THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE (*Mis-en-Cause*) ..... APPELLANT;

AND

INDUSTRIAL ACCEPTANCE CORPORATION LIMITED (*Petitioner*) RESPONDENT.

1958

*Jun. 17
**Oct. 7

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

*Revenue—Customs—Breach of Customs Act—Automobile seized—Whether interest of assignee of conditional sale agreement affected—Evidence—Customs Act, R.S.C. 1952, c. 58.*

The respondent was the assignee of the conditional sale agreement of a car, title to which was to remain in the vendor until the price had been paid in full. When the car was seized by the R.C.M.P. for a breach of the *Customs Act*, the respondent took proceedings, pursuant to s. 166 of the Act, for a declaration that its interest in the car was not affected by the seizure. The petition was granted with costs by the trial judge and by the Court of Appeal. The Crown appealed to this Court.

*Held:* The appeal should be dismissed, but the order as to costs should be deleted from the judgments below. The respondent was entitled to a declaration that its interest in the car had not been affected by the seizure.

*Per* Taschereau, Fauteux and Abbott JJ.: Under s. 166(5) of the Act, the claimant becomes entitled to an order that his interest is not affected by the seizure once he has shown, to the satisfaction of a judge, that he did, at the relevant time, exercise all reasonable care to satisfy himself that the vehicle was not likely to be used contrary to the Act.

*PRESENT: Kerwin C.J. and Taschereau, Cartwright, Fauteux and Abbott JJ.

**The Chief Justice, owing to illness, took no part in the judgment.

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The condition precedent to the right to obtain the relief is precisely that a positive and specific inquiry, as to whether there are reasons to suspect such a likelihood, was made and negatived any reason for such suspicions. What that inquiry should be to satisfy that standard of care is for the judge to appreciate in the light of the particular circumstances of each case. The judge, in this case, does not appear to have misdirected himself as to the law, and while, on the whole of the evidence, he might reasonably have reached a contrary conclusion, it cannot be said that his conclusion cannot be supported.

*Per* Taschereau, Cartwright, Fauteux and Abbott JJ.: The order as to costs should not have been made by the judge of the Superior Court, and hence should not have been confirmed by the Court of Appeal. The special jurisdiction conferred on the judge in the matter is exhausted once the application for relief has been heard and decided on the merits. A comparison of subs. (5) with subs. (6) makes it clear that Parliament has not seen fit to provide for the imposition of costs by the judge of the Superior Court.

*Per* Cartwright J.: The Act imposes upon any lien-holder the duty of using all reasonable care to satisfy himself that the vehicle is not likely to be used contrary to the provisions of the Act. The standard of conduct required by the statute is that of the reasonable man. It cannot be said that the Courts below have erred in holding that the respondent used all the care which a reasonable man would have used in the particular circumstances.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], affirming a judgment of Desmarais J. Appeal dismissed.

*G. Favreau, Q.C.*, and *P. M. Ollivier*, for the appellant.

*E. Veilleux, Q.C.*, for the respondent.

The judgment of Taschereau, Fauteux and Abbott JJ. was delivered by

FAUTEUX J.:—This is an appeal, with leave of this Court, from a judgment of the Court of Appeal[1], for the Province of Quebec, affirming an order, made by Desmarais J. of the Superior Court under what is now s. 166 of the *Customs Act*, R.S.C. 1952, c. 58, declaring that the interest of respondent, in a motor vehicle seized as forfeited under this Act, is not affected by the seizure and granting, with costs against appellant, respondent's application for such an order.

The first submission on behalf of appellant is stated as follows:

The Court of Queen's Bench (Appeal Side) has erred in law in assuming that, so long as the vendor had no reason to suspect at the time of the sale that the vehicle now under seizure would be used for illegal purposes,

[1] [1957] Que. Q.B. 284.

the Finance Company now claiming under Section 179 of the Customs Act had no obligation to make a positive enquiry as to the likelihood of said vehicle being used contrary to the Act.

For the consideration of this point, reference was made to what was said by Taschereau J., with the concurrence of the other members of the Court of Appeal[1]:

> Dans mon opinion, la loi ne peut exiger et n'exige pas qu'un acheteur de contrat de vente conditionnelle d'automobile soit obligé, à moins d'avoir des soupçons sérieux, lors de chaque achat, de faire des enquêtes qui forceraient les compagnies, d'après M. Chevrier, à faire six ou sept cents téléphones par jour. De plus, ces compagnies s'exposeraient à ce que des clients, parfaitement honnêtes, soient froissés par de telles enquêtes.

As construed by counsel for the appellant, this language would indicate that, in the views of the Court below, the obligation to inquire arises only if and when there are serious suspicions that the vehicle sold is likely to be used contrary to the provisions of the Act. If this be a proper interpretation, I must say, with deference, that the law in the matter was not accurately stated. Under subs. (5) of s. 166 of the Act, the claimant becomes entitled to an order that his interest is not affected by the seizure, once he has shown, to the satisfaction of the Judge, that he did, at the relevant time, exercise all reasonable care to satisfy himself that the vehicle was not likely to be used contrary to the provisions of the Act. The condition precedent to the right to obtain the relief is precisely that a positive and specific inquiry as to whether there are reasons to suspect such a likelihood, was made and negatived any reason for such suspicions. The fact that such an inquiry might offend the person who is the subject thereof cannot minimize the obligation to make it.

On this ground, however, appellant cannot succeed for this inaccurate view of the law was not taken, in first instance, by Desmarais J.

The second submission in support of the appeal is that:

> The Court of Queen's Bench (Appeal Side) has erred in law and in fact in holding that, at all events, the burden imposed upon claimant Finance Company by Section 179 (now s. 166) of the Customs Act has been legally and sufficiently discharged by the latter relying on the vendor's general knowledge of the purchaser, on the said purchaser's answer that he had no criminal record, and on the general statement of another finance company that its experience with the purchaser had been good.

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What, in each of the cases, the inquiry should be to satisfy the standard of care set forth in subs. (5) of s. 166, is for the Judge before whom relief is claimed to appreciate in the light of the particular circumstances of the case under consideration. It is obvious that the nature and extent of such inquiries will differ widely in various cases and that no general rule can be laid down as to what they must consist of. In the present case, the appellant urged that, had respondent communicated with the local detachment of the R.C.M.Police, he would have learned that the purchaser had been recently convicted of an offence under the Act, and that, having failed to do so, he could not be said to have taken all reasonable care. It may very well be that in certain areas and under certain circumstances, the specific and positive inquiries to which I have referred should include an inquiry of the police or some other public authority; but such procedure cannot be held to be necessary in all of the cases to satisfy the standard of care described in the enactment.

In the case at bar, Desmarais J., as already indicated, does not appear to have misdirected himself as to the law; and while, on the whole of the evidence, he might reasonably have reached a conclusion contrary to the one he adopted, I am unable to say that the latter cannot be supported.

The third and last submission is that:

> The Court of Queen's Bench (Appeal Side) erred in law in affirming the decision of the Judge of the Superior Court to the effect that Appellant has to bear the costs of the proceedings before the Superior Court, inasmuch as Section 179 (now s. 166) of the Customs Act, although authorizing a Judge of that Court to make the Order declaring the applicant's interest in a vehicle, and although providing for the procedure to be followed in this respect, does not provide for costs to be imposed either in favour of or against the Crown, at that stage.

Admittedly, the vehicle was legally seized as forfeited under the Act. The relief claimed by respondent is of an exceptional and statutory nature. The special jurisdiction conferred in the matter, by Parliament, to a Judge of the Superior Court, is exhausted, in my view, once the application for relief has been heard and decided on the merit. Parliament has not seen fit to provide for the imposition of costs in the matter. That there was no intention of Parliament to allow the rule governing as to costs in ordinary procedure, under the *Code of Civil Procedure,* to

obtain on an application made under subs. (5) of s. 166, is made clear when the terms of this subsection are contrasted with those of subs. (6) of s. 166, providing for a right of appeal from an order given under subs. (5) and which, in part, enacts that ". . . the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the Court of Appeal from Orders or judgments of a Judge".

I agree that the order as to costs should not have been made by Desmarais J. and should not, consequently, have been confirmed, as it has been, by the Court of Appeal.

Under these circumstances, I would vary the order made by Desmarais J. by deleting the order as to costs, and dismiss the appeal against the order that respondent's interest in the vehicle is not affected by the seizure; and considering that both parties to the appeal succeed in part only, there should be no costs here or in the Court of Appeal.

CARTWRIGHT J.:—This is an appeal from a judgment of the Court of Queen's Bench (Appeal Side)[1] affirming a judgment of Desmarais J. declaring, pursuant to what is now s. 166 of the *Customs Act*, R.S.C. 1952, c. 58, hereinafter referred to as "the Act", that the interest of the respondent in an automobile, which had been seized under the provisions of the Act, was not affected by such seizure.

On May 20, 1953, Roland Blais, an automobile dealer at Lennoxville, sold a 1950 model car to Luc Routhier under a conditional sale agreement, by the terms of which the title to the car was to remain in the vendor until the price was paid in full. The price, including charges for interest and insurance, was $982.30; of this $300 was paid in cash leaving a balance of $682.30. On the same day Blais assigned the agreement and all his rights thereunder to the respondent and guaranteed payment of the balance.

Routhier was unknown to the respondent but the latter had done business with Blais since 1946 and their relationship had been satisfactory. In answer to inquiries Blais told Chevrier, the assistant manager of the respondent, that he had known Routhier since 1946, and that the latter had never been convicted of any offence. Chevrier then inquired of an officer of the Traders Finance Company

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and was told that Routhier had had dealings with that company, that its experience with him had been good and that he had paid well. The respondent made no other inquiries.

On July 3, 1953, the car in question was seized by police officers as Routhier had used it to commit an offence under the Act. It was conceded that the respondent was innocent of any complicity in the offence which resulted in the seizure or of any collusion with Routhier in relation thereto; but the appellant contended that it did not appear that the respondent had fulfilled the obligation resting upon it under clause (b) of subs. 5 of s. 179 (now s. 166) of the Act. This subsection reads as follows:

(5) Where, upon the hearing of an application, it is made to appear to the satisfaction of the judge

(a) that the claimant is innocent of any complicity in the offence resulting in such seizure or of any collusion with the offender in relation thereto, and

(b) that the claimant exercised all reasonable care in respect of the person permitted to obtain the possession of such vessel, vehicle, goods or thing to satisfy himself that it was not likely to be used contrary to the provisions of this Act, or, if a mortgagee or lien-holder, he exercised such care with respect to the mortgagor or lien-giver,

the claimant shall be entitled to an order that his interest be not affected by such seizure.

In fact, although it was unknown to the respondent or Blais or the Traders Finance Company, Routhier had been convicted on October 2, 1952, of having possession of cigarettes illegally imported into Canada and had been fined $52 and costs. The main contention of the appellant was that the respondent should have made inquiries of the police as to whether Routhier had ever been convicted and that, not having done so, it had not exercised all reasonable care in respect of Routhier to satisfy itself that the car was not likely to be used contrary to the provisions of the *Customs Act*.

The learned trial judge was satisfied that the respondent had exercised all reasonable care in the circumstances and the members of the Court of Queen's Bench were unanimously of the same opinion.

In my opinion the Act imposes upon any lien-holder, who permits another to obtain possession of the vehicle on which he holds a lien and who desires to avail himself

of the protection afforded by s. 166 of the Act, the duty of using all reasonable care to satisfy himself that the vehicle is not likely to be used contrary to the provisions of the Act. The standard of conduct required by the statute is, I think, the same as that required by the common law of a person under a duty to take care, i.e., that of the reasonable man.

The question in the case at bar appears to me to be whether we can say that the courts below have erred in holding that the respondent used all the care which a reasonable man, mindful of his duty under the Act, would have used in the particular circumstances. In dealing with this question it is helpful to recall the often quoted passage in the judgment of Lord Macmillan in *Glasgow Corporation v. Muir*[1]:

> The standard of foresight of the reasonable man is, in one sense, an impersonal test. It eliminates the personal equation and is independent of the idiosyncrasies of the particular person whose conduct is in question. Some persons are by nature unduly timorous and imagine every path beset with lions. Others, of more robust temperament, fail to foresee or nonchalantly disregard even the most obvious dangers. The reasonable man is presumed to be free both from over-apprehension and from overconfidence, but there is a sense in which the standard of care of the reasonable man involves in its application a subjective element. It is still left to the judge to decide what, in the circumstances of the particular case, the reasonable man would have had in contemplation and what, accordingly, the party sought to be made liable ought to have foreseen. Here there is room for diversity of view, as, indeed, is well illustrated in the present case. What to one judge may seem far-fetched may seem to another both natural and probable.

Counsel for the appellant contends that a reasonable man in the position of the respondent would have had in contemplation, notwithstanding the reports received from Blais and from the Traders Finance Company, that Routhier might well have been likely to use the car in contravention of the Act, and should therefore have made further inquiries, particularly from the police, before allowing Routhier to have possession of the car. I do not say that this is an impossible view, but my inclination is to disagree with it, and I find myself unable to say that the courts below were in error in arriving at the unanimous conclusion that it should be rejected. It follows that I would dismiss the appeal.

[1] [1943] A.C. 448 at 457, [1943] 3 All E.R. 44, 112 L.J.P.C. 1.

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There remains the question whether Desmarais J. had jurisdiction to order the respondent, who represents the Crown, to pay the costs of the application. On this question I agree with the reasons and conclusion of my brother Fauteux.

In the result the appellant succeeds on the question as to the order as to costs which Desmarais J. should have made but fails on the main issue as to whether the respondent was entitled to an order that its interest in the automobile be not affected by the seizure. In these circumstances I would be inclined to give the costs in the Court of Queen's Bench and in this Court to the respondent, but, as the other members of the Court take a different view, I concur in the disposition of the appeal proposed by my brother Fauteux.

*Appeal dismissed subject to a variation; no costs.*

*Solicitor for the appellant: W. R. Jackett, Ottawa.*

*Solicitors for the respondent: Blanchet & Peloquin, Sherbrooke.*