

## THE VILLA FRANCA

The Supreme Court (Prize Jurisdiction)

McDougall, C.J.

18 December 1942

*Prize—goods of a neutral becoming enemy property after seizure and before claim by the neutral.*

Certain goods despatched by a Swiss firm to Japanese consignees were seized when in a Portuguese ship. Two months after the seizure Japan became an enemy country. The Crown sought condemnation.

**Held:** (i) It could only be assumed that the ownership of the goods was in the Japanese consignees.

(ii) Goods the property of a neutral at the time of seizure which became the property of an enemy are liable to condemnation.

### Cases referred to in the judgment.

*The Katwijk*, (1915) 2 Lloyd Pr. Cas. 317.

*The Sally Griffiths*, (1795) referred to at 3 Ch. Rob. 302.

*The Palm Branch*, [1916] P.230; [1919] A.C. 272.

In this cause, the Crown sought condemnation of goods seized in a Portuguese ship which put in at Gibraltar. No appearance was entered by any claimant.

C.M. Reece for the Crown.

### 6 January 1943: The following judgment was read—

The Crown asks for condemnation of 16 postal packets of machinery and one of calendar blocks and diaries, being part cargo of the Portuguese ship *Villa Franca*.

This ship was on a voyage from Genoa to Lisbon and arrived at Gibraltar on 4 October 1941.

On that day, the detaining officer, Lieut. Ellis, took possession of the said postal packets.

It appears that these packets were despatched by a Swiss firm on 24 September 1941 to a firm in Japan. There are certificates of origin and interest to show that the goods were of Swiss origin.

Switzerland was and is a neutral country. Japan was neutral until 9 December 1941, i.e., some two months after the seizure of the packets.

I use the term "seizure" advisedly in view of the observations of the President in *The Katwijk*<sup>1</sup>.

At first sight it would seem on the authority of Hallick's International Law<sup>2</sup> and the case of *The Sally Griffiths*<sup>3</sup> that the goods are not liable to condemnation. There is no suggestion that they were despatched in contemplation of war.

The writ was issued on 10 June 1942. No appearance had been entered by any party on 14 December 1942. Had the ownership of the goods been that of the Swiss despatching firm at the time of the seizure it might have been expected that a claim would have been made. I can only assume that the Japanese addressees were and are the owners. It is unnecessary to decide whether in the absence of any claim the Crown is entitled to ask for condemnation by default alone in the absence of other satisfactory grounds, as the case of *The Palm Branch*<sup>4</sup> is authority for the condemnation of goods which were the property of a neutral when seized but which became, before the neutral's claim to them was made, enemy property.

It is true that, in that case, on appeal, the order of condemnation was varied, but that was by consent, and the court did not say that condemnation was wrong.

On that authority, and as the goods are clearly contraband within the list in Government Notice No. 131 of 9 September 1939, I condemn the part cargo set out in the schedule to the writ of summons as good and lawful prize. It is to be appraised and sold and the proceeds paid into court.

<sup>1</sup> (1915) 2 Lloyd Pr. Cas. 317 at 329.

<sup>2</sup> Vol. II, p. 104.

<sup>3</sup> (1795) See *The Atlas* (1801) 3 Ch. Rob. 302.

<sup>4</sup> [1916] P. 230; [1919] A.C. 272.