Privy Council Appeal No. 46 of 1921.

The Canadian Pacific Wine Company, Limited - - - *Appellants*

v.

Charles F. Tuley and others - - - - - - *Respondents*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST JULY, 1921.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD CARSON.
SIR LOUIS DAVIES.

[*Delivered by* THE LORD CHANCELLOR.]

This is an appeal from a judgment of the Court of Appeal of British Columbia, which affirmed the judgment of the Trial Judge Murphy J. delivered in the Supreme Court. The action was brought for the return of moveable property of the appellants, including books and papers and a stock of liquor, alleged to have been illegally seized, and for damages for such seizure and for unlawful entry into the appellants' warehouse. The respondents, excepting the respondent South, who is a Deputy Police Magistrate, are police officers of the City of Vancouver.

The first question to be decided relates to the constitutional validity of the Statutes under which the respondents purported to act. These are the British Columbia Prohibition Act, as consolidated in 1920, and the Summary Convictions Act, 1915.

The former statute provides by Section 10 that, subject to exceptions not here material, no person shall within the Province, by himself, his clerk, servant, or agent, expose or keep for sale, on any pretence or upon any device sell or barter, or offer to sell or barter, or in consideration of the purchase, a transfer of any

property or thing, or for any other consideration, or at the time of the transfer of any property or thing, give to any other person, any liquor.

By Section 11 the keeping, having, or giving of liquor in any place other than the private dwelling house where a person resides is prohibited.

Section 19 provides that nothing in the Act shall prevent the keeping of liquor for export, provided that the warehouse in which it is kept complies with certain requirements in default of the observance of which it is not to be deemed to be a warehouse within the Act, or from selling from such warehouse liquor to persons in other Provinces, or in foreign countries, or to a vendor under the Act. By an amendment introduced into the Act in 1919 by way of an addition to Section 19, it is provided that any person who has liquor in a warehouse shall furnish the Commissioners under the Act with certain information as to the warehouse and the liquor in it, and as to all removals from it of such liquor, with its destination, and the Commissioner or his agent authorised in writing may enter and make such searches in the warehouse as he thinks necessary for the purpose of obtaining or confirming information. Penalties imposed under the Act are by Section 30 to be recoverable under the provisions of the Summary Convictions Act.

By Section 48 the Commissioner, Superintendent or any police officer, are for the purpose of detecting the violation of any of the provisions of the Act to have power, where it is believed that liquor is kept contrary to its provisions, to enter and search, and break open lockfast places, and anyone who obstructs such entry is to be guilty of an offence against the provisions of the Act.

By Section 49 if the Commissioner, Superintendent, or any police officer believes that liquor intended for sale in violation of the Act is concealed in the vehicles or on the land of any person. he or they are to have power without warrant to search for and seize such liquor and the vessels in which it is kept, and by Section 50 the Justice who convicts for the keeping of liquor contrary to the provisions of the Act, may declare the liquor and the vessels to be forfeited.

By Section 28 every person contravening or committing any breach of the provisions of Section 10 is made liable to fine or imprisonment, and further, for every offence against the Act for which a penalty has not been specially provided, penalties of fine or imprisonment are enacted.

The above summary represents sufficiently for the purposes of the present appeal, the main provisions of the Statute. Their Lordships are of opinion that it was within the power of the Legislature of British Columbia to enact it. The case is in their opinion governed by the principles enumerated when their decision was given in favour of the Province of Manitoba on the interpretation of Sections 91 and 92 of the British North America Act, 1867,

in *Attorney-General of Manitoba* v. *Manitoba Licence Holders' Association* (1902 A.C. 73).

The second statute under which the proceedings of the police are justified in the present proceedings, and which in turn is impeached, is the Summary Convictions Act of the Province. This statute provides (Section 2) that in every case in which a penalty or imprisonment is prescribed by any statute of the Province, and it is not provided in such statute in what manner or by what procedure such penalty or punishment may be recovered or enforced, such penalty or imprisonment shall be enforced on summary conviction before a Justice (including a Police Magistrate) as if the same was expressly so declared in such statute.

By Section 4, the Act is to apply to cases in which any person commits or is suspected of having committed any offence or act over which the Legislature has legislative authority, and for which such person is liable on summary conviction to imprisonment, fine, or other punishment ; and to cases in which a complaint is made to any Justice in relation to any matter over which the Legislature has such authority, and with respect to which the Justice has authority by law to make any order for the payment of money or otherwise. The Act further contains provisions for procedure, and for enabling, under Section 11, the Justice to detain anything seized and brought before him for the purposes of evidence.

It was contended at the Bar that this statute was *ultra vires* of the Provincial Legislature, on the ground that it was an attempt to enact provincial legislation for "criminal law," including procedure in criminal matters, within the words of Section 91 (27) of the British North America Act. But that section only declares that it is to be lawful for the Sovereign, with the advice of the Dominion Parliament, to make laws for the peace, order and good government of Canada generally, in relation to all matters not coming within the classes of subjects by the Act exclusively assigned to the Legislatures of the Provinces, and the enumeration of matters which follows in Section 91 to which the exclusive authority of the Dominion Parliament extends is only a declaration that certain subjects fall under this description. When the language of Section 92, which defines the matters to which the exclusive legislative authority of the Province extends, is scrutinised, this definition is found to include the administration of justice in the Provinces embracing the constitution, maintenance and organisation of provincial Courts, both civil and criminal, and procedure in civil matters in these Courts. Sub-head 15 of Section 92 expressly adds the imposition of punishment by fine, penalty or imprisonment, for enforcing any law of a Province, made in relation to any of the classes of subject enumerated in the section ; and sub-head 16 gives exclusive legislative power to the provincial legislatures in all matters of a merely local character. Reading Sections 91 and 92 together, their Lordships entertain no doubt that the Summary Convictions Act was within the competence of the Legislature of British Columbia. It

relates only to punishment for offences against the provisions of the statutes of the Province, and is to be read as if the provisions to this end were expressly declared in some such statute. No other conclusion would appear to be in harmony with the principle of construction laid down by the Judicial Committee in *Attorney-General of Ontario* v. *Attorney-General for the Dominion* (1896 A.C. 348).

The two preliminary constitutional points having thus been disposed of, their Lordships turn to the facts as proved in the proceedings.

The appellants are dealers in liquor, as importers into the Province and exporters from it, in the city of Vancouver. They possess a warehouse in that city where, on the 15th July, 1920, they had a large stock of liquor. On that date the respondents Tuley, Sutherland, Copelands and Thompson, who were police officers, entered the warehouse. Previously some 60 dollars had been marked and handed to a police officer, who had gone to the warehouse to ascertain whether liquor for that amount would be unlawfully sold to him by the appellants. It was so sold and the money in payment therefore was accepted. When the respondents above mentioned entered, they seized the whole stock of liquor there, with the money marked referred to above, and subsequently removed the liquor, books and papers of the appellants from the warehouse. On the 19th July, one of the respondents, South, laid an information against the appellants under the Summary Convictions Act for unlawfully keeping liquor for sale. On this information the Deputy Police Magistrate before whom the proceedings came, convicted the appellants, finding that all the liquor in the warehouse was unlawfully kept there. He ordered it to be confiscated and fined the appellants. On the 9th August, 1920, the appellants issued the writ in this action, claiming replevin and other relief. In due course, the action came for trial before Murphy J. The learned Judge held that the appellants were entitled to recovery of the sixty dollars first paid by the police and afterwards seized by them. Whether this decision was right or not, there is no cross-appeal with regard to it. But he further held that the confiscation order of the Police Magistrate was valid. A second point was made before him to the effect that even if the entry and seizure were lawful, the police became trespassers *ab initio* because they seized and carried away the money and books without the authority of a search warrant. But the learned Judge held that, even if there were no authority in the terms of the prohibition Act for these seizures, this fact did not make the police trespassers *ab initio*. In so far as the seizure of the liquor was concerned, their Lordships agree with Murphy J. This seizure must be taken to be within the statute on the facts proved. *The Six Carpenters Case* (8 Coke 146a) left the further point which arises from the unauthorised seizure of other properties unsettled. But it was subsequently disposed of by the judgment of the Court of Exchequer in *Harvey* v. *Pocock* (11 M. & W. 740). There a landlord had taken in distraint, along with chattels that

were distrainable, others that were not. It was decided that the distrainer was a trespasser *ab initio* only as to the goods that were not properly distrainable. Lord Abinger, C.B., delivering the judgment of the Court, which included Gurney B. and Rolfe B., decided that the opinion of Lord Holt in *Dod* v. *Monger* (6 Mod. 215) ought to be followed, and that where there is an abuse of part only of the distress, the distrainer is not a trespasser *ab initio* as to what was rightly distrained. Their Lordships find themselves in agreement with this statement of the law. The learned Judge held further that the books and papers seized were taken under a seach warrant properly issued under the Summary Convictions Act. In any event these books and papers appear to have formed the subject of a separate proceeding, and to have been returned to the appellants. Their Lordships do not think that any substantial question arises with regard to them.

The Court of Appeal affirmed the judgment of the trial judge without adding to the reasons he gave for his judgment.

For the reasons indicated, the Board will humbly advise His Majesty that this appeal should be dismissed

There will be no order as to costs.

In the Privy Council.

THE CANADIAN PACIFIC WINE COMPANY, LIMITED,

v.

CHARLES F. TULEY AND OTHERS.

DELIVERED BY THE LORD CHANCELLOR.

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