

Privy Council Appeal No. 30 of 1915.

In the matter of the Cargo *ex* "Odessa."

Privy Council Appeal No. 66 of 1915.

In the matter of the Cargo *ex* Steamship "Woolston."

(Consolidated Appeals)

FROM

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

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 11TH NOVEMBER 1915.

Present at the Hearing :

LORD MERSEY.	LORD PARMOOR.
LORD PARKER OF WADDINGTON.	SIR EDMUND BARTON.
LORD SUMNER.	

[Delivered by LORD MERSEY.]

These are appeals from two judgments of the President of the Probate, Divorce and Admiralty Division of the High Court of Justice sitting in Prize.

There is very much in common in the points arising in both cases, but as the facts and arguments are not identical, it is desirable to consider each case separately.

THE CARGO *ex* *Odessa*.

The facts in this case are as follows: The appellants, Messrs. J. H. Schroeder & Co., are bankers carrying on business in London. The partners are Baron Bruno von Schroeder, a naturalised British subject, and Frank Tiarks, a natural born British subject. In the ordinary course of their business, the appellants had in

March 1914 agreed with a German Company in Hamburg called The Rhederei Actien Gesellschaft von 1896, to accept the drafts of Weber & Co., a firm carrying on its business in Chili, for the price of a quantity of nitrate of soda to be sold and shipped by Weber & Co., to the German Company.

The drafts were to be drawn at ninety days' sight and the appellants, upon acceptance of them, were to receive by way of security the bill of lading for the cargo, together with a policy of marine insurance. The consideration for this accommodation was to be a commission of one quarter per cent. payable by the German Company to the appellants. In due course Weber and Co. shipped a cargo of nitrate on board a sailing ship called *The Odessa*, belonging to the German Company, and took from the captain a bill of lading dated the 8th May 1914, in which the voyage was described as from Mejillones (the port of shipment in Chili) to the "Channel for orders," and by which the cargo was made deliverable to the appellants or their assigns. This bill of lading incorporated the terms of a charter party (of which there is no copy), and made the chartered freight payable by the consignees upon delivery of the cargo. Drafts for a total amount of £1,153l. 1s. 5d. (said to be the full price of the cargo) were drawn by Weber and Co. upon the appellants, and accepted by them on the 9th June 1914, they receiving in exchange the bill of lading. War broke out between Great Britain and Germany on the 4th August 1914, *The Odessa* being then on her voyage to the Channel. On the 19th the ship was captured on the High Seas by H.M.S. *Caronia*, and brought into Bantry Bay and on the 31st a writ was issued against ship and cargo at the suit of the Procurator-General claiming condemnation of both as lawful prize.

On the 10th September the drafts of Weber & Co. fell due, and were paid by the appellants. The ship was duly condemned, and no question arises with reference to her condemnation, but in respect of the cargo the appellants intervened, and by their claim alleged it to be their property as holders, for full value of the bill of lading therefor and as British property not liable to condemnation. The case was heard by the learned President on the 7th and 14th December 1914, with the result that he condemned the cargo on the ground that the general property was in the German Company at the date of the seizure, and that the appellants were merely pledgees, and as such not entitled to any precedence over the Crown.

Their Lordships are of opinion that the learned President was right in the inferences which he drew from the facts, namely, that the general property in the cargo was in the German Company, and that the appellants were merely pledgees thereof at the date of the seizure. This indeed is hardly disputable, having regard to the case of *Sewell v. Burdick*, 10 A.C. 74. The property vested in the Company upon the ascertainment of the goods at Mejillones, and the pledge was perfected when the appellants accepted the drafts and received the bill of lading.

The appellants indeed did not dispute the correctness of these inferences, but what they say is that, though correct, they do not justify a decree which has the effect of forfeiting their rights as pledgees. Thus the question in the appeal is whether in case of a pledge such as existed here a Court of Prize ought to condemn the cargo, and, if so, whether it should direct the appellants' claim to be paid out of the proceeds to arise from the sale thereof.

It is worth while to recall generally the principles which have hitherto guided British

Courts of Prize in dealing with a claim by a captor for condemnation. All civilised nations up to the present time have recognised the right of a belligerent to seize with a view to condemnation by a competent Court of Prize enemy ships found on the high seas or in the belligerents' territorial waters and enemy cargoes. But such seizure does not, according to British Prize Law, affect the ownership of the thing seized. Before that can happen the thing seized be it ship or goods must be brought into the possession of a lawfully constituted Court of Prize, and the captor must then ask for and obtain its condemnation as prize. The suit may be initiated by the representative of the capturing State, in this country by the Procurator-General. It is a suit *in rem*, and the function of the Court is to enquire into the national character of the thing seized. If it is found to be of enemy character the duty of the Court is to condemn it, if not, then to restore it to those entitled to its possession. The question of national character is made to depend upon the ownership at the date of seizure, and is to be determined by evidence. The effect of a condemnation is to divest the enemy subject of his ownership as from the date of the seizure, and to transfer it as from that date to the Sovereign or to his grantees. The thing the *res* is then *his* for him to deal with as he thinks fit, and the proceeding is at an end.

As the right to seize is universally recognised so also is the title which the judgment of the Court creates. The judgment is of international force, and it is because of this circumstance that Courts of Prize have always been guided by general principles of law capable of universal acceptance rather than by considerations of special rules of municipal law. Thus it has come about that in determining the national character of the thing seized, the courts in this

country have taken ownership as the criterion, meaning by ownership the property or *dominium* as opposed to any special rights created by contracts or dealings between individuals, without considering whether these special rights are or are not, according to the municipal law applicable to the case, proprietary rights or otherwise. The rule by which ownership is taken as the criterion is not a mere rule of practice or convenience; it is not a rule of thumb. It lays down a test capable of universal application, and therefore peculiarly appropriate to questions with which a Court of Prize has to deal. It is a rule not complicated by considerations of the effect of the numerous interests which under different systems of jurisprudence may be acquired by individuals either in or in relation to chattels. All the world knows what ownership is, and that it is not lost by the creation of a security upon the thing owned. If in each case the Court of Prize had to investigate the municipal law of a foreign country in order to ascertain the various rights and interests of everyone who might claim to be directly or indirectly interested in the vessel or goods seized, and if in addition it had to investigate the particular facts of each case (as to which it would have few, if any, means of learning the truth), the Court would be subject to a burthen which it could not well discharge.

There is a further reason for the adoption of the rule. If special rights of property created by the enemy owner were recognised in a Court of Prize, it would be easy for such owner to protect his own interests upon shipment of the goods to or from the ports of his own country. He might, for example, in every case borrow on the security of the goods an amount approximating to their value from a

neutral lender and create in favour of such lender a charge or lien or mortgage on the goods in question. He would thus stand to lose nothing in the transaction, for the proceeds of the goods if captured would, if recovered by the lender, have to be applied by him in discharge of his debt. Again, if a neutral pledgee were allowed to use the Prize Court as a means of obtaining payment of his debt instead of being left to recover it in the enemy's courts the door would be opened to the enemy for obtaining fresh banking credit for his trade, to the great injury of the captor belligerent.

Acting upon the principle of this rule Courts of Prize in this country have from before the days of Lord Stowell, refused to recognise or give effect to any right in the nature of a "special" property or interest or any mortgage or contractual lien created by the enemy whose vessel or goods have been seized. Liens arising otherwise than by contract stand on a different footing and involve different considerations; but even as to these it is doubtful whether the Court will give effect to them. Where the goods have been increased in value by the services which give rise to the possessory lien, it appears to have been the practice of the Court to make an equitable allowance to the national or neutral lienholder in respect of such services. In the judgment in *The Frances* (8 Cranch 419) speaking of freight, it is said:—

"on the one hand the captor by stepping into the shoes of the enemy owner of the goods is personally benefited by the labour of a friend, and ought in justice to make him proper compensation, and on the other, the shipowner by not having carried the goods to the place of their destination, and this in consequence of the act of the captor, would be totally without remedy to recover his freight against the owner of the goods."

It is, however, unnecessary to deal with the question of liens arising apart from contract,

the present case being one of pledge founded on a contract made with the enemy.

When the authorities are examined it will be found that they bear out the view that enemy ownership is the true criterion of the liability to condemnation. The case of *The Tobago* (5 Ch. Robinson 218) is in point. There the claimant was a British subject. In time of peace he had honestly advanced money to a French shipowner to enable the latter to repair his ship which was disabled, and by way of security he had taken from the owner a bottomry bond. Afterwards war broke out with France and the vessel was captured. In the proceedings in the Prize Court for condemnation, the holder of the bottomry bond asked that his security might be protected, but Lord Stowell (then Sir William Scott), after observing that the contract of bottomry was one which the Admiralty Court regarded with great attention and tenderness, went on to ask:—

“but can the Court recognise bonds of this kind as titles of
“of property so as to give persons a right to stand in
“judgment and demand restitution of such interests in a
“Court of Prize?”

and he states that it had never been the practice to do so. He points out that a bottomry bond works no change of property in the vessel and says:—

“if there is no change of property there can be no change
“of national character. Those lending money on such
“security take this security subject to all the chances
“incident to it, and amongst the rest, the chances of war.”

The decision in *The Mary* (9 Cranch 147) is to the same effect. Similarly in *The Aina* (1 Spink's Prize Cases 8) the Court refused to recognise or give effect to a mortgage on the ship captured, and the same point arose and was similarly decided in *The Hampton* (5 Wall. 372). Again, in *The Battle* (6 Wall. 498) the Court refused to recognise a maritime lien for neces-

saries, a decision which was followed in *The Rossia* (2 Russian and Japanese Prize Cases 43). *The Ariel* (11 Moore P. C. 119) was the converse case of an attempt to obtain condemnation not of enemy goods but an enemy lien on goods; it failed on the same principle. In that case Sir John Patteson said:—

“ liens whether in favour of a neutral on an enemy’s ship, or
“ in favour of an enemy on a neutral ship, are equally to be
“ disregarded in a Court of Prize.”

All these cases were fully discussed by the President in *The Marie Glaeser*, (P.D. 1914, p. 218).

Passing to cases which in their circumstances more resemble the present case there is *The Marianna* (6 C. Rob. 24), in which the Court refused to give effect to a contract of pledge on goods consigned to the agent of the pledgee.

“ Captors,”

says Sir W. Scott in that case,

“ are supposed to lay their hands on the gross tangible
“ property on which there may be many just claims out-
“ standing between other parties which can have no
“ operation as to them. If such a rule did not exist it
“ would be quite impossible for captors to know upon what
“ grounds they were proceeding to make seizure. . . .
“ The doctrine of liens depends very much on the particular
“ rules of jurisprudence which prevail in different countries.
“ To decide judicially on such claims would require of the
“ Court a perfect knowledge of the law of covenant and the
“ application of that law in all countries under all the
“ diversities in which that law exists. From necessity,
“ therefore, the Court would be obliged to shut the door
“ against such discussions and to decide on the simple title
“ of property with scarcely any exceptions.”

There is *The Frances* (8 Cranch 418), in which the Court refused to recognise or give effect to the rights of a consignee under the bill of lading for advances against the goods to which the bill of lading related. In that case the Court laid it down that—

“ in cases of liens created by the mere private contract of
“ individuals, depending upon the different laws of different
“ countries, the difficulties which an examination of such

" claims would impose upon the captors and even upon the
 " Prize Courts in deciding upon them and the door which
 " such a doctrine would open to collusion between the
 " enemy owners of the property and neutral claimants have
 " excluded such cases from the consideration of those
 " Courts."

There is another American case *The Carlos P. Roses* (177 U.S. Reports, 655) in which the claim put forward by a neutral who had advanced money upon a cargo on a captured ship and who had received bills of lading covering the shipment was rejected.

It is difficult to distinguish the facts in any of the three cases last mentioned from the facts of the present claim by Messrs. Schroeder & Co. Some stress was laid by the appellants upon the dissenting judgments in *The Carlos P. Roses*, but a perusal of these judgments will show that they proceeded upon the assumption that in the circumstances the general property in the goods had passed to the holder of the bills of lading. The case was decided before the judgment in *Sewell v. Bardick*. Finally *The Hampton* (5 Wallace, p. 372) is a case in which the claim of a mortgagee on a ship was rejected.

Before adverting to the arguments by which the appellants seek to displace this weight of authority it is necessary to deal with a contention put forward by them to the effect that by their title as pledgees they are clothed with a sufficient ownership to bring their case within the rule. This contention is based upon the right of sale accorded to a pledgee by the law of England by which in the event of default by the pledgor in payment of his debt, the pledgee can sell the pledge without first having recourse to a court of law for authority to do so. This right it is said creates a "special" property in the pledge in favour of the pledgee and is a right *in re* constituting or equivalent to ownership and distinguishable in character from the mere right

in rem possessed by a lien holder. It is first to be observed of this right to sell without recourse to a court of law that it is peculiar to the English law of pledge. It is thus precisely one of those matters which a Prize Court should leave out of consideration when applying to its decision general principles common to all systems of law to the exclusion of principles of municipal law.

The subject was very fully examined by Chancellor Kent in Lord Stowell's time in 1805, in a learned judgment declaring the decision of the Supreme Court of the State of New York (*Cortelyou v. Lansing*, 2 Cairnes' Cases in Error, p. 202):—

“ I believe,” he says “ that there is no country at present, “ unless it be England, that allows a pledge to be sold but “ in pursuance of a judicial sentence.”

And secondly it is to be observed that if the right clothes the pledgees with ownership it precludes the Court from making any decree at all of condemnation.

The ownership by which a Court of Prize is guided cannot subsist both in the pledgees and in the pledgors.

If it exists in the appellants in the present case no decree can be made against them for they are British subjects, and the interest left in the enemy subject cannot be condemned for ex hypothesi it is not an interest which includes ownership. See *The Ariel* (11 Moore P.C. 119) in which it was laid down that as a Court of Prize ignores a lien in favour of a neutral on an enemy's ship, so will it ignore a lien in favour of an enemy on a neutral ship.

But when the nature of the right of a pledgee to sell is examined it will be seen that the so-called “ special ” property which it is said to create is in truth no property at all. This has been recognised by many judges who have used

the expression "special interest" as a substitute for "special property." See *Mores v. Conham* (Owen 123, 7 Jac. 1) and *Donald v. Suckling* (L.R. 1 Q.B. at p. 613).

If it were not for the somewhat unfortunate peculiarity of English terminology involved in the established use of the words "special property" when "special interest" would seem better, it is difficult to see how an argument could be maintained which would effectively distinguish pledge from lien for present purposes.

The very expression "special property" seems to exclude the notion of that general property which is the badge of ownership. If the pledgee sells he does so by virtue and to the extent of the pledgor's ownership, and not with a new title of his own. He must appropriate the proceeds of the sale to the payment of the pledgor's debt, for the money resulting from the sale is the pledgor's money to be so applied. The pledgee must account to the pledgor for any surplus after paying the debt. He must take care that the sale is a provident sale, and if the goods are in bulk he must not sell more than is reasonably sufficient to pay off the debt, for he only holds possession for the purpose of securing himself the advance which he has made. He cannot use the goods as his own. These considerations show that the right of sale is exerciseable by virtue of an implied authority from the pledgor and for the benefit of both parties. It creates no *jus in re* in favour of the pledgee; it gives him no more than a *jus in rem* such as a lien holder possesses, but with this added incident that he can sell the property *motu proprio* and without any assistance from the Court.

Returning to the authorities the appellants attempt to displace them in the following way. They say, in the first place that Lord Stowell in

The Tobago was referring only to "secret" liens which they interpret to mean liens not appearing on the ship's papers, and they contend that theirs was not secret for that it appears on the ship's papers namely on the face of the bills of lading. But when the judgment in *The Tobago* is examined it will be found that Lord Stowell used the term "secret liens" as equivalent to liens created by the act of the parties as opposed to those arising under the general law merchant. Further, it cannot in the present case be said with any truth that Messrs. Schroeder's lien is disclosed on the ship's papers. It is true that the bill of lading was made out in favour of them or their assigns, but this is quite consistent with their having no charge at all, and the consignment having been made to them merely as the factors or agents of the enemy owner. The contract of pledge under which alone their claim arises, however probable in the ordinary course of commerce, is nowhere disclosed in the ship's papers. Again, such as it was, the disclosure was certainly no more than existed in the cases of *The Marianna*, *The Frances* and *The Carlos F. Roses*.

Secondly, the appellants contend that being by virtue of the bill of lading in possession of the goods in question there can be no reason in principle why the Court should not recognise an interest arising out of such possession just as it recognises the carrier's possessory lien for freight. But such possession as the appellants had is not an actual possession such as forms the basis of a possessory lien at common law but merely such possession as according to the law relating to pledge arises out of constructive or symbolical delivery. There is not, to use the words of Lord Stowell in *The Tobago*, that "interest directly and visibly residing in the

“substance of the thing itself” which is to be found in the actual possession held by a carrier. Further, it will be found that a possession, similar in character to that which Messrs. Schroeder had, existed in several of the cases already referred to on the part of lien holders whose claims were rejected by the Court.

Thirdly, the Court was asked to accept the suggestion that the practice of making advances on the security of bills of lading had arisen after the decisions referred to had been pronounced and that in the interest of commerce the adverse decisions should now be disregarded. With regard to this argument it is to be observed that at any rate *The Carlos F. Roses* was decided at a time when the practice referred to was well known, and although the decision cannot bind an English Court, still the considered judgment of the Supreme Court of the United States is entitled to the greatest possible weight. Further, it is difficult to see how any change—if there has been any change—in commercial practice invalidates the reasons which led to the decisions in question.

Lastly, the appellants urged that if the Court now applies the principles illustrated by the cases above referred to very serious injustice will be done to and serious loss incurred by neutrals or subjects who, before the commencement of the war and in the normal course of business, have made advances against bills of lading. It is to be observed that similar injustice and loss, though possibly on a less extensive scale, must have been occasioned by the application of the same rules in the 18th and early 19th centuries, and similar arguments were in fact addressed to Lord Stowell as a reason why they should not be applied in individual cases. The reason why such arguments cannot be sustained is fairly obvious. War must in its

very nature work hardship to individuals, and in laying down rules to be applied internationally to circumstances arising out of a state of war it would be impossible to avoid it. All that can be done is to lay down rules which, if applied generally by civilised nations, will, without interfering with the belligerent right of capture, avoid as far as may be any loss to innocent parties. It is precisely because the recognition of liens or other rights arising out of private contracts would so seriously interfere with the belligerent right of capture that the Courts have refused to recognise such liens or rights in spite of the hardship which might be occasioned to individuals from such want of recognition. It is said that in Lord Stowell's time there was a possibility of redressing any individual hardship which might be caused to neutral or subject by an appeal to the bounty of the Crown and that in some way or other the Crown has lost its power of bounty in the matter. It is true that Lord Stowell, when pressed with the individual hardship of decisions he was about to pronounce, sometimes referred to the fact that any apparent injustice might be met by an exercise of the Crown's bounty. See *The Belvidere* 1 Dods 353 and *The Constantia Harlessen*, Edwards Adm. 232.

Whether his judgments were in any way based on that consideration or whether they would not have been the same if the possibility of the exercise of the Crown's bounty had not existed is an arguable point.

In their Lordships' opinion, however, it is unnecessary to decide this point, for after hearing the Attorney-General they have come to the conclusion not only that the Crown had and was accustomed to exercise a power of bounty by way of redress of hardships, but that such power still exists unimpaired.

Perhaps the most notable instance of the exercise of such power was the Order in Council made at the commencement of the war with Denmark in 1807. It was thereby ordered that in case any advances should have been made before the then late embargo (viz., the 2nd September then last passed) by any British subject upon the credit and security of any ship, freight, or goods belonging to Danish subjects which might be condemned as prize to His Majesty, the amount of such advances so actually made (but without further compensation) should be paid to the British subjects out of the proceeds of the property so condemned upon the credit of which the advances were respectively made upon due proof thereof to the satisfaction of the High Court of Admiralty.

If the Crown could order this generally, it must also have had the power to order it in particular instances. Further, if it could make such an order in favour of British subjects, it must also have had the power to make it in favour of neutrals, and circumstances can easily be imagined in which the exercise of such a power in favour of neutrals might as a matter of policy be deemed desirable.

If the Crown had and was accustomed to exercise the power of redressing hardship by way of bounty such right must still exist unless taken away by Act of Parliament, and it must be remembered that the Crown's Prerogative can only be abridged by express words or necessary implication. The argument of the Attorney-General to the effect that the power in question has ceased to exist is solely based on the effect to be given to the statutes which have been from time to time passed in reference to the Civil List. The first Civil List Act which affects Droits of Admiralty and Droits of the Crown is the Act of 1 Geo. IV. c. 1. By Section 2 of this

Act the produce of certain Crown Revenues (which did not include Droits of Admiralty or Droits of the Crown or other small casual revenues) were for the life of King George IV. carried to the Consolidated Fund. It was provided that an account of all moneys to be received in respect of the casual revenues of the Crown including Droits of Admiralty and Droits of the Crown and of the application thereof should annually be laid before Parliament. By S. 2 of 1 Will. IV. c. 25, the casual revenues of the Crown including Droits of Admiralty and Droits of the Crown were treated in the same way as the other hereditary revenues and carried during the life of King William IV. to the Consolidated Fund, it being provided that all such revenues should after his death be payable to his Heirs and Successors. The 12th Section of this Act provides that nothing therein contained should impair or prejudice any rights or powers of control, management, or direction, relative to (*inter alia*) the granting of any Droits of Admiralty or any Droits of the Crown as a reward or remuneration to any officer or officers or other person or persons seizing or taking the same or giving any information relating thereto, it being the true intent and meaning of the Act that the said rights and powers should not in any degree be prejudiced in any manner but only that the moneys accruing to the Crown after the full and free exercise and enjoyment of the said rights and powers should during His Majesty's life be carried to the Consolidated Fund. It was obviously the intention of this clause that the Crown's right of making grants out of Droits of Admiralty and Droits of the Crown in favour of captors or persons giving information leading to the capture should be preserved, but nothing being expressly said as to making grants in order to redress

hardships, it is arguable that on the principle of *expressio unius est exclusio alterius* the Crown's right in this respect was intended to be taken away. Further, the same argument is open upon the construction of 1 & 2 Vict. c. 2, which in effect re-enacts the Act of 1 Will. IV. c. 25 during the reign of Queen Victoria. It is unnecessary actually to decide the point and their Lordships will assume for the purpose of this case that during the reigns of King William IV. and Queen Victoria the right of the Crown in respect of Admiralty Droits and Droits of the Crown was confined to rewarding captors and persons giving information leading to the capture. It seems clear, however, that on the death of Queen Victoria her successor, King Edward VII., became entitled to Droits of Admiralty and Droits of the Crown to the same extent as if there had never been a surrender in favour of the Consolidated Fund. In other words any restriction created during the lives of King William IV. and Queen Victoria ceased to apply. If, therefore, the ancient right of the Crown to dispose of these droits is now curtailed it must be by virtue of some statute passed subsequently to the death of Queen Victoria. In other words it must be by virtue of the Civil Lists Acts 1 Edward VII. c. 4 and 1 Geo. V. c. 28.

By 1 Edward VII. c. 4, s. 1, it is provided that the hereditary revenues which were by Section 2 of 1 & 2 Vict. c. 2 directed to be carried to and made part of the Consolidated Fund should, during the life of King Edward VII. and six months afterwards, be paid into the Exchequer and made part of the Consolidated Fund. By Section 9 (2) it is provided that nothing in the Act contained should affect any rights or powers for the time being exerciseable with respect to any of the hereditary revenues which were by the Act directed to be paid into

the Exchequer, and by Sub-section 3 of the same Section the 1 & 2 Vict. c. 2 was with immaterial exceptions repealed. The Act of 1 Geo. V. c. 28 re-enacts in the same terms the Act of 1 Edward VII. c. 1 for the life of his present Majesty and six months afterwards.

The question therefore is as to the meaning and effect of the reservation contained in the two last-mentioned Acts of the rights and powers of the Crown for the time being exerciseable. It should be noticed in contrast to the Acts of 1 Will. IV. c. 25 and 1 & 2 Vict. c. 2 that the reservation is not specific but general in its terms. It should be noticed also that it is not a reservation of rights and powers which were or might have been exercised by some former Sovereign or Sovereigns (the form of reservation in some of the earlier Civil Lists Acts) but a reservation of rights and powers "for the time being" exerciseable. This must mean powers which have not at the date of their proposed exercise been taken away by Act of Parliament. To ascertain the nature of the rights and powers intended to be reserved it is permissible to consider the object for which the Acts themselves and the earlier Acts hereinbefore mentioned were passed.

The object of each of these Acts is a surrender by the Crown of its hereditary revenues in consideration of a fixed grant from Parliament. Each Act has been intended to carry to the Consolidated Fund revenue which would otherwise have gone to the Sovereign, and not revenue which because of the exercise of some right or power in the Crown would never have gone to the Sovereign at all. This object was in the Acts of George IV., William IV., and Victoria, sought to be attained by a specific enumeration of the rights reserved. In the Acts of Edward VII. and George V. it is

sought to be attained by a general reservation of all rights. It could hardly be contended that the rights and powers expressly reserved in the earlier Acts are not included in the general reservation contained in the latter Acts. If such a contention were well founded, the Crown would have lost many rights, the existence of which is of great importance in the public interest. It would have lost, for instance, the right to make grants to the natural children of a bastard intestate or to reward captors or persons giving information leading to the capture of enemy goods. It is of equal importance in the public interest, and indeed of friendly relations with neutral powers, that the Crown should retain the power of making in the interests either of British subjects or of neutrals such an Order in Council as was done at the outbreak of the Danish war in 1807. The only distinction is that no such power was expressly reserved in the earlier Civil List Acts. It is in their Lordships' opinion much more reasonable to suppose that the general words were used to cover such a case than to confine the words themselves, in spite of their generality, to rights and powers expressly reserved by the earlier Acts. If the words of reservation now in force are sufficient to cover a right of so important and useful a nature, it would, in their Lordships' opinion, be wrong to hold that it had been destroyed merely because it had ceased to be exerciseable during the reigns of King William IV. and Queen Victoria. Their Lordships therefore hold that the power in question still exists. They desire, however, to state that they express no opinion as to whether the present case is one in which the power ought to be exercised.

There were two other points suggested in argument which deserve some consideration. First it was said that the difficulty of recognising

liens on captured enemy goods might be less in the case of a lien holder being a subject than in the case of his being a neutral. In the case of a neutral it is obvious that the payment of the lien out of the proceeds of a sale of the goods would enure directly to the benefit of the enemy. The enemy debt would thus be paid at the expense of the captors instead of the neutral being left to recover it in the enemy courts. A right of capture at sea would thus be deprived of its national advantage. On the other hand, if the lien holder be a subject his right of proceeding in the enemy courts is, if not lost, at any rate suspended by the existence of a state of war. If the right be lost the recognition of the lien would not, it is said, enure to the advantage of the alien enemy but merely to one of His Majesty's subjects. If the right be merely suspended it could not enure to the advantage of the alien enemy, at any rate until after the war, and the Court it is said should only consider the existing state of war and not be guided by what will happen when the war is over. There may be some force in these considerations, but, on the other hand, it is to be remembered that by international comity the Courts of Prize in this country have, in general, extended to neutrals the same advantages as they afford to His Majesty's subjects, and it would be difficult to make an exception. Moreover, both in the case of a neutral and of a subject the lien holder may have in his hands assets belonging to the enemy to which he can have recourse for the payment of his debt; and into such a matter the Courts have no means of enquiring.

The second suggestion does not involve the same difficulty. It is that the rules laid down in the cases referred to should be confined to

transactions originating during the war, and that liens created *bonâ fide* before the war began might well be recognised whether held by subjects or neutrals. There is, however, no authority for such a distinction, indeed authority is the other way. See *The Tobago, ubi sup.*

Neither of the above suggestions was seriously pressed on their Lordships, nor could either of them be accepted.

For the foregoing reasons their Lordships will humbly advise His Majesty that the appeal should be dismissed.

THE CARGO *ex Woolston.*

The above judgment in the case of the cargo *ex Odessa* applies equally in the case of the cargo *ex Woolston*. The only difference between the two cases is that *The Odessa* was an enemy ship and *The Woolston* was a British ship. Their Lordships are of opinion that enemy goods on board British ships at the commencement of hostilities are the proper subject of maritime prize. The point has been more fully dealt with in the judgment in the case of *The Roumanian*. The fact that *The Woolston* was a British ship can therefore have no importance unless it be necessary for the Court to act upon some presumption arising from the character of the ship. It is unnecessary to act on any such presumption, where, as in the present case, the whole facts are in evidence and the enemy character of the cargo is fully established.

In this case, also, their Lordships will humbly advise His Majesty that the appeal should be dismissed.

In the Privy Council.

IN THE MATTER OF THE CARGO
et "ODESSA,"
IN THE MATTER OF THE CARGO
et STEAMSHIP "WOOLSTON"

DELIVERED BY LORD MERSSEY.

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