

1896
 Nov. 16.

GEORGE JULIEN.....SUPPLIANT ;

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

Customs law—Breach—Seizure of vessel—Controller's decision—Reference to court—Petition of right—Jurisdiction—Damages for wrongful seizure and detention.

The Controller of Customs had made his decision in respect of the seizure and detention of a vessel under the provisions of *The Customs Act*, confirming such seizure. The owner of the vessel within the thirty days mentioned in the 181st and 182nd sections of the said Act gave notice in writing to the Controller that his decision would not be accepted. No reference of the matter was made by the Controller to the court as provided in section 181, but the claimant presented a petition of right and a *fiat* was granted. The Crown objected that the court had no jurisdiction to entertain the petition, and that the only procedure open to the claimant was upon a reference by the Controller to the court.

Held, that the court had jurisdiction.

2. Damages cannot be recovered against the Crown for the wrongful act of a customs officer in seizing a vessel for a supposed infraction of the Customs law; but the claimant is entitled to the restitution of the vessel.

PETITION of Right to recover possession of a schooner alleged to have been wrongfully seized into the hands of the Crown for a supposed infraction of the Customs laws.

The case came on for trial at Halifax on the 3rd day of October, 1895, when the Crown failed to establish that the suppliant had been guilty of any infraction of *The Customs Act*, and the court made an order in the nature of a preliminary judgment directing that the vessel be restored to the suppliant upon his personal undertaking to re-deliver the same to the Crown if the order then made should thereafter be set aside. Amongst other things, leave was reserved to the Crown

to move to set aside the order on the ground of want of jurisdiction in the court to entertain the petition. Leave was also reserved to the suppliant to move for judgment for damages arising from the arrest and detention of the vessel.

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

September 22nd, 1896.

The motions upon the questions reserved now came on for argument at Halifax.

W. B. A. Ritchie, Q.C., for the respondent :

The petition must be dismissed because the only remedy the suppliant had was upon a reference to the court by the Controller of Customs under the 182nd section of *The Customs Act*. Unless the Controller saw fit to grant an appeal from his decision to the Exchequer Court, his decision under the provisions of the said section was conclusive of the claim, no court could re-open the questions in controversy. It is not possible that the suppliant could pursue two remedies concurrently in respect of the one claim—he could not have a reference and a *fiat* at the same time. The section of *The Customs Act* quoted contains specific provisions touching the procedure in Customs cases, and, therefore, the general provisions of sec. 23 of *The Exchequer Court Act* do not apply.

G. A. R. Rowlings (with whom was *W. E. Thompson*), for the suppliant :

The provisions of *The Customs Act* referred to by counsel for the respondent relate solely to departmental procedure, and do not affect the courts. [*McDonnell v. The Queen* (1).]

As to damages, the suppliant is entitled to *restitutio in integrum*. [*Tobin v. The Queen* (2); *Feather v. The*

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(1) 1 Ex. C. R. 119.

(2) 16 C.B. N.S. 386.

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Queen (1); *The Inflexible* (2); *Shelby v. The Queen* (3);
Clode on Pet. Right (4); *The Petition of Right Act* (5);
Brady v. The Queen (6); *Farnell v. Bowman* (7).]
 W. B. A. Ritchie Q. C. replied, citing *Halifax City*
Ry. Co. v. The Queen (8); *Clode on Pet. Right* (9);
Audette's Prac. Ex. Ct. (10).

THE JUDGE OF THE EXCHEQUER COURT now
 (November 16th, 1896) delivered judgment.

The suppliant brought his petition to recover possession of the schooner *Rising Sun*, which had been seized for an alleged infraction of the Customs laws of Canada, and for damages arising from such seizure.

The Controller of Customs had maintained such seizure, and the suppliant, within the thirty days mentioned in the 181st and in the 182nd sections of *The Customs Act* (11), had given notice in writing that the Controller's decision would not be accepted. The Controller, however, did not refer the matter to the court, but the suppliant was given a *fiat* for his petition of right. At the trial which took place at Halifax on the 3rd of October, 1895, I came to the conclusion that a case had not been made out for the forfeiture of the vessel; and I ordered that it should be forthwith restored and delivered up to the suppliant with her tackle, upon his filing with the registrar of the court a personal undertaking that the vessel would be re-delivered to the Crown if the order then made should eventually be set aside and judgment be entered in favour of the respondent. The Crown also had liberty on the first day of the next sitting of the court at Halifax to move to examine a witness who could not

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| (1) 6 B. & S. 292. | (6) 2 Ex. C.R. 273. |
| (2) 2 Swab. & Trist. 204. | (7) 12 Ap. Cas. 649. |
| (3) 1 Ex. 354. | (8) 2 Ex. C.R. 433. |
| (4) 1st ed. pp. 88-89. | (9) 1st ed. pp. 53 to 63. |
| (5) Sec. 1; sec. 12, s.s. 2. | (10) Pp. 55 to 75. |
| (11) R. S. C. c. 32. | |

be produced at the hearing on the 3rd day of October, 1895. The personal undertaking I have mentioned was given by the suppliant, and the vessel with her tackle was delivered to him. The witness whom the Crown had desired to examine was not produced at the next sitting of the court, but counsel for the Crown, in pursuance of leave reserved, moved to set aside the order made on the ground of want of jurisdiction in the court to entertain the petition. The suppliant at the same time, in pursuance of leave reserved to him moved for judgment for damages for the arrest and detention of the vessel.

With reference to the first question, it is argued for the Crown that where the Minister or the Controller of Customs makes his decision in respect of any seizure or detention, penalty or forfeiture, and the claimant, within the thirty days prescribed by statute, gives him notice in writing that his decision will not be accepted, the court has no jurisdiction over the matter unless it be referred to the court by the Minister or the Controller. With that contention I cannot agree. The 15th section of *The Exchequer Court Act* provides that the court shall have exclusive original jurisdiction in all cases in which demand is made or relief sought in respect of any matter which might in England be the subject of a suit or action against the Crown; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it shall have exclusive original jurisdiction in all cases in which the land, goods or money of the subject are in the possession of the Crown. And by the 23rd section it is provided that any claim against the Crown may be prosecuted by petition of right, or may be referred to the court by the head of the department in connection with the administration of which the claim arises, and if any such claim is so referred no *fiat* shall be given on any petition of right in respect thereof. If in the present case the Controller had made a reference then there could not have been a

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petition of right, but in the absence of such a reference there cannot be any doubt that a petition will lie. In this case a *fiat* has been granted, the petition has been filed, and upon the evidence taken it has appeared that no offence had been committed whereby the property in the vessel in question has passed from the suppliant to the Crown. It is therefore a case in which the property of the subject is in the possession of the Crown, and I entertain no doubt of the jurisdiction of the court in such a case.

With reference to the other question which arises upon the motion made by the suppliant for damages, I am of the opinion that the suppliant cannot succeed. It is well settled law that no petition will lie against the Crown for damages for the wrongful act of an officer of the Crown except in cases where the liability exists by virtue of some statute. There is, so far as I know, no statute which makes the Crown liable for the wrongful act of a customs officer in seizing a vessel for a supposed infraction of the customs laws. In such cases, except so far as the officer is protected by law, he is himself personally liable for his act, and in an action against him the suppliant may, no doubt, recover his damages; but I know of no authority for his recovering damages against the Crown in such a case as this. As I have before pointed out, if property wrongfully seized is in the possession of the Crown the owner may have his petition to recover the same, and so far in this case the suppliant's action has been maintained; but there is no authority for allowing him as against the Crown damages for the wrongful act of its officer.

I think both motions should be dismissed, and under the circumstances, without costs to either party.

Judgment accordingly.

Solicitors for suppliant: *Rowlings & Thompson.*

Solicitor for respondent: *J. A. Chisholm.*