

War: Confiscation of alien property: Construction of enemy Trade Act

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minute. Its attempt to set up these licenses as a defense of course was futile since it clearly had exceeded them.

At the same time this general statement of the legislation and the action of the Secretary of War under it, points the way out of the present difficulty. The legislation gives the Secretary of War extensive powers in the matter. A license by him increasing the amount of water which Chicago may divert until such time as proper sewage disposal plants have been erected, will protect not only the interests of Chicago and its inhabitants but the interests of those outside of Chicago and will also preserve the lakes themselves—all this within the strict meaning of the judgment of the Supreme Court which, as already mentioned, granted its injunction, "without prejudice to any permit that may be issued by the Secretary of War according to law."

That this result is highly satisfactory to all concerned, excepting uncompromising Chicagoans of the "I will" variety, is beyond a doubt. The United States Supreme Court by this decision has again demonstrated how important is its place in the Government and affairs of the nation, and how vital it is to the well-being of us all. A situation such as this would, in Europe, lead to war and the flowing of blood. In the United States, it merely leads to a law suit and the spilling of ink.

In referring to the city of Chicago, the writer of this note is, of course, fully aware that it was, technically speaking, the Sanitary District which took the reprehensible action. This district was organized by the Illinois Legislature independently of the city of Chicago, because the very inhabitants of Chicago, for good and sufficient reasons, did not wish to give to their city council, with its grey wolves, additional power. While the district covers territory outside of the city limits, the denizens of Chicago constitute such an overwhelming majority of the inhabitants of the district, that the writer believes that he is justified in treating, for the purposes of this note, the city as identical with the district.

War: Confiscation of alien property: Construction of enemy Trade Act.—*Swiss National Insurance Company Ltd. v. Thomas W. Miller and Frank White*. 45 Supreme Court Reporter 213. The appellant plaintiff had a Swiss charter though its stockholders were largely German, at least during the war. It was engaged in business in Germany while hostilities were in progress. It transacted business in the United States during the fateful days of 1917 and 1918. To obtain the necessary licenses it had deposited about one million dollars worth of bonds with various state treasurers. These securities were seized by the alien property custodian one week after the Armistice. There can be no question but that this sequestration was permissible since the Enemy Trade Act expressly included any corporation incorporated in any other country other than the United States and doing business within the territory of any enemy nation. Its appropriateness at the particular time when the war was practically though not theoretically at an end presents another question with which the courts, however, are not concerned.

More than a year before the war officially terminated by the adoption of the peace resolution of July 2, 1921, (42 Stat. 105, 106 c. 40) Congress, on June 5, 1920, amended the Enemy Trade Act by providing, among other things, that if the owner of the seized property was "a citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject such nation or state or free city," the sequestered property was to be delivered back to him. The great question before the court was whether this Swiss Insurance Company was a citizen or a subject within the meaning of this provision. The court by Chief Justice Taft, in answering this question in the negative, freely conceded that the term citizen or subject standing alone would be broad enough to include this particular claimant and even cited cases in support of this proposition. Its decision was based on the fact that there was an additional clause in the same enactment which provided for a return of seized property to *corporations incorporated* within any foreign country whose stock was, at the time of the sequestration, entirely owned by non-enemies and was so owned at the time of the return. Says the court: "Had not clause 6 been inserted in the act, possibly the words citizens or subjects of clause 1 might have been held to include corporations; but with a specification of them as a separate class, it would violate an obviously sound rule to include them by construction in clause 1 also as citizen or subjects."

The result is that the alien property custodian retains possession of this property though all reason for such retention has passed away. The construction of the court, while perhaps technically correct, seems to do violence to the spirit of the act. It overlooks the obvious fact that statutes are frequently loosely drawn and are not intended to be masterpieces of the close application of logical principles. Relief will probably be sought by an amendment of the Enemy Trade Act by Congress. The resulting tinkering with legislation to fit individual needs is one of the outstanding faults of our legislative system and deserves to be discouraged in every way possible. The decision will probably impede rather than expedite the liquidation of the enormous trust estate still held by the Alien Property Custodian. If it should result in a *comprehensive* amendment of the Enemy Trade Act it would, of course, prove to be a blessing in disguise.

It is not surprising that the court was not unanimous in its holding. Justice McReynolds filed a long dissenting opinion in which he stressed particularly the intent and purpose of the Enemy Trade Act to conserve and utilize enemy property upon a basis of practical justice and to prevent the owner from receiving benefits therefrom until after the war but without ultimate confiscation. He contends that the amendment of 1920 is entitled to receive a liberal construction in favor of the plaintiff. Those who are familiar with the history of the liberal construction of such famous legislative landmarks as the statute of uses or the statute of Elizabeth concerning charities will readily see that the court, if it had yielded to the contentions of the plaintiff, would have been well within the general policy pursued in the construction of these old statutes.

The case is of interest as bringing again into the foreground the question whether a corporation is really a separate entity apart from its stockholders or merely a giant partnership with the liability of the partners strictly limited. The prevailing opinion lays stress on the fact that most of the owners of the corporation resided in Germany during the war and thus leans toward the partnership theory. The dissenting opinion stresses the entity theory and regards the corporation as a citizen or subject of the country where it is incorporated, no matter who its stockholders might be. Perhaps this contrariety was not consciously felt by the writers of either opinion, yet it is possible that it furnishes the key to the differences between them.

C. Z.

Wills: Blindness of testator; validity of will.—*In re Bakke's Will*, 199 N. W. 438 (Wis.). The validity or invalidity of the execution of wills has raised a number of very nice questions of law, among which not the least prominent is the question of the effect of the blindness of the testator on the validity of his will. Two questions arise in discussing this subject: first, whether a blind person has sufficient testamentary capacity and second, whether he has the ability of knowing the contents of his will.

In Wisconsin, the statute on the execution of wills reads, "No will made within this state . . . shall be effectual to pass any estate . . . unless it be in writing and signed by the testator or by some person in his presence and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses in the presence of each other. . . ."¹

The statutes regarding who may devise or bequeath property read as follows: "Every person of full age and any married woman of the age of eighteen years and upwards, being of sound mind, . . ."² This phrase is the deciding factor in Wisconsin as to who has testamentary capacity in the devising of both real and personal property.

In reference to the first-named statute, the question usually evolves around whether or not the clause "in the presence of" must be construed so as to mean that the testator must see the persons signing as witnesses or signing for him at his express direction. At this point, the further question arises as to whether the testator knew the contents of the will. Both of these questions will be fully discussed later.

In the present case, the facts were as follows: Guinhild Bakke, a woman of sound mind but blind and partially deaf, made her will on October 11, 1890. She was a widow holding eighty acres homestead as a life estate and 280 acres in fee. The contestant, Mrs. Stern, a daughter, received her share of the estate when her father died. No question of mental capacity or undue influence was raised but the only ground of contest was the blindness of the testatrix. The defense contended that the burden of proof resting upon the proponents was not satisfied by the evidence and that there must be, under the circumstances,

¹ Sec. 2282, Wis. Stats. 1923.

² Secs. 2277 and 2281, Wis. Stats. 1923.