Privy Council Appeal No. 96 of 1917.

In the matter of Part Cargo *ex* Steamship "Baron Stjernblad."

Aktiebolaget Forende Chokladfabrikerne - *Appellants,*

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 22ND NOVEMBER, 1917.

Present at the Hearing:

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

[*Delivered by* LORD PARKER OF WADDINGTON.]

On the 18th April, 1916, His Majesty's officer of Customs at the port of North Shields seized as prize 3,000 bags of cocoa beans on board the Danish steamship "Baron Stjernblad," the ground of seizure being that the goods were contraband of war.

It is not disputed that cocoa beans are contraband, but by the bills of lading the 3,000 bags in question were deliverable to the appellants at Gothenburg, a neutral port, and the only question, therefore, was whether, beyond their ostensible destination at Gothenburg, they had a further or ultimate destination in an enemy country. The President decided on the evidence that they had not, and ordered their release to the appellants, but he refused to allow the appellants any damages or costs, and the present appeal is from this refusal.

The law on the subject is reasonably certain. It is clearly stated in the letter of Sir William Scott and Sir John Nicholl,

printed pp. 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," 9 Moore, P.C. 150. If there were no circumstance 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. If, on the other hand, there were suspicious circumstances justifying the seizure, the claimant is not entitled to either costs or 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.

Some stress was laid by counsel for the appellants on the examples given by Sir William Scott and Sir John Nicholl in the letter above referred to of the circumstances under which seizure would be justified. All of them no doubt relate to suspicion arising either on the ship's papers or by reason of something done or omitted on the part of the master or crew. Their Lordships do not think that the writers of the letter intended their list of examples to be exhaustive, and it must be remembered that they wrote before the doctrine of continuous voyage had been applied either to contraband or to blockade. It is clear that the ultimate as opposed to the ostensible destination of goods would seldom, if ever, appear on the ship's papers or be within the knowledge of the master or crew. It would have to be proved or inferred from other sources, and it could hardly be contended that if the Crown were in possession of evidence obtained from such other sources from which an ultimate destination in an enemy country could be inferred as reasonably probable, the seizure of the goods would not be justified.

The appellants further contended that in considering whether there were circumstances of suspicion which justified the seizure the Court must confine its attention to those circumstances for which the owner of the property seized is in some way responsible, and cannot take into consideration circumstances the existence of which is not due to any act or omission on the part of such owner or his agents or employees. Before considering this contention their Lordships think it better to state shortly the several facts on which the Crown relies as raising a reasonable suspicion that the 3,000 bags in question had an ultimate destination in Germany.

Cocoa and chocolate are important foodstuffs. Both are

manufactured from cocoa-powder, itself the product of the cocoa-bean. In manufacturing cocoa-powder cocoa-fat is also produced, and from cocoa-fat glycerine is easily made, and this can be readily converted into nitro-glycerine, an essential ingredient in many high explosives. Thus 100 tons of cocoa-beans give about 60 tons of cocoa-powder and 25 tons of cocoa-fat, which last will yield 2½ tons of glycerine, and 2½ tons of glycerine can be converted into 6 tons of nitro-glycerine.

Prior to the war Germany was importing annually about 55,000 tons of cocoa-beans—this was approximately one-quarter of the world's annual production. The outbreak of war cut her off from nearly 85 per cent. of her supply. The result was serious. In spite of the measures taken by the German Government to obtain supplies from other sources, to secure economy and to regulate distribution, prices rose rapidly until by March 1916 the price of cocoa in Berlin was eight or nine times its price in London. Under these circumstances there was every inducement to neutrals, and in particular to the neighbouring Scandinavian countries, to develop an export trade in cocoa-beans or their products to the German Empire.

Turning now to Sweden, their Lordships find that prior to the war the imports of cocoa-beans into Sweden were between 1,600 and 1,700 tons only annually. There was no re-export trade to Germany. Since the outbreak of hostilities imports of cocoa-beans into Sweden have increased tenfold, and a re-export trade to Germany has been developed. During the first year of the war such re-export trade amounted to over 1,200 tons, it being the regular practice to ship cocoa-beans to Gothenburg in Danish steamers and to reship them thence to Germany. Besides this the imports of cocoa into Sweden have since the outbreak of the war largely increased, and there has developed a considerable export trade from Sweden to Germany in cocoa powder, cocoa, chocolate, and cocoa-fat, an export trade which was non-existent before the war. The fact that before the war Sweden imported cocoa and chocolate from Germany, and since the war has been unable to do so, has little bearing on the inference suggested by the circumstances to which their Lordships have referred.

The position is therefore this. If the shipments of cocoa-beans to Sweden be considered collectively, a considerable portion thereof must be destined for or find its way into Germany, either by the re-export to Germany of the beans themselves or by the export to Germany of the various products of the beans. It must be remembered that in the "Balto," 1917, P., p. 79, it was decided that an intention to export to an enemy country the manufactured products of imported raw material might bring a case within the doctrine of continuous voyage. The decision is not binding on this Board, but the appellants' counsel did not ask their Lordships to review it or question its validity in law. The appellants thus belong to a class of importers, some of whom must be engaged in a con-

traband trade, while others may not. It is impossible in any particular case to avoid suspicion or to predicate with regard to any particular importer that his intention is innocent.

But the matter does not stop there. It is not improbable that in the case of a reputable Swedish merchant, His Majesty's Procurator-General might accept his assurance or guarantee that neither the beans in question nor their products were intended for export to Germany, but would be consumed in Sweden. But here unfortunately a difficulty is raised by the Swedish War Trade Law of April, 1916. According to such law it is unlawful for a Swedish subject to give any such assurance or guarantee without the consent of the Swedish Executive, and such Executive refuses to allow Swedish subjects to give any such assurance or guarantee with regard to the products of imported raw material. This law, or at any rate the way in which it is administered, has already on several occasions proved prejudicial to the proper determination in the Prize Court, according to international law, of questions arising between the Crown and Swedish subjects. Only the other day the President struck out a claim on the ground that the claimant, a Swedish subject, refused, under order of his Government, to give the discovery which had been ordered by the Prize Court, and their Lordships' Board felt unable to advise His Majesty to give leave to appeal from the President's decision. It is quite impossible for a Prize Court administering international law to accept the dictates of any municipal law as to what discovery ought or ought not to be insisted on either generally or in any particular case. The Prize Court can, however, protect itself, but this is not so with the Swedish subject. He is in a dilemma. Either he must act in contempt of the order of the Prize Court and so lose his case, which may be a perfectly good one, or he must prove his case to the Prize Court, and in so doing incur penalties under his own municipal law. The position is anomalous, but the anomaly is certainly not due to any defect in the practice of the Prize Court or in the law which it administers.

It appears that the assurance or guarantee given by the appellants prior to the seizure of the goods in question went only to the consumption in Sweden of the raw material, and said nothing about its products. It was only in the course of the subsequent proceedings before the Prize Court, when one of the directors of the appellant firm was examined orally, that evidence was adduced on this point, and this evidence, though accepted by the President as satisfactory, was not, in their Lordships' opinion, so conclusive as to make it unreasonable for the Crown to bring the case to trial. For example, it does not appear how the appellants dispose of the cocoa-fat produced in the manufacture of cocoa or chocolate from the cocoa-beans.

Their Lordships therefore conclude that, looking at all the known facts from the common-sense point of view, there were circumstances of suspicion calling for further enquiry, and amply

sufficient to justify the seizure, so that the only remaining question on this part of the case is whether the appellants are right in their contention that these facts, or some of them, ought to have been disregarded altogether, because their existence was not due to any action or omission for which the appellants could be held responsible.

Their Lordships are of opinion that this contention is wholly untenable. The question in every case is whether circumstances of suspicion exist, and not who is responsible for their existence. Thus the fact that documents are destroyed when search is imminent is a suspicious circumstance irrespective of the person responsible for such destruction, and whether this person acted on the instructions or in the presumed interest of the cargo-owners or otherwise. Indeed, in the present case the question how far the appellants were responsible for the growth of the export trade from Sweden to Germany in cocoa-beans or their products was precisely one of the questions requiring investigation, and would be of the utmost materiality in determining the ultimate destination of the goods in question. If responsibility has anything to do with it, it would seem that the appellants were responsible for the absence of any assurance or guarantee as to the products of the goods, although their omission in this respect was due to observance of their own municipal law, and further, a neutral cargo-owner would appear to be quite as responsible for the actions of his own Government as he is for the action of the master or crew of the vessel on which the cargo is shipped.

There are two further points which require notice. It was contended that at any rate after the 4th August, 1916, the date when the oral evidence above referred to was taken, the Crown ought to have consented to a release of the goods. In their Lordships' opinion the Crown was amply justified in bringing the matter to trial. It was also urged that the Crown had improperly delayed the trial. Their Lordships see no evidence of this. The trial took place on the 27th November, 1916, the seizure having been made on the 16th April, 1916. This does not appear an unreasonable interval, having regard to the heavy work of the Prize Court and the importance of the questions at issue. In any case, questions as to delay are eminently a matter for the President to deal with, and their Lordships could only interfere with his decision in very exceptional cases.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

Privy Council.

In the matter of
PART CARGO *EX* STEAMSHIP "BARON STJERNBLAD."

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY
LORD PARKER OF WADDINGTON.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1917.