Privy Council Appeal No. 11 *of* 1917.

In the Matter of Part Cargo *ex* Steamship "Prinz Adalbert."

The Crew Levick Company - - - - *Appellants,*

v.

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

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 3RD JULY, 1917.

Present at the Hearing:

LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

When the German steamship "Prinz Adalbert," bound from Philadelphia to Hamburg, was seized as prize at Falmouth on the 5th August, 1914, she had on board the two parcels of lubricating oil, respectively 290 and 86 barrels, which are now in question. The writ was issued on the 18th August, 1914.

The appellants, the Crew Levick Company of Philadelphia, neutral shippers, filed a claim, dated the 1st April, 1916, alleging the oil to be their own and saying that they had shipped and consigned it to the Maschinen Oel Import Actien-Gesellschaft of Hamburg, as their agents for sale on the Continent of Europe, and that, as it had never passed to any purchaser, it had always continued to belong to them. The learned President decided that the oil had ceased to belong to the appellants on shipment. Neither the actual shipping documents nor the dates of the acceptances to the accompanying drafts appear to have been brought to his attention. At their

Lordships' bar the appellants' argument made these dates crucial. The learned President was strongly and justly impressed by the absence of proper evidence of the prior course of dealing between the shippers and the consignees. The appellants petitioned their Lordships for leave to remedy this defect, but their Lordships refused to grant it for reasons of principle already given.

Both parcels were covered by bills of lading, which made the oil deliverable to the shippers' order at Hamburg and were endorsed in blank by an officer of the claimant Company. The bills of lading and certificates of insurance were attached to drafts, drawn by the claimants on the Maschinen Oel Import Gesellschaft and discounted in the United States, namely, a sixty days' draft for 75 per cent. of the invoice value of the 290 barrels, and a draft at three days' sight for the full value of the eighty-six barrels. The discounting bank forwarded the documents to Germany. The draft drawn against the eighty-six barrels reached Hamburg on or before the 1st August, 1914, on which date it was accepted by the Maschinen Oel Import Gesellschaft against surrender of the bill of lading. The other draft was accompanied by a bill of lading of the same date, namely, the 20th July, and the evidence does not show any sufficient reason to suppose that it was not forwarded by the same mail. The appellants contended that it was not accepted till the 10th August, though no reason for this difference could be given. This bill of lading also was handed over to the Maschinen Oel Import Gesellschaft against acceptance of the corresponding draft, and ultimately that Company returned both bills of lading to the claimants at Philadelphia. Presumably they also met both bills of exchange when they fell due, for the amounts are debited against the appellants in a quarterly account current, brought down to the 30th September, which they rendered to the claimants on the 28th November. It does not appear that the claimants have either paid or otherwise settled the debit balance shown on this account, and, as the evidence leaves the matter, they have received the proceeds of the two bills of exchange, less discount, in Philadelphia, have neither paid nor agreed to pay to the acceptors the amounts of those bills, and have got back the bills of lading from the acceptors, without conditions or explanation, and so, presumably, for the acceptors' account.

By general mercantile understanding, which has the force of law, where transactions originate like the present in time of peace, without prospect of war, the delivery of an endorsed bill of lading, made out to the shipper's order, while the goods are afloat, is equivalent to delivery of the goods themselves, and is effectual to transfer ownership if made with that intention. The bill of lading is the symbol of the goods. Apart from specific formalities or similar prescriptions of municipal law, which are not now material, such intention is a question of fact. The usual course of dealing in

the export of merchandise, and the interest of the parties concerned in it, suffice for the necessary inference in the absence of evidence to the contrary. When a shipper takes his draft, not as yet accepted, but accompanied by a bill of lading, endorsed in this way, and discounts it with a banker, he makes himself liable on the instrument as drawer, and he further makes the goods, which the bill of lading represents, security for its payment. If, in turn, the discounting banker surrenders the bill of lading to the acceptor against his acceptance, the inference is that he is satisfied to part with his security in consideration of getting this further party's liability on the bill, and that in so doing he acts with the permission and by the mandate of the shipper and drawer. Possession of the endorsed bill of lading enables the acceptor to get possession of the goods on the ship's arrival. If the shipper, being then owner of the goods, authorises and directs the banker, to whom he is himself liable and whose interest it is to continue to hold the bill of lading till the draft is accepted, to surrender the bill of lading against acceptance of the draft, it is natural to infer that he intends to transfer the ownership when this is done, but intends also to remain the owner until this has been done. Particular arrangements made between shipper and consignee may modify or rebut these inferences, but in the absence of evidence to the contrary, and apart from rules which arise only out of a state of war existing or imminent at the beginning of the transaction, the general law infers under these circumstances that the ownership in the goods is transferred when the draft drawn against them is accepted.

Their Lordships are unable to agree with the learned President's view that the property in the oil in question passed on shipment. In their opinion the claimants were owners until the Maschinen Oel Import Gesellschaft accepted the drafts, drawn against the two parcels respectively, but no longer. Such is the true inference from the mercantile transactions themselves.

Sundry communications were produced, either requesting that the shipment should be made or advising that it had been made, but they are neutral in their effect; nor is it material to consider how the transaction might be worked out after the drafts had been accepted. This depends on arrangements between the parties, which are not properly proved, and the transfer of the ownership in the oil on the acceptance of the drafts is consistent either with a sale to the German Company and a resale by them to German customers, or with some agency arrangement, under which they might debit the amount of the drafts paid and credit the proceeds of their sales to the claimants, and obtain their own remuneration by charging an agreed commission.

It follows that the eighty-six barrels had ceased to belong to the claimants, and had become the property of the Maschinen Oel Import Gesellschaft on the 1st August. How stands the

other parcel? The date when the draft drawn against it was accepted depends upon an entry in the quarterly account above mentioned. That account was prepared for the purpose of showing a general balance on the 30th September, 1914. The acceptance transactions are only incidents in it. The dates of the acceptances are immaterial to the account, which, of course, reckons interest from the dates of payment, and are of small value even for the purpose of identifying the acceptances, which are sufficiently described by their amounts. The document is not proved, nor is it sufficient to discharge the onus, which is on the claimants. Even if the larger parcel of oil differs in its circumstances from the smaller one, at any rate it ceased to belong to the claimants before they came into Court to prove a claim as owners, and so their title fails. The probability is that there is no difference between the two parcels, and that the date of acceptance to the larger draft ought to be the 1st August and not the 10th August. That both drafts should have been accepted together is natural, but that one, and that the larger of the two, should have been refused acceptance for over a week, and then have received it, is a very difficult supposition. If nothing else was known of the "Prinz Adalbert," on the 10th August, at least, it was known that she was considerably overdue. Capture was, at any rate, a reasonable explanation of her non-arrival. It may well have been that, having, as the appellants' Case says, "called at Falmouth after her master heard of the outbreak of war between France and Germany," she was already known in Hamburg, before the 10th August, "to have been seized as prize by the officer of Customs at Falmouth." If so, acceptance of the draft on the 10th August is most improbable. Their Lordships, however, cannot act upon conjecture, and as the original exhibit bears the date of the 10th August they have accepted it, and are content to say that, as the claimants failed to prove their right to the goods, when they came before the Court as owners, their appeal must also fail.

Accordingly their Lordships, being of opinion that the claimants were not owners of either parcel at or at any time after the commencement of the proceedings in prize in this case, will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

In the Matter of

PART CARGO *EX* STEAMSHIP "PRINZ ADALBERT."

THE CREW LEVICK COMPANY

v.

HIS MAJESTY'S PROCURATOR-GENERAL.

DELIVERED BY LORD SUMNER.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1917.