

Province of Ontario, agreed to sell it to one Glab for \$1,450. Glab purchased on behalf of the plaintiff, and on the 2nd January, 1917, assigned his interest under the contract to the plaintiff.

The defendant, by birth a Hungarian, had been for some years, and still was at the time of the trial, a resident of the State of Michigan, but had retained his Austro-Hungarian nationality, and thus at the date of the contract was an alien enemy subject, resident in neutral territory. Before completion of the contract, the plaintiff ascertained that the defendant had a wife and children resident in Hungary, and was in the habit of remitting money to them there. Being doubtful whether he might lawfully pay over the purchase-money to the defendant, the plaintiff instituted this action.

The defendant admitted that the contract was valid and binding and expressed his willingness to carry it out, provided that he was paid the purchase-money. He also submitted that the plaintiff should not have brought this action, but should have invoked the provisions of sec. 19 of the Privy Council's Consolidated Orders respecting Trading with the Enemy.

On examination for discovery, the defendant stated that he intended to send to his wife, in Hungary, a portion of the purchase-money.

The action was tried without a jury at Sarnia.

M. K. Cowan, K.C., for the plaintiff.

A. I. McKinley, for the defendant.

MULOCK, C.J.Ex., in a written judgment, said that the first question to determine was, whether the contract was valid and binding. The only ground of invalidity alleged was, that the defendant was by nationality an alien enemy subject. His residence and place of business were, however, in the United States, a neutral country at the time of making the contract, and now an ally of Great Britain.

Upon the declaration of war it became unlawful for any resident of Canada to trade with the enemy; but the defendant was not an enemy in the sense that he was incapable of entering into a binding contract with a resident of Canada.

With reference to civil rights, "enemy" does not mean a person who is by nationality a subject of a sovereign with whom His Majesty is at war, but a person, of whatever nationality, who resides or carries on business in enemy territory. The prohibition of commercial intercourse is based on public policy which aims at