

has been all but hopeless" seem well justified; and the same observations we fear might be applied to many cases in Ontario.

PRIZE COURT—POWERS OF KING IN COUNCIL—ROYAL PREROGATIVE—ORDERS IN COUNCIL—PRESERVATION OF PROPERTY IN SPECIE PENDING ADJUDICATION—RIGHT OF CROWN TO REQUISITION PROPERTY SEIZED, WHEN IT MAY BE EXERCISED—PRIZE COURT RULES.

*The Zamora* (1916) 2 A.C. 77 is an appeal from the decision of the Prize Court (1916) P. 27, noted ante p. 187. The case is important, not only on the questions involved, but also as regards the legal effect of Orders in Council generally. The facts of the case were that a neutral vessel bound to Stockholm with a contraband cargo (copper), consigned to a Swedish company, was stopped at sea by a British cruiser and taken into a British port for search. A writ having been issued in prize, an application was made on behalf of the Crown to requisition. The application was supported by an affidavit of a Crown official stating merely that the Crown desired to requisition the cargo, and the Court below, considering that the Crown had an inherent right to requisition the cargo, and assuming it was bound by Prize Court Rule Ord. xxix (1), which was made pursuant to a statutory provision empowering the Crown to make rules governing the practice and procedure of the Prize Court, granted the application: the value of the cargo being thereupon appraised and paid into Court. The Judicial Committee of the Privy Council (Lords Parker, Sumner, Parmoor, and Wrenbury, and Sir A. Channell), however, held that the statutory power to make rules governing practice and procedure did not empower the Crown to alter the law, and, therefore, the Rule in question could not properly be construed as an imperative direction to the Court to allow a requisition otherwise than according to international law; and that, according to international law, a belligerent is only entitled to requisition a prize ship or cargo: (1) where it is shewn that the property is urgently required for use in connection with the defence of the realm, the prosecution of the war, or other matters concerning the national security; and (2) that there is a real question to be tried, so that it would be improper to order an immediate release; and (3) the Prize Court must determine judicially whether in the particular circumstances the right is exerciseable. These conditions, their Lordships held, had not been observed in allowing the requisition of the Crown, and it was, therefore, declared invalid, and leave was given to the owners to apply against the Crown for damages sustained by them by reason of the order in the event of their ultimately being successful in the proceedings for condemnation.