1931

*Oct. 16.
*Dec. 22.

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

AND

MAX KRAKOWEC, DAHLBERG AND EKLUND AND CONTINENTAL GUARANTY CORPORATION OF CANADA, LIMITED (DEFENDANTS) RESPONDENTS.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Revenue—Criminal law—Conditional sales—Excise Act, R.S.C., 1927, c. 60—Forfeiture of vehicle under s. 181—Legal owners having no notice or knowledge of illegal use—Penal statutes—Construction.

A vehicle, otherwise undisputably liable to forfeiture under s. 181 of the *Excise Act*, R.S.C., 1927, c. 60, is (on construction of s. 181 and the Act as a whole) to be held so liable notwithstanding that its legal owner had, prior to seizure, no notice or knowledge of the illegal use which was being made of it.

Even a penal statute must not be construed so as to narrow its words to the exclusion of cases which those words in their ordinary acceptation would comprehend (*Dyke* v. *Elliott; The "Gauntlett,"* L.R. 4 P.C. 184, at 191; Craies on Statute Law, 3rd ed., p. 444).

Truck in the possession and use of its purchaser under a conditional sale agreement, by which the property in and title to it remained in the vendors until payment in full and on which a balance remained unpaid, was seized under circumstances which, as held on facts admitted, must be taken to have made it liable to forfeiture to the Crown under said s. 181. *Held* that it was liable to forfeiture not only as against the person in whose possession it was seized but also as against the said vendors, although the latter had no notice or knowledge of the illegal use which was being made of it.

The court is not vested under s. 124 of the Act with any discretionary power in the matter. It must decide according to law.

*Present at hearing of the appeal: Anglin C.J.C. and Newcombe, Rinfret, Smith and Cannon JJ. Newcombe J. took no part in the judgment, having died before the delivery thereof.

Forget v. *Forget et al.*, Q.R. 67 S.C. 78; *The King* v. *Traders' Financial Corp. (In re Excise Act)*, [1929] 4 D.L.R. 154; *Le Roi* v. *Messervier et al.*, 34 R.L.n.s. 436, so far as inconsistent with above holding, overruled. *The Ship "Frederick Gerring Jr."* v. *The Queen*, 27 Can. S.C.R. 271, at 285, cited.

Judgment of the Exchequer Court (Audette J.), [1931] Ex. C.R. 137, reversed.

1931

THE KING v. KRAKOWEC ET AL.

APPEAL by the plaintiff from the judgment of Audette J., of the Exchequer Court of Canada (1), dismissing the action and ordering that the seizure in question be set aside and annulled and that the vehicle in question be released to the owners to be dealt with under the contract between the vendors and purchaser thereof. The material facts of the case and the questions in issue are sufficiently stated in the judgment now reported and are indicated in the above head-note. The appeal to this Court was allowed with costs.

D. L. McCarthy K.C. for the appellant.

No one for respondents.

ANGLIN C.J.C.—I would allow this appeal with costs throughout.

The judgment of Rinfret, Smith and Cannon JJ. was delivered by

RINFRET J.—In this case, the information of the Attorney-General of Canada sheweth that on or about the 5th day of December, 1929, at Albertville, in the province of Saskatchewan, one S. A. Bovan, an officer of His Majesty's Excise of Canada, under the authority of a writ of assistance and in accord with the provisions of section 181 of the *Excise Act*, did seize as having become subject to forfeiture to His Majesty a certain vehicle, to wit: a one-and-a-half ton Fargo Express, Serial No. 283531, Engine No. KT1690, covered by Saskatchewan Licence 1929 No. T-18-678; that, at the time of such seizure, the said vehicle was being used by one Max Krakowec for the purpose of removing spirits in his possession unlawfully manufactured contrary to the provisions of the said section 181; and that, on the 5th day of December, 1929, before John Ashby and John Rosser, two of His Majesty's Justices of the Peace in and for the

(1) [1931] Ex. C.R. 137.

1931

THE KING v. KRAKOWEC ET AL.

Rinfret J.

province of Saskatchewan, at Prince Albert, Krakowec was duly convicted of having in his possession a quantity of spirits of unlawful manufacture.

The information further sheweth that Alfred Dahlberg and Paul A. Eklund, residing and carrying on business at Prince Albert aforesaid, under the firm name and style of Dahlberg and Eklund, and that Continental Guaranty Corporation of Canada, Limited, a corporation having its head office in Montreal in the province of Quebec, and doing business in the province of Saskatchewan, severally claim interest in the said vehicle. They are made parties to the suit with Krakowec; and the prayer of the Attorney-General, as against all of them, is for a declaration and judgment that the said vehicle has become and is forfeited to His Majesty.

Only one statement of defence was filed on behalf of all the defendants. It alleged that Krakowec was in possession of the vehicle only by virtue of an agreement in writing whereby it was mutually understood that the property in and title to the Fargo express did not pass to him, but remained in Dahlberg & Eklund until the entire purchase price was fully paid in cash; that the agreement created a lien on the vehicle; that there was a balance owing by Krakowec to the Continental Guaranty Corporation to which Dahlberg & Eklund had assigned their rights and to which they remained liable under guarantee; that Dahlberg & Eklund and the Guaranty Corporation had no knowledge that Krakowec intended to use the vehicle for the unlawful purpose of which he was found guilty and, had they known it, they would not have sold the vehicle to him, nor financed the sale to him. They pray therefore that the claim be dismissed.

The action was tried, without the adducement of evidence, on the following admission of facts:

"It is admitted by counsel for the plaintiff and the defendants that:—

"(1) Action has been instituted herein on the information of the Attorney-General of Canada for the purpose of obtaining, should the facts warrant it, a declaration and judgment that the vehicle in the information described has become and is forfeited to His Majesty.

"(2) On December 5, 1929, S. A. Bovan, an Excise Officer carrying a Writ of Assistance, and C. E. Buck of the Prince Albert Town Station encountered at Albertville, Sask., one Max Krakowec, then driving the truck described in paragraph 4 of the information.

"(3) Bovan, under authority of the Writ, searching the truck found therein two bottles of spirits, one under the seat and one in the back, a third being found in Krakowec's pocket.

"(4) Bovan seized the spirits and truck as forfeited under section 181 of the *Excise Act,* duly served notice of seizure on Max Krakowec and laid information before John Ashby, J.P., against Krakowec in respect of having in his possession spirits of unlawful manufacture contrary to section 181.

"(5) At trial the same day before the said Ashby, J.P., and another, Rosser, Max Krakowec pleaded guilty and had sentence imposed.

"(6) The truck remained in the custody of the non-commissioned officer in charge of R.C.M.P. Town Station, Prince Albert, Sask.

"(7) On December 12th Messrs. Diefenbaker and Elder wired the Department of National Revenue as follows:

Max Krakowec on Dec. fifth pleaded guilty to offence under section 181 Excise Act Stop Fargo truck owned by accused still held by police Stop Please wire authorization to proper officials to release said truck to the accused.

"(8) On December 17, the department having been made aware of the circumstances, wrote in reply that 'the truck is regarded as confiscated.'

"(9) Under letter of December 23rd Messrs. Dahlberg and Eklund submitted the following document which they held out as a true copy of the sales contract covering the said truck:

(The agreement is here recited in full.)

"(10) The said Dahlberg and Eklund were informed in reply that the Act sets out no qualification as to ownership and that the truck was regarded as confiscated.

"(11) On January 24, 1930, the Continental Guaranty Corporation of Canada, Limited, issued unsealed warrant to one, S. C. Anderson, its bailiff, to take pos-

1931

THE KING v. KRAKOWEC ET AL.

Rinfret J.

session of the said truck. The said bailiff on the 25th of January, in attempting to seize the truck, handed * * * the warrant to a constable and received the same back forthwith:—

(Here the warrant is recited.)

"(12) The said truck was not then, or at any time by or on behalf of any defendant herein, removed from the possession of the non-commissioned officer above mentioned.

"(13) The said solicitors under letter dated January 25, 1930, forwarded the said copy of warrant to, and made demand for immediate delivery over of the said truck of, the Minister of Excise.

"(14) By virtue of the claim to the said truck so laid and the provisions of section 125 of the said Act the automatic condemnation of the said truck was avoided and the right of the claimant to have his claim adjudicated upon preserved.

"(15) The defendant Krakowec lays no claim and stands subject to having judgment signed against him on the pleadings.

"(16) The defendants Dahlberg and Eklund have assigned to the Continental Guaranty Corporation of Canada, Limited, all interest of them or either of them in the said truck or arising out of the said contract of sale.

"(17) The defendant the Continental Guaranty Corporation of Canada, Limited, claims the right to have delivered over to it the said truck or the sum of $672.55, the moneys still owing in respect thereof by the said Krakowec on the grounds that as assignee it stands in the shoes of Dahlberg and Eklund the vendors, is entitled to all the rights before assignment enjoyed by the said vendors, including title to and power to repossess the truck for cause.

"(18) The following question submitted in the pending summons is calculated to decide the claim put forward by the said corporation defendant:—

> " Is the vehicle referred to in paragraph numbered 4 of the information filed seized under section 181 of the *Excise Act* in the circumstances set forth in paragraphs numbered 4 and 5 of the said information liable

to forfeiture notwithstanding that the legal owners of the vehicle in question had, prior to the said seizure, no notice or knowledge of the illegal use which was being made of the vehicle by the defendant Krakowec when the same was seized as alleged in said paragraph numbered 4?"

The Exchequer Court (1) dismissed the action largely, if not altogether, on the ground that the relevant provisions of section 181 apply only to vehicles "which have been or are being used for the purpose of *removing* the" spirits unlawfully manufactured or imported; and, as the court thought, the evidence failed to show that, in the circumstances, the Fargo express was being used for the purpose of "*removing*" within the meaning which the court ascribed to that word in the enactment.

Dealing with that point first, with deference, we think it should be eliminated as a ground of judgment.

As a result of the admissions upon which the parties agreed to submit the case, it must be assumed that all the necessary formalities for the effective seizure of the vehicle were complied with and the required procedure was followed. Further, it was not disputed that the vehicle was seized under circumstances which, by force of section 181 of the *Excise Act*, made it liable to forfeiture to the Crown. But it was granted that Krakowec, in whose possession the vehicle was seized, was not the legal owner thereof; and the question put to the court—and the only question—was

> whether a vehicle, otherwise undisputably liable to forfeiture under the *Excise Act*, is to be held so liable notwithstanding that its legal owner had, prior to seizure, no notice or knowledge of the illegal use which was being made of it?

It is therefore to that question alone that we must now confine our attention.

The Exchequer Court thought the statute was not so clear as to manifestly bring within its ambit innocent third parties without any knowledge of the illegal use to which their vehicle was being put; and, in the premises, it decided to give the defendants the benefit of the doubt.

(1) [1931] Ex. C.R. 137.

1931

THE KING v. KRAKOWEC ET AL.

Rinfret J.

The courts in several of the provinces of Canada have already had occasion to pronounce upon the same enactment, and also, in other instances, upon texts which, though not contained in the same statute, were not dissimilar in their essential provisions. Thus, in *Forget* v. *Forget and General Motors Acceptance Corporation* (1), the Superior Court in Quebec took the same view as the learned trial judge in this case. In *The King* v. *Traders' Financial Corporation (In re Excise Act)* (2), Galt J. in Manitoba, thought the language of the statute, construed literally, involved unjust consequences which the legislature could not have intended, unless it had manifested such an intention by express, and not merely general words. Accordingly he held that when goods seized under the *Excise Act* belonged to an innocent third party, who duly claimed them, the Crown was not entitled to forfeit the goods.

On the other hand, in *Rex* v. *Martch* (3), a case under the *Ontario Temperance Act,* and in *McDonald* v. *Clarke* (4), a case from Nova Scotia, the contrary view prevailed.

Special attention should be given to the decision of Stein J., in *Le Roi* v. *Messervier et Légaré Automobile de Montmagny Limitée* (5), where the learned judge, though apparently of the opinion that liability to forfeiture was absolute under sec. 181 (then sec. 185) of the *Excise Act,* decided he had the power to exercise a discretion under sec. 124 (then sec. 129).

It will thus be seen that the enactment in question has so far given rise to quite a diversity of opinion. It has now become the duty of this court to express its views upon it.

In order to do so more conveniently, it is necessary to quote section 181:

181. Every person who sells or offers for sale, or who purchases, or has in his possession any spirits unlawfully manufactured or imported, whether the owner thereof or not, without lawful excuse, the proof of which shall be on the person accused, is guilty of an indictable offence, and shall, for a first offence be liable to a penalty not exceeding two thousand dollars and not less than two hundred dollars, and to imprisonment, with or without hard labour, for a term not exceeding twelve months and not less than one month, and, in default of payment of the penalty, to

(1) (1928) Q.R. 67 S.C. 78.
(2) [1929] 4 D.L.R. 154.
(3) (1926) 46 C.C.C. 192.
(4) (1889) 22 N.S.L.R. 110.
(5) (1928) 34 R.L.n.s. 436.

a further term of imprisonment not exceeding twelve months and not less than six months, and for every subsequent offence to a penalty not exceeding two thousand dollars and not less than five hundred dollars, and to imprisonment, with hard labour, for a term not exceeding twelve months and not less than six months, and in default of payment of the penalty, to a further term of imprisonment equal to that already imposed by the court for such subsequent offence; and all spirits so unlawfully manufactured or imported wheresoever they are found, and all horses and vehicles, vessels, and other appliances which have been or are being used for the purpose of removing the same, shall be forfeited to the Crown, and shall be dealt with accordingly.

The section, it will be noticed, sets out no qualification as to ownership of the "horses and vehicles, vessels and other appliances which have been or are being used." On the contrary, it says that all such horses, vehicles, etc., "shall be forfeited to the Crown, and shall be dealt with accordingly." Upon the bare words of the enactment it must, therefore, follow that any vehicle used for the purpose of removing spirits unlawfully manufactured or imported is subject to the forfeiture therein prescribed, unless something be found in the context or in the general scope of the Act to justify a departure from the well known rule that the intention of the legislature must be determined from the words it has selected to express it. Here we find nothing of the kind in the context or in the subject-matter of the statute. The learned trial judge observed that, when dealing with penalties, the expression "whether the owner thereof or not" is used in the section, while it is not there when the section comes to deal with the forfeiture. But the explanation is that it was necessary, in order to avoid doubt, to insert the expression in the one case, while it was not in the other. In the first part of the section, mere possession is the mischief aimed at by the legislature. Now, possession may be possession by the owner, or it may be possession in the name of or for another; and it was, of course, essential, in the premises, to specify that "possession" alone would be sufficient to incur the penalty, "whether" the person found in "possession" of the spirits was "the owner thereof or not." It was not so, however, in that part of the section dealing with the forfeiture of vehicles, and the other appliances mentioned. It may be a question whether, the legislature having once said that the penalty was incurred by the mere possessor, whether owner or not, the expression does not *ipso facto* extend to

1931

THE KING v. KRAKOWEC ET AL.

Rinfret J.

the whole section without the necessity of its being repeated. It is sufficient to say that, in the provision respecting forfeiture, the object in view is the connection between the vehicles and the spirits unlawfully manufactured or imported. The point is that the vehicles "have been used or are being used for the purpose of removing the same"; and it is immaterial to whom the vehicles belong. In the words of Sedgwick J., in *The Ship "Frederick Gerring Jr."* v. *The Queen* (1),

> In the enforcement of fiscal law, of statutes passed for the protection of the revenue or of public property, such provisions are as necessary as they are universal, and neither ignorance of law, nor, as a general rule, ignorance of fact, will prevent a forfeiture when the proceeding is against the thing offending, whether it be the smuggled goods or the purloined fish, or the vehicle or vessel, the instrument or abettor of the offence.

That the proceeding is, under the *Excise Act*, "a proceeding against the thing," that is, in the nature of a proceeding *in rem*, is apparent throughout the Act (Secs. 79, 83, 121, 124, 125, 131, etc.), but is nowhere more evident than in sec. 125, under which

> all vehicles, vessels, goods and other things seized as forfeited * * * 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,* * * * gives notice * * * that he claims or intends to claim the same.

As will be noticed, the automatic condemnation is against the thing seized. Moreover, the right to object is given both to the owner and "the person from whom (it was) seized"—a right quite incompatible, if forfeiture resulted only in cases where the owner was also the offender.

We agree that, when the meaning of a statute is doubtful or ambiguous, the courts should not, unless otherwise compelled to do so, give it that interpretation which might lead to unjust consequences; but even penal statutes must not be construed so as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation would comprehend (*Dyke* v. *Elliott; The "Gauntlett"* (2)); and it is surely not for the judge so to mould a statute as to make it agree with his own conception of justice (Craies on Statute Law, 3rd ed., pp. 86, 444). Adverting to the particular case before us, it is not assuming too much to say that it must have been known to the

(1) (1897) 27 Can. S.C.R. 271, at 285.

(2) (1872) L.R. 4 P.C. 184, at 191.

legislature, when it passed the *Excise Act*, that a great many drivers of motor vehicles are not the owners thereof, but possess and operate them subject to conditional sale agreements, and if sec. 181 was meant to apply only to vehicles driven by the owners thereof, it is obvious with what ease the provision respecting forfeiture could be evaded.

Whether such a thing exists as what is referred to by Lord Cairns (in *Partington* v. *Attorney-General* (1)) as the " equitable construction " of a statute, we cannot see that this is a case for its application, and we find no reason why we should not simply adhere to the words of the enactment.

It is not for the court to say if, in some cases,—such as, for example, when the vehicle utilized was stolen from its owner—the forfeiture may effect a hardship. Such cases are specially provided for in subs. 2 of sec. 133 of the *Excise Act*. The power to deal with them is thereby expressly vested in the Governor in Council, thus leaving full play to the operation of sec. 91 of the *Consolidated Revenue and Audit Act* (c. 178 of R.S.C., 1927), for the remission of forfeitures. We are unable to agree with the decision in ***Le Roi*** **v.** ***Messervier*** (2), already referred to, that the discretionary power is also vested in the court under sec. 124 of the Act. In our view, that section means nothing more than this:

After the vehicles, vessels, goods and other things have been seized as forfeited under sec. 181, the person from whom they were seized, or the owner thereof, may prevent the automatic condemnation of the said vehicles, etc., by giving notice as provided for in sec. 125 " that he claims or intends to claim the same "; whereupon, an information for the condemnation of the vehicles, etc., having been filed (as was done in this case), the court may hear and determine the claim made by the person from whom they were seized or from the owner, and the court may release or condemn the vehicles, etc., as the case requires, i.e., according as they come or not under the provisions of the Act. The court thereunder is vested with no discretion, it must decide according to law.

(1) (1869) L.R. 4 H.L. 100, at 122. (2) (1928) Q.R. 34 R.L.n.s. 436.

1931

THE KING
v.
KRAKOWEC
ET AL.

Rinfret J.

The appeal must be allowed and judgment should be entered granting the conclusions in the information of the Attorney-General of Canada, with costs both here and in the Exchequer Court.

Appeal allowed with costs.