

~~11, 1950~~

11, 1950

No. 2 of 1949.

In the Privy Council.

31179

ON APPEAL
FROM THE HIGH COURT OF JUSTICE, PROBATE, DIVORCE AND
ADMIRALTY DIVISION.
(IN PRIZE.)

UNIVERSITY OF LONDON
W.C.1 AND
17 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

LEVER BROTHERS & UNILEVER N.V., "MARGA" MAAT-
SCHAPPIJ TOT BEHEER VAN AANDEELEN IN
INDUSTRIEELE ONDERNEMINGEN N.V. AND "SAPONIA"
MAATSCHAPPIJ TOT BEHEER VAN AANDEELEN IN
INDUSTRIEELE ONDERNEMINGEN N.V.

Appellants

AND

H.M. PROCURATOR GENERAL

Respondent.

S.S. "UNITAS" AND CARGO.

RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED
LEGAL STUDIES
25, RUSSELL SQUARE,
LONDON,
W.C.1.

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In the Privy Council.

ON APPEAL
*FROM THE HIGH COURT OF JUSTICE, PROBATE, DIVORCE
AND ADMIRALTY DIVISION.*
(IN PRIZE.)

BETWEEN

LEVER BROTHERS & UNILEVER N.V., "MARGA"
MAATSCHAPPIJ TOT BEHEER VAN AANDEELEN
IN INDUSTRIEELLE ONDERNEMINGEN N.V. AND
"SAPONIA" MAATSCHAPPIJ TOT BEHEER
VAN AANDEELEN IN INDUSTRIEELLE
ONDERNEMINGEN N.V.

Appellants

10

AND

H.M. PROCURATOR GENERAL

Respondent.

S.S. "UNITAS" AND CARGO.

RECORD OF PROCEEDINGS

No. 1.
WRIT OF SUMMONS.

*In the
High
Court of
Justice.
(In Prize.)*
No. 1925.

IN THE HIGH COURT OF JUSTICE.
Probate, Divorce and Admiralty Division.
In Prize.

S.S. "UNITAS" AND CARGO.

20 GEORGE THE SIXTH, by the Grace of God, of Great Britain,
Ireland, and of the British Dominions beyond the Seas King, Defender of
the Faith, To the owners and parties interested in the ship "Unitas" of
the Port of Bremen and the goods laden therein seized and taken as prize
by Our ship of war "Royal Alexandra" B. O. Bell-Salter Commander.

No. 1.
Writ of
Summons
17th July
1945.

30 WE COMMAND YOU that within thirty days after the service of this
writ, inclusive of the day of such service, you do cause appearances to be
entered for you in the Registry of Our said Court in a cause instituted on
Our behalf by Our Procurator General or other the proper officer of the
Crown against the said ship and goods for the condemnation thereof as
good and lawful prize.

And take notice that in default of your doing so Our said Court may
proceed therein and judgment may be given in your absence.

Witness, JOHN, VISCOUNT SIMON, Lord High Chancellor of Great
Britain, this 17th day of July in the year of Our Lord One thousand nine
hundred and forty-five.

This writ was issued by the said PROCURATOR GENERAL of and whose
address for service is Storey's Gate, St. James's Park, London, S.W.1.

*In the
High
Court of
Justice.
(In Prize.)*

No. 2.

AFFIDAVIT of Service of Writ on Ship.

No. 1925.

IN THE HIGH COURT OF JUSTICE.

No. 2.
Affidavit of
Service of
Writ on
Ship,
26th April
1946.

Probate, Divorce and Admiralty Division.
In Prize.

S.S. "UNITAS" AND CARGO.

I, LIONEL GORDON FISHER, Surveyor of H.M. Customs and Excise
of the Custom House, Southampton, make Oath and say as
follows :—

10

I did on the 18th day of July 1945 serve the Writ herein on the
above-named ship by placing the Writ for a short time on the foremast of
the said ship and on removing the Writ by leaving a true copy thereof
fixed in its place in accordance with the manner and form prescribed by
the rules of this Court.

Sworn at Southampton this 26th day of } L. G. FISHER.
April 1946

Before me,

P. T. DUNNING,

Collector of Customs and Excise authorised by the }
Commissioners of Customs and Excise to administer }
oaths in Prize proceedings. } 20

No. 3.
Affidavit
of Service
of Writ
on Cargo,
11th July
1946.

No. 3.

AFFIDAVIT of Service of Writ on Cargo.

No. 1925.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.
In Prize.

S.S. "UNITAS" AND CARGO.

I, LIONEL GORDON FISHER, Surveyor of H.M. Customs and Excise }
of the Custom House, Southampton, make Oath and say as }
follows :— } 30

I did on the 18th day of July 1945 serve the Writ herein on the cargo
laden on board the above-named vessel by placing the Writ for a short
time on the foremast of the said vessel and on removing the Writ by

leaving a true copy thereof fixed in its place in accordance with the manner and form prescribed by the rules of this Court.

Sworn at Southampton this 11th day of July 1946 L. G. FISHER.

Before me,

G. GREEN,

Asst. Collector of Customs and Excise authorised by the Commissioners of Customs and Excise to administer Oaths in Prize proceedings.

In the High Court of Justice. (In Prize.)

Affidavit of Service of Writ on Cargo, 11th July 1946, continued.

10

No. 4.

AFFIDAVIT of Seizure of Ship.

No. 1925.

No. 4. Affidavit of Seizure of Ship, 3rd July 1945.

IN PRIZE.

THE STEAMSHIP "UNITAS" AND CARGO THEREOF.

I, DAVID EDMUND PURDIE make Oath and say as follows :—

1. I am Preventive Officer of Customs and Excise stationed at the Port of Methil.

2. The said vessel is a Merchant Vessel of the Port of Bremen and at the material time was in Naval Custody at the Port of Wilhelmshavn following the unconditional surrender of Germany.

3. On the First day of July, 1945 the said Vessel arrived at Methil Roads, Methil in the County of Fife having been sent there by order of His Majesty's Royal Naval Flag Officer at Hamburg and thereupon I, acting on behalf of the Crown, took possession of the said Vessel and certain Cargo on board thereof. Particulars of said cargo are specified in the Schedule hereto annexed and marked "Schedule No. 1, Cargo on board S/S "Unitas".

4. On or before taking possession as aforesaid, the several papers and writings hereto annexed and numbered from 1 to 4 inclusive were delivered up or found on board the said Vessel and are all the Ship Papers relative to said ship and said cargo which were so delivered up or found.

*In the
High
Court of
Justice.
(In Prize.)*

5. The said papers and writings are brought in and delivered as they were taken and received without fraud, addition, subduction or embezzlement and in the same condition (save the numbering thereof) as the same were delivered up or found.

No. 4.
Affidavit of
Seizure
of Ship,
3rd July
1945,
continued.

Sworn at Methil in the County of Fife,
this Third day of July 1945, Before me
Alexander Frederick Cumming Officer
of Customs and Excise authorised by
the Commissioners of Customs and
Excise to administer Oaths in prize
proceedings

D. E. PURDIE.

10

A. F. CUMMING.

S.S. "UNITAS."

PAPERS REFERRED TO IN ATTACHED AFFIDAVIT.

1. Cert. No. 10—Money & Valuables found on board.
2. Cert. re Money in possession of Crew.
3. Certe. No. 13—Inventory of Stores & Valuables on board.
4. Certificate from Master re Cargo on board.

D. E. PURDIE Preventive Officer

A. F. CUMMING Officer

20

(H.M. Customs & Excise).

SCHEDULE No. 1.

CARGO ON BOARD STEAMSHIP "UNITAS."

Exhibit No.	Voyage	Relative Bill of Lading	Particulars of Consignment	Consignor	Consignee	Date of taking possession
4			250 tons of machinery, etc. i.e. Machine and Precision Tools Two Motor launches	Gotenrafen Loaded under instructions of Amgott (M.W.T. Branch)	Kriegsmarinarsenal Kiel	1.7.45

30

(No Manifest or Bills of Lading available—Only evidence furnished by Master.)

D. E. PURDIE, Preventive Officer.

A. F. CUMMING, Officer.

No. 5.

AFFIDAVIT of Ship's Papers with exhibits annexed.

No. 14.

No. 1925.

Affidavit as to Ship's Papers on board at the time of capture and delivered up.

In the High Court of Justice. (In Prize.)

No. 5. Affidavit of Ship's Papers with Exhibits annexed, 9th June 1945.

THE S.S. "UNITAS," ERFREID ANDREIS, Master.

10 I, ARTHUR DENIS AYLETT, a Lt. Cdr., R.N.V.R. in His Majesty's Navy and of His Majesty's Ship of War "Royal Alexandra" whereof Captain B. O. Bell-Salter, Esq., is commander, make oath and say as follows :—

1. The papers and writings hereunto annexed, and numbered from No. 1 to No. 66 inclusive, are all the papers, books, pass ports seabriefs charter parties, bills of lading, letters and other documents and writings which were delivered up or otherwise found on board the ship called the "Unitas" whereof Erfreid Andreis was master or commander and lately taken by His Majesty's ship of war "Royal Alexandra," at which capture I, the said deponent, was present.

20 2. The said papers and writings are brought and delivered in as they were received and taken, without fraud, addition, subduction or embezzlement and in the same condition (save the numbering thereof) as the same were delivered up or found on board the said ship.

Sworn by the said Arthur Denis Aylett } A DENIS AYLETT.
9th day of June 1945 }

Before me,

B. O. BELL-SALTER, Captain, Royal Navy
Commanding Officer, H.M.S. "Royal Alexandra,"
Naval Officer in Charge Frensburg.

S.S. "UNITAS."

LIST OF SHIP PAPERS.

30 Exht. No.

- 1. Messbrief.
- 2. Envelope containing deratization and other certificates.
- 3. Meteorological Certificates.
- 4. Receipts for light dues and clearance certificates.
- 7. Class certificates—ship and machinery.
- 8. Test certificates (anchor and chain etc.).
- 9 Envelope containing miscellaneous certificates (Suez, Panama, Swedish, compass, barometer &c.).
- 10. Register of chains and wire ropes.
- 40 12. Whaling gun certificates.
- 13 Wire test certificates.

<i>In the High Court of Justice. (In Prize.)</i>	Exht. No.		
	14.	Lamp certificates.	
	15.	Crew List.	
	16.	Freeboard certificate.	
	17.	Folder—1 document.	
No. 5. Affidavit of Ship's Papers with Exhibits annexed, 9th June 1945, <i>continued.</i>	18 & 19.	Two books—Instructions re safety of life at sea.	
	24.	Sick Bay Journal I.	
	25.	Doctor's log.	
	26.	Log Book.	
	27.	Sick Bay Journal II.	10
	28.	Folder—Tank soundings.	
	29.	„ —Captain's file containing various instructions for safety, etc.	
	30.	„ —Master's incoming mail.	
	31.	„ — „ outgoing mail (copies).	
	32.	„ —Trim and stability data.	
	33.	Book—Ventilation.	
	35.	Book—Crew lists and sundry notes.	
	36.	Log book.	
	37.	Folder—List of damage and repairs (1939).	20
	38.	Folder—Sundry telegrams.	
	39.	Folder—Progress reports.	
	40.	Folder—Corres. with Owners, etc.	
	41.	„ —Letters to Owners.	
	42.	„ —Poems.	
	43.	„ —Crew Lists (1939/40).	
	44.	Hand book—punishments, etc.	
	45.	Diary.	
	46.	Book—Azimuth tables.	
	47.	Envelope containing (1) Instructions re ships in distress. (2) Pay regulations.	30
	48.	Folder—Crew Lists.	
	49.	Log book.	
	50.	Books—(1) Custom Regulations for Deep Sea Fishing. (2) „ „ „ „ Fishing (1906).	
	51.	Folder—Bills and charts.	
	52.	Folder—Misc. papers—equipment lists, etc.	
	53.	Folder—W/T signals received 1939.	
	53a.	Folder—Travelling expenses and receipts.	
	54.	Folder—Extracts from log.	40
	55.	Folder—Accounts—various.	
	56.	Folder—Crew lists.	

Exht. No.		<i>In the High Court of Justice. (In Prize.)</i>
57.	Folder—Inventories.	
58.	Folder—Correspondence.	
59.	Folder—German Navy Stores.	
61.	Folder—Copies of letters from Owners.	No. 5.
62.	Folder—Instructions received from Owners and Shipping Authorities.	Affidavit of Ship's Papers with Exhibits annexed, 9th June 1945, <i>continued.</i>
63.	Folder—Radio telegrams sent to Owners etc. while ship at sea.	
64.	Folder—Copy of Insurance Policy for "Unitas" and contracts with Tug companies.	
10 65.	Folder—Letters to master from Owners (1941).	
66.	Folder— " " " (1939/40).	
67.	Folder— " " " (1939).	

Documents not numbered :—

Envelope—Inventory stewards' stores.

„ —Inventory deck stores.

Folder—Lists of Engine room stores.

„ —Engineer's letters.

Crew lists and other sundry documents

EXHIBIT 1 to Affidavit of Ship's Papers.

For vessels with deck

[TRANSLATION]

GERMAN REICH

FORM A.

*In the
High
Court of
Justice.
(In Prize.)*

Exhibit I
to Affidavit
of Ship's
Papers
(Certificate
of Tonnage,
26th August
1937).

Name of vessel :
"UNITAS"

Recognition signal :
D O T C

Nationality :
German
Port of Registry :
BREMEN

CERTIFICATE OF TONNAGE

DESCRIPTION OF VESSEL

Shipbuilders : Deutsche Schiff- und Maschinenbau
Aktien-Gesellschaft,
Werk : Act.-Ges. "Weser"
Year of construction : July, 1937.
Place of construction : BREMEN.
Material : Steel.
Structure : Fore and after body transverse frames,
midships longitudinal frames, bow and
stern double bottom.

Number of decks : 2, 1 part deck.
Construction of upper deck : broken line.
Number of watertight transversal bulkheads above
and below tonnage deck : 18.
Number of water ballast tanks with cargo
hatches : —

Ceiling : close ceiling in part of bottom.
Sides of fore holds battened.
Shape of bow : Slightly protruding.
Shape of stern : Flat in the region of the slipway
otherwise slightly rounded.
Number of funnels : 2.
Number of masts : 2 and 2 derricks.
Rigging : Pole masts and derricks.

IDENTIFICATION MEASUREMENTS

1. The LENGTH OF THE VESSEL from back end of stem to back of stern post (on vessels with patent rudder up to middle of main piece of rudder) on the tonnage deck is 183.62 m.
2. The GREATEST BREADTH OF THE VESSEL between the outside surfaces of the shell or the bends is 24.46 "
3. The DEPTH OF THE HOLD between lower edge of tonnage deck and upper edge of floors next to keelson or upper surface of inner iron double bottom, if any, at centre point of length ascertained under 1 is 14.96 "
4. The GREATEST LENGTH OF ENGINE ROOM, including any fixed coal bunkers between the bulkheads which enclose this space and stretch from side to side, is 35.67 "

MEASUREMENTS RESULTS

GROSS CAPACITY

1. Space below tonnage deck	<i>cu. m.</i>				
2. Space between tonnage deck and the deck above, shelter deck	51715.641				
3. Space between 1st and 2nd decks above tonnage deck	5529.129				
4. Quarter deck cabin or after deck poop	—				
5. Forecastle	1930.029				
6. Spaces below bridge deck	—				
7. Half deck	—				
8. Other spaces	2711.368				
9. Capacity of cargo hatches to be taken into account	—				
	<hr/>				
	61886.167				
	<i>Gross capacity</i>				
	<i>Cub. m.</i>				
Gross capacity	61886.167				
Deductions	28343.520				
	<hr/>				
Net Capacity	33542.647				

Total deductions 28343.520

	<i>Cub. m.</i>	<i>Register tons</i>
FINAL MEASUREMENT RESULTS:		
Gross capacity	61886.2	21845.82
Net capacity	33542.6	11840.55

This tonnage certificate is issued in respect of the above full-scale admittance terminated on 10th August 1937 by the Bremerhaven Gauging Authorities in accordance with the Decree dated 1st March 1895 relating to Gauging of Ships.

Bremen, 26th August 1937.

(U.S.) The Board of Navigation, Trade and Commerce.
(illegible signature)

NOTE : The following superstructures on or above the upper deck have been regarded as OPEX spaces and are therefore NOT included in the above gross capacity and net capacity :

- (1) The slipway in its entire length = 901.2 cub. m. = 318.12 r.t.
Open parts of shelter deck on both sides aft = 128.1 cub. m. = 45.22 r.t.
- (2) The gross capacity shown in the tonnage certificate includes 1,370.784 cub. m. for engine and boiler casings above the upper deck (shelter deck).
- (3) The total of the spaces for boatswains' stores included in the gross capacity is 861.254 cub. m.

For vessels with deck.

Type of vessel :
Screw steamer.

[TRANSLATION]
GERMAN REICH

CERTIFICATE OF TONNAGE

DESCRIPTION OF VESSEL

Shipbuilders: F. Schichau G.m.b.H., Elbing.
(Danzig Shipyard).
Month and year of first launching: August, 1939.
Place of construction: Danzig.
Material: Steel.
Structure: Transverse frames.

Recognition signal :
D O V R

FORM A.
Nationality :
German.
Port of Registry :
Bremen.

In the
High
Court of
Justice.
(In Prize.)
Exhibit 1
to Affidavit
of Ship's
Papers
(Certificate
of Tonnage,
26th August
1937),
continued.

Ceiling: Complete ceilings in cabins.
Shape of bow: Protruding.
Shape of stern: Cruiser stern.
Number of funnels: 1.
Number of masts: 2.
Rigging: Pole masts.

IDENTIFICATION MEASUREMENTS

1. The LENGTH OF THE VESSEL from back of stem to back of stern post (on vessels with patent rudder up to middle of main piece of rudder) on the topmost enclosed deck is 41.28 m.
2. The GREATEST BREADTH OF THE VESSEL between the outside surfaces of the shell or the bends is 7.96 ..
3. The DEPTH OF THE HOLD between lower edge of the topmost enclosed deck and upper edge of floors next to keelson or upper surface of inner iron double bottom, if any, at centre point of length ascertained under 1 is 4.10 ..
4. The GREATEST LENGTH OF ENGINE ROOM including any fixed coal bunkers between the bulkheads which enclose this space and stretch from side to side is 17.81 ..

MEASUREMENT RESULTS

GROSS CAPACITY		DEDUCTIONS	
	<i> cub. m.</i>		<i> cub. m.</i>
1. Space below tonnage deck	921.564	I. For engine rooms	399.154
2. Space between tonnage deck and the deck above	—	II. Crew and navigation spaces, etc.:	
3. Space between 1st and 2nd decks	—	1. Spaces for seamen, stokers, deck officers, cooks, stewards, etc.	72.978
4. Engine and boiler casings above upper deck	—	2. Quarters for officers, engineers, etc.	62.228
5. Quarterdeck cabin or after deck poop	—	3. Wheel houses, chart house, etc.	27.612
6. Forecastle	—	4. Sail room	—
7. Spaces below bridge deck	—	5. Boatswains' stores	24.029
8. Half deck	0.311	6. Spaces for water ballast	37.069
9. Other spaces	39.266	III. Quarters for master	11.491
10. Capacity of cargo hatches to be taken into account	—	Total deductions	634.561
Gross capacity	961.141		
	<i> cub. m.</i>		<i> Register tons</i>
Gross capacity	961.141	FINAL MEASUREMENT RESULTS:	
Deductions	634.561	Gross capacity	339.28
Net capacity	326.580	Net capacity	115.28

This tonnage certificate is issued in respect of the above full-scale admeasurement terminated on 6th October 1939 by the Elbing Gauging Authorities in accordance with the Decree dated 1st March 1895 relating to Gauging of Ships.

(L.S.)

Berlin, 17th October 1939.

Reich Ship Gauging Office
(Sgd.) SPIEL

(Sgd.) MISCHKE.

NOTE: The following superstructures on or above the upper deck have been regarded as OPEN spaces and are therefore NOT included in the above gross capacity and net capacity:

(Handwritten note in English): This is the paper numbered 1 (one) in the Schedule to the affidavit of John Fortescue Mackeson sworn before me this 16th day of November 1945

(Sgd.) J. S. CAMBRIDGE

(Dr. R.N.V.R.

1st in Command of H.M. Ship Royal Prince.

The total of the spaces for boatswains' stores included in the gross capacity is 49.632 cub. m.

EXHIBIT 2 to Affidavit of Ship's Papers.

[TRANSLATION]

The twin screw steamer "Unitas" has been entered in the local Register of Sea-Going Vessels under No. 2807.

The vessel has been given the recognition signal : D O T C.

(L.S.)

Bremen, 17th September 1937.

The County Court

(illegible signature)

Chief Inspector of Justice.

*In the
High
Court of
Justice.
(In Prize.)*

Exhibit 2
to Affidavit
of Ship's
Papers
(Certificate
of
Registra-
tion in
Bremen
County
Court,
17th
September
1937).

10

[TRANSLATION]

The screw steamer "Unitas 10" has been entered under No. 2878 in the Ships' Register at the Bremen County Court.

The vessel has been given the recognition signal D O V R.

(L.S.)

Bremen, 18th November 1939

The County Court

(illegible signature).

*In the
High
Court of
Justice.
(In Prize.)*

No. 6.
Appearance
for Lever
Brothers
& Unilever
N.V.,
10th
August
1945.

No. 6.

APPEARANCE for Lever Brothers & Unilever N.V.

No. 1925.

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.
In Prize.

s.s. "UNITAS" AND CARGO.

Enter an appearance for Lever Brothers & Unilever N.V. of Rotterdam,
Holland, as parties interested in the Ship "Unitas."

Dated this 10th day of August, 1945.

10

SIMPSON, NORTH, HARLEY & CO.

of and whose address for service is 21 Surrey
Street, London, W.C.2, Solicitors for
the above-named Lever Brothers &
Unilever N.V.

No. 7.
Appearance
for
"Marga,"
etc., and
"Saponia,"
etc.,
18th June
1946.

No. 7.

APPEARANCES for "Marga" Maatschappij tot Beheer van Aandeelen in Industriële
Ondernemingen N.V. and "Saponia" Maatschappij tot Beheer van Aandeelen in Industriële
Ondernemingen N.V.

No. 1925. 20

IN THE HIGH COURT OF JUSTICE.

Probate, Divorce and Admiralty Division.
(Admiralty.)
(In Prize.)

s.s. "UNITAS" AND CARGO.

Enter appearances for "Marga" Maatschappij tot Beheer van
Aandeelen in Industriële Ondernemingen N.V. of Rotterdam, Holland
and "Saponia" Maatschappij tot Beheer van Aandeelen in Industriële
Ondernemingen N.V. of Rotterdam, Holland, as parties interested in and
as beneficial owners of the Ship "Unitas."

30

Dated this 18th day of June 1946.

SIMPSON, NORTH, HARLEY & CO.,

of and whose address for service is 21 Surrey
Street, London, W.C.2, Solicitors for the
above-named "Marga" Maatschappij tot
Beheer van Aandeelen in Industriële
Ondernemingen N.V. and "Saponia"
Maatschappij tot Beheer van Aandeelen
in Industriële Ondernemingen N.V.

No. 8.

CLAIM of Lever Brothers & Unilever N.V., "Marga" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V. and "Saponia" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V.

*In the
High
Court of
Justice.
(In Prize.)*

No. 1925.

IN THE HIGH COURT OF JUSTICE.
Probate, Divorce and Admiralty Division.
In Prize.

No. 8.
Claim of
Lever
Brothers &
Unilever
N.V.
"Marga,"
etc., and
"Saponia,"
etc.,
7th
January
1947.

S.S. "UNITAS" AND CARGO.

10 The claim of Lever Brothers & Unilever N.V. (hereinafter referred to as "N.V.") or alternatively the claim of "Marga" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V. (hereinafter referred to as "Marga") and of "Saponia" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V. (hereinafter referred to as "Saponia") all companies incorporated under the laws of the Kingdom of the Netherlands and all of Rotterdam in that Kingdom as parties interested in or as sole beneficial owners of the steamship "Unitas," her tackle, apparel and furniture at the time she was taken and seized as prize by His Majesty's ship of war "Royal Alexandra," B. O. Bell-Salter,
20 Commander, and brought into Methil for the said ship and for all losses, costs, charges, damages, demurrage and expenses which have arisen or shall or may arise by reason of the seizure and detention of the said ship as prize.

Endorsement.

The grounds of the said claims are :—

1. That N.V., a subject of a State allied with His Majesty, through its wholly owned subsidiary companies incorporated under the laws of the Kingdom of the Netherlands (including *inter alios* Anton Jurgens Vereenigde Fabrieken N.V. (hereinafter referred to as "A.J.V.F.") and N.V.
30 Hollandsche Vereeniging tot Exploitatie van Margarinefabrieken (hereinafter referred to as "Hovema") and Marga and Saponia, the successors in title of A.J.V.F. and Hovema) at all material times managed and controlled from Holland, and was solely interested in the operations and assets of Jurgens-Van den Bergh Margarine Verkaufs Union G.m.b.h. (whose name was in the month of June 1939 changed to Margarine Verkaufs Union G.m.b.h.) in whose name the said ship was registered.
2. That the construction of the said ship in Germany and her subsequent registration and operation under the German flag were not voluntarily undertaken by N.V., A.J.V.F. or Hovema or Marga or Saponia.
- 40 3. That N.V. was compelled, or alternatively A.J.V.F. and Hovema were compelled, to build the said ship or to cause the said ship to be built in Germany and to be registered and operated under the German flag by the duress of the German Government.
4. That at the time of the said seizure the whole beneficial interest in the said ship was owned by and vested in N.V., or alternatively by and in

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Marga and Saponia, each and all of them subjects of a State allied with His Majesty.

5. That there was at the time of the said seizure no enemy beneficial interest in the said ship.

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6. That the interest of N.V. or in the alternative of Marga and Saponia and the absence of any enemy interest was prior to the said seizure well known to the Crown and/or the captors by reason of two letters the first dated 26th October 1943 and addressed to Sir Cyril Hurcomb, then Director-General of the Ministry of War Transport by one L. V. Fildes then Secretary of Lever Brothers & Unilever Ltd. and the second dated 10 20th June 1945 and addressed to the said Director-General by Simpson, North, Harley & Co., Solicitors, both written on behalf of N.V., Marga and Saponia.

7. That the fact that the said ship was flying the German flag at the time of the said seizure and registered at the port of Bremen does not conclusively determine her liability to seizure or condemnation in Prize.

8. That the said ship was not at the time of the said seizure in Prize liable to such seizure and is not liable to condemnation.

Dated this 7th day of January, 1947.

SIMPSON, NORTH, HARLEY & CO., 20
21 Surrey Street, London, W.C.2,
Solicitors for the Claimants.

No. 9.
Affidavit of
Paul
Rykens
and
Exhibits,
8th April
1947.

No. 9.
AFFIDAVIT of Paul Rykens and Exhibits.

No. 1925.
No. 2161.
No. 2148.

IN THE HIGH COURT OF JUSTICE.
Probate, Divorce and Admiralty Division.
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30

s.s. "UNITAS" AND CARGO.

s.s. "UNITAS 8."

s.s. "UNITAS 10."

I, PAUL RYKENS of 60 North Gate in the County of London make Oath and say as follows :—

1. I am a Dutch national and Chairman of Lever Brothers & Unilever N.V. (hereinafter referred to as "N.V."). I reside and have since 1930 resided in the United Kingdom. I was Chairman of N.V. from 1937 until August 1939, when for the reasons more particularly deposed

to in paragraph 10 hereof, I resigned that appointment. I again became Chairman of N.V. in July 1945. I am one of the Vice-Chairmen of Lever Brothers and Unilever Limited and have been a member of the Board of that company at all times material to the facts and matters hereinafter deposed to. I am duly authorised to make this affidavit on behalf of N.V., on behalf of "Marga" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V. (hereinafter referred to as "Marga") and on behalf of "Saponia" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V. (hereinafter referred to as "Saponia") the several claimants in these proceedings. Save as is otherwise hereinafter more particularly set out, the facts herein deposed to are within my own knowledge. All the facts herein deposed to which are within my own knowledge are true and all the other facts herein deposed to are true to the best of my information and belief.

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2. N.V. is a company incorporated under the laws of the Kingdom of the Netherlands, Lever Brothers & Unilever Limited is a company incorporated under the laws of the United Kingdom. The issued share capital of each of these companies is publicly held, mainly by persons in Holland or the United Kingdom. Marga and Saponia are also each incorporated under the laws of the Kingdom of the Netherlands.

3. N.V., Marga and Saponia carry on business both in the Kingdom of the Netherlands and through various subsidiary companies elsewhere. The present relationship between N.V., Marga and Saponia is detailed in a document now produced and shown to me marked "P.R.1," the contents of which are true. A copy of this document was sent by Simpson, North, Harley & Co. (acting as solicitors for N.V.), to the Director-General, Ministry of War Transport under cover of a letter dated 3rd August 1945. As appears from the said document, N.V. own the entire share capital of Marga and Saponia.

4. Marga and Saponia, as also appears from the said document "P.R.1," own between them the entire share capital of "Margarine Union" Vereinigte Oel-und-Fettwerke A.G. (hereinafter referred to as "Margarine Union A.G.") a company incorporated under the laws of Germany and Margarine Union A.G. owns the entire share capital of Margarine-Verkaufs; Union G.m.b.H. (hereinafter referred to as "Verkaufs") a company also incorporated under the laws of Germany and until June 1939 known as Jurgens Vanden Bergh's Margarine Verkaufs Union G.m.b.H. The whale factory ship "Unitas" (hereinafter referred to as "the Unitas") and the two whale catchers "Unitas 8" and "Unitas 10" (hereinafter together referred to as "the catchers" and individually by their respective names) were at all material times registered in the name of Verkaufs. At all material times N.V. carried on business in Germany as (inter alia) manufacturers and distributors of margarine through Margarine Union A.G. or its immediate predecessors and Verkaufs or its immediate predecessors.

5. For the purpose of explaining how the said present relationship arose it is necessary for me briefly to explain the previous history of the Unilever organisation. For this purpose I crave leave to refer to the document now produced and shown to me marked "P.R.2," which has been prepared for use in these proceedings and the contents of which are true. The said document marked "P.R.2" is a chart showing in diagrammatic form the general structure of the Unilever organisation and the

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details of that structure so far as it relates to Germany. I crave leave in the immediately following paragraphs to supplement the information given in the said document.

6. From shortly after the beginning of the present century three independent groups developed extensive oil, margarine and soap businesses in the United Kingdom, on the continent of Europe (including Germany) and overseas, namely the Jurgens group (which was Dutch), the Van den Bergh group (which was partly British and partly Dutch) and the Lever group (which was British). The independence of these groups continued through the 1914-18 war and down to 1927. 10

7. During the period from 1927 to 1930, both years inclusive, for reasons which are not material to these proceedings inter-group mergers took place. These resulted first in the merger of the Jurgens and Van den Bergh groups and subsequently in a merger of all three groups. A further result of these mergers was that the separate interests of the said three groups in (inter alia) the margarine businesses carried on in Germany passed into the complete control of N.V. (which then and until 1937 was styled Unilever N.V.) and have so remained ever since. Thereafter N.V. carried on these margarine businesses in Germany through Margarine Union A.G. and Verkaufs or their respective immediate predecessors. 20
Another result of the said mergers was that certain other interests of the said three groups (mainly interests in the United Kingdom and throughout the British Empire) were vested in a company incorporated under the laws of the United Kingdom and known as Unilever Limited. This latter company was in 1937 (for various reasons not material to these proceedings) merged with another company known as "Lever Brothers Limited" which thereupon changed its name to Lever Brothers & Unilever Limited.

8. In 1938 Marga and Saponia were formed and had transferred to them, in the proportion of approximately three-quarters to Marga and one-quarter to Saponia, the whole of the capital of those subsidiary 30
companies in Germany through which N.V. had theretofore indirectly owned the entire share capital of Verkaufs. Marga and Saponia themselves replaced the Dutch subsidiary companies of N.V. which prior to 1938 held the whole of the capital of the said subsidiary companies in Germany.

9. On 22nd June 1942 the said subsidiary companies in Germany were merged into a single company known as Margarine Union A.G. which thereafter held the entire share capital of Verkaufs. On 26th November 1942, the capital of Verkaufs was increased to R.M.30,000,000 but all the additional shares issued were issued to Margarine Union A.G.

10. In May 1940 Holland was invaded by Germany and thereafter 40
occupied until 1945 by German forces. The board of N.V. never freely functioned in Holland during the occupation. On 23rd June 1941 the German authorities appointed a Reich Commissioner of N.V. There is now produced and shown to me marked "P.R.3" a translation of the order appointing the Reich Commissioner of N.V. and of a confirmatory order issued by the Reich Commissioner for Occupied Netherlands Territory. Thereafter all the operations of N.V. in Germany were carried out under the direction of the said Reich Commissioner for N.V. Prior to the

invasion of Holland namely on the 4th September 1939 all the directors of N.V. who were nationals of or resident in belligerent states resigned. As a resident in the United Kingdom I resigned my appointment as Chairman of N.V.

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11. On the expulsion of German forces from Holland in 1945 the board of N.V. resumed full control of the affairs of N.V., N.V. holding the same controlling rights in (*inter alia*) the said subsidiary companies in Germany in 1945 and 1946 as N.V. had held in and before May 1940. The survivors of the British and Dutch Directors who had resigned in 1939 were re-appointed to and I myself was re-elected Chairman of the Board of N.V.

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12. At all times both before and after the merger in 1930 when N.V. came to acquire full control of all the businesses in Germany hereinbefore referred to, complete control of these businesses was exercised from Rotterdam, such control being exercised where necessary after full consultation with Unilever Limited and subsequently Lever Brothers and Unilever Limited who were or might be interested in such businesses in Germany by reason of an Equalization Agreement between Unilever Limited (and later Lever Brothers & Unilever Limited) and N.V. for the pooling of profits and the payment of similar dividends on the ordinary stocks of both companies, which Equalisation Agreement is referred to in the said document marked "P.R.2." Though N.V.'s said subsidiary companies in Germany had German boards of directors, such boards rarely formally met as such and when they did so meet, the meetings were solely for the purpose of giving effect to decisions on policy or management matters taken in Rotterdam. The German directors had no authority to deal independently with policy or management matters. Thus the German directors had no effective part in any decision whether to increase or decrease production, to build new factories, to adopt new methods of distribution or production or to extend or enter any particular class of business or as to the size of the dividends to be declared but were solely concerned to carry out decisions taken in Rotterdam as to the various courses to be pursued by N.V.'s said subsidiary companies in Germany in connection with any of such matters. The same control was exercised from Rotterdam in relation to all N.V.'s businesses in Germany.

13. Effective control by N.V. in Rotterdam was exercised through a body known as the Praesidium sitting in Berlin the members of which were appointed by N.V. to control the said German businesses on behalf of N.V. and to ensure that the policies decided upon in Rotterdam were effectively carried out. Conversely any new problem arising in Germany would be referred through the Praesidium to Rotterdam for consideration and decision. The principal members of the Praesidium, which consisted of six persons in all, were always of Dutch nationality. These principal members were frequently in daily contact with Rotterdam either with officials of N.V. or with myself as Chairman upon matters of especial importance. Prior to 1934 the principal Dutch member of the Praesidium was Mr. P. D. H. Hendriks who died on 28th May 1946. In 1934 Mr. Hendriks was appointed a Director of N.V. and in this capacity he remained primarily responsible for all matters affecting the said and all other businesses in Germany. Dr. A. E. J. Simon Thomas and Mr. F. J.

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Tempel (both Dutch nationals) succeeded him as the principal members of the Praesidium. After 1934 Mr. Hendriks was constantly in Berlin on matters of policy affecting the said businesses in Germany. I frequently accompanied him. When I did not do so he always reported to me either day by day on the telephone or personally on his return. As a result I was fully acquainted with all that happened and the decisions, which were taken either at once in Berlin or after such reports were made, were made by me in conjunction with my co-directors in Rotterdam or London as the case required. Neither Mr. Hendriks nor I ever kept any written records or other notes of his or our conferences or visits to Germany. We were especially careful not to do so at any time after the rise of the Nazi party to power in 1933/4. Nor did I keep any notes of his reports to me. 10

14. The position in Germany first began to cause concern to N.V. in 1931. Hitherto raw materials were constantly being sold by N.V.'s subsidiary companies in Holland to (*inter alia*) N.V.'s subsidiary companies in Germany and in particular to Deutsche Jurgens Werke A.G. and Van den Bergh's Margarine A.G. both of which companies were ultimately merged in Margarine Union A.G. At any given time large amounts were owing from the said and other subsidiary companies in Germany controlled by N.V. to N.V. or to N.V.'s subsidiary companies in Holland in respect of such purchases of raw materials and also for other reasons as for instance the granting of considerable loans by N.V. or N.V.'s subsidiary companies in Holland to N.V.'s subsidiary companies in Germany for the purpose of providing the latter with the necessary working capital. On 1st August 1931 the sums, which N.V.'s subsidiary companies in Germany were directly or indirectly so owing to N.V. or to N.V.'s subsidiary companies in Holland, amounted to Fl.62,000,000, £400,000 and 39,000,000 Reichsmarks, making a total (after conversion into sterling at the then official rates of exchange) of the equivalent of about £7,500,000. With the introduction of the restrictive financial legislation in Germany affecting the remittances of money from Germany, all the claims of N.V. or of N.V.'s subsidiary companies in Holland on N.V.'s subsidiary companies in Germany were frozen and the amounts involved became "blocked marks." At the same time trading profits were accumulating inside Germany as a result of the trading activities of the said and other subsidiary companies in Germany from the manufacture, distribution and sale of their products. Marks so accumulating would in the ordinary way have been paid to N.V. or to N.V.'s subsidiary companies in Holland in the form of dividends declared by N.V.'s subsidiary companies in Germany or towards reduction of their said indebtedness to N.V. or to N.V.'s subsidiary companies in Holland or both. 30 40

15. When, therefore, the first of the decrees affecting remittances from Germany was issued by the then German Government on 1st August 1931, the interests of N.V. and of N.V.'s subsidiary companies in Holland were thereby seriously affected. From the first introduction of such restrictive financial legislation the freedom of N.V. to exercise unfettered control over its businesses in Germany was seriously jeopardised and with the rise of the Nazi party to power in 1933 and the further subsequent introduction of even more restrictive financial legislation a powerful weapon was placed in the hands of any German Government, if such a 50

weapon should ever be needed to force N.V. to act not as N.V. wished to act but as the German Government was determined that N.V. should act.

16. For the purpose of illustrating the potential power so placed in the hands of the German Government in view of the wide ramifications of N.V.'s interests in Germany, I crave leave to inform the Court of certain figures showing the accumulation of Reichsmarks during the years between 1933 and 1936. At the end of 1933 after allowing for the deduction of all payments of dividends and other payments of a capital nature, an aggregate sum of over 40,000,000 Reichsmarks in cash and cash investments had accumulated in Germany from trading profits, from the excess of depreciation over capital expenditure and from the reduction of the working capital employed by N.V.'s said subsidiary companies in Germany. Such excess of depreciation over capital expenditure and reduction of working capital arose by reason of the restrictive trade and financial policies adopted by the German Government. It thereupon became and remained the constant endeavour of N.V. to restrict as much as possible the quantity of Reichsmarks which accrued in this matter and of which only a small fraction was allowed to be remitted from Germany to N.V. or to N.V.'s subsidiary companies in Holland by way of dividend. As these Reichsmarks were in name the property of N.V.'s said subsidiary companies in Germany and did not represent foreign claims on Germany, these Reichsmarks were classified as "inland marks" and could therefore be used within certain limits by those companies for making investments in Germany. In pursuance of the policy of restricting accumulations of Reichsmarks, N.V.'s said subsidiary companies in Germany under the direction of N.V. began to spend large sums of inland marks on the acquisition of further businesses in Germany. But notwithstanding very substantial expenditure by N.V.'s said subsidiary companies in Germany on payments of this nature, by the end of December 1936 their aggregate cash and cash investments in Germany had risen from the above-mentioned total of 40,000,000 Reichsmarks to about 61,000,000 Reichsmarks.

17. In so far as in pursuance of the said policy N.V.'s said subsidiary companies in Germany acquired new businesses in that country, this merely had the effect of converting accumulated Reichsmarks in Germany into comparatively safer investments also in Germany. The policy did not result in any money being remitted from Germany to Holland nor in any reduction in the very substantial claims by N.V. or by N.V.'s said subsidiary companies in Holland on N.V.'s said subsidiary companies in Germany which as already deposed to in paragraph 14 hereof had resulted in a large accumulation of blocked marks. In order to achieve this result, which was also the constant aim of N.V., N.V. began in 1935 with the consent of the German Government, to cause ships to be built in Germany for export. In the beginning a certain number of the ships so built were ordered for account of a few non-German subsidiary or associated companies of Lever Brothers Limited for example MacFisheries Limited and The United Africa Company Limited. Later on however, when the requirements of these companies had been satisfied, a further considerable number of ships were built by N.V. for account of independent purchasers of Dutch and other nationalities (especially Norwegian).

18. The agreements for the ships so to be built for delivery outside Germany were all concluded with the German shipyards in the name of

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N.V. or of one of its associated companies outside Germany and provided for payment to the shipyards in Reichsmarks in Germany. In fact, however, the construction of these ships was financed as follows. The German Government usually imposed the condition that a proportion of the building price should be paid for out of the proceeds of sale of certain commodities which N.V. was specifically required to import into Germany for this purpose. As these commodities had to be bought by N.V. outside Germany and paid for in guilders or sterling, N.V. in effect partly paid for the ships in foreign currency. The German Government effected a corresponding saving in foreign exchange. In the beginning the value of these special imports was limited to the equivalent of 20 per cent. of the building price of the ship. Later on however this proportion was gradually increased by the German Government and in the end amounted to as much as the equivalent of 45% to 48% of the building price. 10

19. N.V. was allowed to use the proceeds of Reichsmarks of the sale of the special imports in part-payment of the building price of the ship. N.V.'s said subsidiary companies in Germany were allowed to pay to the shipyard concerned the balance in Reichsmarks for account of N.V. in reduction of their indebtedness to N.V. or to N.V.'s said subsidiary companies in Holland or in or towards repayment of the share-capital of N.V.'s said subsidiary companies in Germany which was held by N.V.'s said subsidiary companies in Holland. For example, in 1935 the preference shares of Deutsche Jurgens Werke A.G. were wholly extinguished for this purpose. When in this manner the entire building price had been paid the ship was delivered to N.V. which was allowed to export the ship from Germany for delivery to the eventual buyer against payment outside Germany in guilders or sterling. I crave leave to refer the Court to the following example showing how the building of these ships was financed and the resulting conversion of blocked marks achieved. 20

Building price in Germany	RM. 3,500,000	Ship sold at	..	£160,000	30
To be paid in commodities (30%)	R.M. 1,050,000	Payment for com- modities specially imported		£63,000	
<hr/>					
Paid in blocked Marks	RM. 2,450,000	Net proceeds in sterling		£97,000	
<hr/>					

Consequently, by this transaction 2,450,000 blocked marks were converted into £97,000.0.0. making an actual rate of exchange of 25.25 R.M. to the pound against the official rate of 16.50 R.M. to the pound which then prevailed.

20. The amount spent on ships so exported by N.V. from Germany in 1935 was 32,600,000 Reichsmarks and in 1936 was 23,400,000 Reichsmarks. As the building prices charged by the German shipyards, calculated at the official rate of exchange were substantially higher than the corresponding world market prices for ships, the building of these ships at these high German prices and their subsequent sale at the lower world market price necessarily resulted in a considerable loss for N.V. on the Reichsmarks spent by N.V.'s said subsidiary companies in Germany in part-payment of the ships. In the beginning N.V. was prepared to 40

bear this loss in order to be able to export its marks from Germany and in this manner to convert them into guilders or sterling. In the end however the German Government caused both the building price of the ships and the proportion of the price which was required to be paid in imported commodities to be raised to such an extent that the loss for N.V. on its Reichsmarks became too heavy and the transactions wholly uneconomic. The construction of further ships in Germany in pursuance of N.V.'s said policy was consequently discontinued.

21. As the purpose of building of these ships was to sell them outside
 10 Germany and so to convert blocked marks into guilders or sterling no ships so built were ever put under the German flag. The German Government required and N.V. agreed to the partial payment of the ships in commodities to be imported into Germany for the purpose because the ships were to be so exported.

22. As deposed to in paragraph 14 of this affidavit, up to 1931 sales in raw materials to N.V.'s said subsidiary companies in Germany were made by N.V.'s said subsidiary companies in Holland on a large scale and on credit terms. On the introduction of the said restrictive financial legislation in 1931, N.V. and N.V.'s said subsidiary companies in Holland
 20 ceased selling raw materials on credit terms to N.V.'s said and other subsidiary companies in Germany and in particular to Deutsche Jurgens Werke A.G. and Van den Berghs Margarine A.G. From that time deliveries of raw materials were only effected against cash payment in foreign currency for which the necessary permits were obtained by N.V.'s said subsidiary companies in Germany from the German Government which alone commanded the foreign currency required. Subsequently the German Government became the sole buyer of imported raw materials for the margarine, soap and other industries. The German Government thereafter (and especially after the rise of the Nazi party to power) sought
 30 ways and means of reducing their expenditure in foreign exchange on raw materials for (*inter alia*) the margarine and soap industry and for this and other reasons were anxious to reduce the degree of their dependence upon foreign interests for raw materials for these industries.

23. The Departments of the German Government responsible for carrying out this policy were the Reich Ministry of Economy, whose Minister was at all material times Dr. Hjalmar Schacht, and the Reich Ministry of Food, the permanent official in charge of which was at all material times Herr Backe. In 1935 Dr. Schacht attempted to force
 40 N.V. to supply raw materials to the German Government on credit terms instead of for cash as heretofore. Both Mr. Hendriks and I had a number of interviews with Dr. Schacht on this subject. When I refused to agree to the grant of three months' credit which Dr. Schacht had asked for, Dr. Schacht who normally treated Mr. Hendriks and me with courtesy and consideration became very firm and hinted at the adverse consequences for N.V.'s interests if the refusal was persisted in. I well imagined how serious these consequences could be for N.V. as I remembered the damaging treatment which N.V.'s margarine businesses in Germany had already experienced in the past without any justifiable foundation and without any apparent reason other than the non-German nationality of their
 50 shareholders. As early as April 1933 the margarine industry in Germany had been put under government control and allotments of raw materials

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1947,
continued.

and quotas for production had been established for the various members of the industry. In principle such quotas had been fixed on the basis of production during a certain period preceding the introduction of the quota system. But although N.V.'s said subsidiary companies in Germany were, on the basis of their average production during the last three preceding years, undoubtedly entitled to a quota of at least 69 per cent., a quota of only 56 per cent. was arbitrarily allotted to them. This operated very much to their detriment. But notwithstanding that this past experience of discrimination against N.V.'s interests in Germany was vividly in my mind I nevertheless declined to accede to Dr. Schacht's request. Shortly 10 after this I was informed that the Reich Ministry of Food was proposing to impose a further substantial cut in the production quotas of N.V.'s said subsidiary companies in Germany. As I had reason to believe that no cut was being proposed in the production quotas of other companies manufacturing margarine in Germany Mr. Hendriks and I sought and had a number of interviews with high officials of the Ministry of Food at which threats were openly made that if N.V. would not agree to the credit terms which were demanded, the proposed cuts in the production quotas of N.V.'s said subsidiary companies in Germany would be made. We, however, persisted in our refusal. As soon as I became aware of the 20 intention of the Ministry of Food to impose these cuts, I protested vigorously to Dr. Schacht and also to Herr von Ribbentrop. Both these Ministers asserted that they were unaware of the action proposed by the Ministry of Food but expressed their willingness to make inquiries and to see whether cuts could be avoided. From my previous conversations with Dr. Schacht to which I have already deposed I was however convinced that they were well aware of the threats that had been made and were parties to this scheme of bringing pressure to bear upon N.V. But notwithstanding this pressure, N.V. still refused to make any raw materials available to the German Government on terms which would lead to any increase in Dutch 30 or British investment in Germany.

24. I turn now to circumstances in which the Unitas and the catchers came to be built in Germany. In or about April or May 1935 Dr. Schacht approached Mr. Hendriks and me direct with a proposal that N.V. should build a whaling fleet in Germany for operation under the German flag. I was opposed to this, as it was a proposition which could not result in N.V. being able to remit money or money's worth from Germany. Nevertheless realising the dangers involved in returning a flat refusal to Dr. Schacht's proposals I had a number of interviews with him at the time in Berlin at which I was accompanied by Mr. Hendriks. Mr. Hendriks 40 also had a number of interviews with Dr. Schacht about this time, reporting the substance of his discussions to me either by telephone or when we next met. It will be apparent from the facts deposed to in the preceding paragraphs that Mr. Hendriks and I were from the outset of the negotiations aware of the covert threat which lay behind Dr. Schacht's approaches since Mr. Hendriks reported to me that Dr. Schacht had informed him that the German Government was "relying upon" N.V. building such a fleet. The German Government was in a position to see that the production quotas of N.V.'s oil, margarine and soap businesses in Germany were cut and that their allowances of imported raw materials, which were essential 50 to their production, were reduced as well as to force N.V. to sell or make

available one or more of their factories to rival manufacturers. By virtue of their dictatorial power the German Government was also in a position to force N.V. or N.V.'s said and other subsidiary companies in Germany to invest their accumulated balances of marks in concerns over which N.V. would have had no control whatever.

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25. One factor which enabled N.V. at this time to resist the pressure of the German Government was that it was recognised by the German Government that the successful operation of such a whaling fleet involved the recruitment of a substantial number of Norwegian officers and seamen experienced in whaling operations. The Norwegian Government was unwilling to allow Norwegian officers and seamen to sail under the German flag and I was therefore able to inform Dr. Schacht that N.V. would in any event be unable to participate in building of such a fleet because satisfactory arrangements could not be made with the Norwegian Government with regard to the employment of Norwegian seamen. I was however convinced that, if this obstacle were removed, N.V. would be compelled to fall in with Dr. Schacht's requirements.

No. 9.
Affidavit of
Paul
Rykens
and
Exhibits,
8th April
1947,
continued.

26. At the beginning of 1936 Mr. Hendriks and I learned that in the interval Dr. Schacht had made a similar approach to certain German concerns interested in the margarine and soap business, namely Rau and Henkel and that these two concerns had agreed to build whaling fleets and that the Norwegian Government's opposition to the recruitment of Norwegian seamen had been overcome. Dr. Schacht then made a fresh approach to Mr. Hendriks. It became apparent to Mr. Hendriks and myself that, unless N.V. was prepared to participate in the construction of such a whaling fleet on Dr. Schacht's terms, the consequences, such as those I have already indicated, might and probably would be extremely serious. I have no doubt whatsoever that, had N.V. not complied with Dr. Sachacht's demands, the production quotas would have been cut still further and other steps adverse to the interests of N.V. taken. The proposed terms included a requirement not only that the whaling fleet when built should be chartered to a new company to be formed in which N.V. would have no more than a fifty per cent. interest but also that the fleet should not be transferred from the German flag without the consent of the German Government. Mr. Hendriks and I tried up to the last stage of these negotiations to insist that the proposed whaling fleet should be registered under the Dutch flag but Dr. Schacht would not agree to this. I was aware that the German Government was prepared to grant a subsidy towards the construction and this subsidy it was decided to accept because otherwise the cost of construction in Germany would have been wholly uneconomical. Accordingly Mr. Hendriks was requested to go again to Berlin at once and make the necessary arrangements with the German Government. This Mr. Hendriks did and after further interviews with Dr. Wohltat of the Reich Ministry of Economy, an agreement with the German Government was reached and the contract for the construction of the fleet was signed. The task of concluding the arrangements was entrusted to the said Dr. Simon Thomas as the responsible member of the said Praesidium concerned.

27. The original plan for the whaling fleet was that there should be a floating factory and eight catchers. It was subsequently ascertained that

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continued.

eight catchers were not sufficient for the full utilization of the capacity of the "Unitas" and a further catcher the "Unitas 9" was purchased and in 1939 a further catcher the "Unitas 10" was built.

28. Though my conversations with Dr. Schacht and also Herr von Ribbentrop were conducted in a courteous manner I was never left in any doubt as to the reality of the threats lying behind their proposals and I have no doubt at all that if N.V. had not agreed to the building of the whaling fleet in Germany for operation under the German flag effective steps would have been taken to confiscate or render virtually valueless the N.V. assets in Germany and to restrict to the minimum any further carrying on of business by N.V. in Germany. As an illustration of the high-handed and lawless action of the German authorities I would mention that before the outbreak of war one of N.V.'s German subsidiaries carrying on business in East Prussia had the quota of one of its factories arbitrarily taken by the German authorities so that it was forced to cease carrying on business. 10

29. But for the pressure brought to bear by Dr. Schacht and the sanctions which the German Government was in a position to impose had N.V. not ultimately complied with their demands, the said whaling fleet would never have been built and thereafter owned and operated under the German flag. The construction of the said whaling fleet was not voluntarily undertaken by N.V. nor was it a freely chosen investment which N.V. decided to make of their own volition. N.V. was in my respectful submission forced by the German Government into a position in which they had no alternative but to comply with the German Government's demands. I crave leave to draw the attention of the Court to the difference between the circumstances in which the "Unitas" and the catchers came to be constructed in Germany and those under which, as deposed to in paragraphs 17, 18, 19 and 20 of this affidavit, the other ships therein referred to came to be so constructed. The latter were built voluntarily by N.V. as part of a consistent policy of restricting and reducing N.V.'s interests in Germany. The former were built only as a result of the direct pressure by the German Government to which I have already deposed and were only registered under the German flag as a result of that pressure in spite of every effort by Mr. Hendriks and myself to avoid having to comply with this demand of the German Government and to secure Dr. Schacht's agreement to their being registered under the Dutch flag. 30

SWORN at Unilever House in the City)
of London this 8th day of April, 1947.) P. RYKENS.

Before me,

B. J. HUSSEY

A Commissioner for Oaths.

40

EXHIBIT 1 to Affidavit of Paul Rykens.

THE "UNITAS."

STATEMENT REFERRED TO IN SIMPSON, NORTH, HARLEY & CO.'S LETTER OF THE 3RD AUGUST 1945.

COMPANY	ISSUED CAPITAL	HELD BY	R.M.
MARGARINE VERKAUFS UNION G.m.b.H.	R.M. 30,000,000	"Margarine Union" Vereinigste Oel- & Fettwerke A.G.	30,000,000
"MARGARINE UNION" Vereinigste Oel- & Fettwerke A.G.	R.M. 100,000,000	"MARGA" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V.	R.M. 74,967,000
"MARGA" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V.	Fls. 25,000,000	"SAPONIA" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V.	25,033,000
"SAPONIA" Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V.	Fls. 25,000,000	Lever Brothers & Unilever N.V.	Fls. 25,000,000
		Lever Brothers & Unilever N.V.	Fls. 25,000,000

*In the
High
Court of
Justice.
(In Prize.)*

Exhibit 1
to Affidavit
of Paul
Rykens
(Statement
of Share-
holding in
Margarine
Verkaufs
Union
G.m.b.H.).

*In the
High
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Justice.
(In Prize.)*

EXHIBIT 2 to the Affidavit of Paul Rykens.

(see attached at page 109)

Exhibit 2
to Affidavit
of Paul
Rykens
(Diagram
of Unilever
Organisa-
tion).

EXHIBIT 3 to the Affidavit of Paul Rykens.

TRANSLATION

Exhibit 3
to the
Affidavit of
Paul
Rykens
(Order for
appoint-
ment of
Reich
Com-
missioner).

of extract from Law Sheet for the Occupied Neth. Territory No. 28 issued
8th July 1941.

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ORDER

of the Reich Commissioner for Occupied Netherlands Territory ratifying an
order from the Minister for the Four Year Plan relating to the appointment
of a Reich Commissioner for the Unilever Concern for Occupied Netherlands
Territory. 10

By virtue of Article 5 of the Fuhrer's Decree of 18th May 1940
relating to the exercise of powers of government in the Netherlands (Reich
Legal Gazette I, Page 778) I order.

SOLE ARTICLE.

(1) The order from the Minister for the Four Year Plan relating to
the appointment of a Reich Commissioner for the Unilever Concern, a copy
of which is appended, is declared binding upon the firm Lever Brothers &
Unilever and its associated companies. 20

(2) The powers of the Reich Commissioner for the Unilever Concern
are exercised in Occupied Netherlands Territory by a Reich delegate
appointed by him.

The Hague, 5th July 1941.

The Reich Commissioner for Occupied Netherlands Territory :

SEYSS-INQUART.

Enclosure.

ORDER

in execution of the Four Year Plan relating to the appointment of a Reich
Commissioner for the Unilever Concern. 30

By virtue of the Order of 18th October 1936 relating to the execution
the Four Year Plan (Reich Legal Gazette I, Page 887) I order :

I.

In order to protect the interests of the German Reich and to safeguard the Greater German foodstuffs and industrial oils and fats economy, I am appointing a Reich Commissioner for the Unilever Concern with the object of concentrating the managements of Lever Brothers & Unilever and their associated companies (Unilever Concern).

I appoint the Secretary of State, Dr. Posse, Reich Commissioner for the Unilever Concern.

10 The Reich Commissioner is directly responsible to me. Whether or not a business belongs to the Unilever Concern is decided by a person responsible for direct control.

II.

The Reich Commissioner exercises the legal and statutory powers of the companies' organs and of the General Meetings. He may delegate his rights and appoint proxies.

Withdrawals from and commitments in respect of the property of the firms mentioned in Section I made after 2nd September 1939 are null and void unless subsequently approved by the Reich Commissioner.

III.

20 For firms which are entered in the Register of Commercial Companies and Co-operative Societies the appointment of the Reich Commissioner is to be registered officially free of charge. The costs of the Commissioner's office are borne by the firms to which the Reich Commissioner is appointed.

IV.

The Reich Commissioner is allotted an advisory council made up from the spheres concerned and from representatives of the branches of business in which the Concern or its companies are engaged.

V.

Executory provisions may be issued by the Administration.

30 Berlin, 23rd June 1941.

The Reich Marshal of the Greater German Reich :

GORING,

Minister of the Four Year Plan

*In the
High
Court of
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Exhibit 3
to the
Affidavit of
Paul
Rykens
(Order for
appoint-
ment of
Reich
Com-
missioner),
continued.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10.

AFFIDAVIT of Abraham Everardus Jacob Simon Thomas.

No. 1925.
No. 2161.
No. 2148.

No. 10.
Affidavit of
Abraham
Everardus
Jacob
Simon
Thomas,
10th April
1947.

IN THE HIGH COURT OF JUSTICE.
Probate Divorce and Admiralty Division.
In Prize.

s.s. "UNITAS" AND CARGO.

s.s. "UNITAS 8."

10

s.s. "UNITAS 10."

I, ABRAHAM EVERARDUS JACOB SIMON THOMAS of Flatgebouw
Nirwana Flat 24 Benoordenhoutscheweg 227 The Hague Holland
make oath and say as follows :—

1. I am a Dutch national and at all material times between 1934 and 1940, when I was compelled to leave Germany, I was one of the principal Dutch members of the Praesidium appointed by Lever Brothers & Unilever N.V. (in this affidavit referred to as "N.V.") for the purpose of controlling the extensive business carried on in Germany by N.V. through their numerous subsidiary Companies in Germany including Deutsche Jurgens Werke A.G., Van den Bergh's Margarine A.G. and Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H., and first two named of which companies in Germany were concerned with (*inter alia*) the production of margarine in Germany while the third named was concerned with (*inter alia*) the distribution of margarine so produced in Germany. 20

2. I crave leave to refer to the affidavit of Mr. Paul Rykens sworn herein on 8th day of April 1947 regarding the said three companies in Germany and their subsequent changes of name, their relationship with the parent companies in Holland and the degree and method of control exercised by N.V. over the said three companies in Germany through the said Praesidium. The facts relating thereto and deposed to by the said Mr. Paul Rykens are correct. 30

3. I first became aware of the proposal that N.V. should undertake the construction of a whaling fleet in the first half of 1935. I knew that Dr. Schacht (who was at all material times the head of the Reich Ministry of Economy) had approached Mr. Rykens and the late Mr. Hendriks and that the matter was under consideration in Rotterdam and elsewhere. I was also well aware, by reason of my residence in Germany and constant contact with officials of the German Government and with German officials, of the risks which N.V. ran if they refused to co-operate on Dr. Schacht's terms. These risks are accurately summarized in the latter part of the said affidavit of Mr. Rykens. I did not however take part in the discussions between Dr. Schacht and Herr Backe on the one hand and Mr. Rykens and Mr. Hendriks on the other, since as one of the principal Dutch members of the Praesidium it was no part of my duties to participate in any decision on the major question of policy whether such a whaling fleet should be constructed. My duty was to see that if any decision on this question was taken by N.V. in favour of such construction, that 40

decision was promptly carried out by those of N.V.'s said subsidiary companies in Germany which were concerned. I was however kept fully informed by Mr. Hendriks of the nature of his discussions with Dr. Schacht and we discussed together the risks of refusing to co-operate on Dr. Schacht's terms.

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4. It was not however until about May 1936 that I became closely concerned with the question of the construction of the proposed whaling fleet—that is to say after the decision to comply with Dr. Schacht's terms had been taken by N.V. Mr. Hendriks returned to Berlin at the beginning of May 1936 with instructions that Dr. Schacht's terms were to be accepted and it thereupon became my duty to see that the necessary arrangements with the German authorities, the builders and the other German margarine concerns interested were concluded as soon as possible. Mr. Hendriks took me with him on 7th May 1936 to a meeting with Dr. Wohltat, a high official of the Reich Ministry of Economy, when final discussions took place as to the various terms upon which the said whaling fleet was to be built, owned and operated. It had already been provisionally decided that the said fleet should be built for Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. and if so required by the German Government, upon completion chartered by that Company to a new company to be formed in which other German concerns interested in margarine (other than Rau and Henkel by whom other whaling fleets were already on the course of construction) could participate.

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Everardus
Jacob
Simon
Thomas,
10th April
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continued.

5. Accordingly on 8th May 1936, the day following the said meeting with Dr. Wohltat, I wrote a letter to the Reich Ministry of Economy on behalf of Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. setting out the terms upon which the said whaling fleet was to be built and operated. I together with my Dutch colleague on the Praesidium, Mr. F. J. Tempel, signed the letter, the terms of which were first approved by Mr. Hendriks. That letter was slightly corrected by a further letter dated 8th May 1936. On 19th May 1936 a further interview took place between Mr. Tempel and myself and Dr. Wohltat. As a result of that interview, a further letter was sent to the Reich Ministry of Economy on the same day together with an enclosure setting out the arrangement for operating the said fleet upon which the German Government insisted. On 20th May 1936 Dr. Wohltat replied by letter accepting the various proposals put forward in the previous letters and interviews. True Copies (in translation) of all the said letters are now produced (tied together) and shown to me in the bundle numbered 1-11 and marked "A.E.J.S.T.I."

6. Following the conclusion of the said negotiations with the Reich Ministry of Economy orders were at once placed with Deutsche Schiff-und Maschinenbau A.G. of Bremen for the construction of a whale factory ship ultimately named the "Unitas" and with Bremen Vulkan Schiffbau-und Maschinenfabrik of Vegesack/Bremen for seven whale catchers ultimately named "Unitas 2 to 8." Subsequently a further whale catcher was purchased and named "Unitas 9" and in 1939 a further whale catcher was ordered and ultimately named "Unitas 10." True copies (in translation) of the order for the "Unitas" dated 27th May 1936, of the contract dated 27th May 1936 for the 7 whale catchers including "Unitas 8" and of the contract dated 26th January 1939 for "Unitas 10"

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No. 10.
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Simon
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10th April
1947,
continued.

are now produced (tied together) and shewn to me in the bundle numbered 1-20 and marked "A.E.J.S.T.2."

7. The net cost of the "Unitas," of the "Unitas 8" and the "Unitas 10" respectively was R.M.7,472,351.35, R.M.361,365.78 and R.M.711,186.81. Details showing how these figures are arrived at are set out in a statement now produced and shown to be marked "A.E.J.S.T.3." So far as these sums were paid in Reichsmarks, all marks used for this purpose were "inland" marks, that is to say marks accumulated by (*inter alia*) N.V.'s subsidiary Companies in the manner described in the said affidavit of Mr. Paul Rykens. But included in those 10 figures are amounts representing the equivalent in marks of foreign exchange which N.V. was obliged by Dr. Schacht to expend on items of equipment for the said fleet which could not be obtained in Germany and accordingly had to be acquired from abroad.

8. While the said fleet was in the course of construction in 1936 and 1937 arrangements were made for setting up the "working company" to which reference is made in the correspondence in the said bundle marked "A.E.J.S.T.1" and upon the formation of which the German Government insisted in order that other concerns in Germany interested in the margarine business might participate in the operation of the said whaling 20 fleet. Accordingly on 23rd September 1937, the day upon which the Unitas was completed and delivered to Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H., an agreement was signed in Berlin for the formation of a new company "Unitas" Deutsche Walfang G.m.b.H. in which company Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. together with Johann Hinrich Mohr and Hans Loh (each representing certain other concerns in Germany interested in the margarine business) were partners. A true copy (in translation of the said Deed) is now produced and shown to me marked "A.E.J.S.T.4." The capital of this new company was R.M.1,000,000 which was subscribed as to 30 R.M.486,400.00 by Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H., as to R.M.98,800.00 by the interests represented by the said Hans Loh and as to R.M.414,800.00 by the interests represented by the said Johann Hinrich Mohr. Ultimately in order to meet the further financial needs of this new company advances totalling R.M.4,000,000 were made by the said three interests in the same proportions as those in which the said share capital had been subscribed.

9. On the same day, namely 23rd September 1937, the "Unitas" was delivered by the said builders to Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. and forthwith delivered by that company to 40 "Unitas" Deutsche Walfang G.m.b.H. Seven whale catchers (including "Unitas 8") and a scout catcher named "Unitas 1" were similarly delivered on 10th October 1937. On 24th February 1938 a "demise" or "bare-boat" charterparty was entered into between Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. and "Unitas" Deutsche Walfang G.m.b.H. with retrospective effect to the said respective dates of delivery, in respect of the "Unitas" and the said seven whale catchers (including "Unitas 8") and of the scout catcher "Unitas 1." A true copy of the said charterparty (in translation) together with copies of a later charterparty (in translation) relating to "Unitas 9" and other 50

correspondence and documents (in translation) relating to later extensions of the said charterparties are now produced and shown to me in a bundle Nod. 1-27 and marked "A.E.J.S.T.5."

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10. It will be seen that as a result of the insistence of the German Government prior to the conclusion of the agreement reached in the letters set out in the said bundle marked "A.E.J.S.T.1," upon the operation of the said whaling fleet when completed being entrusted to a special working company, N.V. by their said subsidiary company in Germany lost actual possession and control of the said fleet to the said working
10 company as soon as the said fleet had been completed.

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Affidavit of
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Jacob
Simon
Thomas,
10th April
1947,
continued.

11. "Unitas 10" was never similarly chartered because her construction was not completed until after the outbreak of war in 1939.

Sworn at Unilever House in the City }
of London this 10th day of April 1947 } A. E. J. SIMON THOMAS.

Before me,

B. J. HUSSEY,

A Commissioner for Oaths.

No. 10 (1) (a).

20 LETTER, Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. to Reich Ministry
of Economy.

No. 10
(1) (A).
Letter,
Margarine
Verkaufs
Union to
Reich
Ministry of
Economy,
8th May
1936.

[TRANSLATION]

Jurgens-Van Den Bergh Margarine-
Verkaufs-Union G.m.b.H.,
Berlin,

8th May 1936.

To the
Reich Ministry of Economy
for the attention of Mr. H. Wohlthat,
Behrenstr. 43,
30 Berlin W.8.

Dear Sirs,

We confirm the conversation our Mr. Hendriks and Dr. Simon Thomas had the honour of having with you yesterday and, at your suggestion, we beg to put the following proposition to you :

We propose to have a floating factory of 29,000 tons d.w. and 8 catchers built by a German company belonging to our Concern. The total price of the factory ship and catchers has not yet been fixed exactly, but will be in the neighbourhood of RM.13,000,000—(thirteen million Reichsmarks). The intention is to have the factory ship built by the Deutsche Schiff-
40 und Maschinenbau Aktiengesellschaft, Bremen, and the catchers by the

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No. 10
(1) (A).
Letter,
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Verkaufs
Union to
Reich
Ministry of
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8th May
1936,
continued.

Bremer Vulkan Schiffbau-und Maschinenfabrik, Vegesack. If the orders can be placed within the coming week, we can expect the ships to be ready for the 1937/38 whaling season.

In order to enable us to build the whaling fleet as referred to above, we hereby make application for a subsidy from the Reich towards the building costs, of the same amount as has been granted in the case of the whaling companies founded by Messrs. Henkel and Rau.

Our Concern companies abroad are prepared, if the German Government should so wish, to advance the amounts of foreign currency which have to be procured as a part of the building costs to pay for items supplied from abroad, on condition that we are allowed to repay these advances, plus a fair rate of interest, by deliveries of whale oil from the first whaling season at the world market price. 10

Our foreign companies are also prepared similarly to advance such costs of running the whaling expeditions as have to be paid in foreign currency, on the understanding that these advances, with interest at a fair rate, would likewise be repaid by deliveries of whale oil from each year's catch at the world market price.

We are prepared to carry on whaling with this fleet alone and at our own risk and, after deducting the quantity required to cover the necessary amounts of foreign currency, to sell the products obtained to the German Government at the prevailing world market price converted into Reichsmarks. 20

If desired, however, we are also prepared to carry on whaling jointly with the members of the Association of Margarine and Edible Fat Manufacturers. In such case our idea would be to set up a working company in which each participating margarine factory would have an interest corresponding to its margarine quota; it would have a Board on which the outsider firms were suitably represented, while the business management, in view of our special experience in this branch, would have to be in our hands. This company would then conclude a charter-party for a number of years with whichever of our German companies is the owner of the new whaling fleet, the charter price consisting of a certain quantity of whale oil. We estimate that with a total building cost of about RM.13,000,000.—, approximately 7,000 tons of whale oil per annum would cover the amount required for amortization and interest on the necessary capital. (See addition.) 30

We are prepared to sell the German Government the whale oil to be supplied to us in this way at the world market price converted into Reichsmarks. The working company would likewise sell the balance of its whale oil to the German Government at the world market price converted into Reichsmarks. 40

Naturally this, as well as the offer to sell made on page 2, para. 3, will apply only so long as fats control exists in Germany.

Our foregoing proposals are conditional upon the German Government not raising any objections to the signing on of the necessary Norwegian crews and in general upon our not being treated in any way less favourably

than the whaling companies founded by Messrs. Henkel and Rau as regards the carrying on of whaling operations and the utilising of the products obtained.

In view of the extreme urgency of the matter, we should be grateful if you would let us have your decision on our proposition in the course of the next few days if possible.

Yours faithfully,

JURGENS-VAN DEN BERGH MARGARINE-
VERKAUFS-UNION G.m.b.H.

(Sgs.) A. E. J. SIMON THOMAS.

(Sgd.) F. J. TEMPEL.

10

S.TH./K.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(1) (A).

Letter,
Margarine
Verkaufs
Union to
Reich
Ministry of
Economy,
8th May
1936,
continued.

No. 10 (1) (b).

LETTER, Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. to Reich Ministry of Economy.

[TRANSLATION]

Jurgens-Van den Bergh Margarine-
Verkaufs-Union G.m.b.H.,
Berlin.

8th May 1936.

20

To the
Reich Ministry of Economy,
For the attention of Mr. H. Wohlthat,
Behrenstr. 43,
Berlin, W.8.

Dear Sirs,

On reading through the proposition we have just despatched to you to-day, we find that at the foot of page 2 part of the last sentence has been omitted. Will you please read the sentence as follows :—

30

We estimate that with a total building cost of about RM.13,000,000.—, approximately 7,000 tons of whale oil per annum would cover the amount required for amortization and interest on the necessary capital, so that when the amount of the subsidy to be granted has been decided upon, the quantity of whale oil to be fixed as charter price will have to be reckoned in the same ratio.

Yours faithfully,

JURGENS-VAN DEN BERGH MARGARINE-
VERKAUFS-UNION G.m.b.H.

40

(Sgd.) A. E. J. SIMON THOMAS. (Sgd.) F. J. TEMPEL.

S.Th./K.

No. 10
(1) (B).

Letter
Margarine
Verkaufs
Union to
Reich
Ministry of
Economy,
8th May
1936.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10 (1) (c).

LETTIER, Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. to Reich Ministry of Economy and enclosure.

[TRANSLATION]

No. 10
(1) (c).
Letter,
Margarine
Verkaufs
Union to
Reich
Ministry of
Economy,
19th May
1936.

19.5.36.

To the Reich Ministry of Economy,
For the attention of Mr. Bertsch,
Behrenstr. 43,
Berlin, W.8.

Dear Sirs,

10

We confirm the conversation which our Mr. Tempel and Dr. Simon Thomas had the honour of having in Mr. Wohlthat's office this morning and now beg to give you the following information :—

We agree to the subsidy towards the building of a whaling fleet being fixed at 30 % of the building cost for 1 floating factory and 8 catchers, with a maximum of 3½ million R.M., and we note your statement that the amount of this subsidy has been arrived at on the same principles as applied when fixing the subsidy for Mr. Rau's similar ship-building scheme.

We also confirm that the whaling fleet will be built either by Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. or by another purely 20 Germany company belonging 100 % to the Unilever Concern.

We mentioned £7,000 as the approximate amount required for the items to be paid for in foreign currency. So far these consist only of the shooting weapons, which will have to be obtained from either England or Norway. We duly noted that if they are bought from Norway the purchase price can be paid via the German-Norwegian clearing, so that Norway is to be preferred.

We noted, moreover, that the Government subsidy will be paid in the instalments usual in the case of shipbuilding. In view of the special payment arrangements discussed between us and the shipbuilders it 30 may happen that in making our payments we shall advance a part of the Government subsidy which advance will then be made good to us by the Government when the usual instalments fall due.

We have no objection if the Government wishes to set up a Meteorological station on board the factory ship.

In case the German Government should start negotiations with the Norwegian Government for the fixation of quotas, we were assured that such negotiations would not be conducted without consulting us and that the German Government would not fix any quotas with the Norwegian Government which would make it impossible for the fleet to be built by 40 us to carry on whaling on a paying basis.

The condition mentioned in our letter of 8th May, that the German Government should not raise any objections to our signing on the necessary Norwegian crew, might—in view of the current Norwegian tendency not to allow crews consisting partly of Norwegians and partly of foreigners—in the extreme case mean that the fleet we are to build would be manned

exclusively by Norwegians. You told us that, should this extreme case occur, the German Government would obviously agree.

As regards our offer to permit the outsider German margarine manufacturers to participate in the running of the whaling fleet, we have no objection to allowing these manufacturers two months' option on this point, to run as from to-day. As requested by you, we enclose a statement of the main terms on which we offer such participation.

These points were discussed to-day between Mr. Mohr and ourselves; we have now sent the statement to him in Hamburg and he will telephone Mr. Wohlthat to-morrow morning to advise him that he agrees with the way we have formulated these various points.

Yours faithfully,

JURGENS-VAN DEN BERGH MARGARINE-
VERKAUFS-UNION G.m.b.H.

(Sgd.) Dr. SIMON THOMAS. TEMPEL.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(1) (c).

Letter,
Margarine
Verkaufs
Union to
Reich
Ministry of
Economy,
19th May
1936,
continued.

[ENCLOSURE]

Terms for the participation of outsider margarine manufacturers in the running of the whaling fleet to be built by Unilever.

20 1. A "working company," to be run as a purely private business enterprise, will be set up in which every member of the margarine industry holding a quota will be offered the opportunity of participating in proportion to his margarine quota.

2. Should the quota holders not all wish to participate in this "working company," the shares not subscribed will be divided between the participants *pro rata* their holding.

30 3. The "working company" will have a Board consisting of 7 members. The Board will be so composed that, in addition to Mr. Hans Mohr, as chairman, there will be three representatives of the Concern and 3 representatives of the outsider factories, one of whom must be a representative of the outsider factories with which the Concern has contracts for the delivery of raw materials.

4. The company will have as sole manager a person acceptable to the Board, who will be appointed by Jurgens-Van-den Bergh Margarine-Verkaufs-Union G.m.b.H. and can only be dismissed by them.

5. The chairman of the Board has unlimited power to supervise the entire business management of the "working company."

40 6. The "working company" concludes a charter-party for a period of 3 years, beginning as from the completion of the whaling fleet, with Jurgens-Van-den Bergh Margarine-Verkaufs-Union G.m.b.H. or with the company which owns the fleet in the latter's stead. At the end of each year the "working company" and the owners of the whaling fleet shall arrange to discuss the extension of the charter party beyond the 3-year period.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(1) (c).

Letter,
Margarine
Verkaufs
Union to
Reich
Ministry of
Economy,
19th May
1936,
continued.

7. The charter will be paid for in kind by the delivery of whale oil, 54.2 tons whale oil being reckoned to every RM.100,000.— of the net building cost (building cost after deduction of the Government subsidy).

8. The charter will be a so-called "bare boat" charter and will be limited merely to making the vessel available; insurance, maintenance, etc. will be borne by the "working company."

9. The costs of the whaling expeditions which have to be paid in foreign currency will be advanced by one of the foreign Unilever companies, on condition that such advances are repaid, plus interest at a fair rate, by deliveries of whale oil from each year's catch at world market price, this whale oil to be placed at the free disposal abroad of the Unilever company concerned. These foreign currency payments will naturally be restricted to what is absolutely essential. 10

10. The whale oil which the "working company" has left after delivering the quantity required to pay the charter price and to repay the advances of foreign currency, will be sold by it to the German Government at the world market price converted into Reichsmarks. The fish-meal and other by-products obtained will also be sold by the "working company."

11. The outsider margarine factories will be given 2 months' option as from to-day of participating in the "working company" on the foregoing terms. 20

19.5.36

S.Th/Ho.

No. 10
(1) (D).
Letter,
Reich
Minister of
Economy to
Margarine
Verkaufs
Union,
20th May
1936.

No. 10 (1) (d).

LETTER, Reich Minister of Economy to Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H.

[TRANSLATION]

II 20201/36

The Reich and Prussian Minister of Economy, 30
Behrenstr. 43,
Berlin W.8.

20th May 1936.

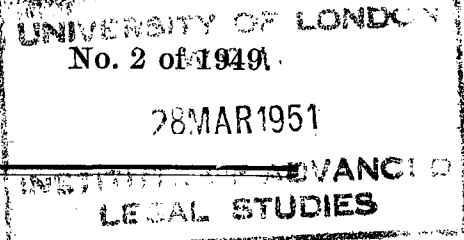
Messrs. Jurgens-Van den Bergh Margarine-
Verkaufs-Union G.m.b.H.,
Union-Haus,
Berlin C.2.

Your letters of 8th and 19th May 1936

re: German Whaling.

With reference to your letters of 8th and 19th May 1936 and the 40
conversations with the writer during the last few days concerning the

In the Privy Council.



ON APPEAL
 FROM THE HIGH COURT OF JUSTICE, PROBATE, DIVORCE AND
 ADMIRALTY DIVISION.
 (IN PRIZE.)

BETWEEN

**LEVER BROTHERS & UNILEVER N.V., "MARGA"
 MAATSCHAPPIJ TOT BEHEER VAN AANDEELEN IN
 INDUSTRIEEL Ondernemingen N.V. AND "SAPONIA"
 MAATSCHAPPIJ TOT BEHEER VAN AANDEELEN IN
 INDUSTRIEEL Ondernemingen N.V. - - - Appellants**

AND

H.M. PROCURATOR GENERAL - - - - - Respondent.

S.S. "UNITAS" AND CARGO.

RECORD OF PROCEEDINGS.

SIMPSON, NORTH, HARLEY & CO.,
 18-20 YORK BUILDINGS,
 ADELPHI, LONDON, W.C.2,
Solicitors for the Appellants.

THE TREASURY SOLICITOR,
 STOREY'S GATE,
 LONDON, S.W.1,
Solicitor for the Respondent.

equipping of a further German whaling enterprise, I have to inform you that your application has been granted on the following conditions:—

10 (1) Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H., Berlin, or another purely German company belonging 100% to the Unilever Concern will receive a subsidy from the Reich of 30% of the cost of building a floating factory of 29,000 tons and 8 catchers in German shipyards. The subsidy is limited to a maximum of 3½ million RM. It will be paid as the building work progresses, such progress to be verified by vouchers from the shipyards.

(2) The company building the whaling fleet is bound until 20th July 1936 by your offer to charter it to the outsider margarine manufacturers in accordance with the terms agreed on 19th May 1936 between you and representatives of the German margarine industry.

20 (3) The Unilever Concern and—in the event of the whaling fleet being chartered by the German margarine industry also the “working company” to be formed, undertake not to demand any special treatment for the German companies or factories belonging to them, especially as regards quotas and equalization payments.

(4) To cover the foreign currency credits for necessary items of equipment which have to be obtained from abroad and which amount to a maximum of £7,000, and for other foreign payments necessary for the running of the enterprise, the building company and, the case occurring, also the “working company” are entitled to sell corresponding quantities of the production abroad unless the Reich Foreign Exchange Control Office provides some other cover for them.

30 (5) In the event of the Reich Government concluding international agreements for the regulation of whaling, the interests of German whaling enterprises will be given due consideration and they will be given an opportunity of expressing their views first.

(6) To ensure that the foregoing conditions are adhered to even in the event of the whaling fleet being sold or chartered, my express consent must be obtained to any such disposal of the whaling fleet.

40 The preceding promises are valid on condition that you place the building orders without delay, so that the fleet can proceed to the Antarctic for the whaling season in the autumn of 1937, and that the total production of oil, meat meal and other whale products goes to Germany in so far as no exceptions are provided for in the foregoing. Should there be any delays in building (say in the delivery of rolled material), for the sake of getting the fleet completed quickly I am prepared to give you my support in overcoming such difficulties.

I also expect that you will be willing to allow the Reich Air Ministry and/or the German Naval Observatory to set up meteorological stations aboard your whaling vessels and will arrange for experienced radio operators and short-wave equipment to be carried by those vessels.

By Order.

(Sgd.) WOHLTHAT.

*In the
High
Court of
Justice.
(In Prize.)*

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No. 10
(1) (D).
Letter,
Reich
Minister of
Economy to
Margarine
Verkaufs
Union,
20th May
1936,
continued.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (A).
Letter,
Margarine
Verkaufs
Union to
Deutsche
Schiff,
27th May
1936.

No. 10 (2) (a).

LETTER, Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. to Deutsche Schiff-und Maschinenbau-A.G.

[TRANSLATION]

27.5.36.

Messrs.
DEUTSCHE SCHIFF-UND MASCHINENBAU-
AKTIEN-GESELLSCHAFT, Bremen.

DEAR SIRs,

We confirm having this day ordered from you a *Twin Screw Floating Whaling Factory Ship* similar in main outline construction, in main Engines and in Boiler Plant to the vessel now being built by you under Yard number 914, but with one important addition, namely, the building of a further deck to be known as the shelter-deck. 10

The principal dimensions of the said vessel to be as follows:—

Length overall	.. .. .	633'	9' 16"
Length between perpendiculars	.. .. .	600'	
Breadth moulded	.. .. .	80'	
Height of upper deck (Flensing deck)	.. .. .	67'	
Height of shelter deck	.. .. .	52'	6" 20
Height of main deck	.. .. .	40'	6"
Draught on summer freeboard about	.. .. .	35'	5"

The vessel to be built to the requirements of Germanischer Lloyd, of the best possible materials and workmanship and to be classed + 100^A/₄ (E) with freeboard.

Speed in deep water fully laden and in good weather conditions to be about 11½ to 12 knots. Total dead-weight carrying capacity of vessel about 27.600 tons of 1000 Kilo.

The propelling machinery consists of two (2) Triple Expansion main Engines with "Bauer-Wach" exhaust steam Turbines developing about 6000 I.H.P. at about 104 revolutions per minute and giving a minimum speed of about 11½ to 12 knots. 30

The Boiler Plant to consist of 6 (six) Boilers of Scotch type with a total heating surface of about 17.000 square feet.

4 (four) Boilers to be equipped for superheated steam,
2 (two) " " " " " " saturated " .

The specification of work to be carried out by you and materials and equipment to be supplied by you to comprise all items and to be exactly similar to those being provided in the case of your Yard number 914 subject, however, that if in respect of any particular items, the requirements of Germanischer Lloyd and German Board of Trade differ from those of British Lloyds Register of Shipping and British Board of Trade, you will in respect of such items supply the full requirements of the former to meet their classification and rules. 40

Within twenty-eight (28) working days from the signing of this letter you undertake to supply us with complete Hull and Engine specifications and the usual plans in accordance with the previous paragraph.

Such specifications and plans to meet with the approval of our agents and/or superintendent Engineers.

Any deviation from the specifications to be the subject of a reduction from or addition to the price (hereinafter stipulated) of the said vessel.

We do not bind ourselves to instal Factory Plant similar to that now being or to be installed in the vessel under your Yard number 914. The price hereinafter mentioned does, however, include the installation of all Factory Plant being supplied by us.

The price to be paid for the said vessel is RM.7.750.000.—(Seven Millions Seven hundred and fifty thousand Reichmarks). We undertake to pay you 80% (eighty per cent) of the total purchase price within 7 days after receipt by us or by our agent of all permits from the German Authorities necessary to effect the payment of the ship in accordance with our arrangements with the German Government, the remaining 20% (twenty per cent) to be paid on delivery of the ship. In consideration, your firm definitely undertook on their part not to claim any increase in the agreed price of the ship, either in respect of the 80% above referred to, or in respect of the remaining 20%, in the event of the cost of labour and/or materials for the ship increasing during the period of its construction owing to a departure by the Reichsmark from its present gold parity or for any other clause.

The vessel to be completed and ready for sea after successful Trial Trips on or before 20th September 1937. If, however, the vessel be not delivered by the 20th September 1937 penalties to be agreed between us shall be paid by you and we to have the right to reject the vessel if not delivered on 20th September 1938.

This order is subject to the drawing up and signing by both parties of a formal agreement on the usual lines, such agreement to be drawn up and signed without delay when the Hull and Engine specifications and Plans have been mutually agreed.

Yours faithfully

JURGENS-VAN DEN BERGH MARGARINE-
VERKAUFS-UNION G.m.b.H.

THEH./K

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (A).
Letter,
Margarine
Verkaufs
Union to
Deutsche
Schiff,
27th May
1936,
continued.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10 (2) (b).
AGREEMENT, Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. and Bremer
Vulkan Schiffbau-und Maschinenfabrik.

[TRANSLATION]

MEMORANDUM OF AGREEMENT

No. 10
(2) (b).
Agreement,
Margarine
Verkaufs
Union and
Vulkan
Schiffbau,
27th May,
1936.

Between : BREMER VULKAN SCHIFFBAU-UND MASCHINENFABRIK,
VEGESACK (hereinafter called the Builders) of the one part and JURGENS-
VAN DEN BERGH MARGARINE-VERKAUFS-UNION G.m.b.H., BERLIN (herein-
after called the Purchasers) of the other part

Witnesseth that the said parties hereto mutually agree as follows :— 10

1. The Builders shall build, launch, engine, complete and equip for
Sea for the Purchasers of the best materials and workmanship, and the
Purchasers shall purchase at the price and on the terms hereinafter
mentioned 7 (seven) WHALECATCHERS similar in all respects to the
“ Southern Maid ” as recently completed by the Builders and delivered to
Lever Brothers Limited, Toronto, and including all extras over and above
the original specification, and also to include the supply by and fittings by
the Builders of the Whaling Winch (similar to that supplied by Lever
Brothers Limited, Toronto, and fitted by the Builders to the “ Southern
Maid ”) and the following accumulator Gear (as supplied by Lever Brothers 20
Limited, Toronto, and fitted by the Builders)

- 2 (two) Masthead Blocks
- 2 (two) Top Blocks
- 2 (two) Sheaves for Vertical Blocks
- 2 (two) Sheaves for Horizontal Blocks
- 4 (four) Sheaves for Riding Blocks
- 128 (one hundred and twenty eight)
Accumulator Springs

(with such modifications—if any—as are agreed from time to time by the
Purchasers and the Builders), and to be built under Survey of British 30
Corporation Register of Shipping and Air Craft and to their Highest Class
for Whaling purposes. The classification fees and costs and Board of
Trade fees and costs are to be paid by the Builders.

2. The vessels shall be of the following dimensions, viz. :—

Length overall	.. .. .	144' 7 $\frac{3}{4}$ "
Length between perpendiculars	.. .. .	133' 3 $\frac{1}{4}$ "
Breadth moulded	.. .. .	26' 0"
Depth moulded	.. .. .	14' 6"
Draught, about	.. .. .	12' 2 $\frac{7}{8}$ "

These dimensions are not to prejudice the guarantees herein given for 40
speed and fuel oil consumption.

3. All the said Vessels shall be completed ready for their Trial Trips
at Sea on or before 30th September 1937 and shall immediately after
satisfactory Trial Trips be delivered to the Purchasers afloat and free of
all claims, charges and expenses whatsoever at some usual and convenient
place in or near the River Weser, but in case any of the Vessels be not then
completed and after successful Trial Trips at Sea ready for delivery to the
Purchasers, the Builders shall, unless and to the extent they can prove

that any cause beyond their control has resulted in a stoppage of work on the vessel and/or her machinery, be liable to pay the Purchasers as Liquidated Damages (and not as Penalty) for such non-completion and non-delivery the sum of RM.100.— (ONE HUNDRED REICHSMARKS) for each vessel per working day after such date until 15th October 1937 or until such earlier date as such vessel is ready for delivery. If any of the vessels, through any fault of or want of due diligence on the part of the Builders is not ready for delivery after successful trials on the 15th October 1937, the above Liquidated Damages in respect to such vessels or vessel

10 to be increased to RM.400.— (FOUR HUNDRED REICHSMARKS) per working day after that date until the vessel or vessels are ready for delivery after successful trials, subject however that in the event of three or more of the vessels not being ready for delivery after successful trials on 15th October 1937, the above penalty of RM.400.— (FOUR HUNDRED REICHSMARKS) to be increased for each vessel not delivered on 15th October 1937 to RM.1.000.— (ONE THOUSAND REICHSMARKS) per working day after 15th October 1937 until the date of delivery. The expression "working day" shall not include Sundays or any holiday usually observed in the Builders' Works, provided always that if any of the Vessels, through any

20 fault of or want of due diligence on the part of the Builders be not completed and delivered to the Purchasers before 15th September 1938 the Purchasers shall forthwith have the option of cancelling this Contract in respect of such vessel or vessels. If the Purchasers cancel this . . . contract in . . . respect of any vessel the full purchase price and all other monies paid to the Builders by or on behalf of the Purchasers in respect of such vessel, her engines, machinery, equipment or any other article or thing in on or for such Vessel shall forthwith together with interest thereon at 1% under the official German Bank Rate from the date of this contract until the date of repayment be refunded to the Purchasers or their assigns

30 by the Builders and the amounts (if any) due from the Purchasers to the Builders at the date of such cancellation up to the amounts to be refunded shall cease to be due to the Builders and shall not be debited by them in account or otherwise to the Purchasers. If the Purchasers cancel this contract in respect of any vessel the Builders shall notwithstanding anything contained in Clause 5 hereof, be entitled to the ownership of such vessel and any materials intended for it on refunding the monies due from them in accordance with the provisions of this clause.

4. The Purchasers or any persons for the time being appointed by them as their surveyors and also the Inspectors and other authorities

40 constituted under Lloyds Register of British and Foreign Shipping shall have free access to the Builders' premises and to the premises of the Builders of the Engines, boilers and/or Machinery at all times during working hours and shall have all proper facilities afforded to them with a view to making their inspection. Any defect pointed out by them in any of the said Vessels, their Engines, Boilers, Machinery or fittings shall be made good by the Builders to the reasonable satisfaction of the Purchasers.

5. During construction and until acceptance by the Purchasers, the ownership of the Vessels, their hulls, boilers, machinery, fittings and

50 materials from time to time intended for them, whether on board the Vessels, in the building yard or workshop, and whether wrought or not,

*In the
High
Court of
Justice.
(In Prize.)*

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No. 10
(2) (B).
Agreement.
Margarine
Verkaufs
Union and
Vulkan
Schiffbau,
27th May,
1936,
continued.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (B).
Agreement,
Margarine
Verkaufs
Union and
Vulkan
Schiffbau,
27th May,
1936,
continued.

shall be vested in the Purchasers as from the moment of arrival at the yard or workshop, and of numbering in accordance with the next following paragraph. The said vessels, their hulls, boilers, machinery, fittings and materials, however, remain in the possession of the Builders, who, under an agreement for safe custody (Verwahrungsvertrag), will hold them for the Purchasers in accordance with and always subject to the other provisions of this contract. The ownership is transferred to the Purchasers to constitute security for all monies paid to the Builders on account of the purchase price and of any extras, alterations and additions (if any) and for all further claims whatever which the Purchasers have or may have against the Builders and arising out of or in connection with this contract. The transfer of ownership will, however, in no respect prejudice the contractual relationship between the parties under this agreement and will in particular not prejudice in any respect the obligation of the Builders to deliver the Vessels. 10

6. Immediately on arrival at the yard the Builders shall place on the boilers, machinery, fittings and materials of or intended for the said Vessels and at the bows of the said Vessels, and, in case any of the said Vessels before delivery becomes a total loss, on the boilers, machinery, fittings and materials of or intended for and on the bow of any Vessel built to replace the said Vessel, the number thereof, namely— 20

the first	..	..	..	740
the second	..	..	..	742
the third	..	..	..	742
the fourth	..	..	..	743
the fifth	..	..	..	744
the sixth	..	..	..	745
the seventh	..	..	..	746

Further all articles provided for the construction of the Vessels must be kept strictly separate from other articles. 30

The Builders undertake to acquire all articles necessary for the construction of the Vessels under such terms and conditions as will preclude the suppliers from retaining any rights of ownership therein.

7. In case the Builders fail to deliver any of the vessels at its due date or if during the period of construction they do not proceed with reasonable despatch in the building of any vessel according to the meaning of these Presents, it shall be lawful for the Purchasers, after 15 days' notice in writing, to enter into the building yard of the Builders, and to employ any number of workmen, and use and employ all the machinery, engines, and tools of the Builders, and to proceed with the finishing of the Vessels and for that purpose to move any such vessel, engines, machinery, and equipment and material intended therefor to any other place or yard and/or to use and employ all materials brought into the said building yard for the purpose of the Vessels, and to purchase and provide any other materials proper to be employed therein, and to pay for such materials and the Wages of the Workmen and the Builders shall on demand pay and make good the sums so paid and all expenses so incurred. 40

8. The Engines shall be triple expansion steam engines of the following dimensions :—

410mm 660mm 1120mm
by 660mm stroke

to develop at 178 revolutions per minute about 1550 I.H.P. These dimensions are not to prejudice any guarantees herein of speed and fuel consumption.

9. The Boilers to have each a heating surface of about 3400 square feet and a working pressure of 200 lbs. No superheated steam.

10 This Boiler specification not to prejudice the guarantees herein of speed and fuel consumption.

10. The Builders guarantee to the Purchasers that in respect to each of the vessels, her machinery shall be capable of propelling the vessel when laden with 115 tons of bunkers on fair weather conditions during trials over the measured admiralty mile in the Baltic, at a speed of not less than that obtained by the "Southern Maid" during her Trial Trip. If the speed on Trial Trip of any of the vessels shall be found to be less than the speed of the "Southern Maid" as above referred to with a tolerance of one quarter of a knot a deduction shall be made in respect of each such vessel from its Contract price of RM.2.000.— (two thousand Reichsmarks) for every quarter of a knot or part of a quarter of a knot of deficient speed after making due allowance for the one quarter knot tolerance above referred to. Any such deduction or deductions shall be by way of liquidated damages and be payable by the Builders to the Purchasers forthwith on completion of the Trial Trip of the vessel in question.

If the speed on the Trial Trip shall in respect of any vessel be found to be less than $13\frac{1}{2}$ knots, the Purchasers shall have the option of rejecting the vessel in which case the last two sentences of clause 3 of this agreement will apply.

11. The Builders to arrange to make at their expense Trial Trips for each vessel over a period of not less than six hours' duration with full bunkers and/or partial bunkers at the option of the Purchasers at sea in fair weather. The Builders shall insure the Vessels for such Trial Trips in Sterling in the joint names of the Builders and the Purchasers, Clause 15 of this agreement to apply to such insurance. The Builders shall find the necessary crew and provide the bunker oil consumed and engine room stores consumed during such Trial Trips. Provided always that if the Purchasers be dissatisfied with the said Trial Trips in respect of any vessel then the Purchasers shall be bound to give notice in writing to the Builders within twenty-four hours after the completion of such Trial Trips, of their dissatisfaction, otherwise such Trial Trips shall be deemed to have been satisfactory in all respects.

12. After any of the Vessels has been delivered to the Purchasers, the Builders shall guarantee to the Purchasers or the Owner or Owners for the time being each such vessel, her engine and machinery for the period of six Calendar Months after delivery, but only to the extent, that in case any defective material workmanship or design in the original construction thereof be discovered during such period of six Calendar

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (B).
Agreement,
Margarine
Verkaufs
Union and
Vulkan
Schiffbau,
27th May,
1936,
continued.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (B).
Agreement,
Margarine
Verkaufs
Union and
Vulkan
Schiffbau,
27th May,
1936,
continued.

Months and written notice thereof be given, the Builders shall supply and fit at their works new articles or new materials to replace any that may be proved to have been defective, or, in case any such vessel cannot conveniently be brought to their works, shall pay to the Purchasers or the Owner or Owners for the time being of the said vessel in Reichsmarks such sum as it would have cost the Builders to have made good such defect at German Yards. Nothing in this clause shall, however, be construed as to impose on the Builders any greater liability in respect of any new materials and work done than in respect of the original materials and work or to extend their liability beyond the said period of six months from the date of acceptance of the vessel except in respect of new materials and work done under this clause for which the guarantee period shall be extended for six months from the date of completion of such work. The Builders shall not be liable for any consequential damages, nor for any accident whether arising from neglect of the Engineer in charge or not, or whether in respect of the original or substitute work or material. A Guarantee Engineer shall during the period of Guarantee be appointed by the Purchasers or the Owners for the time being, whose servant he shall be. 10

13. After any of the Vessels has been delivered to the Purchasers the Builders shall in respect of such vessel also remain responsible for the tightness of the shell plating and internal structure of her Water and Fuel Oil compartments, which are guaranteed to be kept tight by the Builders for six months from date of delivery, except so far as leakages may be occasioned by damage from any cause sustained by the Vessel or from accident or negligence or wilful act of persons, but no liability shall come against the Builders for consequential damages through this guarantee. In the event of any such leakage occurring, the same shall be repaired at Purchasers' request at the Builders' expense in their works, or in case the Vessel cannot conveniently be brought to their works the Builders shall allow to Purchasers or Owner or Owners for the time being a sum in Reichsmarks equivalent to the cost of doing such repairs at German Yards. 20 30

14. Subject always to the Proviso contained in Clause 3 above in the event of the delivery of any of the said Vessels being delayed by any strike, combination or lock-out of any of the Builders' workmen or of any of the workmen employed by the makers of the engines, boilers, machinery or fittings, or in the steel, iron, coal or any other trades affecting the quality or delivery of the material for the construction of the said vessel or her engine, boilers, machinery, or fittings, or by any fire, accident, storm, or bad weather, or by additions or alterations ordered by the Purchasers, or by any other cause beyond the control of the Builders, whether of a kind similar to those specified, or of a different kind, as f.i. lack of raw material, then and in any such case the time allowed for the completion of such vessel shall be extended by the number of working days lost to the Builders by such causes as mentioned in this clause. Notice to be given of any strike or lock-out as soon as it takes place. 40

15. Notwithstanding clause 5 hereof until delivery and acceptance each vessel shall be at the risk of the Builders and shall be insured in the joint names of the Purchasers and the Builders against the same risks as in the case of the "Southern Maid" for the sum of £38,500.— Sterling 50

(being the countervalue of Marks 473.7.0.— at the rate of 12.30 Marks to the £ Sterling) being the contract price on the terms of the insurance cover to be attached hereto ; the policy or policies of such insurance shall be effected with insurers approved by the Purchasers and such insurance shall not affect the liability of the Builders to make good any damage to such Vessel or her machinery before delivery.

*In the
High
Court of
Justice.
(In Prize.)*

—
No. 10
(2) (B).

10 The premiums shall be paid in Sterling by the Purchasers and shall be credited by the Builders to the Purchasers in Marks at the rate ruling in London for free Reichsmarks on the date when each premium is paid and such credit shall be available to the Purchasers for payment to the Builders for instalments due and for extras (if any) ordered under Clause 16 hereof or in respect of any monies due from the Purchasers to the Builders.

Agreement,
Margarine
Verkaufs
Union and
Vulkan
Schiffbau,
27th May,
1936,
continued.

If any of the Vessels is before delivery lost or damaged by fire or any other cause to such an extent and at such a time as will not prevent the Builders from delivery of such vessel on or before the 15th September 1938, the insurance monies recovered in respect of such vessel shall be paid to the Builders to make good such loss or damage to enable them to complete and deliver such vessel within the period provided for in this agreement for such vessel.

20 If any of the vessels is lost or damaged by fire or any other cause to such an extent and at such a time as will prevent the Builders from delivering such vessel before the 15th September 1938, the Purchasers can at their option demand :—

A. That the vessel or vessels shall be built by the Builders according to the terms of this agreement, in which case the previous paragraph of this clause and clause 14 of this agreement will apply, or

30 B. The agreement shall in respect of any such vessel or vessels be cancelled and the Insurance monies recovered in respect of such vessel or vessels shall be paid to the Purchasers, and the Builders to be entitled to the same percentage of the purchase price as that obtained by the Purchasers from Underwriters of the insured value, any necessary adjustment of the purchase price already paid or to be paid to be made immediately on the receipt by the Purchasers of the Insurance monies.

40 16. The Purchasers shall be at liberty from time to time to require any alterations or additions to be made in or to any of the Vessels' engines, boilers, or machinery, and a corresponding addition to or abatement from the purchase money payable on delivery shall thereupon be allowed, but if such alterations or additions should be required of such a nature as may prejudice the carrying into effect of the Builders' guarantees hereunder, then the Builders shall forthwith give notice to the Purchasers thereof and if they prejudice the carrying into effect of such guarantees they shall be modified accordingly.

The Purchasers shall not be liable to pay the Builders for any extras unless the same be ordered in writing under the hand of the Purchasers and the amount of such extras shall be paid for in cash on delivery of the vessel.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (B).
Agreement,
Margarine
Verkaufs
Union and
Vulkan
Schiffbau,
27th May,
1936,
continued.

It is understood that the specification does not include the supply by the Builders of the guns and gun forks, compasses and wireless equipment, but that the purchase price does include the installation of this equipment.

17. The price of the said vessels shall be the sum of RM.473.750.— (FOUR HUNDRED AND SEVENTY-THREE THOUSAND AND SEVEN HUNDRED AND FIFTY REICHSMARKS) for each vessel payable as under :—

- one-fifth in respect to each vessel on signing the contract.
- one-fifth in respect to each vessel on laying the keel.
- one-fifth in respect to each vessel when the frames are erected 10 or equal works done.
- one-fifth in respect to each vessel when such vessel is launched.
- one-fifth on delivery of each vessel.

18. Should there be any discrepancy between this agreement and the specification the former shall prevail and be adopted.

19. The benefit and burden of this contract in respect of each or any of these vessels may be assigned by the Purchasers to any other party. Provided that notwithstanding any such assignment as between the Builders and the Purchasers the Purchasers shall continue liable on their undertakings hereunder.

20

20. Any dispute arising under this agreement or in respect of any matter arising thereon shall be referred to an Arbitration Court in Hamburg consisting of three Arbitrators. Each party to appoint an Arbitrator and the two so appointed shall appoint an umpire. If the two arbitrators appointed by the parties cannot agree on the appointment of the umpire, the umpire shall be appointed by the President of the Hanseatisches Oberlandesgericht in Hamburg.

The provisions of the German Zivilprozessordnung on arbitration shall apply.

The Landgericht Hamburg shall be the competent court in the meaning 30 of paragraph 1045 Z.P.O.

Berlin/Bremen.

27th May 1936.

For and on behalf of

For and on behalf of

JURGENS-VAN DEN BERGH BREMER VULKAN SCHIFFBAU-
MARGARINE-VERKAUFS-UNION UND MASCHINENFABRIK,
G.m.b.H. Vegesack.

Berlin.

(Sgd.) SCHRAUD. VOLLAND.

KABELAC.

No. 10 (2) (c).

LETTER, Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. to Bremer Vulkan Schiffbau-und Maschinenfabrik.

[TRANSLATION]

27.5.36.

Messrs. Bremer Vulkan Schiffbau-und Maschinenfabrik,
 Attention : Mr. R. Kabelac,
 Vegesack.

*In the
 High
 Court of
 Justice.
 (In Prize.)*

No. 10
 (2) (c).

Letter
 Margarine
 Verkaufs
 Union to
 Vulkan
 Schiffbau,
 27th May
 1936.

Dear Sirs,

10 With reference to our to-day's agreement for the building of SEVEN WHALECATCHERS, Yard Number 740-746, we herewith confirm having entered into the following arrangements, partly supplementary to and partly in modification of the provisions of the said agreement :—

20 (1) Clause 17 of the agreement provides for the purchase price of the Whalecatchers to be RM.473.750.— (FOUR HUNDRED AND SEVENTY-THREE THOUSAND AND SEVEN HUNDRED AND FIFTY) per ship. It has, however, been agreed between us that if during the period of construction the wages, overhead expenses and/or prices of materials as employed in the building of the Catchers should, for any reason whatsoever, increase as compared to wages, overhead expenses and prices ruling on the 27th May 1936, then the purchase price of the Catchers shall accordingly be increased ; but such increase shall only be apportioned over the amount of wages and expenses unpaid and materials not yet ordered at the time of the increase. Provided always that wages and expenses shall be deemed to have been expended on and materials deemed to have been ordered for the construction of the ships to the extent of the instalments of the purchase price already paid by us and that such wages and expenses deemed to have been expended and materials deemed to have been ordered shall not be taken into account in ascertaining any increase in the purchase price of the vessels as provided above.

30 In connection therewith and in further deviation from the provisions of Clause 17 of the agreement, we undertake to pay you 40 % of the total purchase price within fourteen days as from to-day, a further 20 % when the keel of the ships is laid, further 20 % on completion of framing or equivalent work, and the remaining 20 % on delivery, after satisfactory Trial Trips.

40 (2) Ultimately, we confirm that, if, on account of this contract Nr. 740-746, your firm should have to pay a contribution to the German Export Fund, we shall refund such contribution to you.

We shall be glad if you would kindly confirm the above at your earliest convenience.

Yours faithfully,

JURGENS-VAN DEN BERGH MARGARINE-
 VERKAUFS-UNION G.m.b.H.

(Sgd.) SCHRAUD.

VOLLAND.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10 (2) (d).

AGREEMENT, F. Schichau G.m.b.H. and Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H.

[TRANSLATION]

AGREEMENT

No. 10
(2) (d).
Agreement,
F. Schichau
and
Margarine
Verkaufs
Union,
26th
January
1939.

Between F. SCHICHAU G.m.b.H., Elbing (called the Builders) of the one part and JURGENS-VAN DEN BERGH MARGARINE-VERKAUFS-UNION G.m.b.H., Union-Haus, Burgstrasse 24, Berlin C.2 (called the Purchasers) of the other part

Whereby the following is agreed :—

10

1. The builders shall supply the Purchasers with a whaler, ship No. 1454, to be built in accordance with the following :

The shipbuilding instructions from Bremer Vulkan, Vegesack, for the construction of the vessels built under Yard Nos. 740/46, the instructions for building the engines for those vessels and, finally, all the shipbuilding drawings and other particulars which Bremer Vulkan have sent us for the purpose of copying those vessels, particularly Drawings E.1. and E.2. of 6th December 1938.

Whaler No. 1454 shall be built in the Builders' Shipyard in Danzig and the Builders are entitled and bound to supply a practical, not a theoretical, copy in all essential details of the whalers supplied by Bremer Vulkan, Vegesack, to the Purchasers in 1937 in so far as the shipbuilding drawings and the other particulars placed at the Builders' disposal by Bremer Vulkan—both of which, according to Bremer Vulkan, are correct for *practical purposes*—permit of this.

20

The main engine, the boiler, shafting and the propeller shall be supplied by Bremer Vulkan, Vegesack, to the Builders' order and—with the exception of the propeller—shall be constructed in the same way as for the Unitas Catchers II-VIII (Bremer Vulkan Yard Nos. 740/46). The propeller shall be supplied by Bremer Vulkan in accordance with a newer type indicated by the Purchasers. The Builders shall use the best material and first class workmanship in building the whaler.

30

The ship shall be built under survey of the British Corporation Register of Shipping and Aircraft and to their highest class for whaling purposes.

The classification fees and costs of the British Corporation shall be paid by the Builders. This part of the purchase price shall be paid by the Purchasers in foreign currency (cash). The items which the Bremer Vulkan building instructions serving as a guide to the Builders mention as being deliverable by the shipowners, viz. : harpoon-guns, fishing equipment, compass, chronometer, sextants, charts, medical supplies, etc., are excluded by the Builders from their delivery.

40

2. The ship shall have the following dimensions :

Approximate length overall	..	..	43.96	m.
Breadth moulded	..	..	7.925	m.
Depth moulded	..	..	4.42	m.

3. The vessel shall be ready for its acceptance trial in Danzig Harbour by 30th September 1939 at latest and shall immediately after a satisfactory trial be delivered to the Purchasers, afloat and free of all charges and expenses.

In the event of the vessel not being ready for the acceptance trial by 30th September 1939 at latest or not being delivered to the Purchasers owing to an unsatisfactory trial, the Builders—if the delay is their own fault—shall pay the sum of RM.75 for each working day from 15th October 1939 to the date of delivery to the Purchasers as damages and not as 10 penalty.

The following shall in particular not be considered to be the fault of the Builders :

Delay due to the unpunctual arrival of supplies, i.e. materials in general, irrespective of the circumstances causing the delay in such supplies, e.g. if cast and wrought iron parts, etc. have to be rejected, even if at the Builders' own supply works.

Should the vessel not have been delivered to the Purchasers by 30th September 1940 in the condition stated in the contract through any fault of the Builders, the Purchasers shall have the right to declare this 20 building contract null and void and to claim the return of all payments which they have made for the vessel, together with interest at 1% below the Reichsbank rate, from the date of receipt of the payment by the Builders to the date of the refund. The Builders shall become the owners of the rejected vessel.

4. The Builders shall make possible and facilitate the inspection by the Purchasers and their duly authorised representatives and/or the building surveyors and inspectors of the British Corporation, during working hours, of the vessel in course of construction and of the parts being made.

30 5. During construction and until delivery the ownership of all material and all parts shall be vested in the Purchasers. Material and parts are merely in the custody of the Builders. The ownership is transferred to the Purchasers to constitute security for their payments and any other claims. For this purpose the transferred materials shall be marked with the ship's number 1454. The Builders shall acquire the materials in such a way that the Purchasers' right of ownership is not endangered.

6. The ship's screw shall be driven by a triple expansion engine, 420 x 660 x 1120 : 660, to develop 1550 I.H.P. at about 176 revolutions per minute.

40 7. The steam shall be produced by a cylindrical boiler for oil firing with a heating surface of 315 sq.m. and a working pressure of 14 atm. above absolute.

8. As a whaler No. 1454 to be supplied by the Builders is in all essential details to be merely a copy of catchers II–VIII previously supplied by Bremer Vulkan and engine and boiler are to be supplied by Bremer Vulkan according to their original plans and as, moreover a new type of propeller, differing from the original propellers of catchers II–VIII, is to

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (D).

Agreement,
F. Schichau
and
Margarine
Verkaufs
Union,
26th
January
1939,
continued.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (D).
Agreement,
F. Schichau
and
Margarine
Verkaufs
Union,
26th
January
1939,
continued.

be used for this whaler, the Builders do not guarantee that any specific speed will be reached.

9. The Builders shall at their expense carry out an acceptance trial with the vessel over a period of not less than 6 hours' duration, with full bunkers or partial bunkers at the option of the Purchasers, in fair weather, over the measured admiralty mile in Danzig Bay, where, following a satisfactory trial trip, the handing over to the Purchasers shall take place outside the 3-mile limit. The Purchasers shall provide the crew, fuel, lubricating oil and other supplies for this trial trip. They shall also insure the vessel at its full building price in the joint names of the Builders and 10 Purchasers.

Should the Purchasers be dissatisfied with the acceptance trial they shall advise the Builders in writing within 24 hours, otherwise the trial trip shall be deemed to have been satisfactory in every respect.

10. The Builders give a guarantee of good material and expert workmanship valid for a period of 6 months after delivery. The Builders shall be advised by the Purchasers in writing of any defects and the Builders shall rectify these at their premises. If this cannot be done at their premises, the Builders shall refund the amount in Reichsmarks which the repairs would have cost at their shipyard. For such work under the 20 guarantee, the 6 months run from the date of delivery. A guarantee engineer, who must also enjoy the confidence of the Builders, shall be appointed for the 6-monthly guarantee period by the Purchasers at their expense. The Builders' guarantee shall of course also cover the water and oil tightness of the shell plating of the oil bunkers, indirect damage being as usual excluded.

11. Insurance shall be effected by the Builders for their own account in the names of the Builders and the Purchasers for the sum of RM.618,500. The insured sum will be paid to the Purchasers and the Purchasers shall pay to the Builders out of this the amounts necessary to make good the 30 loss or damage.

In the event of the loss or damage being so great that it cannot be made good and the vessel delivered by 30th September 1940, the Purchasers may at their option

(A) either have the vessel rebuilt by the Builders by a new date to be agreed upon

(B) or cancel the building contract for the vessel and collect the insured sums with the exception of those amounts to which the Builders might still have a claim. The Purchasers note that in the event of a new vessel being built as under (A) it is necessary to 40 obtain the fresh approval of the competent German authority and Bremer Vulkan's agreement in principle to make a replacement delivery to the necessary extent by 15th August 1940 ex Vegesack.

12. The building price shall be RM.618,500 (six hundred and eighteen thousand five hundred Reichsmarks) for the whole contract as mentioned under 1, this price including the erection of the equipment to be supplied by the owners, i.e. whaling guns, fishing tackle, etc. The building price shall be paid in full on signing the contract, the Builders for their part

renouncing the right to make subsequent claims for increases in the price of materials and in wages which may occur during the period of building, i.e. up to 30th September 1939.

The amount payable in foreign currency to the British Corporation shall be made available by the Purchasers to the Builders in foreign currency by permission of the German Exchange Control Office against reimbursement at the official Berlin mean rate of exchange of the day when the foreign currency is received by the Builders. It is agreed that apart from the above-mentioned payments abroad no other disbursements shall be made abroad. Nevertheless, should adherence to Bremer Vulkan's specifications necessitate this, then the amount of foreign currency required shall be agreed upon between the Builders and the Purchasers and made available by the latter against reimbursement in Reichsmarks by the Builders at the rate of exchange referred to above.

13. The arrangements between Bremer Vulkan, Vegesack, and the Builders stated in the Builders' letter to Bremer Vulkan dated 23.1.39 and in Bremer Vulkan's acknowledgment are noted and accepted by the Purchasers and are attached to this agreement.

14. Should this agreement differ in any respect from the building instructions and specifications, the latter shall be considered final.

15. The Purchasers shall have the right to transfer this agreement to a third party, but they shall still remain liable towards the Builders for the fulfilment of their obligations.

16. Any dispute arising from this agreement or its execution shall be referred to a Court of Arbitration in Hamburg consisting of 3 arbitrators. Each party shall appoint an arbitrator within a period of 14 days after one of the two parties has advised the other in writing of the appeal to arbitration. These two arbitrators shall appoint an umpire. In the event of their not agreeing, the umpire shall be appointed by the President of the Hamburg Court of Appeal, as shall also one of the arbitrators if one of the two parties has not appointed his arbitrator within the time limit specified above. The rules of the German Code of Civil Procedure shall apply to the arbitration proceedings.

The Hamburg Provincial Court shall be the competent court within the meaning of Art. 1045 of the Code of Civil Procedure.

Berlin, 26th January 1939.
Elbing.

For JURGENS-VAN DEN BERGH MARGARINE-VERKAUFS-
UNION G.m.b.H., Berlin,

40 (Sgd.) SCHRAUD. (Sgd.) F. RADKE.

For F. SCHICHAU G.m.b.H., Elbing,
(2 illegible signatures.)

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(2) (D).
Agreement,
F. Schichau
and
Margarine
Verkaufs
Union,
26th
January,
1939,
continued.

No. 10 (3).

STATEMENT of the net cost of "Unitas," "Unitas 8" and "Unitas 10."

*In the
High
Court of
Justice.
(In Prize.)*

No. 10 (3).
Statement
of net cost
of
"Unitas,"
"Unitas
8" and
"Unitas
10."

"UNITAS"

Cost of building ship and factory equipment at contract price	RM.	7,750,000.00
Extra cost for additional services of shipyard and items supplied by shipowners	,,	2,017,921.35
		<hr/>
	,,	9,767,921.35
Less contribution from the Reich	,,	2,295,570.00
		<hr/>
Net cost to shipowners	RM.	7,472,351.35 10

"UNITAS 8"

Building cost at contract price	RM.	473,750.00
Extra cost of additional services of shipyard and items supplied by shipowners	,,	27,941.50
		<hr/>
	RM.	501,691.50
Less contribution from the Reich	,,	140,325.72
		<hr/>
Net cost to shipowners	RM.	361,365.78

"UNITAS 10"

Building cost at contract price	RM.	618,500.00
Extra cost for additional services of shipyard and items supplied by shipowners	,,	45,684.81 20
Electrical equipment for killing the whales including licence fee	,,	47,002.00
		<hr/>
Cost to shipowners	RM.	711,186.81

No. 10 (4).

AGREEMENT for formation of "Unitas" Deutsche Walfang G.m.b.H.

{TRANSLATION}

Stamps to the value of R.M.3.—
affixed to the original document
for document tax.

Berlin, 24th September 1937.

Notary.

No. 485, Year 1937, of Notarial Register

Done

in Berlin, on 23rd September 1937.

Before the undersigned notary in the district of the Prussian Supreme Court
of Appeal,

REINHARD FREIHERR VON GODIN,

residing at 22 Am Karlsbad, Berlin, there appeared this day at
24 Burgstrasse, Berlin, to which address the notary had gone upon request :

- (1) Mr. Johann Hinrich MOHR, merchant, of 26 Badestrasse,
Hamburg,
- (2) Mr. Ferdinand SCHRAUD, merchant, of 24 Burgstrasse, Berlin,
C.2,
- (3) Dr. Jan JURGENS, merchant, of 24 Burgstrasse, Berlin, C.2,
- (4) Mr. Hans LOH, merchant, of 25 Tiergartenstrasse, Duisburg.

The parties appearing sub. (2) and (3) are known to the notary.

The parties sub. (1) and (4) were introduced to the notary by
Dr. Bernhard Frankenbarch, lawyer, of 24 Burgstrasse, Berlin C.2, who
is known to the notary, so that the notary has received assurance as to
their identity. The parties sub. (2) and (3) declared that they would
make and accept the declarations recorded in the following deed in the
name of the Jurgens-Van den Bergh Margarine-Verkaufs-Union
Gesellschaft mit beschränkter Haftung which they jointly represent as
managers. The parties thereupon unanimously declared :

We wish to form a

Limited Liability Company

and concluded the following

DEED OF PARTNERSHIP.

Art. 1.

(1) The company bears the name :

"Unitas" Deutsche Walfang-Gesellschaft mit beschränkter Haftung
and has its seat in Hamburg.

(2) The company may be given six months' notice of termination
by any of the partners, to take effect at the end of a calendar year, for
the first time at 31st December 1940. Notice must be given by registered
letter to all the partners and to the management of the company.

In the
High
Court of
Justice.
(In Prize.)

No. 10 (4),
Agreement
for
formation
of
"Unitas"
Deutsche
Walfang
G.m.b.H.,
24th
September
1937.

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30

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*In the
High
Court of
Justice.
(In Prize.)*

Art. 2.

The object of the enterprise is to carry on whaling to undertake all business connected with whaling and to process and utilise all products obtained from whaling.

No. 10 (4).
Agreement
for
formation
of
"Unitas"
Deutsche
Walfang
G.m.b.H.,
24th
September
1937,
continued.

Art. 3.

(1) The original capital of the company amounts to RM. 1,000,000,— and is subscribed by the partners as follows :—

(a) by Mr. Johann Hinrich Mohr to the amount of	RM.	414,800.—	
(b) by Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesellschaft mit beschränkter Haftung to the amount of	.. .. .	„	486,400.—
and (c) by Mr. Hans Loh to the amount of	.. .. .	„	98,800.—
		<u>RM.</u>	<u>1,000,000.—</u>

(2) The capital is to be paid in in cash, one-fourth at first and the balance as and when calls are made by the manager.

Art. 4.

(1) The shares in the business, or parts thereof, may only be disposed of, in particular sold, transferred or pledged, with the consent of each individual partner.

(2) Para (1) notwithstanding, Mr. Mohr and Mr. Loh or their heirs 20 are, however, entitled without further authorization to sell or transfer their shares to the following persons :—

Mr. Johann Hinrich Mohr to Mr. Gaston Wagon, 14 Tempelhofer Ufer, Berlin SW. 61,

Mr. Hans Loh to Mr Hugo Homann, merchant, Dissen/Teutoburger Wald.

Art. 5.

(1) The company is represented by one or more managers. If more than one manager is appointed, the company is represented by not less than two managers or by a manager jointly with a procurist. 30

(2) The managers are appointed and dismissed by the meeting of partners.

(3) Only such persons may be appointed managers as are nominated for that office by Jurgens-Van den Bergh Margarine - Verkaufs - Union Gesellschaft mit beschränkter Haftung. A manager has to be dismissed as soon as Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesellschaft mit beschränkter Haftung requests such dismissal. In order that resolutions concerning the appointment of managers may be valid it is necessary that Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesellschaft mit beschränkter Haftung shall have voted in favour of the 40 appointment. If, despite the request of Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesellschaft mit beschränkter Haftung for dismissal of

a manager, the partners' meeting has not resolved upon such dismissal, Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesellschaft mit beschränkter Haftung is entitled to resolve upon dismissal by itself. The rights of Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesellschaft mit beschränkter Haftung devolve also upon the legal successors to their share in the business.

*In the
High
Court of
Justice.
(In Prize.)*

(4) Procurists are appointed by the managers after obtaining the consent of the chairman of the Board.

(5) Mr. Leendert van Krimpen, merchant, 49 Eppendorferlandstrasse, 10 Hamburg, is appointed the first manager.

No. 10 (4).
Agreement
for
formation
of
"Unitas"
Deutsche
Walfang
G.m.b.H.,
24th
September
1937,
continued.

Art. 6.

(1) The company has a Board consisting of seven members. Three members are appointed by Mr. Mohr or his successor, and a further three by Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesellschaft mit beschränkter Haftung or their successors, while one member is elected and appointed by all the partners. Dismissal of any member of the Board is made by the party who appointed him. The member of the Board elected and appointed by the partners' meeting is simultaneously chairman of the Board. Unless otherwise stipulated when each member is appointed the 20 period of office of each member of the Board terminates—subject to dismissal—at the end of the partners' meeting which deals with the balance sheet for the trading year during which he was appointed. The composition of the Board and alterations in the composition of the Board do not have to be reported to the Court or published. For the rest the provisions of the law are applicable.

(2) The following are appointed members of the first Board :

1. by the partner Mr. Johann Hinrich Mohr :
Mr. Alfred Voss, merchant, of Hamburg,
Mr. Heinrich Meyer-Lippinghausen, merchant, of Lipping-
30 hausen, and
Dr. Walter Meineke, merchant, of Brunswick,
2. by Jurgens-Van den Bergh Margarine-Verkaufs-Union Gesell-
schaft mit beschränkter Haftung :
Mr. Ferdinand Schraud, merchant,
Mr. Albrecht Volland, merchant,
Dr. A. Simon Thomas, merchant,
all of Berlin,
3. by all the partners :
Mr. Johann Hinrich Mohr, merchant, of Hamburg

40 In conformity with para. (1), Mr. Johann Hinrich Mohr is simultaneously chairman of the Board. Para. (1) notwithstanding, it is stipulated in the case of Mr. Mohr's appointment that his period of office as member and chairman of the Board shall not terminate until the end of the partners' meeting which deals with the balance-sheet for the trading year ending on 31st June 1940. Should Mr. Mohr for any reason resign these offices before the stipulated period expires, his place shall be taken by Mr. Gaston Wagon, Berlin, with the proviso that the latter's period of office shall end

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at the time when Mr. Mohr's period of office would have ended if he had not resigned.

(3) The partners' meeting resolves whether the members of the Board shall be paid an honorarium and if so what amount.

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Agreement
for
formation
of
"Unitas"
Deutsche
Walfang
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Art. 7.

(1) The Board has unlimited powers to supervise the entire business management. The chairman of the Board also has the same right of supervision alone and independently.

(2) The management is bound to consult the chairman of the Board before embarking on important business measures or transactions. The chairman of the Board may give the management directions except in so far as the engagement of staff and the arrangements connected with the whaling operations are concerned.

(3) The chairman of the Board arranges with the manager or managers the remuneration the latter shall receive.

Art. 8.

In so far as the engagement of staff and the arrangements connected with the whaling operations are not involved, the company will in suitable cases make use of the services of the Hamburger Walfang-Kontor Gesellschaft mit beschränkter Haftung, Hamburg.

20

Art. 9.

The trading year of the company runs from 1st July to 30th June of the following calendar year. The first trading year begins on the date of registration in the Commercial Register and ends on 30th June 1938.

Art. 10.

Within the first six months of each trading year the managers shall draw up the balance sheet for the last trading year as well as a profit and loss account.

Art. 11.

The company's notices are published in the German Reich Gazette. 30

The Minutes were read in the presence of the notary, approved by the parties and signed by them personally, as follows :

JOHANN HINRICH MOHR,
FERDINAND SCHRAUD,
JAN JURGENS,
HANS LOH,
D.S.R. FREIHERR VON GODIN.

No. 10 (5) (a).

CHARTERPARTY relating to the "Unitas" and catchers.

[TRANSLATION]

Copy.

Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H., Berlin,
have had built :

by Deutsche Schiff-und Maschinenbau Aktiengesellschaft, Bremen,

the floating factory UNITAS (No. 933 : agreement dated
27th November 1936 and supplementary agreements)

10 and by Bremer Vulkan Schiffbau und Maschinenfabrik, Vegesack near
Bremen,

the scout catcher UNITAS I (No. 751 : agreement dated
17th November 1936 and supplementary agreements) and

the seven catchers UNITAS II-VIII (Nos. 740-746 : agreement
dated 27th May 1936 and supplementary agreements)

Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H. have chartered
the said vessels (hereinafter collectively called "the fleet") for whaling
purposes to "Unitas" Deutsche Walfang-Gesellschaft m.b.H., Hamburg.
In order to settle the terms and conditions of the charter

20 (1) Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H.,
Berlin,
—hereinafter called the Owners—

—of the one part—

and

(2) "Unitas" Deutsche Walfang-Gesellschaft m.b.H., Hamburg,
—hereinafter called the Charterers—

—of the other part—

have entered into the following

CHARTER PARTY

30

Art. 1.

Object of Charter, Duration of Charter, Delivery.

(1) The Owners agree to let and the Charterers agree to hire the fleet
for use on the latter's own responsibility, for their own account, to be
managed and manned by their own personnel. The charter is for ordinary
whaling operations in Antarctic waters. The Charterers may also use the
fleet temporarily for transport of soft oils or for storage of soft oils. The
Charterers may also allow the fleet to be used temporarily by third parties
for transport and storage of soft oils. They may not allow the fleet to be
used by third parties for whaling purposes.

40 (2) The fleet has already been placed at the Charterers' disposal, to
wit : the floating factory on 23.9.1937 and the other vessels of the fleet
on 10.10.1937 (delivery of the fleet). The agreed hire is payable in full
as from 23.9.1937 irrespective of the later delivery of the catcher (sic)
and the catchers ; all other rights and obligations arising for the Charterers
from the charter commence on 23.9.1937 in respect of the floating factory
and on 10.10.1937 in respect of the other vessels. The charter for the
entire fleet ends on 20.9.1940.

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Art. 2.

Condition and Equipment of Fleet.

(1) The vessels have been delivered to the Charterers in the condition in which they were supplied by the shipbuilders to the Owners, complete with installations and equipment suitable for the agreed purpose (Art. 1, par. 1), but in principle without the items to be supplied by the Charterers in accordance with Art. 3 (covering running costs) and Art. 4 (covering upkeep), more particularly, in principle, without provisions, fuel, ammunition and spare equipment.

(2) The crew has not been, and will not be, provided by the Owners 10
(Art. 1, par. 1).

(3) The items contained in the inventories supplied by the shipbuilders at the time of delivery of the vessels, have been handed over to the Charterers with the fleet. A list will be drawn up forthwith and signed by the contracting parties, of any further fittings, installations and equipment on board at the time the fleet is delivered.

(4) Any stocks of provisions, fuel and supplies which may be on board the vessels at time of delivery and which in accordance with Par. 1 need not in principle have been, or be, supplied by the Owners, shall be taken over by the Charterers at the original cost-price. Payment, unless already 20
effected, shall be made immediately.

Art. 3.

Running Costs.

All work and costs necessary for the management and use of the fleet and/or arising from the management and use of the fleet (running costs) from date of delivery to date of return, in any case up to the end of the charter's period, are borne by the Charterers irrespective of the reason for which they arise. Such running costs include all work and costs of manning, material requirements and wear and tear of plant and equipment for sea voyages, more particularly enlisting, paying, victualling and 30
insuring the crew, obtaining and paying for fuel, galley coal, boiler water and tank cleaning materials, paying port dues, pilotage (for compulsory as well as for optional pilots), canal tolls, lighthouse charges, boat charges and towage, freightage, consular fees (including consular fees for enlisting and discharging the crew), canal, dock, quay and tonnage dues, agency fees, commission, costs of loading, equipping, trimming and stowage (including stowing and dunnage wood except that already on board), discharging, weighing, counting and delivering cargoes, quarantine fees and costs including cost of fumigating and disinfecting, furthermore all costs of stowage certificates and hatchway inspections, protest and declara- 40
tion costs for cargo and any other fees, dues, charges and expenses relating to the fleet and/or the production including any general taxes connected with whaling. The running costs to be borne by the Charterers also include all work and costs, more particularly all dock, quay, port and tonnage dues, at port of delivery and at port of return, and during the time of laying-up and lying-to, in particular between the whaling seasons.

Art. 4.

Maintenance.

(1) The Charterers are bound to keep the vessels, engines, equipment and fittings in first-class repair throughout the period from delivery to their return, in any case up to the end of the charter period. The Charterers therefore assume responsibility for and bear in particular all current and exceptional restoration work, including repairs and replacements, which may be necessary from date of delivery to date of return, in any case up to the end of the charter period. The Charterers are bound, at
 10 their expense and for their account to arrange for such maintenance work on vessels and engines as is usual during this period, as well as for classification work, in particular for any re-classification that may become necessary within the period, in each case within the proper time-limits to satisfy the representative of the classification authority. The Charterers shall keep the vessels within the highest class of the German Lloyd. Normal deterioration and normal wear and tear of the vessels and the fittings are not for Charterers' account.

(2) At the end of each whaling season the Charterers shall place all vessels in dry dock and have them cleaned and painted. In dry-dock
 20 the bottoms are painted in the usual way. The decks and the superstructure must be painted as and when necessary. Any under-water damage is to be immediately repaired at the Charterers' expense to the satisfaction of the representative of the classification authority.

Art. 5.

Average.

(1) All damage arising from average or other incidents between delivery and return, in any case up to the end of the charter period, and affecting the seaworthiness of the vessels, shall be repaired at the Charterers' expense.

30 (2) In the event of average or other incidents affecting the seaworthiness of the vessels during the period mentioned in Par. 1. the Charterers shall in each case procure without delay a certificate of seaworthiness valid until the final repair of the damage, to be undertaken as rapidly as possible by the Charterers, and the confirmation of the class to be arranged immediately afterwards by the Charterers.

(3) The Charterers shall report immediately, by telegraph and in writing, to the Owners any average and any other incident affecting the seaworthiness of the vessels.

40 (4) General average shall be adjusted by the Charterers in accordance with the 1924 York/Antwerp Regulations including the latest additions and amendments. Where necessary, the York/Antwerp Regulations shall be interpreted in accordance with the provisions of the German Commercial Code. In the mutual relationship between the parties, all damages affecting the Owners' interests, particularly the vessels or the hire, or payable out of the Owners' interests, particularly the vessels or the hire, shall be borne by the Charterers.

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Art. 6.

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Insurance.

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(1) The Owners shall take out, in their own name or in their own name and/or the Charterers' name :

(A) for the floating factory :

A hull insurance with part-damage insurance including third-party risks, interest insurance including surcharge for general average, salvage, particular average and collision as well as the anticipated-profit insurance ;

(B) for the scout catcher and the seven catchers :

A hull insurance with part-damage insurance for collisions with ships including third-party risks and interest insurance including surcharge for general average, salvage, particular average and collision.

10

The above-mentioned insurances must also cover the risks in respect of the equipment with which the ships were fitted by the Owners. For the rest, each party is entitled, but not obliged, vis-a-vis the other party, to take out at any time, in their name and at their discretion, to cover their interests, any other insurances customary in deep-sea traffic, relating in particular to the purpose for which the fleet is used, more especially war-risk insurance if considered advisable. 20

(2) In cases where by the nature of insurances to be taken out by one of the parties, not only the interests of the insuring party, but also interests which de facto and/or de jure represent interests of the other party are covered or are usually covered, the insuring party shall also cover the interests of the other party by the insurances to be taken out.

(3) The insurances are to be taken out on the usual terms, if possible on the customary British terms, for an adequate amount, in conformity with the usages of deep-sea traffic and corresponding to the purpose for which the fleet is used. If during the period of the charter, either party should deem it necessary to increase one or more of the insurances taken out or to be taken out, the provisions applicable to the insurances also apply to the increase. If disputes should arise as to the adequacy of an insurance from the point of view of its scope in accordance with Par 2, or the costs to be borne by the Charterers, in accordance with Par. 5, or as to an increase of an insurance considered necessary by one of the parties, and the parties are unable to agree, the opinion of one of the shipyards which built the vessels shall be decisive as to the necessity for, and the extent of, the increase. 30

(4) *The parties shall keep each other informed of the provisions of the insurances taken out by them.* The terms and conditions contained in the insurances taken out by the Charterers are binding on the Owners. The Charterers expressly waive any objection and right of redress against the Owners that may arise for them from the terms and conditions. The Charterers assume the obligation towards the Owners of observing carefully the terms and conditions of the insurances and of advising the Owners without delay of any incident which, under the terms and conditions of the insurances, should be notified or declared for the safeguarding of any rights vis-a-vis the insurance companies, in such a way 40

that the Owners are enabled to safeguard their rights vis-a-vis the insurance companies. The Charterers are responsible towards the Owners for any violation of the insurance terms or for any omission prejudicial to the insured rights.

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(5) In the mutual relationship between the parties, costs of any kind payable for insurances taken out either by the Owners or by the Charterers, are borne by the Charterers, costs of insurances taken out by the Owners to be borne only for the period from delivery to return of the fleet, in any case up to the end of the charter period. Any amounts, more particularly premiums, falling due on the insurances taken out by the Owners must be placed at the Owners' disposal by the Charterers on the due dates laid down in the insurance policies.

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(6) In the cases referred to in Par. 2 the insuring party is bound on demand to prove to the other party, by producing receipts, that the payments have been made at the proper time in accordance with the insurance terms.

(7) Any insurance compensation paid shall in principle accrue to the party who took out the insurance. In the event of loss or damage affecting both parties and covered by insurances in accordance with Par. 2, the party receiving the compensation shall pay to the other party the amount to which the latter is entitled.

Art. 7.

Liability of Charterers.

(1) The Charterers shall undertake all the obligations devolving upon owners of ships under civil law, more particularly Art. 510 of the Commercial Code, as well as under public and international law, from the date of delivery to the date of return of the fleet, but in any case up to the end of the charter period.

(2) The Charterers shall release the Owners from all obligations and liabilities under civil, public and international law that may arise during the period mentioned in Par. 1, more particularly from obligations, liabilities and other consequences arising from acts or omissions on the part of captains, officers, ship's agents and crews, whether due to negligence or not.

Art. 8.

Release of Owners from Liability.

The Owners are not liable for any damage, including loss of time and expenses, arising from the date of delivery to the date of return of the fleet, in any case up to the end of the charter period, whether this is due to lack of vessels, boilers, machinery and equipment, even if these defects existed when the fleet was delivered, or whether it is due to any other causes affecting, impeding or preventing the stipulated use of the fleet. In particular, therefore, the Owners are not liable for any loss or damage, including loss of time and expenses, due to the following causes: to force majeure, perils of the sea and other waters, collisions, strandings, fire and explosions on board, in barges, on lighters and ashore, to boiler

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and pipeline bursts and breakdowns, breakers, breakdown of machinery and equipment, legal measures or orders, more particularly restrictions on voyages, and catches, sequestration or retention by the powers that be, by governments and nations, to war and revolution, enemy or pirate action, barratry of the ship's crew, in particular smuggling, to robbery and theft, quarantine, disinfection, fumigation, laying of poison, to repairs, docking, classification work, overhauling, lying-to or laying-up for any reasons whatsoever, to the terms and conditions of insurances to be taken out by the Owners or the Charterers, to lack of crew and ship's requisites, to negligence, default or error on the part of pilots and ship's crew, to default in the commercial or nautical management by the Charterers. 10

Art. 9.

Use of the Fleet.

(1) The vessels shall not be used except for legally permitted voyages. Legally permitted goods only may be taken on board. Goods or substances prohibited by the Nautical Association or other German authorities may not be placed, transported or stored on board the vessels. The official regulations relating to loading and stowing are binding on the Charterers and their employees and authorized representatives. Whenever the fleet passes into non-German territorial waters, the regulations of the foreign law and/or authorities applicable in those waters are to be observed. 20

(2) No voyage shall be undertaken and no goods, documents or persons brought on board that expose the vessels to danger of confiscation, seizure, capture, sinking, enforced return to home port or of penalties imposed by the powers that be or by governments or to any other dangers.

(3) Restrictions of any kind on voyages and catches, in so far as they are recognized by Germany or apply in the areas visited by the fleet, are to be observed.

Art. 10.

Perilous Areas, War Risk.

30

(1) Areas endangered by war, revolution and mines are to be avoided at all costs, also the entering of endangered and blockaded areas and ports. Should any voyages become impossible without entering endangered areas or ports, the Charterers shall first ask for the Owners' permission. The Owners are entitled to demand that the vessels be used in a way that precludes any war risk affecting the vessels and *to give explicit instructions to the Charterers*. Perilous areas are those which, in the opinion of the Owners may be, or have been, entered by a party at war or in a state of revolution.

(2) If at the outbreak of war, revolution or other hostilities the vessels are lying in ports and areas where, in the opinion of the Owners (sic) they appear to be in danger, the berth must be changed after immediate notification of the Owners. 40

(3) The provisions of Art. 9, Pars. 1-3 are applicable in particular to perilous areas and war risk.

Art. 11.

Logs.

The Charterers shall see to it that accurate logs are kept by the captains and the engineers. The logs shall be handed over to the Owners when the vessels are returned.

Art. 12.

Owners' Right of Inspection.

From date of delivery to date of return the Owners are entitled at any time to inspect the condition of the vessels. For this purpose, free access to the vessels shall be allowed to, and procured for, the Owners' representative by the Charterers. The journals and logs, etc., shall be submitted. At the Owners' request the Charterers are bound to give them immediate and timely information as to when and where the vessels can be inspected. Moreover, the Owners shall, if desired, be kept supplied with
 10 copies of extracts and proofs from the deck and engine room journal.

Art. 13.

Hire.

(1) The Charterers shall pay the hire exclusively by deliveries of whale oil. The hire shall be 54.2 tons whale oil O/I quality per contract year for every RM.100,000 paid by the Owners as net price (building price after deduction of government subsidy) for the building and construction of the fleet including equipment (annual hire). The contract year is a twelve months' period beginning on 23rd September 1937 (day of delivery of the floating factory, Art. 1, Par. 2); the period from the end of the
 20 penultimate contract year to the end of the charter shall be considered a complete contract year even though the full twelve months have not elapsed.

(2) The Charterers undertake to use the first production from the catch of every contract year exclusively for the payment of the annual hire until the hire for the contract year concerned has been paid up. If the annual hire has not been paid during the season in accordance with these provisions, it falls due in any case on the 15th May of the respective contract year at latest.

(3) The whale oil to be used in payment of the annual hire shall be
 30 delivered to the Owners on a working day at a Rotterdam, Bremen or Hamburg dock at Owners' choice. Delivery is for risk and account of Charterers until taken by the Owners.

(4) In the event of total loss (actual or inferred) of one or more vessels or of the entire fleet after delivery of the fleet, the following shall apply :—

(a) The agreed hire shall in any case be paid in full by the Charterers for the contract year during which the total loss occurs.

(b) In the event of loss of the floating factory the charter ends with the expiration of the contract year during which the total loss occurs, unless by that time the Owners supply a substitute vessel of the same capacity and in the same condition, irrespective of how the Owners procure the substitute vessel (hire, purchase or building).
 40

(c) In the event of loss of the scout catcher or one of the catchers, the annual hire shall be reduced for the contract years following the contract year referred to under (a). The reduction shall be 20% of the annual hire for one vessel and 10% of the annual hire for every further vessel. The Owners shall have the right to supply

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to the Charterers in place of any lost vessel of the said types, a substitute vessel of the same capacity and in the same condition, irrespective of how the Owners procure the substitute vessel (hire, purchase or building). The respective reductions in hire cease to operate from the date when the substitute vessel is supplied.

(5) Apart from the contingency of total loss as provided for in Par. 4, the Charterers shall not be entitled to refuse payment of, or to reduce, the hire, if for any reason whatsoever, in particular for the reasons mentioned in Arts. 8-10, the vessels cannot be used for the intended purpose, more especially if they become unserviceable or less serviceable. 10

(6) If it becomes impossible for the Charterers to pay the hire in whole oil on due date owing to an emergency over which neither the Charterers nor the Owners have control, the whole oil due shall be replaced by its equivalent in Reichsmarks based on the price paid by the German Government during the respective season for whale oil produced by whalers operating for German account.

Art. 14.

Return of Fleet.

(1) At the end of the charter period, i.e. not later than 20th September 1940 (Art. 1, Par. 2) the fleet shall be returned at a German port chosen 20 by the Owners, on a working day, during local working hours, in an accessible and free berth to be chosen by the Owners, where the fleet can lie safely and afloat.

(2) The Charterers may not exceed the agreed charter period. The vessels may not be returned earlier than two months before the termination of the charter period. The right of the Owners to demand the hire for the full period and the Charterers' obligations up to the end of the charter period are not affected if the return is made prior to the termination of the charter period.

(3) The Owners undertake to advise the Charterers of the port of 30 return four months in advance if requested to do so in good time.

(4) The Charterers shall give a provisional notice of return to the Owners not less than six months before return, and final notice of return three months before termination of the charter period.

(5) The Charterers shall return the vessels including the fittings and equipment supplied in the condition in which they were delivered (Art. 2, Par. 1) and in the condition as provided for in Arts. 4 and 5, in particular ; disinfected, with clean tanks, clean pipelines and clean valves. Any loss or damage to vessels, equipment and fittings shall be repaid (before) return. The periodical repairs to the ship's body (tapping and painting 40 etc.) and to the engine shall also be attended to by the Charterers before the return. In order to determine any under-water damage the vessels shall be docked at Charterers' expense before the return and the bottoms inspected in the presence of the Owners' representative, likewise at Charterers' expense. The vessels shall in any case be returned by the Charterers (Art. 4, Par. 1, last sentence) with their class confirmed for the current classification period. Normal deterioration and normal wear and tear of the vessels and the fittings are not for Charterers' account.

(6) At the time of return, representatives of both parties shall draw up and sign a list of the fittings, installations and equipment on board as supplied by the Owners.

(7) Stocks of the kind mentioned in Art. 2, Par. 4, available at the time of the return of the fleet, shall be taken over by the Owners at the current purchase price or, if lower, at Charterers' original cost price, perishable stocks only in so far as they do not exceed requirements for a fortnight's working of the fleet, non-perishable stocks only in so far as is compatible with normal store-keeping. The Charterers are entitled, but not obliged, to take over any fittings and equipment on board the vessels at the time of return which were not there at the time of delivery, at the current price or, if lower, at Charterers' original cost price, in particular equipment that should be on board in accordance with the regulations of the Nautical Association or in pursuance of other official rules, but was not on board at the time of delivery.

Both in the case of the current price and of the original cost price reasonable allowance shall be made for wear and tear.

(8) The return shall not be considered as completed until all vessels complete with fittings and equipment have been returned in the condition agreed on and delivery has been taken by the Owners. The Owners are bound to take over without delay the vessels offered for return in proper condition.

Art. 15.

Assumption by Charterers of Owners' Obligations towards the German Reich.

Charterers have been informed of the following correspondence between the Owners and the Ministry of Economy relating to the building of the fleet :

- (1) Owners' letter to the Ministry of Economy dated 8.5.1936 and rectification of the same date,
- (2) Owners' letter to the Ministry of Economy dated 19.5.1936, and
- (3) Letter from the Reich and Prussian Minister of Economy to the Owners dated 20.5.1936 (II 20201/36).

The Charterers hereby agree for the duration of the charter to assume towards the Owners and the German Government the obligations undertaken by the Owners towards the Reich and Prussian Minister of Economy in accordance with the correspondence mentioned above under (3) and (4).

Art. 16.

Costs of Re-classification on Termination of the Charter Period.

On expiry of the classification period in course at the end of the charter period for each individual vessel, the Owners will arrange for re-classification. When the classification has been completed for each individual vessel, the Charterers are bound to refund to the Owners a reasonable proportion of the classification costs. The Charterers' share

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shall be fixed on a fair basis at the discretion of the parties, due consideration being given to the length of time during which the vessel was at the disposal of and/or used by, either party in the past classification period. A list signed by the German Lloyd shall be submitted showing the classification work done.

Art. 17.

Change of Charterers' Firm Name on Expiration of the Charter Period.

The Charterers undertake towards the Owners to delete the word "Unitas" from their firm name at any time after the end of the charter period if the Owners so desire.

10

Art. 18.

Court of Arbitration.

(1) The parties agree to submit all differences and disputes arising from, or connected with this Charter Party and all differences and disputes relating to the validity of the Charter Party or individual provisions thereof, to a court of arbitration, to the exclusion of the courts of law.

(2) The court of arbitration shall consist of two expert arbitrators and one umpire qualified to act as judge. The parties shall appoint one arbitrator each. The appointment of the arbitrators by the parties shall be subject to Pars. 1029 to 1032 of the Rules of Civil Procedure, with the proviso that the Hamburg Chamber of Commerce shall take the place of the court. The umpire shall be appointed by the two arbitrators within a fortnight. Should the two arbitrators be unable to agree within that period, the umpire shall be appointed by the Hamburg Chamber of Commerce at the request of the party taking the initiative.

(3) The arbitrators are bound in their award to the petitions of the parties and may not grant or disallow anything not contained therein.

(4) The court of arbitration shall meet in Berlin or Hamburg, whichever the parties may desire. If the parties cannot agree, the court itself shall decide whether it will meet in Berlin or Hamburg.

30

(5) The Hamburg courts shall have jurisdiction for any necessary court decisions.

Art. 19.

Costs.

Any costs connected with this Charter Party and its execution, in particular any document tax that may become due, shall be borne by the parties equally.

Hamburg, 24th February 1938.
Berlin,

JURGENS-VAN DEN BERGH
MARGARINE-VERKAUFS-UNION
G.m.b.H.

(Sgd.) SCHRAUD (Sgd.) VOLLAND

"UNITAS" DEUTSCHE 40
WALFANG G.m.b.h.

(Sgd.) VAN KRIMPEN

No. 10 (5) (b).

CHARTERPARTY relating to the "Unitas 9."

[TRANSLATION]

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High
Court of
Justice.
(In Prize.)*

On 24th February 1938, Margarine-Verkaufs-Union G.m.b.H. (formerly Jurgens-Van den Bergh Margarine-Verkaufs-Union G.m.b.H.), Berlin, entered into a charter party with "Unitas" Deutsche Walfang-Gesellschaft m.b.H., Hamburg, relating to the floating factory "Unitas," the scout catcher "Unitas I" and seven catchers "Unitas II-VIII" (hereinafter called the Charter Party of 24.2.1938). In the autumn of 1938 Margarine-Verkaufs-Union G.m.b.H. bought the catcher "Sorbyoen," now "Unitas IX," from another whaling company and placed it at the disposal of "Unitas" Deutsche Walfang-Gesellschaft m.b.H. to enlarge the whaling fleet leased under the said charter party. In order to settle the terms of hire for the said catcher "Unitas IX"

No. 10
(5) (B)
Charter-
party
relating to
the
"Unitas
9,"
10th July
1939.

- (1) Margarine-Verkaufs-Union G.m.b.H.,
Berlin
—hereinafter called the Owners—
—of the one part—
- and
20 (2) "Unitas" Deutsche Walfang-Gesellschaft m.b.H.,
Hamburg,
—hereinafter called the Charterers—
—of the other part—

hereby enter into the following

CHARTER PARTY

Art. 1.

(1) The Owners agree to let and the Charterers agree to hire the catcher for use on the latter's responsibility, for their own account, to be managed and manned by their own personnel. The charter is for ordinary whaling operations in Antarctic waters. The Charterers may not allow the fleet to be used by third parties for whaling purposes.

(2) The catcher was placed at the Charterers' disposal on 28.10.1938 in Cape Town (delivery). The agreed hire is payable in full as from 23rd September 1938 irrespective of the date of delivery of the catcher. All other rights and obligations arising for the Charterers from the charter commence on the day of delivery. The charter ends on 20th September 1940.

Art. 2.

(1) The vessel has been delivered to the Charterers in the condition in which she was supplied by the sellers to the Owners as buyers, complete with installations and equipment suitable for the agreed purpose (Art. 1, Par. 1), but, in principle, without the items to be supplied by the Charterers in accordance with Art. 3 (covering upkeep and repair), more particularly, in principle, without provisions, fuel, ammunition and spare equipment.

(2) The crew has not been and will not be provided by the Owners (Art. 1, Par. 1).

*In the
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Court of
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(In Prize.)*

—
No. 10
(5) (B)
Charter-
party
relating to
the
"Unitas
9,"
10th July
1939,
continued.

(3) The items contained in the inventories supplied by the sellers to the Owners as buyers at the time of delivery of the vessel have been handed over to the Charterers with the boat. A list will be drawn up forthwith and signed by the contracting parties, of any further fittings, installations and equipment on board at the time the catcher was delivered.

(4) Any stocks of provisions, fuel and supplies which were on board the vessel at time of delivery and which in accordance with Par. 1 need not in principle have been or be supplied by the Owners, shall be taken over by the Charterers at the original cost price. Payment, unless already effected, shall be made immediately.

10

Art. 3.

(1) As regards running costs, repairs, average, insurance, Charterers' liability, Owners' release from liability, use of catcher, perilous areas and war risk, logs, Owners' right of inspection, return, Charterers' assumption of the Owners' liabilities towards the German Reich and costs of re-classification after termination of the charter period, the parties agree that the provisions contained in Arts. 3-12 and in Arts. 14-16 of the Charter Party of 24th February 1938 shall also apply to the catcher "Unitas IX" let and hired under the present charter party.

(2) In Art. 6, Par. 3 of the Charter Party of 24th February 1938, the opinion to be obtained from the shipbuilders in case of necessity in accordance with Par. 1 shall be substituted by an opinion given by an expert to be appointed by the contracting parties jointly, or by a decision of the court of arbitration.

20

Art. 4.

(1) The Charterers shall pay the hire exclusively by deliveries of whale oil. The hire shall be 54.2 tons whale oil O/I quality per contract year for every RM.100,000.— paid by the owners as net price for the vessel including equipment (annual hire). The contract year is a twelve months' period beginning on 23rd September 1938. The period from the end of the penultimate contract year to the end of the charter shall be considered a complete contract year even though the full twelve months have not elapsed.

30

(2) The Charterers undertake to use the first production from the annual catch obtained with the fleet hired under the Charter Party of 24th February 1938 and with the catcher hired under the present Charter Party, exclusively for the payment of the annual hire until the hire for the contract year concerned has been paid up. If the annual hire has not been paid during the season in accordance with these provisions, it falls due in any case on the 15th May of the respective contract year at latest.

40

(3) The whale oil to be used in payment of the annual hire shall be delivered to the Owners on a working day at a Rotterdam, Bremen or Hamburg dock at Owners' choice. Delivery is for risk and account of Charterers until taken by the Owners.

(4) In the event of total loss (actual or inferred) of the vessel the following shall apply :

(a) The agreed hire shall in any case be paid in full by the Charterers for the contract year during which the total loss occurs.

(b) In the event of loss of the catcher the charter ends with the expiration of the contract year during which the total loss occurs, unless by that time the Owners supply a substitute vessel of the same capacity and in the same condition, irrespective of how the Owners procure the substitute vessel (hire, purchase or building).

*In the
High
Court of
Justice.
(In Prize.)*

10 (c) In the event of loss of the catcher, no hire shall be payable for the contract years following the contract year referred to under (a). The Owners shall have the right to supply to the Charterers a substitute vessel of the same capacity and in the same condition, irrespective of how the Owners procure the substitute vessel (hire, purchase or building). The agreed hire becomes payable again from the date on which the substitute vessel is supplied.

No. 10
(5) (B)
Charter-
party
relating to
the
"Unitas
9,"
10th July
1939,
continued.

(5) In the event of loss of the floating factory hired under the Charter Party of 24th February 1938 the charter ends with the expiration of the contract year during which the total loss of the floating factory occurs, unless by that time the Owners supply a substitute vessel of the same capacity and in the same condition, irrespective of how the Owners procure the substitute vessel (purchase, hire or building).

20 (6) Apart from the cases provided for in Pars. 4 and 5, the Charterers shall not be entitled to refuse payment of, or to reduce, the hire if, for any reason whatsoever, in particular for the reasons mentioned in Arts. 8-10 of the Charter Party of 24th February 1938 agreed upon in accordance with Art. 3, the vessel cannot be used for the intended purpose, more particularly if she becomes unserviceable or less serviceable.

30 (7) If it becomes impossible for the Charterers to pay the hire in whale oil on due date owing to an emergency over which neither the Charterers nor the Owners have control, the whale oil due shall be replaced by its equivalent in Reichsmarks based on the price paid by the German Government during the respective season for whale oil produced by whalers operating for German account.

Art. 5.

(1) The parties agree to submit all differences and disputes arising from, or connected with this Charter Party and all differences and disputes relating to the validity of the Charter Party or individual provisions thereof, to a court of arbitration, to the exclusion of the courts of law.

40 (2) The court of arbitration shall consist of two expert arbitrators and one umpire qualified to act as judge. The parties shall appoint one arbitrator each. The appointment of the arbitrators by the parties shall be subject to Pars. 1029 to 1032 of the Rules of Civil Procedure, with the proviso that the Hamburg Chamber of Commerce shall take the place of the court. The umpire shall be appointed by the two arbitrators within a fortnight. Should the two arbitrators be unable to agree within that period, the umpire shall be appointed by the Hamburg Chamber of Commerce at the request of the party taking the initiative.

(3) The arbitrators are bound in their award to the petitions of the parties and may not grant or disallow anything not contained therein.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(5) (B)
Charter-
party
relating to
the
"Unitas
9,"
10th July
1939,
continued.

(4) The court of arbitration shall meet in Berlin or Hamburg, whichever the parties may desire. If the parties cannot agree, the court itself shall decide whether it will meet in Berlin or Hamburg.

(5) The Hamburg courts shall have jurisdiction for any necessary court decisions.

Art. 6.

Any costs connected with this Charter Party and its execution, in particular any document tax that may become due, shall be borne by the parties equally.

Hamburg, 10th July 1939.
Berlin.

10

MARGARINE-VERKAUFS-UNION "UNITAS" DEUTSCHE
G.m.b.H. WALFANG G.m.b.H.

(Sgd.) G. v. d. VEEN.

(Sgd.) L. VAN KRIMPEN.

(Sgd.) Dr. FRANKENBACH.

No. 10
(5) (c).
Letter,
Margarine-
Verkaufs-
Union to
"Unitas"
Deutsche
Walfang
G.m.b.H.,
21st
October
1940.

No. 10 (5) (c).

LETTER, Margarine-Verkaufs-Union to "Unitas" Deutsche Walfang G.m.b.H.

[TRANSLATION]

Legal Dept. R.140/37 II Sa.

Margarine-Verkaufs-Union G.m.b.H.,
Berlin.

20

21st October 1940.

"Unitas" Deutsche Walfang-Gesellschaft m.b.H.,
Messberghof,
Hamburg, 1.

For the attention of Mr. J. H. Mohr, Chairman of the Board of Directors.

Dear Mr. Mohr,

*Charter Parties of 20.2.38 and 10.7.39.
(sic)*

We refer to the discussions we had on 20.9.40 and 15.10.40 with a view to reaching agreement concerning our charter parties of 24.2.38 and 10.7.39 in respect of the Unitas fleet. 30

Duration.

We shared your view that both charter parties should be extended beyond the expiry date of 20.9.40. We suggest that the extension be agreed within the framework of the following arrangements.

We take the opportunity of recommending that the wishes of the Board of Unitas G.m.b.H. and of our own Board be complied with and

the contract years made to correspond with the financial year of Unitas G.m.b.H. We therefore propose that it be agreed that the contract year 1939/40 shall run from 23rd September 1939 to 30th September 1940 and that the charter parties shall then be extended for a further year commencing on 1st October 1940, i.e. to 30th September 1941. In the event of further extension of the charter parties in accordance with the proposals below, the contract years shall in each case run from 1st October to 30th September of the following calendar year.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(5) (c).
Letter,
Margarine-
Verkaufs-
Union to
"Unitas"
Deutsche
Walfang
G.m.b.H.,
21st
October
1940,
continued.

Hire for Contract Year 1939/40.

10 As we have already informed you, we intend to take into account the fact that it has not been possible for Unitas G.m.b.H. in the past contract year 1939/40 to use the vessels leased to it in the manner laid down in the charter parties, and the consequent economic position of Unitas G.m.b.H. We therefore propose as hire for the contract year 1939/40 a sum which, apart from reasonable interest on capital, shall in principle only cover our own outlays for depreciation and property, industry and capital taxes payable on capital assets.

20 As is known, the prices fixed by the Reich Ministry of Food allowed whaling firms a depreciation rate of 15% per annum and an interest rate of 5% per annum on invested capital. We propose to continue to base the rate of hire on this agreed rate of interest on capital. As regards the depreciation rate, in view of the above-mentioned circumstances we propose to reduce it for the purpose of calculation of the hire from 15% to 10%. For the contract year 1939/40, therefore, the hire would work out as follows up to 20th September 1940, i.e. the date on which the contract year expires according to the earlier charter parties :

	10% depreciation on our total capital expenditure on the chartered fleet, i.e. 10% of RM.10,952,766,93 :	.. .. .	RM.1,095,277,—
30	5% interest on net book value: 3.5% of original value, as already written off to 70% :	.. .. .	RM. 383,347,—
	Property and industry taxes payable on this capital expenditure :	.. .. .	RM. 88,717,—
	Capital taxes payable on this same capital expenditure :	.. .. .	RM. 49,287,—
			Total RM.1,616,628,—
			rounded off to 1,617,000,—

40 In view of our proposal to extend the duration of the contract year 1939/40 to 30th September 1940 the hire would have to be increased correspondingly. We therefore suggest a hire of RM.1,617,000,— for the contract year 1939/40 running up to 30th September 1940.

Hire for the Contract Year 1940/41 and any Subsequent Contract Years.

In the contract year 1940/41 and any subsequent contract years for which you may opt in accordance with the proposals below and during which it is likewise impossible, owing to war conditions, for the Unitas

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(5) (c).
Letter,
Margarine-
Verkaufs-
Union to
"Unitas"
Deutsche
Walfang
G.m.b.H.,
21st
October
1940,
continued.

fleet to be used in the manner laid down in the charter parties, the hire shall be calculated in the same way as for the contract year 1939/40. In principle, therefore, the hire will be made up of the following items :

(A) annual depreciation of 10%,

(B) all expenses incurred by us as owners of the fleet in the form of taxes and public dues of all kinds, more especially property, industry and capital taxes, and

(C) annual interest on capital is 5%.

The depreciation will be calculated on our total capital expenditure on the chartered fleet. The interest will be reckoned from the capital sum at the beginning of each contract year, arrived at by deducting from our total capital expenditure on the chartered fleet the depreciation in respect of the previous contract years. The depreciation rate for the period prior to the contract year 1939/40 is 15%, for subsequent years—as agreed—10%.

If and when the fleet is again used for whaling or can be so used after the present obstacles have ceased to exist, the foregoing exceptional hire arrangement comes to an end. From the contract year in which the fleet is or can be used for whaling and hire arrangements laid down in the charter parties of 24.2.38 and 10.7.39 again apply in full.

Option of Unitas G.m.b.H.

We agreed that, notwithstanding this hire arrangement Unitas G.m.b.H. would incur a loss in the contract year 1939/40 and perhaps also in subsequent contract years if, as in 1939/40, it were unable to make commercial use of the fleet. (At present the fleet is in use on terms which, provided it is used for the whole year, will probably enable the Profit & Loss Account for the financial year 1940/41 to break even.) We were in agreement with you that Unitas G.m.b.H. should be given an opportunity of making good its losses by whaling and we hereby declare that Unitas G.m.b.H. has the right up to the 30th June of each contract year at the end of which the charter parties expire, to ask for these to be prolonged for a further contract year, if and as long as, according to a reasonable estimate to be made at the time, it is not anticipated that the losses incurred by Unitas G.m.b.H. as a result of wartime conditions from hire and use of the fleet will be covered by the time the contract expires by corresponding profits. Prolongation must be notified in writing within the specified time limit and applies to the two charter parties of 24.2.38 and 10.7.39 together. A limit of time would of course have to be set for the option, on the lines that the charter parties could not be extended beyond a certain date—we suggest 30th September 1943. It is of course understood that if by that time Unitas G.m.b.H. still have substantial losses which have not been covered, we are prepared to enter into further negotiations. As, however, it is impossible to foresee what the position will be, we do not wish to bind ourselves formally in this respect.

Use of the Fleet.

In order to enable Unitas G.m.b.H. to use the fleet commercially we have given you the right, during the period in which the Unitas fleet cannot

be used for whaling in accordance with the charter parties, to make use of it for any commercial purpose. Alterations to the various vessels may not, however, be carried out without our consent.

*In the
High
Court of
Justice.
(In Prize.)*

Hamburger Walfangkontor G.m.b.H.

10 In the course of our discussions you raised the question whether it might not be possible to entrust the management of the fleet to the Hamburger Walfangkontor G.m.b.H. In this connection we have to advise you that, contrary to previous practice, we agree in principle to such an arrangement. Our agreement is naturally restricted to the above-mentioned time limits for extension of the charter parties. As this fleet owned by us represents a considerable assets item, you will understand that we can give our agreement only on condition that our consent is obtained to the agreements to be concluded by Unitas G.m.b.H. with the Hamburger Walfangkontor G.m.b.H.

No. 10
(5) (C).
Letter,
Margarine-
Verkaufs-
Union to
"Unitas"
Deutsche
Walfang
G.m.b.H.,
21st
October
1940.
continued.

Negotiations with the Authorities.

Following our discussions you undertook to open the necessary negotiations with the Reich Ministry of Economy and the Reich Ministry of Food and Agriculture. We would therefore ask you to do so and to inform us of the results.

20

Heil Hitler ! :

MARGARINE-VERKAUFS-UNION G.m.b.H.

(Sgd.) SCHRAUD. (Sgd.) DR. FRANKENBACH.

No. 10 (5) (d).

LETTER, Dr. Wohlthat to Margarine-Verkaufs-Union.

[TRANSLATION]¹

W.X/1286.

The Reich Marshal of the Greater German Reich,
Commissioner for the Four-Year Plan,
Director for Special Duties,

Leipziger Str. 3,
Berlin, W.8.

22nd March 1941.

30

Margarine Verkaufs-Union G.m.b.H.,
Union House,
Berlin, C.2.

For the attention of Mr. Blessing, Director.

Dear Sir,

With reference to our recent conversation, I have to inform you that I have asked Mr. Mohr, as Chairman of the Board of Directors of the

No. 10
(5) (D).
Letter,
Dr.
Wohlthat
to
Margarine
Verkaufs-
Union,
22nd
March
1941.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(5) (D).
Letter,
Dr.
Wohlthat
to
Margarine
Verkaufs-
Union,
22nd
March
1941,
continued.

“ Unitas ” Deutsche Walfang-Gessellschaft m.b.H., to submit correspondence exchanged between the “ Unitas ” Deutsche Walfang-Gesellschaft m.b.H. and the Margarine Verkaufs-Union regarding the management of the “ Unitas ” whaling fleet for the duration of the war by the Hamburger Walfangkontor to the Reich Ministry of Economy for approval on the basis of Art. II of the Act relating to Whaling, dated 6th October 1937.

Mr. Mohr will get in touch with you in this connection.

Heil Hitler ! :

(Sgd.) WOHLTHAT.

No. 10
(5) (E).
Letter
Margarine-
Verkaufs-
Union to
“Unitas”
Deutsche
Walfang
G.m.b.H.,
30th April
1941.

No. 10 (5) (e).

10

LETTER, Margarine-Verkaufs-Union to “ Unitas ” Deutsche Walfang G.m.b.H.

[TRANSLATION.]

30.4.41.

“ Unitas ” Deutsche Walfang-Ges.m.b.H.,
Messberghof,
Hamburg, 1.

For the attention of Mr. J. H. Mohr, Chairman of the Board of Directors.

Dear Sir,

With reference to our various conversations, we beg to inform you that Mr. Wohlthat in his letter of 22nd March 1941 attached advises us 20 that you are to ask the Reich Ministry of Economy to approve the management of the “ Unitas ” whaling fleet for the duration of the war by the Hamburger Walfangkontor on the basis of Art. II of the Act relating to Whaling, dated 6.10.37.

In view of the fact that Mr. Wohlthat informed us verbally that after the war completely new regulations regarding whaling would possibly be introduced, we for our part are in agreement with his proposal.

It is understood between you and us that after approval by the Reich Ministry of Economy the charter party will be extended in accordance with the principles laid down in our letter of 21.10.40, it being understood that 30 our proposal concerning the management of the fleet by the Hamburger Walfangkontor is agreed only for the duration of the war.

Heil Hitler ! :

MARGARINE-VERKAUFS-UNION G.m.b.H.

(illegible initials).

Encl.

No. 10 (5) (f).

LETTER, "Unitas" Deutsche Walfang G.m.b.H. to Reich Ministry of Economy.

[TRANSLATION]

30.4.1941.

The Reich Ministry of Economy,
Behrenstr. 42/43,
Berlin, W.8.

For the attention of Dr. Hoffmann-Baginski.

Dear Sir,

10 At the suggestion of Mr. Wohlthat we hereby apply to the Ministry of Economy for approval, on the basis of Art. II of the Act relating to Whaling, dated 6.10.1937, that for the duration of the war the management of the "Unitas" whaling fleet be taken over by the Hamburger Walfangkontor.

In the event of the Reich Ministry of Economy giving its approval the Margarine-Verkaufs-Union G.m.b.H. and our Company propose to extend the expired charter party in accordance with the principles set forth in the enclosed letter of 21.10.40, except that on Page 3, management by the Hamburger Walfangkontor shall be for the duration of the war
20 only.

I also enclose a copy of a letter from the Margarine-Verkaufs-Union to me in this connection.

Heil Hitler ! :

"UNITAS" DEUTSCHE WALFANG-
GESELLSCHAFT m.b.H.

(illegible initials)

Enclosures.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10
(5) (f).
Letter
"Unitas"
Deutsche
Walfang
G.m.b.H.
to Reich
Ministry of
Economy,
30th April
1941.

*In the
High
Court of
Justice.
(In Prize.)*

No. 10 (5) (g).

LETTER, Reich Ministry of Economy to "Unitas" Deutsche Walfang G.m.b.H.

[TRANSLATION]

No. 10
(5) (g).
Letter
Reich
Ministry of
Economy
to
"Unitas"
Deutsche
Walfang
G.m.b.H.,
4th June
1941.

II S In. 6/22862/41.

The Reich Minister of Economy,
Behrenstrasse 43,
Berlin, W.8.

Please quote this reference
and the subject matter in
future correspondence.

4th June 1941. 10

"Unitas" Deutsche Walfang G.m.b.H.,
Post Box 790,
Hamburg, 1.

*For the attention of Mr. J. H. Mohr,
Chairman of the Board of Directors.*

*Re : Extension of the charter parties in respect of the
"Unitas" whaling fleet.*

Reference my letter of 9th May 1941—II S In 6/22760/41 :

In agreement with the Minister of Food and Agriculture I approve in principle the concluding of an agreement to extend the charter parties relating to the "Unitas" whaling fleet, dated 24th February 1938 and 10th July 1939, in accordance with the contents of the copy letter handed to me from the Margarine-Verkaufs-Union G.m.b.H., Berlin, dated 21st October 1940—Legal Dept. R140/37 II Sa.—it being understood that the management of the "Unitas" whaling fleet by the Hamburger Walfang-Kontor G.m.b.H., Hamburg, is agreed only for the duration of the present war.

I should be obliged if you would send me the draft agreement in quadruplicate before the agreement is finally concluded.

By Order :

30

(Sgd.) Dr. HARTIG

Stamp
Reich Ministry of
Economy

Certified
(Sgd.) FRITZ
Clerk.

No. 10 (5) (h).

SUPPLEMENTAL AGREEMENT relating to charter of "Unitas" and catchers.

In the
High
Court of
Justice.
(In Prize.)

[TRANSLATION]

On 24.2.1938 and also on 10.7.1939 Margarine-Verkaufs-Union G.m.b.H., Berlin, concluded with "Unitas" Deutsche Walfang-Gesellschaft m.b.H., Hamburg, two charter-parties in respect of the floating factory "Unitas," the scout catcher "Unitas I" and eight catchers "Unitas II-IX" (hereinafter briefly called the charter-parties). Having regard to and as a result of the changed circumstances due to the war

No. 10
(5) (H).
Supple-
mental
Agreement
relating to
Charter of
"Unitas"
and
Catchers,
21st
October
1941.

I. Margarine-Verkaufs-Union G.m.b.H., Berlin,
—hereinafter called the owners—

of the one part

and

II. "Unitas" Deutsche Walfang-Gesellschaft m.b.H., Hamburg
—hereinafter called the charterers—

of the other part

conclude the following *supplementary agreement* to the two aforementioned charter-parties :

20 I. The duration of the charter-parties, which according to the present arrangements expire on 20.9.1940, is prolonged until 30.9.1942.

II. The contract year 1939/40 runs until 30.9.1940. Subsequent contract years will run from 1st October to 30th September of the ensuing calendar year.

III. The following will apply for the contract year 1939/40 and for the ensuing contract years in which the fleet (floating factory, scout catcher and eight catchers) is not or cannot be used for whaling as per contract owing to the present state of war :

30 1. The fleet may be used by the charterers for any commercial purpose. Alterations to the various vessels may not, however, be carried out by the charterers without the consent of the owners.

2. The hire will in principle consist of the following items :

(a) 10% annual depreciation ;

(b) all the expenses incurred by the owners in connection with their ownership of the fleet and in the form of taxes and dues of all kinds, more especially property, industry and capital taxes ;

and (c) 5% annual interest on capital.

40 re (a) The depreciation is calculated on the total capital expenditure of the owners on the chartered fleet.

*In the
High
Court of
Justice.
(In Prize.)*
No. 10
(5) (H).
Supple-
mental
Agreement
relating to
Charter of
"Unitas"
and
Catchers,
21st
October
1941,
continued

re (c) The interest is calculated on the capital sum at the beginning of each contract year, arrived at from the total capital expenditure of the owners on the chartered fleet less depreciation in respect of previous contract years. The rate of depreciation for the period prior to this arrangement is 15 %. The rate of depreciation from the beginning and for the duration of this arrangement can be seen from (a).

On the above basis the hire for the contract year 1939/40 is RM 1,617,000.--. In view of the longer duration of the contract year 1939/40 as agreed in fig. II, namely to 30.9.1940, the hire for this contract year is fixed at 10 RM 1,647,000.--.

IV. If and when the fleet is or can again be used for whaling after the present obstacles cease to exist, the provisions of fig. III will no longer apply. As from the contract year in which the fleet is or can again be used for whaling, the hire provisions of the charter-parties will again apply in full.

V. The charterers have the right up to the 30th June of each contract year at the end of which the charter-parties expire, to ask for these to be prolonged for a further contract year, if and as long as, according to a reasonable estimate to be made at the time, it is not anticipated that 20 the losses incurred by the charterers as a result of war-time conditions from hire and use of the fleet will be covered by the time the contract expires by corresponding profits. Prolongation, which applies to both charter-parties together, must be notified in writing within the specified time-limit. Prolongation may not be demanded beyond the end of the third contract year reckoned from the beginning of the contract year in which the fleet is or can again be used for whaling.

IV. Owners and charterers agree that the charterers shall within the framework of the charter-parties transfer the management of the fleet for the period of the present war to the Hamburg Walfang-Kontor 30 G.m.b.H. Instructions as to management will be given by the charterers in accordance with an agreement to be concluded with the owners and subject to the provisions in this connection in the charterers' deed of partnership.

Hamburg, 21st October 1941.
Berlin

MARGARINE-VERKAUFS-UNION
G.m.b.H.

"UNITAS" DEUTSCHE
WALFANG-
GESELLSCHAFT m.b.H.

(Sgd.) SCHRAUD (Sgd.) Dr. FRANKENBACH

(Sgd.) ROBERT NEEF 40
pp. Milewski

No. 11.

LETTER, Lever Brothers & Unilever Ltd. to Sir Cyril Hurcomb.

Unilever House,
Blackfriars,
London, E.C.4.

26th October 1943.

Sir Cyril Hurcomb, K.C.B., K.B.E.,
Director General,
Ministry of War Transport,
Berkeley Square House, W.1.

10

Dear Sir,

There is a matter we wish to bring to your notice which we have already brought to the notice of the Netherlands Ministry of Foreign Affairs.

20

We have very close relations in normal times with our Dutch Associates, Lever Brothers & Unilever N.V. of Rotterdam. Our relations with that Company are well known to such Government Departments as the Treasury, the Ministry of Economic Warfare and the Trading with the Enemy Department, and it is sufficient for our present purpose to tell you that because of an agreement for the mutual distribution of their profits which the two Companies made in 1937, and we hope will be resumed when intercourse between the two Companies becomes possible and permissible again, anything that damnifies the Dutch Company damnifies ourselves.

30

Lever Brothers & Unilever N.V., are the owners indirectly of important interests in Germany. Apart from any other form of reparation that the terms of the Armistice and of the Peace Treaty will impose upon Germany, reparation in kind is presumably to be expected. There is talk already of "pools" being formed of the material which will be found in Germany after the war and of "allocations" being met out of such pools in favour of those countries which have suffered damage through the war in some order of priority according to their needs; and it may be expected, too, that ships will be some of the material to be treated in this way.

40

But not all material found in Germany will be German owned. For example there will be material which has been looted by Germany from the countries it has been occupying. Presumably material coming within that category will not be included in Reparation Pools. There will also be material which is ostensibly German owned but in fact is not; for example, assets of Industrial and Trading Companies in Germany, formed under the Law of Germany and therefore German Nationals, the capital of which, however, is owned by shareholders who are not German nationals but are nationals of the United Nations or of Neutral States. In such cases the "equitable ownership" of the assets may properly be regarded as not being at the disposal of the High Contracting Parties to the Treaty of Peace.

These general observations lead to the particular matter we have in mind. Lever Brothers & Unilever N.V., as we have said, are the owners of

*In the
High
Court of
Justice.
(In Prize.)*

No. 11.
Letter,
Lever
Brothers &
Unilever
Ltd. to
Sir Cyril
Hurcomb,
26th
October
1943.

*In the
High
Court of
Justice.
(In Prize.)*

No. 11.
Letter,
Lever
Brothers &
Unilever
Ltd. to
Sir Cyril
Hurcomb,
26th
October
1943,
continued.

important interests in Germany. Amongst other Shipping interests, they own, through Subsidiary Companies in Holland and in Germany, the whole of the capital of Margarine Verkaufs Union G.m.b.H of Berlin, a Company which amongst other property owns a Whaling Floating Factory called "Unitas" and a fleet of Whale Catchers. Through a similar chain of ownership Lever Brothers & Unilever N.V. are also the owners of 92% of the capital of "Neue Norddeutsche und Vereinigte Elbeschiffahrt A.G." a Company which owns a fleet of vessels on the River Elbe. Further, Lever Brothers & Unilever N.V. own a majority interest in other German Companies which own rivercraft. 10

It is obvious, if "Unitas" and the other vessels in question or any of them were to be treated as being German owned for the purposes of "pooling" and "allocation" because the legal ownership of them is vested in a Company incorporated in Germany, that it would not be Germany or German nationals who would suffer the loss of them.

We have had occasion to consider this matter once more when we received an enquiry recently from a firm of Shipbrokers informing us that the loss of Whaling Factory Ships has been very heavy and there only remain three Norwegian and three British, all others having been lost except any German or Japanese Factories there may still be afloat, and asking us whether we would be willing to sell "our interest in 'Unitas'" subject to her being still afloat. 20

We are not the owners of "Unitas", but for the reasons appearing above we have a close interest in what happens to her. Because of the considerations we have explained we are assuming that "Unitas" will not form the subject of any "pool" or "allocation," but if, contrary to that expectation, the vessel is brought into some pool for allocation, we desire that our interests shall be kept in mind. We have a Subsidiary Company, the Southern Whaling & Sealing Company Limited, and we trust that if "Unitas" should ever form the subject of any "Pool" or "allocation" we shall be given the opportunity of expressing our views and receive prior consideration of any claim we may put forward in respect of the vessel. 30

Yours faithfully,

LEVER BROTHERS & UNILEVER LIMITED.

(Sgd.) L. V. FILDES.

Secretary.

No. 12.

LETTER, Sir Cyril Hurcomb to Lever Brothers & Unilever Ltd.

Ministry of War Transport.

28th December 1943.

Gentlemen,

With reference to your letter of 26th October relating to your shipping interest in Germany, I am directed by the Minister of War Transport to inform you that your statement has been noted here and by the Treasury and will be borne in mind.

10 For the time being, it is not possible to say more.

I am, Gentlemen,

Your obedient Servant,

(Sgd.) CYRIL HURCOMB.

Messrs. Lever Brothers & Unilever Ltd.

*In the
High
Court of
Justice.
(In Prize.)*

No. 12.
Letter,
Sir Cyril
Hurcomb
to Lever
Brothers &
Unilever
Ltd.,
28th
December
1943.

No. 13.

LETTER, Simpson, North & Co. to Ministry of War Transport.

21, Surrey Street,
Victoria Embankment,
London, W.C.2.

20th June, 1945.

20

Dear Sir,

Whaling Floating Factory "Unitas."

Your Reference FSR/PW/104.

We refer to the interview the writer, Mr. Wiseman, had with Mr. Keenlyside and Mr. McNair on Saturday last with regard to the above vessel, which we understand has been "seized" in a German port and is shortly to be brought over to this Country, and we confirm the following facts which we gave to them with regard to such vessel.

30 The registered owners of the "Unitas" are Margarine Verkaufs Union G.m.b.H. of Berlin (this company was originally called Jurgens Van den Bergh Margarine Verkaufs Union G.m.b.H., but has since changed its name), which Company is through the intermediary of certain other companies a wholly owned subsidiary of Lever Brothers & Unilever N.V. of Rotterdam. We enclose herewith a statement shewing the share capital of Margarine Verkaufs Union G.m.b.H. and tracing the ownership of such share capital to Lever Brothers & Unilever N.V.

40 We may say that we are instructed in this matter by the four Managing Directors of Lever Brothers & Unilever N.V. appointed by a decree of the Royal Netherlands Government dated the 31st March 1943, a translation of which is enclosed. We are instructed also by the English Company,

No. 13.
Letter,
Simpson,
North &
Co. to
Ministry of
War
Transport,
20th June
1945.

*In the
High
Court of
Justice.
(In Prize.)*

No. 13.
Letter,
Simpson,
North &
Co., to
Ministry
of War
Transport
30th June
1945,
continued.

Lever Brothers & Unilever Limited. You are, of course, aware of the very close relationship that exists between the Dutch company, Lever Brothers & Unilever N.V., and their English Associates, Lever Brothers & Unilever Limited, and that in 1937 an agreement for the mutual distribution of the profits of the two Companies was entered into, and so any confiscation of assets of the Dutch Company will in turn cause loss to the English Company. We would refer you to a letter written on the 26th October 1943 by the Secretary of Lever Brothers & Unilever Limited to Sir Cyril Hurcomb dealing with this question of vessels and material found in Germany and ostensibly German owned, but in fact owned by nationals of the United Nations, and specifically mentioning the case of the "Unitas." 10

It will be seen from the above that the "Unitas" is not in equity German owned, but is really an asset of the Dutch Company, Lever Brothers & Unilever N.V., and that, if the vessel is condemned in prize or otherwise used for Reparation purposes, the loss will not fall upon any German national but directly upon a Dutch Company and indirectly upon an English Company.

We understand that the Ministry desire to put this vessel to use in the next whaling season, and that it is proposed once the vessel is in this Country to issue a writ in prize and then to requisition the vessel. Our Clients have no objection to the vessel being put to use by the Ministry certainly for next season, and they would take any steps the Ministry might reasonably wish them to take, either by assenting to a requisition under the Defence Regulations, or by chartering or otherwise to have this purpose achieved; but they do feel that the vessel should not be regarded as "Prize," or made the subject of reparations, and the Writer understood from Mr. Keenlyside and Mr. McNair that the Ministry had no present intention of having the vessel condemned in prize, and that this question would probably not arise for about twelve months. 20

If you wish to have any more information with regard to the "Unitas," or any other matter raised in this letter, and will let us know, we will do our best to obtain such information for you. 30

On behalf of our Clients we do strongly submit to you that, as the "Unitas" is really a Dutch and not a German asset, it should not be condemned in prize or used for Reparation purposes.

We may mention that the "Unitas," although perhaps individually the most important, is not the only instance which may arise of vessels ostensibly German owned but in fact not so owned, as our Clients have substantial interests in other vessels as appears from the letter dated the 26th October 1943 written to Sir Cyril Hurcomb and referred to above. 40

Yours faithfully,
SIMPSON, NORTH & CO.

The Director General,
Ministry of War Transport,
Berkeley Square House,
Berkeley Square,
London, W.1.

No. 14.

LETTER, Ministry of War Transport to Simpson, North & Co.

Ministry of War Transport,
Berkeley Square House,
Berkeley Square,
London, W.1.

3rd July 1945.

Gentlemen,

Whaling Floating Factory UNITAS.

10 I am directed by the Minister of War Transport to refer to your letter of the 20th June relating to the Whaling Floating Factory UNITAS and to thank you for the information therein contained. As I informed Mr. Wiseman on the occasion of his recent interview with me, it is intended that this vessel shall be seized in prize and requisitioned out of the Prize Court for use in the next whaling season but that no immediate steps shall be taken by way of an application for condemnation. The alternative suggestions which you make that she shall be requisitioned under the Defence Regulations or chartered to the Ministry are not suggestions which the Ministry could accept.

20 For the rest, I am afraid that I cannot go further than to say that the contents of your letter are noted and will be borne in mind when consideration is given to the question of the ultimate disposal of this vessel.

I am, Gentlemen,

Your obedient Servant,

F. H. KEENLYSIDE.

Messrs. Simpson, North, Harley & Co.,
21, Surrey Street,
Victoria Embankment, W.C.2.

*In the
High
Court of
Justice.
(In Prize.)*

—
No. 14.
Letter,
Ministry
of War
Transport
to Simpson,
North &
Co.,
3rd July
1945.

No. 15.

LETTER, Simpson, North & Co. to Ministry of War Transport.

21 Surrey Street,
London, W.C.2,

13th July 1945.

Dear Sir,

Whaling Floating Factory "Unitas."

Your Reference FSR/PW.104.

We duly received your letter of the 3rd instant and observe as to the course which you say it is intended to follow with regard to this vessel.

No. 15.
Letter,
Simpson,
North &
Co. to
Ministry of
War
Transport,
13th July
1945.

*In the
High
Court of
Justice.
(In Prize.)*
—

No. 15.
Letter,
Simpson,
North &
Co. to
Ministry of
War
Transport,
13th July
1945,
continued.

We regret that you should consider it necessary to bring this vessel into the Prize Court in view of what we have told you as to its actual ownership, but observe that you say no immediate steps will be taken by way of an application for condemnation and that you will bear in mind the facts we have put before you when consideration is given to the question of the ultimate disposal of the vessel.

Yours faithfully,
SIMPSON, NORTH & CO.

The Director-General,
Ministry of War Transport,
Berkeley Square House,
Berkeley Square,
London, W.1.

10

No. 16.
Letter,
Simpson,
North &
Co. to
Ministry of
War
Transport,
3rd August
1945.

No. 16.

LETTER, Simpson, North & Co. to Ministry of War Transport.

21 Surrey Street,
Victoria Embankment,
London, W.C.2.

3rd August, 1945.

Dear Sir,

Whaling Floating Factory "Unitas."

Your Reference FSR/PW/104.

We beg to refer to our letter to you of the 20th June and to the Statement enclosed in such letter tracing the ownership of the Share Capital of Margarine Verkaufs Union G.m.b.H. to Lever Brothers & Unilever N.V.

We have now heard from our Clients in Holland that, while we were perfectly correct in stating that Margarine Verkaufs Union is a wholly owned subsidiary of Lever Brothers & Unilever N.V., the statement we sent you tracing the ownership was not entirely accurate. We have prepared and send you herewith a new statement tracing the ownership of the Share Capital in Margarine Verkaufs Union G.m.b.H. to our Clients, Lever Brothers & Unilever N.V.

Yours faithfully,
SIMPSON, NORTH & CO.

The Director-General,
Ministry of War Transport,
Berkeley Square House,
Berkeley Square,
London, W.1.

40

LIST OF CONTRACTS for building of Ships in Germany.

NO.	DATE OF CONTRACT	DESCRIPTION OF SHIPS	TONNAGE	SHIPBUILDERS	DATE OF DELIVERY	TO WHOM DELIVERED
1.	15th November 1934	1 Tanker	14,500 tons each	Deutsche Werft	—	Third party.
2.	21st November 1934	1 Tanker	14,500 tons each	Bremer Vulkan	—	Third party.
3.	13th December 1934	3 Cargo Ships	8,000 tons each	Deutsche Schiff und Maschinenbau	17th August 1936	The United Africa Co. Ltd.
4.	13th December 1934	2 Cargo Ships	8,000 tons each	Howaldtswerke	26th June 1936	Do.
5.	14th December 1934	2 Trawlers	475 tons each	Deutsche Schiff und Maschinenbau	2nd December 1935	Bloomfields Ltd.
6.	14th December 1934	2 Trawlers	475 tons each	Do.	2nd December 1935	Do.
7.	2nd February 1935	1 Coasting Vessel	470 tons	Howaldtswerke	24th December 1935	The United Africa Co. Ltd.
8.	19th June 1935	1 Tanker	6,500 tons	Do.	23rd October 1936	Do.
9.	4th September 1935	1 Tanker	14,500 tons	Deutsche Werft	28th September 1937	Third party
10.	5th September 1935	1 Tanker	14,500 tons	Bremer Vulkan	22nd October 1936	Do.
11.	7th October 1935	4 Whalers	340 tons each	Do.	5th October 1936	Southern Whaling & Sealing Co. Ltd.
12.	12th October 1935	12 Trawlers	700 tons each	Deutsche Schiff und Maschinenbau	31st December 1936	MacFisheries Ltd.
13.	21st November 1935	2 Tankers	14,500 tons each	Deutsche Werft	4th July 1936	Third parties.
					12th August 1936	
14.	21st November 1935	1 Tanker	14,500 tons	Do.	22nd September 1936	Third party.
15.	21st November 1935	4 Cargo Ships	9,300 tons each	Do.	11th May 1937	Third party.
					9th July 1937	
					1st September 1937	
16.	21st November 1935	2 Whalers	340 tons each	Bremer Vulkan	15th October 1936	Southern Whaling & Sealing Co. Ltd.
17.	21st November 1935	2 Cargo Ships	8,500 tons each	Do.	10th January 1937	Third parties.
					14th August 1937	
18.	21st November 1935	1 Trawler	700 tons	Deutsche Schiff und Maschinenbau	31st December 1936	MacFisheries Limited.
19.	21st November 1935	2 Cargo Ships	8,500 tons each	Do.	7th April 1937	Third party.
					11th October 1937	
20.	21st November 1935	2 Cargo Ships	8,500 tons each	Flensburger	12th June 1937	Third party.
					4th August 1937	
21.	16th January 1936	1 Tanker	14,500 tons	Deutsche Werft	25th November 1937	Third party.
22.	7th February 1936	1 Tanker	14,500 tons	Bremer Vulkan	23rd October 1937	
23.	30th March 1936	2 Trawlers	700 tons each	Deutsche Schiff und Maschinenbau	31st December 1936	MacFisheries Ltd.
24.	30th March 1936	2 Tankers	14,500 tons each	Deutsche Werft	31st May 1937	Third parties.
					— January 1938	
25.	17th April 1936	1 Tanker	541 tons	Mayer	5th April 1937	A Dutch subsidiary.
26.	23rd April 1936	2 Cargo boats	8,000 tons each	Deutsche Schiff und Maschinenbau	8th June 1937	The United Africa Co. Ltd.
					22nd July 1937	
27.	26th May 1936	1 Tanker	696 tons	Kremer Sohn	13th July 1937	A Dutch subsidiary.
28.	29th May 1936	3 Tankers	16,000 tons each	Deutsche Werft	15th August 1938	Third parties.
					20th September 1938	
					11th October 1938	
29.	3rd June 1936	1 Whaling Scout	520 tons	Bremer Vulkan	7th October 1937	Southern Whaling & Sealing Co. Ltd.
30.	26th June 1936	1 Tanker	1,600 tons	Deutsche Werft	October 1938	Third party.
31.	26th September 1936	2 Tankers	14,500 tons each	Do.	8th March 1938	Third parties.
					31st August 1938	
32.	16th October 1936	2 Tankers	14,500 tons each	Do.	16th February 1939	Third parties.
					16th March 1939	
33.	31st October 1936	2 Tankers	14,500 tons each	Bremer Vulkan	5th April 1939	Third parties.
					15th June 1939	

In the
High
Court of
Justice.
(In Prize.)

No. 17.
List of
Contracts
for building
of ships
in
Germany.

No. 18.
STATEMENT of Position as at 31st December 1939.

It has been confirmed from Rotterdam that on 31st December 1939 the indebtedness of N.V.'s German Subsidiaries to N.V. or N.V.'s Subsidiary Companies in Holland had been reduced to the equivalent of about RM.3,000,000. The break-up of this figure is as follows :—

£16,000
FL.1,400,000
RM.1,000,000

10 which has to be compared with the figures of FL.62,000,000, £400,000 and RM.39,000,000 appearing in para. 14 of Mr. Ryken's affidavit.

*In the
High
Court of
Justice.
(In Prize.)*

—
No. 18.
Statement
of Position
as at
31st
December
1939.

No. 19.
STATEMENT of Ships built for Export.

	<i>Number of ships.</i>	<i>Tonnage.</i>
Total Ships built for export under contracts dated between 15th November 1934 and 31st October 1936 when policy was discontinued	68	448,867
20 Between 15th November 1934 and 8th May 1936 (the date of the offer to build the "Unitas") ..	56	311,051
From 26th May 1936 to 31st October 1936, when policy was discontinued	12	137,816
	<u>68</u>	<u>448,867</u>

No. 19.
Statement
of Ships
built for
Export.

*In the
High
Court of
Justice.
(In Prize.)*

No. 20.
SUMMARY OF EXPENSES.

BUILDING AND OPERATING COSTS, "UNITAS"
WHALING FLEET.

AS PER ATTACHED STATEMENTS.

No. 20.
Summary
of
Expenses.

			£	s.	d.
Sterling Disbursements	..	..	5,311	13	0
Currency Disbursements :					
Norwegian Kronen & Exchange					
Kr.19.90 to £		=47,157.99=	2,369	15	0 10
Total Disbursements	..		<u>£7,681</u>	<u>8</u>	<u>0</u>
A/c Unitas Whaling Fleet :					
F.F. "Unitas" and 9 Whalecatchers					
Sterling	..	..	4,530	16	11
Currency Kr.46,561.42	..	..	2,339	15	5
			<u>6,870</u>	<u>12</u>	<u>4</u>
Other Expenses :					
Building Costs :					
Tanker 738	Sterling	..	365	18	8
" 195	"	..	204	12	1
" 195	Currency	..	29	19	7
			<u>600</u>	<u>10</u>	<u>4</u>
Operating Costs, "Unitas" Fleet :					
Mr. N. C. Watt, Travelling					
Expenses	..	..	210	5	4
			<u>810</u>	<u>15</u>	<u>8</u>
			<u>£7,681</u>	<u>8</u>	<u>0</u>

NOTE.—Mr. Bell, Engineer ceased to be employed on new buildings in Germany on 27th November last and his total Wages and expenses have been included in the attached statement. 30

Mr. Staubo, Salary and expenses for the months of November and December have not been included, but they will be charged against Tanker 195.

No. 21.
JUDGMENT.

No. 1925.

*In the
High
Court of
Justice.
(In Prize.)*

IN THE HIGH COURT OF JUSTICE.
Probate, Divorce and Admiralty Division.
(In Prize.)

ROYAL COURTS OF JUSTICE.

Friday, 20th February, 1948.

No. 21.
Judgment,
20th
February
1948.

Before :

10 THE RT. HON. THE PRESIDENT
(LORD MERRIMAN).

S.S. "UNITAS" AND CARGO.

Claim of :—

LEVER BROTHERS & UNILEVER N.V., "MARGA" MAATSCHAPPIJ TOT
BENEER VAN ANDEELEN IN INDUSTRIEELLE ONDERNEMINGEN of Rotterdam,
Holland, N.V. and "SAPONIA" MAATSCHAPPIJ TOT BEHEER VAN ANDEELEN
IN INDUSTRIEELLE ONDERNEMINGEN of Rotterdam, Holland, N.V.

Sir WILLIAM MCNAIR, K.C., and Mr. E. W. ROSKILL (instructed
by Messrs. SIMPSON, NORTH, HARLEY & Co., 18-20 York Buildings,
20 Adelphi, London, W.C.2, and 1 Water Street, Liverpool, 2) appeared on
behalf of the Claimants.

Mr. C. T. LE QUESNE, K.C., and The Hon. QUINTIN M. HOGG
(instructed by THE TREASURY SOLICITOR, Storey's Gate, London, S.W.1)
appeared on behalf of His Majesty's Procurator General.

JUDGMENT.

The PRESIDENT : In this case the Crown seeks condemnation of
the whaling factory ship "Unitas." The vessel was captured in
Wilhelmshaven when that port was taken by Allied invading forces in
June, 1945. She was transferred to Methil under British naval control,
30 and was there formally seized in Prize on the 1st July, 1945.

The Writ was issued on the 17th July and was served on the 18th July
1945. Appearances were entered by two Dutch Companies, Lever Brothers
and Unilever N.V. (referred to throughout as "N.V.") and two subsidiary
Dutch Companies referred to as "Marga" and "Saponia," engaged
respectively, as their names imply, in the production of margarine, soap
and kindred products. Save in so far as the characters of "Marga"
and "Saponia" indicate the normal activities of their subsidiary companies
in Germany, to which more detailed reference must later be made, they
require no separate consideration. The real Claimants are N.V. All
40 the Claimants, as parties interested in or as sole beneficial owners of the
vessel, claim not only for the said ship but for all losses, costs, charges,
damages, demurrage and expenses which have arisen or may arise by
reason of her seizure and detention.

*In the
High
Court of
Justice.
(In Prize.)*

No. 21.
Judgment,
20th
February
1948,
continued.

The order for the construction of the vessel was placed in May, 1936, as the result of arrangements between N.V. and the German Government by a subsidiary company of the Claimants incorporated in Germany, whose name has been conveniently abbreviated to "Verkaufs." The vessel was completed by September 1937, delivered to "Verkaufs" on the 3rd of that month, on or about which date she was chartered to another German company named "Unitas" which had been formed, in circumstances which I shall describe more particularly later, to operate the vessel as the principal unit in a whaling fleet, the whale catchers of which were constructed and delivered in pursuance of the same arrangement, about the middle of October 1937. The "Unitas" was registered, on completion, at the Port of Bremen, as a German ship, the property of German owners. As appears from the ship's papers found on board, no change had been made in her registration at the time of her capture at Wilhelmshaven. 10

It appears to be necessary at the outset to refer to two elementary principles of Prize Law. The first is laid down in the "*Baron Stjernblad*" (1918 Appeal Cases, p. 173 at p. 175). The Privy Council, in an appeal directed solely to this issue, restated the principles upon which a claimant who has succeeded in obtaining an order for the release of the subject-matter is also entitled to damages and costs, in the following terms: 20
"The law on the subject is reasonably certain. It is clearly stated in the letter of Sir William Scott and Sir John Nicholl, printed on pages 1-11 of Pratt's edition of Mr. Justice Story's Notes on the Principles and Practice of Prize Courts, and in the case of the 'Ostsee.' If there were no circumstances of suspicion, or, as it is sometimes put, 'no probable cause' justifying the seizure, the claimant to whom the goods are released is entitled to both costs and damages. The reason is clear. It would be obviously unjust to compel a belligerent to pay damages or costs where he has done nothing in excess of his belligerent rights, and those rights justify a seizure of neutral property when it is in nature contraband and there is reasonable suspicion that it has an enemy destination. This may be thought hard upon the neutral owner, who will not be fully indemnified by a mere release of his property. So it is; but war unfortunately entails hardships of various kinds on neutrals as well as on belligerents. It follows that the real question to be decided on this appeal is whether, when the goods were seized, there were circumstances of suspicion justifying the seizure." 30

Applying these principles, it is, in my opinion, clear that whatever view may be taken about the claim for release, the facts already stated as to the ownership and flag of this vessel alone provide "probable cause" 40 justifying the seizure. In my opinion, the claim for damages and costs, which was seriously maintained at the very end of the argument, is untenable, and I propose to say no more about it.

The second principle is that once probable cause for seizure is established by the captors, the burden of proof lies upon the Claimants. In support of this principle it is only necessary to cite the most recent restatement of it by the Privy Council in the "*Sidi Ifni*" (Lloyds Reports of Prize Cases, Second Series, vol. 1, p. 200, at page 204). After referring to the "*Monte Contes*" (1944 Appeal Cases, p. 6), Lord Roche, delivering the opinion of the Privy Council, says: "As their Lordships point out in 50 that case, it is sufficient in Prize Law for captors seeking condemnation by

the Prize Court of seized property to establish that there is reasonable ground for suspicion that the property is subject to be condemned. The claimants whose property has been seized must show to the satisfaction of the Court by affirmative evidence amounting to positive proof that the reasonable suspicion is unfounded (see also the "*Hakan*," 1918 Appeal Cases, p. 148, and 5 Lloyds Reports of Prize Cases, p. 186)."

*In the
High
Court of
Justice.
(In Prize.)*

— —
No. 21.
Judgment,
20th
February
1948,
continued.

10 This case was tried on the affidavits filed by the Claimants and the exhibits thereto, supplemented by certain further information provided at my own request. In so far as the affidavits deal with events and figures their accuracy has not been challenged by the Crown, but the Crown does not, of course, admit the inferences which it is sought to draw therefrom. More than once, in the course of the argument for the Claimants, it seemed to be assumed that they were entitled to the benefit of any doubtful inferences. I have therefore thought it necessary to restate this elementary principle at the outset.

20 Apart from the formal evidence in proof of the capture, seizure, the particulars of the ship's papers and the service of the Writ, no evidence was filed on behalf of the Crown. The evidence on behalf of the Claimants is contained in two affidavits and the documents exhibited thereto. The whole is conveniently set out in an agreed bundle, supplemented by the further documents put in at the hearing, the statements in which, so far as they go, though not supported by affidavit, are not challenged by the Crown.

30 In summarising the facts, I propose so far as possible to follow the chronological order rather than the order in which events are dealt with in the affidavits. It would be well in the first place, however, to refer to the diagram of the Unilever organisation set out on page 109. From this it appears that at all material times, so far as the German structure is concerned, N.V. through its Dutch subsidiaries "*Marga*" and "*Saponia*" were the sole shareholders of the German company "*Margarine Union*" which in turn held all the shares in "*Verkaufs*." The diagram also records the existence between the N.V. group and the British Company Lever Brothers and Unilever Limited and its subsidiaries, of an agreement for the equalisation of profits, more particularly described on page 19, paragraph 12. The details of the structure of N.V. in relation to Germany are set out in paragraphs 2-9 of the affidavit of Paul Rykens (Documents, pages 17-18). From paragraph 9 it appears that the "*Margarine Union*" did not in fact come into existence until 1942, when it replaced former subsidiary companies in Germany, but this detail is immaterial. Before 40 the war the control of the German businesses was exercised from Rotterdam, if necessary after full consultation with the British Company who were interested by reason of the equalisation agreement, and although the German subsidiary companies had German Boards of Directors it appears that these Boards met solely for the purpose of giving effect to decisions on policy or management matters taken in Rotterdam, and had no independent authority (page 19, paragraph 12). There was in Berlin a body known as the Praesidium, the members of which were appointed by N.V., and which controlled the German business on their behalf, so as to ensure that the policies decided upon in Rotterdam were effectively carried out (page 19, 50 paragraph 13).

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On the 1st August, 1931 (page 20, paragraph 14) N.V.'s subsidiary companies in Germany were indebted in respect of the purchase of raw materials, and for other reasons including the granting of considerable loans, to N.V. and to N.V.'s subsidiary companies in Holland, in sums in Dutch florins, sterling or Reichmarks amounting in all, at the then official rates of exchange, to the equivalent of £7,500,000 sterling. On that date a decree was issued by the German Government affecting remittances from Germany, the effect of which was that these debts were frozen, and the amounts involved became "blocked marks" (page 20, paragraphs 14-15). At the same time fresh trading profits were accumulating inside 10 Germany, which are stated by the end of 1933 to have amounted to Reichmarks 40,000,000, and by the end of 1936 to have amounted to Reichmarks 61,000,000. These Reichmarks were classified as "inland marks" (page 21, paragraph 16). These increases in "inland marks" had occurred notwithstanding the decision of N.V. to direct their German subsidiaries to spend large sums thereout on the acquisition of yet further businesses in Germany.

Meanwhile there remained the serious problem of getting out of Germany the very considerable sum of "blocked marks". An arrangement was made with the German Government designed to effect this 20 purpose, which I will call the "extraction process". I have not been informed whether any similar arrangements were made with other holders of "blocked marks," or whether this was a special privilege accorded to N.V. Suffice it to say that not only in its inception, but more particularly as events have turned out, it was manifestly to N.V.'s advantage. The arrangement is set out on pages 21-23, paragraphs 17-21 of Mr. Rykens' affidavit, and may be summarised as follows: With the consent of the German Government N.V., whose business had not hitherto included shipbuilding, began to place contracts in German shipyards for the building of ships for export. At first these ships appear to have been built for the 30 British Company and its subsidiaries, but when their requirements had been satisfied, were built for independent purchasers of Dutch and other nationalities. They were built in the name of N.V. or one of its associated companies outside Germany, and provided for the payment to the shipyards in Reichsmarks in Germany. I have not seen the details of these contracts, but it is stated that the German Government usually imposed the condition that a portion of the building price should be paid out of the proceeds of sale of certain commodities which N.V. were specifically required to import into Germany for this purpose, which meant in effect that part of the purchase price was found in foreign currency, 40 and that the German Government effected a corresponding saving in foreign exchange (page 21, paragraph 18). The proportion of the building costs thus provided is stated (*ibid.*) to have risen from 20 per cent. at first, though I am not informed when or by what stages, to as high as 45 per cent. or 48 per cent., at which rate the loss on the Reichsmarks provided by N.V. became so heavy that the transactions were uneconomic and the policy was discontinued.

When the ship was delivered by the shipyards, N.V. was allowed to export her from Germany for delivery to the eventual buyer against payment outside Germany in guilders or sterling as the case might be. An 50

example is given (page 22, paragraph 19) showing that on a ship sold for £160,000, in respect of which the proportion paid in imported commodities was 30 per cent., the net proceeds in sterling were £97,000.

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- Having regard to a certain vagueness in the details of the "extraction process" as described in Mr. Rykens' affidavit, and more particularly having regard to the distinction drawn between this shipbuilding programme and the building of the "Unitas" (page 26, paragraph 29), a distinction even more emphatically insisted upon in the argument of the Claimants' case, I asked, as I have already said, for further information.
- 10 Although no detailed analysis of the stages of the "extraction process" was given, a point to which I shall be obliged to refer later, I was provided with a list of the contracts for the building of ships for export. From this (although it is stated in paragraph 17 of the affidavit that the programme began at some unspecified date in 1935) I now know that in fact the first contract was placed on the 15th November 1934, and that by the end of 1934 contracts had been placed for two tankers of 14,500 tons each, as well as for five cargo ships of 8,000 tons each and for two trawlers of 475 tons each. I also know that the last contract was placed nearly two years later, on the 31st October 1936. I was also informed by the
- 20 Claimants that taking the rates of exchange prevalent in 1931, the equivalent of £7,500,000 in "blocked marks" was Reichsmarks 120,000,000, and, taking the same rate of exchange throughout, that there remained to be extracted as at the 31st December 1938 only 5,000,000 "blocked marks," which a further statement showed had been reduced by the 31st December 1939 to 3,000,000 marks. *Prima facie*, therefore, it would seem that at the date of the placing of the last contract at the end of October 1936 the "extraction process" had not yet become wholly uneconomic, as it is said (page 22, paragraph 20) eventually to have become. In view of the great importance which, for obvious reasons, the
- 30 Claimants attach to the absence of any connection between the "extraction process" and the circumstances in which the "Unitas" herself was built, one would have expected that they would provide the Court with a detailed statement showing, month by month and contract by contract, the state of progress of the "extraction process." It would have been valuable as showing, periodically, what in terms of sterling or guilders yet remained to be extracted, and, consequently, what inducement there was to avoid any untimely interruption of the benefits of the "extraction process." In the absence of any such detailed analysis it is possible only to draw inferences in general terms.
- 40 This brings me to the building of the "Unitas." The circumstances are described in the concluding paragraphs of Mr. Rykens' affidavit (page 24, paragraph 24 *et seq.*). It appears that about April or May 1935 Dr. Schacht, at all material times Reichsminister of Economy (page 23, paragraph 23), spoke to Mr. Rykens and Mr. Hendriks, both Dutch nationals, respectively the Chairman of N.V. and the principal Dutch member of the Praesidium, with a proposal that N.V. should build a whaling fleet in Germany for operation under the German flag. Mr. Rykens states expressly (page 24, paragraph 24) that he was opposed to this because it was a proposition which could not result in N.V. being able to
- 50 remit money or money's worth from Germany. In other words, it was not part of the "extraction process." The Chairman succeeded in staving off

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this proposal for the time being. He was able to use the argument (page 25, paragraph 25) that the successful operation of such a whaling fleet involved the recruitment of a substantial number of Norwegian officers and seamen, experienced in such work, and that the Norwegian Government were unwilling to allow Norwegian officers and seamen to sail under the German flag.

I pause here to observe that it is manifestly impossible for Mr. Rykens to speak with certainty about the considerations which were passing in the mind of Dr. Schacht or any other member of the German Government; but I find it difficult to draw the inference which I was pressed to draw, that the proposal that N.V. should spend part of their accumulation of "inland marks" from trading profits in Germany on the building of a whaling fleet in Germany, was wholly disconnected in the minds of Dr. Schacht and others with the fact that the German Government had permitted N.V. to undertake the business, hitherto foreign to their trading activities, of building ships for export for the purpose of the "extraction process." However that may be, it appears (page 25, paragraph 26) that at the beginning of 1936 Mr. Rykens and Mr. Hendriks learned that Dr. Schacht, meanwhile, had made a similar proposal to certain German concerns interested in the margarine or soap business, and therefore presumably rivals of N.V., that these two concerns, namely Rau and Henkel, had agreed to build whaling fleets, and that the Norwegian Government's opposition to the recruitment of Norwegian officers and seamen had been overcome. Dr. Schacht then made a fresh approach to N.V. It is not suggested that Dr. Schacht actually used any threats in this connection, but it is stated that in connection with another proposal made in 1935 (page 23, paragraph 23), by Dr. Schacht that N.V. should supply raw materials to the German Government on credit terms instead of for cash as theretofore, certain high officials of the Ministry of Food had openly threatened that unless N.V. agreed to the proposal the production quotas of their subsidiary companies in Germany would be cut. Dr. Schacht and Herr von Ribbentrop had disclaimed all knowledge of such threats, although Mr. Rykens states that he did not accept the truth of these disclaimers. Be that as it may, N.V. had resisted the pressure brought to bear on that occasion and refused "to make any raw materials available to the German Government, on terms which would lead to any increase in Dutch or British investment in Germany" (page 23, paragraph 23).

Reverting to the proposal about the whaling fleet, Mr. Rykens says (page 25, paragraph 26) that it became apparent, though, as I have said, no overt suggestion was made to this effect, that unless N.V. was prepared to participate in the construction of the whaling fleet, consequences such as those indicated might, and probably would, be extremely serious. To quote his own words, he says: "I have no doubt whatsoever that, had N.V. not complied with Dr. Schacht's demands, the production quotas would have been cut still further and other steps adverse to the interests of N.V. taken."

Let me say at once that, in examining, as I shall do later, the extent to which economic pressure was responsible for the decision to participate in the building of the "Unitas" and the rest of the whaling fleet, I do not doubt at all that the German Government were in a position to bring

economic pressure to bear on foreign concerns trading in the country through German subsidiaries, nor that they would hesitate to bring to bear any such pressure as they thought would serve their purpose. But it is not unimportant to consider, in light of the information available, what, apart from the virtual confiscation of N.V.'s German businesses, may be implied in the phrase "other steps adverse to the interests of N.V."

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The schedule giving the list of contracts for the building of ships for the purposes of the "extraction process" shows that by the end of 1935 10 20 contracts had been placed for the construction of 47 ships of a total tonnage of 249,710 tons. From the beginning of 1936 to the 31st October of that year when the last contract was placed, 13 more contracts were placed for the building of 21 ships, no less than 13 of which were tankers of 14,500 tons or more. The total tonnage covered by these last 13 contracts was 213,757 tons. I shall return to this matter later. For the moment, I say no more than that it appears to me to be a reasonable inference that the interruption of the "extraction process" at this point would have been a "step adverse to the interests of N.V."

Before the proposal was accepted in principle, Mr. Rykens was made 20 aware of two other points on which the German Government insisted: (1) That the whaling fleet, when built, should be chartered to a new company to be formed, in which N.V. would have no more than a 50 per cent. interest; and (2) That the fleet should not be transferred from the German flag without the consent of the German Government. Dr. Schacht had refused to agree to N.V.'s proposal that the whaling fleet should be registered under the Dutch flag. Mr. Rykens was also aware that the German Government was prepared to grant a subsidy towards its construction. Again, to quote his own words, Mr. Rykens says (page 25, paragraph 26): "This subsidy it was decided to accept because otherwise 30 the cost of construction in Germany would have been wholly uneconomical." This appears to imply that with the subsidy, the amount of which is given (page 54) as Reichsmarks 2,295,570 as against the gross total of Reichsmarks 9,767,921, both figures being in "inland marks" (page 32, paragraph 7), the proposal was not "wholly uneconomical," but here again no detailed information is vouchsafed, and, as will be seen, the gross figure included a sum of about £7,000 which N.V. were enabled to recoup themselves in sterling.

The proposal having been accepted in principle, the formal contracts were dealt with by Mr. Thomas, a Dutch national, one of the principal 40 Dutch members of the Praesidium, who was in Germany at all material times until he was compelled to leave in 1940. The formal documents relating to the "Unitas" herself appear in the exhibits to his affidavit (pages 33-41 inclusive) beginning with a letter of the 8th May written by Mr. Thomas and another director on behalf of "Verkaufs," the building owners, and ending with a letter of confirmation dated the 27th May, 1936. The formal contract (pages 50-53) was not signed until the 26th January, 1939. Again I observe in passing that at the beginning of May, 1936, there were still unplaced seven contracts involving 12 ships, to be built for the purpose of the "extraction process," of a tonnage of 137,816 tons.

50 It is unnecessary to go through these documents in detail, but there are certain salient features to which I must refer.

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The "Unitas" was to be of 29,000 tons dead weight, and was to be built by shipbuilders at Bremen, with the expectation that the fleet was to be ready for the 1937-38 whaling season (page 33). The subsidy was to be for the same amount as had already been granted to the German rival concerns. The letter of the 8th May (page 33) contains two proposals to which I attach considerable importance. The first was that one of the foreign Unilever companies (page 38, paragraph 9) was prepared to advance amounts of foreign currency which might be required as part of the actual building costs for items supplied from abroad, upon condition that "Verkaufs" were allowed to replace such advances, plus a fair rate of interest, by deliveries of whale oil from the first whaling season at the world market price. In fact, it was admitted that no foreign currency at all was thus required for the actual construction of the vessel, and that the amount required for equipment purchased abroad was accurately estimated (page 39, paragraph 4) not to exceed £7,000. It is, of course, admitted that this sum would be amply covered by the proceeds of the first season's whaling. It follows this programme was undertaken without any risk of losing sterling or guilders, and at a time, as has already been pointed out, when the "extraction process" was still in operation. 10

Next (page 34) "Verkaufs" undertook that their foreign companies were prepared to advance such costs of running the whaling expeditions as had to be paid in foreign currency, which likewise might be recouped by deliveries of whale oil from each year's catch at the world market price. It was also stipulated (page 34) that in general "Verkaufs" should in no way be treated less favourably than their rivals already referred to. 20

In accordance with the arrangement that the whaling fleet should be chartered to a new company, in which "Verkaufs" had not a controlling interest, the "Unitas" company was formed on the 24th September 1937 to carry on whaling, to undertake all business connected with whaling, and to process and utilise all products obtained from whaling (page 56, Article 2). The capital was Reichsmarks 1,000,000 subscribed as to Reichsmarks 486,000 by "Verkaufs" and as to the balance by German interests (page 56, Article 3). Mr. Thomas was one of the directors appointed by "Verkaufs" (page 57). The chairman, J. H. Mohr, was a Hamburg merchant. 30

The charterparty (pages 59-68) is actually dated the 24th February 1938, but shows that in fact the "Unitas" was handed over to the "Unitas" Company immediately she was delivered to "Verkaufs" on the 23rd September 1937, and that the other vessels of the fleet were similarly handed over on the 10th October 1937 (page 59, Article 1 (2)). In this sense, as Mr. Thomas says (page 33, paragraph 10), N.V., through "Verkaufs," parted with the actual possession and control of the fleet, on completion, about two years before war broke out. 40

The charter was for ordinary whaling operations in Antarctic waters, with permission to the charterers to use the fleet temporarily for the transport of soft oils and for storage of soft oils, or to allow a similar use by third parties. They were not, however, permitted to allow the fleet to be used by third parties for whaling purposes.

Article 9 (page 64) provided that the vessels should not be used except for legally permitted voyages, that no voyage should be undertaken 50

that exposed the vessels to danger of confiscation, seizure or capture. By Article 10 areas endangered by war were to be avoided at all costs, and "Verkaufs" were entitled to demand that the vessels be used in a way that precluded any war risk affecting them, and the provisions of Article 9 were made particularly applicable to perilous areas and war risk. The charter for the entire fleet was to end on the 20th September 1940 (page 59, Article 1, paragraph 2).

In the two concluding paragraphs of his affidavit Mr. Rykens contends (page 26, paragraphs 28-29) that the building of the whaling fleet was undertaken involuntarily. He says that although his conferences with Dr. Schacht and Herr von Ribbentrop were conducted in a courteous manner, he was never left in any doubt as to the reality of the threats lying behind their proposals, and that he has no doubt at all that if N.V. had not agreed to the building of the whaling fleet in Germany for operation under the German flag, steps would have been taken to confiscate or render valueless N.V.'s assets in Germany, and to restrict to the minimum any further carrying on of business by N.V. in Germany. He submits that N.V. was forced by the German Government into a position in which they had no alternative but to comply with the German Government's demands. He draws attention to the difference between the circumstances in which the "Unitas" and the whale catchers came to be constructed in Germany, and those in which the ships for export were constructed under the "extraction process." The latter, he admits, were built voluntarily by N.V. as part of a consistent policy of restricting and reducing N.V.'s interests in Germany, but says that the whaling fleet was built "only as the result of the direct pressure by the German Government."

The rival arguments may be summarised shortly as follows: For the Crown it is argued, in the first place, that in the case of a ship the enemy flag is *prima facie* decisive of her enemy character, and that if there be special exceptions to this rule, there is nothing in the facts of this case to warrant the making of an exception. Secondly, that the ship is condemnable as enemy property.

The Claimants, while admitting that the flag under which she sailed is an important consideration, argue that the "Unitas" was placed under the German flag involuntarily and under duress. Secondly, they seek to apply in their favour the principle of *Daimler Company v. Continental Tyre & Rubber Company* ([1916] (2) Appeal Cases, page 307) and assert that "the whole and sole ownership" in the ship "in every real and business sense" was in N.V. (*The "St. Tudno,"* 2 British and Colonial Prize Cases, at page 278).

To this second contention the Crown replies, first, that the allegation of duress is inconsistent with the allegation of "whole and sole ownership in every real and business sense." But, apart from this inconsistency, submits as a matter of principle that the decision in the *Daimler* case is applicable in Prize only in favour of the Crown and not of the Claimants, and that the argument of the Claimants would mean allowing the nationality of shareholders in the Company owning the vessel (and in this case shareholders twice, thrice, or even, as regards N.V., four times removed) to determine her character and ownership. Further, that if the decision in the *Daimler* case is applicable as the Claimants contend, the result

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would be that "Verkaufs" was a house of trade of N.V. in Germany, that the "Unitas" was a concern of that house of trade, and that N.V. on the outbreak of war did nothing whatever to dissociate themselves from that house of trade, or its concerns.

I will deal first with the question of the flag. In Pratt's edition of Story the proposition is thus stated on page 61: "Ships are deemed to belong to the country under whose flag and pass they navigate, and this circumstance is conclusive upon their character." But on page 62 the learned author adds: "When, however, it is said that the flag and pass are conclusive on the character of the ship, the meaning is this; 10 that the party who takes the benefit of them, is himself bound by them; he is not at liberty, when they happen to turn to his disadvantage, to turn round and deny the character which he has worn for his own benefit, and upon the credit of his own oath or solemn declarations; but they do not bind other parties as against him; other parties are at liberty to show that these are spurious credentials, assumed for the purpose of disguising the real character of the vessel."

The "Vigilantia" (1 Christopher Robinson, at page 13) is cited in support of both propositions, and the later passage is taken from the "Fortuna" (1 Dodson, at page 87). In the "Vrouw Elizabeth" 20 (5 Christopher Robinson, page 2) Lord Stowell said at page 4: "I hold the claim to be also against the established rules of law; by which it has been decided that a vessel, sailing under the colours and pass of a nation, is to be considered as clothed with the national character of that country. With goods it may be otherwise, but ships have a peculiar character impressed upon them by the special nature of their documents, and have always been held to the character with which they are so invested, to the exclusion of any claims of interest that persons living in neutral countries may actually have in them." In laying down the rule, Lord Stowell said that there may be cases of such particular circumstances as 30 to raise a reasonable distinction. He instances the case where, because the Governments of France and Holland had refused, in breach of the Treaty of Amiens, to allow British property to be withdrawn from certain islands otherwise than in ships of France and Holland, and on destination to those countries, the British Government had permitted British ships to put themselves under the Dutch flag for this particular purpose; and adds that in such cases the particular situation of affairs arising out of this refusal to execute the Treaty, may have entitled such parties to a relaxation of the general rule (*ibid.*, page 7, and Note (a) thereto). The same principles were applied by Sir Samuel Evans in the first World War 40 (see the "Tommi," 2 British and Colonial Prize Cases, p. 16, and the "Hamborn," 3 British and Colonial Prize Cases, p. 80, at p. 83). In the latter case Sir Samuel Evans stated the rule thus (at page 83): "It is a settled rule of prize law, based on the principles upon which Courts of Prize act, that they will penetrate through and beyond forms and technicalities to the facts and realities. This rule, when applied to questions of the ownership of vessels, means that the Court is not bound to determine the neutral or enemy character of a vessel according to the flag she is flying, or may be entitled to fly, at the time of capture. The owners are bound by the flag which they have chosen to adopt, but captors as against them 50 are not so bound." He then cites the passage from Story already

referred to. The criticism of this passage on appeal (*ibid.*, at p. 381) when Sir Samuel Evans' Judgment was affirmed by the Privy Council, does not affect the validity of the principle, but only its applicability to the facts of the particular case.

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The only two exceptions to which my attention has been drawn are the cases of the "*Palme*" and the "*Taxiarchis*," both referred to in "*Wheaton*," 7th Edition, at pages 152 and 153. These were both cases of vessels whose country had no maritime flag, a particular circumstance which bears no resemblance to the present case. With regard to such
10 cases, however, the learned Editor of "*Wheaton*," Professor Keith, says that it is not at all clear that even in such a case as this English law would have deviated from its rule that the flag is decisive against the owners, and the learned Editor of the 6th Edition of Oppenheim's International Law (Vol. II, p. 223) says that the circumstance that the vessel was compelled to fly the flag of a maritime state would make no difference to the general rule.

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Admittedly the case of alleged duress has never arisen as a "particular circumstance to raise a reasonable distinction." It is manifestly unnecessary to consider whether the handing over of a ship to be sailed
20 under an enemy flag by reason of duress to the person of the true owner would be a particular circumstance, because nothing of the sort is alleged to have occurred. What is asserted is that the building of the "*Unitas*" as a German ship was brought about by duress of goods under the threat, unexpressed but by no means imaginary, of the confiscation of N.V.'s German property. In support of this contention, the decision of the Court of Appeal in *Maskell v. Horner* ([1915] (3) King's Bench Division, p. 106) was relied on; *per* Lord Reading, Lord Chief Justice, at p. 118, citing *Atlee v. Backhouse* (3 Meeson and Welsby, p. 633); and it was
30 argued that the same principle should be applied in Prize. But that was a case of payment of money under duress of goods; this is a case of making a series of contracts; and it is well settled in English law that duress of goods, as distinct from duress of person, does not avail to avoid a contract (see Bullen and Leake, 3rd Edition (1868), p. 49).

In *Oates v. Hudson* (6 Exchequer, p. 346) at p. 348, Baron Parke says: "In *Atlee v. Backhouse* (3 Meeson and Welsby, p. 633) it is correctly laid down that, in order to avoid a contract by reason of duress, it must be duress of a man's person, not of his goods; but that where a sum of money is paid simply to obtain possession of goods which are wrongfully detained, that may be recovered back, for it is not a voluntary payment."

40 Even assuming, however, that duress of goods would suffice in Prize Law as distinct from municipal law, I will examine first the arrangements for the construction of the "*Unitas*" by themselves. It is said that there was nothing to be gained by N.V., but I would observe that it was their deliberate policy, with a view to restricting the accumulation of "inland marks," to invest them through their subsidiaries in the purchase of German businesses (page 21, paragraph 16; and as to the control of policy, p. 19, paragraph 12). Regarded solely as an investment of "inland marks" in a German business, I have been given no reason to suppose that the building of a whaling fleet was not a sound business proposition.
50 One fact which admittedly had some influence with N.V. was that their trade rivals, presumably because it was to their advantage to do so, had

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undertaken to build whaling fleets. Moreover, save for the equipment to be paid for in sterling, for which, as has already been stated, they could very easily recoup themselves in sterling, only "inland marks" were to be employed in the construction.

I have not been informed whether the fleet was in fact completed in time for the 1937-38 season, a point upon which the German Government laid great stress and for which they offered every facility; and therefore whether there were two seasons, or only one, with, perhaps, part of another, before the outbreak of war made whaling in the Antarctic impossible. Nor have I had any evidence whatever to suggest that the whaling 10 operations were anything but satisfactory and profitable.

Seeing that almost the whole of the cost of building the "Unitas" was provided out of "inland marks," that the German Government contributed a subsidy of 30 per cent. and (page 34) that it was stipulated that in general "Verkaufs" were not to be treated any less favourably than the whaling companies founded by their rivals, either as regards the carrying out of operations or the utilisation of the profits obtained, and there is no evidence that these conditions were not faithfully observed in peace-time, it does not seem to me that there was anything inherently unreasonable in the German Government requiring that the ship should 20 be a German ship, that she should be chartered to a German company in which German nationals held a controlling interest, and that the whaling fleet should not be sold or chartered outside Germany (page 39) without the Ministry's consent. Even if the project is to be considered on its own merits, I am far from convinced that it bore signs of being concluded under duress.

But I am unable to accept the submission that it is to be treated in isolation, or that, as Mr. Rykens asserts on page 26, paragraph 29, the fleet was built "only as the result of direct pressure by the German Government." On the contrary, it seems to me that the decision to 30 accept the proposals of the German Government must have had a close connection with the "extraction process." In one sense, of course, they were essentially different projects, in that the one did, while the other could not, result in the extraction of "blocked marks" from Germany (page 26, paragraph 29). But, as I have already shown, at the beginning of 1936 when the project of building a whaling fleet became the subject of serious consideration, the building of ships under the "extraction process" was very far from complete.

Having regard to the proportion of tonnage for which contracts were yet to be placed, namely, 213,757 tons, out of a total tonnage of 463,467 40 tons, it seems to me to be a reasonably plain inference that a large part of the £7,500,000 yet remained to be extracted, and the fact that it is admitted that 2,000,000 "blocked marks" were extracted between the 31st December, 1938, and the 31st December, 1939, which presumably must have occurred during the eight months before the outbreak of war, appears to show that the "extraction process" never wholly ceased to be effective. It was argued that I had no right to draw any such inference because other methods of extracting the "blocked marks" might be in operation. I offered the Claimants the opportunity of proving that any other effective method was in operation, but the offer was declined. 50

I do not hesitate, therefore, to draw the inference that early in 1936 the advantage of continuing the "extraction process" without interruption must have been in the mind of those directing the policy of N.V., and that the risk of this benefit being withdrawn cannot fail to have been a potent inducement to accept the proposal of building the whaling fleet. Putting it at its very lowest, the Claimants have provided no evidence which satisfies me that this was not the case. In my view, there is no particular circumstance which takes this case out of the general rule that the enemy character of the ship is determined by her flag.

- 10 Mr Rykens complains (page 20, paragraph 15) that from the first introduction in 1931 of restrictive financial legislation the freedom of N.V. to exercise unfettered control over its businesses in Germany was seriously jeopardised. But traders, whether in foreign countries or in their own, are subject to the restrictive financial legislation of the country in which they trade; nor is there anything novel in the idea of some measure of discrimination in favour of native as against foreign traders, or in the attempt to overcome such difficulties by setting up an organisation in accordance with the municipal law of the country concerned. I do not doubt that with the coming of a totalitarian regime in Germany, trading conditions became
- 20 more precarious for foreigners carrying on business there, nor, as I have already said, that the German Government would hesitate to bring any such pressure to bear as they thought would serve their purpose. But when it is insisted that this is a case of extreme hardship, I feel obliged to say that I am not concerned with that, but with the strict administration of the law of Prize.

- Hardship is a matter for the bounty of the Crown. But, after all, it is quite clear from the evidence that after the advent of the Nazi regime N.V., so far from curtailing their trade in Germany, were expanding it by investing their accumulated profits in "inland marks" in what are described as "comparatively safer investments" in Germany. Presumably
- 30 they did so because they thought it was the best policy for themselves, and incidentally for their British associates who were equally interested, so to do. This policy still prevailed in 1936 (page 21, paragraphs 16-17). In that year they were, as has been seen, still engaged in the "extraction process," a scheme which, while it was of considerable advantage to N.V., was also saving the German Government foreign exchange (page 21, paragraph 18). If, therefore, the desire to continue this process provided, as I infer that it did, some part at least of the inducement to participate in the German Government's whaling schemes, which would not only
- 40 provide that Government with a whaling fleet without the expenditure of foreign currency, but would necessarily result in augmenting the provision of substitutes for the butter which they were openly proclaiming to the world was, figuratively speaking, being turned into guns, it is hardly a matter for surprise that the Crown should insist on its strict rights when the fortunes of war brought about the capture of this ship in a German port. But however that may be, I am prepared to decide this case on the basis that the flag is decisive of her enemy character. In the "*Endraught*" (1 Christopher Robinson, p. 19), one of the group of cases governed by the "*Vigilantia*" (*supra*), Lord Stowell said: "If the Claimant, from views
- 50 of interest, chose to engage himself in the trade of a belligerent nation, he must be content to bear all the consequences of such a speculation." That sentence seems to me to apply to this case.

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Nevertheless, out of deference to the argument upon the other points raised, I will express my opinion about them.

As regards the principle of the *Daimler* case, it was argued that this must be applicable in favour of the Claimants because otherwise the "Unitas" could have been condemned in a German Prize Court after the German conquest of Holland, on the ground that in every real and business sense the whole and sole ownership of the vessel was Dutch (*The "St. Tudno"*, *supra*), while at the same time the Crown seeks to obtain condemnation in a British Prize Court.

To this curious argument there seem to me to be two answers: first, 10 that the German Government, having taken every precaution to ensure that the "Unitas" was owned, registered and managed in Germany, and that no change should be made in this respect without their express consent, could have no object in bringing her before a German Prize Court, nor is there the slightest suggestion that they did so. On the contrary, the evidence is that she was treated during the war as a German ship (see the supplementary Agreement dated the 21st October, 1941, and the letter relating thereto, pages 72-80). It is true that on the 5th July, 1941, a Reich Commissioner for the management and control of N.V. was appointed, but this does not affect the point. Secondly, if 20 the "Unitas" had been duly condemned by a German Prize Court, her status would thereby have been determined in face of the world. Therefore, if she subsequently came before a British Prize Court her case would fall to be dealt with not in spite of, but in light of, the fact that she had already been condemned to the German Government by a Court of competent jurisdiction.

In my opinion, there is no authority for applying the principle of the *Daimler* case in favour of Claimants in Prize, though it is clearly applicable in favour of the Crown (*The "Glenroy"*, 1945 Appeal Cases, at p. 137). Moreover, it seems to me that it would be contrary to settled 30 principle to do so. The allegation that the "whole and sole ownership" of the "Unitas" resides in N.V. depends upon the fact that N.V. indirectly hold all the shares in "Verkaufs." In my opinion this claim is untenable.

In the "*Primus*" (1 Spinks E. & A., p. 204) Dr. Lushington, during the Crimean War, said that not only the authority of Lord Stowell, but every argument he used go the whole length of saying that whoever embarks his property in shares of a ship, is bound by the character of that ship, whatever it happen to be. If he reap the benefit accruing in peace, he must also take the consequence of war.

In the "*Pedro*" (1889, 175 United States Reports, at page 376) 40 Chief Justice Fuller, delivering the judgment of the majority of the court, says: "It was argued that the '*Pedro*' was not liable to capture and condemnation because British subjects were the legal owners of some, and the equitable owners of the rest, of the stock of La Compania La Flecha, and because the vessel was insured against risks of war by British underwriters. But the '*Pedro*' was owned by a corporation incorporated under the laws of Spain; had a Spanish registry; was sailing under a Spanish flag and a Spanish licence; and was officered and manned by Spaniards. Nothing is better settled than that she must, under such circumstances, be deemed to be a Spanish ship and be dealt with accordingly. Story 50

on Prize Courts (Pratt's Edition), pages 60, 66 and cases cited. *The 'Freundschaft,'* 4 Wheaton, p. 105; *The 'Ariadne,'* 2 Wheaton, p. 143; *The 'Cheshire,'* 3 Wallace, p. 231. Hall on International Law, paragraph 169."

Moreover, this principle was recognised by Sir Samuel Evans in the "*Marie Glaeser*" (1 British and Colonial Prize Cases, p. 39 at p. 45). It was suggested in the course of the argument that the word "shareholders" was used in that case to describe the part-owners of the vessel. I have now seen the record and it is clear that the claim was made on behalf of shareholders in the Company owning the vessel. The confusion may have arisen from the fact that, as the share certificate of one of the Claimants shows, the limited liability company owning the ship was named after her (see also the British Year Book of International Law, 1927, p. 164 to the same effect).

As I do not find that duress is proved, I need not deal with the argument that it is inconsistent with the allegation that the whole and sole ownership resided in N.V.

That brings me to the last point, the position of "Verkaufs" as a house of trade. The principle is stated in Story, p. 61, as follows: "So if the agency" (that is, an agent stationed in a belligerent country) "carry on a trade from the hostile country which is not clearly neutral, and if a person be a partner in a house of trade in an enemy's country, he is, as to the concerns and trade of that house, deemed an enemy; and his share is liable to confiscation as such, notwithstanding his own residence is in a neutral country; for the domicile of the house is considered in this respect as the domicile of the partners."

But a neutral having such a commercial domicile in a country which becomes an enemy is, on the outbreak of war, according to the views held by British Courts, allowed a reasonable interval during which he can discontinue or dissociate himself from the business in question. (*The "Anglo Mexican,"* 1918 Appeal Cases, at p. 425). See also the "*Glenroy*" (1945 Appeal Cases at p. 141), where Lord Porter, delivering the opinion of the Privy Council, says: "In a sense it is a hardship, but the neutral is given a *locus poenitentiae* if he withdraws from the business carried on in the enemy country, and he may well be called on to elect not to continue to assist the trade of the enemy as the price of rescuing his goods from condemnation."

It is argued that there was nothing that N.V. could do, and that Prize Law, like English Law, does not compel the doing of the impossible. Reliance is placed on the fact that all the German directors resigned from N.V. after the outbreak of war between Germany and this country. So apparently did the British directors; at any rate, the Chairman did so (see Mr. Rykens' affidavit, p. 16, paragraph 1). Admittedly N.V. could do nothing after the invasion of Holland, but it is clear that during the time when Holland was neutral Mr. Thomas, a principal member of the Praesidium, was still in Germany (page 30, paragraph 1). But although he has sworn an affidavit in support of this claim, there is not the slightest suggestion that he, or anyone else on behalf of N.V., did anything to dissociate N.V. from the activities of their subsidiaries in Germany, even, for instance, by insisting on a strict compliance with Articles 9 and 10 of the charter-party quoted above. During the war it is true that on the 26th October 1943 the British Company wrote a letter to the Ministry of

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War Transport claiming that this whaling fleet, and another with which I am not concerned, were not German owned and should not be considered as available for reparations. But that does not seem to me to affect the point that at the time when N.V. were still neutral they did nothing to dissociate their organisation in Germany from the taint of enemy character, or to make plain to the British Government where they stood.

For these reasons this claim, in my opinion, fails, and the "Unitas" should be decreed to be good and lawful Prize, and I give Judgment accordingly.

Sir WILLIAM McNAIR : Your Lordship's Judgment will obviously 10 require very careful consideration by my clients in Holland, and, in those circumstances, there are two matters I should like to put before your Lordship. Firstly, to make a formal application for admission of an appeal as of right, under the order.

The PRESIDENT : There is no doubt about that ; the only question is the terms, of course.

Sir WILLIAM McNAIR : Yes, my Lord.

Mr. HOGG : There is, of course, an appeal as of right, but I think, in the circumstances, my friend is bound to offer security.

The PRESIDENT : The two matters for discussion are the security 20 and the time within which to lodge.

Sir WILLIAM McNAIR : The record for the Privy Council would be comparatively light. It would only be the agreed bundle of correspondence, and I suggest a modest sum as security.

The PRESIDENT : What do you mean by " a modest sum " ?

Sir WILLIAM McNAIR : I think the sum usually ordered is £250 or £300, and I suggest that that would be appropriate in this case.

The PRESIDENT : It usually ranges between £300 and £500. There is a good deal of money at stake. I expect the costs of the preparation of the record will not be very large. Five copies have got to be obtained. 30

Mr. HOGG : I am instructed to ask for £500. It is a very substantial matter and, of course, the record is only part of the expense.

The PRESIDENT : I should not think we need spend much time on the question of whether Unilever can afford £500.

Sir WILLIAM McNAIR : If your Lordship thinks £500 is right, I say no more.

The PRESIDENT : What about the time ?—three months is the usual time.

Mr. HOGG : Three months is agreeable to the Crown.

Sir WILLIAM McNAIR : Yes, I agree. Under Order 44, Rule 4, 40 your Lordship has power to direct that the execution of this order for condemnation be suspended pending the appeal. On that I should just mention this. This vessel, the "Unitas," has been requisitioned out of the Prize Court by the Ministry of Transport, and, whilst under that

requisition, has been sold to the Union Whaling Company for the sum of £1,000,000, subject to the property not passing until a Decree of Condemnation is made. I submit, my Lord, that in those circumstances the operation of the Decree of Condemnation should be suspended pending the appeal.

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The PRESIDENT: In the circumstances that sounds reasonable, does it not, because if one does not suspend it the property would pass, which is not what is intended?

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Mr. HOGG: Whether reasonable or not, I do not object, my Lord.

10 Sir WILLIAM McNAIR: If your Lordship pleases.

The PRESIDENT: Have you any application, Mr. Hogg?

Mr. HOGG: No, my Lord.

The PRESIDENT: Nothing has been said about costs.

Mr. HOGG: I am not instructed to ask for costs.

The PRESIDENT: Very well.

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DECREE.

Before—

THE RIGHT HONOURABLE THE PRESIDENT.

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20 s.s. "UNITAS" AND CARGO.

20th February, 1948.

The President having heard Counsel for the Crown and Counsel for Lever Brothers & Unilever N.V., of Rotterdam, Holland, as parties interested in the s.s. "Unitas" and for Marga Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V., of Rotterdam, Holland, and Saponia Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V. of Rotterdam, Holland, as parties interested in and as beneficial Owners of the s.s. "Unitas," on the 2nd, 3rd, 4th and 5th February 1948, after mature deliberation pronounced
30 the steamship "Unitas" to have belonged at the time of capture and seizure thereof to enemies of the Crown and as such or otherwise liable to confiscation, and condemned the same as good and lawful Prize, and dismissed the Claim of Lever Brothers & Unilever N.V., or alternatively the Claim of Marga Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V., and Saponia Maatschappij tot Beheer van Aandeelen in Industrieele Ondernemingen N.V. of Rotterdam, Holland, and on the application of the aforesaid Claimants to admit an appeal to the Privy Council, the President admitted an appeal subject to the Claimants paying
40 such security to be lodged within a period of three months from the date of the Decree, and further directed that the execution of the Decree be suspended pending the Appeal.

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No. 23.

RECEIPT for payment into Court of £500, dated 14th May 1948.

[*Not printed.*]

No. 24.
Registrar's
Certificate.

No. 24.

REGISTRAR'S CERTIFICATE.

I Lionel Frank Christopher Darby, Registrar of the Admiralty Division of the High Court of Justice, In Prize, Hereby Certify that the foregoing pages 1 to 108 and page 109 contain a true and exact copy of all the evidence, proceedings and orders made or had in the suit in so far as the same have relation to the matter of the Appeal of Lever Brothers & Unilever N.V., "Marga" Maatschappij Tot Beheer Van Aandeelen In Industriele Ondernemingen and "Saponia" Maatschappij Tot Beheer Van Aandeelen In Industriele Ondernemingen, together with a true copy of the Judgment of the Right Honourable Lord Merriman The President.

In faith and testimony whereof I have to this sheet affixed the Seal of the said Admiralty Division of the High Court of Justice In Prize.

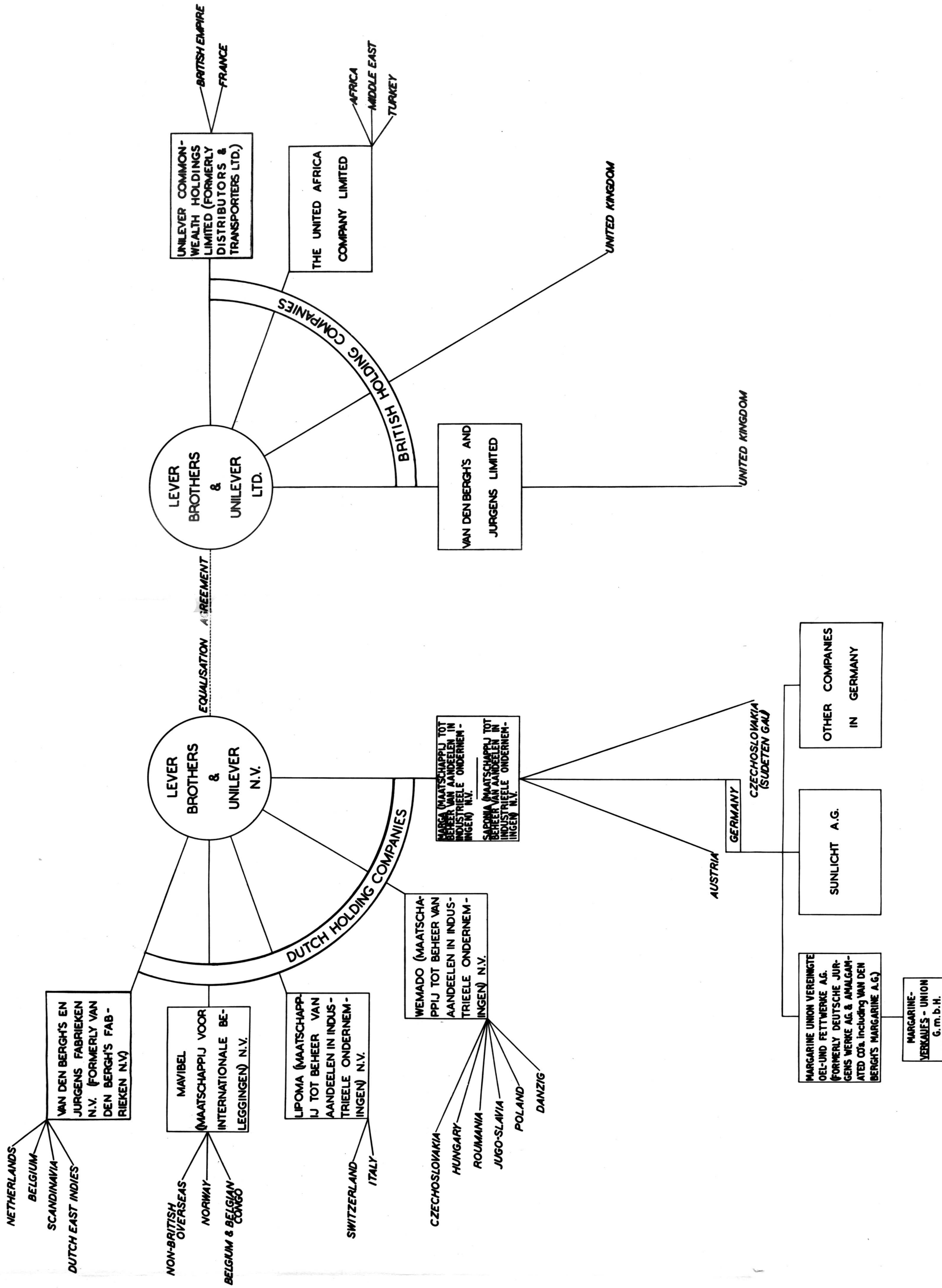
Dated this 15th day of February 1949.

(Seal)

L. F. C. DARBY,
Registrar.

Diagram of the Unilever Organisation with Particular Reference to the German Structure

1942 - 1947



In the Privy Council.

ON APPEAL
FROM THE HIGH COURT OF JUSTICE, PROBATE, DIVORCE AND
ADMIRALTY DIVISION.
(IN PRIZE.)

BETWEEN

LEVER BROTHERS & UNILEVER N.V., "MARGA"
MAATSCHAPPIJ TOT BEHEER VAN AANDEELEN IN
INDUSTRIEELLE ONDERNEMINGEN N.V. AND "SAPONIA"
MAATSCHAPPIJ TOT BEHEER VAN AANDEELEN IN
INDUSTRIEELLE ONDERNEMINGEN N.V. - - - *Appellants*

AND

H.M. PROCURATOR GENERAL - - - - - *Respondent.*

S.S. "UNITAS" AND CARGO.

RECORD OF PROCEEDINGS.

SIMPSON, NORTH, HARLEY & CO.,
18-20 YORK BUILDINGS,
ADELPHI, LONDON, W.C.2,
Solicitors for the Appellants.

THE TREASURY SOLICITOR,
STOREY'S GATE,
LONDON, S.W.1,
Solicitor for the Respondent.