J. C. GROENDYKE COMPANY.........SUPPLIANT;

1917
June 14

AND

HIS MAJESTY THE KING............RESPONDENT.

Customs—Prison-made goods—Seizure and detention—Recovery.

Item 1206, Schedule C, of the Customs tariff (Can. Stat. 1907, ch. 11), prohibiting the importation of "Goods manufactured in whole or in part by prison labour," applies to goods similar in character to the prison-made goods, if sought to be imported by one having at any time a contract to purchase prison-made goods.

A failure by the owner or claimant of a thing seized or held under the provisions of the Customs Act (R.S.C. 1906, c. 48 ss. 172-8-9), to proceed for the recovery thereof within the period prescribed by statute, forms a complete bar to his recovery.

PETITION OF RIGHT filed on behalf of the J. C. Groendyke Company, having its head office at No. 8 South Dearborn St., Chicago.

R. R. Hall, for suppliants; *W. D. Hogg*, for the Crown.

Case tried at Ottawa, March 8, May 11, 1917, before the Honourable MR. JUSTICE CASSELS.

CASSELS, J. (June 14, 1917) delivered judgment.

The allegations in the petition of right are, that in or about the month of June, 1914, the said Groendyke company, for its sole use and benefit, entered into negotiations with Mr. Green, who represented the Saskatchewan Grain Growers Association, for the sale of 300 tons of binder twine, with an option to increase the said sale by 450 tons more—all of which twine was to be manufactured and produced by the said Groendyke company at Miamsbury.

The allegation is that in pursuance of the said contract, the said Groendyke company caused to be shipped to the order of the Saskatchewan Grain Growers Assoc. 15 cars of the said binder twine so manufactured by them at Miamsbury as aforesaid containing 527,750 lbs., which in or about the month of July, 1914, entered the Province of Saskatchewan.

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Par. 9 of the petition of right reads as follows:—

"That on or about the 19th day of August, 1914, the "Commissioner of Customs notified the said Groendyke "company that the inspector of customs, Port of Preventive "Service, having reported on the 3rd day of August, 1914, "that the following facts have been ascertained upon in-"spection, namely, that since the first of June, 1914, the "said Groendyke company exported to Canada 15 cars of "binder twine, containing about 527,750 pounds, valued at "$48,289, more or less, and the following charges for infrac-"tion of the customs laws having been made against said "Groendyke company, namely, that the said goods were "imported into Canada contrary to law, the same being "prohibited importation (item 1206, schedule "C," Customs "Tariff), wherefore the said Groendyke company was given "notice that if such seizure or charges be maintained the "said goods or moneys, if accepted on deposit in respect "thereof, become liable to forfeiture and each party con-"cerned in such infraction of the law subject to penalties "under the provisions thereof.",

The petition further alleges that in or about the month of August, 1914, the Commissioner of Customs released the said 15 cars of twine, and received a deposit from the said Groendyke company of $2,500 which was accepted by the said Commissioner of Customs in lieu of the said 15 cars of twine.

The 17th, 18th and 19th paragraphs of the said petition, read as follows:—

"17. That under and by virtue of a certain notice bearing "date on or about December, 1915, the Commissioner of "Customs, pursuant to sec. 177 of the Customs Act, notified "the said Groendyke company that said deposit of $2,500 "made in this matter remained forfeited to the Crown."

"18. That pursuant to sec. 178 of the Customs Act the "said Groendyke company duly gave notice in writing that "such decision to forfeit the said sum of $2,500 would not "be accepted and respectfully requested the Honourable "the Minister of Customs, pursuant to sec. 179 of the "Customs Act, to refer the matter to the Court. "

"19. That under and by virtue of a certain notice bearing "date January 13, 1915 (1916 intended), the Commissioner

"of Customs notified the Groendyke company that the "Honourable the Minister of Customs declined to refer the "matter in question in this petition to the Exchequer Court. "Court."

Item 1206 of schedule "C" of the Customs Tariff, as contained in ch. 11 of the Statutes of Canada of 1907, is as follows:—

"Goods manufactured or produced wholly or in part by "prison labour, or which have been made within or in con-"nection with any prison, jail or penitentiary; also goods "similar in character to those produced in such institutions "when sold or offered for sale by any person, firm or cor-"poration, having a contract for the manufacture of such "articles in such institutions or by any agent of such person, "firm or corporation, or when such goods were originally "purchased from or transferred by any such contractor."

By sec. 11 of the said Customs Tariff Act of 1907 it is provided as follows:—

"The importation into Canada of any goods enumerated, "described or referred to in schedule "C" to this Act is "prohibited; and any such goods imported shall thereby "become forfeited to the Crown and shall be destroyed or "otherwise dealt with as the Minister of Customs directs; "and any person importing any such prohibited goods or "causing or permitting them to be imported, shall for each "offence incur a penalty not exceeding $200.

It is contended by the petitioner that it has not been proved that the goods which were seized had been manufactured by prison labour.

The contention, however, on the part of the Crown is that under this provision, item 1206 of schedule "C" of the Customs Tariff, that if "goods similar in character to those produced in such institutions when sold or offered for sale by any person, firm or corporation, having a contract for the manufacture of such articles in such institutions or by any agent of such person, firm or corporation" whether the goods were imported into Canada or not, would bring the importing company within the provisions of the statute.

Mr. Hall, acting for the petitioner, in his elaborate and able argument conceded that if the Groendyke company, through their agent, had contracted for binder twine similar

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in character, although such binder twine so manufactured was not the binder twine shipped to Canada, nevertheless the petitioner would come within the meaning of this particular provision.

I apprehend that the provision is intended to prohibit any person, firm or corporation, who had at any time a contract by themselves or by their agent for prison-made twine, whether such twine were sold in the United States or shipped to Candaa, sending any such goods similar to those produced in such institutions into Canada.

It would be extremely difficult if not impossible to prove that the particular twine brought into Canada had been manufactured by prison labour; and, therefore, to guard against any such importation no doubt the provisions of this section were enacted.

I have not the slightest doubt that the Groendyke company, acting through their agent, Mr. Groendyke, had a contract for the manufacture of binder twine with the prison authorities. It would appear from the contract filed that Groendyke was an agent for the prison authorities. It would also appear that he had contracts with companies other than the Groendyke company for the manufacture of twine in the prison. According to his own evidence these contracts were procured by him, and the labels of the various purchasers were placed upon the twine in the prison warehouse, and were sent out with the representation that they had been manufactured by the various companies by whom they were ordered.

It is proved beyond question that binder twine was manufactured for and on behalf of the Groendyke company in the prison. They were labelled with the trade label of the Groendyke company. This is conceded by Mr. Groendyke in his evidence. They were beyond question manufactured for the Groendyke company in the prison, and at the direction of Groendyke were labelled with the trade label of the Groendyke company, and no doubt were paid for by the Groendyke company.

Moreover, Mr. Kirk gives evidence of his visit to the Michigan State Prison at Jackson, Michigan. He gives detailed evidence of what was taking place—shews that the balls of twine were being put into bags, and these bags

had stencilled on the outside of the bag the same mark as that placed upon the balls of twine similar in character "a circle 'G'" and "Manufactured by J. C. Groendyke Company, Chicago." With the morality of this method of dealing I am not at present concerned.

It is admitted by Groendyke that the twine manufactured by the company at their own factory at Miamsbury was of a superior quality to prison-made twine, although similar in character to prison-made twine.

They deliberately placed upon the prison-made twine their own trademark which would enable them to represent to their customers that the twine had been made by themselves at their own works.

The Groendyke company is apparently composed of three members. Groendyke the witness was the owner of 85% of the shares, and his wife and son owned the remaining 15%. Groendyke was the president and manager of the company, and as such manager was in receipt of a salary, and in addition his share of whatever dividend may have been paid by the company. He admits he had no factory of his own. In his evidence he states, as follows:—

"Q. Is your time entirely given up to the management "of the Company? A. No. Q. Have you any other "private business of your own? A. No, I have nothing "private. Q. Any dealings you have, in binder twine, is "for and on behalf of the company? A. Yes. Q.There "is no question about that? A. Yes."

It is asking too much of the Court under the facts as proved in this case to conclude that this prison-made twine labelled was not manufactured by the prison authorities under a contract made by the agent of the Groendyke company.

I think there is no question whatever that the Groendyke company had obtained twine manufactured at the prison, and such twine was manufactured for the Groendyke company, and that such contract was entered into by the agent of the Groendyke company.

I think the judgment of the Minister is correct.

Were it not for the case of *Julien* v. *The Queen*,[1] decided by Burbidge, J., I would have thought that after the

[1] 5 Can. Ex. 238.

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Minister had heard the parties, as provided by sec. 174 *et seq.*, and had given his decision, it would be too late for the petitioner to assert his rights by petition of right. Burbidge, J., apparently, came to a different conclusion, and I think it only right to leave it to an appellate Court to say whether such decision is correct:

Sec. 178 of the Customs Act (R.S.C. 1906, ch. 48) provides:—

"If the owner or claimant of the thing seized or detained, "or the person alleged to have incurred the penalty, does "not, within thirty days after being notified of the Minister's "decision, give him notice in writing that such decision "will not be accepted, the decision shall be final."

Supposing no notice had been given, could a petition of right lie after a decision which is final?

Sec. 179 provides:—

"If the owner or claimant of the thing seized or detained, "or the person alleged to have incurred the penalty, within "thirty days after being notified of the Minister's decision, "gives him notice in writing that such decision will not be "accepted, the Minister may refer the matter to the Court."

In this particular case the Minister declined to refer the matter to the Court. I would have thought that his decision remained final. The Court could not review the decision of the Minister, and there is no attempt in the present case to appeal from him, and I would not have jurisdiction to entertain such an appeal.

In the *Julien* case the facts were not the same as in the present case, as I understand the property in question in that case was held until the final litigation. It was not the case where the goods were released and money deposited in lieu thereof under the special provisions of sec. 171 of the Customs Act. I see no reason why a person whose goods have been seized should not present a petition of right the day after such seizure, if a fiat therefor is granted. Moreover, the Crown might file an information to have the provisions of the Customs Act enforced, and also for any penalties that were sought. It would not be necessary to await the final decision of the Minister.

The earlier clauses of the statute, namely, sec. 164, seems to me to apply to actions of a different character, namely,

an action brought for illegal acts on the part of the officials of the Crown. The money was deposited in the case before me in August of 1914. No petition was presented for a fiat until the year 1916.

Section 172 of the Customs Act applies to the case of the money being so deposited. Sub-sec. 2 provides that no proceeding against the Crown for the recovery of any such money shall be instituted unless brought within 6 months from the date of the deposit thereof. It seems to me that this forms a complete defence to the petition. The Crown has set it up as a defence, and I think I am bound by the terms of the statute, and if otherwise the petitioner were entitled to relief his petition is too late.

The petition is dismissed with costs.

Petition dismissed.

Solicitor for suppliant: *R. R. Hall.*

Solicitors for respondent: *Hogg & Hogg.*