SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Central Union Trust Co. Vs. Garvan

Central Union Trust Co. Vs. Garvan

SooperKanoon Citation : sooperkanoon.com/93546

Court : US Supreme Court

Decided On : Jan-24-1921

Appeal No. : 254 U.S. 554

Appellant : Central Union Trust Co.

Respondent : Garvan

Judgement :

Central Union Trust Co. v. Garvan - 254 U.S. 554 (1921)
U.S. Supreme Court Central Union Trust Co. v. Garvan, 254 U.S. 554 (1921)

Central Union Trust Co. v. Garvan

No. 392-39

Argued January 10, 11, 1921

Decided January 24, 1921

254 U.S. 554 (1921)

ERROR TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

1. Decrees of the circuit court of appeals affirming decree of the district court placing the Alien Property Custodian in possession of property in libel proceedings brought by him under the Trading with the Enemy Act *held* reviewable in this Court by writ of error. P. 254 U. S. 566 .

2. Congress has power in war time to provide for immediate seizure, *in pais* or through a court, of property supposed to belong to the enemy, leaving the question of enemy ownership *vel non* to be settled later at the suit of the claimant. P. 254 U. S. 566 .

3. Under 17 of the Trading with the Enemy Act of October 6, 1917,

Page 254 U. S. 555

which confers on the district court jurisdiction to make all such orders and decrees as may be necessary and proper to enforce the provisions of the act, those courts have jurisdiction to enforce the demands of the Alien Property Custodian for the delivery of property to the possession of which the act entitles him. P. 254 U. S. 566 .

4. The Trading with the Enemy Act, 7(c), provides that, "[i]f the President shall so require, any money or other property . . . held . . . for the benefit of an enemy," without license,

"which the President after investigation shall determine . . . is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Held that, upon a determination after investigation by the Custodian, exercising the President's power by delegation under 5 of the act, that certain securities were held by trustees for the benefit of enemy insurance companies, followed by demand, the duty arose to deliver them to the Custodian; that the question of enemy property *vel non* could not be inquired into in his suit to compel delivery,

but rights in that regard could be asserted and protected by claim, and, if necessary, suit, for return of the property, under 9, as amended. P. 254 U. S. 567 .

5. Proceedings of this character are alternative to direct seizure by the Custodian under 7(c) of the act as amended by the Act of November 4, 1918, and involve only the right to possession. P. 254 U. S. 568 . *Clinkenbeard v. United States,* 21 Wall. 65, distinguished.

6. Insofar as concerns claimants who proceed as allowed by amended 9, a proceeding like the present gives a mere preliminary custody, although in other respects the Custodian may get a conveyance under the act, with broad powers of management and disposition under 12, as amended. P. 254 U. S. 569 .

265 F. 477, *id.* 481, affirmed.

The cases are stated in the opinion.

Page 254 U. S. 565

MR. JUSTICE HOLMES delivered the opinion of the Court.

These are libels brought by the Alien Property Custodian under the Trading with the Enemy Act October 6, 1917, c. 106, 17, 40 Stat. 411, 425, to obtain possession of securities in the hands of the plaintiffs in error respectively as trustees. The libel in each case alleges that the Alien Property Custodian, after investigation, determined that a German insurance company named was an enemy not holding a license from the President, etc., that certain specified securities belonged to it or were held for its benefit by the party now appearing as a plaintiff in error in that case, and that a demand for the property had been made but not complied with. The libellant prayed an order directing the marshal to seize the property and citing claimants of a right to possession to show cause why the same should not be delivered to him. The plaintiffs in error appeared as claimants in their several cases, denied that the funds were held for the benefit of an enemy, and set up the trust under which they held

them as required by the laws of Massachusetts or Connecticut for the security of American policyholders and creditors, with reasons for their right to retain the funds alleged in detail. The libellant moved for decrees for possession upon the pleadings which were granted by the district court. The decrees were affirmed by the circuit court of appeals, *Garvan v. $20,000 Bonds,* 265 F. 477; *ibid.,* 481. As the decision of the latter Court is not made final by the statute, the cases have been brought on writ of error to this Court.

As is obvious from the statement of the pleadings, the libels are brought upon the theory that these are purely possessory actions and that, for the purposes of immediate possession, the determination of the Enemy Property Custodian is conclusive, whether right or wrong. The claimants, on the other hand, set up substantive rights and seek to have it decided in these suits whether the funds are enemy property in fact and whether they have not the right to detain them. Strictly possessory actions still survive in the laws of some states, and have been upheld, leaving the party claiming title to a subsequent suit. *Grant Timber & Manufacturing Co. v. Gray,* 236 U. S. 133 . There can be no doubt that Congress has power to provide for an immediate seizure in war times of property supposed to belong to the enemy, as it could provide for an attachment or distraint if adequate provision is made for a return in case of mistake. As it can authorize a seizure *in pais,* it can authorize one through the help of a court. The only questions are whether it has done so as supposed by the libellant, and, if so, whether the conditions imposed by the act have been performed.

If the Custodian was entitled to demand the delivery of the property in question, it does not seem to need argument to show that the demand could be enforced by the district courts under 17 of the act, giving to those courts jurisdiction to make all such orders and decrees as may

be necessary and proper to enforce the provisions of the act. The first question, then, is whether the Custodian had the right to make the demand. By 5, the President may exercise any power or authority conferred by the act through such officers as he may direct. It is admitted that he has exercised the powers material to these cases through the Enemy Property Custodian, and, by the Act of November 4, 1918, c. 201, 40 Stat. 1020, the Custodian is given the right to seize. By 7(c),as originally enacted:

"If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian."

We are to take it, therefore, that the President has "so required," and that a case is made out under 17 unless we are to consider the defenses interposed.

If we look no further than 7(c), it is plain that obedience to the statute requires an immediate transfer in any case within its terms, without awaiting a resort to the courts. The occasion of the duty is a demand after a determination by the President, and it is hard to give much meaning to the words "which the President after investigation shall determine is so . . . held" unless the determination and demand call the duty into being. The condition "after investigation" additionally points to the intent to make his act decisive upon the point, as it is in other cases mentioned in 7(a). But it is said that the subject of the section is enemy property only, and therefore that the determination cannot be final in its effect. *Day v. Micou,* 18 Wall. 156. And it is true that it is not final against the claimant's rights. Upon surrender, the claimant may at once file a claim under 9 if he satisfies the representative

of the President may obtain a return, and, if he does not obtain it in sixty days after filing his application, or forthwith if he has given the required notice but filed no application to the President, may bring a suit to establish his rights in the district court, in which case the property is to be retained by the Custodian until final decree. These provisions explain the initial words of 7(c) as saving the ultimate rights of the claimant while the determination of the President still may be given effect to carry out an immediate seizure for the security of the government until the final decision upon the right. The reservation implies that mistakes may be made, and assumes that the transfer will take place whether right or wrong.

The argument on the original words of the Act in view of the manifest purpose seems to us to be strong, but it appears to us to be much strengthened by the amendments of later date. By the Act of November 4, 1918, c. 201, 40 Stat. 1020, 7(c), was amended, among other things, by adding after the requirements of transfer "or the same may be seized by the Alien Property Custodian, and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act." This shows clearly enough the peremptory character of this first step. It cannot be supposed that a resort to the Courts is to be less immediately effective than a taking with the strong hand. *Clinkenbeard v. United States,* 21 Wall. 65, has no application. That was debt on a bond for a tax, and turned on the right of the government to the tax, not on possession. By a later paragraph, "the sole relief and remedy of any person having any claim to any . . . property" transferred to the Custodian "or required so to be, or seized by him shall be that provided by the terms of this Act." The natural interpretation of this clause is that it refers to the remedies expressly provided, in this case by 9; that property required to be transferred and property seized stand on the same footing, not that the resort by the Custodian

Page 254 U. S. 569

to the courts instead of to force opens to the person who has declined to obey the order of the statute or who has prevented a seizure a right by implication to delay what the statute evidently means to accomplish at once.

To the conclusion that we reach it is objected that the Custodian gets a good deal more than bare possession -- that the property is to be conveyed to him, and that, by the Act of March 28, 1918, c. 28, 40 Stat. 459, 460, enlarging 12, the Custodian

"shall be vested with all of the powers of a common law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed,"

etc., to him, and is given the power to sell and manage the same as though he were absolute owner. All this may be conceded if no claim is filed. But this act did not repeal 9, which is amended by the later Acts of July 11, 1919, c. 6, 41 Stat. 35, and of June 5, 1920, c. 241, 41 Stat. 977, and, as we have said, provides for immediate claim and suit and requires the property in cases of suit to be retained in the custody of the Alien Property Custodian or in the Treasury of the United States to abide the result. The present proceeding gives nothing but the preliminary custody such as would have been gained by seizure. It attaches the property to make sure that it is forthcoming if finally condemned, and does no more.

Decrees affirmed.

THE CHIEF JUSTICE took no part in the consideration or decision of these causes.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com