

THE DAKSA: Attorney General v Louis Dreyfus and Co.

Privy Council

Lord Parker of Waddington, Lord Sumner, Lord Parmoor, Lord Wrenbury and Sir Samuel Evans.

22 March 1917

Prize — transfer in fraud of belligerent rights — onus of proof of innocence of transaction.

An Austrian Ship, the Daksa, was taken as prize at sea by a British cruiser. She held, with other cargo, a consignment of barley. The respondent, a French company, claimed that the property in the barley had passed to it on 1 August 1914, when payment for it was made in pursuance of a contract dated 13 July 1914. The purchase was from a German company. The Chief Justice held that when the transfer was made, no expectation of war between Great Britain and Germany influenced the parties and he ordered that the proceeds of sale of the barley be released to the respondents. There was expectation of war between Germany and France and Russia. The Attorney General as Proctor of Gibraltar appealed.

Held: (i) A transfer induced by apprehension of hostilities is not void but cannot be set up against those in fraud of whose rights it is deemed to have been made.

(ii) If at the date of the transfer there was a general apprehension of war, the onus is on the transferee to prove the innocence of the transaction.

(iii) The onus may be discharged by showing that the transfer was pursuant to a contract made when hostilities were not apprehended.

(iv) The transfer of the barley could not be deemed to be in fraud of the British captors because there was nothing to show that it was induced by apprehension of war between Great Britain and Germany, although war between France and Germany was generally apprehended.

Case referred to in the judgment.

The Southfield, (1916) P. Cas. 322.

The Solicitor-General (Sir Gordon Hewart) and T. Mathew for the appellant. Leck, K.C., and Raeburn for the respondents.

Appeal

This was an appeal from a decree of the Prize Court of Gibraltar, ordering the release to the respondents of the proceeds of sale of a cargo of barley, which had been seized at sea as prize and taken into Gibraltar.

Lord Parker of Waddington: Their Lordships are of opinion that in view of the course taken both here and below the parties to this appeal must be deemed to have made all such admissions of fact as were necessary to reduce the issue to one single question, namely, Was the transfer of 1 August 1914, to the respondents by the German sellers made under such circumstances as to entitle the captors to treat the barley transferred as retaining, notwithstanding the transfer, the character of enemy property at the date of its seizure as prize?

The principles of Prize law upon which the answer to this question depends may, so far as material, be summarised as follows: (1) where a transfer of goods at sea is induced by apprehension on the part of the transferor of the outbreak of hostilities between the State to which he owes allegiance and another State, such transfer is deemed to be in fraud of the belligerent rights of the latter State, and should such hostilities subsequently arise and the goods be seized as prize, the transferee cannot (at any rate if he were aware of the apprehension which induced the transfer), set up his own title in order to show that the goods had at the date of seizure lost their enemy character; (2) If at the date of the transfer the circumstances were such as to give rise to a general apprehension of war the onus is on the transferee to prove the complete innocence of the transaction. It will not be enough to prove his own innocence. He must prove also that the contract was not induced by apprehension of war on the part of the transferor; (3) the transferee may discharge this onus by showing that the transfer was pursuant to a contract made at a time when no such hostilities were apprehended.

In the present case the respondents set up that the transfer of 1 August, 1914, was made pursuant to a contract dated 13 July, 1914. This may very probably have been the case, but it can hardly be said to have been proved; for the contract of 13 July, 1914, was not produced, nor is there any satisfactory evidence as to its terms. Their Lordships prefer to base their advice to His Majesty upon another ground.

The learned judge in the court below held that there was at the date of the transfer no such general apprehension of hostilities between this country and Germany as to throw upon the transferee the onus of proving that the

transfer was not in fraud of our belligerent rights. This was in accordance with the view expressed by the President in the case of *The Southfield*¹, and their Lordships are not prepared to differ from the learned judge upon what is in reality a finding of fact. The only question, therefore is whether the British captors are, because war between France and Germany was at the date of transfer undoubtedly generally apprehended and subsequently broke out, in a better position than they could otherwise have been. In their Lordships' opinion they are not. A transfer induced by apprehension of hostilities is not void. It merely cannot be set up against those in fraud of whose rights it is deemed to have been made. Here there was no transfer which can be deemed to be in fraud of the rights of British captors because there is nothing to show and nothing to raise any presumption that the transferor was induced to make the transfer by apprehension of war between Germany and the United Kingdom. Their Lordships agree in this respect with the judgment of the court below and with the decision of the President in the case of *The Southfield* already referred to.

Under the circumstances their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.