

Privy Council Appeal No. 69 of 1921.

In the matter of part cargo ex steamship "Oranje Nassau."

J. C. de Witt Visser - - - - - *Appellants*

v.

H.M. Procurator-General - - - - - *Respondent*

FROM

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1921.

Present at the Hearing :

LORD SUMNER.

LORD PARMOOR.

SIR ARTHUR CHANNELL.

[*Delivered by* LORD PARMOOR.]

The only point raised in this appeal is whether the appellants have discharged the burden of proving affirmatively that the goods in question had not at the date of seizure an enemy destination.

The goods consist of a parcel of 500 bags of coffee shipped in the "Oranje Nassau" at Funchal, Madeira, under a bill of lading of the 11th December, 1915, for carriage to Rotterdam. The "Oranje Nassau" was detained in the Downs, but allowed to proceed on her voyage on an undertaking that the bags of coffee should be returned to this country. These goods were subsequently seized as prize, and condemned as contraband of war destined for Germany, in the Prize Court on the 15th February, 1921.

The goods were purchased by the appellants before the war, and were shipped at Santos in July, 1914, on the German steamship

“ Petropolis.” This vessel on the 3rd August, 1914, took refuge in the harbour of Funchal, Madeira, and remained there with the appellant’s coffee on board. It is clear from the documents that, prior to the seizure, the appellants had become owners of the cargo, and entitled to succeed as claimants, if they could discharge the burden of proof which rested on them.

In June, 1915, the appellants instructed their bankers to hand over the bill of lading to Wambersie and Zoon, shipping agents in Rotterdam, in order that the coffee might be shipped to Rotterdam for their account. On the arrival of the bill of lading in Rotterdam, it was found that the name of Wambersie and Zoon had been inserted as consignees. The appellants say that this was done without their knowledge through the action of E. Alves, the Dutch Consul at Funchal. In the opinion of their Lordships Wambersie and Zoon are not the real consignees within the terms of the Order in Council of the 29th October, 1914, and this throws upon the appellants the burden of establishing that the goods have not an enemy destination.

In support of the claim an affidavit was sworn by a partner in the appellants’ firm on the 17th April, 1918. So far as the documents are concerned, they are in order. The Netherlands Overseas Trust gave permission to import the coffee, a permission which was extended to allow for shipment up to December, 1915. On the 22nd December, 1915, the appellants wrote a letter to the N.O.T. enclosing the contract under which the goods were purchased, and stating that the vessel in which they were shipped had been compelled to put into the port of Funchal, in August, 1914. The letter ends with a request that the N.O.T. would release the goods on the ground that they do not come within the stipulations of the N.O.T. contract. The respondent relies on this letter, which was written by the appellants before they were aware that the goods were in process of seizure by the British authorities, and contend that the request therein contained pointed clearly to a desire and intention to dispose of the goods otherwise than in Holland. Apart, however, from the terms of this letter, the respondent contended not only that the claimants had not discharged the onus placed upon them, but that there were circumstances of suspicion which they had failed adequately to explain.

The statistical evidence, which was not disputed, found that the import of coffee to Holland (excluding coffee re-exported to neutral countries) was almost five times the amount of the average net annual import for the years before the war and at the time of the arrival of the consignment in question, in this appeal, Holland was overcharged with coffee. It was further shown that Wambersie and Zoon had acted as forwarding agents and correspondence intermediaries for a number of enemy firms. Interrupted wireless messages were produced in support of this allegation. In addition, it was proved that the appellants had been twice fined in connection with the re-export of pepper and coffee in breach of the regulations of the N.O.T., but in these cases, it was said that the fault

lay with the sub-purchasers against whom relief was claimed. In addition, it was proved that two other consignments of coffee, shipped on the steamship "Nickerie," and on the steamship "Oranje Nassau," and claimed by the appellants, were on the 20th October, 1919, condemned in the Prize Court as contraband goods with an enemy destination. The two consignments in question were of a later date than the consignment in question in this appeal. The claimants say that they were advised that it would be useless to go to the Appeal Court without the production of the documents to which the President, Lord Sterndale, referred, and that they could not get them and had not got them; but their Lordships do not regard this explanation as satisfactory. The President of the Prize Court having come to the conclusion that the appellants have not discharged the burden of proof which the Order in Council placed upon them, their Lordships are unable to find any reason for setting aside his decision.

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

In the Privy Council.

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Nassau,"*

J. C. DE WITT VISSER

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY LORD PARMOOR.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1921.