

*Privy Council Appeal No. 108 of 1916.*

*In the matter of part cargo ex steamship "Derfflinger."*

**Società anonima "Il Truciolo"** - - - *Appellants,*

*v.*

**His Majesty's Procurator in Egypt** - - - *Respondent,*

FROM

**HIS BRITANNIC MAJESTY'S SUPREME COURT FOR EGYPT  
(IN PRIZE).**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 15TH MARCH, 1918.**

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*Present at the Hearing:*

LORD PARKER OF WADDINGTON.

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

SIR SAMUEL EVANS.

[*Delivered by LORD PARMOOR.*]

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This is an appeal from a judgment of the Supreme Court for Egypt (in Prize) of the 14th April, 1916. The Court rejected the claim of the appellants to forty-three bales of knotted hemp fibre, part cargo *ex* the steamship "Derfflinger," and pronounced the said bales to have belonged, at the time of capture and seizure, to enemies of the Crown, and as such subject to confiscation and condemnation.

The appellants are a company incorporated under the laws of Italy and are carrying on business in that country. The bales of knotted hemp fibre were purchased in *Manilla* at an inclusive price of 55,375 fr., on c.i.f. terms. The said bales were shipped to Hong Kong partly in the steamship "Chinhua" and partly in the steamship "Wunensang," and at Hong Kong were re-shipped on the German steamship "Derfflinger" for conveyance to the port of Genoa. The bills of lading relating to the shipments are dated respectively the 29th June and the 3rd July, 1914, and were forwarded by a branch Germann and Co., of *Manilla*, to the house Germann and Co., of *Hamburg*, who forwarded the said bills to a bank in *Florence*, the *Credito Italiano*, with

instructions to the said bank to deliver the said bills of lading to the appellants, against acceptance by them of a draft for 55,375 fr. drawn on the appellants by the said Germann and Co., of Hamburg. On the 2nd December, 1914, the said bank accepted the said draft, and thereupon forwarded the said bills of lading to the appellants.

On the 15th October, 1914, the steamship "Derfflinger" was seized as prize of war and was condemned as prize by decree of the Supreme Court of Egypt (In Prize) on the 20th January, 1915. It was ordered, under the said decree, that the consideration of the cargo on board the "Derfflinger" should stand over with liberty to any party interested to apply. The appellants thereupon applied to the respondent, His Majesty's Procurator in Egypt, for the delivery of the said bales to them. They filed their claim in the Prize Court and asked for the release of the bales on the ground that they were neutral and the lawful owners thereof at the time of the seizure. On the 14th April, 1916, judgment was delivered against the claim of the appellants and the appeal is brought against this judgment.

It has been settled by their Lordships, as a principle of international law, that the question whether goods seized, as prize, are enemy in character, depends on property and not on risk, and that the property to be looked for is the general property as opposed to any special proprietary right. The *Odessa* (1916, A.C., p. 145). The *Parchim* (1918, A.C., p. 157).

The only question, therefore, which arises in this appeal is in whom was the general property in the goods at the time of seizure on the 15th October, 1914. Their Lordships are prepared to accept the appellants' contention that the parties intended the transaction to be governed by Italian law. But it is quite clear on the evidence that the question whether and when the general property passes by virtue of a contract of sale of goods must, according to Italian law, be determined (as it is according to English law) by the intention of the parties to the contract. On the other hand, it does not appear that the Italian law has any special rules such as those recognised in the Sale of Goods Act, 1893, as to how this intention ought to be discovered. After full consideration of all the circumstances their Lordships find themselves in agreement with the finding of his Honour Judge Grain that it was the intention of the parties to the contract that the property in the bales of knotted hemp fibre should not pass to the buyers until the draft held by the bank on behalf of Germann and Co. had been accepted. This draft had not been accepted at the date of seizure, and it follows that at that date the property in the bales was in the enemy firm Germann and Co., Hamburg, and liable to seizure and condemnation as enemy goods. Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

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In the Privy Council.

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PART CARGO *EX* STEAMSHIP  
"DERFFLINGER,"  
SOCIETA ANONIMA "IL TRUCIOLO,"

*v.*

HIS MAJESTY'S PROCURATOR  
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DELIVERED BY LORD PARMOOR.