
 REPORTS AND NOTES OF CASES

Dominion of Canada.

EXCHEQUER COURT.

JULIEN v. THE QUEEN.

Customs law—Wrongful seizure of vessel—Damages—Jurisdiction.

Damages cannot be recovered against the Crown for the wrongful act of a Customs officer in seizing a vessel for a supposed infraction of the Customs law. Under the provisions of s. 15 of the Exchequer Court Act, however, the claimant is entitled to the restitution of the vessel.

2. The Exchequer Court has jurisdiction to entertain a petition of right founded upon a claim in respect of which the Controller of Customs has given his decision under s. 180 of The Customs Act, but has not referred such claim to the Court as therein provided.

[OTTAWA, Nov. 16, 1896—BURBIDGE, J.]

The suppliant brought his petition to recover possession of the schooner "Rising Sun," which had been seized for an alleged infraction of the Customs laws of Canada, and for damages arising from such seizure. The Controller of Customs had maintained such seizure, and the suppliant, within the thirty days mentioned in the ss. 181, 182 of The Customs Act (R.S.C. c. 32), gave notice in writing that the Controller's decision would not be accepted. The Controller, however, did not refer the matter to the Court, but the suppliant was given a fiat for his petition of right.

Rowlings and Thompson, for suppliant.
W. B. A. Ritchie, Q.C., for Crown.

BURBIDGE, J. : At the trial which took place at Halifax on the 3rd of October, 1895, I came to the conclusion that a case had not been made out for the forfeiture of the vessel, and I ordered that it should be forthwith restored and delivered up to the suppliant, with her tackle, upon his filing with the Registrar of the Court a personal undertaking that the vessel would be re-delivered to the Crown if the order then made should eventually be set aside and judgment be entered in favor of the respondent. The Crown also had liberty on the first day of the next sitting of the Court at Halifax to move to examine a witness who could not be produced at the hearing on the third day of October, 1895. The personal undertaking I have mentioned was given by the suppliant, and the vessel with her tackle was delivered to him. The witness whom the Crown had desired to examine was not produced at the next sitting of the Court, but counsel for the Crown, in pursuance of leave reserved, moved to set aside the order made on the ground of want of jurisdiction in the Court to entertain the petition. The suppliant at the same time, in pursuance of leave reserved to him, moved for judgment for damages for the arrest and detention of the vessel.

With reference to the first question, it is argued for the Crown that where the Minister or Controller of Customs makes his decision in respect of any seizure or detention, penalty or forfeiture, and the claimant within the thirty