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BETWEEN:

1951  
 Jan. 25  


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 Mar. 9
 

 HARRY GOLD, ..... CLAIMANT;  
  
 AND  
  
 HIS MAJESTY THE KING ..... RESPONDENT.

*Revenue—Seizure, Forfeiture—The Customs Act, R.S.C. 1927, c. 42, ss. 176, 193(1) (2)—Automobile used to pilot motor truck containing refrigerators smuggled into Canada and to direct driver of said truck—Motor vehicle “made use of” in “subsequent transportation” of goods liable to forfeiture under the Customs Act—Claim of owner dismissed.*

Some time in July, 1949, one L., who owned a motor truck, undertook to transport to Montreal, P.Q., eight refrigerators which had been smuggled into Canada from the United States. By arrangement L. was to be met at the Montreal side of the Jacques-Cartier bridge by a man in an automobile bearing Quebec licence number 67-708. Upon his arrival there L. was met by the driver of the said automobile, Harry Gold, the claimant. After speaking to L. Gold drove his car a short distance, when he alighted and made a telephone call. The truck followed Gold's car to that point. Gold then proceeded ahead of L. and piloted him until the truck and its load were seized. Subsequently Gold's car was seized and declared forfeited by the Minister of National Revenue on the ground that it was "made use of" in the "subsequent transportation" of goods liable to forfeiture under the Customs Act. The Minister, on being advised by the claimant that his decision was not accepted, referred the matter to this Court.

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*Held:* That Gold assisted in the transporting of the refrigerators which were, to his knowledge, liable to forfeiture under the Customs Act.

REFERENCE by the Minister of National Revenue under section 176 of the Customs Act.

The reference was heard before the Honourable Mr. Justice Angers at Montreal.

*J. J. Penverne, K.C.* for claimant.

*Georges Reid* for respondent.

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

ANGERS J. now (March 9, 1951) delivered the following judgment:

By his action the claimant claims a judgment declaring illegal, null and void the seizure and subsequent forfeiture of his automobile and ordering the Department of National Revenue (Customs) to release and return to him the said automobile, with costs.

In his statement of claim the claimant alleges:

he is the owner by conditional deed of sale of an automobile which was declared forfeited on September 29, 1949, by the Department of National Revenue (Customs);

he gave notice to the said Department by letter dated October 18, 1949, that he did not accept the decision of forfeiture:

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he was served on January 21, 1950, with a notice from an agent for the Attorney-General of Canada that the Minister of National Revenue referred the decision of forfeiture to the Exchequer Court of Canada for adjudication;

his automobile was seized subsequent to the seizure by Customs of several refrigerators found in a motor truck driven by a third party;

his automobile was not used in the importation, unshipping, landing, removal or transportation of goods liable to forfeiture under the Customs Act;

the seizure of the said automobile is illegal, null and void;

the subsequent decision of forfeiture of the said automobile is also illegal, null and void;

the claimant is a salesman and needs his automobile for his livelihood and that of his family;

he is entitled to demand judgment ordering the return of his said automobile.

In his statement of defence the respondent pleads:

he admits that the claimant gave notice to the Department of National Revenue (Customs) by letter dated October 18, 1949, that he did not accept its decision of forfeiture;

he admits that he was served on January 21, 1950, with a notice from an agent for the Attorney-General of Canada that the Minister of National Revenue referred the decision of forfeiture to the Exchequer Court of Canada;

he denies or ignores the other allegations;

on or about July 18, 1949, the claimant was a party and one of the principals who arranged for unlawful importation of eight refrigerators from the United States of America and their subsequent transportation to Montreal;

members of the Royal Canadian Mounted Police seized the eight refrigerators on a truck operated by one Henri Lamoureux and also seized the truck;

a decision of forfeiture of the eight refrigerators under the Customs Act has been rendered in re Customs seizure number 38041/23583;

claimant was a party to the arrangements that the said eight refrigerators illegally imported from the United

States be delivered to a point near the residence of one Frank Bellingham, district of Bedford, Quebec, not far from the international boundary;

in fact the said eight refrigerators were delivered to the agreed upon place and from there the said Frank Bellingham transported them in his truck to the home of said Henri Lamoureux, Saint-Césaire, Quebec;

the said eight refrigerators were transferred to Lamoureux's motor truck and he transported them to Montreal;

by arrangement Lamoureux was to be met at the Jacques-Cartier bridge by a man in an automobile bearing Quebec licence number 67-708;

on the same day, to wit July 18, 1949, Lamoureux proceeded to Montreal as understood and arrived at approximately ten o'clock in the forenoon; as soon as he had left Jacques-Cartier bridge the car expected arrived and the driver thereof walked over to him and told him to follow his automobile, which Lamoureux did up to a certain street intersection;

the driver of the said automobile was Harry Gold, the claimant;

from the first street intersection the claimant had the truck follow his automobile to another point, where some goods were unloaded;

later on the same day and still using the aforesaid automobile, the claimant directed the truck driver to another street intersection and finally to the point where the seizure of the said eight refrigerators was made on the said truck;

the said automobile, driven by the claimant and used to pilot the truck containing the said eight refrigerators seized and also to direct the driver of the said truck, was "made use of" in the "subsequent transportation" of goods liable to forfeiture under the Customs Act;

claimant assisted and was concerned in the importation, unshipping, landing, removal and subsequent transportation of goods liable to forfeiture under the Customs Act, to wit the aforesaid eight refrigerators seized, in whose control or possession the same came without lawful excuse;

the Minister of National Revenue was justified in passing the decision of September 29, 1949, in the matter of the seizure report number 38114/23566 of the Department of

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National Revenue, whereby the said automobile, being a green Studebaker Sedan, model 1948, which claimant claims as his property, was declared forfeited in virtue of the powers vested in the Minister of National Revenue by section 176 of the Customs Act;

the claimant's statement of claim is ill-founded in fact and in law.

In his reply the claimant, after praying act of the admissions contained in the statement of defence, admits the transportation of refrigerators to Montreal by Lamoureux and his meeting him at Jacques-Cartier bridge, ignores or denies the other allegations thereof and avers specifically:

the decision referred to is unlawful, unjustified and an abuse of power in that the essential facts in seizure report number 38114/23566, which are denied, fail to disclose that the automobile was ever used to carry, move, remove, transport or land physically any of the refrigerators aforesaid or parts thereof;

the conclusions of the statement of defence are unfounded in law and in fact;

the claimant further avers:

he admitted being a party to an offence under the Customs Act, pleaded guilty and paid the penalty imposed by law and he is justified in pleading that the decision of forfeiture is an "abus de droit" and a deliberate and unlawful attempt to punish him twice for the same offence.

The matter was referred to this Court by the Minister of National Revenue on December 29, 1949, by virtue of the powers vested in him by section 176 of the Customs Act. The reference contains, among others, the following statements:

WHEREAS, by a decision dated the 29th day of September, 1949, in the matter of Seizure Report No. 38114/23566 of the Department of National Revenue (Customs) (a copy of which is attached hereto), it was decided that 'the automobile be forfeited';

AND WHEREAS, by a letter dated the 18th day of October, 1949, (a copy of which is attached hereto), the claimant gave notice that such decision would not be accepted;

In a letter dated October 18, 1949, the claimant wrote to the Department of National Revenue acknowledging

receipt of its letter of September 30 advising him that his automobile had been forfeited and giving notice that its decision was not accepted.

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Admissions were made at the trial by Gold:

that some time in July 1949 he was concerned in the illegal importation into Canada of eight refrigerators with other persons;

that the arrangements included the transportation of refrigerators by one Lamoureux, in his truck, to the city of Montreal;

that subsequently the claimant met Lamoureux at the Montreal side of the Jacques-Cartier bridge;

that pursuant to the offence committed against the Customs Act a charge was brought against claimant before the Courts of criminal jurisdiction in Montreal, the charge being, briefly, one of illegal importation into Canada of goods liable to customs;

that claimant pleaded guilty to the charge;

that the charge was:

I am credibly informed, and do verily believe, that Harry Gold—of Montreal, Quebec, on or about the 18th day of July, 1949, in Montreal, District of Montreal, committed an indictable offence by assisting, or (was otherwise concerned, in the importing, unshipping, landing, or removing, or subsequently transporting, or in harboring American goods, in whose control or possession the same came without lawful excuse, to wit: American Refrigerators, on which the value for Duty was over \$200, contrary to Section 193(3) of the Customs Act, Chapter 42 R.S.C. 1927, and its amendments, whereby I pray for justice, and sign. . . . ;

that subsequent to a plea of guilty claimant was sentenced by the Court to the payment of a fine and costs and that claimant paid them.

A brief recapitulation of the evidence seems apposite.

[Here the learned Judge reviews the evidence and proceeds:]

The facts are simple and may be summarized briefly. On July 18, 1949, the claimant, who owned a Studebaker Sedan, went to see Henri Lamoureux, a truck-man, whom he did not know, at his residence in Saint-Césaire, and asked him to transport eight refrigerators, which had been smuggled into Canada from the United States. Lamoureux undertook to transport the refrigerators in question. It was agreed that he would meet Gold at the Montreal side

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of the Jacques-Cartier bridge. The former arrived at the bridge alone in his automobile and waited some time before Lamoureux reached the Montreal end of the bridge in his truck, in which were eight refrigerators. Gold got out of his automobile, approached the truck and spoke to Lamoureux. He then went back to his car, got into it and drove a short distance, when he alighted and made a telephone call. The truck was at a standstill when he left in his automobile, but it followed him to the place where he had telephoned. Gold proceeded ahead of Lamoureux and piloted him until the truck and its load of refrigerators were seized.

I have been unable to find any pertinent decisions, notwithstanding a thorough investigation. I may note that counsel admitted having failed to come across any precedents.

The case is governed by paragraphs 1 and 2 of section 193 of the Customs Act. The relevant part of section 193 reads thus:

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.

(2) Every person who assists or is otherwise concerned in the importing, unshipping, landing or removing or subsequent transporting, or in the harbouring of such goods, or into whose control or possession the same come without lawful excuse, the proof of which shall be on the person accused, shall, in addition to any other penalty, forfeit a sum equal to the value of such goods, which may be recovered in any court of competent jurisdiction, . . .

Regarding the meaning of the words "made use of" in paragraph 1 of section 193 reference may be had to *Words and Phrases judicially defined*, Roland Burrows, volume 3, page 303, and *Western Trust Company v. City of Regina* (1).

I am inclined to believe that the question involved herein has never been decided.

The deposition of Gold is incoherent and replete with reticences, hesitations and contradictions and the witness' credibility is thereby considerably lessened.

Considering the admissions made at the trial, the claimant's testimony and the version of Lamoureux, I have reached the conclusion that Gold assisted in the transporting of the eight refrigerators which were, to his knowledge, liable to forfeiture under the Customs Act.

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There will be judgment dismissing the claimant's statement of claim and declaring good and valid the decision of the Minister of National Revenue dated November 29, 1949, in the matter of the seizure report number 38114/23566 of the Department of National Revenue (Customs), whereby the claimant's automobile bearing the Quebec licence number 67-708 for the year 1949, being a green Studebaker Sedan automobile, model 1948, was declared forfeited, and maintaining the forfeiture of the said automobile.

Respondent will be entitled to his costs against claimant.

*Judgment accordingly.*