

1907

\*May 7, 8.

\*May 23.

SPENCER BROTHERS (SUPPLIANTS), APPELLANTS;

AND

HIS MAJESTY THE KING .....RESPONDENT.

*Customs Act—Importation of cattle—Smuggling—Clandestinely introducing cattle into Canada—Claim for return of deposit made to secure release of cattle seized—Evidence.*

**APPEAL** from the judgment of the Exchequer Court of Canada(1) by which the appellants' petition of right was refused with costs.

The petition of right prayed for re-payment to the suppliants of a sum of money deposited by them to obtain the release of a number of cattle seized for infraction of the "Customs Act" and held by the Crown as forfeiture. The questions raised on the appeal depended almost entirely on the proper conclusions of fact to be drawn from the evidence.

The Supreme Court of Canada heard counsel on behalf of both parties and reserved judgment. On a subsequent day the appeal was dismissed with costs.

Notes of reasons for judgment were delivered as follows:—

GIROUARD J.—I agree with the learned judge of the Exchequer Court. The appeal should be dismissed with costs.

DAVIES J. concurred in the dismissal of the appeal.

\*PRESENT:—Girouard, Davies, Idington, Maclellan and Duff JJ.

(1) 10 Ex. C.R. 79.

IDINGTON J.—I see no reason to complain of the methods by which the learned trial judge has arrived at his conclusions.

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If the methods or mode of reasoning adopted by him be liable to produce results that would not be mathematically speaking exactly correct, he has allowed, or has at all events had, such a wide margin to spare that I see no reason whatever to doubt the absolute correctness of his conclusion.

In view of the heavy burthen of proof the law casts on the appellants, it would require, if not a clear mathematical demonstration, at least a great deal more cogent evidence than has been presented to us in argument, (and from the careful preparation thereof, no doubt all that could be presented has been presented,) to discharge that burthen and entitle us to set aside the conclusions of Mr. Justice Burbidge, supported as they are by a mass of evidence needless to dwell upon.

I think the appeal should be dismissed with costs.

MACLENNAN J. concurred in the dismissal of the appeal with costs.

DUFF J.—I have nothing to add to the reasons stated by Mr. Justice Burbidge, in the court below.

*Appeal dismissed with costs.*

*J. Lorne McDougall and Kilgour, for the appellants.*

*Chrysler K.C. for the respondent.*