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June 29

BETWEEN:

HIS MAJESTY THE KING, on the Information of the Attorney General of Canada,

PLAINTIFF;

AND

WATT & SCOTT (TORONTO) LTD.,

DEFENDANT.

AND

BETWEEN:

HIS MAJESTY THE KING, on the Information of the Attorney General of Canada,

PLAINTIFF;

AND

TEES AND PERSSE LIMITED,

DEFENDANT.

Revenue—Customs Duty—Customs Act, R.S.C. 1927, chap. 42, and amendments, secs. 2(m), 112—Liability for duty of person acting on behalf of owner or importer of goods.

Each of the defendants during 1940, 1941 and 1942 imported into Canada large quantities of canned corned beef from South American countries and paid customs duties based on the values at which the goods were entered for customs. Each of the defendants received the goods on consignment and acted as selling agent for an Argentine company, which was said to be the owner of the goods. Each of the defendants cleared the imported goods through customs on behalf of its principal, and on customs forms on which the goods were entered for home consumption it was stated in each case that the goods were imported by the defendant.

It being considered that the goods had been undervalued, the Chief Dominion Customs appraiser made fresh appraisals and directed each of the defendants to make amended entries and pay additional customs duty and taxes. Protests being made against these appraisals the matter was referred to the Minister of National Revenue who, on August 19, 1943, determined the value for duty of the canned corned beef imported by each of the defendants during 1940 to 1942, showing the additional customs duty and taxes payable by each of the defendants. Actions were brought to recover in each case such additional amount or, in the alternative, the additional amount resulting from the appraisal made by the Chief Dominion Customs appraiser.

Held: That when goods are imported into Canada consigned to a selling agent for their owner and the agent acts for the owner in clearing them through customs and enters them as being imported by himself, such agent is liable for the customs duty and taxes payable in respect of them. *The King* v. *Weddel Limited* (1945) Ex. C.R. 97 followed.

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INFORMATIONS exhibited by the Attorney General of Canada to recover from each of the defendants the additional amount of customs duty and taxes resulting from the determination by the Minister of National Revenue of the values for duty of certain goods imported into Canada in excess of those at which they had been entered for duty.

The actions were tried before the Honourable Mr. Justice Thorson, President of the Court, at Ottawa.

J. C. McRuer, K.C. and *Robert Forsyth, K.C.* for plaintiff.

Aimé Geoffrion, K.C. for Watt & Scott (Toronto) Limited.

Aimé Geoffrion, K.C. and *E. K. Williams, K.C.* for Tees & Persse Limited.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (June 29, 1945) delivered the following judgment:

With one difference, the issues in these two cases are similar to those in *The King* v. *Weddel Limited,* in which judgment for the plaintiff has just been given. In each case, the defendant during 1940, 1941 and 1942 imported into Canada large quantities of canned corned beef from countries in South America and paid customs duties based on the values at which the goods were entered for customs. Subsequently, early in 1943, it being considered that the importations had been undervalued, the Chief Dominion Customs appraiser made fresh appraisals of the value of the imported goods. In the case of the defendant Watt & Scott (Toronto) Ltd., these were at $348,780 in excess of those at which they had been entered for duty and the appraiser directed the defendant to make amended entries and pay additional customs duty and taxes amounting to $167,157.68. In the case of the defendant Tees & Persse Limited, the excess values found on the fresh appraisals amounted to $131,947 and the amount of additional duty and taxes directed to be paid on the amended entries came to $63,955.18. Protests against these appraisals were made to the Department

of National Revenue and eventually the matter was referred to the Minister of National Revenue. He followed the same steps as he took in the *Weddel Limited* case and finally, on August 19, 1943, made a determination of the value for duty of the canned corned beef imported by each defendant during 1940 to 1942 in terms similar to his determination in the *Weddel Limited* case. The amount of additional customs duty and taxes found payable by the defendants as the result of these determinations was, in the case of the defendant Watt & Scott (Toronto) Ltd., the sum of $158,215.18 and, in the case of the defendant Tees & Persse Limited, the sum of $68,825.30. On the refusal of the defendants to pay any additional duty or taxes these actions were brought, the plaintiff, in each case, claiming the additional amount of customs duty and taxes resulting from the determination of the Minister purporting to act under section 41 of the Customs Act, R.S.C. 1927, chap. 42, and amendments, and, in the alternative, the additional amount resulting from the appraisal by the Chief Dominion Customs appraiser purporting to act under section 48.

The difference between the present cases and the *Weddel Limited* case is that Weddel Limited imported the canned corned beef as owner thereof, whereas each of the present defendants was an agent of an Argentine company, Frigorifico Armour de la Plata, of Buenos Aires, the owner of the goods, and received the goods on consignment as selling agent for such owner, the defendant Watt & Scott (Toronto) Ltd. being the sales representative of Frigorifico Armour de la Plata for Eastern Canada, and the defendant Tees & Persse Limited being its sales representative for Western Canada. Each of the defendants denies that it was the importer of the goods or liable for customs duty, it being alleged that the importer was Frigorifico Armour da la Plata, the owner of the goods, and that the defendant was merely consignee of the goods as selling agent for the owner.

I have come to the conclusion that this difference does not free the defendants from liability. Section 112 of the Customs Act provides as follows:

112. The true amount of Customs duties payable to His Majesty with respect to any goods imported into Canada or exported therefrom

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Thorson J.

shall, from and after the time when such duties should have been paid or accounted for, constitute a debt due and payable to His Majesty, jointly and severally, from the owner of the goods at the time of the importation or exportation thereof, and from the importer or exporter thereof, as the case may be; . . . . .

and section 2 (*m*) provides:

2. In this Act, or in any other law relating to the Customs, unless the context otherwise requires,

(*m*) "owner", "importer", or "exporter" includes any person lawfully acting on behalf of the owner; importer or exporter;

The evidence is conclusive that each of the defendants lawfully acted on behalf of its principal in clearing the imported goods through customs. The customs brokers of each defendant, acted for it and in accordance with its instructions. The defendant, in each case, paid the necessary customs duties and taxes in order to obtain possession of the goods of which it took delivery in its own name, and was then re-imbursed by its principal in accordance with the agency and consignment agreement between it and its principal. Whether Frigorifico Armour de la Plata was the owner or importer of the goods makes no difference for each defendant lawfully acted on its behalf in clearing the goods through customs and thus completing their importation. Moreover, on the Customs forms on which the goods were entered for home consumption it was stated, in each case, that the goods were imported by the defendant. Thus the defendant not only lawfully acted for the owner of the goods but was itself a de facto importer of them. It would, I think, be estopped from contending that it was not the importer when it put forward an entry stating that the goods were imported by it and thus obtained possession of them. It was urged that, because of the broad terms of section 112, making the owner of the goods and their importer or exporter jointly and severally liable for the customs duties payable on them, the definition of section 2 (*m*) should not apply. I see no reason why it should not do so. There is nothing in the context to render the definition inapplicable and each defendant comes clearly within its terms. It is part of the scheme of the Act that, whoever is the owner of the imported goods and wherever such owner may be, there shall be somebody in Canada who may be assessed for duty in respect of them, whether

as agent for the owner or importer, or as an importer or de facto importer. Each defendant was in such a position. I conclude, therefore, that when goods are imported into Canada consigned to a selling agent for their owner and the agent acts for the owner in clearing them through customs and enters them as being imported by himself, such agent is liable for the customs duty and taxes payable in respect of them.

The defendants are, therefore, in the same position in the matter of liability as was the defendant in *The King* v. *Weddel Limited* (*supra*), and the reasons for judgment in that case are, *mutatis mutandis,* incorporated herein. In each case, the Minister acted within his jurisdiction in the determination of value for duty made by him, the determination is referrable to the canned corned beef imported by the defendant during 1940, 1941 and 1942 and the defendant is liable for the amount of additional customs duty and taxes found by the Minister to be payable. There will, therefore, be judgment for the plaintiff against the defendant Watt & Scott (Toronto) Ltd. for $158,215.18 and costs; and judgment for the plaintiff against the defendant Tees & Persse Limited for $68,825.30 and costs.

Judgments accordingly.