

H. Salti & Fils - - - - - *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 15TH JULY, 1919.

Present at the Hearing:

LORD PARMOOR.
LORD WRENBURY.
LORD STERNDALE.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD WRENBURY.]

The claimants are Ottoman subjects. For some 30 years before the war they had carried on business in Antwerp as diamond merchants. Owing to the invasion of Belgium by the Germans they left Antwerp in August, 1914, and came to London. On the 23rd December, 1914, they obtained from the Treasury an authority to trade as diamond merchants in this country on conditions which are not relevant to anything here to be decided. In November, 1915, they left this country for Amsterdam, and have since remained there.

In September, 1915, the claimants sent by post from London two registered packets of diamonds addressed to James Blode at the American Post Office, Shanghai, and in November, 1915 (before they left this country), sent a third registered packet to James Blode at the American Post Office, Shanghai.

James Blode was an Austrian subject. By an agreement in writing made in 1913 the claimants had engaged him as their agent to sell their goods in Eastern Asia for a period of five years at a salary without commission upon the terms that he should not represent any other firm as agent. The diamonds were sent to him as such agent for sale.

The packets of diamonds reached the British Post Office at Shanghai and were returned by the Post Office to the Chief Postal Censor in London on the ground that, being addressed to James.

Blode, an enemy subject, they were not deliverable. On the 29th November, 1916, the Postal Censor's Office in London seized the packets as prize to the use of His Majesty.

On the 12th June, 1917, the Procurator-General issued a writ claiming the condemnation of the goods.

It is not disputed that the goods were confiscable if the transactions between the claimants and Blode amounted to trading with the enemy or intercourse with the enemy.

In their Lordships' opinion it is not necessary to determine whether the goods were confiscable at common law. The case is in their judgment covered by the Proclamations to which they proceed to refer.

The Trading with the Enemy Proclamation (No. 2), dated 9th September, 1914, after reciting in the preamble that it was "expedient and necessary to warn all persons resident, carrying on business or being in Our Dominions of their duties and obligations towards Us" went on to declare that—

"3. The expression 'enemy' in this Proclamation means any person or body of persons of whatever nationality resident or carrying on business in the enemy country, but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country.

"5. From and after the date of this Proclamation the following prohibitions shall have effect (save so far as licences may be issued as hereinafter provided), and We do hereby accordingly warn all persons resident, carrying on business or being in Our dominions :—

"(7) Not directly or indirectly to supply to or for the use or benefit of, or obtain from, an enemy country, or an enemy, any goods, wares or merchandise, nor directly or indirectly to supply to or for the use or benefit of, or obtain from any person any goods, wares or merchandise, for or by way of transmission to or from an enemy country or an enemy, nor directly or indirectly to trade in or carry any goods, wares or merchandise destined for or coming from an enemy country or an enemy

"(9) Not to enter into any commercial, financial or other contract or obligation with or for the benefit of an enemy."

The claimants as persons resident and carrying on business in this country were within the words of the preamble and were within the Proclamation. But James Blode was not within Art. 3, for although of enemy nationality he was neither resident nor carrying on business in an enemy country.

On the 25th June, 1915, however, a further Proclamation was made, viz.—The Trading with the Enemy (China, Siam, Persia and Morocco) Proclamation, 1915. This Proclamation by its preamble recited that it was expedient that "transactions between British subjects and persons of enemy nationality resident or carrying on business in China, Siam, Persia or Morocco should be restricted in manner provided by this Proclamation," and declared that :

"1. The Proclamations for the time being in force relating to trading with the enemy shall, as from the twenty-sixth day of July, nineteen hundred and fifteen, apply to any person or body of persons of enemy

nationality resident or carrying on business in China, Siam, Persia or Morocco in the same manner as they apply to persons or bodies of persons resident or carrying on business in an enemy country."

James Blode was a person of enemy nationality resident or carrying on business in China. He was therefore within Art. 1 of this latter Proclamation, and consequently the former Proclamation applied to him. As already pointed out, the claimants were within the former Proclamation. The result is that the former Proclamation applies to both the claimants and Blode, unless it can be said that the words "British subjects" in the preamble to the latter Proclamation have the effect of confining to British subjects the operative words of the latter Proclamation which render the former Proclamation applicable. In their Lordships' opinion those words have not that effect. The generality of the words in the operative part is not as matter of construction restricted by the words of the preamble. Further, it cannot be that the intention of the Proclamation was to give to persons resident in and amenable to the laws of this country but not in the full sense of the words "British subjects" a greater liberty than was allowed to subjects of the British Crown.

It remains to consider whether any words in the former Proclamation cover the present case.

The transaction between the claimants and Blode was not one in which the former were trading with the latter or entering into any commercial contract with him. Their Lordships do not rely on sub-clause (9). Neither is it necessary to rely on the concluding words of sub-clause (7). The first words of (7) in their opinion cover this case. The claimants were supplying to Blode goods, wares, or merchandise, and none the less because they were supplying them to him as agent for sale on behalf of the claimants. Blode was not a mere servant. He was an agent for sale—an agent precluded by contract from representing any other firm as agent. He would have authority to fix a price, to give credit, and to act on behalf of his principals in any manner in which an agent for sale may bind his principal. A principal in distributing his goods amongst his agents for sale and sending so many parcels to A, so many to B and so on is correctly described as supplying the goods to his agent. The context of the clause is "supply to or for the use or benefit of." The supply, therefore, need not be "for the use or benefit of" the person; it is sufficient that the supply shall be to him. In their Lordships' opinion the first words of sub-clause (7) cover this case.

For these reasons their Lordships hold that these goods were rightly condemned, and that the appeal should be dismissed with costs. They will humbly advise His Majesty accordingly.

In the Privy Council.

H. SALTI & FILS

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H.M. PROCURATOR-GENERAL.

DELIVERED BY LORD WRENDBURY.

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