

IN THE MATTER OF THE PETITION OF RIGHT OF

HODGSON, SUMNER & CO., LIMITED

SUPPLIANTS;

AND

HIS MAJESTY THE KING,

RESPONDENT.

1915  
May 6.

*Customs—Goods stolen or lost while in bond in Customs Warehouse—Liability of Crown.*

*Held, following Corse vs. The Queen (3 Ex. C.R. 13) that the Crown is not liable for the loss of any goods while the same were in the custody of the Officers of Customs.*

THIS was a claim against the Crown by petition of right for the recovery of \$260.89, the value of certain goods which were alleged to have been lost or stolen while in the custody of the Customs authorities.

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

May 1st, 1914.

The case came on for hearing before the Honourable Mr. Justice Audette, at Montreal.

*A. Geoffrion, K.C., for the suppliants.*

*L. T. Marechal, K.C., for the respondent.*

Mr. *Geoffrion* contended that the action would be one based either on a quasi-contract or on a contract. The Crown took possession of the goods for the pur-

1915  
 HODGSON  
 v.  
 THE KING.  
 Argument  
 of Counsel.

pose of examining them, and has not returned them. The reason why it may not be a contract is this, a contract supposes freedom, mutual consent. The Crown should either return the goods to the suppliants or pay for them. If it is a quasi-contract, it corresponds to what a bailment is in English law. Now coming to the question of whether or not there is a bailment here, the *Corse* case was similar to this one, and it was there held not to be a bailment. That is my difficulty. You must look at the law of the Province where the transaction took place. What would be a bailment in one Province, might not be one in another. Whether the Crown can ever be a bailee or not is immaterial. The only way in which I can distinguish that particular case from the present one, is that it was established there that the Crown was dispossessed—*the goods had been stolen*. In the case before the court, the Crown has not proved that the goods are not still in its possession—they simply say we cannot find them. The Crown took possession of the goods, and it has not been established that they are no longer in its possession. If it is a quasi-contract it is to be governed by the law of contract and not by the rules with respect to tort; and if the Crown is bound by a contract, it is equally bound by a quasi-contract.

Mr. *Marechal* contended on behalf of the Crown that the case now before the Court was absolutely similar to the *Corse* case. The suppliants were aware of the system of examination which was followed in the Custom House at Montreal, and that custom has existed for the past fifty years. In the case of *Fry v. Quebec Harbour Commsisioners* (1)—which was confirmed by the Court of Appeal (2), it was held that “a

(1) Q.R. 9 S.C. 14.

(2) 5 Q.B.R. (Que.) p. 340.

“warehouseman is not liable for a loss resulting from a  
 “cause the danger and risk of which was made known  
 “to the owner of the goods at the time they were  
 “warehoused.” In this case there is no quasi-contract  
 —it is purely and simply a contract and; you cannot  
 enlarge the interpretation of the section of the Act,  
 and base the claim upon a quasi-contract.

1915  
 HODGSON  
 v.  
 THE KING.  
 Reasons for  
 Judgment.

AUDETTE, J. now (May 6th, 1915) delivered judgment.

The suppliants brought their petition of right to recover the sum of \$260.89, being the value to them of certain goods purchased in and imported from Germany, and which would appear to have been stolen or lost at the Custom House in Montreal. The above value includes the duty paid.

The goods in question, which were fancy goods bought for the Christmas trade, belonged out and out to the suppliants, having been bought by them in Germany. The goods were packed in a large case, four feet by three feet and three feet in height. This case, one of several, was taken from the steamer to the third flat of the Examining Warehouse, where the goods were examined and appraised, as appears by Exhibit No. 2, and sent down to the basement of the building for delivery.

Such delivery is usually made—at any rate it was at the date in question—under the practice prevailing at the Custom House of the Port of Montreal, upon this examination ticket, Exhibit No. 2, being handed to the checking Customs clerk, who takes receipt for the goods upon this ticket, which is finally retained by him.

Upon obtaining this examination ticket, the suppliants deputed their own carter to go and take delivery

1915  
 HODGSON  
 v.  
 THE KING.  
 —  
 Reasons for  
 Judgment.  
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of the case in question. Upon enquiry, and after searches being made, it was found that the case was missing, and a correspondence was started between the said suppliants and the Collector of Customs at Montreal in respect of the same. On the 10th March, 1911, the Collector of Customs, addressed to the suppliants a letter reading as follows:—

“Referring to your letter of the 4th inst. respecting one case ex S.S. *Montezuma* short-delivered to you from the Examining Warehouse on entry No. 54578A, I beg to inform you that this package was duly received in the Examining Warehouse, examined by Appraiser and returned to the ground floor where all trace of it, I regret to say, has been lost. A very thorough search has been made without avail. I return you the examination ticket and can only trust that sooner or later trace of the package may be found.

“Yours truly

“R. S. WHITE,  
 “Collector of Customs.”

This established beyond controversy the failure on behalf of the Customs authorities to deliver the goods after due demand had been made therefor.

The goods have ever since been missing and the suppliants are suing to recover the value thereof.

For the loss of goods under such circumstances is the Crown liable? That is the question to be determined in the present action.

The same question has been under consideration before this Court in the case of *Corse v. The Queen* (1) where the question has been answered in the negative, denying the subject any redress. There is no reason

for reaching any other conclusion, the present case not being distinguishable from the *Corse* case.

The suppliants not being entitled to the relief sought by their petition of right, there will be judgment for respondent with costs.

1915  
HODGSON  
v.  
THE KING.  
Reasons for  
Judgment.

*Judgment accordingly.*

Solitors for suppliants : *Geoffriom, Geoffrion and  
Cusson.*

Solicitor for respondent : *L. T. Marechal.*

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