

1913
Feb. 12.

BETWEEN

HIS MAJESTY THE KING, ON THE INFORMATION
OF THE ATTORNEY-GENERAL OF CANADA,

PLAINTIFF;

AND

J. H. RACICOT,

DEFENDANT.

The Customs Act, R.S. 1906, c. 48, sec. 264—Construction—Burden of Proof where goods are not shown to have been smuggled or clandestinely introduced into Canada.

The provisions of section 264 of *The Customs Act* imposing the burden of proof as to payment of duties, and that all the requirements of the Act with regard to entry of the goods have been complied with and fulfilled, upon the person whose duty it was to comply with and fulfil the same, does not apply until the Crown has proved that the defendant charged with a breach of section 206 has actually smuggled or clandestinely introduced the goods in question into Canada. *The Queen v. J. C. Ayer Co.* (1 Ex. c. R. 232); and *Foss Lumber Co. v. The King* (47 S.C.R. 140) referred to.

THIS was information exhibited by His Majesty's Attorney-General for the Dominion of Canada seeking to recover certain duties payable on goods alleged to have been smuggled or clandestinely introduced into Canada.

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

January 27th, 1913.

The case came on for trial before Mr. Justice Audette at Montreal.

F. W. Hibbard, K.C., appeared for the plaintiff.

F. J. Bissaillon, K.C., appeared for the defendant.

AUDETTE, J. now (February 12th, 1913) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it is alleged the defendant, who is a merchant carrying on business in the town of St. Johns, in the District of Iberville, P.Q., had during the years 1907, 1908 and 1909, smuggled into Canada, at a point near Rouses Point, goods and merchandise subject to duty. It is further alleged the goods have not been seized and forfeited, and the Crown, under section 206 of *The Customs Act*, asks for judgment against the defendant in the sum of \$8,845.35.

The defendant at Bar denies all the plaintiff's allegations.

The Crown has adduced evidence showing that the goods in question have been purchased by the defendant from different jewellery manufacturers in the United States of America, with instruction to ship or express them to one Couture, at Rouses Point, in the State of New York, U.S. It is also proved, in most cases, that the goods have been paid for by Racicot.

On behalf of the defendant it was proved that the greater part of the goods in question had been bought in the name of the defendant, at the request of and for one Larivière, and the reason assigned for so doing is that where the goods are purchased by a merchant, they can be had at better prices, with, it is assumed, better trade discount. Larivière, who styled himself as "a jobber" during the period in question, testified the goods were bought for him, and that he peddled them through that part of the country, and he swears that in all such cases the goods were exclusively sold in the United States.

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Couture, Larivière and Racicot had all, at one time, lived at St. Johns and knew one another.

The Crown having established and proved the purchase of these goods in the United States, the payment for the same by the defendant, and traced them to Couture at Rouses Point, N.Y., claims that under section 264 of *The Customs Act*, that having done so, the burden of proof is upon the defendant to prove the goods were not brought into Canada.

Before assenting to the correctness of this contention, it is necessary to consider the provisions of section 264 with reference to the provisions of the interpretation clause of *The Customs Act*, as embodied in sub-section 2 of section 2, and certain decisions illustrative of the proper interpretation which should be placed upon section 264, by this Court. Sub-section 2 of section 2 (R.S. 1886, Ch. 32, Sec. 2, and R.S. 1906, Ch. 48) reads as follows:—

“All the expressions and provisions of this Act, or of any law relating to the Customs, shall receive such fair and liberal construction and interpretation as will best ensure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to the true intent, meaning and spirit.”

A similar enactment in *The Customs Act*, 1883, was considered by Sir William Ritchie, C.J., in *The Queen v. J. C. Ayer Company* (1) and he there came to the conclusion that notwithstanding the language of this interpretation clause, the intention of the Legislature in the imposition of duties must be clearly expressed, and in case of doubtful interpretation, the construction shall be in favour of the person charged with an infringement of the Act.

(1) 1 Ex. C.R. 232.

In the recent case of *Foss Lumber Co. v. The King* (1), Sir Charles Fitzpatrick, C.J., adopts Sir William Ritchie's views as above expressed with the following observation:—

“To this I would add what Lord Taunton said, “when speaking of the ‘Stamp Duty’: The stamp law is *positivi juris*. It imports nothing of principle or reason, but depends entirely upon the language of the legislature.”

It was also held in the case of *Algoma Central Railway v. The King* (2) that a taxing Act is not to be construed differently from any other statute.

Approaching section 264 of *The Customs Act* in the light of the interpretation clause and the above decisions, one must necessarily come to the conclusion that the section applies only to a case where the Crown has proved the defendant “has smuggled or clandestinely introduced into Canada any goods subject to duty.”

There is no proof whatsoever that the goods in question have been entered into Canada at any frontier port, or after crossing the frontier. Moreover, the charge against the defendant, by paragraph 77, and even by all previous paragraphs, is that the goods under section 206 of that Act, have been smuggled or clandestinely introduced into Canada. The plaintiff has utterly failed to prove such goods have been introduced into Canada.

The defendant has, by the evidence of Larivière disproved part of the plaintiff's case by adducing evidence that some such goods have been bought and sold in the United States, although paid for by Racicot.

However, in the view this Court takes of the case, this last mentioned evidence makes no difference,

(1) 47 S.C.R., p. 140. (2) 32 S.C.R. 277, and (1903) A.C. 478.

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as in both cases the Crown has failed to prove any smuggling or introduction of the goods into Canada.

The solution of the facts involved in this case would have been ever so much more satisfactorily arrived at, had Racicot and Couture been heard. Racicot could have corroborated Larivière, and both Racicot and Larivière could, if they had cared, have induced Couture to give evidence, and thereby enabled us to know the part he took in the transaction. Furthermore, if there was nothing wrong, Couture could have had no objection to help Racicot dissipate the accusation against him.

Upon the facts viewed as a whole, it must be conceded that the conduct of the defendant might very well have given rise to suspicion in the mind of the Customs authorities; but in the absence of proof that the goods were brought into Canada mere suspicion will not justify the court to give effect to section 264, thus shifting the burden of the proof, and presume that the defendant has evaded the payment of duties and so infringed the provisions of the Act.

Under all the circumstances, this Court finds that the plaintiff has failed to prove the allegations of the information and the action is dismissed with costs.

Judgment accordingly.

Solicitor for Plaintiff : *F. W. Hibbard.*

Solicitor for Defendant : *Bisaillon & Brossard.*