

ENEMY CAN'T SUE SUBJECT OF KING IN BRITISH COURT

Rules Mr. Justice Poullet Declining to Hear Suit of Austrian Claimant

MUST WAIT TILL WAR ENDS

Enemy Alien Despoiled of Rights in British Empire—Plaintiff Resided in Austria-Hungary

In the present state of war a British court cannot go ahead with the hearing of a claim in law, entered against a subject of the King, by a native of an enemy state. Such in brief is the ruling handed down by Mr. Justice Poullet, ordering the suspension of the suit of Dame Kosarj-suk, who claims \$5,000 damages from the D. & A. Asbestos Company, on account of the death of her husband, instantly killed whilst engaged in his duties as a workman in the employ of the defendant. His Lordship was not called upon to adjudicate on the merits of the case itself, but only on an incidental proceeding, which was met by the objection on the part of the defendant, that the plaintiff was incapable of suing in a British court, as she was an enemy of the King. The whole dispute centered about the fact that plaintiff is at present a resident of Kressejack, province of Bukowona, Austria, and His Lordship, citing copiously from International law as well as from jurisprudence, held that plaintiff's residence in the enemy state precluded her from being considered as affected by special enactments or Orders in Council, granting enemy aliens resident in British Dominions, status before the Courts, on the specified conditions that they be of good conduct and peaceably pursue their avocations. Plaintiff had entered suit prior to the opening of hostilities, and proceedings were held up on granting of a motion presented by defendant demanding security for costs. It would appear that, owing to the length of time which it took to communicate with plaintiff, the security was not put up in time and the defendant accordingly asked to have the suit struck. Plaintiff sought additional delay to enable her to deposit the requisite security, and it was this interlocutory proceeding on which Mr. Justice Poullet was required to adjudicate. After reviewing the facts above stated, the Court declared that the question to be resolved was whether, taking into consideration the state of war at present existing between Britain and Austria, should a British Court recognize plaintiff's status, as plaintiff, or should it decline to hear her. The question was one of great interest at the present time, said His Lordship, and one which was of weighty import to the rights of the respective parties. His Lordship reviewed the proclamation issued by the Governor-General-in-Council, granting locally resident enemy aliens, status before the law of the land, on the condition that they be residents and peaceably pursue their avocations as law abiding citizens. In the present case plaintiff was not a resident nor did she, of course, pursue an avocation here. She palpably did not fall within the purview of the exception embodied in the proclamation.

On the other hand, under war conditions, a British subject was prohibited from paying any sum to or for the profit or benefit of an enemy; to furnish any security for the payment of any sum, with or to or for the benefit of an enemy; to enter into any contract or obligation, financial or commercial or other; with or for the benefit of an enemy.

Taking into consideration the above dicta and scanning them in conjunction with the exceptions embodied in the proclamation of the Governor-General-in-Council, it was apparent that it was not the nationality of the person, but his domicile, which determined whether he should be considered as being an enemy or not. As to persons of alien nationality, they were considered as sharing the sentiments of enmity of the sovereign to whose dominion they were subjects and in whose territory they resided.

"The principle laid down by Cockburn 'On Nationality,'" proceeded His Lordship, "is that an enemy alien has not the enjoyment of his civil rights in the British Empire. In Sparenberg and Dannatyne, Chief Justice Eyre declares that 'a man professing himself hostile to this country' and in a state of war with it, cannot be heard, if he sues for the benefit and protection of our laws in the courts of this country." (P. 163 and 170). . . . It follows that an alien, citizen of a country at war with Britain, cannot be admitted to plead before the British courts. But in the present case is the plaintiff thus incapacitated, seeing that her suit was started before the opening of hostilities? The object of the prohibiting law being to obviate the despoiling of a British citizen for the benefit of a citizen of an enemy state, the court cannot authorize any act which would directly or indirectly bring about such a result. 'During war,' says Merlin, 'a subject of an enemy state cannot proceed against a subject of the King' (Vho. Prescription, par 8, C. 530). According to the same author, plague (la peste) and notably war, can be admitted as causes of the suspension of prescription."

His Lordship here cited a notice of the Council of State, inserted in the "Bulletin des Lois," enacting that the exception drawn from force majeure, was applicable in case of invasion on the part of an enemy or in case of events accruing as a result of a state of war. This suspension, applicable to matters of prescription, taking into consideration the words in 22x of the Civil Code ("Prescription runs against all persons . . . unless it is absolutely impossible for them in law or in fact, to act, etc.), might be considered as coming into play, when, by the action of a Sovereign, under whose dominion he was an alien finds himself deprived of enjoyment of his civil rights in the British Empire.

"It can hardly be said," proceeded His Lordship, "that the plaintiff, who was legally and regularly sub judice at the moment of the declaration of war, should be despoiled of what rights she then possessed. The remedy is that her right of action should remain suspended from the time of the Royal proclamation, to be revived

ed and to take effect after the cessation of hostilities. In this way, there is no wiping out of her rights.

All that this court can therefore do is to declare the suit suspended by force majeure, taking into consideration the state of war existing with the nation to which the plaintiff, a resident of Austria-Hungary, belongs."