

1931

Sept. 18.
Oct. 30.

HIS MAJESTY THE KING..... PLAINTIFF;

VS.

PETE ROUBLE DEFENDANT.

*Revenue—Excise Act, Section 95, ss. 2—Seizure—Forfeiture—Discretion
of Court*

On July 26, 1928, an unidentified person rented a certain garage, and on the same day the truck in question herein was driven into the garage by R., a hired truckman, and the owner thereof, who locked it therein. The truck, to the knowledge of R., had on it a "still" used or to be used in violation of the Excise Act in the production of spirits, and which truck was used for removing the still from one place to another. On August 1, 1928, the truck was seized by an Excise Officer, under section 95, ss. 2 of the Act, as forfeited. R. pleaded guilty before the Criminal Courts of illegally having a still in his possession. He was condemned and paid the fine. He contended that a discretion was vested in this Court to direct the restoration to him of the truck, as being an innocent wrongdoer and already sufficiently penalized.

Held that, in the circumstances, the truck was legally seized and forfeited and that the Court had no discretion vested in it to remit the penalty, and that, in any event, even if the court had any discretion in the matter, it should only be exercised upon substantial grounds of law or facts which are entirely absent in this case.

INFORMATION exhibited by the Attorney-General of Canada, to have it ordered and declared that the seizure and forfeiture of a certain motor truck used contrary to the provisions of the Excise Act was legal and valid.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Winnipeg.

A. C. Campbell, K.C., for plaintiff.

W. J. Lindal for defendant.

The facts and questions of law raised at the trial are stated in the Reasons for Judgment.

THE PRESIDENT, now (October 30, 1931), delivered the following judgment.

This is an Information filed by the Attorney-General of Canada on the 16th day of June, 1930, in which it is claimed that a certain motor truck seized by an Excise Officer in the city of Winnipeg, Manitoba, on the 1st day

of August, 1928, should be declared forfeited to His Majesty, and was heard upon certain written admissions made by counsel for the parties hereto. The admissions are as follows:

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That on the 26th day of July, 1928, an unidentified person rented from Mrs. Ilene Taylor a garage at the rear of her premises at 470 Spense street in the city of Winnipeg, in Manitoba, and that under the said renting on the afternoon of the same day a truck, being the truck in question driven and owned by the defendant Rouble, being a hired truckman, and having thereon to the knowledge of the defendant a still used or to be used in violation of the Excise Act in the production of an article, namely spirits, was driven into the said garage by the defendant and the same was locked therein by the defendant and remained therein until the 1st day of August, 1928, when the same was seized by W. H. Stubbs, an Excise Officer, and that the defendant within one month from said 1st day of August, 1928, gave notice in writing to said seizing officer that he claimed the said truck and the said truck was thereafter provisionally released to the defendant under authority of section 121 of the Excise Act upon the defendant depositing \$200 representing the appraised value of the said truck and that the proper proceedings were taken under section 77 of the Excise Act as it then stood, and a notice, hereto annexed, was then mailed in a registered package to the last known post office address of the said Peter Rouble and that in respect of the still on the said truck the said Peter Rouble was on the 15th day of August, 1928, convicted on a plea of guilty for THAT Peter Rouble of 381 Alfred avenue at the city of Winnipeg in the province of Manitoba, on the first day of August in the Year of Our Lord one thousand nine hundred and twenty-eight did unlawfully at the garage in rear of 470 Spense street, Winnipeg, have without having a licence under the Excise Act then in force and without having given notice thereof as required by the said Act in his possession a still suitable for the manufacture of spirits, the said still not being a duly registered chemical still of capacity not exceeding three gallons, being an offence contrary to section 176 paragraph E of the Excise Act and amendments thereto, being Chapter 60 of the Revised Statutes of Canada, 1927, contrary to the provisions of the statute in such cases made and provided, and was thereupon fined \$200 and costs which have been paid.

The admissions reveal the important facts, quite clearly I think. The defendant Rouble pleaded guilty, in a court of competent jurisdiction, to a charge of having in his possession unlawfully, a still, contrary to the provisions of sec. 176 (E) of the Excise Act, and he was thereupon fined \$200 and costs for such offence. A motor truck owned and driven by the defendant, and specifically described in the Information, was used in removing the same still from one place to another, and the still had in fact been laden for about five days upon the motor truck in a garage, when seized; the motor truck was seized as forfeited, by an ex-

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cise officer, for violation of sec. 95, ss. 2 of the Excise Act. The admissions state that the defendant Rouble was aware that he was transporting a still on his motor truck, and that the still was used or to be used in violation of the Excise Act in the production of "spirits." The question for decision is whether any discretion is vested in the court to remit the penalty imposed against the motor truck, and if so, whether within the admissions are to be found grounds for so doing.

The Information asks for a declaration that the seized truck be forfeited. This I assume became necessary, because, either under sec. 124 or sec. 125 of the Excise Act, or possibly under both, Rouble became a claimant of the seized motor truck, and it became necessary in order to determine the issue thus raised that proceedings be taken in some court by either the Crown or the claimant of the truck. No point was raised before me as to the procedure adopted in the initiation and prosecution of this Information.

This is a proceeding in the nature of an action in rem in which it is sought to condemn as forfeited the thing itself, and the bond or money stipulated for the property is a mere substitution for the thing itself; still the real and active defendant is the claimant of the property. Here the truck was seized for the illegal use made of it by Rouble. The forfeiture results from the nature of the use made of the truck and this method of enforcing revenue laws is common, and is enacted to enable governmental authorities to put an end to such use by the apprehension of the thing used, and to minimize the temptation to disregard such laws. The motor truck was seized as forfeited, it was said by counsel for the Crown, under sec. 95, ss. 2, which is as follows:

2. All horses, vehicles, vessels and other appliances which have been or are being used for the purpose of removing any spirits, malt, beer, tobacco, cigars, materials or apparatus used or to be used in the production of any article subject to excise, in violation of this Act, shall likewise be liable to be seized by any such officer and to be forfeited to the Crown, and may be dealt with in like manner.

The claimant's counsel did not contend that the seizure was without statutory authority. The only point urged on behalf of the claimant Rouble was that a discretion was

vested in the court to direct a remission of the penalty and a restoration of the truck to Rouble, and that this discretion should be exercised in his favour, because he was an innocent wrong-doer and had already been sufficiently penalized. The only penalty apparently prescribed by the statute for the offence for which the truck was seized is forfeiture of the thing itself. After the seizing officer, in the exercise of his discretion, seized as forfeited the motor truck, I do not think any discretion is anywhere in the Act vested in the court to remit the penalty, especially, if in fact, the alleged offence was committed by and with the knowledge of the owner of the thing seized. It appears to me that I have no discretion in the matter. In any event, upon the facts disclosed in the admissions, I am not satisfied that there are before me any grounds upon which I could possibly refuse a decree for the forfeiture and condemnation of the truck, and direct a remission of the penalty and a restoration of the truck to the claimant. If the court has any discretion in the matter it should only be exercised upon substantial grounds of law or fact which seem to be entirely absent here. There is no matter before me in my opinion, which would warrant a remission of the penalty, even if I was possessed of such a discretion and were inclined to exercise it in favour of Rouble. The motor truck was used by Rouble for a purpose prohibited by statute, and there is nothing in the admissions to the effect that the user was an innocent one, rather, such a statement of fact seems to have been avoided. If the penalties directly and indirectly imposed against the claimant of the truck were too onerous, or unjust, in the circumstances of the case, then I think the appeal for mitigation should have been made to the authorities administering the Excise Act. The claim of the Attorney-General for forfeiture or condemnation of the motor truck cannot I think, on the grounds before me be refused. The case of *Lord Advocate v. Crookshanks* (1), may be found of interest in this connection.

Costs will follow the event.

Judgment accordingly.

(1) (1888) 15 Sc. Sess. Cas. 995 (4th Ser.)

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