Privy Council Appeal No. 24 of 1917.

In the Matter of Cargo *ex* Steamship "Consul Corfitzon."

Per Palen, trading as Nettraby Laderfabrik - *Appellant,*

v.

His Majesty's Procurator-General - - - *Respondent,*

FROM

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST JUNE, 1917.

Present at the Hearing:

LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD PARKER OF WADDINGTON.]

This is an appeal from an order made by the President on the 24th October, 1916, requiring the appellant to make discovery on oath of all books of account, letter books, and usual commercial documents relating to the matters in question in the litigation, including the books, contracts, policies of insurance cables and correspondence in the order particularly referred to. The appellant contends that this order ought to be discharged or varied, (1) because there was no jurisdiction to make it, (2) because it was wrong in law, and (3) because it was in the circumstances of the case oppressive, and as a matter of discretion ought not to have been made.

There can be no doubt that under Ord. IX, R. 1 of the Prize Court Rules, the President sitting in Prize has power to make an order for the discovery of documents relating to the matters in question, either generally or limited to certain classes of documents to be specified in the order. In the present case the discovery is limited to books of account, letter books, and usual commercial documents, and so far the order is not complained of. It is contended, however, that the order ought to have stopped at this point,

and that in further particularising the documents of which discovery was to be made, the President exceeded his powers under Ord. IX, R. 1. He ought, it was said, to have left it to the judgment or conscience of the person against whom the order was made to decide what documents ought and what need not be included.

In their Lordships' opinion this contention cannot be upheld. It is by no means easy for a litigant, however sound his judgment and however scrupulous his conscience, to come to a correct conclusion as to what documents do or do not relate to the matters in question within the meaning of the rule. The principle applicable was laid down in *Compagnie Financière du Pacifique* v. *Peruvian Guano Co.*, 11 Q.B.D., at p. 63—

> "every document" [said Lord Justice Brett] "relates to the matters in question in the action which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which *may*—not which *must*—either directly or indirectly, enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words 'either directly or indirectly' because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of enquiry which may have either of these two consequences."

But even if this principle be borne in mind, there is such ample room for error in its application that it is, in their Lordships' opinion, not only permissible, but in many cases highly convenient, that the Judge who makes the order should indicate as far as may be the kind of document of which he contemplates that discovery shall be made. The objection to jurisdiction therefore fails.

The second objection to the President's order is that he has specified among the documents of which discovery is to be made documents which cannot by any possibility relate to the matters in question in the litigation. Before considering this objection it is necessary to see what these matters are.

The proceedings in which the appeal arises are proceedings on behalf of the Crown for condemnation as contraband of war of about 2,843 tons of salted hides, 3,550 tons of quebracho logs, and 201 tons of quebracho extract shipped on board the Swedish steamship "Consul Corfitzon," from South American ports to Karlskrona, and consigned to the appellant. There is an alternative claim under the Order in Council of the 11th March, 1915, which is immaterial for the purposes of this appeal.

The goods having been shipped on a neutral vessel, and ostensibly destined for a neutral port, can only be contraband of war if, on the principle of continuous voyage, and according to the real intention of the parties concerned in the transaction, they had a further or ultimate destination in an

enemy country. Intention is rarely the subject of direct evidence. As a rule it has to be inferred from surrounding circumstances, and every circumstance which could, either alone or in connection with other circumstances, give rise to an inference as to the intention of the parties concerned in a transaction, both relates and is relevant to the question what that intention really was.

In the present case one of the matters in question is how the appellant intended to dispose of the goods to which these proceedings relate after their delivery at Karlskrona. Were they intended by him for consumption in Sweden, or had they a further destination, and if so in what country? It appears to their Lordships to be beyond dispute that inferences on this question might properly be drawn from the course and nature of the appellant's business in goods of a similar nature both before and after the outbreak of the present war, and in particular from the volume of his trade with Germany before and since such outbreak. All documents which throw light on these matters must therefore fall within the principle laid down in the case above referred to. The order for discovery being limited to documents which may throw light on the nature and course of the appellant's business and the volume of his trade with Germany for some months before the war and since the outbreak of the war, it is in their Lordships' opinion impossible to hold that the order was wrong in law.

The objection that the order appealed from is oppressive is, in their Lordships' opinion, equally untenable. No doubt in interlocutory matters, such as discovery of documents, the Judge in Prize has a wide discretion which ought, of course, to be exercised so as not to impose upon neutrals any unnecessary difficulty in the speedy establishment of their claims. But, on the other hand, it would be wrong to subordinate the interests of the Crown to the mere convenience of adverse claimants. Considering the nature of the matters in issue in these proceedings, a refusal of the discovery ordered might deprive the Crown of all means of proving that the goods in question were contraband of war. On the other hand the discovery ordered is so limited that it cannot involve the appellant in any great trouble or expense. It must be remembered that full and complete discovery by the claimant may be the best and readiest mode of establishing his own case if it be a good one. At any rate their Lordships do not see their way to interfere with the President's discretion, which appears to have been exercised after full discussion, and in view of his wide experience in cases of this nature.

Considerable stress was laid in argument on the provisions of the Swedish War Trade Law of the 17th April, 1916, a translation of which is contained in the supplemental record. It was said that the appellant if he complied with the order appealed from would, or might, render himself liable to penalties under Article 3 of this law. Their Lordships can

hardly suppose that Article 3 was intended to hamper Swedish subjects in asserting their rights in British Prize Courts. Indeed, the concluding clause of the article seems to authorise everything necessary for the assertion of such rights, and further it would appear to be possible for the appellant, if he feels any difficulty in this respect, to obtain the consent of his Government to complying with the order appealed from. But however this may be, their Lordships are clearly of opinion that a Court of Prize cannot properly be deterred from making what it conceives to be the appropriate order because a neutral claimant would, if he obeyed the order, be guilty of a breach of his own municipal law. The substantive law administered by the Court is international law, which cannot be affected by the municipal legislation of any one State, and its practice and procedure is governed by the municipal law of the State from which it derives its jurisdiction, and cannot be modified by the municipal legislation of any other State.

Their Lordships will humbly advise His Majesty that this appeal fails, and should be dismissed with costs, including the costs of the petition for the admission of the supplemental record.

In the Privy Council.

In the Matter of

CARGO *EX* STEAMSHIP "CONSUL CORFITZON."

PER PALEN

(trading as Nettraby Laderfabrik)

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY

LORD PARKER OF WADDINGTON.

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1917.