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December 2.

IN THE MATTER OF THE PETITION OF RIGHT OF

THE ALGOMA CENTRAL RAILWAY COMPANY..... } SUPPLIANTS;

AND

HIS MAJESTY THE KING..... .....RESPONDENT.

Customs legislation—Legislative authority of Canadian Parliament—Duty upon foreign-built ship—Construction of statutes—Interest—Payment by Crown—Tort—Crown's servant—Damages.

The Parliament of Canada has legislative authority to impose a Customs duty upon a foreign-built ship to be paid upon application by her in Canada for registration as a British ship.

2. The provision in item 409 of *The Customs Tariff Act*, 1897, which purports to impose a duty upon a foreign-built ship upon application by her for a Canadian register, is not a clear and unambigious imposition of the duty such as would support the right of the Crown to exact the payment of such duty.

3. The Crown is not liable to pay interest except upon contract therefor, or where its liability therefor is fixed by statute.

4. In the absence of statutory provision in such behalf, the Crown is not liable to answer for the wrongful act of its officer or servant.

PETITION OF RIGHT to obtain a refund of certain Customs duties paid under protest upon the application for the registration in Canada of a foreign-built ship.

The facts of the case are stated in the reasons for judgment.

The case was heard at Ottawa on the 11th June, 1901.

Wallace Nesbitt, K.C. for the suppliants;

The Algoma Railway Company is a body corporate, its charter being a Canadian one, and, amongst other things, has the power of running steamships between certain of its terminal points. The boat in question is called the *Minnie M.* and she was built at Marquette,

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Michigan, and was bought last autumn. A provisional British registration under *The Merchant Shipping Act* of 1894 was obtained at Chicago, and the vessel thereafter proceeded to Sault Ste. Marie. Now the Sault is, for the purposes of registration of a British vessel under *The Merchant Shipping Act*, just as much a British port as the port of London or Liverpool, G.B. It is a Port of Customs and a port at which the registration of a British ship can be properly made. The owners of the ship presented to the Customs officer at the Sault the provisional registry certificate, and he was requested to issue a certificate of complete British registry. The Customs officer, after having communicated with Ottawa, and upon instructions from Ottawa, informed the master that he could not obtain registration until the duty payable upon the vessel, according to the contention of the authorities at Ottawa, was paid. The duty was subsequently paid under protest and the ship was thereafter registered at the port of Montreal—just why the port of Montreal, it is not clear—because she might have been registered at the Sault equally as well; but the fact is of no importance to the questions arising in this case. Now, as I understand it, the principal question—in fact it may be said the only question—that arises here, is whether a ship that has satisfied the provisions of *The Merchant Shipping Act* of 1894, by obtaining a provisional certificate of registry, can proceed without hindrance to be made a complete British ship, or whether it is competent for the Canadian authorities in Parliament to practically modify the provisions of *The Merchant Shipping Act* passed by the Imperial Parliament, by exacting a condition to the privileges created by the Imperial Act. The broad question is: Whether the suppliants can obtain complete registry in Canada when they have obtained

provisional registry under *The Merchant Shipping Act* of 1894, or whether the provisions of that Act can be modified by the provisions of the Canadian Customs or Tariff Acts?

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The Merchant Shipping Act, 1854, I might say, is the same in its provisions, so far as they affect this case, as the Act of 1894. Now, one has only to examine in even a cursory way *The Merchant Shipping Act*, 1894, to see its Imperial character. It will be seen at once that it is designed for the fostering of British trade throughout all the colonies of the Empire, and it is also intended for the protection of British shipping. So I say, upon an examination of this Act, your lordship must come to the conclusion that the port of Montreal, or Sault Ste. Marie, in Canada, is practically in the same position, so far as the registration of a British ship goes, as if that ship were registered in the port of London or in some port in the British West Indies. (Reads clause (*d*) of section 1 of *The Merchant Shipping Act* of 1894; section 4, clause (*e*)). Then attention should be directed to the order in council establishing the ports of Sault Ste. Marie and Montreal as Customs and registration ports. For the purposes of *The Merchant Shipping Act* they are in the same position as London or Liverpool, G.B. Then in chapter 72 of *The Revised Statutes of Canada* you will find section 11 provides that no fee shall be charged in Canada, except those mentioned in *The Merchant Shipping Act*, 1854. This is mentioned, because the Dominion of Canada, with the consent of the Imperial Parliament, could modify the provisions of *The Merchant Shipping Act* of 1854 or 1894. (He also reads section 13 of the Canadian Act and sections 21 and 22 of the Imperial Act). Section 22 is the section under which the ship in question obtained her provisional certificate in Chicago. Under

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this provisional certificate she is empowered to complete her registration as a British ship in any British port. Having obtained complete registration she is fully empowered to trade under the protection of the Imperial Act, and all Acts affecting such matters as the engagement and discharge of seamen in a foreign port, and as to regulations enacted governing the conduct of seamen on board the ship. Then section 62 of the Imperial Act makes provision as to fees, so we see that under the Imperial Act all possible conditions and obligations affecting the right to registration are dealt with. I would also refer to section 83 of *The Merchant Shipping Act* of 1854, and to *The Revised Statutes of Canada*, chapter 72, section 46, which is a re-enactment of the English Act. Section 69 provides as to her rights under the British flag. Section 89 makes provision as to the registration in the colonies. I might say that sections 88 to 91, inclusive, are material. Section 91 applies to the whole of Her Majesty's Dominions and contains a singular exception to the general view that the colonies, being self-governing are allowed to control their own business. Mr. Lefroy, in his book on *Parliamentary Government in Canada* comments on section 91, and I will give your Lordship a reference to his work later. I would also refer to section 735 of *The Merchant Shipping Act*, 1894. I might also say that *The Revised Statutes of Canada*, c. 72, instead of altering or modifying *The Merchant Shipping Act*, 1854, apparently makes similar provisions to those of the English Act as regards registration of ships. But in any event we say that it is not competent for a Dominion Parliament to make any such modification of rights accruing, or which have accrued and become vested under *The Merchant Shipping Act*, as the tax that is sought to be levied, under the provisions of the Canadian Tariff Act, and

which seeks to make the ship here in question pay the sum of $3,500, actually does modify it. I say that any such power of alteration or modification of an Imperial statute is entirely without the ambit of the jurisdiction of colonial legislation, and it is a modification directly opposed to the spirit of the Act. For the purposes of registration of a British ship, under the provisions of *The Merchant Shipping Act*, 1894, you have to treat the Dominion of Canada as an integral part of the Empire, and the result would be that a ship is in the same position if she is registered in any port in Canada, as if she had been registered in Liverpool or London, G.B. I would ask counsel for respondent to differentiate the case of a ship registered in London and one registered in Montreal, so far as the purposes of *The Merchant Shipping Act* are concerned. I submit that they cannot be so differentiated, and if it is not competent for Canada to exact duty from a ship registered in London, such duty cannot be exacted in respect of a ship registered in Canada. Canadian registration is no more or less than British registration. Then again, if it be conceded that in Canada on application for registration an impost or duty may be imposed, it will also have to be conceded that so exorbitant or so excessive may the impost or duty be made that it might practically destroy the property of the subject altogether. I need not cite to your lordship the well known decisions of the Supreme Court of the United States which declare that the right to tax carries with it the right to destroy.

How is it possible to say that when the paramount legislature creates certain rights that the subordinate legislature may create restrictions upon those rights? I submit that this cannot be done and that this clause in the Tariff Act, affecting as it does, rights created by the Imperial Act, is against the whole purview of the

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latter Act and against the spirit of it as well. (Cites *The Queen* v. *The College of Surgeons* (1)). (He also refers to the case of *Routledge* v. *Low* (2); *Lefroy's Legislative Power in Canada*, proposition 12, page 208, and pages 218 *et seq.*) There is an absolute authority in the Imperial Parliament, whenever it sees fit, to do so to extend its legislation to the colonies. (*Graves* v. *Gorrie*) (3). I might say, by the way, that the suppliants have afloat three ships built in Holland, and they are registered in Sunderland, in England, and I would like to ask my learned friend if they are bound to pay duty in Canada? The question is a large one, and I look upon this exaction of duty as a restriction upon a privilege given by the Imperial Parliament, and I feel safe in saying that His Majesty's advisers in England never contemplated such a question arising. Take the "Beatty" line. Are its ships to be required to pay duty? Now take the item in the tariff itself, and I say it is as equally applicable to ships built in England as to the ship in question in this case. I am referring to item 409 of the Tariff Act of 1897. What we say is, that ships built out of Canada would include ships built in Great Britain and registered in Great Britain, and would cover ships built in Great Britain asking for registry in a British port, being a Canadian port. Surely, it was never contemplated by the Imperial authorities that one rule would have to be applied when a ship was registered in Montreal, and an entirely different one when registry was made in Liverpool, G.B. I submit that the impost is illegal and against the spirit of *The Merchant Shipping Act*.

E. L. Newcombe, K.C. for the respondent:

(1) 44 U. C. Q. B. 564.
(2) L. R. 3 H. L. 100.
(3) 32 Ont. R. 266.

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Counsel for the suppliants has opened up a number of questions which I do not think it is necessary for us to consider in arriving at a decision in this particular case. But at the same time I would submit that we are entitled to go considerably further in the execution of the powers conferred by our constitution than we have gone in this case and still be within the limits of *The British North America Act*. It is true that although we have been granted a constitution by *The British North America Act* which confers upon Canada, acting within its territorial jurisdiction, sovereign powers, still the Imperial Parliament is the paramount body and may legislate for Canada in respect of matters of Imperial concern; but I submit that so far as *The Merchant Shipping Acts* are concerned this admission is of no value to my learned friend here. *The Merchant Shipping Act* was in existence at the time of the union of the British North American Provinces, and with that statute in existence, by a statute of the Imperial Parliament, we were given a constitution empowering us to legislate concerning the regulation of Trade and Commerce and Navigation and Shipping. I say there might have been some question how far we were precluded, or governed, in any way concerning the matter in question here, by the Act of 1854; but in 1894 the Imperial Parliament re-enacted and consolidated the Shipping Acts, and it is a question whether the new enactment was intended to operate in Canada in view of our constitutional powers and our own legislation in the matter. It seems to me that it would be to a certain extent derogatory to our constitution for the Imperial Parliament to have extended the operation of the Act of 1894 to Canada. I have listened to the argument of the suppliants with reference to *The Merchant Shipping Act* and I have found in it nothing which is

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to my mind inconsistent with what has been done by Parliament here. We have simply enacted that, upon application for a Canadian register of a foreign-built ship, the ship must pay a duty of ten per cent. *ad valorem*. It seems to me there is nothing inconsistent between the two enactments. The Imperial enactment merely makes provision for a foreign-built ship to become a British ship by Canadian registration; the Canadian Act simply says that that ship, manufactured abroad, must pay a duty and so contribute to the Canadian revenue. There is no want of harmony between the two matters, they are simply two distinct and separate things. (He refers to item 54 of the Tariff Act of 1897, and reads article 409 thereof.) I submit that there is nothing in the Canadian Act that affects the registration of the ship, but that it is purely and simply the imposition of a tax. We have a clear right to impose taxes; we have the right to impose taxes for the purposes of the Dominion; and we have a perfect right to say that every ship not built in Canada, or, for that matter, we have a perfect right to say that every ship built in Canada shall pay a tax from ten to twenty-five per cent.; or we have a right to distribute it upon the articles entering into the construction of the ship. We have no right to treat this ship as different from any other property—I mean for the purpose of taxation. Of course ships have a peculiar character imposed upon them under *The Merchant Shipping Act* which distinguishes them from ordinary personal property. Your lordship will see upon the admissions that the question is whether this vessel is subject to taxation by the Dominion or not.

[BY THE COURT: Subject to taxation upon registration?]

Not exactly that.

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[BY THE COURT: It will not apply except upon application for registry? It is not a question like the importation of goods. If this vessel had gone to Newfoundland and got her registry you could not have exacted the duty.]

The vessel is liable upon importation into Canada to pay this duty, but so long as she does not make application for Canadian registry the duty is not due. I might say here that originally she did ask for British registry, and did not make application for Canadian registry. We said there is no Canadian registry as distinct from British registry. We said we will give you British registry in Canada, but you must pay the duty. I submit that unless you give effect to section 4 of the Tariff Act of 1897 you cannot administer this item at all. I think we were clearly in a position to make provision for the payment of duty in such a case as this.

I might say that if the question were put to me as to whether the proper officer of Customs might be compelled by mandamus to grant complete registration to a foreign-built ship tendering provisional British registry, I might have some difficulty in arguing that he could not be compelled to grant the complete registration. We might take the position that registration would not be granted until the duty was paid, and in case of such refusal very possibly they might go to the court and get a writ of mandamus to compel our officer to register the ship. But we would concurrently have the right, even if we admit the case for mandamus, to bring our action to compel them to pay the duty, and we could get an order to so compel them.

Wallace Nesbitt, K.C. in reply: Of course it is not necessary for me to argue that when a tax is imposed it has to be imposed in the clearest way as the courts

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place the strictest construction upon revenue laws. The point is whether Canada can make or impose a tax on the registration of a ship in the face of the provisions of *The Merchant Shipping Act*, 1894.

[BY THE COURT: *The Merchant Shipping Act*, 1894, applies to all colonies, with a provision that certain colonies may legislate in a certain way on the subject.]

By getting the consent of the Imperial authorities, I say that we have turned up here in Canada in the same way as if we had turned up with a provisional registration from some port in Brazil. The Canadian Act does not pretend to levy the duty under any other circumstances then those which arise under the provisions of *The Merchant Shipping Act* of 1894. It is in the very teeth of *The Merchants Shipping Act*. Section 409 of the Canadian Act clearly reads that it is upon the application for registration that the duty is to be imposed. We say, then, that this is an impost which stops us. Surely it is not possible to argue that when a colony says that you must pay a duty on registration that this is not a modification of *The Merchant Shipping Act*, 1894.

THE JUDGE OF THE EXCHEQUER COURT now (December 2nd, 1901) delivered judgment.

The main question arising upon the petition in this case is whether the foreign-built steam-ship *Minnie M.*, owned by the suppliant company, was, on application for registration in Canada as a British ship, subject to duty, as provided in item 409, schedule A, of *The Customs Tariff*, 1897. If that question is answered in the affirmative no other question arises. If answered in the negative a question of interest remains to be disposed of, and also a question as to the liability of the Crown for the detention of the ship. By the fourth section of *The Customs Tariff*, 1897, it is, among other

things, provided that there shall be levied, collected and paid upon goods enumerated in schedule A to the Act, the several rates of duties of Customs set forth and described in such schedule, when such goods are imported into Canada, or taken out of warehouse for consumption therein. Item 409 referred to, is in the terms following:

"Ships and other vessels, built in any foreign country, whether steam or sailing vessels, on application for Canadian register, on the fair market value of the hull, rigging, machinery and all appurtenances; on the hull, rigging and all appurtenances, except machinery, ten per cent. *ad valorem*; on the boilers, steam engines and other machinery, twenty-five per cent. *ad valorem*."

If the Parliament of Canada has legislative authority to impose a duty on foreign-built ships on application for registry in Canada as a British ship, and has by this provision duly imposed such a duty, the *Minnie M.* was subject to that duty, and the petition fails. But if Parliament has no such authority, or, if having it, the duty has not been duly and effectively imposed, the suppliant is entitled to a judgment in its favour.

A duty on foreign-built ships was first imposed in 1879. The duty prescribed by *The Customs and Excise Act* of that year was ten per cent. *ad valorem* on the fair market value of the hull, rigging, machinery and all appurtenances, payable "on application for Canadian Register" (42 Vict. c. 15, s. 1, and Schedule A, "Ships, etc"). That provision remained in force until 1882, when the duty on the boilers, steam engines and other machinery of any such ship was increased to twenty-five per cent. *ad valorem*, the duty on other parts of the ship remaining as before at ten per cent. *ad valorem*. (45 Vict. c. 6, s. 2, "Ships, etc.") Since that year no change has been made in the duty then imposed upon

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such ships, the provision cited from *The Customs Tariff*, 1897, being a re-enactment of the law as it existed at the time of the passing of that Act.

The authority of the Parliament of Canada to enact this provision is founded upon the 91st section of *The British North America Act*, 1867, which provides that the exclusive legislative authority of the Parliament of Canada shall extend, among other things, to all matters coming within the following classes of subjects: [2] The regulation of Trade and Commerce; [3] The raising of money by any mode or system of taxation; and [10] Navigation and Shipping. To the first of these three classes of subjects it will not be necessary to direct particular attention. It is mentioned because in some respects it might be thought to cover ground also covered by one or the other of the other two subjects mentioned. Legislation respecting customs duties or navigation and shipping is apt to touch more or less closely the trade and commerce of a country. But the question now to be determined relates more particularly to laws respecting tariffs and ships. And it will be convenient, I think, in the first place to take up the latter subject and to see in a general way what the legislative authority of Parliament is in respect of "shipping."

At the time of the passing of *The British North America Act*, 1867, by the Parliament of the United Kingdom, there were two statutes of that Parliament in existence to which it is necessary to refer, in order to obtain a clear understanding of the measure and limits of the legislative authority conferrred upon the Parliament of Canada in respect of the classes of subjects mentioned. By the second section of *The Colonial Laws Validity Act*, 1865 (1), it is provided that "any "colonial law which is or shall be in any respect

(1) 28th & 29th Vict., c. 63, and 55 & 56 Vict. c. 10.

" repugnant to the provisions of any Act of Parliament " extending" (by express words or necessary intendment of any such Act) " to the Colony to which such " law may relate, or repugnant to any order or regu- " lation made under authority of such Act of Parlia- " ment, 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 repug- " nancy, but not otherwise, be and remain absolutely " void and inoperative." That is one enactment that it is necessary to keep in mind. Then with reference to the subject of navigation and shipping, there was another,—*The Merchant Shipping Act*, 1854 (1). The second part of the Act relating to the ownership, measurement and registry of British ships by express words applies to the whole of His Majesty's Dominions (2), but subject to the provisions of the five hundred and forty seventh section of the Act, by which it was provided as follows :

" The legislative authority of any British possession shall have power by any Act or Ordinance confirmed by Her Majesty in council to repeal wholly or in part any provisions of this Act relating to ships registered in such possession; but no such Act or Ordinance shall take effect until such approval has been proclaimed in such possession; or until such time thereafter as may be fixed by such Act or Ordinance for the purpose."

It may perhaps be noticed in passing that in 1867 there was in force in the Province of Nova Scotia a short statute in respect to the Registry of Ships (3), and in the Province of Canada, *An Act Respecting the Registration of Inland Vessels* (not registered as British vessels under any Act of the Imperial Parliament (4)); and

(1) 17 & 18 Vict. c. 104.
(2) Sec. 17.
(3) R. S. N. S. 3rd Series, c. 75, part 2.
(4) C. S. C. c. 41.

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An Act for the Encouragement of Shipbuilding (1). These Acts were repealed by the Act of the Parliament of Canada, 36th Victoria, chapter 128, *An Act Relating to Shipping and for the Registration, Inspection and Classification thereof*, which, after the approval of Her Majesty in Council had been given thereto, and duly proclaimed, came into force on the 17th day of March, 1874. This Act was re-enacted as chapter 72 of *The Revised Statutes of Canada* and was repealed by virtue of the Act which gave effect thereto. (49 Vict. c. 4, s. 5 (2). R. S. C. pp. X. and 2284). It was not reserved a second time for Her Majesty's approval, and no such approval has been proclaimed in Canada. The repeal of the earlier statute would no doubt be effective, as that would require nothing beyond the assent of Her Majesty given in the usual way. Whether something more ought to have been done with respect to the re-enactment of provisions to which Her Majesty's approval had once been given in the way prescribed by *The Merchant Shipping Act*, 1854, is not now in question. Apparently for some reason it was not thought to be necessary, and the statute has since the passing of *The Revised Statutes of Canada* been accepted and acted upon as being in force as part thereof. Its validity has not been called in question in this proceeding; and for the present at least, it may be taken to be one of the Acts saved by the seven hundred and thirty-fifth section of *The Merchant Shipping Act*, 1894, to which reference will be made. We may, I think pass over the Acts of the Parliament of the United Kingdom enacted between the years 1867 and 1894 in amendment of *The Merchant Shipping Act*, 1854. All that it is material to keep in mind is that many of the provisions of such Acts applied to British possessions, and that Canada was included in

(1) C. S. C. c. 42.

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that term. By the seventh section of *The Merchant Shipping* (Colonial) *Act*, 1869 (1), it was provided that "in the construction of *The Merchant Shipping Act*, "1854, and of the Acts amending the same, Canada "should be deemed to be one British possession"; and to the same effect is the definition of the expression "British Possession" given in *The Interpretation Act*, 1889 (2). *The Merchant Shipping Act*, 1894 (3), is a consolidation of enactments relating to merchant shipping. Some of its provisions apply to the whole of His Majesty's Dominions, and others do not. Section seven hundred and thirty-five corresponds to section five hundred and forty-seven of the Act of 1854 already cited. But from the power, in the manner therein prescribed, to repeal any provision of the Act, given to the legislatures of British possessions, are excepted those provisions of the third part of the Act which relate to emigrant ships; and there is added the following provision:

"Where any Act or Ordinance of the legislature of "a British possession has repealed in whole or in part, "as respects that possession, any provision of the Acts "repealed by this Act, that Act or Ordinance shall have "the same effect in relation to the corresponding pro-"visions of this Act, as it had in relation to the pro-"vision repealed by this Act."

This provision constitutes a saving clause in favour of colonial statutes respecting shipping then in force.

The supremacy of the Parliament of the United Kingdom of Great Britain and Ireland is not questioned by any one. All powers exercisible by the Parliament of Canada, or by the legislature of any Province of Canada, are subject to the sovereign

(1) 32 Vict. c. 11.

(2) 52 & 53 Victoria (U.K.) c. 63, s. 18 (2).

(3) 57 & 58 Victoria c. 60.

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authority of that Parliament. It has been contended by some that since *The British North America Act*, 1867, was passed, the Parliament of Canada, and a legislature of a province of Canada, could in respect of matters within their authority respectively, repeal the provisions of an Act of the Imperial Parliament extending to Canada, but passed prior to 1867; that to that extent at least *The Colonial Laws Validity Act* must be taken to be repealed or modified by *The British North America Act*, 1867. Those who hold that view would I suppose find in the ninety-first section of the latter Act ample authority for the Parliament of Canada to legislate in the largest way with respect to navigation and shipping, without reference to section five hundred and forty-seven of *The Merchant Shipping Act*, 1854, or to section seven hundred and thirty-five of the Act of 1894. The argument by which this view is supported is entitled to great consideration, but the view has not found favour with the law officers of the Crown. But even those who hold this view most strongly concede that *The Colonial Laws Validity Act* applies in the case of an Act of the Parliament of the United Kingdom, extending to Canada, and passed after *The British North America Act*, 1867; and that any Canadian legislation on the same subject repugnant thereto is void. So it appears to be certain that while the Parliament of Canada has power and authority to make laws for the peace, order and good government of Canada, in relation to navigation and shipping, any Act passed for the purpose must be read subject to *The Merchant Shipping Act*, 1894. If it is in any respect repugnant thereto it is to the extent of such repugnancy void and inoperative (1), or if it repeals wholly or in part any provision of that statute it will not take effect in Canada, until it has been con-

(1) 28 & 29 Vict. (U. K.) c. 63, s. 2.

firmed by His Majesty in Council, and His Majesty's approval has been duly proclaimed, or until such time thereafter as may be fixed by the Act for that purpose. *The Merchant Shipping Act*, 1894, s. 735, clause (1).

The authority of the Parliament of Canada to raise money by any mode or system of taxation is not surrounded by any similar statutory limitation. Where the Customs Acts of the United Kingdom are in force in any British possession, any law of such possession which is in any wise contrary thereto is null and void. (*The Customs Consolidation Act*, 1876, s. 161.) But these Acts do not extend to any possession in which, as in Canada, the parliament or legislature of the possession makes entire provision for the management and regulation of the Customs of the possession (*Ibid.* s. 151). As long ago as 1778 it was declared by an Act of Parliament that thereafter the King and Parliament of Great Britain would not (with an exception not now material) impose any duty, tax or assessment whatever, payable in any of His Majesty's Colonies in North America or the West Indies (1). And the policy of the Imperial authorities has been to leave the self-governing colonies free and uncontrolled in matters relating to taxation within such colonies respectively. While Canadians accept as a matter of course legislation by the Parliament of the United Kingdom respecting ships registered in Canada, and object, if there is ground or reason for objection, to the terms of such legislation, and not to the exercise of the power to legislate, they would no doubt receive with surprise and impatience any intimation of the passing of an Act by the Imperial Parliament to levy taxes in Canada, no matter how unobjectionable otherwise the provisions of the Act might be. Such an Act according to its provisions

(1) 18 Geo. 3, c. 12; Statutes of the United Kingdom, Revised. Vol. 3, p. 132.

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would be regarded as an unwarrantable interference with the freedom and authority of the Parliament of Canada or of the legislatures of the several provinces of the Dominion. Happily no such thing is possible. But the practical independence of the Parliament of Canada and of the provincial legislatures in that respect rests upon no unalterable convention or statute but upon the wisdom of those who control the destinies of the Empire. In reality the power of the Imperial Parliament is as great and its supremacy as absolute over the subject of taxation within Canada as it is over any other subject committed by *The British North America Act*, 1867, to the Parliament of Canada, or to the Provincial legislatures. The right of the Dominion Parliament and of the Provincial legislatures to legislate freely and without control, other than that defined in that Act, does not depend upon the absence of any supreme or sovereign authority, but in the knowledge and understanding, which has come in the course of events to be accepted as part of our constitution, that the sovereign authority will not exercise its undoubted powers unsolicited, or against their wishes. If these general observations are well founded, it will make no difference, in determining the question at issue in this case, whether the provision of *The Customs Tariff*, 1897, relating to a duty upon foreign-built ships is taken or considered to be an enactment respecting the registration of such ships, or one respecting taxation. It is immaterial from which standpoint it is regarded. If it is repugnant to any provision of *The Merchant Shipping Act*, 1894, in force in Canada; if its effect is to repeal any such provision it is inoperative, not having been confirmed by Her Majesty in Council and proclaimed in accordance with that statute. Is it repugnant to any provision of that Act? Does it in effect repeal any such provision? But before attempt-

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ing to answer these questions it will be necessary to refer further to the Imperial and Canadian statutes respecting the registration of ships.

It will be seen, on looking at the second section of the Act 36th Victoria, chapter 128, and the fifty-second section of *The Revised Statutes of Canada*, chapter 72, to which reference has already been made, that no particular provision of *The Merchant Shipping Act*, 1854, or of the Acts amending the same, was thereby repealed. The repeal is expressed to extend to so much of the provisions of that Act, and of the Acts amending the same and forming part thereof relating to ships registered in Canada, as is inconsistent with the Canadian Acts mentioned. To determine, then, whether any particular provision of *The Merchant Shipping Act*, 1894, (to which for convenience I shall refer as the Imperial Act) is in force in Canada one must first see whether by the terms of that Act it extends to British possessions generally. If it does not that is the end of the matter. If it does one must in the next place see if there was any corresponding provision in the Acts thereby repealed. If there was no such provision in the repealed Acts the particular provision of the Imperial Act in question would be in force in Canada. If there was any such provision in the repealed Acts the next step would be to examine *The Revised Statutes of Canada*, chapter 72, and any other Canadian statute to which like considerations apply, and see if any provision therein contained was inconsistent with the provision of the Imperial Act in question. If there is any such inconsistent provision in any Canadian Act duly enacted in the manner pointed out and so saved by the seven hundred and thirty-fifth section of the Imperial Act, it will be in force in Canada, and not the provision of the Imperial Act to which it is repugnant. That it is not a condition of matters tending to

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clearness or convenience in respect of legislation on such an important subject as shipping. The re-enactment by the Parliament of Canada of such Acts as deal with subjects also dealt with by provisions of the Imperial Act that extend to Canada, and the approval thereof in manner prescribed therein, would tend greatly to simplify matters and make clear what the law on such subjects is.

The provisions relating to the registering of ships are contained in Part I of the Imperial Act. That part of the Act (consisting of sections one to ninety-one) applies to the whole of His Majesty's Dominions and to all places where His Majesty has jurisdiction (s. 91). By the eighty-ninth section of the Act it is provided that the Governor of any British possession shall in such possession occupy the place of the Commissioners of Customs with respect to the registry of a ship. There is no occasion to go minutely into the provisions of the Act. In the main the law respecting the registering of ships, including the provision relating to the registry of foreign-built ships under which the *Minnie M.* was registered, are to be found therein and not in *The Revised Statutes of Canada*, chapter 72, though the latter Act contains some provisions of importance on the same subject. *The Customs Tariff*, 1897, and the earlier tariff Acts on the same subject refer, as will have been observed, to a "Canadian Register." The duty in question is payable on application for a Canadian register, and the question is raised as to whether or not there is by reason of the Canadian Act a Canadian register distinct from a British register. It seems to me that there is not. That seems to me to be clear from an examination of the Act, to a few of the provisions of which it may perhaps be convenient to refer more particularly.

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The Act (R. S. C. c. 72) is divided into four parts. The first part relates to the measurement and registration of ships; and the fourth part to the inspection and classification of ships. The fourth section of the Act (being the first section of Part I) exempts certain vessels from the provisions of the Act. The fifth and sixth sections are as follows:

"5. No ship propelled either wholly or in part by steam, whatever her tonnage, and no ship not propelled wholly or in part by steam, of more than ten tons burthen and having a whole or fixed deck, although otherwise entitled by law to be deemed a British ship, shall, unless she is duly registered in the United Kingdom or in Canada, or some other British possession, under *The Merchant Shipping Act*, 1854, and the Acts amending the same or under the provisions of this Act, be recognized as a British ship, or be admitted to the privileges of a British ship in Canada; but any ship which was duly registered under the provisions of the *Act respecting the Registration of Inland Vessels* forming chapter forty-one of the Consolidated Statutes of the late Province of Canada, need not be registered in pursuance of the provisions of this Act, except for the purpose of enabling her to proceed to sea as a British ship.

"2. No ship which was required to be registered by the said *Act respecting the Registration of Inland Vessels* shall, unless she was duly registered under the provisions of the said Act, be recognised in Canada as a British ship. 36 V. c. 128, s. 8 and s 14, part.

"6. No officer of Customs shall grant clearance to any ship required to be registered under the provisions of the Act in the next preceding section mentioned, or of this Act, for the purpose of enabling her to proceed on a voyage, unless the master of such ship, upon being required so to do, produces to him the proper certifi-

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cate of registry; and if any such ship attempts to proceed on a voyage as a British ship, without a clearance, any officer of Customs may detain such ship until such certificate is produced to him. 36 V. c. 128, s. 14, part."

The seventh section enables the Lieutenant-Governors of the provinces in certain cases to grant passes to British ships. The eighth section provides that the Governor in Council may appoint at and for every port at which he deems expedient to authorize the registry of ships, the collector or other principal officer of customs to be the registrar for all the purposes of *The Merchant Shipping Act*, 1854, and the Acts amending the same and of this Act. This provision is not repugnant to, but consistent with, section four (*e*) of the Imperial Act by which it is provided, among other things, that the chief officer of Customs at any port in a British possession, other than those specially mentioned, shall be registrars of British ships. The ninth section of the Canadian Act authorizes the Governor in Council to appoint surveyors to superintend the survey and measurement of ships in conformity with the said Acts and this Act. The tenth section empowers the Governor in Council to prescribe the fees and travelling expenses to which surveyors shall be entitled for the measurement of ships about to be registered for the first time. The eleventh section provides that no fees shall be charged in Canada for registering vessels or recording transactions relating to the registry of vessels under this Act or under *The Merchant Shipping Act*, 1854, or the Acts amending the same. From these and other provisions of the Act it will be seen that registry in Canada of a ship takes place not by force of the Canadian Act alone, but under that Act and the Imperial Act, and the registry of ships thereunder is in reality and in substance a British registry

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in Canada, and not a Canadian registry as distinct therefrom. The port of registry, the port to which the ship belongs is of course a Canadian port, and in the qualified sense of being granted in Canada, the certificate of registry may be spoken of as a Canadian certificate; but it is at the same time a certificate of registry as a British ship. The ship when registered in Canada is a British ship, though in respect of her origin or of the port to which she belongs she may at the same time be a Canadian ship.

The register that was obtained in the Province of Canada under the *Act respecting the Registration of Inland Vessels* was no doubt a Canadian register. And a ship could at the same time obtain in that province a British register. But since the repeal of the Act last mentioned there has been only one register that a ship could obtain in any part of Canada, and that, it seems to me, is a British register granted in Canada. That, I take it, is the meaning of the words "Canadian Register" where they occur in *The Customs Tariff*, 1897. The expression "on application for Canadian register" used in that Act must (if any meaning is to be given to it) mean on application under the Imperial Act and the Canadian Act to be registered in Canada as a British ship. So one may, I think, for the present put to one side the controversy that arose between the suppliant company and the officers of the Crown as to whether its application was for a Canadian register or an application in Canada for a British register. And taking that view of the provision in question we come back to the questions already stated: Is it repugnant to any provision of *The Merchant Shipping Act*, 1894? Does it in effect repeal any provision of that Act?

Now it appears certain that it does not repeal in whole or in part any provision of the Imperial Act. The provisions of that Act are in no way altered or

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affected by the imposition of this duty. But it is argued that it is repugnant to the provisions of the Act requiring or permitting a foreign-built ship to be registered to levy a duty on the application for registry. But is that really so? The duty is not a fee exacted in respect of the registration of the ship or of anything done under the Act in relation to such registration. It has in fact nothing to do with the registration of the ship, or the procedure applicable thereto. It is a tax levied upon an article of foreign make, at a time when at the election of its owners, it is about to be given the character and condition of a like article constructed in Canada. A foreign-built ship, if she is to be registered as a British ship, must of course have a port of registry in some part of His Majesty's Dominions. That port where she is registered is the port to which she belongs, her home port. The duty or tax is in reality levied upon the occasion of the foreign ship acquiring in Canada such a port, and the provision that it is payable upon application for a register fixes the time of payment, and nothing more. It seems to me that there is no repugnancy between the statute imposing the duty in question and *The Merchant Shipping Act*, 1894.

It is further contended, however, that if the Parliament of Canada may levy a duty in such a case it may levy one so excessive as to be prohibitory, and thereby render inoperative in Canada the provision of the Imperial Act respecting the registration of foreign-built ships. It will be time enough to consider that case when it arises. The duty now in question appears to be reasonable and in no sense prohibitory.

Then it is said that it is unreasonable that a duty should be levied on registration in Canada of a foreign-built ship when no such duty is imposed in other parts of the King's Dominions, the ship once registered

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in any part of the Empire having in Canada all the privileges of a British ship. For instance, it is said that the owners of the *Minnie M.* might have taken her to Newfoundland and obtained a registry there without the payment of duty; and that then in Canada her position and character would not have been different from what it now is. Beyond question the owner of a foreign-built ship desiring to obtain registry thereof as a British ship is under no compulsion to choose any particular port of registry or a port in any particular part of the King's Dominions. But if he chooses one and takes his ship there, she will be subject to the laws in force at that port, whatever they may be. Such laws differ greatly no doubt at ports in different parts of the Empire. And in all this there is nothing unreasonable. The same thing happens to registered vessels both British and foreign. Any ship coming in the course of her business to a British port submits herself to, and is subject to, the law of that port. A foreign ship intending to enter a British port, and subsequently entering it, was held to be subject to an Act requiring her to make a signal for a pilot before she had come within British waters (1). That she was, after she came within British waters, subject to the laws and regulations in force there did not admit of serious question. In the same way a foreign-built ship coming to a British port for registry as a British ship is subject to the law of that port; and it is no good objection to that law to say that it is not the same as the law in force at some other British port.

Leaving then the question of the authority of the Parliament of Canada to impose a duty on a foreign-built ship on application for registry in Canada as a British ship, we come to the other question mentioned,

(1) *The Annapolis and Johanna Stoll*, 1 Mar. L. C. 69.

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namely: Has such a duty been duly imposed by *The Customs Tariff*, 1897? The difficulty arising from the use, in the 409th item of schedule A to that Act, of the words "Canadian Register" has already been alluded to, and reasons have been given for thinking that the expression "on application for Canadian register" means on application for registry in Canada, the ship when registered becoming a British ship; that there is no such thing as an independent Canadian register; that any registration that takes place is under both the Imperial Act and the Canadian Act, and that the registration of a ship thereunder is a registry in Canada of such ship as a British ship. If I am wrong in the view I have taken of the meaning of these words, if that is not their true meaning, then the duty has not, it seems to me, been imposed in clear language and was not leviable in the case of the *Minnie M.* But that is not the only difficulty. If it were, I should think it might fairly enough be gotten over by giving the provision the meaning suggested. There is the further difficulty that the operative words of the statute, the words authorizing the levy and collection of duties, are not, I think, applicable to item 409, and that item contains in itself no such words. The fourth section of the Act provides that "there shall be levied, "collected, and paid upon all goods enumerated" (or) "referred to as not enumerated in schedule A to this "Act, the several rates of duties of customs set forth "and described in the said schedule and set opposite "to each item respectively, or charged thereon as not "enumerated, when such goods are imported into "Canada or taken out of warehouse for consumption "therein." That is a provision for levying duties of customs on goods imported into Canada. But a ship is not included in the word "goods," and that is clear whether we have regard to the ordinary meaning of

the word, or to the meaning that may be assigned to it in this Act by reason of the interpretation given to the word in the second section of *The Customs Act*, and made applicable to this Act. (*The Customs Tariff*, 1897, s. 3.) The expression "goods" is, in the Act mentioned, defined to mean goods, wares and merchandise or movable effects of any kind including carriages, horses, cattle and other animals. Neither can a ship with propriety be said to be imported; and it would be absurd to refer to it as taken out of warehouse for consumption in Canada. The words of this provision—and it is the only one in the Act by which duties are actually imposed—are wholly inapplicable to a ship as a ship. That is recognised in item 409 itself, where the duty on a foreign-built ship, assuming it to be imposed, is declared to be leviable, not on importation into Canada, but on application for Canadian register. Then, as has been said, item 409 contains no substantive provision imposing a duty. The fact that the provision occurs in a schedule to the Act is not in itself an objection; though it is clearly out of place there and would be more appropriately enacted as a substantive provision of the Act. The schedule is, however, a part of the Act, and if there were in the provision any operative words, any words enacting that the duty therein mentioned should be levied, collected or paid, effect ought to be given to it. No doubt one may see from the connection in which the provision occurs that it was intended that the duty therein mentioned should be imposed and levied, and there are certain cases in which one is said to be at liberty to supply or add words omitted from a statute in order to give effect to its meaning and intention. But that is not permitted in the case of statutes imposing a tax or charge. Where a tax or charge is imposed express language is said to be indispensable;

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and the intention to impose a charge on the subject must be shewn by clear and unambiguous language. *Oriental Bank* v. *Wright* (1). In *Cox* v. *Rabbits* (2). Lord Cairns, L. C. stated the rule in these words: "A "Taxing Act must be construed strictly; you must "find words to impose the tax, and if words are not "found which impose the tax, it is not to be imposed." It seems to me, therefore, that it is not permissible to add to the words contained in the provision in question, or to read into it, other words to make it operative and to impose the duty therein specified. For illustration, suppose in some way the provision in the fourth section of *The Customs Tariff*, 1897, had been omitted from the Act, the schedule remaining as it is. Every one would know that it was the intention of Parliament to impose the duties mentioned in the schedule; but no authority except Parliament could supply the omission and make the Act effective for its purposes. What the whole schedule would in such a case lack, the provision in question here lacks, namely, the support of apt and operative words imposing the tax or duty.

There will be judgment for the suppliant company, and a declaration that it is entitled to be repaid the sum of three thousand five hundred dollars collected for customs duties on the *Minnie M.* The question as to interest on that amount, and that as to damages for the detention of the ship, not having been argued, will be reserved.

Ottawa, December 7th, 1901.

The reserved questions as to interest and damages recoverable by the suppliants were now argued.

Wallace Nesbitt, K.C. for the suppliants, cited R.S.O. 1897, c. 51, secs. 113, 114; *McCullough* v. *Newlove* (3);

(1) 5 App. Cas. 856. (2) 3 App. Cas. 478.
(3) 27 Ont. R. 627.

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Webster v. *British Empire Assrnce. Co.* (1); *Marsh* v. *Jones* (2); *Arnott* v. *Redfern* (3); *Re Gosman* (4); *Partington* v. *Attorney-General* (5); *Tobin* v. *The Queen* (6).

E. L. Newcombe, K.C. for the respondent;

If interest can be recovered at all it would be in the nature of damages in this case, and that would invoke the law of tort and the maxim that the "King can do no wrong."

THE JUDGE OF THE EXCHEQUER COURT now (December 15th, 1902), delivered judgment upon the questions reserved.

In giving judgment for the suppliants in this case for the sum of three thousand five hundred dollars, collected for customs duties on the steamship *Minnie M.* on application for registry in Canada, the questions as to whether or not the Crown was liable for interest on that amount or for damages for the detention of the ship, which were raised by the pleadings but not argued, were reserved for argument and further consideration. These questions have since been argued and now stand for judgment.

The duties in question were paid at the Port of Sault Ste. Marie, in the Province of Ontario, and the case is to be determined by the laws in force in that Province, notwithstanding that the certificate of registry was issued at the Port of Montreal, in the Province of Quebec. These duties were paid under protest, and in order to obtain registry of the steamship. It has been decided that the company is entitled to have the money so paid returned to it; and unless it is repaid with interest it will, through no fault of its own but

(1) 15 Ch. D. 169.
(2) 40 Ch. D. 566.
(3) 3 Bing. 353.
(4) 17 Ch. D. 772.
(5) L. R. 4 E. & I. 100.
(6) 16 C. B. N. S. 310.

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by reason of the acts of the Crown's servants, have suffered a loss for which there is no remedy. The same is true also of the damages that it incurred by the detention of the ship until the duties were paid. But where, as in this case, it is a question of law only, one must, in coming to a conclusion, put considerations of that kind to one side. They are proper matters for the consideration of the Crown and of its advisers, or of Parliament; but a court whose duty is limited to declaring and enforcing the law has no responsibility in respect to them.

Now where the Crown's officer, without authority of law, takes or exacts for the Crown the subject's goods or money, he is liable to an action for the wrong that he commits, unless protected by some statute. The fact that he acts under directions from the Crown or some minister of the Crown does not constitute a good answer; and herein, in the first instance, are found the subject's, protection and remedy. The wrong cannot be imputed to the Crown, and the officer who commits it must answer therefor. If the goods or money so taken or exacted come into the possession of the Crown a petition of right will lie for their recovery. But these remedies are distinct, and the liability of the Crown and that of its officer are not necessarily the same. In both cases this court has jurisdiction. Against the Crown's officer it possesses concurrent original jurisdiction with other competent courts; (*The Exchequer Court Act*, s. 17 (*c*)) against the Crown it has exclusive original jurisdiction (*Ibid.* s. 16). If in the present case the action had been brought against the registrar of shipping he could, in respect of anything he did as such registrar, have set up in defence the provisions of the third clause of the fourth section of *The Merchant Shipping Act*, 1894, whereby it is enacted that a registrar, shall not be liable to damages or other-

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wise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar unless the same has happened through his neglect or wilful act. But that provision does not in the present case afford any defence to the Crown; and in the same way and for like reasons the measure of what, but for the statute, would have been the officer's liability is not of necessity the measure of the Crown's liability. The petition lies for the money, that has come into the Crown's possession; not for any wrong the officer may have done. On such petition the suppliant is entitled to judgment for the money but not for damages for the act of the officer. No wrong can, as has been stated, be imputed to the Crown, and without the authority of some statute, no damages for a wrong can, on a petition of right, be recovered against the Crown.

Now with reference to the interest claimed, it is certain that there is no statute authorizing its recovery. By the thirty-third section of *The Exchequer Court Act*, it is provided that no interest shall be allowed upon any claim arising out of a contract in writing in the absence of a stipulation in writing for payment of such interest, or a statute providing in such case for the payment of interest. In cases where lands are taken for, or injuriously affected by, the construction of a public work, the court may allow interest (1). And after judgment in this court, and from the date thereof, the Minister of Finance may allow interest at a rate not exceeding four per centum per annum on any moneys or costs to which the suppliant thereby becomes entitled (2). But there is no statute authorizing the court in a case such as this to allow interest. And perhaps in passing one might point out that in

(1) *The Expropriation Act*, 52 Vict. c. 13 s.s. 29 & 30, and 63 & 64 Vict. c. 22, s.s. 1 & 2.

(2) 52 Vict. c. 38, s. 4.

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that respect the statute law of Canada is not less liberal than that of other countries. In England there is no statute allowing interest to be recovered in such a case; and in the United States it is expressly enacted that no interest shall be allowed on any claim up to the time of the rendition of the judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest (1).

It is certain also that there is in this case no contract on the part of the Crown to pay interest That being so, it only remains to ask the question, whether or not damages in the nature of interest may be allowed for the wrongful exaction of the duties, or for the wrongful detention of the money. But that obviously cannot be done without making the Crown liable for a wrong done to the suppliant. And the Crown can, in law, do no wrong, and for the wrongs of its servants it is not answerable, unless expressly made liable by statute.

Then with regard to the wrongful detention of money, the case of *The London Chatham and Dover Railway Co.* v. *The South Eastern Railway Co.* (2) is an authority that even as between subject and subject interest cannot at the common law be given by way of damages for the detention of a debt, the law upon the subject, unsatisfactory as it was said to be, having been too long settled to be departed from.

There are of course statutes such as the Acts of the Parliament of the United Kingdom, 3 & 4 Wm IV. c. 42, s.s. 28 & 29, which make interest or damages in the nature of interest recoverable in cases where it was not recoverable at common law. The provisions of that Act either by express re-enactment here, or by

(1) Acts of the 3rd of March, 1863, R.S.U.S. s. 109; *Tillou* v. *The United States*, 1 C. Cls. 232.

(2) [1893] L. R. App. Cas. 429.

reason of its application as part of the law of England, is in force in most of the Provinces of Canada (1).

The Act in force in the Province of Ontario goes further than the English Act and provides that interest shall be payable in all cases in which it was payable by law, or in which it has been usual for a jury to allow interest. See *Michie* v. *Reynolds* (2); and *McCullough* v. *Newlove* (3). But the rights and prerogatives of the Crown are not affected by these statutes, it not being provided therein that the Crown shall be bound thereby.

If the action were against the Crown's officer he would be bound, and his liability to damages in the nature of interest would depend upon the law in force in the province in which the cause of action arose. But not so with respect to the Crown.

It has been held by the Supreme Court of Massachusetts that where taxes, assessed without authority, are recovered back, interest may also be recovered. *The Boston and Sandwich Glass Co.* v. *The City of Boston* (4); but the Crown stands in this respect in a wholly different position from a civic or municipal corporation.

Then there is a class of cases in which where administration on behalf of the Crown to the estate of a person dying intestate without leaving any known next of kin is taken out, and the proceeds are paid into the treasury; if thereafter the next of kin obtains a decree in his favour interest is allowed on such proceeds. (*Turner* v. *Maule* (1); *Edgar* v. *Rey-*

(1) 7 Wm. 4 (U.C.) c. 3, ss. 20, 21; C. S. U. C. c. 43, ss. 1, 3; R. S. O. (1877) c. 50, ss. 266, 268; R. S. O. (1897) c. 51, ss. 113, 115; R. S. N. S. 1st S. c. 82, ss. 4 & 5; R. S. N. S. 4th S. c. 94, ss. 231 & 232; 12 Vict. c. 39 (N.B.) ss. 27 & 28; C. S. N. B. c. 37, ss. 118 & 119; 28 Vict. (P.E.I.) c. 6, ss. 4 & 5.
(2) 24 U. C. Q. B. 303.
(3) 27 Ont. R. 627.
(4) 4 Metcalfe 181.

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nolds (2); *Attorney-General and Reynolds* v. *Kohler* (3); *Bauer* v. *Mitford* (4); *Partington* v. *The Attorney-General* (5). But in these cases the action was brought against the Crown's nominee or representative, not against the Crown itself by petition of right. They stand upon a footing of their own and cannot be considered as authorities for the proposition that the Crown is liable for damages in the nature of interest. In the case of *The Toronto Railway Co.* v. *The Queen* (6) the plaintiff recovered against the Crown the amount of certain duties of customs paid under protest and interest on that amount. But although interest was claimed by the plaintiff in the statement of claim, the question of the Crown's liability to pay it was not raised until after the Queen's order had been made. Subsequently a petition was presented praying that the order should be so amended as to make it clear that the question of interest claimed in the action had not been concluded but left open to be dealt with by the tribunal below. The petition was dismissed. Lord Macnaghten is reported, by the shorthand writer who took notes of the argument, to have stated that that question was not presented when the case was before the Judicial Committee of the Privy Council, and that he could hardly understand the Government, who have wrongly taken a person's money, refusing to pay interest upon it; that he could quite understand that the representatives of the Government would not think of arguing such a question and that he did not think they ought to. The case cannot, however, be taken as an authority that the Crown may be condemned to pay interest, or declared liable therefor in such a case, if the Government refuses to pay it out

(1) 18 L. J. Ch. N. S. 454.
(2) 27 L. J. Ch. N. S. 562.
(3) 9 H. L. C. 655.
(4) 3 L. T. N. S. 575.
(5) L. R. 4 E. & I. App. 101.
(6) [1896] App. Cas. 551.

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of money available for the purpose, if any, or to invite Parliament to make provision for its payment in case no money is so available. That is a question for the Crown's advisers, and the responsibility of deciding it rests with them and not with the court.

On the question of the Crown's liability for interest, it does appear to be clear that the law is as briefly stated by the Master of the Rolls, in *In re Gosman* (1), that interest is only payable by the Crown by statute or by contract.

Then as to damages for the detention of the ship, that stands on the same footing as damages by way of interest. In each case the damages would be given for a wrong done. Those arising from the detention of a ship might in some cases be greatly the more important, and the hardship arising therefrom much greater than that accruing from the detention of the money. But as the law stands the Crown is not liable for the wrong done, although its officer, unless protected by statute, may be.

With reference to the questions of interest on the duties paid, and of damages for the detention of the ship, the judgment of the court is that the company suppliant is not entitled to any portion of the relief claimed.

Judgment accordingly.

Solicitor for suppliants: *H. C. Hamilton.*

Solicitor for respondent: *E. L. Newcombe.*

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(1) L. R. 17 Ch. D. 772; 45 L. T. N. S. 268; 50 L. J. N. S. 624.