

Privy Council Appeal No. 120 of 1920.

In the matter of part cargo ex Steamship "Oscar II."

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

v.

Peter M. Kaae - - - - - *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 25TH JANUARY, 1921.

Present at the Hearing :

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

[*Delivered by* LORD PARMOOR.]

The respondent in this case trades under the firm name of Joergen Jensens Successors. Copenhagen. In March, 1917, he bought, from Knud Rasmussen, of the firm of Levysohn and Rasmussen, Copenhagen, the bills of lading for a consignment of clover seed shipped at New York on a Danish ship, which sailed on or about the 4th December, 1915, from New York for Copenhagen. On the arrival of the ship at Kirkwall in December, the clover seed was seized as prize, but permission was given to take it to Copenhagen, on an undertaking, by the owner of the ship, that it would be returned to the United Kingdom for the purpose of being placed in the Prize Court. The respondent, on the 25th March, 1917, paid for the bills of lading kr. 42,335.20, and applied to the British Legation at Copenhagen for permission to have the goods delivered. It was made a condition that a sum of kr. 52,919.00 should be deposited, and thereupon the respondent received delivery of the clover seed. The amount deposited was transmitted to the Admiralty Marshal, and paid into the Prize Court by him for adjudication. This is the sum of £3,639 10s. 11*d.* now in dispute.

On the 11th January, 1918, by an amendment to a writ, which had been issued in February, 1916, the Procurator-General claimed condemnation of the clover seed as prize, or in the alternative, detention, under the Reprisals Order of the 11th March, 1915. The cause came on for trial in March, 1919, when a claim was made on behalf of a firm in New York, Herbst Bros. and Company, who claimed as owners and shippers of the goods. The Procurator-General did not ask for the condemnation of the goods (or their proceeds) as contraband, but for an order of detention under the Reprisals Order of the 11th March, 1915, on the ground that the goods had an enemy destination and were enemy property. The learned President, Lord Sterndale, decided that Herbst Bros. and Company were acting as agents and intermediaries for the German firm of Ernst und von Spreckelsen, passing the goods through one Hermann Lindberg, and that they never really had the property in the goods. He accordingly pronounced the goods to have had an enemy destination, and to be enemy property, and ordered the proceeds of sale thereof to remain in Court until the end of the war or pending further order of Court. The only question which came before him for decision, and which he decided in his judgment, was that the goods when seized were enemy property. The respondent is not concerned to question this decision, and it does not affect the claim which he makes.

It is not disputed that the respondent purchased from an enemy. The purchase was honestly made, but subject to the risk of all belligerent rights, consequent on the seizure of the goods. The learned President states in his judgment that it had been made clear to him on the part of the appellant that it was not desired to defeat the claim on some collateral ground, but to have the question decided of the effect of the Treaty of Peace upon such a purchase as the respondent had made, and that he proposed to limit his judgment to that question, and to put aside all collateral questions which might conceivably have arisen. Having regard to this statement, it is not open to the appellant to raise collateral questions on the hearing of the appeal.

It was argued on behalf of the appellant that the decision of Lord Sterndale affected adversely the claim of the respondent. Their Lordships are unable to accept this contention. No doubt Lord Sterndale found that the goods at the time of seizure were enemy property, but they were not condemned as contraband, and the only order made was an order for detention of the proceeds of the sale of the goods until the end of the war, or pending further order of the Court. No question was raised at the hearing before Lord Sterndale as to the effect of a detention order in the case of goods which at the date of seizure were enemy property, but which had subsequently been transferred to a neutral.

It was further argued that the Reprisals Order of the 11th March, 1915, operated to restrict the rights of the neutral purchaser

in March, 1917. The relevant article of the Reprisals Order provides that every merchant vessel sailing from a port, other than a German port, after the 1st March, 1915, having on board goods which are of enemy origin, or of enemy property, may be required to discharge such goods in a British or allied port. The S.S. "Oscar II" is a vessel within the terms of this article, and at the time of seizure was carrying goods of enemy property. The article proceeds :—

"Goods so discharged in a British port shall be placed in the custody of the Marshal of the Prize Court, and if not requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Prize Court. The proceeds of goods so sold shall be paid into Court and dealt with in such manner as the Court may under the circumstances deem to be just. Provided that no proceeds of the sale of such goods shall be paid out of Court until the conclusion of peace, except on the application of the proper Officer of the Crown, unless it be shown that the goods had become neutral property before the issue of the Order."

In international law there is no rule which forbids the purchase of goods by a neutral from an enemy after seizure by a belligerent. Such a purchase is no doubt subject to all rights which accrue to a belligerent as a consequence of the seizure. For instance, if the goods purchased by a neutral are condemned as prize in a Prize Court, this is a risk which a neutral must have known would attach to his purchase at the time when he made it, and defeats any right which he otherwise might have to claim the goods. On the other hand, if, apart from the operation of some special order such as the Reprisals Order of the 11th March 1915, the purchased goods are liberated by the Prize Court, the ownership of the neutral purchaser becomes effective, if, as is admitted in the present case, the transaction has been carried through by a *bonâ fide* transfer which in itself is not open to question, and which the appellant does not question.

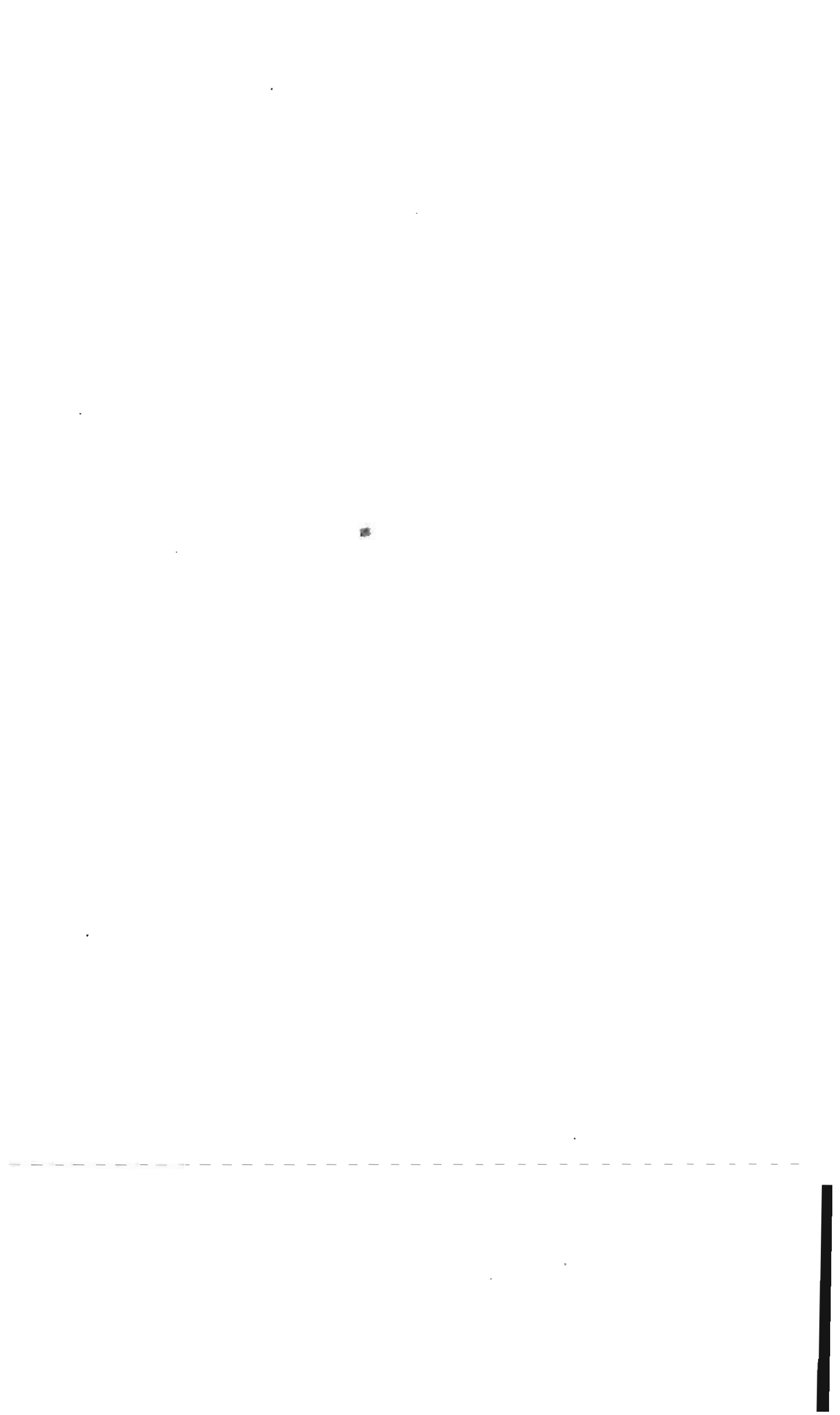
In the present case the only special order which can in any way affect the claim of the respondent or restrict his rights is the Reprisals Order of the 11th March, 1915. The question therefore arises, whether this Reprisals Order operates to defeat the claim of the respondent to the proceeds of the goods. The order was passed *alio intuitu*. The object was to provide in specified cases for the detention of goods seized, or their proceeds, until the close of the war, in order to insure that, during the war, the enemy should not be benefited, either by obtaining possession of the goods, or of their proceeds. The order does not affect the ownership of property. It leaves the ownership just as it would have been if the order had not been passed. It does not purport to deprive a neutral purchaser of a right, to which he would otherwise be entitled, and which does not conflict with any belligerent right. There is not a word in the order which can be construed as depriving an enemy owner of the right which he otherwise would possess, to transfer the goods seized or their proceeds to a neutral purchaser, or as invalidating the title

of the neutral purchaser. Whatever interest in the goods therefore Rasmussen possessed at the time of sale, as representing the owner of goods detained until the close of the war, passed under the terms of the purchase to the respondent ; and the respondent, as a neutral purchaser, is entitled to claim payment of the proceeds of the goods after the close of the war, unless he is placed under a disability either by the terms of the Treaty of Versailles or of the Treaty of Peace Order of the 18th August, 1919.

If the effect of the Reprisals Order of the 11th March, 1915, has been accurately stated, it is impossible to maintain that Article 297 of the Treaty of Versailles and the Treaty of Peace Order of the 18th August, 1919, can operate to defeat the claim of the respondent. Article 297 reserves to the Allied and Associated Powers the right to retain and liquidate all property, rights, and interests belonging at the date of the coming into force of the Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions, and protectorates, including territories ceded to them by the Treaty. Germany undertakes to compensate its nationals in respect of the sale or retention of their property, rights or interests in allied or associated States.

The money claimed as proceeds of the sale of Alsyke clover did not belong to a German national at the date of the coming into force of the Treaty, but to a neutral. The contention on behalf of the appellant involves therefore a claim to confiscate, under the terms of the Treaty, property at that date vested in a neutral owner, a contention which is negatived by the words of limitation in the terms of the Treaty, and which is not capable of serious argument. The same limitation is to be found in the terms of the Treaty of Peace Order. The property charged under that order is all property, rights and interests belonging to German nationals at the date when the Treaty comes into force (not being property, rights or interests acquired under any general licence issued by or on behalf of His Majesty), and the net proceeds of their sale, liquidation or other dealings therewith. It does not affect in any way property, which at the date when the Treaty came into force was the property of a neutral.

The appeal must be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

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HIS MAJESTY'S PROCURATOR-GENERAL

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PETER M. KAAE.

DELIVERED BY LORD PARMOOR.

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