

Principles of recent War Cases

Implied terms re peace

Foster's Agency Ltd. v. Romaine

to postpone her engagement. Thereupon the plaintiffs sued the defendant. It was argued that the contract only contemplated ordinary sea risks, and when the time came for performance an extraordinary peril had arisen which had not been bargained for, and that the defendant was justified in refusing to pay commission.

The Court overruled these arguments.

Ridley J. said :—"The appearance of the German submarines was a reasonable ground for the respondent's suggesting that she should not go to Australia, and if the other parties had agreed to her not going all would have been well ; but the presence of the submarines did not give her the right to say that she would not go. It would be quite impossible to allow people to refuse to perform contracts on their own estimate of the risks to be incurred in the performance"; and *Avory J.* observed :—"The voyage had not been rendered impossible ; there was always some danger in a voyage to Australia, and the worst that could be said here was that the amount of danger had been increased" [*Foster's Agency, Ltd., v. Romaine*, 1916, 32 T.L.R. 331]; but on appeal this decision was reversed [*idem* 1916, 32 T.L.R. 545] and it was held that the plaintiffs could not recover, as the agreement to postpone the engagement was not a default on the part of the defendant, and the writ had been issued before any salary had accrued, and there had been no refusal