The claim is to a parcel of beef tongues (3371 lbs.), shipped on the *Fridland* by Hammond & Co., consigned to their own order, naming Christensen and Thoegersen as the "parties to be notified."

The company say they bought the goods from Christensen and Thoegersen. They produced the bill of lading and priced invoice from Christensen and Thoegersen, and it is sworn they took up the documents. The invoice was sent two days after the seizure. Whether when it was sent the seizure was known does not appear.

On the whole I have come to the conclusion that this is a bona fide claim to goods bought to be dealt with in Denmark; and the claim is therefore allowed.

AS TO THE CLAIM OF ERIK VALEUR.

This is a claim to 106,155 lbs. of oleo stock laden on the *Kim*.

The shipment was by Morris & Co. to their own order at Copenhagen—the parties to be notified being the Morris Packing Company of Christiania.

Mr. Valeur was the representative of Morris & Co. at Copenhagen. He said his agency comprehended Denmark only. He

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alleges that certain of the consignments by Morris (many of which have already been referred to) were sent to him for sale as agent, in Denmark; and that if he wished to sell goods to Germany, or German buyers, he would have to buy them for his own account. The goods he now claims he says he bought on his own account, and I suppose they were therefore goods he intended to send to Germany. I am not satisfied that they were. They were said to have been invoiced to him some days after the capture of the last of the first three vessels.

I find that he has no ground whatever for his allegation that he was the owner of the goods.

THE CLAIM OF CHRISTIAN LOEHR.

This claim is for 41,952 lbs. of lard alleged to have been bought from the Provision Import Company. This parcel was shipped on the *Alfred Nobel* and consigned by Rumsay & Co. to their own order, the Provision Import Company being the parties to be notified. In dealing with the direct claim of the latter I mentioned that certain goods shipped for them had been resold.

Mr. Loehr is a Dane, and is the British Vice-Consul in Denmark. He produced his documents, and I see no reason to doubt the bona fides or the reality of his purchase as one made for the purposes of his business in Denmark.

AS TO THE CLAIM OF J. ULLMAN & CO.

The subject-matter of this claim consists of certain rubber of various kinds. 347 cases (133,209 lbs.) were shipped on the *Fridland*, and 218 cases (44,428 lbs.) on the *Kim*. The consignors were Edward Maurer & Co., and the consignees "J. Ullman & Co., Copenhagen."

Rubber was declared conditional contraband on September 21, and absolute contraband on October 29, 1914.

At the time of the shipment on the *Fridland*, therefore, rubber was conditional contraband, and at that on the *Kim* it was absolute.

Exportation of rubber of this kind from Denmark was

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prohibited on October 22, before either of the shipments. Jacques Ullman had up to the time of the war carried on business as a merchant in rubber and other articles at Hamburg.

It was stated for the Crown that he was a German; but this was a mistake, as it was established that he was born a Swiss and had remained a Swiss subject. After the war he gave up his Hamburg business and began trading in Denmark. He, with his wife, formed a Danish company, "J. Ullman & Co.," on October 24, 1914.

The transactions relating to the goods claimed were attacked by the Crown on the ground that the rubber was falsely described in the ship's papers as "gum" with the object of misleading, and on the ground that the *Fridland* shipment was confiscable as conditional contraband because it was destined for the enemy country and for the use of the enemy Government; and the *Kim* shipment as absolute contraband on the ground of destination for the enemy country.

The goods were invoiced as rubber. Much evidence was given on both sides upon the question whether "gum" was an accurate or a false description of the goods. After weighing the evidence I have come to the conclusion that it was not an accurate commercial description, and that its use in the manifest instead of the appropriate commercial description of "rubber," or various qualities of rubber by their commercial names, was adopted in order to avoid the inconvenience or difficulties which would result from a search and possible capture.

Any concealment or misdescription, or device calculated and intended by neutrals to deceive and to hamper belligerents in their undoubted right of search for contraband, will, while I sit in this Court, weigh heavily against those adopting such courses when any presumptions or inferences have to be considered. Neutrals are expected to conduct their neutral trade during the war not only without having recourse to fraud, or false papers, but with candour and straightforwardness. As has been said by the American Supreme Court, "Belligerents are entitled to require of neutrals a frank and bona fide conduct." It will not be found against their interest to pursue such conduct; but in investigating attempts to

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mislead by misdescription or otherwise, care must be taken to ascertain who have taken part in such attempts, and to what extent

In the present case I find upon the facts that the misdescription of the rubber as "gum" in the manifest was due in the main to Gans & Co.—the charterers of the vessels. Copies of the invoices with the correct description of rubber were given to Gans & Co. for the purpose of the manifest which was to be made out by them. Maurer & Co. no doubt acquiesced in this because otherwise they would probably have lost the benefit of the freight contract which they had made early in October; but I do not find that the claimants, the consignees, ever suggested or took any part in this. I do not find that they were aware of the description used until after the *Fridland* sailed. There was read against them a passage in a cablegram of October 31, "Expect you informed Bruno (the insurer) everything shipped as gum." The explanation of Ullman that this was because of a cablegram he received on October 28 is, I think, sufficient. Similarly I do not find that they were responsible for the misdescription of their cargo on the *Kim*.

I have examined the commercial documents, and considered very carefully the cablegrams set out in Exhibit J.P.M. 1 (many of which, however, do not affect the claimants), and the letters and cablegrams exhibited to Ullman's second affidavit—and even if they are approached in an attitude of suspicion created by some of the surrounding circumstances, I cannot arrive at the inference that the rubber was on its way to an enemy destination when it was seized; on the contrary, my conclusion from the evidence is that the sale to Ullman, and the purchase and payment by him, were honest business transactions, and that he intended to add the rubber to his stock in his Denmark business, and to dispose of it in Scandinavia in the very profitable market described in his letters, which was created greatly by the stoppage to Scandinavia of all exports of rubber from or through Germany.

A very full and strict undertaking was given on the part of Ullman & Co. in the course of these proceedings. That must be adhered to. I need not trouble further about other undertakings

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given in the course of this case, except to say that they must be adhered to.

THE CLAIM OF W. T. BAIRD.

This relates to 39 cases (29,771 lbs.) of rubber shipped on the *Kim* on November 11 (about a fortnight after rubber was declared absolute contraband) by Baird, and consigned to Fritsch.

It stands upon a different footing from the last, as the claimant is the shipper. There are three people concerned: Baird, and Frankfurter, in America, and Fritsch at Landskrona in Sweden. Fritsch was the German Vice-Consul at Sweden, and a forwarding agent. Baird claims as the owner.

The transaction is not made as clear as it could and should have been. Counsel at the hearing stated it thus:

"Mr. Baird sold these 39 cases of rubber to Mr. Frankfurter, who was also a rubber broker in New York, and he in turn sold it to Mr. Fritsch."

The claimant, Baird, deposed that the contract for the sale of the said goods was made between Frankfurter and the Rubber Trading Company, of which Baird was president; and that, at the time of such sale, he was requested by Frankfurter to make the shipment to W. Fritsch, "who (he says) was the principal for whom Frankfurter was acting." Frankfurter exhibits an order which he received from Fritsch—pursuant to this order (according to his affidavit) he entered into a contract with Baird "for the purchase of the rubber." No contract or invoice has been produced; the only documents placed before the Court are the letter from Fritsch to Frankfurter, and a copy of the bill of lading. Two bills of lading were given—both of these were sent to Fritsch, according to Baird's statement. He does not say by whom they were sent. Whether Fritsch dealt with them, or what has become of them, the Court was not informed. Baird does not say that any right to dispose of the goods was reserved on the sale to Frankfurter, or to Fritsch, or when the two original bills of lading were sent. Frankfurter throws no light upon this; and Fritsch has not given any evidence or made any deposition.

I am not satisfied that Baird has made out his claim to be owner of the goods, or that any property remained in him after

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the shipment. There are, moreover, some other matters to which I must advert in connection with the claim. As to the description of the rubber as "gum," he gave no explanation in his affidavit; but he allowed it to be understood as having been done in the ordinary course of business, for all he says about it is, "I have been engaged in buying and selling rubber for forty years in the city of New York, and I have always understood the terms 'gum' and 'rubber' to be interchangeable terms in the trade, and have frequently known of rubber being described as 'gum.'"

In a letter of January 28 he wrote that he could not give any instance of crude rubber having been shipped under the name of "gum."

Later on the Rubber Club of New York, of which he was a member, appears to have asked Mr. Baird to give them an explanation of the transaction. His answer took the form of a statement made and certified before a notary public on March 24, 1915. There he said the contract was entered into on October 29, 1914, with Frankfurter, and the goods were sold to him. Fritsch of Landskrona is not mentioned. Frankfurter is said to have given assurance that the rubber was for Danish consumption. Fritsch was a merchant in Sweden, and that is not the assurance he is said to have given. As to the way in which the rubber was described, he said that the instruction to his shipping clerk to ship it as "gum" was given by Frankfurter, and that he had since been told by Frankfurter that the Gans Line suggested that denomination. Frankfurter does not deal with any of this in his affidavit made two months later. Baird was therefore a party to this misleading description.

Taking the whole circumstances into consideration, I am justified in drawing the inference that the rubber was on its way to enemy territory through Fritsch, the German Consul; and even if the claimant had made out his claim to be the owner, I find that the rubber was confiscable as absolute contraband.

As to the Claim of Marcus & Co.

This claim refers to 99 bales of hides (18,968 lbs.) shipped on the *Kim* on November 11.

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Hides were declared conditional contraband on September 21, 1914.

The consignors were Amsinck & Co., of New York; and the consignees Marcus & Co., of Copenhagen. The latter are hide merchants dealing largely with Hamburg. The claim alleges that the goods were purchased from Goldtree, Liebes & Co., of Santa Ana, El Salvador, on terms c.i.f. Copenhagen, cash to be paid on receipt of goods. It was also alleged that the goods had been paid for by the claimants. No proof of payment was given; and it would be strange if the goods were paid for before seizure, when payment was only due on receipt of the goods. Goldtree, Liebes & Co. were also merchants at Hamburg. The goods were insured by Hamburg offices. On reference to the exhibit set out in J.P.M. 11, it will be seen that the claimants were a firm having active dealings, after the war, with Hamburg.

Amsinck & Co., the consignors, were shown to have sent under cover to a bank in Christiania a lot of letters to be sent on to Germany, addressed to various people in Hamburg and Berlin, which were to have been reposted as if they had been sent from Christiania. Among such letters, which were intercepted, was one to Goldtree, Liebes & Co., of Hamburg, of June 5, 1915, relating to this very parcel of hides, in which they express the hope that the goods have arrived, and refer to Goldtree's "friends in Copenhagen," meaning, without doubt, Marcus & Co., the claimants.

No evidence was given as to what was done with the bill of lading.

As the goods were consigned c.i.f. to Copenhagen and were to be paid for on receipt of the goods, and as the goods were never received by the consignees, and no satisfactory evidence was given of the alleged payment, I am not satisfied that the goods ever were the property of the claimants as alleged. Besides, the proper inference from such evidence as was adduced is, in my opinion, that Marcus & Co. in Copenhagen were merely intermediaries between Goldtree, Liebes & Co. of Santa Ana, and Goldtree, Liebes & Co. of Hamburg, to whom the goods were really destined at the time of seizure.

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THE CLAIMS OF THE GUARANTY TRUST COMPANY OF NEW YORK.

These are the last claims I have to deal with. They relate to wheat and flour on the *A. Nobel*, the *B. Bjornson*, and the *Fridland*.

In the first, the Trust Company are associated with Newman & Co.; in the second, with Norris & Co.; and in the third, partly with Norris & Co.

The facts in these cases were not sufficiently placed before the Court; and there was no argument upon them on behalf of the Crown.

They must be further dealt with by the Crown and the claimants before the Court can dispose of them.

I must accordingly adjourn them for further argument.

The details of all the claims have now been set out. I am very sorry it has taken so long, but it must be remembered that I had to deal with, not one case, but, I think, twenty-five cases.

With regard to the general character of the cargoes, evidence was given by persons of experience that all the foodstuffs were suitable for the use of troops in the field; that some, e.g., the smoked meat or smoked bacon, were similar in kind, wrapping, and packing to what was supplied in large quantities to the British troops, and were not ordinarily supplied for civilian use; that others, e.g., canned or boiled beef in tins, were of the same brand and class as had been offered by Armour & Co. for the use of the British forces in the field; and that the packages sent by these ships could only have been made up for the use of troops in the field. As against this, there was evidence that goods of the same class had been ordinarily supplied to and for civilians.

As to the lard, proof was given that glycerine (which is in great demand for the manufacture of nitro-glycerine for high explosives) is readily obtainable from lard. Although this use is possible, there was no evidence before me that any lard had been so used in Germany; and I am of opinion that the lard comprised ought to be treated upon the footing of foodstuffs only. It is largely used in German army rations.

As to the fat backs (of which large quantities were shipped),

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there was also proof that they could be used for the production of glycerine. Mr. Perkin, in his affidavit in answer to that of Mr. George Stubbs, of the British Government Laboratory (which dealt with lard and fat backs as materials out of which glycerine was producible), confines his observations to lard; and passes by entirely what had been deposed as to fat backs. In fact no evidence as against that of Mr. Stubbs was offered for the shippers of fat backs. Mr. Nuttall, a deponent for one of them, Sulzberger & Sons Co., says the fat backs shipped by them were not in a condition which was suitable for eating; but he may have meant only that they required further treatment before they become edible.

There was no market for these fat backs in Denmark. The Procurator-General deposed as a result of inquiries that the Germans were very anxious to obtain fat backs merely for the glycerine they contain. In these circumstances it is not by any means clear that fat backs should be regarded merely as foodstuffs in these cases, and in the absence of evidence to the contrary, it is fair to treat them as materials which might either be required as food, or for the production of glycerine.

The convenience of Copenhagen for transporting goods to Germany need hardly be mentioned. It is in evidence that the chief trade between Copenhagen and Germany since the war was through Lübeck, Stettin, and Hamburg.

The sea-borne trade of Lübeck has increased very largely since the war. It was also sworn in evidence that Lübeck was a German naval base. Stettin is a garrison town, and is the headquarters of army corps. It has also shipbuilding yards where warships are constructed and repaired. It is Berlin's nearest seaport. It will be remembered that one of the big shipping companies asked a Danish firm to become nominal consignees for goods destined for Stettin. Hamburg and Altona had ceased to be the commercial ports dealing with commerce coming through the North Sea. They were headquarters of various regiments. Copenhagen is also a convenient port for communication with the German naval arsenal and fortress of Kiel and its canal, and for all places reached through the canal. These ports may properly be regarded, in my opinion, as bases of

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supply for the enemy, and the cargoes destined for these might on that short ground be condemned as prize; but I prefer, especially as no particular cargo can definitely be said to be going to a particular port, to deal with the cases upon broader grounds.

Before stating the inferences and conclusions of fact, it will be convenient to investigate and ascertain the legal principles which are to be applied according to international law, in view of the state of things as they were in the year 1914.

While the guiding principles of the law must be followed, it is a truism to say that international law, in order to be adequate, as well as just, must have regard to the circumstances of the times, including "the circumstances arising out of the particular situation of the war, or the condition of the parties engaged in": vide *The Jonge Margaretha.* (1)

Two important doctrines familiar to international law come prominently forward for consideration: the one is embodied in the rule as to "continuous voyage," or continuous "transportation"; the other relates to the ultimate hostile destination of conditional and absolute contraband respectively.

The doctrine of "continuous voyage" was first applied by the English Prize Courts to unlawful trading. There is no reported case in our Courts where the doctrine is applied in terms to the carriage of contraband; but it was so applied and extended by the United States Courts against this country in the time of the American Civil War; and its application was acceded to by the British Government of the day; and was, moreover, acted upon by the International Commission which sat under the Treaty between this country and America, made at Washington on May 8, 1871, when the commission, composed of an Italian, an American and a British delegate, unanimously disallowed the claims in *The Peterhoff* (2), which was the leading case upon the subject of continuous transportation in relation to contraband goods. (The other well known American cases—e.g., *The Stephen Hart* (3), *The Bermuda* (4), and *The Springbok* (5)—considered

(1) (1799) 1 C. Rob. 189; and Chancellor Kent's Commentaries, p. 139.
(2) (1866) 5 Wall. 28.
(3) Blatch. Pr. Cas. 387.
(4) (1865) 3 Wall. 514.
(5) (1866) 5 Wall. 1.

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and applied the doctrine in relation to attempted breaches of the blockade.)

I am not going through the history of it, but the doctrine was asserted by Lord Salisbury at the time of the South African war with reference to German vessels carrying goods to Delagoa Bay, and as he was dealing with Germany, he fortified himself by referring to the view of Bluntschli as the true view as follows: "If the ships or goods are sent to the destination of a neutral port only the better to come to the aid of the enemy, there will be contraband of war, and confiscation will be justified."

It is essential to appreciate that the foundation of the law of contraband, and the reason for the doctrine of continuous voyage which has been grafted into it, is the right of a belligerent to prevent certain goods from reaching the country of the enemy for his military use.

Neutral traders, in their own interest, set limits to the exercise of this right as far as they can. These conflicting interests of neutrals and belligerents are the causes of the contests which have taken place upon the subject of contraband and continuous voyages.

A compromise was attempted by the London Conference in the unratified Declaration of London. The doctrine of continuous voyage or continuous transportation was conceded to the full by the conference in the case of absolute contraband, and it was expressly declared that "it is immaterial whether the carriage of the goods is direct, or entails transhipment, or a subsequent transport by land."

As to conditional contraband, the attempted compromise was that the doctrine was excluded in the case of conditional contraband, except where the enemy country had no seaboard. As is usual in compromises, there seems to be an absence of logical reason for the exclusion. If it is right that a belligerent should be permitted to capture absolute contraband proceeding by various voyages or transport with an ultimate destination for the enemy territory, why should he not be allowed to capture goods which, though not absolutely contraband, become contraband by reason of a further destination to the enemy Government or its armed forces? And with the facilities of

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transportation by sea and by land which now exist the right of a belligerent to capture conditional contraband would be of a very shadowy value if a mere consignment to a neutral port were sufficient to protect the goods. It appears also to be obvious that in these days of easy transit, if the doctrine of continuous voyage or continuous transportation is to hold at all, it must cover not only voyages from port to port at sea, but also transport by land until the real, as distinguished from the merely ostensible, destination of the goods is reached.

In connection with this subject, note may be taken of the communication of January 20, 1915, from Mr. Bryan, as Secretary of State for the United States Government, to Mr. Stone, of the Foreign Relations Committee of the Senate. It is, indeed, a State document. In it the Secretary of State, dealing with absolute and conditional contraband, puts on record the following as the views of the United States Government:—

"The rights and interests of belligerents and neutrals are opposed in respect to contraband articles and trade. . . . . The record of the United States in the past is not free from criticism. When neutral, this Government has stood for a restricted list of absolute and conditional contraband. As a belligerent, we have contended for a liberal list, according to our conception of the necessities of the case.

"The United States has made earnest representations to Great Britain in regard to the seizure and detention of all American ships or cargoes bona fide destined to neutral ports. . . . . It will be recalled, however, that American Courts have established various rules bearing on these matters. The rule of 'continuous voyage' has been not only asserted by American tribunals, but extended by them. They have exercised the right to determine from the circumstances whether the ostensible was the real destination. They have held that the shipment of articles of contraband to a neutral port 'to order' (this was of course before the Order in Council of October 29), from which, as a matter of fact, cargoes had been transhipped to the enemy, is corroborative evidence that the cargo is really destined to the enemy instead of to the neutral port of delivery. It is thus seen that some of the doctrines which appear to bear harshly upon

neutrals at the present time are analogous to or outgrowths from policies adopted by the United States when it was a belligerent. The Government, therefore, cannot consistently protest against the application of rules which it has followed in the past, unless they have not been practised as heretofore. . . . . The fact that the commerce of the United States is interrupted by Great Britain is consequent upon the superiority of her navy on the high seas. History shows that whenever a country has possessed the superiority our trade has been interrupted, and that few articles essential to the prosecution of the war have been allowed to reach its enemy from this country."

It is not necessary to dilate further upon the history of the doctrine in question.

I have no hesitation in pronouncing that, in my view, the doctrine of continuous voyage, or transportation, both in relation to carriage by sea and to carriage over land, had become part of the law of nations at the commencement of the present war, in accordance with the principles of recognized legal decisions, and with the view of the great body of modern jurists, and also with the practice of nations in recent maritime warfare.

The result is that the Court is not restricted in its vision to the primary consignments of the goods in these cases to the neutral port of Copenhagen; but is entitled, and bound, to take a more extended outlook in order to ascertain whether this neutral destination was merely ostensible and, if so, what the real ultimate destination was.

As to the real destination of a cargo, one of the chief tests is whether it was consigned to the neutral port to be there delivered for the purpose of being imported into the common stock of the country. This test was applied over a century ago by Sir William Grant in the Court of Appeal in prize cases in the case of *The William*. (1) It was adopted by the United States Supreme Court in their unanimous judgment in *The Bermuda* (2), where Chase C.J., in delivering the judgment, said: "Neutrals may convey in neutral ships, from one neutral port to another, any goods, whether contraband of war or not,

(1) (1806) 5 C. Rob. 385. (2) 3 Wall. 514.

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if intended for actual delivery at the port of destination, and *to become part of the common stock of the country or of the port.*"

Another circumstance which has been regarded as important in determining the question of real or ostensible destination at the neutral port was the consignment "to order or assigns" without naming any consignee.

In the celebrated case of *The Springbok* (1) the Supreme Court of the United States acted upon inferences as to destination (in the case of blockade) on this very ground. The part of the judgment dealing with the matter is as follows:—

"That some other destination than Nassau was intended may be inferred from the fact that the consignment, shown by the bills of lading, and the manifest was *to order or assigns*. Under the circumstances of this trade, such a consignment must be taken as a negation that any such sale was intended to be made there; for had such sale been intended it is most likely that the goods would have been consigned for that purpose to some established house named in the bills of lading."

The same circumstance was also similarly dealt with in *The Bermuda* (2) and in *The Peterhoff*. (3)

I am not unmindful of the argument that consignment "to order" is common in these days. But a similar argument was used in *The Springbok* (1), supported by the testimony of some of the principal brokers in London, to the effect that a consignment "to order or assign" was the usual and regular form of consignment to an agent for sale at such a port as Nassau. The British Government was petitioned to intervene for the shippers; but upon this point the British Foreign Office said that "no doubt the form was usual in the time of peace, but that a practice which might be perfectly regular in time of peace under the municipal regulations of a particular State, would not always satisfy the law of nations in time of war, more particularly when the voyage might expose the ship to the visit of belligerent cruisers"; and added that, "having regard to the very doubtful character of all trade ostensibly carried on at

(1) 5 Wall. 1.
(2) 3 Wall. 514.
(3) 5 Wall. at p. 25; and see Blatch. Pr. Cas. 463, at p. 540.

Nassau during the war in the United States, and to many other circumstances of suspicion before the Court, Her Majesty's Government are not disposed to consider the argument of the Court upon this point as otherwise than tenable."

The argument still remains good, that if shippers, after the outbreak of war, consign goods of the nature of contraband to their own order without naming a consignee, it may be a circumstance of suspicion in considering the question whether the goods were really intended for the neutral destination, and to become part of the common stock of the neutral country, or whether they had another ultimate destination. Of course, it is not conclusive. The suspicion arising from this form of consignment during war might be dispelled by evidence produced by the shippers. It may be here observed that some point was made that in many of the consignments the bills of lading were not made out "to order" simpliciter, but to branches or agents of the shippers. That circumstance does not, in my opinion, make any material difference.

Other matters relating to destination will be discussed upon the second branch of the case, namely, whether the goods were destined for Government or military use. Wherever destination comes in question, certainty as to it is seldom possible in such cases as these; "highly probable destination" is enough in the absence of satisfactory evidence for the shippers: see per Lord Stowell in *The Jonge Margaretha.* (1)

Upon this branch of the case—for reasons which have been given when dealing with the consignments generally, and when stating the circumstances with respect to each claim—I have no hesitation in stating my conclusion that the cargoes (other than the small portions acquired by persons in Scandinavia whose claims are allowed) were not destined for consumption or use in Denmark or intended to be incorporated into the general stock of that country by sale or otherwise; that Copenhagen was not the real bona fide place of delivery; but that the cargoes were on their way at the time of capture to German territory as their actual and real destination.

The second branch of the case raises the question whether the

(1) 1 C. Rob. 189, at p. 192.

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goods, which I have decided were on their way to German territory, were destined further for the use of the German Government or departments or for military use by the troops, or other persons actually engaged in warlike operations, or should be presumed to be so destined in the circumstances.

As a preliminary, it becomes necessary to consider the two Orders in Council of August 20 and October 29, 1914.

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It was contended for the claimants that before the seizure of the cargoes on the first three vessels, and while they were still on their respective voyages, the Order in Council of August 20 (even if it was binding on the Court) had been rendered inoperative by the repeal contained in the Order of October 29.

It was further contended that the two Orders in Council purporting to give effect with certain additions and modifications to the unratified "Declaration of London" had no binding effect upon this Court and ought to be disregarded.

As to the first of these two contentions, no doubt if the first Order had affected the substantive rights of the neutral, e.g., if it had declared an article as absolute contraband, which by the repealing Order had been removed from the list of contraband before capture, it could not be said that the Order had remained operative so as to justify the seizure of the article; but in reality the only change (material to these cases) which the Order purported to make was in the nature of alteration of practice as to evidence—namely, by adding certain presumptions to those contained in art. 34 of the Declaration of London; and all these presumptions, whether set up in the interest of the captor or against him, are rebuttable (see M. Renault's Report on the Declaration). The Order had proclaimed to the neutral owners of the cargoes before the voyages commenced how in practice as matter of evidence and proof cargoes seized would be dealt with, and it might fairly be argued that they could not complain if their cases were treated in accordance with the Order; but it is not necessary for me to pronounce any decision upon the point. I will, for the purposes of this case, assume that the Order of August 20 had ceased to have any effect upon the promulgation of the subsequent Order. The result is that cases relating to

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the *A. Nobel*, *B. Bjornson*, and the *Fridland* must be decided in accordance with the rules of international law.

The Order of October 29 applies, however, to all the cargoes on the *Kim*.

As to the contention that the Order is not binding on this Court, I expressed my views on the general question of the binding character of Orders in Council upon the Prize Court in the case of *The Zamora*. (1) I do not wish to detract anything from what I then said; nor do I deem it necessary at present to add anything as to the general principles; but as to this Order, so far as it affects questions arising in these proceedings, it is right to point out that no provision in it can possibly be said to be in violation of any rule or principle of international law. It is true that in a matter of real substance it alters the proposed compromise incorporated in art. 35 of the Declaration of London, whereby, if the declaration had been ratified, the doctrine of continuous voyage would have been excluded for conditional contraband.

The provision in art. 35 was described by Sir Robert Finlay (counsel for several of the claimants) as "an innovation in international law as hitherto recognized in the United States and by Great Britain and other States, introducing an innovation of the first importance by excluding the doctrine of continuous voyage in the case of conditional contraband."

What the Order in Council did, therefore, was to prevent the innovation. In this regard it therefore proceeded, not in violation of, but upon the basis of, the existing international law upon the subject.

It may be well to note, and to record, that at the London Conference which produced the Declaration all the Allied Powers engaged in this war, and also the United States, had been in favour of continuing to apply the doctrine of continuous voyage or continuous transportation to conditional as well as to absolute contraband, a doctrine which, as we have seen, was nurtured and specially favoured by the Courts of the United States.

As to the modifications regarding presumptions and onus of

(1) June 21, 1915, 31 Times L. R. 513. Under appeal to the Judicial Committee of the Privy Council.

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proof, as, for instance, where goods are consigned "to order" without naming a consignee, these are matters really affecting rules of evidence and methods of proof in this Court, and I fail to see how it is possible to contend that they are violations of any rule of international law.

The effect of the Order in Council is that, in addition to the presumptions laid down in art. 34 of the "Declaration of London," a presumption of enemy destination as defined by art. 33 shall be presumed to exist if the goods are consigned to or for an agent of the enemy State, or to a person in the enemy territory, or if they are consigned "to order," or if the ship's papers do not show who the consignee is; but in the latter cases the owners may, if they are able, prove that the destination is innocent.

All the goods claimed by the shippers on the *Kim* were consigned to their own order, or to the order of their agents (which is the same thing), and not to any independent consignee; and they have all entirely failed to discharge the onus which lies upon them to prove that their destination was innocent.

There was some suggestion that liability to capture in the Declaration of London and Order in Council did not mean liability to confiscation or condemnation. On reference to the various provisions as to absolute and conditional contraband, it is clear that it is used in that sense.

I am of opinion that under the Order in Council the goods claimed by all the shippers on the *Kim* were confiscable as lawful prize.

I now proceed to consider the confiscability of the cargoes on all the four vessels, apart entirely from the operation of the Order in Council upon the *Kim* cargoes.

Having decided that the cargoes, though ostensibly destined for Copenhagen, were in reality destined for Germany, the question remains whether their real ultimate destination was for the use of the German Government or its naval or military forces.

If the goods were destined for Germany, what are the facts and the law bearing upon the question whether they had the further hostile destination for the German Government for military use?

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In the first place, as has already been pointed out, they were goods adapted for such use ; and further, in part, adapted for immediate warlike purposes in the sense that some of them could be employed for the production of explosives. They were destined, too, for some of the nearest German ports like Hamburg, Lübeck, and Stettin, where some of the forces were quartered, and whose connection with the operations of war has been stated. It is by no means necessary that the Court should be able to fix the exact port: see *The Dolphin* (1); *The Pearl* (2); *The Peterhoff.* (3)

Regard must also be had to the state of things in Germany during this war in relation to the military forces, and to the civil population, and to the method described in evidence which was adopted by the Government in order to procure supplies for the forces.

The general situation was described by the British Foreign Secretary in his Note to the American Government on February 10, 1915, as follows:—

"The reason for drawing a distinction between foodstuffs intended for the civil population and those for the armed forces or enemy Government disappears when the distinction between the civil population and the armed forces itself disappears. In any country in which there exists such a tremendous organisation for war as now obtains in Germany, there is no clear division between those whom the Government is responsible for feeding and those whom it is not. Experience shows that the power to requisition will be used to the fullest extent in order to make sure that the wants of the military are supplied, and however much goods may be imported for civil use it is by the military that they will be consumed if military exigencies require it, especially now that the German Government have taken control of all the foodstuffs in the country."—I am not saying that the last sentence is applicable to the circumstances of this case.— . . . .

"In the peculiar circumstances of the present struggle where the forces of the enemy comprise so large a proportion of the population, and where there is so little evidence of shipments on

(1) Ante, p. 251. (2) (1866) 5 Wall. 574.
(3) 5 Wall. 28, at p. 59.

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private as distinguished from Government account, it is most reasonable that the burden of proof should rest upon claimants."

It was given in evidence that about ten millions of men were either serving in the German army, or dependent upon or under the control of the military authorities of the German Government, out of a population of between 65 and 70 millions of men, women, and children. Of the food required for the population, it would not be extravagant to estimate that at least one-fourth would be consumed by these 10 million adults.

Apart altogether from the special adaptability of these cargoes for the armed forces, and the highly probable inference that they were destined for the forces, even assuming that they were indiscriminately distributed between the military and civilian population, a very large proportion would necessarily be used by the military forces.

So much as to the probable ultimate destination in fact of the cargoes.

Now as to the question of the proof of intention on the part of the shippers of the cargoes.

It was argued that the Crown as captors ought to show that there was an original intention by the shippers to supply the goods to the enemy Government or the armed forces at the inception of the voyage as one complete commercial transaction, evidenced by a contract of sale or something equivalent to it.

It is obvious from a consideration of the whole scheme of conduct of the shippers that if they had expressly arranged to consign the cargoes to the German Government for the armed forces, this would have been done in such a way as to make it as difficult as possible for belligerents to detect it.

If the captors had to prove such an arrangement affirmatively and absolutely, in order to justify capture and condemnation, the rights of belligerents to stop articles of conditional contraband from reaching the hostile destination would become nugatory.

It is not a crime to dispatch contraband to belligerents. It can be quite legitimately sent subject to the risk of capture; but the argument proceeded as if it were essential for the captors to prove the intention as strictly as would be necessary in a criminal trial;

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and as if all the shippers need do was to be silent, to offer no explanation, and to adopt the attitude towards the Crown, "Prove our hostile intention if you can."

In the first place, it may be observed that it is not necessary that an intention at the commencement of the voyage should be established by the captors either absolutely or by inference.

In *The Bermuda* (1) the Chief Justice of the Supreme Court of the United States, in referring to the decision of Sir William Grant in *The William* (2), said:—

"If there be an intention, either formed at the time of the original shipment, *or afterwards*, to send the goods forward to an unlawful destination, the continuity of the voyage will not be broken, as to the cargo, by any transactions at the intermediate port."

It is, no doubt, incumbent upon the captors in the first instance to prove facts from which a reasonable inference of hostile destination can be drawn, subject to rebuttal by the claimants.

Lord Granville as Foreign Secretary in 1885, in a Note to M. Waddington (the French Ambassador) which had reference to the question of rice being declared contraband by the French Government in relation to China, said:—

"There must be circumstances relative to any particular cargo, or its destination, to displace the presumption that articles of food are intended for the ordinary use of life, and to show, prima facie at all events, that they are destined for military use, before they could be treated as contraband."

And Lord Lansdowne as Foreign Secretary in 1904, in a Note to the British Ambassador at St. Petersburg, stated the British view thus:—

"The true test appears to be whether there are circumstances relating to any particular cargo to show that it is destined for military or naval use."

These statements, so qualified, it will be noted, were made when this country was making representations against the action of foreign Governments concerning conditional contraband. Therefore they were put as high, I assume, as it was thought they properly could be put.

(1) 3 Wall. 514. (2) 5 C. Rob. 385.

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So far as it is necessary to establish intention on the part of the shippers, it appears to me to be beyond question that it can be shown by inferences from surrounding circumstances relating to the shipment of and dealings with the goods.

Cargoes are inanimate things, and they must be sent on their way by persons. If that is all that was meant by counsel for the claimants, when they argued that "intention" must be proved, their contention may be conceded. But it need not be an "intention" proved strictly to have existed at the beginning of the voyage, or as an obligation under a definite commercial bargain.

If at the time of the seizure the goods were in fact on their way to the enemy Government or its forces as their real ultimate destination, by the action of the shippers, whenever the project was conceived, or however it was to be carried out; if, in truth, it is reasonably certain that the shippers must have known that that was the real ultimate destination of the goods (apart of course from any genuine sale to be made at some intermediate place), the belligerent had a right to stop the goods on their way, and to seize them as confiscable goods.

In the circumstances of these cases, especially in view of the opportunity given to the claimants, who possess the best and fullest knowledge of the facts, to answer the cases made against them, any fair tribunal, like a jury, or an arbitrator, whose duty it was to judge facts, not only might but almost certainly would come to the conclusion that at the time of the seizure the goods which remained the property of the shippers were, if not as to the whole, at any rate as to a substantial proportion of them at the time of seizure on their way to the enemy for its hostile uses. The facts in these cases, in my opinion, more than amply satisfy the "highly probable destination" spoken of by Lord Stowell.

Before I conclude I will make reference to an opinion expressed, towards the end of last year, by a body of men eminent as students and expositors of international law in America, in the editorial comment in the *American Journal of International Law*, to which my attention was called by the law officers. Amongst them I need only name Mr. Chandler Anderson, Mr.

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Robert Lansing, Mr. John Bassett Moore, Mr. Theodore Woolsey, and Mr. James Brown Scott.

It is as follows:—

"In a war in which the nation is in arms, where every able-bodied man is under arms and is performing military duty, and where the non-combatant population is organised so as to support the soldiers in the field, it seems likely that belligerents will be inclined to consider destination to the enemy country as sufficient, even in the case of conditional contraband, especially if the Government of the enemy possesses and exercises the right of confiscating or appropriating to naval or military uses the property of its citizens or subjects of service to the armies in the field."

I cite this, not of course as any authority, but as showing how these eminent American jurists acknowledge that international law must have regard to the actual circumstances of the times.

I have not in this judgment followed the course thus indicated by them as a likely and reasonable one in the present state of affairs. I have preferred to proceed on the lines of the old recognized authorities.

I wish also to note the opinion recently expressed by the Hamburg Prize Court in the case of *The Maria*, decided in April last, where goods consigned from the United States to Irish ports were laden upon a Dutch vessel.

I refer to it, not because I look upon it as profitable or helpful (on the contrary, I agree with Sir R. Finlay that it should rather be regarded as "a shocking example"), but because it is not uninteresting as an example of the ease with which a Prize Court in Germany "hacks its way through" bona fide commercial transactions when dealing with foodstuffs carried by neutral vessels.

Be it remembered, too, that the Court was dealing with wheat which was shipped from America before the war, and which had also before the war been sold in the ordinary course of business to well-known British merchants, R. & H. Hall, Limited.

This is what the Hamburg Court said:—

"There is no means of ascertaining with the least certainty

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what use the wheat would have been put to at the arrival of the vessel in Belfast, and whether the British Government would not have come upon the scene as purchaser, even at a very high price, and in this connection it must also be borne in mind that the bills of lading were made out to order, which greatly facilitated the free disposal of the cargo. That at the time of the conclusion of the contract concerning the acquisition of the wheat on the part of R. & H. Hall, Limited, the possibility of using the same for war purposes had, perhaps, not been contemplated, does not affect the question what actual use would have been made of the cargo of wheat after the outbreak of war in October, 1914."

For the many reasons which I have given in the course of this judgment and which do not require recapitulation, or even summary, I have come to the clear conclusion from the facts proved, and the reasonable and, indeed, irresistible inferences from them, that the cargoes claimed by the shippers as belonging to them at the time of seizure were not on their way to Denmark to be incorporated into the common stock of that country by consumption, or bona fide sale, or otherwise; but, on the contrary, that they were on their way not only to German territory, but also to the German Government and their forces for naval and military use as their real ultimate destination.

To hold the contrary would be to allow one's eyes to be filled by the dust of theories and technicalities, and to be blinded to the realities of the case.

Even if this conclusion were only accurate as to a substantial proportion of the goods, the whole would be affected; because

"Contraband articles are said to be of an infectious nature, and they contaminate the whole cargo belonging to the same owners. The innocence of any particular article is not usually admitted to exempt it from the general confiscation." (Kent's Commentaries, 12th ed., by Holmes J., p. 142.) (See to the same effect *The Springbok* (1) and *The Peterhoff*. (2))

The Declaration of London (art. 42) is to the same effect; and M. Renault's report on it is:—

"The owner of the contraband is punished in the first place

(1) (1863) Blatch. Pr. Cas. 434, at p. 451. (2) (1866) 5 Wall. 28, at p. 59.

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by the condemnation of his contraband property, and in the second by that of the goods, even if innocent, which he may possess on board the same vessel."

It only remains, to conclude these long and troublesome cases, to state the results as applied to each of the claims:—

I disallow the claims of Morris & Co., Armour & Co., Hammond & Co. (with Swift & Co.), Sulzberger & Sons Company, Pay & Co., Brödr Levy, Elwarth, Buch & Co., Hansen, Pedersen, Henriques and Zoydner, Korsor Fabrik, Dania Fabrik, Valeur, Baird, and Marcus & Co., and pronounce condemnation as prize of the goods comprised in them or of their proceeds, if sold.

I allow the claims of Cudahy & Co., the Provision Import Company, Christensen and Thoegersen, Segelcke, Frigast, Bunchs Fed., Loehr, and Ullman & Co., and order the goods comprised in them or the net proceeds thereof, if sold, to be released to the respective claimants.

Stay pending appeal within six weeks in respect of claims disallowed. Costs to be secured to the extent of 5000*l.* *to be allocated between the various appellants. The cases of the ships themselves to stand over.*

Solicitor for the Crown: *The Treasury Solicitor.*

Solicitors for claimants: *William A. Crump & Son; Botterell & Roche: Rawle, Johnstone & Co.; Pritchard & Sons, for Alsop, Stevens, Crooks & Co., Liverpool; Windybank, Samuell & Lawrence, for Luya & Williams, Liverpool; Batesons, Warr & Wimshurst, Liverpool; Parker, Garrett & Co.; Crosley & Burn; Thomas Cooper & Co.*

T. L. M.