HIS MAJESTY THE KING (OPPOSANT) ..... } APPELLANT;

AND

CENTRAL RAILWAY SIGNAL CO. INC. (PLAINTIFF) ..... } RESPONDENT;

AND

CANADIAN NATIONAL CHEMICAL WORKS (DEFENDANT).

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*May 8, 9, 10.
*June 28.

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

Crown—Goods seized as forfeited under the Excise Act—Section 125—Goods situated in leased premises—Whether subject to seizure and sale for rent—Art. 1622 C.C.—Indemnity of the King from processual coercion in his own courts—Excise Act, R.S.C., 1927, c. 60, ss. 77, 79, 97, 116, 124, 125, 133, 181.

Goods seized as forfeited under the *Excise Act*, to which s. 125 of that statute applies, and in the possession of the Crown as such, in leased premises in the province of Quebec, are not subject to seizure at the instance of the landlord in proceedings by way of *saisie-gagerie* and to sale to satisfy the landlord's claim for rent.

Under a writ in the King's name, issued out of the Superior Court of the province of Quebec, goods which are the property of His Majesty and in the possession of His Majesty's officers cannot be seized and

*PRESENT:—Duff C.J. and Rinfret, Smith, Cannon and Crocket JJ.

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sold to satisfy a pecuniary claim of a subject.—Under the English law, the rule is absolute that no proceeding having for its purpose the issue of any process against His Majesty himself or against any of His Majesty's property is competent in any of His Majesty's courts; and there is nothing in the Quebec Act of 1774 (s. 8), in the two ordinances of 1777 establishing the courts of Quebec and regulating the proceedings in those courts or in the Civil Code or the Code of Civil Procedure, justifying an inference that there was any intention of in any way impairing such immunity of the sovereign from processual coercion in his own courts.

On the first point, Cannon J. stated further that these goods were *extra commercium* and therefore unseizable. He expressed no opinion on the second point which he deems unnecessary to decide the appeal.

APPEAL from the decision of the Court of King's Bench, appeal side, Province of Quebec, reversing, Tellier C.J. dissenting, the judgment of the Superior Court, P. Cousineau J. (1) and dismissing the demand made by His Majesty the King, by way of an opposition to withdraw, to enforce against the respondent, as lessor, the forfeiture of certain moveable property, which had been declared forfeited for violation of the *Excise Act*.

The material facts of the case and the question at issue are stated in the above head-note and in the judgments now reported.

L. E. Beaulieu K.C. and *Ivan Sabourin* for the appellant.

G. Barclay K.C. and *Geo. Fortin K.C.* for the respondent.

The judgment of Duff C.J. and Rinfret, Smith and Crocket JJ. was delivered by

DUFF C.J.—The controversy in this appeal concerns the question whether goods seized as forfeited under the *Excise Act*, to which s. 125 of that statute applies, and in the possession of the Crown as such, in leased premises in the province of Quebec, are subject to seizure at the instance of the landlord in proceedings by way of *saisie-gagerie* and to sale to satisfy the landlord's claim for rent.

The Court of King's Bench has held that this question should be answered in the affirmative. We have come to the conclusion that a negative answer is dictated by the enactments of the *Excise Act*.

A very brief account of the facts will, perhaps, be useful. On the 4th of July, 1930, officers of the excise seized

(1) (1932) Q.R. 70 S.C. 446.

in the name of His Majesty certain goods, a number of gallons of ethyl acetate and the machinery and equipment consisting of boilers, tanks, pumps, still and accessories in the premises of the National Chemical Co. at Iberville as forfeited to His Majesty for violation of the *Excise Act*. The company had a licence for operating a chemical still but none for manufacturing beer or spirits. A sample of the spirits found was sent to the department which was informed that the "accused" had offered no explanation of the presence of the spirits on the premises. In the "opposition afin de distraire" filed subsequently in the Superior Court on behalf of His Majesty, it is alleged that the company had made use of

ces objets illégalement, ces articles ayant comme question de fait servi à manufacturer illégalement l'alcool, contrairement aux dispositions de la loi de l'accise et ces dits objets pouvant pour ces raisons être saisis en vertu de l'article 125 de la loi de l'accise, et l'opposant ayant aussi le droit de saisir ainsi ces objets et de les confisquer; et les objets sont ainsi sous saisie et confisqués depuis le 4 juillet 1930, en vertu de la loi de l'accise et des règlements du département qui en fait partie, étant depuis cette date sous la garde constante des officiers du département;

The National Chemical Co. having abandoned the premises, the articles seized on the 4th July remained in the custody of the officers of excise and in the possession of the Crown and were in such custody and possession on the 15th November, 1930. On that date, the respondent, the landlord of the premises, initiated proceedings by way of *saisie-gagerie* against the National Chemical Co., the tenant, and on the same day caused the property mentioned, in the possession of the Crown, to be attached.

The declaration having been filed on the 20th November claimed $600 for arrears of rent, $750 for rent for the residue of the term, possession of the demised premises and sale of the goods seized and payment of the landlord's claim by way of preference, and the Crown, on the 29th December, filed an "*opposition afin de distraire*" alleging that the Crown was the sole proprietor of the goods seized on the 4th July praying a declaration to that effect and a direction to the bailiff to release the goods from the seizure under the *saisie-gagerie*.

Some question was raised on the argument as to the effect of the seizure of the 4th July and as to its character as well. The point was not raised in the courts below and

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the evidence on the point is quite sufficient. It is not open to question on that evidence, that the goods were seized, and "seized as forfeited" for violation of the *Excise Act*. Nor is there any room for doubt as to the effect of such a seizure. It proceeds upon the assumption that the goods, having been forfeited *ipso jure*, in consequence of the violation of the Act, are at the time of seizure, and not as a consequence of it, the property of the Crown. There are several provisions of the statute under which forfeiture supervenes upon the commission of the offence, as a legal consequence of the offence, independently of any act on the part of the officers of excise or any conviction or other judgment of a court. Section 97, for example, under which in this case the officers seem to have been proceeding provides,

97. Every steam-engine, boiler, mill, still, worm rectifying apparatus, fermenting-tun, mash-tub, cistern, couchframe, machine, vessel, tub, cask, pipe or cock, with the contents thereof, and all stores or stocks of grain, spirits, malt, beer, tobacco, cigars, drugs or other materials or commodities which are in any premises or place subject to excise, shall be forfeited to the Crown, and be dealt with accordingly, if any fraud against the revenue is committed in any such place or premises, or if the owner of any such place, premises, apparatus, goods or commodities, his agent or any person employed by him, or any person having lawful possession or control of such place, premises, apparatus, goods, or commodities, is discovered in the act of committing, or is convicted of committing any act in or about such place or premises which is declared by this Act to be an indictable offence.

The enactments of the statute make effective provision for the protection of the Crown's possession of goods after forfeiture. Section 79, for instance, is in these words,

79. If any stock, steam-engine, boiler, still, fermenting-tun, machinery, apparatus, vessel or utensil, boat, vessel, vehicle or other article or commodity is forfeited under the provisions of this Act, for any violation thereof, it may be seized by the collector or other officer, or by any other person acting by the authority of such officer, at any time after the commission of the offence for which it is forfeited, and may be marked, detained, removed, sold or otherwise secured until condemned or released by competent authority, and shall not, while under seizure, be used by the offender; and if condemned, it shall be removed, sold or otherwise dealt with as the Minister directs.

Moreover, by force of the Act, certain definitely stated consequences flow from the seizure itself where the goods are "seized as forfeited". S. 116 provides as follows:

116. Every person who, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away any goods, vessel, carriage or other thing which has been seized or detained on suspicion, as forfeited under this Act, before the same has been declared by competent authority to have been seized

without due cause, and without the permission of the officer or person who seized the same, or of some competent authority, shall be deemed to have stolen such goods, vessel, carriage or other thing, being the property of His Majesty, and is guilty of theft and liable to three years' imprisonment.

It is convenient here to call attention also to s. 133 of the statute which is in these words,

133. All forfeitures and penalties under this Act, after deducting the expenses in connection therewith, shall, unless it is otherwise expressly provided, belong to His Majesty for the public uses of Canada: * * *

A good deal turns upon the effect of these sections and it is better that that should be now explained. But, first of all, attention ought to be called to the decision of this court in *The King* v. *Krakowec* (1), which deals with the words of s. 181. It was there held that the scope of the forfeiture contemplated by the Act could not be limited to the particular interest of the person or persons involved in the offence giving rise to it, but that it operates to vest in the Crown the absolute property of the thing forfeited.

I shall assume for the moment that the contention of the Crown is correct as to the effect of s. 125, viz., that in the events that happened the goods in question were, in point of law, condemned as forfeited to the Crown. At the time, therefore, of the attachment of the goods under the landlord's proceedings the goods were the property of the Crown. They were by force of s. 79 held by the Crown under the statutory enactment that they "shall be removed, sold or otherwise dealt with as the Minister directs". By s. 133 they belonged "to His Majesty for the public use of Canada". By the general law, being the property of the Crown, they were in the Crown's possession, but s. 116, which has just been quoted, deals with the possession of goods seized as forfeited in a very specific way before such goods have

been declared by some competent authority to be seized without due cause and without the permission of the officer or person who seized the same or some other competent authority.

If they are taken or carried away, with or without force or violence, by any person, they are deemed to have been stolen and the person having taken or carried them away is taken to be guilty of theft and liable to three years' imprisonment. The act, therefore, of interfering with the possession of the excise officer in such circumstances is an

(1) [1932] S.C.R. 142.

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illegal act, and any authority which might otherwise have been derived from Art. 1622 C.C. or any of the articles of the Code of Civil Procedure is overridden by the paramount force of the Dominion statute.

The argument for the respondent very largely centered upon the effect of s. 125 which is, accordingly, reproduced in its entirety:

125. All vehicles, vessels, goods and other things seized as forfeited under this Act or any other Act relating to excise, or to trade or navigation, shall be deemed and taken to be condemned, and may be dealt with accordingly, unless the person from whom they were seized, or the owner thereof, within one month from the day of seizure, gives notice in writing to the seizing officer, the collector in the excise division in which such goods were seized, or superior officer, that he claims or intends to claim the same.

2. The collector at the place where the seized articles are secured, or any superior officer, may order the delivery thereof to the owner, on receiving security by bond with two sufficient sureties, to be first approved by such collector or superior officer, for double the value in case of condemnation.

3. If such seized articles are condemned, the value thereof shall be forthwith paid to the collector and the bond cancelled; otherwise the penalty of such bond shall be enforced and recovered.

4. Such bond shall be taken to His Majesty's use in the name of the collector or superior officer, and shall be delivered to and kept by such collector or superior officer.

There does not appear to be any ground of substance for imputing ambiguity or obscurity to this language or even doubt as to what is signifies. In light of the provisions of the statute the phrase "seized as forfeited" can have only one meaning, as already indicated. It can only mean a seizure in consequence of the goods having been forfeited, the title to which has, by virtue of the forfeiture, become vested to the Crown. The context shews also that it does not contemplate a forfeiture which has occurred in consequence of a condemnation, and beyond question it includes a forfeiture following, without any act or proceeding of the Crown's officers, the commission of the offence, in cases in which the statute under which the forfeiture takes effect so provides.

What then follows? "All * * * goods * * * seized as forfeited", the section declares, "shall be deemed and taken to be condemned and may be dealt with accordingly," unless the owner or the person from whom they are taken gives notice within one month that he intends to claim them. The consequence that the goods shall "be deemed and taken to be condemned" is declared, in un-

qualified words, to be the consequence of the seizure unless the notice provided for is given within the specified time. If the notice is given, the seizing officer may deliver up the goods to the owner on receiving security by bond with sureties for double the value of the goods, to be available in the event of condemnation. In the absence of notice within one month, condemnation follows by force of the statute. If notice is given, the statute contemplates the usual proceedings for establishing the grounds of forfeiture and condemnation accordingly.

Mr. Barclay argued forcefully that the requirements of s. 124 must be observed before the condemnation declared by s. 125 could take effect.

It is plain from a mere inspection of these two sections that they are dealing with different things. S. 125 provides for a condemnation by force of the statute itself in the absence of notice. If notice is given, proceedings for condemnation will in the ordinary course follow, in which case the enactments of s. 124 may come into play, but in the absence of notice it is too clear for argument that no such proceedings are contemplated.

It was vigorously urged upon us that under this construction, s. 125 flagrantly violates the principle *audi alteram partem*. But, in truth, it is doubtful whether the provision for notice by posting in s. 124 affords any protection for the parties concerned more efficacious than that of s. 77, which directs the officer concerned in cases of seizure of property "as forfeited" to furnish one copy of the schedule to the person from whom the seizure is made, or to forward it to his last known post office address by registered letter.

It will be observed indeed that s. 125 embraces seizures not only under the *Excise Act*, but also under "any other act relating to excise or to trade or navigation," while the scope of s. 124 is restricted to proceedings in respect of things seized under the *Excise Act* and is not necessarily limited to cases where the things are "seized as forfeited".

In the course of his able argument, Mr. Barclay very properly called our attention to sections 163 and 164 of the *Customs Act* which deal with the effect of seizure of goods "as forfeited" by the officers of the Customs. There the words are,

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> All such vessels, goods or other things seized as forfeited shall be deemed and taken to be condemned without suit, information or proceedings of any kind and may be sold. * * *

The difference in language, he contends, manifests a difference in intention and he asks us to infer from the absence from s. 125 of the words corresponding to the closing words of the sentence just quoted, that s. 125 contemplates only a condemnation after a proceeding in the ordinary course. If the language of s. 125 were ambiguous it might be permissible to resort to s. 164 for assistance. But, we repeat, the language of the former section is not ambiguous. Indeed, the phrase "shall be deemed and be taken to be condemned" manifests in the plainest way that an actual condemnation by judgment after suit is not what the section has in view, and the words in the *Customs Act* "without suit, information or proceedings of any kind," if inserted in s. 125 would be redundant. The legislature had in view a condemnation by construction of law taking effect the moment the prescribed conditions come into being. In modern statutes parsimony of words is not the rule. Redundancy, as every lawyer knows, is very common; in consequence, no doubt, of the necessity of meeting the difficulties suggested sometimes by inexpert persons during the passage of measures through Parliament. It would be a perilous proceeding to modify the effect of the unequivocal words of one statute by reference to the more copious style employed in a cognate provision of some enactment in *pari materia*.

This is sufficient for the disposition of the appeal in favour of the appellant, but we ought not, we think, to take leave of the case without dealing with the decision of the majority of the Court of King's Bench upon a question of fundamental importance and significance. That question is nothing less than this,—whether under a writ in the King's name, issued out of the Superior Court of the province of Quebec, goods which are the property of His Majesty and in the possession of His Majesty's officers can be seized and sold to satisfy a pecuniary claim of a subject. With great respect, in our opinion, the decision upon this point cannot be supported.

For the purposes of this discussion, we shall assume that the landlord has a privilege upon the goods of His Majesty situated on the demised premises in the sense that in a

proper proceeding by petition of right, in the proper court, he could have the goods sold and out of the proceeds have payment, by preference, of his claim for rent. It will, we think, be convenient first of all to state the doctrine of the English law as to the recourse given to a subject in respect of claims against His Majesty.

In respect of torts, the law permits no redress against the Crown. In respect of, perhaps, every other claim based upon legal right: for example for specific recovery of goods, recovery of land, for the enforcement of contract and, no doubt, for the enforcement of such a right as a landlord possesses in the goods of his tenant or of other persons who leave their property on the demised premises, the law permits such recourse by petition of right (*The Abbott of Feversham's* case, 4 Edw. III (1); although, of course, no order can be made against the Crown in such proceedings in the sense in which an order can be made against a subject (*Dominion Building Corp.* v. *The King* (P.C.) 9 May, 1933 (2).

Apart, however, from such remedies as the subject has by way of petition of right and in some special cases by statute, the rule is a rigorous one that His Majesty cannot be impleaded in any of His courts and this rule is just as rigorous in the case of an action *in rem* in which the proceeding is against some property belonging to His Majesty *(The Scotia)* (3). It is true that under modern procedure in certain cases a proceeding may be taken for a declaration of right by a subject against the Attorney General and in other cases where the interests of the Crown appear to be involved in litigation the Attorney General may be made a party (*Dyson* v. *Attorney General* (4); *E. & N. Rly. Co.* v. *Wilson* (5); but the rule is absolute that no proceeding having for its purpose the issue of any process against His Majesty himself or against any of His Majesty's property is competent in any of His Majesty's courts.

For our present purpose the reason for this rule may, perhaps, best be stated in the words of Blackstone who wrote in November, 1765, in his Commentaries on the Laws of England (1876, 1 Kerr 214-5),

(1) (1330) 14 Howell 60.
(2) [1933] A.C. 533.
(3) [1903] A.C. 501.
(4) [1911] 1 K.B. 410.
(5) [1920] A.C. 358.

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And, first, the law ascribes to the king, "or queen regnant," the *attribute* of *sovereignty* or pre-eminence. "*Rex est vicarious,*" says Bracton, "*et minister Dei in terra: omnis quidem sub eo est, et ipse sub nullo, nisi tantum sub Deo.*" He is said to have *imperial* dignity; and in charters before the conquest is frequently styled *basileus* and *imperator,* the titles respectively assumed by the emperors of the East and West. His realm is declared to be an *empire,* and his crown *imperial,* by many acts of parliament, particularly the statutes of 24 Hen. VIII, c. 12, and 25 Hen., VIII, c. 28; which at the same time declare the King to be the supreme head of the realm in matters both civil and ecclesiastical, and of consequence inferior to no man upon earth, dependent on no man, accountable to no man. Formerly there prevailed a ridiculous notion, propagated by the German and Italian civilians, that an emperor could do many things which a king could not, as the creation of notaries and the like; and that all kings were in some degree subordinate and subject to the Emperor of Germany or Rome. The meaning, therefore, of the legislature, when it uses these terms of empire and imperial, and applies them to the realm and Crown of England, is only to assert that our king is equally sovereign and independent within these his dominions, as any emperor is in his empire; and owes no kind of subjection to any other potentate upon earth. Hence it is, that no suit or action can be brought against the sovereign, even in civil matters, because no court can have jurisdiction over him. For all jurisdiction implies superiority of power; authority to try would be vain and idle, without an authority to redress; and the sentence of a court would be contemptible unless that court had power to command the execution of it; but who, says Finch, shall command the king? Hence it is, likewise, that by the law the person of the sovereign is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary: for no jurisdiction upon earth has power to try him in a criminal way; much less to condemn him to punishment. If any foreign jurisdiction had this power, ... the independence of the kingdom would be no more; and if such a power were vested in any domestic tribunal, there would soon be an end of the constitution, by destroying the free agency of one of the constituent parts of the legislative power.

This passage is adopted by the Court of Appeal in *The Parlement Belge* (1) with this comment:

In this passage, which has often been cited and relied on, the reason of the exemption is the character of the sovereign authority, its high dignity, whereby it is not subject to any superior authority of any kind.

It follows from this that no process of execution can issue against His Majesty or His Majesty's property from any of His Majesty's courts.

It has sometimes been said that this immunity of the sovereign from processual coercion, "the grandest of his immunities", to use the words of Maitland (Pollock & Maitland's History of English Law, Vol. I, 1st Ed., p. 502) rests upon the principle that the King by his writ cannot command himself, and this was laid down in the *Sadler's*

(1) (1880) 5 P.D. 206.

case (1); the immunity has also been ascribed to the fact that the courts are the King's own courts and to the same principle as that of the immunity of the feudal seigneur from process in his seigneurial court.

But Blackstone, probably, expressed with accuracy the view which generally prevailed among constitutional lawyers in the year in which the Quebec Act was passed. By s. 8 of that statute it is provided,

> And be it further enacted by the Authority aforesaid, That all His Majesty's Canadian subjects within the Province of Quebec, the religious Orders and Communities excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Wages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamations, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to His Majesty, and Subjection to the Crown and Parliament of Great Britain; and that in all Matters of Controversy, relative to Property and Civil Rights, resort shall be had to the laws of Canada, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province by his Majesty, his Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of Canada, until they shall be varied or altered by any Ordinance that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant-Governor, or Commander in Chief, for the Time being, by and with the advice and consent of the Legislative Council of the same, to be appointed in Manner hereinafter mentioned.

It is to be observed that the part of the enactment which is of immediate practical importance is that

> in all matters of controversy relative to property and civil rights resort shall be had to the laws of Canada for the decision of the same; and all causes that shall hereafter be instituted in any of the courts of justice, to be appointed within and for the said province by His Majesty, his heirs and successors, shall, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada until they shall be varied or altered by any ordinances which shall from time to time be passed in the said province. . . .

All this is subject, of course, as appears plainly from the language of the enactment to the proviso that such rules must be such as consist with the allegiance of the inhabitants to His Majesty, and their "subjection to the Crown and Parliament of Great Britain".

As foreshadowed in this enactment, a superior court of general jurisdiction was set up for the province in 1777 under the ordinance of that year. The court is described as a court of civil jurisdiction to be called the Court of

(1) (1588) 4 Co. Rep., 54 (*b*) and 55 (*a*).

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Common Pleas, and it is provided that appeal may be taken to the Governor in Council with a final appeal to His Majesty in Council. In the same year a further ordinance was enacted "To regulate the proceedings in the courts of civil judicature in the province of Quebec". Article 1 is in these words,

> In all causes or matters or property exceeding the sum or value of ten pounds sterling upon a declaration presented to any one of the judges of the court of common pleas, by any person setting forth the grounds of his complaint against a defendant, and praying an order to compel him to appear and answer thereto; such judge shall be, and hereby is empowered and required, in his separate district, to grant a writ of summons, in the language of the defendant, issuing forth in his majesty's name, tested and signed by one of the judges, and directed to the sheriff of the district, to summon the defendant to appear and answer the plaintiff's declaration, on some certain future day, regard being had to the distance of the defendant's abode from the place where the court sits; but if the judges, or any two of them, are satisfied by the affidavit of the plaintiff, or otherwise, that the defendant is indebted to him, and on the point of leaving the province, whereby the plaintiff might be deprived of his remedy against him, it shall be lawful for the said judges, or any two of them, to grant an attachment against the body of such defendant and hold him to bail, and in default of bail, to commit him to prison until the determination of the action against him. The declaration shall in all cases accompany the writ, and the plaintiff shall not be permitted to amend it, until the defendant shall have answered the matter therein contained, nor afterwards, without paying such reasonable costs as the court may ascertain.

By Article 4 (14) the execution sued out of any of the courts of civil jurisdiction shall be a writ issuing in the King's name.

It does not seem to be a proposition seriously open to debate that the courts contemplated by s. 8 of the Act of 1774, or that the courts set up by the ordinances just mentioned, were to be the King's courts in the ordinary sense of that phrase as known to English lawyers. The proposition, at all events, seems to be demonstrable that the court established by the first of the ordinances mentioned, the proceedings of which were regulated by the second, was one of the King's courts in that sense. The writ of summons which initiates the proceedings is a writ in the King's name; the writ of execution is a writ in the King's name. It would appear to follow that this legislation does not in any way contemplate the invasion of the immunity of the Crown already mentioned, that is to say, from being impleaded and from having his property subjected to any execution issued out of the court.

These observations apply to the Code of Civil Procedure as originally brought into force by which it is provided,

43. Toute action devant la Cour Supérieure commence par un bref d'assignation au nom du souverain; sauf les exceptions contenues dans ce code, et les autres cas auxquels il est pourvu par les lois particulières.

and by Art. 545,

Le jugement du tribunal ne peut être mis à exécution qu'au moyen d'un bref émanant au nom du Souverain et adressé au shérif du district (où il doit être exécuté.)

Ce bref est attesté et signé comme les brefs introductifs de l'action, et scellé du sceau du tribunal, et il doit contenir la date du jugement à exécuter, et fixer le jour où il doit être rapporté au tribunal.

These articles point with no uncertainty to the conclusion that the superior courts are the King's courts; and that the immunities of His Majesty in respect to the process of his own courts are not intended to be trenched upon.

On the argument, a good deal was said as to the distinction between major and minor prerogatives and public and private law as bearing upon this subject of the Crown's immunities in respect of legal proceedings. Such distinctions may be exceedingly useful for the purposes of exposition but we doubt if a line can be drawn between major and minor prerogatives or between public and private law with sufficient precision to provide a guide for the determination of individual cases. We think it is very clear that there is nothing in the Act of 1774 or in the legislation establishing the courts of Quebec or in the Civil Code or in the Code of Civil Procedure justifying an inference that there was any intention of in any way impairing this immunity.

There was some difference of judicial opinion in Quebec whether or not prior to the statute presently to be mentioned the courts in Quebec had jurisdiction to entertain a petition of right (*Laporte* v. *Les Principaux officiers d'Artillerie* (1)). In 1883, however, a statute (46 Vic., c. 27) was enacted to make provision for the institution of suits against the Crown by petition of right which is now reproduced in effect in the provisions of the Code of Civil Procedure (Arts. 1011 *et seq.*) The first section of that statute (now Art. 1011, C.C.P.) purports to define the circumstances in which a petition of right will lie and is expressed in comprehensive terms which, no doubt, embrace all the cases in which a petition would be proper at common law.

(1) (1857) 7 L.C.R. 486.

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In 1876 a statute (39 Vic., c. 27) regulating the procedure in respect of petitions of right was passed by the Dominion Parliament. It is in substance embodied in R.S.C., 1927, c. 158. That statute assumes, no doubt rightly, that the cases in which a petition would lie to the sovereign in right of the Dominion would be determined by the common law and by any other statute dealing with the subject; the respondent's claim, if well founded in point of substantive law, could, no doubt, have been put forward under the procedure instituted by that enactment.

The question does not at present arise whether an action claiming a declaration without consequential relief as against the Attorney General affecting the rights of the Crown could, in any and, if so, in what circumstances, be competent in the Superior Court of Quebec.

The respondents rely upon the decision of the Judicial Committee of the Privy Council in *Exchange Bank* v. *The Queen* (1). In that case Lord Hobhouse, delivering the judgment of the Judicial Committee, said,

> Their Lordships think it clear not only that the Crown is bound by the codes, but that the subject of priorities is exhaustively dealt with by them, so that the Crown can claim no priority except what is allowed by them.

It would be extending the language of their Lordships beyond its legitimate scope so to apply it as to give to the subject in all cases the same remedy against the Crown as against the private individuals. Arts. 1053 and 1054 C.C., for example, give, as against individuals, a right of action for *quasi délit* and the Code of Civil Procedure requires that all proceedings shall be initiated by a writ of summons issued in the King's name. It would be a strange thing, indeed, if the effect of these provisions was to give to the subject a right of action in tort against the Crown by a proceeding commenced in the King's own name. In truth, in the *Exchange Bank* v. *The Queen* (1), their Lordships were discussing a subject dealt with, and as they held, dealt with exhaustively, by the Code of Civil Procedure. It is well to remember that, in applying the decisions of the Privy Council, one must have regard to the rule stated by Lord Halsbury in *Quinn* v. *Leathem* (2), to the effect that every judgment must be read *secundum subjectam materiam.*

(1) (1885) 11 App. Cas. 157. (2) [1901] A.C. 495, at 506.

The appeal should be allowed and the intervention granted with costs throughout.

CANNON J.—La saisie-gagerie faite et pratiquée dans une cause est une mesure provisionnelle pour conserver le privilège du locateur sur le produit de la vente en justice des effets saisis.

L'article 1591 C.C. nous dit que les ventes forcées en exécution d'un jugement sont sujettes aux règles applicables aux contrats de vente.

L'article 1486 C.C. dit:

Peut être vendue toute chose qui n'est pas hors du commerce, soit par sa nature ou sa destination, soit par une disposition spéciale de la loi,

confirmant le principe général posé par l'article 1059 C.C. qu'

il n'y a que les choses qui sont dans le commerce qui puissent être l'objet d'une obligation.

L'article 399 C.C. nous dit que les biens qui appartiennent à l'Etat sont régis par le droit public ou par les lois administratives.

Or, d'après la décision de cette Cour dans l'affaire de *The King* v. *Karkowec* & al (1), les effets saisis en vertu de l'article 125 de la loi d'accise sont automatiquement confisqués et deviennent la propriété de la couronne et, en conséquence, hors du commerce et insaisissables.

Pour cette raison bien élémentaire et sans qu'il soit nécessaire de voir un acte de lèse-majesté dans la procédure adoptée, je crois que l'appel doit être maintenu avec dépens devant la Cour du Banc du Roi et devant cette Cour et l'opposition maintenue avec dépens contre l'intimée.

Appeal allowed with costs.

Solicitor for the appellant: *Ivan Sabourin.*

Solicitor for the respondent: *Georges Fortin.*

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(1) [1932] S.C.R. 134.