HER MAJESTY THE QUEEN (PLAINTIFF) ..... } APPELLANT;

AND

THE CANADA SUGAR REFINING COMPANY (DEFENDANT)..... } RESPONDENT.

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*Mar 8.

*May 1.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Revenue—Customs duties—Imported goods—Importation into Canada—Tariff Act—Construction—Retrospective legislation—R. S. C. c. 32—57 & 58 V. c. 33 (D)—58 & 59 V. c. 23 (D).

By 57 & 58 Vict. ch. 33, sec. 4, duties are to be levied upon certain specified goods "when such goods are imported into Canada."

Held, reversing the judgment of the Exchequer Court, King and Girouard JJ. dissenting, that the importation as defined by sec. 150 of the Customs Act, (R. S. C. ch. 32) is not complete until the vessel containing the goods arrives at the port at which they are to be landed.

Section 4 of the Tariff Act, 1895, (58 & 59 Vict. ch. 23) provided that "this Act shall be held to have come into force on the 3rd of May in the present year, 1895." It was not assented to until July.

Held, that goods imported into Canada on May 4th, 1895, were subject to duty under said Act.

APPEAL from a decision of the Exchequer Court of Canada (1), in favour of the defendant.

The proceeding in this case was by the Crown on information of the Attorney General of Canada to recover an amount claimed to be due for duties on a cargo of sugar imported by the defendant company. The duty could only be levied, if at all, under the Tariff Act of 1895, which, by its terms, was to be held to be in force on May 3rd of that year. The vessel

*PRESENT :—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

(1) 5 Ex. C. R. 177.

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containing the sugar arrived at Montreal, where the goods were to be landed, on May 4th, having in April entered the port of North Sydney where the master reported according to the provisions of sec. 25 of the Customs Act, R. S. C. ch. 32.

By the Tariff Act in force at the time the duties were to be levied when the goods were imported into Canada, and by sec. 150 of the Customs Act such importation is to be deemed completed from the time when the vessel containing the goods came within the limits of the port at which they ought to be reported. The defendant company claimed that the latter provision referred to the report to be made under sec. 25 of the Customs Act, and that the vessel having been reported at North Sydney in April, the goods were not subject to duty under the Act which came into force on May 3rd. The Exchequer Court held this view and gave judgment against the Crown accordingly.

The defendant contended also, that the provision in the Tariff Act, 1894, bringing it into force on May 3rd, though it was not passed until July, did not apply to this importation. This contention was not dealt with by the Exchequer Court where it was not necessary to decide the point as the goods were held non-dutiable in any event.

The statutes bearing on the matter in dispute are set out in the judgment of His Lordship the Chief Justice.

Fitzpatrick Q.C. Solicitor General of Canada, and *Newcombe* Q.C. Deputy Minister of Justice, for the appellant, referred to *United States* v. *Arnold* (1); *Kohne* v. *Insurance Co. of North America* (2); *Wilson* v. *Robertson* (3).

Osler Q.C. and *Gormully* Q.C. for the respondent, cited Maxwell on Statutes (4); Hammill on Customs Laws, pp. 24-5.

(1) 1 Gallison 348.
(2) 1 Wash. Cir. C. 158.
(3) 4 E. & B. 923.
(4) 3 ed. p. 298.

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THE CHIEF JUSTICE.—This is an appeal from the judgment of the Court of Exchequer holding the respondents not liable to duties upon a cargo of raw sugar imported by the respondents in 1895. The proceeding in which the judgment was pronounced was an information by the Attorney General of the Dominion, and it sought to recover duties according to the tariff of 1895 upon 6,587,439 pounds of sugar.

The questions arising are two. First, as to whether the importation of these sugars was completed before the tariff of 1895 came into force. Secondly, as to the effect of the entry and subsequent delivery of the sugar to the respondents as free of duty by the officers of Customs at Montreal.

The sugar was shipped on board the steamer "Cynthiana," at Antwerp. The port of destination of the ship was Montreal. In the course of the voyage, however, the "Cynthiana" entered the port of North Sydney, in Cape Breton, which was not her port of destination, and in compliance with the requirements of section 25 of the Customs Act (R.S.C. ch. 32) there made to the collector of the port of North Sydney, a report in writing embodying the particulars specified in that section.

If this entry at North Sydney constituted an importation of the goods into Canada, then inasmuch as the amended Tariff Act under which the duties are claimed by the Crown, did not come into force until the 3rd of May, 1895, no duties were payable. The vessel, without discharging any portion of her cargo at North Sydney cleared from that port on the 29th April, 1895, for Montreal, her original port of destination, where she arrived on the afternoon of the 4th of May.

It does not appear for what purpose the ship went into North Sydney; there is nothing to show whether she called there for coal, for repairs, or in distress, but

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it is beyond question that it was not her port of destination, that port being Montreal.

The amended Tariff Act, 58 & 59 Vict. ch. 23, entitled, "An Act to amend the Customs Tariff, 1894," did not receive the Royal assent until the 22nd of July, 1895, but it contained a clause (according to the usual course adopted in the Dominion tariff legislation) giving retroactive effect to its provisions, as if it had been passed on the 3rd of May, 1895, on which day the resolutions on which the Act was founded were introduced.

The principal statutory provisions applicable to the questions in controversy are as follows: By section 4 of the Customs Tariff, 1894 (57 & 58 Vict. ch. 33), of which the Act of 1895 was an amendment, it is enacted as follows:

4. Subject to the provisions of this Act, and to the requirements of the Customs Act, chapter thirty-two of the Revised Statutes, as amended, there shall be levied, collected and paid upon all goods enumerated, or referred to as not enumerated, in schedule A to this Act, the several rates of duties of customs set forth and described in the said schedule and set opposite to each item respectively or charged thereon as not enumerated, when such goods are imported into Canada or taken out of warehouse for consumption therein.

The Tariff Act does not contain any definition of what shall constitute "importation."

The Customs Act (R. S. C. ch. 32) contains, however, the following clause (sec. 150):

Whenever, on the levying of any duty, or for any other purpose, it becomes necessary to determine the precise time of the importation or exportation of any goods, or of the arrival or departure of any vessel, 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; and the exportation of any goods shall be deemed to have been commenced from the time of the legal shipment of such goods for expor-

tation, after due entry outwards, in any decked vessel, or from the time the goods were carried beyond the limits of Canada, if the exportation is by land or in any undecked vessel; and the time of the arrival of any vessel shall be deemed to be the time at which the report of such vessel was, is or ought to have been made, and the time of the departure of any vessel to be the time of the last clearance of such vessel on the voyage on which she departed.

By section 25 of the same Act (The Customs Act):

The master of every vessel coming from any port or place out of Canada, or coastwise and entering any port in Canada, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the Customs House for the port or place of entry where he arrives, and there make a report in writing to the collector or other proper officer, of the arrival and voyage of such vessel, stating her name, country, and tonnage, the port of registry, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stowed loose, and where and to whom consigned, and where any and what goods, if any, have been laden or unladen or bulk has been broken during the voyage, what part of the cargo and the number and names of the passengers which are intended to be landed at that port, and what and whom at any other port in Canada, and what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board, as far as any of such particulars are or can be known to him.

The respondents contend that the report in section 25 being one which the master was bound to make on his arrival at North Sydney, there was then an arrival (though not at the port of destination) and a consequent importation at that port under section 150 of the Customs Act.

I unhesitatingly dissent from this contention. Section 31 of the Customs Act alone affords a conclusive answer to such contention. That section provides 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

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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 this Act, as the Governor General in Council from time to time directs.

And this is reinforced by section 4 of the Customs Tariff which says that:

Subject to the provisions of this Act and the requirements of the Customs Act, duties shall be collected, levied and paid upon goods when imported into Canada.

It is thus clear beyond argument that upon these goods destined for Montreal and laden upon a ship bound for that port, duties were not payable at North Sydney, but under section 31 were to be paid where the goods were to be landed, and where in fact they were landed, namely at Montreal. The collector at North Sydney could not legally have received the duties there. Then as section 4 of the Customs Tariff requires that the duties are to be levied when the goods are imported into Canada. and as under section 31 those duties in a case like the present where a vessel touches at a port of entry other than her port of destination, are to be paid at the latter port, by reading these two sections together we find it to be the intention of the legislature that the port at which the duties are to be paid is to be considered the place of importation, thus making it plain that the words of section 150 of the Customs Act "come within the limits of the port at which they ought to be reported" means "reported" for the purpose of levying the duties thereon.

The construction adopted by the court below would have the effect of making the duties payable by a vessel touching for any cause, at a port in Canada other than the port of destination of the cargo, payable at such port of call, which is directly contrary to section

31, or of making the importation precede the time at which the duties are payable, which is contrary to section 4 of the Customs Tariff. So that as the duties are to be paid when the goods are imported, and not before, the importation cannot precede the time at which the duties are payable; the obligation to pay the duties and the importing must be contemporaneous, and a construction which would make the importation precede the payment of duties is precluded.

Numerous American authorities, cases decided in the United States Courts, establish what is generally understood to be the place of importation for fiscal purposes. In the *United States* v. *Arnold* (1) Mr. Justice Story says "there must be arrival at the port of entry to make the right to duties attach. An importation has in many cases been held to mean 'a voluntary bringing into port of goods with an intent to land or discharge them.'" This case went to the Supreme Court on appeal and was there affirmed (2).

The following authorities are to the same effect: *Perot* v. *United States* (3); *Prince* v. *United States* (4); *United States* v. *Vowell* (5); *Meredith* v. *United States* (6); *Kolme* v. *The Insurance Co. of North America* (7); Elmes, Law of the Customs (8).

These American authorities are of course not of direct application in the construction of our Canadian statutes, but they serve to shew what eminent judges and courts have considered to be the proper and primary signification of the terms "imported" and "importation" and are therefore of force when we find the statutes which we have to deal with leading us to the same interpretation.

(1) 1 Gallison 353.
(2) 9 Cranch 104.
(3) 1 Peters C. C. Repts. p. 256.
(4) 2 Gallison 208.
(5) 5 Cranch 372.
(6) 13 Peters 486.
(7) 1 Washington C. C. 166.
(8) Ed. 1887, 134.

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The 4th section of the Act of 1895, "An Act to amend the Customs Tariff, 1894," expressly makes it retroactive to the 3rd of May, 1895; the words are: "This Act shall be held to have come into force on the 3rd of May in the present year 1895." There is therefore no principle upon which to avoid giving effect to this enactment which Parliament had of course full powers to enact. The authorities cited by Mr. Osler were cases in which the language was not express but it was sought by implication to make statutes retrospective, which will not of course be done when the language is clear.

We must, therefore, treat the statute as though it had passed on the 3rd of May. If the Act had been assented to on that date there cannot be a doubt that the illegal and unauthorized act of a subordinate officer of the Custom House at Montreal in accepting on the 2nd of May, before the arrival of the "Cynthiana" at Montreal, an entry of these sugars as free goods would not have had the effect of relieving the respondents from the payment of the duties when she actually arrived on the 4th of May. The collector was then perfectly right when in the performance of what he properly considered to be his duty he cancelled the entry.

The appeal must be allowed, and judgment entered for the Crown for the amount of the duties claimed.

GWYNNE J.—We must read the statute 58 & 59 Vict. ch. 23, under which, in connection with R. S. C. ch. 32, the question on this appeal arises, as if it had been passed on the 3rd May, 1895, and the sole question is whether goods shipped at Antwerp upon a vessel which cleared from that port for the port of Montreal, such goods being consigned to merchants in Montreal where the vessel arrived only on the 4th May, 1895,

were or were not liable to the duties imposed upon such goods by the above statute 58 & 59 Vict. ch. 23.

By sec. 4 of 57 & 58 Vict. ch. 33, it is enacted that subject to the requirements of R. S. C. ch. 32, duties shall be levied on all goods subject to duty,

when such goods are imported into Canada, or taken out of warehouses, for consumption therein.

Until importation is complete no duty is leviable, but upon importation the goods chargeable with duty become liable thereto.

By sec. 34 of R. S. C. ch. 33, it is enacted that *every importer* of goods by sea, or from any place out of Canada, shall within three days after the arrival of the *importing vessel make due entry* inwards of such goods and land the same.

Section 35 prescribes how such entry is to be made by the importer.

Section 36 enacts that unless the goods so entered are to be warehoused, as provided in the Act, *the importer* shall pay duty on the goods so entered.

Then section 150 enacts that:

Whenever on the levying of any duty, it becomes necessary to determine the precise time of importation of any goods, such importation if made by sea 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.

The language of this sec. 150 is as explicit as to the meaning of the words "importation" and "imported," as if they had been explained in an interpretation clause, and the effect is that importation of goods by sea into Canada is not effected until the vessel in which they are imported comes within the limits of the port *at which they ought to be reported*, that is to say the port to which they are consigned, and where they are intended to be landed, and where they must be entered at the Custom House by the

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importer under the provisions of sections 21, 34, 35, 36 and 37.

But it is contended by the respondents that the port "at which they ought to be reported," is by sec. 25, the port of entry in Canada into which a vessel first enters, although not cleared for that port from the port from which she was cleared on commencing her voyage.

That section as it appears to me relates to ports of entry for which the vessel has been cleared, and not to a port into which a vessel cleared for another port has for any cause entered. Secs. 30 & 31 seem to me to support this view, and sec. 162 provides for a vessel putting into a port of entry other than that for which she had cleared upon her voyage, by reason of damage sustained by stress of weather. Then again, there is nothing in the 25th section of the Act, or in any other section, indicating any intention of the legislature to provide for such a contingency as a vessel voluntarily entering a port in Canada different from that for which she had cleared on commencing her voyage. But whether the section be or be not limited to ports of entry for which vessels were by their clearance papers bound on their voyage, the report by that section required to be made is not at all the report referred to in sec. 150. The report to be made under sec. 25 is to be made by the master alone. The report under sec. 150 is of the goods imported which cannot be made by the master, but must be made by the importer under the secs. 21, 34 to 37, which sections could not be complied with if in the present case the goods in question should be deemed to have been imported into Canada when the vessel upon which they were shipped consigned to Montreal entered the port of North Sydney.

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I am of opinion, therefore, that the appeal must be allowed with costs, and judgment be ordered to be entered in the action for the Crown.

SEDGEWICK J.—I am of opinion that the appeal should be allowed.

KING J.—Though with very great doubt I am inclined to think the judgment of the Exchequer Court right.

GIROUARD J.—I am of the opinion that the judgment appealed from should be confirmed, for the reasons given by Mr. Justice Burbidge, and the appeal dismissed with costs.

Appeal allowed with costs.

Solicitor for the appellant: *E. L. Newcombe.*

Solicitors for the respondent: *Gormully & Orde.*