

Privy Council Appeal No. 132 of 1918.

In the matter of Part Cargo *ex* Steamship " Krakatau."

Handelsvereniging Voorheen Reiss and Co. - - - - *Appellants*

v.

H.M. 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 7TH JULY, 1919.

Present at the Hearing :

LORD PARMOOR.

LORD WRENBURY.

LORD STERNDALE.

SIR ARTHUR CHANNELL.

[*Delivered by* LORD STERNDALE.]

This is an appeal from a judgment of the late President of the Probate, Divorce and Admiralty Division sitting in prize by which he condemned cargo belonging to the appellants as good and lawful prize. The cargo consisted of gum copal which was admitted to be absolute contraband and some buffalo horns and shells which were not themselves contraband but were condemned by reason of infection arising from the gum copal, inasmuch as they were property of the same owner carried on the same voyage of the same ship.

The appellants were a branch of a house of Reiss & Co. of Amsterdam and themselves carried on business at Macassar. They alleged that the goods were consigned to the Amsterdam house through the intervention of the Netherlands Overseas Trust in whose name the 'Bs/L were made out for sale on account of the Macassar branch and that they were intended for sale and consumption in Holland and had no enemy destination.

In the Prize Court this claim was heard together with that of another shipment on board the S.S. "Atna" by the Amsterdam house. The President found in respect of the shipment on the "Atna" that the goods had been consigned to dummy consignees for the purpose of sending them to Germany and that Reiss & Co. had issued false documents in respect of the goods. He stated that the course of business in respect of those consignments threw considerable light upon the position of the Amsterdam house in respect of the consignments on the S.S. "Krakatau." Against this decision in respect of the S.S. "Atna" there was no appeal.

In the case of the shipment on the S.S. "Krakatau" the consignment was not to dummy consignees but to the N.O.T. for Reiss & Co. and much reliance was placed on this fact by the appellants. It is no doubt in their favour but it is not conclusive, for experience in prize cases has shown that although the N.O.T. loyally do all in their power to prevent shipments in their name reaching the enemy they do not always succeed and persons engaged in contraband trade do succeed in evading all the restrictions placed upon them by the N.O.T. In this case though the Bs/L were to the order of the N.O.T. the other mercantile documents did not disclose the real nature of the transaction. The invoices were in a form which the learned counsel for the appellants admitted would lead anyone not familiar with the circumstances to believe that there had been a sale by the claimants to the Amsterdam house whereas there had been no sale and the goods were sent to be sold on behalf of the claimants. The learned counsel for the appellants gave some good reasons why the claimants might not profit by this discrepancy but he gave no satisfactory explanation of the reason for misstating the transaction. It was admitted that the facts raised a *prima facie* case against the claimants and their Lordships agree with the President that the affidavit of Mr. Kesting on their behalf was very scanty and insufficient. An application was made for leave to adduce further evidence on this appeal but in their Lordships' opinion there were no grounds for granting such an application. The learned President stated his conclusion in these words "From what I know from the facts both in this case and in the case of the consignments on the 'Atna' I have come to the conclusion that the goods were designed for Germany."

The appeal raises purely the question of fact whether this conclusion was wrong. Their Lordships see no reason to differ from the finding of the learned President or to interfere with it.

It was admitted that if the gum copal were condemned the other goods, though not themselves contraband, were liable to condemnation by reason of the doctrine of infection.

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

In the Privy Council.

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SHIP "KRAKATAU."

HANDELSVEREENIGING VOORHEEN REISS
AND CO.

v.

H.M. PROCURATOR-GENERAL.

DELIVERED BY LORD STERNDALE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1919.