

BETWEEN:

RUTH McCORMICK CLAIMANT;

AND

HIS MAJESTY THE KING..... RESPONDENT.

1939
June 14, 15.
1940
May 22.

*Revenue—Customs Act, R.S.C. 1927, c. 42, secs. 176, 193 (1) & 262—
Seizures—Forfeiture—Use of automobile for transportation of con-
traband liquor—Question of ownership of automobile immaterial—
Burden of proof.*

An officer of the Royal Canadian Mounted Police seized an automobile at North Sydney, Cape Breton, NS, for an alleged infraction of the Customs Act, R.S.C. 1927, c. 42. At the trial respondent admitted that on the date of the seizure the claimant was the registered owner and in possession of the automobile. The Court found that the automobile had been used for the transportation of contraband liquor.

Held: That the question of ownership of the automobile is immaterial.

2. That pursuant to sec. 193 (1) of the Customs Act any vehicle which is used in the importation, removal or subsequent transportation of

- (1) (1923) 2 K.B 447, 454.
- (2) (1927) A.C. 312, 315.
- (3) (1928) Ex.C.R 75, 78.
- (4) (1937) S.C.R. 192.
- (5) (1925) 2 K.B. 753.
- (6) (1932) 16 T.C. 748.

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any goods liable to forfeiture by any one, with or without the knowledge and consent of the owner, is liable to seizure and forfeiture. *Sandness v. The King* (1933) Ex.C.R. 78.

REFERENCE by the Crown under section 176 of the Customs Act.

The action was heard before the Honourable Mr. Justice Angers, at Sydney, N.S.

*C. M. Rosenblum* for claimant.

*A. O'Handley* for respondent.

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

ANGERS J., now (May 22, 1940) delivered the following judgment:

The claimant, Ruth McCormick, wife of Bruno McCormick, residing at Sydney Mines, County of Cape Breton, Province of Nova Scotia, claims the return of a Buick Sedan automobile seized on November 4, 1938, at North Sydney, Cape Breton, by Sergeant Donald A. McKinnon of the Royal Canadian Mounted Police for alleged infraction of revenue laws of Canada.

The matter comes before this Court on a reference by the Minister of National Revenue under section 176 of the Customs Act (R.S.C. 1927, chap. 42, and amendments). By his decision the Minister declared the car forfeited.

[The learned Judge referred to the pleadings and after considering the evidence adduced at trial, continued.]

The seizure of the Buick Sedan automobile in question was made in virtue of the provisions of subsection (1) of section 193, which reads as follows:

193. (1) All vessels, with the guns, tackle, apparel and furniture thereof, and all vehicles, harness, tackle, horses and cattle made use of in the importation or unshipping or landing or removal or subsequent transportation of any goods liable to forfeiture under this Act, shall be seized and forfeited.

The only question arising for determination is whether the Buick Sedan automobile with which we are concerned was used to transport contraband liquor.

The evidence is conflicting and extremely unsatisfactory. The witnesses with the exception of Bateman and McKin-

non, and apparently Giroir, are smugglers and dealers in contraband liquor. Three of them, namely Daniel McCormick, Bruno McCormick and Murray, were arrested and convicted under the Customs Act or the Nova Scotia Liquor Control Act or both. Weatherby was committed to jail on three or four occasions for receiving stolen goods and he was sentenced to a term of two years in the penitentiary for an assault causing actual bodily harm. Apart from this, Weatherby, in his testimony, made two contradictory statements: in chief-examination he swore that he had paid \$1 to Giroir for a bottle of rum, whilst in cross-examination he emphatically denied having paid him for that bottle. I do not think that Weatherby's testimony is worthy of belief. At all events I feel disposed to accept his second statement denying the payment of the sum of \$1 to Giroir for the bottle of rum, which coincides with the latter's version. In support of the claimant's claim there remain the testimonies of Bruno McCormick, admittedly the real owner of the seized car, and Daniel McCormick, his brother and his partner in the liquor business. I am unable to put faith in the statements of these two witnesses. They are both interested in saving the car from forfeiture, if possible, and I feel prone to believe that they would not be reluctant to make the necessary statements, true or not, to attain their end.

For the respondent there are the testimonies of Sergeant McKinnon, Giroir and Murray.

As we have seen, McKinnon found one-quarter circular marks in the trunk of the Buick car which looked like marks made by a keg. In some places the floor was scraped and the marks were partly removed. Why should the owner of the car go to the trouble of erasing these marks, which did not in any way spoil the external aspect of the car since they were on the floor of the trunk, unless they were implicating and dangerous. However it may be, I would hesitate to condemn the car on this evidence alone. If the quarter circular marks were made by kegs or barrels there is nothing in the evidence to show that they were barrels or kegs of smuggled liquor. If evidence had been adduced to establish that liquor legally imported was not delivered in barrels or kegs of the size or shape of those whereof traces were found in the trunk of the car, the

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situation would be quite different. As it is, the evidence concerning the marks detected in the trunk of the car is not in itself complete and conclusive. There is however in support of the respondent's contention the fact that, of their own admission, Bruno and Daniel McCormick were at the time of the seizure and had for a long time previous been engaged in the contraband liquor trade. It is true that Bruno McCormick declared that he usually had two cars, a Buick and a Ford; that the Buick was used by his wife and himself for pleasure purposes and that the Ford was used for transporting liquor. But, when the Buick car was seized, the McCormicks were without their Ford car which had been seized and forfeited. Bruno McCormick stated that, when he was deprived of his Ford, he engaged a car for the transportation of the liquor, for which he paid at the rate of \$1 per barrel. If this were really a fact it seems to me that it should have been possible to adduce evidence corroborating Bruno McCormick's statement. This evidence is lacking and I must say that I have serious doubts as to the veracity of the latter's story regarding the hiring of a car for the transportation of his contraband liquor. Nevertheless, if there were no other proof, I would feel inclined to give to the claimant the benefit of the doubt, notwithstanding my personal impression that the Buick Sedan automobile, the recovery whereof is sought by the claimant, was used on various occasions after the seizure of the Ford car for the transportation of contraband liquor.

In addition to the marks found in the car by Sergeant McKinnon we have the evidence of Murray and Giroir.

Murray's testimony must be considered with great circumspection. He is a self-confessed dealer in smuggled liquor. He was convicted under the Customs Act. Besides this he was not on good terms with Bruno McCormick and was apparently anxious to retaliate for the seizure of his automobile due to the alleged information given to the Royal Canadian Mounted Police by Bruno McCormick; the letters filed as exhibits 2 and 3 show the spirit which actuated Murray. Be that as it may, Murray's statement that liquor was delivered to him from the Buick Sedan in question is corroborated by Giroir and I think that I must accept Murray's testimony on this point.

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Coming now to the deposition of Giroir, I am inclined to believe that his testimony is more reliable than that of Bruno McCormick, Daniel McCormick, Weatherby and Murray. Although he accompanied Murray on two occasions when the latter had dealings with the McCormicks, he personally was not in the liquor business. The evidence does not disclose that he was ever convicted for violations of any of the provisions of the Customs Act or of the Nova Scotia Liquor Control Act. I have no reason to disbelieve him.

On the whole the weight of the evidence regarding the use of the Buick Sedan automobile in question for the transportation of contraband liquor seems to me favourable to the respondent's contention. It may be noted incidentally that under section 262 of the Customs Act the burden of proof laid upon the claimant.

The question of ownership of the automobile is immaterial. Section 193 of the Act is very broad in its terms and a vessel or a vehicle which is made use of in the importation, removal or subsequent transportation of any goods liable to forfeiture by anyone, with or without the knowledge and consent of the owner, is liable to seizure and forfeiture: see *Sandness v. The King* (1), particularly the authorities therein cited.

There will be judgment maintaining the Minister's decision, declaring the Buick Sedan automobile in question herein forfeited and dismissing the claimant's claim, with costs.

*Judgment accordingly.*