ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

December 16.

THE VACUUM OIL COMPANY, PLAINTIFFS *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL, DEFENDANT*.

Sea Customs Act (VIII of 1878), section 30, clauses (a) and (b)—Customs duty—Assessment—Wholesale cash price.

The expression "wholesale cash price" in section 30, clause (*a*) of the Sea Customs Act means the wholesale cash price for which the goods of like quality and kind are sold, or capable of being sold to any person, at the time and place of importation. It does not mean the cost of goods to the importer on the basis that the goods should be taken as being sold to the importer at the price which it cost him to lay them down at the place of importation.

APPEAL from the decision of Kajiji J. dismissing the plaintiffs' suit for a declaration that valuation of customs duty by the Collector of Customs was illegal and *ultra vires*.

The plaintiffs were an American Corporation having their principal place of business at Rochester, in the United States of America. They imported amongst their various kinds and classes of oils a lubricating oil which was sold by them under the name of Mobil oil. For this they had established agencies in India and Ceylon. In other parts of the world they had either subsidiary companies or independent companies and firms to sell the same.

The practice of the plaintiffs in importing their oils to India was to invoice them at the same prices at which they invoiced their oils to several firms or companies in other countries and the plaintiffs submitted that it was the true wholesale price of the oils.

Until the year 1914, the invoice prices fixed as aforesaid were accepted by the Customs Authorities in

* O. C. J. Appeal No. 47 of 1921.

Bombay and at other ports in India and customs duty paid accordingly.

About the beginning of 1914, differences arose between the plaintiffs and the Customs Authorities in regard to the customs duty payable in respect of Mobil oils imported into India. The Customs Authorities claimed that the plaintiffs were bound to pay customs duty on the rate at which they sold their Mobil oils to their customers in India, and refused to accept the invoice prices submitted to them by the plaintiffs in the bills of entry and certified by the officials of the plaintiffs' home office.

In February 1914, the Customs Authorities detained the plaintiffs' goods at Bombay, refusing to accept the invoice in respect of the goods as showing their "real value". The plaintiffs thereupon paid the duty under protest on rates which the Authorities had obtained from the plaintiffs' sale books.

Thereafter, the plaintiffs filed a suit being Suit No. 610 of 1914 for wrongful detention of goods and illegal assessment. The defendants admitted that the detention of goods was illegal but denied that the assessment was illegal. The question of the illegality of the assessment was not tried by the Court and a decree for Rs. 317-7-0 was passed in plaintiffs' favour for wrongful detention of goods.

Since the hearing of the said suit various other consignments of Mobil oils were imported into India by the plaintiffs who had in many cases to pay under protest the duties as levied on the rates shown in the plaintiffs' books. The plaintiffs alleged that such a method of assessment was perverse, illegal, *ultra vires* and contrary to the provisions of the Sea Customs Act, and that all such sums exacted from the plaintiffs by

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the Bombay Customs Authorities had been illegally and invalidly exacted under coercion and compulsion and the same should be ordered to be repaid to the plaintiffs. The plaintiffs further alleged that the forcible imposition on them by the Customs Authorities of the new method of assessment had in effect resulted in taxing the importers profits and their administration charges irrespective of profit or loss on such sales as the plaintiffs might be able to effect. Para. 16 of the plaint which set forth the main contention of the plaintiffs ran as follows :—

"The plaintiffs say that there is no wholesale cash price for which these Mobil oils are sold or are capable of being sold at the time and place of importation within the true meaning and principle of section 30 (*a*) of the said Sea Customs Act, and that thereafter the duty should be assessed under section 30 (*b*) of the Sea Customs Act on the cost at which the plaintiffs' Mobil oils could be delivered at the various ports of importation, namely, the invoice price.

Alternatively and without prejudice to the foregoing contention, the plaintiffs submit that if the said Mobil oils are capable of being sold at a wholesale cash price at the time and place of importation into India, the wholesale cost price thereof is the said invoice price to them of the said Mobil oils.

In either view the plaintiffs contend that any other basis of assessment than the said invoice price is perverse, illegal, wrongful, invalid and *ultra vires* in principle and practice.

From 25th February 1914 up to the 31st December 1917, the plaintiffs paid under protest Rs. 3,391-2-0 which the plaintiffs claimed to be refunded to them.

The defendant in his written statement denied that the method of assessment was wrongful, illegal or *ultra vires* or contrary to the provisions of the Sea Customs Act; that, although prior to 1914 the invoice prices were accepted, they were found to be too low and were such as ought not to have been accepted as

the prices realised by the plaintiffs were 25 per cent. more than the invoice prices: that duty is leviable under the Act irrespective of the anticipated profit or loss of importer, and that the plaintiffs were assessed upon the real values of the goods imported, being the wholesale prices (less trade discount) for which large portions of the goods were sold in Bombay, at the respective times of importation, the prices selected being those at which the plaintiffs sold to the Bombay Motor Car Company.

The defendant denied that at any time coercion or improper compulsion was brought to bear upon the plaintiffs.

Kajiji J. dismissed the plaintiffs' suit and held that the method of valuation adopted by the Customs Authorities was correct and warranted by the provisions of clause (*a*) of section 30 of the Sea Customs Act, 1878.

The plaintiffs appealed.

Desai and *Campbell*, with them *Coltman*, for the appellants.

Sir Thomas Strangman, Advocate-General, with *O'Gorman*, for the respondent.

MACLEOD, C. J.:—This is a suit filed by the plaintiffs against the Secretary of State praying (1) for a declaration that the method of valuation adopted by the Collector of Customs at Bombay in respect of the plaintiffs' Mobil oils imported into India was perverse, wrongful, invalid, illegal and *ultra vires*; (2) that it might be declared that the sum of Rs. 3,391-2-0 had been perversely, wrongfully and illegally exacted from the plaintiffs by way of customs duty in respect of their said oils and contrary to the provisions of the Sea Customs Act; (3) that it might be declared that in the

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circumstances of this case there was no wholesale cash price ascertainable for which the plaintiffs' Mobil oils were sold or were capable of being sold at the time and place of importation thereof within the meaning and principle of section 30 (*a*) of the said Sea Customs Act ; (4) that it might be declared that in any event in the circumstances of the case the invoice price returned by the plaintiffs in the bills of entry in respect of the plaintiffs' said oils was the correct basis on which to assess the customs duty on the plaintiffs' oils under the Sea Customs Act.

The suit was dismissed by Mr. Justice Kajiji.

The question in appeal is, what is the proper construction of section 30 of the Sea Customs Act (VIII of 1878).

Under section 29 of the Act :—

"On the importation into, or exportation from, any customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information..."

Then under section 30 :—

"For the purposes of this Act the real value shall be deemed to be—

(*a*) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof : or

(*b*) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid."

No doubt, from the prayers of the plaint, it would seem that the first argument of the plaintiffs was that there was no wholesale cash price which could be ascertained under section 30 (*a*) of the Act; but from the evidence in the case it is perfectly clear that it would be possible to ascertain the wholesale cash price at which Mobil oil could be sold in Bombay, the place of importation, at or about the time of importation. And since the wholesale cash price could be ascertained, it seems perfectly clear that the wholesale cash price was then the real value of the goods.

But there is the second argument that the term "wholesale cash price" has another meaning, not the popular meaning; but this meaning, as far as I can gather from the arguments advanced, is the same as "the cost of the goods to the importer" on the basis that the goods should be taken as being sold to the importer at the price which it cost him to lay them down in Bombay. If that is the case, as pointed out by the learned Judge, there would be no necessity for sub-clause (*a*) of section 30 of the Act, as in every case the importer would be entitled to have it decided that the real value of the goods imported was the cost of the importation to him.

It has been pointed out by the learned Advocate-General that it is not always possible to ascertain the wholesale cash price of goods imported, and it is, therefore, necessary in such a case that some provision should be made for ascertaining the real value; and so sub-clause (*b*) was added in order that the real value might be ascertained where there is no wholesale cash price. In this case, as I have already pointed out,

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there is no difficulty whatever in ascertaining the wholesale cash price of Mobil oil sold in Bombay : and, therefore, that is the only test to be adopted for ascertaining the real value of the goods. That is the plain meaning of the section. It is difficult to my mind to see how it can have any other possible meaning, or how the words " wholesale cash price " can possibly be said, as argued by the appellants, to be the equivalent of " the cost to the importer. "

The judgment of the Court below was right, and the appeal must be dismissed with costs.

SHAH, J.:—I concur. I desire to deal briefly with the two arguments which have been urged on behalf of the appellants, viz., that under clause (*a*) of section 30 of the Sea Customs Act the wholesale cash price is not the price which the importer realises on a wholesale disposal of the goods by him but the price which is actually paid by him for importing the goods in Bombay. It is further urged that under clause (*b*), where such price is not ascertainable, the real value is the cost at which the goods of the like kind and quality could be delivered at such place, without abatement or deduction except as aforesaid, for the purposes of taxation ; and that no different standard could have been intended to be adopted for the purpose of taxing the goods under clause (*a*). It is also urged that as a provision for taxing the subject, it must be strictly construed.

As regards this last general consideration, there can be no question. No doubt section 30 must be construed strictly, and if the words are ambiguous or admit of any doubt, the construction in favour of the subject may be adopted. But having regard to the terms of section 30, both the contentions urged on their behalf must be disallowed.

As regards the contention that the wholesale cash price within the meaning of clause (*a*) must be the price paid by the importer and not the price realised on the wholesale disposal of the goods at the place and time of importation, I think the expression used clearly indicates that it must mean the wholesale cash price for which the goods of like kind and quality are sold, or are capable of being sold, at the time and place of importation. Those words clearly indicate that it must be the price which the importers here would be able to realise on a wholesale disposal of the goods by them to any person in Bombay. The expression could not be construed as meaning the price which they may have paid for the purpose of importing goods to Bombay.

As regards clause (*b*), in terms it applies where the wholesale cash price is not ascertainable. Here the wholesale cash price being ascertainable, the clause cannot apply. There is no reason to suppose that the standard adopted, under clause (*b*) for taxation would be necessarily adopted as a standard under clause (*a*). It may well be, as it appears to be the case on the language of the section, that the Legislature has adopted one test for cases covered by clause (*a*) and is satisfied with the next best test in other cases, to which the first test cannot be applied. The argument is based on the assumption that the test in both cases must be the same, for which the language used does not afford any warrant.

Lastly, it is urged that the Legislature could not have intended to tax the profits, which the importer would make at the time and place of importation; and that the construction adopted by the lower Court involves that result. Here again the answer is that we can only decide on the language used by the

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Legislature and not upon such *a priori* considerations as the argument suggests.

I think, therefore, that the decision of the trial Court is perfectly right.

Solicitors for the appellants: Messrs. *Crawford & Co.*

Solicitors for the respondents: Messrs. *Little & Co.*

Appeal dismissed.

G. G. N.

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Before Sir Norman Macleod, Kt., Chief Justice, and Mr Justice Coyajee.

1922.

January 26.

VITHALDAS GULABDAS SETH, APPELLANT (PLAINTIFF) *v.* THE HYDERABAD PINNING & WEAVING CO., LTD., RESPONDENT (DEFENDANT)*.

Civil Procedure Code (Act V of 1908), Order VIII, Rule 6—Set-off—Claim for damages—Distinction between equitable set-off and counter-claim—High Court Rules (1909), Rule 118—Jurisdiction—Practice.

The plaintiff, a resident of Hyderabad (Deccan) sued the defendant company to recover the amounts payable to him as a share-holder in respect of two dividends declared by the company. The defendant company claimed that they were entitled to recover damages for breach of contract against two firms in which the joint family of which the plaintiff was the manager was a partner, and that the plaintiff being liable to pay those damages the defendant company were entitled under Article 131 of the Articles of Association of the company to deduct from the dividends payable to the plaintiff "all sums of money due from him to the company". In the alternative, the defendant company counter-claimed that in the event of it being held that the amount of the damages could not be set off against the claim in respect of the dividends, the plaintiff as the head of the joint family might be ordered to pay to the defendant company a reasonable sum by way of damages for breach of contract.

* O. C. J. Appeal No. 120 of 1921.