

55, 1932

No. 131 of 1931.

In the Privy Council.

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ON APPEAL
FROM THE SUPREME COURT OF CANADA.

BETWEEN—

E. R. CROFT - (Defendant) *Appellant*

— AND —

SYLVESTER DUNPHY (Plaintiff) *Respondent.*

RESPONDENT'S CASE.

1. This is an appeal by Special Leave granted on the 17th December, 1931, from the Judgment of the Supreme Court of Canada dated the 30th June, 1931. RECORD.
p. 38.

2. The Court was composed of Duff, Newcombe, Rinfret, Lamont and Cannon, J.J. By a majority consisting of Duff, Rinfret and Lamont, J.J., the Supreme Court allowed the Plaintiff's appeal from the judgment of the Supreme Court of Nova Scotia *en banco*, which affirmed the judgment of the trial Judge, and dismissed the Respondent's appeal. p. 9.

3. The question that arises on this appeal relates to the validity of Sections 151 and 207 of the Customs Act of Canada ch. 42 R.S. of Canada as amended by ch. 16 of 18 and 19 Geo. V. 1928, an Act to amend the Customs Act Sections 1 and 3 which authorised *inter alia* the seizure of any vessel registered in Canada in the circumstances provided for in the sections within twelve marine miles of the territory of the Dominion of Canada.

CASE FOR THE RESPONDENT

RECORD.

4. The learned trial Judge Mr. Justice Paton whose decision was affirmed by the Provincial Court of Appeal but reversed by the Supreme Court of Canada decided that the legislation was *intra vires* the powers of the Dominion Parliament and that the Respondent's vessel, registered in Canada had been lawfully seized.

p 4. 5. The Pleadings in the action are not printed in the Record but from the judgment of the trial Judge Mr. Justice Paton it appears *inter alia* that :—

(i) The Respondent brought his action against the Defendant, the Appellant, for an illegal seizure of his vessel, 10 the "Dorothy M. Smart," and claimed the return of the vessel and cargo or payment of their value and damages for their unlawful detention.

(ii) The Defendant (Appellant) pleaded *inter alia* that the vessel had dutiable goods on board was hovering within 12 miles of the coast and was legally seized under Sections 151 and 207 of the Customs Act as amended aforesaid.

(iii) The action was tried with a jury but it was agreed between the parties that all the issues except a question of fact as to the distance of the Respondent's vessel from the shores of 20 the Province of Nova Scotia at the time of seizure, should be left to the Judge.

(iv) The jury found that the vessel was eleven and one quarter miles off the coast of Canada.

(v) The Respondent's vessel was registered at Digby, Nova Scotia, and while it was jogging about on the 13th June, 1929, in the waters off the coast of Cape Breton, Coast of Nova Scotia, with its cargo of assorted liquors it was seized by the Appellant in his capacity as Master in charge of the Dominion Government Patrol Boat No. 4 while the said Master was in the 30 employment of the Dominion Government as a Customs Officer for the enforcement of the Customs Act ch. 42 R.S. of Canada 1927 as amended by Chapter 16 aforesaid.

6. The Respondent contended before the trial Judge *inter alia* :—

(i) That whatever power of jurisdiction was conferred by the provisions of the British North America Act on the Dominion of Canada to legislate with regard to any of the powers conferred upon it by Section 91 of the said Act, hereinafter referred to, such power was limited territorially to one marine 40 league of the coast measured from low water mark.

(ii) That the vessel and her cargo were seized on the High Seas.

(iii) That Sub-section 7 of Section 151 as amended which defined for the purposes of Section 151 and Section 207 the "Territorial waters of Canada" to mean "the waters forming part of the territory of the Dominion of Canada and the waters adjacent to the Dominion within three marine miles thereof, in the case of any vessel, and within twelve marine miles thereof, in the case of any vessel registered in Canada," was *ultra vires* the powers or jurisdiction of the Parliament of Canada.

7. Section 91 of the British North America Act 1867 deals with the Legislative Authority of the Parliament of Canada and enacts as follows:—

"91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say * * * ."

Then follow the enumerated classes, and of these, the classes referred to in the judgments and proceedings appear to be as follows, but the full text of the Section is set out in the Appendix to this Case:—

(2) The regulation of trade and commerce;

(3) The raising of money by any mode or system of taxation;

* * * * *

(7) Militia, Military and Naval Service, and Defence;

(10) Navigation and shipping;

* * * * *

(12) Sea Coast and inland fisheries;

* * * * *

(27) The criminal law, except the constitution of Courts of Criminal jurisdiction, but including the procedure in criminal matters.

* * * * *

RECORD.

8. The full text of Sections 151 and 207 of the Customs Act aforesaid as amended (*supra* paragraph 3) is printed in the Appendix hereto but the material parts of the Section are for convenience set out as follows:—

“151. (1) If any vessel is hovering in territorial waters of Canada, any officer may go aboard such vessel and examine her cargo and may also examine the Master or person in command upon oath touching the cargo and voyage and may bring the vessel into port.

* * * * *

“(6) The evidence of the officer that the vessel was within territorial waters of Canada, shall be *prima facie* evidence of the fact. 10

“(7) For the purposes of this section and section two hundred and seven of this Act, ‘Territorial waters of Canada’ shall mean the waters forming part of the territory of the Dominion of Canada and the waters adjacent to the Dominion within three marine miles thereof, in the case of any vessel, and within twelve marine miles thereof, in the case of any vessel registered in Canada.

“207 (1) If upon the examination by any officer of the cargo of any vessel hovering in territorial waters of Canada, any dutiable goods or any goods the importation of which into Canada is prohibited are found on board, such vessel with her apparel, rigging, tackle, furniture, stores and cargo, shall be seized and forfeited * * * * * 20

p. 8.

9. The learned trial Judge in his reasons stated *inter alia* that the Crown had not parted with its Sovereignty over the territory ceded to it in 1763 except in so far as it might have done so to the Dominion of Canada or to the Provinces under the British North America Act: it would seem, he said, upon the authority of *Attorney-General v. Cain* 1906 A.C. 542, that in granting power to the Federal Government of Canada to enact revenue laws, as it had done under Section 91 of the British North America Act there was included the right to do such things beyond territorial limits as were reasonably necessary to enforce such laws or prevent their violation; that the Imperial Parliament undoubtedly had the power to confer such authority and there was no good reason why such authority should have been reserved or withheld; that on the other hand there was the strongest reasons why Canada should possess such right: that the legislation of 1928—(The Customs Act as amended)—was not at variance with any Imperial Act made applicable to the Dominion and that he could not imagine circumstances which might give rise to the Imperial Legislation. He then said he preferred to consider the British North America Act conferred authority to pass 30 40

the legislation under review, but if it did not he thought it might be upheld by reason of the assent given to it by the Crown : that he was therefore of the opinion that it was within the legislative competence of the Dominion to enact, and that in the absence of conflicting Imperial legislation it might enforce the provisions found in Sections 151 and 207 of the Customs Act.

10 10. From the particular point of the power of the Dominion Parliament to enact the legislation in question, the Respondent appealed to the Supreme Court of Nova Scotia *en banco* and the said Court confirmed the decision. Mr. Justice Chisholm states the reasons for the judgment concurred in by Harris, Mellish, Graham and Ross, JJ.

20 11. Mr. Justice Chisholm said *inter alia* that he took it to be undisputed that the Parliament of the United Kingdom had power to pass such legislation as to its own littoral as the legislation in question : that the question then was whether power so to legislate as to Canadian territorial waters had been granted to the Parliament of Canada : that the learned trial Judge had suggested that evidence of a grant of such power might be found in the fact that His Excellency the Governor-General had assented to the Statutes which were impugned but that the learned trial Judge preferred to rely upon the provisions of the British North America Acts : he Mr. Justice Chisholm said that he found himself in entire agreement with the learned trial Judge in respect to the scope of the British North America Act : that the Parliament of the United Kingdom had given express power to the Parliament of Canada in relation to matters not exclusively assigned by the Act to the Provinces : and that it was declared in the British North America Act that the Dominion Parliament should have exclusive power to raise revenue by any mode or system of taxation : and, he said, implied in that power was the power to enact any such laws as might be reasonably necessary to make revenue laws of the country effective : and that the sections under discussion in the case fell under that category.

40 12. From the Supreme Court of Nova Scotia *en banco* the Respondent-Plaintiff appealed to the Supreme Court of Canada and by agreement between Counsel for Appellant and Respondent the only question to be argued before the Supreme Court of Canada was the validity of Section 151 as amended by Chapter 16 of the Act of 1928 particularly Sub-section 7 (*supra* paragraph 8).

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p. 39.

13. The judgment of the Supreme Court of Canada was given on the 30th of June, 1931. The reasons of the majority Judges for allowing the appeal were given by Duff J. with whom Lamont and Rinfret, JJ. concurred. Mr. Justice Duff stated in his reasons that—the phrase “peace, order and good government” was found generally in the English Colonial Charters, and unless the constitution set up was federal or *quasi*-federal, it commonly was employed to designate as regards subject matter, the scope of the legislative authority conferred: that it was an accepted principle that *prima facie* the jurisdiction of subordinate legislatures was territorially limited: that it might be considered as axiomatic that a grant of legislative authority to a British Colony for “the peace, order and “good government” of the Colony did not, as a general rule, empower the Colonial legislature to enact laws penalizing acts, otherwise lawful, done beyond the territory of the Colony, or legalising such acts when otherwise unlawful: that broadly, it might be laid down as a rule of construction that subordinate legislatures did not possess such extra-territorial jurisdiction unless it had been granted in express terms or by necessary implication: that the restriction was a restriction of power, and that enactments framed in disregard of it, not only would be ignored by foreign countries but would be treated as *pro tanto* inoperative by the Courts of the Colony itself; in that regard differing in its effect from the restrictions imposed upon a Sovereign state by international law and the competing jurisdictions of other Sovereign states, which, at the command of the Supreme legislative authority of the state would be ignored by its Courts.

p. 39, l. 34.

14. Mr. Justice Duff then proceeded to say that when the subject matter of power possessed by the Crown falls within “peace, “order and good government” and is consequently within the scope of a grant of legislative authority by the Imperial Parliament, then, if that power necessarily involves, in its complete enjoyment, the authority to execute extra-territorial acts of sovereignty, such as acts of constraint upon the person, this complementary authority also passes with it—*Attorney-General of Canada v. Cain*, 1906 A.C., page 542, was an application of that principle. He saw, he said, no reason whatever to think that a general authority to detain and arrest ships extra-territorially passed under the formula “peace, “order and good government” nor did he think that the fullest enjoyment of the powers given under the heads navigation and shipping, trade and commerce and taxation necessitated, in the pertinent sense, the possession of such authority. Indeed, he said, as a rule legislative authority in respect of taxation was limited

strictly, in its exercise, by the territorial boundaries. (Citing *Commercial Cable Company v. Attorney-General of Newfoundland*, 1912, A.C., page 826). He would assume, he said, that the question under that topic was precisely the same as if the regulation of imports was explicitly included among the enumerated items of Section 91 of the British North America Act.

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15. One must emphasize, said the learned Judge, the distinction between the necessity from which a legal implication proceeded and those considerations which merely went to establish the convenience, amounting even, in judicial opinion, to practical necessity from the political point of view, of extending a power admittedly given : that the law implied the grant of all proper means necessary for the execution of the power itself as given, but that was the only necessity of which, for that purpose, the law took notice : that the Courts had no authority to extend the scope of an admitted power merely because the power as given was not sufficiently comprehensive to attain an object never so important or urgent, in the judicial view.

p. 40, l. 12.

16. Mr. Justice Duff then referred to the *Attorney-General of Canada v. Cain*, 1906, A.C., page 542, and proceeded to say that the implied power must, to use the language of the Privy Council in *Cain's* case, be "the complement" in the sense just explained of the power expressly conferred : that there was no general test for determining that that condition was satisfied but that it seemed abundantly clear that no such necessity could be affirmed of the power to maintain at large on the high seas, a preventive service with authority to detain British ships destined for Canadian ports, for the purpose of ascertaining whether they carried non-admissible goods, or non-admissible persons : that it was nothing to the purpose that the Statute applied only to ships of Canadian registry : that if the argument of the Crown was sound, the Statute would be equally within the scope of Canadian jurisdiction if the reference to Canadian registry were absent and that nothing in *Cain's* case countenanced such a procedure in relation to immigrants.

p. 40, l. 24.

17. Mr. Justice Duff then referred to *Nadan v. The King*, 1926, A.C., 482, and said, that that case exemplified the rigour which governed the Courts in examining the question of necessary implication; the subject of that judgment, he said, was the ambit and effect of the Item (27) of Section 91 of the British North America Act that was concerned with criminal law and criminal procedure; (*supra* paragraph 7) that by that Section 91,

p. 40, l. 34.

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Parliament was empowered to make laws "in relation to" those subjects; and that within the territorial bounds of its jurisdiction, those powers were subject to no limitation or qualification; "But however widely these powers are construed "they are confined to action to be taken in the Dominion," citing the quotation from *Nadan v. The King*. Plenary legislative authority for Canada, said the learned Judge, in relation to criminal law and procedure in the entire scope of those subjects, it might have been argued, not without force, would embrace authority to declare the finality of Canadian judgments and sentences in criminal proceed- 10
ings, and that for the purpose of making such declarations effective, the legislative authority must extend so far as to enable Canada to deal with the operation, in Canada, of the jurisdiction of His Majesty in Council in respect of the review of colonial proceedings, but since such a review of His Majesty's Order did not fall within the category of "action to be taken within the dominion" the principle of grant by necessary implication did not take effect: that that was not the only ground of the judgment but it was an independent one and of co-ordinate authority with the others.

p. 41, l. 8.

18. There remained to consider, said Mr. Justice Duff, the 20
limitation of the enactment to ships of Canadian registry: that, he said, so far as he could see did not affect the matter: that it might be assumed that Section 735 of the Merchant Shipping Act pre-supposed colonial authority to establish a system of colonial registration and to prescribe conditions therefor, but he could find nothing in that section, which, by implication created or recognised a general authority to regulate ships of colonial registry by requiring them to submit to such extra-territorial acts as those authorised by the legislation in question: that there was no occasion to consider the extent of the authority given or recognised by that section in 30
relation to subject matters dealt with by the Merchant Shipping Act nor need they discuss the scope of such authority in respect of conditions of registration, precedent or subsequent: that was not the character, in substance or in form, of the enactment with which they were concerned.

p. 41, l. 22.

19. Mr. Justice Duff then said that he did not enter upon a discussion of the effect of the Colonial Laws Validity Act: that it would, he thought, be a new reading, and it would seem to him a misreading of that Statute, to construe it as imparting extra-territorial validity to the enactments of a Colonial legislature 40
professing to operate extra-territorially, where the legislature was

not otherwise endowed with power to pass such legislature and that in his view the legislature was *ultra vires*.

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20. Mr. Justice Newcombe, with whom Mr. Justice Cannon concurred, after referring to the facts—and in particular to the findings of the learned Judge that there was no doubt the intention was to remain in such proximity to the coast as would enable customers or purchasers, under the cover of darkness or fog, to smuggle the liquor into Canada; and that since the adoption of prohibition Halifax was the only entry port in
 10 Nova Scotia for alcoholic liquors, and that lawful importation could not be made at North Sydney, nor at Sydney, and that the Respondent-Plaintiff, as owner of the schooner and cargo and his captain must have known, as he, the learned trial Judge, found they did know, that any liquor that might be sold could only be to persons desiring to smuggle it into Canada,—
 proceeded to say *inter alia* that there was no question of international or of alien rights; that the Plaintiff was a British subject resident at North Sydney in Nova Scotia, and that his schooner was registered in the same Province: that it was not suggested that the Dominion
 20 legislation conflicted with the Provincial powers; that the rights such as they were, were all *intra familiam*, but that what the Plaintiff sought to justify in opposition to the Customs Act, the executive power and the preventive service of Canada, was the use of his vessel upon the outer margin of Canadian territorial waters, contiguous to his place of residence, as a depot of supply of intoxicating liquors to boats engaged in smuggling the liquor into the Province.

p. 41, l. 38.

p. 42, l. 38.

p. 43, l. 10.

21. The learned Judge then proceeded to say that if the Defendant were a pirate prowling on the coast, or if he were, in time
 30 of war, using his vessel to supply an enemy squadron attempting to blockade the port of Sydney, was it conceivable that the powers of the Parliament of Canada would be found inadequate to sanction the seizure? Parliament, he said, (referring to Section 91 of the British North America Act), was specifically empowered to legislate for the regulation of trade and commerce, the raising of money by any mode or system of taxation, defence, navigation and shipping and the criminal law, also to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the legislature of the
 40 Province, and there were moreover, he said, the latent powers which, as explained in *Toronto Electric Commissioners v. Snider*, 1925, A.C., page 412, were exercisable in cases of emergency.

p. 43, l. 20.

RECORD.

p. 43, l. 33.

22. Mr. Justice Newcombe then referred to the Hovering Acts of Great Britain as having been justified in principle and practice, and said that the enactments now in contest exemplified provisions which were reasonable, and, it seemed, necessary, for the protection of the country.

p. 43, l. 40.

23. The learned Judge then quoted Section 2 of the Colonial Laws Validity Act as follows:—

“Any Colonial Law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate, or repugnant to any Order or Regulation made under authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.” 10

and proceeded to say that there was no repugnancy found or suggested as between the legislation upon which the Crown relied and any imperial Act, Order or Regulation having force or effect in Canada; and that, therefore, whatever operation Sections 151 and 207 of the Customs Act might have, it would seem, he said, according to express enactment, that they should not “be and remain absolutely void and inoperative.” 20

p. 44, l. 10.

24. Mr. Justice Newcombe then referred to the rule enunciated by Lord Selborne in *The Queen v. Burah* (1878), 3, A.C., 903-5, and in *Hodge v. The Queen* (1883), 9, A.C., 131-2, and to the Reference to the Supreme Court of the Bigamy Sections of the Criminal Code of Canada (1897), 27, S.C.R., 461, and to Lord Halsbury’s statement in *Riel v. Regina* (1885), 10, A.C., 678-9, in reference to the words “peace, order and good government of Canada”—that these words were apt to authorize the utmost discretion of enactment for the attainment of the objects pointed to. 30

p. 44, l. 33.

25. Having referred to the Preamble of the British North America Act as to the Union of the Provinces under the Crown with a constitution similar in principle to that of the United Kingdom, Mr. Justice Newcombe concluded by saying that the case as submitted did not disclose the port of departure of the Plaintiff’s vessel upon the voyage to St. Pierre Miquelon for the lading of the cargo in respect of which the seizure took place, but, he said, seeing that both the Plaintiff and his vessel were locally situate in Nova Scotia it was not a violent presumption that they cleared, or at any rate went, from that Province upon the voyage in question. 40

When therefore, he said, a British subject resident and being in Canada set himself up to defeat the Customs Laws by contriving to evade them, to defraud the revenue and illegally to introduce into the country a prohibited commodity which had been found a menace to the national life, threatening disaster; and when the Parliament of Canada, having the powers to which he had alluded, found a remedy in the enactments of which the Appellant complained, was it not he said, in the words of Lord Selborne, in the case of the Dominion constituted as it was, "legislation within the general scope
 10 "of the affirmative words which give the power to legislate for the "peace, order and good government of Canada"? Certainly, said Mr. Justice Newcombe, "it violates no express condition or restric-
 "tion by which that power is limited"; and any limitation, he said, to be effective must according to the rule laid down be express. It might also he said be regarded as significant that, while the enumerations of Provincial Powers in Section 92 of the British North America Act, were usually or not infrequently, qualified by the words "in the Province," or a like restriction, there was not, in a
 20 single instance a corresponding qualification to be found in Section 91 which described the powers of Parliament. He therefore concluded that the legislation then the subject of attack was in its application to the facts of the case *intra vires*.

26. The Respondent submits that the judgment of the Supreme Court of Canada is right and ought to be affirmed, and that the appeal therefrom ought to be dismissed, for the reasons given by the majority of the Judges as stated by Mr. Justice Duff, and the following amongst other

REASONS.

- 30 1. Because the British North America Act 1867, did not confer upon the Parliament of Canada power to enact the extra-territorial legislation in question.
2. Because it was not competent to the Parliament of Canada so to legislate as to extend the territorial jurisdiction of Canada over the waters adjacent to the territory of Canada a distance of twelve miles.
3. Because the principle enunciated in the case of the *Attorney-General of Canada v. Cain*, 1906, A.C., 542 is

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not applicable to authorise the legislation under consideration in this case.

4. Because Sub-section 7 of Section 151 of the Customs Act in its application to that section and to Section 207 is as regards the provisions thereof applied in this case *ultra vires* the power of the Parliament of Canada.
5. Because the legislation under consideration is *ultra vires* the powers of the Parliament of Canada.
6. Because the Respondent vessel was seized on the High Seas. 10
7. Because the reasons of the majority of the Judges of the Supreme Court of Canada as stated by Mr. Justice Duff are to be preferred to those of the minority.
8. Because the judgment of the Supreme Court of Canada is right.

D. A. CAMERON.

HORACE DOUGLAS.

APPENDIX.

BRITISH NORTH AMERICA ACT, 1867.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say :—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
- 6 The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
- 20 8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
- 30 15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.

17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce. 10
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the **20** Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Sections 151 and 207 of THE CUSTOMS ACT, OF CANADA, Cap. 42 Revised Statutes of Canada (1927), as amended by Cap. 16 of 18 and 19 Geo. V. (1928).

151. (1) If any vessel is hovering in territorial waters of Canada, any officer may go on board such vessel and examine her cargo and may also examine the master or person in command upon oath touching the cargo and voyage and may bring the vessel into **30** port.

(2) Any vessel in territorial waters of Canada, shall proceed to come to a stop when required so to do in the King's name by any officer or upon signal made by any Government vessel or cruiser by

hoisting the pennant and ensign approved and appointed for the purpose by order of the Governor in Council.

(3) On any vessel failing to proceed to come to a stop when required, the captain or master or other person in charge of any vessel or cruiser in the service of the Government of Canada may, after first causing a gun to be fired as a signal, fire at or into such vessel.

(4) Such captain, master or other person, as well as any person acting in his aid or by his direction, is hereby indemnified
10 and discharged from any indictment, penalty, action or other proceeding for so doing, and His Majesty shall not be liable in any claim for damage to life or property by reason of such act.

(5) No person on board any vessel required to proceed to come to a stop as herein provided shall throw overboard, stave or destroy any part of the cargo, or any papers or documents relating to the vessel or cargo.

(6) The evidence of the officer that the vessel was within territorial waters of Canada, shall be *prima facie* evidence of the fact.

(7) For the purposes of this section and section two hundred
20 and seven of this Act, "Territorial waters of Canada," shall mean the waters forming part of the territory of the Dominion of Canada and the waters adjacent to the Dominion within three marine miles thereof, in the case of any vessel, and within twelve marine miles thereof, in the case of any vessel registered in Canada.

207. (1) If upon the examination of any officer of the cargo of any vessel hovering in territorial waters of Canada, any dutiable goods or any goods the importation of which into Canada is prohibited are found on board, such vessel with her apparel, rigging, tackle, furniture, stores and cargo shall be seized and forfeited and
30 if the master or person in charge refuses to comply with the lawful directions of such officer or does not truly answer such questions as are put to him respecting such vessel or her cargo or her voyage, he shall be liable to a penalty of not less than four hundred dollars.

(2) If any person contravenes the provisions of sub-section five of section one hundred and fifty-one of this Act, such vessel shall be seized and forfeited.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

BETWEEN :

E. R. CROFT - (Defendant) *Appellant*

— AND —

SYLVESTER DUNPHY
(Plaintiff) *Respondent.*

RESPONDENT'S CASE.

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