

BETWEEN

1909
 April 20.

WILLIAM GREENSPAN.....CLAIMANT ;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Revenue — Customs Act—Breach — Importation of jewellery in Canada—
 Smuggling—Evidence—Costs.*

Where unsatisfactory statements with respect to certain articles of jewellery imported into Canada were made by the owner to the Customs authorities who had seized the goods, but the court, on a reference of the claim, found that upon the evidence before it there was no intention on the part of the claimant to evade the law, the goods were ordered to be restored to the claimant ; but he was not allowed his costs. *Smith v. The Queen* (2 Ex. C. R. 417) ; and *Red Wing Sewer Pipe Co. v. The King* (12 Ex. C. R. 230) followed.

THIS was a reference of claim by the Minister of Customs under the provisions of sec. 179 of chap. 48, R. S., 1906.

The claimant Greenspan came to Canada from Buffalo, N. Y., for the purpose of settling in this country. After having been in the City of Toronto for some five days he was arrested and imprisoned by the police department on suspicion of his being a man who was wanted in Montreal for having committed a theft there. After having been detained in custody for some three or four days with no charge against him, he was deprived of certain jewellery he had on his person by the police and handed over to the Customs officers as having been guilty of an evasion of the Customs laws by not having entered and declared such jewellery for duty on coming into Canada. He was compelled to pay 70 % on a valuation of \$600 before he was allowed to take the jewellery into his possession again. Certain statements were made by him to the Customs authorities which were regarded by them as unsatisfac-

tory. He was however, ignorant of the English language, which might have accounted for certain discrepancies in his statements. He subsequently made a claim against the Department of Customs for restitution of the money so paid, on the ground that a man coming into this country with a view to settling here has a right to carry jewellery to a reasonable extent on his person without entering it for duty. The Department of Customs decided against the claim, and sustained the action of its officials in Toronto.

1909
GREENSPAN
v.
THE KING.
—
Argument
of Counsel.
—

March 22nd, 1909.

The case was now heard at Toronto.

R. H. Greer for the claimant.

J. H. Patterson for the respondent.

Mr. *Greer* contended that as Greenspan was entering Canada as a settler he had a clear right to bring in his jewellery as part of his personal belongings or wearing apparel. The articles were not brought in for sale, there is no evidence to support the contention of the Customs officials as to that. Any of Greenspan's statements which seem to indicate an intention to avoid the payment of duty are due to an imperfect knowledge of English, his whole course of conduct with respect to the jewellery negatives any fraudulent intent. He was ignorant of Customs laws, and if he had declared these articles they would have been entitled to free entry. As there is no evidence of intention to smuggle, the Court should give the claimant the full benefit of the settler's privileges. *United States v. One Oil Painting* (1); *The Queen v. Tolson* (2); *United States v. One Pearl Chain* (3).

Mr. *Patterson* argued that the facts all tended to show an intention to evade the duty payable on the jewellery brought into Canada by the claimant. He had no baggage,

(1) 31 Fed. Rep. 881.

(2) 23 Q. B. D. 168 at p. 185.

(3) 139 Fed. Rep. 513.

1909
 GREENSPAN
 v.
 THE KING.
 Reasons for
 Judgment.

which was a most suspicious fact in the case of an alleged settler. He made statements to the Customs Inspector inconsistent with honesty of intention. He had no right of free entry for jewellery carried in his pocket. The Crown is entitled to exact a reasonable sum in lieu of forfeiture. (Cites secs. 23, 28; 187, 193, 198 and 219 of the *Customs Act*, R. S. 1906 c. 48).

Mr. Greer, replied.

CASSELS, J., (now April 20th, 1909), delivered judgment.

This case arises out of a seizure of one pair of solitaire diamond earrings, two only solitaire diamond rings, and one only ring, turquoise set with twelve diamonds, made by Customs officials at Toronto, confirmed by a decision of the Minister of Customs in 1907.

It is not necessary to set out the facts in detail. It would have been more satisfactory had Greenspan and his wife procured evidence from Buffalo corroborating their own evidence as to this purchase and the re-setting of the articles in Buffalo.

As it is, I have to deal with the case as presented before me. I have no reason to disbelieve the story told to me by Greenspan and his wife. They gave their evidence in a manner that carried conviction of the truth of their statement. They are Roumanian Jews. Their language is Yiddish. They both had a very poor appreciation of the meaning of the English language, and I think that neither Greenspan nor his wife should be too harshly judged in respect of statements said to have been made by them on two different occasions varying from their evidence given before me.

Besides, there is not much discrepancy between the sworn evidence before me and their statements as sworn to by the officers of the Customs Department.

Greenspan is a man of considerable means. This is

proved by undisputed evidence. He has purchased property to a considerable amount in Toronto. The value of the jewelry in question is trifling compared with his means. The wife appeared in court with the earrings in her ears and one ring on her finger, the other being on her husband's finger.

1909
GREENSPAN
v.
THE KING.
Reasons for
Judgment.

The Customs authorities seemed to have had evidence that Greenspan had offered one of the diamonds for sale. Counsel for the crown stated that one Branstein was in court who would swear to the fact. He was not called. This alleged fact had considerable influence on the action of the officials. I do not refer to the details of the alleged admissions said to have been made by Greenspan, or the manner in which they were obtained. It may be necessary in the interests of justice to resort to the means adopted in this case by the police. Personally it does not appeal to my sense of justice.

There will be a declaration that the claimant is entitled to the possession of the goods; and that the money paid in to obtain the release of the same from the Customs be refunded and restored to him. Judgment that the claimant is entitled to recover from the Crown the sum of \$420.00 without interest. Under the facts of the case, there ought to be no costs to either party, and it is so ordered. *Smith et al v. The Queen*, (1) *Red Wing Sewer Pipe Co v. The King* (2.)

Judgment accordingly.

Solicitors for the claimant: *Smith, Rae & Green.*

(1) 2 Ex. C. R. 417.

(2) 12 Ex. C. R. 230.