

the performance of any contract which enures to the advantage of an enemy subject is excused on the ground of illegality. But a mere embargo does not necessarily make the performance of a contract illegal. In *Smith Coney & Barrett v. Becker, Gray & Co.* (1915), 31 T.L.R. 151, the plaintiffs in July, 1914, agreed to buy certain sugar from the defendants f.o.b. Hamburg in August. On July 31 the German Government placed an embargo on the sale of sugar, as a result of which the plaintiffs gave orders to the defendants to sell the sugar, and on August 1 they agreed to buy it from the plaintiffs. All the contracts contained arbitration clauses, and the defendants commenced arbitration proceedings. A war clause which was incorporated with the contracts provided that, if Germany should become involved in war the contract should (unless previously closed) be closed upon certain stated terms. Owing to the war Proclamations, delivery of the sugar became impossible after August 5. The plaintiffs having sought an injunction to restrain arbitration proceedings, Warrington, J., held that the contracts were valid and binding when made, and that therefore the arbitration must proceed. In giving judgment affirming this decision the Master of the Rolls pointed out that the contract provided for war by saying that in that event there should be settlement by a payment in cash. The contingency of war has therefore been provided for. He also pointed out that an embargo did not render a contract of this kind illegal: "It was for the buyer to say whether the sugar was to be delivered in a ship at Hamburg or warehouses, and there was nothing to prevent them from saying that as there was an embargo the sugar must be warehoused." In a later case, which also referred to a sugar deal (*Jager v. Tolme and Runge* (1915) 31 T. L. R. 381) Sankey, J., laid it down that there was nothing illegal in the parties to a contract providing that a third party should give a binding decision in the event of war making performance of a contract, as originally intended, impossible. He also pointed out that there was no illegality in a man taking steps to protect his pro-