FREDERICK GRINNELL.....APPELLANT ; 1888

AND *Mar. 23, 24.

HER MAJESTY THE QUEEN.....RESPONDENT. *Dec. 14.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Customs duties—Article imported in parts—Rate of duty—Scrap brass—Good faith—46 Vic. ch. 12, s. 153—Subsequent legislation—Effect of—Statutory declaration.

G., manufacturer of an "Automatic Sprinkler," a brass device composed of several parts, was desirous of importing the same into Canada, with the intention of putting the parts together there and putting the completed articles on the market. He interviewed the appraiser of hardware at Montreal, explained to him the device and its use, and was told that it should pay duty as a manufacture of brass. He imported a number of sprinklers and paid the duty on the several parts, and the Customs officials then caused the same to be seized, and an information to be laid against him for smuggling, evasion of payment of duties, undervaluation, and knowingly keeping and selling goods illegally imported, under secs. 153 and 155 of the Customs Act of 1883.

Held, reversing the judgment of the Exchequer Court, that there was no importation of sprinklers, as completed articles, by G. and the act not imposing a duty on parts of an article the information should be dismissed.

Held also, that the subsequent passage of an act [48-49 V. c. 61, s. 12, re-enacted by 49 V. c. 32, s. 11] imposing a duty on such parts was a legislative declaration that it did not previously exist.

APPEAL from the judgment of Mr. Justice Gwynne in the Exchequer Court in favor of the crown.

The claimant Grinnell was a manufacturer of an article known as "Grinnell's Automatic Sprinkler,"

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*PRESENT—Sir W. J. Ritchie C. J. and Strong, Fournier, Taschereau and Gwynne JJ.

(Mr. Justice Henry was present at the argument, but died before judgment was delivered.)

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and having had the same patented in Canada, he was obliged to manufacture it here. Before importing any of the materials he called on the Custom house appraiser at Montreal, and showed him the different parts of a sprinkler, as well as one put together ready for use, and asked how these parts should be entered for duty, and according to the evidence of the claimant and one of his witnesses the appraiser informed him that the part should be entered as manufactures of brass, and the claimant proceeded to import the parts for making these sprinklers and had them entered for duty as above.

There was little or no labor performed on the sprinklers in Canada, and everything, including solder and screws for putting them together, was imported from the United States. After several of these entries had been made the customs authorities seized a number of the completed articles, and also a number not put together, and claimed that they were undervalued and should pay duty at the rate imposed on the article in its finished state according to its market value. The seizure was made under secs. 153 and 155 of the Customs Act of 1883.

The importer filed his claim to the goods in the Exchequer Court of Canada and the matter was heard before Mr. Justice Gwynne.

Girouard Q.C. for the claimant.

Hogg for the crown.

His Lordship decided against the claimant's contention and delivered the following judgment:—

GWYNNE J.—In the month of January, 1885, the customs officers at Montreal seized 5,606 articles of manufactures in brass, called "Grinnell's Automatic Sprinklers" for non-payment of duty.

The article is patented in the United States by a Mr.

Grinnell who is president of the Providence Steam and Gas Pipe Company, which company has the monopoly of manufacturing the patented invention in the United States by license from Mr. Grinnell, the patentee.

Mr. Grinnell obtained letters patent for his invention in Canada, also, upon the 28th day of April, 1882. These letters patent are subject to conditions therein contained that the same and all the rights and privileges thereby granted should cease and determine, and the patent should be null and void, at the end of two years from the date thereof, unless the patentee, his executors or administrators, or his assignee or assignees, should within that period have commenced, or should after such commencement continuously carry on in Canada, the construction or manufacture of the invention thereof thereby patented in such manner that any person desiring to use it might obtain it, or cause it to be made for him, at a reasonable price at some manufactory or establishment for making it or constructing it in Canada, and further that the patent should be void if after the expiration of twelve months from the granting thereof the patentee, his executors or administrators, or his assignee or assignees for a whole or part of his interest in the patent, should import or cause to be imported into Canada the invention for which the patent was granted.

In the months of February, March and August, 1884, Mr. Grinnell, the patentee, not having previously made, or caused to be made, the patented invention at any manufactory or establishment in Canada, imported into Canada a large number of the several pieces manufactured in brass, which had been manufactured in the United States by and under the license held by the "Providence Steam and Gas Pipe Company," and which being put together constituted the complete

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patented article, to the number in the whole of about 10,000 sprinklers. These he entered, not as the automatic sprinklers but simply as manufactures in brass valued at 8c. per pound, and his claim is that this was a proper entry and valuation and that he had, therefore, in fact, paid all duty chargeable under the circumstances.

This claim rests upon the contention that the mere putting together in Canada of the parts of the sprinklers so imported constituted the manufacturing or constructing of the patented article in Canada, within the meaning of the above condition in that behalf contained in the letters patent of the 28th April, 1882.

There is evidence that the cost of putting them together in Canada would be little over 3 cents apiece, although the patentee sets the price at or about 12½ cents apiece.

It is established beyond all doubt by the evidence that the pieces of manufactures in brass so imported constituted all the parts of the patented article to the minutest particular, and that they had no value whatever, and in the condition they were, as imported, could have been applied to no use whatever, except as parts of the patented article for which purpose they had been imported.

The price of the patented article sold in Canada was $1.25 apiece, but the claimant insists that 75 cents of this is for royalty, and he contends that the sprinklers seized were constructed or manufactured in Canada, and that he has complied with the conditions of the letters patent in that respect, and that, therefore, the utmost that could be charged against him is an undervaluation of the material of which they are made, and as he contends a *bonâ fide* undervaluation if it be one at all, and that the case does not come within sections 153

and 155 of the Customs Act of 1883 upon which the information is framed.

This contention necessitates an enquiry, whether the putting together of the pieces of the sprinklers in Canada, which pieces had all been manufactured in the United States, is a construction or manufacture of the patented invention in Canada within the meaning of the conditions in the letters patent, and I am of opinion clearly that it is not, and that the conditions of the letters patent were violated by the importations made in February, March and August, 1884. The articles then imported constituted in fact Grinnell's automatic sprinklers in pieces, and so were importations of the patented invention after the expiration of twelve months from the issuing of the letters patent, and the putting the several parts together in Canada was not a compliance with the conditions of the letters patent that within two years from their date the patentee should commence and continuously thereafter carry on in Canada the construction or manufacture of the patented invention.

It is a preposterous fallacy to say that a patented invention, every minutest particle of which was manufactured and constructed in the United States, was manufactured or constructed in Canada. I confess that I am wholly unable to understand how any business man of plain common sense could conscientiously entertain the idea that it was.

I am obliged, therefore, to come to the conclusion that the manner in which these "automatic sprinklers" which have been seized, and which were so, as aforesaid, imported in pieces, were imported into Canada, was a plain evasion of the letters patent and of the "Customs Act."

As they must be regarded when so imported as having been the patented invention, as in fact they were

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in pieces, they should, in my opinion, have been entered at the price of the patented invention in the United States, where they were manufactured, that being the only market value which they had in the country from which they were imported.

Of those so imported some three thousand or over were sold by the patentee in Canada at the price of $1.25 apiece, and it cannot, I think, admit of a doubt that the object of importing them as they were imported, and of setting the valuation of 8c. per pound upon them, was to obtain the benefit of sales of the patented article in Canada at the full price, including the royalty, without paying duty upon them as the patented article. I must therefore, I think, hold that the case does come within the sections upon which the information is framed, and that the crown is entitled to judgment.

It was alleged by the claimant that upon entering the pieces of the sprinklers he consulted one of the Government appraisers, who, as he says, directed him to enter them as he did, as "manufactures in brass," but he does not allege in his evidence that such appraiser directed him to value them at any particular price; that was the independent act of the claimant himself.

It was in point of fact under the item, "manufactures in brass," that as automatic sprinklers they should have been entered, but at the value of the patented article which, in truth, the parts entered substantially were. The appraiser, however, says that he has no recollection of having ever seen the parts until the sprinklers were seized, and that he has no recollection either of Mr. Grinnell or any other person having ever spoken to him upon the subject of the sprinklers or their parts, but he says it is frequently the practice of parties to make partial statements,

keeping back some of the main facts, in order to feel their way before passing entries, and that something of this kind may have passed, although he does not recollect that it did in the present case; but he is quite certain that if he had been shown the parts, and if the patented article had been explained to him, and if he had been asked how the parts of the patented invention should have been valued for duty, he would have replied, "At the value of the patented article in the United States, less the cost of putting them together in Canada." This advice would, I think, need qualification as to the right of deducting the cost of the putting together of the parts in Canada, assuming such putting together in Canada not to have been, as I am of opinion it was not, a compliance with the act of Parliament relating to patents of invention and the conditions contained in the letters patent.

The claimant declares that he acted *bonâ fide*, and that his intention was to comply in good faith both with the conditions of his letters patent and the customs law.

As to this, I can only say that, in my opinion, it is to be much regretted that good intentions should have been obscured by any veil, however flimsy and transparent, when we come to observe it closely, it proves to be.

Judgment must be for the crown.

From that judgment the claimant appealed to the Supreme Court of Canada.

Girouard Q.C. and *MacMaster* Q.C. for the appellant contended that no automatic sprinklers were ever imported, and the crown could not claim duty for such on the importation of these parts. The same claim might be made if only one part was imported and thus each part might have to pay the duty on the whole.

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The United States v. *Breed* (1), *Adams* v. *Bancroft* (2) and *Wile* v. *Cayley* (3) were cited.

Hogg for the crown, referred to the Customs Act of 1883, secs. 68-9 and 153, and cited *Torrance* v. *Boutillier* (1), *Attorney General* v. *Rothstein* (2).

Sir W. J. RITCHIE C.J.—The information in this case contains four counts : the first is that a certain person or person did, with intent to defraud the revenue, smuggle or cladestinely introduce into Canada, at the port of Montreal, certain goods subject to duty, portions of which consisted of 5,606 Grinnell's Automatic Sprinklers.

The second count, under section 153 (Customs act of 1883) was, that certain persons did, between 1st February, 1884, and 1st September, 1884, make out and attempt to pass and did pass, through the Custom house at Montreal false and fraudulent invoices of certain goods subject to duty, viz., 5,606 Grinnell's Automatic Sprinklers, imported from the United States of America.

The third count, under section 153 was : That certain persons did, between the 1st of February and the 1st of October, 1884, attempt to evade, and did evade, the payment of part of the duties on certain goods, viz., 5,606 Grinnell's Automatic Sprinklers of great value, viz., $5,606, by entering said goods at the Custom house at a value much below the proper value, namely, $655. 33, and said entry was made with intent and design of defrauding the revenue.

The fourth count, under section 155, was : That certain persons, between 1st February, 1884, and September 1st, 1884, did knowingly keep and sell certain duti-

(1) 1 Sum. 166.
(2) 3 Sum. 384.
(3) 14 U. C. Q.B. 285.
(4) 7 L. C. R. 106.
(5) 8 L. C. J. 130.

able goods, portions of which consisted of 5,606 Grinnell's Automatic Sprinklers, which had been illegally imported into Canada whereon duties lawfully payable had not been paid.

It seems to me that the question in this case is not whether the bringing in the parts composing the sprinklers in an unfinished state, and completing them so as to be in a state to be used as automatic sprinklers with a view of satisfying the provisions of the patent law, as contemplated by the claimant, is a *bonâ fide* compliance with the conditions of the claimant's letters patent. The only question, it appears to me, we have to deal with is simply: Do the invoices presented to the Customs officers correctly describe the goods which were entered as boxes of brass at 30 per cent., machine at 25 per cent., boxes mechanics' tools at 30 per cent., solder at 25 per cent., punched brass at 30 per cent. and manufactured brass, boxes brass bodies at 30 per cent.? And do such invoices give the true and fair market value of the articles as invoiced? And was, or was not, this a compliance with the Customs laws?

STATEMENT OF DEFENCE.

The statement of defence of the claimant, Grinnell, and the evidence given in support of it, is as follows:—

5. That at the time of the arrival of the first shipments, and before making the entry thereof, the said claimant requested the hardware appraiser of the Customs Department at Montreal, one J. F. Hilton, to inform the said claimant, as a foreigner, under which item of the Canadian tariff the said parts so imported should be entered, exhibiting the same to him at the same time and explaining to him the purpose for which they were intended; and that it was on his information that the said parts were entered under the heading and in the manner in which they were entered.

6. That the said parts were entered at their proper valuation in the market where they were produced, and the invoices exhibited were, and are, true and according to the facts, and the said valuation was made in good faith.

EXTRACT FROM AFFIDAVIT OF MR. GEORGE REAVES.

5. That deponent was present at the interview between the said

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Frederic Grinnell and the said hardware appraiser, J. F. Hilton, and that the statement thereof made in paragraph five of the said claim and answer is true.

CLAIMANT'S EVIDENCE.

Q. Did you have any conversation with any of the Custom officers about the time of making the first entry to the Custom house in Montreal? A. I did; I went to the Custom house with Mr. George Reaves for the express purpose of showing the material which I wished to import, and of explaining fully the intended use, so far as the Custom house officials should require me to do, in order to instruct him as to the dutiable value of the material that I was wishing to import.

Q. You went with whom? A. Mr. Reaves, as stated in the previous answer.

Q. Did you say that you saw Mr. Hilton? A. I saw an official whom I knew at the time to be an appraiser, and was, no doubt, informed by introduction of his name, but that, of course, was not material to me, my whole thought being to give full instructions as to what I wanted to do, and after this seizure had been made I learned that this appraiser's name was Hilton.

Q. Who told you that his name was Hilton? A. I think, as a matter of accident, perhaps, more than anything when I went to Montreal after the seizure, that I learned his name when I called upon Mr. Wolff at the Custom house in Montreal and Mr. Hilton was called in.

Q. You identified the same man? A. If I was called upon to swear whether it was the same man or not I should prefer not to swear.

Q. Was Mr. Reaves with you? A. He was. Mr. Reaves was personally acquainted with Mr. Hilton at the time of our first call and had had business of the same character with him before and, of course, knew him when he called the second time.

Q. What did you show to Mr. Hilton at the time of your first interview? A. I showed him the parts of the sprinklers just as shown in Exhibit 6. I took those parts to Montreal for the express purpose of showing them to the proper authorities, and explained to the appraiser the purpose for which they were intended and showed him a sprinkler with parts put together.

Q. Did you explain to him the parts of the sprinkler? A. I do not think that I explained to Mr. Hilton anything in the nature of the operation of the automatic sprinkler; I had no object in doing so.

Q. Did you tell him what was the object of that sprinkler complete? A. I presume that I did; but I have no distinct recollection of explaining the working of the device. I showed the device in order

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to show Mr. Hilton that these parts entered into a constructed device.

Q. Mr. Reaves was present? A. He was.

Q. What answer did you receive from Mr. Hilton? A. I cannot recall Mr. Hilton's language, but it was then decided that the articles were dutiable as manufacturers' brass, and the amount of duty was not discussed because that is all shown in the schedule or in the tariff.

Q. Did you come to that conclusion in the presence of Mr. Hilton? A. We got that information from Mr. Hilton.

Q. And you so entered the first shipment in that way? A. We did.

Q. Had no trouble? A, No question whatever was raised. The second shipment was made the same way and no question was raised.

Q. The third shipment in August was also made the same way; and when did you hear of any complaint on the part of the Custom authorities in Montreal? A. I heard no complaint whatever until I was notified by telegraph from the Providence Steam and Gas Pipe Company, sent to me in the South, saying that they received word from Mr. Reaves that the Customs authorities had seized all of my sprinklers, and tools for constructing the same, which were in his building in Montreal.

Q. That was when? A. The date of Mr. Reaves' despatch from Montreal to the Providence Steam and Gas Pipe company was January 6th, 1885, and that despatch was repeated, or the substance of that repeated, to me. Mr. Reaves also wrote to me on January 5th.

* * * * * *

Q. Till the time of the seizure made by the Customs authorities had you any knowledge of the customs laws of Canada? A. I had not any knowledge of the customs laws of Canada, and did not seek any information other than what I sought from the appraiser, supposing that his information was all-sufficient, with no thought that there was any statute that would apply to my importation as relating to parts of devices.

Q. Did Mr. Hilton allude to the duty on parts? A. Mr. Hilton, or the appraiser whom I saw at my first visit in this connection, made no allusion whatever to the duty on parts of devices, nor raised any discussion or question, or doubt as to whether he was correct in his decision.

Evidence of Mr. George Reaves. Examined by Mr. Girouard, Q.C., on behalf of the claimant, Grinnell.

I have already given my affidavit in this matter when the case was pending before the Department of Customs, and a copy thereof has just been communicated to me for inspection. I acted here for Mr. Grinnell in a friendly way in connection with the

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importation of sprinklers; this was without consideration of any kind. I am familiar with the facts of this case from its inception. Mr. Grinnell used a part of my premises for the purposes of these sprinklers; the first three months he was charged no rent; after that time he paid rental. He used this place as a manufacturing shop for the purposes of these sprinklers. During the carnival, that is, in the early part of eighteen hundred and eighty-four, the first importation of these sprinklers was made; it was first addressed to me—the first shipment was sent to my care and the first customs entry was passed by Moses Davis, custom broker. Mr. Grinnell wished to be here before the first customs entry was made, as he wished to put matters in such a shape that in the event of any patent suits being instituted he would have everything clear and satisfactory. He came to Montreal and he interviewed Mr. Hilton, the hardware appraiser, in my presence; he showed the different parts of the sprinkler to Hilton, and informed him what his intentions were with regard to their manufacture. He also informed him by whom the different parts were made in the United States, and why they were manufactured out of the manufacture of the Providence Steam Pipe Company, of which he was president. He also told him he intended to manufacture a sprinkler in Montreal and that he had to do it in that manner to protect his Canadian patent. Hilton looked at the different parts of the sprinkler which were shown to him and he told him how to enter them, and his directions were followed by his broker, Davis, in making the entry. I believe that Mr. Grinnell showed a sprinkler all finished, but I am positive he showed him all the parts and how to put them together to make a perfect sprinkler. There was no trouble about the first shipment just mentioned. More shipments were made during the same year in the same manner without any trouble. The sprinklers were all made up and constructed and it was only after this that the customs seizure was made by Messrs. Wolff and Grose, during the following summer or fall. They asked for the key and took possession of the place; they applied for my correspondence with the Providence Steam Pipe Company and got it as I happened to be out at the time. My clerk gave it. I am not aware that I have any correspondence now with Mr. Grinnell with reference to the matters at issue in this case; the officer saw the whole correspondence I had with him or the company.

Cross-examined by *William D. Hogg*, Esq., barrister, on behalf of the plaintiff, to whose questions deponent answers as follows:—

The first entry was made after our interview and visit with Hilton. It was during the carnival of 1884, or thereabouts. I saw Hilton in

his own office at the examining warehouse in the customs building. Mr. Grinnell and I were the only ones present. I introduced Grinnell to Davis as a broker, and Grinnell explained the business to Davis which he wanted him to do for him. Mr. Hilton, after hearing the explanations of Grinnell, told him the classification for customs duties under which the entry should be made, and told him the rate of duty at which the material would be charged. The explanations which Mr. Grinnell gave, as I remember, were full and clear and sufficient to obtain from Mr. Hilton the information which he, Grinnell, required. I have no doubt that throughout Mr. Grinnell acted in good faith. Our interview with Mr. Hilton lasted about ten or fifteen minutes. I think the interview was in the forenoon. Mr. Hilton seemed to take an interest in the explanation and understood what was said. And further deponent saith not, and the foregoing having been read over to him he declares it contains the truth and has signed.

It is true that Mr. Grinnell is an interested party, but Mr. Reaves is, as appears by the evidence, entirely disinterested, and Mr. Grinnell thus speaks of him :—

Q. Has Mr. Reaves, who was with you at the time of said interview or since, any interest in your sprinkler business or in the sprinkler business of the Providence Steam and Gas Pipe Company in the United States or Canada? A. Mr. Reaves had no interest either at that time or since, or any expectation, so far as I know, of any interest in any sprinkler business. My business intercourse with Mr. Reaves was purely and wholly in the nature of seeking information from an experienced business man in high standing in the city of Montreal, so that my matters might be attended to with the least expense and care on my part.

Q. Has he been your agent in Montreal charged with looking to your interest in that matter whenever you were not present there? A. He has been my agent, but without any compensation whatever except in the matter of the rent of his building and a small amount which I remitted him to cover his expenses to Ottawa.

And not the slightest imputation has been cast on the character of either Mr. Grinnell or Mr. Reaves, nor does there appear to have been anything in the manner in which these witnesses gave their evidence to discredit their testimony, and therefore we must assume them to be reputable and credible witnesses.

Now, how is this clear and most circumstantial account of the interview met? Simply by the *non mi ricorao* of Mr. Hilton. This is what he says :—

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John F. Hilton sworn. Examined by Mr. Hogg:—

Q. What is your occupation? A. Appraiser of hardware, port of Montreal.

Q. I suppose you have heard of this seizure? A. Yes.

Q. Did you ever see the boxes containing the parts of an automatic sprinkler like this (Grinnell's Ex. 6)? A. I could not say.

Q. Do you remember having an interview with Mr. Grinnell? A. I do not.

Q. Do you know Mr. Grinnell? A. No.

Q. Do you know Mr. Reaves of Montreal? A. Yes.

Q. Do you remember having an interview with Mr. Reaves? A. I could not say that positively; I think he called on me at one time.

Q. I suppose you have a great many interviews in your capacity of appraiser? A. A great many.

Q. It is stated by Mr. Grinnell in his evidence (counsel reads from evidence as to conversation by claimant with witness in company with Reaves). Do you remember these gentlemen showing you a box containing the parts of an automatic sprinkler? A. I do not.

His Lordship—Did you ever see those parts before the seizure? A. Never to my knowledge.

Q. Have you had long experience as appraiser in the customs? A. Yes.

Q. How many years? Between seven and eight.

Q. As appraiser of hardware? A. Yes.

Q. If these parts had been shown to you as you see them now, and the device explained to you, what would you say? A. I should say that the duty should be paid on the cost of the completed article manufactured in the United States, less the cost of putting it together in Canada.

Q. You have no recollection of stating to Mr. Reaves that it was to be entered as brass? A. No.

Q. If the parts had been shown to you, would it have been possible for you to have said so? A. I would not have made the answer that is there stated.

Q. You are sure of that? A. As certain as I can be of anything.

Q. What do you say now about the interview? I cannot recollect it now.

His Lordship—Have you no recollection of anything of the kind? A. No, my Lord.

Q. And what do you say would be the proper value for duty on these articles? A. The proper value would be 30 per cent. on the cost, as I have stated

Cross-examined by Mr. Girouard:—

Q If you were called upon to-day by an importer to make an entry of these goods you would tell him to enter it as the finished

article. Was not the tariff changed within a year or two? A. There has been no alteration in that respect.

(Counsel refers witness to clause 10 of the customs' tariff of 1885.)

Q. Is not that clause direct upon the point? A. Yes.

Q. Would you undertake to swear that you did not say to Messrs. Grinnell and Reaves to enter these goods as manufactured brass? A. I would not swear.

Q. Under what clause of the act of 1883 are you justified in telling them to enter the goods as finished brass? I should only give my decision upon the value and get at it as if the article was finished.

(Letter from J. F. Hilton, appraiser to the Collector of Customs).

APPRAISER'S OFFICE, CUSTOMS EXAMINING WAREHOUSE,
HARDWARE DEPARTMENT,
MONTREAL, 16TH FEBRUARY, 1885.

SIR,—I beg to return to you copy of letter from the Commissioner of Customs, which was contained in departmental file No. 235, referring to entries at this port of parts of Grinnell's automatic sprinklers. In reply to the statement by Mr. Grinnell that he, in company with Mr. G. Reaves, called upon me previous to the first entry for these goods, and presented samples of the different parts, explaining the purpose for which they were intended, and asked the status which they should take under the customs tariff, on which he was informed by me that he might enter them as manufactures of brass not elsewhere specified, and not as finished machines, or parts of finished machines, etc., I beg to say that at this time I have no recollection whatever of any such visit having been made by Mr. Grinnell or Mr. Reaves, and regret to say that I am unable to give Mr. Grinnell's statements either an explicit denial or confirmation. I consider it extremely unlikely, however, that I should have given such answers to Mr. Grinnell's enquiries as he states.

How can any court refuse to accept and act on the uncontradicted testimony of two such witnesses as Grinnell and Reaves, when the party with whom the interview is alleged to have taken place will not even deny the accuracy of Grinnell's and Reaves' statements, but simply says that he has "no recollection whatever of any such visit by Grinnell or Reaves, and that he is unable to give Mr. Grinnell's statements either an explicit denial or confirmation?" Under these circumstances, I think we are bound to find, as a matter of fact, that the statements of Grinnell and Reaves are

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true, and that all the parts of a sprinkler were shown to the appraiser, and the purpose for which they were intended explained to him, and that a sprinkler was shown to him with the parts put together, and that it was then decided that the articles were dutiable, and should be entered as manufacturers' brass, and not the slightest intimation given that they should be entered and pay duty as automatic sprinklers. If confirmation of the truth of Mr. Grinnell's and Mr. Reaves' statements was required, could stronger evidence be found than in the invoice submitted for entry, where the goods were described as "automatic sprinkler materials," and in the action of the customs authorities on those invoices in entering the goods as manufactured brass at the values set forth in the invoices? And in such a case as this, to whom could an importer apply with more propriety and confidence than to the appraiser of hardware?

The first shipment having been entered in that way and no question whatever raised, and the second in the same way and no question whatever raised, and the third shipment also made in the same way and no question raised, under such circumstances does it not look rather strange and, to say the least of it, a very harsh proceeding that the first intimation to Mr. Grinnell should be by a telegram on the 6th of January, 1885, that the customs authorities had seized all his sprinklers and tools for constructing the same which were in his building in Montreal? Apart from the question of harshness or hardship, with which we have really nothing to do, except that it would seem but right that when public officers undertake to act in such a harsh manner they should be well satisfied before they do, by such a summary proceeding, destroy the business operations of importers, that the law will justify their action, as I shall show it will not in this case, if the statement of Grinnell and Reaves in

reference to the interview with Hilton are true, was not the charge of smuggling completely answered and rebutted, as well as the charges of false and fraudulent invoices, evading duties by entering the goods below their proper value with intent to defraud the revenue, and of knowingly keeping and selling goods illegally imported? If this is not so let us consider the case on strictly legal grounds.

Let us see what the law is as to the construction of revenue laws.

The term "smuggling" has been defined to be

> The difference of importing prohibited articles, or defrauding the revenue by the introduction of articles into consumption without paying the duties chargeable thereon (1).
>
> It is a technical word, having a known and accepted meaning. It implies illegality, and is inconsistent with innocent intent. The idea conveyed by it is that of a secret introduction of goods with intent to avoid payment of duty (2).

Maxwell on Statutes (3) says:—

> Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction. It is presumed that the legislature does not desire to confiscate the property, or to encroach upon the rights of persons; and it is, therefore, expected that if such be its intention it will manifest it plainly, if not in express words, at least by clear implication and beyond reasonable doubt.

See per Bramwell L.J. in *Wells* v. *London, Tilbury, etc., Ry. Co.* (4); per Mellish L.J. in *Re Lundy Granite Co.* (5); per James L.J. in *ex parte Jones* (6); per *curiam* in *Randolph* v. *Milman* (7); *Green* v. *The Queen* (8); *ex parte Sheil* (9).

No doubt revenue laws are to be so construed as will most effectually accomplish the intention of the legislature in passing them, which simply is to secure the collection of the revenue. And it is clear that this

(1) McCulloch's Commercial Dictionary Vo. "Smuggling."
(2) U. S. *v.* Claflin, 13 Blatch, at p. 184.
(3) P. 346.
(4) 5 Ch. D. 130.
(5) L. R. 6 Ch. 468.
(6) L. R. 10 Ch. App. 665.
(7) L. R. 4 C. P. 113.
(8) 1 App. Cas. 513.
(9) 4 Ch. D. 789.

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intention of the legislature, in the imposition of duties, must be clearly expressed, and in case of doubtful interpretation the construction should be in favor of the importer; as said by Lord Cairns in *Cox* v. *Rabbits* (1):—

> My Lords, a taxing act must be construed strictly; you must find words to impose the tax, and if words are not found which impose the tax it is not to be imposed.

And by the same learned judge (Lord Cairns) in *Partington* v. *The Attorney General* (2):—

> I am bound to say that I myself have arrived without hesitation at the conclusion that the judgment ought to be affirmed. I do so both upon form and also upon substance. I am not at all sure that in a case of this kind—a fiscal case—form is not amply sufficient; because as I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the crown seeking to recover the tax cannot bring the subject within the letter of the law the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

What were the laws in force bearing on this case at the time these goods were imported? By the customs acts and tariff then in force, 46 Vic., ch. 12, it is enacted:—

> Section 68. Where any duty *ad valorem* is imposed on any goods imported into Canada the value for duty shall be the fair market value thereof, when sold for home consumption, in the principal markets of the country whence and at the time when the same were exported directly to Canada.
>
> Section 69. Such market value shall be the fair market value of such goods in the usual and ordinary commercial acceptation of the term at the usual and ordinary credit, and not the cash value of such goods, except in cases in which the article imported is, by universal usage, considered and known to be a cash article and so, *bonâ fide*, paid for in all transactions in relation to such article; and all invoices representing cash values, except in the special cases

(1) 3 App. Cas. 478. (2) L. R. 4 H. L. 122.

hereinbefore referred to, shall be subject to such additions as to the collector or appraiser of the port at which they are presented may appear just and reasonable to bring up the amount to the true and fair market value as required by this section.

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The only item in the tariff under which these goods could be entered, and a duty imposed, was under schedule A:—Goods subject to duty: brass, manufactures of brass not elsewhere specified, 30 per cent. *ad valorem*. And the 41st section of 46 Vic., chap. 12, 1883, provides that the person entering goods inwards shall deliver to the collector or other officer an invoice of such goods, showing the place and date of purchase and the name or style of the person or persons from whom the goods were purchased, and a full description thereof in detail, giving the quantity and value of each kind of goods so imported.

This being the law governing the case, what are the facts as applicable to the law? It is established beyond controversy that no Grinnell's automatic sprinklers, in a condition to be used as such, were imported into Canada; that to complete them required labor and skill in drilling, riveting, soldering and testing. The evidence on this point is as follows:—

Mr. Grinnell continues his evidence as follows:—

The sprinklers were constructed at No. 18 Hospital street, city of Montreal. They were constructed from pieces of stamped and punched and cast brass which were imported from the United States by me, which pieces were purchased of parties in the United States making a specialty of such work, and the construction in Canada consisted in putting these pieces together, doing a certain amount of mechanical work in the way of drilling and pinning and soldering necessary to constitute them a completed deviee. After so being constructed careful examination was made of them by a party expert in this work. They were also subject to a test by hydraulic pressure, by means of a force pump, to ascertain whether the castings were sound, and also whether the valve which is embodied in the sprinkler was correctly adjusted so as to be, and to remain, permanently water-tight. The sprinklers were then packed in suitable boxes for shipment to any desired point.

Q. Do you require workmen of some skill to properly put the said parts together and test the sprinklers? A. We do. We require

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men who are experienced in that work; men of more intelligence than the average mechanic, and men that are strictly to be depended upon in the matter of the care which it is necessary to exercise in determining whether those sprinklers when constructed are properly constructed.

Q. How many men did you employ in Montreal so to construct the said sprinkler? A. There were three men at work.

The witness Stone says:—

Q. For what purpose did you go to Montreal? A. For the purpose of manufacturing sprinklers.

Q. Which sprinklers? A. The Grinnell Automatic Sprinkler.

Q. What do you mean by manufacturing? A. Well, I did what work there was to be done on them.

Q. What did you do on them? A. Well, I had the drilling, and pinning, and the setting up, soldering and inspection of them, testing.

Q. Where was that done? A. 18 Hospital street, in the city of Montreal.

Q. In the same building as Mr. George Reaves? A. Yes, sir.

Q. Did you have tools there for that purpose? A. Yes, sir.

Q. Does exhibit No. 20 contain a list of said tools? A. Yes, sir; I should say it did.

Q. You had a fire in the place? A. Yes, sir.

Q. You produce, then, there the automatic sprinkler exactly as exhibit 13 is? A. Yes, sir.

Q. Before producing the automatic, did you make what may be called the open sprinkler, as exhibit 12? A. Before producing the automatic I had to make it exactly as exhibit No. 12—that is the open sprinkler and after that I added the automatic feature and it became exhibit 13.

Q. You soldered the automatic, too? A. Yes, sir, I soldered the automatic and put together the other parts.

Q. Those parts were coming where from? A. They were coming from Providence.

Q. And shipped to Montreal? A. Yes, sir.

Q. Did you have anything to do with the preparation of the entry in the custom house in Montreal. A. I went there several times to get them.

Q. But you had nothing to do with the preparation of the necessary papers? A. No, sir.

Q. Do you know who it was done by? A. I think Mr. Reaves attended to that.

Q. After putting together the said parts, what did you do to ascertain that the automatic sprinkler was perfect? A. We had a testing machine there.

Q. Could it become a perfect sprinkler till then? A. No, sir.

Q. And that was done in Montreal? A. Yes, sir.

Q. Without being tested, what did it amount to? A. Well, it would amount to considerable, probably, if we put them up, and if they proved defective it would be a serious loss.

Q. It is an impossibility to use the sprinkler without testing it? A. Yes, sir, I should say it was.

It was shown that 10 or 15 per cent. of the materials imported proved unfit for completing the sprinklers and making them fit for use and had to be reshipped to the United States as scrap brass. It was equally well established that the materials of parts of the sprinklers, with a view of being put together and completed in Canada, were purchased from two different and independent manufacturing establishments, neither of which manufactured all the parts belonging to the sprinklers; that the prices charged by these manufacturers, respectively, were the proper and fair market values, honestly invoiced, and were entered in accordance therewith, the separate invoices forming a portion of the entries as showing clearly what was purchased from the one and from the other, and the prices paid therefor. There was no item of the tariff imposing either a specific or *ad valorem* duty on automatic sprinklers; if there had been then the observation of Taney C.J. in *Karthaus* v. *Frick* (1), would be applicable. He says: "The charge of a specific duty upon an article in a particular form or vessel is a charge upon the whole article as described, including the vessel or material described as containing it!"

We have seen that the item of the tariff under which these goods could be entered and a duty imposed was under schedule A—Goods subject to duty: Brass—Manufactures of brass not elsewhere specified, 30 per cent. *ad valorem*. Let us carefully examine these invoices and entries, and see whether they are or are not the invoices and entries contemplated by the act.

(1) Taney's Reps. 96.

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The first invoice is 2th February, 1884, and is as follows:—

(His Lordship here read the invoice, exhibit No. 20, page 13 of the case, of tools sent to Montreal and shipped to Grinnell by the Providence Steam and Gas Pipe Company, Providence, R.I., dated at Providence, Feb. 1st, 1884, and signed by F. H. Maynard, secretary of the company. Also exhibit 15, an invoice of a number of pieces of punched brass, with the weights, and of lead, dated 17th January, 1884, shipped by the Gorham manufacturing company to Grinnell. Next exhibit 19, an invoice of brass bodies and other articles, from the Providence Steam and Gas Pipe company to Grinnell. Next exhibit 31, the entry of these goods dated 12th February, 1884, being report No. 15109 and entry No. 32072, the value for duty being $366 and the duty 105.55, with the affidavits of Grinnell and of his agent J. Kinleyside attached. Next exhibit 9 A, invoice of brass bodies, etc., from the Providence Steam and Gas Pipe company dated 6th March, 1884, amounting to $215.25. Then exhibit 16, invoice of punched brass and lead from the Gorham Manufacturing company, dated 10th March, 1884, $83,76. Then exhibit 32, entry of the last two invoices dated 25th March, 1884, being report No. 19139 and entry No. 38074. Value for duty in dollars $299, duty $89,70, with the same affidavits as the former entry, made by Charles A. Stone and J. Kinleyside. And lastly, exhibit 18, invoice from the Providence Company of brass bodies, punched brass, etc., amounting to $614.74, and dated 19th August, 1884, and exhibit 30 entry of the same dated 30th August, 1884, being report No. 5055 and entry No. 9481. Value for duty $615 and duty $184,50 with a similar affidavit by J. Kinleyside.)

It has not been attempted to be controverted that for the parts Grinnell purchased from the Providence Steam and Gas Pipe company, and the Gorham Manu-

facturing company, respectively, he paid the prices at which they were supplied to him, and that for those articles he was charged the fair market price or value, and that at those prices he entered the goods. The evidence on this point is as follows :—

Q. For that purpose, I believe, Mr. Grinnell, you imported into Canada certain parts, and you will please state what parts and from whom? A. I imported all of the parts necessary to construct the automatic sprinkler in Canada. A certain part of the sprinkler known as the body of the sprinkler was furnished to me by the Providence Steam and Gas Pipe company, partially finished; the remaining parts of the sprinkler, which consisted of the punched or stamped brass, I obtained from the Gorham Manufacturing company for two shipments, and from the Providence Steam and Gas Pipe company the same material which they had previously purchased of the Gorham company, and imported all of these parts into Canada for the purpose of constructing the automatic sprinkler.

Q. The entries in the custom's in question in this cause, I believe, refer to those very importations of parts? A. Yes, they do.

Q. At what price did you get the said parts from the said parties; was it the usual market price? It was the usual market price so far as the market price had ever been established for such pieces.

Q. Did you get the said parts from the Gorham company at the same price they were selling the same to other parties? A. I did; I obtained them at the same price. They were selling them to the Providence Steam and Gas Pipe Company, who were the only parties purchasing these particular pieces.

Q. Now, could you tell at what price you got the parts that were manufactured by the Providence Steam and Gas Pipe Co.; was it a fair market price? A. It was.

Q. Upon what basis did you place that market price? A. The Providence Steam and Gas Pipe Company's account of the cost of this work was taken, and a fair margin of profit was added to the cost of the part they furnished.

Q. You made the entries in the Custom house in Montreal, or caused them to be made? A. I attended personally to part of the proceedings of entering the first invoice; the remaining part of the work was done by an authorized broker in Montreal, to whom I was introduced by Mr. Reaves.

Q. Were the said entries made upon the prices you paid to the said concern? A. They were on invoices that were sworn to by representative officers of each of these concerns before the British consul here in Providence.

Q. Can you tell to-day whether, by error or other cause or causes,

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there was any mistake or omission in the said entries or value of said parts? A. No error; none whatever, to my knowledge.

Q. Were they done in good faith? A. Entirely in good faith.

I do not understand that it is contended that the invoices submitted were not *bonâ fide* and truthful; if it is the evidence of Mr. Grinnell is direct, and I am bound to believe, and do believe, in the absence of any evidence to the contrary, that what he says is strictly true. He says, in answer to the question:

Q. Have you personal knowledge of the invoices furnished on your behalf with the Department of Customs in Montreal in connection with this case? A. I have.

Q. Are they correct and true? A. They are.

Q. Genuine? A. They are.

Q. Are they according to facts? A. They are.

Q. In good faith? A. They are.

Q. Will you say the same thing about the letters coming either from you or from the Providence Steam and Gas Pipe Co., filed in this matter? A. I do; they were all written in good faith and in the strict line of honest business correspondence, and contain the facts in every particular. The same is to be said of my correspondence with my counsel, Mr. Girouard, wherein I set forth the facts in relation to this whole matter for his instruction.

The invoices, then, having been duly produced, and the articles correctly described and *bonâ fide* entered at the prices paid for them at the place from which they were imported, how can it be said that any of the counts of the information can be sustained? What other invoices could the claimant have produced or the collector accepted? Were they not in the very terms of the statute? How can it be said that the goods were undervalued, when they were valued at the prices paid for them by the importer in the market where he bought them? How otherwise can their market value be established than by showing the market value of the article at the place of production, and the fair, *bonâ fide* amount there paid? It being always borne in mind that at the time these articles were imported there was no law applicable to this case authorizing the imposition of the same rate of duty when imported in Canada

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in separate parts as there is now by the statute 48 Vic., ch. 61, which declares as follows:—

Customs and Excise acts amended—48 Vic., cap. 61.

12. When any manufactured article is imported into Canada in separate parts, each such part shall be charged with the same rate of duty as the finished article, on a proportionate valuation, and when the duty chargeable thereon is specific, or specific and *ad valorem*, an average rate of *ad valorem* duty, equal to the specific and specific and *ad valorem* duty so chargeable, shall be ascertained and charged upon such parts of the manufactured article.

and which was re-enacted by 49 Vic., cap. 32, sec. 11.

What is now desired to be accomplished seems to me an endeavor to give a retroactive operation to this section which, instead of showing a retroactive operation, may fairly be said to indicate that until this clause was enacted there was no justification for the imposition of duties on parts of articles proportionate to the finished article, and I am much inclined to think that it was in this view that Mr. Hilton considered that it was right that the duty should be imposed on the material as imported, and not on the finished article which clearly was not imported; and in giving his testimony I am inclined to think he had in his mind the then state of the law, and not what it was when the goods were imported. This enactment would seem to be a legislative declaration that, until the passing of these acts of 48–49 Vic., and 49 Vic., there was no law to justify the imposition of duty on imported parts of manufactured articles in reference to the value of the finished article. In *Morris* v. *Mellin*, (1) Edward Holroyd *amicus curiæ*, suggested that the statute 7 G. 4, c. 57, s. 33 was a legislative declaration that the provisions of the statute 3 G. 4 c. 39 did not extend to the assignees of an insolvent debtor.

Littledale J.

The statute of 7 G. 4 c. 57 s. 33 recites that it was expedient to extend the provisions of the statute 3 G. 4 c. 39, and enacts that the last mentioned act shall extend to the assignee of every prisoner who shall, within the time therein mentioned, apply

(1) 6 B. & C. 455.

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to the insolvent court for his discharge from confinement, as if the last mentioned act had been expressly therein enacted; and it then declares that all warrants of attorney, etc., etc., which, by the last mentioned act, were declared to be fraudulent and void against the assignees of a bankrupt, shall be deemed fraudulent and void against the assignees of an insolvent debtor. This, as it seems to me, is a legislative declaration that the statute 3 G. 4 c. 39 did not make such instrument void against the assignees of an insolvent debtor. Upon the whole, I think that this rule ought to be discharged.

And in *Bennett* v. *Daniel* (1) Lord Tenderten C. J., recognized *Morris* v. *Mellin* as good law.

Where, then, is the evidence in this case to support the charges of smuggling, false invoices, false and fraudulent undervaluation, or of knowingly keeping and selling goods illegally imported? I cannot discover it. Therefore, on the law and the facts, apart from the conduct and declarations of Hilton and the action of the Customs officials in passing the goods with full knowledge of all the circumstances connected with their importation which, in the absence of any evidence to the contrary, it is to be presumed they must have had through Hilton, I think the crown has failed to establish any breach of the revenue laws as alleged in the information, and the appeal must be allowed with costs and the information dismissed with costs.

STRONG J.—I am of opinion that the judgment of the Exchequer Court cannot be sustained. The statute of 1885 introduced, for the first time, the principle of valuing manufactured component parts of a manufactured article according to the proportions they bear to the market value of the completed article for purposes of home consumption. Previous to that amendment of the law there could have been no valuation of these pieces of brass, intended to form component parts of these sprinklers, except according to their actual separate value as pieces of manufactured brass, as they were, in fact, valued. Then, if they were entered and

(1) 10 B. & C. 506.

valued according to law there can be no question of an intention to evade the revenue. Sprinklers, as completed articles, never were, in fact, imported, and these pieces of brass never had existed as sprinklers before their importation. Therefore, the crown does not establish that there was an importation of automatic sprinklers in detached pieces, but it is simply a case of the importation of manufactured pieces of brass which were, it is true, intended to constitute parts of automatic sprinklers to be formed out of them after importation when, for the first time, the different pieces were to be adjusted to each other. The case of a watch or a carriage completed abroad, then taken to pieces and imported in separate parts, is wholly different, and the same may be said of the case where the several parts, without being actually put together previous to importation so as to form one whole, are yet so identified with the one specific whole which is to be formed out of them that they are appropriated to one particular instrument or machine, and to no other; in such circumstances it may well be said that there is an importation of a particular machine in parts, but in the present case there was nothing resembling this.

It is, of course, a rule that a statute cannot be evaded by doing indirectly that which it forbids to be done directly. But this rule is not to be extended so as, by implication, to bring within the statute a case not provided for nor in the contemplation of the legislator, even though, owing to its omission, parties may be enabled to contravene the policy of the act and to do, though not in the way prohibited by the act, that which it was the object of the legislature to prevent. In order to bring a case within the purview of a statute the language in which the law is expressed must be sufficiently comprehensive to include the alleged infraction. In other words, it is no evasion of

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an act of Parliament, in a legal sense, to do that which may tend to prevent the attainment of the end which the legislature had in view, provided parties keep outside the provisions of the statutes (1). If any authorities are wanting for this principle of construction two strong instances in which it was recognized and applied in recent times are afforded by the cases of *Wilson* v. *Robertson* (2), and *Deal* v. *Schofield* (3).

I think the present was *casus omissus* in the customs and tariff laws until express provision was made for it by the act of 1885. Indeed, the very circumstance that such an act was considered necessary and was passed implies that the previously existing state of the law contained no provision applicable to the importation of such articles otherwise than as manufactured brass.

The judgment of the Exchequer Court should be reversed with costs, and the claim of the appellant to a release of the goods allowed with costs.

FOURNIER J.—I entirely agree with the judgment of the Chief Justice in this case.

TASCHEREAU J.—I would allow this appeal with costs, and dismiss the information with costs, for the reasons given by the Chief Justice.

GWYNNE J. took no part in the judgment.

Appeal allowed with costs.

Solicitors for appellant: *Girouard, Delorimier & Delorimier.*

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

(1) See Maxwell on statutes, page 142.

(2) 4 E. & B. 923.

(3) L. R. 3 Q. B. 8.