

*Privy Council Appeal No. 32 of 1920.*

*In the matter of part cargo ex Steamship "Andijk."*

Polak van Steenwijks Handels Maatschappij - - - *Appellants*

*v.*

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

FROM

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

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 7TH DECEMBER, 1920.

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*Present at the Hearing :*

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

SIR ARTHUR CHANNELL.

[*Delivered by* LORD WRENBURY.]

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This is an appeal from a judgment of the President, Sir Henry Duke, whereby he pronounced the part cargo of 186 kegs and 200 hogsheads, 1 pipe and 1¼ cask of honey to be contraband of war, and as such or otherwise subject and liable to confiscation, and condemned the same or the proceeds of sale thereof as good and lawful prize. The appellants are a limited company incorporated in Holland in 1915 called Polak van Steenwijks Handels Maatschappij. The goods in question were consigned by one Dederich Steengrafe of New York as to part to the Netherlands Overseas Trust for the appellants, and as to the remainder to the appellants themselves, and were on the 5th and 6th July, 1916, shipped at New York for Rotterdam per s.s. "Andijk." On the 19th July, 1916, or thereabouts, the vessel with the goods on board was detained at Kirkwall, but was allowed to proceed without discharging the

goods on condition that they were returned to England. They were returned and were subsequently sold for £5,000, which proceeds were condemned as already stated. There is no question that the appellants were the lawful and real owners; the only question is whether the goods had an enemy destination.

The learned President was of opinion first that the Crown had by certain affidavits which they filed, and by the documents which they adduced in evidence, made a *prima facie* case that the goods had an enemy destination, and secondly that the appellants had failed to displace that case.

The evidence for the Crown disclosed the following facts. In 1914 there were exported from Holland into Germany 16 metric tons of honey. In 1915 there were exported 448 tons. On the 1st September, 1916, an embargo was placed upon the import of honey into Holland. In 1916 there was a great demand for and scarcity of honey in Germany. Honey was recognised in Germany as a most valuable substitute for fat, in particular for such commodities as butter and margarine. During 1916 there was an extreme shortage of fat, and a very short ration was allowed of butter and margarine. On the 21st January, 1916, the appellants Polak wrote to Steengrafe a letter in which they say that they had received Steengrafe's "favours of 6th, 9th and 16th November, 1915, with the invoices of total 480 casks of honey," and that on the 3rd October, 1915, they had bought from one Hertz who was Steengrafe's agent in Amsterdam, 300 barrels of honey and that they had bought 200 barrels at \$72 from Mr. Jähkel, of Havana, and that:—

"We have a regular and large sale in honey as you already perhaps have perceived by the invoice of Jähkel, from whom we also received large quantities and no doubt in the next future these quantities will still augment."

Jähkel carried on business at Calle Tacon 6, Havana and was an active German agent and had actively engaged in German propaganda.

On the 4th September, 1915, Hertz had telegraphed to Steengrafe "Reply order Polak buy all obtainable Cuban honey sixty-four wire quantity bought." The appellants desire their Lordships to read this telegram as if there were a full stop after the word "Polak" and as if the subsequent words had nothing to do with Polak but were advice volunteered by Hertz the agent to Steengrafe his principal to buy all obtainable Cuban honey. Their Lordships do not so understand the telegram. In their judgment the true meaning is, "Send me an answer to the order which Polak has given to buy all obtainable Cuban honey at sixty-four cents and wire me the quantity you have bought." At any rate the telegram may well bear this meaning and it was for the appellants to clear up the matter if it was doubtful. But they do not produce Polak's order and offer no explanation at all in the matter. A large part of the honey here in question was Cuban honey—Polak had previously been in

communication directly with Jähkel about consignments of honey, for on the 29th April, 1916, Polak telegraphed to Jähkel "Télégraphiez nous de vapeur trois cents barils de miel." The appellants have several times been fined by the N.O.T. in respect of goods exported to Germany against N.O.T. regulations. They seek to explain this by saying that it was not they but their purchasers who exported the goods to Germany, that under the N.O.T. regulations they were liable and were fined in respect of their purchasers' acts and that their purchasers have repaid them the fines. The answer is not convincing. If such a transaction is found to occur not once but several times and is unexplained the inference may follow that the vendor is not wholly uninterested in his purchasers' act but is in the habit of finding purchasers who will by payment of an enhanced price or by sharing with the vendors the profits of the sale to Germany give the vendor a benefit for which he is content to run the risk of being fined. The appellants' affidavits do not negative the existence of such a state of facts in the present case.

Without going further into the documents their Lordships find in these materials a very good *prima facie* case made by the Crown and no answer supplied by the appellants to the case thus made. In a proceeding in which the witnesses are unfortunately not exposed to cross-examination there is the more reason for the parties putting fully before the Court any explanation which they can give to displace inferences which in the absence of explanation must be drawn against them. If Mr. Gerzon Levie had been exposed to cross-examination he would no doubt have been called upon to explain the telegrams of the 4th September, 1915, and 29th April, 1916. He has not been able or at any rate has not thought proper to give any explanation of them.

Their Lordships agree with the President in the opinion that the Crown make a *prima facie* case which the appellants have failed to meet.

The appellants, at the close of their argument, sought to raise another point, viz., that even if the destination of the goods was Germany there was no evidence that they were intended for consumption for military purposes in Germany. It is sufficient to say that this point was not raised in the Court below and is not raised in the appellants' case. On the contrary their case (par. 14) says, "The only question was (*i.e.*, in the Court below) whether the goods were destined for Germany."

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

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In the Privy Council.

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POLAK VAN STEENWIJKS HANDELS  
MAATSCHAPPIJ

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

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DELIVERED BY LORD WRENBURY.

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