

their hands. Smith was not at all sure that he would have done so, because he handles many boxes, and it was the carter's business to object if the box was not in good order; though if he had noticed the nail the fact would, he thinks, have struck him. On the other hand, Labelle, who opened the box in the examining warehouse, and those who were with him, do not appear to have observed that anything was wrong with it until after the box had been opened and found to be empty.

On this state of facts I am asked by the plaintiffs to find that the theft was committed while the box was at the examining warehouse, and although the evidence is not to my mind conclusive one way or the other, I shall accede to the plaintiffs' contention, and, for the purposes of the case, draw that inference from the facts proved.

For the loss of the goods under these circumstances the plaintiffs argue that the defendant is liable. With that view I cannot agree.

Even if it were possible under the authorities to hold that the Crown was, in the ordinary acceptance of the word, a bailee of the goods in question, and bound in keeping them to that degree of diligence which the law exacts, for example, of such special or quasi-bailees as captors or revenue officers, the plaintiffs would, I think, fail. (Story on Bailments, ss. 38, 39, 444-450, 613-618; *Finucane v. Small*, 1 Esp., N.P.C. 315). There is no evidence of want of diligence in keeping the goods, or, if it is to be inferred that they were stolen by a servant of the Crown, of negligence in selecting or retaining the dishonest servant. But the question is not to be determined by the law of bailments. The officer of the Crown who has the custody of goods sent to a customs warehouse for examination may be, and no doubt is, in a sense a bailee of such goods, but the Crown is not. (*Moore v. State of Maryland*, 47 Md. 467; 28 Am. R. 483). For any wrong committed by an officer of the Crown the injured person has his remedy against such officer (*Whitfield v. Le Despencer*, 2 Cowp. 765; *Rowning v. Goodchild*, 2 Wm. Bl. 906; Story on Agency, s. 319), but the Crown is not liable therefor except in cases in which the legislature has expressly, or by necessary implication, imposed the liability and given the remedy. (See authorities cited in *City of Quebec v. The Queen*, 2 Ex. C. R. 257; and in *Burroughs v. The Queen*, 2 Ex. C. R. 298). For United States authorities see *United States v. Kirkpatrick*, 9 Wheaton, 720; *Nichols v. United States*, 7 Wallace, 122; *Gibbons v. United States*, 8 Wallace, 269; *Schmalz*