

FRANK H. TYRRELL.....CLAIMANT;

1898

AND

Nov. 3.

HER MAJESTY THE QUEEN.....DEFENDANT.

Customs law—Reference—The Customs Act, secs. 182, 183—Minister's decision—Appeal—Practice.

Where a claim has been referred to the Exchequer Court under sec. 182 of *The Customs Act*, the proceeding thereon, as regulated by the provisions of sec. 183 of the Act, is not in the nature of an appeal from the decision of the Minister; and the court has power to hear, consider and determine the matter upon the evidence adduced before it, whether the same has been before the Minister or not.

THIS was a reference of a claim for property seized for an alleged infraction of *The Customs Act*.

The facts of the case are stated in the reasons for judgment.

The case was heard at St. John, N.B., on October 27th, 28th and 29th, and November 1st, 2nd and 3rd, 1898.

W. Pugsley Q.C. and *J. M. Stevens* for the claimant;
A. G. Earle and *E. H. McAlpine* for the defendant.

At the conclusion of the argument, judgment was delivered by

THE JUDGE OF THE EXCHEQUER COURT:

This case comes before the court upon a reference by the Controller of Customs exercising the power of the Minister of Customs given by the 182nd section of "The Customs Act," which provides as follows:—
 "If the owner or claimant of a 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

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“ in writing that such decision will not be accepted,  
 “ the Minister may refer the matter to the court.”  
 Then section 183 provides that the “ court shall hear  
 “ and consider such matter upon the papers and evi-  
 “ dence referred, and upon any further evidence which  
 “ the owner or claimant of the thing seized or detained,  
 “ or the person alleged to have incurred the penalty,  
 “ or the Crown, produces, under the direction of the  
 “ court, and shall decide according to the right of the  
 “ matter.” It will be observed in regard to this section  
 that the case may not be, and in practice is not usually,  
 decided upon the same evidence as that before the  
 Minister, because the parties have leave to adduce new  
 evidence. The proceeding is not in the nature of an  
 appeal from the decision of the Minister, the court  
 having to deal with the matter upon the evidence  
 before it whether such evidence had been before the  
 Minister or Controller or not.

Now, coming to the facts of this case, it appears that  
 a seizure was made on the 15th of January, 1893, of a  
 gray mare with harness, robes and pung attached, of  
 the probable value of \$250 duty paid, for an infraction  
 of the revenue laws of the Dominion of Canada, that  
 is for having been engaged by Frank H. Tyrrell to  
 convey smuggled goods from Milltown to St. Stephen  
 at different times. The circumstances which led to  
 the seizure are given by the seizing officer as follows :  
 “ I personally saw Wm. Tyrrell driving and in posses-  
 “ sion of said mare now under seizure conveying  
 “ smuggled whiskey from Milltown to Frank H.  
 “ Tyrrell’s place of business at St. Stephen’s, and while  
 “ so engaged I called upon said William Tyrrell to stop  
 “ said team in the Queen’s name, which he refused to  
 “ do, and spirited said mare to the United States.” This  
 apparently sets forth the grounds or reasons for the  
 seizure ; and upon this we have the following recom-

mendation made by the Assistant Commissioner of  
 Customs to the Minister for the forfeiture of the articles  
 seized: "No evidence having been submitted by or  
 " on behalf of the party, from whom the seizure was  
 " made in rebuttal of the charge,—the undersigned  
 " would respectfully recommend that the seizure be  
 " confirmed and the property seized having become  
 " forfeited to the Crown remain so forfeited and be  
 " dealt with accordingly, and as the mare seized is  
 " now a source of increasing expense for her keep, it is  
 " recommended that the collector at St. Stephen be  
 " authorized to sell the animal immediately." Then  
 on April 7th, 1893, this recommendation was approved  
 by the Controller of Customs. Now, in the first place,  
 there is no evidence or contention that the harness,  
 robes or pung were ever used in committing an offence  
 against the Customs Laws, and the claimant is clearly  
 entitled to judgment in respect of these articles. With  
 respect to the gray mare it is in evidence, and I find  
 that it was on one or two occasions used to convey  
 whiskey from Milltown, New Brunswick, to Saint  
 Stephen in the same province, but there is no evidence  
 to justify the conclusion that such whiskey had been  
 smuggled into Canada. On the contrary the fair con-  
 clusion to be drawn from the evidence is that the  
 whiskey in question was not smuggled, and I so find.  
 It will be observed, however, that while the offence for  
 the commission of which the articles in question in this  
 case were seized and forfeited is stated to be the con-  
 veyance of smuggled goods from Milltown to Saint  
 Stephen, both places being within the Province, in  
 the notice to the claimant of the Minister's decision it  
 is stated "that the horse, harness and robes were con-  
 " demned for an infraction of the Customs Laws for  
 " having been used to convey smuggled goods into  
 " Canada," and some evidence has been adduced to

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support a condemnation of the goods for that offence. That evidence is not, it seems to me, sufficient to warrant the seizure or condemnation of the mare. Without discrediting, to the extent I am asked to do so, Mr. Bonness, the officer who made the seizure, and on whose testimony this branch of the Crown's case rests, it is clear that under the circumstances detailed by him he may be mistaken as to the gray horse he saw being the one now in question, and in any event there is no satisfactory evidence that the one he saw was being used to convey goods into Canada contrary to law. This issue of fact also I find in favour of the claimant and against the Crown.

If the goods seized were now in the possession of the Crown there would be judgment that they be restored to the claimant, with costs; but as they have been sold by the Crown, there will be judgment for the claimant for the value thereof, which I assess at three hundred and ten dollars (\$310.00), and for his costs of the action.

Judgment accordingly.

Solicitor for claimant: *W. Pugsley.*

Solicitor for defendant: *E. H. McAlpine.*