THE QUEEN, ON THE INFORMATION OF THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA..... ..... } PLAINTIFF ;

AND

THE CANADIAN SUGAR REFINING COMPANY (LTD.)..... } DEFENDANTS.

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Sept. 14.

Revenue law—Tariff Acts of 1894 *and* 1895—*The Customs Act (R. S. C. c.* 32, *as amended by* 52 *Vict. c.* 14, *s.* 12) *sec.* 150—*When importation of goods to be deemed complete for the purpose of assessing the duty.*

Any importation of goods is complete within the meaning of the 150th section of *The Customs Act* when the ship in which the goods are carried comes within the limits of the first port in Canada at which such goods ought to be reported at the Customs.

INFORMATION for the recovery of Customs duties alleged to be due to the Crown.

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

The case was heard at Ottawa, on the 10th day of April, 1896.

B. B. Osler, Q.C., for the defendants:—It is our contention that the goods in question were "imported into Canada" when they arrived at the port of North Sydney. The intention of Parliament was to make the duty attach to the goods as soon as the ship in which they are carried arrives at the first port of entry in Canada. Neither in the English nor American reports is it possible to find authority to show that it is the time of the actual entry of the goods at the port of destination that fixes the time when the duty attaches. (He cites 49 Vict. c. 32, as amended by 52 Vict. c. 14, secs. 21, 25, 31, 34, 97, 98 and 150.) Granting that North Sydney was only touched at by the ship for the purpose of obtaining coal, nevertheless under

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the Customs law it was a proper port of entry for her, and she did report her cargo there. Then under sec. 31 of *The Customs Act* it is provided that in the case of goods brought in as these were the duty shall not be paid nor the entry completed at the first port, but at the port where the goods are to be landed. So that the duty having once attached it is immaterial where the entry of the goods is completed. (He cites the Tariff Acts of 1894 and 1895, sec. 4.)

The fair interpretation of all the statutes bearing upon the question in controversy is that the moment of importation is the moment when duty would attach on dutiable goods.

(He cites *Meredith* v. *The United States* (1); *Attorney-General* v. *Ansted* (2).

J. J. Gormully, Q.C., followed:—The "report" that is spoken of in the 150th section of *The Customs Act*, and which determines the time when the importation is complete, is the report of the goods by the master of the ship. The master fully complied with all the requirements of the law in reporting at the port of North Sydney, and the importation thereby became complete.

W. D. Hogg, Q.C., for the plaintiff:—Our contention is that an entry at a port like North Sydney is not an arrival within the meaning of *The Customs Act*, sec. 25. The "arrival" occurs when the port at which the goods "ought to be reported" is reached, and that is the port of destination. It was never intended that the goods should be reported for duty at any port at which the ship might casually touch for supplies, &c., in the progress of her voyage to the port of destination of her cargo. As to what is an "arrival" within the meaning of the Customs laws, I cite *Elmes on Customs Laws* (3); *Perrots* v. *United States*

(1) 13 Pet. 494.

(2) 12 M. & W. 520.

(3) Sec. 37.

(1); *Kohne* v. *The Insurance Co. of North America* (2); *Prince* v. *United States* (3); *United States* v. *Shackford* (4); *Harrison* v. *Vose* (5); *Toler* v. *White* (6); *Meigs* v. *Mutual Insurance Co.* (7); *Grondstadt* v. *Witthoff* (8); *Simpson* v. *Pacific Mutual Ins. Co.* (9).

Mr. *Osler* replied.

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THE JUDGE OF THE EXCHEQUER COURT now (September 14th, 1896) delivered judgment.

The question for decision is:—Was the raw sugar mentioned in the information exhibited in this case subject or not subject when imported into Canada to a duty of one-half cent per pound prescribed by *The Customs Tariff Act*, 1894, as amended by 58-59 Victoria, chapter 23?

By the 4th section of *The Customs Tariff Act*, 1894 (10) it is enacted that there shall be levied, collected and paid upon all goods enumerated in Schedule "A" to that Act the several rates of duties of Customs set forth and described in the said Schedule when such goods are imported into Canada, or taken out of warehouse for consumption therein. And by the 5th section it is provided that all goods enumerated in Schedule "B" of the Act may be imported into Canada, or taken out of warehouse for consumption therein without the payment of any duties of Customs thereon. By item 392, Schedule "A," all sugar above number sixteen Dutch Standard in colour, and all refined sugars were subject to a duty of sixty-four one-hundredths of a cent per pound; and by item 708, Schedule "B," sugar not elsewhere specified not above number sixteen Dutch Standard in colour was free of duty. By the

(1) Pet. C.C. 246.
(2) 1 Wash. 158.
(3) 2 Gall. 204.
(4) 5 Mason 445.
(5) 9 How 372.
(6) 1 Ware 280.
(7) 4 Law. Dec. 588.
(8) 15 Fed. Rep. 265.
(9) 1 Holmes 136.
(10) 57-58 Vict. c. 33.

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Act 58-59 Vict. chap. 23, assented to on the 22nd of July, 1895, item 708, Schedule "B" was repealed, and item 392, Schedule "A" was so amended as to make sugar above sixteen Dutch Standard in colour, and all refined sugars, dutiable at the rate of one cent and fourteen-hundreths of a cent per pound, and sugar not elsewhere specified, and not above that standard dutiable at the rate of one-half a cent per pound. And it was declared that the Act should be held to have come into force on the third day of May, 1895, that being the date of the passing of the resolutions on which the Act was founded.

The sugar in question was shipped at Antwerp and formed part of the cargo of the steamship *Cynthiana*, on a voyage from that port to the port of Montreal, in the course of which voyage, and as part thereof, she called at the port of North Sydney for coal. The master's report inwards and outwards at the port of North Sydney and his clearance therefrom for Montreal, all bear date of the 29th of April, 1895. The cargo in the report inwards is described as "general cargo not to be here landed—in the same bottom for Montreal," and a like description occurs in the report outwards, and in the clearance it is stated as a general cargo in same bottom "from Antwerp not here landed and no duties paid." In the affidavit verifying the report inwards the master states that the manifest then exhibited to him, and attached to the report contains to the best of his knowledge and belief "a full, true and correct account of all the goods, wares, and merchandise laden on board such vessel at the port of Antwerp." The copy of the manifest referred to is not now attached to the report or before the court, and I have had no opportunity of comparing it with the copy subsequently filed at the port of Montreal. But nothing, I think, turns upon that. The question is not,

it will be seen, whether the sugar was reported at the port of North Sydney, but whether it ought to have been reported there. And no question is raised, or suggestion made that it was not properly described in the manifest produced at that port.

The *Cynthiana* arrived at the port of Montreal on the 4th of May, 1895. On the 1st of May the defendants had attempted to enter the sugar there free of duty under the tariff of Customs duties then in force, but the entry was refused by the Acting Collector of Customs on the ground that the *Cynthiana* was not then within the limits of the port of Montreal. On the 2nd of May, in accordance with a practice which for convenience, but apparently without any statutory authority, has been adopted at the port of Montreal and which has been long followed there, the ship's manifest without the master's report, which was not made until the 6th, was filed at the Custom-house and numbered, and that being done, an entry of the defendants' sugar was accepted and a landing warrant issued. The sugar was entered as dutiable under protest, the goods being, it was claimed, free of duty. That form of entry and the protest had reference to a question as to whether or not the sugar was "above number sixteen Dutch Standard in colour" and had no reference to any matter now in controversy. It is conceded that the sugar was not above that standard, and that the defendants were entitled to enter it free of duty, if it was not subject to the duty of one-half of one cent per pound prescribed by the Act 58-59 Vict., chap. 23. The entry of the 2nd of May was made without the knowledge of the Acting Collector of Customs at Montreal, and when on the 4th he learned of it he gave directions that the entry should be cancelled and the sugar placed in a warehouse and that the duty proposed in the tariff resolution of May

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3rd, to which I have referred, should be exacted. At that time 2,317,786 pounds of the sugar had been landed and taken to the defendant company's refinery. On that quantity the Crown seeks to recover the duty. The remainder, amounting to 4,269,653 pounds, was warehoused, and as to that the Crown asks for a declaration that it was, when imported, subject to the duty prescribed by the Act of 1895. The fact that it was warehoused is not in the present case material. That was done by direction of the Customs authorities, and for the protection of the revenue. As to all the sugar in question, as well that which was warehoused as that which was delivered to the defendant company, it is conceded that if it was when imported free of duty the Crown's case fails.

When then was the sugar in question imported, within the meaning of the Customs laws of Canada?

By the 150th section of *The Customs Act* (1); as amended by 52 Vict. c. 14, s. 12, it is provided that whenever on the levying of any duty or for any other purpose it becomes necessary to determine the precise time of the importation of any goods, such importation if made by sea, coastwise or by inland navigation in any decked vessel shall be deemed to have been completed from the time the vessel in which such goods were imported came within the limits of the port at which they ought to be reported; and if made by land, or by inland navigation in any undecked vessel, then from the time such goods were brought within the limits of Canada. The same provision is to be found in the 78th section of the Act of the late Province of Canada, 10-11 Vict. c. 31, which was, I think, the first consolidation of the Customs laws that was made in Canada. It was re-enacted in the Consolidated Statutes of the Province of Canada, chapter 17, section 101,

(1) R. S. C. c. 32.

and in "An Act respecting the Customs" passed by the Parliament of the Dominion of Canada in 1867, and it appears in every consolidation of the Customs Acts since (1). There was no similar provision in the Imperial Act 8-9 Vict., chap. 93, to regulate the Trade of British Possessions abroad, which in pursuance of powers granted by the Act of the Parliament of the United Kingdom, 9-10 Vict. chap. 94, was repealed as to the Province of Canada by the Provincial Act 10-11 Vict. chap. 31, to which reference has been made. The provision was taken, apparently, from sec. 136, chap. 86, of another Imperial statute passed in the year 8-9 Vict., for the general regulation of the Customs; but with a change of language which must, I think, be taken to indicate an intention on the part of the legislature of the late Province of Canada to depart from the rule and definition prescribed by the English statute. By the Act 8-9 Vict. chap. 86, sec. 136, as by earlier and later English Customs Acts (2), the time of the importation of any goods was taken and deemed to be the time when the ship importing such goods actually came within the limits of the port at which such ship should in due course be reported and such goods be discharged. In the 78th section of the Provincial Act 10-11 Vict. c. 31, and in the subsequent re-enactments of that provision the words "and such goods be discharged" are omitted, and it is provided, as we have seen, that the importation shall be deemed to have been completed from the time the vessel in which such goods are imported came within the limits of the port at which the goods ought to be reported. In the province of Nova Scotia the legislature in enacting a similar provision subse-

(1) 31 Vict. c. 6, s. 130; 40 Vict. c. 10, s. 133; 46 Vict. c. 12, s. 239; and R. S. C. c. 32, s. 150.

(2) See 6 Geo. 4, c. 107, s. 122, and 39-40 Vict. c. 36, s. 40.

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quently repealed by the Dominion Act 31 Vict. c. 6, defined the time of importation to be the time at which the importing ship should in due course be reported (1). In the United States there is no statutory provision on this subject, but an importation is there held to be complete as soon as the goods are brought from a foreign country within a port of entry of the United States, with the intention of unlading the same (2). The language of some of the American authorities would seem to indicate that unless there be an intention to unlade the goods at the port of entry at which the vessel first arrives the importation is not then complete. I am not aware that the point has been determined, but in the case of a vessel proceeding as she may from one port to another to land her cargo, the laws of the United States require the master to give to the collector of the district within which the vessel shall first arrive a bond in a sum equal to the amount of the duties on the residue of the cargo, conditioned upon the production of evidence of the lawful landing of the same (3). In such a case in order that the importation may be complete there must of course be an intention to land the goods at some port in the United States, but not, it would seem, to land the goods at the port of entry at which the vessel first arrives. Then the duty of the master of the vessel in which goods are imported as to reporting the goods is not the same in the United States as in Canada. The master of any vessel coming from any port or place out of Canada or coastwise, and entering any port in Canada whether laden or in ballast is, when such vessel

(1) R. S. N. S. 3rd s., c. 12, s. 4 ; 31 Vict. c. 6, s. 138.

(2) Elmes on the Law of Customs, s. 32, and cases there cited ; Customs Regulations of the United States (1892), art. 275.

(3) Customs Regulations of the United States (1892), art. 115, R. S. 2782.

is anchored or moored, to go without delay to the Custom-house and there make a report in writing to the proper officer of the arrival and voyage of such vessel, stating her name, country, tonnage and other prescribed particulars, and, if laden, the marks and numbers of every package and parcel of goods on board, and where the same were laden, and where and to whom consigned, what part of the cargo is to be landed at that port and what at any other port in Canada (1). The master of a vessel arriving in a port of entry of the United States from a foreign port must report the vessel within twenty-four hours after the vessel's arrival there; but he has forty-eight hours in which to enter his vessel by filing his manifest, and he is at liberty to depart after report and before the expiration of the forty-eight hours (2).

Probably, nothing is to be gained by pursuing the enquiry any further in the present direction. The definition of the time when an importation of goods into Canada is complete must be construed by the language used by the Canadian legislature, and probably no considerable assistance can be derived from a consideration of the rule adopted in other countries, especially where there may be differences of circumstances, laws and regulations.

What then is meant in the 150th section of *The Customs Act* by the expression, "the port at which the goods ought to be reported"? What was the meaning of that expression as used by the legislature of the late Province of Canada in the 78th sec. of 10-11 Vict. chap 31? For there is nothing to indicate that it has since been used in the corresponding provisions enacted by the legislature of that province, or by the Parliament of the Dominion in a sense differing from that

(1) The Customs Act, s. 25. 1892, art. 102, R. S. 2774, s-s. 4107,
(2) Customs Regulations U. S. 4900, 6603.

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which first attached to it. Where there are two or more ports at which the goods ought to be reported does the expression mean the first port at which they ought to be reported? By the 25th section of *The Customs Act* it is provided, as by the 10th sec. of 10-11 Vict., chap 31, it was provided, that the master of a vessel arriving from sea or coastwise, and entering any port in Canada, must, as we have seen, not only report his vessel but the goods constituting her cargo (1). By the 27th section of *The Customs Act* it is made his duty at the time of making his report, if required by the officer of Customs, to produce to him the bills of lading of the cargo or true copies thereof; and to make and subscribe an affidavit referring to his report and declaring that all the statements made in the report are true. By the 31st section of the Act it is provided that if any goods are brought in any decked vessel from any place out of Canada to any port of entry therein, and not landed, but it is intended to convey such goods to some other port in Canada in the same vessel there to be landed, the duty shall not be paid or the entry completed at the first port, but at the port where the goods are to be landed, and to which they shall be conveyed accordingly under such regulations, and with such security or precautions for compliance with the requirements of the Act, as the Governor in Council from time to time directs. A like provision is to be found in the 12th sec. of 10-11 Vict. c. 31 (2). But in such a case the report of the goods at the first port of entry is not dispensed with. It ought, it is clear, to be made, and by the plain words of the Act the importation is then complete and the duty, if the

(1) See also 8-9 Vict. (U.K.) c. 93, s. 21; 10-11 Vict. c. 31, s. 10; C. S. C. c. 17, s. 11; 31 Vict. c. 6, s. 10; 40 Vict. c. 10, s. 14; 46 Vict. c. 12, s. 25.

(2) See also C. S. C. c. 17, s. 14, s-s. 5; 31 Vict. c. 6, s. 13, s-s. 5; 40 Vict. c. 10, s. 15, s-s. 5; and 46 Vict. c. 12, s. 45.

goods are dutiable, then attaches. The goods themselves then become subject to the control of the Customs authorities and their conveyance to the port where they are to be discharged is subject to any regulation the Governor in Council prescribes, and security may be taken for compliance with the provisions of the Act, that is, among other things, that the goods be landed, the entry completed and the duties paid. There is nothing to prevent the Customs authorities in such a case from putting an officer on board the ship and in that way to retain the possession of the cargo until entered or discharged in due course. That, it appears, was, before the Union, the procedure required by law in the case of vessels arriving with a cargo at the port of St. John bound to the port of Fredericton (1).

It seems to me, therefore, that the words of the 150th section of *The Customs Act* "within the limits of the port at which they ought to be reported" mean within the limits of the first port at which they ought to be reported. And that view is, it seems to me, strengthened by comparing the language of the Canadian Act with that used in the corresponding provision of the English Act from which the former was adopted (2).

By the English Act the time when an importation of goods is complete was determined, as we have seen, by the coming of the ship in which such goods were within the limits of the port at which such ship should in due course be reported and such goods be discharged. In the Canadian statute the words "and such goods be discharged" are omitted and the time is determined by the coming of the vessel in which the goods are imported within the limits of the port at which the goods, not the ship, ought to be reported; and then

(1) R. S. N. B. c. 28, s. 11; 23 Vict. c. 22, s. 1.

(2) 8-9 Vict. (U. K.) c. 86, s. 136.

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another provision of the statute comes in and makes it the duty of the master of the ship to report not only his ship but the goods imported therein at the port at which he arrives, that is, it seems to me, in such a case as that under consideration, at the first port at which he arrives.

The cargo of the *Cynthiana*, of which the sugar in question formed part, was reported at the port of North Sydney. It is, I think, clear that it ought to have been reported there. The master then made his report outwards and obtained his clearance for the port of Montreal. All that was done in accordance with the provisions of the statute. That is not denied. But some stress is laid upon the fact that in the report inwards at Montreal the master makes oath that he last cleared from the port of Antwerp. That, however, we know not to be the fact. It is manifestly a slip or mistake in the affidavit verifying the report, and the case must be decided on the actual facts, not on an allegation that is known not to be true. I am of opinion, therefore, that the importation of the sugar mentioned in the information was complete according to the definition contained in the 150th section of *The Customs Act* when, on the 29th of April, the vessel in which it was imported came in the course of her voyage within the limits of the port of North Sydney; that being a port of entry at which such goods ought to be reported, and that the sugar is not subject to the duty of one-half a cent per pound imposed by the Act 58-59 Vict. chap. 23.

The conclusion I have come to on this branch of the case renders it unnecessary for me to express any opinion on the other questions debated in this case, and which had reference to the sufficiency of the entry of the 2nd of May; and to the question as to whether or not the intention of the legislature to make the *Tariff*

Act of 1895 retroactive had been so clearly expressed that effect should in such a case as this be given to it.

There will be judgment for the defendant company, and with costs.

Judgment accordingly.

Solicitors for plaintiff: *O'Connor & Hogg.*

Solicitor for defendants: *J. J. Gormully.*