

THE QUEEN ON THE INFORMATION }  
 OF THE ATTORNEY-GENERAL FOR } PLAINTIFF ;  
 THE DOMINION OF CANADA..... }

1900  
 May 16.

AGAINST

FITZGIBBON & COMPANY.....DEFENDANTS.

THE QUEEN ON THE INFORMATION }  
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 THE DOMINION OF CANADA..... }

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THOURET AND OTHERS.....DEFENDANTS.

*Revenue laws—The Customs Act, sec. 192—Penalties—Jurisdiction of  
 Exchequer Court—Discretion of judge—Remission of penalty.*

The penalty enforceable under the provisions of sec. 192 of *The Customs Act* in the Exchequer Court is a pecuniary one only, the other remedies open to the Crown thereunder cannot be prosecuted in this court.

2. The court has no discretion as to the amount of the penalty recoverable under such enactment.

THESE were two actions for penalties for alleged infraction of *The Customs Act*, by fraudulent undervaluation of goods for the purpose of Customs entry at the port of Montreal.

To the informations filed by the Attorney-General, defences were pleaded in which the defendants denied the charge of infringing the law and their liability in respect of the penalties sought to be recovered.

8, 9, 10, 11, 12, 14, 15, 16 May, 1900.

The actions came on for trial before the JUDGE OF THE EXCHEQUER COURT, but the parties arrived at a settlement during the process of the trial and before argument.

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 & COMPANY.

*E. L. Newcombe, Q.C. and N. Charbonneau, Q.C.* for  
 the plaintiff;

*F. R. Latchford, Q.C., J. A. C. Madore and E. Guerin*  
 for defendants.

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THE JUDGE OF THE EXCHEQUER COURT now (May  
 16th, 1900), delivered judgment.

Under these circumstances I think it would be proper for me to say that the first and most important consideration in such matters is that the law should be upheld, and that irregular and improper methods of transacting business with the Customs should be replaced by regular and proper methods.

I understand it to be the fact that since 1895 there has been no ground of complaint against the manner in which the business of the Customs has been carried on by this firm, and so far one object is gained.

Then of course it is also in the public interests that if any one has broken the law he should suffer a just punishment for it. That is right in itself, and it is necessary in order to deter others from offending under like or similar circumstances.

The information is filed to recover penalties under the 192nd section of *The Customs Act*. The penalty there, so far as it may be enforced in this court, is a pecuniary penalty, which in cases where the value of the goods is ascertained is twice the value of the goods. There are other penalties and another form of punishment provided, but these are not recoverable or enforceable in this court, in which the punishment must always be inflicted by the imposition of a pecuniary penalty.

To illustrate that: If you take the case of an invoice of goods amounting to \$1,000 in which there was an undervaluation of 10 per cent. and the Customs duties should happen to be, say 30 per cent. the importer

who made the undervaluation would do so to gain \$30, but he would put in peril a sum or penalty amounting to \$2,000. So that you see the penalty is certainly very great indeed in comparison with anything that any importer can gain by any such undervaluation as that which I have mentioned. In regard to these penalties, it is to be observed that the judge has no discretion; that if the case goes against the defendants he must impose the whole penalty, no matter what the results may be. I am not now referring to the present case, because I do not wish to express any opinion as to it one way or the other, but in such a case, under such circumstances, it might very well happen that a judgment would go against defendants which no firm could well be expected to answer, and while it might ruin the defendants it might be of no advantage to the public treasury. I do not say that there might not be a case in which it would be for the public interest that that thing should happen, but I have no idea that this is a case of that kind.

But while the court has no discretion, the Governor in Council has. You will find the provision in *The Audit Act* (1). The Governor in Council may remit any forfeiture or pecuniary penalty in whole or in part, conditionally or unconditionally. He may do that either before, or pending, or after proceedings in a court for the recovery of the forfeiture or penalty.

That being the state of the law, of course it is quite reasonable for those who act for the Crown during the pendency of a suit to agree upon terms of settlement and when they come to settle the terms; when they come to agree upon these terms they are in a position to exercise a reasonable and wise discretion as to the amount for which any judgment should be entered and what they have to see to is that the law,

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as I have said, is vindicated and that the judgment is for a sum which, being paid, will uphold the law, will vindicate the law and will conserve the public interests.

I have no reason to think that this settlement which is now proposed is anything but a fair and reasonable settlement in view of the circumstances of the case. I think it is fair and reasonable, and I have no hesitation in giving effect thereto.

In this case then that is now pending the judgment will be for duties \$2,000, for penalties \$8,000, and for costs.

Then in the other case of *The Queen v. Thouret et al.*, judgment will be, for duties, \$10,000, and for costs.

*Judgment accordingly.*

Solicitor for plaintiff: *E. L. Newcombe.*

Solicitors for defendants: *Madore & Guerin.*

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