CONSOLIDATED DISTILLERIES LIMITED AND W. J. HUME (DEFENDANTS) } APPELLANTS;

AND

HIS MAJESTY THE KING (PLAINTIFF) ... RESPONDENT.

(TWO APPEALS)

1931
*Oct. 28, 29.
1932
*Mar. 15.

CONSOLIDATED DISTILLERIES LIMITED AND F. L. SMITH (DEFENDANTS) } APPELLANTS;

AND

HIS MAJESTY THE KING (PLAINTIFF) ... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Revenue—Excise and Customs Act—Bond—Interest—Jurisdiction—Exchequer Court Act, section 30—Ontario Judicature Act, section 34.

The actions are for the recovery of the amounts of bonds given by the appellants to the Crown in respect of liquors entered at a port for export, the form of bond being expressed to secure actual exportation to the place provided for in the entry and production of proof thereof, such as has been fully described and discussed in the case of *The Canadian Surety Co.* v. *The King* ([1930] S.C.R. 434). The appellants denied liability on the bonds and alleged that, in any event, the Crown could not recover interest, and that the Exchequer Court of Canada had no jurisdiction in the matter, the matter being one of contract and not one arising out of the administration of the laws of Canada and the provincial courts only having jurisdiction.

*Present at hearing: Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ. Newcombe J. took no part in the judgment, having died before the delivery thereof.

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Held that the Exchequer Court of Canada had jurisdiction to hear and determine the claims. It was competent for the Parliament of Canada, in virtue of the powers vested in it by section 101 of the *British North America Act*, to confer upon a court, created by it for "the better administration of the laws of Canada," authority to hear and determine such claims; and the Parliament has clearly intended to confer such jurisdiction on the Exchequer Court of Canada, the cases probably falling within clause (*a*), but clearly within clause (*d*), of section 30 of the *Exchequer Court Act*.

Held, also, that, under the circumstances of these cases, the full amount nominated in the bond is recoverable.

Held further, Anglin C.J.C. dissenting, that interest should only run from the date of the judgment of the trial court as, at no date prior to it, the penalty became payable as a "just debt" within the meaning of Lord MacNaghten's judgment in *Toronto Ry. Co.* v. *City of Toronto* ([1906] A.C. 117).

Section 34 of the Ontario *Judicature Act* should not be regarded as dealing merely with a matter of procedure; it deals also with important matters of substantive law.

Judgment of the Exchequer Court of Canada ([1931] Exc. C.R. 85) aff.

APPEALS by the appellants from the judgments of Maclean J., President of the Exchequer Court of Canada (1), holding that the respondent was entitled to recover from the appellants the amounts of certain bonds. One action was brought on seven bonds totalling $445,093, another action, on four bonds totalling $129,512, and a third one on one bond for $12,795. These bonds were given by the appellants to the Crown in respect of the export in bond of liquors on which the excise duties had not been paid and for interest at five per cent. per annum from the date of the bonds. The bonds were given pursuant to the provisions of section 68 of the *Inland Revenue Act* (1906) c. 51 (now known as *The Excise Act*) and the regulations of the Governor in Council made pursuant to sections 67 and 140. The goods covered by the bond had been deposited in an excise bonding warehouse under section 61 of the Act without payment of the duties imposed by the Act. The appellants denied any liability under the bonds and by an amendment made to their statement in defence pleaded that in any event the Exchequer Court of Canada had no jurisdiction to decide the matters at issue in the actions, and that the *Exchequer Court Act*, R.S.C. (1927) c. 34, in so far as it purports to give the Exchequer Court jurisdiction to decide the matter at issue between the parties to this

(1) [1931] Exc. C.R. 85.

action, is beyond the power of the Parliament of Canada to enact. The trial judge held that the Exchequer Court had jurisdiction to try these actions and that the respondent was entitled to recover on the bonds. The trial judge held also that the respondent was not entitled to interest on the bonds.

W. N. Tilley K.C. and *F. T. Collins* for the appellants.

N. W. Rowell K.C. and *Gordon Lindsay* for the respondent.

ANGLIN C.J.C. (dissenting as to cross-appeals).—I never entertained any doubt whatever as to the jurisdiction of the Exchequer Court in these cases to hear these appeals.

If authority to hear and determine such claims as these is not something which it is competent for the Dominion, under s. 101 of the *British North America Act,* to confer upon a court created by it for "the better administration of the law of Canada," I would find it very difficult to conceive what that clause in the B.N.A. Act was intended to convey.

That the Dominion Parliament intended to confer such jurisdiction on the Exchequer Court, in my opinion, is clear beyond argument, the case probably falling within clause (*a*); but, if not, it certainly is clearly within clause (*d*) of s. 30 of the *Exchequer Court Act.*

On the question of the construction of the bonds raised at bar, to my mind, a breach of the condition of each bond properly constituted has been equally clearly established. As to the amount recoverable, I agree with the contention of the Crown that the whole amount named in the bond must be paid by the defendants.

I was quite prepared to dismiss these appeals at the conclusion of the argument but, in deference to the wishes of some of my colleagues, judgment was reserved. That being so, I think it better to put in writing, as I have done very briefly above, my reasons for concurring in their dismissal.

I also agree in the view, which I understand to be that of the other members of the court, that the matter of interest is clearly a matter of substance and in no sense a matter of procedure. Interest should, in my opinion, be allowed the respondent from the date of default by the

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defendants in each case. From that date the claim of the Crown was for a liquidated amount and was a just debt, payment of which was improperly withheld (*Toronto Ry. Co.* v. *City of Toronto*) (1). As pointed out by my brother Duff, those who take the view that section 34 of the Ontario *Judicature Act* should be regarded as dealing merely with a matter of procedure are clearly wrong. Section 34 of that statute, like a number of other sections thereof, deals with important matters of substantive law.

I would dismiss the appeals and allow the cross-appeals, all with costs.

The judgments of Duff, Rinfret and Lamont JJ. were delivered by

DUFF J.—I find no difficulty in holding that the Parliament of Canada is capable, in virtue of the powers vested in it by section 101 of the *British North America Act,* of endowing the Exchequer Court with authority to entertain such actions as these. I do not doubt that " the better administration of the laws of Canada," embraces, upon a fair construction of the words, such a matter as the enforcement of an obligation contracted pursuant to the provisions of a statute of that Parliament or of a regulation having the force of statute. I do not think the point is susceptible of elaborate argument, and I leave it there.

As to the jurisdiction of the Exchequer Court, in so far as that depends upon the construction of the *Exchequer Court Act,* something might be said for the view that these cases are not within the class of cases contemplated by subsection A of section 30; but that is immaterial because they are plainly within subsection D.

The professed cancellation of the bonds was inoperative in point of law. The learned trial judge properly found that the documents, upon which the cancellation proceeded, were concocted documents, and that the conditions, under which alone cancellation is permitted by the regulations, never came into effect. Nor can I agree with Mr. Tilley's contention that the alternative condition has been performed. That condition is in these words:

(1) [1906] A.C. 117, at 120, 121.

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Or if the above bounden Consolidated Distilleries, Limited, shall account for the said goods to the satisfaction of the said Collector of Inland Revenue, then this obligation is to be void.

There is not the slightest ground for finding that the appellants did account for the goods to the satisfaction of the Collector.

As to the amount recoverable, I think the reasoning of Garrow B., in *The King* v. *Dixon* (1), is conclusive. That experienced lawyer had no doubt that where the breach of the condition occurs in such circumstances as to expose the parties concerned to a serious temptation to violate in a substantial manner the revenue laws and to provide an opportunity for doing so, the breach must be regarded as substantial, and the full amount nominated in the bond is recoverable. Here the bond is required by the regulations. It is to be in the "prescribed form" which, since there is apparently no form prescribed either in the statute or the regulations, I take to mean that it is to follow the form authorized by the departmental instructions. The purpose of the bond is to prevent frauds on the revenue. Where such is the purpose of the bond, generally speaking, the sum named is recoverable in full. The application of this principle is illustrated in two American cases cited by the Crown, in addition to the judgment already mentioned in *The King* v. *Dixon* (1). These cases are: *United States* v. *Ottery* (2), and *Clark* v. *Barnard* (3). Such bonds are to be distinguished from those in which the purpose of the bond is merely or mainly to secure the full payment of duties on imported goods, in other words, to secure the payment of money.

I have, indeed, some difficulty in affirming that the penalties named in these bonds were not in each case "a genuine pre-estimate of the creditor's probable or possible interest in the due performance of the principal obligation." *Clydebank Engineering and Shipbuilding Co., Ltd.* v. *Yzquierdo Y. Castaneda* (4).

As to interest, I think we must be guided by the decision of the Judicial Committee in *Toronto Railway Co.* v. *City of Toronto* (5). I am unable to agree with the learned

(1) (1822) 11 Price 204.
(2) (1894) 67 Fed. Rep. 146, at 152.
(3) (1883) 108 U.S. 436.
(4) [1905] A.C. 6.
(5) [1906] A.C. 117, at 120, 121.

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President that the subject-matter of section 34 of the Ontario *Judicature Act* is matter of procedure. A number of titles of substantive law are dealt with in that Act, and I have no doubt that section 34 falls within that category. On the other hand, I cannot accept the view advanced on behalf of the Crown that the latest date for performance of the alternative condition of the bonds was that suggested, namely, three months subsequent to the date of the exportation of goods from out of Canada. I do not think the provisions of the regulation in regard to cancellation control the period within which the appellants were entitled to perform this condition of the obligation, and I am unable to conclude that at any date prior to judgment the penalty became payable as a "just debt," within the meaning of Lord MacNaghten's judgment in the *Toronto* case (1). Effect must, therefore, be given to the general rule.

The appeals and cross-appeals should be dismissed with costs.

Appeals and cross appeals dismissed with costs.

Solicitors for the appellants: *Meredith, Holden, Heward and Holden.*

Solicitor for the respondent: *W. Stuart Edwards.*