Privy Council Appeal No. 10 *of* 1921.

In the matter of the steamship "Rannveig."

Aktieselskabet Osterjolingen and others - - - - *Appellants*

v.

His Majesty's Procurator-General - - - - - *Respondent*

FROM

THE HIGH COURT OF JUSTICE, PROBATE, DIVORCE AND ADMIRALTY DIVISION (IN PRIZE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH NOVEMBER, 1921.

Present at the Hearing:

LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

This is an appeal by Norwegian shipowners, the Aktieselskabet Osterjolingen, and by German cargo-owners, the Reischsfisch-versorgung, against a decree whereby a cargo of salted herrings in transit from Christiansand to Stettin and the steamship "Rannveig," on which it was laden, were condemned, the first as being conditional contraband bound to a German base of supply, and the second as having carried it with full knowledge of its character and destination. Both appellants relied chiefly on an international agreement, called the Norwegian-American Agreement, dated the 30th April, 1918. The German cargo-owners appeared and claimed the benefit of this agreement, and were heard without objection to argue that it was binding on the Crown, which is not contested, and that it assured to the traffic in question immunity from capture and condemnation. This is the main

question in the appeal. The shipowners claimed that under this agreement, read in combination with another called the Tonnage Agreement, made between His Majesty's Government and the Norwegian Shipowners' Association in the previous November, they were entitled to carry this cargo to Stettin without interference, or at least were reasonably warranted in so reading the agreements and therefore should not suffer condemnation of the ship.

There is a passage in the President's judgment which their Lordships will mention before passing on. He observes, and apparently as a step in his train of reasoning :—

> " To license such a transaction on the part of an alien friend would be to license an unneutral act, whereby he must of necessity lose his character of friend. There is nothing in the terms of the agreement which shows an intention to authorise Norwegian traders to do any act inconsistent with neutrality. The Norwegian trade with Germany in fish which is provided for is, in my opinion, that trade only which is consistent with neutrality, and not trade which is contraband."

This passage, doubtless by inadvertence, appears to assume that the carriage of the cargo in question would, apart from the Norwegian-American Agreement, have been an unneutral act in the carrier, and that to have permitted it to be shipped would have been a breach of neutrality on the part of the Norwegian Government. It is not, however, the crucial point of his decision. The carriage of contraband, though hazardous, is not an unlawful or an unneutral trade. The fact that it is subject to the right of the belligerent to prevent it by capture on the high seas makes it necessary to consider whether the appellants in this case are relieved from the consequences of such capture by the operation of the agreements in question.

The Norwegian-American Agreement had on its face many objects, and in construing it they may well be borne in mind. Furthermore, it is material to remember that it was entered into by the Norwegian Government on the one hand through its special representative, and on the other by the Chairman of the War Trade Board of the United States, an organisation empowered to make such a contract on behalf of the United States. The agreement subsequently received the adherence of various Allied Governments, and more particularly of that of His Majesty.

When this agreement was entered into Norway had undoubtedly a strong interest in obtaining from the Allied and Associated Powers, especially from the United States, an agreement for a full supply of the commodities which were necessary to her economic life and prosperity, but in Europe, too, there were supplies which she desired to obtain from the Central Powers, and this involved the maintenance of Norwegian exports in exchange and of sea-borne traffic, probably in Norwegian bottoms as much as in German, for the purpose of transporting it. Equally important to her, perhaps more important still, was the observance of her obligations of neutrality and the avoidance of any voluntary discrimination between one combatant Power and another. On

the other hand, though there is nothing in the record to furnish direct evidence on this point, their Lordships cannot without affectation ignore what must be common knowledge—that in the spring of 1918 the problem of intercepting contraband traffic between Norway and Stettin was one which presented to the Allies difficulties not attaching to the control of traffic in the North Sea. Their Lordships have been invited to hold that the object, or at least one object, of the stipulations of this agreement with regard to the export of herrings to Stettin was to induce the Norwegian Government in effect to do for the Allied Powers what they could not then do for themselves, and to secure by agreement restriction of the traffic in food within moderate limits. It may be so, but their Lordships cannot undertake to determine the meaning of a written agreement by considering the results which may follow from its terms. It is equally possible that its object was to enable Norway, by stipulations made by the Norwegian Government in the interests of the country, to find a profitable and secure outlet for a portion of her herring catch, to obtain by way of *quid pro quo* a corresponding supply of German manufactures, and above all, to silence any possible complaint from the Central Powers that an agreement had been made which involved discrimination against themselves. The agreement as a whole has compromise writ large upon the face of it. One stipulation answers another; but who can now estimate the relative weight of each? Their Lordships have no information before them which would be an adequate justification for giving to particular phrases a meaning based on the precise objects or the relative importance of the various clauses, and must perforce refer to the words used for their meaning.

Again, in point of form, conventional terms relating to exports of Norwegian commodities from Norwegian waters would naturally be expressed as undertakings by the Norwegian Government, not as licences accepted by it from the hands of foreign Powers. A Sovereign State, scrupulously mindful of the obligations of neutrality, and justly resolute to maintain its own dignity and independence, would be prompt to reject language which might imply the permission of another Power to take this or that action as to the goods to be shipped on board its own ships in its own ports; while, on the other hand, the United States could have no interest in imposing on Norway language suggesting the acceptance of permission from abroad, since for practical purposes the mere undertaking of the Norwegian Government was sufficient to ensure any results that were desired. It cannot, however, be denied that if, upon a sufficient inducement or by inadvertence, the Norwegian Government did, in truth, assent to language clearly expressing the grant of permission by the United States to export herrings in a certain measure from Norway, the matter was entirely within its competence and the language must be read as it stands.

Their Lordships accordingly turn to the wording of the instrument. Article III, paragraph 1, is particularly material.

It begins by a statement that, for considerations recited, "the Norwegian Government agrees to the following restrictions of her exports to the Central Powers or their allies, viz. :—

> "Norway will not export to the Central Powers or their allies foodstuffs of any kind except fish and fish products. Fish and fish products may be exported in quantities not to exceed 48,000 tons per annum export weight."

and then, after defining "fish" and "fish products," it proceeds :—

> "There shall be no export to Germany or her Allies of any oil or derivations thereof, of fish or of any marine animals. The quantity of fish and fish products which may be exported to Germany and her Allies shall not exceed 15,000 tons in any three months, and the amount which such export is more or less than 12,000 tons in any quarter must be deducted from or added to 12,000 tons the following quarter."

Manifestly in form the whole of the Article above quoted is an undertaking by the Norwegian Government, unless the two sentences containing the words "fish products may be exported" and "the quantity . . . which may be exported" can be read as permissive words, uttered by the United States and conferring on Norway an American leave and licence to do certain things.

There is an observation to be made here which, though general, is of actual assistance. It is this : The language of this agreement, when it is the language of the United States, may be treated as being the language of His Majesty's Government, and, whatever its form, if it amounts in substance to a licence from the Crown covering the traffic now in question the appeals succeed. It would be pedantic and unworthy of the dignity of the Crown if their Lordships were to draw a distinction between the promise of a licence to the Norwegian Government and the possession of a licence from the Crown by the particular persons engaged in this adventure. Lord Ellenborough in *Uspariche* v. *Noble* (13 East 332) laid down a similar proposition.

If His Majesty's Government have given assent to a contract which, reasonably construed, involves permission to those engaging in this trade to carry it on free from the exercise of belligerent rights, those rights are waived and a Court of Prize cannot enforce them. The ultimate question before the President was : "Does the agreement, rightly construed, amount to a waiver of the belligerent rights of the Crown in regard to contraband trade of the kind in question ?" Before their Lordships it is : "Have the appellants succeeded in establishing that the conclusion of the President in the negative was wrong ?"

With the assistance of counsel their Lordships have examined every relevant word in this document, but it would be unprofitable to repeat at length the arguments on either side, as applied clause by clause and sentence by sentence. It often happens in questions of construction that the meaning of a passage will finally turn on the impression which it produces on individual minds, rather than on logical deductions or grammatical analysis. The word "may," twice used in the passage quoted, is at least indeterminate.

Even if it were supposed to be a part of the agreement where the United States speaks, there is the question whether it means "You may export without interference from the Allies' cruisers" or "You may export without its being a breach of contract on your own part, that is without complaint on ours." To read it as meaning "Norway contracts not to export foodstuffs other than fish and fish products; these she may or may not export up to 48,000 tons, but she undertakes not to export more," is reasonable and more in accordance with the scheme of the article than to read it as meaning "Norway undertakes not to export foodstuffs other than fish, and the United States permit Norway to export from her own ports 48,000 tons of her own fish."

Thus Norway's agreement relates only to the excess of 48,000 tons, while as to that quantity it remains outside the contract and her original freedom of action is unaffected. The allies, on the other hand, accept the obligations which Norway imposes upon herself as sufficient, and there is no stipulation on their part which restricts their right to interfere with this traffic. This likewise is left outside the agreement and unaffected. The President's conclusion is in favour of the former reading. It is true that there is a later passage, which runs:—

> "Nothing herein contained shall be construed to authorise or permit the exportation to Germany or her Allies of pyrites in any form except pyrites cinders."

but this is a denial of a licence, not the grant of one, and all that can be said is that if these words contemplate a licence by the United States to Norway, which need not be decided, the parties showed that their vocabulary contained much more apt words—namely "authorise" and "permit"—than a mere "may," which is adapted to either purpose.

Although objection may be well taken in some respects to his reasoning, their Lordships are unable to say that the construction adopted by the learned President was wrong, or that he ought to have been satisfied that the belligerent rights of the Crown had been waived. Reading the agreement as a whole, the construction which is most consistent with its language, in their Lordships' opinion, is one by which each contracting party undertakes certain specified obligations—namely, on the part of the United States, to furnish to Norway certain supplies, and on the part of Norway, to place restrictions on her exports to the Central Powers. In other respects the rights of each party remain unaffected. Norway neither obtains nor requires a right for her subjects to ship and carry contraband; the belligerent Powers make no release of their right to capture contraband.

There remain but two minor points. It is said that after the Armistice it cannot be presumed that Stettin was still a military or naval base of supplies, as during actual hostilities it had so often been found to be. The answer is that the record contains no evidence of any change and that the Armistice was an Armistice

only and quite consistent with the maintenance of the German organisations in view of a possible renewal of hostilities. The other contention is that the shipowners acted in good faith (which is not denied) and reasonably read the agreement as permissive, and therefore should not suffer condemnation of their ship. Their Lordships think that those who know all the material facts, as these shipowners did, and rely on a reading of a written instrument, which proves to be wrong, do so at their peril. They can no more rely on such an error than upon ignorance of the law. If they read it aright they were in the right; not having done so, they are in the wrong. They carried a complete cargo of conditional contraband bound to an enemy base of supplies with their eyes open, and the usual consequences follow.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

In the matter of the steamship "Rannveig."

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v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY LORD SUMNER.

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