

1952
 May 30,
 June 2,3 & 26
 June 26

BETWEEN:

EARL ANGLIN JAMES SUPPLIANT;

AND

HER MAJESTY THE QUEEN RESPONDENT.

Revenue—Reference under the Customs Act—Seizure—Forfeiture—Customs Act R.S.C. 1927, c. 42, ss. 190, 193(1), 245 and 262—“Subsequent transportation” of goods liable to forfeiture—Vehicle used in transportation of goods liable to forfeiture is itself liable to forfeiture though it had no direct connection with the importation or landing of such goods.

Held: That s. 193 of the Customs Act R.S.C. 1927, c. 42, renders liable to forfeiture all vehicles used in the transportation of goods liable to forfeiture although such vehicle had no direct connection with the importation or landing of such goods. The “subsequent transportation” of such goods as set forth in s. 193 of the Act need not be directly associated with the importation and unshipping or landing or removal of the goods.

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

The action was heard before the Honourable Mr. Justice Cameron at Toronto.

F. A. Brewin, Q.C. for the suppliant.

Geo. B. Bagwell, Q.C. for the respondent.

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

CAMERON J. now (June 26, 1952) delivered the following judgment:

This is a claim referred to the Court by the Minister of National Revenue under the provisions of s. 176 of the Customs Act, c. 42, R.S.C. 1927, as amended. On November 14, 1950, the Minister gave his decision under s. 174 that certain cameras, photographic equipment and other goods, and a motor car, all owned by the claimant, were forfeited. Following service thereof upon the claimant, the latter, under s. 175, gave notice in writing that such decision would not be accepted and the matter was then referred to this Court.

All the goods in question were seized by the Royal Canadian Mounted Police on July 3 and July 5, 1950. Subsequently, a charge was preferred against the claimant:

That he, between the 1st day of November, 1949, and the 3rd day of July, 1950, at the city of Toronto, in the county of York, unlawfully did, whether the owner thereof or not, without lawful excuse have in his

possession certain goods unlawfully imported into Canada, namely movie cameras, films, camera supplies, radios, typewriters, pen and pencil sets, on which the duties lawfully payable had not been paid, the said goods being of a value for duty of \$200 or over, contrary to the provisions of section 217 of the Customs Act, being chapter 42 of the Revised Statutes of Canada and amendments thereto.

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To that charge the claimant pleaded guilty and was fined \$700.

In the proceedings now before the Court the claimant asks for the return of the following goods as itemized in para. 2 of the Statement of Claim:

- (a) 1949 Chrysler Car, Serial No. 7102970,
- (b) One Ampro Projector,
- (c) One Leica Camera, F.2 lens.
- (d) Photographic equipment including Photo Meter.
- (e) One Silent Typewriter, 77 Noiseless.
- (f) One pocket radio.
- (g) 16 Millimeter Films.

It will be observed that the claim does not include a demand for the return of some of the articles which the minister had declared to be forfeited, namely, 6 movie cameras and certain pen-and-pencil sets.

As to the articles mentioned in subparagraphs (b) to (g) of para. 2 of the Statement of Claim, the respondent alleges that they were smuggled or otherwise unlawfully imported into Canada contrary to the Customs Act and were therefore liable to seizure and forfeiture and were, in fact, seized and forfeited. In his evidence, the claimant vigorously denied that such goods were smuggled or otherwise unlawfully imported into Canada. However, when all the evidence was in, his counsel stated that without conceding that there had been any breach of the law in respect to the importation of the said goods, he was withdrawing any claim to the return thereof. Upon the conclusion of the argument, I stated that the goods mentioned in Items (b) to (g) inclusive, of para. 2 of the Statement of Claim, had been forfeited to the respondent, that the claim herein for the return of such goods would be dismissed, and I now so declare.

The one matter remaining for consideration is Item (a)—a 1949 Chrysler car. The ground of forfeiture alleged by the Crown is that it was used in the illegal transportation of goods liable to forfeiture under the Customs Act.

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The car was purchased by the claimant, an American citizen, on June 29, 1949 (Ex. 2) in Chicago, Illinois, and was lawfully brought into Canada on March 15, 1950, the claimant being in possession of a Traveller's Vehicle Permit in respect thereof (Ex. 1). That permit, subject to certain conditions, allowed the claimant to keep the car in Canada for a period of six months.

The respondent relies on a number of the provisions of the Customs Act, but I think that for the purposes of this case it is sufficient to refer only to the following:

190.

- (a) Any vehicle containing goods, other than a railway carriage, arriving by land at any place in Canada, whether any duty is payable on such goods or not; and
- (b) Any such vehicle on arriving, if the vehicle or its fittings, furnishings or appurtenances, or the animals drawing the same, or their harness or tackle, is or are liable to duty; and
- (c) Any goods brought into Canada in the charge or custody of any person arriving in Canada on foot or otherwise;

shall be forfeited and may be seized and dealt with accordingly, if before unloading or in any manner disposing of any such vehicle or goods, the person in charge thereof does not

- (a) come to the Custom-house nearest to the point at which he crossed the frontier line, or to the station of the officer nearest to such point, if such station is nearer thereto than any Custom-house, and there make a report in writing to the collector or proper officer, stating the contents of each and every package and parcel of such goods and the quantities and values of the same; and
- (b) then truly answer all such questions respecting such goods or packages, and the vehicle, fittings, furnishings and appurtenances appertaining thereto, as to the said collector or proper officer requires of him; and
- (c) then and there make due entry of the same in accordance with the law in that behalf.

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.

245. All goods shipped or unshipped, imported or exported, carried or conveyed, contrary to this Act, or to any regulation made by the Governor in Council, and all goods or vehicles, and all vessels under the value of four hundred dollars, with regard to which the requirements of this Act or any such regulation have not been complied with, shall be forfeited and may be seized.

The contention of the respondent briefly is that the car in question was used in the importation into Canada of goods which were not lawfully entered (namely, the goods which were seized on behalf of the respondent) and/or that under s. 193(1) the car was made use of in the subsequent transportation of goods liable to forfeiture under the Act.

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The first question is whether the goods said to have been imported into Canada in the car, or subsequently transported in the car, were liable to be seized and forfeited. On that point I entertain no doubt whatever. Practically all the goods seized, with the exception of the Leica camera, were manufactured in the United States, and included therein were the 6 movie cameras and the unexposed movie camera films to which special reference will later be made. All the goods seized, with the possible exception of the Leica camera and a camera tripod, were admittedly brought into Canada by the claimant. It is fully established that he did not make due entry of the same or make a report in writing to the collector at the time of entry. Each article was subject to the payment of customs duty and in most cases to the payment of sales tax and excise tax, but no duties of any sort were paid by the claimant in respect thereof. He stated in evidence that when bringing them into Canada at various times he had carried them in his hand, that he was wearing clerical garb, and that he produced to the customs examiner a badge indicating that he was a deputy sheriff of Cook county, Illinois (a purely honorary post), that the examiners made no inspection of the goods but merely waved him through the barrier. For reasons to be stated later, I do not believe his evidence.

In view of the evidence and the law applicable thereto, and considering also that the claimant has previously pleaded guilty to a breach of s. 217 of the Act in respect of such goods, I find no difficulty in deciding that all of the goods seized (except the motor car) were unlawfully imported into Canada, and under ss. 190 and 195 of the Act, as well as under other sections, were liable to forfeiture under the Customs Act.

The remaining question is whether the motor car is liable to forfeiture. For the purposes of this case, I think it is necessary to refer only to the provisions of s. 193(1) (*supra*). As I have stated above, the contention of the

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respondent is that the motor car was used in the importation or subsequent transportation of the goods seized, and which goods I have now found to have been unlawfully imported into Canada and liable to forfeiture under the Act.

S. 262 of the Customs Act provides:

262. (1) In any proceedings instituted for any penalty, punishment or forfeiture or for the recovery of any duty under this Act, or any other law relating to the Customs or to trade and navigation, in case of any question of, or relating to the identity, origin, importation, lading or exportation of any goods or the payment of duties on any goods, or the compliance with the requirements of this Act with regard to the entry of any goods, or the doing or omission of anything by which such penalty, punishment, forfeiture or liability for duty would be incurred or avoided, the burden of proof shall lie upon the owner or claimant of the goods or the person whose duty it was to comply with this Act or in whose possession the goods were found, and not upon His Majesty or upon the person representing His Majesty.

(2) Similarly, in any proceedings instituted against His Majesty or any officer for the recovery of any goods seized or money deposited under this Act or any other such law, if any such question arises the burden of proof shall lie upon the claimant of the goods seized or money deposited, and not upon His Majesty or upon the person representing His Majesty.

The onus of proof, therefore, rests upon the claimant, it being established not only that some of the goods were found in his possession, but that he had failed in his duty to comply with the provisions of the Act in regard to all the goods (other than the motor car so seized). The claimant gave evidence to support his claim, but called no other witnesses. He flatly denies that the car was used at any time in the importation or subsequent transportation of the goods liable to forfeiture and that he ever stated that it was so used.

To establish that the car was so used in the *importation* of goods liable to forfeiture, the respondent called two witnesses, Sgt. Birkett and Constable Munro, both of the Royal Canadian Mounted Police. On July 3, 1950—the date when the goods and car were seized—Sgt. Birkett interviewed the claimant in Toronto, Constable Munro being present throughout but taking no part in the conversation or having any part in the preparation of the report of the interview made by Sgt. Birkett. Birkett referred to his notes and report which make no mention of the car or of any statement by James that the car was used in the importation of the goods. Birkett explained that at the time he was concerned only with the smuggled goods and

that the use of the car was not important in his investigation. He says, however, that James then told him that he was an American citizen, that he frequently came to Canada in his car and that the goods seized came in his car as part of his baggage and were passed through without declaration or inspection. He made no mention of entering Canada except by motor car. In cross-examination, Birkett was somewhat reluctant to pledge his oath that James had said that he used the car in importing the goods into Canada, but felt reasonably certain that he had. Constable Munro, however, was most clear in his recollection that James had stated to them that the goods were brought in by him openly exposed in the back seat of his car. James denied, however, having made any such statement, insisted that the car was never so used, and that all the goods brought in from the United States were at times when he crossed the border by train, bus or on foot.

In view of the conflicting evidence, it becomes necessary to determine what weight is to be given to the claimant's evidence. Having observed his demeanour in the witness box and having listened to his evidence and the explanations furnished by him, my opinion is that his evidence is not to be believed and I accept unhesitatingly the evidence of the Crown's witnesses in preference to his.

James claims that he is the Bishop of Chicago and the Archbishop of Canada for the Western Orthodox Church—sometimes called also the Catholic Apostolic Church—having received his appointment from the Patriarch of Glastonbury (England)—Georgius I, but in cross-examination admitted that he knew of no other member of the organization, at least in Canada if not in the United States as well. Apparently, the only pastoral work he has done was in connection with the inmates of a prison in Chicago. He is unduly impressed with his own importance as will be seen by reference to his biographical sketch (Ex. A)—prepared by himself and which credits him with being the holder of fourteen degrees. His explanation of the purposes for which he brought the six movie cameras into Canada and the manner in which the Leica camera was imported into Canada borders on the fantastic and I disbelieve it entirely. He refers to himself as “H.R.H. Prince James, Duke of Palma,” as a Count and as a Viscount, claiming

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that these are titles conferred on him by various lodges. A business letter written by him (Ex. E) is headed, "The Right Honourable Dr. Earl Anglin James, General of the Legion of Honour" and bearer of a number of degrees. I am quite satisfied that in his effort to avoid forfeiture of his car he would not hesitate to deviate from the truth. It is significant to note, moreover, that he did not attempt to deny the evidence of William Woroschuck that shortly before the trial when he knew that Woroschuck would be giving evidence as a Crown witness, he requested Woroschuck to ignore or overlook the use made of his car, if that question came up at the trial.

Accepting, therefore, the evidence of Birkett and Munro in preference to that of the claimant, I find that James did state to them that use had been made of the car in importing the forfeited goods into Canada. The claimant therefore has failed to establish that the car was not used in the importation of goods liable to seizure and the onus of so doing lies upon him.

There is evidence, also, which I accept, that the car was used in the subsequent transportation of goods liable to forfeiture. The witness Woroschuck is the proprietor of a restaurant on Danforth Avenue in Toronto. In the spring of 1950, James was in the habit of visiting that restaurant and became friendly with the proprietor who displayed an interest in photography. Woroschuck says that James visited his restaurant on twelve or more occasions and that on all but two or three such occasions, he came in the car which he clearly recognized and identified as the car in question. On many of these occasions he brought in cameras and photographic material, some of which he loaned to Woroschuck, and others he sold or endeavoured to sell to him; and on only one occasion when such goods were brought did Woroschuck not see the car which at that time might have been parked out of his view.

Woroschuck states that he saw James remove from that car and bring into the restaurant an "exposure-meter, a camera tripod, and two rolls of 8 mm. films (exposed)," all of which are among the goods forfeited. He further says that on most occasions when James brought goods to the restaurant, he took a shopping bag containing such goods out of the car; that he is fairly certain that a Keystone

movie camera and a Bell & Howell movie camera were so brought in the car. He identified the Keystone camera as one of the articles which had been seized. He stated further that he had bought from James nine rolls of undeveloped films similar to those seized and which were manufactured in the United States.

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James, while admitting that on a few occasions he drove his motor car to the restaurant, denies that any of the forfeited goods were at any time in the car. He admits that he took Keystone and Bell & Howell cameras to the restaurant but says that they were not the ones seized, but were similar ones for which he had an entry permit and which he later returned to the United States.

I was greatly impressed by the frank manner in which Woroschuck gave his evidence and I am quite satisfied of the truth of his statements. I find on his evidence, therefore, that the claimant did, in fact, use the car in the subsequent transportation of goods which had been unlawfully imported into Canada and which were liable to seizure.

I am unable to agree with the argument of counsel for the claimant that on a proper interpretation of s. 193(1), the "subsequent transportation" of goods must be directly associated with the importation and unshipping or landing or removal of the goods, all forming part of the one series of events. My opinion is that while hardships might perhaps occur in cases where a vehicle is innocently used only in the subsequent transportation of goods liable to forfeiture, the clear intention of s. 193 is to make such vehicle liable to forfeiture although it has no direct connection with the importation or landing of the goods.

On the whole of the evidence, I have no doubt whatever that the claimant intended to avoid payment of duties on the goods which he brought into Canada. On his own evidence, he had on other occasions obtained entry permits on similar articles which he had brought in for his own personal use while in Canada, and he therefore had full knowledge that goods of this type must be declared. It is established, also, that he had placed the Leica camera and six movie cameras in the hands of dealers in Toronto for sale. The inference is clear, namely, that he had brought them into Canada for resale.

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The penalty of forfeiture is a very severe one, particularly in a case where a claimant has already been fined for the offence of smuggling. But as pointed out in *The King v. Krakowec et al.* (1), the Court has no discretion in the matter but must decide according to the law and release or condemn the vehicles as the case requires, and as they come or do not come within the provisions of the Act.

On these findings, therefore, there will be judgment dismissing the claim, with costs, and a declaration that all of the goods and articles mentioned in para. 2 of the Statement of Claim have been and remain forfeited to the Crown.

Judgment accordingly.

(1) (1932) S.C.R. 134 at 143.