

IN THE MATTER of the Petition of Right of

1904  
Nov. 7.

THEODORE BOUCHARD.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*The Customs Act—Infraction—Smuggling—Preventive Officer—Salary—  
Share of condemnation money.*

The suppliant had been empowered to act as a preventive officer of Customs by the Chief Inspector of the Department of Customs. The appointment was verbal, but a short-hand writer's note of what took place between the Chief Inspector and the suppliant, at the time of the latter's appointment, showed the following stipulation to have been made and agreed to as regards the suppliant's remuneration: "Your remuneration will be the usual share allotted to seizing officers; and if you have informers, an award to your informers and you must depend wholly upon these seizures." Certain regulations in force at the time provided that, in case of condemnation and sale of goods or chattels seized for smuggling, certain allowances or shares of the net proceeds of the sale should be awarded to the seizing officers and informers respectively,

*Held*, that where the Minister of Customs had not awarded any allowance or share to the suppliant in the matter of a certain seizure and sale for smuggling, the court could not interfere with the Minister's discretion.

**PETITION OF RIGHT** for the recovery of money from the Crown alleged to be due for services rendered the Department of Customs.

The facts of the case are stated in the reasons for judgment.

May 26th, 27th and June 21st, 1904.

The case was heard at Quebec.

*C. De Guise, K.C.*, for the suppliant, contended that the suppliant was regularly appointed as a seizing officer by a competent officer of the Customs Department. The mere fact that no fixed salary was provided

did not affect the suppliant's right to exercise all the powers of a seizing officer. The facts amount to a contract on the part of the Crown to pay the suppliant the share due a seizing officer under the statute.

*R. Roy, K. C., and P. Corriveau*, for the respondent, argued that the suppliant's right to recover anything depended upon the award of the Controller of Customs, and no such award had been made.

1904  
BOUCHARD  
v.  
THE KING.  
Reasons for  
Judgment.

THE JUDGE OF THE EXCHEQUER COURT now (November 7th, 1904) delivered judgment.

The suppliant brings his petition to recover the sum of one thousand one hundred and sixty six dollars and eight cents (\$1166.08) which he alleges that he, as seizing officer and informer, is entitled to out of the proceeds of the sale, for an infraction of the Customs laws, of a certain schooner called the *Florida*, and of her cargo.

By the Customs Regulations respecting seizures, forfeitures and penalties, it is, among other things, provided that except as otherwise specially awarded not more than one-fourth of the gross proceeds of any seizure, fine, forfeiture or penalty shall be awarded to the seizing officer or officers, and not more than one fourth of said proceeds shall be awarded to the informer or informers, or for information in any case. It is also provided that the net proceeds of the sales of all seizures and forfeitures and the whole amount of all fines or penalties shall be paid to the Receiver General, and that a separate and distinct account of the moneys arising therefrom shall be kept in the books of the Customs Department, and provision is made for the payment to any officer or informer entitled to participate in the proceeds of such sales of the proportion allotted to him, according to a prescribed scale.

1904  
 BOUCHARD  
 v.  
 THE KING.  
 ———  
 Reasons for  
 Judgment.  
 ———

Where, as in the present case, the goods or chattels have been condemned and sold according to law, an allowance of not more than one third of the net proceeds shall (it is provided) be awarded to the seizing officer or officers, and not more than one third of such net proceeds to the informer or informers, if any ; and in case of seizures made without information, and which have resulted from special vigilance on the part of an officer, the informer's share, or a proportion thereof, may be awarded to such officer at the discretion of the Minister of Customs.

The suppliant was appointed a preventive officer of Customs on the 23rd of June, 1895, by Chief Inspector McMichael. A short-hand writer's note of what took place between the suppliant and the Chief Inspector at the time of the appointment has been preserved and a copy of it is in evidence. From this it appears that the Chief Inspector understood that the suppliant, Captain Bouchard, had made a proposition to the Department of Customs to act for the Department either by giving information to officers of Customs at Quebec and other points, or to the captain of the *Constance*, or to act as a seizing officer. This having been stated to the suppliant he replied that he would like to be allowed to seize in every place on the St. Lawrence. Mr. McMichael then asked Captain Bouchard whether, if he were given authority to make seizures, he would be willing to do so without salary ; whether he would furnish his own boat and all other appliances at his own expense, accepting for his services such portion of seizure moneys as might be awarded to him. To this the suppliant replied that he thought he would have a remuneration and enough money to pay others to give him help to make the seizures ; that he had not any money. After discussing the matter further

the Chief Inspector made this proposition to the suppliant :

“If you wish to act as an officer, without salary, and without your expenses being paid I will authorize you to so act ; and your remuneration will be the usual share allotted to seizing officer or officers ; and if you have informers, an award to your informers ; and you must depend wholly upon these seizures for your remuneration.” That offer Captain Bouchard accepted.

In September of that year the suppliant having learned that the schooner *Florida* was taking on a cargo of liquors at St. Pierre Miquelon, for the purpose of smuggling the same into Canada, went to St. Pierre and took passage on board the schooner on her return voyage. He alleges that when the *Florida* was opposite Cape North, on the coast of Cape Breton and in Canadian waters, he seized her and her cargo and headed the vessel for the port of Quebec. Subsequently, on or about the 19th of October, when off Seven Islands, the schooner met the revenue cutter *Constance* whose officers boarded her and seized the vessel and cargo. The suppliant protested and claimed that the seizure was his, and subsequently forwarded a report of his seizure to the Chief Inspector. The latter appears to have come to the conclusion that the suppliant had not been acting in good faith, and did not make any recommendation in his favour in respect to the distribution of the proceeds of the sale of the *Florida* and her cargo. The seizure was treated as having been made by the *Constance* and the seizing officers ; and informer's shares of such proceeds, amounting to \$1,166.08, were paid to the master of that vessel, and nothing was paid to the suppliant. He claims that he has not been treated fairly and that

1904

BOUCHARD

v.

THE KING.

Reasons for  
Judgment.

1904  
BOUCHARD  
v.  
THE KING.  
**Reasons for  
Judgment.**

he, and not Captain May, should have been paid the sum mentioned.

By the pleadings an issue of fact is raised as to whether or not the suppliant was in the matters mentioned acting in good faith as a Customs officer. On that issue I do not find it necessary to express any opinion. Assuming in the suppliant's favour that there was no collusion between him and the owners of the cargo, it cannot, I think, be justly said that at the time the *Constance* met the *Florida* the seizure which the suppliant claims to have made was complete or effective. As it happened it was completed and made effective by the action of the *Constance*. That raised a case in which the claim of a number of persons connected, in one way or the other, with the seizure had to be considered and determined by the Minister of Customs. But no one of such persons would have a claim enforceable in a court of law until the Minister had made an award in his favour. That, I think, is the result in any case arising under the regulations referred to. The regulations provided that in a case such as this an allowance shall be made to the seizing officer and to the informer of not more than a prescribed amount. It may possibly be less, and where there are a number of claimants the amount is to be distributed. But who is to decide and to distribute, to "award" and to "allot", to use words occurring in the regulations? Not the court; but the Minister of Customs.\*

\* REPORTER'S NOTE.—The following is the provision of the Customs regulations more particularly referred to by the learned judge :—In case of seizure of goods or chattels which have been condemned and sold according to law, an allowance of not more than one-third of the net proceeds of each shall be awarded to the seizing officer or officers, and not more than one-third of said net proceeds to the informer or informers, if any. In case of seizures made without information, and which have resulted from special vigilance on the part of an officer, the informer's share, or a proportion thereof, may be awarded to such officer at the discretion of the Minister of Customs." See the Regulations made under order in council of 8th June, 1892, (Memo. 558B).

It may be (though no opinion is expressed as to that) that the suppliant was in this matter entitled to greater consideration than he received at the hands of the Controller of Customs, in whom at the time the power and authority of the Minister of Customs was vested; but that was a question for his decision. No action would of course lie against the Crown because the Controller of Customs did not, in the exercise of his discretion, make an award in favour of the suppliant; and in the absence of such an award the suppliant has not, it seems to me, any claim that can be enforced in this court. If any action is to be taken in the direction of reviewing or reconsidering the decision to which the Controller of Customs came to in this matter, such action should, I think, in the first instance at least, be taken by the Minister of Customs.

The judgment of the court is that the suppliant is not, as a matter of law, entitled to any portion of the relief sought by his petition.

*Judgment accordingly.*

Solicitors for the suppliant: *DeGuise & Languedoc.*

Solicitor for the respondent: *Philéas Corriveau.*

1904  
BOUCHARD  
v.  
THE KING.  
Reasons for  
Judgment.