

THE ATTORNEY GENERAL

v.

SUN ALLIANCE & LONDON INSURANCE LIMITED

Judgment of Mr. Justice McWilliam delivered the 14th day of May, 1984.

The Plaintiff's claim is brought on behalf of the Minister for Finance and the Revenue Commissioners for a very substantial sum of money due on foot of a bond given by the Defendant guaranteeing payment by J.J. Murphy & Co., Ltd. (hereinafter called Murphy & Co.) of duties of excise chargeable in respect of spirits delivered from bonded warehouses.

The bond was dated 2nd December, 1981, and, under it, the Defendant bound itself to the Minister for Finance to pay him the sum of £1,400,000 upon condition that, should Murphy & Co. duly pay the duties of excise, the bond should be void or else remain in full force and effect.

Murphy & Co. failed to pay duties which became payable in respect of spirits and beer delivered from bond and imported respectively in the months of June and July, 1982, the payments becoming due in August, 1982.

It appears that a receiver was appointed over the property of Murphy & Co. in the middle of July, 1982, but no reference is made to this circumstance in the affidavits and no significance has been attached to it in the arguments.

The Defendant admits that the sums claimed are due to the Revenue Commissioners by Murphy & Co., but it is argued that

the Defendant is not liable upon the bond because all steps available to the Revenue Commissioners to obtain payment from Murphy & Co. have not first been taken.

This argument is based on the provisions of Section XXIV of the statute 4 Victoria, c.20, an Act relating to the collection and management duties of excise, under which all goods and commodities for or in respect of which any duty of excise is or shall be by law imposed and all materials, etc., for carrying on the trade or business in such commodities which are in the custody or possession of the person carrying on such trade or business shall be chargeable with all duties which during the time of such custody or possession shall have become chargeable or be in arrear or owing from the person carrying on such trade or business and shall be subject to all penalties and forfeitures which shall be or shall have been incurred by such person.

It is submitted that this section created a statutory lien for arrears of duty over such goods in the possession of Murphy & Co., and that the Revenue Commissioners were obliged to enforce this lien and their rights of forfeiture before taking proceedings against the Defendant and it is emphasised that the Revenue Commissioners were in a particularly strong position to control the situation as no goods could be taken out of bond without their consent.

No authority was cited as to the interpretation of the somewhat involved provisions of section XXIV and the only authority to which I was referred with regard to an obligation on the Revenue Commissioners to proceed to exercise rights on foot of the lien before proceeding on foot of the bond was a

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very old case of Cottin .v. Blane & Others (1795) 2 Anstruther 545.

This was an unusual case and, in my opinion, has little application to the circumstances of the present case. There the Plaintiff guaranteed the Defendant, Macauley, the owner of an American ship, the due performance by the Defendant Changeur of an agreement to employ the ship for a cargo at Bordeaux. The Defendant, Blane, was the London agent for Macauley. The ship was detained at Bordeaux by the French government for almost seven months under an embargo on all foreign vessels. The French government then decreed that a reasonable indemnity ought to be granted to all foreign owners whose interests were injured by the embargo. The Defendant, Changeur, became bankrupt, the freight was not paid and Blane sued the Plaintiff. The Plaintiff then brought his proceedings against the Defendants to discover what compensation had been received from the French government, to compel Macauley to proceed with a claim against the French government and claiming an injunction staying the first proceedings in the meantime. When the matter came to hearing Macauley, being abroad, had not put in any answer so that it was not known whether he had received any compensation or not. The judgment of Macdonald, Chief Baron, was as follows:-

"As the existing government of France have promised to indemnify the neutral owners, we are to presume that that promise will be fulfilled. Probably it has been so in part; but whether any compensation either has been or can be received, cannot be known until the coming in of

Macauley's answer, who alone was capable of claiming it. The injunction must be granted, the Plaintiff bringing the money into court."

This decision falls a very long way short of determining that the Revenue Commissioners in the present case were bound to enforce their lien against the stocks, if any, held by Murphy & Co. immediately after the duties became payable at the end of August, 1982. I do not know what is the procedure with regard to the release of goods from bond but it seems to me that the main object of obtaining a bond would be lost if the Revenue Commissioners were required to take this course. Under the terms of the bond the Defendant became liable immediately upon the default of Murphy & Co. and I am of opinion that the fact that the Revenue Commissioners may have had another possible remedy does not affect the liability of the Defendant.

On the question of interest, I have been referred on behalf of the Plaintiff to the case of In re Dixon, Heynes .v. Dixon (1900) 2 Ch. 561 and to Halsbury, Edition 4, paragraph 1409. The passage in Halsbury, referring to the case of Re Dixon, states that, when a bond is conditioned for the payment of a lesser sum of money, interest is recoverable, an agreement for payment of interest being implied. No argument was presented or authority cited to the contrary and I accept the proposition as stated, but I note that, in Dixon's case, interest was expressed to be payable in the bond and under the trust the performance of which was secured by the bond. In that case, interest was held to be payable from the date of

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the bond but, in the present case, I do not see how it could reasonably be held to be payable from an earlier date than the date of the default by Murphy & Co.

*Herbert H. McWilliam.*

*31.10.84*