

FALKLAND ISLANDS.

No.

454/15

WAR/PRI/1#19

Governor's Office.

From		SUBJECT.
Secretary of State for the Colonies.		"JOSEPHINA"
No.	Date	Certified copies of the prize court proceedings in the case of, to be sent by first opportunity.
Telegram	22nd Decr., 1915.	

Colonial Secretary's Record No.

MINUTES.

Registers

Please let me have in triplicate

Certified copies asked for.

Registered Number of last Despatch.
451/15

22. Dec 1915 *for C.P.*

His Honour the Chief Justice

certified copies in triplicate are submitted herewith.

W. Craigie, Registrar

Copies read over to CH.

4. 1. 16.

Desp. 6-1/15 No 6 of 4th Jan 1916

No. next Despatch.

143/16

FALKLAND ISLANDS.

Government House, Stanley.

No. 6.

4th January, 1916.

Sir,

With reference to your telegram received on the 22nd December, I have the honour to transmit herewith, in duplicate, certified copies of the record of proceedings in the case of the Prize S.S. "Josephina" supplied by the Registrar of the Supreme Court of this Colony.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

Douglas Young

Governor.

THE RIGHT HONOURABLE

THE SECRETARY OF STATE FOR THE COLONIES.

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IN THE SUPREME COURT OF THE FALKLAND ISLANDS.

(IN PRIZE)

Thursday, 27th January, 1915.

Before

HIS HONOUR WILLIAM LAMOND ALLARDYCE, C.M.G.

Chief Justice.

S.S. " JOSEPHINA ", No. 1.

The Registrar, Supreme Court. Your Honour, the Master of the "Josephina" does not desire to appear in Court.

Mr. T.N. Goddard. The Supreme Court of this Colony, Your Honour was established as a Prize Court by the Crown by Warrant under dat 10th July, 1909, and was put in force by Proclamation on the 27th August, 1914, at the outbreak of war with Germany
Chief Justice. You will require to give the authority for your appearance in this Court.

Mr. T.N. Goddard. For myself, I am here under authority of the Governor's Commission appointing me to be the Proper Officer of the Crown with power to act for the Crown in all matters connected with Prize, vide September Gazette, 1914. I think it necessary to make these preliminary remarks in order to prevent the raising of any question connected with the status of this Court and its competency to deal with matters pertaining to Prizes.

Chief Justice. Is there not a Proclamation or notification of this Court as a Prize Court ?

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Mr. E. N. Goddard. No, Your Honour, there is a Warrant under the Sign Manual.

Chief Justice. But has there been no Proclamation in a Gazette Extraordinary ?

Mr. E. N. Goddard. Nothing but the Proclamation in August last.

Chief Justice. Then there was a Proclamation. By that Proclamation then the Supreme Court of the Falkland Islands is a Prize Court, and that Proclamation has been published in the Falkland Islands Gazette Extraordinary under date of 22nd August, 1914.

Mr. E. N. Goddard. The "Josephina" was brought in here Your Honour, by His Majesty's Ship "Garnarvon", on the 8th January. The case has not been brought before Your Honour at an earlier date as the Master was desirous of applying to his Owners for instructions as to whether a defence was to be made or not. The "Josephina", as her papers show, was a Dutch vessel owned by a Dutch firm and commanded by a Dutch Master. She was registered in the port of Rotterdam and on her usual run traded between Holland and England and the coast of France. On this particular occasion she was chartered by Messrs. Delfino y Hermano of Buenos Aires.

Chief Justice. Have you particulars regarding her tonnage ?

Mr. E. N. Goddard. She is a vessel of 1395 tons registered and is owned by Messrs. Jos. de Peeter of Rotterdam. In evidence that she is owned by those people I shall be handing Your Honour the Certificate of Registration and also the Charter Party. She left Rotterdam on the 16th October, 1914, under Charter to Delfino y Hermano of Buenos Aires. She was chartered for a period of not less than two months. Here is her Certificate

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of Registration, her Charter Party and the Ship's Log.

(Exhibits 1, 2 and 3 handed up)

She arrived at Cardiff on the 26rd October but on the way she called at Bilbao.

Chief Justice. On what date did she call at Bilbao ?

Mr. E. N. Goddard. Here is the entry in the Log Book, and also papers dealing with the ship's stay and clearance from Cardiff.

(Exhibits 4 and 5 handed up)

She cleared with coal (1596 tons 15 cwt) consigned, as Your Honour will observe, to Buenos Aires. After leaving Cardiff she called at Vigo for the purpose of coaling and of taking on board one passenger, arriving there on the 2nd November.

Chief Justice. What did she want coal again so soon for?

Mr. E. N. Goddard. In order to fill her bunkers.

Chief Justice. I have got no note as yet referring to this call at Vigo.

Mr. E. N. Goddard. I can give you the Clearance papers from Vigo dated 2nd November.

(Exhibit 6 handed up)

She went straight across the Atlantic from Vigo. I shall deal with certain matters relative to the voyage in detail later on. I wish it to be understood that at present I am merely outlining the track of the ship. She arrived at Pernambuco on the 25th November and cleared the same day.

(Exhibit 7 - Clearance from Pernambuco - handed up)

You will notice that she was cleared for Buenos Aires. The Steamer's course from this point becomes suspicious. Up till now we have no complaint to find with her movements as far as compliance with her papers is concerned, but from this

point

point her movements are undoubtedly questionable and have resulted in her capture and appearance in this Court. As from the evidence of the Master may be seen, taken before me yesterday by order of Your Honour, he received verbal instructions from the Agents of Messrs Delfino y Hermano in Pernambuco to proceed to St. Elena, Argentina, which is approximately 700 miles South of Buenos Aires. I should like Your Honour to see a Chart. She arrived at Port St. Elena as may be seen from the entry in the log dated 10th December.

(Exhibits 8 and 9 - Entry in log in Dutch and translation of the same - handed up.)

She left St. Elena on December 17th and arrived at Monte Video on the 21st. While at Monte Video the Master received instructions by telegram from Delfino y Hermano dated 22nd December to the effect that he was to follow the orders of Messrs. Berner and Bernitt to whom his steamer and cargo were consigned. Messrs Berner and Bernitt gave the Master verbal instructions to go to Punta Arenas and get further orders. In addition to this his cargo which, in the first place, had been consigned to Buenos Aires was now transferred and reconsigned to a firm named Hardt in Callao. I can show Your Honour the Bill of Lading for Callao.

(Exhibit 10 - telegram from Delfino y Hermano- and Exhibit 11 - Bill of Lading for Callao - handed up)

As I have said she left Monte Video and sailed for Punta Arenas for orders. I shall return to this point later when I have completed the sketch of the voyage which I am making before going into the circumstances which in my opinion make the ship a good prize. That to all intents and purposes was the end of her voyage as far as we are aware. On January 6th, 1915, H.M.S. "Carnarvon" proceeding to Port Stanley

sighted the "Josephina" and subsequently boarded her as you will see from the letter from Captain Skirwith covering the affidavits of the boarding Officers.

(Exhibit 12 handed up)

If Your Honour is satisfied with the actual journey of the ship from Rotterdam until she was captured I shall now proceed with the points which call for special consideration. The voyage from Rotterdam to Pernambuco is marked by nothing which in itself should draw suspicion on the ship. The Log, the Bills of Lading, the Clearances and Bills of Health and everything which a vessel which is making a bona fide trading voyage should carry were all in complete accord with the course followed. From this point, however, matters take a change.

Chief Justice. Have you put in all the papers ?

Mr. E. H. Goddard. I think I need not trouble Your Honour with any more papers than those I have already put in.

Chief Justice. Should not all the Ship's papers be put in ?

Mr. E. H. Goddard. All the ship's papers are filed in the Court, but a good many are not material to my case. At Pernambuco she received definite instructions verbally as is shown in the evidence of the Master, to proceed to St. Elena and then to Punta Arenas, but at the same time her Clearance was not to St. Elena or to Punta Arenas; it was to Buenos Aires. She had nothing to do at Punta Arenas and when one comes to consider what sort of a place St. Elena is one is led to wonder what business she had there. However, the ship arrived at St. Elena on the 6th or 10th of the month and stayed there about a week.

Chief Justice. Is St. Elena a port in the ordinary acceptation of the term ?

Mr. E. H. Goddard. No, Your Honour. It is simply a bay, there

is a port of any sort

is, no port authorities, and, I believe, no houses. While the "Josephina" was there two German merchantmen, the "Patagonia" and the "Hera", were there also. After the naval action off the Falklands on the 8th of last month the Argentine Naval Authorities arrived at St. Elena, interned the "Patagonia", and ordered the "Josephina" to put to sea at once. She left St. Elena under these conditions after waiting a week and doing nothing in a place which afforded no means of obtaining coal or provisions and no facilities for effecting repairs, and where it was absolutely unnecessary for her to remain at all under ordinary circumstances or in the course of an ordinary ship's voyage. She left there, then, to follow the instructions which her Agents had given her at Pernambuco, but the Master, possibly influenced by the result of the Naval action off the Falklands, decided to go back to Monte Video. From the start her cargo had been consigned to Buenos Aires, but as far as one can judge, the Agents had no intention of sending the ship to that port. As for the Master we have not to consider, fortunately, the question of his culpability. What we are concerned with is the status of the ship and of her cargo. The Master considered it advisable to put back to Monte Video and there he received telegraphic instructions to place himself at the service of Messrs. Dornier and Bernitt as I have already said. His cargo was now re-consigned to Messrs. Hardt of Callao and he was cleared for that port, but he received fresh verbal instructions to call at Punta Arenas for further orders. I submit to Your Honour that a ship definitely cleared with a cargo for Callao although she may have to call at an intermediate port for water or fuel, would have no possible or valid reason to call at Punta Arenas for further orders if she were on a legitimate trading voyage. This when considered by itself is suspicious;

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when regarded in conjunction with her recent stay of a week in a desolate, solitary, uninhabited bay in company with two merchantmen flying German colours, it becomes very suspicious indeed. At Monte Video the Master discharged six of his men (Dutchmen) and took aboard six Germans and one Barbadian. I am not inclined to attach too much weight to this incident; it may be a significant factor but I am not inclined to regard the circumstances as forming a breach of any of the regulations under the Declaration of London dealing with unneutral services; and all through what I have to say I wish to run no risk whatever of jeopardising significant and undoubted facts by too great insistence on hazy and rather uncertain suggestions. The main issue on which this case hangs is the falsification of papers and unjustifiable deviation from the course which the ship ought to have taken, her cargo being shipped at Cardiff and consigned to Buenos Aires. This, as Your Honour is aware, constitutes an infringement of the Declaration of London (Articles 33 and 35) which, although not ratified by the contracting Powers, was put in force in London by an Order in Council shortly after the outbreak of War. In this connection I would draw the attention of Your Honour to the opening clauses in the Order in Council which state, among other things, that the destination referred to in Article 33 may be inferred from any sufficient evidence. The papers relating to Buenos Aires having been falsified we may leave them entirely out of account, and, in as much as the vessel had been instructed to proceed to Punta Arenas for further orders, I do not consider that the reassignment of cargo to Callao is of such account either. I would specially draw Your Honour's attention to the fact that it is specifically stated in two places in the Charter Party that the vessel is not to

proceed to any port on the West Coast of South America and, it appears to me, to be an aggravation of the case that not only has the Charter Party been violated and not only has the ship no means of justifying her stay in St. Elena, but she was also directed verbally to make what would, under ordinary circumstances, be an unnecessary call at Punta Arenas. What I submit is that the "Josephina" went to St. Elena for the purpose of waiting till the German cruisers which were then expected to be coming round the Horn, (and Your Honour will observe in this connection that the Master states in his evidence that it is his impression that his Agents intended him to wait at St. Elena until the German cruisers came and took his coal), and that when this project was defeated by circumstances the "Josephina" was sent to Punta Arenas where she might more easily receive definite orders as to her best means of assisting the scattered remnants of the German fleet. And I submit further that the falsification of papers and the unjustifiable deviation from the ship's proper course, quite apart from the above admission of the Master, lead one to form a strong presumption that the ship was engaged in trading with the enemy, particularly in view of the fact that the "Patagonia" and the "Mera" were at St. Elena at the same time as the "Josephina" was there.

Chief Justice. We do not know that the "Patagonia" and the "Mera" were at St. Elena for the purpose of trading with the enemy.

Mr. T. N. Seddard. No, Your Honour, but it is significant that the "Patagonia" was interned by the Argentine Authorities and that the "Josephina" was ordered to leave the Bay almost immediately after the Falklands action. It would appear that the Argentine Authorities were afraid of jeopardising their neutrality by allowing those ships to stay. While speaking of

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the Charter Party I should have drawn Your Honour's attention to the fact that the charterers undertook to insure the "Josephina" for the sum of 300,000 sterling. I think that is practically everything I wish to bring to Your Honour's notice. There was another point on which the capturing Officers laid some stress. At Bilbao there was landed an alien who then proceeded to Vigo and when the ship returned south was picked up there. He signed on as third mate at Monte Video. He has in evidence taken before me stated that he is a ^{Uch} ^{mch} Ductman and can give an account of his movements between Bilbao and Vigo which is prima facie a good account, but the fact of his landing at Bilbao while the ship proceeded to England and rejoining her again at Vigo is significant and I commend it, together with the papers attesting the movements of this man, to Your Honour's notice. With regard to the whole case I should have wished to place before Your Honour some precedent taken from the cases which have come before the Prize Court in London since the beginning of the war, but almost all the recorded cases are those of enemy cargoes in enemy bottoms, or of enemy cargoes in English bottoms. There has been no case, of which we have record, similar to the "Josephina" since the outbreak of war. The case of the "Franklin", however, has many features similar to those appearing in this case, as Your Honour will observe if you will refer to Volume 1 of Reace, Page 296. The Franklin was a neutral ship carrying contraband for the use of the enemy with a false destination. Sir William Scott, in delivering judgment, in this case makes use of these words "I have deliberated on this case and desire it to be considered as the settled rule of law received by this Court that the carriage of contraband with a false destination will work a

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a condemnation of the ship as well as the cargo". In addition to this very significant judgment, the "Josephina" was carrying contraband the quantity of which was in excess of half her cargo, which is of course conditional contraband under the schedule of such given in the Declaration of London. I submit that the ship can produce no valid justification for her movements after leaving Pernambuco, and I would therefore ask Your Honour to make an order for the condemnation both of the vessel and of the cargo. I am not concerned at present with the sale of the ship, because as Your Honour knows this Court has to await instructions from the Imperial Government on this subject, so that I would ask you to leave the question of sale within the power of the Court to deal with later. I will, in conclusion, draw your attention to the fact that although the Master has been given every facility for making a defence, and has communicated with his owners, he has made no effort to justify the movements of his ship.

Chief Justice. Has the Master been given an opportunity of communicating with his principals?

The Registrar, Supreme Court. A telegram to his owners was handed in on the 15th and, after a delay owing to atmospheric conditions, it was transmitted by wireless on the 16th instant. He has had the opportunity of appearing here today; he came to the Registrar's Office this morning and said that he would make no defence.

(Court adjourned until 11 a.m. on the following day)

Friday, 29th January, 1915, 11 a.m.

Chief Justice. Mr. Registrar, I think I understood you to say that the Master of the "Josephina" had put in an appearance on

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behalf of the owners ?

The Registrar, Supreme Court. That is so, Your Honour. That is in accordance with Form No. 8 of Appendix A. Page 43, Prize Court Rules.

Chief Justice. I should like to see the Writ which was affixed to the vessel by the Marshall.

(Registrar produced Writ)

My Judgment is as follows :

JUDGMENT.

The "Josephina" is a Dutch steamer owned and registered at Rotterdam and is therefore a neutral ship. Her papers show that she was chartered for a period of two months, with right of continuing the charter, and that she was to be employed in lawful trades between any ports in the United Kingdom, the Continent of Europe and America (not west) and back finally to a safe and neutral port of America (not west) or Europe. She sailed from Rotterdam on the 16th October for Bilbao in Spain to pick up a cargo of iron ore before proceeding to Cardiff for coal. The cargo of iron was, however, not forthcoming. A passenger, a friend of the owners, was landed at Bilbao, and subsequently re-embarked at Vigo on the steamer's return south from Cardiff. At Cardiff the "Josephina" was loaded with a cargo of coal amounting to 1596 tons 15 cwt, which was consigned to the charterers in Buenos Aires.

The steamer called at Pernambuco, Brazil, on the 25th November, and the Master states that while there he received verbal instructions from the local agents of the charterers to proceed to Punta Arenas (Straits of Magellan) calling at St. Elena. St. Elena is on the Argentine coast some 700 miles south of Buenos Aires. On reaching St. Elena two German vessels,

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the "Patagonia" and the "Mora", were found there. The former was interned by the Argentine Naval Authorities while the "Josephina" was there. The "Josephina" after a stay of a week was ordered by the same Authorities to leave. St Elena is a remote and little known harbour where there are neither officials nor a settlement. The pretext put forward that the "Josephina" went there in order to effect certain engine room repairs is one to which in the circumstances I am unable to attach much weight. I see no reason however to doubt the Master's impression "that the Agents (in Pernambuco) intended me to wait at St. Elena until the German cruisers came and took my coal from me". After leaving St. Elena by order of the Argentine Naval Authorities the "Josephina" proceeded not to Punta Arenas but to Monte Video, and discharged seven of her crew who were Hollanders and engaged in their places six Germans and a Barbadian. The passenger who was landed at Bilbao and embarked again at Vigo was taken on as third Mate.

While at Monte Video a telegram was received from the Charterers instructing the Master to follow the orders of Messrs. Bernier and Bernier "to whom your cargo and steamer are consigned". The Master states that he was requested verbally by this firm to go to Callao and call at Punta Arenas for further orders. The Bill of Lading shows that the cargo was consigned to Messrs. Harbit and Co, of Callao, and that it consisted of 1506 tons 15 cwt of coal. In the case of Callao this port was outside the limits of the Charter Party which forbade the "Josephina" to go to the west coast of South America, and it is hardly conceivable that it was seriously intended to convey coal consigned to Buenos Aires in a small steamer of her size (1205 tons gross register) to Callao which is distant by water some 3000 miles from Buenos Aires. Apart from the above it is

both significant and suspicious that on two occasions the Master received and acted on verbal orders directing him to proceed to places (i.e. St. Elena and Punta Arenas) which lay hundreds of miles further south than the port of Buenos Aires to which his cargo was consigned under the terms of the Charter Party, and this in a time of war.

Conditional contraband is liable to capture if it can be shown that it is destined for the use of the armed forces of the enemy state, and the vessel carrying such contraband may be condemned if the contraband forms more than half her cargo. In the case of the "Josephine" the whole of the cargo was conditional contraband and it is admitted by the Master himself that it was his impression that the Agents intended him to wait at St. Elena until the German armaments came and took his coal from him. Not only this but the cargo was carried not on one occasion only but on two distinct occasions with a false destination. No attempt was made to land the coal at Buenos Aires, the port of destination, in accordance with the terms of the Charter Party, although the "Josephine" was twice within a few miles of that port, but she was deliberately taken out of her proper course, on the first occasion to an isolated and unfrequented part of the Argentine coast from which she was ordered away by the Argentine Naval Authorities, and on the second occasion when she was en route for Punta Arenas for further orders although her cargo had been re-consigned to Callao.

The Master has been afforded the opportunity to give adequate reasons to justify these unusual deviations but has not offered any explanations. The carriage of contraband with a false destination will work a condemnation of the ship as well as the cargo. The course I make is that the steamer

"Josephine" was properly seized as a prize of war and that she is subject to condemnation, as also her cargo, and I therefore condemn the "Josephine" and her cargo as good and lawful prize as captured by H.M.S. Dartmouth.

The Marshal will apply hereafter to this Court for instructions as to the disposal of the "Josephine" and her cargo.

All costs, expenses, and fees incident to this cause shall be a charge against the ship and her cargo.

(Signed) W. L. Allardice.

Chief Justice.

20th January, 1915.

I certify the foregoing pages marked 1 to 14 to be a true and faithful copy of the Record of Proceedings in cause Prize "Josephine", as filed in the Supreme Court of this Colony.

M. Craigie-Hackett

Registrar, Supreme Court.

The Registry,
Supreme Court,
Stanley, Falkland Islands.
31st December, 1915.



Secretary of State to Governor.

Dated 22nd Dec. Received 22nd December, 1915.

RYACOLITE CREVASSES RECORD PORTSABILE JOSEPHINA
BONARLAW.

Send by first opportunity certified copies of record
proceedings Josephina

Bonarlaw.

His Honour the Chief Justice,

After examining the various Exhibits in cause Prize Josephina I find them to be very much larger than I anticipated. The Charter Party, Bills of Lading, Log Book and clearances are all very lengthy documents and to copy same would take up some considerable time.

Exhibit 8. Evidence of Master, I am making triplicate copies of this but would be glad to receive Your Honours instructions concerning the other exhibits. The Charter Party alone is a very long closely printed document.

Mr. Craigie Mackenzie

Registrar General.

Jan. 4th 1915.

*I am not sure that the Secy of State
wants copy of Charter Party and other
Exhibits, so have sent forward the
Certified copies of proceedings pending
further instructions from S/S.*

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