

HIS MAJESTY THE KING..... PLAINTIFF;

AND

CONSOLIDATED DISTILLERIES LIM- }
 ITED ET AL..... } DEFENDANTS.

1931
 Jan. 29.
 March. 13.

Revenue—Excise and Customs Acts—Bond—Interest—Jurisdiction

This action is for the recovery of the sum of \$34,094 on a bond, such as has been described and discussed in the cases of *The King v. Vancouver Breweries Ltd.* (1929, Ex. C.R. 14); *The King v. Fidelity Insurance Co. of Canada* (1929, Ex. C.R. 1); *The King v. Canadian Surety Co.* (1929, Ex. C.R. 216). The defence denied liability on the bond and alleged that, in any event, the crown could not recover interest, and that the Court had no jurisdiction in the matter. That the matter was one of contract and not one arising out of the administration of the laws of Canada, and that the provincial courts only had jurisdiction.

Held that as the bonds sued upon herein were required by a law enacted by the Parliament of Canada in respect of a matter over which it had undoubted jurisdiction, namely Excise, this Court had jurisdiction to hear and determine the present action, and the Court condemned the defendants in the amount of their bond, but with interest only from the date of judgment.

- (2) That the condition of the bonds in question being for the performance of an act, recovery thereon is limited to the amount of the penalty, and interest only runs from the date of judgment.

1931
 THE KING
 v.
 CONSOLIDATED
 DISTILLERIES
 LTD. ET AL.

INFORMATION by the Attorney-General of Canada to recover from the defendants the sum of \$34,094, amount of the bond executed by them in favour of His Majesty.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

N. W. Rowell, K.C., and Gordon Lindsay for plaintiff.

Arthur Holden, K.C., and F. T. Collins for defendants.

On the question of jurisdiction the defendants, by an amendment to their defence, which also gives the points argued by them, allege as follows:

(18) Without waiver of the foregoing the defendants specially allege that in any event the Exchequer Court of Canada has no jurisdiction to decide the matter at issue herein for the following reasons:

(a) The Exchequer Court of Canada is constituted under and in virtue of the Exchequer Court Act, being Revised Statutes of Canada, 1927, Chapter 34.

(b) The Exchequer Court Act was enacted under and in virtue of Section 101 of the British North America Act, 1867, which section reads as follows:

“The Parliament of Canada may, notwithstanding anything in this Act from Time to Time, provide for the Constitution, Maintenance and Organization of a General Court of Appeal for Canada and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.”

(c) That the words “Laws of Canada” in the said section 101 means laws enacted by the Dominion Parliament and within its competence.

(d) That the Parliament of Canada has under and in virtue of the said section 101 power only to establish additional courts for the better administration of the laws of Canada.

(e) That the matter at issue herein is simply a contract issue and the laws relating to and governing that contract issue are not the laws of Canada, but are laws of the Provinces of Canada.

(f) That under and in virtue of subsection 13 of the said section 92 of the British North America Act, 1867, “Property and Civil Rights in the Provinces” are matters assigned exclusively to the legislature in each province for the purpose of making laws relating thereto, and the contract issue between the parties herein is a matter relating to “Property and Civil Rights in the Provinces” and is governed solely by the laws of the province and not by the laws of Canada.

(g) That under and in virtue of subsection 14 of the said section 92 “The Administration of Justice in the Province, including the Constitution, Maintenance and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts,” are matters assigned exclusively to the Legislature in each Province.

(h) That under the British North America Act, 1867, the Provinces of Canada Exclusively have power to establish Courts to administer the laws relating to property and civil rights in the provinces, and more particularly to administer the laws relating to the contract issue between the parties herein and the Parliament of Canada has no power whatsoever to

give to the Exchequer Court of Canada jurisdiction to administer the laws relating to property and civil rights in the province, and more particularly the laws relating to and governing the contract issue between the parties herein.

THE KING
v.
CONSOLIDATED
DISTILLERIES
LTD. ET AL.

Maclean J.

(19) That the Exchequer Court Act, being Revised Statutes of Canada, 1927, Chapter 34, and every section thereof, is unconstitutional and beyond the powers of the Parliament of Canada in so far as it purports to give to the Exchequer Court of Canada jurisdiction to decide matters not governed by the laws enacted by the Parliament of Canada and within its competence, and more particularly the defendants especially plead that the said Exchequer Court Act is unconstitutional in so far as it purports to give jurisdiction to the Exchequer Court of Canada to decide the matter at issue between the parties herein.

(20) That the action of the plaintiff should therefore be also dismissed on the grounds set forth in paragraphs 18 and 19, saving in this regard however such recourse as the plaintiff may have in the Provinces.

N. W. Rowell, K.C., in reply argued that the words "notwithstanding anything in this Act" in Section 101, B.N.A. Act, applied to the second branch as well as to the first branch of the Section, namely, the "establishment of additional Courts." That "laws of Canada" means all laws, provincial as well as Federal. That Canada has power to legislate in respect to Customs and Excise, and has power to constitute a Court to deal with the better administration of those laws. That the Bonds herein are given under the conditions prescribed in the Act, and if they are not discharged in accordance with their conditions, Parliament can, for the better administration of this law, collect the amount and can provide for the collection under the law. He also argued that interest should be allowed.

The case of *City of Toronto v. The Toronto Street Railway* (1906) A.C. 117, was cited.

The facts and the questions of law raised are stated above and in the Reasons for Judgment.

THE PRESIDENT, now (March 13, 1931), delivered the following judgment.

This is an action, no. 9370, upon four bonds executed by the defendants in favour of the plaintiff.

[The learned President here discusses the matter of liability under the bonds in question, and finds the defendants liable for the amount of the said bonds. The learned President followed the decisions heretofore given in several cases, in this Court on similar bonds, among them being the cases referred to in the head-note. The learned President then proceeds as follows.]

1931
 THE KING
 v.
 CONSOLIDATED
 DISTILLERIES
 LTD. ET AL.
 Maclean J.

The defendants question the jurisdiction of the court in this action, and they rely upon the decision of the Supreme Court of Canada in *The King v. Consolidated Distilleries Ltd.* (1). I am unable to appreciate the argument which was addressed to me by counsel for the defendants upon this point. In the case just mentioned, the defendant company, the same defendant company as in this case, sought on motion, in the Exchequer Court, to bring in as a third party the Consolidated Exporters Co. Ltd., upon the ground that this corporation by agreement had contracted to indemnify the Consolidated Distilleries Ltd. against any loss, damages or expenses which it might suffer by reason of certain bonds which it had executed unto His Majesty, under the Excise Act, just as in this case. Audette J. set aside the third party notice upon the ground that the issue raised by the third party notice was separate and distinct from the issue raised between the plaintiff and the defendant in the action, and he held that if there was a separate cause of action flowing from the agreement of indemnity it must be tried in the provincial courts having jurisdiction in such matters, and that the Exchequer Court was without jurisdiction. There was an appeal from this decision to the Supreme Court of Canada, and the decision of Audette J. was upheld. That is all the Supreme Court of Canada dealt with. This is not a case which involves an agreement of indemnity given by a third party to the defendant company. There can be no doubt but that the Parliament of Canada had jurisdiction to legislate in respect of Customs and Excise, and the subject matter of this action directly arises from legislation enacted by the Parliament of Canada in respect of Excise.

The Chief Justice in delivering the judgment of the Court said:

While there can be no doubt that the powers of Parliament under section 101 are of an overriding character, when the matter dealt with is within the legislative jurisdiction of the Parliament of Canada, it seems equally clear that they do not enable it to set up a Court competent to deal with matters purely of civil right as between subject and subject.

That makes very plain the scope of the judgment of the court. The court held that the matter of a contract of indemnity between a defendant, in an action taken upon a bond by the Crown under the Excise Act, and a third

party, was a matter of civil right as between subject and subject, and was one purely of provincial jurisdiction. The contract of indemnity had not its origin in a law of Canada as distinguished from a law of a province. There can be no question as to the competency of the Parliament of Canada to legislate in respect of the subject of Excise, and I do not think there is any doubt as to the jurisdiction of this court in any proceedings arising under the Excise Act. In this particular matter the bonds sued upon were required by a law enacted by the Parliament of Canada in respect of a matter in which it had undoubted jurisdiction. In my opinion, the judgment of the Supreme Court of Canada is, without qualification whatever, against the contention of the defendants.

1931
 THE KING
 v.
 CONSOLIDATED
 DISTILLERIES
 LTD. ET AL.
 Maclean J.

The plaintiff claims interest at the rate of five per cent upon the total amount stated in the four bonds in question. The defendants contend that in law no interest is payable on such bonds, and I think this contention must be upheld. In similar actions it is true I did allow interest, but in such cases the claim for interest was not contested. It is admitted that in England the amount recoverable on a bond forfeited by breach of the condition is in all cases limited, both at law and in equity, to the amount of the penalty fixed by the obligatory part. The condition of the bonds in question was for the performance of an act, and in such cases a recovery is limited to the amount of the penalty, and interest only runs from the date of judgment. That, I think, is also the law in the United States. Counsel for the plaintiff referred to the Ontario Judicature Act, but we are not here concerned with a matter of procedure, but one of substantive law. The Ontario Judicature Act, and the case of *Toronto Railway Company v. City of Toronto* (1), which was cited do not seem to me to have any relevancy here. The Judicature Act of Ontario is invoked in this court in matters of procedure only; the obligation to pay interest is a matter of substantive law and not procedure. In reason, the claim for interest in respect of a bond of this character would appear to have no foundation. I therefore disallow the claim for interest.

(1) (1906) A.C. 117.

1931
THE KING
v.
CONSOLIDATED
DISTILLERIES
LTD. ET AL.

There will be judgment for the amounts sued upon herein as appearing in the plaintiff's Information, but exclusive of interest, and costs will follow the event.

Judgment accordingly.

Maclea J.
