HIS MAJESTY THE KING, ON THE INFORMATION OF THE ATTORNEY-GENERAL OF CANADA (PLAINTIFF) ..... } APPELLANT;

AND

THE CARLING EXPORT BREWING AND MALTING COMPANY, LIMITED (DEFENDANT) ..... } RESPONDENT.

1929
*Dec. 12, 13, 16, 17, 18.
1930
*Feb. 4.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Revenue—Gallonage and sales taxes—Special War Revenue Act, 1915 (as amended), ss. 19B (1), 19BBB (1)—Exemption in case of export—Requisites for operation of the exempting provisoes—Onus as to proof of export—Export of beer into a country in violation of its laws—Sales tax on sales made in Ontario in violation of Ontario Temperance Act—Right of Crown to interest and penalties.

The Crown claimed against the defendant, under the *Special War Revenue Act, 1915* (as amended), for sales tax in respect of beer sold, and for gallonage tax in respect of beer manufactured and sold, between April 1, 1924, and May 1, 1927. Defendant claimed that the beer was manufactured for export and was exported, and that, therefore, the taxes were not payable.

Held (1) Export, in order to attract the exemption from gallonage tax, must be under government regulation, and in the absence of regulations the exempting proviso in s. 19B (1) of the Act can have no operation.

*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Smith JJ.

1930

THE KING
v.
CARLING EXPORT BREWING & MALTING CO. LTD.

(2) The proviso in s. 19BBB (1) that the sales tax "shall not be payable on goods exported" exempts only in cases in which the goods are exported by the vendor in execution of the contract of sale. If the contract for sale is completed by delivery in Canada the liability for sales tax attaches, notwithstanding that export is contemplated and that the purchaser agrees with the vendor that the goods shall be exported. Subsequent export does not effect a defeasance of the obligation to pay the tax. The remedy in such case would be by way of the procedure (for refund) laid down in subs. 10 of s. 19BBB.

It was further held that, even assuming that subsequent export could have brought defendant within the benefit of the proviso, export had not been sufficiently established to effect this. The Crown having proved the sales, the defendant, to escape taxation in respect of any shipment, must shew it was in fact exported (meaning of "export" discussed); and, upon the facts and circumstances in evidence, while no doubt beer was exported in large quantities, it was impossible to say judicially with regard to any particular shipment that it was in fact exported.

Quaere whether "export," in the sense of the statutory exemption, should not be taken to exclude export which involved the violation of the laws of the United States by the introduction and sale there of goods which could not there be lawfully introduced or sold or (except in circumstances not here relevant) be the subject of property or juridical possession.

(3) As to certain sporadic cash sales in Ontario, these were "sales" within the meaning of said Act, and subject to the tax, notwithstanding that the *Ontario Temperance Act,* in force during the period in question, made such sales unlawful and deprived them of legal effect (*Minister of Finance* v. *Smith,* [1927] A.C. 193, applied).

(4) The Crown was entitled to the penalties provided by s. 19CC (3) (as enacted by c. 69 of 1926-27, amending the *Special War Revenue Act*) not only in respect of sales made after its passing, but also, from the date of its passing, in respect of sales made prior thereto; and, up to the date of said enactment, to interest at 5% per annum from the dates when the taxes became due (*Toronto Ry. Co.* v. *Toronto,* [1906] A.C. 117).

Judgment of Audette J., of the Exchequer Court of Canada, [1929] Ex. C.R. 130, varied in favour of the Crown.

APPEAL by the Crown (plaintiff) from the judgment of Audette J., of the Exchequer Court of Canada (1), in so far as he refused to allow the Crown's claim. The defendant cross-appealed against the allowances made in the said judgment in favour of the Crown.

The Crown's claim was for $163,828.07 for sales tax, under s. 19 BBB of the *Special War Revenue Act, 1915* (as amended), in respect of alleged sales of beer by the defendant on and after April 1, 1924, and prior to May 1, 1927, and for $260,662.21 for gallonage tax, under s. 19 B of

(1) [1929] Ex. C.R. 130.

said Act (as amended) in respect of beer alleged to have been manufactured and sold by the defendant on and after April 1, 1924, and prior to May 1, 1927; and for interest at 5% per annum from the dates when the taxes became due to June 1, 1927, and thereafter at the rate of $\frac{2}{3}$ of 1% per month as provided by s. 19 CC of said Act, as enacted by 17 Geo. V, c. 69, s. 4.

The defendant denied the Crown's allegations and alleged that the beer in respect of which sales taxes were sought to be recovered was exported and not subject to the tax, but, on the contrary, was exempted under the provisions of s. 19 BBB; and that the beer manufactured by it was manufactured for export and was exported within the meaning of s. 19 B, and the defendant was not liable to pay the gallonage tax.

By the formal judgment in the Exchequer Court of Canada, it was adjudged (*inter alia*) that the plaintiff should recover $1,590 for sales tax on certain sales of strong beer entered in the defendant's books as cash sales, upon which sales tax had not been paid; that the plaintiff should recover sales tax and gallonage tax on all strong beer sold by defendant to one Bannon and resold by him in Canada; that the plaintiff should recover sales tax on all other sales of strong beer upon which sales tax had not been paid and in respect of which Customs export entry forms commonly known as B. 13's were not produced and put in as exhibits at the trial [export entries produced covered about 83% of the total sales]; that the defendant was liable to pay to the plaintiff interest at the rate of 5% per annum upon such gallonage and sales tax in respect of all transactions prior to April 14, 1927 [the date of the passing of said 17 Geo. V, c. 69] from the due date thereof until paid, and interest at the rate of $\frac{2}{3}$ of 1% per month upon such gallonage and sales tax in respect of all transactions subsequent to April 14, 1927, from the due date thereof until paid. A reference was directed to ascertain and determine the amount payable by defendant under the judgment.

The Crown's appeal to this Court was allowed with costs. By the formal judgment of this Court, it was adjudged:

* * * that the appellant is entitled to recover from the respondent sales tax on all sales in respect of which sales tax is claimed in this action

1930

THE KING
v.
CARLING EXPORT BREWING & MALTING CO. LTD.

and gallonage tax on all sales in respect of which gallonage tax is claimed in this action as to which the said Exchequer Court held no liability rested on the respondent.

* * * that the appellant is entitled to recover from the respondent interest upon such sales tax and gallonage tax in respect of all sales prior to the fourteenth day of April, A.D. 1927, from the due date thereof until the said fourteenth day of April, A.D. 1927, at the rate of five per centum per annum and a penalty thereafter until paid at the rate of two-thirds of one per centum per month; and a penalty upon such sales tax and gallonage tax in respect of all sales subsequent to the said fourteenth day of April, A.D. 1927, from the due date thereof, until paid at the rate of two-thirds of one per centum per month.

* * * that this action be remitted to the Exchequer Court of Canada which shall determine the amount payable by the respondent under the judgment of the Exchequer Court of Canada as varied by this Court and all subsequent costs, and, except as herein varied, the said judgment of the Exchequer Court of Canada be affirmed.

N. W. Rowell, K.C., G. A. Urquhart, K.C., and *G. Lindsay* for the appellant.

W. N. Tilley, K.C., and *C. F. H. Carson* for the respondent.

The judgment of the court was delivered by

DUFF, J.—In the action out of which the appeal arises the Crown claims $163,828.07 sales tax in respect of beer sold between the 1st of April, 1924, and the 1st of May, 1927; and the sum of $260,662.21 gallonage tax in respect of beer manufactured and sold during the same period; and interest on these sums up to the 1st of June, 1927, at the rate of 5% per annum, and thereafter at the rate of two-thirds of 1% per month. The ground of defence was that all this beer was manufactured for export and exported in fact, and that consequently under the provisions of the Revenue Act upon which the Crown's claim is based, there is no liability.

The learned trial judge held that in respect of certain cash sales in London and the vicinity of London, the respondents are liable to sales tax, and in respect of certain sales by one Bannon, in Windsor, to both sales and gallonage taxes. These items constituted a comparatively trifling element in the Crown's claim, and in respect of the claim as a whole the learned trial judge drew a distinction between shipments of beer sold by the respondents for which export entries were produced, and those for which evidence of such entries was not forthcoming. He accepted

the export entry as evidence of export and held that in respect of sales of goods, of which export was thus proved, no liability rested on the respondents for either sales or gallonage tax. Export was in this manner established in respect of about 83% in value of the goods sold. As to interest and penalties, the learned trial judge allowed the Crown's claim for interest, but disallowed the claim for penalties under the statute of 1927 in respect of taxes payable upon transactions prior to the date of the statute.

It will be convenient first to consider the learned trial judge's view as to the Crown's claim for gallonage tax. The statute is section 19 B 1 (b) of *The Special War Revenue Act, 1915,* as amended by 12-13 Geo. V, c. 47, s. 14:

19B. 1. (*b*). There shall be imposed, levied and collected upon all goods enumerated in Schedule II to this Part, when such goods are imported into Canada or taken out of warehouse or when any such goods are manufactured or produced in Canada and sold on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two, in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule II.

(*c*) Where the goods are imported such excise tax shall be paid by the importer and where the goods are manufactured or produced and sold in Canada such excise tax shall be paid by the manufacturer or producer; provided that if an automobile is, on the twenty-fourth day of May, one thousand nine hundred and twenty-two in the hands of a dealer and not sold to a *bona fide* user the tax shall be paid by such dealer when such automobile is sold.

(*d*) The Minister may require every manufacturer or producer to take out an annual licence for the purposes aforesaid, and may prescribe a fee therefor, not exceeding two dollars, and the penalty for neglect or refusal shall be a sum not exceeding one thousand dollars.

Provided that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise.

Schedule II. Ale, beer, porter and stout, per gallon, twelve and one-half cents.

The respondents base their defence upon the proviso which takes effect when the goods are manufactured for export "under regulations prescribed by the Minister of Customs and Excise." The construction advanced on behalf of the respondents turns upon the effect of the word "under". "Under regulations prescribed by the Minister" means, it is argued, "in compliance with such regulations, if any." That does not appear to be a natural reading of the words. Obviously an exemption on the ground that the goods affected are manufactured for export

1930

THE KING v. CARLING EXPORT BREWING & MALTING CO. LTD.

Duff J.

could not be generally allowed to take effect upon the unsupported representations of the manufacturer without grave risk of fraud upon the revenue, and it is this consideration, no doubt, which accounts for the requirement that export in order to attract the exemption must be under government regulation; in the absence of regulations the proviso can have no operation. Counsel for the Crown called attention to the distinction in the statute between cases in which export is made *simpliciter* the condition of exemption, and cases where the condition is manufacture for export. In the last mentioned cases (the proviso to s. 19 B and the proviso to s. 16 A) regulations, and export under them, are required. In other cases, as for example, sections 19 BB 1 (b), 19 BB 1 (e), 19 BBB 1, regulations are not required; proof of export is enough. Mr. Tilley argues that the present case is distinguishable from the case of the excise taxes which were in question in *Dominion Press Ltd.* v. *Minister of Customs and Excise* (1), and there are no doubt distinctions, but the reasoning in the Lord Chancellor's judgment in that case seems to extend in substance to this case. "The proviso," his Lordship said, "is an exempting proviso, and, in order to obtain its protection, the tax-payer must bring himself within its language." That you cannot do unless there are regulations. This claim for exemption seems to be unfounded.

I shall next mention the sporadic cash sales in London and Windsor. The contention in respect to these is that they are not subject to the tax because they are not sales. The *Ontario Temperance Act,* which was in force during this period, unquestionably did mark down as unlawful (indeed "criminal" if we adopt the recently sanctioned terminology) sales of liquor, except sales of specified categories to which those in question do not belong. Furthermore, by force of the statute, such transactions had no legal effect except for the protection of *bona fide* purchasers for value, and no moneys or other consideration, received for liquor sold, became the property of the receiver as against the payer, who could recover it back. The effect of the Act was undoubtedly to deprive such transactions of the character of sales in contemplation of law, except for a

(1) [1928] A.C. 340.

limited purpose, that is to say, for the purpose of protecting a *bona fide* purchaser for value. The point made is that they are consequently not sales within the meaning of the statute the Crown is seeking to enforce.

The answer to the contention appears to be this. The Ontario Act did not apply to all sales within Ontario. Sales made in course of interprovincial or foreign trade, and sales made to the Ontario government were not affected. Where transactions have taken place which contain all the elements of a sale according to the ordinary language of business, which, but for such a prohibiting statute as the *Ontario Temperance Act,* would have legal effect as sales, and the parties have treated them as such, the purchaser receiving the goods as purchaser, and the vendor receiving the purchase price as vendor, then, the vendor having received the price, which has passed into and become a part of his assets, the court will not for fiscal purposes inquire into the application or effect of a statute such as the *Ontario Temperance Act.*

The case is not precisely the same as, but is not easily distinguishable from, the decision of the Privy Council in *Minister of Finance* v. *Smith* (1). Smith was an Ontario bootlegger and he was assessed for income derived from his bootlegging business. This Court held (2) that he was not assessable in respect thereof because by the provisions of the *Ontario Temperance Act,* above adverted to, every transaction in which he engaged in that business was an offence against the *Ontario Temperance Act* and punishable by imprisonment, and that no moneys received by him from such transactions, and consequently no apparent profits, made in the course of his business, were his property; and that it must be assumed that the *Income War Tax Act* was not intended to apply to incomes made up of the aggregate of apparent profits of such transactions. That judgment was reversed (1) on grounds which were stated in the following passage of Lord Haldane's judgment:

> Construing the Dominion Act literally, the profits in question, although by the law of the particular Province they are illicit, come within the words employed. Their Lordships can find no valid reason for holding that the words used by the Dominion Parliament were intended to

(1) [1927] A.C. 193. (2) [1925] Can. S.C.R. 405.

1930

THE KING
v.
CARLING EXPORT BREWING & MALTING CO. LTD.

Duff J.

exclude these people, particularly as to do so would be to increase the burden on those throughout Canada whose businesses were lawful. Moreover, it is natural that the intention was to tax on the same principle throughout the whole of Canada, rather than to make the incidence of taxation depend on the varying and divergent laws of the particular provinces. Nor does it seem to their Lordships a natural construction of the Act to read it as permitting persons who come within its terms to defeat taxation by setting up their own wrong. There is nothing in the Act which points to any intention to curtail the statutory definition of income, and it does not appear appropriate under the circumstances to impart any assumed moral or ethical standard as controlling in a case such as this the literal interpretation of the language employed. There being power in the Dominion Parliament to levy the tax if they thought fit, their Lordships are therefore of opinion that it has levied income tax without reference to the question of Provincial wrongdoing.

I see no substantial ground for holding these considerations (held decisive in the circumstances of *Smith's* case) to be without application here.

I now come to the critical question in the case, the question, namely, of the liability of the respondents in respect of sales tax. The statute is section 19 BBB (1) of *The Special War Revenue Act, 1915,* as amended by 13-14 Geo. V, c. 70, s. 6, and 14-15 Geo. V, c. 68, s. 1 (1):

> 19 BBB. 1. In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of five per cent. on the sale price of all goods produced or manufactured in Canada, including the amount of excise duties when the goods are sold in bond, which tax shall be payable by the producer or manufacturer at the time of the sale thereof by him; and in the case of imported goods the like tax upon the duty paid value of the goods imported payable by the importer or transferee who takes the goods out of bond for consumption at the time when the goods are imported or taken out of warehouse for consumption.
>
> For the purpose of calculating the amount of the consumption or sales tax, "sale price" shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto.
>
> Provided that the consumption or sales tax specified in this section shall not be payable on goods exported; * * *

It was urged by Mr. Rowell that the phrase "consumption or sales tax" should be read distributively, the designation "sales tax" being applicable only to the tax payable in respect of "sales" under the first limb of the subsection. I doubt if a strict analysis of the language would justify this; the phrase "consumption or sales tax" seems rather to be a designation of the tax levied in respect of sales of good produced or manufactured in Canada, as well as of that which affects the case of imported goods only. In my view of the section, I cannot convince myself that the

point is of any importance. The statute, for the purpose of this particular head of taxation, classifies goods as those produced or manufactured in Canada, and those imported. It is only with the first of these categories that we are concerned, and as to goods coming within it, there is "imposed, levied and collected" a "tax of 5% on the sale price" of all such goods. This tax, it is declared, is to be payable by the producer or manufacturer at the time of the sale of the goods by him. The tax is described as "a consumption or sales tax" or according to the view suggested by the Crown a "sales tax". It does not seem to me to matter in the least whether you think of this tax as a tax upon a sale, or upon goods sold, or upon the price of goods sold. The rubric is "sales tax"; and any such compendious label might serve if it be distinctly understood that it is only a summary way of indicating the tax, which becomes exigible, according to the terms, and under the conditions, laid down in this sub-section. The statute seems clearly enough to assume that the liability to pay is completely ascertainable, as well as completely constituted, at the time of the sale. And this seems to be the cardinal thing, for the purpose in hand. In terms, the taxes are payable in respect of all sales of goods produced or manufactured in Canada, and the phrase "tax * * * on the sale price" is employed by the principal clause. The proviso employs a different turn of expression and seems to treat the impost as a tax "payable on goods"; and declares that it shall not be payable upon a designated class of goods, namely, "goods exported," but there is absolutely nothing in the proviso to indicate any qualification of the enactment in the principal clause that the tax is payable at the time of sale. On the contrary, the proviso explicitly and exclusively legislates for "the tax specified in this section". What it seems to effect is a qualification of the general terms of the principal clause, which literally embraces all sales of goods produced or manufactured in Canada (or all such goods when sold), and it does so by excluding from that comprehensive category "goods exported"; that is to say, the seller, by force of it, is not to come under the liability declared by the principal clause if he sells, not goods manufactured or produced in Canada simply, but such goods "exported." In other words, the

1930

THE KING
v.
CARLING EXPORT BREWING & MALTING CO. LTD.

Duff J.

proviso seems to exempt from the operation of the tax cases in which the goods are exported by the vendor in execution of the contract of sale. That seems to be the fair and reasonable meaning of the language, and there is no context by which the natural construction of the language is controlled.

This exposition of the statute is criticized on two distinct grounds. First, it is said that the principal clause in itself, read apart from the proviso, would only apply to sales complete in Canada and that on this reading the proviso is merely pleonastic. Such inelegancies are not uncommon in statutes; and the criticism, if well founded, would not appear to be a satisfactory reason for departing from what appears rather plainly to be the effect of the language the legislature has seen fit to employ.

The alternative construction was not very precisely formulated in argument; but those suggested seemed to be open to the practicable objection that the exigibility of the tax would under them remain indeterminate for a more or less indefinite period after the completion of the sale. The second objection is that this construction would be productive of great inconvenience in practice. The purpose of the exemption being, it is said, to reinforce Canadian producers in their competition in foreign markets, it could not have been intended to restrict the scope of it so narrowly as to make it non-available in, for example, such frequently occurring transactions as sales through a foreign agent stationed here. But the ingenuity of commerce can hardly be supposed to be so limited in range as to justify a doubt that such transactions would quite legitimately assume a form within the proviso. It is difficult to suppose that any considerable inconvenience would arise in such cases from putting the transaction in some such form. In any case, provision is made by sub-section 10 for a refund of the tax where domestic goods are exported under regulations prescribed by the Minister of Customs and Excise. Further, there is a general provision by which the Government has authority to remit taxes and other claims where justice requires it. The argument *ab inconvenienti* has little cogency.

The Crown contends that, on this construction of the statute, the liability of the respondents to sales tax is indis-

putable, and that contention seems to be unanswerable. It is not seriously open to dispute, in view of the repeated admissions of Low, that the sales proved were sales completed in Canada; nor indeed was this denied on the argument. Neither is it possible to argue, assuming there was export in fact, that such export was effected by the respondents in execution of the contract of sale. The contention of the respondents was that the sales proved were sales to individual purchasers, first to one, Grandi, and afterwards to one, Savard, and that it was part of the arrangement with them that the beer delivered to them should be exported to the United States; that the sales were export sales in the sense that the beer was under the control of the respondents until it was placed in a boat (always an undecked boat) and entered for export, and that these boats cleared for the United States under the eyes of the respondents' agents. Shipment, in these craft, it is said, took place under the superintendence of Low acting for the respondents, for whom it was vital in a business sense that the goods should reach the United States.

Assuming for the moment the point of fact in favour of the respondents, they do not bring themselves within the proviso. The contract for sale was completed by delivery in Ontario. The export, on any assumption, was a subsequent fact, in respect of which the respondents assumed no responsibility. In the view above stated as to the effect of the statute, the liability thereupon attached, and there is nothing in the statute to indicate that export effected a defeasance of the obligation to pay the duty. The remedy of the respondents in such circumstances would be by way of the procedure laid down in sub-sec. 10.

Turning to another branch of the argument, let it be allowed that export, in the circumstances indicated, if proved in fact, would be sufficient to bring the respondents within the benefit of the proviso. The onus is, of course, upon them, to establish export in fact, and one observation is necessary as to what that means. The claim of the Crown is a claim for taxes payable in respect of sales of beer during the period mentioned. It was incumbent upon the Crown to prove such sales, and that has been done. The respondents, if they are to escape taxation in respect of any shipment, must shew it was in fact exported. Gen-

1930

THE KING v. CARLING EXPORT BREWING & MALTING CO. LTD.

Duff J.

erally speaking, export, no doubt, involves the idea of a severance of goods from the mass of things belonging to this country with the intention of uniting them with the mass of things belonging to some foreign country. It also involves the idea of transporting the thing exported beyond the boundaries of this country with the intention of effecting that. The concrete question here is, have the respondents shewn that these goods passed beyond the boundaries of Canada in course of transport to the United States, and that they did not return to this country. I assume that goods passing within American territory and there seized by American customs officials, were exported within the meaning of the proviso. As I shall point out, there are difficulties in reconciling with the ordinary notion of export, as commonly understood in commerce, and as contemplated by this statute, the kind of operation in which the respondents were engaged. But putting this aside for the moment, the respondents must face the question whether export in fact, in the sense just indicated, has been proved.

The case they put is this. They were engaged, they say, in exporting beer to the United States. The beer that they manufactured was a beer which found its principal market there, and their aim throughout was to secure and maintain that market. The persons to whom they sold beer were engaged in the business of selling in the United States, and large quantities of their beer were sold in Detroit and the vicinity. And they go so far as to argue that the onus is on the Crown to shew that the goods did not reach their intended destination.

It is first necessary to remember that the learned trial judge has found virtually that 17% of the beer with which we are concerned was not exported. The learned trial judge was evidently satisfied that the export entries produced were all that could be produced; and I think it is right to say that, considering the opportunities the respondents have had of searching for export entries, and considering the fact that such export entries were in their own possession, it must be found against them, that of the beer in question, not more was entered for export than that covered by the export entries proved. This of course is a very important fact. It is inconsistent entirely with the theory that the respondents were exclusively engaged in

carrying on an export trade, and it is also irreconcilable with any assumption that they have laid before the court an accurate account of the disposition of their beer. There is, moreover, another state of facts of decisive import. The persons concerned in the export of these goods were engaged in a trade which involved the introduction into the United States, and the sale there, of things which could neither be lawfully introduced nor sold there, nor, except in circumstances not here at all relevant, could be the subject of property or juridical possession there. The boundary waters were patrolled by police whose duty it was to prevent the entry of such goods into the United States and to capture and confiscate craft endeavouring to effect such entry. The evidence abounds in indications that this is by no means a theoretical consideration. One witness, Dunford, says that in one month six craft owned by him personally, were captured and confiscated. It is also clear from the evidence that there was an extensive trade carried on in Ontario in beer of all kinds. In view of the non-production of the export entries, in relation to 17% of the goods in question, I do not think we can accept the suggestion that there was no market for lager beer in Ontario. The learned trial judge dwells upon the fact that rice beer is peculiarly an American taste, and infers that it is not sold in Ontario. The evidence in support of this does not proceed from disinterested sources and I wonder whether the boundary line so sharply affects the taste in illicit liquor. In truth, it is stated by Low that it was not until some time in 1926 that the respondents began the manufacture of rice beer, and we are not told at what date, if ever, in their brewery, rice beer wholly superseded malt beer. My conclusion is that, while there is some evidence of export, while no doubt beer was exported in large quantities, it is impossible to say judicially with regard to any particular shipment that that shipment reached the United States side and was landed there, or that it was captured by the United States preventive officers, or that it was returned to the Canadian side and sold there. I may add, that, I hope, as a judge of fact, I shall not be supposed to have divested myself of all knowledge of human habits and modes of thinking.

1930

THE KING v. CARLING EXPORT BREWING & MALTING CO. LTD.

Duff J.

The Crown argues that as the export alleged in this case involves, as already indicated, a deliberate violation of the United States laws to the extent pointed out, it cannot be treated as "export" within the meaning of the statute. I think there is a great deal to be said in favour of the view that "export" in the sense of the statute may be limited in such a way as to exclude export so entirely beyond the ordinary course of commerce. The considerations in favour of this view are so numerous and so obvious that they need not be dwelt upon. As against this contention, however, one must not overlook the point, very moderately put by Mr. Tilley, that the Crown is proposing that we overlook the criminal law from one point of view, while giving decisive effect to it, from another. Personally, I do not think this last contention, although far from being without force, is conclusive. It may well be that here, not for the first time in the history of human affairs, the way of the transgressor is hard. In my view, it is hardly conceivable that Parliament should contemplate such transport beyond the country as is now relied upon as constituting a ground of exemption. But after all we are only concerned with the meaning of the words used. It is risky to speculate upon Parliamentary motives, and I prefer not to express any opinion upon this point.

The only remaining point concerns interest and penalties. As for interest, we are governed by Lord Macnaghten's judgment in *Toronto Ry. Co.* v. *Toronto* (1). As to the other point, I think we are bound to give effect to the precise words of the statute.

The appeal should therefore be allowed and the case remitted to the Court of Exchequer to be dealt with in accordance with the views herein expressed. The respondents must pay the costs of the appeal.

Appeal allowed with costs.

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

Solicitors for the respondent: *McTague, Clark & Racine.*

(1) [1906] A.C. 117.