

matters relating to the Customs and may summon before him any person and may examine him and require him to give evidence. . .”.

Upon the advice of F. W. Bissett of Halifax, his counsel, Foster ignored the summons and on April 16 an information and complaint was laid charging him with Failing to Attend, contrary to s. 134A (4) (a), Customs Act.

With W. C. Dunlop, K.C., of Halifax prosecuting, the accused ten days later pleaded not guilty before Provincial Magistrate R. J. Flinn who after hearing the evidence adjourned the case for decision. Both counsel prepared briefs to assist the magistrate in arriving at his conclusions.

On May 17, 1946, having fully reviewed the evidence, the magistrate convicted the accused and ordered him to pay a fine of \$50 and costs or in default to serve 30 days in gaol.

The accused appealed by way of a stated case whose text reads:

IN THE SUPREME COURT
BETWEEN

JOHN C. FOSTER

APPELLANT

—and—

HIS MAJESTY THE KING

on the information and complaint of
Kenneth J. Parkins,

RESPONDENT

CASE STATED BY R. J. FLINN, K.C.,
PROVINCIAL MAGISTRATE FOR
THE MAGISTERIAL DISTRICT OF
THE PROVINCE OF NOVA SCOTIA,
UNDER THE PROVISIONS OF S. 761
OF THE CRIMINAL CODE.

WHEREAS on the 16th day of April, A.D., 1946, an information was laid under oath by the above named Kenneth J. Parkins, before A. E. Inglis, K.C., A Provincial Magistrate for the Magisterial District of the Province of Nova Scotia, for that the above named, John C. Foster, being a person required to attend at an inquiry or investigation being conducted by D. A. McKinnon, a member of the Royal Canadian Mounted Police designated by the Minister of National Revenue to

conduct such an inquiry or investigation under s. 134A of the Customs Act at R.C. M.P. Headquarters, 203 Hollis Street, in the City of Halifax, at the hour of 10.30 a.m., failed without valid excuse to attend accordingly, contrary to the provisions of s. 134 (4) of the Customs Act.

AND WHEREAS the said charge was duly heard before me on the 26th day of April, A.D., 1946, in the presence of the said parties and after hearing the evidence adduced and counsel for the parties, I found the said John C. Foster guilty of the said charge, but at the request of the said John C. Foster I state the following case for the opinion of this Honourable Court, my findings of fact being:

1. That the said John C. Foster had been required to attend before D. A. McKinnon a member of the Royal Canadian Mounted Police under the provisions of s. 134A of the Customs Act.
2. That it was proven that the said D. A. McKinnon had been duly designated by the Minister of National Revenue to hold such an inquiry under s. 134A of the Customs Act.
3. That the said John C. Foster did not attend the said inquiry because the said D. A. McKinnon would give no assurance that he would not be prosecuted for theft, or receiving stolen goods, or some other offences connected with the Customs, Excise, or Criminal Code.
4. That the said John C. Foster had no valid excuse for not attending such inquiry, (3) not being such excuse.

IT WAS THEREUPON contended on behalf of the said John C. Foster, as follows:

1. Information bad for two reasons:
 - (a) Does not disclose an offence as Minister cannot designate a *member* of the Royal Canadian Mounted Police but only an officer or non-commissioned officer of the Royal Canadian Mounted Police *employed in the preventive service of Canada*.
 - (b) Does not state that Inspector McKinnon is employed in the preventive service.

See ss. 134A and 2 (1) of the Customs Act.