

IN THE MATTER OF THE STEAMSHIP "BATHORI."

Adria Societa Anonima di Navigazione Marittima (a Corporation  
established under Italian Law) and others - - - *Appellants*

*v.*

His Majesty's Procurator General and another - - - *Respondents*

FROM

THE HIGH COURT OF JUSTICE (ENGLAND) 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 3RD NOVEMBER, 1933.

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*Present at the Hearing :*

LORD ATKIN.  
LORD TOMLIN.  
LORD THANKERTON.

[*Delivered by* LORD ATKIN.]

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This is an appeal from a decree of the President, Lord Merrivale, sitting in Prize, by which he pronounced against the claim of the plaintiffs, the present appellants, and condemned them in costs. The appellants are a corporation now established under Italian law. Their nationality for a period after the war has been in dispute ; but it is undisputed that before and during the war they were nationals of Hungary. They are a shipping company and carry on business at Fiume. On July 25th, 1914, the s.s. " Bathori," of 2,223 tons gross register, owned by the appellants and sailing under the Austro-Hungarian flag, left Mazarelli for Rouen with a mixed cargo consisting of beans, apples, flour, paraffin, insect powder, beech sleepers, staves and elder blossoms. She reached Havre on August 5th, 1914, and while there the cargo was discharged by order of the French authorities. Discharge was completed on August 28th, and the next day the ship sailed in ballast for Vigo under a safe-conduct issued by the French authorities and confirmed by the

British Consul-General at Havre. On September 1st, when on the high seas about 30 miles from Vigo, she was stopped by H.M.S. "Minerva." The commander (the defendant Captain Warleigh) apparently thought that the "Bathori" was violating the terms of the safe-conduct, and after removing the master and crew ordered her to be sunk. On representations made on behalf of the Austro-Hungarian Government, the British Government on January 19th, 1915, admitted that a mistake had been made and undertook to consider the question of pecuniary liability on the resumption of friendly relations and "as part of the general settlement of claims on both sides which may then arise."

On May 6th, 1930, the plaintiffs commenced the present proceedings in prize, claiming compensation for the loss of the ship and the effects of the master and crew. Before the President the question was debated whether the circumstances gave a right to claim in prize. The President determined this point in favour of the plaintiffs, and his decision in this respect was not challenged before this Board. It became necessary, therefore, to consider the defences raised in the answer of the defendants, which alleged that the claim was barred by the provisions of the Treaty of Peace between Hungary and the Allied Powers (the Treaty of Trianon), or was subject to the charge created by the same treaty and the Orders in Council made for the enforcement thereof. For the purpose of this case their Lordships find it only necessary to deal with the defence that the claim was completely barred. The Treaty of Trianon was signed on June 4th, 1920. It provided that it was to come into force from the date of ratification. On July 26th, 1921, ratifications were exchanged. On August 24th, 1921, the treaty was registered with the League of Nations. Part X of the Treaty is headed Economic Clauses. It includes Section III, "Debts," Article 231, with Annex, and Section IV, "Property, Rights and Interests," Articles 232, 233, with Annex. Article 232, 1, provides, "The question of private property, rights and interests in an enemy country shall be settled according to the principles laid down in this section and to the provisions of the Annex hereto." By the Annex, para. (2), it is provided as follows :—

No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or department of the Government of such a Power by Hungary or by any Hungarian national or by or on behalf of any national of the former Kingdom of Hungary wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly, no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

On May 12th, 1921, the Treaty of Peace (Hungary) Act, 1921, was passed by the British Legislature. It enacts :—

(1) "His Majesty may make such appointments, establish such offices, make such Orders in Council, and do such things as appear to him to be

*Privy Council Appeal No. 84 of 1932.*

Harry Pope - - - - - *Appellant*

*v.*

The Official Assignee of the High Court of Judicature at Rangoon - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 16TH OCTOBER, 1933.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD THANKERTON.

SIR JOHN WALLIS.

[*Delivered by* LORD THANKERTON.]

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This is an appeal from a judgment and decree of the High Court of Judicature at Rangoon dated the 8th March, 1932, whereby the Court, in exercise of its appellate jurisdiction, set aside an order dated the 14th December, 1931, made in exercise of its original jurisdiction, and declared that the deed of sale hereinafter referred to was void as against the respondent. The respondent did not appear in the appeal.

The deed of sale in question was dated the 27th February, 1931, and was made between Mrs. Edith Young, who carried on business as a milliner and dressmaker at 15, Phayre Street, Rangoon, and the appellant; Mrs. Young thereby assigned to the appellant the stock-in-trade then lying in her shop and all her book debts then due and owing, in consideration of the payment by the appellant to her bank of the sum of Rs. 20,229, being the amount of her overdraft with the bank. The appellant

had guaranteed Mrs. Young's overdraft with her bank up to the sum of Rs. 25,000, and the bank were pressing the appellant for payment. On the 16th June, 1931, Mrs. Young was adjudicated an insolvent.

On the 7th July, 1931, the respondent, as the assignee in insolvency of Mrs. Young's estate, made the application, out of which the present appeal arises, to have the deed of sale declared void as against the respondent, in respect of the provisions of sections 55 and 56 of the Presidency-towns Insolvency Act, 1909. The respondent's contentions, however, have been confined to section 55, and it is unnecessary to refer to section 56. Section 55 provides as follows :—

55. Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

The sole question in the case is whether the deed of sale was a transfer "in good faith and for valuable consideration" within the meaning of section 55, and it is clearly for the respondent to establish the contrary in order to succeed in his application. *Official Receiver v. P.L.K.M.R.M. Chettyar Firm*, L.R. 58 I.A. 115 (1930).

There is little dispute about the facts, and the evidence is referred to in detail by Sen J., who decided the case on the original side of the High Court. In carrying on her business, which was started in 1929, Mrs. Young financed it by means of the overdraft of Rs. 25,000 permitted by her bank on the guarantee of the appellant, who deposited the title deeds of his house with the bank and a promissory note for Rs. 25,000 signed by himself and Mrs. Young. The appellant also guaranteed Mrs. Young's rent for the shop for three years from 1929.

On the 4th February, 1931, the bank called on the appellant as guarantor to liquidate the overdraft and, after obtaining the deed of sale from Mrs. Young, the appellant liquidated the overdraft by two payments on the 20th and 27th March amounting to Rs. 20,521-2-9, which was considerably less than the guaranteed amount.

Four days after signing the deed of sale Mrs. Young left for England, where she told the appellant she hoped to realise Rs. 35,000 from her father's estate, and the appellant thereafter carried on the business in order to realise the stock, and made no new purchases except little articles like ribbons used for making up dresses.

Their Lordships are unable to find any evidence that the appellant knew, when he took the deed of sale, that Mrs. Young was insolvent. The overdraft was not exhausted, and there is no evidence that the appellant knew of other creditors at that date. Their Lordships agree with the opinion of Sen J. The

transaction admittedly was a real one, which takes it out of the class of case found in *Ex parte Chaplin In re Sinclair* (1884), 26 Ch. Div. 319. In that case and in *Tomkins v. Saffery* (1877), 3 App. Cas. 213, there was knowledge of insolvency.

Their Lordships are therefore of opinion that the respondent has failed to prove that the transfer was not made in good faith, and they will humbly advise His Majesty that the appeal should be allowed, that the decree of the High Court dated the 8th March, 1932, should be set aside and the order dated the 14th December, 1931, should be restored, the appellant to have the costs of this appeal and of the proceedings before the High Court in exercise of its appellate jurisdiction.

In the Privy Council.

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HARRY POPE

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THE OFFICIAL ASSIGNEE OF THE HIGH  
COURT OF JUDICATURE AT RANGOON.

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DELIVERED BY LORD THANKERTON.

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