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June 6.
Aug. 2.

THOMAS Y. PARKER.....CLAIMANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Revenue—Customs Act, sec. 96 (1)—False answers to questions—Seizure—Interpretation

Section 246 of the Customs Act provides *inter alia* that where any vessel departs from any port or place in Canada without a clearance, ... or the Master thereof "does not truly answer the questions demanded of him" said Master shall incur a penalty of $400 and the vessel shall be detained until said penalty is paid. The only report made was that required of the Master under section 96 (1) of the Customs Act.

Held, that the delivery of the report required by section 96 (1) to the Customs officer by the Master was not the "answer of questions demanded of him" referred to in section 246 of the Customs Act.

2. That in the interpretation of any enactment which entails penal consequences, the Court should not do violence to the language in order to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it by express language.

Reference by the Crown under section 177 of the Customs Act.

The action was heard before the Honourable Mr. Justice Maclean, President of the Court, at Halifax.

A. W. M. Jones, K.C., for claimant.

Jas. A. Knight, K.C., for respondent.

The facts are stated in the reasons for judgment.

THE PRESIDENT, now (2nd August, 1927), delivered judgment.

This is a reference under sec. 177 of the Customs Act. The proceedings concern the ship *Marion Phyllis* and her cargo, one of liquor, seized by the Customs authorities for alleged violation of the Customs Act. It is charged that the master of the ship obtained four clearances from East Jeddore, N.S., for St. Pierre, Miquelon, on specific dates in June and July, 1926, without the intention it is claimed of proceeding to St. Pierre, and on obtaining such clearances, did not truly answer the questions demanded of him, and obtained such clearances on false representations as to the intended voyages and it is also charged that on August 9, 1926, in reporting inwards at Halifax, N.S., the

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master represented the content of his cargo as 140 kegs of liquor, whereas in fact the same consisted of 177 kegs. These several charges it is said constitute contraventions of sec. 246 of the Customs Act, for which, penalties were exacted against the master in the total sum of $2,000, and for the non-payment of which the ship, and her cargo, was detained and seized. The ship and cargo were subsequently released upon a deposit of $2,000 being made with the Customs, pending the decision of the Department of Customs.

Section 96 of the Customs Act is as follows:—

96. (1) The master of every vessel bound outwards from any port in Canada to any port or place out of Canada, or on any voyage to any place within or without the limits of Canada coastwise, or by inland navigation, shall deliver to the collector or other proper officer a report outwards under his hand of the destination of such vessel stating her name, country and tonnage the port of registry, the name of the master, the country of the owners and the number of the crew.

(2) The master shall also, before the vessel departs bring and deliver to the collector or other proper officer, a content in writing under his hand, of the goods laden, and the names of the respective shippers and consignees of the goods with the marks and numbers of the packages or parcels of the same, and shall make and subscribe a declaration to the truth of such content as far as any of such particulars can be known to him.

Section 98 (1) is as follows:—

The master of every vessel whether in ballast, or laden shall, before departure, come before the collector, or other proper officer, and answer all such questions concerning the vessel, and the cargo, if any, and the crew and the voyage, as are demanded of him by such officer, and if required, shall make his answers or any of them part of the declaration made under his hand.

The penalty clause relied upon by the defendant is sec. 246 of the Act, which is as follows:—

(1) If any vessel departs from any port or place in Canada without a clearance, or if the master delivers a false content, or does not truly answer the questions demanded of him, or if having received a clearance, such vessel adds to her cargo, or takes another vessel in tow, or performs any work without having mentioned in the report outwards the intention so to do, the master shall incur a penalty of four hundred dollars, and the vessel shall be detained in any port in Canada until the said penalty is paid.

(2) Unless payment is made within thirty days, such vessel may, after the expiration of such delay, be sold to pay such penalty and expenses incurred in detaining, keeping and selling such vessel.

The grounds upon which the plaintiff claims a refund of the deposit are: that the statute provides non-penalty

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for stating in the form of outward reports, a destination not reached or in fact not intended; that the master of the ship was not requested and did not refuse to give any answers to questions as contemplated by sec. 98 (1); and that he did not falsely misrepresent the contents of his cargo as alleged.

The contention of the plaintiff that sec. 246 does not provide a penalty for stating in the report outwards required by sec. 96 (1), a port of destination, without the intention of proceeding to such port, or, in fact having not done so, I think must prevail. I have given a very careful consideration to the provisions of the Customs Act upon this point and to the grounds urged by the defendant's counsel in support of the contrary view, but I am unable to discover anything in the Act, or in the views, addressed to me by defendant's counsel which would in my opinion warrant any other conclusion. It is not suggested in this connection that any section of the Act other than 246 creates a punishable offence, if that in fact does. The offence alleged is, that in obtaining the outward clearances in question, the master did not "truly answer the questions demanded of him." It is beyond controversy I think, that this offence is not to be found in sec. 96 (1) where the master is required to state, inter alia, his port of designation when bound outwards, under his hand. A printed form is provided for this purpose, and this form was used in the several outward reports, here in issue. The statute does not require a declaration as to the truth of this report, and the form used by the Customs does not provide for it. The report outwards so far as destination is concerned, was not evidently considered of the same importance, as the requirement of sec. 96 (2) as to the content of the cargo, which must be accompanied by a declaration as to its truth. It cannot I think be contended that the delivery of the report required by sec. 96 (1) to the Customs officer by the master, is the "answer to questions demanded of him" referred to in sec. 246. It is sec. 98 (1) that says that the master must answer all questions demanded of him by the officer, and that those are oral questions to be put to the master by the officer, is made certain and clear by the fact, that this section states, that the master if required shall make his answers or any of

them part of the declaration under his hand. The declaration here referred to, it is also quite clear, is the one required by section 96 (2), as to content. There is in my opinion, nothing whatever to support the contention, that the statement or report required by section 96 (1) relates to the offence of not truly answering questions demanded of the master, as prescribed by sec. 246. If the officer availed himself of sec. 98 (1) and required answers to questions regarding the destination of an outward clearing ship, an offence under sec. 246, might be made possible. In this case no questions were put to the master, by the Customs officer on clearing outwards, in respect of his proposed destination.

There are several sections of the Act requiring true answers to questions put by Customs officers to the master of a ship, and sec. 255 which is very general in its terms, might be referred to. The necessity for such a provision in the enforcement of the Customs laws is quite obvious, but I think it is quite likely that it was not regarded as of practical importance or utility in the protection of the revenue to make a violation of sec. 96 (1) a punishable offence. It would be intolerable in many instances to make it an offence, because in fact we know that frequently in modern days the intended voyage of a ship is changed by direction of its managing owners after departure from port. It is also quite probable that parliament had not in contemplation the existence of the particular trade which occasions these proceedings, and accordingly did not attempt to anticipate the new situations which such trade has developed. Section 128 of the Customs Consolidated Act, of England, which seems to correspond in part with sections 96 and 98 of the Canadian Customs Act, requires the answering of any questions put to the master concerning the ship, the cargo, and the voyage, and requires a declaration as to the content of the ship. This section, however, enables the Commissioners of Customs to dispense even with the declaration as to content. In case of ships clearing from the port of London, the requirement of the delivery of the content has been dispensed with since May, 1872. Highmore Customs Laws, page 174. I only refer to this provision of the English Customs Act, because it would seem to affirm what I have already observed con-

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cerning the somewhat similar sections of our own Act, that is, that parliament at the time of their enactment did not deem it desirable to make it a punishable offence for a ship to state in its outwards report a port of destination without the intention of proceeding there, or for failure to do so, unless questions relating thereto were put to the master and untruly answered.

Where there is an enactment which may entail penal consequences, one ought not to do violence to the language in order to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it by express language. *Rumball* v. *Shmidt* (1). An American text book, Law of the Customs, by Elmes, well states this point:

> Penalties must be specially imposed by statute, or they cannot be enforced; and there is no principle that can justify the extension of a statute so imposing them beyond its plain and unmistakable meaning and intention. The courts will look to the express language employed therein for the designation of the offence and the infliction of the punishment. No artificial or forced construction is to be adopted. They will not give an equitable construction to a penal law, even for the purpose of embracing cases clearly coming within the mischief intended to be remedied. The sense is not to be extended so as to bring things into the statute by construction which do not clearly come within the words. The law does not allow constructive offences or arbitrary punishments. No man incurs a penalty, unless the act which subjects him to it is clearly within both the spirit and the letter of the statute imposing such penalty.

Altogether, I entertain no doubt whatever that the charges against the master which I am presently considering, do not constitute the offence of not truly answering questions demanded of the master, as contemplated by sec. 246. I therefore hold that the master is not liable for the penalties imposed upon him in respect of these particular charges.

Now in respect of the charge of delivering a false content of cargo, it is not in question that the *Marion Phyllis* did make four separate custom entries outwards from a Nova Scotia port, for St. Pierre as alleged. The answer made to the charge in question is, that the master reported the content that the supercargo gave to him on the occasion of the entry inwards on August 9, 1926, and the supercargo states that he unintentionally erred in giving the content

(1) (1882) 8 Q.B.D. 608.

to the master. The master and supercargo made declarations to this effect in writing, and they are to be found on the departmental file, but neither appeared before me to give oral evidence upon the point. The suggestion of the defendant is, that the deficiency in the reported content was knowingly false, and had the ship again departed without the disclosure of this disparity between the reported and the actual content, the difference might have been easily disposed of unlawfully within Canadian waters and landed in Canada, without much hope of successfully establishing the offence against the master or the ship, had she been at once detained for such an offence, by reason of the apparent agreement between her last inward and outward report concerning her content. Neither the master or the supercargo have given any explanation of the shortage of 37 kegs of liquor as reported on August 9, 1926, other than to say, it was unintentional and made in error. I am not disposed to accept their mere declaration to this effect. I have read the answers of the crew given to Mr. Young, Assistant Inspector of Customs for Nova Scotia, on August 16, 1926, the questions and answers having been demanded in writing, and signed by each party, and from that reading of such answers and questions, I am not encouraged in accepting the explanation of the ship's short entry in question. It is difficult to accept as true many of the statements of the master and the supercargo given before Mr. Young, and I cannot accept their statements as to the ship's entry in question. I think the burden is upon them to make some attempt to explain just how the short entry occurred. According to the departmental file before me, the report outwards made last before the entry in question, gave the content as 278 kegs of rum, whereas in the report inwards in question the content is given as 140 packages notwithstanding the fact that the master swears therein, that since his last clearance 20 packages only of rum had been removed from the *Marion Phyllis,* to an unnamed ship nine miles off the Nova Scotia coast. This would appear to make the discrepancy in content greater than that charged, unless I have entirely overlooked something. If there was a bona fide error as to the content, this was susceptible of some more convincing explanation than that given, and I do not think I should now permit the master

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to amend his report under the provisions of sec. 190, or disturb the action taken by the Customs authorities in imposing a penalty of $400 for this offence.

I am therefore of the opinion that $1,600 of the total deposit made with the defendant and in connection with the alleged offences first disposed of by me, should be refunded to the plaintiff and the balance declared forfeited. There was, I certify, probable cause for the detention and seizure of the ship and cargo in the first instance. For the reason that neither side is wholly successful, there shall be no order as to costs.

Judgment accordingly.