

Present: Shaw J.

1915.

BOYSEN *et al.* v. ABEYSEKERA.

39—C. R. Colombo. 41, 192.

*Alien enemy residing in Ceylon with Governor's permission—Right to sue.*

Alien enemies residing in Ceylon with the permission of the Governor may sue in the Courts of this Island as if they were subjects of His Majesty.

THE facts appear from the judgment.

Allan Driberg, for the appellant.—Section 466 of the Civil Procedure Code expressly gives alien enemies residing in Ceylon the power to sue in our Courts. The domicil, and not nationality, is the test of an alien's right to sue. Counsel cited a case reported in the *Times* newspaper (London) of January 20, 1915. and *Princess Thurn of Taxis v. Moffitt*.

His Excellency the Governor, by his notifications in the *Gazette* of August 14, 1915, and September 25, 1915, has allowed German subjects resident in Ceylon certain rights of trading.

No appearance for the respondent.

*Cur. adv. vult.*

March 3, 1915. SHAW J.—

On September 21, 1914, an action was commenced in the Court of Requests, Colombo, by George Boysen and Emil Rickerston, two German subjects residing and trading in Colombo, against D. C. W. Abeysekera to recover the sum of Rs. 300, being balance of an account for goods sold and delivered. At that time a state of war existed between His Majesty and the country of which the plaintiffs were subjects. The goods in respect of which the action was brought had been sold and delivered prior to the outbreak of war. Section 466 of the Civil Procedure Code (Ordinance No. 2 of 1889) provides as follows: "Alien enemies residing in Ceylon with the permission of the Governor and alien friends may sue in the Courts of this Island as if they were subjects of His Majesty."

On August 14, 1914, the Governor issued the following notification in the *Gazette*: "It is hereby notified that German subjects resident within the Colony are authorized to trade for the purpose of disposing of their present stocks and of fulfilling their existing

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engagements. British subjects are authorized to pay to German subjects resident in Ceylon such amounts as may be due to such German subjects."

This was followed by a further notification from His Excellency published in the *Gazette* on September 25: "It is hereby notified that the limitations upon the trading rights accorded to German subjects resident in the Colony under the Government notification published in the *Government Gazette* No. 6,648 of August 14, 1914, are hereby removed, and that German subjects resident in the Colony are authorized to continue to reside within the Colony and carry on their trade or business free from the said limitations."

On August 6, August 14, and September 21 proclamations were issued by the Governor forbidding certain trading with the enemy. These, however, only apply to persons resident or carrying on business in the enemy country, and do not affect the present case.

It has been held in England in *Princess Thurn of Taxis v. Moffitt*, reported in *31 The Times Law Reports* 43, that the subject of an enemy State who was registered under the Aliens Restriction Act, 1914, as an alien and a subject of the enemy State is entitled to sue in the King's Courts. This decision was cited with approval by the Court of Appeal in England, reported in the *Times* newspaper of January 20, 1915. Under the English law alien enemies have no civil rights or privileges, unless they are here under the protection and by permission of the Crown. See *Blackstone's Commentaries* 21 ed., VI, p. 373.

Section 466 of our Civil Procedure Code seems to me to be intended to apply here the English law as stated by Blackstone.

The question therefore in the present case is whether the plaintiffs were at the time they brought these proceedings resident in the Colony with the permission of the Governor.

I think they were; the notification in the *Gazette* of August 14 that German subjects resident within the Colony were authorized to continue to trade for certain purposes, and that British subjects were authorized to pay to them such amounts as might be due, seems to me to amount to an authorization and permission for such German subjects to remain in the Colony, and the subsequent notification of September 25 seems to me to confirm their position and to extend their rights to trade.

The subsequent internment of German subjects for the purposes of the public safety does not seem to me to take away any rights given them by the two notifications I have referred to.

I therefore think that these proceedings were properly brought, and that the Commissioner of Requests was wrong in his decision of the preliminary issue. The case will therefore be sent back to him with instructions to frame and try issues on the merits.

*Sent back.*