

IN THE MATTER OF THE PETITION OF RIGHT OF

ERNEST N. BONNEAU,

SUPPLIANT,

AND

HIS MAJESTY THE KING,

RESPONDENT.

1918

April 9.

*Negligence—Of custom officials—Detention of animals—Liability.*

The liability for wrongful seizure and detention of animals by the Crown's custom officials being one in tort is not actionable against the Crown.

**P**ETITION OF RIGHT to recover damages for the illegal seizure and detention of animals by the Canadian Customs authorities.

Tried before the Honourable Mr. Justice Cassels, at Ottawa, March 27, 1918.

*P. F. Casgrain*, for suppliant.

*C. P. Plaxton*, for respondent.

CASSELS, J. (April 9, 1918) delivered judgment.

A petition of right filed on behalf of Ernest N. Bonneau. The petition alleges that he is a cattle trader carrying on business in the Province of Quebec. He alleges that on or about June 14th, 1915, a carload of animals belonging to him was seized by the Canadian Customs authorities at Farnham, in the Province of Quebec. Further, he alleges that the car containing lambs, etc., consigned to William Davies & Co., Limited, was illegally detained at Abercorn for over a week.

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The 4th paragraph of the petition of right reads as follows:

“That the said seizure was made by the officers of  
“the Canadian Customs Department as aforesaid  
“illegally, maliciously and with the intent to cause  
“your petitioner damage and annoy him in the con-  
“duct of his business, and to prevent him from de-  
“livering the said animals to William Davies & Co.,  
“to whom he had sold them, thereby causing your  
“petitioner a loss of \$640.71.”

Paragraph 5 reads: “That the officers of the said  
“Customs Department acted without any reason-  
“able grounds whatever in seizing the said animals  
“belonging to your humble petitioner.”

Paragraph 8 reads: “That your humble peti-  
“tioner is of opinion that the said illegal and ma-  
“licious seizure made by the Customs officers was  
“so made in the spirit of vengeance.”

Paragraph 9 reads: “That on account of the said  
“malicious and illegal seizure, your humble peti-  
“tioner has suffered loss and damages.”

The petition then details the damages claimed.

To this petition the Crown filed a statement of defence setting up that the petition of right is insufficient and bad in law because it does not allege any cause of action against His Majesty, etc.

An application was made for an order to have the question of law determined, practically amounting to a demurrer to the petition of right.

The case came on for argument on March 27th last. Mr. P. F. Casgrain appeared in support of the petition, and Mr. C. P. Plaxton for the Crown.

On the argument I was of opinion that the case alleged was purely one of tort, and that His Majesty was not liable. Mr. Casgrain presented his case in

support of the petition with great ability and ingenuity, so much so that I reserved judgment in order to consider the points raised by Mr. Casgrain and the authorities cited by him. I have since the argument considered the questions, and am still of opinion that the case made is one purely in tort, and under a long series of decisions, both in the Supreme Court of Canada and elsewhere, in my opinion there is no liability attaching as against His Majesty.

The question of liability against the officer who so maliciously acted is another question. *Boyd v. Smith*,<sup>1</sup> may be referred to—but as the officer was not before me, the point does not arise.

I think the petition should be dismissed, and with costs.

*Petition dismissed.*

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<sup>1</sup>4 Can. Ex. 116.