

THE GERMAN HOSPITAL SHIP OPHELIA.

ALLEGATIONS OF SCOUTING.

CLAIM BY THE CROWN.

The President of the Probate, Divorce, and Admiralty Division began the hearing of the claim by the Crown against the German hospital ship *Ophelia* which was brought into Yarmouth on October 18 last by H.M.S. *Meteor* on the ground that her movements were so suspicious that she was not entitled to the immunity from capture which a hospital ship can claim under The Hague Convention.

The Attorney-General, the Solicitor-General, and Mr. O. H. Dunlop appeared for the Crown; Mr. Leslie Scott, K.C., Mr. Leek, K.C., and Mr. W. N. Baeburn represented Staff-Surgeon J. V. O. Pfeiffer, of the German Navy, who is claimant on behalf of the Imperial German Government.

The ATTORNEY-GENERAL, in opening the case for the Crown, said that the question raised was whether the *Ophelia* was entitled to the exemption which attached to hospital ships properly and solely engaged in hospital work. The Crown desired that full effect should be given to the principles which international agreements and the dictates of humanity provided, but there were circumstances in this case which had to be investigated. Article 1 of The Hague Convention No. 10 for adapting to maritime warfare the principle of the Geneva Convention, 1864, provided for the immunity from capture of military hospital ships the names of which had been communicated to the belligerent Powers, and Article 2 provided for the case of hospital ships equipped at the expense of private individuals. Article 4 provided that the ships should afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality, and also provided that "the Governments undertake not to use these ships for any military purpose." "Such vessels must in no wise hamper the movements of the belligerents"; and "the belligerents shall have the right to control and search them."

Article 5 dealt with the distinguishing mark, including the painting of the vessel, and it said "all hospital ships shall make themselves known by hoisting with their national flag the white flag with a red cross provided by the Geneva Convention."

THE ALLEGATION OF THE CROWN.

The allegation was that the *Ophelia*, though ostensibly a hospital ship, was actually engaged in scouting duties, and if that were so, it followed from Article 4 that the immunity which Article 1 afforded disappeared. The vessel was seized on October 18 by the *Meteor*, and among the things on board which had been seized was the log, and the suspicions already formed were at once confirmed by that document. It left no doubt that a hospital ship which was believed to be the *Ophelia*, and which had been observed on October 8, and as to which there was independent testimony about what she was doing at that time, was in fact the *Ophelia*. It appeared from the log that on August 3 the *Ophelia* was in the Port of London. She was a vessel belonging to the Hamburg-America Company.

Mr. LESLIE SCOTT.—No, she belonged to the Kirstin Company, of Hamburg, but she was fitted out as a hospital ship by the Hamburg-America Company.

The ATTORNEY-GENERAL continuing, said that the vessel received orders to steam on August 3 to a German port "for military duties." On August 4 she left for Hamburg with 244 passengers, and on August 10 she had been refitted as a hospital ship by the Hamburg-America Company for the German Government. On August 14 Johannes Pfeiffer, a staff surgeon in the German Navy, took charge of her, and on the following days she took her hospital requirements on board.

The PRESIDENT said that he thought it right that he should see the vessel, and he had taken the Marshal with him to see her last week.

The ATTORNEY-GENERAL then read the certificate of the use of the vessel as a hospital ship, dated September 11, and added that the British Government desired the case to be treated as one in which all the formal requisites had been complied with on the part of the *Ophelia*, but the question was what actual use was made of her.

A chart was then handed in showing the vessel's movements according to her log from September 18 to October 18, when she was seized. At that time, after dodging backwards and forwards at the mouth of the Weser, she went further out to the westward.

THE STORY OF SUBMARINE D 4.

At this stage the ATTORNEY-GENERAL read the affidavit of Lieutenant-Commander Moncreiffe, R.N., of the British submarine D 4, which had the vessel

under observation on October 8. That officer said that he sighted a vessel with two masts and one funnel. She was painted white with a green band. She was in 53°44' N and 5°46' E, and she altered her course to the N.W. She was flying an ensign which he could not make out, but which was not the national flag of Germany. At 10 a.m., when the steamer was about 24 to five miles from him, she evidently sighted him." She hoisted a large Red Cross flag at the main, and at the same time dense black smoke began to pour out of the funnel and she increased speed and bore away to the northward." Commander Moncreiffe continued:—

I increased speed to 21 knots. At 10.5 a.m. the steamer altered course to east, still increasing speed, and she hoisted down the Red Cross flag. There was no apparent reason for her doing so unless the taking down of the flag was a signal to the enemy. I did not signal to her to stop because she was obviously running away from me, and I had no means of making her stop. The steamer's radio apparatus was clearly visible from me after sighting me in order to escape search. I am confident that the steamer was the Ophelia, as she corresponds with the description given in the affidavit of Commander Newman, R.N., and not with that of any of the other German hospital ships with which I am acquainted. In my opinion the Ophelia was engaged in scouting.

The affidavit gave the Lieutenant-Commander's reasons for that opinion, and he added, with reference to an entry in the Ophelia's log, that he was certain she was not searching for a sunken torpedo boat or any sunken vessel.

The PRESIDENT.—Has there been a suggestion of that sort?

The ATTORNEY-GENERAL.—Yes. The Germans had had a loss shortly before in the mouth of the Ems.

The log of the Ophelia for October 8 stated that she was on the look-out for a sunken torpedo boat. There was no record of her abandoning her search on that day and nothing to suggest that she ran away, although there could be no doubt that she was the vessel sighted by Lieutenant-Commander Moncreiffe.

EVIDENCE FROM THE METEOR.

The affidavit of Lieutenant F. T. Peters, R.N., of H.M.S. Meteor, stated that the Ophelia was sighted on October 18 steering in a westerly direction. She stopped on being signalled to do so, and he was ordered to board her. The surgeon in command produced certificates that the ship had been adapted for use as a hospital ship, and that her name had been notified to the belligerent Powers. The affidavit continued:—

I then questioned the surgeon in command as to the previous movements of the Ophelia. He replied that he had been ordered to proceed to position lat. 52°51' N, and long. 3°55' E, and to look around. On my demand this wireless message was produced. I then questioned the surgeon in command as to what he proposed to look for when he had arrived at the named position. At first he replied that he did not know what in particular he had to look for, but on my further pressing the question he said that perhaps he would find some dead bodies. I then asked how long he intended to remain in the neighbourhood. He replied that he did not know.

The vessel was searched and nothing suspicious was found, but "the vagueness of the orders given to the Ophelia and the difficulty I experienced in getting the above information all led me to form the conclusion that the Ophelia was guilty of rendering unneutral service, either by transmission of intelligence in the interests of the enemy, or improperly carrying warlike stores." The latter, however, he considered unlikely.

Having made his report, Lieutenant Peters was instructed to dismantle the wireless telegraphy apparatus and order the Ophelia to follow the Meteor into port.

The next affidavit was that of J. A. Cox, leading telegraphist in H.M.S. Lawford. This stated that at 1.30 p.m. on October 18 he heard a loud signal in code on the 300-metre wave and judged that it must have been transmitted from a ship not more than 10 miles distant. It was answered from "K.A.V.," which he knew to be the call sign of the Norddeich station. A few minutes later the Ophelia was sighted.

The ATTORNEY-GENERAL said that he would not ask his learned friends to decode the message—it would not be fair and probably the code book was at the bottom of the sea—but he submitted that the sending and receiving of wireless messages not entered in the signal book and in code was suspicious.

According to the log, the Ophelia was at Brunsbüttel on October 9, and at Hamburg on the 16th. There she stayed for five days, and on the 12th her masts were lengthened, with the object, it was suggested, of improving her wireless range. On the 15th she left Hamburg, but there was no entry in the log as to any destination ordered. The last entry in the log was timed 7.35 a.m., October 16. She was stopped by the Meteor at 3 p.m. on the 18th.

Between October 16 and 18 the record of her movements was to be found in loose sheets of paper torn out of another book which was in use at the time when the entries were made and from which, presumably, the log was to be written up. On October 17 the entries showed that she was engaged in taking soundings.

The other ship's papers found were the wireless log, the engine-room register, and the muster roll. As to the engine-room register, the entries on October 8 and 18 were material. On the 8th the entry appeared, "Voyage from Schilling to place of disaster" presumably referring to the sunken torpedo-boat. At the time when the British submarine D 1 was watching the Ophelia there were entries of constant changes on the engines consistent with a searching over a confined area, and then followed 24 hours' full steam ahead. That coincided with the chase given by the submarine.

As to the wireless log, there appeared to be no entries except Press reports. It was curious that no other wireless messages of any sort appeared.

COMMANDER NEWMAN'S AFFIDAVIT.

The affidavit of Commander Edward J. H. Newman was then read. He inspected the Ophelia in December last, and at that time was under the impression that he was reporting upon a vessel which the British Government proposed to buy as a hospital ship. He reported that she was quite unsuitable for that purpose on the ground of absence of scuttles, lack of sanitation, and lack of room for the staff. Further, the only way to get the sick to the wards was by hoisting by derrick after taking off the hatchway. The funnel had been lengthened with the object of hoisting lights and signals higher.

On board her he found 600 green, 480 red, and 140 white lights. On vessels in His Majesty's Navy the usual supply was 100 green, 100 red, and 300 white, and on auxiliary vessels such as the Ophelia 12 of each kind.

The ATTORNEY-GENERAL, continuing, submitted that the Ophelia was undoubtedly to be used as a signalling ship. The reason for the voyage made on October 8 was supported by an affidavit of Sir William Greene, Secretary to the Admiralty, who stated that a British submarine reported that on October 5, at 11 a.m., she had sunk a German destroyer off the mouth of the Ems, but it was curious that the Ophelia when she arrived on the 8th at the vicinity of the disaster dodged about for 17 minutes, and fled when the submarine approached.

THE CLAIMANT'S CASE.

Mr. LESLIE SCOTT, K.C., for the claimant, said that the complaints against the Ophelia fell under four heads:—

(1) The ship was not adapted for and used solely for hospital purposes;

(2) She had been used for military purposes;

(3) She sought to evade search; and

(4) There were certain facts requiring explanation.

The whole case was one of mere suspicion, and none of the facts deposed to in the affidavits justified such a suspicion. A strong case was necessary to prove such a grave departure from international convention. The Hague Convention, which applied the Geneva Convention to naval matters, did not require a hospital ship to be of a particular type. The Ophelia was not fitted as a type upon which patients should undergo prolonged treatment; she was merely an auxiliary hospital ship—a transport to a base. The installation of a wireless apparatus was an essential so as to be able to answer a summons in case of emergency, and no doubt the masts had been lengthened to render her in that respect more efficient. The fact that a secret code was employed was not suspicious; it was to be expected. All non-combatants in the German Navy had a secret code, and it was obviously necessary because otherwise the dispatch of a hospital to a given spot might indicate to the enemy the presence of men of war. Such communications obviously had a military value.

On the evening of October 17 Dr. Pfeiffer received a message to go to the Hanks Lightship. This he did, and when there applied for further instructions, and received a reply from Norddeich. When the vessel was stopped by the Meteor all secret codes, secret instructions, and secret information as to mine areas were quite naturally thrown overboard, according to orders, to prevent them from reaching the enemy. All the entries in the log went to show that, at the times when exception was taken to her movements, the Ophelia was proceeding to the scene of a recent naval disaster.

On October 8 it was said that the Ophelia fled from the submarine, but that was not so. There was no reason that she should stop; the submarine did not call upon her to do so. It was untrue that she was not carrying her national flag. She was carrying the proper flags at the proper places in accordance with the Convention.

The learned counsel had not concluded his opening address when the Court adjourned.

Solicitors.—The Treasury Solicitor; Messrs. Hewitt, Urquhart, and Woollicott.