

THE PRIZE COURT

Written for "The Listener" by PAUL KAVANAGH, Editor of the "New Zealand Law Journal"

THE term "prize" is used to describe whatever is taken during the course of a war by naval or maritime forces. It may be taken from the enemy, or it may be seized from neutrals in order to prevent assistance to the enemy. "Booty," which is used to describe anything taken from the enemy by land forces, becomes the property of its captor as soon as it is seized. But prize comes into the ownership of the nation that seizes it only after it has been declared, according to the rules of international law, to be its property. The tribunal recognised by the law of nations to give a binding decision on the point is the Prize Court of the captor nation.

A Prize Court differs from the courts that we know in civil or criminal matters, as it does not administer the law of the nation in which it functions. A Prize Court, wherever it may be set up, applies to the cases that come before it the rules that comprise international law, which is not found in any Acts of Parliament or in its nation's common law.

Law Without a Country

International law, according to a well known definition, is "founded on justice and equity, convenience and the reason of the thing. It is confirmed by long usage among civilised peoples." It is the universal law. Thus, although a British Prize Court sits in London, the law it administers has no nationality or locality: its duty is to determine the question before it as if it were sitting in Berlin, in Paris, or in Helsinki. If a British Prize Court applied English law, it would no longer be functioning as a Prize Court.

When a neutral ship is suspected of carrying contraband, and is brought into port, its papers are taken to the marshal of the nearest Prize Court. A duplicate set of papers is, in England, sent to the Contraband Control Committee, over which an eminent Judge, Viscount Finlay, presides. This Committee makes a preliminary examination, and decides whether the ship is to be detained pending the decision of a Prize Court, or whether it is to be allowed to go on its way with a minimum of delay. If the former course is to be followed, then an official of the Admiralty, the Procurator-General, commences proceedings in the name of the King for the condemnation of the ship, or its cargo, or both. All parties in any way concerned may appear before the Court.

Englishmen Appearing for Germans

An unusual feature of some prize cases during the last war was the appearance of English barristers to represent German traders who were interested parties. They received permits from the Crown to go to Hol-

land to receive their clients' instructions, this being necessary because of Trading with the Enemy legislation.

Constitution of Court

The Judges of the Probate, Divorce, and Admiralty Division of the High Court of Justice comprise the British Prize Court. In addition, the Judges of the superior court in any Dominion or Colony can constitute a Prize Court. Thus, if a neutral ship suspected of carrying contraband were brought into a New Zealand port, it would be taken in charge by the Registrar of the Supreme Court of the judicial district in which the port is situated. If there were no Supreme Court office there the senior Customs officer would act as Marshal until the Registrar could take over from him. And a Supreme Court Judge would preside over the Prize Court to determine whether or not the ship or goods should be forfeit to the Crown as prize.

The trial may have one of several results: the vessel and its cargo may be condemned, or the vessel only, or the cargo only. In these cases, the captor nation receives a windfall, as the Court orders the ship or cargo, or both, to be sold; and the proceeds, in British countries, belong to the Crown. Again, the ship or cargo may be released, subject to the payment of costs and damages. If the Court holds the capture to have been unjustified, then

the costs of the proceedings and damages for delay and loss of freight are awarded against the Crown. But, if only a part of the cargo were contraband, costs and damages are not allowed to the shipper, though the rest of the cargo and the vessel are released. The decision of the Prize Court is conclusive on the question of property in the ship or cargo, subject, of course, to appeal. The Judicial Committee of His Majesty's Privy Council is the appellate tribunal for Great Britain and all British countries. The responsibility of the captor and the Prize Court ends with that Court's judgment.

Share for Victorious Crew

A special function of the British Prize Court is to determine the amount of prize bounty payable to officers and men of His Majesty's Navy. In olden times, the value of a ship of war captured from the enemy belonged to the captor-ship, so that everyone on board shared in the prize. But, in recent times, a different policy has been followed.

Since the Naval Prize Act of 1864, His Majesty may be pleased to declare by Proclamation or Order in Council his intention to grant prize bounty in relation to any war. Upon such proclamation being made, then such of the officers and crew of any of His Majesty's ships of war as are *actually present at the taking or destruction of any armed ship of His Majesty's enemies* are entitled to have distributed among them prize bounty calculated at the rate of £5 for each person on board the enemy ship at the beginning of the engagement.

Prize Bounty for "Graf Spee"

During the last war many interesting questions arose. For instance, the Prize Court decreed that bounty should be paid to the officers and crew of H.M.A.S. *Sydney* in respect of the *Emden's* full crew of 397, notwithstanding the fact that at the time of her destruction some were ashore dismantling the Keeling Island radio station, and others were aboard a captured British vessel acting as an attendant collier. In July, 1920, Admiral of the Fleet, Viscount Jellicoe, and the commanders, officers, and crews of 151 ships of the Royal Navy, applied to the Prize Court for a declaration that they were entitled to prize bounty, in having been engaged in a joint and common enterprise in destroying eleven enemy vessels at Jutland on May 31, 1916. They were awarded £22,685, calculated on the number of men aboard the destroyed German ships of war. Soon, no doubt, a fair amount in prize bounty will come to New Zealand as the result of the destruction of the *Admiral Graf Spee*.

During the last war, it was recognised that, in the vast area of naval operations, they also served who did only patrol and other duties. So, in 1918, the British Parliament passed a Prize Act, which provided that, if His Majesty should declare his intention to make a grant of prize money out of all prize captured during the then-present war, the value of all captured cargoes and ships, *not being armed ships taken by particular naval vessels or aircraft*, was to be paid into a Naval Prize Fund to be distributed "for the entire benefit and encouragement of His Majesty's naval and marine forces." The fund was administered by a tribunal consisting of a Judge holding high judicial office, an Admiral of the Fleet, and a Treasury official. Questions in dispute were referable to the Prize Court. Any undistributed part of the Fund was paid to the trustees of the Chelsea Hospital for the benefit of aged and infirm pensioners of the Royal Navy.

THAT GOLDFISH FEELING



Broadcasters from the NBS Exhibition Studio, working behind glass walls in full view of a staring public, say they feel like fish in an aquarium