THE SIDI IFNI:
Rios and another v Attorney General

Privy Council
Lord Roche, Lord Porter, Lord Merriman, Lord Goddard
and Lord Justice Mackinnon.
19 July 1945.

Prize — onus on captors to show reasonable ground for suspicion — onus on claimants to prove suspicion unfounded.
Prize — conditional contraband — onus on captors to show cargo would assist warlike operations.

On 3 December 1942, the Sidi Ifni, a Spanish ship sailed from Malaga to Valencia with a cargo of lemons. She had no navicert. She was intercepted and directed to Gibraltar, where ship and cargo were seized as prize. Both ship and cargo were condemned. The master and owners of the ship appealed.

Held: (i) It is sufficient for captors seeking condemnation of seized property in the Prize Court to establish that there is reasonable ground for suspicion that the property is subject to be condemned and the claimants must then prove that the suspicion is unfounded.

(ii) As the lemons were conditional contraband, the captors had to show that they would assist the warlike operations of the enemy.

(iii) All foodstuffs would of necessity help the warlike operations of an enemy.

(iv) There were reasonable grounds for suspicion as regards both ship and cargo and no sufficient evidence to dissipate that suspicion.

Cases referred to in the judgment.

The Monte Contes, [1944] A.C. 6 and supra p. 95.
The Hakan, [1918] A.C. 148.
The Louisiana, [1918] A.C. 461.
The Hillerod, [1918] A.C. 412.

Appeal

This was an appeal by the master and owners of the Sidi Ifni against an order of the Supreme Court condemning the ship as prize.

Lord Roche:

This is an appeal by the Master and Owners of the Spanish ship Sidi Ifni from a judgment of the Supreme Court of Gibraltar, Admiralty Jurisdiction, sitting in Prize, dated 29 June 1943, in so far as it pronounced that ship to be liable to confiscation upon the ground that she was carrying a cargo of contraband upon a voyage from Malaga to Valencia, Spain, and condemned her as good and lawful prize.

By the same judgment the cargo laden upon the Sidi Ifni during this voyage, namely 269 tons of lemons, was also pronounced to have been contraband and to have had an enemy ownership or destination and as such or otherwise subject and liable to confiscation, and was also condemned as good and lawful prize. No appeal has been entered by any claimant in respect of the cargo and, accordingly, the only question in the present appeal is as to whether upon the facts and in the circumstances the ship was rightly condemned as good and lawful prize.

The Sidi Ifni is a Spanish ship which was at all material times owned by the second-named appellants who are a company incorporated with limited liability under the laws of Spain. The first-named appellant is a Spanish subject and was at all material times master of the ship. At all material times the appellant company was specified as a person to be deemed an enemy for the purposes of the Trading with the Enemy Act, 1939, by orders made by the Board of Trade under sub-s. (2) of s. 2 of that Act.

On 3 December 1942, the Sidi Ifni sailed from the Port of Malaga, Spain, upon a voyage to the port of Valencia, Spain, with a cargo of 5,977 cases of lemons of a net weight of 269 tons. She was not provided with a ship navicert valid for this or any voyage, and the cargo was not covered by any valid cargo navicert.

On 4 December 1942, the Sidi Ifni, while in the course of her voyage was intercepted and diverted to the port of Gibraltar and on 9 December 1942, she and her cargo were seized as Prize by the Detaining Officer, Gibraltar. Upon the same date a writ of summons was issued by the respondent in the Supreme Court of Gibraltar, Admiralty Jurisdiction, in Prize, against the ship and cargo for condemnation as good and lawful prize, and was duly served.

On 7 January 1942, an appearance was entered on behalf of the appellant company as owners of the ship; but no appearance was entered on behalf of any person purporting to be the owner of or otherwise interested in the cargo.

By their claim dated 18 February 1942, the appellant company claimed the release of the ship, and consequential relief, alleging as the grounds of their said claim, that the ship was under contract to carry the lemons from the Port of Malaga to the Port of Valencia for account of the Sindicato Nacional de Frutos y Productos Horticolas, an official body of the Spanish Government, and that at the time of the capture of the ship there were no contraband goods on board and that no enemy of Great Britain had, at the time of the capture or at any other material time, any share, right, title or interest in the said ship or the cargo therein or any part thereof.

This claim came on for hearing before the Chief Justice of the Supreme Court of Gibraltar, Admiralty Jurisdiction, sitting in Prize, on 24 and 25 June 1943, when the appellant company appeared and were represented by counsel, but the owners of the cargo did not appear and were not represented.

The ship's roll and deck log which were found on board the Sidi Ifni at the date of her seizure and which covered a period from 4 February 1940, disclosed the following facts:-

(a) that upon no previous occasion had the Sidi Ifni carried any cargo of fruit or fruit pulp to any port of discharge in Spain; but that she had made some 30 voyages carrying such cargoes from Spanish ports to ports of discharge in southern France; namely—Sete, Port Vendres and Marseilles;

(b) that from 8 March to 11 May 1941, the Sidi Ifni was exclusively engaged in carrying oranges from Spanish ports to Sete and returning either in ballast or with cargoes of nitrates;

(c) that during the fruit shipping season of 1941-42, namely,from 27 November 1941, to 13 May 1942, the Sidi Ifni was exclusively engaged in carrying fruit from Spanish ports to Sete, Port Vendres and Marseilles and returning generally in ballast;

(d) that upon six voyages while carrying fruit or fruit pulp from a Spanish port to a French port, the Sidi Ifni called at an intermediate port in Spain; the purpose of such calls, in at least three cases, was to take on bunkers;

(e) that between the close of the fruit shipping season of 1940-41 and the opening of the fruit shipping season of 1941-42, with the exception of one cargo of tiles, two of maize and one general cargo, the Sidi Ifni was exclusively engaged in carrying either cargoes of pulp from Cartegena to Port Vendres, or cargoes of pyrites from Malaga to Valencia;

(f) that after the close of the fruit shipping season of 1941-42, the Sidi Ifni carried three cargoes of ore (celestite) from Motril to Valencia and made one voyage to Sete in ballast, returning to Valencia with a cargo of sulphate of ammonia.

With the ship papers, which were on board the Sidi Ifni at the date of her seizure, there was also found a letter addressed by the master to the Orange National Syndicate dated 29 December 1941, in the following terms:—

"DEAR SIRS,

The undersigned, Master of the Spanish vessel 'Sidi Ifni' who has undertaken to load oranges destined for Germany via Sete for account of the Syndicate, hereby guarantees to be able to take bunkers at Barcelona for the present voyage, making himself responsible for all damages sustained by the cargo in the event of being unable to get said bunkers.

Yours truly,

(Signed) ANGEL SAAVESRA."

The bill of lading issued in respect of the cargo was stated to be issued in Malaga, was dated 3 December 1942, was made out in the name of one A. Munoz Palomo as shipper and also named him as consignee. Freight was expressed to be payable in Malaga but no figure of the amount of the freight or the rate at which it was payable was inserted on the bill of lading.

The ship's agent at Malaga and Valencia for the purposes of the voyage in the course of which the Sidi Ifni was seized was a company known as Baquera, Kusche and Martin Sociedad Anonima (Bakumar). This company had been suggested as agent by Munoz Palomo, and was at all material times specified by an Order made by the Board of Trade under sub-s. (2) of s. 2 of the Trading with the Enemy Act, 1939, as a person deemed to be an enemy for the purposes of the Act.

No witness was called on behalf of the appellant company to prove the ultimate destination of the cargo nor was it suggested that any inquiries had been made by that company to ascertain its destination. At the date of the voyage in question the managing director of the appellant company was one Bau who like his company was at all material times specified as a person to be deemed to be an enemy within the Trading with the Enemy Act, 1939. This gentleman was the person best in a position to speak as to the knowledge of the appellant company about the destination of the cargo but was not called as a witness. The only witness, apart from the master, called on behalf of the appellant company was Bartolome Obrador.

Obrador was president of the company but had been absent from July 1942 to February 1943, and therefore had no knowledge of the shipment in question. Indeed until the latter date according to his own evidence he was technical director only. From his and the master's evidence it appears that when seized in prize the vessel was under requisition to or at least on a voyage directed by a syndicate which was a Government organisation.

The previous voyages to French ports carrying fruit were said by this witness to have been undertaken whilst the ship was requisitioned by the Spanish Ministry of Industry and Commerce. He knew, however, that Valencia was used as a port of transhipment for cargo destined for Germany since in October 1941 he objected to carrying a cargo of copper pyrites to Valencia on the ground that it was contraband. As to the cargo carried on the voyage under consideration he and the master both said that lemons were commonly carried from Malaga to Valencia for consumption there, but as to that as well as the rest of the voyages he appeared to have taken little interest and to have made no inquiries in respect of their object or the ultimate destination of the cargoes.

Indeed though he and the master denied any knowledge of the enemy destination of the lemons, Bakumar appear to have been accepted as agents for this voyage without inquiry although they were known to be on the black list and although they were not the company's ordinary agents. Moreover the lemons on board at the time of seizure did not constitute a full cargo and no explanation was given as to the reason for shipping a part cargo if Valencia was the ultimate destination of the consignment.

The master on his part can hardly have been ignorant of the fact that the lemons may well have been intended for enemy use, since he had previously carried oranges from Spain to southern French ports and on certain of such voyages, of the number of which he professed himself ignorant, he had acted on the terms of the letter dated 29 December 1941 set out above which he referred to as containing "the usual Syndicate formula". Moreover the ship's papers as has been already stated disclosed the fact that on five previous voyages with fruit to French ports calls had been made at intermediate Spanish ports and of those five two at least were for the purpose of bunkering.

The parties most interested in the cargo, viz.:—Bakumar and Munoz, were not called, nor was Bau though its carriage must have been arranged through him.

On this state of fact the questions at issue before their Lordships and in the Supreme Court of Gibraltar were (1) Had the cargo an enemy destination and (2) Did the owners know of it?

As to (1) the law applicable is not in doubt and has most recently been stated by their Lordships' Board in *The Monte Contes* [1]. As their Lordships point out in that case it is sufficient in prize law for captors seeking condemnation by the Prize Court of seized property to establish that there is reasonable ground for suspicion that the property is subject to be condemned. The claimants whose property has been seized must show to the satisfaction of the court by affirmative evidence amounting to positive proof that the reasonable suspicion is unfounded (see also *The Hakan* [2].)

The lemons, it is true, were only conditional contraband and therefore it must be shown that if they should reach enemy destination, they would assist the warlike operations of the enemy. But under the existing circumstances all foodstuffs of necessity fell into this category.

Was there then reasonable ground for suspicion that the goods were likely to reach enemy territory, that is to say southern France in the present case.

Their Lordships cannot doubt that there was such reasonable ground for suspicion when—

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1 [1944] A.C. 6, and supra p. 95.

2 [1918] A.C. 148.

(a) The bill of lading was one in which the shipper and consignee were the same person and in which no rate of freight was disclosed with the result that it did not constitute the contract of carriage or disclose the terms upon which the goods were carried;

(b) there was no navicert for ship or cargo;

(c) the ship had been engaged in contraband traffic from Spain to French ports since June 1940;

(d) no claim was made in the proceedings to the cargo of lemons; and

(e) Valencia has been established in at least one instance as a port of transhipment to enemy territory.

Further as to (a) above their Lordships would point out that the Declaration of London as modified by the Order in Council of 29 October 1914, provided that conditional contraband should be liable to capture on board a vessel bound for a neutral port if the goods were consigned to order or if the ship's papers did not show who the consignee was (see *The Louisiana*[1]). In that case it was observed at p.470 that "the reason for not waiving the doctrine of continuous voyage in the case of consignments to order can only have been that in the case of such consignments the shipper retains the control of the goods, and can alter their destination as his interest may dictate or circumstances may admit. This control may, however, be retained by the shipper, even if he consigns to a named person, provided that the consignee be bound to indorse or otherwise deal with the bill of lading as directed by the shipper."

In the present instance the shipper obviously retained control and the observations have even greater weight in a case such as this where the Declaration of London has no application.

If then the evidence is sufficient to justify seizure of the cargo, is there also reasonable ground for suspicion that the owners were implicated?

All the facts set out above must have been known to someone in authority and in addition the company itself, Bau its managing director at the material time and the special agents appointed for the voyage were all on the black list. It is true that positive evidence of knowledge cannot be produced—it very seldom can—but it is enough even in the case of a neutral ship if the shipowner has knowledge that the cargo is contraband destined to an ultimate enemy destination, and knowledge of this destination may be inferred if the shipowner knowing facts which would cause a reasonable person to suspect the intended destination refrains from making inquiries (see *The Hillerod*[2]).

There remains however the question whether the owner of the ship has given proof sufficient to dissipate the suspicions rightly engendered and to entitle the ship to be released.

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[1] [1918] A.C. 461

[2] [1918] A.C. 412.

The suspicions however are far from being wiped away in the present case. They are rather increased when it is remembered that there was no evidence oral or documentary as to the real contract of affreightment or terms of carriage and that no one was called to state the actual destination or as to the proposed disposition of this part cargo or asked what arrangements were made in respect of these matters by those authorised to act for the ship. Munoz Palomo, Bau and Baquera, Kusche and Martin were the witnesses plainly required to clear up these matters. None of them were called nor was any explanation of their absence given.

These considerations were those which weighed with the Chief Justice in the Supreme Court of Gibraltar and their Lordships agree with him in considering them conclusive of the case.

(The Board did not consider it necessary to pronounce on the effect of paras. 2 and 3 (i) of the Reprisals Order.)