

International Law Studies – Volume 22

International Law Decisions and Notes

U.S. Naval War College (Editor)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. government, the U.S. Department of the Navy or the Naval War College.

difficulties in Germany and of the manner in which the German Government had in effect requisitioned salted herrings to meet the exigencies of the war. They had an opportunity in the court below of establishing their want of knowledge if it existed, but they did not attempt to do so. The inference that they did in fact know that the vessel would be used for the purpose for which it was used is irresistible. If knowledge of the character of the goods be the true criterion as to confiscability, the vessel was rightly condemned.

Even on the hypothesis that something beyond mere knowledge of the character of the cargo is required, something which may be called "malignant or aggravating" within the principles of the *Ringende Jacob*<sup>67</sup> or the *Bermuda*<sup>68</sup> decisions, that something clearly exists in the present case. A shipowner who lets his ship on time charter to an enemy dealer in conditional contraband for the purposes of his trade at a time when the conditional contraband is vitally necessary to and has been requisitioned by the enemy government for the purpose of the war is, in their lordships' opinion, deliberately "taking hostile part against the country of the captors" and "mixing in the war" within the meaning of those expressions as used by Chase C. J. in the *Bermuda*.<sup>68</sup>

Decision.

In their lordships' opinion, the appeal fails and should be dismissed with costs.

---

### THE "BONNA."

ADMIRALTY.

(IN PRIZE.)

February 14, 15, 19, 1918.

[1918] P. 123.

In this case, which governed a number of others, the procurator general, on behalf of the Crown, claimed the condemnation of 416 tons of coconut oil seized at Bristol on August 27, 1916, ex the Norwegian steamship *Bonna*.

The claimants, the Nya Margarin A/B. Svea, of Kalmar, Sweden, claimed the release of the oil on the ground that it had been bought by them for the purpose of the manufacture, in their own factory, of margarine for sale and consumption in Sweden.

---

<sup>67</sup> 1 C. Rob. 89.

<sup>68</sup> 3 Wall. 514.

The case is reported on the alternative question argued on behalf of the Crown that, assuming the claimants established that the oil was destined solely for the Swedish factory, it should be deemed to have an enemy destination on the ground that it helped to form part of a reservoir of edible fats part of which went to Germany, or that the margarine manufactured from it would, to the knowledge of the claimants, be consumed in Sweden in substitution for butter exported to Germany. On this latter point it appeared from an affidavit by the controller of the war trade statistical department that before the war Sweden exported about 76 per cent of her surplus butter to the United Kingdom and Denmark, and that the quantity exported to Germany was 2.3 per cent. After the outbreak of war the export to the United Kingdom, and in a lesser degree to Denmark, decreased, until by June, 1916, it had dwindled to less than 0.4 per cent, while Germany was receiving 98 per cent of the total export. During the second half of 1916 large quantities of edible fats and oils suitable for margarine manufacture were seized as prize, with the result that, whereas in July, 1916, 1,716 tons of butter were exported, 1,701 of which went to Germany, in December, 1916, less than 1 ton was exported, and from January to October, 1917, only 1½ tons were exported to Germany.

February 19. The President (Sir Samuel Evans) read the following judgment: This claim relates to 416 tons of coconut oil shipped on the Norwegian steamship *Bonna*, and seized on August 27, 1916.

The claimants are a Swedish company of margarine manufacturers and dealers carrying on business at Kalmar. The company was formed before the war, but its business increased largely after the war. Coconut oil was declared conditional contraband by an order in council of October 14, 1915.

The case for the claimants was that the oil was their property, and was bought for the purpose of the manufacture of margarine in their own factory for sale and consumption in Sweden, and as such was not subject to capture or condemnation.

It was contended for the Crown that the claimants had failed to discharge the onus which, in the circumstances, rested upon them, to establish that the destination of the oil was neutral; and, further, that the oil was subject to condemnation on the ground either (1) that it, and

Statement of the case.

Neutral destination.

the margarine for the manufacture of which it was acquired, should, in the circumstances, be deemed to have an enemy destination; or (2) that such margarine, when manufactured, would to the knowledge of the claimants be consumed in Sweden in substitution for Swedish butter to be supplied to Germany.

Of the total of 416 tons, 111 tons were shipped at Batavia and Sourabaya, in the Dutch East Indies, by G. H. Slot & Co. as consignors to Auguste Pellerin, Fils & Co. as consignees at Christiania; and 305 tons at Sourabaya by Burns, Philips & Co. as consignors to Anders Mellgren as consignee at Gothenburg. All the consignments were intended for the claimant company, which had bought the former lot through A. B. Nielsen & Co., of Christiania, and the latter through one Ole Boe, of the same city. The goods were sold and bought under f. o. b. contracts.

It was said that the first-named consignees, Auguste Pellerin, Fils & Co., were inserted in some of the bills of lading through a mistake of the shippers, which was not discovered till after the vessel sailed. While she was on her voyage the shippers caused a cablegram to be transmitted to her master asking him to alter the manifest by entering the name of Anders Mellgren as the consignee. This he did not do; but he pinned the cablegram to the manifest. Whether it was intended that he should alter the bills of lading or not is in doubt.

Anders Mellgren was the French consul at Gothenburg. he had no control over, or beneficial interest in, the goods. His name was used as consignee with his assent, accorded for a small commission. The object of this was, according to the claimants' story, to facilitate the passage of the goods into Sweden by satisfying any British cruiser or examining vessel that the destination of the goods was neutral, and so to avoid the diverting of the vessel and her cargo to a British port for search and examination.

How the alleged mistake of inserting Auguste Pellerin, Fils & Co. in some of the bills of lading arose has not been shown as clearly as could be wished. But however that occurred, and whatever the object of consigning the goods to Mellgren may have been, the result was that the ship's papers did not show who were the real consignees for whom the goods were destined. This clearly placed upon the claimants the burden of proving that the goods

did not have an enemy destination. Other matters arising upon the documents also required explanation; but I refrain from entering upon them, as that may be unnecessary in view of the decision to be pronounced upon the claim to the release of the goods.

As to the ownership and destination of the goods, having regard to all the circumstances (which need not be detailed), I have come to the conclusion that the oil was the property of the claimants, and was bought, and intended to be used, by them in their own factory in the manufacture of margarine; and that such margarine was intended for consumption in Sweden.

Apart from these questions of fact, counsel for the Crown rested their case upon a broader ground. Statistics were given in evidence to show the increase of the importation into Sweden of raw materials for margarine and of the production and sale of margarine, and to show the simultaneous increase of the export of butter from Sweden to Germany. They were interesting, and beyond doubt they proved that the more margarine was made for the Swedes the more butter was supplied by them to the Germans; and that when by reason of the naval activity of this country the imports for margarine production became diminished, the Swedish butter was kept for consumption within Sweden itself and ceased to be sent to the enemy.

Raw materials.

Upon these facts counsel for the Crown formulated and founded their legal proposition. That proposition may be translated in practical terms, in relation to the facts of this case, perhaps more usefully than if it were stated in abstract language. So translated it may be stated thus: "Margarine and butter are of the same class of food, one being used as a substitute for, or even as an equivalent of, the other. Margarine was produced in Sweden—by the claimants among others—with the result that, to the knowledge of the manufacturers, the butter of the country was being sent to Germany, where it would pass under the control of the Government. There was, so to speak, one reservoir of the edible fats, butter and margarine. As one part of the contents—the butter—was conveyed away for consumption in Germany, the other part—margarine—was sent in to take its place for consumption in Sweden. If the one part could be captured as conditional contraband, the other part was subject to capture also; and not only that

Conditional  
contraband.

part when completely manufactured, but the raw materials for it as well."

No authority was, or could be, adduced for the proposition formulated in such an argument; but it was contended, nevertheless, that it logically followed principles recognized by international law.

Continuous  
voyage.

Before pronouncing the decision of the court I think it right to say that, if it were established that raw materials were imported by a neutral for the manufacture of margarine with an intention to supply the enemy with the manufactured article, I should be prepared to hold that the doctrine of continuous voyage applied so as to make such raw materials subject to condemnation as conditional contraband with an enemy destination.

I should go even further and hold that, if it were shown that in a neutral country particular manufacturers of margarine were acting in combination with particular producers or vendors of butter, and that the intention and object of their combination was to produce the margarine in order to send the butter to the enemy, the same doctrine would be applicable with the same results.

But there is a long space between those two supposed cases and the one now before the court; and this space, in my view, can not be spanned by the application of the accepted principles of the law of nations.

Conversion  
of raw materials.

I do not consider that it would be in accordance with international law to hold that raw materials on their way to citizens of a neutral country to be converted into a manufactured article for consumption in that country were subject to condemnation on the ground that the consequence might, or even would, necessarily be that another article of a like kind, and adapted for a like use, would be exported by other citizens of the neutral country to the enemy.

Decision.

I therefore allow the claim, and order that the goods seized, or the proceeds if sold, be released to the claimants.

---

### THE "STIGSTAD."

[PRIVY COUNCIL.]

ON APPEAL FROM THE PRIZE COURT, ENGLAND.

December 16, 1918.

[1918] A. C. 279.

Appeal from a judgment of the president of the admiralty division (in prize).<sup>69</sup>

<sup>69</sup> [1916] p. 123.