

Privy Council Appeal No. 111 of 1920.

In the matter of part cargoes ex Steamships "Axel Johnson" and "Drottning Sophia."

Aktiebolaget Skanska Yllefabriken - - - - - *Appellants*

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 25TH JANUARY, 1921.

Present at the Hearing :

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

This appeal, with a very small exception to be mentioned shortly, raises only questions of fact, and after considering the evidence with care, and with the great assistance of counsel for the appellants, their Lordships have come to the conclusion that there is no reason to differ from the conclusions at which the learned President arrived. They do not consider it necessary to review all the steps by which he reached that conclusion, nor do they affirm their own agreement with all the propositions of fact that he mentions in his judgment, but not only do they think that there was evidence upon which he could conclude that the wool in question had a German destination, and being absolute contraband would therefore be condemned, but, for reasons to be shortly given, they have arrived at the same conclusion themselves. It seems to them clear that, as regards the wool purchased from Messrs. Staudt, there was an intention on the part of the claimants, clearly arrived at in November of 1915, that it should be sent to Germany or Austria to be combed. It is quite true that a purchase from Messrs. Hardt had taken place earlier, and no such letters had passed with Messrs. Hardt as passed in the

case of Messrs. Staudt, but the way in which the matter is dealt with by Mr. Engberg draws no sufficient difference between the two consignments, and there is no reason except his statement to suppose that the intention formed with regard to Messrs. Staudt's wool did not equally apply, as naturally it would under the circumstances, to the wool purchased from Messrs. Hardt.

The intention is clearly proved, because the action taken by the appellants in increasing the quantity, which they purchased upon the direct suggestion of Messrs. Staudt, is consistent only with their making provision for what was represented to them as a satisfactory commercial transaction, namely, sending their wool to Germany to be combed upon the understanding that certain waste portions of it, which would be retained, would be paid for. There are circumstances spoken to by Mr. Engberg, which shortly before the seizure of the two consignments might have explained a change of intention, but their Lordships think that his account of the letter, and the transaction with Messrs. Staudt, if not uncandid—for probably he endeavoured to be candid—was at any rate an understatement of his firm's position, and, on closely examining the reasons he gives for saying that no such intention existed at the time of the seizure, their Lordships are unable to suppose that the intention had been changed. There were no doubt some facilities for having wool combed in Sweden, which had previously not existed, and there is an arrangement with the Norrköping Company made by the appellant Company for availing themselves of those facilities, but the affidavits dispose rather too summarily of the suggestion that it would still have suited the appellants' business to carry out their former intention of sending the wool to Germany to be combed. Although it is possible that the appellants' business might have been carried on without sending the wool to Germany, one would have expected much more detail and much more firm ground in the affidavit before concluding that what had been a satisfactory arrangement in November had been abandoned in May or June of the following year. If that is so, the conclusion follows that at the time when the wool was seized on both vessels those who were the owners of it—and their Lordships think the appellant Company were the owners—and who certainly had full control over it, intended for the purpose of their business, and not in any way wrongly, to send it to Germany to be combed, and part of it to be retained.

So much for the question of fact. It is then suggested that on two points the wool, which on those facts would be absolute contraband, would not be subject to seizure, because first of all it was intended to be sent to Germany for a temporary purpose only, and secondly because, as is contended, it was to be sent to Germany for the purpose of being returned to Sweden after treatment, under such a binding engagement between the German Government and the Swedish Government as would constitute a clog upon the German Government's power to requisition or detain it, and would ensure that it would never augment the

resources of the enemy or form part of the German stock of wool.

It is to be observed with regard to the first point that we do not know how long the combing of the wool would involve its remaining in Germany, but it is clear that it is a process of some elaboration and some time. It would involve unbaling it, passing it through the combing machinery, and re-packing both the combed wool and the waste wool, and therefore, although it might be a temporary matter in the sense that some wool was ultimately to be returned, it is not a question of mere passing through the enemy country, or of a sojourn clearly shown to be unimportant or short. Their Lordships do not feel called upon to decide one way or the other whether there are any circumstances in which the temporary character of the stay of the supposed contraband goods in the enemy country would prevent the goods from being contraband, and would therefore deprive a belligerent of the right to seize them, but they are clearly of opinion—and no authority whatever was cited to the contrary—that, where wool is to be sent into the enemy's territory for treatment like this, during a considerable stay, and with no small amount of alteration of identity, it is impossible to say that the temporary character of the proceeding, such as it is, distinguishes the case from that of goods permanently sent into enemy territory with the intention that they should there remain or be consumed.

With regard to the other question, whether such an international agreement as is suggested would of itself prevent goods, which were otherwise condemnable as contraband, from being condemned, upon the ground that faith must be given to the solemn promise of the other belligerent, and therefore that the goods are not going to augment his stock—it is unnecessary to express any opinion, because the facts do not raise it. On a close examination of the affidavit of the one deponent, who speaks to this matter, it is clear that, although the Swedish Government at the time in question required that the Swedish exporter should, as a condition of obtaining a licence to export, give his promise to bring the wool back, there was no proof of a promise on the part of the German Government either to the Government of Sweden or to the individual Swedish exporters to ensure this return. The evidence as to the German Government's arrangements stops short with that given by Messrs. Staudt in November of 1915, the gist of which was that the German Government would only insist upon the retention of the waste wool, and even this was to be without engagement, and as a matter of what is called "exceptional obligingness."

Their Lordships therefore think that on these grounds, which have been sufficiently outlined and need not be further developed, the conclusion at which the learned President has arrived was the right conclusion and is justified by the evidence. They will accordingly humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

*In the matter of part cargoes ex Steamships "Azet
Johnson" and "Drottning Sophia."*

AKTIEBOLAGET SKANSKA YLLEFABRIKEN

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY LORD SUMNER.

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