

BETWEEN:

JOHN A. BROWNECLAIMANT;

1952
March 24

AND

HER MAJESTY THE QUEENRESPONDENT.

Revenue—Customs Act, R.S.C. 1927, c. 42, ss. 168, 176, 203(c)—Action to recover money deposited with Crown as security following seizure of automobile—Attempt to defraud the revenue of Canada—Misrepresentation of fact made by claimant on bringing an automobile into Canada from the United States—Forfeiture of deposit.

The action is one to recover from the Crown money deposited with it by the claimant pursuant to an arrangement by which he was allowed to retain possession of a United States made automobile which had been seized by officers of the Crown while in claimant's possession on the grounds that it had been brought into Canada contrary to the Customs Act, R.S.C. 1927, c. 42, s. 203(c). The money had been declared forfeited to the Crown by the Minister of National Revenue.

The Court found that certain statements of fact made by the claimant at the time he brought the automobile into Canada and statements giving his address in the United States as a permanent one and in Canada as a temporary one were misrepresentations and untrue.

Held: That the claimant committed a breach of s. 203 of the Customs Act and the failure on his part to pay the proper duties on the automobile together with the misrepresentations of fact made by him constituted an attempt to defraud the revenue by avoiding payment of the duties and the money deposited with the Crown is forfeited.

2. That the matter is to be determined by the law of Canada and the law of a foreign country or any interpretation placed upon that law by an official of a foreign country are not to be considered.

ACTION by claimant to recover money deposited with the Crown and declared forfeited.

The action was tried before the Honourable Mr. Justice Cameron at Toronto.

E. J. Walters for claimant.

G. B. Bagwell, Q.C. for respondent.

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

CAMERON J. at the conclusion of the trial delivered the following judgment:

This is a case in which the claimant seeks to recover from the Crown the sum of \$800 which amount was declared forfeited to the Crown by the Minister of National Revenue on December 21, 1950 and due notice whereof was served upon the claimant.

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The claimant then invoked the provisions of Section 176 of the Customs Act, Chapter 42, Revised Statutes of Canada 1927, which is as follows:

If the owner or claimant of the thing seized or detained, or the person alleged to have incurred the penalty, within 30 days after being notified of the Minister's decision, gives him notice in writing that such decision will not be accepted, the Minister may refer the matter to the court.

And pursuant to that section, the claimant having objected to the Minister's decision, the matter was referred to this Court and in due course pleadings were filed.

The onus in this case is on the claimant under the provisions of Section 262 which I do not find it necessary to read.

The seizure in question was that of a United States made Buick motor car which was seized in the possession of the claimant on September 29, 1950, on the grounds that it had been brought into Canada contrary to the provisions of Section 203, subsection (c) and was therefore subject to forfeiture.

Following the seizure an arrangement was made by the terms of which the claimant, as I understand it, paid certain storage charges in connection with the car from the time of its seizure and gave an undertaking that the car would be taken out of Canada to the United States within a definite specified time, and under which arrangement also, the claimant deposited with the Crown the sum of \$800 until such time as the Minister under the Act should make his decision as to whether that deposit should be forfeited. It is in connection with that amount which the Minister subsequently declared forfeited that these proceedings are now taken.

Section 203 subsection (c) of the Customs Act is as follows:

If any person in any way attempts to defraud the revenue by avoiding the payment of the duty or any part of the duty on any goods of whatever value; such goods if found shall be seized and forfeited or if not found but the value thereof has been ascertained, the person so offending shall forfeit the value thereof as ascertained, such forfeiture to be without power of remission in cases of offenses under paragraph (a) of this subsection.

I might point out that the concluding part of that subsection (c) which I have just read is not here applicable, as it is not suggested that the claimant smuggled or clandestinely introduced into Canada the goods referred to in subsection (a) thereof.

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In my view section 168 was also applicable and I point out that, because of the contention of counsel for the claimant that the Crown instead of forfeiting the car has accepted a deposit of somewhat less than its value and somewhat less than is shown to have been the total of all taxes which would have been paid on the car on the date when it came into Canada, which according to my recollection, aggregated something over \$900 to cover customs duty at the then value plus sales tax and plus excise tax. Section 168 of the Act is as follows:

Any collector or other proper officer may, as may also the court with the consent of the collector or other proper officer at the place where the things seized are, order the delivery thereof to the owner on the deposit with the collector or other proper officer, in money, of a sum equal at least to the full duty paid value, to be determined by the collector or other proper officer of the things seized and the estimated costs of the proceedings in the case.

Now, it is true that in this case the amount asked for was somewhat less than the total amount. I do not think that is of any importance. The claimant is not in any way prejudiced but rather he is benefitted by the fact that in the result the amount which was deposited and which is now asked to be forfeited is somewhat less perhaps than the full penalty which could have been exacted had a harsher view prevailed.

As I have said, the car in question was purchased in United States and according to the evidence was last brought into Canada by Mr. Browne, the plaintiff, at the port of entry of Fort Erie, Ontario, on September 18, 1950 and it is on the basis of that entry and the statements then made that it is now alleged that the claimant is in breach of Section 203, subsection (c) and perhaps other sections of the Customs Act. In the main, however, the breach lies under Section 203, subsection (c).

There is introduced into evidence, a document Exhibit 2 entitled Traveller's Vehicle Permit number D505946, which it is shown was issued to Mr. Browne in connection with

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this car at the time he brought the Buick car into Canada on September 18, 1950. Mr. Browne's signature appears thereon above the words "signature of owner". In that permit, which is really an application, he states as follows:

I, J. A. Browne,

underneath which are the words "print here name of owner of car" and I continue:

permanently residing at 2803 Buffalo Road, Erie, Pennsylvania, being a temporary visitor in Canada at 158 Humbercrest, Toronto.

and under the last address which I have given are the printed words "visiting address in Canada"—

hereby apply for a permit to use in Canada the vehicle and outfit described hereunder, conditional that the vehicle and outfit will not be used for hire or primarily for the carriage of articles and that same will be exported within two months from the date hereof

and then follows particulars of the car in question, identifying its make, its year, its serial number and the license number which it then bore, number 2957U of the State of Pennsylvania. And that is followed by the signature of the claimant herein. And it is on the basis of the statements therein given by Mr. Browne that these proceedings were taken.

I emphasize the fact that therein Mr. Browne stated that he was permanently residing at 2803 Buffalo Road, Erie, Pennsylvania and that his visiting address in Canada was 158 Humbercrest, Toronto.

That vehicle permit was granted pursuant to regulations duly established under the Customs Act. I quote from the summary which has been produced by counsel, Section 1 thereof:

Automobiles imported by non-residents for their personal transportation may be admitted without the payment of duty thereon, under Traveller's Vehicle Permit, Form E50—

and I pause to note that Exhibit 2 is form E50—

subject to the following regulations:

- (a) On arrival at the frontier customs port of entry, the driver of the automobile shall report at customs and apply for a permit. The applicant for a permit shall be a non-resident of Canada and a temporary visitor therein. He, or she, shall be the owner of the automobile or a member of the immediate family of the owner, who is also a non-resident of Canada, or shall be able to produce written authority from the owner to use such vehicle.

- (b) The automobile shall be admissible only when imported for the use of the non-resident permit holder for the transportation of such non-resident, his family and guests, and such incidental carriage or articles as may be necessary and appropriate to the purposes of the journey, but not to be used for the transportation of persons or articles for hire nor in any case primarily for the carriage of articles. The use by any other person than the non-resident permit holder shall result in seizure and forfeiture of the vehicle.

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It is pursuant to the provisions of that regulation and pursuant to the application Exhibit 2 that Mr. Browne was permitted to bring into Canada the American-made Buick car and for the Crown it is alleged that had the true facts been stated, Mr. Browne would not have been permitted under any condition to bring the car into Canada.

I pause for a moment merely to point out that under the then existing emergency Foreign Exchange Conservation Act, I think it is called, and which was then in force, no United States-made Buick car or I think any car could then have been imported into Canada except by special permit.

The dispute centres around the representations made on Exhibit 2 by Mr. Browne, the first one being that his permanent residence was at 2803 Buffalo Road, Erie, Pennsylvania, and secondly that he was a temporary visitor in Canada, and I would add the third, that his visiting address in Canada was 158 Humbercrest, Toronto.

Following the seizure of the car, investigations were made chiefly from statements received from Mr. Browne himself and the Crown then came to the conclusion that these representations were in fact contrary to the facts of the case, and it was for that reason that the deposit of \$800 was declared to be forfeited.

It is necessary on the evidence to determine whether those allegations and representations, where they were representations, were true or untrue. I think that without question that it was on the strength of those representations that the vehicle was permitted to enter Canada, otherwise it would have been refused admittance.

Mr. Browne has for a good many years, undoubtedly, been resident in Canada. He states that he has been for many years and continuing, I think, up to the present time President of two Canadian Corporations both having head

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office in Toronto or its vicinity, and one a manufacturing concern in Collingwood, Ontario. He is married, he has two children, and for a great many years has resided at 158 Humbercrest Road, Toronto, the address which, on Exhibit 2, he states was to be his visiting address. That house belongs to his wife but it is there that Mr. Browne has resided since, I think, the year 1936 or 1938—at any rate for a substantial number of years. His livelihood was secured from his positions as President of the two Canadian corporations. In so far as I am aware, there was no remuneration of any sort from any individuals or corporations in the United States. Some five years ago, perhaps a little more, Mr. Browne and presumably other officers of his corporation, decided that it would be advantageous at some time to either open a branch office of their concern or establish a new concern in United States. Mr. Browne's businesses consist in the main of importing china, some of which is in a finished form and to others of which he applies the pattern after it is imported into Canada, and it is shown by the evidence that over a period of twelve months, these importations amounted to somewhere between one-half and three-quarters of a million dollars. For some years, quite naturally, Mr. Browne had found it necessary to go to United States quite frequently, perhaps as often as twice a month, for the purpose of making contacts with those from whom he made purchases in United States and matters of that sort, and I assume that for a part of the time at least he used his own Canadian car.

Some years ago, and following the thought that a new business might be started in the States, Mr. Browne also found it advisable to spend a portion of his time while in United States in endeavouring to secure suitable locations, to interest certain acquaintances there in the possibility of joining him in the business and on occasions he spent considerably longer than the normal time. When he visited the United States the normal time was about two or three days and on occasions of this sort he did spend somewhat longer than that, as he says, up to a matter of, I think, four or five weeks. But his evidence is that not more than half of the time in latter years was spent in connection with the latter activities. He travelled by

motor considerably in the States and at some stage it was suggested to him that as he spent such a great deal of time there it would be desirable—I don't think he said it was necessary—to purchase a United States car. And in 1949 he purchase his first Buick. In January 1950 that car was turned in as a trade-in on a new American car, the car which was later seized in September, 1950.

Now, I return to the question of the statements made on Exhibit 2 by Mr. Browne. The first one was that he was permanently residing at 2803 Buffalo Road. The facts were that Mr. Browne found it necessary when he was in the United States to have a forwarding address, a place where he was welcome as a guest, a place where perhaps he could be reached, and so he did make very friendly arrangements with some of his acquaintances to be entertained in their home. No room was set aside for him, he made no attempt to move any furniture there, he left a few trifling articles of clothing on occasion, realizing that he would probably go back, but that I take it was purely a matter of convenience.

The address given in Exhibit 2 is in Erie, Pennsylvania, but at an earlier stage there had been another address in, I think, another city, I am not positive on that point. At any rate, Mr. Browne said that at some stage he found it convenient to have an address closer to the Canadian border. The address given as to permanent residence in Erie, Pennsylvania, was that of a Doctor Wood whom he hoped to interest in a financial way in the concern which he hoped at some time to establish in the United States. Efforts were made to secure locations and at one time a warehouse was located and probably used, although I am not sure of that point. At any rate, it is shown that throughout all this time Mr. Browne's family remained in Toronto. On each occasion when he returned to Toronto he would return to 158 Humbercrest Road. I assume his children were probably at school. He continued to be President of the corporations from which he drew his livelihood. And on the whole of the evidence I am satisfied beyond any doubt that there never was a stage at any relative time when Mr. Browne could have said "I am moving out of Canada to United States to take my resi-

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dence." That may have been his hope. It would depend on the establishment of the business, probably the success of that business.

In my view, Mr. Browne at no relative time had a permanent residence or any residence in fact other than in the city of Toronto. I do not think that the places that he used as his addresses in the United States amount to anything more than having taken a room in the hotel.

On that finding of fact there is no question in my mind that the statement contained in Exhibit 2 that he was permanently residing at 2803 Buffalo Road, Erie, Pennsylvania amounted to a misrepresentation of fact.

The same thing applies to the statement that he was a temporary visitor in Canada and that his visiting address in Canada was 158 Humbercrest, Toronto, when the reverse of these statements was the truth, that is, his permanent address was 158 Humbercrest, Toronto, and when he went to the United States his temporary address there, a place where he may have temporarily resided for a few days, was no doubt 2803 Buffalo Road, Erie, Pennsylvania.

Had these facts been brought to the attention of the customs officials, there is no question that this difficulty would not have arisen. He would have been prevented from bringing his car into Canada and it was only on the strength of this representation that the temporary Traveler's Vehicle Permit, Exhibit 2 was issued to him.

There is possibly something to be said for the contention advanced by Mr. Walters, counsel for Mr. Browne. I think he has made everything possible of the case that was in his custody and his main contention rests on another document, Exhibit 1.

Some time in 1949, Mr. Browne applied to the U.S. Consul in Toronto for a resident alien's border crossing identification card, and some months later, Exhibit 1 was issued to him. The card itself shows that it was issued at Niagara Falls, New York, on June 24, 1949 and that thereafter he was first admitted at Buffalo, New York, on July 23, 1949.

Mr. Browne's evidence is that at the time of the application he disclosed to the immigration officials the exact position which he was in, his purposes in going to the States,

his home in Canada, and that in the result they were content to issue to him Exhibit 1. On the back of that this statement appears:

This card presented to any U.S. immigrant inspector at a port of entry of the United States will be accepted as prima facie evidence of rightful holder's status as a lawful permanent resident of the United States on date of issue

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and so on.

Mr. Browne relies very largely upon that statement that he had satisfied the United States authorities that he was then a lawful permanent resident and he says that when he brought the car into Canada on September 18, 1950, as I recall the evidence, that he showed Exhibit 1 to the Canadian authorities and he says that inasmuch as Exhibit 1 says he was a lawful permanent resident of United States he was then quite entitled to complete Exhibit 2 and allege that he was in fact permanently residing in Erie, Pennsylvania.

I am not supplied with a copy of any application Mr. Browne may have used when he applied for the resident alien's border crossing identification card but Mr. Browne gave his own evidence as to what he had then stated.

I must decline, however, to accept the opinion of some clerk in the U.S. Consul's office as to whether under the law of Canada Mr. Browne could allege truly that in 1950 he was permanently residing in United States and therefore entitled to the benefit of Section 1 of the regulations established under the Customs Act and which I have read. One might be inclined to weigh the matter more in favour of a completely inexperienced person, a woman who had no knowledge of customs duties, perhaps, and of import and that sort of thing, although I am not sure that there is any discretion in that matter in the court. But in the case of Mr. Browne, president of two corporations dealing in imports from the United States, travelling in the United States, constantly meeting customs officials and having at least some knowledge of the regulations under which imports could be made into Canada, I find myself unable to agree that any consideration should be given under these circumstances. I am satisfied that he knew sufficiently about the customs laws of Canada to know that he could not bring into Canada an American car without declaring

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that he was in fact a Canadian and paying the proper duties, if the car could in fact have been brought in, notwithstanding other regulations.

That being so, I must hold that the statements contained in Exhibit 2 and admittedly signed by Mr. Browne were not in accordance with the facts and that he is quite unwarranted in placing any reliance whatever upon Exhibit 1 or any statements therein contained as to his status. The matter is to be determined under the law of Canada, not under the law of any foreign country or the interpretation placed thereon by an official of a foreign country.

It follows, therefore, that Mr. Browne did commit a breach of Section 203, subsection (c) of the Customs Act and that by reason of the misrepresentations contained in Exhibit 2, the failure to pay the proper duties, and the representations, constitute an attempt to defraud the revenue by avoiding the payment of the duties on the car in question.

For these reasons, the claim will be dismissed and there will be judgment for forfeiture, the Crown being entitled to be paid its costs after taxation.

Judgment accordingly.