

but I think 450 was received by Morris. As stated, 773 was delivered on the 4th September. The duty on the two bales had been paid in the latter part of August. The custom dues on the two bales were paid also in the latter part of August. There is no evidence of any application or request by Morris for a refund of the duty paid upon bale 450, which he states was not received. About two weeks afterwards the "Devona" of the Donaldson Line arrived in Montreal and consigned to Mr. Morris on this vessel was a bale number 5 or 500, which corresponded with the invoice given to Greene upon which bale No. 450 had been handed over. Mr. Greene then went to the custom house with the invoice and shewed that he had already paid duty on bale number 500 or number 5, and the result was that this bale 500 was handed over, the duty previously paid on 450 being credited as against this bale. This left bale 450 in the possession of Morris without the duty being paid. The letter of the 3rd October, 1906, asks for an invoice for bale 450. There is no suggestion that the goods in bale 450 had not been purchased by Morris, nor is there a suggestion in the letter that the goods in this bale 450 had not been received by Morris.

Staton, the agent, in the letter which he wrote to Day & Fox makes no reference whatever to any contention that the bale in question had not been received. Their letter is as follows:—

"Dear sirs,—Kindly send this firm a duplicate invoice for goods invoiced August 13th. They claim not to have received this invoice, and there is some trouble with the cartage company. Kindly mark on the invoice 'duplicate.'"

Subsequently Day & Fox were paid by Morris for the goods contained in bale 450.

The contention is raised that sometimes carters were in the habit of leaving bales at the wrong places, and it was suggested that Wallace, the carter, may have left the bale at some other place. It would not, in my mind, affect the case if it were so. The property passed through the custom house, and was handed to Mullaly's carter, and as between the custom house and the Crown the duties were payable on this bale, the bale being the property of Morris, whether he received it or not.

I think there is but one conclusion to be arrived at on the facts, and that the application on behalf of Morris should be dismissed with costs.