

Privy Council Appeal No. 195 of 1919.

In the matter of part cargo ex Motor-Ship "Kronprins Gustaf Adolf."

A/B Alfred Nilsson - - - - - *Appellant*

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 JUNE, 1920.

Present at the Hearing :

LORD SUMNER.

LORD PARMOOR.

SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

Their Lordships need not trouble Counsel for the Crown.

Every possible argument has been advanced in this appeal and has been examined as the argument proceeded. The question is whether the learned President exercised his discretion in any manner that is open to review. Their Lordships think it unnecessary to re-examine the facts and the dates for the purpose of expressing their opinion. The appellants allowed six months to pass—a few days more or less—from the time when they had notice that their consignment was in the list for trial in the Prize Court, before they placed their solicitors in a position to make the application, which the learned President refused.

Their Lordships think it quite impossible to interfere with his conclusion, and they desire to add that they are by no means satisfied, in the absence of any affidavit of merits, that the appellants suffered any practical disadvantage by not being heard.

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

In the Privy Council.

*In the matter of part cargo ex Motor-Ship " Kronprins
Gustaf Adolf "*

A/B ALFRED NILSSON

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY LORD SUMNER.

In the Privy Council.

NAWAB BAHADUR MUHAMMAD RUSTAM ALI
KHAN, SINCE DECEASED, AND ANOTHER

o.

NAWAB MAULVI MUSHTAQ HUSAIN, SINCE
DECEASED, AND OTHERS.

DELIVERED BY LORD BUCKMASTER.

he acted faithfully and honestly in the discharge of his duties, but it is said that none the less, by virtue of Rule 174 of the rules made under Section 69 of the Indian Registration Act, he was incompetent to register the wakfnama, being in the words of the rule "personally or otherwise connected with or interested" in the document. Although his interest was remote, their Lordships are prepared, for the purposes of this appeal, and without giving any definite decision upon the meaning of the rule, to accept the view that this interest did bring him within the meaning of the provision. It would, however, be obvious that, if such a rule stood without any modification in the case of honest and independent action, the validity of registration might again and again be impugned, with unfortunate consequences. The framers of the statute, under which the rules were made, have however foreseen and prevented such an unfortunate contingency, for by Section 87 it is provided that :

" Nothing done in good faith pursuant to this or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure."

It is contended that the disability created by Rule 174 cannot be regarded as a mere question of procedure, but their Lordships do not accept this view. The registration by the Sub-Registrar is obviously the essence of the proceedings in effecting registration. If the Sub-Registrar were disqualified the Registrar would be entitled to act, and the fact that the Sub-Registrar, overlooking his own interest, or regarding it as an interest which created no disqualification, in perfect good faith effected the registration himself, is, in their Lordships' opinion, intended by the rules to be a step in the procedure, for it is under the actual heading " Procedure " that the rule is found.

The final question is one that at first sight appears to present more difficulty. It is argued that the " trusteesnamah " must have dealt with an interest in immovable property, for otherwise the trustees could have no right to maintain the suit ; and such an argument at first sight makes a strong appeal to those who are accustomed to administer the English law with regard to trustees. It needs, however, but a slight examination to show that the argument depends for its validity upon the assumption that the trustees of the wakfnama in the present case stand in the same relation to the trust that trustees to whom property had been validly assigned would stand over here. Such is not the case. The wakfnama itself does not purport to assign property to trustees. The words of the document are these :—

" I was the lawful owner of the said property. I was partly in actual possession thereof, and partly in legal possession thereof, that is, I was in possession through my servants, ' mustajars ' (farmers or lessees), tenants and cultivators. I had power in every way to transfer the same. By virtue of the said power, I divested myself of the connection of ownership and proprietary possession thereof, and placed it into the proprietary possession of Him who is the real owner, that is God, the owner of the universe, and changed my temporary possession known as proprietary

possession into that of a 'mutwalli' (superintendent). With effect from this day, the said property no longer belongs to me ; nor am I any longer in proprietary possession thereof. It belongs to God, and is a 'sadka' (alms) for His creatures. I am in possession thereof as a superintendent, that is, as a trustee for those who are according to the objects of the said 'wakf,' entitled to be, in any way, benefited thereby. The said property can neither be sold nor mortgaged, nor transferred in any other way. Neither I nor anyone through me can exercise any proprietary power in respect thereof. It cannot be inherited by anyone on my death, nor can anyone enter into possession thereof by right of inheritance from me. I have reserved for myself the right of superintendence and protection of the said property which I possess under the Muhammadan Law. I shall remain to be myself the superintendent thereof during my lifetime or so long as I wish to be so. After that one who shall be appointed by me, shall be the superintendent. I shall be at liberty to appoint, during my lifetime, anyone whom I like, as a superintendent jointly with me or in my place. I am at liberty to remove him whenever I like and again appoint and remove him so long as he is not appointed a superintendent under the last will. Such person shall continue to remain the superintendent after my death, until he is duly removed under the provisions of the said wil or according to the law for the time being in force. The said superintendent or I or any other person, acting as a superintendent of the 'wakf' property, shall have all such powers of managing and protecting the said property as are possessed by an owner of property or were possessed by me before the 'wakf,' provided that the said persons (superintendents) shall have no right to claim ownerships therein or do anything which may be inconsistent with the objects of the 'wakf,' or to sell, mortgage or transfer it in any other way."

If analogies be sought between people holding similar interests over here and the trustees who would take charge of the property under that deed, the trustees would be more closely allied to receivers and managers appointed over property in this country than to trustees in whom the property is absolutely vested. A receiver and manager by virtue of his appointment has no estate in the property he is called upon to control ; he possesses powers over it but not an interest in it, and the appointment of others in his place would by itself effect no transfer of ownership. The same thing is, in their Lordships' opinion, true of the trustees under this deed. They are, as the deed itself states, superintendents of the property. The further use of the term "trustee" is apt to mislead until this distinction is borne in mind. They are trustees in the general sense that every man is a trustee to whom is entrusted the duty of managing and controlling property that belongs to another, but the deed by which the Nawab appointed the trustees in this case did not and did not purport to transfer to them the ownership of the property, and it is therefore, in their Lordships' opinion, outside the provisions of the statute and registration was unnecessary.

For these reasons their Lordships are of opinion that the judgment of the High Court was right upon all points, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

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