

Privy Council Appeal No. 141 of 1920.

In the matter of Part Cargo ex Steamship "Larchmore."

Kaufmann Brothers - - - - - *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 24TH OCTOBER, 1921.

Present at the Hearing :

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

This is an appeal by a claimant (carrying on business as Kaufmann Brothers), Rumanian born but long ago naturalised as a British subject, and long a resident in and trading in Manchester, for the costs of a successful motion, to set aside a decree of condemnation of goods, in which he was interested. The learned President refused to give him any costs; the Crown did not ask for any costs to be paid by him; and so no order was made. The appeal also asks for expenses and damages. That point was not argued or even raised before the learned President. It is said to follow as a matter of course that there should be an enquiry as to damages, at the appellant's own risk, if he can once establish his right to costs, arising out of misconduct on the part of those in the service of the Crown, but their Lordships think that the Board should guard itself against recognising a right to claim by way of appeal a remedy which was not mentioned to the learned President, so that they have not his judgment upon it. Virtually damages appear to have been abandoned.

The whole point of the claim as to costs rests upon the conclusion that Mr. Kaufmann drew from the letter of the

5th February, 1918, from the representative of the Procurator-General, as to which he says that, being unlearned in the law, and being so unwise as to be his own lawyer, he understood it to mean: "You need not enter an appearance; it is useless to do so; the goods are liable to condemnation as enemy goods, for the property has passed to a Bulgarian firm. So we decide, but, when condemnation has taken place, it will be open to you to make application for the exercise of the bounty of the Crown." So understanding it, he says he allowed the goods to be condemned, which he regarded as a formality, and, so far as he was concerned, a mere condition precedent to his application for the bounty of the Crown, and he proceeded in due course to apply to the secretary of the Prize Claims Committee. Then it was that he learned more at any rate about his true position—enough to cause him to consult solicitors, who advised him to take the steps and make the motion which was ultimately successful.

Their Lordships have had the advantage of this case being put before them as clearly as could be, and so as to make the most of it, by Mr. Darby on behalf of the appellant. To have said more about it could not have made it either more attractive or more intelligible. The conclusion which the learned President arrived at, after consideration of all the documents and of Mr. Kaufmann's own affidavit and account of the matter, is that the legal view taken by the Procurator-General was a very natural one. The effect of Mr. Kaufmann's letter was to tell the Procurator-General that the goods were shipped on account of the buyer; that the goods were the property of the buyer in Bulgaria but that he had not paid for them, and that therefore Mr. Kaufmann's position was only that of an unpaid vendor. Whether or not the Procurator-General went out of his obligatory course in suggesting an application to the Prize Claims Committee, it was a mere good-natured statement, which was volunteered, and could not excuse Mr. Kaufmann from getting proper advice, if he was not competent in a legal matter himself, and cannot justify the contention that it was so couched as to be misleading and to form any reasonable ground for the imprudent course which Mr. Kaufmann pursued. In view of Mr. Kaufmann's way of putting his position in the correspondence it is impossible to say that the Procurator-General acted unreasonably in seeking condemnation; in view of Mr. Kaufmann's abstinence from opposition one could not expect anything else than that the goods should be condemned, and in view of Mr. Kaufmann's delay to take proper advice in so technical a matter as prize, one cannot question the learned President's view that he has only himself to thank for what has happened.

Their Lordships therefore think the President's judgment with regard to the costs was right; *a fortiori* no more can Mr. Kaufmann be heard with regard to a claim for damages, and therefore the appeal must be dismissed with costs, and so their Lordships will humbly advise His Majesty.

In the Privy Council.

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KAUFMANN BROTHERS

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY LORD SUMNER.

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