Privy Council Appeal No. 175 of 1919.
In the matter of part cargo ex Steamship "Noordam."

H.M. Procurator-General - - - - - - *Appellant*

v.

Wiegman's Bank, American Express Company, Zimmermann and Forshay, Louis Korijn and Company, and Kalker and Polack - *Respondents*

Privy Council Appeal No. 176 of 1919.
In the matter of part cargo ex Steamship "Rotterdam."

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

v.

Wiegman's Bank and Zimmermann and Forshay - - - *Respondents*

Privy Council Appeal No. 177 of 1919.
In the matter of part cargo ex Steamship "Zaandijk."

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

v.

Wiegman's Bank - - - - - - - *Respondent*

Privy Council Appeal No. 178 of 1919.
In the matter of part cargo ex Steamship "Gelria."

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

v.

Wiegman's Bank - - - - - - - *Respondent*

(*Consolidated Appeals*)

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 4TH MAY, 1920.

Present at the Hearing:

LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
THE LORD JUSTICE CLERK.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

This appeal relates to various bearer securities found in the mails carried on voyages from Holland to the United States by several neutral mail steamers which were stopped and diverted under the Reprisals Order in Council of the 11th March, 1915. They were all issued by extra-European Governments or companies, though in some cases they were parts of the issues appropriated to

Germany. The respondents are neutral claimants, to whom Lord Sterndale, P., sitting in Prize, released these securities. The Procurator-General appeals. He contends that within the meaning of the Order they all were "goods" and were either enemy property or of enemy origin, and as such should be either condemned or detained. The respondents accept the Order in Council as valid, but contest its application and construction. In addition to traversing each contention of the Crown, they further allege that in any case the securities are exempt from either capture or detention as being "postal correspondence" within the meaning of the Eleventh Hague Convention, Art. 1. There are some minor matters, in respect of which an appeal is also brought, but as to these their Lordships, having examined the facts, think it sufficient to say that they see no reason to differ from the conclusion of the learned President. The questions above mentioned are those which alone require detailed consideration.

No doubt these securities were documents found in the mail bags of the mail steamers in question, but it cannot be contended that everything, found in a mail bag at sea and carried at postal rates or franked by postage stamps, is *ipso facto* "postal correspondence" for the purpose of the Convention. These documents, though printed and engraved matter, are not vehicles of information, and the value of their contents does not lie in what they tell the reader. On the contrary, expressed in common form and earmarked by serial letters and numbers or otherwise, they are identical records of proprietary rights in certain loans and shares or in the interest payable thereon, and, by their terms or by mercantile usage applicable to them, are transferable by delivery. To a *bonâ fide* buyer the document represents the holder's right to a portion of the loan or the share capital as the case may be. They are commonly dealt in; they are a convenient form in which to transfer wealth from one country to another, and they require no separate assignment nor the execution of any instrument of transfer. If, therefore, any incorporeal rights can be assimilated to goods and merchandise, they must be such rights as these documents represent. If any document can stand outside the description "postal correspondence," it must be such a document as these. The occasion is not opportune for an attempt to define the word "correspondence" as used in the Convention, but their Lordships are satisfied that none of these securities come within it. Whether in the circumstances of this case the Eleventh Hague Convention has any application at all is a question which accordingly need not be pursued.

At first sight the word "goods" might seem to be an equally inappropriate description. It must, however, be observed that the word is of very general and quite indefinite import, and primarily derives its meaning from the context in which it is used. Their Lordships were referred to sundry statutes, in which the word is either defined or stated to include specified things. Of the latter kind the Naval Prize Act, 1864 was

particularly relied on, for it brings within the term "goods" "all things subject to adjudication as prize." This does not advance matters. When, as in that Act, a word is extended by statute to include a named thing, the conclusion naturally is that in its ordinary sense the bare word would have been insufficient to include it. There is further no reason why the definition clause of the Naval Prize Act, 1864, should be treated as explanatory of the language of an Order in Council which makes no reference to it.

Their Lordships are of opinion that the cardinal consideration in interpreting the Order in Council is the character and scope of the Order itself. The content of the word "goods" differs greatly according to the context in which it is found and the instrument in which it occurs. In a will or in a policy of marine insurance, in the Marriage Service or in a schedule of Railway Rates, in the title of a probate action or in an enactment relating to the rights of an execution creditor, the word may sometimes be of the narrowest and sometimes of the widest scope. The question is what is its content here.

This Order was made for the purpose of further restricting the commerce of Germany, and the retaliation, which this Order gives effect to, finds its unquestionable justification in the avowed policy of Germany to prevent crews, passengers or goods being entrusted to British or Allied ships. That policy was intended to be, and was in fact, carried into effect by sinking ships with all that they contained. The "goods," upon which the Order operates by way of retaliation for such outrages, are things which instead of being destroyed are to be adjudicated upon, and condemned or detained as the case may be. They are things such as can be loaded on board a ship and discharged from it, placed in the custody of the Marshal of the Prize Court, requisitioned or detained, sold or released. They are such as, having been enemy property, may become neutral property at a definable date. The Order contains no definition of the word. Its general object is recited as being "to prevent commodities of any kind from reaching or leaving Germany." How should the word "goods" be construed in such a context?

If securities such as these are not covered by the word "goods," it is plain that the Order as a means of carrying out its declared policy contains a large and lamentable lacuna; not that this is a reason for supplying its defects by doing violence to its language, but that the language may be legitimately interpreted with reference to the general scope of the Order. Of the several things which under the terms of the Order can be predicated of the "goods" to which it refers, no one can be said to be inapplicable to these securities. Their Lordships are of opinion that the scope of this Order is correlative to the enemy policy, which it was intended to defeat. In a British ship these securities were liable to be sunk by enemy action in the name of legitimate warfare: nothing but the clearest defect in the wording of the Order should compel the conclusion that they were not also liable, when carried on neutral ships, to be brought

before a Court of Prize to be dealt with after trial in accordance with the terms of the Order. "Goods" are not limited to things which are of considerable bulk or weight, though indeed these securities were anything but imponderable. The documents were not mere symbols of a right or title to be transferred by the operation of other instruments. If lost, they could not be proved and given effect to by secondary evidence. They themselves were things of price, the subjects of sale and delivery, irreplaceable and unalterable. No doubt can be entertained that they are within the descriptive word "goods" as used in the Order.

Next, when these securities were seized it is plain that in fact they all belonged to neutrals. The appellant contends that they ought to be deemed to be enemy property because by the Law of Nations belligerent rights are not to be defeated by changes of ownership, while goods are in transit. If the securities have been in Germany since the date of the Order, it is said that enemy ownership ought to be presumed, and that no transfer can be effective from the moment of their despatch from somewhere in Germany until their arrival at an ultimate destination in the United States. In order to apply the old rule of Prize Law to the present circumstances the argument must assume that transit is not confined to sea transit or to transit in the vessel actually seized, but extends to anterior land transit, even through Germany into Holland or through Holland to the Dutch port of departure, before the securities reach the mail steamer. It assumes the inversion of the doctrine of continuous voyage by applying this doctrine to transit away from Germany; it assumes its application to a transit in separate and discontinuous stages, and to articles which are not contraband at all; it assumes that the valid and complete transfer of property by delivery of the documents at the intermediate stages may be disregarded for the present purposes. Their Lordships are not to be understood to accept these assumptions as legitimate, or to express any opinion upon them; nor do they hold that the facts in the present case establish a "continuous transit" from Germany to America, in progress at the time of the seizure, in the sense in which that expression is used by the appellant in this part of the argument. They think that it is not necessary to investigate these assumptions on the present occasion. There is, in any case, a broad ground on which the whole of the appellant's argument on this point fails.

The Order in Council is a reprisals order—that is to say His Majesty, in the exercise of his belligerent right, has been pleased upon just and adequate provocation to resort to measures not prescribed by the general existing rules of the Law of Nations. These measures are of his own selection and are defined in such manner as he thought fit to adopt in the terms of the Order. It is just because neutrals are required to submit to an Order, validly and justly made by way of reprisal, that they must also be held entitled to know from the terms of the Order itself what is the extent and limit of their liability under it. If clear terms are used, their clear meaning must be enforced; if ambiguous terms are used, the belligerent cannot ask to have them extended by construction in his own favour. It rested with those who

framed the Order, within the limits of the Crown's right of reprisal, to select and to state the extent of its exercise. It is the duty of a Court of Prize, administering the Law of Nations, to protect the rights of neutrals in this matter by limiting their obligation to that which the Order itself states, no less than to enforce the obligations which the Order duly creates and clearly declares. In the present case, in order to deter neutrals from assisting the enemy by engaging in his commerce, the Order tells them that their goods, if of German origin, are exposed to detention, and, by declaring that condemnation applies to enemy property, it tells them also that, so far as the Order is concerned, what belongs to them will not be condemned, though it may be detained. The words are precise. There is nothing said of "enemy character," nothing added to the words "enemy property" to make them applicable to a date antecedent to that of the diversion, nothing to show that the words are to be deemed to include something to which otherwise they would not extend. How can their Lordships be asked, under the name of construing the plain and simple language of the Order, to declare that it condemns neutral property which has been validly acquired from Germans within a certain time and under certain circumstances, and this not by force of the Order itself, but by an appeal to general rules whose inadequacy made it necessary to bring the special provisions of the Order into existence to meet the enemy's provocation? It is not enough that the second proviso to Article IV contemplates the release of neutral property. This is to be done only on the application of the proper officer of the Crown, and is discretionary; nor, in any case, is the argument valid that, if a misconstruction of the language leads to hardship, the hardship can be redressed by the action of the Executive. Their Lordships are unable to accept the argument of the Procurator-General on this point.

There remains the question of enemy origin. Origin is a quality of the goods, not of the owners or of their intentions or dealings. To decide where a chattel originates may often be difficult; in the case of things of great durability, often impossible. Origin sometimes refers to the place where raw material was produced, but *ex hypothesi* the Reprisals Order goes beyond the general rules applicable to the produce of enemy soil, since existing rules were found inadequate. Origin means sometimes the place of manufacture of an artificial commodity, and sometimes it is a thing undiscoverable. It is not inconsistent with the enemy origin of goods, which come from Germany, that they have previously come into being elsewhere than in Germany. After a certain lapse of time, or certain changes of circumstances, origin may be of little more than curious or antiquarian interest. This Order could not be concerned, for example, with old German machinery or old German books or old German wine imported into Holland many years ago. For present purposes there is no utility in applying to "goods" ideas appropriate only to human beings, such as the effect of an individual's place of birth or race or nationality upon his subsequent rights or obligations.

The best guide is the language and context of the Order itself, and the purpose which it was intended to serve. In substance Article III and Article IV of the Order are to the same effect, an inwards movement being dealt with in the one, and an outwards movement in the other. The words "of enemy origin" in the latter must correspond to "with an enemy destination" in the former; certainly no other words do. Neither expression makes any reference to the completion of some one mercantile or financial adventure or transaction; neither is limited in any way to goods which start from, or are bound to, an enemy port. One of the purposes of the Order is to prevent commodities of any kind from leaving Germany; as regards certain commodities, namely such as are of enemy origin but are not enemy property, the means of prevention is diversion, discharge and detention till the conclusion of peace. To origin in such a connection neither the place where the securities were printed or signed or sealed is really material, nor the country in which the undertakings or the debtors, from whom the securities emanate, chance to carry on their affairs. As to the securities with which this appeal is concerned, in some cases they were bought in Germany for American buyers and received and forwarded to them by their Dutch agents; in some they were bought in Germany by Dutch dealers for the purpose of prompt resale or of delivery under sales already made in the United States. It is clear as a common characteristic that no long time before they were diverted all had formed part of the common financial stock of Germany's holding in foreign securities. What happened was that as part of the liquidation of this stock, either to support foreign exchange or to establish foreign credits or otherwise, these securities, no doubt along with many others, were separated from that common stock and despatched from a terminus *a quo* in Germany to a terminus *ad quem* overseas. Only in two cases, and those cases of collection of interest coupons, is that terminus elsewhere than in the United States, where doubtless a free market was to be found. There they became merged in the general mass of American-owned securities. In a word these securities were part of Germany's resources, and the subject-matter of these despatches had its source in Germany. Their origin does not depend on subsequent and intermediate dealings. That the transfer from the place of their origin to their new resting-place was effected by *bonâ fide* transfers in the ordinary course of financial business and physically by a series of transportations in various vehicles, not necessarily predetermined from the outset, is material to the question of enemy property but not to that of enemy origin. If it were otherwise the whole Order could be made nugatory as to all classes of goods if care were taken in each case to sell to a neutral buyer and to deliver in Germany and to leave the buyer to do the rest. Their Lordships are of opinion that the meaning of "enemy origin" in the Order is abundantly clear and satisfies all that a neutral is entitled to require of the language of a Reprisals Order.

Under the terms of Article IV the following parcels were of enemy origin, and as such were liable to detention :-

Number in Schedule. Record, pp. 184-193.	Addressor.	Addressee.	Particulars.
Ex "Noordam," 13	Dubgen ...	Fargo ...	Coupons and American Notes, £3,077 1s.
,, 15	Kalcker & Polak	Zimmerman & Forshay	Japanese Bonds, £10,000.
,, 117	,,	,,	,, ,, £4,000.
,, 123	,,	,,	,, ,, £4,000.
,, 124	,,	,,	,, ,, £4,000.
,, 11	Wiegman's Bank	Irving National Bank	Japanese Coupons bought from Marx (2 lots), Heilbronner, Merzbach (2 lots), Rosenbaum & Wolff (2 lots), and Homburger. (Record, pp. 32-33.)
,, 66	Korijn & Co.	Hirsch, Lilienthal & Co.	Japanese Bonds bought from National Bank für Deutschland, Deutsche Bank and Mayerfeld. (Record, pp. pp. 76-77.)
,, 112	Kalcker & Polak	Zimmerman & Forshay	Baltimore and Ohio Shares bought from Oppenheimer. (Record, p. 100.)
Ex "Rotterdam." 229	Wiegman's Bank	Irving National Bank	Japanese Coupons bought from Homburger (2 lots), Bacharach, Bank für Handel und Industrie (2 lots), Rosenbaum und Wolff, Bamberger (3 lots), Merzbach (2 lots). Heilbronner, Weil, Marx. (Record, pp. 128, 129.)
,, 245	,,	Momyiya Bank	Yen 1,100 5 per cent. Japan Special Bonds bought from Marx. (Record, p. 147.)
Ex "Gelria," 190	,,	Banco de Chile	Bond and Coupons bought from Schwarzhaupt. (Record. p. 176.)

In No. 190 the claimants' affidavit admits the purchase of the coupons in Germany and gives no explanation of the accompanying bond, which therefore their Lordships do not propose to separate from the coupons. The mere fact that bonds bear a German revenue stamp, apparently because they were at some time issued in Germany, does not seem to them sufficient to prove origin, where there is no evidence as to the character of the sellers.

There are other cases as to which the facts are insufficient, either by way of proof or of presumption, to establish such a connection with Germany as would bring them within the term "enemy origin," but it is not necessary to discuss these cases in detail.

Their Lordships, therefore, think that the judgment of Lord Sterndale, which was otherwise correct, should be varied by setting aside the decrees for the release of the securities, numbered and described as above, and by substituting the order for their detention, till it be otherwise ordered, which he should have made. It is not necessary to decide what constitutes "the conclusion of peace," mentioned in the first proviso to Article IV, for the objects of the Order in Council have now been satisfied and there is no further reason why the proper officer of the Crown should not forthwith apply to the Prize Court for the release of the securities to the respondents. The very limited success of his appeal does not entitle the appellant to any order as to costs, which will therefore be borne by the respective parties. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

In the matter of part cargo ex Steamship "Noordam."

HIS MAJESTY'S PROCURATOR-GENERAL

v.

WIEGMAN'S BANK, AMERICAN EXPRESS COMPANY, ZIMMERMANN AND FORSHAY, LOUIS KORIJN AND COMPANY, AND KALKER AND POLACK.

In the matter of part cargo ex Steamship "Rotterdam."

HIS MAJESTY'S PROCURATOR-GENERAL

v.

WIEGMAN'S BANK AND ZIMMERMANN AND FORSHAY.

In the matter of part cargo ex Steamship "Zaandijk."

HIS MAJESTY'S PROCURATOR-GENERAL

v.

WIEGMAN'S BANK.

In the matter of part cargo ex Steamship "Gelria."

HIS MAJESTY'S PROCURATOR-GENERAL

v.

WIEGMAN'S BANK.

(*Consolidated Appeals.*)

DELIVERED BY LORD SUMNER.

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