

*Privy Council Appeals Nos. 84-92 of 1921.*

*In the matter of part cargo ex steamship "Oscar II."*

*In the matter of part cargo ex steamship "Frederik VIII."*

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

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

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

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

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

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

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

**Jens Toft** - - - - - *Appellant*

*v.*

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

*(Consolidated Appeals.)*

FROM

**THE HIGH COURT OF JUSTICE, 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 2ND DECEMBER, 1921.

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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 the appeal of the claimant of part cargoes ex nine steamships from the judgment of the President, Sir Henry Duke, condemning the cargoes as contraband. The cargoes consisted of cocoa beans, cocoa and coffee, all consigned to the claimant, Jens Toft, of Copenhagen, except one parcel shipped on the "Frederik VIII." That parcel was consigned to S. Chr. Jensen,

an agent of the claimant in Copenhagen. The consignments amounted in the aggregate to 4,589 bags of cocoa and cocoa beans and 1,100 bags of coffee of the total value of about £30,000 to £40,000. Cocoa and coffee had been conditional contraband since the 4th August, 1914. The shipments were from neutral ports—in most cases from New York—and were in neutral vessels bound for neutral ports. In all cases but one the intended voyage was to Copenhagen, in the remaining case it was to Malmo. The ships sailed at various dates from the 16th October, 1915, to the 10th May, 1916, and the seizures were made at various dates from the 15th November, 1915, to the 6th June, 1916.

The claimant, Jens Toft, is a Danish subject, residing and carrying on business in Copenhagen. In 1907 he was declared insolvent, and compounded with his creditors at 30 per cent. From 1911 onwards he was endeavouring to pay his creditors in full, and there is nothing to show that when these shipments began he had succeeded in doing so, still less that he was in command of substantial means.

This is not the first time that Jens Toft has been an unsuccessful claimant in the Prize Court, nay more, it is not the first time that he has been unsuccessful in respect of a similar cargo shipped on one of the ships in question on this appeal, viz., the "Oscar II," on a previous voyage. On the 25th July, 1919, Lord Sterndale, sitting in Prize adjudicating upon a claim made by him in respect of 34 consignments of coffee and cocoa shipped at various dates between October and December, 1915, from New York to Copenhagen on the three Danish ships, "Hellig Olav," "Oscar II," and "Frederik VIII," condemned the consignments, coming to the conclusion that Toft was acting for some German firm who wanted the goods in Germany and who paid for them. Upon appeal this Board, on the 24th February, 1921, affirmed that decision, holding that the appellant's name was used to cover the importation of goods which were intended to go through to Germany. The case was in the main statistical. In the year 1915 the imports of these food-stuffs into Denmark were about ten times as great as the yearly average of the three years prior to the war. Lord Sterndale was satisfied and this Board was satisfied that a large part of these imports was in fact for German destination. The appellant's case in that case as in this was one in which the documents were all in order, but the Court was satisfied that the documents did not disclose the real transaction. The appellant's case here is that he bought and paid for the goods with his own money through the Revisions Banken of Copenhagen, and that within Art. 1 (3) of the Order in Council of the 29th October, 1914, the ship's papers, in showing him as consignee, showed who was the real consignee of the goods. The onus was on the Crown to show that Toft was not the real consignee. In the former case it was held that the Crown had satisfied that onus.

The previous decision having been, on the 25th July, 1919, before the President, and on the 24th February, 1921, before this Board, the present claim was heard by Sir Henry Duke on the