

In the Privy Council

No. of 1930.

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN :

THE CARLING EXPORT BREWING AND MALTING
COMPANY, LIMITED,

(Defendant) APPELLANT,

AND

HIS MAJESTY THE KING, on the information of the Attorney-
General of Canada,

(Plaintiff) RESPONDENT.

RECORD OF PROCEEDINGS

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For the Respondent

PRESS OF
THE HUNTER-ROSE CO., LIMITED
TORONTO, ONT.

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RECORD OF PROCEEDINGS

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In the Exchequer Court of Canada

*In the
Exchequer
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of Canada*

BETWEEN:

HIS MAJESTY THE KING, on the Information of the Attorney-General of
Canada,

No. 1

PLAINTIFF,

Amended
Information
October 22, 1927

AND

THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED,

DEFENDANT.

10 Filed the 22nd day of October, A.D. 1927.

Amended May 6th, 1929, pursuant to order of May 10th, 1928.

To the Honorable the President of the Exchequer Court of Canada:

The Information of the Attorney-General of Canada sheweth as follows:

1. The defendant is and was during the periods hereinafter referred to licensed to carry on the trade or business of a brewer, and as such manufactured and sold beer.

2. Under Section 19BBB of the Special War Revenue Act, 1915, as amended from time to time, and the Regulations made thereunder, the defendant became liable to pay a tax on and in respect of sales of beer hereinafter referred to made by it and to pay the said tax to His Majesty on or before the last day of the month next 20 succeeding the month in which the sales took place.

3. On and after the first day of April, 1924, and prior to the first day of May, 1927, the Defendant made sales of beer subject to the tax hereinbefore referred to, as a result of which it became liable to pay to His Majesty the following sums, payable on the last day of each month, as follows:

	1924—June.....	\$ 6,930 17	1925—December.....	580 04
	July.....	5,119 79	1926—January.....	\$ 1,426 05
	August.....	5,130 91	February.....	1,437 94
	September.....	5,093 27	March.....	2,937 05
	October.....	3,346 05	April.....	3,096 95
30	November.....	2,114 41	May.....	5,252 09
	December.....	549 49	June.....	7,644 65
	1925—January.....	1,261 14	July.....	9,547 09
	February.....	1,299 10	August.....	9,933 61
	March.....	3,131 30	September.....	9,404 09
	April.....	3,285 01	October.....	12,077 55
	May.....	3,775 56	November.....	7,023 44
	June.....	7,695 22	December.....	3,277 71
	July.....	3,893 49	1927—January.....	10,451 35
	August.....	3,250 58	February.....	7,849 92
40	September.....	6,608 79	March.....	3,086 87
	October.....	1,820 40	April.....	4,196 22
	November.....	1,209 69		

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6. Under Section 19B of the Special War Revenue Act, 1915, as amended from time to time, and the Regulations made thereunder, the defendant became liable to pay a tax per gallon on and in respect of beer, hereinafter referred to, manufactured and sold by it, and to pay the said tax to His Majesty on or before the last day of the month next succeeding the month in which the sales took place.

7. On and after the first day of April 1924 and prior to the first day of May, 1927, the Defendant manufactured and sold beer subject to the tax in the preceding paragraph hereof referred to, as a result of which it became liable to pay to His Majesty the following sums, payable on the last day of each month as follows:

1924—May.....	\$ 1 05	1926—March.....	\$ 9,269 84 10
June.....	56 19	April.....	10,359 89
September.....	43 42	May.....	17,821 75
December.....	252 15	June.....	27,414 73
1925—February.....	327 24	July.....	34,362 70
March.....	61 33	August.....	23,590 51
April.....	16 94	September.....	26,275 94
July.....	76 70	October.....	19,213 25
August.....	8,091 44	November.....	16,746 99
September.....	7,543 80	December.....	6,787 03
October.....	4,760 69	1927—January.....	3,870 70 20
November.....	4,992 57	February.....	7,129 15
December.....	2,613 14	March.....	8,876 47
1926—January.....	4,726 73	April.....	11,505 63
February.....	4,751 66		

8. The defendant has omitted or refused to pay the said taxes to His Majesty.

9. In the alternative, the Attorney-General says the defendant is indebted to His Majesty on account of income tax inasmuch as the defendant deducted the aforesaid items of sales tax and gallonage tax as expenses in making the returns under the Income War Tax Act of 1917. If the said items of sales tax and gallonage tax are not payable to His Majesty, the Attorney-General says the same should not have been deducted as aforesaid and that the taxable income of the defendant during the period mentioned should be thereby increased.

10. By the said Special War Revenue Act, 1915, as amended, all taxes or sums payable under the said Act are recoverable at any time after the same ought to have been accounted for and paid, as a debt due to His Majesty, in the Exchequer Court of Canada.

The Attorney-General on behalf of His Majesty claims judgment against the defendant as follows:

- (a) judgment for sales tax under Section 19 BBB of the Special War Revenue Act, 1915, and regulations, in the sum of \$163,828.07, and
 (b) judgment for gallonage tax under Section 19 B of the Special War Revenue Act, 1915, and regulations, in the sum of \$260,662.21.

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10 (c) Judgment for interest at the rate of 5 per centum per annum from the dates hereinbefore mentioned when the taxes became due and owing to the 1st day of June, 1927, and thereafter at the rate of $\frac{2}{3}$ of 1 per centum per month as provided by section 19cc of the Special War Revenue Act, as enacted by Section 4 of Chapter 69 of the statutes of 1926-1927.

(d) In the alternative, judgment for income tax on the amount of sales tax and gallonage tax hereinbefore mentioned which the defendant is held not liable to pay and which it deducted for the purpose of its returns under the Income War Tax Act, 1917.

(e) The costs of this action.

(f) Such further and other relief as to this Honourable Court may seem meet.

Sgd. ERNEST LAPOINTE,

20 *Attorney-General of Canada.*

This information is filed by

W. STUART EDWARDS, K.C., Solicitor for the Attorney-General of Canada.

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No. 2
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STATEMENT OF DEFENCE

Filed the 22nd day of November, 1927.

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The Defendant, in answer to the Information herein, states as follows:—

Statement
of Defence
Nov. 22, 1927

1. The Defendant admits the allegations contained in paragraph 1 of the Information herein.

2. The Defendant denies the allegations contained in paragraphs Numbers 2, 3 and 4 of the said Information.

3. In answer to the allegations contained in the said paragraphs Numbers 2, 3 and 4 of the Information, the Defendant states that the beer therein mentioned was exported and was not subject to the tax provided for under section 19BBB of the Special War Revenue Act, but, on the contrary, was exempt from the said tax by the provisions of the said section of the Act as amended from time to time.

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Statement
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4. The Defendant states however that even if it were liable for the said taxes as claimed in sections 2, 3 and 4 of the Information, which the Defendant does not admit but denies, then the amounts claimed in the said paragraphs of the Information are in error in that the computations of the amounts are not in accordance with the amounts of beer exported by the Defendants in the periods referred to in the said paragraphs and the claim is greatly in excess of the Defendant's liability, if any.

5. In answer to paragraph 5 of the Information the Defendant says that it has not received on account of sales any amounts whatsoever that have not been accounted for and that the Defendant is therefore not liable and is not indebted to His Majesty in respect of the sum of \$5,000.00 as claimed in paragraph 5 of the Information.

6. The Defendant denies the allegations contained in paragraphs 6 and 7 of the said Information and states and the fact is that the beer manufactured by it during the period or periods mentioned in said paragraphs was manufactured for export and was exported within the meaning of section 19B of the Special War Revenue Act and amendments thereto, and the Defendant is not liable to pay a tax per gallon thereon as alleged in the Information.

7. The Defendant says further that even if it were liable for the said tax as claimed in paragraphs 6 and 7 of the Information, which the Defendant does not admit but denies, then the amounts claimed in the said paragraphs of the Information are in error in that the computations of the amounts are not in accordance with the amounts of beer exported by the Defendants in the periods referred to in the said paragraphs and the claim is greatly in excess of the Defendant's liability, if any.

8. The Defendant denies the allegations contained in paragraph 9 of the Information and states that in making its income tax returns, it did not deduct the items of sales tax and gallonage tax as expenses, but, on the contrary, it paid income tax on the amounts now claimed to be due by its for sales tax and gallonage tax as set forth in the information.

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The Defendant therefore claims that this action should be dismissed with costs.

DELIVERED at the City of Windsor, Ontario, this 21st day of November, 1927, by McTague, Clark & Racine, 401 Heintzman Building, Windsor, Ontario, Solicitors for the said Defendant, The Carling Export Brewing & Malting Company Limited.

PROCEEDINGS AT TRIAL

In the Exchequer Court of Canada*In the
Exchequer
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Evidence

No. 3

Proceedings
at Trial
May 7, 1928

BETWEEN:

HIS MAJESTY THE KING,

No. 8809

AND

THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED.

Before the Honourable Mr. Justice Audette, at Toronto, on this 7th day of May, 1928.

10 MR. ROWELL, K.C., and MR. G. A. URQUHART appeared for the Crown, and MR. TILLEY, K.C., and MR. J. H. CLARK for the Carling Export Brewing and Malting Co. Limited.

MR. ROWELL: I presume your Lordship has read the petition and defence?

HIS LORDSHIP: The Information.

MR. ROWELL: The Information.

HIS LORDSHIP: I have perused it in a general way—I have an idea of what the matter is about.

MR. ROWELL: Your Lordship will observe that the Crown's claim is for Excise taxes consisting of gallonage taxes and Sales tax on beer manufactured and sold by 20 the defendant company. That is the case for the Crown.

HIS LORDSHIP: I understand that there are two or three counts—is there not—first is the Sales tax?

MR. ROWELL: Yes.

HIS LORDSHIP: And second is the Gallonage.

MR. ROWELL: And the third is in the alternative.

HIS LORDSHIP: Yes. That is the one I had in mind. The third is an adjustment of the income tax.

MR. ROWELL: Your Lordship is familiar with cases of this kind, and it is not necessary that I should enter into any explanation, but will call the witnesses.

30 HIS LORDSHIP: I am familiar with section 19BBB. I have decided a number of cases. If there is anything special you might mention it?

MR. ROWELL: I do not think so. I might start by calling the witnesses. I will call Mr. Nash.

HIS LORDSHIP: Let me understand you well. You are going to prove your allegation, and the quantities?

MR. ROWELL: Yes.

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HIS LORDSHIP: Well, Mr. Tilley, you deny both?

MR. TILLEY: I did not hear what your Lordship started, by saying—

HIS LORDSHIP: When he was putting the witness in the box, I said, from his allegation, I suppose now you are going to prove the quantity.

MR. TILLEY: Yes, quantity.

HIS LORDSHIP: And that the goods are subject to the tax. And your case is that you deny they were—

MR. TILLEY—Subject to the tax.

HIS LORDSHIP: They were not for domestic use—and do you attack the quantities. 10

MR. TILLEY: I have not heard what he will say.

HIS LORDSHIP: I mean as alleged?

MR. TILLEY: Yes.

HIS LORDSHIP: That is the case in a nut-shell.

MR. ROWELL: Our position is this, that it is necessary for the Crown to prove in chief the sale in Canada, of these goods. My learned friend says they were exported and come within the exception.

HIS LORDSHIP: That will be one of the debated questions.

ALBERT E. NASH: Called, sworn and examined by Mr. Rowell, K.C.

Q. MR. NASH, you are a member of the firm of Clarkson, Gordon & Dilworth?— 20
A. And company, yes.

HIS LORDSHIP: Say what that firm is?

Q. MR. ROWELL: They are auditors and accountants?—A. Chartered accountants, yes.

Q. Your firm was employed by the Government in connection with the Customs investigation, to examine into the accounts of certain breweries in Ontario and elsewhere?—A. Yes.

Q. In connection with the Customs investigation, did your firm make an examination of the books of the defendant company, with a view of ascertaining the amount of the gallonage and sales tax?—A. Yes, we did make an investigation of 30 the Carling Export Brewing and Malting Company.

Q. And I believe your firm prepared the claim upon which this suit is brought, as set out in the petition?—A. We gave the figures to the solicitors, to the department.

Q. Of the particulars set out—of the particulars set out in the Information—they were furnished by your firm to the Solicitors for the department?

HIS LORDSHIP: Do you mean, your question will cover all the figures?

MR. TILLEY: I object to that.

MR. ROWELL: I am coming to the details.

HIS LORDSHIP: There could not be any objection to the witness saying that he 40 had investigated the books, and the figures correspond.

Albert
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MR. TILLEY: But this witness does not know anything about that.

HIS LORDSHIP: Do you or do you not know about these figures. I notice that you said "we".

A. I will put it this way, that the firm of which I am a member through its staff with me directing that staff, prepared the figures.

HIS LORDSHIP: Will you put it this way. In other words that you had the control of preparing that statement, and you were directing different officers to work for you, and the result was arrived at? A. Yes.

Q. MR. TILLEY: Do you say that you were on the Carling plant, or saw the 10 books yourself at all?—A. No.

Q. MR. TILLEY: Any directions you gave was absent treatment. You would give them instructions to go up to London, and make some investigation? A. Yes.

Q. MR. TILLEY: And return and hand you the figures. But you never saw the books, as I am instructed?—A. I did see the books.

Q. MR. TILLEY: Where?—A. But not while the investigation was going on. I saw the books at the time the Customs inquiry was held in Toronto.

Q. MR. TILLEY: When they were produced?—A. Yes.

Q. MR. TILLEY: But you made no study of them?—A. I made a partial study. I cannot say I made a study, but I can personally speak as to the entire 20 accuracy of this claim.

HIS LORDSHIP: The Chief Engineer directs the whole work, and he is the man who gives the certificate. The Chief Engineer does not see anything himself.

MR. TILLEY: Who has not seen anything?

HIS LORDSHIP: No.

MR. TILLEY: I would certainly object to his evidence.

HIS LORDSHIP: With respect to the matter in question, as the case might be, he has a Resident Engineer who is on the locus, and who directs it, and who gives him the progress estimates and the rest—but the final certificate is given by the Chief Engineer.

30 MR. TILLEY: Under a contract, the certificate of the Chief Engineer governs.

HIS LORDSHIP: This obtains in every big enterprise. You could not exact it from a clerk.

MR. TILLEY: All I can do is to object to any person who has not made an examination of our books, giving evidence to what they contain.

HIS LORDSHIP: I will allow the question, subject to the objection, and reserving all of your rights—and we will know how the books were prepared—and if you do want any of these books they could be produced for your cross-examination.

MR. TILLEY: It is all subject to my objection.

MR. ROWELL: The figures which are set out in the Information in this 40 action—

HIS LORDSHIP: I think that is too general. You might say in paragraph so and so.

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MR. ROWELL: Take paragraph 3 of the Information with respect to the Sales Tax. Are those the figures prepared by your firm? Do they correspond with the figures you have already made, by your firm?

MR. TILLEY: I object. We have not a thing how this is got up. He has not made an investigation, and he is asked whether that corresponds with some other statement. I object to that as strongly as I can.

HIS LORDSHIP: Have you not a statement saying this is the result. I think you should put in his statement of the result of the investigation of his firm.

MR. TILLEY: I will have to consider whether I will cross examine him at all, if he does not say more than that. 10

MR. ROWELL: Did you prepare a statement of the particulars of the account as taken from the books of the company?—A. My firm did. My assistants did under my directions.

Q. Your assistants did under your direction—and what is that particular document?

MR. TILLEY: He said his firm prepared a statement. A. This statement I have in my hand is one of the copies of the statement—several were taken off at one time—and this is one of the typewritten copies of a statement prepared for the purpose of arriving at the amount.

HIS LORDSHIP: What does it show?—A. It shows on the first page particulars of sales tax claimed in paragraphs 3 and 4 of the Information—and the figures follow, month by month, arriving at a total figure at the end. And on page two are the particulars of the gallonage tax claimed in paragraph 7 of the Information.

HIS LORDSHIP: How would you get the information?—A. How did we get the information?

HIS LORDSHIP: Q. Yes?—A. I do not think I can answer that question. I do not recollect how we got it. If I may explain without going outside of your question. This was done in Ottawa.

MR. TILLEY: At where—A. Ottawa. This statement I have in my hand was prepared in Ottawa and submitted to the officials, to the legal officers of the 30 Department, during its preparation and after.

HIS LORDSHIP: You are answering my question from the wrong end. I want to know how you got this information?—A. For this statement?

HIS LORDSHIP: Yes. The answer is obvious?—A. We got this information—my firm, my assistants, got the information from the books of the company.

HIS LORDSHIP: From the books of the company?—A. Yes. (Mr. Rowell put the statement in as Exhibit Number 1.)

MR. TILLEY: I object to the document as not being proof against us at all.

HIS LORDSHIP: Well, if it is proven to my satisfaction that it is from your books—

MR. TILLEY: This witness says he never made an examination of the books; 40 he said that subject to what he was informed by his staff.

MR. ROWELL: I intend to call the man who took it from the books.

MR. TILLEY: What I am objecting to is what we are proceeding on at the moment, and I object to it being made an exhibit on this witness's evidence.

HIS LORDSHIP: Your objection is noted, reserving all of your rights.

MR. ROWELL: What is the total of the sales tax, as shown on Exhibit Number 1? Does that correspond with the total as shown in the Information?

HIS LORDSHIP: In paragraph (a) of the prayer?

MR. ROWELL: In paragraph (a) of the prayer?—A. \$149,160.07 is the total of the sales tax claimed, and appearing in this document.

10 Q. Then the gallonage tax—what is the total as shown in Exhibit Number 1? —A. The total of the gallonage tax is \$272,240.59.

Q. Then referring to Exhibit Number 1, in respect of both gallonage and sales taxes, it shows the amount from month to month?—A. It shows the amount from month to month. The sales tax shows it from month to month. Yes, both show it from month to month.

Q. Then does it show the total amount for each month, with a credit in each month for the amount paid?—A. Yes, it shows the total amount of tax claimed to be payable, and the total of the tax paid, leaving the balance.

20 HIS LORDSHIP: Q. If I understand that right—they have an entry of goods that they sell for \$100,000 in that month, and they have a tax on a certain amount—is that what you mean?—A. Yes.

HIS LORDSHIP: Q. And then the balance of that \$100,000, on which they have not paid a tax will be represented by your figures?—A. Yes, There are cases, to answer your question—cases where nothing in the month was paid; and there are two months what they paid actually exceeded the amount claimed to be payable.

HIS LORDSHIP: Did you give them credit for that?—A. Yes.

MR. ROWELL: And the figures you have given us, of both gallonage and sales taxes, are the balances in respect to both as shown by Exhibit Number 1?—A. Yes.

30 Q. Now then, since you prepared this statement, Exhibit Number 1, has your firm made a further investigation of the books of the defendant company?—A. Yes.

HIS LORDSHIP: What does that mean?

MR. ROWELL: In connection with this suit—Exhibit No. 1, Mr. Nash states was prepared in connection with the Customs investigation.

HIS LORDSHIP: I did not realize that. That was made for the Customs inquiry.

MR. ROWELL: The investigation was made for the Customs inquiry.

HIS LORDSHIP: Not the Customs Department?

MR. ROWELL: No. The Royal Customs Commission investigation.

40 HIS LORDSHIP: And now you say since that, you mean since the commission or inquiry, since the audit of the account—

MR. ROWELL: Since the Commission of inquiry, and since the statements

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were made in preparing for the trial of this action, has your firm made further investigation of the books of the defendant company?—A. Yes.

Q. Now in connection with the gallonage tax, have you made any change as the result of the further investigation?—A. Yes.

Q. Will you just explain to His Lordship what change?

HIS LORDSHIP: Let me understand. Does the statement you put in contain the changes. Is that a correct statement?

MR. ROWELL: Exhibit Number 1 agrees with the Information.

HIS LORDSHIP: You are not giving the claim?

MR. ROWELL: No, slightly less—there are certain credits.

10

MR. TILLEY: Again, this is not an investigation you made?—A. It was under my direction.

MR. TILLEY: In the way you described, you sent people from Toronto to London?—A. Yes.

MR. ROWELL: What change, if any, has been made in connection with the amount for gallonage?—A. The amount for gallonage on the statement you now have which is the result of subsequent investigation, is \$258,638.31.

HIS LORDSHIP: Instead of \$272,240.59?

MR. ROWELL: What is the explanation of that change?—A. When the inquiry was made for the purposes of the Royal Commission, the time that was 20 permitted for the making of the investigation was not sufficient to arrive with absolute accuracy at the amount claimed to be owing, and I may say that it was not contemplated that the statement that we were preparing for the Royal Commission should necessarily be absolutely accurate; it was dealing rather more with the principles generally than to arrive at the exact amount—although an attempt was made to get as close as possible. Now, after going over the books, changes have been made in respect of beer returned which were not treated as deductible in the first statement, and are now treated as deductible—that is, beer returned reduces the number of net gallons sold and therefore reduces the tax.

Q. Is that the explanation of the difference between the two statements?—30
A. That is the explanation of the difference between the two statements.

Q. Then have you also made a revised statement in connection with the sales tax?—A. Before I answer that question, may I also give another reason for the difference in the gallonage tax, and that is that certain payments which have been made since the session of the Royal Commission have now been deducted from this subsequent statement.

Q. Then what do you say with reference to the sales tax? Have you made a further investigation as to the sales tax, and have you prepared a revised statement?—
A. Yes.

Q. What is the result of that?—A. The revised amount of sales taxes claimed 40
is \$159,172.51.

Q. Now that is, the sales tax appears to be more, while the gallonage tax is less, but the total of the two is?—A. \$417,810.82.

Q. As compared with?—A. As against \$421,400.66 in the prior statement.

Q. What is the explanation of the differences in the sales tax statement?—

A. Firstly, the sales tax is increased in those cases where the gallonage taxes is decreased, for the reason that the sales taxes are computable upon the sales less the gallonage tax.

HIS LORDSHIP: Say that again?—A. The sales tax is increased in those cases where the gallonage tax is decreased for the reason that the sales tax is calculated upon the sales less the gallonage tax; that is, the Department says that the sales tax is not calculable upon the gross sales after deducting the gallonage tax paid to the department, so that there is no tax on tax. So that every time you change the amount of gallonage tax, you automatically change the amount of sales tax.

HIS LORDSHIP: Let me understand that. Supposing you had 100 gallons, you would get your sales tax on those 100 gallons, and you deduct that?—A. You get your gallonage tax first, and then you say the 100 gallons produced so much.

Q. Say \$25—that leaves you \$75, and your sales tax would be calculated on the \$75?—A. Yes. That is how the Department says the tax should be applied.

HIS LORDSHIP: You do not take the same total?—A. The gallonage is applied on quantity, and the sales tax is on dollars. You cannot speak of the same total, because one is in quantity and one is in dollars.

HIS LORDSHIP: When you get your total, you deduct the amount of gallonage in figures?—A. Yes.

MR. ROWELL: Are there any other reasons for the change in the amount?—A. Yes. The same reasons that affects the sales tax are referred to as affecting the gallonage tax, that is beer returned. Certain credits for beer returned together with packages have been allowed. I am using the expression as being treated by the Department as being allowed. Then there is also the question of freight in the original claim that was made up for the Royal Commission—the items shown in the books as freight paid upon shipments out of the brewery were allowed as deductible, treated as deductible without enquiring at that time closely into the circumstances. Since the second inquiry the amount actually paid by the company to freight companies, or transportation companies, has been allowed and that only, as under the rulings of the department that is all that may be allowed.

HIS LORDSHIP: Is that freight for home consumption as well?—A. We even allowed the freight—in all cases we have allowed the total freight paid. We have not considered where the goods were going. We merely considered what the company paid. It is what the Department said we will allow. They cannot allow something that has not been paid.

HIS LORDSHIP: Are you treating the freight on account of export, or do you treat the freight generally for export and home consumption?—A. At any rate we

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have deducted all freight—all freight paid independently to transportation companies.

MR. ROWELL: This revised statement I will put in as Exhibit Number 2.

HIS LORDSHIP: That will be the same statement, but revised.

MR. ROWELL: It is the same as Exhibit Number 1, but revised and gives other particulars.

MR. TILLEY: I need not be objecting all the time—but I make objection to it.

MR. ROWELL: Does that set forth the amount of gallonage and sales tax, as your firm has now ascertained it, from this further investigation of the books?

MR. TILLEY: My learned friend is putting a statement into the action that the 10 witness has not yet acceded to at all. The witness has not said—he said that is what the government claim, and I gathered from the expression he used that he got instructions—he does not say that is what is due.

MR. ROWELL: Tell me what you say that statement Exhibit Number 2 shows—first with respect to the gallonage tax?—A. I think I can treat both. The statement sets out what we have computed as the claim of the government for sales and gallonage taxes, under the existing Regulations.

Q. My learned friend has suggested that you have not said what you believe to be the correct amount?

MR. TILLEY: Surely that is not admissible. This witness has not made any 20 examination that entitles him to express an opinion at all, is my submission.

HIS LORDSHIP: That goes subject to your objection. He gives instructions for the examination of the books and says what he wants—he says I want this and I want that—and they go to the company's office and examine the books, and they give him this information. That is what we have. It is the only thing we could have—and the information is got in the enemy's camp.

MR. ROWELL: Can you say whether in your view as an auditor with the knowledge of the sales tax and regulations that correctly sets forth the government's claim?

HIS LORDSHIP: That is his opinion. 30

MR. TILLEY: And your Lordship is admitting it. I think your Lordship is here to try that question.

MR. ROWELL: It is Mr. Nash's view as computed under the gallonage and sales tax.

HIS LORDSHIP: Any accountant in the land would say get me this information. I am not making the calculation, although I am going to make the finding.—A. If I may put my answer in this way, I believe it to be a correct computation of the tax claimed under the existing regulations.

HIS LORDSHIP: May I ask you this. Are you in a position to say that it presents an accurate statement, which according to you the defendant should have paid 40 in taxes, from the information that you got from their own books—is that what

you mean?—A. The only thing I do not want to say, I am not in a position to say whether this tax is payable or not,—that is a matter for the court to decide,—but I say if the tax is payable, then that is a correct computation of the amount so payable.

Q. What is it based on?—A. It is based first, on the records of the company; and secondly, upon the Regulations of the Department—the regulations and rulings I should say.

HIS LORDSHIP: I have not seen those statements. Do they show the total sales?

MR. ROWELL: Yes.

10 THE WITNESS: Look at the second page of the statement.

HIS LORDSHIP: Perhaps Mr. Tilley will bring it out. I will leave it to you— if you do not bring it out, I will bring it out afterwards.

MR. TILLEY: I ask to be allowed to cross-examine subject to my objections.

HIS LORDSHIP: Yes.

Cross-examined by Mr. Tilley, K.C.

Q. Let us deal with the last statement you made. This statement you say you believe to be correct, and shows the amount payable, provided the tax on the goods included in your statement is payable—you make that proviso?—A. Yes.

Q. Provided there is a tax payable?—A. Yes.

20 Q. You say assuming there is a tax payable then these figures are based on two things, the records of the company; and secondly, the rulings and regulations of the department?—A. Yes.

HIS LORDSHIP: I do not know whether he really means that.

MR. TILLEY: Mr. Nash always means exactly what he says.

Q. What do you mean by a ruling,—something you have been told to do by the department, I suppose?—A. Yes, and—

Q. I want that first?

MR. ROWELL: He is entitled to finish his answer.

MR. TILLEY: Are you including the instructions given to you as to how you 30 should make up the statement—rulings?

A. I am including them but not confining it to that.

Q. But you used the expression, regulations and rulings—and I assume rulings is a broad word, including instructions given to you from time to time about the preparation of the various statements?—A. I want to answer you fully.

Q. I would like you to answer me that first?—A. I do not at the moment recollect any ruling given to me that has not been placed upon some record. I do not recollect one.

Q. Do you mean a letter?—A. A letter.

Q. I am including among the rulings instructions to you?—A. No, I had no 40 instructions outside of rulings dealing with a specific point.

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Examination
May 7, 1928
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Q. When I say rulings include instructions, I do not mean that you had instructions outside of rulings?—A. I did not have any instructions as to how to make up the claim, except to follow the rulings of the department?

Q. You mean that were made without reference to the statement itself?—A. Without reference to the statement itself—so I think with particular reference to the Carling Export Brewing & Malting Co. brewery?

Q. What do you mean with reference to the Carling brewery?—A. We did discuss with the department certain points in the making up of the claim.

Q. That is what I mean. So that the rulings you referred to include specific instructions with regard to the Carling claim?—A. In respect of one or two particular points.

Q. We will come to the items—but it includes that?—A. Yes.

Q. And the one or two points that you now carry in mind possibly might include the price at which you were to say the sale took place?—A. Quite right.

Q. That is one of the things. That is to say, when you are making up this claim, you and the accountant went to the department and took their instructions as to the price at which the goods were to be treated as being sold by the Carling Company?—A. Yes.

HIS LORDSHIP: What do you mean by that?

MR. TILLEY: I will get him to say.

20

Q. You were in difficulty as to whether you would put the price we will say at \$1.75, or \$2.75 or \$3.50, or \$2.25?—A. No, I do not think I was. I was not in any particular difficulty.

Q. At any rate you treated it as a matter for the department to tell?—A. I treated it as a matter for discussion with the department before I completed the claim.

Q. And you received instructions from them?—A. Yes.

Q. And you followed their instructions?—A. Yes.

Q. What were the instructions?—A. That the price that was shown in the books, \$1.75 in respect to some of the sales was not the full price of the beer for tax computation.

30

Q. So that we start with this, that the price in the books as showing the price which the goods were sold at should be disregarded?—A. The price at which they were invoiced.

Q. The price shown by the books at which they were sold?—A. Yes.

Q. Is that right?—A. Yes.

Q. The price that according to the books was the sale price?—A. It is not easy to answer that question without a qualification, because there were sections in the period covered in which the treatment was different.

Q. For my purposes that is with respect to some of the goods at any rate, the price at which they were shown as having been sold in the books was disregarded?—A. Oh no, no.

40

Q. You did not use that price?—A. Yes, for the period where they did appear to be sold at that price, we did use that price.

Q. And when they were not sold according to the books, nevertheless you used the price although it was not the proper price?—A. I cannot answer that. In the period in which the price, taking \$1.75 as an example appeared as the only price, or the only proceeds of the sale, then \$1.75 is charged, and the \$1.75 is taxed. In the period where the additional proceeds than \$1.75 were received, then the additional proceeds are treated as taxable.

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Q. The books in the latter case—the books show the price that the company realized for the goods it sold, that is the price you used—the price that the company realized for the goods it sold, is the price you used?—A. By the price the company realized, you mean the money that was received?

Q. I am not talking about money received?—A. What do you mean by the price realized?

Q. That when the transaction was through and concluded they had some net returns for the goods they sold, is that the price you used?—A. No, not net returns, but gross returns.

HIS LORDSHIP: But was not that the price you took, the price shown in the books?—A. No, not in all cases.

20 HIS LORDSHIP: Where did you get your information?

MR. TILLEY: From the department.

Q. We will come back to that when we are in a position to straighten it out more definitely. In the first place may I start with this, that the company made its returns periodically, all taxes payable according to the company's contention in respect of sales?—A. Yes.

Q. And was that put in a form to the government?—A. Yes, on the regular monthly form.

Q. Have you those forms here?

HIS LORDSHIP: Does that cover 1924, 1925 and 1926?

30 MR. ROWELL: These are the returns made to the government of gallonage and sales tax.

HIS LORDSHIP: During 1924, 1925 and 1926?

MR. ROWELL: Commencing on the 30th April, 1924—covering the entire period. I see these go beyond—

MR. TILLEY: Are these the returns you are referring to?—A. I do not recognize these particularly.

Q. Please do not commence drawing fine distinctions between documents you have seen. You would not recognize the company's papers here if I produced them.—A. I certainly can say that.

40 Q. They come from Mr. Rowell?—A. I do not doubt they are from the company to the department.

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MR. TILLEY: You will admit that?

MR. ROWELL: Yes, I will admit that. I produced them.

HIS LORDSHIP: You produced them for his inspection.

MR. TILLEY: I will put them in.

HIS LORDSHIP: Mark them now for identification.

MR. ROWELL: My learned friend may put them in as part of his case.

MR. TILLEY: I will put them in now, as Exhibit "A."

HIS LORDSHIP: I will have them marked as Exhibit "A."

HIS LORDSHIP: Would these be the returns covering the period in question?

MR. TILLEY: I do not know what your Lordship's ruling is. If I refer to any 10 documents that show the differences in this evidence, I do not know that I am putting them in.

HIS LORDSHIP: I may mark them for the purpose of identification. If the witness speaks to them, they will have to be marked; and when you come to your case you may put them in.

MR. TILLEY: I do not understand that.

HIS LORDSHIP: We have done that in every case. Would you rather that I should not mark them. I am not anxious to mark them. It is to understand what the witness is going to speak to.

MR. TILLEY: You will speak to this exhibit "A"—and I suppose you will 20 tell me that these statements showing certain amounts payable for sales tax being received, were followed up by payments to the government, as shown by the receipts and by your own statements, because you have given credit?—A. Yes.

Q. You have given credit for these sums?—A. Our statement shows the amount.

Q. Will you tell me whether I have them all for the period we are concerned with, or if there are any statements afterwards?—A. I don't think there are any statements but these, except late in 1927 when the company paid certain additional taxes for the period we are now reviewing.

Q. Some correction?—A. Yes. By Exhibit No. 2 they paid \$4,655.56 for 30 sales tax; and, \$2,023.90 for gallonage taxes. They paid those in respect of the periods now under review.

Q. Your statement on the first page of it, shows less additional amounts paid July, 1927,—that means in respect of?—A. No, that is the date of payment, July.

Q. July, 1927, \$969.52 was paid in respect of some prior period.—A. Yes.

HIS LORDSHIP: I understand it would be with respect to the period mentioned above?

MR. TILLEY: Some part of it.

Q. And the same remark applies to all of these, and the same to October?—40
A. Yes.

Q. And you will find those for me?—A. Yes. The statements filed by the company.

Q. And then they can be attached to this. Now those returns are returns that are required by the regulations?—A. Yes.

Q. And the Act?—A. Yes.

Q. And just to get an understanding of what we have to deal with here, they reflect what the company puts forward as sales that are taxable under the Act?—A. Yes. I think they state so on their face.

Q. Now then your statement on the other hand brings up terms that the
10 company makes another contention about, that they are not taxable under the Act being export sales?—A. You must assume that.

Q. You assume that, do you?

HIS LORDSHIP: Do they state that?

MR. TILLEY: These are domestic sales.

HIS LORDSHIP: The total amount covers everything.

MR. TILLEY: The total amount covers everything. I will clear it up.

Q. Now the books I am speaking about, and the books on which you say you are giving evidence, show that the other sales were export sales?—A. That is a very difficult question to answer.

20 Q. But I put it to a man who can answer difficult questions?—A. Certain of the books and records at any rate show that persons purchasing the beer from the company, as having addresses in the United States—that is one part of your question.

Q. I am not saying what effect it may have for the moment—I want to know whether you were going into their books to make a division according to their books of their export business from their domestic business—would you show that these sales on which you are claiming the tax, or the government is now claiming the tax, were export sales according to their books?—A. No, I could not say on the whole.

Q. According to their books?—A. No.

Q. Do they not keep a separate set of books for export, from domestic?—
30 A. A separate set?

Q. Yes—that the books showing the exports are different from the domestic books?—A. No.

Q. Do you say that?—A. Yes. I don't know of a separate set of books showing export.

Q. They only have one set of books taking them as a whole—but let us have the books then?

MR. ROWELL: You have the books.

MR. TILLEY: This witness is saying that the statement is made up from the books,—

40 Q. I understand you to say that the books do not show that these are export

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sales?—A. That is a question I cannot answer fully. I do not say that there are no indications that purchasers of beer have addresses in the United States.

Q. I am asking you something more. All the books can do is to indicate that these are export sales?—A. There are indications of persons outside of Canada appearing as purchasers of beer.

Q. In a normal case you would agree with me at once that they were export sales?—A. You must excuse my being reluctant to admit that anything is an export sale.

MR. TILLEY: I understand you are reluctant to do that—of course you are.

HIS LORDSHIP: Take for instance the second page of your statement. Take the 10 first item there,—during the month of April, \$41,000. Then in May \$100,000—does not that cover all the sales made by the company as well as the beer that might have been exported or for domestic use?—A. That is the total sales.

HIS LORDSHIP. Which cover both? Whatever may have been exported and whatever may have been domestic?—A. Yes, that shows all sales.

MR. TILLEY: But in the end you take off all the sales for which they made payments?—A. Yes.

Q. So I am taking the ones shown there as constituting the claim. No, do not keep coming back. You say your are in difficulty about answering a question that is based on whether or not the books indicate that those were export sales. I 20 am not saying whether it is true or false, but they indicate that—and you say that you are embarrassed about that?—A. I cannot answer that they were export sales. I say they do indicate that they were sold to persons with addresses in the Carling Company's books outside of Canada.

HIS LORDSHIP: Was the total amount of the sales taxable under that statement Exhibit Number 2. Was any allowance made for the anything sold outside of Canada?—A. No.

HIS LORDSHIP. It was treated as all sold in Canada?—A. I won't say that.

MR. TILLEY: Q. That is what I am getting at. You are treating these as all sales made in Canada, in this statement?—A. No, I cannot say that. I am treat-30 ing them all as taxable sales.

Q. Is not that playing on words. You know that the tax only applies on goods sold for domestic consumption?

MR. ROWELL: It is a question of law.

MR. TILLEY: I don't know that it is a question of law. He has made up the statement. On what have you made it up—Have you made it up on the view that these sales in the statement are sales for domestic consumption, or that they are sales both for domestic consumption and for export?—A. I have made it upon the basis that they are taxable sales. I cannot say whether they were sales for domestic consumption—whether they were domestic consumption or otherwise. 40

Q. You have found all the beer that was sold by the Carling Company in this period, and you have brought it into that statement?—A. Yes.

Q. And you have treated it as all being taxable?—A. Yes.

Q. And even if it was sold for export, it would be still taxable on that view?—
A. It is all treated as being taxable

Q. Are you putting that forward as your opinion?—A. No. I have no opinion in the matter. I do not hold any opinion in the matter at all.

Q. Then the statement does not at all reflect that in your opinion after going through the books that amount is payable by the defendant?—A. I said that at the
10 beginning. I said that if the sales are taxable it is a correct computation of the tax payable.

HIS LORDSHIP: It is a record of all the sales of the company.

MR. TILLEY: Let us take a particular month. Let us take the month of April and see how it is worked out—April, 1924—look at that,—is that the first month?—
A. That is the first month.

HIS LORDSHIP: You are now taking the case from the returns made by the defendants themselves?

MR. TILLEY: Yes.

Q. Will you tell me what the total sales were according to you?—A. \$41,296.30.

20 Q. Is not that the same as the return?—A. Yes.

Q. That is not a very good illustration because we are not concerned with fifty cents among sporting people like breweries?—A. Both in April and May, they overpaid the sales tax.

Q. Take one down further—take the one for May?—A. Here is June, 1924, the sales—the total sales were, \$161,589.54—that is the total of the 9 and the 2½ per cent beer.

HIS LORDSHIP: What do you mean?—A. That is the description the company uses in respect of their beer—9 and 2½ per cent.

HIS LORDSHIP: He has 9 per cent on the first line, and 2½ per cent on the second
30 line.

MR. TILLEY: According to the books of the company, which are the things on which you are basing your evidence, the beer was all of that strength?—A. There is only one book that records the strength, and that is the government mash book.

Q. You say that is the description. It is more than a description of the beer. It is a description of the beer according to its strength?—A. Yes.

HIS LORDSHIP: It is the brand?—A. It is the strength. So we get \$161,589.54.

Q. As a total in the month?—A. Yes. The return says the total taxable sales, \$1,149.29. They paid on \$1,149.29.

Q. There might be some stronger beer sent to other provinces that would not
40 answer to two and a half, that was sold in Canada?—A. No. This would likely include some strong beer sold to the government dispensaries.

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Q. That means this that you have not made any examination of their books to ascertain whether the goods were exported or not exported. You have not done that in point of fact?—A. There is no examination of the books I could make as to whether they were actually exported or not exported. The books would only show what they record—and I have made an examination of the books to see if they were recorded as exported.

Q. Were they recorded as exported?—A. They were recorded to have been sold to a person with a United States address.

Q. All of them?—A. I would like to verify it. That was in June, 1924. I think I am right in stating all of them, in 1924. 10

Q. So that if the books were the sole guide, you would treat them as exported goods,—if the books were the sole guide?—A. I cannot say I would. I would not say I would.

Q. Have you got to be so suspicious since you have been acting for the government, that you suspect everybody?—A. No, I have to be satisfied.

Q. I am not asking you whether that is absolute proof. I am asking you whether on such a showing that the books would give, you would put them in the list of exported if you were dividing the export sales from the domestic sales?—A. It is impossible to put myself in that position. I know from being in touch with sales tax matters for so long it is impossible for me to assume it is on one side—I 20 would not be satisfied that they were exported, merely because the books say they were exported. I do not want to doubt it, but I could not accept it without further enquiry.

Q. Outside of the books?—A. Wherever I could get it.

Q. Outside of the books?—A. Yes.

Q. Will you answer my question—according to the books. What would you say about it if you had no outside opinion?—A. The books show the goods to be sold to a person with an address outside of Canada.

Q. And the books show if the sales were made to New Brunswick or whatever the province was. If the sales were to the provinces the books show it?—A. Yes. 30

Q. That is to say, the books show whether the sales are in Ontario, or New Brunswick, or Quebec, or the United States?—A. Well let us say to persons which the books show to have addresses in those places.

HIS LORDSHIP: Ask him whether the discrepancy of the difference between the amount of his return of sales for June, and the amount of the returns made by the company, would be explained so far as it went by the entry, that it was sold to some American citizen?

MR. TILLEY: That would be so?—A. Yes, I think I can go further. I can say this that the difference reflects the sale of the so-called 9 per cent beer to everybody but the Ontario government dispensaries. 40

HIS LORDSHIP: Except to what?—A. Except to the government dispensary sales of strong beer were reported and paid upon.

HIS LORDSHIP: It would be explained by the entries in the books of the company that the difference was sold outside of those. Will you go as far as to say the United States. What will you say to that?—A. They were certainly sold to persons in the books who had United States addresses.

HIS LORDSHIP: That is what you mean?—A. Yes.

MR. TILLEY: I am not sure I am quite understanding you. Sales made for instance in New Brunswick, or to persons with New Brunswick addresses—do not let us quarrel about that. If you found a New Brunswick address, you would at once say that it was a New Brunswick sale—that is what you would say?—A. I would accept what the books say, that it was a New Brunswick address.

Q. Let me ask you this. The sale to New Brunswick—or for instance to Quebec—to persons in those provinces were paid on?—A. They were paid on.

Q. And what we can take it to be as appearing from the books is this, that they paid on all the beer which according to the books was sold to persons who according to the books were in Canada. We will start with that; and what they did not pay on were sales to persons whose addresses were in the United States?—A. I cannot say that.

20 Q. Why not?—A. Because in certain cases the strong beer that was not sold to the Ontario Government dispensaries, or Quebec or New Brunswick, appear in the books as sold to addresses in Canada in certain cases.

Q. What cases—give me any case?—A. There is the case of P. C. Crooks, care of the Genuine Dollar Taxi Co., in Toronto.

Q. How much?—A. Those were sales from the 24th May, 1924, to the 9th August, 1924, and were approximately \$10,000.

Q. Of what?—A. Strong beer. Now in that case the invoices were made out to Canadian addresses. P. C. Crooks, Chippewa; P. C. Crooks, Port Credit; H. J. Jones, care of P. V. Crooks, Port Colborne—and there is one H. J. Jones, Buffalo,
30 care of P. C. Crooks, Chippewa.

Q. Have you copies here?—A. We have not any of the books of the company here.

Q. I want to have what you are going to refer to us in that book?—A.—H. P. Crooks and H. Carrick, Port Colborne. Do you want me to go through the list?

Q. Give me the names of those with Canadian addresses?—A. There is another class of Canadian addresses. In that case there is no mention of any place outside of Canada.

Q. Do you find no mention of it?—A. I went through one case. H. J. Jones, Buffalo, care of P. C. Crooks, Chippewa—that is one of these invoices. The other
40 five indicate only Canadian addresses.

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Q. The indication is P. C. Crooks, Chippewa, or P. C. Crooks, Port Credit?—

A. Yes, and the charge in the books is made to P. C. Crooks, Toronto, Ontario.

Q. Do you say you saw the shipping bills for those, I am told that the shipping bills were not for any Canadian?—A. I was not excluding the shipping bills.

Q. Did you see them?—A. I will find out whether we have them.

Q. Where would you get them, from us?—A. We got the bills of lading a few days ago. I would like to refer to, if I may, to my assistant.

Q. Who is your assistant?—A. Mr. Troop.

Q. He works with you?—A. Yes.

Q. Well now, tell me, did the company pay the tax on those goods? 10

HIS LORDSHIP: Be specific.

MR. TILLEY: On all of Crooks?—A. I don't think so.

Q. Well, check it up?—A. It will take some time.

MR. TILLEY: I know—call Mr. Troop.

Q. Will you not see whether I am right in saying that all the goods sold that month, that payment was made on them?—A. These goods to Crooks, from May 24th to August—

Q. From May to August, did we pay the tax on everything?—A. From May to August, no. We will deal with June, and we find a difference of \$160,000. You will remember we referred to the June account. 20

HIS LORDSHIP: There was a difference.

A. The gross sales were \$161,000, and they paid on \$1,149. Now take July, we have \$140,000 of sales, and they paid on \$13,000.

Q. That is 1924?—A. Those are the gross sales.

Q. Let us have August?—A. In August they paid on \$870, and the gross sales were \$127,000.

Q. Will you look up and see whether Crooks were paid?—A. Yes.

Q. We have now Crooks. Any others?—A. That is one class.

Q. Why do you call it a class?—A. It is a class because in respect of those sales. There is no mention except in one instance of any address outside of Canada. 30 Now there is another class where the account is in the name of Canadian addresses, but the invoice shows the name and address in some cases of a person with a United States address. I will give you an example of that. Take the account in the name of Disburg, Belle River, Ontario—that is an account in the ledger. That on the face of it is a Canadian address—sales in May, June and July, 1924—

Q. The amount roughly?—A. \$85,000. The goods were invoiced to C. B. Grandi, care of A. Disburg, Belle River, for Grandi. Miss B. Strong, Belle River. I am told she is a local customs officer—I do not think there is any local significance. That is another class. I will give you another instance of that. Take the case of O. Paquette, in the books, Ford City. The sales from September, 1924, 40

to June 1925, were about \$30,000. The invoice is made to C. B. Grandi, Detroit, Michigan, F. Paquette, Ford City, Ontario.

Q. How much?—A. \$30,000. That is the second class—I have given you two instances. Then there is a third class where the books show in this particular case a United States address—and this is why I have been hesitating to answer your question as to whether the records all show United States addresses should be accepted by me.

Q. I am asking you to say what the books show. I am not asking you to pass judgment on anything. I am relying on His Lordship to do that. Now, with that explanation what do you say?—A. I want to be clear about my difficulty. In this case the following address is a United States address—Mr. Hopt, New York. Sales from the 9th September, 1924, to the 1st April, 1925. The goods were invoiced to Hopt in some cases—just Hopt—Hopt, New York—in other cases, Hopt, New York. In respect of those there were no settlements in the account, no cash credits if I may use that term. The sales or sales charged were offset by certain credits which came from another account.

Q. Name it?—A. Called the export insurance account—and one item was charged through the private ledger, and another to the LaSalle account marked Car “T,” Number 13492, diverted. In respect of that there was some doubt as to what those transactions and entries meant; and we had to rely upon the statements of the company’s officials as to how the sale was effected, and why it was so stated on the documents.

Q. And the information you got would confirm it that it was?—A. No, it would not.

Q. Did you see them yourself?—A. No. I cannot speak of first hand knowledge, but from conversation with the officials,— but I have given you examples.

Q. Did you give the amount of the first?—A. The amount was \$19,075. Do you want more instances?

Q. Yes, anything you can find from the books that makes it questionable in your mind, as to whether the goods went to the United States.—A. I could give instances for some hours.

Q. How do you mean instances?—A. Similar to what I have given you. I have given you three classes, with one or two instances of each.

Q. Of the three classes, describing the classes generally—how are they divided?—

A. The first class shows goods sold to persons with Canadian addresses, without indication on the books themselves of United States addresses.

The second class shows goods sold to persons with Canadian addresses, with reference to the fact that they are for some person with a United States address, care of somebody with a Canadian address.

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examination
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(continued)

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And the third class shows goods sold to persons with United States addresses, but were no settlements—and we had to rely upon the officials of the company.

Q. What do you mean by no settlements?—A. I mean no cash settlements.

Q. They were transfer settlements?—A. Yes.

Q. But no cash payments by the consignee indicated in the books, is that what you mean?—A. Yes.

Q. Have you exhausted such criticism as you think ought to be made, speaking generally, so that you could divide it into classes before you accede to the proposition that the books show that the goods on which the sales tax and gallonage tax was not paid, according to your statement, were goods exported to the United States, so far as 10 the books show?—A. No, I cannot accede to that statement.

Q. Have you any other general criticism to make?—A. I think that these cover it generally. The books show merely sales to persons with a United States address. They do not show any more than that, the books themselves.

Q. Well, did you check up the B.13s held by the government to ascertain whether any of these shipments of beer were not exported?—A. We checked up the B.13s of the government.

Q. You did?—A. Yes.

Q. When did you check them up?—A. Within the first few days.

Q. How long did it take you?—A. I do not think we are nearly finished. 20

HIS LORDSHIP: What are B.13s?—A. That is the government number for a form.

Q. For exporting goods?—A. Exporting goods.

Q. Wet and dry?—A. Yes, all goods.

Q. Now, make it clear. The practice is as you found it for a person shipping goods to the United States, that is exporting goods, to make out several copies of a form supplied by the government?—A. It is a form—if not supplied by the government, in the same form.

Q. Approved by the government, an approved form?—A. In the approved form.

Q. And on one time there was a certificate, and at a later date an affidavit 30 attached to the form—do you remember that?—A. Yes.

Q. Then one of the copies ought to be sent to Ottawa?—A. Yes, under the regulations, it has to be sent to Ottawa.

Q. Then another form is handed to the consignor, kept by him—stamped by him?

HIS LORDSHIP: Another copy?—A. I do not know that that is imperative.

Q. It is convenient?—A. It is frequently needed. It has been needed in many cases, but I do not think it is compulsory.

Q. You do not think it is compulsory to return that to the consignor, but that it is frequently done?—A. Yes. 40

Q. And are copies kept at the port of export?—A. At the port.

Q. Where did you make your investigation?—A. We got the B.13s from Ottawa.

Q. When did you get them?—A. I would say a month or five weeks ago—perhaps not more than a month—not quite a month.

Q. And are you checking them now, or have you checked them?—A. We started to check them a week or ten days ago.

Q. And are you through?—A. No.

Q. May we put it this way, that you have obtained from the government the B.13s sent to Ottawa in the ordinary course of business; and you have examined 10 them, and find that as to a great quantity of the goods on which you are now claiming sales tax, that according to those documents the goods were exported?—A. Well, I can say that according to the B.13s the goods are shown to be exported. I cannot say that they were those goods, because the B.13s you cannot match them up. You cannot match the B.13s up with the sales. There is a sale to one of these persons I have referred to—

Q. Let me put it to you broadly. Have you checked up to see how much beer was exported according to the B.13s during the period for which your statement is made up?—A. Yes.

Q. Exported to the United States?—A. We have added up the B.13s and 20 arrived at the value of the beer as stated on the face of them.

Q. I thought you had not finished yet?—A. That is adding up the total. That is an adding machine check. We have not finished comparison or matching them up with the sales.

HIS LORDSHIP: But you have the B.13s representing an amount of so much and you are verifying this amount, is that what you mean?—A. We have the B.13s for so much in dollars and cents. Now what we are doing, we are taking the B.13s and are trying to match them up with the sales made.

Q. What is the total you have matched?

HIS LORDSHIP: Have you got it?—A. I think I have that. The total of the 30 B.13s being the total of the value stated on the face of them?

HIS LORDSHIP: Yes?—A. \$3,605,892.14. I will give the round figures.

HIS LORDSHIP: How much have you investigated now?—A. I would not think ten per cent; not ten per cent—that is, to match up the B.13s with the sales. We have not done ten per cent of them.

Q. I would like to know first. You say that you have got a total in your period of \$3,605,893 worth of beer exported—I want to know—

HIS LORDSHIP: You are asking two or three questions in that one question. I want to know first—answer that first question, would that be the amount represented by the sales in that period?—A. It is the amount represented by the amount 40 stated on the face of the B.13s in that period.

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MR. TILLEY: Please be fair. All you have, from which you are speaking is documentary evidence?—A. The B.13s.

Q. Please do not throw doubt on those—according to the documents on file with the government, \$3,605,892 of the beer covered by your statement, Exhibit Number 1, went to the United States?—A. I can't say that.

Q. According to the documents?—A. I can't say that.

HIS LORDSHIP: Listen to the question?—A. I cannot say that the B.13s that are in Ottawa represent the sales that we have in our statement.

Q. Why?—A. Because I don't know.

MR. TILLEY: Well, the sales by that company within that time?—A. I do not know that they represent sales at all.

Q. You are speaking from documents?—A. I have answered your question by saying that the total of the value on the face of the B.13s is \$3,605,892—the court must draw the conclusion whether that is a sale or whether it is not a sale.

Q. Things are quite clearly established one way, but not in another. You have gone to our books—you have had them thrown open to you?—A. Everything.

Q. Has any been held back?—A. I do not know of any.

Q. This company began business in April, 1924?—A. Yes.

Q. So that the beer that went across is not the beer made before this?—
A. No. 20

Q. Your statement starts with its business in 1924?—A. Yes.

Q. And you include in that statement every bit of beer they sold, and wherever they sold it?

HIS LORDSHIP: According to their books?—A. Yes. More than according to their books. According to the books and other records that we built it up from.

MR. TILLEY: What do you mean by that?—A. A bank account in Windsor that was dealing with Carling beer.

Q. I don't know—I wish you would be clear?—A. I am trying to be clear. But I cannot stay with the question as you put it to me.

Q. Which question?—A. Whether the B.13s represent sales. 30

HIS LORDSHIP: Can you tell me what is the total amount of the sales you have gathered from their books?—A. From the books, \$3,451,520.77—that is from the company's books.

MR. TILLEY: In the first place you have in your statement put the sales at higher prices than the books show,—have you not?—A. Than the actual books show, yes.

Q. That is why there may be some difference in the figures?—A. But if I may say, what figures do you refer to now?

Q. I will come to that?—A. I must ask you the figures you mean? I will answer you fully. 40

Q. I will come to them. Do you suggest that the records of the company as

to beer manufactured and sold from 1924 down to the end of your statement period, that all such beer is not included in your statement?—A. I cannot say all such beer. I say all such prices.

Q. I am not asking you about prices. Does your statement that you have there show all the beer that they manufactured — and we will come to the price in a moment?—A. Let us say that they sold. Manufactured is another term—apart from that.

Q. Apart from what they have on hand at your statement period, it represents all they made?—A. Yes—all recorded.

10 Q. Am I to say what they made? A. I am to say what they have recorded to have made. You cannot put words into my mouth. They certainly have recorded it.

Q. When you made your investigation, did you make any check to ascertain whether they were accounting, never mind the price,—whether they were accounting for in some form or other in their books for all the beer they made, subject to any that may be on hand; or did you not make any test at all to see if they were not accounting for it at all?—A. We tested the sales against the production in the earlier investigation any way.

Q. And were you satisfied that they were showing the disposition of all the beer they manufactured?—A. I did not doubt that.

20 Q. Let us start with that first. I am assuming now that they have accounted for all the beer they made—never mind the price for the moment. Is all of that beer included in your statement or is there other beer that was on their books, and disposed of by the books, and not in your statement?—A. No, if you confine it to beer. I think that all the beer that they manufactured, subject to any matter of stock in hand, is shown in this statement.

HIS LORDSHIP: The statement Number 2?—A. Yes. That is quite clear.

Q. As I understand it the breweries do have a certain amount of wastage of beer?—A. Yes.

30 Q. And I am instructed that the wastage by the Carling Co. is the least you have met with by any company?—A. It was very low.

Q. So that we may reasonably say that this company has shown you its disposition of all the beer manufactured since 1924?—A. Yes.

Q. Now will you tell me according to your statement what the total amount of beer that was sold in the period under review by you was?—A. In gallons?

Q. Yes, if you can?—A. I cannot tell you.

Q. You cannot tell us that?—A. No.

Q. Can you tell us in money according to your statement?—A. Yes.

Q. I want the money first?—A. According to the books first,—may I take that first?

40 Q. I am asking you for your statement, if you say it is more logical to take

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that first?—A. I will take the books first,—according to the books the sales were \$3,451,520.77.

Q. According to the books, the total sales of beer in the period?—A. \$3,451,520.77. That is the books for nine per cent beer, exclusive of the nine per cent beer sold to the Ontario Government dispensaries or to Quebec or the Maritimes.

Q. \$3,451,520.77—This is 9 per cent beer?—A. This is nine per cent beer. It excludes the two and one half per beer.

Q. It excludes the 2½ per cent beer?—A. Yes and 4.4.

Q. You call that beer, do you?—A. I am generous in my description of it.

Q. It excludes all 2½ per cent, all 4.4 per cent, and excludes all beer sold to 10 dispensaries?—A. To dispensaries or Quebec.

Q. First, we have excluded all 2½ per cent and all 4.4?—A. Yes.

Q. Now we are going to exclude the 9 per cent?—A. Yes.

Q. What 9 per cent beer is not in that figure?—A. Sales to dispensaries, Quebec, and the maritimes.

Q. And Ontario?—A. The dispensaries are in Ontario.

HIS LORDSHIP: I thought he said to the contrary. If you turn to the notes?—A. I might explain it to you.

HIS LORDSHIP: According to me you have made two statements. Let us understand it perfectly?—A. \$3,451,520.77 is the total sales according to the books of 20 the company, excluding the 2½ per cent, the 4.4 and the 9 per cent beer sold definitely to people in Canada.

MR. TILLEY: To people in Canada?—A. Exclusive of the examples I have referred to.

Q. When you say definitely in Canada, we know what you mean. It is to dispensaries or to Quebec?—A. Yes.

Q. We can say legitimate sales in Canada, something of that kind?—A. If you allow me to use the word legitimate.

Q. So that to put it in the language in which we might also put it to show what it includes, it includes only 9 per cent beer in the first place?—A. Yes. 30

Q. And it includes all 9 per cent beer that would be in the realm of doubtful whether in Ontario, or United States, for our present purposes?—A. Yes.

HIS LORDSHIP: If it is exclusive of the beer sold to the Ontario dispensaries, to whom was it sold?

MR. TILLEY: It was sold to the United States. It was a great boon to the people over there to get this beer.

Q. Of course we paid the sales tax on the 2½ per cent and the 4.4?—A. Yes. The only difference in the 2½ and 4.4 were in minor differences in the treatment of freight that does not amount to anything.

Q. It is not worth bothering about?—A. No. 40

Q. It is the 9 per cent beer—and we want to find out whether this \$3,451,520.77 worth of 9 per cent beer was exported, or not exported—that is the problem?—A. Yes. Unfortunately I have to add something, that is the book figure.

Q. I should have said according to the book figure?—A. Yes.

Q. And then I understand you are going to say that you found in that account certain moneys that were devoted to increase that amount. But I just want to identify it?—A. Yes.

Q. If there is any change in that, it is because the sales price should be at a higher price?—A. Yes.

10 Q. It is not because we find more beer to deal with?—A. No.

Q. Just before we pass from that, to illustrate what these things mean in amount. How much was sold to the Ontario government dispensaries—have you that?—A. I could not separate it—but the sales to dispensaries, Quebec, and the maritimes, were fairly substantial, amounting to some hundreds of thousands of dollars.

Q. I wish during the adjournment you would find out, if you can, what was sold to government dispensaries in Ontario under the O.T.A.?—A. We have not that figure. We could only get it from the books. We have built up this exclusive of that.

20 Q. Now then I want to return. You have \$3,451,520 of beer to be considered according to the books, the price in the books?—A. Yes.

Q. And you have already found \$3,604,892 worth of beer, which according to the face of the B. 13s was exported—and that beer would be beer that is included in your statement. I think that is right?—A. I can say yes, except the last sentence, I cannot possibly state.

Q. You have no reason to think it is not, because they have accounted for all they made?—A. Yes.

30 Q. Now I want to ask you this. Have you compared the prices in the books with the prices that are on the B. 13s, to ascertain whether these two figures I have just mentioned are on a comparable basis?—A. We have examined at least a number of the B. 13s, and I think in no case so far have we found the prices to be different from the price in the books. That is to say, the \$1.75 is mentioned in the books, and \$1.75 is in the B. 13s.

Q. When we are trying to account for beer, that would be the proper way to deal with it?—A. I cannot say that. I think the Department required that the amount stated on the face of the B. 13s should be the actual price at which the beer was sold.

40 Q. I am not asking you about that. I have got to the point at least I think I have, and I want to be sure I have it, each step—I have got to the point that I have three and a half millions of dollars of beer that we are concerned with following

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—and I have got the B. 13s representing about the same or a little more?—A. A little more.

Q. From Ottawa,—showing, I would gather, if the prices are made on the same basis on the books, as on the B. 13s, that then if the B. 13s are right, I have shown that I have exported all the beer that is in doubt here. Now I want to know what you have to say to that?—A. You certainly show that the value on \$100,000 of B. 13s is approximately the same as the amounts charged in the books for the same period.

Q. And if the B. 13s mean anything at all, as evidence, there is that much evidence that the beer was exported?—A. Do you think I should answer that 10 question?

Q. Unless you have a criticism of my statement, to make from your own knowledge. I may be making a false step, and I want to be kept right?—A. I do not want to give an opinion that the B. 13s means exported.

Q. No, no, perish the thought. But what I do want you to say is, that if the B. 13s do mean export, that we seem to have exported the beer in question in your statement?—A. If they mean export, I suppose so.

HIS LORDSHIP: In other words, if the B. 13s are supposed to show prima facie, that would explain the difference. That is as far as the B. 13s go. The other 20 questions as to whether it got there is all incidental.

MR. TILLEY: Q. I am speaking to a witness who is an accountant, and I say from an accounting standpoint if you take our B. 13s that are on file with the government at Ottawa, they would seem from an accounting standpoint to account for all the beer?—A. They account for \$150,000 more.

MR. TILLEY: Then as a matter of fact, the government on my client's submission do owe them money. But whether that has so happened, we have accounted for it in that way from an accounting standpoint. Now, as to the B. 13s we may have to argue that.

(The court then took a recess from 1 to 2.30 p.m.)

The Court resumed at 2.30 p.m.

30

ALBERT E. NASH: Cross examination resumed by Mr. Tilley, K.C.

Q. There was something that you were to get?—A. No, I told you I could not get it.

Q. Will you let us have a sample of a B. 13?—A. This is one of the Company's copies. (Exhibit "B".)

Q. It is an actual B. 13 but it is a sample of the rest?—A. Yes.

Q. And that particular B. 13 is one in which the form reads: "I for The Carling Export Brewing and Malting Co., Limited, make oath and say"; and there were earlier ones which said I do hereby certify? —A. Yes.

Q. And that particular document comes from the government archives at 40 Ottawa?—A. Yes.

Q. Were these B. 13s transmitted from the department files?—A. Yes.

Q. And these documents are completed at the port of export, and then are returned in bunches I think, or at stated intervals?—A. According to the size of the port—sometimes daily.

Q. By the Collector of Customs at the port, or under his jurisdiction?—
A. Yes.

Q. To Ottawa?—A. Yes.

Q. To the Customs Department at Ottawa?

HIS LORDSHIP: Do you know?—A. I want to be quite clear. Dealing with
10 ports and outports, the outport sends them to the port; and the port sends one copy
to Ottawa.

Q. Windsor would have some outports?—A. Yes.

Q. And the Collector at the outport would not send his direct to Ottawa—he would send his to the Collector at the port?—A. Yes.

Q. And then the Collector at the port would transmit them to the Customs Department at Ottawa?—A. Yes.

Q. And then you have got on this sample report, Number 4163. What is that taken from?—A. One is the port number, and the other is the outport number. I think the port number there deals with the report of the vessel.

20 Q. That is Number 4163?—A. This typewritten Number would be the outport.

Q. May we refer to the actual figures. First is the export entry, and then the Number stamped 95294. That I think is the Number at the port—and they number them when they are sending them to Ottawa?—A. Yes.

Q. And below that you have report Number 4163; and below that again another number, 17223—if I am right in that?—A. No. 17233.

Q. Those would refer to the Number of the report and the vessel possibly; and the other would be the outport number?—A. I think so.

30 Q. And then those are filed as received at Ottawa; and there are huge quantities of them, of course?—A. Yes. They are filed in Ottawa under ports, but not under companies.

Q. Under what?—A. Under ports.

Q. Consecutively according to this top number from the port?—A. Yes.

Q. And this form of document is used for furniture or any other goods that are exported?—A. I think that is the regular form.

Q. The regular form of export entry?—A. Yes.

Q. And when you want to get these for the purpose of checking, you would have to go through each port, at least, the officers would have to go through each port and get those that were issued by the Carlings?—A. Yes.

40 HIS LORDSHIP: Have you compared the prices mentioned on this B.13 with the prices in the books of the defendant?—A. We have in a number of cases.

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HIS LORDSHIP: Would they be the same?—A. In those cases we compared them, they were the same.

MR. TILLEY: You have made a sufficient check?—A. We have compared some hundreds.

Q. When you checked ten per cent, you were checking the ten per cent for other purposes?—A. We were trying to match up the B.13s.

HIS LORDSHIP: What do you mean by that?—A. I mean, to compare the B.13s with the sales in the various books.

Q. The price there would seem to be a sufficient check to warrant the statement that the books and the B.13s are placed on the same basis?—A. We have not found 10 any differences yet.

Q. You spoke of the amount of beer exported, according to the B.13s as being even in excess of the beer not accounted for in the sales returns—?

HIS LORDSHIP: That is what I suggested?—A. Yes.

Q. To Ottawa?—A. Yes.

Q. Would there not enter into that computation some beer returned on account of quality. I think we had some instances of that, were there not?—A. Spoiled beer, do you mean?

Q. Yes?—A. It might.

Q. That is to say there might be a fluctuation, and an apparent overplus due 20 to beer being sent over and sent back?—A. Yes, that might occur.

Q. Now did you check up from one other standpoint. I suppose that the beer wholly or in part is sent away in bottles?—A. In bottles and kegs.

Q. I was referring particularly to bottles?—A. Yes.

Q. A lot of it is bottled beer?—A. Yes; a large part of it.

Q. Did you find in the books entries for the returned empty bottles from the United States to Canada?—A. We found entries for payment of Customs duty on bottles returned.

Q. And they would be subject to duty on coming back, the bottles, would be? —A. Yes.

30

Q. Now then, can you say to what extent the bottles were returned from 1924, on to a period that would include what we are concerned with here?—A. No. We did not attempt to check up the quantity.

Q. But there would be considerable?—A. There were a number of entries representing quite a number of bottles, a quantity of bottles.

Q. I am told that the returned empty bottles passed through the Customs returning to Canada, would amount to a couple of thousands of dollars in value a week?—A. I do not think I could answer that. I could refer to my papers. I could not tell you that offhand.

Q. I am willing you should get it in the way you have got all the rest of the 40 information. You cannot give me an answer?—A. No. We were speaking of bottles entirely?

Q. I was, but I might be wrong?—A. It was the kegs that are covered by the customs entries not bottles.

Q. Not bottles?—A. No. There were returned bottles in the books, but not indicated by the customs entries. Kegs were covered by the customs entries.

Q. The kegs were covered by customs entries, and returned bottles shown?—A. Returned in the customs accounts, as returned containers.

Q. Was the duty paid?—A. They were returned, but not imported—not in respect to the bottles. To make myself clear, there are no customs entries that relate to the importation of bottles.

10 Q. For the Carlings?—A. But there are in respect of kegs. In respect of bottles there are entries indicating bottles were returned, but not returned from the United States.

Q. Returned from where?—A. From Windsor or other ports.

HIS LORDSHIP: You have mixed it up. You first spoke of returned kegs. Now you speak of the importation of the kegs?—A. I am referring to the same thing.

HIS LORDSHIP: It is not the same thing. Returned kegs would be kegs that have been used before. Importation might be new kegs?—A.—It may be new kegs.

HIS LORDSHIP: There is nothing tangible.

20 MR. TILLEY: Q. I possibly do not understand the practice well enough to keep it straight. Let us keep to the bottles first—we will come to the kegs later. I do not know what help this will be to you, but would you please look at that, and see whether with this information you can find anything in your returns that will enable you to answer about bottles. I am suggesting that this may assist you in locating what I want?—A. That is a car of second-hand empty bottles. Yes, there are certain entries here indicating second-hand bottles returned.

Q. A second-hand bottle is a bottle that has been used. These are customs forms?—A. Yes.

Q. And you are familiar with the form?—A. I am familiar with the form, yes.

30 Q. And apparently the fact is different from what you recollect?—A. Yes. I am sorry I made that mistake. That is quite so. Those are customs entries for second-hand bottles.

Q. You mean second-hand bottles—bottles that have been filled at least once and returned?—A. They are second hand.

Q. What do you mean by second-hand. In the beer business,—it is a bottle that has been used before?

HIS LORDSHIP: They may have a label on them—that would earmark them. The result is that there are customs entries showing that second-hand bottles have passed back by the entry, and that answers to the entries in the book.

40 MR. TILLEY: Can you find the entries for that in the book. I was wondering

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with the help that these would afford—?—A. I could only match them up if I had the books.

Q. It would appear now that there ought to be entries in the books for the bottles?—A. They were certainly brought into Canada according to these entries.

Q. Are the bottles that are used for the business in the United States, and you can call it so-called business—I am not trying to pin you to that—for the United States business are those bottles special bottles, or are they the same bottles ordinarily found in the Canadian trade,—are they specially made or labelled?—A. I don't know.

HIS LORDSHIP: You have not seen them?—A. No. I have not examined the 10 bottles to see.

Q. You will see these run in substantial amounts—a whole carload. Does it show where it comes from?—A. The Port of London—imported by Carling. And the goods were exported to Canada direct—it does not say the point.

Q. It says U.S.A.?—A. Yes. It is all London, apparently.

Q. All brought back to London?—A. Yes.

Q. Do you happen to know whether the duty on those is a special rate for returned empties?—A. Yes, I think there is a special rate.

Q. And it would be a rate to each brewery for its own empties. It would not be with second-hand bottles different?—A. I do not think there are different rates 20 for different breweries.

Q. But a brewery to get a special rate would have to get back its own bottles I would think?—A. I don't know that. I could look it up in the tariff.

Q. Well, I cannot ask you to identify these, but I will be glad to have the books here, and to have Mr. Troop examine them. Now then you were going to speak about the kegs. My understanding is that the kegs are used only in certain seasons of the year. That is, it is not a usual thing to ship in kegs—I think in the summer the kegs are used?—A. I don't know that.

Q. Well now did you make any enquiry. I think when you investigate these breweries, you go at it to follow through the whole process pretty well, don't you?—30
A. Well, we try to.

Q. Will you answer me this—do you find there is any distinction in the business, by the book as shown, in the United States, and the business in the books, in Canada—do you find anything to show where the bulk sold is beer or ale?—A. I did not study that. It would be an easy matter to give you an answer by looking up the papers. I did not study that.

Q. Did you examine to see whether the beer that is manufactured for the United States trade is a beer that is not acceptable to the Canadian trade—did you examine that?—A. No.

Q. You did not examine to see whether the process was different from the usual 40 process of breweries supplying the Canadian trade?—A. No. Unless the manu-

facture of Rice Beer in the latter part of 1926 or 1927 would be an answer to your question.

Q. It only started then?—A. In the latter part of the period. I have not the exact date they did manufacture rice beer.

Q. My instructions are that all the beer for the United States trade was what is called rice beer,—that would be distinct from malt beer?—A. Yes—lager beer—they show in the mash book the production of malt beer, and in the later period rice beer.

Q. Is it not so that the beer that is so to speak in controversy here was rice beer, and that that beer is not made at all for Canadian consumption, but only for United States consumption.—A. I could not answer that.

Q. Is it not more expensive. Did you not find on your investigation of their costs that they were paying as much as fifteen cents a gallon more, because they were making rice beer for the United States trade—I will leave off the last few words. We will say rice beer?—A. I did not go into their manufacturing costs. The manufacture of it in various places costs more.

Q. Costs more?—A. Yes.

Q. It has a super tax?—A. There is a tax on the malt.

Q. On the rice?—A. Yes.

20 Q. Can you from the information available to you and the way you get your information about these things, tell me whether I am right in suggesting that this beer upon which a sales tax is being demanded here was rice beer?—A. I cannot for the moment. I do not know whether it is possible to do that. I would say no, because the manufacture of rice beer, according to our records, only started in December, 1925.

Q. That is a little better than late in 1926. Are you sure that is when it commenced, or when you made your notation?—A. That is when we first have the notation of it.

Q. Can we say that from the end of 1925 on that my statement was right, that 30 the beer we are dealing with in this case on which no sales tax was paid was rice beer?—A. I could only answer that if the invoices to the trade indicated the sale of rice beer.

Q. You cannot tell it in any other way?—A. No. If the invoice on its face does not show, we have no means of telling which beer was sold.

Q. Would it depend on the label?—A. They would be labelled differently. The label is not given on the invoice.

Q. Do the books not show that the brewery paid the government this fifteen cents extra a gallon?—A. Yes.

Q. So we can take that, that the books show that the brewery paid the govern- 40 ment fifteen cents per gallon extra?—A. That is the tax on rice beer.

Q. The government got the money. The government received that?—A. Yes

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Q. And the fifteen cents a gallon extra was because it was rice beer?—A. Yes.

Q. Was all the beer rice beer, or did they make some that was not rice beer?—

A. I think they were manufacturing all kinds of beer, that is three kinds of beer—that is ale, lager and rice beer.

HIS LORDSHIP: I do not quite understand why you say it would not apply to the sale tax?—A. I don't think I said that.

Q. HIS LORDSHIP: That was in answer to Mr. Tilley?—A. No, I do not think so. I don't think he asked that.

Q. MR. TILLEY: Whether what would apply?

HIS LORDSHIP: Whether rice beer? 10

MR. TILLEY: I don't think I asked him that. I don't think he said that.

Q. I am speaking of the beer on which no sales tax had been paid, that would be rice beer. Now, you said to me properly that you are not able to say that?—

A. No.

HIS LORDSHIP: And you gave as a reason, in December?—A. No.

MR. TILLEY: Q. But even since that date, he said he cannot do that because he said I would have to follow the particular sale and see what they were professing to sell?—A. Yes.

Q. And it might be that my suggestion would be correct, or it might not?—

A. Quite so, depending on what would be sold. 20

Q. I may be wrong. Am I right in saying that the two kinds of beer, lager beer and rice beer can be made from malt or rice?—A. I can only speak of the production as shown. They show ale, lager and rice beer.

Q. Can you tell the proportions?—A. From December, 1925, the mash-book shows the production, the quantities of each.

Q. Supposing you appropriate the beers other than the rice beer to the Canadian trade, and then appropriate the rice beer to the American trade, would it establish, would it show that probably, although not necessarily, that the rice beer was for the American trade?—A. I do not see how I can answer that.

Q. The only way would be to compute what the Canadian trade took, and how 30 much there was other than rice beer?—A. Yes.

Q. You can do that?—A. We can take the quantities sold for the so called Canadian trade, and we can take the quantities produced of ale and lager, eliminating the American trade, and the rice beer, in the matching up. We have not done that.

Q. One other thing. Do you find that the manufacture of rice beer was special to this brewery, or is it common practice to the extent that they were doing it in all breweries?—A. No it is not a common practice in all breweries. Some breweries make rice beer.

Q. And can you tell us which brewery was the pioneer in making rice beer?— 40
A. No.

Q. I am instructed it was the Carlings?—A. I would not like to doubt it.

Q. And then can you say whether you found anything to indicate the Canadian trade favoured rice beer, or whether the Canadian trade has never been developed along that line?—A. I really do not know. My experience of rice beer throughout the breweries of Canada is limited to a few breweries.

Q. My instructions are that it is a special beer made for the American trade and is not sold here in Canada. When I say that it is not sold, I mean sold to any substantial degree?—A. I cannot answer that.

Q. The older form is now produced, and I do not know that we make this a 10 copy—but it reads this way: "I Carlings etc hereby certify that this is a full and true statement. At one time they were certifying; afterwards they made an affidavit?—A. Yes.

MR. TILLEY: I will put in two of the earlier ones.

HIS LORDSHIP: Are they all put in as samples?

MR. TILLEY: In this sense that they are actual B.13s for the Carling shipments. I am not putting them all in because your lordship sees the heap of them back in the court room; but in the sense of illustrations I put them in. They illustrate the forms.

HIS LORDSHIP: I understood the other one was put in as a sample, but it was 20 actually used.

MR. TILLEY: Yes. These are the same.

HIS LORDSHIP: We might group them together, and call the one filed Exhibit B,1, and these will be Exhibits B,2, and B,3.

HIS LORDSHIP: Can we sty'e the three the same?

MR. TILLEY: They are samples of B.13s.

HIS LORDSHIP: Which have been used in the transactions.

MR. TILLEY: Exhibit B,2, is of the 28th April, 1924; and B,3, is of the 15th July, 1925. But they are both in the form of certificates. In one case the attorney signs for the shippers.

30 HIS LORDSHIP: Is the third one different?

MR. TILLEY: One is signed by the Company; and the other is signed by an individual as attorney for the company—that is why I am putting them both in.

Q. I don't know whether I asked you to what extent were empty kegs returned, largely, or do you know?—A. There were substantial quantities returned.

Q. You said that you did not like to take the B.13s as proof yourself. I am not asking you whether you are right or wrong—but you are not suggesting that where there are B.13s that the beer was not sent to the United States?—A. That is passing an opinion or judgment on the B.13s.

Q. I want to know. You spoke of having a doubt. I do not want to leave 40 it so that it might be said that you had something more behind it, than I think there

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is behind it. I assume you are not passing any judgment on it?—A. I am not passing any opinion on the bona fides of the B.13s.

Q. Or whether they represent goods exported or not—that is what you mean?

A. Yes.

Q. You are not suggesting that they are not genuine?—A. I would sooner leave it where I did. I am not passing judgment on it. There are certain indications that throw some doubt on them.

Q. The ones you have already given?—A. Those are examples.

Q. How much beer do you find went into the County of Essex between 1924 and 1927?—A. I don't know. 10

Q. Give us the beer the consumers used that did not go across the border. How much went to the County of Essex either in transit to the United States or not?—A. I could not answer that at all. I have not the shipments for the County of Essex.

Q. I thought you did give some estimate of that when you were testifying at the Commission—or to the border?—A. I think we have something for a period when the Commission was sitting, of the quantity of liquor that went through Windsor or neighbourhood.

Q. How much. While Mr. Troop is looking that up for you, have you a government blue book showing the amount of beer exported from Canada to the United States in those years?—A. I have not got them. I have seen them. 20

Q. There is no doubt about this, is there, that in the government returns showing beer exported to the United States, the beer that we are dealing with here would be a part of the bulk?—A. I would say this, that the government blue book figures include the beer on all B.13s that reached Ottawa. That is where they are compiled from.

HIS LORDSHIP: Those are statistical figures?—A. Yes.

Q. When the government get those B.13s it shows they get them and put them in their returns?—A. Yes.

MR. ROWELL: Statistical returns from breweries other than the Carling Brewery can have no bearing on the issue which your lordship is called upon to try. 30

MR. TILLEY: I think it is important for us to know how much beer was required to satisfy the people of the County of Essex.

HIS LORDSHIP: They may be more thirsty than others—they are further west.

MR. ROWELL: The evidence is entirely irrelevant.

HIS LORDSHIP: It is not strictly relevant—it has nothing to do with the principal facts.

MR. TILLEY: If it was not irrelevant—

HIS LORDSHIP: Anything connected with it might be relevant—it may not be essential, and perhaps have no bearing. But in this class of case you allow this 40

class of evidence and it is for the Judge in the end to sift it. I cannot say it is irrelevant.

MR. TILLEY: Then I ask to put it in.

HIS LORDSHIP: You may build up an argument, but I do not know.

MR. TILLEY: It is relevant. Take the converse, if you were to prove that no beer ever went to those places it would be relevant.

MR. ROWELL: What other breweries may do or send can have no bearing on what this company did, I respectfully submit.

HIS LORDSHIP: Absolutely so. I am afraid it is burdening the record. How-
10 ever, if Mr. Tilley can find some consolation for his client I will give him a chance.

MR. ROWELL: Subject to my objection.

HIS LORDSHIP: Yes.

MR. TILLEY: Q. What do you say?—A. Give me the question.

Q. Let us have the County of Essex first?—A. I have got certain figures for particular months in 1926 taken from the Carling records, as given for the district. In July, 1926, \$286,405.27—that is in respect of the ports of Windsor, LaSalle, Amherstburg and Port Lambton.

HIS LORDSHIP: I thought it was the trade?

MR. TILLEY: He will give me that?—A. I have only Carlings for the moment.

20 Q. You cannot give me the total trade?—A. I will give it to you when I get my Commission statement. I will give you the trade for the whole of Canada or any particular port.

Q. Have you the blue-book?—A. No. It is in my office.

MR. ROWELL: The blue-book does not prove anything. It means simply that certain documents went to Ottawa, from which statistics were compiled.

HIS LORDSHIP: It might help you to prove that B.13s are only good for statistical purposes.

MR. TILLEY: We will discuss the B.13s in time. Possibly it has a little more force than he is willing to admit.

30 THE WITNESS: You want the quantity of beer from the government blue-books that went through the district of the County of Essex?

Q. Through the ports along there?—A. Yes. Within the period we have covered.

HIS LORDSHIP: We should have first the quantity of beer manufactured in Canada.

MR. TILLEY: No.

HIS LORDSHIP: And then what portion of that went to other parts of Canada, and whether this western part was consuming a larger portion than the other. Is not that it. If we have it that they have got half a million, that does not tell us
40 anything about the rest.

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MR. TILLEY: Q. Well, let us have that. You can tell what the total output of all of them is?

MR. ROWELL: Your Lordship's observations show, I submit, how irrelevant this line of questioning is.

HIS LORDSHIP: If we had only a statement of the quantity that went there—it would have to be compared.

MR. ROWELL: Are we to enter into a comparison of how much is consumed in each part of Canada?

HIS LORDSHIP: It can be explained by somebody. Perhaps there is too much for their own consumption. 10

MR. TILLEY: Q. You will be able to get us that?—A. The information as to the total amount of beer?

MR. TILLEY: Q. Manufactured and sold?—A. Sold in Canada, yes, I think we can get that.

Q. From the different breweries—and the percentage of the beer that went to Windsor and the ports along the United States?—A. Yes, we can get that.

Q. And possibly you can give me the blue-book to-morrow?—A. If I have a copy.

Q. Then you know the Regulation that is issued with the Act—Has your Lordship it?—A. Yes. 20

HIS LORDSHIP: I have a copy. I have been dealing with these cases before.

MR. TILLEY: Which copy has your lordship got?

HIS LORDSHIP: July, 1925. And I have a different edition—I have got one of 1927 also. The copy of 1927 does not contain the regulations.

MR. TILLEY: I think we ought to file the Regulation—that will be Exhibit "C."

HIS LORDSHIP: Is it the regulation without the statute?

MR. TILLEY: I think the statute might be with it. I think it is a convenient copy. I will put in a copy as Exhibit "C."

Q. Exhibit C.—see the regulations at page 39.

HIS LORDSHIP: Regulation No. 4. 30

Regulation 4, Clause (c) reads:

"(c) Claims for refund of the tax paid on domestic goods exported shall be accompanied by a certified copy of Customs Export Entry and proof of payment of the tax. Claims shall not be allowed on goods sold and used for domestic consumption and subsequently exported."

Q. Have you in your work had anything to do with refunds—I am speaking generally. I am asking you, outside of your duties in connection with this particular matter. I want to find out what comes within your purview in this particular matter?—A. I cannot say I have in this particular matter.

Q. I am told that there is a practice with regard to making refunds on exported goods, speaking generally, on the production of the forms B. 13, the customs entry, 40

can you speak of that—or can you not?—A. I can only say that there is a practice of making refunds in a Department in Ottawa called a Refund Branch of the Customs Department, and they require a certain proof before the refund is paid.

Q. Do you know what proof is required?—A. No, I do not think I can fully answer that.

MR. TILLEY: Now, you were going to get me some information. But subject to that, that is all. I would be glad to have it but the books are not here.

THE WITNESS: The books are not here. Will you indicate what you would like me to do.

10 MR. TILLEY: Yes.

Re-examined by Mr. Rowell, K.C.

Q. In answer to my learned friend, you said there was a question of price at which the sale was to be taken for the purpose of computing the sales tax?—A. Yes.

Q. And that you had some discussion with the department officers in connection with that. Now I wish you to take the claim as made up, and tell me in what respect it differs from the records in the Company's books, and why?

MR. TILLEY: I did not go into that with the witness. I just asked him one thing whether he took instructions. I will want to re-examine him if my learned friend pursues that.

20 HIS LORDSHIP: I will allow it. I did not catch the first word you said, Mr. Rowell.

MR. ROWELL: My learned friend elicited from Mr. Nash that in respect of the price upon which the sales tax was computed, he had acted in some respects at a price different from that appearing in the books. Now, I want him to tell us in what respect. That is directly arising out of my learned friend's cross examination.

MR. TILLEY: I am not objecting to my learned friend asking him.

HIS LORDSHIP: I will give you the right.

MR. ROWELL: I am just following it along.

Q. Take the first period, if it is divided into periods—how would you deal with it?

30 HIS LORDSHIP: You are dealing with the sales tax?

MR. ROWELL: With the sales tax—A. The company started business first in April, 1924; and, from April, 1924, to about the 2nd of August 1924, the goods were invoiced to C. B. Grandi.

HIS LORDSHIP: No place mentioned?—A. I think the invoices showed C. B. Grandi, Carlings' dock, whereas the ledger account showed Detroit, Michigan.

MR. ROWELL: Q. Carlings' dock at what point?—A. I am speaking of the invoice. The ledger account showed C. B. Grandi, Detroit, Michigan. Now, the prices during that period were \$3.00 a case for ale—that is the carton ale; and \$2.75 to \$3.00 a case for lager. And, in respect of that period there is no addition to the
40 price made by us. That is the price. That is all we know about it.

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HIS LORDSHIP: No dispute about those prices?—A. That is all we know about those prices for that period. They were \$3.00 or \$2.75 and we found nothing to indicate there was any other price.

Then the next period from the 5th August, to the 30th December, 1924, the early invoices are marked first LaSalle; the later ones C. B. Grandi, Carlings' dock, LaSalle. The shipments generally were billed at the price of \$2.25 a case, which was fairly uniform throughout.

HIS LORDSHIP: Is there in that period any addition made by you to this price of \$2.25?—A. In respect of that period there were certain sums received by the company and entered as cash, and credited in the books to what they called export 10 expense accounts. This practice that I am now dealing with commenced in the latter part of 1924, and went on through 1925, so that I am dealing with it now so that I may refer to it again when I come to the next period.

MR. TILLEY: Do you say it went over the whole of 1925?—A. Pretty well through the whole of 1925.

MR. ROWELL: Q. Well, go on and explain what you did?—A. These were credited. These amounts were credited to certain export expense accounts, and finally were transferred to export funds accounts in their books.

MR. TILLEY: Q. That export fund account is not the same as the export expense account?—A. They did not go straight. They went through certain 20 export expense accounts.

MR. TILLEY: Q. When they first came in?—A. They went to export expense accounts and then were transferred to export funds accounts.

MR. ROWELL: And did they finally get into the profits of the company at this early period I am speaking of?—A. Yes. There were some charges made against this export funds account, but it was treated as a revenue account.

Q. They were treated as a revenue account?—A. Yes.

HIS LORDSHIP: You first called it an expense account?—A. I am directing your attention to the way it came through the books—

HIS LORDSHIP: When it was transferred to the export fund account, was it there 30 as a profit?—A. No. There were certain things charged against it there.

MR. ROWELL: And what was done with the new balance? A.—It was treated as a profit.

MR. TILLEY: The net balance was treated as a profit?—A. Yes, or as a revenue.

Then the next period really is the 1925 period, from the 2nd January, 1925, to the 29th June, 1925. This is marked LaSalle account. The goods here were invoiced to C. B. Grandi, care of the C.P.R. dock.

HIS LORDSHIP: The C.P.R. dock where?—A. That is what the invoice states.

MR. ROWELL: The invoice does not show where. What about that period?—A. I have already dealt with that in the Export Funds Accounts. This 40 account started at the end of 1924, and ran on through 1925.

The next period is July and August, 1925. The ledger shows, C. B. Grandi, as one invoice on the 21st August, to F. Savard. This period is not so clearly defined as the others, because it is coming to a change—and that is followed by the period starting in the beginning of September, 1925, where the account in the book shows F. Savard, care of the C.P.R. dock, Windsor.

Q. The account in the books changes in this time?—A. From Grandi to Savard.

Q. And what is done with the balance, is it carried from the Grandi account to the Savard account?—A. I think it is. I think that is what was done with it. I do not think it was exactly balanced. Then during September and October, during this period, the sales of this account are billed at \$2.25 a case. Commencing in November, and from then on to the end of the account, the sales are billed at \$1.75 a case.

MR. TILLEY: Q. From November to the end?—A. From November to the end, I think of 1926. In the earlier part of the period, perhaps I should say that during the running of this account of Savard there was a bank account opened in Windsor under the name of the Carling Company, and during the course of the sales the Savard bank account shows certain moneys deposited in it, and certain moneys transferred from it to the Carling Company's books and accounts in London, and there credited to the Savard account.

MR. TILLEY: Q. You say that that account showed certain moneys deposited and transferred?—A. Transferred to London, Ontario, and there credited against the sales to Savard.

MR. ROWELL: Q. Do the Carling books in London contain any record of the Carling bank account at Windsor?—A. I do not recollect seeing any record in London except such record as would come from the transfer of the money.

MR. TILLEY: Q. And when it got to London it was credited to some account? A. Credited to sales of Savard.

MR. ROWELL: Q. Is the Carling bank account at Windsor—is there a record in the books of the Carling Company at London of the transactions contained in the Carling bank account at Windsor?—A. My answer is I do not recollect any except such as would be indicated by the transfer of the funds.

Q. Except such as would be indicated by the transfer of the funds. Then is there any record in the books of the Carling Company at London, which would show the total receipts or disbursements to the credit of the Carling account in Windsor?—A. No.

Q. There is not?—A. No.

Q. Now are the deposits to the credit of the Carling account at Windsor larger than the amounts transmitted to London?—A. Yes.

Q. Substantially?—A. Yes, substantially larger.

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Q. Then how have you dealt with that?—A. We have dealt with the amounts placed to the credit of the Carling bank account in Windsor as being the price received for the beer sold.

Q. For the beer sold?—A. Yes.

MR. TILLEY: Is that at so much a bottle or case? How do you convert that into money?—A. We are dealing with the sales price.

Q. Are you taking the total in the account, or did find the price per bottle?—

A. No. We tested it to the quantities. We could not very well take the price per bottle. I don't know that the moneys in the Carling bank account in Windsor, assuming that they did represent the additional price for the sale. I don't know 10 at how much a dozen it was.

Q. Was it the gross you took?—A. The gross.

MR. ROWELL: Q. Why did you take the gross amount to the credit of the Carling bank account in Windsor as representing the proceeds of the sale of the Carling goods?—A. I think that we first of all satisfied ourselves that it was the price received for the sale of the beer.

MR. TILLEY: I don't see how we can take that.

THE WITNESS: I was going to show how we satisfied ourselves, or confirmed it. I am going on to show how we did it. I form no opinion.

MR. TILLEY: You have just said so. 20

MR. ROWELL: Q. Tell us what you did?—A. I did not say I formed an opinion. I confirmed what was in the bank account by just asking the officials of the company what was in the bank account.

Q. Who did you ask?—A. Mr. Burns. I don't know that I asked Mr. Burns.

MR. TILLEY: I object to statements made. I do not want what he saw in the books. I made my statement as to that.

THE WITNESS: I do not remember asking Mr. Burns.

MR. ROWELL: Q. There would be someone of your staff from whom we can get it?—A. Yes. I can go further. I want to give evidence fairly. I listened to the 30 evidence of the Royal Commission.

MR. TILLEY: That was a most misleading thing for you to listen to.

THE WITNESS: I want to give my evidence fairly.

MR. ROWELL: Was this some statement from an officer of the Carling Company?—A. That is my recollection.

HIS LORDSHIP: Well, that is not evidence.

MR. ROWELL: Q. You cannot speak of that personally?—A. No. I think not under those circumstances—I can not.

Q. You say you had charged in the account the full amount that went to the credit of the Carling bank account in Windsor, for the purpose of getting the sales 40 tax?—A. Yes.

Q. Is there any other factor affecting the price you charged?—A. No. I think that covers it. Now, there is one other matter.

Q. What is the other matter?—A. I think the other matter is covered by what I said on the bank account. The bank account covers the period I was referring to.

Q. You brought that down to the end of December, 1926?—A. Yes. Then the period from January. This will be the last period. The period from January, 1927, up to the end of the claim, April, 1927.

HIS LORDSHIP: That is with reference to the sales tax, to May?—A. The account is carried under the name of B. Syring.

10 MR. TILLEY: Do you mean the former Savard account?—A. I cannot say it is the former Savard account. The Savard account is closed and the account is in the name of Syring, care of Carling C.P.R. dock,—and the sales are billed at \$2.00 per case, cash transferred from the Windsor bank account,—and part of the amount which I refer to was coming from the Windsor bank account in excess of the amount charged in the books as being included for this period as well as for the period of 1926. The Windsor bank account did not end with the Savard account,—it went on.

Q. And as far as the Windsor bank account was concerned were transactions entered in it after the B. Syring account commenced, carried on as during the Savard 20 period?—A. I do not recollect any difference.

Q. My learned friend says he gave the Carling Co.'s Bermuda export agreement to the Royal Commission?—A. I was describing first what we added back.

Q. I want to see if it is clear if you have given us all that was added back?

MR. TILLEY: You have the original.

MR. ROWELL: It was given to the Royal Commission.

MR. TILLEY: You have it. You can get production of it.

MR. ROWELL: My learned friend produced this as a copy of the document.

MR. TILLEY: I did not produce it as a copy of the document—and you can frame 30 any questions you wish on it. I do not know that it is a copy. You have the original.

MR. ROWELL: I am instructed the original is not before the Commission.

MR. TILLEY: I do not admit that.

MR. ROWELL: Q. Do you remember in connection with the Carling investigation coming across any transactions with the Bermuda Export Company?—A. Yes.

Q. What was the nature of those transactions?

MR. TILLEY: Q. Is this from the Carling Company's books?—A. Yes. I will try and answer entirely from the Carling Company's books. There is an account 40 marked Bermuda Export Company, Port Lambton. Sales commencing in July, 1926, and continuing to the end of October.

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Evidence

No. 3

Albert E. Nash
Re-examination
May 7, 1928
(continued)

*In the
Exchequer
Court
of Canada*
—
Plaintiff's
Evidence
—
No. 3
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Albert E. Nash
Re-examination
May 7, 1928
(continued)

MR. TILLEY: Q. The same year?—A. Yes. The total sales were \$65,000 in that period. Now then there is another account in the books. I think it is under B. 6—that would be the letter of the alphabet of the reference in the ledger. The name of the account Bermuda Export Company, Bermuda, care of Thibideau dock, Port Lambton, Ontario. That account shows certain debits, charges, and certain cash recorded as being received. The cash items particularly are in September and October, 1926.

Q. Any other?—A. Then there is another account under ledger B. 8, under the name of the Bermuda Export Company, Bermuda, from August 11th, 1926, to June 10th, 1927. That would indicate not any heavy items,—some commission pay-10 ments and remittances and so on.

Q. Are those the only accounts you find charged in the books to the Bermuda Export Co., that you recall?—A. I think so. Yes, as I recall it.

Q. Take the first one you mentioned—at what price are the goods charged in the account, in the books of the company?—A. I cannot say without reference to my papers again. At \$1.75 a case.

Q. Does that also apply to the second?—A. I think so. Yes, it does.

Q. It also applies to both accounts?—A. Yes.

Q. Does it apply to the three or the two?—A. No, the third one does not apply to sales—it does not look as if it were a sales account. 20

Q. What did you charge in connection with these Bermuda sales?—A. We charged from the time the Windsor bank account opened to the time it ended—we charged the amounts appearing in the Windsor bank account,—when I say charged, I mean the amounts included in the Windsor bank account under the heading of sales.

Q. Then will you tell us why these amounts were charged as part of the sales tax for the purpose of computing the tax?—A. Yes. We discussed this question of price with the department, with the officials of the department. We told them what we had discovered, and what we understood was the transaction.

MR. TILLEY: I object to that. This was done under instructions. 30

HIS LORDSHIP: Tell us what you did.

MR. TILLEY: If there are any facts he knows, let him tell it.

MR. ROWELL: How did you arrive at the sale price for the purpose of making up the claim?

MR. TILLEY: He has told us that.

HIS LORDSHIP: He can tell us how he proceeded?—A. We explained to the Department.

HIS LORDSHIP: Leave that out. Tell us what you did.—A. We asked the Department.

Q. Tell us how you arrived at your figures?—A. By adding back the amounts 40 of the bank account.

MR. ROWELL: Why did you add them back?

MR. TILLEY: Ask the witness to forget the Department when he said what the Department told him what to do.

HIS LORDSHIP: We want to know what was done.

MR. TILLEY: He told us what was done.—A. I cannot do it without discussing the evidence His Lordship said was not permissible. I do not want to go contrary to your Lordship's decision.

HIS LORDSHIP: Tell us what you did. Forget the department?—A. I added back to the sales the amount of money received in the Windsor bank account in excess
10 of the amount appearing in the company's books. I added back the money in the Windsor bank account.

MR. ROWELL: Why did you do that?

MR. TILLEY: He cannot get evidence that way. My learned friend should not transgress the ruling. The witness has told us that he went to the Department.

HIS LORDSHIP: We want to know what he actually did.

MR. TILLEY: He said he took the bank account and added on everything above \$1.75.

MR. ROWELL: Q. Why did you add that on?—A. I added it on because I thought I had arrived at what the sales proceeds were.

20 MR. TILLEY:—My learned friend has stuck at it, until he has got a piece of evidence that pleases him immensely because it is not evidence at all. The witness has told us time and again that he went to the department and discussed it with the department, and he told us what he thought, what he suspected, and on the strength of that the Department told him to do something. Now, my learned friend said to him, how did you come to do this, and he said because I thought I got the price. On what he proceeded I submit is not evidence at all.

THE WITNESS: Perhaps I could put it in another way, I discussed with the Department all sales of breweries that dealt with the Bermuda Company, and by talks at the department they said the full price—

30 HIS LORDSHIP: Is that what you did?—A. I did.

HIS LORDSHIP: We want to know what you actually did?

A. I first of all discussed the matter with the company's officials.

HIS LORDSHIP: How did you arrive at your figures?

A. I took the Windsor bank account and I calculated my selling price upon the amounts of money deposited therein, which was so much, so many dollars and cents in excess of the \$1.75 charged in the books of the company.

MR. TILLEY: I am not objecting to my learned friend giving evidence on any fact that would justify that, but I do object to my learned friend getting him to say that I reached an opinion after having a lot of talk with the department, which
40 would not be, and your lordship has ruled, evidence here.

*In the
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Plaintiff's
Evidence

No. 3

Albert E. Nash
Re-examination
May 7, 1928
(continued)

*In the
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Plaintiff's
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No. 3

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Re-examination
May 7, 1928
(continued)

HIS LORDSHIP: It would make no difference in the end. Supposing he did it on his own account or on instructions. I have to decide whether what he did was right or wrong.

MR. ROWELL: Q. You said \$3.25 was paid for all goods sold through the Bermuda Export Company—is that what you said? A. Yes.

Q. Why \$3.25 a case for the goods sold through the Bermuda Export Company?

MR. TILLEY: I object to my learned friend proceeding in that way.

MR. ROWELL: I am only asking him to give facts.

MR. TILLEY: You are carefully framing your question—We do not want an explanation of something already ruled out as not evidence. 10

HIS LORDSHIP: No. He has prepared statements and he gives us the figures. We want to know how he has arrived at them.

MR. TILLEY: We have got how he arrived at it exactly.

HIS LORDSHIP: He is telling us now. Now we want to know following that, why did you do that.

MR. TILLEY: And he will say I did it because I received a lot of information.

HIS LORDSHIP: If it is that—He may have a reason of his own.

MR. TILLEY: Let us know whether it is on some facts or gossip. The witness has already told your lordship two or three times—and why is he transgressing your Lordship's ruling—and my learned friend knowing that the witness is saying that, 20 keeps on saying, why, why.

MR. ROWELL: My learned friend has no right to make any such observations. It is entirely unwarranted. I do not want to enter into an argument.

HIS LORDSHIP: My ruling is that that question can be put to the witness.

We do not want to know what was told you?

A. It was not done because anybody told me. What people told me confirmed what was done. That is the exact answer.

HIS LORDSHIP: Then why did you charge at \$3.25 a case instead of \$1.75?

A. If I told you that I will have to tell you why I did it.

HIS LORDSHIP: That is what we want? 30

A. Then if I told you that, then I will be transgressing your lordship's ruling.

MR. TILLEY: This is a method of getting in evidence that I object to strenuously. The witness in answer to what your lordship might ask, as your lordship put it, may say the reason I did it was because of something that Mr. Troop or somebody else told me—or it was said to him by somebody in the company—that is not evidence against me.

HIS LORDSHIP: I will put the question in a different way. You might ask this question. Did you do it on your own account, or did you do it because of instruction, or did you do it because of what you found in the books? A. Is that a question—?

Q. Yes? A. I did it first on my own account. I did it secondly because— 40

HIS LORDSHIP: Tell us your reason?

MR. TILLEY: The reason why he did it has nothing to do with us here at all. If there are any other facts he wants to bring in that substantiates the propriety of what he did—

HIS LORDSHIP: That is what we are asking him.

MR. TILLEY: No, that is not what you are asking him. If your lordship knew the destination that Mr. Rowell is trying to get at, you would appreciate it.

HIS LORDSHIP: I do not know anything outside of what is before me now.

MR. TILLEY: Why should the witness not be asked what can you point to in the company's books that justifies what you did?

10 HIS LORDSHIP: That is my question. He is answering my question.

MR. TILLEY: Let him point to anything in the company's books that justifies what he did.

HIS LORDSHIP: That is what I am asking him.

Q. Do you understand?—A. I think I understand. I can point to nothing in the books of the company. I can point to the bank account as representing more money than appears in the books of the company.

HIS LORDSHIP: Did you find something in the Windsor account that awoke your attention—in the Windsor bank account?—A. We found more money in the Windsor bank account, than was represented by sales in the company's books.

20 HIS LORDSHIP: Why did you not say it?—A. I thought I said it some time ago.

MR. TILLEY: Now we have it all.

HIS LORDSHIP: That is the reason. Why should he make a mystery out of it. Why should you object?

MR. TILLEY: I did not object to that at all—and my learned friend has not yet got what he is after.

MR. ROWELL: My learned friend professes to be a mind reader.

MR. TILLEY: Then you will let it rest.

MR. ROWELL: For the time being. I will give my learned friend plenty more.

30 MR. TILLEY: Let us get it properly.

MR. ROWELL: Have you shown on Exhibit Number 2 where you have added amounts from other accounts to the amount of the sales as shown in the books?—A. Yes.

HIS LORDSHIP: What do you refer to. Oh, I see now. It is the third item on the second page, under the heading, adding back to sales beginning in September—have you anything to add as to this difference in price of \$1.75 and \$3.25?—A. It has to do with the difference in the price in the books and bank account—having to do with the difference between the price charged in the books and the bank account, and also the items that I previously referred to as having been previously referred to
40 credited to export funds account.

*In the
Exchequer
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of Canada*

Plaintiff's
Evidence

No. 3

Albert E. Nash
Re-examination
May 7, 1928
(continued)

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Q. We find the items added back to sales as shown in Exhibit Number 2, in page 2?

HIS LORDSHIP: The sales in 1924, 1925 and 1926?

MR. ROWELL: All the amounts that were added to the sales price as appearing in the books?—A. Yes. I have included all the items I have been referring to.

HIS LORDSHIP: What is the reason for the red ink letters?—A. It is the amount overpaid.

MR. ROWELL: Q. Then my learned friend asked you in reference to the B.13s or export entries. Have you examined any of these to see what difference in date there is between the bill of lading and the apparent date of export as shown on 10 the B.13?—A. Yes.

Q. Can you tell me what is the result of that investigation?

HIS LORDSHIP: Would the bill of lading always be dated from London?

MR. ROWELL: With the bills of lading of the Carling Co.?—A. Yes, from the records.

Q. Found in the records of the Carling Company?—A. Yes.

Q. Then can you tell me what you found?

MR. TILLEY: I would like to have them produced.

MR. ROWELL: Have you any samples of them?—A. We have the results worked up, yes. 20

MR. ROWELL: You have got your bills of lading here?

MR. TILLEY: Yes, we have some here.

MR. ROWELL: Will you let me see them?

MR. TILLEY: I would suggest that this evidence should have been put in in chief.

HIS LORDSHIP: I realize that.

MR. ROWELL: May I submit, with respect,—I did not bring up the B.13s or touch export. It was my learned friend who brought up the question of export and now I am seeking to re-examine on the documents he has brought it.

HIS LORDSHIP: I will give Mr. Tilley a right to cross-examine on that. 30

I thought the witness said he had some samples of the B.13s that he could produce and compare?—A. I said so. I have some cases here.

Q. Have you the bills of lading?—A. No, I have not the bills of lading here. I can refer to the invoice and date of sale. The invoice Number is 0838, of the 4th December, 1926—sale to F. Savard.

HIS LORDSHIP: That invoice—where did it come from?—A. It is in the company's record.

HIS LORDSHIP: You saw the invoice itself?—A. It would be a copy of course.

HIS LORDSHIP: I want to know where the invoice was dated from?—A. It was dated the 4th December, 1926. 40

HIS LORDSHIP: Where from?—A. London. All the invoices are dated at London.

HIS LORDSHIP: None went from Port Lambton or Windsor?—A. These are the invoices.

HIS LORDSHIP: The company might have sold to somebody else? Those are all the invoices of the company from London?—A. Yes. Dated the 4th December, 1926, to F. Savard, Detroit—C.P.R. dock, Windsor.

HIS LORDSHIP: What should I understand by that?

MR. ROWELL: That is the way they are billed.

10 MR. TILLEY: Q. Could we get the document you are referring to?—A. I have no doubt the company has it.

MR. TILLEY: If we had a sample we could understand it better?

MR. ROWELL: Q. The bill of lading is No. 02648?—A. I was dealing first with the invoice.

MR. TILLEY: I think you gave the wrong number—you gave 0838?—A. The invoice number is 03838, the 4th December, 1926. I can refer direct to the invoice marked duplicate, F. Savard—Detroit, Michigan—C.P.R. Dock, Windsor, Ontario—1,500 dozen cartons.

MR. ROWELL: Q. What is a carton?—A. Two dozen pints—two dozen pints 20 or one dozen quarts. I think it is black label—\$1.75 is carried out and amounts to \$2,625.00. Then on the face of it is N.Y.C. 18296. I take that to be New York Central.

Q. The Bill of lading Number?—A. I think that is probably the car Number. That is all the invoice.

Then the bill of lading Number is 02648, and is dated the 4th December, 1926.

HIS LORDSHIP: Is there an address on it?—A. F. Savard, C.P.R. Dock, Via C.P.R. to Windsor.

HIS LORDSHIP: Just the same as on the invoice?—A. The other does not have it put "Via."

30 MR. TILLEY: If this is to be followed through, I would suggest that we take the invoices out to be followed through.

HIS LORDSHIP: The document itself would be better than the description.

THE WITNESS: Then the bill of lading says consigned to Savard care of C.P.R. Dock,—destination Windsor, Ontario. Route C.P.—then care of official N.Y.C.—car initial No. 18296—1,200 cartons, B.L. lager.

HIS LORDSHIP: Q. No value?—A. No, not on the bill of lading—just the weight. The weight looks like 49,200 pounds I suppose. Then underneath, for export from Canada. Delivery—delivered only under the supervision of the Collector of Customs. Signed by the Company's agent, and the railway agent. That 40 is the bill of lading.

HIS LORDSHIP: I think it is better to take the documents themselves.

(The court then adjourned at 4.50 p.m. to 10.30 a.m. to-morrow).

*In the
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Plaintiff's
Evidence

No. 3

Albert
E. Nash
Re-examination
May 7, 1928
(continued)

(Second day)

May 8, 1928.

In the
Exchequer
Court
of Canada

Plaintiff's
Evidence

No. 3

Albert E. Nash
Re-examination
May 8, 1928
(continued)

ALBERT E. NASH: Re-examination continued by Mr. Rowell, K.C.

Q. You told my learned friend yesterday that you would endeavour to check up certain B.13s with the shipments. You had started to give us some information about one particular shipment just as the court arose?—A. I think that we had described the invoice number and date, and the fact that it contained N.Y.C., 18296, on its face. I think we had also described the bill of lading number and date, and the fact that it showed on its face the same notation N.Y.C. 18296.

MR. ROWELL: We might just put in the invoice and bill of lading—Exhibit 2A 10 will be the Invoice, and 3B will be the Bill of lading.

THE WITNESS: Then we examined the B.13, and up to the date of the 30th April, 1927, we found the B.13 containing the same notation, N.Y.C. 18296, covering 580 cases.

MR. TILLEY: Q. The same notation?—A. N.Y.C. 18296, and bearing date from the 15th December, 1926 to the 11th April, 1927—various dates.

I said that the B.13s will be found to total 580 cases. They all bear on their face the notation N.Y.C. 18296.

HIS LORDSHIP: And they dated from?—A. From the 15th December, 1926, to the 11th April, 1927—that is various dates covering that period. 20

HIS LORDSHIP: Would the invoice, the bill of lading and the B.13s cover the same quantity?—A. No. The invoice covered 1,500 cartons; and the bill of lading reads 1,200 cartons—it is rather faint, I think it is 1,200,—and the B.13s total 580 cases.

HIS LORDSHIP: Q. How do you reconcile them?—A. I should have used the word cartons all the way through—580 cartons.

HIS LORDSHIP: You are trying to reconcile that, but it does not cover the same quantity?—A. No, it does not.

Q. And you reconcile it because you have the same notation on three documents?—A. Yes. 30

Q. That is the only reason why you try to link them together?—A. That is all.

HIS LORDSHIP: There is a question which I might put to you at this juncture which bothered me yesterday. With respect to the price. You said that the books in London said \$1.75—then when you went to the Windsor account they had a much larger amount, that that these several invoiced would represent—and you tried to adjust that by saying Oh well, they did not sell that at \$1.75, they sold it at \$3.25. Do you follow me?—A. Yes.

HIS LORDSHIP: Is not there another way—do you think it is possible that they would say, we are sending you 15,000 cartons, and they may send 20,000 cartons?—A. I do not see how that could happen. 40

HIS LORDSHIP: It is the principal house sending to an agent.

Q. If they sent more from London to be sold at Windsor, than their invoice and entry shows, they would show larger proceeds than what their books would show?—A. They might. The invoices are the only things we have to determine the quantity of beer sent.

HIS LORDSHIP: Would not the books also have it?—A. The invoices are bound together in what is called a sales recapitulation.

HIS LORDSHIP: There is no entry in their book?—A. Yes, the charge in the ledger is in dollars and cents.

HIS LORDSHIP: No journal entry?—A. No. It is posted directly—it is more
10 a sales recapitulation—that is a collection of copies of invoices summarized, recapitulated at the end of each month—that is a form of journal. It is quite proper to use the work journal in connection with it—that is how it is made up.

HIS LORDSHIP: Then I am directing your attention to that.

MR. TILLEY: Q. Have you those B. 13s to which you refer?—A. Yes.

MR. ROWELL: I will come to that with another witness.

Q. Just at this particular point His Lordship asked you a question, how you reconciled the two, and I did not hear you make any answer?—A. I do not.

Q. You do not?—A. I do not reconcile them.

HIS LORDSHIP: With respect to that question, you say you group them together,
20 because they have the same notation, but not the same number. Is that right?—
A. Yes.

MR. ROWELL: The notation you refer to is the number or description of the car and car initial?—A. Car number.

Q. N.Y.C. 18296?—A. Yes.

Q. Then have you gone through for the period you have mentioned to see all the B. 13s bear that car number?—A. My assistants have. I have not personally done it. Yes, my assistants have gone all through the B. 13s up to the 30th April, 1927.

HIS LORDSHIP: All B. 13s that bear that number?—A. We have gone through
30 all the B. 13's and have extracted from them all that bear this number.

MR. TILLEY: Someone will have to speak to that.

MR. ROWELL: I will have them.

Q. The shipment of the bill of lading is to what port—to what port are the goods shipped?

HIS LORDSHIP: May I take it for granted that all the invoices are made from London?—A. I think you can. We do not find any made from any other place. All of these bills of lading we have seen would be from London. I am referred to the bill of lading (Exhibit No. 3) consigned to F. Savard. It is either care of, the symbol for care of, C.P.R. Dock; destination, Windsor.—Province or State, Ontario.

40 MR. ROWELL: So that we will get it upon the record, will you run through these B. 13s and indicate the amounts and dates, say every one in five, just as they come to show how they run?

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Re-examination
May 8, 1928
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MR. TILLEY: Are they in order of date?—A. No, they are not—they are not arranged in presently order of date.

HIS LORDSHIP: Have you at any time made a total of the quantities mentioned in the B. 13s and compared it with either the invoices or bills of lading?—A. Yes.

HIS LORDSHIP: You have?—A. Yes. That is a total for the whole period.

Q. And how did it tally—any discrepancy?—A. There was a discrepancy—an overage, of quantities in the B. 13s.

Q. More B. 13s?—A. Yes.

MR. TILLEY: Q. You stated that yesterday. You stated you found an overage but some bad liquor had come back?—A. I said that might be one of the reasons. 10

HIS LORDSHIP: It might justify my remark that more were sent than the bills of lading represented.

MR. TILLEY: I do not understand that you are suggesting that having regard to what might be returned because of lack of condition, that there is any comment to be made on the fact that the amount according to the B. 13s slightly exceeds the invoices?

MR. ROWELL: 150,000.

MR. TILLEY: Mr. Nash can take care of that. Is it not slightly having regard to the amount?

HIS LORDSHIP: The witness is in the hands of Mr. Rowell. 20

MR. TILLEY: He is leaving an impression.

HIS LORDSHIP: We have no jury.

MR. TILLEY: We are all somewhat of a jury.

MR. ROWELL: Q. Taking these B. 13s, Exhibit B, C, they are made out in various amounts—how do they vary in amount?—A. Perhaps for reference I could give the number. It is a stamped number on the right hand corner.

HIS LORDSHIP: What are you dealing with?—A. The B. 13s.

MR. ROWELL: Exhibit 3, C?—A. 82857 is the stamped number—five cartons—Customs stamp 15th December, 1926. Number 85680, fifteen cartons, 27th December.

HIS LORDSHIP: You told us that these three exhibits would cover a period 30 from the 15th December, 1926, to the 11th April, 1927—you could not have the B. 13 before the shipping took place?—A. The invoice is the 4th December, 1926—

MR. ROWELL: May I explain the situation. What the Crown submits this evidence goes to show, is that these goods whatever they were, were shipped to Windsor and were warehoused there; and were dealt out from the warehouse from time to time as suited their convenience—and these B. 13s if they are evidence of anything at all, are evidence of the dates on which they were dealt out from the warehouse.

HIS LORDSHIP: Then that would mean that previous to the 15th December, 1926 there would be 580 cartons.

MR. ROWELL: No. The evidence would be that previous to December, 1926, 40 this carload had arrived at Windsor, the contents put in the Warehouse, and then between that date and April, five hundred and some cartons had been shipped out.

HIS LORDSHIP: Your B. 13 is dated December, 1926.

MR. ROWELL: They run on to April in small quantities—he has mentioned two.

HIS LORDSHIP: I thought it was limited to that one.

MR. ROWELL: I am illustrating how the thing is done by the B. 13s.

HIS LORDSHIP: You can get the B. 13s before the goods are shipped?

MR. ROWELL: No. The invoice bears date the 4th December, and the bill of lading is the 4th December, 1926.

HIS LORDSHIP: That B. 13 Exhibit C, does not cover anything in 1927, that is self evident.

10 MR. ROWELL: There is a whole list of them. I am illustrating to your lordship how the thing is handled.

THE WITNESS: The second one I was giving, is No. 85680, 15 cartons, dated 27th December, 1926. Then Number 85682, 15 cartons, dated 27th December, 1926. Then Number 85706, 5 cartons, dated 24th December, 1926.

Q. Then if you have some in January, give us them—some in each month?—
A. Number 89683—ten cartons, dated 4th January, 1927. Number 92459, ten cartons, dated 12th January, 1927. Number 95293, ten cartons, dated 18th January, 1927.

Q. Then you might pass on to February and March?—A. Number 98006, 20 25 cartons, dated 31st January, 1927. Number 3276, 5 cartons, dated 9th April, 1927. Number 3281, 5 cartons, dated 9th April, 1927. Number 5402, 5 cartons, dated 12th April, 1927.

Q. Then have you endeavoured to check up any other shipment, and compare the B.13s with the shipment?

HIS LORDSHIP: I think we had better mark them consecutively, so that when we come to speak to them, we can identify them.

MR. ROWELL: There are more than a dozen—there are about twenty or thirty.

HIS LORDSHIP: You want to put what in?

MR. ROWELL: I want to put them all in, because they all relate to this particular car.

HIS LORDSHIP: What do you mean by “all”?

MR. ROWELL: All the bundle of B.13s which Mr. Nash has found relating to this particular shipment.

MR. TILLEY: And he identifies them as having that notation?

MR. ROWELL: Yes.

MR. TILLEY: Mr. Rowell has a lot with that notation on it—and the witness has given us a certain illustration of what he had in the bundle. I think for convenience it should be in. Everyone has a number on it—they can be counted.

HIS LORDSHIP: They will be all Exhibit 3,C.

40 Q. What is the total number of them?—A. There are 52 B.13s.

MR. TILLEY: Being part of Exhibit 3,C.

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MR. ROWELL: Q. Then have you endeavoured to check up any other shipment and compare the B.13s with the shipment?—A. Yes. The second one is Invoice Number 04571, dated the 4th February, 1927.

HIS LORDSHIP: What does it cover, the quantity?—A. Twelve hundred cartons, Black Label; three hundred cartons of Amber ale, B. Syringe, Detroit, care of Carling C.P.R. dock, Windsor. The notation on the invoice is C.P. No. 287672. The bill of lading is dated the 4th February, 1927. To B. Syringe.

HIS LORDSHIP: Can you give us the number and the quantity as you did with the invoice?

MR. ROWELL: I would suggest that the bill of lading and invoice go in as 4/A 10 and 4/B; and 4/C will be the B.13.

THE WITNESS: I do not see any number to the bill of lading. The quantity 1,200 cartons, pints, beer. Marked car number 287672, for export from Canada—delivery only under supervision of Collector of Customs, to Heaters.

HIS LORDSHIP: The quantity is not the same as the invoice, and the description is not the same.

MR. TILLEY: The 1,200 cartons are the same—black label would be beer?—A. Yes.

MR. TILLEY: Q. But it has not the 300 cartons of amber ale?—A. Not according to the bill of lading. 20

MR. ROWELL: The charges are prepaid on the bill of lading?—A. Yes.

Then the B.13s, Exhibit 4,C. Perhaps it would be convenient to give a number to them now. I think there are 95, B.13s, with dated from the 9th February, 1927, to the 9th April, 1927—and the total of the cartons on the B.13s is 1724.

Q. So that in this case there are 500 more than the amount shown on the bill of lading and the invoice?—A. Yes.

Q. Now you told us the bill of lading was, ship to the Carling dock at Windsor?—A. B. Syring, care of C.P.R. dock at Windsor.

MR. ROWELL: I assume that this is referred to as the C.P.R. dock and the Carling dock. 30

MR. TILLEY: I don't know.

MR. ROWELL: Then is there any difference in the Customs ports or outports in the stamps. Is there any difference in the stamps as ports and outports?—A.—There are stamps for Walkerville, Sandwich—those two.

Q. Walkerville and Sandwich?—A. Yes.

Q. I notice that the other exhibit 3,C, also has Walkerville and Sandwich as ports stamped on it?—A. Yes.

MR. TILLEY: Are those outports, Walkerville and Sandwich?—A. I think they are both outports. The previous exhibit also shows Walkerville and Sandwich.

Q. Have you any other case where you tried to check the B.13s against the 40 shipment?—A. Yes. There is the third one. An invoice dated the 22nd May,

1926, to F. Savard, Detroit, C.P.R. Dock, Windsor. The invoice number is 03420 for 300 cartons of ale, pints; 1,200 cartons of lager, pints. The bill of lading is dated the 22nd May, 1926. I should state that on the invoice is the notation C.P. No. 197732. Bill of lading dated 22nd May, 1926. It is very faint. I think it is for 1,200 cartons. To F. Savard, care of C.P.R. dock, Windsor, Ontario—car number 197732—to be prepaid. For export from Canada, delivery only under supervision of Collector of Customs.

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HIS LORDSHIP: I have marked the invoice 5/A, and this last bill of lading 5/B and this B.13 will be 5/C.

10 THE WITNESS: There are 5 B.13s covering the period from the 2nd June to the 8th June, 1926—covering 350 cartons. They are marked transferred to Carling dock, LaSalle.

MR. ROWELL: And this is all you have been able to find of the B. 13s applicable to this particular shipment?—A. All that I have been able to find with that car number notation on it.

Q. And this also applies to the prior B 13s you have put in?—A. Yes.

Q. Then have you made any further comparisons?—A. Yes. Invoice number 03474, of 12th June, 1926.

MR. TILLEY: Q. Your number cannot be right?—A. 03474, 12th June, 1926.
20 We can take the 03447.

MR. TILLEY: Q. And the date is what?—A. Second of June, 1926 (Exhibit 6/A). To F. Savard, Detroit, Michigan; A. V. Hall, Point Edward—that is the invoice. 1,000 Canada Club; 200 amber ale; 100 black label. Notation C.P. 127806. Bill of lading dated 2nd June, 1926. A. V. Hall, Port Edward, Ontario—car number 127806, to be prepaid. 1,400 cartons for export from Canada, delivery only under the supervision of the Collector of Customs.

Q. How many B. 13s do you find in that case?—A. 19 B. 13s, totalling 1,300 cartons. Dated and covering the period from the 8th June, 1926, to the 26th June, 1926.

30 Q. Have you made any further comparisons?—A. Number 04586,—invoice dated 4th January, 1927—B. Syring, Detroit, Michigan, care of Carling C.P.R. dock, Windsor, Ontario,—1,500 cartons. Notation is C.P. 287867,—bill of lading is dated 4th January, 1927 (Exhibit 7, B). To F. Savard, care of C.P.R. dock, Windsor, car number 287,867—I cannot read the number of cartons—my eyes are not capable of reading that print.

MR. TILLEY: Q. I suppose the bill of lading has on it “for export”?—A. Yes. All I have spoken of to-day. Yes, it had.

MR. ROWELL: How many B. 13s have you?—A. I have 18 B. 13s.

HIS LORDSHIP: You have not been able to give us the number of cartons on the
40 bill of lading?—A. I have not been able to read it—my eyes are not equal to that.

HIS LORDSHIP: To me it looks like 1280. If it could be agreed on that?

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HIS LORDSHIP: Would you read 1280 on that, Mr. Tilley?

MR. TILLEY: I think it is difficult to say what it is.

MR. TILLEY: Q. What are the dates?—A. There are 18 B. 13s covering 345 cartons—stamped Sandwich and Walkerville.

Q. Between what dates?—A. Dated the 7th to the 22nd January, 1927. One B. 13 belonging to this bundle has already been filed as a sample exhibit, so that I should read it as 19 instead of 18 because that one is in.

MR. TILLEY: It would be a good thing to put in that bundle a little note saying that the other one is in.

MR. ROWELL: Q. Will you pick out which one it is?—A. Exhibit Bi, is the 10 19th. I started with January 12th, and I want to correct that to January 19th, to the 4th February, on this bundle—that is the 18 plus the one already filed.

MR. TILLEY: Q. And that is what exhibit?—A. Exhibit B, 1.

Then I have another bundle of 29 B 13s. This is a second bundle of B. 13s, with respect to this shipment.

HIS LORDSHIP: Is that covered by the 19?—A. This is another bundle. The reason they are dealt with separately is on account of the charge in the books. We want to have it ready to separate.

HIS LORDSHIP: And there is an additional number of B. 13s—how many?—A. There are 29 covering 640 cartons. Dated from the 7th to the 22nd January, 1927 20 (Exhibit 7, D).

MR. TILLEY: Q. Would it be convenient to say why you separate those into two bundles—what distinguished the B. 13s. Is there anything on the B. 13s?—A. It is a matter of the charge in the books.

MR. TILLEY: Q. One charged how, and the other is charged how?—A. I was going to let my assistant speak to that, as he had seen the charge himself in the books.

HIS LORDSHIP: There is a difference in the date?

MR. ROWELL: Yes. Exhibit 7 C bears date the 12th January, 1927, as sworn to. 30

THE WITNESS: That is the date at London.

MR. ROWELL: The date at London. That is the affidavit at the bottom that bears that date—and Exhibit 7 D—the affidavit bears date the 4th January, 1927.

HIS LORDSHIP: The dates given were from the 7th to the 22nd?—A. Those were the dates of the Customs stamps. The dates I gave in all cases were the dates of the customs stamps.

MR. TILLEY: Q. In the lower left hand corner?—A. Yes.

MR. ROWELL.—Your Lordship will see the invoice is dated the 4th January, 1927. Certain of the B. 13s are sworn to on that date, and certain of them are sworn to at a later date. 40

Q. What is the next one?—A. Then invoice number 03529, dated the 28th June, 1926, to F. Savard, Detroit, C.P.R. dock, Windsor—1,500 cartons; notation

C.P. 210,083. Bill of lading is dated the 28th June, 1926—to F. Savard, C.P.R. dock, covering 1,200 cartons. The bill of lading has 1,200 cartons.

There are 11 B. 13s all dated the 2nd July, 1926, each of them is for 100 cases making a total of 1,100 cases.

MR. TILLEY: Q. When you say cases, do you mean cartons?—A. Cartons. They are all marked, transfer to Carling dock, LaSalle,—dated 30th June, 1926.

MR. TILLEY: Q. What is that marked with?—A. This particular one is marked with a red rubber stamp.

MR. TILLEY: Q. And the date of the transfer?—A. It is the 30th June, 1926.

10 MR. ROWELL: Q. And when you said it was dated July 2nd, 1926, that is the customs stamp you were referring to?—A. The customs stamp.

(Exhibit 8-A, 8-B and 8-C put in).

Q. Will you go back to the one you started to give where we do not have the invoice? A. No. 03474, dated the 12th June, 1926.

Q. You have now the invoice and bill of lading. Will you finish with that one?—A. F. Savard, Detroit, C.P.R. dock, Windsor, Ontario.—600 ale, pints; 600 black label; notation "M.C." 87356. Bill of lading dated the 12th June, 1926. F. Savard, care of H. Low, Amherstburg. I should say that the invoice on its face also bore the notation to Amherstburg.

20 MR. TILLEY: Q. I thought you stated it said C.P.R. dock?—A. It does and mentions the Amherstburg bill of lading as 1200 cartons, care Number M.C. 87536.

MR. ROWELL: Q. How many B. 13s do you find?—A. There are 31 B. 13s. (Exhibits 9-A, 9-B and 9-C.)

All dated, that is with the customs stamp, the 15th April, 1926. There are 22 B. 13s, dated the 15th July, 1926, Amherstburg; and the other 9 are dated from the 18th to the 21st July, from Sandwich.

My reason for dividing them was this. On the 9, I am now referring to the notation M.C. 87356 which was typewritten on has been struck out, and another car number inserted—the new car number is C.P. 210,494. The total of the whole of 30 the 31 B. 13s is 2,600 cases.

MR. TILLEY: Q. Will you divide this between 22 and 9?—A. The 22 are for 1,700 cases; and the 9 are each for 100, or 900 cases.

MR. ROWELL: The 22 will be marked, 9, C. and the 9 will be marked 9, D.

MR. ROWELL: The 9, D are the ones where there is a change in the car number. I think you pointed out that in the invoice dated June 12th the bill of lading is June 12th, and the stamp received by the railway is June 12th.

Q. Have you any further comparison?—A. 04664—invoice number—date April, 1927. B. Syring, Detroit, Michigan, care C.P.R. dock, Windsor, Ontario.—800 amber ale—400 black label—notation, C.P. 287,433—Bill of lading dated 11th 40 April, 1927. B. Syring, care of C.P.R. dock, Windsor—car Number C.P. 287,433—1,000 cartons and the notation "for export", as I have described and to be prepaid.

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(Exhibits 10, A, Bill of lading 10, B, and B 13s, 10, C.)

There are 8 B. 13s covering 350 cartons, dated from April 13th to April 22nd, 1927.

Q. That is all you have been able to find with that car number?—A. All my assistants have been able to find.

Q. And that applies to each case in which you have given evidence?—A. Yes.

Q. Then have you the invoice of that one we had before this morning—Exhibit 8-A is the invoice number, 03529, dated June 28th, 1926 for 1,500 cartons; and the bill of lading is for 1,500 cartons?—A. It is 1,500 cartons.

HIS LORDSHIP: You gave us 1,200 cartons before?—A. Then I was wrong—it 10 should be 1,500 cartons. (Ex. 8-B).

HIS LORDSHIP: The B. 13s had 1,100 cartons?—A. 1,100 cartons.

THE WITNESS: Invoice Number 03545 is the one I am dealing with now.

MR. ROWELL: This will be Exhibit 11-a; the bill of lading will be 11-b; and 11-c will be the B. 13.

THE WITNESS: 03545 is dated the first of July, 1926, to F. Savard, Detroit, Michigan, care of C. P. R. dock, Windsor. 1,500 cartons black label, pints; notation "N.P." 13845, and notation also to C.P.R. dock.

Bill of lading is dated the first of July, 1926, consigned to F. Savard, C.P.R. dock, Windsor—car number "N.P." 13845, 1,200 cartons, for export, as described in 20 the others, and to be prepaid. There are 12 B. 13s, all for 100 cases each, total 1,200 cases—dated 13th and 14th July, 1926—all from Sandwich.

Q. What is the next one?—A. Number 04647, dated the 30th March, 1927, B. Syring, Detroit, Michigan, care C.P.R. dock, Windsor—1,500 amber ale, pints; notation C.P. 286,029. Bill of lading is dated the 30th March, 1927, B. Syring, care C.P.R. dock, Windsor, car number C.P. 286,029. 1,200 cartons, same notation as to export, and to be prepaid. There are 22 B. 13's covering dates from the 5th April, to 12th April, 1927. The customs stamp of Sandwich cover the 1,200 cartons.

(Exhibits 12-A, 12-B and 12-C.)

Q. I notice in the cases you have given us are all in 1926 and 1927. How about 30 the illustrations in 1924 and 1925? A. I could not make a comparison.

Q. You could not make a comparison? A. I could not make a comparison.

Q. Why?—A. In the earlier months of the company, there was no notation of the freight car number.

Q. On what?—A. On the B. 13.

Q. On the B. 13?—A. Yes.

Q. And then you could not possibly have the invoices and bills of lading with the B. 13 to check them up so as to ascertain what the B. 13s related to in the particular shipments in those two years?—A. No.

Q. In 1924 and 1925?—A. Yes. I don't know how you could do it unless it 40 was possibly to make a complete analysis of each B. 13 which would take weeks.

HIS LORDSHIP: Did you take the total?—A. We took the grand total for the whole period.

HIS LORDSHIP: But for the semester for 1924 and 1925?—A. No.

MR. ROWELL: Q. Then on what principle or basis did you select the illustrations you have given us this morning?—A. Entirely at random.

Q. Entirely at random?—A. We had selected them at random. We did not know what we were going to find. There were some 100,000 of B.13s or more, and it was impossible to select them except at random. We endeavoured to do this. I selected all for one name, one name appearing in the company's books as charged
10 with the beer.

Q. Is there any fairer way you know of getting at an idea of the general relation of the B.13s to the shipments than the one you have adopted?—A. I don't know what other comparison could be made unless as I said before it was possible to analyze every B.13 and match it up with some shipment, and I think that is very unlikely it would work out as there are so many of them.

HIS LORDSHIP: Can you explain the difference in the invoice and the bill of lading?—A. Do you mean in the date?

HIS LORDSHIP: No, in the quantity?—A. No, I cannot explain it.

MR. ROWELL: Q. You said yesterday in answer to my learned friend that in
20 making up this exhibit No. 2 which was put in, you had followed the regulations and rulings of the department, as I understood your answer?

HIS LORDSHIP: He was acting under their instructions. He was asked by the department to try and unravel this.

MR. ROWELL: I want to find out what rulings he refers to.

HIS LORDSHIP: You mean something legal, something written?

MR. ROWELL: Q. Something that would be written?—A.—Apart from the question of price which I think we discussed yesterday, I saw a great many rulings.

HIS LORDSHIP: What do you mean by rulings?—A. I am going to describe them. First of all the regulations issued under the statute itself—that is the first,
30 the regulations.

HIS LORDSHIP: That is something tangible.

MR. TILLEY: Q. Could we not have them so that we would know what he is referring to?—A. If you will let me explain what I am talking about.

MR. TILLEY: He says he saw regulations under the Act. Can he not identify them, so that we can have them as we go along.

MR. ROWELL: Q. Have you any rulings by the department under the Act which you have dealt with in connection with this claim?

MR. TILLEY: I object to the question. Let us know what he saw. It is for your Lordship whether they are rulings under the Act or not.

40 MR. ROWELL: His Lordship must determine whether the rulings are good or bad.

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MR. TILLEY: Why can't the witness say what he saw, and produce it, and then we can decide whether they are proper or not.

HIS LORDSHIP: His instructions and what he had in his head. He has made a statement and he stands by that statement, and we have to face the statement irrespective of any instructions or talk or anything he might have had before—that cannot influence the statement.

MR. ROWELL: Quite so. But if there are certain departmental rulings or regulations which were furnished to him—which he has been furnished with, then I submit it is a proper thing, he having answered that in my learned friend's cross examination, for me to ask him what were those. 10

HIS LORDSHIP: But you are not going to ask him to give us the rulings made in the department by some official with respect to thousands of entries that have been made.

MR. ROWELL: No, unless they are general rulings.

HIS LORDSHIP: That is dangerous.

MR. ROWELL: That are applicable to the entire brewing business.

HIS LORDSHIP: What is your object in getting that.

MR. ROWELL: So that your lordship will have before you fully the basis upon which the claim is made up.

HIS LORDSHIP: I will have to approach it from the legal point at the end. Is 20 that right. Is that finding right. Does it comply with this and that, and I will have to find my law in the statute or regulations—but not by the rulings made by the department.

MR. ROWELL: Then I will ask a question if your lordship rules it out. Then I accept your lordship's ruling. My learned friend asked him what he proceeded on.

MR. TILLEY: I did not ask him what the regulations were. I asked him what he proceeded on, and he said on some regulations. If my learned friend wants to prove the regulations as controlling your lordship's decision I quite agree he can do it.

HIS LORDSHIP: But the regulations that are made under the statute—he ear-30 marked it—we know what that is.

MR. TILLEY: Let him produce that.

HIS LORDSHIP: I think we have got them.

(The Registrar.—They are filed as Exhibit C, but are not yet furnished.)

MR. ROWELL: The witness hastily said in his answer to my learned friend's question, he used the regulations, rulings and instructions. Now my question is, what regulations, rulings and instructions—are they in writing?

MR. TILLEY: I asked him what he proceeded on, and he said on something.

MR. ROWELL: If my learned friend asks what he proceeded on, and the witness gives his answer, then I am entitled to know what those things are in respect 40 to which he has answered my learned friend.

MR. TILLEY: If I ask the witness what did you proceed on, and he says on a talk with someone—I did not ask him about the talk.

HIS LORDSHIP: I will have to see whether the statement meets with the requirements of the law. You want to put the cart before the horse?

MR. ROWELL: No. The judgment on the law and the legality is clearly in your lordship's hands—but I want to have before your lordship the basis on which the claim was made up. Your lordship may say that is a good or bad basis.

HIS LORDSHIP: Why don't you ask him—you will have to ask him afterwards did he make the statement according to his instructions.

10 MR. ROWELL: I am only asking for matters in writing.

HIS LORDSHIP: We have so far, the Regulations made under the statute. I think we are all agreed about that. You might show them to him.

MR. TILLEY. I am presuming that my learned friend is trying to get in something produced to this witness that is really not evidence and should not be considered.

HIS LORDSHIP: Those regulations we can identify them. There is no objection. It is the rulings I stop at and wish to consider. I would not allow this witness to relate the several rulings that had been made by the department.

MR. ROWELL: Will your Lordship not allow him to refer to rulings sent to all 20 the port collectors as governing—

HIS LORDSHIP: Those rulings would not bind anybody. It is only the regulations that would bind anybody. I had to consider that in a case—those rulings other than by a Minister, call them what you like, not made under the statute are not binding.

MR. ROWELL: They may be made under a statute, but they may not be binding on your Lordship. Even the regulations made under the statute, purporting to be made under the statute, are not binding on your Lordship.

HIS LORDSHIP: What difference does it make whether we know what instructions this witness had. Why don't you ask him how he prepared that; what principle he 30 adopted; what directed him—that is all we need get. Whether he did it under instructions or not makes no difference.

(The court then took a recess from 1 to 2.30 p.m.)

The court resumed at 2.30 p.m.

ALBERT E. NASH: Re-examination resumed by Mr. Rowell, K.C.

Q. My learned friend showed you certain customs entry forms relating to bottles, which my learned friend presented to you yesterday; and I would ask you, is there anything appearing on those entries which would identify those second-hand bottles with the Carling Co.'s sales?—A. May I see the entries?

Q. Yes. (The entries are handed to the witness).—A. No.

40 HIS LORDSHIP: Is there anything to identify the Carling Co.'s bottles?—A. No. They are imported by the Carling Export Brewing and Malting Co.

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HIS LORDSHIP: They are not in the nature of second-hand bottles used and sent back. Let me see one of them. They are called second-hand. I am taking the one of the 12th January, 1925. Do you read the number of packages as being "one"?—A. One car.

Re-Cross-Examined by Mr. Tilley, K.C.

Q. You were going to look up for me what the tariff item was for returned empty bottles.

MR. ROWELL: Is there any tariff for returned empty bottles?

MR. TILLEY: Q. If there is not, he cannot read it. If there is one read it?—

A. No, I cannot read it. 10

Q. You cannot read it, why?—A. There is nothing about empty second-hand bottles.

Q. What does it say?—A. "Glass—demi-johns or carboys—bottles, n.o.p., decanters, flasks, phials, glass jars and glass bowls, lamp chimneys, glass shades or globes; cut, pressed, moulded or crystal glass tableware, decorated or not; blown glass tableware and other cut glassware."

Q. So that there is no item for returned empty bottles?—A. I have not been over the whole tariff. I have not found any.

Q. You have not found any?—A. No.

Q. They have come in apparently free. What you had there is bottles?—A. 20
The entry is one car of second-hand empty bottles. The rate of duty is 32½ per cent.

Q. One carload of empty bottles—second-hand?—A. Yes, second-hand empty bottles.

Q. And the total value of them is what—the value for duty?—A. The invoice value is \$591.88 on this particular entry I have in my hand. The value for duty, \$392—rate of duty, 32½ per cent.

Q. One column is headed invoice value in currency; and the other is value for duty in dollars?—A. The value for duty in dollars is the value at which they compute the duty. 30

* Q. What does the column mean, invoice value in currency?—A. I would think that would mean that was the price they paid for them.

Q. And the other is?—A. The price at which they are valued for duty.

Q. How would there be a difference between the two?—A. There might be a difference. It is an ad valorem duty and declared at presumably for home consumption.

HIS LORDSHIP: Would it all mean this, while there is no turn over for empty bottles, that is all governed by the value or price. They may have paid in duty in the first place when entering Canada on \$600—then they were filled, and they went out and now they are coming back entered as second hand. They would say you 40

would not pay \$600, but you might pay on \$450—and they would charge on that price?—A. I could answer that if I saw the invoice value.

HIS LORDSHIP: Is there anything turning upon that?

MR. TILLEY: All I want to ask you are they entered as second hand bottles?—

A. They are entered as such.

Q. How many carloads are there?—A. I think they were all in one car. I will have them added up to ascertain the number of cars.

HIS LORDSHIP: Is there anything turning upon that?

MR. TILLEY: It shows Carling's bottles coming back from the United States.

10 These are all brought from the United States.

MR. ROWELL: But we say that there is no evidence there that they are Carlings' bottles. There is nothing but second hand bottles.

MR. TILLEY: Q. You do not find any entry that they are in the second hand bottle business, buying and selling bottles?—A. I do not think I can answer that without referring to my notes.

Q. If you do, I would like to have what you have to say about it. And the Carling bottles, are they bottles of their own shape?—A. I don't know.

Q. You don't know whether they are or not?—A. No.

Q. They are not dealers in second hand bottles, buying them and selling them
20 again?—A. We did not find they were.

Q. So far as they were purchasers of bottles, second hand and new, so far as their books show, they were bottles to be used by them rather than to be sold?—A. I think there is no doubt about that, they were to be used.

Q. Now then dealing with the B.13s will you please let me have a bundle of the B.13s for 1926, say June and July, 1926?—A. Any bundle?

Q. Any bundle. Do they go according to dates or ports?—A. I think they go according to ports and dates.

Q. Did you go through these B.13s to ascertain whether in all cases the number of the car was on the B.13?—A. We did not go through them with that
30 object first. We found when going through them the number of the car was not on all of them, but that was not the object.

Q. Can you say whether there were any B.13s during the period you were examining the B.13s, that had no number of the car on them at all?—A. Yes, there were.

Q. What did you do with the B. 13's that had no car number on them—did you make any use of them in your analysis of the B.13s.—A. No.

Q. So that according to your evidence as it now stands, there would be B.13s without any car number on the B.13, and the B.13 would represent some portion of the invoices you were dealing with?—A. I cannot answer the second portion of
40 your question.

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Q. It might be. Please be frank with me, even if it is against the Crown?—
—A. The point I did not take into consideration, in the B.13s was the car numbers on them.

Q. I am asking you whether it would be possible that some of the B. 13's on which there were no car numbers, would represent portions of the shipments covered by some of the invoices you have produced—whether that may be so?—A. I could only answer that if I could compare them.

Q. What do you mean by comparing them?—A. Matching them up.

Q. So far as your information goes now that might be so?—A. It is possible.

Q. The form does not require the car number to be given at all?—A. I do not think it does.

HIS LORDSHIP: The B.13 is nothing else but a document to show that the goods went out of the port?

A. There is no place for the car number.

Q. But you have found it stamped on some of the B.13s or printed?—A. Yes, stamped.

HIS LORDSHIP: Stamped, Customs?—A. The number is stamped in this part— with a rubber stamp.

Q. I open this bundle up that was handed to me of B.13s 52090 or 52091, and I see these are Sandwich, C.P.R. to Windsor, one without a car number on; then 20 another one with a car number; then another without a car number; another one without a car number; another one with it—that is September apparently 1926—that is the time they would be filed in Ottawa?—A. Yes.

Q. You are not suggesting are you that unless you find the B.13s with the car number on it for the quantity of goods shown by the invoice, that that indicates the goods covered by the invoice did not go to the United States?—A. I am not suggesting anything.

Q. And then, I notice in one case, you have a larger amount covered by B.13s with the car number stamped on than is covered by the invoice?—A. Yes.

HIS LORDSHIP: That is covered by the books. Is the Number of the invoice 30 the same as in the books?—A. Yes.

MR. TILLEY: You only found that in one instance?—A. The one I gave you; I don't know whether we found more or not.

Q. I suppose it would be possible for the same car to make a second journey with beer?—A. I would think so.

Q. That is to say, there is nothing in the information you have before you to prove that the car did not make a second trip?—A. No.

Q. You do find accounts showing large purchases of new bottles?—A. That is what I want to refresh my memory from my notes. There are accounts showing purchases of bottles.

Q. I am told they run into many thousands of dollars every week?—A. I am not able to say without referring to the items to confirm that.

Q. Will you?—A. That is so. The financial statements of the company would show the total from that company—that is one of the expenses of the company.

Q. Can you compare the price with the new as compared with the price for the old—what they paid for the new, compared with what they got them in from the United States for?—A. I should think that would be possible. I may have to ask the company to produce the invoices. That would be quite possible to tell if they have the invoices here.

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10 Q. Give me the total per month sold, and the amount that went to the border city?—A. Yes.

HIS LORDSHIP: For how long?

MR. TILLEY: During the period.

HIS LORDSHIP: They only came into existence in 1924—for the period in question?

MR. TILLEY: Yes.

MR. ROWELL: Your lordship will note that I object to this as being irrelevant, and not appearing in the issue here.

HIS LORDSHIP: Subject to your objection, and reserving all of your rights, I will allow it.—A. There are 149 entries covering bottles, customs entries, and two
20 covering barrels. There are two instances where two copies of the entry are included in duplicates.

Q. What does that mean, is each sheet a carload?—A. Yes. It would be 151 carloads.

Q. 151 carloads of bottles described as second-hand bottles from the United States to the Carlings at London?—A. Yes.

HIS LORDSHIP: Did you not say 149 for bottles?—A. Yes. There are 151 carloads of which 149 are for bottles, and two are for kegs.

Q. I notice that there is quite a variation in the size of a carload, so that I thought we could get it, some exact amount, but apparently you cannot give it.
30 The first one has 110 gross; and then another has 427 gross; and 378; and some do not say—some 360—then 250, 260, and as you say some do not specify it?—A. Yes.

Q. You were speaking of the way the figures were made up. How many gallons do you take to a barrel?—A. 25 gallons to a full barrel; 12½ gallons to a half barrel; 6¼ gallons to a quarter barrel; and 1·7 gallons to one dozen quarts; and ·90 gallons to one dozen pints.

Q. Returning to the first one you mentioned?—A. Twenty-five gallons to a barrel—I used the word full barrel—I mean a full barrel, what they call a barrel.

Q. You do not use 26 gallons?—A. 25.

Q. I was instructed you used 26 gallons?—A. 25 gallons.

40 Q. Could you put a check on that to see whether in the actual computation

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you did not use 26 instead of 25. I am not saying you are wrong—but I would like you to put a check on it?—A. I certainly will, yes.

Q. Now you said as well, and your statement is put in now and shows it, that you made some adjustment about the freight?—A. Yes.

Q. Will you explain what is involved in that statement?—A. Yes. The freight allowed in the first column was all the freight which the company claimed. We only allowed the total amount the company had actually paid taken from the purchase records of the company. Do you wish my reasons?

Q. Yes, give me your reasons?—A. The reason involves a ruling of the department, that is why I desire to give it. 10

Q. I am not concerned with why you did it. There is nothing from the books of the company that makes it a different proposition to deal with than from the books of any other company?—A. No.

Q. It is the ruling you applied to all?—A. Applied to all breweries.

Q. What I am concerned with. What is the difference in point of fact,—supposing the company trucked beer, would you exclude the expense of trucking?—A. Yes. In their own trucks, yes.

Q. That is the test you applied, whether the company paid it to a common carrier?—A. I will use the word independent truck, a common carrier independently of it as a company. 20

Q. And then if it did not do so, you did not allow it anything as an expense for transporting goods?—A. No.

Q. Although it would cost money?—A. Although it would cost the company money to truck it, if it had its own trucks.

Q. I would like to know what the point is, when it is penalizing the company because it did work itself rather than pay the money out. Why not allow them the expense?

HIS LORDSHIP: I suppose it goes in the overhead, in the price of the beer.

Q. I wonder why it was disregarded?—A. That is a matter the officials should answer—that involves a ruling by the department. 30

Q. I am not concerned with a ruling?—A. The money paid to an independent carrier has been allowed.

Q. And if not done by an independent company the company has had to transport it at its own expense?—A. I think it did.

Q. Let me assume that that is not a justifiable thing to draw. If you were not proceeding on the differentiation between money paid to an independent party and money expended by the company itself, would the freight charges or expense of transportation as it stood in the first statement remain, or do you criticize that provided the principle should be adopted that they should get their expense of trucking if they did it themselves?—A. You mean if they are entitled to the deduc- 40
tion what they charge as the cost of trucking?

Q. Yes?—A. If that was allowed then the claim would be somewhat reduced in the second statement.

Q. As I understand the question I am asked to put to you, it is this. That in your statement which is Exhibit 2, you do not make any deduction for freight—that may be the point you have been speaking to me about. You did not make any deduction for packages,—and it is suggested to me, and you will be able to tell me whether it is right or not, that had you done so, there would have been an overpayment of \$910.79 instead of an overpayment of \$288.66 as shown in your exhibit No. 2?—A. Assuming this to be a correct statement?

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10 Q. It is the principle I want to get at?—A. The principle behind the allowances was this. We allowed the freight that was paid to the independent carriers.

Q. In that month (indicating) was no freight paid at all?—A. It must be so. I have overlooked another point in connection with freight I should have mentioned. In addition to allowing the freight paid the independent carrier, we did not allow freight for the earlier months of this claim for the reason that it was not shown as a separate item on the invoices that the company sent it to the purchasers of the beer—that is the reason why in the month of April no freight is allowed. Late in 1925 the company did commence to show on its invoices the items of freight separately, and from that time on.

20 Q. That freight was allowed if paid?—A. If paid.

Q. To independent carriers?—A. Yes.

HIS LORDSHIP: Was it just a matter of showing it as a separate item on the invoice?—A. Yes.

Q. What is the point. That seems arbitrary. Possibly there was a reason back of it?—A. For that you must refer to the Regulations under the statute which are filed. I could refer to them.

Q. Yes, do?

HIS LORDSHIP: There has been a copy filed.

30 Q. What page?—A. (Witness is handed Exhibit "C"). The item I refer to is on page 44 of this book, Exhibit "C," section 6. It reads the "Consumption or sales tax is not to apply on the charge for freight for transporting a taxable article from a licensed manufacturer or producer to the purchaser, provided the charge is shown as a separate item on the invoice on which the tax is accounted for by the manufacturer or producer."

Q. You say that covers this case?—A. I am not giving a legal interpretation of it, but that is what we followed.

Q. Has any doubt been raised about it?—A. No.

Q. It seems to you to be clear?—A. Yes, it seems to me to be clear. That is the first treatment afforded in respect to credits allowable. Then in respect of the 40 packages returned—

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HIS LORDSHIP: You mean packages or containers?—A. I was going to use the word containers. These have all been allowed where the credit notes indicate clearly that they were returned empties. Nothing has been allowed where no credit notes were produced, or where not seen by us.

Q. Did you ask for them?—A. I think we asked for all the credit notes.

Q. What do you mean by credit notes. Would these items that we have been speaking about in this bundle be credit notes?—A. Those are not credit notes. Those are entries for importation.

Q. Let us call them what you like, but here is money paid by the company. Would credit have been given for those payments if it was in the form of a credit 10 note?—A. Yes. If in other words this document read that they were crediting John Smith for returning those empty bottles in that entry, John Smith being the purchaser of their beer it would have been allowed.

HIS LORDSHIP: The credit note is between the vendor and the purchaser?—A. Yes.

MR. TILLEY: Q. If we put it this way, that the empties must be returned by the purchaser direct?—A. I don't think we can put it quite in that way now.

Q. May I put to you another question, and I will not embarrass you about answering it fully. Supposing that in the regular course of business with your checking up of the brewery, you found that these were empty bottles returned from 20 the United States or wherever the beer had been consumed, and a reasonable amount included there for collecting them and getting them and bringing them back, would that be treated as a credit?—A. I cannot quite answer that. What would be treated as a credit would be the amounts passed as a credit between the vendor and purchaser. What is done in practice is to make an accounting at the end of a monthly or a 12 monthly period—credits charged out to customers less credits returned by customers, they are never the same. They never work out exactly. The difference, if there is more charged out than has been returned it is taxable—when I say is taxable, would have been taxed by us in making up the claim.

Q. Because the sales tax would cover the sales price?—A. Would cover the 30 sales price. But what we have allowed is the empties or containers for which credit notes have been issued to customers.

Q. Must the credit note be issued to the customer?—A. To a customer.

Q. Are you speaking of the form, the form or matter of substance when you say that?—A. Matter of substance.

Q. That is to say you would give credit for an item such as we find here—the price might come to \$500 on this bill for the container, the credit?—A. If the bottles covered by this entry had been credited to the purchaser of the beer, or a purchaser of the beer, credit given to him on his account in the books, then we would have deducted it from the sales.

HIS LORDSHIP: You mean the difference between purchasing second hand empty bottles,—the return by the purchaser—as bought full and returned empty?—A. That is what we are trying to do.

MR. TILLEY: Q. I am going to ask you to assume that they are returned as empties,—that they were bottles filled and sold with beer in them by the Carlings, and the beer was consumed,—and the person who consumed the beer did not consume the bottle?—A. They would be credited to the purchaser.

Q. If they had credited them you would have allowed it?—A. Yes.

Q. But you would not have allowed it if it was made to any other person than the purchaser himself. Do you tell me that?—A. I do not go that far. I say if there is evidence of the purchase of bottles, for instance from a bottle broker, I mean, who collects them and sells them back to the brewery that would not be deducted.

Q. That would not be deducted. Although if the allowance was made to the person who bought the bottle with the beer in it, you would credit it?—A. If the allowance is made on the selling price of the beer.

Q. Supposing the customer paid his bill in full, and he gives the bottles to some person who turns them in and gets credit?—A. I think provisions has recently been made for dealing with such a case as that.

Q. By the regulations?—A. It is a new ruling of the department. It has been a difficult point.

HIS LORDSHIP: You have Regulation 7?—A. This is some other ruling issued by the department, and we will get to that when we come upon this point.

MR. TILLEY: What date?—A. I don't know the original date. I have one under January 20th, 1928.

Q. That ruling would not concern us. That is the only way you can state the rule, when you went through these books of ours. You have explained what the rule was?—A. I have explained what we have done in the absence of more complete information as to how the containers are treated. What we have done is to allow all credits for containers where the credit notes have been produced and indicate that the allowance was made.

Q. The allowance was made to the purchaser and not to anybody else?—A. Yes. I don't know whether it would be the original purchaser. It is impossible to say that. For instance take the account to Savard, if Savard got credit by a credit note for bottles, I don't know whether Savard was the first purchaser of those bottles—but the credit is allowed to him where the credit is given, where the credit notes indicate they were returned bottles.

Q. The man who gets the credit need not have bought the beer in the bottles originally. He must be a purchaser of beer from the Carlings, and if he is a purchaser of beer he can get credit?

HIS LORDSHIP: There is nothing unreasonable in that. They would not give credit to anybody but the purchaser.

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MR. TILLEY: Q. Let me apply your rule. Supposing Savard bought ten gross of beer and happened to be able to turn in 20 gross of bottles, and it was credited in his account he being the purchaser of the Carling beer, you would pass that?—

A. I do not think I can say that. I don't think I would.

Q. Now, then just a question or two about the account you referred to at Windsor. It is rather difficult to follow your statement although you made it as clear as it could be made at the time about the account at Windsor. But I gather from a certain date you took all the credits to a Windsor bank account the details of which were not in the company's books at London and treated all the credits as being the purchase price of the beer? A. Yes.

10

HIS LORDSHIP: That is right?—A. Yes.

MR. TILLEY: Q. And you took that as a lump sum. I mean it did not result in so much per case. It is just the aggregate amount?—A. Yes, spread over the months.

Q. HIS LORDSHIP: Over what months, can you identify the months?

MR. TILLEY: Q. I think they appear in that statement, Exhibit No. 2?—

A. From August, 1926.

Q. Well, from August, 1926. In August you added \$87,592.81?—A. Yes.

Q. In July, there was no such addition?

HIS LORDSHIP: Where do you find that?

20

MR. TILLEY: In the third item.

HIS LORDSHIP: In 1926?

MR. TILLEY: Yes.

HIS LORDSHIP: Yes, I have got it.

MR. TILLEY: Q. Now, then in July you took \$286,406. You have to add the total, that is for all the beer, is it not? Now can you tell me what addition you made to the price per gallon by adding the \$87,592.?—A. It might be worked out.

Q. You have never worked it out?—A. No.

Q. You do not know how much it is per gallon?—A. No.

HIS LORDSHIP: Would not that be at \$3.25?—A. We used what came into the 30 bank account.

HIS LORDSHIP: As a result what price do you put on the beer?

MR. TILLEY: Q. You found a bank account in Windsor?—A. Yes.

HIS LORDSHIP: Have I understood that point. Although the beer was entered at \$1.75, at London, it turned out that they realized with what was in the bank, \$3.25?

MR. TILLEY: No.

HIS LORDSHIP: Is not that your contention?—A. No, not exactly,

HIS LORDSHIP: Well, make it clear.—A. I don't know that it is my contention.

HIS LORDSHIP: Your view?—A. We added the whole of the amount that was 40

in the bank account as representing the price received by the Carling Co., from the purchaser of the beer—that is why it was done.

HIS LORDSHIP: The proceeds of the beer?—A. Yes. It may be that it might work out slightly less than \$3.25.

MR. TILLEY: Q. You do not know?—A. I think that is probable. I think that it is more than probable. Well, we know pretty well it did work out less than \$3.25. Now I am getting into another realm.

Q. Probably less than \$3.25?—A. Probably less than \$3.25—that is on the basis of \$3.25 for two dozen pints.

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10 Q. You took the total credits of the account?—A. Yes.

Q. Although the total credits were not in fact transferred to London?—
A. They were not in fact.

Q. You did not take such of the moneys in the bank account that went to the company at London?—A. No.

Q. And did you continue that right down to date?—A. We continued that down, not quite—with the exception of one month.

HIS LORDSHIP: Q. With the exception of April, 1927?—A. Yes, with the exception of April, 1927.

MR. TILLEY: Q. Have you got that other information?—A. If you will let
20 me give it to you as soon as it comes.

HIS LORDSHIP: You were to get the total amount of beer?—A. It is coming up from my office.

By Mr. Rowell, K.C.

Q. My learned friend asked you about the B.13s put in—if there might not
be a second trip of the same car, and I understood you to say that was possible?—
A. Yes.

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Q. Have you looked at the B.13s to see whether they are all dated on the date of the car shipped, or whether they are dated on different dates?—A. They are dated at London.

30 Q. All dated at London?—A. Not speaking of the customs stamp date.

Q. They are all dated at London, but there was one exception you pointed out this morning, where it went in as C and D?—A. Where I split it in one case—that was my object in splitting it.

Q. Apart from that they are all dated the same date in London,—all dated on the same date at which the bills of lading and invoices are dated?—A. Yes. I think that is so.

Now, I think we perhaps can get the information you desire. The information I am now giving is the total exports of alcoholic beverage during the fiscal years ending 31st March, 1924, March, 1925, March 1926—and the six months period
40 ending September, 1926 as reported to the government and included in their blue books.

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HIS LORDSHIP: Ending September, 1926?—A. September, 1926.

MR. TILLEY: That would be three years and six months?—A. Yes. Then Beer, Canadian produce, 1924, 3,192,491 gallons—value, \$5,335,668.

HIS LORDSHIP: Is that a statement you are going to put in?

MR. TILLEY: Yes.

THE WITNESS: 1925, gallons—3,142,048—value \$4,860,984. Then 1926, gallons 3,786,164, value \$5,136,103.

And for the six months to September, 1926, gallons 2,861,753, value \$3,727,775.

In addition to that in 1924 there was a small amount of foreign produced beer.

Q. But it is shown on the statement?—A. Yes. That is Canada as a whole. 10

Q. That is export?—A. That is reported exported.

(The statement is put in as Exhibit "D".)

MR. ROWELL: It will not be necessary to renew my objection to these exhibits.

THE WITNESS: Then the next statement is the exports of spirits through the port of Windsor and outports. This is only given for the six months period ending the 30th September, 1926—and the six months period ending March, 1927.

Q. Why?—A. We did not compile it for the earlier years for those ports. Those two six months periods were added together—

MR. TILLEY: Q. Are we going to have the items here to compare?—A. No. This is for the 12 months period taking in the last six months of the previous statement, and including six months ending March, 1927. But it would take a little time to compile a statement so that it would be comparable with the previous statement.

HIS LORDSHIP: I think it would be better?—A. I can have that done tomorrow.

(Statement is put in as Exhibit "E".)

MR. TILLEY: Q. I thought you were going to give us as well the total beer produced?—A. Produced by all the breweries?

Q. Yes?—A. I am not aware that such a record is kept. I think it would mean a compilation of each of the 86 breweries.

MR. TILLEY: You can tell me if I am wrong, when I suggest that you are the 30 authority for the statement that 80 per cent of the beer manufactured in Canada went out through Windsor?—A. If I made the statement? I don't know—but I know it was a large percentage.

MR. ROWELL: Say what you know—what you can check up.

MR. TILLEY: Q. You could check that up?—A. Yes. You say produced—you mean sold?

Q. Sold?

HIS LORDSHIP: Do you mean sold or shipped?

MR. TILLEY: It might be a difficult thing to get.

THE WITNESS: I mentioned and I spoke to what was reported as exported—40

that is the quantity of beer reported as exported through Windsor, as compared with the quantity of beer exported for the whole Dominion, that is what you want?

MR. TILLEY: Yes.

Q. That is comparing the beer at Windsor with other points?—A. Yes.

MR. TILLEY: Q. I would like to know how Windsor compares as an exporting point with other places which are said to be exporting points?—A. That is, as I understand you.

MR. ROWELL: Q. There is one question subject to my objection. The statements you have given my learned friend, are they compiled from the government returns?—A. They are compiled from the government statistical records.

Q. The government statistical records as published?—A. Yes.

Q. And that is based on the government statistical record of the B.13s returned?

HIS LORDSHIP: It could not be otherwise.—A. I think I can say that. I do know that, because I know how they built it up.

MR. TILLEY: Q. On all that beer, the excise tax is paid is it not—I mean there is another tax on it?—A. No. There is an excise sales tax, and a gallonage tax which are now being claimed. Apart from rice beer there is no other tax except the tax on malt unreleased from bond.

Q. And then the rice beer is fifteen cents extra per gallon?—A. Yes.

Q. When you refer to rice beer, that is beer containing anything but malt—is that statutory?—A. I do not recall what the statute says now.

(This concluded the examination of this witness).

ARTHUR MORGAN COWIE: Called, sworn, and examined by Mr. Rowell, K.C.

Q. What is your position in the Dominion Bank at Windsor?—A. I am the Manager.

Q. For how long have you held that position?—A. Eight years.

Q. Have you an account in the Dominion Bank at Windsor for the Carling Export Brewing & Malting Company?—A. Yes.

Q. When did that account open?—A. I could not say definitely without referring to my records.

Q. Well, look at your records and tell us?—A. The account was opened on the 12th May, 1924.

Q. In the name of the Carling?—A. Export Brewing and Malting Company Limited.

Q. Who were the signing officers of that account?—A. Any two of three—Charles Burns, Marco Leon, and Harry Low.

Q. Do you happen to know their relation to the Carling Company?—A. I believe they were the proprietors.

Q. The proprietors of the Carling Co.?—A. Yes.

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No. 4

Arthur Morgan
Cowie
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No. 4

Arthur Morgan
Cowie
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Q. Who was President of the Carling Co.?—A. The President was Charles Burns.

Q. What was Mr. Low's position?—A. He was Vice-President.

Q. And what was Leon?—A. Secretary-treasurer.

Q. How long did that account continue?—A. Until March 26th, 1928.

Q. It continued during the whole period?—A. Yes. So far as our books are concerned.

Q. Was it closed out at that date?—A. The last entry, yes,—March 26th, 1928.

Q. By a withdrawal?—A. By a cheque withdrawing the then balance.

Q. Amounting to?—A. \$52,828.52. 10

Q. Then have you any records connected with the account in cheques showing the nature of the transactions in the account?—A. We have no cheques. They are all given up at the end of the month.

Q. Have you any deposit slips showing the nature of the deposits relating to the account?—A. I have practically all the deposit slips.

Q. Will you just let us see some of them. Take a bundle for each year. Are these the deposit slips for the whole of the year 1926?—A. I believe so (Exhibit No. 13).

HIS LORDSHIP: You call them deposit slips?—A. Yes. We call them deposit slips. 20

HIS LORDSHIP: For the whole year, 1926?—A. I believe so.

HIS LORDSHIP: How many are there?—A. I have not counted them.

HIS LORDSHIP: I wish you would count them?—A. There are 147 there, but they will have to be checked over—the top one is January 26th. They would have to be segregated by months. There are 147 in that lot.

Q. Put them all together—there are 147 in that bundle?—A. Yes.

HIS LORDSHIP: That exhibit will contain 147.

MR. ROWELL: Q. I notice on the margin of some of those deposit slips certain names—what would the names indicate to you?—A. That is put on by the customer. We do not know anything about that. The depositor may make any notation he 30 wishes, and we do not know exactly what it represents.

Q. The upper part of the deposit. Take one as an example—it starts off with Dominion Bank—Credit Carling E. B. & M. Co., Limited (Export Brewing and Malting Co.)—then deposited 5th January, 1926?—A. Correct.

Q. And there are certain amounts—what does that indicate?—A. Currency.

Q. That indicates currency?—A. Yes.

Q. That is a deposit of currency?—A. Yes.

Q. Then below that comes cheques?—A. Yes.

Q. And then below that are certain names, and amounts opposite the names?—
A. Yes. 40

Q. You are receiving a deposit,—what would those names represent?—A.

They are put on by the customer for some reason of his own, probably to indicate to him from whom the cheque came or what gentleman handed him the cheque. As far as we are concerned we are not interested in that. We lose track of that the minute it is cleared. (Objected to by Mr. Tilley).

HIS LORDSHIP: It does not mean anything to him.

MR. TILLEY: That is what it means to him—

HIS LORDSHIP: It might be a cheque, signed by that name.

MR. ROWELL: Q. I see here is one with Caplan on it. Do you know a Caplan in Windsor?—A. I have heard of a man by that name.

10 Q. Do you know a man by the name of Fall?—A. No.

Q. Nash?—A. Probably he was there.

Q. Verrest?—A. That does not mean anything to me.

Q. Koven?—A. I know a man by that name.

Q. Where does he live?—A. I don't know. I have a customer by that name.

Q. Carrying his bank account with you?—A. Yes.

Q. In Windsor?—A. Yes.

Q. Does he live in Windsor?—A. I don't know whether he lives there now, he did.

Q. He did live there?—A. Yes.

20 Q. Then I see the name Bermuda appears hereon a number. Do you know what that would?—A. I have not anything on my books to signify what it is.

Q. Paquette, do you know him?—A. Just by name.

Q. Is he living in Windsor?—A. I have heard the name but I don't think I know anybody by that name.

Q. Then you produce the deposit slips for 1924?—A. Yes.

(That will be Exhibit Number 14).

Q. And the deposit slips for 1925?—A. Yes (Exhibit No. 15).

Q. And they are made out in the same form as the others?—A. Yes.

Q. Have you a bundle for 1927?—A. No.

30 HIS LORDSHIP: Since there are some in the bundle of 1926, we might call Exhibit No. 13, deposit slips for 1926 and 1927—will that cover it?—A. Yes.

What you have there looks like a full set for 1924. I asked my clerk to get them all out.

Q. Tell us if there are any duplicates?—A. There are no duplicates. I brought the whole set.

Q. Will you look to see if there are any duplicates?—A. I know there are no duplicates.

MR. TILLEY: Q. Does it take those two bundles to make up the 1924 deposit slips?—A. No. That bundle there is apparently 1924, and this here is 1924.

40 Q. And there is no reason why there should be two separate bundles?—A. No.

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Q. Who made the deposits in connection with this Carling account in Windsor?
A. Various clerks from their office.

Q. From whose office?—A. The Carling office.

Q. Give me the names of any one, or two or three—A. I don't think I know their names back two or three years. They changed their book-keepers frequently, but anyone might bring in the deposit.

Q. Can you give me the name of anyone who brought in a deposit?—A. Mr. Harry Low has brought in deposits. His brother S. Low may have. I cannot say for certain who brought them in, but it is usually one of their clerks and I do not know their clerks by name. 10

Q. I see a number here in one name, deposited by a number of slips?

HIS LORDSHIP: Is there not a blank at the top of the slip to show to whom a member has deposited?

MR. ROWELL: Yes.

Q. I see here the name of Kennedy, and on others J.A.K.—can you tell me who that refers to?—A. I do not know who J.A.K. is—presumably it is the name of the clerk who made the deposit. Some of them are blank.

MR. TILLEY: What year is that?

MR. ROWELL: 1925.

Q. There appear to be quite a number in Kennedy's name?—A. Yes. 20

Q. Did you see Kennedy yourself in connection with these deposits?—A. Not particularly. I knew the man to see him.

HIS LORDSHIP: Did you give his first name?

MR. ROWELL: Most of them are just Kennedy, and some are J. A. K.—Can you tell me who J.A.K. is?—A. Not definitely, but I presume it is Kennedy.

Q. And you knew Kennedy?—A. Yes.

Q. What was his position in the Carling Company as you knew him in dealing with you?—A. Book-keeper.

HIS LORDSHIP: He was their book-keeper at their office in Windsor?—A. Yes.

MR. ROWELL: Q. There is one on the 21st August, 1925, J. A. Kennedy—a 30 deposit slip?—A. Yes.

Q. On the 13th August, I see it is full J. A. Kennedy?—A. Yes.

Q. Others are Kennedy, and others are J. A. K.?—A. Yes.

Q. And have you any other documents in connection with that account?—
A. No.

Q. You have produced everything you have in connection with it?—A. Yes.

Q. I presume you want to keep your original sheets?—A. They have a copy of this particular account, the auditors. They made it in my office.

MR. ROWELL: Then I presume my learned friend will agree that we may put in a copy, and let Mr. Cowie take back his original? 40

MR. TILLEY: I would like to have it compared.

THE WITNESS: I am willing to have that done.

MR. ROWELL: It would be better if you would leave the account with us for a few days. A copy could then be filed after it is compared with the original, and the original can be returned to you.

HIS LORDSHIP: Is that your original?—A. This is my original out of the ledger. I should have it on my files.

MR. ROWELL: If your lordship pleases, this might be retained until a copy can be made, and put in, and then this could be released to Mr. Cowie.

HIS LORDSHIP: And in the meantime it may subject to inspection by the other 10 side.

MR. ROWELL: This will be Exhibit No. 16.

HIS LORDSHIP: What do you call that exhibit? — A. The ledger sheets covering the account.

MR. ROWELL: And I see on the face of the account it has Charles Burns, President, Marco Leon, Secretary-Treasurer, and Harry Low, Vice-President?—A. Yes.

MR. TILLEY: I don't mind the account if it is merely a statement of the items, but if there is a notation on it by the bank. Is there anything of that kind?—A. Occasionally they put a C.B., that indicates that a cheque has been charged back. You will notice it there, and notice it over there, but they do not always put it in but 20 they are unimportant.

MR. ROWELL: Q. Have you an account in the bank at Windsor of Harry Low, a special account?—A. We had.

Q. What was the date on which that was opened?—A. The 23rd May, 1925.

Q. And it ran to what date? A. April 12th, 1927.

MR. TILLEY: I object to any evidence with regard to this account—it is not evidence whether it was closed or not. It is not evidence against me at all.

HIS LORDSHIP: I do not know. Have you traced it? There is no objection to producing it.

MR. TILLEY: I object to it—I rise to object to it—it is not evidence against my 30 client. There may be any number of accounts there, and there is nothing to show any connection with the Carling Company as yet; and my submission is it is not evidence, and the witness can not be reading from some account in their books at the bank and make evidence against me the Carling Brewing Co.

HIS LORDSHIP: I will allow the filing of it, and will reserve all of your rights. This is the class of case I want all information.

MR. TILLEY: That may be so if it is information pertinent to what we have to determine.

HIS LORDSHIP: He is an officer of this company.

MR. TILLEY: That is perfectly true; but that does not make his transaction as 40 against the company.

HIS LORDSHIP: They may be connected.

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MR. TILLEY: My learned friend should connect it before he puts it in.

HIS LORDSHIP: I will allow it to be filed subject to your objection.

MR. TILLEY: We will get a lot of material on the record, in my estimation, quite irrelevant for the matter we have to determine here.

HIS LORDSHIP: We have some that is strictly irrelevant—I am going to get all the evidence I can. In this class of case I cannot shut it out.

MR. ROWELL: Q. Then it ran to what period?—A. April 12th, 1927.

HIS LORDSHIP: I ask whether the account was closed up on that date?—A. It was closed on that date.

HIS LORDSHIP: There is nothing to his credit after that date?—A. No. 10

MR. ROWELL: Have you the deposit slips in connection with that account?—
A. I have.

Q. Will you kindly let me see the deposit slips in connection with that account?

MR. TILLEY: Is that within your lordship's ruling too?

HIS LORDSHIP: They will go in the same with account. It may turn out that we may get some light out of it. It cannot hurt anybody.

MR. TILLEY: All irrelevant evidence admitted hurts the party against whom it is submitted—that is why we have rules of evidence.

HIS LORDSHIP: This is not irrelevant.

MR. TILLEY: It is entirely irrelevant. 20

HIS LORDSHIP: You have that class of evidence that bears on the principal facts of the case—but there are in every case a great many ramifications that link up the principal facts, and which are allowed because you cannot strictly speaking say they are irrelevant. They are linked to some extent.

MR. TILLEY: We could go on following links until we would be so far from our case that we would not know what we were trying.

HIS LORDSHIP: There is lots of evidence in every case that is not relevant.

MR. TILLEY: I am suggesting to your lordship a means of stopping it.

HIS LORDSHIP: Then we will have to change the law.

MR. TILLEY: How can it be supposed that on the mere production of an account 30 of Harry Low we will find out whether these goods were exported, or short circuited back to Canada.

HIS LORDSHIP: I don't know. I am not going to shut the door.

MR. TILLEY: There are three of us who do not know—my learned friend does not know—from his silence he does not know.

MR. ROWELL: I want to show the proceeds of the Carling Company's beer. It is not entered in the Carling Company's books.

MR. TILLEY: Is this the money that was transferred by the auditors. He (the auditor) said I went through and I totalled up all the credits, and I transferred that as the price of the beer? Is my learned friend going to add Mr. Low's account 40 to the price of the beer?

MR. ROWELL: The statement included certain amounts carried to the credits of other accounts in the Carling Company's books.

MR. TILLEY: It is one account.

MR. ROWELL: No. Look at the statement Number 2. Mr. Nash claims that certain items were carried to the sales accounts. One was the export funds account,—and there were certain other accounts. Your lordship will see certain items added to the sales in September and October—at least in 1925, in December,—in January, February and March—

MR. TILLEY: Let me see them.

10 MR. ROWELL: 1924, December— 1925, January, February—

MR. TILLEY: You refer to January, 1925.

MR. ROWELL: The items added back to the sales. Look at the third item back, claim under January, 1925, \$10,700.

MR. TILLEY: Does that come from the Low account?

MR. ROWELL: I will try and trace the moneys. I can only make a step at a time.

MR. TILLEY: My learned friend has had an inquiry for a year or so, and now he starts with another. It is clear the auditors have gone through these books. They have copies of the accounts and deposit slips—and Mr. Nash has told us what 20 he brought into his sales accounts, and what he brought in the Carling—and I made no objection to that because he said he adds the credits in that account—and therefore it becomes necessary to see what that is. But when it comes to Low's account, I don't know where it ends. My learned friend says he may connect it up with something. We must know why it is being put in. I must have some ground for cross-examination. I must know whether it is relevant or whether it is understood to be relevant.

HIS LORDSHIP: You cannot be hurt. The Manager is here. He produces the document.

MR. TILLEY: Surely I am not to be in a position of having bank accounts put 30 in merely on the statement I am not hurt?

HIS LORDSHIP: I am reserving all of your rights.

MR. TILLEY: You can reserve all my rights and put in the account of the T. Eaton Company.

HIS LORDSHIP: I cannot say at this stage what is relevant and what is not. I cannot shut him out from putting it in if it is connected.

MR. TILLEY: Must he not say how it is connected.

HIS LORDSHIP: Perhaps Mr. Rowell you might explain. I foresee what Mr. Tilley means.

MR. ROWELL: My instructions are with reference to one point that moneys are 40 transferred from the Carling account instead of being transmitted to London and appearing in the Carling books, are transferred to the credit of this account.

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MR. TILLEY: It is a very simple matter to follow certain items—but that is no reason for putting in the Low account as though the production was proof of the correctness of the items, or evidence against me. Surely he can trace it, without merely calling a witness to produce the account and file the document. I am surely not to have all of these accounts put in and then have to surmise what use is going to be made of them.

HIS LORDSHIP: We will not surmise. It will have to be established clearly.

MR. TILLEY: My learned friend is putting it that there may be certain items that may go to an account. Let him trace it from the Carling account.

MR. ROWELL: I cannot call my accountant to deal with these until the accounts 10 are before the court.

MR. TILLEY: He is not hesitating to call Mr. Nash.

HIS LORDSHIP: Mr. Nash's evidence has to be corroborated.

MR. TILLEY: We are on an endless enquiry if we submit to all of these accounts. Your lordship is admitting the whole account?

HIS LORDSHIP: I am admitting it. How could we discuss it if it were not admitted. I am allowing the account to be filed and then we are going to discuss the account, and then we may extract some items which may have some bearing.

(Account is filed as Exhibit No. 17.)

MR. ROWELL: Then I put in the deposit slips as Exhibit No. 18. 20

HIS LORDSHIP: The account cannot go in without the deposit slips—that is the Harry Low account?—A. The Harry Low, special account.

HIS LORDSHIP: Among bankers, is there any meaning attached to the word "Special"?—A. No.

MR. TILLEY: As to cross examination I don't know what to do?

HIS LORDSHIP: You may cross examine him subject to your objection.

MR. TILLEY: I do not know what the alleged connection is. I do not know whether it is an item in the beginning of 1924, or in 1925, or in 1926 that I am supposed to be concerned with.

HIS LORDSHIP: I don't think you can get anything more from him. 30

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Cross-examined by Mr. Tilley, K.C.

Q. Has that account got any notations written on it by your bank.—A. Nothing particular. The only notations are those few memorandums made of the two initials C.B.

Q. "C.B."—that is charged back?—A. Yes.

Q. That means some item has been put through on the credit side, and then put through on the debit side?—A. Yes.

HIS LORDSHIP: Is that what it means?—A. Yes.

MR. TILLEY: Q. And if it is a charged back item, it might be charged back for any reason—you don't know for what reason?—A. It may be. 40

Q. You cannot tell what the reason would be?—A. No.

Q. And it might be put through again and charged back again for all you know?

A. Indefinitely.

HIS LORDSHIP: Sometimes it is occasioned by the mistake of a clerk in the bank?

A. Sometimes.

MR. TILLEY: Q. Sometimes paper gets in the habit of going through and it is hard to stop it—you have found that to be so?—A. Quite frequently.

Q. You have “Ech”—what does that mean?—A. That was an item designated as exchange. It was a debit for exchange on American money.

10 HIS LORDSHIP: A deduction or addition?—A. It was a deduction.

Q. Because American money was at a discount?—A. Yes.

HIS LORDSHIP: That is evidence in your favour.

MR. TILLEY: Q. Was the account an account that had American money in it. Let us take the one I have in my hand, the Carling account?—A. I would judge eighty per cent of all the deposits were by way of American funds.

Q. Eighty per cent?—A. Yes.

HIS LORDSHIP: Does that apply to both accounts?—A. That applies to the Carling account.

HIS LORDSHIP: That applies to the Carling account?—A. Yes.

20 HIS LORDSHIP: Will you say the same thing with respect to the other account?—

A. I don't know about the other account. It was a small special account.

Q. You say that eighty per cent would be in the form of American currency or funds?—A. American funds, either currency or cashiers' cheques or American cheques of every sort.

Q. And the other 20 per cent, would be roughly what, made up of other funds?—

A. Canadian funds.

Q. Now sometimes would the Canadian funds take the form of purchase drafts on Canada?—A. Sometimes when Canadian money is at a discount, some of the American purchasers would, knowing that they could settle with Canadian funds
30 buy Canadian funds at their bank in Detroit and hand them in to our customers.

Q. And that would then be treated as Canadian funds in this account?—A. Yes.

Q. So that so far as your knowledge of the funds that went into the account was concerned, it would indicate that the payments were by Americans?—A. It would.

Re-examined by Mr. Rowell, K.C.

Q. You said that sometimes customers would buy Canadian funds because Canadian money was at a discount?—A. Yes.

HIS LORDSHIP: He would come in with American money and buy some other?—

A. Yes.

40 MR. TILLEY: Q. My learned friend said that American purchasers would,

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knowing that they could pay their accounts with Canadian funds, buy Canadian funds.—A. That appertains when Canadian money is at a discount.

Q. If they buy it in the United States?—A. They can buy it in the United States, but I have known them to come across the river and buy Canadian funds with American, and pay their bills in our currency.

Q. Are you speaking generally or in relation to this particular account?—A. I am speaking generally.

Q. Not in relation to this particular account?—A. No, not particularly.

MR. TILLEY: Was I right in saying that the auditors for the Crown have gone through these accounts?—A. Yes. 10

Q. And have seen the deposit slips?—A. They saw most of them in the time they had. I don't know how many they saw. We gave them access to the Carling, and they saw what accounts they could and made a copy of the account—I was asked to bring ten or more accounts—they did not see all of these.

MR. ROWELL: Q. And they did not see the Low account?—A. The Low special account, I do not think so.

(This concluded the examination of this witness).

No. 5

James Arthur
De Lalanne
Examination
May 8, 1928

JAMES ARTHUR DE LALANNE—Called, sworn, and examined by Mr. Rowell, K.C.

Q. You are a chartered accountant residing where?—A. At Montreal. 20

Q. And I believe you are in the firm of—?—A. At present, Clarkson, McDonald, Currie & Company.

Q. During the year 1926, I believe you were assisting Mr. Nash and his firm in investigating certain breweries in the Province of Ontario?—A. Yes.

Q. In respect of gallonage and sales tax?—A. Yes.

Q. Among others were you assisting in the investigation of the Carling Export Brewing and Malting Company of London?—A. I was.

Q. When you were engaged in your investigation were any of the officials of the company present?—A. Yes.

Q. What officials of the company were present during your investigation?—A. 30
Mr. Charles Burns, the President.

Q. Did you in the course of your investigation find certain moneys transmitted from Windsor, from the bank account in Windsor to the Carling Company in London? A. Yes, as so recorded in the books. They were recorded as transfers from the Dominion Bank in Windsor to the company's account in Windsor, Ontario.

Q. Did you have any conversation with Mr. Burns, the President, as to what bank account in Windsor it was from which these transfers were made?—A. He told me what he understood these transfers represented.

Q. What did he tell you these transfers represented?

(Objected to by Mr. Tilley). 40

MR. ROWELL: What did he tell you he understood?

MR. TILLEY: He may not be familiar with the items.

MR. ROWELL: He is President of the company.

MR. TILLEY: My learned friend may be President of the Toronto General Trust Company, and he may not know all the transactions.

HIS LORDSHIP: I cannot see that there is any objection to what took place between your president, that it should be cut off. Mr. Burns can rectify that himself.

MR. TILLEY: Mr. Burns unfortunately is away through illness.

MR. ROWELL: We have tried to get him, and we are advised that he cannot
10 come up—his wife is ill.

MR. TILLEY: Who advised you of that?

MR. ROWELL: Your firm.

Q. Just tell us the conversation with Mr. Burns, what he said about this bank account at Windsor, or the transfer of funds from Windsor?—A. He stated that he understood that these transfers from the bank account in Windsor represented moneys collected for the sale of the company's product which were deposited in that account.

Cross-examined by Mr. Tilley, K.C.

Q. When did you have the conversation with Mr. Burns, Mr. deLalanne?—
20 A. It would be during my examination of the books.

Q. But what year, what month?—A. In the month of October, 1926.

Q. What week?—A. It would be during the ten days after, the 10th or 12th—possibly the last day of the month or first day of November.

Q. Did he tell you anything more than that?—A. I had several conversations with him. I was there with him in the next office.

Q. Is that all he told you that is material to this point?—A. I don't understand the question.

Q. You made a statement, and it seemed to be on the tip of your tongue—I am asking you whether that is all he told you about it?—A. About the actual transfer of
30 the funds?

Q. Yes?—A. I do not imagine it would be all, but if there are any particular points about it—

Q. Is that all you remember?—A. No, not necessarily.

Q. Did you ask him a question?—A. I do not actually recollect the exact question, but I presume I discussed the situation with him.

Q. I presume a lot, but I want to know what you remember about it, because you had no trouble about making the statement at all. Did you ask for the information or did he volunteer it?—A. I asked for it. We came upon these various things in the books, and we discussed it.

40 Q. You asked him what the transfers meant?—A. I asked him what these moneys would represent.

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Q. The moneys transferred?—A. Yes.

Q. The moneys that were transferred?—A. Yes.

Q. And he told you that the moneys that were transferred he understood represented moneys collected from purchasers of the beer in the United States?—A. No, I would not go so far as to say that.

Q. What did he not say?—A. That it would be money collected by Mr. Low or his staff for the sale of beers. I would not go so far as to say in the United States or Canada.

Q. Do not be so guarded now. Do you mean to tell me that it was not money collected in the United States?—A. Not necessarily. 10

Q. Did he tell you it was collected in the United States?—A. No, he did not say it was collected in the United States.

Q. You say that he did not tell you it was not money collected from people who bought beer in the United States—you are pledging your oath to that?—A. He did not make that statement, that it was all paid by people in the United States.

Q. Did he tell you it was money collected from people who purchased beer in the United States?—A. No. I don't think he did. I do not recollect his making that statement.

Q. You do not recollect his making the statement that the money came from the United States purchasers of beer?—A. Not completely. He made mention 20 of persons who would have paid money.

Q. In the United States?—A. No, he did not say they paid in the United States. They might personally have been persons who came from the United States.

Q. I am asking you what he told you. Do you mean to say that Mr. Burns did not tell you that the money did not come from people who bought beer in the United States?—A. Yes, he may have said that—in that way that the money might have come from them.

Q. I am not asking you what might have come. I am asking you what he told you. You had no trouble in remembering the conversation at the start?—A. I can answer that point. 30

Q. What?—A. The point you are making. He said he understood that this money came from persons such as Savard, or his customers; and the money that would be paid to Mr. Low for the sale of those goods.

Q. That it was money paid by Savard?

HIS LORDSHIP: No, from sales?

A. It might have been paid to Mr. Low or his staff in payment of charges charged to the Savard account.

Q. By persons who bought beer in the United States?—A. Yes. They may have bought it in the United States or in Windsor.

Q. I am asking you what he told you, is that what he told you, by purchasers 40 in the United States?—A. And possibly others.

Q. I am not asking you what was possible; did he tell you possibly others?—
A. No, he did not make the statement that all the money came from purchasers in the United States.

Q. I am not asking you that. It wont make much difference if the government loses this money. Don't be so anxious about it. I am asking you what he told you. Did he tell you that that was money paid by persons who bought the beer in the United States—did he tell you that, whether he is right or wrong about it?—A. Can I refer to what note I made?

Q. No. I just want your recollection—what do you say about it?—A. Yes, 10 some of it. I do not want to say that definitely all the money, but some of it.

Q. Now we have got it that some of it came from the United States, is that right?
A. The money, yes.

Q. All the money came from the United States?—A. Not all necessarily, but my understanding was that his statement was that some of the moneys at least did come from purchasers in the United States.

Q. Purchasers in the United States. Now then we have that—and are you suggesting that any money came from purchasers in Canada?—A. No, I do not recollect that he did.

Q. So far as he gave you information about purchasers, they were purchasers 20 in the United States?—A. So far as I can remember. I do not remember discussing that definitely with him where the money came from particularly.

Q. Do you feel that you have not—that is your best recollection of what he said to you?—A. Yes.

Q. And that is what he said to you about certain items transferred to London?—A. Yes.

Q. Will you tell me what those items were. You were asking him about certain definite transfers of money, were you not?—A. Yes.

Q. Let us see where the transfers are recorded. Let us have the transfers you were asking him about?—A. I do not know whether there is a complete list of them 30 or not, unless they are in the Savard account.

Q. What account do you want?—A. The F. Savard account. It was the account in the books of the Carling Company at London—the F. Savard account.

Q. You are referring now to the account in the books at London?—A. Yes. That would come through the cash book in London, and would be credited to Savard.

Q. Would it not be charged to the account in Windsor?—A It would show as having come from there, only in the cash book. I made specimens of the cash book while there.

Q. Will you tell me whether this is the account you are referring to?

40 HIS LORDSHIP: What is that?

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MR. TILLEY: The Savard account in the books at London. I am asking the witness whether this is the account to which he refers.—A. This looks like the account. I do not recognize the first pages of the account. It was opened under the name of C. B. Grandi.

Q. You have in this account on sheet Number 1 transferred \$10,000 and that is credited to Savard's account?—A. Yes.

Q. And below that you have entered a transfer of \$5,000; and below that another transfer of \$7,000—and those are the transfers that you are referring to?—A. Yes.

Q. Transfers that are actually shown in Savard's account as credit items?—
A. Yes. 10

Q. And Mr. Burns' statement was made you in the way you have indicated?—
A. Yes.

(Account is put in as Exhibit "F".)

MR. TILLEY: Probably we could put a copy in—If we want to substitute a copy we may?

HIS LORDSHIP: Yes.

Q. MR. TILLEY: Do you want that account that transfer was charged to?—A. The entry coming through would show the money coming from the Dominion Bank in Windsor.

Q. That is all you know about it?—A. Yes. 20

Q. You yourself never examined the account in the Dominion Bank at Windsor?—A. No.

Q. So that all you had so far as the account in the book of the company at London was that it showed certain credits, and you asked Mr. Burns about the credits, and he made the statement to you that have indicated?—A. Yes.

HIS LORDSHIP: That is that there was an account opened by Savard at Windsor?

MR. TILLEY: At London—and there were certain credits.

Q. Did you see any other books?—A. I saw no other books. I have not been at Windsor at all.

MR. ROWELL: I overlooked asking the witness with reference to another account. 30
I apologize to the court.

HIS LORDSHIP: And you want to reopen it.

MR. ROWELL: I want to reopen on another question relating to sales in the books. I can do it in the morning.

MR. TILLEY: If my learned friend wants to do it he had better do it now. If he has something he has overlooked surely now is the time to do it.

HIS LORDSHIP: I will give you leave to reopen the examination in chief if you have omitted a question.

By Mr. Rowell:

Q. Did you have occasion to enquire of Mr. Burns in regard to any other of 40
the accounts in the books relating to business with reference to sales?

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MR. TILLEY: My learned friend should not suggest to the witness.

HIS LORDSHIP: It would be a natural thing when he went to examine the books of the company to ask the President a number of questions.

MR. ROWELL: Q. Did you ask him anything in reference to the export funds account?—A. It is a year and half since I saw the account I recollect named the export funds account.

MR. TILLEY: This witness is detailing conversations.

MR. ROWELL: The witness asks if he would be permitted to refer to his notes made at the time, with a view to refresh his memory.

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10 HIS LORDSHIP: There cannot be any objection to that.

MR. ROWELL: Will you look at your notes?

HIS LORDSHIP: Q. When did you make any notes of your investigation?

MR. TILLEY: Is that in his writing?—A. It is in my handwriting.

MR. ROWELL: Q. Did you make certain notes at the time of your investigation?

HIS LORDSHIP: And where did you make them?—A. I would make them in London soon after I had the conversation.

HIS LORDSHIP: Did you make them in writing?—A. This is in my handwriting. This is a copy of the account in the ledger.

20 MR. ROWELL: Q. When did you make it?—A. While making the investigation in London.

Q. You made it while making the investigation in London?—A. Yes.

Q. And what account is that a copy of?—A. The export funds account.

Q. Did you make any enquiry of Mr. Burns in reference to the export funds account?—A. Yes, I did.

Q. What information did you get from Mr. Burns in reference to that account?—A. There is one item I notice here, special loan account, C. Burns, and I followed it through, \$10,000—and I found the information he gave was correct—he showed me in the books too.

30 HIS LORDSHIP: He told you it was there?—A. He explained to me where the entry came, and where the other part of the entry would be.

MR. ROWELL: Q. Did you find out from him or any official of the company what that fund was called, the export funds account?

MR. TILLEY: That is an improper question to put to the witness that way.—A. Yes, I did.

MR. ROWELL: Q. What information did you get from Mr. Burns—What information did Mr. Burns give you in reference to that account?—A. That export funds account had transferred to it the collection of certain items credited to other accounts.

40 Q. Will you repeat it?—A. Credits to export funds account are not all actual collections of moneys which came in to the company,—some of the credits are made up of a collection of several entries appearing in other accounts, and from which either a total or a portion is eventually credited to export funds accounts.

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Q. Other accounts in the books of the company?—A. Yes. Export insurance account.

Q. Tell us what Mr. Burns told you about that export funds account—what you asked him first, and what answer you got?—A. That he understood the amounts credited here, that some of the amounts credited here represented something received by the company from customers or on behalf of customers in excess of the actual amount charged for the shipments of beer.

Q. Sums received from customers on behalf of customers in excess of the amount actually charged for the beer?—A. For that particular shipment.

Q. For that particular shipment of beer?—A. Yes.

10

Q. When you say that charged, where?—A. Charged through the sales book through the debit of some customer.

Q. Anything further in connection with that. Did you ask him about the special loan account, export funds?—A. That is a similar account.

Q. That is a similar account?—A. Yes.

Q. Tell us what explanation he gives you in reference to that account—Mr. Burns gave you?—A. Well, the explanation would be the same as that for the export insurance account, a similar explanation. As I recollect it I discussed them together, and they are of different dates. The export special loan account is September and October, 1924; and the other account, the export insurance account 20 appears to have been opened from December 1924, to May 1925.

Q. And when was the export funds account opened?—A. The export funds account has one debit on December 31st, 1924; and the other entries run from September 30th 1925. The first entries in the account of the debit are shown as September 30th 1925. The account appears to have been opened on September 30th 1925 with certain transfer entries, debts and credits from other accounts.

Q. And it runs to what date?—A. And the other debit entries—

Q. It runs to what date?—When is the end of the account?—A. October 30th 1925.

Q. Then you were going to make some reference to the accounts?—A. The 30 expense items in it appear to run from December 31st, 1924, to October 30th, 1925.

Q. Now then you have referred to three accounts, the export funds account, the special loan account, and the export insurance account?—A. Yes.

Q. To which of these three accounts does Mr. Burns' statement apply?—A. His statement would apply to the export insurance account, and special loan account export funds. And the export funds account has these various transfers from many other accounts, and also some debit items for expenses in it.

By Mr. Tilley, K.C.

Q. Will you show me the export funds account. Now you take this export funds account. Will you please tell me whether there is anything on that account 40 that shows that you talked about it to anybody?—A. Do you mean a notation?

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Q. Yes?—A. No.

Q. So that there is nothing on that to refresh your memory of a conversation with Mr. Burns, is there?—A. No.

Q. Now let us turn to your notes on the export insurance account. Is there anything there of a notation showing conversation with anybody?—A. No, Sir—not there. That is a separate item.

Q. Is there on the second page any notation by you of a conversation with anybody?—A. No.

Q. So that there is nothing there to refresh your memory of conversations?—
10 A. No.

Q. Then we will turn to the next account, that is the special loan account export funds. Is there any notation there of a conversation with anybody?—A. No.

Q. Then the next is the export insurance account. I have seen them all?—
A. Yes.

Q. Do we start with this that on the memoranda that you made at the time, you examined these accounts, and at the time you say you spoke to Mr. Burns, there is not notation by you of any conversation with Mr. Burns?—A. Not actually on those accounts.

A. And there is nothing to refresh your memory of any such conversation?—
20 A. Not on those sheets.

Q. So that what you have seen here, and what has been produced does not refresh your memory at all?—A. No.

Q. Now you seem to remember after being examined, which at the commencement you could not recall to your mind at all?—A. I remember this conversation.

Q. Will you tell me just what the question was that you propounded to Mr. Burns?—A. I cannot remember any definite question.

Q. Did it come up in conversation as the result of an enquiry by you, or can you remember whether it did or not?—A. Yes, I think it would.

Q. But you cannot recall that to mind?—A. I had access to Mr. Burns and
30 would discuss them every evening.

Q. You say naturally you would, but you can't remember it. You say there was plenty of opportunity and you likely asked him?—A. I would ask him anything I have stated. I would request information.

Q. You cannot tell us what the request was. Will you tell us what the answer was. Did it apply to all three accounts in one statement or was it separate?—
A. They would be all discussed there.

Q. They would be with respect to all three accounts?—A. We would go over them.

Q. Do you remember doing it?—A. Yes.

40 Q. Or do you think you would be likely to do it?—A. I remember mentioning the accounts to him.

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Q. Did you ask him for information with regard to the three accounts together or one at a time?—A. They would be all together.

Q. They would be, but were they—do you remember?—A. Yes, I can definitely say. I copied them altogether at the same time.

Q. I am asking you whether you remember a conversation, or are you reasoning out something?—A. Not at all. I discussed them together.

Q. You went in to see him?—A. Yes.

Q. What did you ask him when you went in to see him—you say you cannot remember that?—A. Not exactly the question I would ask. I would present accounts and go over them with him. 10

Q. He always talked to you perfectly frank about the accounts?—A. Yes.

Q. What did he tell you about the accounts, after he approached them or mentioned them one at a time?—A. The statement I made previously that these he understood to be amounts received by the company in excess of the actual amounts charged for the actual shipments—these are 1924 or 1925.

Q. And he told you they were amounts received in 1924, or 1925—no later date?—A. I don't think there is any later date.

Q. Either in 1924 or 1925 received by the company on behalf of their customers?—A. From customers.

Q. From or on behalf of, on behalf of their customers in excess of what their 20 customers had to pay them?—A. Yes.

Q. That these were accounts showing moneys received by the company on behalf of the company's customers, in excess of what the company's customers owed the company?—A. According to the charge in the books.

Q. And according to the fact they were moneys received on behalf of customers in excess of what the customers were liable to pay to the company?

HIS LORDSHIP: He did not say that?

(The court stenographer was here asked to read one of the previous questions and answers, as follows:

Q. "That these were accounts showing moneys received by the company 30 on behalf of the company's customers, in excess of what the company's customers owed the company?—A. According to the charge in the books.")

THE WITNESS: According to the charge in the books.

Q. Did he tell you that his customers had to pay them anything except what they showed in the books?—A. No. He stated that these amounts were paid for the delivery of goods.

Q. You are stating it quite differently. I wish you would take your time and state it accurately—what did he say to you?—A. That these were amounts received by the company from customers or on behalf of customers in excess of the amounts charged on the books and credited to sales for the particular shipments concerned. 40

Q. Did he tell you that the customers were indebted to the company in respect of these moneys?—A. Not in those words.

Q. Did he tell you that they were moneys received on behalf of customers?—
A. They were received from customers or on behalf of customers.

Q. In excess of what customers had to pay for the beer?—A I won't make that statement.

Q. I am asking you if that is not what he said to you?—A. No, he did not.

Q. Can you state it more accurately than you have?—A. That these items were in excess.

10 Q. I am asking you for his language in the conversation with you—can you state it accurately or can you not?—A. I can—adding to what I have said, his remarks were that these items would be amounts—that these items as well as the charge in the books credited to sales account, would represent the amount that the customer had given for the delivery of goods to a certain point.

Q. Did he put it that way,—that is different from what you said before. Is that what he said?—A. The two remarks together is what he conveyed to me.

Q. Is that what he said?—A. Yes.

Q. Will you repeat it again?—A. That these amounts—

Q. Repeat the whole conversation?—A. That these amounts—the amounts in
20 these accounts were amounts received from customers or on behalf of customers which were in excess of the amounts charged to the customer on the books, and credited to sales account for the particular shipment; and that the amount charged on the books plus these amounts would be the amount paid by the customer or on his behalf to the company for the delivery of goods at a certain place.

Q. He told you all of that. You are now detailing exactly what he said to you?
A. Yes.

Q. When were you first asked about this conversation, I mean recently—how long ago?—A. Myself?

Q. Yes, of course yourself?—A. I have not discussed the conversation since
30 January, 1927, so far as I know.

Q. How did you come to discuss it in January, 1927?—A. When I was assisting Mr. Dilworth to draw the reports.

Q. When did you have the conversation?—A. Either in the latter part of October or beginning of November, 1926.

Q. You had the conversation at that time—was it brought to your recollection in 1927?—A. Yes.

Q. And was any note made of it?—A. Yes.

Q. A note was made of it in 1927?—A. There were certain notes before that on our reports.

40 Q. I am asking you was a note made of it before 1927?—A. I don't know

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whether those actual words of it were made, but the substance of it were made while in London.

Q. A note made by you?—A. Yes.

Q. Of your conversation with Mr. Burns. When did you last see the note?—

A. I have been looking for the note in the interim reports this morning.

Q. I am asking you about the note you made at the time.—A. That is the time the notes were made.

Q. I thought you said you made a note at the time you had the talk with Mr. Burns?—A. Not necessarily when I had it.

Q. You put something in a report in 1927?—A. 1926. We did the work. 10

Q. I thought you said January, 1927?—A. That was the final report but we submitted two reports before that.

Q. When did you report to Mr. Nash,—did you write it?—A. I assisted in writing it.

Q. Did you write down what Mr. Burns told you?—A. Not the definite conversation, but a summary.

Q. I am afraid of your summaries. I am asking you if you ever at any time purported to make a record of his conversation with you?—A. Yes, I did.

Q. When?—A. In London.

Q. At the time it took place?—A. Possibly a day or so afterwards. 20

Q. Have you got that?—A. I could not find it in the notes.

Q. So that the record that you made at the time is not available to you?—

A. Not completely. I have not found it yet. I cannot find the one I thought I had written at the time of the first conversation.

Q. Let me see the one you see now. Was that written in your own handwriting?—A. Yes.

Q. When was it written?—A. On my last visit to London.

Q. What date was that?—A. The first week of November, 1926.

Q. Was that the week the conversation took place?—A. There would be a conversation. It would not be the first conversation I had with Mr. Burns. 30

Q. Was that the time the conversation we are now speaking of took place?—

A. No. I don't recollect definitely. I don't think so. I think it was before I came to Toronto.

Q. What do you mean?—A. I worked at the Carling brewery first, and I then went to Miller & White.

Q. Does that note purport to give a conversation with Mr. Burns?—A. Yes, it does.

Q. When was it put down, have you the date?—A. There is no date to it.

Q. Will you read what it says about your conversation with Mr. Burns?—

A. This is as I reported. 40

Q. I am not asking you what you reported. Will you read your—A. With regard to the Bermuda export?

Q. I am asking about these accounts—we are concerned with that?—A. There is no note on that; not on those definite accounts—but follow up.

Q. I am asking you that. I am asking you about your conversation—I thought you made a note of that conversation although you had not the note that you thought you made at the time. Now you have no note of the conversation with Mr. Burns?—A. Not this one.

Q. Your habit was to make notes of conversations?—A. Yes—on anything I considered of importance.

Q. The conversation you are giving now you would have thought of extreme importance, would you?—A. Yes.

Q. If it took place it would be of extreme importance, and there is no note of it?
A. I have not seen it.

(This concluded the examination of this witness.)

The court then adjourned at 5.20 to 10.30 a.m. to-morrow.

(Third day)

WEDNESDAY, May 9th, 1928.

The court resumed at 10.30 a.m.

20 MR. ROWELL: Your Lordship yesterday asked for authority under which the B.13s were issued. Perhaps it would be convenient to draw your lordship's attention to the relevant sections of the Customs Act.

Section 100 is the first section that deals with it.

30 "100. All goods or merchandise exported by sea, by land or by inland navigation shall be reported and entered outwards at the nearest Custom-house, and a certified copy of the export entry shall be attached to and accompany the waybill of goods; or, if exported from any place where no Custom-house is established, they shall be reported either in like manner at such nearest Custom-house or at the port of exit from Canada, according to such regulations as are established by the Governor in Council from time to time."

HIS LORDSHIP: The question is deeper than that. I have looked for the forms at the end of the Act and cannot find them—and I have also looked through the Regulations for them.

MR. ROWELL: I shall give your Lordship the Regulations under which the B.13s are issued.

The next section that deals with shipments of this kind is section 104.

"104. The owners, shippers or consignors of any goods consigned to a port or place out of Canada, to be transported by railway or other land conveyance, shall enter the same for exportation at the Custom-house nearest to the place

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of landing; and such entry shall specify the kinds and quantities of the articles laden by them respectively, and the proper name and description of the railway over which such goods are to be transported, or of any other conveyance to be used for the same purpose; and they shall verify the entry by oath, and such oath shall be of the same form and tenor as that required from owners, shippers or consignors of goods to be transported by sea."

I should perhaps have referred to section 101, as to the evidence required where the goods are exported by sea.

"101. Upon the entry outwards of any goods to be exported from a Customs warehouse, either by sea or by land or by inland navigation, as the case may be, 10 the person entering the same for such purpose shall, by and upon the making of such entry, whether so expressed in such entry or not, become bound, when the entry aforesaid is for exportation by sea, to the actual exportation of the said goods, and, when the entry aforesaid is for exportation by land or inland navigation, to the actual landing or delivering of the goods at the place for which they are entered outwards, or, in either case, to otherwise account for the said goods to the satisfaction of the collector or other proper officer, and to produce within a period to be named in such entry, such proof or certificate that such goods have been exported, landed or delivered or otherwise lawfully disposed of, as the case may be, as shall be required by any regulation of the 20 Governor in Council, or by the collector or other proper officer."

HIS LORDSHIP: Then there is a provision as to being bonded.

MR. ROWELL: Then section 102 relates to the bonding also.

Then the next section is 298

"298. The Governor in Council may, by regulations from time to time, require such further information with regard to the description, quantity, quality and value of goods exported from Canada, or removed from one port to another in Canada, or in transit through Canada, to be given to the proper officer of the Customs, in the report and entry of such goods outwards or otherwise, as he deems requisite for statistical or other purposes, whether such goods 30 are exported, or removed or transported by sea, land or inland navigation."

HIS LORDSHIP: Under the order in council the Governor in Council has power to make regulations for the carrying out of the Act.

MR. ROWELL: Yes.

HIS LORDSHIP: Is this a special Act with respect to statistics alone?

MR. ROWELL: That is what we say it is, for statistical purposes. Then there is the order in council made under the Act, dated the 26th May, 1900, which is still the operative order in council in connection with the matter. That order in council is, as follows:

“His Excellency in virtue of the provisions of the Customs Act and the Acts in amendment thereof and by and with the advice of the Queen’s Privy Council of Canada, is pleased to make the following Regulations as to Customs entries and statistical returns of goods exported from Canada and the same are hereby made according’y:

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REGULATIONS

10 “1. Export entries in duplicate for statistical purposes shall be delivered to the collector of customs at the last port in Canada through which goods for exportation pass outwards for places beyond the limits of Canada when exported by land, and at the port where laden on the exporting ship if the goods be exported by water—each such port being herein designated as “the port of exit Canada.”

“2. Goods not liable to any export duty, and other than are exported under customs or excise bonds shall be reported and entered outwards at the port of exit from Canada in duplicate in accordance with the form schedule “A” approved by Order in Council of 15th November, 1897, (known as Customs form B 13.)”

“Goods exported under customs or excise bonds, and goods liable to export duty shall be reported and entered for export in accordance with the special forms prescribed therefor.”

20 Probably I had better put that Order-in-Council and Circular in. It gives your Lordship the whole information. (Marked Exhibit No. 19).

MR. TILLEY: Before my learned friend leaves that, your Lordship will observe that clause 2 refers to an Order in Council of the 15th November, 1897, as being the order in council that approved of the forms.

HIS LORDSHIP: I take it that it was repealed by this one.

MR. TILLEY: No.

MR. ROWELL: It still continues. Then I put in the official memorandum from the Customs Department, which sets out the order in council, although it is not the order in council itself. It is dated the 1st December, 1897, and is Numbered 953-B.

30 HIS LORDSHIP: What does it purport to be?

HIS LORDSHIP: It is a memorandum from the Customs Department signed by the Commissioner, and is addressed to the Collectors advising them of the Order-in-Council.

HIS LORDSHIP: It embodies the order in council?

MR. ROWELL: It gives the terms of it.

MR. TILLEY: We will check it up. It is merely an official communication of the order in council.

HIS LORDSHIP: It is in the nature of a circular to the employees.

MR. TILLEY: Giving them the terms, but we will check up the order in council 40 itself.

HIS LORDSHIP: That is with respect to the order in council of 1887?

MR. ROWELL: 1897.

HIS LORDSHIP: Does it clash with the order in council of 1900?

MR. ROWELL: No.

MR. TILLEY: I think your lordship would like to have this earlier one in your mind, as we go along.

MR. ROWELL: The earlier order in council, that is the circular embodying it, is in this form.

“Re Report outwards and entry of goods exported.

“1. By an Order of the Governor General in Council on the 15th November, 1897, the declaration in the form Schedule “A” hereto is prescribed to be substituted for the oath to be made in Canada, on the entry for export of articles not liable to any export duty, and other than are exported under Customs or Excise Bond.”

HIS LORDSHIP: Have you a schedule at the end of that?

MR. TILLEY: Yes, it is all there.

MR. ROWELL: It is a B. 13.

HIS LORDSHIP: It is the same as the B. 13 under the Act of 1900. Is there any difference.

MR. ROWELL: There is no difference.

MR. TILLEY: In 1897 this B. 13 was made a schedule to this order in council, and received whatever authority this order in council gives. Then in 1900 apparently it was ordered that certain extra copies were to be prepared for statistical purposes, but we will have to discuss that later. But this is the first sanction I know of by an order in council of the B. 13 as a form.

HIS LORDSHIP: This is the creation of the B. 13?

MR. TILLEY: I think it is—

MR. ROWELL: There may be prior forms similar to this, but I have not gone back of this.

Then paragraph 2 reads as follows of the said order in council (Exhibit No. 20)

“2. An Export Entry prepared, in duplicate, and signed by the owner of the goods exported or by his agent (who may also be the agent of the transportation line carrying the goods), in the absence of a subscribing witness, in the said prescribed form, shall accompany and be attached to the way bill of all goods or merchandise exported by sea, by land, or by inland navigation, and all such goods and merchandise shall be reported outwards in the said form at the nearest Custom House and at the Customs port of exit from Canada, (saving and excepting goods exported under Customs or Excise Bond, and goods liable to export duty, all of which shall be reported and entered for export in accordance with special forms prescribed therefor.).

“3. The duplicate copy of the Export Entry accompanying the way bill of the goods shall be filed at the port of exit from Canada and shall be marked

with the stamp of the Custom House where the original entry has been filed. The export Entries may be thus stamped by Customs Officers in attendance at railway stations and other places where goods are laden for export.

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“4. All Export Entries shall, as far as possible, be made at the Customs House nearest the place of shipment for export, and the Export Entries so made shall be compiled at the Chief Port of such Custom House: Plaintiff's
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10 “(a) Provided, however, that all goods exported from Canada, excepting such as are entered outwards at another Custom House as aforesaid and are accompanied by Entries marked with such Custom House stamp, shall be entered for export at the Canadian port of exit and the entries thereof shall be compiled at the Chief Port of the port of exit;

“(b) Provided also, that in cases of urgency, the Export Entries of goods forwarded by Express may be made at the port of exit from Canada;

“5. The Master, Officer or other person in charge of any vessel, railway car, or other vehicle is liable to the penalties provided by the Customs Act if he departs from Canada before bringing and delivering to the Collector or other proper officer of Customs, at the port of exit, a content, in writing, of the goods laden for export, and the names of the respective shippers and consignees of the goods, with the marks and numbers of the packages.

20 “6. Railway companies, steamship companies, express companies, and other carriers engaged in the exportation of goods, are enjoined to strictly observe the law in respect to the report outwards at Customs of all goods carried by them for export from Canada, and are requested to be particularly careful that the quantities and values of the goods exported are accurately stated.

“7. Nothing herein contained shall be held as applicable to goods passing through Canada in transit by rail from one point in the United States to another point in the United States.

“8. The form of Export Entry, as per schedule “A” hereto, shall be used on and after 1st January, 1898.

30 “9. In all cases where goods are entered for export at an inland or other port which is not the frontier port of exit from Canada for said goods, the Collector of Customs at such inland or other port shall forward, by mail, without delay one copy of the Export Entry (marked with the Customs Stamp and the word “copy”) to the Collector of Customs at the Frontier port of Exit, for his information in checking the exports passed outwards,—but such stamped “copies” of entries shall not be aggregated in the Export Returns at the Chief Port of the Port of Exit.”

HIS LORDSHIP: Let me interrupt you. You mentioned yesterday that this is an outpost. Are there such distinctions in the Customs office, that some are only 40 for entry inwards?

MR. ROWELL: No.

HIS LORDSHIP: Why do you qualify them as an outport for the customs house.

MR. ROWELL: It is really a sub-port of the main port.

MR. TILLEY: Sandwich may be an outport of Windsor—

HIS LORDSHIP: I thought any customs house could receive—

MR. TILLEY: Nothing turns on that. They are all of equal importance in that regard.

MR. ROWELL: Each of the principal ports in Canada have associated with them outports or subports, and they report through the port of which they are an outport. Outport is an official name. In other words Windsor is the port—Sandwich and Walkerville are outports of Windsor. All B.13s that are received at 10 Sandwich would be forwarded by Sandwich to Windsor, and would be by Windsor sent forward to Ottawa.

HIS LORDSHIP: It is a kind of a branch?

MR. ROWELL: It is a kind of a branch, except the main office does not exercise supervision and control over the outport.

HIS LORDSHIP: In the Customs Act you cannot find the definition of an outport. You have reports inwards and outwards.

MR. TILLEY: It is not an outwards port—

MR. ROWELL: It is merely a smaller port.

MR. TILLEY: It is a subsidiary port. 20

MR. ROWELL: To illustrate. If goods were being shipped by London, that not being a port of exit from Canada, then this would require the Collector who received the export entries at London to forward one copy to the port of exit at Windsor in order that it might be exported by the entry there. Then form 3 is given which is substantially the present form.

MR. TILLEY: It has at the top Form B.13.

MR. ROWELL: It is headed Form B.13—Schedule "A". There is only one important difference in the form at the present time. At the present time in connection with the export of liquors, it is required that instead of the declaration there should be an affidavit. Perhaps the two might go in together. (Exhibit 30 No. 20).

HIS LORDSHIP: There is a difference between a declaration and an affidavit, as that carried out by Exhibit 19.

MR. ROWELL: No. There is a later one. The instructions change the matter, requiring an affidavit—that is the 13th March, 1926.

HIS LORDSHIP: Is it by an order in council?

MR. ROWELL: No. These are circulars issued by the Commissioner of Customs. The letter of the 13th February, 1926, does not touch this point, but it is referred to in the circular of the 13th March, 1926, which does touch the point—They both may go in together as Exhibits 21/A and 21/B. Exhibit No. 21/A will be the 40

letter of the 13th February, 1926, and Exhibit 21/B will be the circular of the 13th March, 1926.

The letter of R. R. Farrow, Deputy Minister, of the 13th February, 1926, although it does not touch this particular point, reads, as follows:—

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“To Collectors of Customs and Excise:

Exportation of Beer and other Intoxicating Liquors (Spirits)

10

“It has come to the notice of the Department that beer and other intoxicating liquors are being shipped to frontier ports and outports in Ontario, for export, on bills of lading, showing the ultimate destination of the goods to be a place in a foreign country other than the United States,—for example, Mexico, Cuba, etc.

“If any such shipments arrive at your Port or Outports, with Export Entry attached to the billing showing a place in a foreign country, other than the United States, as the destination, you are instructed not to accept a substitute Export Entry for shipment to the United States.

“In all such cases, you are to notify the shipper that the liquors are to be returned to the place of shipment, as shown by the Bill of Lading.

“You are instructed to immediately notify Outports accordingly.”

Then the letter of the 13th March, 1926, reads as follows:—

20

“DEPARTMENT OF CUSTOMS AND EXCISE, CANADA,

OTTAWA, 13th March, 1926.

“To Collectors of Customs and Excise, at frontier Ports and Outports in Ontario.

Subject: Exportation of Beer and other Intoxicating Liquors (Spirits)

“Supplementary to Circular Letter, same subject, dated 13th February, 1926.

30

“Heretofore, bulk shipments from interior points of lading accompanied by a single export entry have been accepted at frontier ports of exit although the goods covered thereby are actually exported in part shipments, the original export entry being accounted for when the entire shipment has gone forward.

“You are instructed that this is no longer to be permitted and that hereafter separate export entries are to be furnished at interior point of lading for each quantity to be carried forward from the port of exit in a single shipment, those to be attached to the waybill.

“Perhaps I might explain to your Lordship what that covers. Prior to this circular it was the habit to prepare an export entry for the full amount of the invoice or bill of lading, as the case might be. If the bill of lading showed 1,200 cartons, a B. 13 would be prepared at the port of shipment for 1,200

cartons, and it would accompany the goods say to Windsor, if the shipment was to Windsor. Then instead of using that as an export entry, they made out new B. 13s at Windsor for whatever amount they wanted to load on any particular boat, if that was the purpose of the export entry, and this was to change that practice.

“HIS LORDSHIP: Segregate all shipments and earmark them.

“MR. ROWELL: Earmark them, and that this should be done by the shipper, and not make out the smaller ones at the so-called port of exit.”

Then the circular continues, as follows:—

“Notify all exporters or their agents promptly of this requirement. 10

“While the general instructions of the Department admit of the acceptance of export entries signed by the shipper and not verified by oath, it is required under the provisions of the Act (See section 99) that the export entry be verified by oath of the actual owner of the goods or of his duly authorized agent, and this requirement is to be observed in respect of beer and other spirituous liquors and wines.

“The party making the oath will be described as owner, shipper or consignor, as may be, striking out the two words not applicable and leaving the one word that is applicable.”

“The form of certificate on export entry B. 13 may be changed to read as 20 follows: ‘I.....owner, shipper or consignor (as the case may be), hereby make oath and say that the above is a full and true statement etc., and this affidavit will require to be sworn before the Collector or some official authorized to take oaths.’”

Now the section of the Customs Act referred to, Section 99, reads as follows:—

“99. Before a clearance is granted to any vessel bound to a port or place out of Canada, the owners or shippers or consignors of the cargo on board such vessel shall deliver to the collector or other proper officer of Customs entries of such parts of the cargo as are shipped by them respectively, and shall verify the same by oath. 30

“2. Such entries shall specify the kinds and quantities of the articles shipped by them respectively, and the value of the total quantity of each kind of article, and whether the said goods are of Canadian or of foreign production or manufacture.

“3. Such oath shall state that such entry contains a full, just and true account of all articles laden on board of such vessel by such owners, shippers or consignors respectively; and that the values of such articles are truly stated according to their actual cost, or the value which they truly bear at the port and time of exportation.”

Then follows section 100.

GEORGE USHER STIFF: Called, sworn, and examined by Mr. Rowell, K.C.

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Q. Mr. Stiff you are a chartered accountant residing in the City of Toronto?—

A. Yes.

Q. And you are practising your profession here?—A. Yes.

HIS LORDSHIP: Is he attached to a firm?

MR. ROWELL: No, he is entirely independent.

Q. You have had some relations with the Carling Export Brewing and Malting Company in connection with the sale of certain goods to the Bermuda Export?—A.

Yes. I do not know that I would call it a sale to the Bermuda Export.

10 Q. But sales through the Bermuda Export?—A. Yes.

Q. Is your relationship to the company defined in the agreement?—A. Yes.

Q. Have you got the agreement?—A. The document itself is not called an agreement, it passes under the name of a contract.

Q. Is that the original document under which you were appointed a trustee?—

A. That is the original document under which I was appointed a trustee.

Q. And that is dated the 29th June, 1926?—A. Yes.

Q. The Carling Company is a party?—A. The second signature is that of the defendant company.

HIS LORDSHIP: The contract is between the witness and the defendant com-
20 pany?

MR. ROWELL: And there are several breweries associated.

(Mr. Rowell here read clauses 1, 2, 3, 4 and 5).

Q. When they ship to Bermuda they send particulars to you?—A. Yes, that is a provision in the agreement.

(Mr. Rowell then read clause 6).

HIS LORDSHIP: May I ask you this, why do you introduce this after you told me there was no shipping to Bermuda?

MR. TILLEY: This company did not ship to Bermuda.

MR. ROWELL: I think the Bermuda Export is only a name.

30 MR. TILLEY: Oh no—it is incorporated.

MR. ROWELL: It is incorporated in Bermuda but it carries on operations in Ontario.

MR. TILLEY: And in the United States.

MR. ROWELL: We have no evidence of that.

MR. TILLEY: But you are putting it in.

MR. ROWELL: I know what I am doing.

(Mr. Rowell here read clause 7).

HIS LORDSHIP: That would apply only in 1926?

MR. ROWELL: In 1926 on, until the end of the term.

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Evidence

No. 7

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THE WITNESS: There is a clause providing the date on which it is to come into effect. It was the 15th July, 1926, the agreement became operative.

MR. ROWELL: There is a provision here that it is to be operative on a date in a certain manner.

(Mr. Rowell here read clauses 8 to 20 inclusive).

HIS LORDSHIP: I think the witness said this contract came in force in July?

THE WITNESS: (Reads clause 4) That meeting was held and they decided to put it in force on the 15th July, 1926.

(The Bermuda Export contract is put in as Exhibit No. 22).

Q. MR. ROWELL: Does that show the signatures?—A. They are typewritten in. 10

Q. Then Mr. Stiff have you been acting as trustee under that agreement since the 15th July, 1926?—A. Yes.

Q. Have you during that period received moneys in respect of the sale of goods by the Carling Company through the Bermuda Company?—A. Yes.

Q. Or forwarded to the Bermuda Company?—A. Yes. I may say in reference to that agreement which speaks of months there, the Bermuda Company found that they were going to settle with the brewers every week, and the brewers decided it would be better to have the Bermuda Company settle with me every four weeks, so that four settlements with a brewery would synchronize with one settlement with me—so that I worked on four weeks or 13 months of the year. 20

Q. You got returns every week. How frequently did you get returns from the Bermuda Export Co?—A. Every four weeks.

Q. And did you make returns to the brewers?—A. As soon as I work out the money I have got in accordance with the terms of the contract, I pay over to each brewer what he is entitled to in that contract.

Q. Then apparently under the contract there are two methods at least. The total amount is not divided on the basis of sales—part of it is divided equally among the parties to the agreement and part on the basis of the sales for the four weeks?—A. Yes, that is right. In other words a certain number of cartons are sold in a period, and I multiply that by twenty-five cents and divide it by eleven— 30

Q. You take first twenty-five cents a carton, and you take the total number of cartons in the four weeks?—A. Yes.

Q. You multiply it by twenty-five, and that result you divide by the number of brewers, parties to the agreement, and give each one an equal share?—A. Yes.

Q. You receive a total of how much, seventy-five cents a carton?—A. No, I do not receive seventy-five cents. I receive seventy-five cents a carton, less the Bermuda Company's expenses.

Q. How much do you receive in practice? A.—I don't know that I ever worked it out on the basis of cartons. I never went into the statistics to that extent. I would say that sometimes I got as much as fifty cents a carton. 40

Q. If you got fifty cents a carton the other twenty-five cents a carton or whatever it was would be divided according to quantities?—A. The remaining money would be divided among the brewers who did business in proportion of their business done bore to the total business done.

Q. That would be that each brewer would receive a proportion on the basis of his business?—A. In addition to his equal share he would receive a further payment in proportion to the business he has done.

Q. And if the amount to be distributed was an additional twenty-five a carton, then each brewer who had shipped would receive twenty-five cents a carton for the 10 total beer shipped during that period?—A. Yes.

Q. Then during this period have you received information from the Bermuda Co., of the total number of cartons handled for the Carling Company?—A. Yes.

Q. Have you got that here?—A. I don't know that I have got it in cartons but I have the amount to which they were entitled each period. I may say that during the earlier operation of the company it was not possible to get it functioning in time to make a report at the end of four weeks, and for the first period it was six weeks. The prolonged apportionment or share in that period was \$24,344.68.

MR. TILLEY: Q. Would you mind telling us on what proportion of business done?—A. No. What they got from me.

20 HIS LORDSHIP: It is not an answer to the question.

MR. TILLEY: Before you go away from it, is that the money they got from you including both items—that is the amount divided quarterly and the amount divided in business.—A. Yes. That would be their credit.

MR. ROWELL: That is not quite what I asked. We will take this now and I will come back to it.

Q. You say the amount to which they became entitled for the six weeks from the 15th July, 1926, to the 25th August, 1926, was \$24,344.68—was that paid over by you to the Bermuda Co.?—A. Eventually all except \$5,000 which by the contract I am instructed to retain.

30 Q. You have it paid by cheque?—A. By cheque.

Q. To the Carling Company?—A. Yes.

Q. The Carling Export Brewing and Malting Company?—A. Yes. According to the contract I make my preliminary payment immediately, but there are the residuary receipts to be distributed every three months hence in each case.

Q. When you say preliminary payment, is that an equal sum to each?—A. Yes,—and their share of their own business.

Q. What do you mean by a residuary payment at the end of three months?—
A. In the case of bottled goods, if I receive \$50,000 and the twenty-five cents a carton takes up \$25,000. I still have \$25,000 residuary receipts to which the brewers are
40 entitled in the proportion to the business they did and that is paid over at the end of three months.

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Q. Then what is paid at the end of the month is an equal sum to each of the brewers based on the agreement in respect to twenty-five cents per carton of the total business done during the period?—A. Yes.

Q. As reported to you?—A. Yes.

Q. And at the end of three months you pay the balances?—A. Yes. If they are entitled to it under the contract.

Q. And when you ultimately pay to them do you refer to this sum being paid in the two sums less \$5,000 held back?—A. Yes.

Q. Then what further sums. It is not important for us to deal with each particular period. If you can give it to us perhaps we had better take it down, it may be checked from month to month with the books?—A. The period of the 26th August to the 22nd September, 1926, \$22,603.34.

The period from the 23rd September to the 20th October, 1926, \$15,185.19.

The period from the 21st October to the 17th November, 1926, \$14,974.

The period from the 18th November to the 16th December, 1926, \$3,888.35.

Q. That makes a total up to the 16th December, 1926,—that represents their share of the total moneys received by you?—A. Up to the end of the period of 16th December, 1926.

Q. Up to the 16th December, 1926?—A. Yes.

Q. And that makes a total of ?—A. \$80,995.56.

20

Q. Then what further payments did you receive during the months of January, February and March—at least what was their share of the payments?—A. The period from the 17th December, 1926 to the 13th January, 1927, was \$1,747.33.

The period from the 14th January, 1927, to the 10th February, 1927, was \$2,678.70.

And the period from the 11th February to the 10th March, 1927, was \$4,190.19. You asked I believe for the figures to the end of March?

Q. Yes?—A. It is impossible—the Bermuda Company does not report to me in a manner that enables me to make up the statement to the 31st March.

I had given you the figures to the 10th March, and I can give you the next period 30 from the 11th March to the 7th April, 1927, \$6,864.31.

Q. Making a total up to the 7th April?—A. Of \$95,476.09.

Q. Now how much more did you receive in respect of the sales by the Carling Company than you have set forth in this memorandum?—A. I had not received anything from the Carling Company.

Q. I mean from the Bermuda Company in respect of sales of the Carling Company's goods?—A. I don't know that I have that information. The Bermuda Company accounts to me for so many cartons, and so many half-barrels at these prices, and I distribute the money. I don't know what the Carling Co.'s sales are—no, I would not know what the Carling sales are. I never had occasion to work it up. 40

Q. I thought you said under the agreement, as I understand it, they must report to you every month all shipments to the Bermuda Company. Do you get a report each month from the Carling Company?—A. No, not from the Carling Company, but from the Bermuda Company.

Q. You do not get a report each month from the Carling Company?—A. I did at one time, but that provision of the contract fell into disuse, and I have not been able to get it observed.

Q. So that you are not receiving the monthly returns from the brewers that the contract calls for?—A. It is not monthly returns, but it is an advice of each shipment. I do not get those from the Carling Company. There are only three that are observing that rule, although they have all been notified time and again.

Q. What is the nature of the report you get from the Bermuda Company?—A. They send me a statement showing the name of each brewer, the different ports or docks from which the goods are sold,—the total quantity sold belonging to each brewer, and the expense. You asked me if I can tell you what the Carling sales would amount to, I could.

HIS LORDSHIP: He did give that.

MR. ROWELL: No, not the total of the Carling sales. He said he could not. Now he tells me he can give us the total of the Carling sales as reported to him?—A. Yes. I take these figures and I work them out at the authorized price. I worked them out at the authorized price and take off the expenses, and the result I get agrees with the money sent me by the Bermuda Company.

Q. Will you give us a copy of one of these sheets to illustrate it?—A. Yes. I will have a copy made (Exhibit No. 23).

MR. ROWELL: Give us a copy between August 26th and March 27th—August or September, 1926.

THE WITNESS: This is September, 1926,—you want a copy of that?

MR. ROWELL: Yes, you might have a copy of that made, and I will put it in as Exhibit No. 23.

30 HIS LORDSHIP: It is only a sample of a given month?

MR. ROWELL: Yes.

Q. They are all in the same form?—A. Yes.

Q. And they show on their face the number of cartons?—A. LaSalle, Number 1 dock, cartons, Carlings, 47,005; from LaSalle Number 2 dock, 3,081 halves, and 185 quarters; Riverside dock, 12,858 cartons; Amherstburg dock, 8,017 cartons; Port Lambton dock, 11,736 cartons; Point Edward dock, 34 cartons; Kingsville dock, 2,688 cartons—and outside points 800 cartons—making a total of 3,081 halves, 185 quarters, and 83,138 cartons. That was Carlings. And these are expenses for draft and bottled beer.

40 Q. You refer to one item here under Port Lambton, 4 o.s.—what do you say o.s. refers to?—A. Old stock. It was sold at a higher price than the ordinary \$3.25.

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Q. Is that a common thing occurring through it?—A. No. There are only small quantities. There is one, British America—B.H. is black horse and they get a higher price for that.

HIS LORDSHIP: They get more than \$3.25?—A. Carlings had four cartons of old stock in this particular period. This is the one you want a copy of.

Q. Yes, you can make a copy of that one?

HIS LORDSHIP: Then it is possible that all of these sales would return more than \$3.25?—A. It is more than \$3.25. It was a mere bagatelle in all of these special sales. During the last several periods I have there have not been any special sales.

HIS LORDSHIP: If you tried to make a calculation on that rate, it would not agree 10 on account of these little changes.

MR. TILLEY: There would be a variation.

HIS LORDSHIP: Fluctuations, which do not amount to very much.

THE WITNESS: I could give the amount of the Carling sales—I will presently give the amount. I will do it by reading it off the working sheets.

Q. Will you give us the total amount of the Carling sales as reported to you during the period?

HIS LORDSHIP: I suppose the witness will understand, from July 1926.

MR. TILLEY: To the end of April.

MR. ROWELL: To the 30th April. I was speaking of it as being to the end of 20 March, it is to the end of April.

HIS LORDSHIP: Can you give that period?—A. I have given it up to the 7th April. I can give it to the 5th May, if desired. Dealing with the total sales, can you give us the total sales from July 26th?—A. I can give it to the 5th May or 7th April.

Q. You have to take it off as reported to you?—A. Yes.

MR. TILLEY: The total sales of Carlings.

MR. ROWELL: Yes?—A. From the period of the 15th July to the 26th August, 1926.

MR. TILLEY: That is the first period?—A. Yes. \$322,234.25, bottled goods. 30 I will have a copy of it made.

MR. TILLEY: Q. When you are giving it, can you give it conveniently for Carlings and then the total for all as you go along?—A. Yes.

MR. TILLEY: It will save coming back to it.

HIS LORDSHIP: That was from the 15th July to the 26th August?—A. From the 15th July to the 26th August—the business done by the Carlings was \$322,234.25 in bottled goods, and \$98,966.75 in draft goods. The total business done in that period was \$513,460 of bottled goods; and \$400,584.75 in draft goods.

Q. Before passing from that can you tell us the number of cartons?—A. Yes. I can pick them out.

Q. Well, give us the cartons at the same time so that we will have both the cartons and proceeds?—A. The Carlings cartons were 99,149; half barrels 6,122; and quarter barrels 123.

Q. Then perhaps you can tell me this. Taking the quantities and the prices mentioned in the agreement, would that give you the cash returns that you have mentioned?—A. Approximately—any difference would be the more expensive goods.

Q. Any difference would be the more expensive goods?—A. Yes.

MR. TILLEY: Q. Could you give the total cartons?—A. Yes. 157,180 cartons in that first period; 1,050 cartons of quarts; 20,943 halves; and 7,939 of quarters.

10 The next period, 27th August to 23rd September, 1926, Carlings business done amounted to \$270,198.50 in bottled goods; and \$50,822.25 in draft goods;—The total business done was \$440,913.25 in bottled goods; and \$208,253. in draft goods. The quantities are Carlings 83,138 cartons; 3,081 halves; 185 quarters, out of a total of 132,981 cartons, and 3,490 cartons of quarts, 11,009 half barrels, and 3,892 quarter barrels.

The period from the 23rd September to the 21st October, I can prepare that information for you.

Q. Mr. ROWELL: Perhaps I can ask you a question, and perhaps the witness can prepare an exhibit which will save us a little time. The figures you have given us
20 in these two monthly statements are typical of the figures contained in all the monthly statements you received for the period indicated?—A. Yes.

Q. And you will prepare a statement giving the information taken from these sheets you have received, that will cover the period mentioned up to the 5th May?—A. Yes (Exhibit No. 24).

Q. Did I ask you if you paid this by cheque?—A. Yes.

Q. Have you returned cheque?—A. Yes. I have only got the cheques here down to the 7th April, 1927,—I have not got the payment of \$1,200.

Q. What is the aggregate amount of the cheques?—A. The cheques that you have there down to the 7th April amount to \$78,936.87 paid over to the Carling
30 Company—and if you continue it down to the end of April—the actual payment made.

Q. What is the aggregate amount of the cheques?—A. The cheques that you have there down to the 7th April amount to \$78,936.87 paid over to the Carling Company; and if you continue it down to the end of April—the actual payment made by me was in April—\$12,071.84.

Q. You would still be holding back?—A. I would be holding three months residuary receipts.

Q. And you would still have the month of April receipts that would not have come into you in sales made in the month of April—would that have reached you in
40 the month of April?—A. The period ending the 5th May.

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HIS LORDSHIP: The ledger would give you the information.

MR. ROWELL: Will you turn and see what that is?—A. It was the 21st May when I got a settlement of the period ending the 5th May.

Q. Will you just look at these cheques and tell us. The first cheque is the 6th October, 1926 for the sum of \$2,607.66 and it is payable to the Carling Export Brewing and Malting Company, Limited,—and can you tell me from the endorsement where it was deposited and the account to which it was deposited?—A. It is endorsed for deposit only to the credit of the Carling E. B. & M. Co., Ltd.

HIS LORDSHIP: Where was it deposited?—A. Pay to the order of any bank or banks, November 6th 1926, the Dominion Bank, London, Ontario. 10

Q. Then the next cheque is November 2nd, 1926, for \$2,349.89, payable to the Carling Export Brewing & Malting Company,—can you tell me where that was deposited?—A. Deposited at the Carling E. B. & M. Company, Limited, in the Dominion Bank, London, Ontario.

Q. Then the next is December 6th, 1926, for \$22,314.72, payable to the Carling Export Brewing & Malting Company—can you tell me where that was deposited?—A. That is marked for deposit to Carling E. B. & M. Co. Ltd., and it has the initials H. T. R. It is deposited in the Dominion Bank at London, but the Carling stamp is not on it. H. T. R. is presumably the teller who took it in.

MR. TILLEY: Q. Is it not endorsed by the company?—A. Just by the bank to 20 the credit of the company.

HIS LORDSHIP: It may have been mailed to the bank for deposit?—A. The others have the stamp, but that has been written on it by the teller.

Q. The next one is January 3rd, 1927, and is for \$20,284.38 payable also to the Carling Export Brewing and Malting Company—will you please tell me where that is deposited?—A. Deposited to the credit of the Carling E. B. & M. Co., Ltd.—deposited apparently in the Dominion Bank at Windsor.

HIS LORDSHIP: How do you remit those. Do you make a cheque and what follows?—A. I make out the cheques and send them to the brewer entitled to them, accompanied with a statement. 30

HIS LORDSHIP: You mail it?—A. Yes.

HIS LORDSHIP: Where?—A. At London.

MR. ROWELL: Q. Then the next is February 8th, 1927, for \$13,607.21, The Carling Export Brewing & Malting Co., Limited, and can you tell me where that was deposited?—A. Deposited to the credit of the Carling E. B. & M. Co., Ltd., Dominion Bank at Windsor.

Q. The next is February 25, 1927, for \$13,742.27, Carling Export Brewing and Malting Co.—tell me where that was deposited?—A. It was deposited in the Dominion Bank at Windsor, but it is not endorsed by the Carling Export Brewing & Malting Co. It was deposited to the credit of somebody—Z. Payel—and that 40

is evidently the bank manager's signature that he has credited it to the credit of that man.

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MR. TILLEY: Do not infer too much.

Q. MR. ROWELL: Tell us what appears on it?—A. Deposited to the credit of Z. Payel in the Dominion Bank. I cannot make out what the rubber stamp is beyond that, except there is a further signature which I cannot even guess at, and it is marked "Manager"—that would be the manager of the bank—But there is a stamp of the Dominion Bank at Windsor, marked second teller, March 1st, 1927, Windsor, Ontario. There is a further rubber stamp "pay any bank or banker or the Dominion 10 Bank, Windsor, Ontario". "A. M. Cowie, Manager." That seems to be the history of that.

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Examination
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(continued)

MR. TILLEY: As recorded?—A. Yes.

MR. ROWELL: Then the next is March 23rd, 1927, for \$4,030.74, payable to the Carling Export Brewing & Malting Co., Ltd., and where was that deposited?—A. Carling Export Brewing & Malting Co., Ltd., credit account Low, Leon & Burns—the Dominion Bank, Windsor, Ontario, second teller, April 1st, 1927. Pay any bank or banker for the Dominion Bank, Windsor, Ontario, A. M. Cowie, Manager.

Q. You say those are all the cheques you have here. Have you the cheques for the April and May payments?—A. No. I have not got those back. This is a 20 savings account and it takes some time to get the cheques picked out, That takes up every payment but one up to the end of payments.

Q. You could get the further cheques could you showing the payments you have made up to the 5th May?—A. That would just be this one—\$1,200. It is a matter of \$1,296.42 that is the actual amount of the cheque.

MR. TILLEY: Of what date?—A. The 27th April, 1927.

MR. ROWELL: And then the next cheque paid after that is the 21st May?—A. Yes.

MR. ROWELL: Then those cheques had better go in.

HIS LORDSHIP: Yes, they will be Exhibit Number 25—that will be seven 30 cheques.

MR. ROWELL: Now under the terms of this agreement the brewers were to notify you of their selling agents?—A. Yes.

Q. Their sales representatives?—A. Yes.

Q. In the territory covered by the agreement?—A. Yes.

Q. Who was named by the defendant company as their sales representative?—

A. They did not represent to me at all. That was another feature of the agreement more honoured in the breach than in the observance of it. I do not think that more than two or three ever complied with that clause.

HIS LORDSHIP: Did the Carling Company comply with it?—A. No.

40 MR. ROWELL: So that you have never received from them the names of the sales representatives provided for in the agreement?—A. No.

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Q. Now as I understand it, I think it is clear, but I just want to see if I am correct in it, the moneys you paid over to the Carling Company are the moneys you received from the Bermuda Export Co., which represent first the 75 cents a carton less the Bermuda Company's expenses; and then you in turn deducted your own expenses from the money received?—A. Yes.

Q. And you still retain the sum of \$5,000 on hand?—A. Yes.

Q. And the hold back for the three months period?—A. Yes.

HIS LORDSHIP: Have you ever had occasion to discipline any of them for shipping somewhere else?—A. Yes. As provided for in the agreement they set my finding aside.

10

HIS LORDSHIP: What is that clause of the agreement?—A. Clause II.

MR. ROWELL: You have set out in a memorandum here the amounts payable to the Carling Company, as you have already detailed them in evidence up to the 7th April, 1927?—A. Yes.

MR. ROWELL: Perhaps that might be for convenience marked as Exhibit No. 26.

Q. If you will add the May period on to this, we will put it in as complete—up to the 5th May. The return of the 5th May would be the April period. This exhibit does not represent the payments, the amount payable to the Carlings as computed for each period, not the amount actually paid. This relates to the first set of figures you gave us this morning, but if you would include the month of April 20 bringing it to May 5th, then the completed figures could be put in?—A. This period will be the 8th April to the 5th May, and the amount of Carlings share or apportionment is \$9,266.48.

HIS LORDSHIP: You make a distinction in the statements of the amount paid and the amount payable?

MR. ROWELL: Yes. The manner in which it has been dealt with by Mr. Stiff who prepared at the end of each period mentioned the amount payable, and then the cheques have been issued on different days for varying amounts as provided for under the agreement. The dates do not correspond as shown in this with the cheques. We have two lists of dates and amounts. One of the lists of the amounts computed 30 as payable and the other the cheques. April 1927 we are speaking of.

Q. Who are the officers of the Bermuda Export Company?

MR. TILLEY: If he knows?

A. I cannot say I remember who they were. I do remember that George Russell of Hamilton was President. I don't know who the Secretary is.

Q. Do you know who the directors are?—A. I think there are each one of the brewers who are parties to that contract—I would not be positive about this—It was my opinion they had eleven directors and there were eleven companies.

Q. Do you know who represents the Carling Company on the board?—A. I cannot say who it is. I have had dealings—

40

MR. TILLEY: If you do not know?

MR. ROWELL: Who have you had dealings with?

MR. TILLEY: He has guessed at the signatures and cheques.

MR. ROWELL: I do not want him to guess at who the officers are unless he knows. With whom have you had dealings with respect to the Carling Company?—
A. Mr. Harry Low.

MR. TILLEY: With Mr. Low representing the Carling Company?—A. Yes. and with Mr. Burns representing the Carling Company. I think I can best answer that by quoting from this agreement with the representative of any brewery, or by
10 the President, Director, Secretary, Treasurer, Manager, Assistant Manager, or the book-keeper. I have had dealings with people in that way in connection with the Carling Company.

Cross-examined by Mr. Tilley, K.C.

Q. There is no doubt by the document itself it contemplated that each company would have a representative in the Bermuda Company?—A. Yes.

Q. That is what you are referring to?—A. Yes.

Q. That is on the document?—A. Yes.

Q. Who they are you cannot say or cannot tell—and if you can, I would be glad if you would tell?—A. I have no official notification of the officers.

20 Q. They had not communicated that to you?—A. No.

Q. And all the money you received for any of these breweries including the Carling Company, the source of it is the Bermuda Company.—A. That is my only source of revenue.

Q. At any rate you get no moneys direct from the Carling Company?—A. None whatever.

Q. Or from any of the other companies?—A. No.

Q. And then you get such moneys as the agreement says you are to have?—
A. Yes.

Q. You spoke of fining some company, and I think you referred to clause eleven
30 of the contract. (Reads clause 11.) Now was it a complaint with regard to the Carling Company that you are referring to when you said you had taken some action?—A. No, it was not.

Q. Have you ever had any complaint against the Carling Company with respect to marketing their goods?—A. Yes, I have, recently.

Q. I mean down to the end of April, 1927?—A. No.

Q. So that down to the end of April, 1927, there was no complaint against the Carling Company at all?—A. None whatever.

Q. Now the business that you are concerned with, if this agreement means what it says, as I understand it, is the export business of these breweries?—A. Yes.

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Q. Are you concerned at all with their Canadian business?—A. Not in the slightest.

Q. The Canadian sales of the Canadian product does not come to you directly or indirectly through the Bermuda Company?—A. No.

Q. It is all export?—A. Yes.

Q. And is it all United States?—A. I don't know whether the Bermuda Company forwards to—my connection—I don't know anything but what they tell us.

Q. So far as the agreement goes it indicates export, and nothing has come before you to indicate that any Canadian business comes into this at all?—A. No.

Q. And you did not have any account rendered to you of any export beers that 10 would be on hand at the beginning of this period?—A. No. I would not know anything. So far as I know it started off on the 15th July, 1926, with a blank set of books.

Q. The business started up then?—A. Six weeks later I got a return from the Bermuda Company, and then I began to function.

Q. So that you had not checked up the quantities on hand from time to time, or manufactured for export, or anything of that kind. You merely got cash returns?—A. Yes.

Q. Now then, can you tell me from your returns, whether something that was said here yesterday was true—that the keg business as distinct from the bottle 20 business is carried on in the hot months. Look at your returns. I assume you know nothing except what your returns show. Compare the months of August and September, with the months of February and March—July does not come into our period—You have July, I suppose?—A. Take the period ending the 16th December, 1926. The halves amount to 2,400, and the quarters amount to 800, and the cartons amount to 4,800.

Q. Is that the kind of information your statement is going to give?—A. Yes.

HIS LORDSHIP: When you speak of hot months—

MR. TILLEY: Summer months.

HIS LORDSHIP: Months in which beer would freeze, as distinguished from 30 months it would not.

MR. TILLEY: I was speaking rather of the months when it would go down with a relish.

HIS LORDSHIP: Can you ship it in kegs on an ordinary freight car in winter?—A. During the bad months there was some reported to me.

HIS LORDSHIP: It might be expressed instead of sent by freight?—A. This export is all by water.

HIS LORDSHIP: It has to go from London, not by water?

MR. TILLEY: It may not be so transportable in the winter.

HIS LORDSHIP: But you can overcome the difficulty, climatic and the rest.

(This concluded the examination of this witness.)

HARRY A. CORNWALL: Called, sworn and examined by Mr. Rowell, K.C.

Q. You reside at Windsor?—A. Yes.

Q. What is your position in the Bermuda Export Company?—A. I am book-keeper.

Q. When did you enter the employ of the Bermuda Export Company?—A. At the commencement of the Company's business.

Q. And you have been in the employ ever since?—A. Yes.

Q. And are still in the employ of the company?—A. Yes.

Q. There has been a Mr. Clapp, the secretary of the company, who produced 10 the books and documents—do you say that Mr. Clapp is ill?—A. Mr. Clapp is ill.

Q. And they have sent you up here in his place?—A. Yes.

Q. Well now, how long has Mr. Clapp been ill?—A. Almost two weeks.

HIS LORDSHIP: Where is the company's office?—A. In the Security Building, in Windsor.

Q. MR. ROWELL: Q. We have been told, and Mr. Stiff has put in the agreement which indicates that the Bermuda Export Company handles the Carling Company's beer?—A. Yes.

Q. Is there an agreement between the Bermuda Export Co., and the defendant, the Carling Company?—A. Yes.

20 Q. There is?—A. Yes.

Q. Have you produced that agreement?—A. I have been unable to get the original agreement.

Q. Where is the original agreement?—A. The present secretary, Mr. McPhee, has it.

Q. But you were instructed to get and bring the original agreement?—A. Yes.

Q. Why have you not brought it?—A. I could not get in touch with Mr. McPhee on Sunday when I left, and Mr. Harris was going to look after the matter for me, and I received this registered letter yesterday which contained only a copy of the agreement.

30 HIS LORDSHIP: Who did you receive that letter from?—A. Mr. McPhee.

Q. What have you got. Let us see what you have got?

(The witness produces a paper).

HIS LORDSHIP: Do you mean, Mr. Rowell, the contract with the brewers. There is a contract between the Carling Co. and the Bermuda Co.

MR. ROWELL: Yes, the witness stated there was such a contract between the Carling Company and the Bermuda Company.

Q. Did they tell you why they had not sent the original?—A. He says that the agreement is needed in the May sittings in the case to come on in Windsor this month. If you will read his letter.

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HIS LORDSHIP: Perhaps Mr. Tilley knows?

MR. TILLEY: I have never seen the document. I have not got it. I have never seen the original or a copy. If my learned friend will let me see the copy, we can compare it—we can use this in the meantime.

MR. ROWELL: Then subject to any question of verification.

MR. TILLEY: I have never seen the document, and I cannot admit it, but we can use it—and if we find it is not in accordance with the original—

Surely the witness could ask to have it sent down by mail to-night?—A. I can do my best. Mr. McPhee is in London today.

MR. ROWELL: We will use this in the meantime. It is of the 15th June, 1926—10 and is between the Bermuda Export Co., and the Carling Export Brewing & Malting Co.

HIS LORDSHIP: Do you know whether there is a similar contract between the Bermuda Export Co., and each Brewing Company.

Q. Can you tell us whether there is a similar contract between the Bermuda Export Co., and each Brewing Company?—A. Yes, there is a contract between each.

HIS LORDSHIP: Besides the general contract of them all together?—A. No, I never heard of a general contract.

MR. ROWELL: The general contract is with Mr. Stiff.

MR. TILLEY: That would not be the same thing. I think His Lordship's 20 question involved this, whether the contracts with all the breweries were in the same form.

HIS LORDSHIP: That is what I meant?—A. Absolutely as far as I know each contract was the same.

MR. TILLEY: Q. With the different ones?—A. Yes.

(Mr. Rowell read the document which is marked Exhibit 27).

MR. TILLEY: That seems to agree with the copy of another contract we have,—and you have a copy of another and it agrees with that. So I think we could agree on that and not bother about the original.

MR. ROWELL: All right, we will take this one. (Exhibit 27). 30

(Then the court took a recess from 1 p.m. to 2.30 p.m.)

The Court resumed at 2.30 p.m.

HARRY A. CORNWALL: Examination resumed by Mr. Rowell, K.C.

Q. I notice by the second clause of this agreement, Exhibit Number 27, the price is fixed which you are to collect, that is the Bermuda Export Company is to collect for the products of the Carling Company at the time of delivery to the purchaser. Did you collect in all cases the amounts mentioned?—A. For that period yes.

Q. MR. TILLEY: For the period of 1924?

MR. ROWELL: Q. When it opened July, 1926, until the end of April, 1927?—40
A. That is right.

Q. And I see you were to collect it before delivery?—A. Yes.

Q. Did you collect it in all cases before delivery?—A. Yes—the Cashier at the dock collected it before the beer is loaded.

Q. How did you keep track. How did you keep track of the Carling's Company sales so as to make your returns?—A. We have a sheet for each brewer that is kept daily. It starts off with the stock in the morning. It shows the receipts. It shows the sales.

MR. TILLEY: Q. Do you mean the receipts of money or beer?—A. The receipts of beer.

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10 HIS LORDSHIP: A statement for each brewery—he means an account.

MR. TILLEY: Q. A loose leaf?—A. Yes.

MR. ROWELL: Q. Explain what you mean?—A. I have a sheet here.

Q. Let us see what they are like?—A. They are all practically the same. This is the stock in the morning at the top, on the right hand side.

MR. TILLEY: Q. This is the Carling Co's. sheet?—A. Yes.

MR. ROWELL: Q. And the Carling is the same in form as this copy for the other breweries?—A. They are all the same.

Q. Then just describe what this sheet contains so that we will understand it?—

A. At the top at the right we have the stock in the morning, and under that received 20 during that particular day; and we have the shipments during the day which are taken off of our stock.

HIS LORDSHIP: The shipment is indicated to the left?—A. Yes. And then we have on the very last line the stock at the close of business that day.

HIS LORDSHIP: On the last line, what do you mean? A. In the summary.

HIS LORDSHIP: For instance, in this case you had 714, 325 and 336 of ale?—A. Yes.

HIS LORDSHIP: And then you sold 90—and then you deducted the 90?—A. There is one entry.

HIS LORDSHIP: There is only 45, and you credit 45—and it goes to the top 30 amount less 45 at the end of the day?—A. Yes.

HIS LORDSHIP: Do you always allow something for shrinkage?—A. We never allow it unless there is a shrinkage.

Q. What do you mean by shrinkage?—A. Four or five cases might be broken.

HIS LORDSHIP: That is what you mean by shrinkage?—A. Yes.

Q. Anything damaged you put a value on it yourself?—A. We handle that in the accounts at the end of the period.

MR. ROWELL: Q. Then is this at some particular dock?—A. Yes. This is at LaSalle dock on February 3rd, 1927.

Q. And this is the statement made out at 7 a.m. on February 4th? A. That 40 is right.

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Q. That is dated February 5th?—A. We put this date on in the office in Windsor. It indicates the day it goes through our books in Windsor.

MR. TILLEY: Q. The stamped date at the top is February 5th?—A. Yes.

Q. It would be the summary of the business at LaSalle Number 1, on February 3rd, and made out on the morning of February 4th?—A. That is right.

Q. At LaSalle?—A. Yes.

Q. And sent to your office in Windsor?—A. Yes.

Q. And stamped as received in Windsor on the 5th, or entered in the book?—
A. Entered in our book under date of the 5th.

MR. ROWELL: Q. Now how do you get the stock on hand in the morning. I want the volume of the Carling shipments to you, and I want to see how you deal with it. When did you start in business?—A. July 15th, 1926.

Q. Did you start with a stock on hand at that time?—A. I don't remember.

Q. Will not your books show?—A. Can I give a specific instance?

Q. In respect to Carlings, yes. I don't know what you mean by a specific instance, just tell us?—A. I can give you the number of cases we took over at LaSalle Number 1 on July 15th.

Q. That is what I am asking you?—A. We took over 35 cases.

Q. Would you have a similar record with reference to each dock for the amount you took over on the morning of the 15th July?—A. Yes. 20

Q. How many docks did you have where you took over stock?—A. LaSalle is one dock.

Q. There is LaSalle Number 1, and there is LaSalle Number 2?—A. At LaSalle Number 2 we did not take over anything. At Riverside we took over 340 cases.

Q. Tell us where these places are so that His Lordship will know. LaSalle is east of Windsor, how far?—A. About ten miles.

Q. Are the docks Numbers 1 and 2 both at La Salle?—A. Yes.

Q. Are they near together?—A. Yes.

Q. Then where is Riverside?—A. Riverside is about five or six miles west of Windsor. At Amhersburg we took over 510 cases. 30

Q. Where is Amherstburg in relation to Windsor?—A. About 20 miles east of Windsor.

Q. On Lake Erie?—A. Yes.

Q. Are you speaking of cases or cartons, or do you mean the same thing?—A. The same thing. At Port Lambton we took over 442 cases.

Q. Where is Port Lambton in relation to Windsor?—A. It is about 35 miles north and west.

Q. On Lake Huron?—A. No. Not on Lake Huron.

Q. On Lake St. Clair?—A. At the top of Lake St. Clair. At Kingsville we took over 1,049 cases. 40

Q. Where is Kingsville in relation to Windsor?—A. Kingsville is 29 miles down Lake Erie.

Q. Neither Amherstburg, nor Kingsville nor Port Lambton are outports of Windsor.—A. I don't know as to that.

Q. It is towards Lake Erie.—A. On Lake Erie.

Q. Is Kingsville east or west of Amherstburg?—A. East.

Q. Does that cover all the docks at which you took over stock?—A. Yes.

Q. And does it cover all the docks at which you received stock from the Carling Company.—A. Yes.

10 Q. When you speak of the stocks taken over, on what date were they taken over?—A. On the morning of the 15th.

Q. When you say taken over what do you mean by that?

MR. TILLEY: Q. What was done.

HIS LORDSHIP: What do you mean?—A. I mean the Bermuda Export Company's man took charge of the dock and consequently that stock.

Q. I notice under the agreement the Bermuda Export Co., had the right to take over the docks. I see under paragraph 9 of the agreement the first party upon request shall have the right to require an assignment of any lease of the docks under the control of the second party within the limits of the territory hereinbefore
20 described. Where the docks if any are owned by the first party the second party shall have the right to take them over during the period this agreement remains in force. Did the Bermuda Company take over the docks to which you have referred?—
A. Excepting in the case of Kingsville.

Q. You took over the other docks?—A. It is a little different case. All the other docks were staffed with the Bermuda Export Company's men. At Kingsville we had simply one Bermuda man who took charge of the money.

Q. Then who received the goods when they came in. How did the goods reach these docks?—A. In some cases by truck—in some cases by freight.

Q. Well what determined it whether they reached you by truck or freight?

30 A. The only thing I can say is that different breweries—

Q. We are speaking of the Carling Company. I want it confined to the Carling?

A. Well, the Carling cases were practically all received from Windsor.

Q. Practically all received from Windsor?—A. The cases or cartons.

Q. Wherever you use the word case or carton, you mean the same kind of package? A. Yes.

Q. They were practically all received from Windsor?—A. Yes.

Q. How did they get from Windsor to the docks?—A. We got them from the Carling Company's trucks.

Q. Then when they were received at the dock, they were added each day to the
40 stock in the manner you have explained to us?—A. Yes.

MR. ROWELL: We will put in a copy of the sheet as Exhibit No. 28. This is one already referred to. It is for the period, 7 a.m. February 4th 1927—

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HIS LORDSHIP: Why do you mark your periods at 7 a.m. in the morning.

MR. TILLEY: He spoke of it as at the beginning of the day.

HIS LORDSHIP: Q. You open your docks at seven in the morning?—A. Yes.

MR. ROWELL: Q. When did you close them?—A. I have never been at the docks. I was at one dock for a few minutes one day.

Q. Then you say they are trucked down from Windsor to the different docks, and are added to the stock on hand each day?—A. Yes.

Q. Then how do you keep track of the stock that comes down?—A. With each load we get a voucher.

Q. With each load you get a voucher?—A. Yes, showing the number of cartons 10 on the load.

Q. Will you give me one to illustrate. Just let us take two or three out to illustrate. That is the first one on August 31st 1926. Then there is September 3rd, 1926—September 6th 1926. These are all to the LaSalle dock. We will take a few out to illustrate. You have first August 31st, 1926, 300 cases—the one of September 3rd has 300 cases, to Amherstburg—and here is one, Riverside, September 7th, 300 cases?—A. Yes.

Q. Now do these come to you each day?—A. Yes—each day that they receive a load.

Q. Each day that you received a load you got from each dock—How do you 20 describe the document—a voucher?—A. Yes.

Q. Showing the amount you received that day at that dock?—A. On that particular load.

Q. On that particular truck?—A. Yes.

Q. There might be several loads in a day or only one load?—A. There might be one or none.

MR. ROWELL: Then I will put in the three samples as Exhibits 29/A, 29/B and 29/C.

Q. Would these amounts compare on your sheet with that date?—A. Yes.

Q. Will you turn to one and show us? 30

MR. TILLEY: August 31st at LaSalle.

A. The amount shown in that particular slip is lost in the total.

MR. ROWELL: Q. Can you look through the slips and see if you can find the total for that day?

HIS LORDSHIP: Q. Would you not have an item for each voucher on your sheet?—A. No.

HIS LORDSHIP: Q. If you have a load of 300 and another load of 400, you may enter that as 700 on your sheet—is that what you mean?—A. Yes.

MR. ROWELL: Q. See if you can get the other vouchers for the total of this day?—A. The date in our office for the shipments on the 31st is September 1st. 40

MR. TILLEY: You mean in our office, Windsor?—A. The Windsor office—
September 1st.

MR. ROWELL: Q. And what is the total that day for dock I, LaSalle?—A. 1,500
cartons.

Q. Have you got the slips?—A. I have three slips for 300, and three slips for
200. Q. The slips make up the 1,500?—A. Yes.

Q. And if we went through the list of bundles we would find the same thing
throughout?—A. We added the value in the Windsor office each morning.

Q. You have vouchers as you call them showing the receipt at the particular
10 dock of the total amount entered in your dock stock record in your office?—A. Yes.

Q. You keep a stock record for each dock?—A. Yes.

Q. For each brewery?—A. At each dock.

Q. Then is the first notice you get of the goods coming to the dock the receipt in
the morning of this voucher?—A. The dock may get some notice. There is no notice
comes into our office except in the case of a carload or sometimes we would know the
load coming to the dock. In some cases we would know of a load going to a dock
before it got to the dock.

HIS LORDSHIP: But you would not take any cognizance before the goods actually
came?—A. No.

20 MR. ROWELL: Q. Then you said they all came from Windsor—from where in
Windsor?—A. I believe they came from the Carlings C.P.R. sheds.

Q. Is that what we had reference to from time to time, to the Carling dock, and
the C.P.R. dock?—A. Yes.

Q. Is it the same dock?—A. I could not say definitely.

Q. Then was it any part of your duties in keeping track of the stock and sales,
to keep in touch with the Carling dock in Windsor; or were you limited to these other
docks. Did you keep in touch at all with the Carling dock in Windsor?—A. Not
with regard to how much they should ship each day.

Q. Did you keep in touch only in regard to the sales?—A. We notified the
30 Carlings, Windsor, each morning of sales of the previous day, and their stock on
hand that morning.

Q. You supplied them each day with that information. How was that done by
a memorandum or verbally?—A. Verbally.

Q. How did you communicate that?

HIS LORDSHIP: By phone?—A. By phone, yes, in some cases.

MR. ROWELL: Q. Who would you communicate it to there?—A. In the few
cases I may have communicated it during that period, it would be to Mr. Kennedy.

Q. Then how did you receive the cash, how did the money come in?—A. From
the docks do you mean?

40 Q. Yes. You were to collect the money. You had your agent or represent-
ative at each dock, did you?—A. Yes.

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Q. And you told us that you got the money before the goods were loaded?—
A. Yes.

Q. Then how was it transmitted to you. How did you get it in your office in Windsor?—A. We received the money each morning with the sheets and vouchers.

Q. Can you give me an illustration of the documents you received each morning from the docks?—A. I have not one of those.

Q. You can perhaps furnish us with one. Tell us what it is like—what it contains?—A. The summary shows the name of the brewery with the amount of collections for each, and the total.

MR. TILLEY: Q. Is that a separate summary for each brewery, or one summary for all the breweries?—A. One summary for all the breweries. It also shows the specification of the cash.

MR. ROWELL: Q. Is there any sales slip returned to you, or document of that character?—A. We have a slip in a register that we compile for each collection. I don't know whether I have one or not. Yes, I have one.

Q. Tell us what that document is?—A. This is compiled by the cashier on the dock at the time of making the collection. It shows the dock, the brewery, the number of cartons, and the amount collected.

Q. Then do those statements come to you each morning with returns?—A. Yes.

HIS LORDSHIP: Each morning only?—A. Yes. 20

Q. MR. ROWELL: To the Windsor office?—A. Yes.

Q. So that in respect of every sale made at the dock, you get the following morning a memo of this kind, giving a description of the goods and the amount?—
A. Yes.

Q. For each transaction?—A. Yes. (Exhibit Number 30).

Q. What do you call that exhibit?—A. We call it a register slip.

HIS LORDSHIP: Because it registers the quantity sold, and the proceeds received—
A. No.

HIS LORDSHIP: Why?—A. We have a register that sits on the desk and turns with a crank, and turns out this form. 30

MR. TILLEY: Q. It is on a roll?—A. Yes, just like an invoice.

MR. TILLEY: Q. And you can turn it over and write on it, and go on with the next?—A. Yes.

Q. Is it simple?—A. There are two other copies besides this.

Q. Three are made each times it operates?—A. Yes.

Q. Where do the three go?—A. The third copy stays in the machine—and the man at the dock takes the second copy—and we kept the original.

Q. One remains in the machine, one comes to you, and what happens to the third one?—A. The dock manager takes it for reference.

Q. The next one here is four half barrels of beer, and one quarter barrel?—
A. Yes. 40

Q. And the next one is?—A. Ten, Red Cap Ale.

MR. TILLEY: Q. Are they all numbered consecutively?—A. Yes.

Q. Everyone has to be accounted for?—A. Yes. The number appears on the dock stock record.

MR. ROWELL: We will put in one as Exhibit No. 30.

MR. TILLEY: Q. On the sample sheet, Exhibit Number 28, it shows the number of the sale—is that right?—A. Yes.

HIS LORDSHIP: The billing number is the number on the bottom of this last exhibit?—A. That is right.

10 MR. ROWELL: Q. Can you tell us the total amount of goods of the defendant company that you handled from the time you opened on the 15th July, 1926, until the 30th April, 1927?—A. That could be ascertained from our records.

Q. You have not made it up so far?—A. No.

Q. You could make up a statement for us showing us that, month by month?—A. Yes—by our periods.

MR. TILLEY: Q. Do you mean from the books you have here?—A. From the books here and at Windsor.

MR. ROWELL: Q. Have you sufficient records here to make it up?—A. No.

Q. You would have to get that from Windsor?—A. Yes.

20 Q. Now having got these returns in this way, how do you deal with the month. I am speaking always now with reference to the Carling Company. The proceeds of sales where you have collected the money?—A. I am sorry I do not understand the question.

Q. What do you do with the money you have collected in respect of the sales of the Carling beer?—A. We deposited the money in the bank every day.

Q. That is in the Bermuda Export Co.'s account?—A. Yes.

HIS LORDSHIP: In the name of the Bermuda Export Co.?

MR. ROWELL: Yes.

Q. How often do you make returns to the Carling Co.?—A. Every week.

30 Q. What is the nature of the return you make to the Carling Co.—will you kindly produce some sample of that?—A. There is a copy of our letter setting forth a week's collection.

Q. This is a sample?—A. It is a duplicate of the letter to the Carling Brewing Co.

Q. What is the date?—A. March 11th, 1927.

Q. It is addressed to the Carling Export Brewing and Malting Co., Limited, Windsor, Ontario: "Dear Sir,—We enclose herewith our cheque for \$15,424.50 for collections made on our account for the week ending 6 p.m. March 9th, 1927, as per the following summary"—then follows a list of the docks, and the amounts at each dock, and over the sums is a certain price?—A. Yes.

40 Q. Are the prices put upon that statement the prices mentioned in the agreement?—A. Yes.

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HIS LORDSHIP: That is dated Windsor?—A. Yes.

MR. TILLEY: Q. And it is on the letter paper of the Bermuda Export Co.?—

A. Yes.

MR. ROWELL: Q. And with the letter head of the Bermuda Export Company?—

A. Yes.

MR. ROWELL: Unless my learned friend has the originals.

MR. TILLEY: I do not object to the copy.

MR. ROWELL: I want to put it in (Exhibit Number 31).

Q. Then I see the amount per carton here is \$2.50?—A. Yes.

Q. And has the Bermuda Export Co. paid over to the Carling Company \$2.50 10 per carton for all the beer handled by them during this period?—A. Yes.

Q. And in respect of the other goods handled, what is the \$14.75?—A. We turned over to the Carlings for a half barrel.

Q. And \$6.00 is what you turn over for what quantity?

HIS LORDSHIP: Is it a quarter barrel? A. No.—a quarter barrel is \$7.55.

MR. ROWELL: Q. Will you tell us what that \$6.00 refers to?—A. It is beer that has been replaced, and we simply charged for the wood—simply charged for the barrel. Six dollars was the value of the barrel.

Q. I do not understand what you mean by that?—A. The beer would be bad.

Q. And you would replace that with other beer, and simply charge for the half 20 barrel?—A. Yes.

Q. Then you state "We have deducted from the above collections at the usual rates for cooperage" and so on. That relates to certain work done by you for the Carling Company?—A. Yes. Those are the empties we cleared for the Carling Co.

Q. Then you have a statement somewhat similar to Exhibit 31 for each week throughout the period?—A. For the empties?

Q. No, for the returns?—A. Oh yes.

Q. A similar statement to this throughout the period?—A. Yes.

Q. What was the amount you actually received per carton?

HIS LORDSHIP: You accounted for \$2.50?—A. \$3.25 we received, except for 30 that old stock ale.

Q. Why is it you had not paid over the full \$3.25?—A. It is in accordance with the agreement.

Q. Then what becomes of the other 75 cents per carton?—A. We periodically remit to the trustee, less our expenses.

Q. And how do you arrive at your expenses. You charge each brewery in proportion to the amount of the goods handled or how do you decide how much to allocate?—A. We carry our expenses along for the period, and at the end of the period we have sold so much, and our expenses were so much, giving us the cost per carton.

Q. And you deduct the cost per carton before you remit to Mr. Stiff?—A. Yes.

HIS LORDSHIP: What was the nature of your expenses?—A. Wages, rent,—our office in Windsor.

MR. TILLEY: Q. The overhead?—A. Yes.

MR. ROWELL: Q. Do you include depreciation?—A. Yes.

Q. On the docks?—A. Yes.

Q. Depreciation on the docks is included in the expenses?—A. Yes.

Q. On what basis do you estimate depreciation on the docks for including in the expenses?

MR. TILLEY: Are we concerned with the depreciation?

10 MR. ROWELL: I want an idea of the amount whether large or small.

HIS LORDSHIP: It is there in the seventy-five cents. You may ask him.

MR. ROWELL: Q. I think it is quite clear that depreciation is in any case deductible before you arrive at the sales tax?

HIS LORDSHIP: I think you should stand by Mr. Tilley's suggestion—it is part of the overhead.

MR. ROWELL: Of course with all due respect I do not think it is—Depreciation is not part of overhead.

HIS LORDSHIP: I think you are right. It is not one of the items that would go into overhead.

20 MR. ROWELL: I want to see whether it was a substantial sum or not.

HIS LORDSHIP: Well, I don't know. If you have a factory, and you have got machinery, the cost of the machinery goes into the overhead; but as your machinery gets older, the percentage would be less because you would have to allow for a certain amount of depreciation.

MR. ROWELL: If you were computing income tax that would be a proper matter, but when you are computing a sales tax?

HIS LORDSHIP: If you were computing the price of merchandise, that goes into the price.

MR. ROWELL: But when you come to determine what the selling price is, and 30 what deduction if any may be permitted.

HIS LORDSHIP: That is another question we have not touched.

MR. ROWELL: That is the point I had in view.

HIS LORDSHIP: I think that overhead is part of the selling price.

MR. ROWELL: I agree too. That is what I said. It would go more in my favour.

MR. TILLEY: Are we not going into the question of the accounts.

HIS LORDSHIP: I am going to hear the case. Mr. Rowell can conduct his case the way he sees fit; and you can conduct your side as you like. It may or may not come in.

40 MR. ROWELL: Give us an idea of the amount charged in for depreciation—depreciation in respect of the tax?

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HIS LORDSHIP: What proportion of the seventy-five cents would be allowed for depreciation?

MR. TILLEY: Does he know?

A.—Not that way—on per carton.

Q. MR. ROWELL: Can you tell me how much per carton your expenses would amount to after you deduct, before you remit to Mr. Stiff?—A. It is about an average of eighteen or nineteen cents per was during that period.

Q. So that you remitted to Mr. Stiff during that period .56 or .57 cents per carton?—A. No Sir, not that much.

Q. If it is 18 or 19 cents, and you deduct that from 75 cents that is the way you 10 would arrive at it. I just want to give you your figures. But that is the way it struck me in your answer?

HIS LORDSHIP: Is it a uniform amount, or is it according to the actual fact. Is it the actual wastage or is it an accepted percentage that you allow?—A. We held back what it actually cost us for a certain period.

HIS LORDSHIP: Then it actually responds to the actual wastage from day to day?—A. It might be forty cents.

Q. There might be some day when it is nothing?—A. No.

MR. TILLEY: They try to prevent that.

MR. ROWELL: Q. During the period from the 15th July to the 30th April, 1927, 20 would it be fair to say that you kept back 18 to 19 cents per carton to cover all of these items of expenditure?—A. That 18 or 19 cents was my idea. It might have been higher. I have detailed statements of all I kept back for those periods and can submit those.

Q. If you can tell us the result of it?—A. I can tell you the amount I sent to the trustee for any period, and how much I sold in that period, delivered.

Q. Give us one or two illustrations, perhaps we can judge for ourselves?—A. For four weeks, ending March 10th, 1927,—will I give the sales?

Q. Yes?

MR. TILLEY: Will he give us the sales and expenses for that period? 30

HIS LORDSHIP: Have you the item for depreciation?—A. No. It is in the dock expense.

MR. ROWELL: Q. Perhaps these figures will illustrate. Give your total sales for that period—\$43,734.20?—A. No, that is the total margin.

Q. That is the total of the seventy-five cents?—A. Yes.

Q. What do you deduct from that as expenses?—A. All the expenses.

Q. The first item is docks, \$9,257.32. Is that a sum for depreciation on the docks?—A. The depreciation is included in that.

Q. Is it a large part of it?—A. No, it is not the large item.

Q. You have not any figures that will illustrate what proportion it bears?— 40
A. Yes, I have.

Q. I want one illustration which will simplify it?—A. At LaSalle No. 2, for a previous period the depreciation was \$173.41, in a total expense of \$4,448.52.

MR. TILLEY: Q. That is the total expense under the heading of dock?—A. Under the heading of dock expense. It is higher on some of the other docks.

HIS LORDSHIP: Q. Give me what you mean by a carton or case—is it a closed box?—A. It is a closed carton, yes.

HIS LORDSHIP: It is a wooden box?—A. It is of cardboard.

Q. In LaSalle No. 1, you have a total dock expense of \$3,628.56, and you have depreciation \$509.40?—A. Yes.

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10 Q. It is a varying amount on the different docks?—A. Yes.

HIS LORDSHIP: Referring to the carton, is it sealed or can anyone open it without breaking it?—A. I believe it is sealed with adhesive tape—glued tape.

MR. TILLEY: This is not depreciation on goods. This is depreciation on physical structures—docks.

HIS LORDSHIP: Is that what you mean?—A. Yes.

HIS LORDSHIP: I thought it was waste.

MR. ROWELL: No, it is a charge put in the expenses the depreciation on the docks.

Q. Then I notice in your expenses you have administration and general, that 20 is your overhead generally at Windsor?—A. Yes.

Q. Then you have a provision for reserve, the largest item of all—\$10,273—approximately one quarter of the total sum then available for depreciation. What is that provision for reserve?

HIS LORDSHIP: I do not understand it. If it is depreciation for a dock, it should be a daily depreciation. Will you explain it?—A. A daily depreciation?

HIS LORDSHIP: Yes?

MR. TILLEY: This statement that the witness is referring to is a statement made up at the end of every four weeks, which they call a month.

HIS LORDSHIP: Is that right?—A. Yes.

30 Q. MR. TILLEY: And in that statement from the 75 cents you withhold from the \$3.25 before you send it on to Mr. Stiff, you deduct certain expenses of your company, and included in those expenses are something for the dock itself?—A. Yes.

HIS LORDSHIP: Is the dock repaired every month?—A. It is apportioning the original capital expense.

MR. ROWELL: Q. And what period are you seeking to wipe out the original capital expense on the docks, the three year mentioned in the agreement?—A. Yes.

HIS LORDSHIP: What is the dock like. Is it on poles, or is it crib-work—what is it?—A. I believe it is on piles. I never examined it.

MR. ROWELL: Does it include a warehouse for storing the goods?—A. There is 40 room there to store the goods.

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Q. What is the provision for reserve, this large sum for reserve—what is that for?—A. That is twenty cents per carton held back for any extraordinary expenses in connection with leases or unexpired contracts.

Q. Have you held back twenty cents a carton throughout this period as a reserve to cover any possible extraordinary expenses?—A. Yes, through the entire period.

Q. Then that would explain to some extent the figures you have given us as to the amount sent forward to Mr. Stiff. What is the total then that you deducted per carton on the average to cover expenses, and depreciation and reserve?—A. When I said 18 or 19 cents, it was exclusive of the 20 cents.

Q. It was exclusive of the 20 cents?—A. Yes. 10

Q. That would be 38 to 39 cents you deduct?—A. Yes.

MR. TILLEY: Q. As an estimate?—A. As a rough estimate.

MR. ROWELL: Q. Now then did you pay the money over to the Carling Company each week?—A. Yes.

Q. How did you pay it?—A. By cheque.

Q. Payable to the Carling Export Brewing and Malting Company, Limited?—

A. Yes.

Q. Where was that cheque sent to?—A. To their Windsor office.

Q. It was sent to their Windsor office?—A. Yes.

Q. And who was in charge of that office?—A. I don't know. 20

Q. You do not know?—A. No.

Q. Well, any dealings you had with that office, who were they with?—A. Mr. Hardy.

Q. Mr. Hardy?—A. Yes.

Q. What was his position in the office?—A. He was a book-keeper.

Q. He was a book-keeper in the office?—A. Yes.

Q. You mentioned before Mr. Kennedy, what was his position in the office?—

A. He has charge of the stock, as I remember.

Q. He had charge of the stock?—A. Yes.

Q. And have you got the return cheques from the Carling Co.?—A. No. 30

Q. Has the Bermuda Export Company got them in their possession?—A. Yes, they are in our office in Windsor.

Q. You can produce them for us?—A. I have sent for them.

Q. When these shipments came down did you get any bills of lading?

A. Shipments by truck.

Q. No. I mean shipments first by car, railway. Did you see any of the bills of lading?—A. Yes, I have bills of lading for some of the shipments here.

MR. TILLEY: Q. Carlings?—A. Yes. This particular shipment was—

MR. ROWELL: Q. This is a bill of lading for a truck?—A. Yes. I do not believe I have a bill of lading for a car. 40

Q. Well then did they issue bills of lading for a truck?—A. For the Port Lambton shipments.

Q. Where would those bills of lading be issued?—A. At London, Ontario.

Q. And who were the bills of lading to?—A. Consigned to B. Syring, care of the Bermuda Export Company.

Q. At what point?—A. At Port Lambton.

Q. And then instead of the railway company's name, it is some other name filled in—is it?—A. The Atcheson Transfer.

Q. Are those the only kinds of bills of lading that you at any time saw from the 10 Carling Co.?—A. I don't remember definitely—but I think there are some bills of lading in the office for cars of beer to Amherstburg, and cars of draft beer to LaSalle.

Q. You think there are some bills of lading there?—A. Yes.

Q. We want all of those. You have not any of those here with you?—A. No.

Q. You could have those sent down?—A. Yes. If I can find them.

Q. Can you tell me in whose names they are made out?

HIS LORDSHIP: If he is going to get them it is no use to challenge his memory now.

MR. ROWELL: Then taking the goods apart from those particular shipments you referred to, did you get any bills of lading for any of the other shipments. 20 Take all the cartons that went to LaSalle.

HIS LORDSHIP: In the course of your daily transactions was it customary to always have bills of lading?—A. Not for the Carlings at Windsor for their shipments by truck to LaSalle.

HIS LORDSHIP: Q. In what cases would you have them?—A. We would have bills of lading from London, Ontario, to Port Lambton.

Q. By truck?—A. By truck. And I think there are some in the office for the other shipments I mentioned.

Q. For railway shipments to Amherstburg?—A. And draft beer to LaSalle.

MR. TILLEY: Q. I gather what you are saying is, when the cars went to Windsor, 30 and the goods were trucked to any of the docks, you had no bill of lading.—A. No.

Q. But where the goods were shipped by car or truck to a dock you might have some bills of lading and you think you have them?—A. Yes.

MR. ROWELL: Q. Would the bulk of your shipments be ones that come by truck from Windsor to all of these docks?—A. It might vary at different periods.

Q. I am speaking generally over the period?—A. There was a good deal came in by car to LaSalle of draft beer—and a good deal came by truck from Windsor.

Q. Leaving out the draft beer, and dealing with the cartons, did they all come by truck?—A. The greater part by truck from Windsor would be for LaSalle, Amherstburg and Riverside.

40 Q. Did you get any B. 13s in connection with these trucked goods?—A. The B. 13s go to the dock, and later we in the office got one copy for the goods shipped.

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Q. I am only speaking of the goods that are trucked down from one place to another. If you can tell me, all right,—if you can not say so. Were they accompanied by B.13s?—A. Yes. Each truck-load is accompanied by a B.13—by one or more B.13s.

Q. That is the B.13s are made out in denominations from one to various amounts?

—A. From one to fifty.

Q. Like dollar bills?—A. Yes.

Q. Like the denominations of bank bills?—A. Yes.

Q. From 1 to 50?—A. It would be an exceptional case where it would be a B.13 for one carton. 10

Q. Where are the B.13s issued from?—A. I don't recollect.

HIS LORDSHIP: That is a thing I cannot understand. The B.13 is supposed to be a document that allows the export, and verifies it. After it is made out it is handed to the one who exports, and he goes away with it and he may or may not export the goods. There is no Custom's official following him.

MR. ROWELL: What is apparently done here is this. When a truck driver starts from Windsor say from the Carling warehouse with a load of beer to LaSalle, he would carry enough B.13s of various denominations to represent that load, and the reason is pretty obvious. I do not want to suggest it.

MR. TILLEY: He went a little further in another case. Do you really want it in? 20

HIS LORDSHIP: I thought the B.13 is given by a customs official who would follow the goods and see that the goods would be on board a vessel starting for an outport.

MR. TILLEY: And they do.

HIS LORDSHIP: That is what I understand, but now I see it is not.

MR. TILLEY: Except my learned friend is insinuating something different, that is exactly what happens.

HIS LORDSHIP: Not if it is delivered to a taxi-driver or truck and no one goes with him. I simply want the facts.

MR. TILLEY: Your lordship is not getting the facts. We will see. 30

HIS LORDSHIP: We will apply the law afterwards.

MR. TILLEY: You do not get the facts when you are halfway through the case.

HIS LORDSHIP: I am simply following the goods from Windsor to the dock.

MR. ROWELL: Q. Does that apply to the movement of goods by truck from Windsor to the docks of the Bermuda Export Company?—A. Yes. Not necessarily to all the docks but any of the docks in that portion.

MR. TILLEY: Q. You are speaking of the Carlings?—A. The Carlings, Windsor, to any dock within a reasonable distance.

MR. ROWELL: Q. Can you tell me this, do they move from dock to dock at times—apart from moving from Windsor to these particular docks, do you move the 40 goods from one dock to another?—A. Yes.

Q. How is that done?—A. Sometimes by a truck from the brewery, or one of the trucks we might hire.

Q. Then when you are moving from one dock to the other, is the truck-driver given a B.13?—A. Yes.

Q. A sufficient number of the B.13s to cover the load he is moving?—A. Yes.

Q. Now then when you want to move a certain quantity of goods from one dock to the other, how do you determine what B.13s to give to the truck-driver who goes with that load?—A. We never want to move any beer from one dock to another.

Q. Who wants to move it from one dock to the other. You told us it is moved—
10 who moves it?—A. The brewery concerned.

Q. The brewer concerned?—A. Yes.

MR. TILLEY: Q. You are at the dock?—A. No, I am at the office in Windsor.

MR. ROWELL: Q. Are these movements all reported to you?—A. Yes. Each transfer is recorded on the cashier's daily report of stock.

Q. Then do you know. If you do not know of your own knowledge I do not wish you to tell me. Do you know where the B.13s come from, when you are moving from one dock to the other. Say you want to move a truckload from LaSalle to Riverside, where would the B.13s come from that would accompany the truck-driver on that load?—A. They would come from the customs office—or the office that the
20 customs officer uses at the dock, and would be put with the load.

Q. What B.13s would accompany the load. How would you know the particular B. 13s that are applicable to that particular load of beer?

MR. TILLEY: Does he know?—A. I have never got out a B.13 for a load from the office of the customs house. I only know from giving instructions to a driver, or some way that way.

Q. You only know from the instructions you give the driver—you don't know yourself what is done?—A. No.

HIS LORDSHIP: I would like to know if some beer starts from Windsor and they go to La Salle with it, where do they get the B.13s. You were not able to
30 answer whether all the B. 13s were issued from Windsor?

MR. TILLEY: The B.13s are all issued from London, and they are stamped or produced by the customs' officer there; and they have track of all of that beer from the time it leaves them at London.

HIS LORDSHIP: I simply want the facts.

MR. TILLEY: I do not want to interrupt now. This witness, I don't know whether he knows or not how it is done at London. I don't know whether he knows that or not.

HIS LORDSHIP: He is located at Windsor.

MR. TILLEY: He is located at Windsor in the office. I assume he gets certain
40 knowledge how the business is carried on. Your lordship will appreciate, the customs papers are made out at London, and these are the papers which are used down to the

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time the customs officer sees the goods off the dock. We are checked from place to place by the customs.

MR. ROWELL: With that we do not agree.

HIS LORDSHIP: I am speaking of it because I want that to be clear.

MR. ROWELL: My learned friend is in error when he says that all the B.13s are issued from London. All the B.13s were issued from London since March of 1926. When that circular went out, that I read this morning, it required that they should be issued—

HIS LORDSHIP: But before that?

MR. ROWELL: Before that they issued the B.13s from London for a carload 10 of 12,000 cartons, but it was never used.

MR. TILLEY: I understood we were dealing with the period covered by the Bermuda Export Company, and I understood we were tracing the trucks under the control of that company.

HIS LORDSHIP: It flows from remarks I made.

MR. TILLEY: There was a change.

HIS LORDSHIP: I am trying to reconcile this testimony.

MR. TILLEY: There was a change, but I beg of my friend not to mix up the two statements, when we are trying to get at what the Bermuda Export Company was doing. 20

MR. ROWELL: As long as my learned friend limits his observations to—I understood His Lordship to ask in regard to the matter generally.

HIS LORDSHIP: I did. I am responsible for this.

MR. TILLEY: There was a change in March. But we will rather confuse things if we develop both systems at once.

MR. ROWELL: Subject to the statements you are going to make up for us, and the production of the cheques which you expect to have in the morning, that is all I have to ask..

MR. TILLEY: I will reserve my cross-examination until my learned friend has finished. 30

HIS LORDSHIP: You would rather that the witness stand aside?

MR. TILLEY: Yes.

(The witness stands aside).

No. 9
—
George Robert
Ferrier Troop
Examination
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GEORGE ROBERT FERRIER TROOP: Called, sworn, and examined by Mr. Rowell, K.C.

Q. You are a chartered accountant in the firm of Clarkson, Gordon, Dilworth & Company?—A. Yes. I am a member of the staff,

Q. And you have been with that firm, how long?—A. About five years.

Q. During the last two years have you been engaged in assisting in the investigation of certain breweries under Mr. Nash's supervision?—A. I have for part of 40 that period.

Q. Did you have anything to do with the investigation of the books of the Carling Export Brewing and Malting Company, the defendant in this action, for the purpose of preparing the statement, Exhibit Number 2, as to gallonage and sales tax?—A. I did.

Q. Did you personally examine the books of the company with reference to that?—A. I did.

Q. Will you just take a copy of Exhibit Number 2. I would like to ask you with reference to it. On the fourth page of this exhibit headed statement of net gallons sold, did you ascertain from the books of the company the gallonage sold by 10 them for the period from April, 1924, to the end of April, 1927?—A. I did.

Q. Does this page of Exhibit Number 2 so headed correctly set forth the gallonage sold by the defendant company during that period, as taken by you from their books?—A. It does.

Q. Then I see on this page you have divided according to the particular class of goods as you found it in the books?—A. That is in accordance with the division in the sales recapitulation of the company's records.

Q. In the company's records?—A. Yes.

Q. Does the total amount of gallonage show on that page. Did you ascertain the number of gallons sold, and compute the gallonage tax upon that amount?—A. 20 That appears on the previous page of the statement.

Q. Page 3?—A. Yes.

Q. And is that a correct compilation of the gallonage in respect of the number of gallons on page 4?—A. That is the computation based on the contents for pints, quarts, half kegs and quarter kegs at the rates of conversion as fixed by the department.

Q. At the rates of conversion fixed by the department?—A. Yes.

Q. Will you explain what you mean by that?—A. The quantities are arrived at from a number of cartons, half kegs and quarter kegs, that the company's records show as sold, converted at the rates fixed by the department.

30 Q. Will you give us those rates. I think that Mr. Nash gave them to us yesterday?—A. The rates are for half barrels, twelve and one-half gallons; for quarter barrels, six and one half gallons—for a dozen quarts 1.7 gallons—and for one dozen pints .90 gallons. That will be 1.8 gallons for a carton of two dozen pints.

Q. That is the standard applicable to all breweries throughout Canada?—A. That is the standard we have used throughout our investigation of this period.

Q. Then on that basis of conversion do the amounts of gallonage tax shown on page 3 represent the gallonage tax upon the quantity of beer shown on page 4?—A. At the rate of twelve and one half cents a gallon.

40 Q. That is correct?—A. Yes. We have computed the amount by taking the number of gallons, and at the rate of twelve and one half cents a gallon.

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HIS LORDSHIP: Do you mean to say for the year 1924?—A. I will make that clear. For the first month of April, 1924, we have there the number of gallons and in the line below we compute the tax at $12\frac{1}{2}$ cents; and on the second line below is the amount of the tax, and then the amount paid.

Q. What is the meaning of .05 cents?—A. There is an overpayment—the red figures indicate that.

HIS LORDSHIP: Q. Supposing for 1924 if I want to arrive at the tax due, I would have to add together the black figures at the end of every month under the head of gallon tax unpaid, and deduct the red figures therefrom?—A. That is correct.

MR. ROWELL: That is all done on the first page. The fourth page is gallons, 10 and the third page is the computation of the gallonage; the second page the computation of the sales tax; and the first page is a summary both of gallonage and sales tax.

Q. Then on that basis what is the total amount of the gallonage payable?—A. The total amount of the gallonage tax is \$258,638.31.

Q. Then you saw the Carling Brewing Company's mash book?—A. I did not examine the mash book myself personally.

HIS LORDSHIP: Did you make an allowance on that for wastage?—A. There was no question of wastage.

Q. The gallonage you have entered here as the gallonage you found entered in 20 their book report as sold?—A. Yes. That is the number of cases or half or quarter kegs sold converted into standard kegs.

Q. Then coming to the sales tax did you find recorded in the books of the company all the sales, I am not now speaking of the amount, I mean all the sales which are taken into account in the computations on page 2?—A. Yes.

Q. You found all of those sales recorded in the books of the company?—A. Yes.

Q. Then I notice you have added a column, the third item—items added back to sales—the first item being September, 1924, and taking the months at least in which these items appear, are September, October, December of 1924; January, February, March, April and September of 1925,—for the years 1924 and 1925?—30
A. We have.

Q. We will deal with 1926 later. Where do you find the items that you have included in the items added back to sales during the years 1924 and 1925. Did you find those also in the books of the company?—A. We did.

Q. Will you just tell me then where you found those items?—A. The accounts from which we took these items are the export funds account, the export insurance account, and the account marked special loan account export funds, for the months of September and October.

MR. TILLEY: Q. Did you say you took those accounts for some months?—
A. Down to September, 1925.

MR. ROWELL: Q. Will you just turn to the accounts to which you refer? (The witness turns to the account)—A. We took first of from all the export funds account certain credits. These are the first, an item marked C. Burns, personal, \$35,494.10; a second item marked C. Burns, personal, \$30,000; then a third item marked C. Burns, personal, \$1,742.44; then another item marked LaSalle old account, \$2,384.40 and an item marked C. B. G. \$589.

Q. Making a total of?—A. Making a total of \$80,209.94 which is the item which will be found added back to sales in September, 1925.

HIS LORDSHIP: Will those items cover all the items you have mentioned?—

10 A. Those are applicable to September, 1925.

MR. ROWELL: Q. You will find it in September, 1925?—A. They appear in the export funds account under date September 30th, 1925.

The next account is the export insurance account.

HIS LORDSHIP: Are the accounts not indexed?—A. No.

HIS LORDSHIP: What is that book?—A. It is a general ledger.

MR. ROWELL: Q. Explain that if you please?—A. From the export insurance account we took first a credit of an item of December 24th, 1924, of \$293.84; secondly, the difference between the amounts credited and charged for January, 1925, which amounted to \$10,700—similarly for February, we took the net figure of \$1,310.98, 20 for March a new figure of \$21,182.50, for April and May a net figure of \$25,073.

Q. These amounts were added back month by month for the sales for the particular month referred to and appear on a page of Exhibit No. 2?—A. Yes.

Q. The April and May are all put in under April?—A. Yes.

Q. Then what other fund?—A. The third account we added back was a special loan account; and from this account we took the net credits for September, 1924, amounting to \$11,477.50, and for October amounting to \$927.50.

Q. Then those two amounts you have now mentioned appear at page 2, Exhibit No. 2, under the dates of September and October respectively—items added back to sales?—A. Yes.

30 Q. You have now given us all the figures that have been added back for the years 1924 and 1925?—A. That is right.

Q. Then taking these accounts in order, will you tell us why you added back those figures?—A. My reason for doing that was based on certain notes in our—

MR. TILLEY: I object.

MR. ROWELL: Information that came from whom?

HIS LORDSHIP: Ask him why he did it.

MR. TILLEY: We had that out yesterday. If it is anything based on our books let us have it; but if it is some person's statement let us have the person brought here.

HIS LORDSHIP: Why did you do it?—A. My reason for doing it was first of all 40 the working papers and report which we had formerly made on this brewery.

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HIS LORDSHIP: What does that mean. From some information?—A. There had been a previous investigation into this brewery.

HIS LORDSHIP: You gathered some information from some documents you had with respect to that firm?—A. Correct.

Q. And that put you on the track?—A. That was my reason for adding this—regarding these amounts as being part of the proceeds of sales and treating them that way.

HIS LORDSHIP: He was not instructed but it originated from something he saw.

MR. TILLEY: Let us have it.

MR. ROWELL: Who made the investigation?—A. It was made by Mr. DeLan- 10
lanne.

HIS LORDSHIP: Who gave his evidence here yesterday?—A. It was not on any information he gave me personally but it was on the working papers and report on this brewery that I had before me.

HIS LORDSHIP: I see nothing objectionable.

MR. TILLEY: Made by some person else?

HIS LORDSHIP: It does not matter. A man on the street may say there is something wrong there—that opens my eyes and I come and investigate.

MR. TILLEY: He does something because some person on the street says there is something wrong—he tells me something. 20

HIS LORDSHIP: Not why he deducted the figures.

MR. TILLEY: Yes, exactly, that is what the witness is saying. It is not why he made the investigation. If it is on the statement or evidence given by this witness yesterday I am not objecting to that, because there is the statement for what it is worth. But I do object to him saying that he made it on some working papers in his office.

HIS LORDSHIP: He must have some justification for doing so.

MR. ROWELL: Whose working papers? I want to connect it with the evidence we had yesterday—the witness who was there working made a certain investigation and left working papers. 30

HIS LORDSHIP: Why did you find those amounts?—A. Because as the result of the previous investigation that had been made, those amounts had been added back to sales and we followed the same procedure that had been done before.

HIS LORDSHIP: Did you satisfy yourself or did you do it because some others gave you the information. Did you satisfy yourself whether that was right or wrong?—A. I did not have any way of satisfying myself. The information came from Mr. Burns.

MR. TILLEY: Q. You mean the information that the witness swore to yesterday came from Mr. Burns?—A. That is as far as I know.

MR. TILLEY: If the witness justifies it he has done it, if not he has not done it. 40

HIS LORDSHIP: It is because these words fell from Mr. Burns that they were put on their inquiry, and they began to investigate it. I want to know besides that.

MR. ROWELL: What Mr. DeLalanne said yesterday was that Mr. Burns told him that the amounts in these accounts represented moneys received in respect of the sale of goods in excess of the price mentioned in London.

MR. TILLEY: Whatever the witness said yesterday was said and we have it.

(The court then adjourned at 4.30 to 10.30 a.m. to-morrow).

(The fourth day)

THURSDAY, May 10th 1928.

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George Robert
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10 GEORGE ROBERT FERRIER TROOP: Examination resumed by Mr. Rowell, K.C.

Q. You gave us yesterday certain items that you had added back to sales for the years 1924 and 1925?—A. I did.

Q. Can you say whether those items were carried to the profit account of the Carling Company?—A. The accounts indicate that they were.

Q. Will you point out what book is required?—A. The two general ledgers.

HIS LORDSHIP: What is that book?—A. This is the general ledger of the company,—the first ledger covering the first periods of the company's operations. In the special loan account, the balance at the credit of that account on the 31st October, 1924, is transferred by journal entry to the profit ledger of the company, and is indi-
20 cated in the company's operating statement as being credited to the profit and loss account.

Q. What do you mean by operating statement?—A. By that I mean that the statement of the company's operations for the year 1924 with which I was furnished—

Q. With which you were furnished by the company?—A. Yes. I have a copy here.

MR. TILLEY: If we can identify it we will produce it.

HIS LORDSHIP: It is a copy of what?—A. A copy of the statement of the company's operations made up by the Company which was furnished to me.

MR. TILLEY: It is a profit and loss statement ending October 31st, 1924. It is
30 a copy made by the witness, but the original was produced to him by the company, he said.

THE WITNESS: In that statement under the expenditure section this balance of \$12,405 appears as a deduction,—that is certain expenses are totalled, and then there appears less refund export expenses, sundries, \$12,405. The effect of that being to include this item in the company's revenue for the year.

Q. Then will you take the next item?—A. The balance in the export insurance account which is the second account to which I referred, was transferred to the export fund account, as at September 30th, 1925.

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Q. What was the balance?—A. The balance being \$58,560.32—and the balance of the export funds account to which these items had been transferred, was transferred to the profit and loss account as indicated by the account on the 30th October, 1925. The balance so transferred being \$93,887.17. That item of \$93,887.17 appears in the company's operating statement for the year 1925, a copy of which I have.

HIS LORDSHIP: With respect to the Insurance fund account, does that mean that they set aside a fund for insurance—are they their own insurers or are they insured outside? A. I am rather at a loss. I have no means of knowing what the account indicates, except what I gather from my notes of de Lalanne of what he 10 spoke the other day.

Q. You find it carried into the profits of the company.—A. I do.

HIS LORDSHIP: I cannot understand if a certain amount is dispersed for insurance how it can come back.

MR. ROWELL: We do not know—except the information given.

HIS LORDSHIP: What is it. Of course if they are insuring themselves, and they put a certain sum of money aside to cover any loss they incur, and they have pulled through without any loss that amount can come back.

MR. ROWELL: All the information we have is that given by de Lalanne.

THE WITNESS: If I may refer back to that item of \$93,887.17—that item appears 20 in the company's profit and loss statement for 1925, and is shown as export funds.

HIS LORDSHIP: Is it fluid? Was there any such manipulation with respect to insurance or not, or shown as a journal entry?—A. I cannot state about that.

MR. TILLEY: Q. You want to say something about it—about the item of \$93,887.17. I don't know whether it appears in the profit and loss statement.

HIS LORDSHIP: He said that before.

THE WITNESS: I have now covered the three accounts.

MR. ROWELL: Q. Those three accounts hardly equal those totals?—A. Those three equal the totals down to September, 1925. The amounts after that were taken from other sources. There is the special loan account, and the export insur-30
ance account, the balance of which was transferred to the export funds account, and the balance of the export funds account was taken into profit and loss.

Q. The amount that has been carried into profit and loss that you have explained is how much?—A. Profits from export funds account \$93,887.17. That does not represent the amount we added back to sales. The amounts added back to sales were those indicated in Mr. DeLalanne's notes, as being those concerning which Mr. Burns had before him.

MR. TILLEY: Q. How much did you carry back. Where are the items? Identify them, then we will find out about them.

HIS LORDSHIP: I thought he had done that yesterday.

MR. ROWELL: Yes, he gave us these items yesterday.

MR. TILLEY: Except that Mr. Rowell thought, and I rather agreed with him, that the items he gave us yesterday did not agree with the ones he gave this morning—and now he was proceeding to show there was a difference. That is what we are trying to do now.

HIS LORDSHIP: Does he show they are not the same.

MR. TILLEY: If he will tell what items were transferred.

THE WITNESS: I have a list of the items here.

MR. TILLEY: I think it would be convenient if he would list them. We would all have to be accountants to follow this. If he would prepare a statement showing
10 what was transferred, it would be of assistance.

MR. ROWELL: You will prepare a statement covering that?

HIS LORDSHIP: We need not have anything from where he took those figures. We had that clearly yesterday.

MR. TILLEY: I know Mr. Troop will know how to set it up best for us.

(Statement No. 32 as an exhibit to be furnished.)

MR. TILLEY: The exhibit will be Mr. Troop's statement of transfers.

HIS LORDSHIP: What would you call it?—A. It would be a statement of the amounts added back to sales appearing in these different accounts to which I have referred.

20 MR. TILLEY: The amounts added to sales and taken from the special loan account, the export insurance account and the export funds account.

MR. ROWELL: Q. Then coming to the amounts you added back for the year 1926-1927?

HIS LORDSHIP: That is new.

MR. ROWELL: That is new—1926-1927 appearing on Exhibit Number 2?

HIS LORDSHIP: You might also when you prepare that statement spoken of, make a statement for 1926-1927.

MR. ROWELL: I think there will have to be the evidence in reference to it. The statement can be given for elucidation.

30 THE WITNESS: These amounts added back to sales commence in August, 1926—an item of \$87,592.81. That item is made up of certain amounts which appear from the bank account of the company in Windsor to have been withdrawn from that account, but which do not appear to have reached the company in London.

HIS LORDSHIP: Have you looked to see whether it appeared in the profit account in the bank.

MR. ROWELL: In Harry Low's account—I will come to that later.

THE WITNESS: The item for September is made up on the same basis.

Q. The item for September is on the same basis \$61,000—A. \$51,000. And then with reference to that bank account there are further items. A part of the
40 item for October \$100,000, represents similar amounts withdrawn from the bank

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account. That is the full item for October is \$154,274.65 as shown in Exhibit Number 2, and of that \$100,000 represent amounts which appear to have been withdrawn from that bank account and not to have been taken into account in the company's records in London.

MR. TILLEY: Q. The same as in August and September?—A. Yes.

MR. ROWELL: Q. What is the balance \$54,274.60 added back in October, to make up the total amount added back in that month?—A. That balance is taken from two accounts in the company's books. The first is the F. Savard commission account, and that accounts for \$51,415.50 of it; and the other is a small account in the name of the Bermuda Export Company which accounts for \$2,859.15. 10

Q. Will you explain that Bermuda Export Company item first?—A. There is an account in the company's books headed Bermuda Export Company, Bermuda; and, to that account certain amounts were transferred from customers accounts which I took as being additional proceeds of sales received by the company.

Q. Well, why did you take them as being additional proceeds of sales received by the company?—A. Because these customers accounts from which these items were transferred indicated that there were receipts from sales somewhat larger than the amounts at which sales had been charged to them. In other words, they appeared to me to indicate that the company had received more for the sale of these goods than the goods had been billed to the customers. 20

Q. Then in the case of the Bermuda Company's accounts referred to, how much per case was carried into the sales account?—A. I cannot speak definitely as to the amount per case. All I can say is that the customers' accounts appear to indicate that more had been received from sales than the goods had been billed at. The goods were billed at \$1.75 a case.

Q. The accounts indicate more received, and the surplus carried into the Bermuda Export Co.'s account?—A. The surplus appears to have been carried into the Bermuda Export Co.'s account, and in adding it back the sales, I took it from the Bermuda Export Company's account.

Q. Do the books show the receipt of more from the customer than the amount 30 at which it is charged. You can of course only speak from the books?—A. Entirely. If I may refer you to a particular amount it may make the thing clearer. There is an account in the name of F. Savard, Cleveland, Ohio, care of E. Sigal, Port Stanley, Ontario. That account shows certain sales charged to Savard, and certain receipts indicate as being cash. The cash receipts running somewhat over the amounts at which the goods are charged. Then a credit balance which results from this, and appears in the amount, is transferred on the 30th October, 1926. A debit item of \$1,698.50 appears in the account. This is transferred by journal entry, a part to this Bermuda account to which I have referred, and part to an account headed F. Savard, commission account. The portion that is transferred to the 40 Bermuda Company is \$374.25. The account does not give much indication as to

how the amount transferred is split between the Bermuda Company and the Savard Commission account, but the total cartons sold appear to be 499 which at .75 cents a carton would give \$374.25. I don't know whether that is any indication as to the basis upon which the split was made.

Q. Then you find the goods charged at a certain figure. You find entered in the books a larger cash receipt than the amount charged?—A. And the balance is transferred.

Q. And the balance, that is the larger amount of cash received, is divided and transferred to two accounts, the two you have mentioned?—A. One in the name of
10 the Bermuda Export Company, and one in the name of F. Savard, commission account.

HIS LORDSHIP: You are only making a comparison between the entry at London, and the prices?—A. That is correct.

HIS LORDSHIP: Will he go into the books of the Bermuda Export Company?

MR. ROWELL: He will later.

Q. Then taking that as an illustration, you have taken the balances,—you have already told us you took the balance at the credit of the Bermuda account and carried it into the sales?—A. That is correct.

Q. And did you take the balance of the Savard commission account and carry
20 it into sales in the same way?—A. I did.

Q. Then is that balance of October \$54,274.66 made up various amounts of a similar character to the one already given us?—A. It is.

Q. Then take the month of November 1926, \$51,979.27 added back?—A. That is made up of amounts taken from the same three sources. First from the bank account, \$51,329.27; then from the Savard commission account, an item of \$400; and from the Bermuda Export Company, an item of \$250.

Q. And are the amounts from the F. Savard and the Bermuda Export Co. arrived at in the same way as you arrive at for the month of October?—A. The amounts from the Savard and the Bermuda Export Co., for that month, are amounts
30 which I believe represent additional proceeds of sales. They are not balances carried forward but they are particular amounts credited to the Bermuda Export Company's account.

Q. Representing you say proceeds of sales?—A. They are amounts which I believe to be proceeds of sales.

Q. Why do you say you believe it. What is in the book that leads you to that conclusion? You were going to illustrate it? Why do you say it is proceeds of sales, so that you include it—speaking entirely from the books?—A. I would like to have the cash-book of the company.

HIS LORDSHIP: What is that book?—A. It is a synoptic cash book. It is an
40 analysis of cash receipts, of payments.

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HIS LORDSHIP: It is not a daily blotter or register?—A. No. My reason for including these credits from the Bermuda Export Co's. account, after I had once satisfied myself as to the preceding months, was that the account appeared to me to be an account of the nature I have indicated, that is one to which additional proceeds of sales were transferred—and so having once verified the first items which appeared in it, I took the other credit items applicable to this period and treated them as being items of the same sort.

Q. Well then take the next month, December, 1926, \$21,575?—A. That amount is made up of \$21,000 from the Windsor bank account; \$375 from the Savard commission account, and \$200 from the Bermuda Export Co's. account. 10

Q. And January?—A. The January item of \$193,661.60 is entirely taken from the Windsor bank account.

Q. And February?—A. The February item is the same way, entirely from the Windsor bank account.

Q. February is \$120,000?—A. The item for March \$20,000, is also from the Windsor bank account.

Q. April is \$17,835.26?—A. That is made up of \$15,305.51 from the F. Savard commission account, and \$2,529.75 from the Bermuda Export account.

Q. Then you spoke of these large sums from the Windsor bank account. Are they all taken on the same principle as you took the earlier amounts in respect of 20 which you have given testimony?—A. They are added back to sales because I believe them to represent additional proceeds of sales.

Q. And they appear in that account, in the Carling bank account at Windsor, and were not transmitted to London?—A. I do not find them recorded in the London books as being transmitted to London.

Q. Then can you tell me how much you found in the Windsor bank account, deposited in the Windsor bank account of the Carling Company, from the date it opened up, to the 30th April, 1927, which you do not find entered in the books of the company at London?—A. The total amount is \$644,583.68.

Q. And what period is covered by the amount you gave?—A. That covers the 30 period from August, 1926, to March, 1927. Nothing is included for April, 1927.

HIS LORDSHIP: You are dealing exclusively with the second period.

MR. ROWELL: Yes.

Q. That is a period of 7 months?—A. Of 8 months.

HIS LORDSHIP: The entries on this statement only start in August?

MR. ROWELL: Q. If there is any more to the credit of that account which was not transmitted, I want to get the figures?—A. Do you mean to the period—

Q. From the time the bank account opened up to April, 1927?—A. From the time the account opened up to the end of July, 1926. All the moneys deposited in that account appear to have been transferred to the Carling Company in London, 40

and I find them in their books. But after the end of July, 1926, there appear to be amounts withdrawn from that account which I do not find in the Carling books at London.

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Q. And the amount so withdrawn you have already given us?—A. \$644,583.68.

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Q. Now as they did not enter the books I assume they did not form any part of the profit and loss account of the Carling Company?—A. I do not see how that would be possible. I have not made an examination of the profit and loss account as recorded in the books, and I do not see how they could be brought into the accounts.

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Q. Is there any record in the books of the company at London of the Windsor bank account?—A. Not as such, but certain amounts received according to the London books are indicated as being transferred from Windsor.

(continued)

Q. Is that the only indication in the London books of the existence of the Windsor bank account?—A. That is the only indication I find.

Q. Is there any record in the books of the company of the sales to the Bermuda Export Company, of which evidence was given yesterday at \$3.25 a case, as well as through the Bermuda Export Company?—A. There are two accounts in the books in the name of the Bermuda Export Company which record sales being made and one other account to which I have referred. The two accounts which record sales are first an account headed Bermuda Export Company, Limited, Bermuda, care of the Thibideau dock, Port Lambton, Ontario. That account records sales from the 20th July, 1926, to the 28th October, 1926.

Q. Of how much?—A. I have not totalled the sales.

Q. Approximately, we want a rough general idea?—A. I should say between five and six thousand dollars.

Q. That is one account in the name of the Bermuda Export Company, and what is the other?—A. The other is the account headed Bermuda Export Company, Bermuda, care of the Thibideau dock, Point Edward, and to that account one sale is charged on the 27th August, 1926.

HIS LORDSHIP: Where is Point Edward—is it near Port Lambton?—A. I don't know. I understand it is a border point.

HIS LORDSHIP: It is in Ontario.

MR. ROWELL: In Ontario. They are points different from the ones given us yesterday by Mr. Cornwall as points where the Bermuda Export Company had their docks.

Q. What is approximately the amount of that?—A. There is just one sale in that account, August 27th 1926, of 1,200 cartons, \$1,750.

HIS LORDSHIP: Q. That would be how much a carton?—A. That would be \$1.45 a carton.

HIS LORDSHIP: It would bring it to \$3.20 assuming the \$1.75 is charged?—A. No. \$1.45 is the charge as far as the account is concerned.

HIS LORDSHIP: But add \$1.75 to that, that would give you \$3.20—is that right?—A. Yes.

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HIS LORDSHIP: Not \$3.25?—A. I see in the account I am in error, that there were 1,200—There is only 1,000 cartons, which makes it \$1.75.

Q. MR. ROWELL: How is that account dealt with?—A. The opening charge in the account is the sale to which I have referred.

HIS LORDSHIP: You are still referring to that particular account?

MR. ROWELL: Yes.—A. \$1,750 to which I have referred. Then on September 7th, an item of \$204.75 is charged to the account which is entered as 117 cartons taken over by the Bermuda Export Company from A. V. Hall, Point Edward,—that was also charged to the account.

Then on the 24th September, there is a credit, by cash of \$25.00; and on October 10 30th, there is a further credit of \$1,786.75, which is marked "goods transferred to F. Savard, care of A. V. Hall, 1021 cartons."

On the 31st October there is a credit allowance for brokerage and shrinkage of \$21.00; on the 31st a debit transfer to F. Savard, commission account, \$63.00—and finally the account is closed out on the 10th June, 1927, with a credit item transferred to F. Savard, Detroit account, \$185.00.

Q. Have you given us the only amounts charged in the books of the company in the name of the Bermuda Export Company, from November 15th, 1926, to April 30th, 1927?—A. So far as I have been able to find them, I have.

Q. Then have you made a comparison or attempted to make a comparison between the Carling bank account at Windsor, and Mr. Low's special account, to see if there are any items in the two that correspond?—A. I have attempted to make a comparison although it has been rather difficult. All that I have had being merely copies of the accounts, so that all I can speak to on any similar date, there appears to be amounts transferred from the Carling bank account and similar amounts deposited to the Harry Low special account.

Q. So far as the books show, during the period in which the Bermuda Export Co. was carrying on business, is there any amount carried to the credit of sales except the \$1.75 a case?—A. Insofar as the sales which are shown in the books as being other than 4·4 or Quebec sales—that seems to be the only amount. 30

Q. That seems to be the only amount?—A. Yes.

Q. Then can you tell me how the profit and loss account shows?

HIS LORDSHIP: What books?

MR. ROWELL: The books of the Carling Company in London.

HIS LORDSHIP: That is what you mean?—A. Yes.

MR. ROWELL: What effect has it had on the profit and loss account of only carrying \$1.75 per carton, at least the amounts of the sales as so entered?—A. In regard to that I can only speak from copies of the profit and loss statement of which I have been supplied. I have copies for each of the three years operations of the company down to the 31st October, 1926, and also for the period up to the 10th June, 40 1927, when the Carling Export Company went out of business.

HIS LORDSHIP: Did they go out of business?

MR. ROWELL: They formed a company practically of the same name. There was a reorganization of the business.

HIS LORDSHIP: Were there many shareholders in the company?

MR. ROWELL: I don't know—it is the same management.

HIS LORDSHIP: In the old do you limit it only to the officers?

MR. ROWELL: I think Mr. Cowie stated that the three men were the owners of the company, that was, as I understand it, Low, Leon and Burns.

THE WITNESS: The statements with which I have been supplied show that 10 during the first year's operations the company made a net loss of \$24,110.29.

MR. TILLEY: How are we concerned with the profits and losses in this enquiry. I am not interrupting, but we are very far afield now, whether the goods were exported or whether they were not. I quite agree that some of the questions the witness has raised would be material to be considered if it were to be determined that the goods were subject to sales and gallonage tax, but I do submit that it looks as if the enquiry was going so far off the main issue that we will lose track of it. And now that my learned friend is recasting the profit and loss account on the basis that Mr. Troop has taken with regard to what should be brought into sales, we will never get anywhere.

20 HIS LORDSHIP: This case involves going into the books of this company, necessarily?

MR. TILLEY: Certainly.

HIS LORDSHIP: And if we go into the books of the company there is nothing that could not be brought out when we go into them.

MR. TILLEY: I am not objecting to anything being brought out.

HIS LORDSHIP: There may be some facts that will have no bearing, but they are part of the structure.

MR. TILLEY: No, they are not part of the structure whether the goods were exported or not.

30 HIS LORDSHIP: We are examining the statement of profit and loss.

MR. ROWELL: It is part of the amount of the government claim—a question of the amount.

MR. TILLEY: The government is not claiming the profits. Whether the company makes money or loses money has nothing at all to do with the sales tax. The sales tax is computed on the sales price, and they may make money or lose money.

HIS LORDSHIP: You are absolutely right. But if we had the whole thing before our eyes,—if your clients would come here and say this is what was done, and ear mark it, then we would not have to go to the books to have it explained.

MR. TILLEY: The auditors were there and they could have asked.

40 HIS LORDSHIP: That is what they are doing.

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MR. TILLEY: I am not taking objection to the evidence put in, but are we to recast the profit and loss statements with which we have nothing to do on this branch.

HIS LORDSHIP: It does not matter whether they made a profit or a loss, but we have to go through the books to get the figures.

MR. TILLEY: I thought we had enough to try in this case.

HIS LORDSHIP: I do not know.

MR. TILLEY: I can assure your lordship we have.

HIS LORDSHIP: It is de minimus whether they made a profit or a loss. They would have to pay the tax, if they are liable to the tax. 10

MR. TILLEY: You cannot escape taxation by saying you are not able to pay it.

MR. ROWELL: Will you tell us what they show?

MR. TILLEY: Your lordship is admitting the evidence, I assume?

HIS LORDSHIP: How can I segregate that.

MR. TILLEY: That is the trouble.

A. For the year 1924 the statement I have shown, there is a net loss for the period of \$24,110.29.

HIS LORDSHIP: That is a loss?—A. Yes.

For the year 1925 the statement shows a net loss of \$16,924. For the year 1926 the statement shows a net profit of \$12,543.19—and for the period between November 20 1st, 1926, and June 10th, 1927, a loss of \$236,177.91.

HIS LORDSHIP: Well, in this profit and loss account, how are they treated—you have treated and handed back as the proceeds in profits, besides what the books show they have taken into account?—A. I have not checked up the make-up of the profit and loss statement. I am only quoting from statements that have come to me as showing the company's operations.

Q. If these payments did not enter the books, would they enter into any profit and loss account, assuming it was made up?—A. If they were not entered in the books they could not enter into any statement.

HIS LORDSHIP: Can you go so far as to say that the profit and loss account was made from the books in London?—A. I understand it is, although I have not checked it. 30

MR. ROWELL: It is a profit and loss statement furnished to the auditor by the company.

HIS LORDSHIP: He said the company was not treating this extra profit. When we examined it, they had not taken it into consideration.

MR. ROWELL: If my learned friend asks whether it is relevant, I submit it is relevant as corroborating evidence—that they did not bring their entire profits, sales price, into the account—and the government is losing both ways, on sales tax and income tax. 40

MR. TILLEY: We are trying a case of sales tax.

HIS LORDSHIP: But I may point out the effect of it.

MR. TILLEY: Yes, quite.

HIS LORDSHIP: I am coming back to what I said at the beginning of the trial. There is one main fact, and there are a great many others. There is one main fact we are seeking, that is the most relevant fact—but there are a great many ramifications all around that become relevant to prove that main fact.

MR. TILLEY: I understand your lordship.

MR. ROWELL: The alternative claim of the Crown is paragraph 9.

HIS LORDSHIP: Are you putting any stress on it?

10 MR. ROWELL: I just want to bring out the fact.

MR. TILLEY: Are you claiming in the alternative?

MR. ROWELL: In the alternative.

HIS LORDSHIP: You do claim it.

MR. ROWELL: The Crown's plea is this. If this gallonage and sales tax is not payable to the Crown, we of course allege it is, then we say there is an income tax payable, because they have deducted gallonage and sales tax as part of their operating expenses in their annual returns.

HIS LORDSHIP: I quite understand it. Suppose I were to take that view, it would be a very difficult thing to arrive at. You see you have your conclusion 20 reckoning under section 19. BBB at so much, for the sales tax. How could I bring that back into income. You would treat that as clear profit.

MR. ROWELL: Well, no. I just want to show what they have done in their books with reference to it. I hope we will not have to come to the alternative claim at all.

HIS LORDSHIP: It would be difficult.

MR. TILLEY: If my learned friend is not going to follow it up why go into it at all?

MR. ROWELL: I want the evidence in with reference to it.

MR. TILLEY: He has put it in two or three times before, now he wants to do it 30 again. I would like in trying the case to keep my mind on it.

MR. ROWELL: Mr. Tilley always keeps his mind on the case. Q. Do you find in the expenses of the company, in arriving at the profit and loss, has the company included any amount for gallonage and sales tax, that is now in dispute as part of the expenses of operation of the business, and deducted it before arriving at the profits or losses as the case may be. Speaking of the company's books, what the books show?

MR. TILLEY: The income tax depends on the return.

HIS LORDSHIP: We are dealing with gallonage tax now.

MR. TILLEY: No.

40 MR. ROWELL: Under paragraph 9 of the Information we allege

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"9. In the alternative, the Attorney General says the defendant is indebted to His Majesty on account of income tax inasmuch as the defendant deducted the aforesaid items of sales tax and gallonage tax as expenses in making the returns under the Income War Tax Act of 1917. If the said items of sales tax and gallonage tax are not payable to His Majesty, the Attorney General says the same should not have been deducted as aforesaid and that the taxable income of the defendant during the period mentioned should be thereby increased."

Now I want to find out what deductions have been made according to the books in respect of gallonage and sales tax. The Crown's allegation is, while they did not pay it, they deducted it from their profits in arriving at their annual statement. 10

HIS LORDSHIP: You are dealing with their income statement?

MR. ROWELL: With their profit and loss account.—A. I find in the company's books an account headed "Reserve for taxes in dispute," which on the 11th June, 1927, showed a credit balance of \$328,917.67.

HIS LORDSHIP: And that is in the profit and loss statement?

MR. ROWELL: That is a reserve account.

Q. Can you tell me from year to year if the amount was deducted as part of the expenses of operation?—A. According to the notes I have, in the first year of operations, the company deducted the amount of \$30,435.70 which is charged to the profit and loss account and is indicated in the notes I have as being set up as a reserve for 20 sales taxes in dispute.

HIS LORDSHIP: If the tax is not paid, instead of showing a loss, it shows a profit for that year?—A. That is correct.

MR. ROWELL: Q. Then the next year?—A. In the next year they deducted the amount of \$27,914.88—my notes do not appear to be complete for the third year—but the statement I have for the year ending the 31st October, 1926, shows a reserve for taxes in dispute set up at \$80,248.63.

HIS LORDSHIP: These three amounts would not make the same amount, \$80,248.63?

Q. Where do you get that?—A. That is the amount that appears at the end of 30 October, 1926. The same amount appears on the company's financial statement on the 10th June, 1927,—and then from the copy of the account which I have there appears to have been a further amount,—the entry reads: "To bring reserve up to the amount of Taxes",—a further amount of \$248,669.04, leaving a balance in the account at the 11th June of \$328,917.67.

Q. MR. ROWELL: Then you I believe supervised the examination of the B.13 in respect of which Mr. Nash spoke while in the witness box?—A. I did.

Q. Who worked with you on that examination of the B.13?—A. Three other members of the staff.

HIS LORDSHIP: What do you mean?

40

MR. ROWELL: My learned friend asked Mr. Nash about a B.13 returned to Ottawa, and Mr. Nash gave certain figures with respect to them, and he also stated that they had tried to check up the B.13s with the shipments to see how they corresponded, and when I went into that, my learned friend said you had better call someone who did the work. Mr. Nash said he was speaking from information, he had not done it.

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HIS LORDSHIP: The system with respect the B.13s is I think incredible. You put a man between his duty and his interests from the moment that transaction starts. You give him a B.13 and he can roam all over the place with it. It is the 10 authorities who are to be found fault with. I think the system is wrong.

MR. ROWELL: Q. Has the company produced to you their income tax return?—
A. I have not seen it.

Q. Then coming to the B.13, you say you supervised such examination as was made?—A. I did.

MR. ROWELL: Now certain exhibits were put in. Speaking generally of the exhibits. I am only now bringing evidence in support of Mr. Nash's statement. When Mr. Nash stated he had not done any of this work himself—he said he was only speaking from information. My learned friend asked if I would call another witness—

20 MR. TILLEY: I said I understood you said you would call a witness.

HIS LORDSHIP: What exhibits are they?

MR. ROWELL: Exhibits from 3 to 12. Perhaps we had better take them in the order in which they were put in.

Q. We will start with Exhibits 3-A, 3-B and 3-C—Can you tell me what was done with that exhibit to compare the B.13 with the invoice and the bill of lading?—A. We would take the invoice for that particular shipment. It had on it a freight-car number.

MR. TILLEY: Mr. Nash gave all of that.

MR. ROWELL: I thought you wanted to know what was done by the party who 30 supervised it.

MR. TILLEY: Certain B.13s had been examined. Tell us who the man was who made the examination. Did he compare this particular B.13s with the invoice—can he say we went over them.

HIS LORDSHIP: I think you are quite right. I think it would be sufficient for the purposes of this case to say here is my witness who has done the original work what Mr. Nash has referred to—and if Mr. Tilley wants to cross-examine him he can do so. Unless you have something further.

MR. ROWELL: I want to add something further.

Q. In the comparison made of the exhibits produced by Mr. Nash, what ports 40 were covered?—A. In covering those shipments we took—

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HIS LORDSHIP: Before you get into that. I would like to ask a question. You said you were trying to reconcile the invoice, the bill of lading and the B.13?—
A. Yes.

HIS LORDSHIP: And with respect to the B.13 you would use the number of the railway car that you would find on the bill of lading?— A. And on the invoice.

HIS LORDSHIP: And on the invoice. But have you always been able to exhaustively compare the B.13 with all the invoices and the bills of lading?—A. We have not been able to do it in every case. We have only taken certain cases picked more or less at random and tried to check them up with the B.13s. We have taken certain shipments. 10

HIS LORDSHIP: You might have an invoice with respect to a large quantity, say four or five cars; and when they arrive, they arrive piece-meal in small lots—and the B.13 is exhibited at the same time—it is possible to allow a large quantity to leak out.

MR. TILLEY: A large quantity of what leak out?

HIS LORDSHIP: Of the quantity shipped under the invoice.

MR. TILLEY: Your Lordship is not understanding the B.13s at all.

HIS LORDSHIP: The B.13 is issued in London.

MR. TILLEY: It is issued as a piece of paper, and commences in London. The final act of making out a completed B.13 takes place at the dock, when the boat is 20 loaded and is going across the river.

HIS LORDSHIP: Is the affidavit made there? When you say completed what do you mean. Is the B.13 completed in London?

MR. TILLEY: No. If your Lordship will let me finish my statement.

HIS LORDSHIP: I want to follow you.

MR. TILLEY: The B.13 is drawn up in London, and it goes to Windsor or wherever the goods leave the dock for the United States. When the goods are going away from the dock the Customs officer attends to see them off.

HIS LORDSHIP: He puts his stamp on it?

MR. TILLEY: He puts a stamp on it there and then enters it in his book. 30
There is no chance for a leakage there of anything.

MR. ROWELL: I agree with my learned friend that these bear a stamp at Windsor or some other port, but I do not agree with his conclusion.

MR. TILLEY: I do not expect he will agree with me.

HIS LORDSHIP: You might as well put it on the invoice that this is for export.

MR. TILLEY: I have not made it clear. A customs officer attends—

HIS LORDSHIP: At the place where it is supposed to be loaded.

MR. TILLEY: The customs officer attends at the place where it is loaded—and the customs officer attends at the place where it is shipped across the border—at both places—and the customs mark is on it at each place. 40

HIS LORDSHIP: What prevents you disposing of the goods between London and Windsor?

MR. TILLEY: If we do dispose of them, then we cannot get a certificate that they go across the border. If your lordship will appreciate these documents—they are required by statute and they are in the form as your lordship indicated. They are prepared by the government—the customs officers stamp them twice, or takes the oath once and stamps them the second time.

HIS LORDSHIP: I have not heard your side of the case yet—I am making remarks so far from the evidence. I will be glad if it will bring out from you some information.

MR. ROWELL: The book-keeping matters go to the basis of the amount of the government's claim.

MR. TILLEY: We have spent a lot of time on this.

MR. ROWELL: We want to show how much in our view, and in view of most of the breweries of Canada—

MR. TILLEY: And in view of most of the breweries of Canada, is that necessary? Is it necessary for you to put in statements when they are not quite accurate.

MR. ROWELL: The statement is absolutely accurate.

MR. TILLEY: Why not stick to the evidence and get it in.

MR. ROWELL: I would, but my learned friend has been making statements that are not in the evidence.

Q. Will you tell us, Mr. Troop, just in a word or two in reference to each exhibit. I do not want to go into details. I want you to tell us how you proceeded to compare it?—A. Our procedure in each case was pretty much the same.

Q. Will you tell us and it will apply in all?—A. We would take a particular shipment and the bill of lading relating to it, and these would show certain points that could be checked up with the B.13; that is, they would show the number of the freight car on which the goods went, and they would show the date of the shipment which would also be the date on which the B.13 was made out in London. Then in going through the B.13s we would take all that we had for the particular port to which the goods were consigned, and we would go through them, and looking out for the same freight car number and if they were made out in London on the same date. This is applicable to the particular shipment.

Q. If you found any that bore the same date, although they did not bear any car number, what would you do?—A. We would have included those if we had found any in relation to these particular exhibits, but we did not,—that is in relation to these particular cases we found no B.13s bearing the same date at London with the same freight car number.

Q. Then you said you took the B.13s at the port at which they were shipped?—A. We took the B.13s at the port at which they were shipped; but since we made up those exhibits, we have gone over the other ports in addition to those to which the

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goods were shipped, and in two cases we have found additional B.13s at another port from those to which the goods were indicated as being shipped.

MR. TILLEY: Is he referring to the B.13s in the cases filed here?

MR. ROWELL: Yes.

Q. Which are the two cases in which you so found other B.13s at ports other than the ones to which the goods were shipped?—A. In the shipment of the 4th January, 1927.

Q. Let us have the number of that exhibit (Exhibit No. 7)?—A. In that case we found a B.13 bearing the same freight car number, C.P. 287867—that was dated January 12th 1927. The shipment according to the invoice was to Windsor, but in 10 examining the B.13 at Amherstburg, we found an additional B.13 dated January 12th 1927, and totalling 165 cartons.

Q. With the same car number?—A. Yes.

Q. And bearing stamps covering what period?—A. And bearing stamps of the port of Amherstburg covering the periods from January 28th, 1927, to February 16th, 1927.

Q. Then what was the total you had before, and just give us the change, if you include the Amherstburg in the other?—A. In relation to that shipment we had before a total of 640 cartons, where the B.13s bore the same date as the shipment, and an additional 345 cartons where the B.13s were dated January 12th—to 20 that total, should not be added 165 cartons at Amherstburg bearing date January 12th.

Q. What was the date of the invoice?—A. January 4th, 1927.

Q. And the bill of lading?—A. The bill of lading was the same date.

Q. The bill of lading is also dated January 4th?—A. Yes.

Q. Then to whom was that shipment?—A. The shipment according to the invoice was to B. Syring, care of Carling C.P.R. dock, Windsor. According to the bill of lading and the B.13 the shipment was to F. Savard.

MR. ROWELL: How would it do to add them as an exhibit 7/E.?

HIS LORDSHIP: What document is he producing? 30

MR. ROWELL: These additional B.13s from the port of Amherstburg.

HIS LORDSHIP: Yes.

MR. ROWELL: It would be convenient to have them with the other B.13s.

HIS LORDSHIP: They are linked with the shipment of the 4th January.

MR. ROWELL: Q. Before passing from that exhibit 7/A, 7/B, 7/C, 7/D and 7/E, does that represent all the B.13s which you were able to find bearing the date or car number?—A. It does. We have now gone through all the B.13s for all the ports we had.

Q. Then what is the next one?—A. The other exhibit to which there are a few B.13s to be added—that is one dated the 30th March, 1927. 40

HIS LORDSHIP: And that has reference to what exhibit?—A. That is Exhibit 12/C. In that case we found B.13s through Windsor, and its outports, totalling

1,200 cases. Those are already in. We have now found additional B.13s through Amherstburg totalling 225 cases, and these are stamped by the customs on April 11th and April 19th, 1927.

HIS LORDSHIP: The same number of car?—A. The same car number, and the same date at London.

MR. ROWELL: Q. Then in reference to all the other exhibits are you in a position to say whether they include all the B.13s for all the ports produced by the government, bearing either the car number or date?—A. We have now gone through all the B.13s and have produced all that we have been able to find—of those car numbers 10 or the same date.

HIS LORDSHIP: Q. Well, are you able to say that you have found all the B.13s available. Do you find there that the quantities, have you tried to verify it, of B.13s correspond with the quantities in the invoices?—A. There were differences, as Mr. Nash indicated the other day.

Q. But you were the one who made the examination?—A. I directed the examination. I examined some of the B.13s myself.

HIS LORDSHIP: Q. There is a discrepancy which way?—A. For most of the shipments we have not been able to find the B.13s making up the total. I think in one case we found more B.13s than the shipment called for.

20 MR. ROWELL: These should be Exhibit 12/E.

Q. Then have you looked at certain invoices and bills of lading in the earlier period, that is prior to the date when the government required that they should be made out in detail at the port of shipment,—that is prior to I think March, 1926?—A. I understand the 13th March, 1926.

Q. Have you looked at some of the invoices and bills of lading prior to that date?—A. We are at present examining those. We have not yet secured all the invoices and bills of lading that we are to look at.

Q. Then I intend to ask you about one matter, dealing with that Windsor bank account. Did you have any conversation with any of the officers of the company 30 in reference to the Windsor bank account?—A. I did.

Q. Who did you have your conversation with?—A. Mr. Harry Low.

Q. What is his position in the company?—A. I understand he was Vice-President of the Carling Export Brewing and Malting Company.

Q. Will you tell us what enquiry you made of him, and what answer you got?—

HIS LORDSHIP: Tell us the circumstances, time and place?—A. It was a short conversation. It was last Friday, I think yes, last Friday. We had been examining the Windsor bank account on Thursday, and we came back to London on Friday, and I was checking up the transfers from the account to the London books. While I was engaged in doing that, Mr. Low came to me and said that they were anxious 40 to get the books for their own examination as soon as possible, and that they wanted to send them down to Toronto. I explained to him that I had a few things I wanted

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George Robert
Ferrier Troop
Examination
May 10, 1928
(continued)

*In the
Exchequer
Court
of Canada*
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to clean up, and mentioned that I was checking the Windsor bank account with the books of the company. He said that if I was trying to find out whether all the money in that account had gone to London, he could save me the trouble by saying that it had not. I asked him if the deposits in that account were not the proceeds of the sale of Carling's beer,—he said they were, but that all the company had got out of it was \$1.75 a case. It was just a short conversation because we were very much in a hurry to get through with the books in the short time we had.

Q. Then was there any conversation or discussion between you as to the balance of the amount, the amount that did not come to London?—A. I did not ask him whether the other amount went to London—I was in a hurry to get as much out of 10 the books with the time at my disposal.

MR. ROWELL: That is all subject to checking up those of which he has not got the figures—subject to a few additional B.13s.

HIS LORDSHIP: Subject to what was taken before March, 1926,—what they are working at.

MR. ROWELL: Yes.

Cross-examined by Mr. Tilley, K.C.

Q. Now Mr. Troop, you were told by Mr. Low that the account at Windsor represented moneys that were the purchase price of beer—is that right?—A. What I was told was that the deposits in that account were the proceeds of the sale of 20 Carling's beer.

Q. Do you say that he told you that they were the proceeds to the Carling Company of the sale of their beer?—A. No, I do not recollect him saying that.

Q. Did he not tell you quite to the contrary that the proceeds of the sale, were not proceeds of the sales to which the Carlings were entitled, that they were not proceeds to the Carling Company.

HIS LORDSHIP: He said the company was getting \$1.75 a case.

MR. TILLEY: Q. Is that not what he told you that the moneys there represented the proceeds of sales, were not all moneys to which the Carling Company were entitled?—A. I remember his using the words the company got out of it all they were 30 entitled to, \$1.75 a case.

Q. Now that was a definite statement made by him,—and will you tell me of anything that you see in the books that contradicts that statement or shows that it is not true?—A. Are you including in the books the bank account at Windsor?

Q. If you want to include that. I thought the question was whether the bank account at Windsor were not moneys of the Carling Company, although the account was in their name. Have you got anything you can point to to show what Mr. Low told you about the Windsor bank account was untrue? A. I have no way of knowing what the company was entitled to.

Q. But in your account you have treated all the moneys as being moneys to 40 which the Carling Company was entitled?—A. Yes.

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Q. In your exhibit Number 2?—A. Yes.

Q. That is to say, you as auditor bring in an account which is in direct contradiction to Mr. Low's statement to you?—A. Yes.

Q. And you have not anything in the books of the Carling Company to justify that?—A. I don't know that I would say that there is nothing in the books of the Carling Co.

Q. If there is, let us see what it is—let us see what you base it on?—A. In his evidence yesterday Mr. Stiff of the Bermuda Export Company said that certain cheques had been issued to the Carling Company—and he gave certain amounts

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10 Q. I am dealing with the Windsor bank account now?—A. Amounts corresponding to two of those as he gave appeared on deposit slips indicating that they went into the Windsor bank account. Amounts corresponding to three of the amounts he gave appeared in the books of the company.

Q. We are dealing with the books of the company. We are dealing with the things you put in, what are called corrections of the books, or corrections of their sales account?—A. Added back.

Q. What meaning do you give to charging it back. Was it ever there and taken out, and then brought back—or was it put there for the first time by you?—A. It was put there for the first time by me.

20 Q. Then the expression charging back is not very appropriate?—A. Only this that the sales figures for the earlier periods do not include the amounts, and we are adding them to the sales figures.

Q. You are not charging them back, you are adding?—A. I am charging them back for the first time.

Q. Did you ask Mr. Low who was entitled to the rest of the money over the \$1.75—did you ask him that?—A. I do not recall asking him that in so many words.

Q. Did you ask him in any other words than the words I have used?—A. As I recall it, he objected to our taking into our sales figures the full Bermuda Export Co.'s selling price of \$3.25 a case.

30 Q. Did he tell you why?—A. He said, as I said before, that the company got out of it what they were entitled to.

Q. Did you not ask him who got the balance?—A. No.

Q. Why not, did you not want to know?—A. To some extent I thought I did know.

Q. Yes. But he was telling you something about the account—did you not want to know what his story was?—A. I thought I knew it already.

Q. His story?—A. To a large extent.

Q. What he was going to say?—A. To a large extent.

40 Q. Where did you get it?—A. From the evidence before the Royal Commission on the previous investigation.

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Q. Was that matter gone into there?—A. I understand that to some extent it was.

Q. Well then you were not getting information from Mr. Low for the first time, when he spoke to you on Friday last about the company getting all they were entitled to out of it at \$1.75?—A. That was not the first time that I had heard that \$1.75 was all the company was entitled to.

Q. I thought it came as news to you?—A. Not at all.

Q. You are not suggesting that Mr. Low was giving you any new information on that as to the company's position?—A. No.

Q. When were your people first on the books?—A. I think in October, 1926. 10

Q. And how long were you on them then?—A. I am not just sure whether Mr. LaLanne was there.

Q. But there was a staff on them then?—A. I understand there were two or three of them.

Q. You were on them personally?—A. No, I was not.

HIS LORDSHIP: Was it the same firm of accountants working for the Commission.

MR. TILLEY: The same accountants who are working now.

Q. But your firm have been on the books for a long time?—A. Our firm, or the members of our staff at different times. 20

Q. Commencing about October, 1926?—A. I think that is the first date they saw the books.

Q. And then when did you first make up a statement adding these items from the Windsor bank account, that are now added?—A. I did not know the amount of those items until I examined the Windsor bank account, which was last Thursday. Having ascertained the amount of the Windsor bank account, having ascertained the amounts I added them back.

Q. You added them on?—A. Yes. I added them on a day or two afterwards.

Q. Within the last few days?—A. Yes.

Q. Now the existence of the Windsor bank account was plainly ascertainable from the Carling Company's books at London?—A. The books indicated transfers from that account. 30

Q. Indicated transfers from the Windsor account to the London account?—A. Yes.

HIS LORDSHIP: But not vice versa.

MR. TILLEY: Q. Were there transfers from London to Windsor?—A. Not that I am aware of.

Q. There were transfers of substantial sums of money from the Windsor account?—A. To the London account.

Q. And then did your people see the Windsor account at an earlier date?—A. I am not positive as to that. I rather think there was some examination made 40

when the Royal Commission was sitting in Windsor, but I am not sure how far that went.

Q. The Windsor account was not something you discovered last week, or the last few days when you got on the work?—A. No.

Q. The account was quite well known and had been examined, as you believed?—A. I was aware that account was known; and I was aware that it had been examined, but I did not know how far it had been examined.

Q. And we have it that you had the statement of the Vice President of the company, that the Carling Company had got from that account into this London
10 account all the Carling Company was entitled to. You got that definite statement from him?—A. I seem to recall him saying that the company got out of it all they were entitled to.

Q. You mean got out of it all they were entitled to by the London books?—A. That was my understanding.

Q. And you have given such information as you can to the contrary, that is one account. Another account that you took moneys from was the Bermuda Export Company's account?—A. Quite so.

Q. And did you ask him about that account when you were talking to him?—A. No, I did not ask him about that account. That was a small account, and I
20 only really examined it in detail when I came back from London.

Q. Where did you examine it?—A. That was in our office here.

Q. How did you examine it here?—A. I had a copy of it; and I had copies of any other account which bore relation to it.

Q. When was the copy made?—A. Some of them were made by Mr. de Lalanne when he was in London, and some by myself or people with me.

Q. You had copies for some time?—A. Yes.

Q. And although the Bermuda Export Company accounted for moneys that in part went to Savard, you brought those in as being Carling money?—A. You mean the amounts that went to Savard?

30 Q. Yes, to his credit?—A. Yes—to the Savard Commission account.

Q. You are not stating, are you, that the money that was credited to the Savard account did not go to Savard?—A. If you are speaking of the Savard commission account?

Q. I mean the account from which you say credits were made, and then you took the credits and put them in as the price of beer, and charged it as the purchase price as against the Carling Company when making up your statement. Those are the ones I mean?—A. I am not quite clear as to your question.

Q. As I understood you, you found certain payments from the Bermuda Export Company appeared in the Carling Company's books?—A. Yes.

40 Q. And part was credited to Savard, was it. I think that is what you said.

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Let us get the example now. You have given us an example. You said there was one F. Savard, Cleveland, care of E. Sigle, Port Stanley?—A. Yes.

Q. Is that one of them?—A. That is one of them.

Q. That comes through the Bermuda Export Company?—A. No, the receipts in that account do not indicate as coming from Bermuda Export Company; but there is a transfer from that account of a certain amount.

Q. There is a transfer from that account, part to the Bermuda Export Company?—A. And part to Savard.

Q. On the books of the Carling Company?—A. Yes.

Q. And then there is a part transferred to the Savard commission account on 10 the books of the Carling Company?—A. Yes.

Q. Do you suggest that the money that was credited to Savard did not go to Savard?—A. Well, the account indicates the other way.

Q. Indicates what?—A. It indicates this that the total in the Savard commission account was credited against another account in the Savard account headed expenses re Windsor dock. The amount credited from the Savard commission account did not altogether offset the debits in the expenses of our Windsor dock account; and according to the books additional money was received from Savard to offset the expenses.

Q. There was an account for expenses of the Windsor dock in which there were 20 charges against Savard?—A. Yes.

Q. And as against those charges there are credits to Savard in the same account?—A. The credits to Savard came from a commission account which was transferred to the Windsor dock account.

Q. Never mind where it came from, they were credits to Savard in that account?—A. Yes.

Q. And it came from this commission account?—A. Yes.

Q. And the balance of the account was squared by Savard paying money?—A. By the money recorded as received from Savard.

Q. You are not questioning it?—A. Only this the amounts recorded as received 30 agree with certain amounts which Mr. Stiff stated yesterday were paid to the Carling Company.

Q. Would there be anything extraordinary about Savard having a commission in connection with all the sales?—A. I don't know what is the connection.

Q. Would there be anything extraordinary about Savard being entitled to a commission on those sales?—A. I should not think so.

Q. So that if he was, it would be very appropriate for the money accounted for by the Bermuda Export Company to go to Savard?—A. I suppose it might be. I have no way of knowing what moneys might go to him.

Q. Did you ask any person, when you were examining the books what those 40 items were of Savard?—A. Do you mean those cheques that Mr. Stiff said—

Q. Yes?—A. I did not know that there was any connection between those items.

Q. You only found that out when Mr. Stiff gave his evidence?—A. Yes.

Q. Did you enquire what the amounts meant?—A. No. I was under the impression—

Q. I am not asking you for your impression. I am asking you if you enquired of the company?—A. No, I did not. The reason—

Q. I am not asking you the reason, unless it is from our books, or what the company's officers told you. I say if it comes from our books, or comes from what our officers tell you?—A. It comes from one of the company's officers.

Q. Which one?—A. Mr. Morrison.

Q. What did he tell you?—A. In connection with one account.

Q. Which account?—A. Smith, of Detroit, Michigan, concerning which I made some enquiry of him. He told me that Mr. Burns, the President of the company, was the only person who could give me full information regarding that. Also Mr. Harry Low told me on one occasion that he knew very little about the company's books. Consequently I was expecting to question Mr. Burns about the items, but as he did not return while I was there I did not have an opportunity of doing it.

20 HIS LORDSHIP: Is Mr. Morrison an officer of the company?—A. Mr. Morrison, I understand, is the Accountant of the company.

MR. TILLEY: In all of these matters you referred to about the accounts, they have relation to the amount of the tax if the tax is payable?—A. Quite so.

Q. If they have any bearing as to whether the tax is payable in your view, I would be glad if you would tell me?—A. I don't see how they could, as the amounts have no connection with the tax payable.

Q. They have the size of the tax rather than whether the tax is payable at all—that is so?—A. I do not see how it could be anything else.

HIS LORDSHIP: I do not quite understand.

30 MR. TILLEY: Q. These are complications that must be faced if the tax is leviable and has to be ascertained?—A. Yes.

HIS LORDSHIP: In other words, what you mean is—first, whether there is any tax payable?

MR. TILLEY: Yes.

HIS LORDSHIP: And the second question is, what amount. Is that all that means?

MR. TILLEY: Yes. And these questions we have been dealing with on the books have to do with the amount rather than whether it is payable.

MR. TILLEY: We received a demand from the government on August 11th 40 1927, reading in this way: "Failing payment forthwith, will issue writ immediately for sales and gallonage tax due by you April 1st, 1924, to April 30th, 1927, amounting to \$421,384.32 with penalties and costs. Details of statement follows."

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Then that is followed by a telegram on August 19th: "Further my telegram 11th instant—am to inform you amount therein stated made up as follows—sales tax on domestic sales \$2,650.56, gallonage tax do (that would be on domestic sales) \$2,023.90. Sales tax on export sales \$146,505.45. The gallonage tax do, \$269,612.53—gallonage tax at 2.5 per cent beer \$591.88—total \$421,384.32. Above figures exclusive of any claim for interest. Wire decision." There are two telegrams, they will be Exhibits G/1 and G/2. Then there will be the reply, Exhibit G/3: "Your telegram has been passed to our attorney, who will communicate with you."

I attach also a letter from Messrs. Osler, Hoskins & Harcourt, dated September 10 16th, 1927, to the Deputy Minister of Justice, to whom the matter had been transferred: "We enclose herewith payable to the Collector of Customs cheque for \$4,674.46 in payment of the amount claimed by the Department of Inland Revenue due in respect of sales and gallonage tax on domestic sales. This payment is being made by us on behalf of the company without admitting the company is liable for the amount so claimed, etc." Exhibit G/4.

Q. Now, what I want to ask you is this, do you find that payment was made?—
A. I find a payment made in which I have included in those made in the statement Exhibit No. 2, a sales tax account of \$2,650.56; and on gallonage tax, an amount of \$2,023.90. 20

Q. Those are the amounts mentioned in the telegram?—A. I think they are.

Q. The telegram says on sales tax on domestic sales, \$2,650.56?—A. Correct.

Q. And on the gallonage tax on domestic sales, \$2,023.90.?—A. That is right.

Q. Those were both paid?—A. Those were both paid and credited.

Q. I want to ask you whether there is any claim involved in your claim as filed in respect of sales tax or gallonage tax on domestic sales?—A. The claim has not been made up on the basis of splitting sales on so-called export and so-called domestic.

MR. TILLEY: I want to find out what the issues are.

MR. ROWELL: It is not for Mr. Troop to define the issues. Mr. Troop can answer any question within his knowledge. 30

HIS LORDSHIP: There is one question which is very relevant as to whether any statements that he has drawn and prepared for us, there are items that cover both domestic and foreign.

MR. TILLEY: That is what I want to know.

Q. I want to know whether the statement you have prepared brings in all the domestic sales as well as the export sales?—A. It brings in all of the sales of the company.

HIS LORDSHIP: You treat them all as domestic, do you not?

MR. ROWELL: We say they are all liable to the tax. We claim on all sales, and we credit all payments; and we say the balance is due. 40

HIS LORDSHIP: You say they are all domestic?

MR. ROWELL: We say they are all subject to the tax.

MR. TILLEY: I am not trying to develop that issue at all. I would like to get my side of the case before the court.

HIS LORDSHIP: You are absolutely entitled to get it.

MR. TILLEY: Q. Let us examine what your claim is from the claim as presented by your figures. I am not playing on the words "domestic" or "export". I want to know in respect of the business that was admittedly domestic on both the Crown's side and the company's side, whether there is any balance claimed by your figures in respect of that business. I produce a telegram demanding the balance on those 10 domestic sales, and I show I have paid it. I want to know now whether we are to treat those so-called domestic sales, domestic according to the contention of both sides I want to know whether there is in your figures any claim in respect of that matter, that we have not satisfied the Crown's demand in regard to it. You can tell us?—A. It will be hard to speak positively without splitting up the claim. My impression is that there is no claim on the part of the Crown which the company has recorded domestic.

MR. TILLEY: He says that he understands that there is no claim due in respect of those sales that the company treated as domestic sales.

HIS LORDSHIP: Q. Is that right?—A. That is my impression. I have not 20 split the claim between the so-called domestic and the so-called export.

HIS LORDSHIP: That is my first question. Then you say?—A. My impression is that there is nothing claimed on the sales which the company calls domestic—that there is no resulting claim.

MR. TILLEY: Q. The figures are all put together, because it was convenient for you to examine the books—You do not think from your knowledge of the figures, that the claim as you presented it, is any demand on the part of the government in respect of sales or gallonage taxes on this transaction which the company has in its books treated as domestic?—A. That is correct.

Q. Now then we come to the next point. Then the claim must of course entirely 30 arise out of what the company calls its export business, and the Crown says that claim is disputed?—A. That follows from my answer to the last question.

Q. Do not let us play on words about calling it export business. We know what the business is that has to be considered. Now, I want to deal with you as to quantities rather than as to prices, because the answer to that question—and I am not a sufficient mathematician or accountant—as to whether the tax is payable or not depends on whether the tax ought to be paid on the goods which have been sold. It depends on the quantity of goods sold in the first place?—A. That may be true as to one of the two. That may be true as respects the gallonage tax, but not as regards the sales tax.

40 Q. Now I quite appreciate the sales tax when you compute the amount and say it depends on the price of the goods?—A. Yes.

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Q. And the gallonage tax depends on the quantity of goods?—A. Yes.

Q. And as to each tax you must have been to sell whether you have sales tax or gallonage tax?—A. Quite so.

Q. Then I want to keep to the quantity in testing it, whether the quantity we have claimed to have exported was exported as a matter of quantity. Never mind the price for the moment. Have you checked the B.13s that you have from the department at Ottawa in the first place—I will take it as to the quantity shown on the B.13s?—A. We have carried that up to a certain point,—but while we were in the middle of it, the B.13s were removed up here.

Q. From Ottawa?—A. No, at our office—and that work has not been quite 10 completed.

Q. How near is it completed?—A. We have totalled up the quantities for two of the three fiscal years. The last fiscal year has not been added up.

Q. Have you carried it to the stage where you can make a comparison of the quantity, as to the quantity sold for export. The quantity sold for export of the B.13s represent supposed exports we will call it. Have you been able to make any check over those two years?—A. We have not done it yet.

HIS LORDSHIP: Would it be the same thing as comparing the B.13s with your books in London.

MR. TILLEY: I was thinking more of what the books would show. I don't 20 know whether the invoices are returned or cancelled. I was wondering whether in point of fact he was able to make any comparison as to the quantity alleged to be exported, with the returns at Ottawa which are supposed to show export.

HIS LORDSHIP: Q. If you were doing that work, what would be your two points of comparison?—A. We would take the quantities recorded in the B.13s as going out; on the other, we would take the quantity that the company records as having sold.

HIS LORDSHIP: And it would be from the entries in their books?—A. Yes.

HIS LORDSHIP: But that might or might not be different from the invoice?

Q. There would be no question of price.

HIS LORDSHIP: We are not dealing with prices, we are speaking as to quantities. 30 I think it is quite right that we should try and stay with the quantity.

MR. TILLEY: I would like to stay with the quantity. If we find out the quantity exported, the question of price does not enter into it.

Q. Have you been able to make any check so that you could come to the court and say, I have checked the statements at Ottawa called the B.13s as to the quantity shown by them to be exported, with the books of the company, as to the amount of goods—according to their books they sold for export business—and I find they agree or disagree—and if they disagree how?—A. We have not done that as yet.

Q. You cannot make any statement as to part?

HIS LORDSHIP: I would like that to be done before the case is over.

MR. TILLEY: We will get at some of these questions before the case finishes, but it will take some time.

(The court then took a recess from 1 p.m. to 2.30 p.m.)

The court resumed at 2.30 p.m.

HIS LORDSHIP: Mr. Rowell, the last questions of Mr. Tilley to the witness before we adjourned were with respect to quantity. You mentioned at the opening of the case that you were going to change your figures as they stand in the Information, but you did not make an application to amend.

MR. ROWELL: We have only reduced them slightly.

10 HIS LORDSHIP: I do not know what Mr. Tilley will have to say with respect to an amendment, but if he wants to amend his pleadings he should have an opportunity.

MR. TILLEY: When my learned friend makes his application we will deal with it then. Does my learned friend say he does it. Is his total reduced?

HIS LORDSHIP: There is some question about it.

MR. ROWELL: Then I would ask to amend.

HIS LORDSHIP: I think it would be the proper course to take to amend. You would ask leave to amend, and then the defence will have the right to answer the amendment if they see fit.

20 MR. TILLEY: Is the question of accounting coming up. Is your lordship going to dispense with this question of accounting.

HIS LORDSHIP: I don't know what I will do. But we should have the record in proper form.

MR. TILLEY: Because it leads to endless confusion always.

HIS LORDSHIP: You are making a formal application to amend, Mr. Rowell, to change the figures mentioned in the prayer of the Information, and to strike out for instance in paragraph (a) the sum of \$149,160.07, and substitute therefor \$159,172.51; and to strike out in sub-paragraph (b) the figures \$272,240.59, and substitute therefor, the figures \$258,638.31—the total being now \$417,810.82 instead
30 of the former amount of \$421,400.60.

MR. ROWELL: Quite so.

HIS LORDSHIP: On the application to amend I will hear Mr. Tilley.

MR. TILLEY: My learned friend should not, I submit, be allowed to amend these figures now at this stage.

HIS LORDSHIP: I take it that he has amended at the opening of the trial. He said at the opening of the trial he would do so.

MR. TILLEY: Not *nunc pro tunc*—I am not objecting on that ground—that he mentions it to-day, I mean, at the trial.

HIS LORDSHIP: You said now.

40 MR. TILLEY: I was not meaning this particular minute.

HIS LORDSHIP: Let us understand one another.

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MR. TILLEY: I quite agree that we should not be too technical in that regard; and the fact that he told us at the beginning of the trial what his changes were should not prevent me saying that it is inappropriate to deal with it now. What I should object to is that it should be done at the trial. Your Lordship sees that the last few days they have been changing their account. It is quite impossible for the accountants serving themselves to serve us at the same time with regard to books and papers. Mr. Troop said we want these books to do a little work ourselves before trial. It is quite all right to allow them to make an amendment as an amendment—but your Lordship sees the first thing we are going to determine is liability or no liability. If there is liability, then your Lordship will take any evidence that is necessary before 10 the Registrar.

HIS LORDSHIP: It is important to rectify the record.

MR. TILLEY: It is important to rectify the record, but I do not wish to meet a new case at the trial.

HIS LORDSHIP: Do not forget that the Crown is getting the information from your books.

MR. TILLEY: No, not from our books. May I make my submission. My learned friend has added to the figures within the last few days.

HIS LORDSHIP: And I have taken some off.

MR. TILLEY: You will see the character of the items he has added. He says I 20 will go to the account called insurance—and I will go to the account called this, that and the other thing, and I will pick out certain things and add them on—and he gives conversations with Mr. Burns who is not here with regard to this. I do not care at all provided my ultimate right to have the account properly taken, if there is liability, is preserved to me. I am not objecting to that—but I cannot do it at this trial. Now why should we encumber the record of the trial, which is to determine liability, with all of this mass of detail about the accounts.

HIS LORDSHIP: It makes the prayer of his petition, of his information, tally with the statements produced.

MR. TILLEY: I quite agree the prayer will have to be in better shape, but I am 30 not concerned with that. I am concerned with going into the accounts and fixing the amount now, because he is basing it somewhat on conversations—he is not getting from our books all of these additions on which he computes his tax. He cannot go into it unless the amendment is made.

HIS LORDSHIP: The amendment is full of details.

MR. TILLEY: We had his claim before, and we have been working on that claim. Now he comes and says I will put in a new claim as Exhibit Number 2 instead of Exhibit Number 1, and it is in that document he brings in all of these figures. Now I am quite willing to meet that claim, if we are held liable to pay the tax. The accountants could find out what the amount would be. 40

HIS LORDSHIP: On the question of law as to your liability the figures would have nothing to do with it.

MR. TILLEY: No That is what I say. If we proceed on this trial to determine the liability he could not make the amendment.

HIS LORDSHIP: Supposing I find liability, I have to find the amount too?

MR. TILLEY: At the trial?

HIS LORDSHIP: I will not give my decision to-day, but at the end of the trial. I would have to consider the case.

MR. TILLEY: Is it not a matter in which your lordship would resort to the 10 taking of the account?

HIS LORDSHIP: Very likely. The account will be made up, and the claim should be rightly stated.

MR. TILLEY: I am not objecting to that, providing that it is not on the basis that we shall have to go into all of these features at the trial.

HIS LORDSHIP: I cannot tell you to-day what my decision will be. I have not heard the case. I have not yet heard your side of the case.

MR. TILLEY: You have only heard a few outbursts from me, but I am afraid I am not making myself clear on it.

HIS LORDSHIP: Yes, what I am willing to do is to allow the amendment, and to 20 give you the right to amend your plea.

MR. TILLEY: I have not considered it. I am sure your lordship would let me amend?

HIS LORDSHIP: I want to treat you the same. Shall I give you a delay?

MR. TILLEY: When I see his amendment, I shall know if I want time.

HIS LORDSHIP: Don't you know it now?

MR. ROWELL: It is only changing the amounts.

MR. TILLEY: I will let you know to-morrow morning.

HIS LORDSHIP: Reserving all of your rights you may set up as resulting from the amendment.

30 MR. TILLEY: And your lordship will not determine now whether you will take the account now.

HIS LORDSHIP: No. I will hear the case before I come to the conclusion.

GEORGE ROBERT FERRIER TROOP: Cross-examination resumed by Mr. Tilley, K.C.

HIS LORDSHIP: The amendment is allowed and you have leave to amend.

MR. TILLEY: I will do it promptly. As soon as I have read the amendment, I will decide.

40 Q. MR. TILLEY: Now Mr. Troop, you have been examining the B.13s, and I would like to ask you a few questions about them. I don't know whether you have or have not followed through the course of business in the sense of actually seeing the

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No. 10

Discussion re
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No. 9

George Robert
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goods handled from place to place, and off the dock and into the warehouse, and off the train?—A. I have not done that.

MR. TILLEY: Then we will limit your evidence to the accountancy part of it.

HIS LORDSHIP: I wonder whether this will be admitted, whether it is common ground, that for every shipment and invoice made from London there was a B.13 Will you admit that?

MR. ROWELL: I cannot say.

MR. TILLEY: Q. You are still at the checking?—A. We are still checking certain shipments.

Q. Now, Mr. Troop, looking at Exhibit No. 12, just as an illustration. That B. 10 13 was issued in March, 1927, and therefore is in the period of time. That any division of the shipment into parcels would have to be made at London rather than at the port of export?—A. I would think so.

Q. I am not asking you to prove these things. I simply want the basis of your examination. That is so. March 13, 1926?—A. March 13th, 1926.

MR. ROWELL: The instructions were carried out.

MR. TILLEY: I want to get at how these things are dealt with.

Q. Now on the right hand side of the B.13 is the affidavit of the attorney for Carlings. The firm provides it?—A. Yes.

Q. And that is a customs stamp on it? 20

HIS LORDSHIP: On the right hand side.

MR. TILLEY: Q. On the right hand side it has the customs stamp of the customs officer at London?—A. Yes.

HIS LORDSHIP: What does the stamp say?

MR. TILLEY: London—Customs Excise, Canada, March 13th, 1927.

HIS LORDSHIP: The place, London?

MR. TILLEY: Yes, London.

Q. That is completed. You assume it was at London?—A. I understand that declaration was taken at London.

Q. You assume that to be so?—A. Yes. 30

Q. And it was stamped by the customs officials there?—A. Stamped at the port.

Q. At the port of London?—A. At the customs office at London.

Q. Or by the customs officer, it was done at London?—A. Yes.

Q. Now on the left hand side is the stamp of the customs office at some port on the river or lake, like Windsor, Sandwich, Amherstburg?

HIS LORDSHIP: Is it not styled "exit"?—A. At the port of exit where the goods leave Canada.

MR. TILLEY: Q. One is the port where the shipment starts, and the other is where it leaves Canada?—A. Yes.

Q. And then can you tell us, if you have gone into it yourself,—if you have any 40 personal knowledge tell me,—as to how many of these are made up for each shipment—how many copies?—A. I understand that from 5 to 7 copies are made.

Q. Depending on the needs?—A. Depending on the number of copies required—
5 to 7 copies of B.13.

Q. I do not know whether you are familiar enough with business to trace what
is done with each copy, or the need of each copy?—A. To some extent.

Q. Well, tell us?—A. As I understand it, one copy is kept at the brewery, and
three copies at any rate go to the port of exit.

Q. Can you tell us how they go to the port of exit,—are they sent by mail, or
by the railway that carries the goods?

HIS LORDSHIP: Or by the exporter?—A. I cannot speak positively.

10 Q. You think one stays with the exporter and three go to the port of exit?—
A. Yes. That is my impression.

Q. And the port of exit would be the port to which the goods in this case would
go—it would be C.P.R. to Windsor—it would go to Windsor in the first place?—

A. Yes.

Q. That is four copies. What happens to the rest?—A. They require different
copies for different purposes. In some cases they want to keep more than four copies.

HIS LORDSHIP: Who are “they”?—A. The exporter.

HIS LORDSHIP: Sometimes the exporter wants more than four copies?—A. Yes.

Q. And does the government want more than three?—A. The government re-
20 quires two copies, one at Ottawa, and one to be filed at the port of exit.

Q. And are these taken out of the three?—A. Yes.

Q. Sent to the port of exit?—A. Yes.

Q. Three are sent to the port of exit. One goes to Ottawa and one stays there?—
A. And one is kept by the shipper.

Q. One is handed back stamped, if it wants it, to the shipper?—A. Yes.

HIS LORDSHIP: Does the customs at London keep a copy?—A. I don't think
they do. I cannot speak positively on that.

MR. TILLEY: I think they do but I am not sure.

Q. The document then has got an entry number on it at the top, but the bottom
30 one, and the blank space for the number,—in this case it is 787, that is the entry at
the port of exit?—A. Yes. In this case it is the outport of Sandwich.

Q. That is while the goods were destined to Windsor, the goods apparently left
the port of Sandwich, an outport?—A. That appears from the stamp.

Q. The port of Sandwich?—A. Yes.

HIS LORDSHIP: Then there would be two entries at the port of exit—the number
and the stamp?

Q. MR. TILLEY: The entry number would be here, No. 787, and they would
stamp it at the lower left hand corner?—A. That is my impression.

Q. Now that is the first thing that is done. I think you can tell me whether
40 this is right. The entry Number shows the number of the entry in the port's book?—

A. In this case in the records of the outport.

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Q. That is to say, at Sandwich there would be an entry made giving the 787, which is on this B.13, and that entry would show this exportation?—A. That entry would record this particular B.13.

Q. From these they could come back to the book and see their record in the book?—A. They keep a record of the B.13s. I think it is a record of export entries.

Q. This sheet is the official export entry?—A. That is the official export entry.

Q. So they keep a record of that in their books, and they keep a copy of it?—
A. Yes.

Q. They have their copy and they have their entry?—A. Yes. 10

Q. Have you checked up their entries or do you assume them to agree with their copies?—A. I have not done that personally. We have checked nearly all the Ottawa copies with the port records.

Q. Are you speaking of Carlings or others?—A. In reference to Carlings and one or two other breweries.

Q. Will you tell us how you proceeded. Did you take the export entries from Ottawa and then trace them in the books, or did you go there and get the entries in the books and then get the entries from Ottawa?—A. In the case of Carling we first went to the ports before we received the entries from Ottawa. We took a list of the entries, the numbers on record at the ports, and when we got the entries from 20 Ottawa we checked the list from Ottawa with the entry numbers we had from the ports.

HIS LORDSHIP: What did you get from Ottawa, the B.13s?—A. The copies that are on file there.

MR. TILLEY: Q. Have you your lists with you that would let us check this up?—
A. We have the list from Ottawa; and we have the list from the ports.

Q. If you will let us have them it will save time. That having been done, if the entry outwards is made at a subport or outport, the report then has to go to Windsor?—A. The entry goes to the chief port.

Q. And then it gets the stamped number at the very top, export entry, in this 30 case No. 1309?—A. That would be the number put on at the chief port.

Q. And then when the chief port gets these B.13s at such periods as it does the work, I don't know whether it is daily or weekly, they are shipped to Ottawa?—A. One copy goes to Ottawa, and the other copy is kept at the chief port.

Q. And then there is an item report Number 185. My understanding is that refers to the number of the report they send to Ottawa with regard to this?—A. I understand by that, that that is the report to Ottawa that the vessel carrying the goods makes.

Q. The vessels report outwards?—A. I understand that.

Q. Well then, in addition to the entry with regard to these B.13s in their books 40 there, and assuming things to be done properly, there ought to be an entry outwards

of the vessel on which the goods were carried?—A. As I understand it, a report outwards should be on file of the vessel.

Q. Did you check those up?—A. We did not.

Q. You did not think that was necessary?—A. No.

HIS LORDSHIP: Where does that go, the report of the vessel?—A. It is hard for me to speak positively.

MR. TILLEY: Well then one copy is sent to Ottawa,—and my understanding of the evidence given by Mr. Nash was that they are filed in the order they are received from the port?—A. The port sends each week or periodically the entries 10 to Ottawa—they are sent to a special branch, and they are kept in the original envelopes as they are received.

Q. And you got in this particular case the B.13s that took that route,—that is I am limiting it now to those made out in London, that started at London, and possibly went to Windsor, in the first place, and then to an outport; and then when the boat left and the cargo left, returned to Windsor, having been entered up at the outport, then back to Ottawa,—and it is the ones that were sent back to Ottawa you got?—A. That we have here.

Q. Did you pick out those that were Carlings at Ottawa, or was that done by the department?—A. That was done by the department.

20 Q. So that when you speak of the B.13s you have, you mean and of course it might be just as complete if you had done the work yourself, you mean the B.13s that have been sent up to you from Ottawa?—A. Yes.

Q. Professing to be all the Carling entries?—A. Yes.

Q. Within what period of time, commencing in 1924 when they started business and to the end of when?—A. To the end of April, 1927.

Q. Did you stop at the end of April?—A. My impression is they did. I would like to see the list we got from Ottawa.

Q. If you would be good enough to let us use such basic things you have got, we might be able to check up readily and save time?—A. With Mr. Rowell's permission.

30 Q. Yes. You say you have not yet checked up to see whether all export beer, that the defendants call export at any rate, in quantity is covered by the B.13s—you have not been able to complete that check?—A. We started to do that, and we got ahead more quickly by checking up the values.

HIS LORDSHIP: I understand we are going to get that?

MR. TILLEY: I think so.

Q. You are going to complete that?

MR. ROWELL: I will see what work is involved in it. It is part of my learned friend's case.

HIS LORDSHIP: He volunteered a little while ago to do it.

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MR. ROWELL: I don't know how much work is involved. I will have to look into it.

MR. TILLEY: Q. Were you told to stop that method?—A. No.

Q. That would be the better method than taking the values?—A. I am not so sure it would. So far as we have checked the B.13s they are equal to those entered in the company's records.

Q. That might not be in all cases. You have not found any cases where it differed?—A. Not so far.

Q. If the procedure was followed, and these signatures of customs officials mean what they ought to mean, there would be no way of the B.13s reaching Ottawa except 10 as the result of the goods being loaded to go away from Canada?

HIS LORDSHIP: I do not think the witness is competent to answer that.

MR. ROWELL: My learned friend is putting a hypothetical question with a lot of suppositions. How can the accountant answer that.

MR. TILLEY: Can you not answer that?—A. It depends on so many things.

I say that if these customs officials have signed when they should have signed; and have not signed when they should have signed—

MR. ROWELL: Who is to determine that?

MR. TILLEY: I am not to say. I am putting that to Mr. Troop.

HIS LORDSHIP: Is it not prima facie evidence that these goods have been 20 exported, if this B.13 is produced with all the certificates of the Customs on it?

MR. TILLEY: If I put the question that way, my learned friend will say that you cannot rely on the evidence.

HIS LORDSHIP: I know you will put it that way in your argument.

MR. TILLEY: Yes, not only prima facie but other ways.

Q. You have examined into this thing, and you have been there to find where all the loop holes were. I am asking you if the Customs officials signed these B.13s only when they ought to sign, there would be no way of the B. 13 reaching Ottawa unless the goods were in some conveyance for export, would it?—A. My impression of what that would mean in that case would be, that these officials would sign as 30 having seen the goods loaded on some boat.

Q. Having seen the goods loaded on some boat?—A. Yes.

Q. You are not saying that would necessarily be so, because they might be going blind—I am not asking you to say that at all. Did you ever go to the dock to see them sending the boats out?—A. No.

Q. When were you there last?—A. In Windsor?

Q. Yes?—A. I was there last Thursday examining the bank accounts.

Q. The business was going on was it not?—A. I presume it was.

Q. And in the way it has been described here, by what is the name of the company?—A. The Bermuda Export Co. 40

Q. Through the Bermuda Export Co. It is still operating.—A. I understand so.

MR. ROWELL: If you know, say so. If you do not say it.—A. I don't know.

HIS LORDSHIP: He has not been to the pier.

MR. TILLEY: Q. You were there at the Bermuda Export Co's office?—A. No, I was at the Dominion Bank.

Q. Were you not at their office at all?—A. No.

Q. Were you not at the Carling Brewery office at Windsor at all?—A. No.

Q. It was last Thursday you were there?—A. Yes.

Q. Well, you have seen the Bermuda Export Company's books?—A. No.

Q. You have not examined them?—A. No.

10 Q. Your staff?—A. I understand they have been examining them.

Q. Now, I don't know whether you know what the practice was before March, 1926?—A. I don't know from first hand.

Q. You do not know what really the changes involved meant in a practical way?—A. I have a general impression.

Q. The general situation as I understand it is that one B.13 was made out say at London for the whole shipment. Is that right?—A. That is my impression, that prior to the regulation, that one was made out at the brewery for the whole shipment.

Q. And when the goods were sent out to the United States there would be new B.13s, or that there might be new B13s brought into existence at the port?—A. 20 Before the goods left the port of exit other B.13s were made out.

Q. Do you know who kept the original B.13 that covered the whole shipment?—A. My understanding is it was kept at the brewery, but I am not positive.

Q. It would have to go to the outport?—A. I think the B.13 is kept for the outport, for those covering smaller quantities.

Q. My instructions are, and if you have any knowledge of that in case I should be wrong say so, that the B.13 was sent for the whole shipment to the Customs, and they saw that there were smaller B.13s to represent the large B.13, and they kept the large B.13?—A. I cannot speak positively on that at all.

Q. You have a list of the B.13s?—A. Yes.

30 Q. What is that list?—A. This is a list of the B.13s that came from Ottawa.

Q. This is a complete list that came to you from Ottawa?—A. Yes.

HIS LORDSHIP: Can you give me the first date and the last date?—A. The first date is 1924. It gives different entry numbers under different ports. It is arranged in the order of entry numbers.

MR. TILLEY: Q. You have Windsor at the top and the first column?—A. This would be the Windsor port numbers.

Q. At the top?—A. Yes, the higher number.

Q. And then you have put in?—A. The outport numbers.

Q. You have done that yourself here?—A. We have done that here.

40 HIS LORDSHIP: You do not know what period it covers?

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MR. TILLEY: It covers from the beginning of this company's business—I understand the first fiscal year ending March 1925—It would go back to the beginning of the Company's business, and would bring it down to April, 1927.

Q. Inclusive?—A. Yes.

Q. You also have the list you made up from the ports themselves?—A. I am not sure they are in the court room.

Q. Subject to Mr. Rowell's approval they will be available too?—A. Yes.

Re-examined by Mr. Rowell, K.C.

Q. You refer to these B.13s coming to Ottawa, and being filed in the envelopes. Will you tell us to whom they would go at Ottawa?—A. My recollection is that they go in envelopes addressed to the Commissioner of Customs—and are sent to the statistics branch at Ottawa when they are received at Ottawa.

Q. They go straight to the statistical branch?—A. And are opened there.

Q. Who is in charge of that branch?—A. Mr. Telford.

Q. So far as you are aware do they go anywhere else than to the statistics branch?—A. Not the export entries.

Q. We are speaking of the B.13s?—A. Not the export entries.

Q. Then my learned friend referred to Exhibit Number 12 as illustrating the B.13. Do you know, if you do not say so, what the procedure is at the port of exit when this affidavit is sworn to or presented? 20

MR. TILLEY: You mean London?

MR. ROWELL: I mean the port of shipment?—A. I cannot speak positively as to that.

Q. Then does the carrier receive any of these, can you tell us?—A. I understand that one goes with the goods. I am not positive on that, but I think so.

Q. My learned friend asked you with reference to the amount added to the sales in Exhibit Number 2, and you stated that a statement had only been prepared within the last few days. How was that—the same matters in the particulars which are in as Exhibit Number 1?—A. In those particulars the same amounts with reference to the special loan account and the export funds account are added in; but the grouping is a little different. That is, in Exhibit Number 1, we have added them all in under four months. In Exhibit Number 2, we have spread them out. We have made a further analysis of the account, and we have spread them out in the months they occurred, In the first there were four months.

Q. So far as the amounts added in the years 1924 and 1925 are concerned, the totals appear in Exhibit No. 1, the particulars of the information—but they are distributed differently in the two statements?—A. That is correct.

Q. In the statement you have made a more detailed analysis and distributed them month by month?—A. That is the only change with respect to those amounts.

Q. When we come to the question of the amounts from Windsor bank account, how was that dealt with in the former statement, Exhibit Number 1?—A. The

former statement bore no reference to the Windsor bank account at all. That is, when the formal statement was made up we had not seen the Windsor bank account—that is we had not made any detailed analysis of it.

Q. How were they treated? For the months of August and September no additional amounts were added. From October 1926 to April, 1927, the sales figures were made up by an Inspector of the Department who took them from the books, but instead of being priced at the amounts in the books, they were priced at the amounts in the Bermuda Export Company's agreement. The sales values were based on the prices in the Bermuda agreement.

10 Q. At \$3.25 a case?—A. Yes.

Q. Then the difference between Exhibit Number 1, the particulars of the information, and Exhibit 2, your present claim, is the difference between charging at \$3.25 a case from October on, to charging the actual amounts deposited in the bank account at Windsor from August on to the end of April?—A. That practically accounts for all the difference although there were a few extra amounts added from the Savard account and the Bermuda Export Co.'s account.

Q. That you explained this morning?—A. Yes.

Q. But the principal difference is in the particulars of Exhibit Number 1, they are charging at \$3.25 a carton or case, on the basis of the Bermuda Export Co.'s 20 agreement—and in your account you have charged the actual proceeds?—A. The actual amount shown in the bank account at Windsor.

MR. TILLEY: Q. Might I ask one question. These amounts that are included seem large. What would be the tax on those added amounts. How much does it change the tax?—A. We have added in about \$600,000 from the Windsor bank account, and about \$250,000 from these other accounts in the books. The difference in the tax would be the tax on these. It would amount to approximately five per cent on \$800,000 which would be \$40,000 approximately.

Q. Then you said something to my learned friend about the cheques. You had traced certain cheques that Mr. Stiff had to use. Will you kindly tell me. I 30 did not quite catch what you said. You said you had traced two only in the Windsor bank account?—A. With reference to two of the accounts which Mr. Stiff had mentioned as being cheques issued by him, there are deposits in the Windsor bank account which agree with two of the amounts mentioned by him. In one case there is a deposit slip marked Stiff; in the other case it is marked Brewers Trust Account—and I judge they went into the Windsor bank account.

Q. How many cheques were there altogether, seven?—A. I traced two which appear to be deposited in the Windsor bank account, and three in the books of the company.

Q. Were the three in the books of the company carried into the sales account?— 40 A. No. They were credited to an account in the name of F. Savard, expenses of Windsor dock, and are shown in the cash book as being received from F. Savard.

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Q. F. Savard, Brewers Trust Account?—A. Yes.

Q. Three separate cheques?—A. Three separate items.

Q. Well then, where did they go from there?—A. From there they are carried to the credit of this account, credit of expenses Windsor dock.

Q. Are there any other cheques?—A. That was the account to which the balance of the Savard Commission account was transferred.

Q. But the three that went to the account, taken into the account, were they added to the sales?—A. No.

Q. They are not included in the figures you have given?—A. No.

Q. Were there other cheques?—A. Mr. Stiff mentioned a number of other 10 cheques, but those five are the only ones I have been able to trace so far.

Q. Then in answer to my learned friend, you referred to a conversation with Morrison about a Smith account, will you tell us what that was?—A. There is an account in the company's customers' ledger in the name of Smith, Detroit, Michigan. The invoices are made out to Mr. Smith, Detroit. They have no freight car number on them, and we were not able to find any bills of lading that appeared to cover them.

MR. TILLEY: I am instructed that was paid.

Q. Continue your explanation?—A. The charges to the account consist of goods sold at \$1.75 a case, and the credits are entirely cash items. The cash received appears to be somewhat more than the amounts at which the goods were billed. 20 The resulting credit balance is carried to the Savard Commission account. I asked Mr. Morrison if he could tell me anything about the account, or how the goods were shipped, and he told me that while Mr. Burns looked after these particular shipments, he understood that they represented goods delivered at the brewery; that persons would come from the United States bearing with them some sort of an order, and that they would get the goods at the brewery—but that Mr. Burns looked after these matters, and he was not able to give me any more information.

Q. My learned friend suggests that that has been paid?—A. I cannot say if the specific items in that account were covered by any particular payment.

Q. Check it up and see?

30

MR. TILLEY: It was recently paid after Mr. Troop drew Mr. Morrison's attention to it. I understand it was paid.

MR. ROWELL: You mean paid this last week?

MR. TILLEY: About a week ago or whatever time it was.

MR. ROWELL: We will enquire as to that.

HIS LORDSHIP: I want at some point during the course of the trial to have evidence of the American law.

MR. ROWELL: Perhaps my learned friend will admit it? My learned friend wishes it proved?

MR. TILLEY: No.

40

MR. ROWELL: My learned friend does not feel free to admit the law, perhaps that is his position?

MR. TILLEY: I got into trouble once through admitting things.

MR. ROWELL: It is more properly an answer to my learned friend's defence. I have an attorney at law from Buffalo—he is here and is anxious to get away, and I would like to get his evidence at the present time.

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ROBERT A. GRIMM: Called, sworn, and examined by Mr. Rowell, K.C.

Q. You are an attorney-at-law residing and practising in the City of Buffalo in the State of New York?—A. I am.

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Q. And are you familiar with the provisions of the American law relating to the prohibition of the liquor traffic, and the American Customs laws and Regulations?—

10 A. Yes.

Q. Have you a copy of what is commonly referred to as the Eighteenth Amendment?—A. I have.

HIS LORDSHIP: There is a volume of the Corpus Juris which contains the Constitution, with the eighteenth amendment.

MR. ROWELL: Q. Will you tell me what that document is?—A. This is a document published by the United States Government, with reference to certain public laws affecting intoxicating liquor.

Q. Just tell us what it contains?—A. It contains a public law, Number 223, enacted by the fifty-first Congress, First session.

20 HIS LORDSHIP: What is the year of the 51st Congress?

MR. ROWELL: 1890. It goes further back. We do not require to go back that far.

Q. What is the date of the eighteenth amendment?—A. The eighteenth amendment was enacted by Congress, and ratified by several States and became the law of the United States on January 17th, 1920.

Q. And it is found—?—A. I have not examined the document you have. I have the official document of the government, the 1927 edition.

HIS LORDSHIP: That is a compendium of all the laws with respect to liquor?—A. Yes. -

30 MR. ROWELL: Q. Then just give us the page on which the eighteenth amendment appears?—A. Page 211 of Regulations 2, as promulgated by the United States Government—Published by the United States Government printing office, in 1927, and set forth as section 1.

Q. Section 1?—A. Yes.

Q. Then you have already given us the date when that became effective?—A. On January 17th, 1920.

Q. Then follows the National Prohibition Act. Tell us what that Act is?—
A. The National Prohibition Act was an Act enacted by Congress to give force and effect to the provisions of the 18th amendment—that appears on page 211 of the
40 same book, under the title 2.

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Q. Then what is the next Act relating to the matter?—A. The next Act is commonly known as the Willis Campbell Act.

HIS LORDSHIP: And what is it?—A. The Willis Campbell Act was enacted by Congress to cure a situation that developed through judicial interpretation of sections of the National Prohibition Act, and the Internal Revenue laws. There had grown up a conflict in the several circuits as to whether or not the Internal Revenue Act had been succeeded by the later Act, the Prohibition Act,—and to cure that situation Congress enacted the Campbell Act, which provided that for all purposes the Internal Revenue Act, and the Prohibition Act, are still in force and effect unless there was a direct conflict between the two. I can cite you that particular Act as 10 Section 3, of the United States Code, Annotated.

Q. Will you read that section to us?

HIS LORDSHIP: Give us the page?—A. At page 13, Section 3, title 27, of the United States Code, annotated. It reads, as follows:—

“That all laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted—

(That Act came into force on October 28th, 1919).

shall be and continue in force, as to both beverage and non beverage liquor, except such provisions of such laws as are directly in conflict with any provision 20 of the National Prohibition Act or of this Act; but if any Act is a violation of any of such laws and also of the National Prohibition Act or of this Act, a conviction for such act or offense under one shall be a bar to prosecution therefor under the other.”

That is known as Vol. 42, Statutes at large, 1921-1923.

Q. Were all of these Acts you have mentioned in force in April, 1924?—A. They were.

Q. Do they still remain in force?—A. They are.

Q. And have they been in force throughout the entire period?—A. Yes.

HIS LORDSHIP: What period?

Q. From April 1924 to date?—A. Yes.

Q. Then without going through the details of these Acts,—or perhaps we might have this 18th Amendment, and the Prohibition Enforcement Act marked as an exhibit for reference?—A. I will leave that here (Exhibit Number 33).

Q. Then without going into details, because we can look at the provisions of the Acts as you have filed them, what is the general effect of the 18th Amendment of the Prohibition Act, in reference to the importation of intoxicating liquor into the United States?

MR. TILLEY: Do you mean the resulting effect?

HIS LORDSHIP: What is in effect the result of the law—of this law upon the 40 importation of liquor into the United States?

MR. ROWELL: We can refer to the particular sections.

MR. TILLEY: Now you will tell us that there is no liquor in the United States?

MR. ROWELL: No. That is my learned friend's privilege.

Q. Perhaps you can tell us in a word what the law is?

MR. TILLEY: Can't we read it?

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THE WITNESS: A. I shall read the amendment, section 1. It covers it in a few lines—section 1 of the Constitution. "After one year from the ratification of this Article, the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States, and all 10 territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

Q. Have you a copy of your Customs Act affecting the importation of liquors into the United States?—A. I have the Tariff Act of 1922 which controls the Customs. That is the official document as printed and distributed by the United States government from Washington.

Q. And is this the existing Tariff Act?—A. It is.

Q. And has this been in force since 1922?—A. Since 1922 (Exhibit Number 34).

HIS LORDSHIP: Could he refer us to any specific item?

MR. ROWELL: My learned friend and I could refer you to the particular pro- 20 visions of the Act before we come to the argument. I am only doing this to save time. If your Lordship prefers we will take the time now?

HIS LORDSHIP: It is there.

MR. ROWELL: It is there. In the last case we drew certain sections to the attention of the court.

HIS LORDSHIP: I thought it would be better to know what sections allowed importation into the United States. It is more on account of my curiosity than affects the case.

MR. TILLEY: It will take a little time.

HIS LORDSHIP: I suppose nothing will turn on it.

30 Q. In addition to the Customs Act, you have certain Regulations made under the Act?—A. I have the Regulations promulgated by the Secretary of the Treasury, and they have the same force and effect as the law itself, so long as they come within the provisions, and do not—

HIS LORDSHIP: Clash?—A. Clash. Correct.

THE WITNESS: These are the Customs Regulations of the Treasury Department, the book just handed to me by Mr. Rowell.

Q. Are these the Regulations now in force under your Tariff Act?—A. Yes.

Q. And have been in force since 1923?—A. They have been in force right along. This is the 1923 edition (Exhibit Number 35).

40 MR. ROWELL: I have, my Lord, a list of the sections and of the Regulations which we referred to in the former case, and I think the same ones will be the ones in

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the present case. I think we can put it in with the book, as part of the book, the particular sections.

HIS LORDSHIP: With Exhibit No. 35, will be a list of sections relied upon—as part of Exhibit 35.

THE WITNESS: There are many regulations in there. I have the very latest brought down to date. I can tell you whether there have been any changes in the Regulations as set forth in the volume you have.

Q. Can you give me a volume brought up to date?—A. I can not do that, but if you refer to the sections in that book, I can tell you whether there have been any changes. 10

HIS LORDSHIP: Let him see that list.

MR. ROWELL: Q. We might have Mr. Grimm go over it, and if there are any changes he will intimate them to us, and we can file them?—A. I can state that have already looked them over and they are the same.

Q. And they are in force?—A. Yes. I want to get it in the record.

Q. Then in addition to the Prohibition law, and the Customs law, that is the tariff law and regulations, are there certain sections of your Criminal Code that affect violations of the tariff law, or the Prohibition law?—A. Why, the Criminal Code sets forth the various claims and offences against the statutes and the punishment. The particular section that is probably invoked more often than any other 20 is probably sec. 37. It is known as the Conspiracy section.

Q.—Will you give that section to the court?—A. Section 37 of the penal law or Criminal Code provides:

“That if two or more persons conspire either to commit any offence against the United States, or to defraud the United States in any manner or for any other purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy will be subject to a fine of not more than ten thousand dollars, or to imprisonment for not more than two years or both.”

Q. Then in case the officials of any Canadian brewery were engaged themselves, 30 that is their company was engaged, in the actual export of liquor to the United States, would they come under the provisions of that section of the law?—A. If you could show an unlawful conspiracy between the brewery itself, or the corporation existing as a brewery, and its officer with others, it would be sufficient to make them defendants.

Q. In a conspiracy?—A. Yes.

HIS LORDSHIP: There is no law with respect to the individual smuggling?—A. Yes.

Section 593 of the Tariff Act of 1922 is the section.

HIS LORDSHIP: It is not in your Criminal Act?—A. No, it is in the Tariff Act. 40 It is in the Tariff Act itself, which prohibits the importation or smuggling or bringing

into the United States all merchandise of any kind. That appears on page 139 of the Tariff Act of 1922. It is Exhibit Number 34. Section 593 reads as follows:—

“593. If any person knowingly and wilfully, with intent to defraud the revenue of the United States, smuggles, or clandestinely introduces, into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the custom house any false, forged, or fraudulent invoice, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding \$5,000 or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court.”

10

Those are the sections that penalizes the violations of the customs.

Q. Would the smuggled liquor, the entry of intoxicating liquor into the United States be a violation of that section of your law?—A. There are decisions by the highest court in the United States. The United States Supreme Court has held that liquors are merchandise—intoxicating liquors.

Q. And that a person so taking them in would be subject to the penalties provided in that section?—A. They would.

Q. Then under your Customs law and Regulations, is it necessary before goods can be lawfully exported, where the value exceeds \$100, that they should apply to a Consul, a resident American Consul in Canada, in case the export is from Canada, and have the invoice certified to by the Consul?—A. The Tariff Act provides for such procedure.

20

Q. What is the provision of the Act?—A. May I refer to a memorandum that I have?

Q. Certainly?—A. Section 481 of the Tariff Act of 1922; and sections 482 and 483, deal with the situation calling for an invoice of merchandise to be brought into the United States. Section 482, sub-division (a) reads, as follows:—

30

“Every invoice covering merchandise exceeding \$100 in value shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States.”

Q. Then in case the Consular invoice is not presented with the goods at the time of entry, what is it necessary for the importer to do to get the goods in?—

A. The Tariff Act of 1922 provides—

HIS LORDSHIP: Q. By what section?—A. Section 484.

40

“Section 484. Entry,—(a) Except as provided in sections 490, 498, 552, and 553 and in subsection (d) of section 315 of this Act, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the custom house within forty-eight hours, exclusive of Sundays and holidays, after the entry of the importing

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vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the collector authorizes in writing a longer time."

Then (b) of the same section Number 484 provides:—

"No merchandise shall be admitted to entry under the provisions of this section without the production of a certified invoice therefor, except that entry may be permitted if—

(I) The collector is satisfied that the failure to produce such invoice is due to causes beyond the control of the person making entry;"

And then (3)

10

"Such person gives a bond in a penal sum to be fixed by the Secretary of the Treasury for the production of such certified invoice within six months, and the payment of the penal sum so fixed as liquidated damages in the event such invoice is not so produced."

Subsection 2 of section (b) of section 484—Such person, reading back from the first paragraph—Except, that entry may be permitted if (2)

"Such person makes a verified declaration in writing that he is unable to produce such invoice, and — (A) files therewith a seller's or shipper's invoice, or (B) if he is not in possession of a seller's or shipper's invoice files therewith a statement of the value, or the price paid, in the form of an invoice." 20

Q. So that to permit the entry of goods without a certified invoice, the importer must do three things. First, he must satisfy the Collector that the failure to produce such certified invoice is due to causes beyond his control; second, makes a verified declaration, such as you have read; and third, gives a Bond, as provided in subsection 3?—A. Yes.

Q. Then can a vessel carrying liquor make a lawful entry into any port of the United States, under your Customs laws or Regulations?—A. May it make a lawful entry?

Q. Yes?—A. Yes.

Q. Under what conditions?—A. Section 433 of the Tariff Act provides, as 30 follows:—

"Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, at any port or within any harbour or bay at which such vessel shall come to, the master shall, unless otherwise provided by law report the arrival of the vessel at the custom house, under such regulations as the Secretary of Commerce may prescribe."

HIS LORDSHIP: That is the Inward report?—A. Yes.

HIS LORDSHIP: That does not answer the question?

40

MR. ROWELL: Q. Under your Regulations, the Regulations made under your

Tariff Act (Exhibit No. 35), would it be possible to enter a port with intoxicating liquors for beverage purposes, without the liquors being seized, except a foreign vessel?—A. With that vessel I will say it is unlawful.

Q. With that exception, just tell us the exception you refer to?—A. The Regulations, Article 581, are as follows:—

“No wines, spirits or other liquors or articles containing one half of one per cent or more of alcohol shall be imported or permitted to enter except on permit therefor by the Commissioner of Internal Revenue. Any such wines, spirits or other liquors or articles imported into the United States without a permit, shall be seized and forfeited in the same manner as for other violations of the customs law.”

Q. Then in case any vessel arrived with a cargo of liquor without a permit from the Commissioner of Internal Revenue, such vessel and liquor would be liable to seizure?—A. Yes.

Q. Under law?—A. That is, liquors for beverage purposes. I can volunteer information while I am here, so that counsel in the court should know all the sections.

MR. TILLEY: No, not all.

THE WITNESS: There is one particular section of the law I would call your attention to. Sec. No. 42, Statutes at large, at page 222—and this is known as section 56 of title 27, of the United States Code, annotated.

“No spirituous liquor shall be imported into the United States, nor shall any permit be granted authorizing the manufacture of any spirituous liquor, save alcohol, until the amount of such liquor now in distilleries or other bonded warehouses shall have been reduced to a quantity that in the opinion of the commissioner will, with liquor that may thereafter be manufactured and imported, be sufficient to supply the current need thereafter for all non-beverage uses: PROVIDED, That no vinous liquor shall be imported into the United States unless it is made to appear to the Commissioner that vinous liquor for such non-beverage use produced in the United States is not sufficient to meet such non-beverage needs; PROVIDED FURTHER, That this provision against importation shall not apply to shipments en route to the United States at the time of the passage of this Act; AND PROVIDED FURTHER, That the commissioner may authorize the return to the United States under such regulations and conditions as he may prescribe any distilled spirits of American production exported free of tax and reimported in original packages in which exported and consigned for re-deposit in the distillery bonded warehouse from which originally removed.

Q. What has been the decision on that of your Supreme Court?—A. In the case of Ford versus the United States, a recent case that was decided in the Circuit Court of Appeal, 1926,—and reported in 10 Federal, Second series, at page 339; and affirmed by the United States Supreme Court, in 1927, in volume 47 Supreme Court Reporter, at page 531—the court held that importing liquor is unlawful in view of this section.

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Q. I omitted to ask you one question, when I commenced examining you. How long have you been practising your profession? A. About ten years.

Q. Have you been in the active practice of law during that period?—A. I have.

Q. And have you had to do with this particular branch of the law during that period?—A. Yes,—as the United States District Attorney.

Cross-examined by Mr. Tilley, K.C.

Q. I noticed you used the expression, these laws were in force or were enforced, which was it?—A. Both are correct.

Q. That is to say, the United States is just as dry as the reading of these statutes would indicate?—A. I say it to my own personal knowledge. 10

Q. To your own personal knowledge?—A. As far as the importation of liquor is concerned.

Q. What do you mean?—A. Bringing it in from a foreign contiguous country.

Q. You were saying that according to your own knowledge so far as your knowledge goes, that liquor is not brought into the United States?—A. I do not say that.

Q. I thought that is what you were saying. I thought that you were saying that so far as your knowledge goes, that the law was not only in force but that it was enforced, and the United States was as dry as the statutes would indicate?—A. Well, liquor may be procured there legitimately.

Q. And illegitimately?—A. Yes, illegitimately. 20

Re-examined by Mr. Rowell, K.C.

Q. As to enforcement. What do you say as to enforcement?

MR. TILLEY: I did not ask him about that. I asked him if the law was enforced and he said it was sold illegitimately.

A. The government is vigorously enforcing the law, and is making every effort to see the statutes are enforced.

(This concluded the examination of this witness.)

HARRY OGDEN PALMER: Called, sworn, and examined by Mr. Rowell, K.C.

Q. You were associated with Mr. Nash in making an enquiry into certain breweries and liquor warehouses during the Customs Investigation?—A. I was. 30

Q. In connection with that did you make an investigation into the books of the Bermuda Export Company?—A. I did.

Q. When did you make that investigation?—A. About November and December, 1926.

Q. And what was the nature of the investigation you made at that time?—A. I made two visits. The first visit was to verify the price paid over to George Stiff, the trustee for the breweries, which I checked both with the Bermuda Export Co's. books, and with Mr. Stiff's books, and they both agreed in all cases. The report sent in by the Bermuda Export Company of the breweries, taken from the docks, was in accord with the records of the trustee's accounts. 40

Q. Then what was the occasion of your next visit?—A. On the second visit I made a summary of two periods of sales from the books of the Bermuda Export Company September 15th to the 23rd, and November 3rd to the 11th.

Q. And what was the purpose of making that summary. A. The purpose of making the summary was to attempt to have the B.13s at Ottawa agree with the goods sold by the Bermuda Export Company.

Q. And then did you take off from the books the amount sold each day at the different docks?—A. The amounts were taken each day from the dock records sent in to the Bermuda Export Company.

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10 Q. The documents of the character produced here?—A. Yes—the exhibit that Harry J. Cornwall produced yesterday; the stock on hand received during the day, that sold during the day, and the balance of the stock on hand.

Q. While you were there did you see the manner in which the business was being carried on?—A. I visited most of the docks, perhaps all of them during the time I was there.

Q. Tell us how the business was carried on?—A. In the first place I went down to the dock to verify that the stock record was correct, and I found out that the cases sold at LaSalle Number 2, either 1 or 2, LaSalle Number 2, the cases sold that day agreed with the report that he had sent in to the office.

20 MR. TILLEY: Q. When you say cases, you mean cartons?—A. It is the same thing. It is a package—one bundle.

MR. ROWELL: Q. Did you see how the business was being transacted at the dock?—A. Yes. I went down several times unbeknown to the people at the docks to see if the goods were being loaded, and to see if the B.13s were being carried out in the proper way. In every case I saw the B.13 made out—but the boats were so heavy that it was impossible for a man to know what was on a boat.

MR. TILLEY: What did you say was there?—A. They were all there, the B.13s.

MR. ROWELL: Q. I want to know how the business was being carried on at 30 the dock?—A. Do you mean how the goods were received?

Q. No. How the goods were disposed of at the dock?—A. They came down on a truck from Windsor, in most cases, with the B.13s with the truck driver, and they were handed to the broker at the office there; and it was their broker and customs officer had the same office. There was a customs officer there.

Q. Whose broker?—A. The broker acting for the brewers. I don't know whether he would be any particular firm's broker.

Q. And the B.13s were handed to him?—A. They were handed to the broker.

Q. That is the way the goods came in?—A. Yes.

Q. And the way the goods went out, describe that?—A. Sometimes they went 40 to another dock. Sometimes they were transferred to another dock. In each case I stopped the truck driver; he had a B.13 to cover the load. In other cases a man

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came in on a boat, and he told the manager how many cases he wanted, and he paid for them, and they were put on the boat.

Q. He paid the money?—A. And they were put on the boat.

Q. How was the sale recorded?—A. It was recorded under the daily stock sheet.

Q. Exhibit Number 30 which was produced yesterday, is that an illustration?—
It was a similar slip to that.

Q. The man would come in and pay his money?—A. And pay his money into the little cashier's wicket, and he would make this up—and he would give it to the man that loaded the boats. 10

Q. He would give it to the man who would load the boats, and the boats would be loaded?—A. Yes.

Q. He would get the money?—A. Before the boats were loaded—I believe that was the strict instruction, that nothing would be given out without the money.

HIS LORDSHIP: Who checked the money?—A. The cashier at the dock.

Q. The broker did not take the money?—A. The cashier belonging to the staff of the Bermuda Export Company took the money.

Q. Then at the end of the day the total sales would be recorded on these slips, which would represent the sales of that day?—A. Yes. As put in by Harry J. Cornwall. 20

Q. Similar to Exhibit Number 28?—A. Yes.

Q. Then you were able to get the amount of the sales at the end of each day from the period of the 15th September to the 23rd inclusive.—A. Yes.

Q. Then did you compare the amount sold as appeared in the books, with the actual B.13s for that same period?—A. I examined the B.13s in Ottawa for the same period and listed them in detail for the same days.

Q. That is the B.13s that bore a stamp?—A. Stamped for the Carling brewery and the district of Windsor, Sandwich and Amherstburg.

Q. The district of Windsor?—A. Where the Bermuda Export Co. had a dock.

Q. You examined the all B.13s of the Carling Co., filed in Ottawa, for that 30 period, in all the places where the Bermuda Export Co. had docks?—A. Yes.

Q. And how did the stamped B.13s compare for that period?—A. 6,010 cases short.

Q. The sales during ten days were 6,010 cases more than you could find B.13s for?—A. Yes.

Q. Did you make a similar investigation from November 3rd to November 11th?
A. I did.

Q. What was the result of that search?—A. 1,313 cases short.

Q. For that period?—A. Yes.

Q. The sales exceeded the B.13s by that amount?—A. Yes. 40

Cross-examined by Mr. Tilley, K.C.

Q. I don't know that I quite follow you how you got at this. You first took certain sales as shown by the Bermuda Export Company's books?—A. Yes.

Q. For two periods?—A. Yes.

Q. September 15th to September 23rd?—A. Yes.

Q. And again from November 3rd to the 11th—that would be a week each time?—A. Yes.

Q. And then you went to Ottawa, did you?—A. Yes.

Q. And when did you examine the B.13s at Ottawa?—A. I could not say the 10 date. It would be around December, 1926.

Q. When were you at Windsor?—A. It was around October, November and December.

Q. Sometime in the fall?—A. It was towards the end of 1926. It may have been the first two weeks of 1927.

Q. And then you went through the B.13s at Ottawa yourself?—A. Yes. Not everyone. I had an assistant there.

Q. Some person helping you?—A. Yes.

Q. Will you give me your working sheets for that?—A. Yes.

Q. Have you got them here?—A. Yes.

20 Q. And did you pick out the B.13s at Ottawa, or did you have some person do it for you?—A. We had a bundle for the district, and we listed the Carling's as we came to them. We left them just intact.

Q. Will you show me how?—A. There is one. The red figures are the B.13s short.

Q. What does it mean by 60?—A. There are 83 quarters, halves and cases—21,000 cases sold, and 15,000 B.13s covering 15,814.

Q. You were not there from September 15th to the 23rd?—A. I have an idea I may have been.

30 Q. That is not part of your information on which you were giving your evidence?—A. I am trying to think. I picked the B.13s there as well as the sales slips there, I think it was in October.

Q. I may not be putting it very plainly. I want to ask you whether you saw the 83 quarters shipped out of Windsor?—A. No, I cannot say that.

Q. And what you took then were the sales slips?—A. What I took was the dock record sent into the office showing the number of cases sold that day.

Q. Whether the cases that were sold that day were all taken away that day you cannot say?—A. No.

Q. It showed the cash payments so to speak for liquor that day?—A. Yes.

Q. And what the liquor consisted of?—A. Yes.

40 (Mr. Rowell—The witness has made out a summary by days of these and we might put them in as an Exhibit—Exhibit 36.)

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MR. ROWELL: This statement prepared by the witness, shows the totals for each port both of cases sold and of B.13s for each of the two periods.

MR. TILLEY: These and your working papers will be available for us to examine?

MR. ROWELL: Quite.

MR. TILLEY: The witness says he is anxious to get away tonight.

Q. Did you make up this summary?—A. It is taken from mine. It is the same as mine. (Ex. 26.)

Q. So that there is a shortage in each period of B.13s?—A. At Ottawa.

Q. That is to say, the Ottawa B.13s for those two periods would indicate that less liquor, less Carlings' beer was either sold or shipped—I don't know which is the 10 appropriate word to use—than was actually sold, shipped?—A. Yes.

Q. There was less beer shipped than was actually sold?—A. It would indicate that.

HIS LORDSHIP: The books showed more sales than B.13s.

MR. TILLEY: There would be more beer exported than the export returns showed in the shape of B.13s?—A. Yes.

HIS LORDSHIP: Would you say exported or sold?—A. I made them up on records which they call sales, and I called it sold.

Q. You were there at the docks themselves to see how the work was carried out?—A. Yes. 20

Q. When these sales are made what was done with the liquor,—if there was immediate delivery of the liquor, what was done with it?—A. It was put on a boat.

Q. And then what happened?—A. Directly the man got it on the boat he got a C.3, and left.

Q. Did he clear the boat at the customs?—A. Yes. He got a C.3.

Q. A clearance form?—A. Yes.

Q. Did you see whether he reported inwards when he came in with his boat?—
A. Everyone that I tested had done so.

Q. The man coming in would enter at the customs, and when he was leaving he would report outwards?—A. He would get a report outwards. 30

Q. At the customs?—A. Yes.

Q. And did you observe where he headed for?—A. They did not leave right away in many cases. You mean they went around the river waiting for a favourable opportunity to go across?—A. I saw several go across.

Q. With liquor on board?—A. Yes.

Q. And when you say going across, do you mean going straight across to the other side?—A. I could not see that far, but they went out in the river—but when I say they went across I mean they went out of sight.

HIS LORDSHIP: Towards the other shore?—A. Yes.

Q. And out of sight?—A. Yes. 40

Q. Were you able to see whether any of them actually landed?—A. I could not see that at all.

Q. Now let us understand to what extent you traced it. In the first place you went to see the liquor arrive on the railway car?—A. Yes.

Q. And let us assume that it came to Windsor. What happened on its arrival at Windsor?—A. It was released by the customs officer to the man who trucks, to take it down to its various destinations.

Q. When it first arrived at Windsor were the customs officers communicated with?—A. They could not get into the car until the customs officers released it.

10 Q. There was a special seal on the car, and they could not get the goods out of the car until the customs officers released them?—A. They were not supposed to.

Q. You did not see any violation with the railway?—A. No.

Q. While you were there the customs official was in attendance?—A. Yes.

Q. Opening the car?—A. He was there.

Q. And if they were going to take some of that, to another dock, it would be put on a truck?—A. Yes,—and there would be several trucks to unload one car.

Q. And the B. 13 would accompany the truck?—A. Yes.

Q. Who had those?—A. The customs officer when he undid the car.

20 Q. And then the appropriate number of B. 13s would go with the goods on the truck?—A. In every case I examined.

Q. And they would be taken to some dock?—A. Yes.

Q. And entered in the books of the dock?—A. Yes.

Q. And would there be a customs officer there?—A. Yes.

Q. And what would happen at the dock when the truck came?—A. The goods would be taken into stock and the B.13 would be filed in a box.

Q. Where?—A. In the customs office—in the office used by the customs' officer.

Q. —It was not a special custom's room, but it was a room used by the customs officer?—A. Yes.

30 Q. And then they would remain there until when?—A. Until they needed a certain number of cases for a boat load.

Q. And then what?—A. The customs officer made them up—in some cases 3 or 4, and in some cases 5 copies. He stamped them and made them agree with the report outwards—and one copy stayed at the outport, and one went to the port, and one went to Ottawa, and I think the broker kept one, and I think one was sent to the brewery—five copies.

Q. There would be five copies, and they would be distributed in that way?—A. Yes.

Q. And stamped?—A. Yes.

Q. When would they be stamped?—A. At the time the boat was loaded.

40 Q. I see there is a signature at the lower left hand corner—at least on some of the B. 13s. I am looking now at Exhibit Number 12—what signature would that be?—A. J. Wilson.

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 12

Harry Ogden
Palmer
Cross-
examination
May 10, 1928
(continued)

*In the
Exchequer
Court
of Canada*
—
Plaintiff's
Evidence
—
No. 12
—
Harry Ogden
Palmer
Cross-
examination
May 10, 1928
(continued)

Q. Who is he?—A. He is a customs man—I am not sure.

Q. At Sandwich?—A. It must be Sandwich.

Q. Did you see the customs officer sign them?—A. Yes.

Q. So that not only did he stamp them, but he signed them?—A. He signed then while I was there.

Q. Now then all you can say I suppose is, that you took a certain number of days, and you compiled this statement?—A. Yes.

A. And it is rather a short period to you?—A. It was a very heavy period.

Q. Do you mean heavy in shipments?—A. Yes.

Q. What time of the year was it?—A. September 15th to 23rd. 10

Q. All you would say, it was for those particular days and you went down to Ottawa and you examined the B. 13s with the result you have indicated?—A. Yes.

Q. Was the cash being received there?—A. Received at the dock?

Q. Yes?—A. Yes.

Q. What kind of currency was it?—A. I don't know that I can recall in the case of the Bermuda Export Company; but in the case of the Mexico Company it was American money.

Q. Were these operations all being carried on openly and publicly?—A. Exactly. And I saw a patrol boat on many occasions.

Q. Patrol men or boat?—A. A patrol boat. 20

Q. On the river?—A. Yes.

Q. How many boats have you seen loading at once?—A. I think there were 25 at one dock, one night.

Q. Did you, when you were checking the B. 13s check all the outports?—A. All the outports connected with the Bermuda Export Company.

Q. And I am instructed that sometimes these outport returns are very slow in getting to Ottawa. Do you know how that was—or how it is?—A. I could not say.

Q. They would have to go through the main port, and have to be sent by the main port to Ottawa?—A. The B.13 for to-day would go to the port in the morning. By the time they got through in the day the office would be closed—they would go 30 up in the morning.

Q. Are you speaking of what you know would happen, or what did happen?—

A. What did happen.

Q. They would go up in the morning?—A. In the morning.

Q. I thought I came on cases where they would be a week behind?—A. The B.13s would be stamped with the day.

Q. But the actual transmitting of these documents to the main port from the outport, do you know whether there was a delay in that?—A. No, I don't know whether there would be any delay at Windsor, but there was that one delay in getting to the port—they went up the next morning. I saw them going up to the port next 40 morning.

Re-examined by Mr. Rowell, K.C.

Q. You did find in the files in the statistical branch at Ottawa B.13s for these particular days?—A. Yes.

Q. Covered by the period under examination?—A. I found some for each day for each port.

Q. Then my learned friend asked you about the boats. What was the character of the boats you saw?—A. Some of them were fast speed boats, what we would call a small yacht. Most of them would be a rowboat with another boat tagged on. I saw one boat with five different boats tagged on the end.

10 Q. Open boats—they were not decked?—A. I would call them rowboats. A rowboat with a screw propeller.

HIS LORDSHIP: You saw one propelled by gasoline or otherwise and it was towing some small boats?—A. Yes.

Q. But these boats you saw were not decked vessels?—A. No.

HIS LORDSHIP: None of them?—None of them.

MR. ROWELL: Then you told my learned friend that some of them did not leave at the time, did not leave at once—you saw some go, but some did not leave?—A. There were some that did not leave right away.

Q. Take it at LaSalle Number 1, is that where most of the shipping was done?—
20 A. I think it was LaSalle Number 2.

Q. The principal Bermuda Export Company's shipments, according to the shipments yesterday appeared to be from LaSalle?—A. Yes.

Q. Can you tell me whether at LaSalle the boats used to leave or whether they stayed at the dock?—A. Most of them left. When I say they did not leave I might say they just switched around in the water. I did not see them go out.

Q. You did not see them go out?—A. Some I did, and some I did not.

Q. And did you see some stay at the dock for hours?—A. No.

Q. Did you stay at the dock?—A. I was there at six o'clock—or ten minutes to six.

30 Q. Did you see a number of boats there?—A. Yes—anywhere from 15 to 25.

Q. And did you stay until they all left?—A. I could not say for sure. I think most of them had left before I left—but some of them were still there when I left.

Q. Then you spoke of the car coming down under seal. Are you referring to liquor shipments subject to excise?—A. No. All the cars I ever saw were all under seal.

Q. My instructions are that none of them are?

MR. TILLEY: My instructions are that they are.—A. The particular car I had reference to, I cannot say whether the customs officer opened it with a key or with a hammer.

40 MR. ROWELL: Q. Did you see any seal on it?—A. Perhaps I could not say I did. I thought I did.

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 1

Harry Ogden
Palmer
Re-examination
May 10, 1928
(continued)

*In the
Exchequer
Court
of Canada*
—
Plaintiff's
Evidence
—
No. 12
—
Harry Ogden
Palmer
Re-examination
May 10, 1928
(continued)

Q. The customs officials tell me there are none on beer cars; but we can get that from another officer?—A. Perhaps when I referred to it being under seal, that they could not open it without him.

Q. How do you know they could not open it without him?—A. They had to find him before they could get the beer, and went down with him.

Q. Then you said the B.13s went with the trucks to the dock, and were put into the office on the dock?—A. Yes.

Q. Now whose office is that?—A. It is the office of the Bermuda Export Company.

Q. And where are the B.13s kept in the office of the Bermuda Export Com-10 pany?

MR. TILLEY: My learned friend is leading the witness.

MR. ROWELL: Q. I am asking him where they are kept. Where are they kept?—A. They are in a file, in a letter box file.

Q. In the office, of all denominations?—A. Yes.

Q. Of the different breweries?—A. The different breweries are separate. But as they come in they are all put into this box.

Q. And there is a separate box for each brewery?—A. Yes.

Q. How was the stock kept in the export house, was each shipment kept separate?—A. No. 20

Q. The shipments were not kept separate in the docks?—A. No.

Q. Incoming shipments?—A. In the dock there was a separate section for each brewery, and as they come in they put them in that section.

Q. Were they locked?—A. The out-door was locked, but the whole of the different breweries were in different sections.

Q. There were certain spaces used for each?—A. It was very much like a horse-stable.

(The court then adjourned at 5 p.m. until 10.30 a.m. to-morrow).

No. 8

(Fifth day)

FRIDAY, May 11th, 1928. 30

Harry J.
Cornwall
Examination
May 11, 1928
(continued)

HARRY J. CORNWALL: Examination resumed by Mr. Rowell, K.C.

Q. You were going to prepare a statement for us of the total sales of the Carling Company made by the Bermuda Export Company?—A. Yes. I have it with the cancelled cheques.

Q. First let us see the sales. Tell us what this statement is you have prepared?—A. This is the collection at \$2.50 per carton.

Q. I asked you to prepare one showing the total amount of the sales and the value at \$3.25 per carton?—A. Yes.

Q. This is a statement at \$2.50 a carton.—A. Yes.

Q. And if we added a proportionate amount representing seventy-five cents a carton, it would represent the total amount you received?—A. Yes.

Q. I think you explained the other day that it was \$2.50 a carton you paid over to the Carling Company?—A. Yes.

Q. And out of the remaining seventy-five cents a carton, you deducted your expenses, depreciation and reserve?—A. Yes.

Q. And remitted the balance to Mr. Stiff?—A. Yes.

Q. Then this statement you have now prepared is a statement showing the amounts you collected after deducting the seventy-five cents per carton?—A. Yes.

10 Q. Then what is the total amount you collected during the period at \$2.50?—
A. \$1,308,284.45.

MR. TILLEY: Q. That is Carlings only?—A. Yes. Also we paid to London \$81,471.50.

Q. Paid to Carlings at London?—A. Yes.

MR. ROWELL: Q. The first amount was sent to the Carlings at Windsor?—
A. Yes.

Q. Why do you provide these two classes?—A. I should say the \$1,308 is before the value of empties were accepted for Carlings—the net amount paid to Carlings for that period was \$1,185,419.

20 Q. What do you mean by deducting the empties—explain that?—A. That is empty kegs that were accepted for their account plus duty and sales tax.

Q. The \$122,864.63, tell us what that represents?—A. The \$122,864 represents the value at six dollars for the half barrel, and three dollars for a quarter barrel.

HIS LORDSHIP: What do you mean by those empties that you charged to them?—
A. It is what we accepted for their account.

HIS LORDSHIP: Where do they come from?—A. They came to the dock.

HIS LORDSHIP: Where did they come from?—A. They came in the boats.

HIS LORDSHIP: They were returned to Canada?—A. Yes.

30 Q. They came to Canada, and you had to pay the value of them. Did you pay
the value of them?—A. We allowed the value.

HIS LORDSHIP: Tell us the story of the empties, and why you deducted—we cannot guess?—A. We allow to the purchaser for these empties returned to us at six dollars for the half barrel, and three dollars for a quarter barrel.

HIS LORDSHIP: Q. And whatever amount you paid for these empties, you deducted it from what you returned to the Carling Company?—A. Yes.

HIS LORDSHIP: And you sent those empties which represent the total amount just the same.

40 MR. TILLEY: I gathered that \$308,284.45 was the total receipts at \$2.50 a carton, but he said we got in a lot of empties for which we allowed \$122,864 which reduced
the actual cash sent to London to \$1,185,419.

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Examination
May 11, 1928
(continued)

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Examination
May 11, 1928
(continued)

MR. ROWELL: Q. Will you tell me what purchasers you got these back from?—

A. No.

Q. You cannot tell that?—A. No.

Q. The barrels come—what do you do?—A. We make a refund slip.

Q. A refund slip?—A. Yes.

Q. Then does this indicate who gets the refund?—A. This indicates Number 2, LaSalle dock,—accepted for the Carling brewery on July 31st, eight half barrels, value \$48.00.

Q. Does it indicate in any way who you got them from?—A. No.

Q. Have you anything in your records that will indicate who you got the barrels 10 from?—A. No.

HIS LORDSHIP: That is the uniform price you pay for empties?—A. Yes.

Q. For any of the Carling Company barrels returned?—A. Yes.

Q. Or barrels of any other brewery of the same size?—A. They are all the same price.

Q. When you take barrels back, when they come you have some for one brewery and some for another—what is your procedure?—A. That is ascertained by the man on the dock. I cannot say what the exact procedure is.

Q. You cannot say as to the procedure?—A. No.

Q. Do you know anything more than you get slips of this kind?—A. Those slips 20 are compiled at the dock and sent to the office each morning.

HIS LORDSHIP: Are those barrels marked in any way?—A. I believe they are.

Q. MR. ROWELL: Are you correct in that. I was instructed that they defaced the marks in shipping—that the marks were rubbed off?—A. I know the men on the dock are able to identify the kegs to a certain extent. I do not know to what extent they can identify each brewery's kegs.

Q. The markings are removed, are they?—A. I cannot say.

HIS LORDSHIP: Any barrel can be used by any of the brewers.

MR. TILLEY: There are ways adopted to identify their own, but that will come 30 later.

HIS LORDSHIP: But what I have in mind is this. If it is returned as part of the cash, it would be of some value to the brewer who would get such a barrel even if there was some confusion as to who it belonged to.

MR. ROWELL: Q. Then you say there was a payment of \$81,471.50 to London. What does that represent. That is Carlings, London?—A. \$2.50 that comes for the sales in the Port Lambton district.

Q. Do you know why you treated the Port Lambton sales different from the Windsor sales, that is the Windsor district sales, sent to Port Lambton, remittances to the Carling Company at London, and the Windsor district remittances to the Carling Company, Windsor?—A. When we were first operating, we were asked to 40 make a separate cheque for this district, to the London office, the shipments of

course were from London to Port Lambton. Later we received instructions to pay those to the Windsor office with the other payments.

Q. Then the London payments only covered the period from July 29th to November 26th, 1926?—A. Yes.

Q. And thereafter the collections in respect of Port Lambton went to Windsor with the others, included in the others?—A. That is right.

MR. ROWELL: This statement might go in as Exhibit No. 37.

Q. If we desire to find the number of cartons, would we get it by dividing the total by \$2.50?—A. I think Mr. Stiff will show the number of packages, half barrels, 10 quarter barrels, and cartons. I am sure the exhibit he made up shows that—and I have it for the period in April that is between the periods—from April 7th to the end of April.

(Slip showing credits for empties is put in as Exhibit No. 38).

Q. Then you tell us that the statement that Mr. Stiff is making up for us would show the cartons, barrels, half barrels, and quarter barrels up to what date?—A. April 7th, 1927.

Q. And you have prepared a statement from April 7th to April 30th?—A. I drew that up this morning, a rough statement. There are 30 half barrels, one quarter barrel, 2,842 cartons at \$2.50 and 7 old stock ale at \$3.50.

20 HIS LORDSHIP: You might put in that statement.

MR. ROWELL: Yes. (Exhibit No. 39 is a statement showing the sales by the Bermuda Export Company of the Carling beer from the 7th April to the 30th April, 1927).

Q. What is the selling price of old ale in respect of which you remitted \$3.50?—A. We collected \$4.25.

Q. You kept 75 cents?—A. Yes.

Q. Have you got the cheques which were issued both to London and Windsor to the Carling Company—sent to London and Windsor respectively?—A. Yes.

Q. What is this bunch you produce?—A. This represents payments to the 30 Windsor office.

Q. How many cheques are there?—A. There are 42.

(Exhibit Number 40/A are the cheques sent to Windsor; and Exhibit No. 40/B are cheques sent to London.)

Q. The 42 cheques represent the aggregate of the figure you gave us?—A. Yes.

Q. These cheques represent the aggregate of what?—A. There are two or three small cheques I could not find,—they must have been removed in the adjustment of payments.

Q. There are two or three small cheques which you have not been able to find?—A. Yes.

40 Q. So that the aggregate of these 42 cheques is not quite equal to the total amount?—A. It would be about \$5,800 short of the total amount.

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Examination
May 11, 1928
(Continued)

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Examination
May 11, 1928
(continued)

Q. Of the \$1,185,419?—A. Yes.

Q. What is this second bundle of cheques you produce?

HIS LORDSHIP: Now you are dealing with London?

MR. ROWELL: Yes.

A. These cheques represent the payment to the Carling Export Brewing and Malting Company, London, Ontario.

Q. How many are there?—A. There are eighteen cheques, aggregating \$81,471.50.

Q. Does that cover all the cheques in connection with this matter. Then you have another cheque paid to the Carling Company in respect of the transaction—representing the transactions in question, that is between the 15th July, 1926, and the 30th April, 1927,—tell us what that cheque is?—A. You will remember the twenty cents reserve. This is part of that return and wiped off the books.

Q. This is part of the reserve returned and wiped off the books?—A. Yes.

Q. And on what date was that returned?—A. July 25th, 1927, \$62,353.62.

Q. Several of these cheques appear to be signed by Low—the Bermuda Export Company—Harry Low—and who was the other?—A. Mr. Clapp.

Q. Mr. Clapp is the secretary?—A. He was manager.

Q. And what was Low's relation?—A. He was a member of the committee authorized to sign the cheques.

HIS LORDSHIP: This last cheque might perhaps be made Exhibit 40/C. 20

THE WITNESS: May I explain something?

Q. Yes?—A. Only part of this cheque of \$62,000 applies to the period ending at the end of April, 1927.

Q. Tell us what part applies to the end of April, 1927?

MR. TILLEY: Does it matter?—A. The division of the amount of the cheque dated the 25th July, 1927, is \$55,540.82, and is applicable to the period ending April 30th, 1927.

HIS LORDSHIP: Out of the \$62,000 there were \$55,000 odd applying to Carlings.

Q. For the period prior to the 30th April, 1927?—A. Yes.

Q. Is it in addition to the \$2.50 per case?—A. Yes. \$55,540.82. 30

Q. Now then I notice on the endorsement of these Windsor cheques a certain endorsement—can you tell me what that endorsement is on the back?—A. That particular endorsement on the cheque dated May 6th, 1927, is "deposit to the credit of payee."

Q. That is payee, the Carling Brewing and Malting Company?—A. Yes.

Q. What is the date of the cheque?—A. May 6th, 1927, for \$23,864.90.

Q. You spoke of having certain bills of lading the other day from Port Lambton or Amherstburg, were you able to locate them?—A. No. I have none on our files for those shipments. We kept a record of the car numbers.

Q. But you have no bills of lading?—A. No. 40

Q. Could you leave with us the documents that show the record of the car numbers?—A. I could for a while.

Q. Could you make a copy of the car numbers for us? I want to see the ones entered here as coming to these ports. Or can you make a memorandum which we can put in of the car numbers and dates of the car numbers especially to Amherstburg and Port Lambton?—A. I can for the period I have the numbers. I have not the car numbers for the entire period.

Q. Will you make and prepare and we will file as Exhibit No. 41, the record of the car numbers, with the dates of receipt?—A. Yes.

10 Q. And the shipments to Amherstburg and Port Lambton?—A. LaSalle and Amherstburg.

HIS LORDSHIP: If you make that statement, you will show what you have just said—you have those numbers but it is not exhaustive?—A. No.

MR. ROWELL: Q. It is exhaustive for the period covered by it. Is it complete for the period covered by it?—A. Yes. It is complete for the period when I started this system.

HIS LORDSHIP: Stay with that word exhaustive. You told us that you had the numbers of the cars, but you did not have all the numbers of the cars. Is that right?—A. Yes, that is right.

20 MR. TILLEY: What he is saying is that he commenced this system from a certain date. From that date he has the car numbers, but prior to that he has not the car numbers.

HIS LORDSHIP: Is that right?—A. Yes.

MR. TILLEY: Q. It exhausts the period under your system—is that what you mean?—A. Yes.

MR. ROWELL: Q. I think you told us the other day in reference to Kingsville, you took over the stock that was on the dock at the time you started in business there?—A. Yes. I gave you the figures, I believe.

30 Q. Did you buy it?—A. We collected and turned over the collections to Hoffman & Dunford.

MR. TILLEY: Q. What did he do?

THE WITNESS: We took over the stock at their dock and as deliveries and collections were made we later turned over to Hoffman and Dunford the full \$3.25 per case.

MR. ROWELL: Q. Is that a letter from the Bermuda Export Co., to Hoffman and Dunford enclosing a cheque for the price of the stock that was on hand at the time?

MR. TILLEY: I object to that again. If that is a letter from some people it will speak for itself. Each time there is a statement involved in the question.

40 HIS LORDSHIP: Your objection is well taken, if it is a letter.—A. It is a letter from our office, the Bermuda Export Co.

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

—
No. 8

—
Harry J.
Cornwall
Examination
May 11, 1928
(continued)

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Examination
May 11, 1928
(concluded)

Q. To Hoffman and Dunford, signed by whom?—A. Signed by the manager.
Mr. Clapp.

Q. It is dated August 21st, 1926 (Reads it)?—A. Yes.

Q. That is the letter?—A. Yes. (Exhibit Number 42).

MR. TILLEY: I object.

HIS LORDSHIP: Your objection first was that it was a letter.

MR. TILLEY: My first objection was that my learned friend was stating something that the letter was supposed to show—and I say the letter will speak for itself.

HIS LORDSHIP: He had stated in his evidence before that the transfer to Hoffman and Dunford was at the rate of \$3.25, and the letter says the same thing. 10

MR. ROWELL: Q. Can you tell us what brewery stock it was that was taken over or was there Carlings in it?—A. There were 69 cases of Carlings at \$3.25 represented in that payment, or rather a value of \$211.25 instead of 69 cases.

MR. TILLEY: What is the meaning of that?

MR. ROWELL: Tell us what you mean by the value of \$211.25 represented in that payment?—A. It represents 65 cases at \$3.25 per case.

MR. TILLEY: Q. Where do you get that from. My instructions are there were none there. Will you verify it. You have some working sheets.

MR. ROWELL: Q. What is the document you are looking at?—A. It is the working sheet for the stock at the Kingsville dock. 20

MR. TILLEY: Q. Have you the original record?—A. This is my original record.

Q. That is your original record?—A. Yes.

Q. Then can you tell me if the Carlings are included in the breweries referred to in the last paragraph, in which you say: "we deducted the amount of your indebtedness to various breweries, full details of which are set forth in attached statement?"—A. No. The Carling Company does not appear in that.

Q. The Carling Company does not appear to be in it?—A. No.

HIS LORDSHIP: The Carling Company does not appear to be covered by the expression in the letter.

MR. ROWELL: He says we have deducted the amount of your indebtedness to 30 various breweries. There was no indebtedness due by Carlings for which a deduction should be made.

Cross-examined by Mr. Tilley, K.C.

Q. You spoke of returned empties. Do you know whether the empties returned to each brewery were the empties of that brewery?—A. I do not know that definitely.

HIS LORDSHIP: His mode of operating was, he took what the man on the dock told him.

THE WITNESS: Yes.

MR. TILLEY: Q. The man on the dock would tell you whether it was a credit to be given in respect of the Carling Company, but not necessarily show you whether 40 it was a credit to be given in respect of a Carling barrel. Is that what you mean.

Harry J.
Cornwall
Cross-
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May 11, 1928

They told you who to charge it to, but did not tell you whether it was a barrel belonging to that company?—A. They designated by the slip what brewery it was for.

Q. And you have no reason to think that they were or were not giving you Carling's barrels that really belonged in the first place to another brewery?—A. No, I have no reason to believe.

Q. You cannot help us on that?—A. No.

Q. You say those barrels were returned with the boats when the boats came to get cargoes. Is that what you said?—You said they were brought back to the dock?—A. And examined by the men at the dock, and charged to the different
10 breweries.

HIS LORDSHIP: How were they brought back to the dock?—A. I never saw them come into the dock.

MR. TILLEY: Q. You said they were brought back in the boats from the United States?—A. That is the information. I know that from being in the office.

Q. Did you pay duty on those barrels?—A. Yes.

Q. That is to say they were barrels that were passed through the customs, were they, and duty paid?—A. Yes. The customs notified me each day of the amount to be paid.

Q. For duty?—A. For duty, and sales tax at that time on a certain number of
20 empties.

Q. And you say there was a sales tax at that time. Has that been changed?—A. Yes, that has been changed lately.

Q. How, by a change in the law. Is a sales tax not collected by the government on them?—A. No sales tax at present.

Q. But down to trial there was?

MR. ROWELL: Is that on that document or was it a regulation?

MR. TILLEY: Q. Down to the end of April how was it?—A. A sales tax and duty over all the period.

HIS LORDSHIP: It was not changed during the period in question?—A. No.

30 MR. TILLEY: Q. So that the amount you were to pay was communicated to you by the customs people?—A. The Customs brokers.

Q. And how did you make the cheque?—A. Payable to the Collector of Customs and Excise, Sandwich, Ontario, in the case of LaSalle.

Q. And did the cheque that you paid cover both the sales tax and duty on these barrels?—A. Yes.

Q. And the duty was on the importation of the barrel from what country?—A. The B-1 stated that the merchandise is from the U.S.A.

Q. When you say B-1, that would be the form that the Customs sent to you, or what do you mean by B, 1?—A. That is the form the customs sent to us.

40 Q. Showing that the duty and sales tax were to be paid?—A. Yes.

*In the
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Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Cross-
examination
May 11, 1928
(continued)

*In the
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—
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Harry J.
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Cross-
examination
May 11, 1928
(continued)

Q. Have you a sample of those here. It is the same form we had the other day for some others?—A. Yes. The Carling Brewery and the Walkerville Brewery.

Q. Yes, it is Customs of Canada entry for home consumption—Port of Sandwich, July 20, 1926—Imported by Dominion Export Company, arriving per boat, as shown below—goods exported to Canada direct from Detroit, Michigan,—boat—and it gives the name of the boat,—and it says empty barrels returned to Carlings,—half size,—and it gives the invoice value, and value for duty. I don't understand the different amounts, can you explain them?—A. It is the valuation placed on the kegs by the Customs.

Q. The valuation for duty placed on it by the Customs?—A. Yes. 10

Q. What is the invoice value, is that the value if you bought them new, or what you paid for them. It is practically the same in this case. It was not in the other case, the invoice value was different from the value for duty. But here it is only fifty cents difference?—A. It is a computation of the valuation.

HIS LORDSHIP: They have appraisers who put a value on them?—A. It is all the same in the case of a wooden keg.

HIS LORDSHIP: They know the price given for them?—A. Yes.

Q. The Customs know the price?—A. Yes.

Mr. TILLEY: Q. So that on this lot coming in on July 20th, 1926, the items for Carlings were for the Customs \$170.75 for half size; \$9.50 duty on the quarter size 20 and \$239.50 on half size by another boat; and \$4.50 for quarter size by another boat. So that there are two boats. Those are amounts for customs duty. And the sales tax was \$4,269 for the first lot, and \$238 for the second; \$59.88 for the third; and \$1.13 for the fourth—and that was sent to you by the customs authorities?—A. It comes to us from the Customs broker.

Q. But it was made up by the Customs Excise, Canada, July 21, 1926?—A. Yes.

Q. And you issue your cheque to the Collector of Customs and it is paid?—A. I issue the cheque on information I receive from our Customs broker, and he saves these for me and eventually turns them into our office.

Q. He tells you that he needs a cheque for a certain amount for the customs, 30 and you issue a cheque, and he pays the cheque and gets a voucher?—A. We send the cheque direct to the Customs officer.

Q. And in due course this voucher comes back?—A. Yes.

Q. To you?—A. Yes.

HIS LORDSHIP: And you debit the brewery, as the case may be?—A. Yes.
(Exhibit "H".)

Q. And then at the bottom of most of them, is that a summary?—A. That is a little different from the others.

Q. That is not a very good sample?—A. No.

Q. Then we will attach to it a better sample because at the bottom it segregates 40 Carlings and the others?—A. That first form is not a good example.

HIS LORDSHIP: I will stick to the one we had (Exhibit H).

MR. TILLEY: Now the total amount that was paid by the Carling Company in that period for sales tax and customs was \$122,864.63?—A. Yes. Charged against the Carlings.

It includes duty and sales tax.

Q. You could split that amount up into cost of empties, duty and sales tax?—

A. Yes. It would be a little work but it could be done.

Q. I wish you would do it?

Q. I don't know whether I understood what you said about taking over the 10 docks. Did you take an assignment of the leases, or did you go and look after the stuff on the dock?—A. In accordance with the contract of the Bermuda Export Co., a date was to be named when it was to go into effect, and the date was July 15th. On that date we took over the operation of the dock.

Q. Now what did you do when you took over the operation of the dock; did you send men there or put them under your employ?—A. In the case of LaSalle, Amherstburg and Riverside, we hired all the men on the dock.

Q. You employed them?—A. Yes.

Q. And carried on operations there?—A. Yes.

Q. And then at Kingsville what did you do?—A. We simply sent a cashier and 20 formed a company to carry on the other work, loading.

Q. Who were they?—A. Messrs. Hoffman and Dunford.

Q. And then the twenty-five cents mentioned in the letter, is that a payment for the use of the dock?—A. Yes.

Q. That was a payment made for the use of the dock?—A. And of course the men on the dock.

Q. That is passing things across the dock, using the dock?—A. Yes.

Q. And that letter did not refer to anything but Carlings?—A. There was nothing in payment of debt for Carlings.

Q. Nothing deducted. They did not owe Carlings anything?—A. Not accord- 30 ing to the information I received.

Q. That firm then continued operations. Did you become the cashier?—
A. We simply employed a cashier.

Q. And then did you carry out the accounting?—A. All the stock on the dock was carried on our records.

Q. Was entered on your records—and then as it was sold what did you do?—
A. We forwarded the money to the brewery.

Q. And what did this cheque sent to Hoffman and Dunford represent?—A. We were notified that a number of cases had been previously collected, and when we collected \$3.25 we turned back the full price to Hoffman and Dunford.

40 Q. This having been already collected?—A. Yes.

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Exchequer
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Evidence

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No. 8

—
Harry J.
Cornwall
Cross-
examination
May 11, 1928
(continued)

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Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Cross-
examination
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(continued)

Q. What currency did you receive at these docks?—A. We received in the office the currency and cheques for the previous days business. I deposited it in the bank.

Q. In what currency was it, Canadian, American or both?—A. Practically all American currency and cheques.

Q. And American cheques?—A. Yes. Cashiers' cheques.

Q. What do you mean by cashiers' cheques?—A. American bank cheques.

HIS LORDSHIP: Were those cheques accepted?—A. Yes. The same as a certified cheque in Canada.

Q. Now you spoke of what went on at the dock, in your examination in chief. 10 Were you at the dock at all?—A. I was at the dock one day for a few minutes.

Q. Only once?—A. Once at one dock and once at another dock.

Q. For a few minutes at each?—A. Yes.

Q. Were you there long enough to see how the business was carried on?—
A. I did not see any loading. I saw a boat leave.

Q. Where did it go?—A. Across the river.

Q. To the United States?—A. Yes.

MR. ROWELL: The witness says he did not see any.

MR. TILLEY: He said he did see one.

Q. How far from the dock was your office?—A. From this particular dock it is 20 about six miles.

Q. Is your office at any of the docks, or up town in Windsor?—A. Up town in Windsor.

Q. Except for the once or twice you happened to be at a dock for a few minutes. on one occasion, you saw a boat go across — that is all you know?

Q. HIS LORDSHIP: Did you see it going across or going towards the other side?—

A. I saw it going across.

HIS LORDSHIP: And land?—A. No. I could not see it plain enough where it landed.

Q. But it continued on its way towards the other side?—A. It went up the 30 River Rouge.

MR. TILLEY: On which side of the river is that on?—A. The United States.

HIS LORDSHIP: What is the width across there from that dock?—A. A little less than half a mile.

HIS LORDSHIP: Was it a foggy day?—A. No.

HIS LORDSHIP: Could you see it?—A. It was smoky on the river, on the other side.

Re-examined by Mr. Rowell, K.C.

Q. Speaking of the boat you saw, do you know what was on board?—A. I saw some kegs on board.

Q. Did you see whose they were?—A. No.

Harry J.
Cornwall
Re-examination
May 11, 1928

Q. You don't know whose they were?—A. No.

Q. Then you spoke of customs brokers. Who do you refer to as customs brokers?—A. Our customs broker is Mr. Piche.

Q. Your customs broker. And when you say a notice was sent to the customs broker, you mean a notice to your representative at the dock?

MR. TILLEY: He did not speak of a customs broker.

MR. ROWELL: A customs broker notified you?—A. Yes.

Q. Any notice you got was from your own customs broker?—A. Yes.

Q. And at this dock your customs broker was Mr. Piche?—A. Yes.

10 Q. And at that dock, who is the sub-collector—at that point—in charge of Sandwich and LaSalle?—A. I believe Mr. Piche is the officer as well.

Q. That he is officer and broker as well?—A. It is the same name.

Q. And what is the relation between the two?—A. I don't know.

Q. You don't know?—A. No.

Q. Is your broker, Mr. Piche, in charge of everything at LaSalle?—A. For our company.

Q. That is what I mean for your company?—A. Yes.

Q. And who has charge at Sandwich?—A. For us?

Q. Yes?—A. Mr. Piche is our representative in that district at Sandwich and
20 LaSalle.

Q. Who has charge for you at Riverside?—A. Mr. Mason.

Q. Who has charge for you at Walkerville?—A. We employ only two customs brokers, Mr. Mason and Mr. Piche.

Q. Mr. Mason looks after Walkerville as well as Riverside?—A. We have not any dock at Walkerville.

Q. And at Ford City?—A. Not now.

Q. But at that period?—A. We operated a dock at Ford City.

Q. I remember we had some B13s stamped Walkerville, and it may have been prior to the period you had charge, I don't remember. You did not have any dock
30 at Walkerville?—A. I believe the papers for Ford City are stamped at Walkerville—I am not sure.

Q. And Mr. Mason was your broker in charge of that port?—A. Riverside.

Q. And Ford City?—A. Yes.

Q. And who had charge for you at Amherstburg?—A. We do not employ a customs broker at Amherstburg.

Q. And this customs broker looks after any of these importations of barrels, and so on, does he?—A. Yes.

Q. He looks after the importations?—A. Yes.

Q. And does he look after the B.13s?—A. The B.13s for importation.

40 Q. But also the B.13s for shipment?—A. Yes. He looks after the B.13s.

*In the
Exchequer
Court
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Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Re-examination
May 11, 1928
(continued)

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Harry J.
Cornwall
Re-examination
May 11, 1928
(continued)

Q. Has he custody of the B.13s?—A. Temporarily. He turns them over to us periodically.

MR. TILLEY: Which B.13s are those?

MR. ROWELL: Q. What B.13s has he got charge of?—A. He has the four copies before the clearance is made; and then he has to stamp a copy for us, that he turns over to us.

Q. He has charge of the copies that come to the dock—does he have charge before the clearance is made?

MR. TILLEY: He said he has charge of the four.

MR. ROWELL: Do you know how many go to the dock?—A. Four copies. 10

Q. And your broker has charge of them all?—A. As far as I know.

Q. And then when the clearance is made he sends you a stamped copy, is that it?
—A. Yes.

Q. And do you know what he does with the balance of them?—A. No.

Q. Then do you keep these stamped copies?—A. We return them to the brewery.

Q. To the respective breweries?—A. Yes.

Q. So that the breweries would have all the stamped copies for the period in which the Bermuda Export Company was handling the goods for them?—A. Yes.

Q. You would return to the Carlings stamped copies of all B.13s for all shipments while the Bermuda Export Company was in charge, is that correct? 20

MR. TILLEY: No. He would return all he got—that is all he could say.

MR. ROWELL: Did your Customs broker make a return to you of B.13s representing the shipments of each brewery?—A. He simply turned over to us all the B.13s representing shipments.

Q. He turned over all B.13s representing shipments?—A. We sorted them in our office.

Q. And apportioned them to the different breweries?—A. Yes.

Q. And did you send to each brewery all the B.13s stamped that were returned by the broker to you?—A. We sent to the breweries all we received from the broker.

HIS LORDSHIP: Q. Did you check yours to see whether the B.13s covered your 30 shipments?—A. No. We left that to the customs broker.

MR. ROWELL: Q. To the customs broker?—A. Yes.

Q. You mean in this case you left it to Mr. Piche?—A. In the case of LaSalle.

Q. My learned friend asked you about taking over the docks, under the agreement, Exhibit No. 27,—I notice that it provides that you may call for a transfer of the lease of a dock. Did the Bermuda Export Company take a transfer of the lease of these docks?—A. I can't say.

Q. You were going to prepare a list of the car numbers for us. Have you in your records the record of the daily sales of the Carling Company throughout the entire period?—A. Yes. 40

Q. You have?—A. Yes, in quantities.

Q. Will you make them available for one of our auditors to look over. I do not want to file them—it may not be necessary?—A. Yes.

MR. TILLEY: Q. Have they not seen them?—A. They have the total for each period.

(This concluded the examination of this witness).

HOWARD F. WITHEY: Called, sworn, and examined by Mr. Rowell, K.C.

Q. You are the United States consul at London, Ontario?—A. That is correct.

Q. How long have you held that position?—A. At London, Ontario, since 10 October 18th, 1927.

Q. Are you in charge of the records of the office?—A. I am.

Q. Have you made an examination of the records of the office from the first of 1924 down to the end of April, 1927, to see if any applications had been made by the Carling Export Brewing and Malting Company for certifying invoices or other forms for exporting goods?—A. I have made a search of the appropriate records of the American Consulate at London for the purpose you indicate, from the first of October, 1920, until last Sunday whatever date that was.

Q. Had any applications been made by the Carling Export Brewing and Malting Co., for certificates to send any goods of any kind to the United States?—A. Yes. 20 The Carling Export Brewing and Malting Company.

Q. What class of goods did they make application for?—A. As shown by the office records, for machinery, empty kegs and empty barrels—it fell into the three categories—the three I have just mentioned.

HIS LORDSHIP: Machinery, empty kegs and what?—A. Empty barrels.

HIS LORDSHIP: That is two?—A. Empty kegs, empty barrels and machinery.

Q. MR. ROWELL: Can you tell me the dates on which they made application for the appropriate papers for those shipments?—A. I can only do it by referring to a memorandum, if that is permitted?

Q. Yes.

30 HIS LORDSHIP: Is that for importing or exporting?

MR. ROWELL: Exporting.

MR. TILLEY: I would like to see the record. The record should be here.

MR. ROWELL: We cannot force a foreign government to produce their records in court.

MR. TILLEY: I object to the witness speaking unless we see the record.

MR. ROWELL: Q. Do you find any application for the certification of invoices for the export of any kind of liquor, beers,—we are only concerned with export?—A. There is no record of any consular documentation covering shipments of liquor in the London consulate between the periods which I have mentioned.

40 Q. And by liquors you include beers?—A. I include any intoxicants.

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Court
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Plaintiff's
Evidence

No. 8

Harry J.
Cornwall
Re-examination
May 11, 1928
(concluded)

No. 13

Howard F.
Withey
Examination
May 11, 1928

*In the
Exchequer
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Plaintiff's
Evidence

No. 13

Howard F.
Withey
Examination
May 11, 1928
(*con:inued*)

HIS LORDSHIP: I took it, that was to send machinery and empties to the United States?

MR. ROWELL: Yes.*

HIS LORDSHIP: That is export?

MR. ROWELL: That is export.

Q. It is export we are dealing with. Then I understand you to say there has been no application for certificates for any kind of liquor?—A. I said there would be no consular documentation. The record would not show any liquor if there was no service to correspond with the application.

Q. There is nothing in the records indicating any application?—A. That is 10 correct. In the records I examined.

Q. Have you any of the documents signed by the Carling Company in respect of the machinery you have referred to?—A. I have two. But not for the machinery, no.

Q. What do those relate to?—A. One for empty barrels and one for empty kegs.

Q. The first is of March 25th, 1927 (Reads it). That is an invoice of return, the appropriate declaration of importation of American goods?

MR. TILLEY: Imported American goods?—A. It was the appropriate Consular document for the return of American goods from a foreign country, when they have not been enhanced in value.

Q. MR. ROWELL: And I see this is signed Carling Export Brewing and Malting 20 Company—apparently by somebody named Morrison, Accountant?—A. Yes. That is what the document shows. I do not recognize the signature.

Q. Then the other is of April 19th, 1927, the same form—for 400 empty used half-barrels—and that bears the signature the Carling Export Brewing and Malting Company, per, it looks like E. W. Hains or Higginson. Could you spare copies of those?—A. I am willing to submit them for copies to be taken.

MR. ROWELL: Then we might take copies of those, and they will be Exhibit Number 43.

Cross-examined by Mr. Tilley, K.C.

Q. Now these two documents cover all the barrels, half barrels or kegs that 30 you refer to?—A. That I referred to, yes.

Q. You know of no other documents or entries or applications with regard to half barrels or kegs or any other sized barrels except these?—A. I do not.

Q. And these are dated, one March 25th, 1927, and the other April 19th, 1927, and I see they have at the bottom the reason why they are returned, and the reason is because they are not according to order?

HIS LORDSHIP: They were defective.

Q. They must give the reason for returning them?—A. It is required. At least it is the practice.

Q. And these were returned because they were not according to order?—A. That 40 is what they said.

(This concluded the examination of this witness.)

Howard F.
Withey
Cross-
Examination
May 11, 1928

WILLIAM JOHNSTON—Called, sworn, and examined by Mr. Urquhart.

Q. What is your occupation?—A. Warehouse Superintendent, of one of the liquor control warehouses.

Q. And before that?—A. Assistant Superintendent of warehouse under the government dispensaries.

Q. That is government dispensaries, Ontario Government dispensaries, which operated prior to the Liquor Control Act?—A. Yes.

Q. Which operated from 1916 on until the Liquor Control Act was passed?—A. Yes.

10 Q. What happens to the liquor which is seized in Ontario by the prevention or other officers, including beer?—A. When it is shipped by them? It was shipped by them into government dispensaries for hold purposes pending the disposition of the case.

HIS LORDSHIP: What word is that?—A. "Hold", to be held.

MR. URQUHART: Q. To be held under confiscation orders,—until orders are given by the magistrate from the district from which they come?—A. Yes.

Q. And when these liquors, beers were received in the dispensary during the period covered, from April 1st, 1924, to the 30th March, 1927, who was the receiving officer of these?—A. I was.

20 Q. You received them and checked them into the dispensary?—A. Yes.

Q. Have you received a list of the beer of the defendant company which was received during that period?

MR. TILLEY: I object to that—to the question being asked that way

MR. ROWELL: Did you receive any beer bearing the defendant's marks during that time?—A. Yes.

Q. Have you prepared a list of certain seizures of beer with the names of the officers from whom they were received?—A. Yes.

Q. And have you that list here?—A. I have a copy of it.

30 Q. You have the original list?—A. This is the original list. There were other ones made.

Q. How was this beer received?—A. In cartons.

HIS LORDSHIP: Under what circumstances does it find its way into your hands.

MR. ROWELL: Q. How did it get to you, and in what sort of vehicle?—A. These particular shipments were received in ordinary box cars, with the exception of one, and it probably would arrive by motor truck.

Q. Have you noted on this shipment the number of the box cars in which these were received?—A. Yes. The box car numbers are the numbers where we ticked the beer off.

Q. They appear on the list?—A. Yes.

40 Q. Now I see that there are on your list six distinct dates of seizures during the period?

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Court
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Plaintiff's
Evidence

No. 14

William
Johnston
Examination
May 11, 1928

*In the
Exchequer
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Plaintiff's
Evidence

No. 14

William
Johnston
Examination
May 11, 1928
(continued)

MR. TILLEY: How can my learned friend justify that—

HIS LORDSHIP: Are you going to connect it with the defendant?

MR. TILLEY: I suppose he is at some time.

MR. URQUHART: Yes.

Q. You have six items we will call it?—A. Yes.

Q. The first is April 8th, 1925, Received from Inspector Elliot, Sarnia, in car Number 323344,—815 cartons of beer, of which apparently there are six dozen of Carling ale, and 20 dozen of Carling lager pints?—A. Yes.

Q. The balance of the car was composed of other brands. It was a mixed car?—
A. A mixed car. 10

Q. Sent in?—A. Sent in by the Inspector.

Q. The second is February 20th, 1925,—Received from Inspector Mousseau from Windsor, Car Number 26530—that is correct?—A. Yes.

Q. And that contained 54 dozen Carling ale, pints?—A. Yes.

Q. And 28 dozen Carling lager, pints?—A. Yes.

Q. That appears to be a part of a larger shipment. There were other brands in that car?—A. Yes.

MR. TILLEY: Does it not show here at all?

MR. URQUHART: The details are on the right hand side.

Q. In the car there were 525 cartons of beer, and 134 cases of liquor?—A. Yes. 20

Q. That is another mixed car?—A. Yes.

Q. And on October 16th, 1924, Inspector Miller of Niagara Falls, sent in Car Number 86554. Did that car come from Hamilton?—A. That car I believe was loaded in Hamilton—and a truck was from Hamilton.

Q. The car came from Hamilton anyway?—A. To the best of my knowledge it came from Hamilton.

Q. There were 836 cartons in that car, apparently of which 831 and 9-12 dozen were of Carlings ale, quarts?—A. Yes.

Q. Then the next item is September 17th, 1924. Tell us from your memorandum who it is from. What cars there were and how many cartons, and how they 30 were made up?—A. That was two cars consigned to us from Inspector Lougheed, from Windsor—Car Number 17260 and 23424.

Q. What was in that car appertaining to our case?—A. The two cars contained 1,850 cartons.

Q. Can you tell us whether that was all Carlings' ale?—A. Yes, that car was all Carlings' ale.

Q. And that was how many?—A. 2,470 dozen of Carlings' ale, pints; 600 dozen ale, quarts 26 ounces, and 30 dozen Carling lager, pints.

Q. The next item is July 31st, 1924,—who was that received from?—A. Inspector Bolton of London,—three cars,—Numbers 105514, 205594, and 208622. 40

Q. And that is what?—A. Those three cars contained 1,590 cartons in one car; 810 in another car; and 1,199 in another one.

HIS LORDSHIP: Were they all of the Carling Co.?—A. Yes.

Q. All Carling. And what analysis is there?—A. That is 4,800 dozen Carling ale, pints; and 1,199 dozen Carling ale, quarts.

Q. And then the last one you say came by truck November 25th?

MR. TILLEY: Does he say it did?—A. I fancy that would come—I could not say for sure which way that came.

Q. There is no railway car notation on it?—A. No.

Q. November 25th, 1925—from whom?—A. Inspector Pellon of Huron County.

Q. Do you know where he is located?—A. I could not tell you. His headquarters
10 would be in Huron County.

Q. How many cartons?—A. 207 cartons.

Q. Which contained?—A. 414 dozen Carling beer, 13 ounces.

Q. Then you say that this beer was received and checked in by you?—A. Yes.

Q. And what class of beer was it?—A. Do you mean this shipment or all of the shipments?

Q. All, any difference?—A. These were all Carlings beer.

Q. Of what strength?—A. So far as we know full strength.

Q. Strong beer?—A. Yes.

Q. These six, that are all large shipments—is this all the Carling beer received
20 during the period—these shipments?—A. No. There would be more Carling beer received in that period.

Q. What was your practice as to say small seizures that were received from time to time outside of these carload lots. How did you classify them, what was done?—A. On the ordinary small shipment from an inspector, if there was beer on it we would simply put it through as dumped beer—we would not sort it into any particular brand.

Q. And were there few or many shipments in that period?—A. Many shipments.

Q. You took it in as beer?—A. We call it beer, and it went through the dump for vinegar purposes.

30 *Cross-examined by Mr. Tilley, K.C.*

Q. Do you keep a record of all dumped beer?—A. Yes. It is all reported into the ledger keeper, and it is in the ledger.

Q. And does it show what brand it is supposed to be?—A. No.

Q. How are you in a position to say there were any bottles of Carlings' beer, or that purported to be Carlings' beer in those seizures?—A. I am only taking that from memory now.

Q. I am instructed that your memory is inaccurate. Are you able to say that there was Carling beer in these small seizures of which you kept no record?—A. Yes,—in shipments other than these?

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 14

William
Johnston
Examination
May 11, 1928
(continued)

William
Johnston
Cross-
examination
May 11, 1928

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 14

William
Johnston
Cross-
examination
May 11, 1928
(continued)

Q. Yes. How do you know?—A. From memory. I remember having seen Carling beer.

Q. How many times?—A. I cannot say.

Q. About how many times?—A. I would only be guessing at it. I have seen it two or three times at least.

Q. In what period of time?—A. In probably this—

Q. I do not want “probably”. In what period will you put yourself so that you are safe?—A. Say three years.

Q. From what date. This date we are at now?—A. From this date they started this at. 10

Q. From what?—A. At the date they started this, July, 1924.

Q. From July, 1924, down to July, 1927, do you mean?—A. Yes—no, we will take it to April 8th, 1925.

Q. I do not follow what you mean by that. I am asking you what period of time you saw these two or three seizures that you are referring to?—A. From July, 1924 up to the time I left off handling the confiscated stock.

Q. When did you leave off handling the confiscated stock?—A. April, 1927.

Q. In April, 1927, you stopped?—A. Yes.

Q. And during that time there might be two or three seizures of bottles that may appear to be Carling beer?—A. Yes. 20

Q. And how many bottles of Carling beer were in those one or two seizures?—A. I cannot say. I don't remember the particular number.

Q. Is it not a fact that you have less Carling beer in those seizures, those small seizures, than any other beer?—A. Yes.

Q. They are remarkable for their smallness in number?—A. They are much smaller than the other ones, yes.

Q. When you get them, I gather from what you say, you make no test of the beer, but put it in the dump, what you call dumped beer. I am not reflecting on it?—A. There was no test made.

Q. And then it would be used for some purposes other than beverage, for vinegar 30 or something like that?—A. Yes.

Q. If you made no test how can you speak of the strength. Does the same remark about not testing it apply to this beer referred to in the list?—A. Yes.

HIS LORDSHIP: Did you intend to put in that list?

MR. URQUHART: Yes. (List is put in as Exhibit No. 44).

MR. TILLEY: So that there was no test of this beer referred to in the exhibit?—A. No,—no test.

Q. I am leaving the small seizures. I gather the small seizures are seizures where it would be in an improper place—it might be in hotels?—A. I think that is where they would be from—from the different police. 40

Q. And would I be right in assuming that you could not tell from memory whether it came from Toronto or Haliburton or Windsor or border points?—A. I could not say.

HIS LORDSHIP: You would say it came from Ontario?—A. Yes, all of our stuff came from Ontario.

MR. TILLEY: Q. Your only source of seized goods would be Ontario?—A. Yes.

Q. Dealing with that small number first, would it be right to say that those small seizures would indicate better than the large seizures whether the beer was being around and being consumed?—A. I would fancy it might indicate that.

Q. That a person would make a raid and find some bottles, and the bottles would be sent to you?—A. Yes.

Q. HIS LORDSHIP: I suppose it would be part of stock seized?

MR. TILLEY: No.

HIS LORDSHIP: Of different kinds. The police would go and make a raid, and they would seize a stock of different liquors, and among that would be some of the Carling beer, is that what you want to convey to us?—A. Or again the license inspector might send in stuff every month or two months—he might go around seizing for a month, a little here and there, and he would lump them together and send them in,—that is what I was referring to in the shipment.

MR. TILLEY: We have got what Carling beer was seized in that small way, that is you might say by raids or people having it in a small number of bottles for consumption, do you think you could say there were two or three cases where Carling's beer was involved?—A. Yes.

Q. And a very small quantity of it, much smaller than any other brand of beer sold in Ontario at the present time?—A. Yes.

Q. And today you can get it from the vendors?—A. Yes.

Q. Now then putting that to one side you say this other was not examined. How do you speak as to the strength of it?—A. Only in this way—when the beer came in we would take a look at it to see if it was marked strong beer, or weak beer; and the carton we would open would be marked more than two and one half per cent of alcohol—or eight per cent.

Q. You can't tell?—A. I don't remember which way the Carling Co. marked their strength on them.

Q. You don't know how these were marked at all, do you, these particular goods?
A. The ones we opened would be marked with strong beer markings, at that time.

Q. How do you know?—A. From having opened several cartons. When they would come in we would open them to see.

Q. Would the label show?—A. The label?

Q. Did the label show?—A. Yes. I don't think I opened a case in which the label did not show that information.

40 Q. But you made no record of that?—A. No.

*In the
Exchequer
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of Canada*

Plaintiff's
Evidence

No. 14

William
Johnston
Cross-
examination
May 11, 1928
(continued)

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 14

William
Johnston
Cross-
examination
May 11, 1928
(continued)

Q. Now then is it not a fact that at that time bottles were being bought and labels put on them to imitate the genuine article?—A. That I don't know.

Q. That is bogus stuff would be put up?—A. I never saw a bogus beer label.

Q. Have you seen other bogus labels?—A. What we term bogus whiskey labels.

Q. But you have never seen a bogus beer label?—A. No.

Q. Did you make these entries yourself at the time or are you giving it from your records?—A. I made originals of these records. That is copied from the receiving book.

Q. But at the time the beer was received were you in charge to make the entry?—

A. In the receiving book—this is a copy of the receiving book. 10

Q. In your own handwriting?—A. Yes.

Q. You are able to identify these as being your own handwriting?—A. Yes.

Q. And except for two or three small instances you referred to, this covers all the seizures?—A. Yes.

Q. Of Carling beer?—A. During that period.

Q. Commencing in 1924, and 1925 and 1926?—A. Yes. If that is the date on there—1924, 1925 and 1926.

Q. I want to know. There is not a seizure of any kind in 1926. You would say that was remarkable, no seizure of Carling beer in 1926. That stands by itself?—

A. Yes. 20

Q. You could not find any other brewery that did not have a seizure in the whole year?—A. I don't think so.

MR. TILLEY: And I notice on this one, there is not a single seizure from November, 1925 to April, 1927.

(This concluded the examination of this witness.)

WALTER BOLTON:—Called, sworn, and examined by Mr. Urquhart.

Q. You are an employee of the Liquor Control Board now?—A. Yes.

Q. And you were formerly License Inspector in the County of Middlesex, with headquarters in the City of London?—A. Yes.

Q. For what period were you inspector?—A. Since the 15th January, 1923, to 30 the end of the Act.

Q. Until the middle of last year?—A. To the last of May, 1927.

Q. That is when the new Liquor Control Act came into force?—A. Yes.

Q. You know the Carling Export Brewing and Malting Co., the defendant?—

A. Yes.

Q. Their headquarters are in London?—A. Yes.

Q. And they have a plant there, a brewery there?—A. Yes.

Q. The last witness has mentioned three cars of beer as coming from you. Do you recollect that seizure?—A. Yes.

Q. Have you the numbers of the cars?—A. No. 40

Q. Did you make the seizure yourself?—A. I did.

Walter
Bolton
Examination
May 11, 1928

Q. Tell us what happened?—A. After seizing the cars.

Q. Where did you seize the cars?—A. On the C.P.R. siding at London.

Q. How many cars?—A. Three.

Q. Then did you examine these cars. Did you see where they were coming to, and how they were billed?—A. I examined the cars at the time of the seizure.

Q. What shape were they in?—A. They were loaded with beer.

Q. What kind of beer?—A. Carling's beer.

Q. What strength?—A. It was labelled strong beer.

Q. And where were they billed to, do you know?—A. I am not too sure about
10 remembering the billing of them.

Q. What were they billed as?—A. If I remember right they were billed as
“Canned meat”.

Q. You seized the cars?—A. Three cars.

Q. And what happened then. What was the next step?—A. I held the cars
about three days, in London, awaiting instructions from Toronto, then I shipped
them to Toronto.

Q. In the same cars as you seized them?—A. In the same cars. I never
unloaded them.

Q. You shipped them to whom in Toronto?—A It will be to the Government
20 Dispensaries.

Q. Then what happened to these cars?—A. I served a summons to show cause
under section 70 of the Ontario Temperance Act.

HIS LORDSHIP: Upon whom?—A. Upon the C.P.R., and also upon Carling's
brewery, the manager—on the agent of the C.P.R. and on Carling's brewery.

Q. And were the cars confiscated by the magistrate?—A. Yes.

Q. On what date were they seized?—A. The 26th July, 1924.

Q. That was the date of confiscation?—A. That was the date of seizure.

Q. Do you know what date you shipped them to Toronto?—A. It was about
three days afterwards.

30 Q. Have you as License Inspector had any prosecutions—taken any other pro-
ceedings against the brewery, against the defendant?—A. Yes, I believe I have.

Q. What day, and what year and what for?—A. In October, 1924, I laid
information under section 40 of the Ontario Temperance Act.

Q. That is for selling liquor?—A. For selling and keeping it for sale.

Q. Under the old O. T. A.?—A. Yes.

Q. What happened?—A. If I remember rightly they pleaded guilty to the
charge and were fined \$1,000.

HIS LORDSHIP: Who was that against?—A. Against the Carling Export
Brewing and Malting Company, the manager.

40 Q. Who was the manager?—A. Charles Burns.

Q. He was summoned and pleaded guilty and the brewery was fined \$1,000?—

A. Yes.

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Plaintiff's
Evidence

No. 15

Walter Bolton
Examination
May 11, 1928
(continued)

Q. What was the nature of that offence?—A. If I remember rightly a special officer bought two or four cartons of beer at the brewery.

Q. Did you have any other experience with the Carling Company's product?—
No, not that I can remember.

Q. Any other seizures?—A. There may have been some other seizures.

Q. I mean either in London or around the country covered by your district?—

A. I think there was one other that I might remember.

Q. Where was that, and when was it?—A. I remember the date of that. It was outside of the city. I think the man's name was Wilson. It was outside of the city limits of London. 10

Q. On a farm?—A. At a small farming place.

Q. What did you find there on that occasion?—A. There were 90 cartons of beer, and a bunch of whiskey.

Q. Whose beer was it?—A. That was the Carling beer.

Q. It was 90 and some odd cartons?—A. I think so.

Q. Do you remember what date that was, what year?—A. I rather think it was in 1924.

Q. What happened. Where was this beer found?—A. It was found in a shed at a barn, an outbuilding. There was a pile in a shed.

Q. And what was the result of that, was any case brought against anybody?—A. 20
Yes, the man was summoned.

Q. Wilson?—A. Yes. And he was charged under section 40.

Q. For keeping it for sale?—A. Yes, and he was fined \$1,000.

Q. In your experience you have spoken of some prosecutions—what would you say generally as to any seizures, small seizures, like my learned friend's enquiry of the last witness, in or about London—what is your observation as to that?—A. I had very few of the small seizures of beer in the district at any time.

Q. Have you any observations with respect to the London police office for example?—A. Not any more than the city police used to turn over the seized liquor to me to be shipped to Toronto. 30

Q. And what about their turning over—how were they as far as Carlings were concerned?—A. I don't remember. I don't know that there would be a great deal of difference with Carlings.

Q. All seizures would be on the same level?—A. I did not keep track of it in that way. The beer sometimes was turned over to the hospitals, and I did not keep track of the kind of beers.

Q. What do you mean by no difference?—A. We used to count the bottles and send our report into the Department of the amount of seizures turned over.

Q. Did you turn it in by brands or beer?—A. Just as beer.

Q. And how would the Carling compare with Labatt's and other brands?—A. I 40
could not say that.

Cross-examined by Mr. Tilley, K.C.

Q. There are three items, first the three carload seizure, secondly the fine of \$1,000, under section 40, and the Wilson farm episode. On the small seizures I gather that you are not in a position to say anything about the Carling beer?—A. No, I could not remember, and I have not got the records at all.

Q. On the seizure at Wilson's place, did you make that?—A. I was along with the provincial constable, yes.

Q. And was there any charge against the Carling Company?—A. No.

Q. Was it so that it was plain to be seen to have been stolen beer?—A. No. In 10 laying the information against Wilson he said it was left there by somebody of whom he did not know the name.

Q. And did you get the Carling story at the time. Was there a trial?—A. Yes, I think Wilson pleaded guilty.

Q. My instructions are that certain beer was stolen at that time, and that that was part of it—do you know?—A. I don't know.

Q. I don't say stolen by Wilson, or the man who got it there, but stolen as far as the Carling Company was concerned?—A. I don't know anything about that.

Q. Take the one about the prosecution for \$1,000, that is where the Carlings pleaded guilty. Did they plead guilty?—A. Yes.

20 Q. Now let us know the circumstances of that. You spoke of a special officer?—A. Yes.

Q. What do you mean by a special officer?—A. An officer sent, I believe, from Toronto.

Q. To be a sort of trap?—A. I could not say that.

Q. Not possibly that, but I mean to catch them if possible?—A. They were enforcement officers.

Q. Were they acting under you?—A. No.

Q. Do you remember how they succeeded in getting the cartons?—A. No—any more than the cartons were turned over to me.

30 Q. But didn't they get an American car with an American register, and then go and beg them, alleging themselves to be personal friends?—A. I can't say.

Q. Did you not hear that?—A. I was not there with them.

Q. Did you not hear that in connection with the case when it came up in court, that they had an American license—and an American car—and that they came and pleaded for cartons. Were they charged for the cartons?—A. I was called that night and they turned over the cartons to me.

Q. How many?—A. If I remember right there were four.

Q. Four?—A. Yes.

40 Q. And do you remember that two of them were got for nothing—were they charged for them. One went back and got two more, and insisted upon giving the man \$5.00, and then prosecuted him?—A. I can't say.

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 15

Walter Bolton
Cross-
examination
May 11, 1928

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 15

Walter Bolton
Cross-
examination
May 11, 1928
(continued)

Q. Was not that the story?—A. It may have been. I don't remember the evidence.

Q. My instructions are that these people came along with an American car, and claimed they knew some member of the company personally, and begged them for this excellent beverage; that they were allowed to have two cartons, and no charge was made,—and that not being enough for a prosecution, they gave the man a tip and then prosecuted them. Don't you remember that being the story?—A. I do remember something being said about an American license.

Q. And giving the man a tip?—A. If I remember rightly in pleading guilty, the solicitor only addressed the magistrate to that point. I don't think there was evi- 10
dence taken.

Q. Was not that put forward as being the circumstances under which it happened?—A. I don't remember.

Q. There were special circumstances as disclosed in the statement made on behalf of the Carling Company?—A. Some statements were made to the manager along that line.

Q. Take the first instance, the three cars you seized—Was your attention brought to it by the railway?—A. No. It was from information which I received that I made the seizure.

Q. I thought the information came to you by the railway, or probably you don't 20
want to say that?—A. No, I don't want to say that. I don't have to.

Q. The fine was not on the railway. Was there a fine?—A. Just a confiscation order.

Q. That was a show cause order, to show who was the owner of the goods. There was no prosecution. They did not seize the car?—A. They just seized the beer.

Q. You found out in that case that that car was loaded with beer and billed out as beer in the first place from the plant—did you not?—A. I can't remember how the bills were made out.

Q. My instructions are that that car was a car billed out as for the United States, and was billed out as beer. Can you remember that?—A. My recollection 30
is that it was billed to Buffalo.

Q. As beer?—A. I am not prepared to say the billing of the canned meat—
what bills were on it—

Q. Did the owner of the beer not turn up when the case was heard?—A. There was a man by the name of Jones appeared on the day of the show cause summons was answered and claimed the beer.

Q. Where was he from?—A. I believe from Buffalo.

Q. Now I am putting it to you that some change was made by Jones after the beer left the plant, and after it was first billed, and that is what got him into trouble?—A. I understand the beer went as far as Tilsonburg, and then was reshipped back 40
to London.

Q. By whom?—A. I don't remember. And then it was billed from the C.P.R. to be forwarded to the C.N.R.

Q. It was sent by one railway to another?—A. Yes. It was not accepted by the C. N.R., and was sent back to the C.P.R. and when that happened I made the seizure.

Q. It did not get back to the Carling plant?—A. No.

Q. And there was no prosecution of the Carling Company in connection with it?—A. No.

Q. And what happened was the owner, or Mr. Jones from Buffalo, went up and 10 claimed there was an owner, and it was confiscated and sent to Toronto?—A. Yes. The magistrate confiscated it.

Q. And that was the end?—A. That was the end of it as far as I know.

Q. When Mr. Jones attended did he produce his cheques to show that he had paid for the beer from Buffalo?—A. If I remember rightly there were two drafts produced at the trial.

Q. Amounting to some \$9,000?—A. I believe it was.

Q. That had been actually paid for the beer?—A. They were there.

Q. And they were payments made to the Carling Company?—A. I believe that is what was said.

20 Q. So that apparently the transaction was that the Carlings sold the beer to a man in Buffalo, billed them to Buffalo, and they were paid for by a Buffalo man,—that it got as far as Tilsonburg, and after that something happened, and in the course of events that brought you down on top of it, and it was seized, and the man lost his beer—is that right. Is that the story?—

MR. ROWELL: My learned friend is putting different things to him.

MR. TILLEY: My statement of it is right, is it not?

MR. ROWELL: He has said there are certain things he does not know.

MR. TILLEY: Q. But according to you?—A. Something along that line. I have lost the records.

30 *Re-examined by Mr. Urquhart.*

Q. At any rate the magistrate did not accept Mr. Jones' story?

MR. TILLEY: Why?

MR. URQUHART: Because he confiscated the beer.

Q. Mr. Jones gave his story in court?—A. Yes.

Q. And still the magistrate confiscated the beer?—A. Yes.

MR. TILLEY: Q. It was wrongly billed?—A. It was billed as canned meat.

(This concluded the examination of this witness).

SIDNEY B. YOUNG: Called, sworn, and examined by Mr. Urquhart.

40 A. Yes. Q. You are an employee of the General Motors Company at Walkerville?—

*In the
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Plaintiff's
Evidence

No. 15

Walter Bolton
Cross-
examination
May 11, 1928
(continued)

Walter Bolton
Re-examination
May 11, 1928

No. 16

Sidney B.
Young
Examination
May 11, 1928

*In the
Exchequer
Court
of Canada*
—
Plaintiff's
Evidence
—
No. 16
—
Sidney B.
Young
Examination
May 11, 1928
(continued)

Q. Formerly you were a Provincial Police sergeant?

HIS LORDSHIP: Why don't you ask him his occupation, without telling him?

Q. MR. URQUHART: What was your occupation in 1924?—A. I was with the Ontario provincial police.

Q. As what?—A. Sergeant.

Q. Mr. Johnston of the government dispensaries has testified to the seizure of shipments of liquor and beer in two freight cars from Windsor. Do you know about that?—A. Yes.

Q. Who made the seizure?—A. I made one seizure.

Q. You made one seizure?—A. Yes. 10

Q. Of what cars?—A. Of two freight cars.

Q. What were the numbers of those cars?—A. The number of one was 23424.

Q. Of what railway?—A. Of the Canadian and Great Western; Canadian Great Western.

Q. And the second one was?—A. A Union Pacific car, No. 17260.

Q. On what day did you seize those?—A. On September 10th, 1924.

Q. On what railway?—A. The C.P.R.

Q. On the C.P.R. at Windsor?—A. Yes.

Q. And whereabouts on that railway?—A. At their yards in the south west part of Windsor. 20

Q. What did these two cars contain?—A. Number 23424 contained 650 cartons of beer.

Q. To whom was it consigned?—A. It was consigned to A. H. Phillips.

Q. Of where?—A. Of Windsor.

Q. What is his occupation?—A. He is a wholesale butcher.

Q. How was it consigned?—A. As ninety barrels of oil.

Q. And the second car?—A. The second car was No. 17260.

Q. Addressed to whom?—A. To H. E. Guppy & Company.

Q. Of what place?—A. Windsor.

Q. Guppy & Company are what?—A. Wholesale grocers. 30

Q. Are Phillips and Guppy prominent men?—A. Yes, they are very prominent.

Q. They are prominent firms in the community?—A. Yes.

Q. What did it contain?—A. It contained 1,850 cases of beer.

Q. And what did the other car contain?—A. 650 cartons.

Q. Of whose beer were they?—A. Carling.

Q. The defendant's beer?—A. Yes.

HIS LORDSHIP: They were both Carling beer?—A. Yes.

Q. MR. URQUHART: What sort of beer was it?—A. It was strong beer.

Q. What you know as strong beer.—A. Yes.

Q. Well then what happened. Were any proceedings taken in the Windsor 40 police court as to these?—A. Yes.

Q. On what date?—A. On September 16th, 1924.

Q. And did Mr. Guppy appear in those proceedings?—A. Yes.

Q. And what happened?—A. The liquor was confiscated.

Q. What about the other car,—did Mr. Phillips appear?—A. No—Mr. Phillips did not appear.

Q. Was that car confiscated too?—A. Yes.

Q. Who did you serve in that connection?—A. Both Mr. Phillips and Mr. Guppy were served and also the C.P.R. officials, the agent.

Q. Anybody else?—A. And I believe that a summons was also sent to London 10 to be served on the Carling brewery.

Q. Do you know that?—A. No.

Q. The second car, did you say what it was billed as?—A. As 160 barrels of oil.

Q. Then what happened ultimately to this beer?—A. The beer was confiscated by Magistrate Gundy, and it was reshipped back to the government dispensaries at Toronto.

Q. In what vehicles?—A. In the same vehicles as it was seized in.

Q. In the two cars you mentioned?—A. Yes.

Cross-examined by Mr. Tilley, K.C.

Q. Can you tell me who the shipper was?—A. No, I cannot.

20 Q. Would not the billing sheet show. Did you see it?—A. I think it would, but it is a long time ago, and I don't remember.

Q. It was not Carlings?—A. I don't remember.

Q. You don't remember?—A. No.

Q. Do you know where it was shipped from?—A. It was shipped from London.

Q. But you can't tell who by?—A. No.

Q. Can you fix the date of the shipment?—A. No.

Q. Do you remember that?—A. I do not.

Q. All you can say is there were these cars and consigned as you have indicated, one to one man and the other to the other, and you seized them and they were con- 30 fiscated?—A. Yes.

Q. You don't remember whether Carlings were served or not definitely?—A. No, I don't remember definitely.

Q. You have an impression they were?—A. I have a faint recollection they were, but I am not positive.

Q. Were you at the trial?—A. Yes.

Q. Did they turn up?—A. No.

Q. The Carlings were not there at any rate?—A. No.

Q. And there was no prosecution of the Carling Company in connection with it in any shape or form?—A. No.

40 (This concluded the examination of this witness.)

(The court then took a recess from 1 p.m. to 2.30 p.m.)

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 16

Sidney B.
Young
Examination
May 11, 1928
(continued)

Sidney B.
Young
Cross-
examination
May 11, 1928

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence
—
No. 8
—

Harry J.
Cornwall
Examination
May 11, 1928
(continued)

The court resumed at 2.30 p.m.

HARRY J. CORNWALL: Recalled by Mr. Rowell, K.C.

Q. Have you now prepared a statement of the dates on which the cars were received at LaSalle, the number of the cars, and the contents during the period in which you were receiving cars at LaSalle?—A. Yes, I have prepared that statement—from September 16th, 1926, to April 30th, 1927.

Q. And that is a correct statement as taken from the records of the Bermuda Export Company?—A. Yes, that is a correct statement as shown for that period.

HIS LORDSHIP: The statement for LaSalle will be Exhibit Number 41/A and for Amherstburg Exhibit Number 41/B. 10

Q. Have you prepared a similar statement of the cars received at Amherstburg?—A. Yes, for the same period.

Q. I see the Amherstburg cars—17 cars—18,500 cartons?—A. Yes.

Q. And LaSalle, 35 cars?—A. Yes—6,995 half barrels, and 235 quarter barrels (Exhibit 41/B).

(No cross-examination).

MR. ROWELL: I will put in the Anti-Smuggling Treaty between the United States and Canada along the international boundary between the Dominion of Canada and the United States. It will be marked Exhibit Number 45. Attached to it is a letter of the Deputy Minister of Customs and Excise of the 30th September, 20 1925, sending the treaty out to the Collectors of Customs and Excise.

I shall first draw your Lordship's attention to two or three pertinent clauses. It is between:

"The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, being desirous of suppressing smuggling operations along the boundary between the United States of America, and the Dominion of Canada, and of assisting in the arrest and prosecution of persons violating the narcotic laws of either Government, etc. 30

ARTICLE 1. The high contracting parties agree that the appropriate officers of the Governments of the United States of America and of Canada respectively shall be required to furnish upon request to duly authorized officers of the other government, information concerning clearances of vessels or the transportation of cargoes, shipments or loads of articles across the international boundary when the importation of the cargo carried or of articles transported by land is subject to the payment of duties; also to furnish information respecting clearances of vessels to any ports when there is ground to suspect that the owners or persons in possession of the cargo intend to smuggle it into the territory of the United States or of Canada. 40

Article 2: The High Contracting Parties agree that clearance from Canada or from the United States shall be denied to any vessel carrying cargo consisting

of articles the importation of which into the territory of Canada or of the United States, as the case may be, is prohibited, when it is evident from the tonnage, size and general character of the vessel, or the length of the voyage and the perils or conditions of navigation attendant upon it, that the vessel will be unable to carry its cargo to the destination proposed in the application for clearance.

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HIS LORDSHIP: What is the date of the Treaty?

MR. ROWELL: The Treaty is dated the 6th June, 1924, but it did not come into operation until 1925.

Article 3 deals with prosecutions, not important here.

10 Article 4 deals with persons suspected of violating the narcotic laws.

Article 5 deals with the attendance of witnesses

Article 7 deals with penalties and forfeitures.

Then following the Treaty, your Lordship will find a series of Regulations dated the 26th September, 1925, embodied in an Order-in-Council of His Excellency the Governor General of Canada.

HIS LORDSHIP: Article 2, which you have just read, is only with respect to the seaworthiness of the vessel.

MR. ROWELL: Article 1 is the article that dealt with notice.

HIS LORDSHIP: It does not forbid the giving of a clearance?

20 MR. ROWELL: No. All they have to do is to notify of a clearance.

MR. TILLEY: The result would be, that they would be required to give the clearance, but they must notify.

MR. ROWELL: Then under the Order in Council on page 6,—the Regulations are made under the different Articles of the Treaty,—you will section 1:—

30 “Section 1. The officers authorized to furnish, request and receive information as provided in Article I of the Treaty shall be as follows:—For the Dominion of Canada, the Deputy Minister of Customs and Excise, the Chief Customs-Excise Preventive Service and Collectors of Customs and Excise; for the United States of America, Consuls, Collectors of Customs and United States District Attorneys. In addition, other officers may be designated and authorized, for Canada, by the Minister of Customs and Excise, and for the United States by the Secretary of the Treasury or the Attorney General.

40 “Section 2. Advance or immediate information respecting the clearance of vessels to any port shall be so furnished where there is reasonable ground to suspect that the owners or persons in possession of the cargo intend to smuggle or illegally introduce it into Canada or the United States. It shall be the duty of any such officer of either government having reasonable ground to suspect an intent to smuggle or illegally introduce any merchandise into the other country, immediately to inform by telegram or telephone, at the expense of the receiving government, the appropriate officer of such government, as provided in Section 1. Arrangements may be made to furnish such information to a specially named officer when it is deemed advisable to do so.

"Section 3. For the purpose of Section 2, reasonable ground to suspect an intent to smuggle or unlawfully to introduce goods or merchandise shall be deemed to exist not only when the officers of the country from which the goods are being conveyed suspect that unlawful operations are contemplated but also when the Minister of Customs and Excise, for Canada, or the Secretary of the Treasury, for the United States, or the duly authorized representative of either, certifies, one to the other, that he has reasonable grounds for believing that such vessel or the owner or possessor of its cargo or of such goods or merchandise is engaged in or about to engage in such unlawful operations.

"Section 4. All information furnished under the provisions of this article 10 of the Treaty shall be for official use only and may be designated as confidential by the officer furnishing it. The source of all information furnished as confidential shall not be disclosed without the consent of the officer who furnished it and any officer who violates the provisions of this section will be subject to severe disciplinary action."

I do not think there is any other article of the Treaty that I need draw your attention to at the present time.

Then following that certain additional regulations have been passed and notices have been sent out indicating the different persons to whom the notice should be sent under the terms of the Treaty. As they complete the list of documents relating to 20 the Treaty, it might go in with the Treaty itself.

HIS LORDSHIP: The Treaty will be Exhibit 45, A. and the list of such persons to whom notice might be given will be Exhibit 45, B.

MR. ROWELL: They are a series of notifications sent out to different officers with respect to the Treaty.

Reference has been made from time to time during the course of the trial to Rice Beer, as distinguished from other beer, and as to which special duties are payable. I thought it would be convenient to give your Lordship references to the Act. It is in the Excise Act.

HIS LORDSHIP: Give me the citation of the Act.

30

MR. ROWELL: The copy I have is An Act respecting Excise, Chapter 51, Revised Statutes of Canada, 1906. But it has been revised this last year, and my bound copy is before the revision. The Department issued a consolidation in 1924—I will have it checked up and give your Lordship a reference to the present Revised Statutes.

The section is 201.

"201. There shall be imposed, levied and collected on every gallon of any fermented beverage made in imitation of beer or malt liquor, and brewed in whole or in part from any other substance than malt, a duty of excise of fifteen cents, which shall be paid to the collector as herein required: Provided that any 40 brewer using sugar, syrup or other saccharine matter in the manufacture of

beer, and having previously given ten days' notice in writing, to the collector of his intention to use such sugar, syrup or other saccharine matter, and paying the duty herinbefore mentioned on the beer made therewith, may receive a drawback equal to the duty of excise paid by him on the malt used with such sugar, syrup or other saccharine matter in making such beer, under such restrictions and regulations as the Department prescribes."

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(Cap 6, sec. 201, Acts of 1914.)

HIS LORDSHIP: Have we got to deal with cases that come within the drawback?

MR. ROWELL: The rice beer is the beer that is manufactured under this section.

10 HIS LORDSHIP: Have we anything here subject to drawback?

MR. ROWELL: So far as I am aware there has been no application for a drawback. Perhaps we can ascertain. The drawback is not an issue in the present action. I am giving the reference so that the rice beer is referred to.

HIS LORDSHIP: They would pay in any case 15 cents a gallon?

MR. ROWELL: Yes. If they export it, under certain conditions they may get a refund of that amount.

Then the next section is 202, with respect to drawback:—

20 "202. Every licensed brewer who exports any beer or malt liquor of his own manufacture, shall be entitled to receive a drawback thereon equivalent to the duty herein imposed on the malt contained in the beer so exported; and the amount of such drawback shall be in proportion to the strength of the beer, which shall be tested and the drawback computed in such manner and by such means as are, from time to time, directed by departmental regulations in that behalf.

2. No such drawback shall be allowed or paid unless the brewer claiming it has given at least two days' notice of his intention to export the beer on which it is claimed, and made such declaration as to the strength thereof as is required by departmental regulations in that behalf, nor unless the beer has been duly inspected and tested and certified by a proper officer of Inland Revenue."

30 Then under that certain regulations have been made which govern the export of that particular class of beer. The Regulations are G. 249.

HIS LORDSHIP: The Regulation has only to do with rice beer?

MR. ROWELL: Only with beer manufactured under that clause of which rice beer is one per cent.

Section 201 says, under the regulations there may be a drawback "equal to the duty of excise paid by him on the malt used with such sugar, syrup or other saccharine matter in making such beer, under such restrictions and regulations as the Department prescribed."

The number on the face of the Regulations is G.249.

40 HIS LORDSHIP: What is the clause?

MR. ROWELL: The clause is on page 13, and is headed "Manufacture of beer subject to a duty of fifteen cents per gallon." The first clauses deal with the methods of measurement.

Sub-section 9 says: "Application for rebate of quantity of Malt used in completed brews may be made at the end of each month * * *"

Subsec. 10. Bottling of beer for export shall be under supervision of officer of Customs and Excise.

Subsec. 11. Export Entry shall be passed for each quantity of beer to be exported. The contents of Quart bottles will be calculated at 1.70 gallons per dozen bottles, and pints at the rate of .90 gallons per dozen bottles. 10

Subsec. 12. An Export Bond shall be taken for thirty (30) cents per gallon (double the duty);

Subsec. 13. Export Bond shall be cancelled by the production of the duly authenticated certificate of some principal officer of Customs at the place to which the goods were exported stating that the goods were actually landed at said place, as provided by the Bond.

Subsections 14 and 15 are not important.

I put it in because it explains when extra duty is paid; and to get the rebate those conditions must be complied with (These regulations are marked as Exhibit No. 46). 20

No. 17

Basil Bannon
Examination
May 11, 1928

BASIL BANNON: Called, sworn, and examined by Mr. Rowell, K.C.

THE WITNESS: I ask for the protection of the Court.

MR. ROWELL: Under the Witness and Evidence Act, the witness asks for protection—the evidence he gives here cannot be used against him in any other proceeding.

HIS LORDSHIP: Yes—but he is not exempt from prosecution for perjury.

MR. ROWELL: Yes.

HIS LORDSHIP: It is under section 5.

MR. ROWELL: Q. You reside in Windsor?—A. Yes.

Q. You have resided in Windsor for some years?—A. Yes. 30

Q. Did you ever have any dealings with the Carling Export Brewing and Malting Company, or any of its officers, in reference to liquor?—A. No.

Q. Did you ever purchase any Carling beer?—A. From their warehouse?

Q. Yes?—A. Yes.

Q. You have purchased Carling beer from their warehouse in Windsor?—A. Yes.

Q. Can you tell us the year in which you made the purchase?—A. I never kept no date. It was the year the 4.4 came out, after it slowed up. It was a couple of months slowed up. After the 4.4 turned out to be no good.

Q. Then what kind of beer did you purchase?—A. What make, what brand?

Q. When you say that 4.4 turned out to be no good, what strength of beer did 40 you purchase?—A. I got the stronger beer.

Q. How long did you continue buying the stronger beer?—A. I never got the date. Only a month, while the summer stayed good.

Q. And where did you dispose of it?—A. I disposed of it wherever I could get sales for it around the border city.

Q. On the Canadian side?—A. Yes.

Q. Who did you see when you went to the Carling warehouse to get the liquor?—A. I went to this agent of theirs. I first went to Marco Leon—he recommended me to go and see Savard.

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Q. Do you distinguish between liquor and beer. Let us deal with beer first.

10 Are you speaking now of beer when you speak of Marco Leon?—A. I went to this gentleman and said I want some stronger; and he said go to Savard, and I went to Savard.

Q. First tell us the place you went to?—A. I tried to get him on the phone, and could not get him—then I found I could get him at Detroit, and I went to Detroit and had a conversation with him.

Q. Who did you see at Windsor when you got the strong beer?—A. I saw Savard. I went to Detroit.

Q. When you came to Windsor who did you see?—A. I went to the warehouse and handed in the order. I called it in.

20 Q. Who did you see at the warehouse?—A. Well, there were several men—one man specially I called was the man who had charge of the export—I forget his name—I think it was Stan Orm. He got discharged shortly after I quit. I don't know what his name is. This was one.

Q. Who else did you see?—A. That is all.

Q. You only saw him?—A. I did not say I only saw him. There were other men employed in the warehouse at the time.

Q. Did you know Kennedy?—A. Very well.

Q. Was he employed there?—A. Savard instructed me when I took the merchandise—

30 Q. Was he employed there?—A. I understood so, yes.

Q. Did you see him on any occasion you went there?—A. Only to settle my accounts.

Q. Did you settle them with him?—A. Yes.

MR. TILLEY: Q. With Kennedy?—A. I took my slips and settled them there.

MR. ROWELL: Q. They made delivery of the beer to you?—A. No. The beer was there and I picked it up.

Q. Did you put it on your own truck?—A. Yes.

Q. And you paid for it there?—A. Every 24 hours.

Q. You paid Kennedy?—A. Yes.

40 Q. You paid it to Kennedy?—A. Yes.

Q. Then did you ever have any conversation with Burns?—A. I never had no time only regarding 4.4. Burns was in London then.

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HIS LORDSHIP: Previous to this bill?—A. I did business with him on 4.4 previous to this time.

MR. ROWELL: Q. Did you do any business with Low?—A. No, none whatever—no business with Harry Low.

Q. Then did you get any documents when you purchased the beer, the strong beer?—A. Well yes, I got the necessary papers. I got what they call those road papers, and the necessary papers to move the stuff to the dock if I wanted to go there.

Q. When you say the necessary papers, do you mean the B.13?—A. I don't know whether they used the B.13s or not. But the drivers had always the necessary papers not to have any trouble provided they were caught unloading the beer—

Q. Not to have any trouble with whom?—A. With the Provincial police.

Q. And these papers were to protect you?—A. I would call up and tell the office boy I wanted ten half-barrels or 100 cases of beer—he would say for where—I would say Port Stanley. They would put the beer on the truck. When I saw everything was clear I pulled into the first hotel that wanted the stuff.

Q. And you sold it there?—A. Yes.

Q. Can you tell me whether you got a form like that?—A. I don't believe I could. I am not sure whether we used road papers. I had the necessary papers if I was bothered by the provincial police. They would have them ready and they would hand them to the driver and away he would go. I believe it was a paper like that, but I am not sure. There were two slips. I don't think there was that much written on them.

Q. This paper, of what use was the paper in case you wanted to export the beer?—A. I took this stuff out for export. If I wanted that stuff I would say I want 100 cases for Sunnyside Dock, I have a boat there. They would fix up the papers and I got the stuff and drove it there, if the Provincial Police were not around.

Q. You produced for our inspection before the Customs Commission certain blank invoices?—A. Yes.

Q. "R. Bannon, Distributer, Carling's Brewery, London?"—A. Those were 30 my slips.

HIS LORDSHIP: They are samples of the slips?—A. Yes.

MR. ROWELL: Q. Are those samples of the slips?—A. Yes, for 4.4. Those are my 4.4 slips.

Q. Did you have all kinds of 4.4. This is cases of beer, cases of ale, cases of porter—you did not have 4.4 porter?—A. This slip was ordered one afternoon when I happened to be out, and they put that on and they were delivered to the office and settled for—and we used that to keep track of the kinds of soft beer.

MR. ROWELL: Q. Let us see what you have on there?

MR. TILLEY: No. I object. This is not evidence against my client.

MR. ROWELL: This shows the goods he was dealing with.

MR. TILLEY: It does not show it against me.

HIS LORDSHIP: Did he use that slip. Is that to go down to the warehouse with to get the goods?

MR. ROWELL: Q. How did you use that slip—was that when you sold the goods? —A. No. When I first went into business, through Charles Burns for soft beer, one of my boys ordered this slip to keep track of his accounts of soft beer, and he used this slip—like as if he had three slips. He had three slips, and he would make a duplicate—he would give the driver one, and keep one himself, and the other one would be for the man who got the stuff.

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Basil Bannon
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10 HIS LORDSHIP: Was that used for your sales?—A. It is used to keep track of the sales.

HIS LORDSHIP: Of your sales?—A. Yes. Of the Carling 4.4.

HIS LORDSHIP: We are not concerned with that.

MR. ROWELL: I want to find out from the witness the facts about this particular matter.

MR. TILLEY: Then he should ask the witness for the facts properly, and not be putting documents before him, and asking him to say something on the strength of the document—I say it is most misleading and improper.

MR. ROWELL: I submit I am entitled to ask the witness what these things 20 signify on the document.

HIS LORDSHIP: There is no objection to that.

MR. TILLEY: They signify nothing as to me.

HIS LORDSHIP: If this witness is able to explain it, there is no reason why he cannot explain it. It may be that it has no bearing, but we will know afterwards.

MR. ROWELL: Is porter 4.4?—A. It seems to me we had some there 4.4. I am not sure. Maybe not. I think the only thing we handled was keg beer and bottle beer, and maybe ale. It turned out very bad. We did not waste much time—we could not sell it.

Q. You could not sell it?—A. We absolutely could not. We could not give it 30 away.

Q. That is the reason you took up the strong beer business?—A. Absolutely.

Cross-examined by Mr. Tilley, K.C.

Q. Let me see if I have what you said. I think you said for a time you were engaged in the 4.4. beer?—A. Yes.

Q. And that through the lack of taste for such beer on the part of the public you gave up that after a time?—A. Yes.

Q. It was not worth it?—A. Yes.

Q. Then you wanted to get stronger beer?—A. Yes.

Q. And I understood you to say that you told them that you were taking it for 40 export?—A. Yes.

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- Q. And you told them the dock you were going to?—A. Yes.
- Q. And you got the proper documents whatever they may have been?—A. Yes.
- Q. You can't identify them?—A. They gave us the regular slips there for protection.
- Q. The regular slips as though it was going to be exported?—A. Yes.
- Q. And after that you did not export all of it anyway?—A. No.
- Q. Did you export some of it?—A. Yes. At Port Stanley, a few loads—we sold 500 or 600 cases.
- Q. When you did, did you complete the papers?—A. Yes. They called at Port Stanley and I gave them the stuff. 10
- Q. And if you did not export it, what did you do with the slips?—A. I carried them until I was clear, then I tore them up.
- Q. So that if you used the beer locally you tore the slips up, is that right?—
A. Yes.
- Q. HIS LORDSHIP: You just said that you sent 500 or 600 cases from Port Stanley. Can you tell us the total amount you exported?—A. No.
- Q. You think there were 500 or 600 cases exported from Port Stanley?—
A. Whiskey—500 or 600 cases of whiskey and beer. I had a customer, and every time he would call up I would take him the stuff.
- HIS LORDSHIP: And it was taken from Port Stanley?—A. Yes. 20
- HIS LORDSHIP: And what would 500 or 600 cases represent to your trade?—
A. Do you mean what would it amount to?
- Q. Was it a large business?—A. I judge all told, I might have held \$5,000 worth.
- Q. \$5,000 worth of beer and whiskey?—A. Yes.
- Q. Of liquors?—A. Yes.
- Q. Including beer?—A. Yes.
- MR. TILLEY: Q. And the 500 or 600 cases that went out of Port Stanley was both whiskey and beer?—A. Yes.
- Q. You cannot say how much of your \$5,000 worth was beer, can you?—A. I sold all kinds of beer. 30
- Q. How much do you say was beer of the \$5,000?—A. I should judge \$2,000 worth of Carling's. Whatever they called for I gave it to them. If they called for British American I gave it.
- Q. You tried to satisfy the demand?—A. Yes.
- Q. Over what period of time?—A. I could not say. About two months or so.
- Q. And then I understood you to say it stopped?—A. They stopped me.
- Q. And the man there you said was discharged?—A. There was some monkey business, and Mr. Low fired him.
- Q. And can you say what time?—A. It was the same year.
- Q. Was that the time the 4.4. was legal?—A. Yes. 40
- Q. And in the summer months?—A. Yes.

HIS LORDSHIP: I thought he said it was after?—A. It was after but in the summer months. It was after I quit handling 4.4. —If I got a call for 4.4., I gave it.

Q. It was after you stopped dealing with the 4.4. regularly, and it was still legal beer to be sold?—A. Yes.

Q. Can you say how much of the beer you got actually was exported and went to the United States?—A. I judge probably one half of it.

Re-examined by Mr. Rowell, K.C.

Q. In your evidence in chief you said it was whiskey exported at Port Stanley?

MR. TILLEY: And beer.

10 MR. ROWELL: No, he added it on with you.

Q. Did you export beer from Port Stanley or whiskey?—A. No, I exported whiskey and beer. A lot of whiskey, and a large amount of beer. I had one customer there.

Q. You had quite a number of local customers in Windsor?—A. Yes.

Q. To whom you were supplying beer?—A. I had everybody. I had every road house in Windsor that handled it, I sold to.

Q. You must have handled quite a tidy amount?—A. I did, I used British American, Walkerville, and Carling's if I wanted it.

Q. And the road-houses for all they wanted?—A. Yes, if they had the money.

20 (This concluded the examination of this witness.)

WILLIAM C. DUNFORD:—Called, sworn and examined by Mr. Rowell, K.C.

Q. Where do you live?—A. I have a home in Windsor and Kingsville.

Q. Where were you living in the early part of 1926?—A. I was in Windsor first.

Q. And then?—A. And when the season came on I moved to Kingsville.

Q. I am now speaking of the period prior to the Bermuda Export Company—prior to the 15th July, 1926?—A. I moved into Kingsville, about May 1st, 1926.

Q. Were you handling beer there?—A. Prior to moving in.

Q. Yes?—A. No. Not at the Kingsville dock.

30 Q. Where were you handling the beer prior to moving to Kingsville?—A. In Windsor.

Q. Then did you purchase any beer from the Carling Company or any of their representatives?—A. No.

Q. You did not purchase any?—A. No, not in Windsor. I had no transactions with the Carlings not until I went to Kingsville.

Q. Did you have transactions with the Carlings when you went to Kingsville?—A. Yes.

Q. And who did you deal with in connection with those transactions?

A. With Mr. Sam Low.

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Basil Bannon
Re-examination
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No. 18

William C.
Dunford
Examination
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Q. What was his relation to the Carling Export Brewing and Malting Company?—A. He was the agent for the Carling Brewing Company.

Q. Where did you see him?—A. In Windsor.

Q. How long did you continue your purchasing of beer from the Carling Company?—A. We never purchased any beer from the Carlings.

Q. What did you do?—A. Well, the consignee did the purchasing—I had nothing to do with that.

Q. Who purchased the beer from the Carlings?—A. The consignee—the men in Vermilion, Sandusky, Toledo and Cleveland.

Q. And do you issue your own cheques or partner's cheques for the beer?—A. 10 Well, in one sense of the word yes.

HIS LORDSHIP: Who was the cheque in favour of?—A. It depends on whose stuff it was.

Q. Well, for the Carling stuff that you were buying—who was the cheque in favour of?—A. I do not get your drift on that?

Q. I mean this, in whose favour did you make the cheque for the Carling goods that you got when you were at Kingsville?—A. I forget now. If you have one of the cheques I will refresh my memory.

Q. I want you to recollect?—A. This is two or three years ago. I forget. They may have been made to Sam Low direct, or to the Carling Brewing Company, 20 or to the Bermuda. I forget. It is three years ago.

Q. I am speaking of before the Bermuda Export Company came into existence. Is that one of your cheques (Exhibiting a cheque to the witness)?—A. Yes. That is one of them. That is what I wanted to know.

Q. What was that cheque for. It is payable to Harry Low, July 4th 1926, for \$700?—A. That may have been for whiskey or beer, I cannot tell you which.

Q. To whose credit is it deposited?

MR. TILLEY: Can the witness say?

MR. ROWELL: It is his own cheque.

MR. TILLEY: That would not enable him to say.—A. I cannot tell whether it 30 was for beer or whiskey. I am honest with you.

Q. It was deposited to the credit of the Carling E. B. & M. Co., Limited?—A. I could not tell without referring to my books with respect to that particular cheque. (Exhibit No. 47).

Q. Then your cheques would be payable to Sam Low—I am speaking now for beer—Samuel Low or Harry Low or the Carling Export Brewing and Malting Company, prior to the Bermuda Export Co.?—A. Yes.

Q. How did the beer come down to you?—A. By trucks.

Q. Did you send your own trucks up?—A. In some cases, and in some cases it came by freight from London. The only time we used trucks was if we wanted it 40 immediately—we would get a small consignment if there was delay with freight cars.

Q. You would get it from Windsor, and it would be sent to you at Kingsville by truck—A. Yes.

Q. Did you send your own truck for it?—A. No.

Q. Whose truck would bring it down?—A. There were several. There was the Erie Transit Company—and another concern, a trucking concern of Ford City—There were several concerns that had contracts with the brewery for trucking—The Lancaster was one—and the Erie Transit Company—I cannot tell you which one it was.

Q. This continued until what date—the formation of the Bermuda Export Company?—A. Before the Bermuda, I think we only did business for 15 days or 3 weeks, may be a month.

Q. Before the Bermuda Export Company?—A. Prior to the Bermuda Export Company.

Q. That is one of your cheques?—A. Yes.

Q. Dated November 19th, 1926, for \$1,427. Can you tell me what that cheque would be for?—A. I could not say offhand. There is nothing on there to tell me at the present time, unless I had an invoice for it. That looks to me like as if it were a whiskey cheque.

MR. TILLEY: Q. It is payable to whom?—A. To Harry Low. It looks to me like a whiskey cheque according to the amount of it.

Q. MR. ROWELL: Were you getting whiskey then from Harry Low, as well as from the Carling Export Brewing and Malting Co.?—A. No. It was not under the Carling Company, the whiskey was not—it was under the Vancouver Forwarding Co. I think that is it but I am not positive.

Q. What is this book?—A. It is a kind of day-book.

Q. Of your firm?—A. Yes.

Q. Which you produced to the Royal Customs Commission?—A. I did not produce it.

Q. They subpoenaed you to produce it?—A. They came and took it from me.

30 Q. You produced it on subpoena?—A. Yes.

Q. Is that the commencement of your business, May 6th, 1926?—A. Yes.

Q. You could not tell from looking at this whether it was beer or whiskey?—A. Yes, I think I can.

Q. The cheque is for \$1,427. That is the 19th November, 1926. I see in May you have a cheque for the Vancouver Forwarding Company?—A. November 19th would be away late in the fall,—that would be a whiskey cheque, because we did not have anything to do practically with beer from then on.

Q. You said that the whiskey was handled by the Vancouver Forwarding Company?—A. Yes.

40 Q. I find on May 29th a cheque to the Vancouver Forwarding Co., and a cheque to Harry Low?—A. There were two kinds then,—one was for fancy liquors and one for ryes and bourbons. I think those two accounts we kept separate.

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 18

William C.
Dunford
Examination
May 11, 1928
(continued)

*In the
Exchequer
Court
of Canada*

Plaintiff's
Evidence

No. 18

William C.
Dunford
Examination
May 11, 1928
(continued)

Q. Where do you show the cheques to Harry Low for beer?—A. We never purchased any beer from Low.

Q. Where do you show the cheques you purchased beer from anybody, if the cheques to Low are not here. Where do you find the cheques entered for Carling beer if the ones marked Low are not for beer?—A. We only did business for 30 days prior to the Bermuda Export Company taking over the dock, and I don't know whether there were any Carling beers at that time.

Q. You have already told us there were?—A. I am not sure.

MR. TILLEY: I don't think he has.

THE WITNESS: There was some stuff sent to the dock. There may have been a 10 few shipments of stuff the first month.

Q. This does not appear to be a continuous record. There are whole weeks left out?—A. Then they were made out on slips, through the register—or cash sales slips—they were made out like a butcher would make out a slip with a duplicate copy. That is why we discontinued this book.

Q. The entries appear to be quite intermittent?—A. Some days there would be no business. Some days there would be a storm on the lakes, and no boats would come in.

Q. You would not skip two weeks at a time would you,—you did not have such bad weather up there in the summer of 1926 to have two weeks?—A. I have seen 20 it pretty rough for two weeks.

Q. Where are the other records you kept?—A. I never got a thing back from the Royal Commission. I asked for them several times, but I never got them back. I have not the scratch of a pen or statement of my account which I have been anxious to get hold of. The sales slips, I think you will find them in the books.

Q. There are no sales slips filed with the papers?—A. There were at that time.

Q. I am instructed there are none here in the file?—A. All of my slips of every sale made on our dock from the time we opened up to the closing in November were before the Royal Commission. We filed with the Royal Commission a wholesuit-case of books.

30

Cross-examined by Mr. Tilley, K.C.

Q. Now, Mr. Dunford, I understand that when the Royal Commission was sitting that they subpoenaed you to produce your books and papers?—A. Yes.

Q. And pursuant to the subpoena you took with you to the Commission your cheques, your books, and your slips, showing the sales—everything you had?—A. Yes everything.

Q. From the time you commenced at the dock, until the Royal Commission sat?—A. Yes.

Q. And did you turn it over to the Royal Commission or representatives of the Crown?—A. No—I turned it over to the Royal Commission.

40

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Q. And have you ever got them back?—A. No. I have called for them. I think Sergeant Fish will verify my statement. I have called on Corporal Nelson several times, but they have never been able to get them.

Q. So that you are without papers now as coming from the Royal Commission. At any rate you have no papers of your own that you can produce?—A. No, not a thing.

Q. And then you say, prior to the time you were operating the dock or the Bermuda Export Company was there, you were exporting some beer or whiskey?—

A. Yes.

10 Q. In what direction?—A. I did not get that?

Q. Prior to the Bermuda Company taking it over, were you operating the dock?—A. The Kingsville dock, yes.

Q. The Kingsville dock?—A. Yes.

Q. Was that a government dock?—A. Yes.

Q. Owned by the government?—A. Yes, by the Dominion Government.

Q. And did the government charge for the whiskey going across the dock?—

A. There is a tariff, a regulation book, a tariff on meats, groceries, beers, sugar, salt—there is a regular tariff.

Q. And did you have to keep an account of that?—A. Yes.

20 Q. And pay your dues?—A. Each month we paid the government so much per cent of what went over the pier, on whisky or kegs of our own.

Q. And what was the government charge on beer going over the dock?—A. There is a tariff rate on government docks throughout Canada—so much.

HIS LORDSHIP: When you are using the dock?—A. It makes no difference whose stuff it is, they pay toll to the government.

Q. There is a government charge, a toll on the merchandise that goes over their dock, coming on or off?—A. On and off, both.

Q. And what was the government tariff for beers and whiskey going across the dock?—A. Whisky, if I remember right, was two cents a case. Beers were one cent

30 a case.

Q. And when you were sending in your returns, did you show how much beer and whisky went across the dock?—A. The wharfinger kept track of that. He kept the amount of beer received on the dock. He kept those figures as well as myself.

Q. And did your books show all the beer and whisky going across the dock?—A. Yes,—and it was checked up each month.

Q. How did you divide the charge?—A. The wharfinger would keep one half for his salary, and he would mail the balance to the Dominion Government.

Q. The wharfinger got one half of the amount?—A. Yes.

Q. And it was up to him to see the matter was counted over properly?—A. Yes.

40 Q. It was counted over properly?—A. Yes.

Q. Is he appointed by the government?—A. Yes.

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No. 18

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examination
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(continued)

Q. Appointed by the government?—A. No, by the Department of Marine and Fisheries.

Q. All the time you were there every bit of beer and whisky that went over that dock to the United States, all paid duty to the government?—A. It had to be.

Q. Dues?—A. Yes.

HIS LORDSHIP: The wharfinger's dues?—A. Yes.

Q. For the use of the wharf?—A. Yes.

Q. So that the amount of whisky and beer crossing the dock could be computed from the records that you had?—A. Yes.

Q. Now where did the beer and whisky that went across the dock go. I will 10 take the beer, where did it go to?—A. Our business hinged principally with Cleveland, Toledo, Vermilion, Sandusky, Port Clinton,—principally all Toledo ports in that district.

Q. Those are all ports in the United States?—A. Yes.

Q. You have given a list of places—to put it broadly did it all go to the United States?—A. I never knew of a case of beer that came off our dock all the time I was there, not even to my own home.

Q. You never knew of a case of beer that came off the dock, that did not go on the boats?—A. Yes.

Q. And if it went on the boats where did it go?—A. They were all lake-going 20 vessels. We had no small boats in our port at all. They had to be lake boats because of the condition of Lake Erie on account of the storms. No small boats.

Q. What do you say as to any beer crossing your dock and remaining in Ontario? —A. We made the Government a promise when I opened up that dock—it was closed for three years—we made the government a promise that no automobiles or small boats would be loaded out of that dock, and on that one condition the government allowed us to open up that dock.

Q. That is any beer or whisky that went across the pier had to go to the United States?—A. Yes. There was no short-circuiting.

Q. Did you carry out that promise?—A. Yes. I don't think it was ever broken. 30

Q. How did you get paid for the beer?—A. We received our money in several different ways. We received wires—we received cash—and we received American drafts and sometimes certified cheques.

Q. From where?—A. From Cleveland, Toledo, Sandusky.

Q. American cities?—A. American ports.

Q. Was there any practice adopted with regard to cheques that actually reached you,—bills, did they ever divide them in two?—A. It is a common practice for boot-leggers, as they call them in the United States to tear up currency in half, and mail us one half, and send the runner whoever they hire who comes for the stuff with the other half. May be they do not trust the runner. 40

Q. It requires the two halves to make a bill?—A. They would be torn in two.

Q. And one half mailed to you?—A. Yes.

Q. And the other half would be sent by the carrier?—A. Yes.

Q. And when you got the two halves you would be able to piece them together?

—A. Yes. That method is used today on the Atlantic coast for a big shipment.

HIS LORDSHIP: They would tear a bank bill in two?—A. Yes. The numbers on each half would correspond. Here is a Canadian bill—there is a number on each side. I have not an American bill here. It would be the same with the American. Take a thousand dollar bill—they would tear it in two.

MR. TILLEY: Q. And send the two halves by different routes to reach you?—

10 A. Yes.

Q. And the carrier would be trusted with only half one of the bill?—A. Yes. These men on the lake were only hired by the consignees at so much a case to pull the stuff over. If they had \$15,000 or \$20,000 it would be easy not to come back.

Q. It was a precaution they used?—A. It was a precaution they used to stop stealing.

Q. Then when you got the cash what currency was it?—A. It was always American currency.

Q. And the cheques the same, American cheques?—A. American drafts—New York drafts. Sometimes it was wired in.

20 Q. Then did you lose any boats there?—A. I lost six boats during the month of November.

Q. In 1926?—A. Yes. My own privately owned boats.

Q. What happened?—A. They were seized under the law in the United States by the coast-guards in the United States.

Q. Do you sometimes get them back?—A. Yes. We had an under-cover nab who would go over and buy them back at auction sale.

The "Anna A. the second" was seized at Vermillion which had 1,500 cases of whiskey and beer. It was sold by auction in Cleveland under the federal hammer for \$1,500.—it was a craft worth from \$8,000 to \$10,000. She has been seized three
30 times lately, and it has been sold each time by the government and bought in by different runners.

Q. And then it was a case of operating again?—A. It is still working. It is working under the name of the "Rondo" at the present time. They confiscate them and sell them under the hammer. It is a cash transaction. You have to have the cash as soon as the sale is made. If it is \$100 you have to pay it. There was a beautiful boat sold the other day for \$100—a beautiful boat.

Q. The business is still going on flourishing?—A. Yes. The boats are still going. This is not hearsay. These are recorded facts on the other side. These boats are all registered, and the sale is registered at the port.

40 HIS LORDSHIP: In the American registry?—A. American registry.

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No. 18

William C.
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Plaintiff's
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No. 18

William C.
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Q. MR. TILLEY: In what order did you settle for the beer you got?—A. The money was forwarded to us in advance from the other side, and it was deposited in the bank. When the Bermuda Company, or whoever it was, came along to collect we paid them out of our bank account, the joint bank account between my partner and myself.

Q. You would get the money first from the Americans?—A. Yes, it was always got in advance.

Q. And did you deduct anything for yourself?—A. We were permitted to have a commission for warehouse of twenty-five cents.

Q. What period are you referring to now?—A. From the time of the Bermuda 10 Export Company—I think that was June 15th, 1926.

Q. And then did the wharfage dues and the government dues come out of your twenty-five cents?—A. Yes—and we had to pay so much for boat fees, to the dock for boats out of that.

Q. Were these boats you are speaking of operated when the Bermuda Export Co. were operating, and for a month or two before when you were operating?—A. Yes.

Q. On your own account at the dock—A. Yes.

Q. And do the boats enter at the customs?—A. Yes, they have to report immediately to the customs upon landing. They report in and they report out, whether they are light or heavy. 20

Q. They take a clearance?—A. Yes.

Q. Every time?—A. Yes.

Q. And do the boats bring in empties?—A. Occasionally, yes. When they brought back empty kegs?

Q. Empty kegs?—A. Yes. A few empty bottles but not many.

Q. And what would happen when a boat came in and reported and got loaded—what happened at the customs?—A. After they got loaded?

Q. Yes?—A. The customs would clear them. Our port is different from most ports. Our boats did not leave until six o'clock; and the customs officer would come down town and clear the boats out at six o'clock. 30

Q. And what about the B. 13s, were they completed?—A. I had nothing to do with that. The customs kept them up town, that is about one mile from the dock. He checked them off.

Q. You said the customs had the B. 13s up town?—A. Yes.

Q. You did not have them at the dock?—A. No.

We had nothing to do with checking the B. 13s—they never entered our hands. We would never see them. He would check the beers off that were sold, and deduct the B. 13s what he had. I don't know how he went about it, but we did not have them at our dock.

Q. You said something about the B.13s being checked as the goods were sold. 40 Did you mean that?—A. They were deducted from that particular consignment—

say for 100 cases, he would come down with the B.13s for that particular shipment, and check them on the boat.

Q. He would check them on the boat?—A. Yes.

Q. As the goods were on the boat?—A. Yes.

Q. You have not your books. Are you in a position to say whether before the Bermuda Export Co., took charge you had in fact bought or dealt in or handled any Carling beer?—A. Well, I could not be positive about that. I think there was a small lot of stuff prior to that—I forget how big or small—I cannot say positively.

Q. Now something has been said here about rice beer. Is that a beer that suits the fancy of Canada or the United States?—A. Well, to my knowledge as much as I have sold beer, it was always a palatable beer for the Americans. It was a much more better beer than our beer, and I never considered it a beer for my own taste. I never liked it personally—I liked a sweeter beer—lager beer.

Q. Are you in a position to say whether that is a beer which is used in the United States?—A. It was always known that Rice beer was an American beer, and American product.

Q. Have you seen the Carling beer over there?—A. Yes.

Q. Could you say what proportion of the Canadian beer goes to the United States, would be Carling's rice beer?

20 MR. ROWELL: How is it possible for the witness to answer a question like that.

MR. TILLEY: We will see on my cross-examination.

MR. ROWELL: It is true I called him. He is one of their customers. We had to go into the enemy's camp.

MR. TILLEY: I don't think he ever bought a case from us.

MR. ROWELL: The evidence was quite to the contrary on the Royal Commission.

MR. TILLEY: The Royal Commission is not here.

HIS LORDSHIP: I think the question is permissible.

MR. TILLEY: Q. Could you say what proportion of the Canadian beer that goes to the United States would be Carling's rice beer?—A. It is a known fact among the bootleggers that Carlings do about seventy-five per cent or eighty per cent of the business over in the United States. It is common gossip among the bootleggers that seventy-five per cent is the amount.

Q. Have you seen any of their beer landed on the other side?

MR. ROWELL: That I submit is not evidence.

MR. TILLEY: I will follow it up.

HIS LORDSHIP: That does not hurt you.

MR. ROWELL: It is entirely irrelevant. If he knows it of his own knowledge then he can say. If he does not know, then it is only gossip. That is not receivable in cross-examination than in an examination.

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Plaintiff's
Evidence

No. 18

William C.
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Cross-
examination
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(concluded)

MR. TILLEY: Q. What were you going to say?—A. From visiting around the road-houses on the other side, which I did a lot of to get in touch with these runners, we found in the biggest portion of the road-houses, and blind pigs and speak-easies, the biggest portion of the beer is the black label beer.

Q. That is Carlings'?—A. Yes.

Q. Going around those places on the American side?—A. Yes.

Q. The biggest proportion is Carling's black label beer?—A. Yes; the biggest proportion.

Q. Have you seen it being landed on the American side?—A. Yes.

Q. To what extent?—A. I have been over there a number of times getting money 10 from consignees, at different times, and some things I was interested in myself for my own boats. I have been there when they were landing boats of Carling's beer. I have been at Ecorse a number of times.

Q. Where is Ecorse?—A. That is in Michigan between Wyandotte and Detroit. That is the biggest port we have.

Q. The biggest port on the United States side for exporting liquor.?—A. Yes.

Q. From the Canadian side?—A. Yes. It is always the shorter route, and easier place to get through.

Q. Now you spoke of seeing some of the liquor in the road-houses and such places in the United States. Have you been in similar places on the Canadian 20 side?—A. What do you mean by that?

Q. You said when you were on the American side you saw a lot of Carling's black label beer sold on the counters of road-houses?—A. Yes. I visited a number of them.

Q. And on the Canadian side?—A. Yes.

Q. Have you ever seen Carling's beer there?—A. Not to my knowledge. I could not tell you as sure as I could on the other side. It is mostly draft beer sold in the Canadian road houses.

Q. Are you positive that you have not seen Carling's beer sold in these places in Canada?—A. No, not to my knowledge. 30

William C.
Dunford
Re-examination
May 11, 1928

Re-examined by Mr. Rowell, K.C.

Q. My learned friend asked you about bills. You stated you always received the money from the American side before the goods were shipped. It came to you and was deposited to your bank account?

HIS LORDSHIP: Did you say "always"?—A. Mostly always.

Q. MR. ROWELL: That would be the rule?—A. As a rule, yes.

Q. As a rule you got the money?—A. In advance.

Q. You had it to the credit of your bank account?—A. Yes.

Q. Did you have it there before you ordered the beer?—A. Well, we had a safety deposit vault in the Bank of Montreal and we had an account in the Royal Bank. 40

We always had between \$15,000 and \$20,000 in the Bank of Montreal vault—that was always in advance—that was money left there by the consignees to pay for their bills as they became due.

Q. You always had the money of the consignee before you ordered the beer from the brewery?—A. Yes.

Q. And that also applied before you got it from the Bermuda Export Company also?—A. Before that? Did we have our money in advance?

Q. Yes?—A. Yes.

Q. Both before and after the Bermuda Export Co., you had your money in 10 advance?—A. Yes. It had to be advanced before we would release the goods.

Q. Did you usually have it in advance before you ordered the goods down to the dock?—A. We had nothing to do with the ordering ourselves personally, or myself personally. I had nothing to do with that at all.

Q. Who did that, Hoffman?

HIS LORDSHIP? Orr?—A. No. Some of this beer ordered we would never hear of it until it came to the dock.

Q. You heard of it when it came to the dock?—A. Yes.

Q. But I am speaking of the beer where you received the money—please confine yourself to that?—A. Say that again? I may have misunderstood you.

20 Q. The beer with respect to which you received the money. Did you have the money before you ordered the beer from the brewery or from the Bermuda Export Co.?—A. I never ordered the beer. I had nothing to do with that.

HIS LORDSHIP: Before the beer was purchased?—A. I had nothing to do with ordering the beer.

MR. ROWELL: Q. Did you get the money before?—A. The money was always in advance.

HIS LORDSHIP: Did you get that money from the other side with an order before the beer was purchased?—A. Yes.

MR. ROWELL: Q. Then when the money was paid, the men came over in the boat 30 according to your story, and got delivery of the beer at the dock—is that correct?—A. In some cases, yes.

Q. Was that generally the rule that he came to the dock and got the beer?—A. It depended on the consignee.

Q. In the cases where you got the money, Mr. Dunford—in the cases where you got money, did the man come over to get the beer, and was it delivered to him, or did he bring part of the money with him?

HIS LORDSHIP: Mr. Rowell does not get my meaning.

MR. TILLEY: Q. Is this before the Bermuda Export Co.?—A. At any time. Your Honour, these men are professional haulers.

40 MR. TILLEY: Q. Which means?—A. The men in the boats get so much a case from the consignee for bringing that beer. I think it is one dollar a case; on whisky

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it is from \$3 to \$5 to the United States. They are professional haulers—they own their own boats and supply the gasoline. They may have a Contract for the whole summer season—

HIS LORDSHIP: You got an order, and the money would be sent in advance?—

A. Yes.

Q. How would the beer come to the boat?

MR. TILLEY: Q. Take a transaction and go through it step by step?—A. The money would be wired to us in advance. We had on deposit at times from \$15,000 to \$20,000 cash for different consignments, in the Bank of Montreal, in a vault. We had a chequing account with the Royal Bank. Rather than keep the money on hand we would sometimes deposit it. We would draw on that account from time to time as the consignee drew the beer. If the money was sent to us we would pay the Bermuda Company off—they would in turn after getting the money, would send a professional hauler for this beer for the American port. He in turn would come with an order or letter.

HIS LORDSHIP: Who brought them to the wharf?—A. They would come over in their own boats.

Q. But the liquor?—A. It was transferred to the dock in freight cars.

Q. By the Bermuda Export Company?—A. Yes—sometimes by freight cars and sometimes by trucks. That would be brought down. And at that time they were putting it in the government warehouse under government lock and key. Nobody had access to that except the wharfinger. It was checked in the government warehouse. The boat would come in. We would take it out of the government warehouse and load it into the boat, and hold the boat waiting for the customs officer to come and check it at six o'clock. Our ports are a little different. I understand they leave at all hours—but at our dock it was the practice for them to leave at six o'clock because it became dark shortly afterwards, and they could run in under cover.

HIS LORDSHIP: You had the whole of the money?—A. In some cases where the man could not come around, he would send half by the runner and half by mail. 30

HIS LORDSHIP: Then you would not be paid altogether in advance?—A. Some consignees operated one way, and some in another. I don't know why they did it, whether they had no confidence in us or confidence in the runner.

MR. ROWELL: Q. I will put a very simple question to you which I think are capable of quite simple answers. Did you get the money before the boat came over, or did you get it from the boat, the full amount, before the goods were loaded?—A. Well, as I told you before, in some cases in advance. In some cases where the bill would be cut in two, the holder would have the other half.

Q. In some form or other you would have the money before the goods were loaded?—A. Yes. 40

Q. And when they were once loaded you were through with it?—A. Yes.

HIS LORDSHIP: If there was a \$1,000 bill they would send you one half of the bill by mail, and the hauler would have the other half—who would get the beer down?—

A. The Bermuda Export Company kept a stock in the government warehouse on my pier.

HIS LORDSHIP: The beer was taken from there?—A. From the government warehouse.

HIS LORDSHIP: I thought it came from Windsor?—A. This is a government dock with a government warehouse on the dock.

HIS LORDSHIP: The whole thing was there?—A. Yes. They kept it in stock
10 at all times.

MR. ROWELL: Q. And from that stock the orders from the boats were filled?—
A. Yes.

Q. Was the Bermuda Export Co., the lessee of that dock?—A. No.

Q. Who was the lessee of that dock?—A. I was supposed to be the lessee of that dock.

Q. You leased it from the government?—A. I made arrangements with the government.

Q. You made arrangements with the government?—A. Yes.

Q. And how long had you the dock leased?—A. It was an understanding
20 between the government and myself that I would operate during the year 1926.

MR. TILLEY: This does not arise out of my cross-examination.

MR. ROWELL: I am trying to get at how this thing was handled. He said there was a government dock, and government dues to be paid.

Q. You had a warehouse where the goods were stored?—A. The government.

Q. Was it leased to you?—A. No. Anybody could ship.

Q. I am asking you whether the warehouse was leased to you?—A. No. You could put groceries or sugar or hardware in this government warehouse.

Q. And who was in charge of the government warehouse?—A. The wharfinger.

Q. And anybody could store goods in the government warehouse?—A. Yes.

30 Q. Any kind of goods they liked?—A. Yes.

Q. Prior to their shipment?—A. Yes. He was accountable for so many packages of hardware, or beer, or whisky or so many bags of salt.

Q. The same as any warehouseman would have to account for if goods were put in his warehouse?—A. Yes.

Q. Then you spoke of the customs' officer looking after the B. 13s?—A. Yes.

Q. How much did you pay him. How much did your firm pay the customs' officer for this summer in assisting you in the work?—A. Some fee my partner gave the customs' officer.

MR. TILLEY: He should have gone into it at the opening.

40 HIS LORDSHIP: I think it is all right.

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Plaintiff's
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No. 18

William C.
Dunford
Re-examination
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MR. ROWELL: Q. Did your partner, or firm, pay the customs officer fifty dollars a month that summer for assisting you in the work?—A. There was something paid—fifty dollars or something like that.

Q. And in looking after the B. 13s, he was looking after them for you—you paid him for his work?—A. I don't know whether you could put it that way. It was a fee anyhow.

HIS LORDSHIP: A fee?

MR. ROWELL: A fee to the customs officer of fifty dollars?—A. Something like that.

HIS LORDSHIP: Was it a government fee?—A. It was a remuneration from us. 10
His hours are up to 4.30 p.m., and when he closed his office he did not have to come down and clear the boats unless he wanted to. The boats were cleared at six o'clock—and something came out on the Royal Commission where my partner paid him \$50 a month.

Q. You stated that you had been in road houses on the Canadian side, but you were not sure whether you saw Carling beer there. What road houses were you in where you saw Carling beer?—A. I was in the same business that Mr. Bannon was in. I was supplying stuff to road houses. I did more than he did.

Q. You were supplying the road houses with business too?—A. Yes.

Q. And you can get all the beer you need to supply the road houses?—A. Yes. 20
We had enough of it down there in Windsor—everybody knows it. We could get any amount we wanted.

Q. Of any brand?—A. No, I do not say that. Any beer we wanted.

Q. Where would the road houses in the United States you visited be?—A. In our business it is like drumming up trade.

Q. I would like you to tell me?—A. From Cleveland to Port German.

Q. Whereabouts in Cleveland?—A. Several big clubs and Elks.

Q. I want to know the street and address?—A. It would not be fair for me to tell it out.

Q. You gave the evidence to my learned friend?—A. There is a Department of 30
Justice man in the audience at the present time.

Q. If you are going to give evidence here I want the whole of it?—A. I will give it to you on paper.

Q. If you are going to give evidence of what you saw of Carling beer in the United States, I want to know the place you saw it?—A. I won't give you any names or addresses.

Q. I say that you should?—A. It would not be fair. There is a Department of
Justice man here. It would be a conviction against them on the other side, and they would get me into trouble if I cross the border. I will give them to you on paper, names—any amount of them on paper. 40

Q. You have come into court and you say you saw Carling beer in the United States?—A. Yes.

Q. I want to know where you saw it?—A. All along Ecorse.

Q. I want to know the particular places you saw it.

MR. TILLEY: Is this proper on re-examination?

HIS LORDSHIP: Does it help me in this case?—A. I will do anything to help you, Mr. Rowell, but I will not convict myself in the United States. I will not enter into a feud with the boys over there. I will do anything to help you.

MR. ROWELL: Q. No, it is not to help me. But if you are coming into court to tell us you saw Carling liquor in the United States, I want to know where it was you saw it, so that I can check up your evidence?—A. I would be glad to take you over there and show it to you. I did not mean it as a slam. There are thousands of places I could take you.

Q. That is not the question?

MR. TILLEY: Is this re-examination? I object to the evidence. My learned friend is cross-examining the witness about these things, and I think he is going too far afield. Surely the witness could give evidence on general conditions without being cross-examined as to particular places.

MR. ROWELL: Not if my learned friend is going to prove export.

THE WITNESS: Here is a book. Here are places I delivered goods to the last few months. Here are names of different people and telephone numbers.

20 Q. If you are going to give the evidence, I want it so that it can be checked?—
A. It will be hard to check it.

Q. Can you give me any place I can check?—A. I would not mind doing that without an audience—within our own crowd—but with an audience it would be impossible for me to give it. It is a serious thing in the United States to-day. If a man is a stool-pigeon he is a marked man, and he may be taken for a ride. I would not do it. I could not do it. I would like to give the evidence. I could not come here in open court and give names of the places where I disposed of these liquors. I will give it to you in a private room, any of these places, but I can't do it in an open court-room, it is not fair to me. I am trying to protect myself, that is all.

30 Q. Has the experience of John A. Kennedy made you more careful?

MR. TILLEY: I object.

HIS LORDSHIP: I don't know what it is officially. It has never been brought before the court. What there is in the newspapers I do not take cognizance of. If it is put before the court then I will know.

HIS LORDSHIP: Do you want to adjourn now?

MR. ROWELL: When can your lordship renew the case?

MR. TILLEY: Is my learned friend finished with his case?

MR. ROWELL: No, I am not through yet.

HIS LORDSHIP: I have two cases in Ottawa on Tuesday. They were fixed long before this case, and they have the right of way. They are two cases about Indian lands, where it is mostly a question of law—they may last one day, perhaps two

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Plaintiff's
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No. 18

William C.
Dunford
Re-examination
May 11, 1928
(continued)

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Plaintiff's
Evidence

No. 18

William C.
Dunford
Re-examination
May 11, 1928
(continued)

days. I could give you, if you care, the 16th provided I am clear—or the 17th, 18th and 19th—that would be Thursday, Friday and Saturday—sitting on the Saturday of next week. I am due in Montreal in a similar case to this on the following Monday. Am I right in stating that somebody mentioned that you were arguing a case on appeal on Monday?

MR. TILLEY: Yes. That will be sure to run a week.

MR. ROWELL: My learned friend and I discussed the matter this morning with the registrar, and we noted your lordship's engagements for some time ahead.

HIS LORDSHIP: I have engagements to October. I cannot give you any day in June or September. In June I am going on an eastern circuit, and in September I 10
leave for the western circuit.

MR. ROWELL: Could you give us the last week in June?

HIS LORDSHIP: No. I will be sitting in Quebec. I may sit in Sydney almost the last week in June—and I promised to hear a case in Quebec after I heard the case in Sydney. This case was fixed before and you had the time enlarged so that it has dislocated the docket sheet.

MR. ROWELL: But it was not at my request. We must consult your lordship's convenience.

HIS LORDSHIP: It is not so much my convenience as my engagements.

MR. ROWELL: I mean your lordship's engagements. I have something in 20
Ottawa on the 23rd which is a serious matter.

HIS LORDSHIP: Mr. Tilley says not this month.

MR. TILLEY: Our engagements are almost the same. We are both engaged on a water-power reference, and this month appears to be taken up.

HIS LORDSHIP: Why not adjourn sine die, and whenever there comes a date that would suit you you can speak to it—or would you rather fix it now. If I fix the time now I will have to fix it in October. Some of my cases may break down.

MR. TILLEY: Do you think you will not be free in September.

HIS LORDSHIP: I am leaving for Victoria at the beginning of September. My
last sitting in the west will be on the 24th at Winnipeg. 30

MR. TILLEY: You do not care about July?

HIS LORDSHIP: No. I have done it in the past, but I do not intend to do it again.

MR. ROWELL: I think it would be better to adjourn sine die.

HIS LORDSHIP: We shall adjourn sine die, leaving it to either party to apply for a date to fix the next sitting.

No. 10

Discussion as
to Amendrent
of Information
April 16, 1929

Trial continued at Toronto, April 16th, 1929, and following days.

HIS LORDSHIP: Mr. Rowell, I notice you took an order for amendment, but you did not amend. And there was a reserve to the defendant to amend. You have not considered that in the meantime? 40

MR. TILLEY: I remember promising to do it—I am afraid I have not done it yet.

HIS LORDSHIP: I just want to draw your attention to it. I see there are figures in the Information, and you said that these figures are wrong. I wondered whether you had come into accord or not.

MR. TILLEY: No, we could not come to any agreement, because there are certain principles at stake, certain questions that will have to be discussed.

HIS LORDSHIP: I understand that, I did not mean that you would admit liability. If you intend to amend before I consider the case I would like to know. You
10 know we have a rule that says if you have an order—

MR. ROWELL: I will look into it and if necessary will ask your Lordship to revive it.

HIS LORDSHIP: I have tried a number of cases since we adjourned, and my memory is rather vague as to what took place. I remember we had exhibits 1 and 2—

MR. ROWELL: Number 1 shows the way the amount set forth in the Information is made up. No. 2 is a revised form made up by the auditors after a more detailed examination.

HIS LORDSHIP: Have we gone beyond the Sales Tax?

20 MR. TILLEY: Sales Tax and gallonage, just the two things. Well there was some question raised, I am not sure whether it is alive still, whether proper Income Tax had been paid, depending upon how the figures were dealt with ultimately. But that is a very subsidiary point.

HIS LORDSHIP: What do you mean by the 5th?

MR. ROWELL: That comes in the revised statement.

MR. TILLEY: I do not think your Lordship will be bothered about keeping that as a separate item. It comes in the general computation. I think my friend has got his claim in his exhibit No. 2 now. The fifth item was originally set up in that form, but the auditors I think have recast their account.

30 HIS LORDSHIP: It is part of the Sales Tax?

MR. ROWELL: Yes, my lord.

HIS LORDSHIP: And it is included in the \$258,000.

MR. ROWELL: Yes, my lord.

HIS LORDSHIP: The question whether the Income Tax was brought in is more a question of argument than of fact?

MR. ROWELL: There is only one question of fact in connection with it, that is, did they deduct the amount of the Gallonage and Sales Taxes as part of the expenses of the business when making their return for Income Tax? If they did, then if they are liable to pay the Sales and Gallonage Taxes the Income Tax is
40 correct. It is purely incidental to the claim.

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Discussion
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*In the
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No. 7
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George Usher
Stiff
Examination
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GEORGE USHER STIFF (previously sworn). Examined by Mr. Urquhart:—

Q. You were to produce certain statements referred to in your evidence before. You are now producing what document?—A. An Abstract of my distribution as trustee of my receipts from the Bermuda Company, showing what amount of business the Carling Company were entitled to, and the aggregate business done from the 15th of July, 1926, to the 5th of May, 1927.

MR. TILLEY: Aggregate of what?—A. Of all the business, and then I was asked to prepare the Carling's proportion.

MR. TILLEY: That is beer?—A. Yes, beer only.

His LORDSHIP: Had you a previous statement in the same matter? 10

MR. ROWELL: Your Lordship may remember that at a certain period included within the period covered by this suit the Bermuda Export Company was formed under an agreement, so it is said, as a selling agent for the Carlings and other breweries. Mr. Stiff was the trustee under that agreement, he received certain moneys and was to distribute them, and at the time he did not have a statement showing the aggregate amounts dealt with. Mr. Stiff was to prepare that statement. It was to be put in as Exhibit No. 24.

EXHIBIT No. 24—Statement *re* business of Bermuda Co.

MR. URQUHART: The statement you have prepared shows the total sales, by quantities, and you have also included the total by sale price?—A. Sale price. 20

Q. So that on this Exhibit 24 appear first the total quantities and sale price for all breweries of the business done through the Bermuda Company?—A. Yes.

Q. And secondly the totals in quantities and business done in respect of the Carling Company?—A. Yes.

MR. TILLEY: Handled only through the Bermuda Company?—A. Only through the Bermuda Company. I had no dealings with anybody but the Bermuda Company.

MR. URQUHART: Then the last column on Exhibit 24 is headed Distributable Funds. What does that relate to?—A. The Bermuda Company under their agreement with the brewers was to pay over to me as trustee at the rate of 75 cents a carton of pints, 30 cents a carton of quarts, \$1.25 on half barrels, and 70 cents on 30 quarter barrels, less the Bermuda Company's expenses. That fund came into my hands I always called Trustee Receipts, then I took my expenses out of that, and the balance was known as the Brewers' Trust Distributable Funds.

Q. So that in this column Distributable Funds, the item opposite the name of the Carling Company, \$24,344.65 represents the Distributable Funds?—A. That they got from me.

Q. For what period?—A. 15th July to 25th August.

Q. 1926. And so on down the page.—A. Every period of four weeks is shown. The figures are all to the same effect. And for the whole period there is the aggregate they were paid or credited. 40

HIS LORDSHIP: What meaning do you put on this word Distributable? Did you pay to the Carling Company for that period \$24,344?—A. Yes.

Q. Why do you call it Distributable Funds, that is the amount you give to them for distribution?—A. No, the money was sent to me for distribution as trustee between all the brewers, and they were entitled to and got that amount for that period.

Q. That is the amount you paid them?—A. Yes, paid them.

Q. Not paid to them for distribution?—A. No., that was received by them.

MR. URQUHART: And the total opposite Carlings at the bottom of that column, 10 \$104,742.54 represents what?—A. Cash paid to the Carling Company.

Q. During the whole period?—A. From July 15th to May 5th, 1927.

Q. Then at the bottom of each column on the exhibit you have totalled the items both in respect of Carling's and in respect of the total?—A. That is right.

Q. Am I right in saying that this shows that during that period there was handled through the Bermuda Company for the Carling Company, 15,356 half barrels?—A. That is right.

Q. 518 quarter barrels?—A. That is right.

Q. 478,407 cartons?—A. That is right.

Q. That the business done through the Bermuda Company by the Carling Company in respect of bottled beer during the period from 15th July to the 5th of May, 1927, was \$1,554,835.75.—A. In respect of bottled beer.

Q. And in respect of draught beer, \$249,969.50?—A. That is correct.

Q. Then you were also to file as Exhibit No. 23 another statement.—A. I was asked to produce a copy or sample of the return that was made to me periodically by the Bermuda Company. This is a copy of the statement for the four weeks ended 23rd September, 1926.

EXHIBIT No. 23—Specimen statement from the Bermuda Company

Q. A specimen of the returns made to you by the Bermuda Export Company?—

A. Yes, on the strength of which they paid over the moneys to me that I show there as Distributable Funds.

HIS LORDSHIP: Does that represent the aggregate that you find on the other statement?—A. Yes, that other statement is a compilation—

MR. TILLEY: I do not think he means that. If you had all of them it would be, but this is a sample only.

MR. URQUHART: This is a sample of each four-week period?—A. Yes.

MR. TILLEY: Your Lordship will remember we asked what items came into this, and we asked him to illustrate. This is by way of illustration, I presume.

WITNESS: That is right. You said a copy of one would be sufficient for your purpose.

40 MR. URQUHART: In this Exhibit 23 you have shown in the column on the left side the names of the different breweries?—A. Yes.

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George Usher
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Q. Then you have shown in columns opposite each brewery the business done at each of the Bermuda docks, is that right?—A. That is right, sir.

Q. "LaSalle No. 1," that refers to a dock I take it?—A. Yes, all these are docks.

Q. Riverside is another dock, and so on?—A. Yes.

Q. Then grand total, that represents what?—A. The half barrels the first item, and quarter barrels, and cartons shipped from all docks on account of the brewing company.

Q. So that opposite Carling we find in the grand total column the number of half barrels, quarter barrels and cartons handled for the Carling Company for the four-week period ended September 23rd, 1926?—A. That is right, sir. 10

Q. Then at the right hand side you have a heading Expenses.—A. Yes.

Q. And under that you have a column for draught beer and bottled beer. How is that made up?—A. That is figured out by the Bermuda Company on the cost at the different docks, and it is deducted from the amount they send me. Those two amounts, the deduction in that period would be \$18,671.

Q. And opposite Carlings do we find the amount deducted from the amount sent to you in respect of Carling's business?—A. Yes.

Q. That is \$1,252.26 was deducted in respect of the draught beer.—A. Yes.

Q. Is that proportion arrived at by you?—A. No, by the Bermuda Company, that is a transaction between the Bermuda Company and Carling, I have nothing to do with it.

Q. Does Exhibit 23 show the amount you received from the Bermuda Company for that period?—A. No, it won't.

Q. It is just a report to you of the business?—A. They have, you might call it an invoice of those quantities at 75 cents, 30 cents, \$1.25 and 70 cents. That is the total they have to pay over to me, less those two items.

Q. This does not purport to show the amount you received?—A. No.

Q. Then you were to produce as Exhibit No. 26 a further statement. What does this statement represent?—A. A memo of the Carling Export Brewing & Malting Company, Limited's share or apportionment of the receipts from the Bermuda Export Company received by George U. Stiff, Trustee. It deals with the periods from July 15th, 1926, to May 5th, 1927. It shows that in that period Carlings were entitled to \$104,742.57, and that at that date they had been paid \$80,208.71, leaving a balance due to them at that date of \$24,533.86.

I may say these payments took place—well part of them took place immediately, and part of the end of three months. That balance that I show here as still due them on the 5th of May, 1927, was afterwards paid.

EXHIBIT No. 26: Statement showing defendant's share of receipts from Bermuda Export Co. from July 15th, 1926, to May 5th, 1927

Q. So that they have altogether received in respect of that period the total of \$104,742.57?—A. That is right, and it agrees with the figures shown in this Exhibit, No. 24.

Cross-examined by Mr. Tilley:

Q. As I understand the statements that you have handed in, they are with respect to the beer of those interested in the Bermuda Export Company that went through the Bermuda Export Company?—A. Yes sir, that is all. There were 11 in the Bermuda Export Company at first, and two others joined later.

Q. There were originally eleven, and then to bring good luck they added two more making 13?—A. And then things happened.

Q. The names of the companies are shown on Exhibit 23?—A. Yes.

Q. That is the original eleven?—A. Yes.

10 Q. The particular sample you took for our purposes happened to be in the period when there were eleven members of the Bermuda Company?—A. Yes, it was the sample that you gentlemen passed around that day.

Q. And you were good enough to say you would put it in proper shape for us. That shows the business done in beer by these respective companies at the various docks owned by the Bermuda?—A. Yes.

Q. But if any of those member companies, as we might describe them, shipped beer from a dock that was not under the control of the Bermuda Company, it would not come through you at all?—A. Under their original contract they were supposed, if they did ship where the Bermuda Company had not a dock, that they would report 20 it and pay their fees.

Q. But I mean you would not get that from the Bermuda?—A. They would pay to the Bermuda Company.

Q. Do you remember how long that lasted? I am told that at any rate for a period, and I think the evidence showed it, when the companies shipped from a dock that was not controlled by the Bermuda, but probably leased by a particular brewery for its own purposes, or owned by a brewery, that that did not go through the Bermuda accounting. But you think it should have gone?—A. I know that some of it did. As a matter of fact under their contract between themselves and with me they were to notify me of every shipment made from what I might call these non-30 Bermuda docks.

Q. Yes, that is a good way to describe them.—A. At first they did that, but that fell into disuse, and eventually that part of the contract was dropped.

Q. Well, was not carried out?—A. Not carried out.

Q. What you are saying is that the agreement, and I assume you are referring to the agreement filed here that you produced last time?—A. The contract.

Q. The contract will speak for itself on that point, but as you remember it it had a provision that if beer was shipped otherwise than over a Bermuda dock there would be an accounting to the Bermuda Company?—A. Yes sir.

Q. And you say that was done by some or possibly all—I am not sure whether 40 you are clear about that.—A. As far as I was able to find out, up to that time the brewers, if they shipped over these non-Bermuda docks, accounted to the Bermuda Company for the amount arranged in the contract.

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Q. For a time?—A. For a time.

Q. And you say that gradually, by agreement among themselves, they stopped doing that?—A. Yes.

Q. And just when that occurred you cannot fix the time?—A. I cannot fix the time.

Q. So that from a certain date at any rate there would be, or there was a possibility that there would be, you cannot say whether there was or not, there was the possibility of beer been sent over other docks than the Bermuda that would not come into these figures?—A. Yes, it is quite possible.

HIS LORDSHIP: Where are you located?—A. Toronto. 10

MR. TILLEY: Just to refresh His Lordship's memory, you were trustee of a certain residue that would be left, of 75 cents or such charge as was made, after the Bermuda Company took out its expenses?—A. Yes sir.

Q. Whatever they had left of that amount came to you as trustee, and you distributed it according to the agreement?—A. Yes.

HIS LORDSHIP: He took his own remuneration.

MR. TILLEY: Oh yes, Mr. Stiff would not overlook that.

Q. Now, looking at Exhibit No. 24, under the heading of Quantities, you have half barrels, quarter barrels, cartons and quarts. What does that mean "quarts"?—A. Cartons are understood to contain two dozen pints, and the quarts are put up 20 in a parcel by themselves containing one dozen.

Q. Now when we come to the column "Business Done", I assume that is changing the quantities into money?—A. Into selling price, according to the information supplied to me.

Q. Then you have the money divided under two headings, the money that came from bottled goods and the money that came from draught beer?—A. That is right.

Q. Then under the column for bottle goods, if one follows that down one sees what proportion of all the beer business done through the Bermuda the Carlings did as compared with all the rest?—A. Yes sir.

Q. And your Lordship will see how high it runs, well over one-third of the total 30 I would say. The first period is \$322,000 of bottled out of \$513,000. That converts the quantities of bottled goods in the earlier columns into money.

HIS LORDSHIP: How am I to compare that with the others?

MR. TILLEY: Carlings is 322 and the aggregate of all 513.

Q. Now just to be clear about it, the aggregate figure includes Carling's, does it?—A. Yes.

Q. So that Carling's would supply more than half. And it goes along that way right through. So that as to bottled beer, it would seem to be so, that although Carlings is one out of 11 or 13,—Exhibit No. 24 would include when there were 13 as well as when there were 11.—A. I think not, sir. 40

Q. Then let us say 11.—A. It is fair to say eleven, the other two did not come in until March, 1927.

Q. Well although Carlings were only one out of eleven of these people who shipped bottled goods through the Bermuda Company, they were over half of the output of that kind of goods roughly?—A. Roughly.

HIS LORDSHIP: They were not always.

MR. TILLEY: I think your Lordship will find it is more than half almost always, sometimes almost 75 per cent.

Re-examined by Mr. Urquhart:—

10 Q. In that column, in Exhibit No. 24, where you show the business done, how is that figure you have there, \$322,000 opposite Carlings for July 15th, on what basis is that arrived at?—A. The selling price reported to me by the Bermuda Company. I have nothing to do with that. They say they sell so many packages at whatever the price is, and they account to Carlings for that.

Q. Would that be the full selling price in the agreement of \$3.75?—A. No. \$3.25, supposing it was just the ordinary beer, no special beer; for every carton the Bermuda Company sold of Carlings they got \$3.25.

Q. Would that be the price?—A. Yes, that would be the price.

20 Q. Then you told my learned friend of the discontinuance of the practice at some time of accounting to the Bermuda Company in respect of deliveries over other docks?—A. Well it is only quite recently that I know definitely about that, but what I intended to convey was that to my knowledge certain breweries shipping over non-Bermuda docks used to account to the Bermuda Company. All breweries under the contract were supposed to notify me as well as the Bermuda Company whenever they shipped over a non-Bermuda dock, but that fell into disuse, I know it was disregarded.

30 Q. You say it fell into disuse. I understood you to tell my learned friend that by agreement between the breweries it was discontinued. Is that right?—A. There was no written agreement. What I had in mind was what happened a year ago last January when the agreement was practically shot to pieces.

Q. Do you know of any agreement between them in respect to the discontinuance of that practice?—A. No, just a matter of meetings and discussion and each man going his own way, I think that is about what happened.

MR. TILLEY: By consent, not by agreement.

JOHN GORDON MORRISON, sworn. Examined by MR. ROWELL, K.C.

Q. Mr. Morrison, what is your position in the defendant company?—A. Accountant.

Q. When did you become accountant?—A. June, 1925.

Q. Have you held that position ever since?—A. Yes, sir.

40 Q. Then were you with the company prior to June, 1925?—A. No, sir.

Q. Your first duties were as accountant?—A. Yes, sir.

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Plaintiff's
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HIS LORDSHIP: Are you the only accountant or the head accountant? Are you the only accountant?—A. Yes, sir.

MR. ROWELL: You have charge of the books?—A. Yes, sir.

Q. Then will you tell me, starting with the time you commenced your work as accountant, in what books of the company did you record the sales of the company? —A. Will you be more definite when you say "record the sales"? Do you mean sales as far as accounts receivable are concerned?

Q. I mean any sales, we will come to the particulars later. In what books of the company did you record any sales?—A. In the Sales Recapitulation Book, and in the Accounts Receivable Ledger, and in the General Ledger. 10

Q. Any others?—A. Not that I recall.

Q. Now take them in the order you have mentioned. What would you record in the Sales Recapitulation?—A. The details of all invoices.

Q. Of all goods sold?—A. Yes, sir.

HIS LORDSHIP: They manufacture the beer, then does it go into a Crown warehouse, or is it in their own warehouse?

MR. ROWELL: The Carling Company has a brewery license under the Act?—A. Yes, sir.

Q. They brew their own beer?—A. Yes, sir.

Q. And they store it in their own storehouses, or is it bottled?—A. It is bottled 20 in their own plant.

Q. And kept in their own plant bottled until?—A. It is sold.

HIS LORDSHIP: Have they got a book that keeps the outgoing quantity of beer leaving your warehouse?—A. Yes, sir.

Q. What do you call that?—A. That is the Sales Recap.

MR. ROWELL: Then just so that we have the books in mind before we go into details, you said the next was the Accounts Receivable Ledger?—A. Yes.

Q. What sales were recorded in that book?—A. The charges to the purchaser of the goods.

Q. In other words, you kept the accounts of all the purchasers in that book, did 30 you?—A. Yes, sir.

Q. And it indicates the amount charged against each?—A. Yes, sir.

Q. Then third you referred to the General Ledger?—A. The General Ledger was the controlling accounts, the totals in the recapitulation of sales would be posted to the General Ledger.

Q. And charged against purchasers?—A. No, sir.

Q. Just explain what you mean?—A. The recapitulation of sales was totalled off at the end of each month, and those totals posted to General Ledger accounts.

Q. Under what names, to illustrate?—A. For instance Sales. The column showing the quantity in dollars and cents of goods sold was posted to the General 40 Ledger account headed Sales, the monthly totals.

HIS LORDSHIP: Did you keep a Journal besides that?—A. Yes, sir.

MR. ROWELL: You might explain what the Journal was.—A. The Journal was a book in which items, adjustments and so forth, were entered through.

Q. Well if you will just bring your books so that we can see how it was done. What is this book?—A. This is the Sales Recap.

Q. What period is covered by this Sales Recap. which you now produce?—A. April 1st, 1924, until April 30th, 1927.

Q. Then this Sales Recap. covers all the sales involved in this action?—A. Yes, sir.

10 MR. ROWELL: There will be no objection to my friend having these books out for their business purposes.

MR. TILLEY: They will be filed, but Mr. Justice Maclean gave us a direction not to encumber the record with all these bulky books. But they will always be available. I do not think your Lordship will find there will be any difficulty about our working it out.

EXHIBIT NO. 48: Sales Recapitulation Book

HIS LORDSHIP. Do I understand that Exhibit 48 will represent all the sales by Carlings?—A. All the export sales.

Q. Only the export sales?—A. There is a separate Recap. to record the 4.4 20 sales.

MR. TILLEY: Do you mean it goes by strength, or that it is export and domestic?—A. It goes by strength.

Q. You just told us that that Sales Recap. extended from April, 1924, to April, 1927, and covered all sales in this action?—A. Your Lordship, I did say that, because as I understand it there is no claim on any 4.4.

MR. ROWELL: The claim in the action covers everything you sold, and there are credits made for certain payments.—A. Then with that version, that does not cover all the sales.

Q. This covers all the sales of strong beer?—A. Yes.

30 Q. And you have another Sales Recap. that covers 4.4?—A. Yes sir.

HIS LORDSHIP: Then he also had it that this covered all the sales for export.—A. This covers all the sales for export and 2½ per cent. 4.4 is in a separate book by itself.

MR. ROWELL: Then except 4.4 this covers all the domestic sales and also all export sales?—A. It covers all domestic sales and export sales.

Q. Now let us start with a sheet of about the time that you commenced as bookkeeper, and you will illustrate the matter for us. We will start with sheet 54, page 54 you would call it?—A. Yes sir.

Q. For June, 1925. You start the first column "Number," what does that 40 indicate?—A. The number of the invoice.

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Q. Then the next "Name."—A. The name used there is simply an identification, as to what port or exit would be used.

Q. Let us follow down this page to illustrate. The first twelve or fourteen items are just marked LaSalle?—A. Yes.

Q. The next is marked Amherstburg, then three more LaSalle?—A. Yes.

Q. Then we have W. W. Carrick, then four more LaSalle, then A. Diesburg.—
A. Yes sir.

Q. Then one more LaSalle, then Carrick again, and then two LaSalle.—A. Yes.

HIS LORDSHIP: How did you get your information to put that in?—A. From the invoices. 10

MR. ROWELL: Perhaps you will get us the invoices of this page, and we will illustrate this. Before I ask you the details I will ask you, is the same system pursued throughout?

HIS LORDSHIP: Was it before you took hold?—A. Yes sir, it was the same procedure carried on.

Q. Was any change made after you came?—A. There might have been a slight change, just what it is I cannot indicate.

MR. TILLEY: Do you mean in this book?

MR. ROWELL: In the method of keeping track.

Q. Let me ask you, is the procedure shown on page 54 for the month of June, 20 1925, the same as in the past?—A. Not exactly, sir.

Q. Then give us this, and point out the difference. From what do we get the date?—A. From the invoice.

Q. You turn to the first item on this page, Invoice 659. What is the date of the Invoice?—A. June 1st, 1925.

Q. It is headed—?—A. It is billed to C. B. Grandi, Detroit, Michigan, Carling's C.P.R. dock. 1,500 cases of lager at \$2.65, extended as \$3,975, and across the corner is the word LaSalle. When was that put on?—A. That would be put on at the same time as it was posted in here.

Q. Where do you get the instructions for LaSalle?—A. I do not put that on, sir. 30

Q. Who put that on?—A. The young lady who made out the invoice.

Q. Had you anything to do with the making out of the invoices?—A. A little later in the period, not when I first went. I really did not start until June 20th.

Q. We will pass on to June 20th, I would like to get one you personally did.

MR. TILLEY: Would he personally do it anyway?

MR. ROWELL: Well where he can speak personally.—A. Well you will need to go on to July.

Q. Let us turn to a page then—A. No. 755, the page is No. 61.

Q. I see it is headed "Sales 9 per cent."—A. Yes sir.

Q. That means strong beer?—A. Yes sir. 40

Q. Then let us take this one to illustrate. The invoice is made out, C.P.R. dock, Windsor, Ontario—?—A. C. B. Grandi, Detroit, Michigan & LaSalle, Ontario.

Q. Let us follow it as it appears here. C.P.R. dock, Windsor, Ontario, Carling Brewing & Malting Company—and then on the face is C.B. Grandi Detroit, to LaSalle, Ontario. Now that is of how much—A. That is for 100 half barrels, and 200 quarter barrels.

Q. At what price?—A. At \$15.50 for the half and \$8.00 for the quarters, making a total of \$3,150.

Q. Where did you get the instructions to make out that invoice in that form?—

10 A. I received my instructions first from Mr. Burns who was manager of the office.

Q. Mr. Burns is general manager of the compny?—A. Yes.

HIS LORDSHIP: Is that your handwriting?—A. Yes.

MR. ROWELL: Mr. Burns was the president and general manager?—A. Yes, sir.

Q. And Mr. Lowe is Vice-President?—A. Yes.

Q. And Mr. Leon is Secretary-Treasurer?—A. Yes, sir.

Q. And the three owned the company at that time?—A. No, it was a limited liability company, there were two other shareholders.

Q. To what extent?—A. I do not know.

Q. That is the five to form a company. Then you got your instructions from 20 Mr. Burns to make it out in that form?—A. Yes.

Q. Who instructed you the price to be charged?—A. Mr. Burns.

Q. Who instructed you the quantity?—A. The quantity was taken from the shipping instructions.

Q. Who made out the shipping instructions?—A. I did.

Q. Will you get the shipping instructions for that particular one so that we can follow it. —A. The shipping instructions were not kept after they had served their purpose.

Q. Tell us what the shipping instructions in this case would show.—A. The shipping instructions would be a notice or memo to the shipper to ship to C. B. 30 Grandi, Detroit, Michigan, care of Carling C.P.R. dock or via Carling C.P.R. dock, Windsor, Ontario, to LaSalle, 100 half barrels of beer and 200 quarters.

Q. And you made out those shipping instructions upon instructions from Mr. Burns?—A. Yes, sir.

Q. He gave you all the information that was contained in the shipping instructions?—A. Yes, sir.

Q. You had no personal knowledge of the matter yourself?—A. Not at that time.

Q. Well, we are speaking of that time. A. No, sir.

Q. You saw no written order from Grandi?—A. . No.

Q. Did you see any correspondence with Grandi at that time?—A. I do not 40 recall now, that is four or five years ago.

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Q. Well, I am asking did you at any time? I ask first in reference to this, did you see any correspondence coming from Grandi in connection with this order or any order so long as Grandi's name appears?—A. I would not want to go on oath to say that I had not, nor I would not want to say that I had.

Q. Well, give us your best recollection.—A. I cannot remember whether I did or not.

HIS LORDSHIP: You began by saying that you prepared that entirely from instructions from Mr. Burns.—A. Yes, sir.

MR. ROWELL: You cannot now recollect seeing any communication from Grandi in reference to any of his orders?—A. In connection with that order. 10

Q. I go a step further, with any order where Grandi's name appears in the book?—A. I cannot recollect seeing any, no, sir.

Q. Then what would be done with the shipping instructions?—A. It would be sent to the shipper in charge of shipping the liquor.

Q. Who was the shipper?—A. J. M. Hennessey.

Q. He was shipper throughout the entire period while you were accountant?—A. Yes, sir.

Q. Just to get the steps of procedure, Mr. Burns would give you instructions, verbal instructions?—A. Yes, sir.

Q. Always verbal?—A. Yes, sir. 20

Q. Which you would embody in what you have called shipping instructions?—A. Yes, sir.

Q. What would you do when you had made out the shipping instructions?—A. Retain one copy in the office and pass the duplicate of it on to the shipper.

Q. Then did you have anything further to do with the shipping?—A. Not with the shipping.

Q. Then you kept the original. What did you do with it?—A. Retained it in the office until the duplicate came back from the shipper, which signified that the order had been filled.

Q. What did you do with the duplicate when it came back?—A. Compared it 30 with the original I had made to see that my instructions were followed out.

Q. Then having done that, what was the next step?—A. The invoice was prepared.

Q. How many copies of the invoice?—A. Two copies.

Q. Then what did you do with the copies of the invoice?—A. The duplicate went on our invoice file, the original was sent forward with a copy of the bill of lading and the B-13 to the consignee, or rather the purchaser's representative.

Q. Who made out the bill of lading?—A. The shipper.

Q. You had nothing to do with that?—A. No sir.

Q. Did he return the bill of lading to you when he returned the duplicate of the 40 invoice?—A. Yes sir—not the duplicate of the invoice.

Q. I mean the duplicate of the shipping instructions?—A. Yes sir.

Q. Then who made out the B.13?—A. At one time the shipper, later on they were out by one of the stenographers in the office.

Q. Did you make out any B.13's?—A. No sir.

HIS LORDSHIP: I do not quite see it. You got instructions first from Mr. Burns to make your entry in this book?—A. No sir, I first got my instructions from Mr. Burns to instruct the shipper to ship a car of beer to C. B. Grandi of Detroit, Michigan.

Q. Then you gave him these instructions in writing, and you kept a copy?—

10 A. In the office.

Q. And send him a duplicate of it?—A. I do, sir.

Q. Then the shipper acts on that?—A. Yes sir, he ships the goods.

Q. When does this second operation take place, and how does it take place, when the copy of the invoice, bill of lading and B.13 is shipped by you?—A. I do not grasp your statement, sir.

Q. Well I want to know what takes place?—A. The order is given to me first by Mr. Burns. I make out instructions to the shipper. He despatches the goods, making out the bill of lading. At one time he made up the B.13s, and then he sends the bill of lading, his copy of the shipping instructions, and copy of the B.13 back
20 into my office.

Q. Back into your office after the goods have been shipped?—A. After the beer has been shipped, or on the same day.

Q. But they are not attached to the goods?—A. No.

MR. ROWELL: Then you send them to the representative of the purchaser?—

A. Yes sir.

Q. Where?—A. It depends where the purchaser's representative is located.

Q. Take that one?—A. That would go to Windsor.

Q. To whom?—A. I think it was Mr. Kennedy that was acting for Mr. Grandi at that time.

30 Q. That is the late John A. Kennedy?—A. Yes sir.

Q. Who was murdered last year.

MR. TILLEY: Well—this witness did not do it.

MR. ROWELL: No, I do not blame him.

Q. Then as far as you were concerned did that complete the transaction?—

A. No, it didn't.

Q. What was next?—A. That invoice was entered through our Sales Recap., and it was also posted to the Accounts Receivable Ledger.

EXHIBIT No 49: Invoice Binder

EXHIBIT No. 50: Accounts Receivable Ledger

40 Q. You would first post the invoice into the Recap.?—A. Recapitulation of Sales.

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Q. Exhibit No. 48?—A. Yes sir.

Q. Then you would post it into the—?—A. Accounts Receivable Ledger.

Q. Exhibit No. 50. Show us how you would post that, that particular account.

HIS LORDSHIP: What is the date of that?—A. August 10th, 1925, invoice 755, \$3,150.

MR. ROWELL: Then you have on the page you now refer to—what page is that?—

A. That is Accounts Receivable Ledger, page G-1.

Q. Headed C. B. Grandi, care of C.P.R. dock, Windsor?—A. Yes sir.

Q. Then are all the invoices in which C. B. Grandi's name appears posted to this account?—A. No sir, that is C. B. Grandi, Detroit, Michigan, care of C.P.R. 10 dock, Windsor.

Q. Then tell us what items are posted to this account?—A. All items that went via C.P.R. dock.

Q. That went to C.P.R. dock?—A. Via the C.P.R. dock.

Q. Well that went to the C.P.R. dock, are posted there?—A. I do not say "to" I say "via".

Q. Your bill of lading only went to the C.P.R. docks.—A. Because the railway company will not let you bill further.

Q. So that your bills only went to the C.P.R. dock, Windsor?—A. Yes sir.

HIS LORDSHIP: You say the C.P.R. would not allow you to ship what, what is 20 it the C.P.R. would not allow?—A. To bill it farther than Windsor.

MR. TILLEY: Not bill it into the United States is what he means.

MR. ROWELL: Is this C.P.R. dock what is also commonly referred to as the Carling dock?—A. I believe it was.

MR. TILLEY: You said "is". At a certain time?—A. As far as I know it was. My knowledge is not authentic on it.

MR. ROWELL: But as far as you know the C.P.R. dock and the Carling dock, Windsor, refer to the same place?—A. Yes sir.

Q. Then all the goods where C. B. Grandi's name appears on the invoice, and the destination is C.P.R. dock, Windsor,—that is the address shown on the bill of 30 lading?

MR. TILLEY: Care of C.P.R. dock, Windsor.—A. You would have to refer to the bill of lading before I would want to state.

MR. ROWELL: Well please get the bill of lading. You produce the bill of lading relating to this particular shipment of August 10th, 1925?—A. Yes sir.

Q. It is consigned to C. B. Grandi, Detroit, care H. Low, destination LaSalle, Province of Ontario, route C.P., E.T. and Hydro, is that it?—A. Yes sir.

Q. Now who is H. Low?—A. Mr. Harry Low.

Q. Was he Grandi's representative at LaSalle?—A. He could tell you that better than I could.

Q. You cannot say?—A. No sir.

Q. Then would all the papers in this case be sent to Harry Lowe?—A. I do not recall.

Q. Well I am asking you, in the regular course of business, if his name appears there. You said it went to the representative of the purchaser at the dock, would the papers in this case be sent to Harry Low?—A. I do not know, sir.

Q. Well who would they be sent to?—A. They would be sent to C.P.R. dock, Windsor.

Q. Addressed to who?—A. I do not know who they would be addressed to.

Q. I want you to be frank with me. You told me before that the papers went 10 to the representative of the purchaser at the dock.—A. When I said that, sir, I really had reference not particularly to this period, but later on. That is shortly after I became accountant there, and the practice is not as clear in my mind as it is at a later period.

Q. I asked you to pick out one yourself with which you would be familiar, and you picked this out. I want you to give me your best recollection.—A. You asked me to pick one out near the period when I started work.

Q. And you started work in June and you have picked one out in August?—A. Yes sir.

Q. Now I ask you what is your best recollection as to where, following the 20 regular practice, those documents would be sent.—A. To Carling's, C.P.R. dock, Windsor.

Q. Addressed to whom?—A. I do not know if there would be any further address on it.

Q. Then what does this mean, destination LaSalle?—A. Just what it says, sir, that is as far as the Province of Ontario is concerned that went to the dock at LaSalle.

Q. And that is the destination shown on the bill of lading?—A. Yes sir.

Q. LaSalle is a different dock from the Windsor dock?—A. I cannot tell you the details of that, sir.

Q. I am not asking the details. You have been accountant for this company 30 for years, do you not know that the LaSalle dock is a different dock from the C.P.R. or Carling dock at Windsor?—A. I do not know anything about the docks along the river, I could not even tell you where LaSalle is.

Q. Well I will take that answer.

MR. TILLEY: It is not for you to take it or not take it.

HIS LORDSHIP: Tell me this: When that invoice, shipping bill, and B-13 were ready were you the one who sent and addressed them?—A. No sir.

Q. Who did?—A. Anyone of the clerks in the office, but I was in charge of the office.

Q. Well, it was done under your direction?—A. It was, sir.

40 Q. Then you would put those three documents in an envelope?—A. Yes sir.

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Q. How would they be addressed?—A. As I said, as nearly as I can recollect, to Carlings, C.P.R. dock, Windsor.

Q. Not to Grandi?—A. No sir.

EXHIBIT 51: Bill of Lading, relating to shipment of August 10th, 1925

MR. ROWELL: Did you get back B-13s, did they come back to the office?—A. There were.

Q. B-13s came back to the office. Will you kindly get me the B-13s for that particular shipment?—A. It might take a little time to turn them up, there are about one hundred thousand B-13s there.

Q. Well I will let you do that at lunch.

10

HIS LORDSHIP: What about the invoice? He said the duplicate came back to him, and that indicated that it had been shipped?—A. No sir, I did not say the duplicate of the invoice came back.

MR. ROWELL: The shipping instructions I think.

HIS LORDSHIP: Yes, that is what I mean. That would come back to—?—A. That came from the shipper.

MR. ROWELL: After he had shipped, indicating that he had shipped the goods.

MR. TILLEY: When you say "shipper" I suppose you mean Carling's shipper, Hennessey?—A. Yes sir.

HIS LORDSHIP: You said you retained one copy of what you called the instructions for the shipping until the duplicate came back showing that it had been shipped. You mean by that that Hennessey would be acting on the duplicate, and when the goods had been shipped he would return you this duplicate?—A. Yes sir.

MR. ROWELL: Then what did you do with these duplicates when they were returned by Hennessey indicating that the goods had been shipped?—A. As I stated, I prepared my invoices.

Q. What did you do with the instructions, what became of them?—A. They were destroyed.

Q. At the time?—A. Yes, sir.

Q. All shipping instructions destroyed at the time?—A. Yes, sir.

30

Q. What was the purpose of destroying the shipping instructions?—A. They had served their purpose.

Q. Did you have instructions to destroy them?—A. Not distinctly, it was the general practice.

Q. You found that practice when you went there?—A. Yes, sir.

Q. And you continued it?—A. Yes, sir.

Q. Now, we will leave the B-13 until you have a chance to look them up at lunch. I will go on and ask about some more of these invoices. I see a great many just entered C.P.R. dock, Windsor, C. B. Grandi, Detroit, the same as the one you have given here.—A. Yes, sir.

40

Q. Here is one on August 15th, 1925, G. Anderson, Wilson, New York, U.S.A., care of J. Watson, Whitby, Ontario.—A. Yes, sir.

Q. Where would that be charged?—A. To Mr. G. Anderson's account in the Accounts Receivable Ledger.

Q. That was not charged to Grandi's account?—A. No, sir.

Q. A. V. Hall, Point Edward, Ontario, for C. B. Grandi, Detroit, Michigan, August 15th, 1925.—A. Yes, sir.

Q. Who is A. V. Hall, Point Edward?—A. A representative or dock man for C. B. Grandi at Point Edward.

10 Q. Who told you he was a representative or dock man for C. B. Grandy?—
A. I do not recall who told me.

Q. How did you learn it?—A. In the same manner in which I learned the particulars of other shipments.

Q. From Mr. Burns?—A. Yes, sir.

Q. Would this be a case where Mr. Burns instructed you to ship 600 cartons to A. V. Hall, Point Edward, for C. B. Grandi, Detroit, Michigan?—A. Yes, sir.

Q. And the same procedure would be followed as in the other cases?—A. Yes, sir.

Q. Then I notice there are a number of other names, F. Savard, Detroit, Michigan, C.P.R. dock, Windsor. Who is Savard?—A. Savard was a purchaser in the
20 United States.

Q. Who did you learn that from?—A. First from Mr. Low.

Q. Did he take over the Grandi account?—A. I believe there was some connection between the two.

Q. Did you cease to address these shipments to Grandi and then commenced to address the same class of shipments to Savard?—A. We ceased shipping to C. B. Grandi and started shipping to F. Savard, naturally we would address our shipments to Savard.

Q. And did you carry to the debit of Savard's account any balance that was against Grandi?—A. Yes, we did.

30 Q. So that save a change in name, and the transfer from one to the other, the account continued in the same way?—A. Will you repeat your question?

Q. I say, save for the change in name from Grandi to Savard and the transfer of the debit balance from Grandi's account to Savard you continued to ship in the same way?—A. We discontinued shipping to C. B. Grandy, Detroit, and started shipping to F. Savard, Detroit, and my knowledge was that there was some arrangement about goods in transit, and so forth, and whatever balance shows in the ledger was transferred from Grandi's account to Savard's.

Q. Your knowledge is knowledge derived from Mr. Burns?—A. That particular knowledge was derived from Mr. Low.

40 Q. Then I will put it this way: Did you deal with the Savard transactions in the same way as you had been dealing with the Grandi transactions?—A. Yes, sir.

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MR. TILLEY: In what respect?

MR. ROWELL: In all respects as far as the shipping instructions, bills of lading, and so on.—A. There may have been some slight difference, but as a general rule it was the same.

Q. Then I notice here in this Accounts Receivable Ledger on the very next page, —how would you identify this page?—A. As account No. 4.

Q. In pencil the name is?—A. Is C. B. Grandi, Detroit.

Q. While in ink is Belle River?—A. Yes, sir.

Q. Whose writing is the ink?—A. I do not know, sir.

Q. Then written in pencil is C. B. Grandi, Detroit, Michigan, care of A. Dies-10 burg?—A. Yes, sir.

Q. Whose writing is that?—A. Mine, sir.

Q. When was that put in?—A. I do not recall, sir.

Q. Why did you put it in?—A. To more distinctly designate or identify the account for my own purposes.

Q. Who instructed you to put it in?—A. Nobody.

Q. How did you know to put C. B. Grandi, care of A. Diesburg?—A. From the heading that had been on the invoices I believe.

Q. Well, turn to one invoice and let me see. I want you to get me the invoice of August 7th which opens that account?—A. I do not see it. 20

Q. Well perhaps at lunch you can turn that up. Who was Mr. Diesburg?—A. He was a representative I undertand of Grandi's.

Q. Did he tell you he was a representative of Grandi's?—A. I do not recall who told me.

Q. Where did you get the information?—A. I do not know, sir.

Q. Did you have any letters from Diesburg in reference to these orders?—A. No sir, I think those were all prior to my time.

Q. Well this is August 17th.—A. 1924.

Q. I thought that was 1925. There is no year, why do you say it is 1924?—A. Because I know it is. 30

Q. Why do you know it is 1924?—A. Because here is one item \$31, here is the invoice covering that, and that is in among the 1924 invoices.

Q. Let us look at that. You said you would get the name from the invoice, but the invoice is just Belle River.

MR. TILLEY: That is not the one he was talking about.

MR. ROWELL: Then this account is a 1924 account, and when you took over the books the only heading was Belle River?—A. Yes sir.

Q. And after you took over the accounts you put that endorsement in pencil on the top at some time, you cannot tell me when?—A. No sir.

Q. Does that apply to all the sales on this page, that would be the shipping 40 point?—A. The whole account was completed before I took over.

Q. And the only thing you are responsible for is writing in pencil on the top, C. B. Grandi, Detroit, Michigan, care of A. Diesburg?—A. Yes sir.

Q. Then I noticed as you turned these over there were several that appeared to be marked Cash Sales (that is in Exhibit 49). Here is one to illustrate, can you tell me anything about that?—A. No sir.

Q. September 2nd, 1924, September 3rd—

HIS LORDSHIP: Why do not deal with 1925?

MR. ROWELL: Then I notice a number of other accounts at different docks. How did you deal with them? Take the Kingsville dock, how is that dealt with?—

10 A. What account?

Q. I mean any account you had for Kingsville dock during the year 1925. A. I would have to refer to the ledger or the invoices.

Q. Well, refer to anything you like and tell me how you dealt with shipments to Kingsville?—A. I believe the ledger sheet that covered Savard's is already in as an exhibit, I would have to refer to that.

Q. Were there no shipments to Kingsville prior to Savard?—A. There may have been.

Q. Have you an account in the book marked D. Koven, Kingsville?—A. Yes sir—no that is Leamington.

20 Q. Let us see that. In pen D. Koven, Leamington, and is this in your writing written in at the top?—A. No sir.

Q. Whose writing is that?—A. I do not know, sir.

Q. You do not know whose the pencil writing is, C. B. Grandi, Detroit, Michigan?—A. No sir.

Q. What year is that?—A. That would be 1924.

Q. See if you can get some 1925 where Koven's name appears.—A. Can you let me scrutinize the exhibit, Savard's ledger account?

Q. (Exhibit F.) What year does this start?—A. This is August, 1925.

30 Q. It starts "Brought forward \$32,025.21", where does that come from?—A. I do not know, sir, that is not my writing.

Q. But it was done under your instructions while you were there as accountant. Did that run following Grandi's account?—A. That apparently is transferred from Grandi's account.

Q. That is the debit balance in Grandi's account on the date the Savard account was opened?—A. Yes sir.

Q. Now you were going on to tell me about Koven. Here is Koven's name, what is this?—A. Express on cartons.

Q. To D. Koven, what does that refer to?—A. Express on empty cartons.

HIS LORDSHIP: Did you know Savard personally?—A. I met him once.

40 Q. Was he an employee of your company?—A. No sir.

Q. Not paid by your company?—A. I never saw any payments made to him,

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No. 19

John Gordon
Morrison
Examination
April 16, 1929
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Q. No entry made in your books of payments to him? A. No sir. Advances I believe some way or other, but not what would be charged as a salary payment or anything of that nature. I think one of our general ledger accounts shows advances re F. Savard.

MR. ROWELL: Do you find Koven's name?—A. On there, no sir.

Q. Can you tell me where Koven's name appears after you became accountant, or were the transactions in which his name appears all before you became accountant?—A. I cannot say definitely without going through these, I do not recall.

Q. Then was Siegal, St. Thomas, Port Stanley, during your period?—A. Yes sir.

Q. Now this is F. Savard, Cleveland, Ohio, care of Siegal, Port Stanley. Where did you get instructions for that, the same as the other?—A. Yes sir.

Q. Where does Savard live?—A. In the United States.

Q. Where?—A. I do not know just where.

Q. And were these goods shipped to Port Stanley care of E. Siegal?—A. Yes sir.

Q. Did you know Siegal?—A. Yes sir.

Q. Was he a bootlegger in St. Thomas?—A. I do not know, sir.

Q. Was he not a dealer in liquor in St. Thomas, to your knowledge?—A. I never had any dealings with him so that I could not say definitely whether he was or not.

Q. Did he reside in St. Thomas?—A. Yes sir. 20

Q. Did you know of any other business he carried on?—A. No sir.

Q. Then did you have any transactions in which Mr. Paquette's name appears?—A. No sir.

Q. Not while you were there?—A. No sir.

Q. If there were any they were before your time?—A. Yes sir.

Q. Were any shipments made to Sarnia during your time?—A. Yes sir.

Q. In whose name were those shipped?—A. E. Schreiber of Port Huron, Michigan.

Q. E. Schreiber, Port Huron, Michigan, care of Mr. Loughead, Sarnia?—A. Yes sir. 30

Q. Who was Loughead?—A. I believe a representative of E. Schreiber.

Q. Who told you that?—A. I do not know.

Q. Where did you get that information?—A. I do not know unless it was from Mr. Burns.

Q. Instructions for those shipments came from?—A. Mr. Burns.

Q. Did you ever see any letter from Loughead?—A. No sir.

Q. Do we find then a different party's name appearing at each different port?—A. Just make your question more definite.

Q. Well you have shown us Sarnia, it appears care of Loughead, Port Stanley appears care of Siegal, Carling, C.P.R. dock, we have had that. Now take Amherst-40 burg.—A. The best way is to refer to the invoice.

Q. Well take your invoice.—A. Here is one Amherstburg.

Q. How is that made out?—A. F. Savard, Detroit, Michigan, C.P.R. dock, Windsor, F. Rymal, Amherstburg.

Q. Would you get the same instructions from Mr. Burns in that case?—A. Yes sir.

Q. Do you know Mr. Rymal?—A. No sir.

Q. No letter from him that you have seen?—A. No sir.

Q. Then you have given me Belle River and Amherstburg. What other ports did you ship to?—A. To Port Colborne, Whitby, Port Maitland.

10 Q. Well we have had Whitby, give us Port Colborne and Port Maitland.—A. I do not believe we have had Whitby.

Q. Well, give us Port Colborne and Port Maitland to start with.—A. (Shows account.)

Q. This is Mr. Robinson, Erie, Pennsylvania, care of A. E. Sandal, Port Colborne. Your instructions in this case, the same as the others, from Mr. Burns? A. Yes sir.

Q. Do you know Mr. Sandal?—A. No.

Q. You do not know that he is in the liquor business at Port Colborne?—A. I know nothing about him, sir.

20 Q. To whom would the papers be sent in this case, to Sandal?—A. Yes sir.

Q. And where Mr. Diesburg's name appears the papers would be sent to him, is that correct?—A. I do not recall saying that I had anything to do with the papers in connection with any shipment where Diesburg's name came in at all.

Q. Then Mr. Siegal, would the papers be sent to Siegal?—A. I think if you refer to shipments to Siegal, our own trucker took them and handed I believe to either Mr. Siegal or the collector of Customs at Port Stanley.

Q. You were not there yourself?—A. No sir.

Q. Then they would be sent in this case to Sandal?—A. Yes sir.

Q. What other port did you mention?—A. Whitby.

30 Q. Let us see Whitby.—A. (Account shown).

Q. We had that before, G. Anderson, Wilson, New York, care of G. Watson, Whitby. The papers would be sent to Watson?—A. Yes sir.

Q. And these are instructions you got from Mr. Burns?—A. Yes sir.

(Noon adjournment, 1 p.m. to 2.30 p.m.)

AFTERNOON SESSION

TUESDAY, April 16th, 1929.

MR. URQUHART: Your Lordship, Mr. Rowell asked me to ask your Lordships' permission to call a number of short witnesses until he could come.

JOHN FRANK MILLER sworn. Examined by MR. URQUHART:

40 Q. What is your occupation, Mr. Miller?—A. Travelling brewery inspector for the Liquor Control Board.

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John Gordon
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No. 20

John Frank
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No. 20

John Frank
Miller
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(continued)

Q. In 1924 and 1925 what was your occupation?—A. I was inspector under the Ontario Temperance Act.

Q. Located at what point?—A. Stationed at Niagara Falls, Ontario.

Q. When did you go to Niagara Falls?—A. Around April of 1924.

Q. You continued there until what date?—A. I think it was in February, 1926.

Q. You know William Johnston do you, of the Ontario Dispensaries?—A. I only met him once.

Q. You know who he is though?—A. Yes.

Q. He was the receiving clerk in the Ontario Dispensaries?—A. Yes.

Q. He gave evidence here, page 312, that on October 16th, 1924, Inspector 10 Miller of Niagara Falls sent in a car of beer. Are you the Inspector Miller referred to in that?—A. Yes.

Q. Tell us what kind of beer it was and what the car contained.—A. I will have to refer to my diary, it is so long ago. On the 27th of September, 1924, two other constables and myself searched a barn in the Township of Stamford—

Q. The Township of Stamford is near what point?—A. About half a mile to Niagara Falls City limits in Welland County.

Q. To whom did the barn belong, whose property was it on?—A. The man who lived in the house where this barn was situated was a man by the name of Johnston, he rented the barn and the house. 20

Q. Are you sure Johnston is the name?—A. No, pardon me, Harry Williams.

Q. You, with these two other officers searched this barn. Just what did you do and what did you find?—A. There was a padlock on the door, we looked through the cracks and we could see cartons of beer there, presumably beer, so we burst the padlock off the door, opened the door, and located 836 cartons of Carling's ale in quart bottles, a dozen in a carton.

Q. What kind of ale was it?—A. Well we did not open every carton, but those we opened were all labelled 9 per cent.

Q. Were there any marks at all on the cartons you saw?—A. They were addressed to C. B. Grandi, Detroit, Michigan. 30

Q. This was in the Township of Stamford in the Province of Ontario?—A. Yes, sir.

Q. What happened next?—A. We had to get six trucks to take it to Hamilton dispensary.

Q. Conveyed it to Hamilton dispensary?—A. Yes.

Q. And from there it went to the Toronto dispensary?—A. Yes.

Q. Was the matter dealt with in any Police Court or anything?—A. On the 11th of October a charge of keeping for sale which was laid against Harry Williams was dismissed.

Q. And what happened to the beer?—A. The beer was confiscated by Magistrate Alex. Fraser of Niagara Falls. 40

Q. Now, this barn, just how was it located?—A. It was located within 20 feet of the Hydro Power canal there, with a railroad siding between the barn and the power canal, I presume it was used when they were building the power canal.

Q. The railway siding, how far did it come from the barn?—A. It is hard to say from memory, but the barn was about 20 feet from the canal, and the siding was between.

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Q. Had you other seizures during the period you were at Niagara Falls, other seizures of Carling's beer?—A. There was from time to time small seizures, but did not mark them down, this is the only one I marked the brand because it was such
10 a large quantity.

John Frank
Miller
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(continued)

HIS LORDSHIP: Were they all Carling's beer?—A. No, not all.

Q. I mean that seizure?—A. Oh, yes, that seizure was.

Cross-examined by Mr. Tilley, K.C.

Q. That seizure was made in the time of the Ontario Temperance Act, was it?—
A. Yes, sir.

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Q. Did you find anything else in the barn in the way of liquor or beer except this 836 cartons?—A. No, sir.

Q. I suppose you knew it was there before you went?—A. No, we did not.

Q. Or suspected it was?—A. We had a search warrant for the place but we did
20 not know what we would find.

Q. Why did you have a search warrant for the place?—A. Our information was, to the best of my memory, that this barn and property was being used as a transfer point for bootlegging loads.

Q. Over to the States?—A. No, it was not that at all, nothing mentioned of the States.

Q. I did not ask you what was mentioned. You got information that this was being used as a transfer point?—A. Yes.

Q. Therefore you got out a search warrant?—A. Yes.

Q. At that time there was some view entertained by the Province or you officers
30 that you could not store beer, if it was in transit to the States even, is not that so?—

A. Well I do not know much about—

Q. Those were your instructions, that there could be no storage of beer any place even though it were for export, unless the place was a private residence?—A. The only way I can answer that is to say that we had instructions to seize every truckload of beer or liquor that was on the highway.

Q. You made this seizure at that time?—A. Well I do not remember just when,—

Q. Well about that time?—A. It was under the O.T.A., but I do not remember when the other that you speak of happened.

40 HIS LORDSHIP: You mean the seizure in September, 1924.

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John Frank
Miller
Cross-
examination
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MR. TILLEY: At that time you had instructions to seize everything that was on the highway?—A. I say I do not know whether it was exactly at that time that we had those instructions.

Q. It must have been about then, or before then, wasn't it, because at that time you were making these seizures?—A. Yes, in fact we made these seizures right up to the time when the O.T.A. went out of business.

Q. That is seizures when they were on the highway?—A. Yes.

Q. Did you stop to enquire whether they were on the highway on the way for export or not, you just seized them all?—A. We seized everything we found on the highway. 10

Q. And this place you say you heard or suspected was being used as a sort of transfer point or storage place for beer, and you went and made the seizure?—A. No, what I said was that the information was that this place was a transfer point for beer, but not for export purposes, our information was it was being brought into Niagara Falls by truck or otherwise and put in this barn and then distributed locally.

Q. Then you do not know what happened after it left the barn.—A. No, all I say is that is the information we got the search warrant on.

Q. Have you got the paper here?—A. No, I have destroyed everything on the O.T.A.

Q. Why was it destroyed, that is what the witness was being asked this morning, 20 why did you destroy it?—A. I did not see any need of keeping it when the O.T.A. went out of existence.

Q. Then the charge was that in the first place Williams was keeping it for sale?—That is what we believed, yes.

Q. And he proved to the satisfaction of the Magistrate that he was not?—A. The Magistrate took his defence plea, yes.

Q. And that was his defence plea, that he was not keeping it for sale?—A. No, it was not. His defence was that he granted the barn to a man named Johnston but he did not know who this Johnston was or anything about him, and the Magistrate believed that he had sublet that barn to a man named Johnston, therefore Williams 30 had nothing to do with it.

Q. Was Johnston prosecuted?—A. We never could locate him, he could not give us any information about Johnston.

Q. At any rate no person was convicted of keeping it for sale?—A. No.

Q. But there was a confiscation of beer because it was stored in a place other than a private residence?—A. Yes.

Q. And that is the whole case?—A. That is all I know about it.

No. 21

Ivan A.
Weinert
Examination
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IVAN A. WEINERT, sworn. Examined by Mr. Urquhart:—

Q. What is your occupation, Mr. Weinert?—A. Manager of the Canadian Bank of Commerce, Ford City. 40

Q. Do you know a man named O. Paquette?—A. Yes sir.

Q. Is he here?—A. Yes sir.

Q. You have been subpoenaed to bring to court the bank account of Mr. Paquette?—A. Yes sir.

Q. Is it here?—A. Yes sir.

HIS LORDSHIP: From what date to what date?—A. I was subpoenaed to bring from the first of January, 1924, to the 31st December, 1927.

MR. URQUHART: This account you have labelled "A" is an account of O. Paquette or—A. Agatha Paquette or either of them.

MR. TILLEY: That is not evidence against my clients, I do not know on what theory my friend is asking to put it in.

HIS LORDSHIP: There is no foundation, Paquette's name was not mentioned except casually.

MR. URQUHART: It was mentioned as one of the parties to whom Carling's beer was billed.

MR. TILLEY: Might it not be treated as here, if it becomes evidence we can refer to it. There is nothing you want from the witness about it?

MR. URQUHART: No.

MR. TILLEY: My friend can have it and produce it, and I will not raise any question about this witness having to be brought back.

20 HIS LORDSHIP: Mark it for identification.

MR. TILLEY: It is a big thing, if we should have to appeal these are terrible things to print. I suggest if my friend will just keep it, and whenever he produces it, if your lordship thinks it should be used I will not raise any technical objection about it being identified, I will trust him to produce the same thing.

MR. URQUHART: We propose, I understand, to link it up with other evidence I want to get the bank manager away.

MR. TILLEY: I am not going to ask him to come back.

HIS LORDSHIP: You are not going to ask any details about the account?

MR. URQUHART: No.

30 HIS LORDSHIP: The account will be in the hands of the Registrar for the time being.

Q. There are several bundles I see, are they all in connection with Paquette's account?

WITNESS: His name appears on every one.

MR. URQUHART: The account marked "A"?—A. That is just my own identification.

Q. Is Onesime or Agatha Paquette or either of them. Then there is another account which you have marked "B," as No. 2 account—

MR. TILLEY: I thought we were saving time, I do not know what my friend is asking all this about. They will all be here, I will not object to any question about the bank—

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(continued)

HIS LORDSHIP: Is there any reason for marking them "A" and "B?"—A. No, they are merely my own mark so that I could identify these packages.

Q. What are they?—A. The deposit slips.

MR. TILLEY: They will be left with the Registrar, and I will not object to the proof later on.

MR. URQUHART: Have you any cheques in connection with these accounts?—No, they are all handed back at the end of each month.

Q. Then there is one, the Dominion Export Company. What connection has that with Paquette?

MR. TILLEY: Does he know? 10

WITNESS: He is one of the members.

MR. TILLEY: How does he know that?—A. I have a document at the office signed by Mr. Paquette as one of the partners, I am sorry I did not bring it, I meant to, but I did not get the summons until late, and I had to get all these vouchers up, a big package.

MR. URQUHART: I think it should be numbered for identification anyway, so that they can be referred to.

MR. TILLEY: If my friend does not take it as I offered I shall object to the whole thing, the witness will simply have to stay. But I do not want to raise it just technically, here they are in the hands of the Registrar, and I will take it, whenever they are 20 produced, if they become relevant, as though the bank were producing them here as a witness.

HIS LORDSHIP: Put them in the hands of the Registrar.

HAROLD H. MICKLEBOROUGH, sworn. Examined by MR. URQUHART.

Q. What is your occupation?—A. Accountant at the east end branch, Imperial Bank, St. Thomas.

Q. Do you know E. Siegal?—A. Just to see him.

Q. You were subpoenaed to produce accounts of Edward Siegal?—A. Yes.

Q. Have you the original accounts there?—A. Yes. These are certified copies.

MR. URQUHART: Can they stand in lieu of the original account? 30

MR. TILLEY: Just in the same way as the others.

Q. Have you the originals here?—A. I have. If it is possible we would like to keep them. These are an exact copy.

MR. TILLEY: That will be all right, only we might just like to see the original, let us make a little check if we want to.

MR. URQUHART: Then what are these documents?—A. Deposit slips.

HIS LORDSHIP: Corresponding with the account?—A. Yes, and I brought the pass book receipt for all the cheques, I have not got those.

MR. TILLEY: This is for the cheques according to the pass book?—A. Yes.

MR. URQUHART: This account apparently runs from the 25th of February, 1925, 40 to the 4th of November, 1926.—A. Yes.

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Harold H.
Mickleborough
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- Q. Was the account closed then?—A. Yes.
- Q. Where does Siegal live?—A. He used to live in St. Thomas; I do not know where he is now.
- Q. Do you know what his business is?—A. Junk dealer he is purported to be.
- Q. Do you know anything more about his business than that?—A. No.
- MR. URQUHART: I would like to deal with them in the same way.
- MR. TILLEY: Deal with them in the same way, yes.
- MR. URQUHART: Does your Lordship not think there is ground work—
- HIS LORDSHIP: There is some in this case, we have had the dealings of the
10 company with this man.
- MR. URQUHART: Then might they be marked?
- MR. TILLEY: They are not evidence against me. How is a man's bank account evidence against me? I do not know what transactions he may have had.
- HIS LORDSHIP: They are not evidence against you, but they are evidence of what this purchaser from you—
- MR. TILLEY: That is not evidence against me. I object to someone's bank account being put in merely because he bought my beer.
- HIS LORDSHIP: Let us leave them that way at present, and we will discuss the two of them later.
- 20 NORMAN DOUGLAS STUART, sworn. Examined by HON. MR. ROWELL, K.C.
- Q. Mr. Stuart you are in the employ of the defendant, the Carling Company?—
A. Yes, sir.
- Q. What is your position?—A. At the present time branch manager, Montreal branch.
- Q. What was your position when you entered the employ of the company?—
A. Bookkeeper.
- Q. Were you in charge of the books?—A. Yes, sir.
- Q. When did you take charge of the books?—A. I was bookkeeper when the London company first started.
- 30 Q. When did you enter upon your duties as bookkeeper?—A. Some time in January, 1924.
- Q. That would be when the company commenced its business?—A. Soon after, yes.
- Q. How long did you continue as bookkeeper?—A. About a year or a year and a half.
- Q. Can you tell me the date upon which you ceased?—A. I do not remember. When Mr. Morrison took over.
- Q. Then between you and Morrison you cover the entire period?—A. Yes.
- Q. Had you charge of the books or was there anyone in charge of the books for
40 you?—A. I had charge of the books.
- Q. Who did you take your instructions from?—A. Mr. Burns.

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Q. Then, I do not want to go into detail more than necessary, tell us how you dealt with a transaction. Did you get instructions from Mr. Burns, as Mr. Morrison did, to make out shipping instructions?

MR. TILLEY: There are two questions in that. I do not know why you should couple it up with Morrison. Can you not find what he did.

MR. ROWELL: Just tell us then what you did.—A. As near as I can remember it is a long time ago, we used to get the instructions from Mr. Burns. I do not, remember that we had any written instructions to the shipper, we simply told him to ship them out.

Q. Then just let us get the procedure as far as you were concerned. You got 10 the instructions from Mr. Burns?—A. Yes.

Q. Would that be instructions to ship so many cartons or barrels to some particular person at a particular place?—A. Yes.

Q. It would be the full information necessary in order to give instructions to the shipper?—A. Yes.

Q. Then with that information, you would give the instructions to the shipper?—A. Yes.

HIS LORDSHIP: Verbally?—A. Verbally, yes.

MR. ROWELL: No document was made out, no shipping instructions?—A. No, sir.

Q. When did you first put in writing in any form the instructions you got from Mr. Burns?—A. I would not put them in writing at all, any instructions from him, until the shipper had made his shipment. Then he would send in the bill of lading, and when the bill of lading came in an invoice would be made.

Q. You took the invoice from the bill of lading?—A. The invoice would be taken from the bill of lading.

Q. Then, would he send in anything else than the bill of lading?—A. Unless of course at a certain time he was making the B-13s.

Q. Did you make out any B-13s?—A. No.

Q. Who made them out?—A. The shipper made them out, or one of the girls 30 in the office.

Q. Was that done under your supervision as in charge of the office?—A. I do not know that the shipper would come under my supervision.

Q. No, I am speaking of the girls in the office.—A. They would do it under my supervision, yes.

Q. Who gave them the information to make out the B-13s?—A. They would get the information from the bill of lading or from instructions from Mr. Burns.

Q. Then did the B-13s come to you?—A. No.

Q. They never came into your custody at all?—A. No.

Q. What did you do with the invoice when you made it out?—A. When the 40 invoice was made out it would be put on the invoice file, the amount carried over in

the Sales Recap., and from the Sales Recap. it would be posted to the customer's ledger.

Q. Did you send a copy of the invoice to anyone?—A. No.

Q. So that you did not mail any documents to anybody?—A. Not personally, no.

Q. Were any documents mailed to anybody to your knowledge in the office?—

A. Not that I remember, that I can recall.

Q. Then just let us see one or two transactions of which you had charge. You made out the invoice. Let us see the invoice book, Exhibit 49. Turn to your period please.—A. These are some of mine.

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10 Q. Let us get down to the month of June, 1924.—A. Someone else started here.

Q. Are these in your writing?—A. No.

Q. Who would make out those invoices?—A. I do not remember who made these out.

Q. Here is June 4th, cash sale, truck. Who made that out?—A. I don't know.

Q. How is that treated in the ledger?—A. That would go from there on to a page similar to this. (In Exhibit 48.)

Q. Well turn to it. You find it entered on page 11 of what?—A. Recap. of Sales.

Q. At how much?—A. \$60.

20 Q. And it shows no name under the column of names, it is a blank?—A. It is a cash sale.

Q. Can you tell me anything about that sale?—A. I cannot tell you anything other than what shows on the invoice.

Q. Then the next page is June 5th, also entered cash sale. What is the first? Ale 9 pints, 3 quarts. What would that 9 pints mean?—A. I do not remember, sir.

Q. And the price is \$50.—A. That is what it says on the invoice.

Q. And then lower appear—2·5 is it?

MR. TILLEY: It must be 2½. At a cheaper price.

30 MR. ROWELL: You were the accountant?—A. Yes sir, but I cannot remember what it was for at that time, I did not make the invoice out.

Q. Well look and tell me what it is for.—A. I do not know, sir.

Q. Then the next is J. Famularo, who is he?—A. I do not know, but was the name of an account given to me.

Q. You do not know who he was?—A. No sir.

Q. Did you ever see any writing from him?—A. No sir.

Q. Do you know where he lived?—A. No sir.

Q. Can you trace in your books where that shipment went to? It is marked CHARGE. I think his name appears quite frequently.—A. I am afraid I cannot, it is four years since I have had anything to do with these books at all.

40 Q. Can you find where it is entered in this Sales Recap.?—A. (Shown.)

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Q. It appears on page 11, the same page, under Outside Ledger, \$24, J. Famularo. What does Outside Ledger mean?—A. I do not remember, unless it was shipments outside the city.

Q. What book would contain those?—A. The Accounts Receivable Ledger.

Q. Will you turn and see if you can find it in the Accounts Receivable Ledger?

HIS LORDSHIP: Is there any date on that?

MR. TILLEY: June 5th, 1924.

WITNESS: It is not recorded there. (Showing ledger account.)

HIS LORDSHIP: Would it be because it is a cash sale?

MR. ROWELL: The heading of the account is just J. Famularo, Special Account. 10 No address given.

HIS LORDSHIP: Would you deal with a cash sale a different way?—A. A cash sale was entered right through the cash sales account and carried to the cash book at the end of the month, would not be posted to the customers' ledger at all.

MR. ROWELL: Then the next, just looking at these as they come, page after page, is C. B. Grandi, Detroit, care A. Diesbourg, Belle River, C.P.R. Is that your handwriting?—A. Yes sir.

Q. June 5th, 1924. Where did you get the instructions about A. Diesbourg, Belle River?—A. From Mr. Burns.

Q. Then where is that carried to in the Sales Recapitulation or Outside Ledger?— 20
A. The page has apparently been taken out.

Q. Is it among those that Mr. Morrison had at the front?—A. (Page found with Mr. Morrison's help.)

Q. You find it in the Ledger. How do you indicate that page?—A. It should be indicated here, but the number is not on it.

MR. TILLEY: Well it is 1 anyway.

MR. ROWELL: Is this your handwriting?—A. No sir.

Q. Was it made out since you left the company?—A. No sir—at least I do not think so. It looks like someone that was in the office at that time, one of the girls.

Q. Whose writing is the Belle River on it?—A. That is mine. 30

Q. Whose writing is on the top, apparently something has been rubbed out and a name put in.—A. I do not know, sir.

HIS LORDSHIP: Are you quite sure this is not your handwriting?

MR. TILLEY: He says that is his.

MR. ROWELL: But the name is not yours?—A. No sir.

Q. Do you know who wrote it?—A. No sir.

Q. Do you know what was there before?—A. No sir.

MR. TILLEY: I suppose the witness will say that sheet must have been there when he was there? I mean has he written it since?—A. No sir, that was there when I was there. 40

MR. ROWELL: And you put the Belle River on?—A. Yes sir.

Q. But the name above the Belle River you did not put on?—A. That is not my writing. Of course it may have been written in pencil the same as this and some one has simply written over the top.

Q. Is it in pencil or ink? It is in pencil I think, but you cannot say?—A. No sir.

MR. TILLEY: I do not know what the point of all this is. One likes to be able to follow a case as we go on.

MR. ROWELL: That is Hisburg there, I suppose it is intended for Diesbourg?—

A. I do not know, sir.

Q. What do you make out of it?

10 MR. TILLEY: Well there it is, His Lordship can look at it.

WITNESS: You can make it a D or an H.

MR. ROWELL: Did you know Diesbourg, did you ever see him?—A. No sir.

Q. Never had any letters from him?—A. No sir.

MR. TILLEY: Do you mean the company never had?

MR. ROWELL: Well he never saw any.

Q. You never saw any while you were there?—A. No sir.

Q. Apparently he was getting large quantities of liquor, by this account?—

A. It has been charged to him in the account.

Q. Can you tell me where the shipments were made in respect of that account?—

20 A. To Belle River.

MR. TILLEY: There is no way of identifying that page unless you do it. Mark it yourself in the right hand corner with an X.

MR. ROWELL: Can you tell me whether any shipments went to Belle River other than entered in this Diesbourg account?—A. I do not remember, sir.

Q. Were you shipping to Amherstburg, how were those dealt with?—A. I do not remember.

Q. Well take a look and see. Mr. Morrison says he cannot speak as to your period. Here on the very first page of this Exhibit No. 50 appears Amherstburg, it is just entered under the name Amherstburg, no consignee's name appears. A. 30 Not on the ledger, there may be on the invoice.

Q. Why did you enter it in the ledger in this form, just Amherstburg?—A. I do not remember why it was now.

Q. Did you do it on instructions?—A. I imagine I had instructions on it.

Q. Who from?—A. Mr. Burns.

MR. TILLEY: You mean if you got instructions you imagine it would be from Mr. Burns, is that what you mean?—A. Yes.

MR. ROWELL: Then there appear to be some pages of this Amherstburg account, just entered in the same way, just Amherstburg. Then turning over there are three pages just headed Amherstburg in that ledger. Then the fourth page is Amherst- 40 burg, D. Koven. Who was D. Koven do you know?—A. I have met Mr. Koven, yes.

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Q. At the brewery?—A. I do not remember whether it was at the brewery or elsewhere that I met him.

Q. Where did he live?—A. I do not know.

Q. Did you meet him at Sandwich?—A. No.

Q. You do not know where he lives?—A. I do not know where he lives.

Q. Under what circumstances did you meet him?—A. I don't remember, sir.

Q. Was D. Koven buying this liquor that appears here on this account, Amherstburg, D. Koven?—A. I do not know whether he was buying it or not.

Q. Was it shipped to him?—A. I do not know if it was shipped to him or through him. 10

Q. Then the next page is Amherstburg Account No. 2, headed New Account. It starts off with credits taken over from D. Koven, doesn't it?—A. That is what it says there, sir.

Q. And it is simply headed Amherstburg, New Account. And it covers two pages in this ledger?—A. Yes.

Q. Then the next, just running on, Account No. 3, is E. S. Andrick, Walkerville, Ontario.—A. I do not know anything about that, sir.

Q. Well you were there in June, 1924?—A. Yes.

Q. Upon whose instructions would these entries be made?—A. I do not know I am sure whose instructions this would be made on, I do not know anything about 20 the account.

Q. Was it made in the books while you were the accountant?—A. No sir, because since looking at the ledger I remember that Mr. Ellicott came in between Mr. Morrison and me.

Q. But this is June, 1924, isn't it?—A. I do not know, sir, it is not my writing.

Q. Perhaps Mr. Morrison can tell us, these early accounts are 1924, are they not?

MR. MORRISON: Yes sir.

Q. Then that must have been made while you were there, but you cannot tell anything about it? 30

WITNESS: I do not remember anything about the account.

Q. Then the next is J. Bannon, Account No. 1. Did you know J. Bannon? —A. Yes sir.

Q. Where did he live?—A. I do not know.

Q. He has given evidence in this case, and my recollection is it is Windsor or Sandwich, I am not sure.—A. Well I do not know, sir.

Q. Is this your writing?—A. J. Bannon is my writing.

Q. This account was opened by you in the books—A. Yes, sir.

Q. How did you come to open it? Just tell us frankly.—A. Just in the ordinary way of business, that you would get the charge to Bannon. 40

MR. TILLEY: Is there any use going over with this witness about his recollection five years old?—A. I suppose what he did was done on instructions.

HIS LORDSHIP: I do not know what counsel is aiming at, but I will not interfere.

MR. TILLEY: Your Lordship sees that we have no notice what the witness is required to come here and talk about. I never saw the witness until he came in the box, that I know of. This is five years old, he has not been asked to refresh his memory or anything. He is working in Montreal now.

MR. ROWELL: Then do you remember Kingsville accounts, Devitsky, Detroit, Michigan, is that during your time or since your time?—A. Since my time.

Q. Then here comes Diesbourg again, Account No. 1. Is that during your time?—A. It is not my writing, sir.

10 Q. It is April, but no year above it. Can you tell us when it was entered?—A. No, sir, I do not remember whether it is mine or not.

Q. Here is one, C. Elwood, Port Huron, Michigan, care of Thomas Reid, Fort Wright, Ontario. Is that yours?—A. No, sir.

Q. Then here is C. B. Grandi, care of P. A. Smith, Riverside, is that one of yours?—A. It is not my writing, sir.

Q. You do not know anything about that. C. B. Grandi, Detroit, Michigan, is that yours?—A. The heading is mine.

MR. TILLEY: You mean your writing?—A. Yes, sir, my writing down to here.

MR. ROWELL: Your writing down to the end of April, 1924. Whose writing 20 is it after that?—A. I do not know, sir.

Q. Then there is a D. K. Grandi. Do you know why they changed that to D. K. Grandi?—A. No, sir.

Q. Then comes C. B. Grandi, addressed James Hart, Amherstburg.—A. I do not know anything about it, sir.

Q. Then there is C. B. Grandi, Walkerville. What is the second name?—A. Savard.

Q. Is that your writing?—A. No, sir.

Q. James Hugel, Port Lambton, Account No. 3, is that your writing?—A. No, sir.

30 HIS LORDSHIP: Are we not getting to a period when he was not in that office?

MR. ROWELL: It is difficult to say, there are no dates. Can you tell me whether that was during your period or not?—A. No, sir, I do not think so.

Q. It is February, 1925, I am instructed. Can you tell us anything about it?—A. It is none of it my writing and I do not recollect the account at all.

Q. Then have you an account for Mr. Loughead?—A. I do not remember it.

Q. Can you check and see?—A. There is an account.

Q. H. W. Loughead, in October, 1924. Is that your writing?—A. No, sir.

Q. That was during your period?—A. I was in the office at that time.

Q. Do you know where Mr. Loughead lives?—A. No, I do not know where he 40 lives.

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Q. Have you met him?—A. No, sir.

Q. Then, have you an account for Paquette?—A. (Shows account).

Q. O. Paquette, Ford City. It commences September 23rd, 1924. Is that in your writing?—A. No, sir.

Q. It is during your period?—A. During my period.

Q. It is a pretty substantial account?

MR. TILLEY: It is shown right in the book whether it is substantial or not. To a lawyer \$1,000 would be substantial, to a beer manufacturer it would take about a million to be substantial.

MR. ROWELL: Well, it is somewhere between the two. 10

Q. Then, the Siegal account was not during your period?—A. No, sir.

Q. Did you get any orders for any shipments during the period you were in charge of the books except through Mr. Burns?—A. No, sir.

Q. Did you get written orders for any shipments?—A. No, sir.

Q. Did you see written orders from anybody for any shipments?—A. No, sir.

Q. Who paid for these different shipments?

MR. TILLEY: Is that collectively?

MR. ROWELL: I am speaking generally. Perhaps I had better put it this way. Where did you get the money from?—A. In most cases brought by Mr. Burns.

Q. In most cases, in all cases except the cases—A. Where in the latter part of 20 my term they transferred money from the Windsor account.

Q. From what account in Windsor was it transferred?—A. Dominion Bank.

Q. To the credit of whom?—A. Carling Export Brewing & Malting Company.

MR. TILLEY: We have had all the evidence about that before. We have had the facts and the accounts, and have gone over them, I do not know why we should ask the witness his recollection.

MR. ROWELL: I want to ascertain the method of doing the business. We have not had it proven from an officer of the company.

Q. Transferred from the Carling Brewing & Malting Company, Windsor, to the bank account of the Carling Company in London?—A. Yes. 30

Q. Were those transfers made from the Windsor account in substantial sums?

MR. TILLEY: I object to that. We have had the accounts and seen the figures. Why are we concerned with whether this witness thinks they are substantial or not? Exhibit 16 is the account, the witness has not seen this for five years and was not warned what he was to be asked.

MR. ROWELL: That question was only leading up to a more important one. It is an obvious fact from the account, but I want to get the whole situation.

Q. Did you have a record in the books of the company at London of the Windsor bank account of the Carling Company?—A. I do not understand the question.

Q. Did you keep a record in the books of the Carling Company in London of 40 the bank account of the Carling Company at Windsor?—A. No sir—I do not remember keeping it.

Q. Who kept the records of the Carling Bank account at Windsor?—A. I do not know.

Q. An examination of the London books would not disclose receipts and disbursements from that account except as far as the money was transferred to London. A. It would show the transfers that came from it.

Q. But it would not show any more?—A. It would show all the money that came to London.

Q. Do you know what books were kept at Windsor?—A. No.

Q. Did you ever examine the books at Windsor?—A. No sir.

10 Q. How were the transfers from the Windsor bank account entered in the books, where did they appear in the books of the company?—A. They appeared in the Cash Book, and from there transferred to the account we were instructed to post them to.

Q. Did you post them to more than one account?—A. If there was more than one account in the ledger we would have to.

Q. Did you post the credits from the Windsor bank account—to what account in that ledger?—A. I do not remember what accounts there were.

MR. TILLEY: Mr. Nash gave all that evidence? Mr. Rowell is just asking questions about things that are not reduced to certainty by the witness, and we have to get it all again.

20 HIS LORDSHIP: As I understand, what Mr. Rowell is after is not so much what is in the books, but the manner in which the business was carried on.

MR. ROWELL: Yes, we say the books do not truly show the real transactions. We want to get the real transactions, and my learned friend insists—

Q. Will you take any of the transfers from the account that came from Windsor and show us how they are dealt with in the books?—A. I will have to have the Cash Book.

MR. TILLEY: I presume the object is to prove that deposits that he originally proved were made were not made? We had it all.

30 Here is Exhibit 16 with the Carling account in the Windsor Bank, the whole entries are there produced by the bankers. We have followed them into the account Your Lordship appreciates that the Government auditors have had full access to all these bank accounts, etc.

MR. ROWELL: I am seeking to establish the method by which the business was carried on, and these accounts are dealt with by the man who was accountant during the period. The other witness Morrison could not speak of this period, that is the reason I have taken this witness.

WITNESS: Here is one, there is a transfer from Windsor, \$11,936.69. It is charged to the bank and credited to C. B. Grandi's account. There is another underneath it.

40 Q. Can you tell me if Grandi's Belle River account, to illustrate, was paid in that way, or in some other way?—A. I cannot tell.

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Q. Can you tell from the book?—A. No, you would have to go all the way through it to find out.

Q. Do you say you are not able to tell me which accounts were paid by transfers from Windsor?—A. There are two there, and the others will all show in the books in the regular way the same as those two do.

MR. TILLEY: Are the books accurate as far as you know with regard to those entries?—A. Yes sir.

MR. ROWELL: Then what other accounts did you carry besides the charges to the particular customer? Did you have an export insurance account?—A. Yes sir.

Q. Will you turn to that please?—A. You will have to have Mr. Morrison 10 find that.

HIS LORDSHIP: Is the insurance taken by the shipper or the purchaser?

MR. TILLEY: That is an account we heard a lot of evidence about the last time.

MR. ROWELL: What did that account represent?—A. Cash turned over to me by Mr. Burns.

MR. ROWELL: The Crown says this represents part of the selling price that was not entered in the books as part of the selling price.

HIS LORDSHIP: But what is it supposed to be, what is it that is insured, and who is paying the premiums?—A. I am sorry sir, I do not know the answer.

MR. ROWELL: Do you know what that account was for?—A. It was for cash 20 received.

Q. What did it represent?—A. Cash that was brought to me by Mr. Burns.

Q. What did Mr. Burns tell you it represented?—A. He did not tell me, just told me to credit it to this account.

Q. And what was done with that account at the end of the year?—A. That was after my time, sir.

Q. The closing entries were made after your time. Then you cannot say anything further with reference to the account than that Mr. Burns gave you the money and instructed you to open that account and credit the money to it?—A. Yes sir.

Q. Was there any debit against that account?—A. There were debits, yes sir. 30

Q. What were the debits against it?—A. Journal entries.

Q. What did those entries represent?—A. Charges to be put to that account.

Q. What were they for?—A. I do not remember, sir.

HIS LORDSHIP: You have not got any policy that would show anything of that kind?

MR. ROWELL: No, my lord. It is cash received by the company from Burns, the witness says, entered in the book under this head and certain charges against them.

HIS LORDSHIP: But I am trying to see what is the nature of that. What does it mean? If you sell your goods you do not insure them after you part with them. 40

MR. ROWELL: There is no evidence of any insurance, according to the evidence of this witness.

(Witness shows journal entry).

Q. What is that?—A. Entry in the journal debiting Export Insurance Account.

Q. And it says "To adjust account." What account is adjusted in that way?—

A. Hopt.

HIS LORDSHIP: What is the date of that?

MR. ROWELL: February 28th, 1925.

Q. Turn to some other account.—A. Another one 4925, also Hopt.

Q. You do not know what it means?—A. No sir, "To adjust account", that is

all the explanation I see given.

10 Q. Here is another below Export Insurance Account, Lilian, 2650. What was that for, do you know?—A. I do not know, sir.

Q. You cannot tell us what those are?—A. No sir.

Q. Do you remember being examined in reference to that account before the Royal Commission on Customs?—A. I do not remember it definitely.

Q. You do remember being examined on that occasion?—A. Yes sir.

HIS LORDSHIP: When and where?

MR. ROWELL: At Toronto.

Q. You remember?—A. Yes sir, I remember.

MR. TILLEY: How long ago was that?

20 MR. ROWELL: 1927, April.

Q. Do you remember stating then what the account was for?—A. No sir.

Q. Would any statement you made at that time be correct?

MR. TILLEY: I object to this witness being examined in that way. This is not a hostile witness.

HIS LORDSHIP: He can ask him, at another time and place did he say so and so.

MR. TILLEY: By way of cross-examination. The witness has not shown any desire to evade.

HIS LORDSHIP: He is trying to improve his memory in reference to what has taken place.

30 MR. ROWELL: Page 14305.

HIS LORDSHIP: You cannot put that in.

MR. ROWELL: No, but I want to draw his attention to a question asked.

MR. TILLEY: My submission is my friend has no right to put a question like that to the witness, his own witness. He is suggesting that this witness is not disclosing what he could disclose.

MR. ROWELL: I am seeking to refresh his memory. In any event he is my learned friend's client and I submit I should be allowed to cross-examine him.

HIS LORDSHIP: You have more license than usual.

40 MR. ROWELL: You were asked: You said you received special instructions about one account that you now remember about. What was that account that you got special instructions about?—A. The Export Insurance Account.

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Q. What was that account?—A. That was an account set up as I understand it to take care of differences between the prices that were charged and the prices that were received.

HIS LORDSHIP: That is a kind of a journal.

MR. ROWELL: Do you remember that? A.—If I said that there, sir, it is correct.

HIS LORDSHIP: Why disguise it under the title of Insurance Account?—A. I followed my instructions, sir.

MR. ROWELL: "Differences between the price you charged and the price that was received?—A. Yes." 10

Q. That is correct?—A. If it is there, sir, it is.

"Q. What price did you charge?—A. I am not positive of the price, but at that time it was around \$2.25 to \$2.50 a case.

"Q. How much did you receive?—A. I do not know.

"Q. Did you receive more than that?—A. Yes."

A. If it is there, sir.

Q. That is correct?—A. If that is in my evidence.

Q. Then you go on—

MR. TILLEY: Your Lordship sees the style of the questioning. I submit my friend has no right to put his evidence in in this way. 20

HIS LORDSHIP: He has the right to ask whether he said this and that on any examination before.

MR. ROWELL: "You received more than that?—A. Yes."

"Q. And the sum that you received in excess of that price was entered in this particular account?—A. Yes."

Is that correct?—A. The whole amount was entered in the account, sir, therefore it would all be entered.

Q. All what?—A. All the money received.

Q. But you said before that you understood it was to take care of differences between the price you charged and the price that you received, that you received 30 more than was charged. Is that correct?—A. I do not remember what it was now. Whatever I said there—

MR. TILLEY: You are being asked whether you can swear to it now.

HIS LORDSHIP: Put it that way, if I did swear to that at that time?—A. It is correct to the best of my knowledge and remembrance.

MR. ROWELL: Then were you aware of an agreement between the brewers for which Mr. Fitzgerald was trustee, in reference to prices for beer?—A. No, sir, I do not remember.

MR. TILLEY: You wanted an invoice of May 17th, 1924, 02698. There are some B-13s attached. I hand them to you. 40

MR. ROWELL: Is there a bill of lading?

MR. TILLEY: No, we have not the bill of lading. Of course the Sales Tax was paid on this exhibit, I do not know why we are concerned with it.

HIS LORDSHIP: Yes, that is before the period, Mr. Rowell.

MR. ROWELL: Yes. I will not go into that. Let me have the one of July 8th, 1924, those we gave you a list of.

MR. TILLEY: July, 1924, when we get it, will be in the same position, the Sales Tax paid. It is paid up to September.

HIS LORDSHIP: What is the meaning of the red figures on exhibits 1 and 2?

MR. ROWELL: Those were overpayments.

10 HIS LORDSHIP: I think we will get all that from Mr. Morrison, he seems to be more familiar.

MR. ROWELL: If Mr. Morrison can deal with it.

MR. TILLEY: He can deal with that the books show. That is all this man can give.

MR. ROWELL: I am instructed that many of the B-13s during this period while you were there show a higher price or value than appears on the invoice.—A. I do not know, sir.

MR. TILLEY: Well, Morrison can talk about it.

MR. ROWELL: If it is so, do you know why the B-13 shows a higher price than 20 the invoice?—A. No, sir.

Q. Who would give instructions for the price to appear on the B-13?—A. I do not know, sir.

Q. You did not give it?—A. No, sir.

MR. TILLEY: Let us have a note of what I am handing over: The invoice of February 17th, 1925, 00540, stamped, with two B-13s attached. Invoice of April 22nd, 1926, 00362, and one B-13 attached. Invoice, July 8th, 1924, 4 B-13s attached.

MR. ROWELL: This invoice produced by the defendant, February 17th, Detroit, Michigan, care of James Hugel, invoice from the Carling Brewing & Malting Company, Limited, A. Grandi, Detroit, care of James Hugel, Port Lambton, and accom- 30 panying it a bill of lading.

HIS LORDSHIP: What is the amount of the invoice?

MR. ROWELL: \$1,500. That is correct?

WITNESS: Yes, sir.

EXHIBIT No. 52: Invoice of February 17th, 1925, with B-13s attached.

Q. Then there is a bill of lading, that would be made out by the shipper?—

A. Yes, sir.

Q. That is Mr. Hennessey's name, is it?—A. That is Vincent.

Q. Who was Vincent?—A. Apparently the shipper at that time.

Q. Then there is a B-13, C. B. Grandi, \$1,350, a difference of \$150. And the 40 declaration is signed by E. R. Hugel, Port Lambton, dated February 18th, 1925,

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and it is stamped by the Customs apparently March 8th, 1925. Is that correct?—
A. It is stamped 1925.

Q. Well, it is marked 1925. So that the bill of lading is dated February, the B-13 is dated February 18th, and it is stamped March 8th, 1925?—A. Yes.

Q. What date would that be shipped from the Carling Brewery?—A. It says February 16th.

Q. 1925. The invoice is dated February 15th—

HIS LORDSHIP: Is not the invoice dated February 17th?

MR. ROWELL: Yes, the bill of lading dated February 16th. The B.13 bears the signature Hugel, is dated February 18th, 1925, and the date of the Customs 10 stamp is March, something difficult to make out, 1925?—A. Yes.

Q. Do you know who Hugel was?—A. No sir.

Q. That would be made out on Mr. Burns' instructions?—A. Yes.

Q. Do you know where the goods covered by that invoice would be between the date of the shipment, or the date of the B.13, and the date of the Customs stamp?—
A. No sir.

Q. And you do not know why there is the difference in the price shown on the invoice and the price in the B.13?—A. No sir.

Q. Then here is an invoice of July 8th, 1924, C. B. Grandi, Carling's dock, via C.N.R. to Walkerville, Essex Terminal to Carling's dock. Then what does this 20 Smart refer to?—A. I don't know.

Q. Is that in your handwriting?—A. No sir.

Q. One thousand cases lager at \$2.75, \$2,750. Then the B.13s dated 7/10/24, I presume that is the 10th of July, 1924?—A. Yes sir.

Q. The one for 185 cases bears stamp the same day, \$740 for the 185 cases, is it?—A. Yes sir.

Q. Which would be about \$4 a case.—A. It says at \$3.70.

Q. Can you tell me why the difference between \$2.75 in the invoice and \$3.70 on the B.13?—A. No sir.

Q. Then the next B.13 is for 315 cases, \$1,260, that would be \$4 a case.—A. No, 30 this is in gallons.

Q. But isn't it 315 cases?—A. Yes.

Q. And the price is \$1,260?—A. Yes sir.

Q. Which works out at \$4 a case?—A. Yes sir.

Q. Can you tell me why there is the difference in price between \$4 and the \$2.75 shown on the invoice?—A. No sir.

Q. The B.13 bears stamp July 11th.

EXHIBIT No. 53: Invoice of July 8th with B.13s attached.

Q. The next B.13 is 240 cases, the date is filled in in pencil.—A. I do not know anything about these, I am just reading them as you are showing them to me. I do 40 not know a thing about them.

Q. And it is also at \$4 a case?—A. It divides out at that.

Q. It is stamped July 13th. You cannot say why?—A. I do not know anything about any of the B.13s.

Q. The next is 260 cases, \$1,040, \$4 a case, and that bears stamp July 24th, 1924.—A. That is what is there, sir.

Q. You cannot tell where that beer was between the date of the invoice, July 8th, and the date July 24th, of the stamp?—A. No sir.

Q. At that time did you get back the same B.13 as accompanied the shipment? Did you make out one B.13 for the whole shipment and then get back smaller B.13s 10 for part of the shipment?—A. Well I do not remember it, sir.

Q. You cannot remember whether you made out one B.13 for all the shipments?
A. No sir, I know at one time they were making one B.13 to cover the complete shipment.

Q. Was not that the case during all the time you were accountant?—A. I do not remember whether it was the same at the last or not, because I did not make out the B.13s.

Q. Do you know anything about the actual B.13s that were made out and are produced here.—A. No sir.

Q. These cash sales, everything that is entered under the heading Cash Sales 20 there, was that cash received at the brewery?—A. I would receive it from Mr. Burns.

Q. To whom would those goods be delivered, where it is entered Cash Sales?

HIS LORDSHIP: What would you make your entry from?—A. From the sales slip, the delivery slip. Most of those cash sales are for 2½ per cent beer.

MR. ROWELL: But there are others where it is not. It is noted on the face whether it is 2½ per cent, isn't it?

MR. TILLEY: Not necessarily.

MR. ROWELL: Is it not?

WITNESS: Some of them may not have that on, but it will show it was delivered 30 by truck.

Q. The prices of the 2½ and of the strong beer were very different?—A. There was a difference, I do not remember the prices.

Q. The strong beer is more expensive than the 2·5?—A. Yes, I believe it was, I do not remember the prices.

Q. And you say where it is a cash sale it was delivered to a truck?—A. It was our own truck making deliveries in the city, or out in the country.

Cross-examined by Mr. Tilley:—

Q. Now, Mr. Stuart, what strength beer was that that was delivered by your own truck?—A. 2½ per cent.

40 Q. You left the company when?—A. I did not leave the company, but I went to different work.

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Plaintiff's
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No. 23

Norman
Douglas
Stuart
Examination
April 16, 1929
(continued)

No. 23

Norman
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Plaintiff's
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No. 23

Norman
Douglas
Stuart
Cross-
examination
April 16, 1929
(continued)

No. 19

John Gordon
Morrison
Examination
continued
April 17, 1929

HIS LORDSHIP: 1924 Morrison took office.

MR. TILLEY: I think you said there was a break.—A. There was a few months, yes.

Q. Then you were called here by notice yesterday to come up from Montreal last night to give this evidence?—A. Yes sir.

Q. Without any intimation what you were going to be asked about or any reference to the books—A. Yes sir.

MR. ROWELL: You were subpoenaed for the last trial?—A. Yes.

Q. And were here for the last trial but were not reached?—A. Yes sir.

(Court adjourned at 4.30 on April 16th, to 10.30 a.m. April 17th, 1929.)

10

WEDNESDAY, April 17th, 1929, 10.30 a.m.

JOHN GORDON MORRISON. Examination continued by MR. ROWELL:

Q. Mr. Morrison, while Mr. Stuart was in the box yesterday two invoices and certain documents attached were produced, marked Exhibits 52 and 53. Exhibit 52 is an invoice of February 17th, 1925, Exhibit 53 is an invoice of July 8th, 1924. Have you got the invoice, bill of lading and B.-13 for a shipment of August 30th 1924, the invoice being No. 00259?—A. No sir, I do not appear to. There are a couple of them that the boys are still endeavoring to pick out the B-13s on.

Q. You have found the invoice, have you?—A. I have left the invoices that I have picked out and the bills of lading with them.

20

Q. To pick out the B.-13s. Then invoice of October 6th, 1924, No. 00387.—A. I do not appear to have that one either.

Q. You will get that. Then invoice of November 11th, No. 00469.—A. Those are not on the last list I was given.

Q. Yes, this is the last list.—A. I think there must be some mistake.

Q. I understood it had been asked for. Mr. Troop tells me it has not been asked for so far. Will you take a note of that one. Then December 4th, 1924, No. 00492, C. B. Grandi, O. Paquette, Ford City. Also April 22nd, 1925, No. 00617, C. B. Grandi, care of Deisbourg, Belle River. Then June 5th, 1925, No. 00670. You have that?—A. Yes sir.

30

Q. You produce in that case invoice dated June 5th, 1925, C. B. Grandi, Detroit, Michigan, LaSalle dock, for—?—A. 700 cartons.

Q. The invoice amounts to \$1,855, and attached to it is a bill of lading, C. B. Grandi, destination LaSalle, 700 cartons lager, ale and —A. No, pardon me, here is your B.13, that is not the proper one.

Q. Tell me what that relates to?—A. I guess to beer.

Q. It is 700 cartons, and it is C. B. Grandi, Detroit, 500 lager and 200 ale. Does it not correspond with the invoice?—A. I believe it does.

Q. And it is dated June 6th, 1925, and it corresponds with the date of the bill of lading?—A. June 6th, 1925.

40

Q. What does that relate to?—A. I would say it relates to that shipment.

Q. Then why is it not properly here?—A. I guess in picking out the B.13s for that they have picked this one out instead of those. I did not pick these out myself.

Q. Why do you say it should not belong to this one?—A. Either that should not or that should not.

HIS LORDSHIP: I do not follow this. Have you more than one invoice in your hands?

MR. ROWELL: Only one invoice, but more than one B.13.

MR. TILLEY: You have only one invoice of that date numbered with that number.

10 MR. ROWELL: There is just one invoice. Then there is this B.13 for 700 cartons. That is made out at London apparently?—A. Yes sir.

HIS LORDSHIP: What did the witness mean when he said it applies to this and does not apply to that?

WITNESS: We have also certified copies of other B.13s making up 700 cartons, and if one applies then the other cannot.

MR. ROWELL: The other ones are certified copies of something you have obtained, are they?—A. Certified copies of B.13s.

Q. Where did you get these certified copies of B.13s which are also attached to the invoice?—A. Out of the group of B.13s that I have here.

20 Q. This apparently was certified on March 31st, 1928.—A. Yes sir.

HIS LORDSHIP: What was certified?

MR. ROWELL: The first B.13 mentioned on this list. The date of it is at the bottom, 6/8/25, I assume 8th June, 1925. It bears the stamp of Customs as of June 8th, 1925.

Q. Did you procure from the Department of National Revenue this copy of March 31st, 1928?—A. Yes sir.

Q. That is a copy obtained from the Department of National Revenue on that date?—A. Obtained from the port.

Q. Sandwich?—A. Port Sandwich. That is a copy of their records.

30 Q. It is 300 cases. Then attached is another, 300 cases, also certified the same date, March 31st, 1928, and bearing Customs stamp of June 8th, 1925. I presume it is a certified copy of a B.13 bearing the Customs stamp of that date.

HIS LORDSHIP: The B.13 you have shown is of the 6th June?

MR. TILLEY: That is not the document he is now on. That is what is making the confusion. The witness is saying one or other must not be right for this shipment.

MR. ROWELL: Then the third of these is for 100 cases, certified the same date, March 31st, 1928?—A. Do not confuse your two dates—

MR. TILLEY: That is the date on which it is sworn or certified, and the date of the Customs stamp?—A. Yes, I notice, however, that they are the same.

40 MR. ROWELL: These are made out from Sandwich.—A. Yes, sir.

MR. ROWELL: The three. We will call the invoice 54.A and bill of lading 54.B, the B.13 made out in London dated June 6th for 700 cases 54.C, and the other B.13s,

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the first for 300 cases, 54.D, the second for 300 cases, 54.E, and the third for 100 cases 54.F.

EXHIBIT No. 54.A-F: Invoice, June 5th, 1925, with bill of lading and B.13s attached.

Q. Now, perhaps you will explain this. At this time did you make out one B.13 in London for the whole carload?—A. The shipper did, sir.

MR. TILLEY: You mean the Carling's shipper?

MR. ROWELL: The Carling shipper made up one B.13 for the whole carload?—A. Yes, sir.

Q. And how long did that continue?—A. The dates are not just clear in my 10 mind.

Q. Well, about March, 1926.

MR. ROWELL: At a certain period, my lord, my recollection is it was March, 1926, the Department instructed that the practice of making out one B.13 at the point of shipment and then making out subsidiary B.13s at the border should stop, and they all should be made out at the point of shipment.

MR. CARSON: Exhibit 21-B, the date is 13th March, 1926.

MR. ROWELL: Up to the 13th of March, 1926, the shipper made out one B.13 for each carload?—A. Yes.

Q. And after March 13th, 1926, the B.13s were made out in various denom-20 inations?—A. Yes, sir.

HIS LORDSHIP: Could they overlap?—That is, suppose you issued one B.13 for a load of 700 from London, and then you would issue three others at the border at the time of shipment, would you have four B.13s covering twice 700?

WITNESS: I do not understand the question.

Q. Suppose at London at the time of shipment you were shipping 700 cartons, and you had a B.13 for that.—A. Yes, sir.

Q. Then, the whole shipment went to the border, and at the border, as they were not selling 700, but were selling three different lots, say 300, 300 and 100, would you again get three new B.13s at the border?—A. I do not understand your statement 30 "selling"—

Q. I mean as they were shipped. When you made your delivery.—A. I know nothing about what took place at the border. I know the B.13 that was made out at London, what operations went on at the border, I know nothing about.

Q. Would you have returned to you at the time of delivery B.13s that would cover the same quantity as the B.13s taken out at London?—A. At that time we did not check up the B.13s received back from the border, they were simply filed away. We never expected this stuff to come up and did not put the stress on it. Had we anticipated this maybe we would have.

Q. What would you do with the B.13s you got in London?—A. File them away. 40

Q. You did not send them to Windsor?—A. You said what would we do with the B.13s when they came back to London?

Q. No, when you took them out.—A. Your Lordship, I stated yesterday that the B.13 went forward with the bill of lading and invoice.

Q. But now you say you put them aside.

MR. TILLEY: After they came back.

HIS LORDSHIP: Let us try and clear that if it is possible.

MR. ROWELL: Yes. When you got back the B.13s, whether you examined them at the time or since, did you get back in respect of shipments made from London 10 prior to March, 1926, new B.13s made out at the border?—A. Yes, sir, we did.

Q. That is just what His Lordship asked.

HIS LORDSHIP: Yes. Why didn't you answer?—A. Well, your Lordship, there was so much talk about it, I tried to get it clear.

MR. TILLEY: I think the witness has answered right, Mr. Rowell, and from the cases we have had before, I think Mr. Rowell knows it.

MR. ROWELL: It is exactly in accordance with the cases we have had before.

MR. TILLEY: No, the evidence has been that an original B.13 was made out say at London covering the whole shipment, would go down to the port, and if it was split up into smaller shipments as it left the port other B.13s would be made out—

20 MR. ROWELL: I object to my learned friend's statement.

MR. TILLEY: But you are challenging my statement and contradicting it. And when the Customs officer had issued enough subsidiary B.13s to cover the whole original shipment he would stamp the original B.13 and return it to the shipper.

WITNESS: That is the proper explanation, but that is not what I understood Mr. Rowell to ask me. He asked me about those certified copies, and I said those certified copies were taken from the records at the port of export.

MR. ROWELL: Now, to prevent any misunderstanding I must state my view as to what has appeared in the other cases. Your Lordship will see it if you read the judgment in the Gooderham & Worts case—

30 MR. TILLEY: It is not what the Judges say.

MR. ROWELL: It is what the evidence shows. It is this: A B.13, prior to March, 1926, was made out at the point of shipment, in this case London, for the whole carload; that the goods went to some point at the border, and they were there stored, and as they were delivered from time to time new B.13s were made out at the border. These new B.13s were stamped and returned to the shipper as stamped, returned by the party who made the actual shipment, in other words, the delivery.

MR. TILLEY: That is not in accordance with the fact, and these documents show the contrary.

HIS LORDSHIP: Then give me your theory. Then what happened to these split 40 B.13s we will call it.

MR. ROWELL: The split B.13s would be handed back stamped to the person making the delivery, and returned to the shipper.

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HIS LORDSHIP: And what became of the original B.13?

MR. ROWELL: The original B.13s in many cases were not available. In some cases they were available but were not stamped.

MR. TILLEY: Available where?

HIS LORDSHIP: They were not used for purposes of the delivery?

MR. ROWELL: They were not used for purposes of delivery.

HIS LORDSHIP: And therefore not completed?

MR. ROWELL: Not completed.

HIS LORDSHIP: The only one completed would be those that were split?

MR. ROWELL: The only one completed would be those that were split. Gen-10 erally speaking that is my recollection of the evidence. I think there was one subsidiary port where what my learned friend has said was done in substance, but not in detail.

HIS LORDSHIP: Was there anything done to reconcile the whole transaction, that is to say was there anything to show that what was taken out from the warehouse under the original B.13 was all shipped under another B.13, or whether there was a gap, a difference in the quantities?

MR. ROWELL: We say there is a gap and difference. That is the Crown's statement of the situation.

MR. TILLEY: Well I suppose we will get the proof, something more than insinuations.

MR. ROWELL: My learned friend made his statement, I make mine, and I refer for authority to the evidence and judgment in the Gooderham & Worts case.

HIS LORDSHIP: But that is a question of fact, I do not need any authority from any other judgment. But I would like this witness to try and explain these four B.13s for the same quantity.

MR. TILLEY: My lord, does it require any explanation when your Lordship sees the exhibit. What happens is they have a returned B.13 for the whole shipment, if these all refer to the same shipment, I do not know whether they do or not.

HIS LORDSHIP: Let me see the B.13 for the whole amount. 30

MR. TILLEY: Then they have certified copies later of what is at the port.

HIS LORDSHIP: There is no signature of the Customs officer. 54-C is for 700. But they are not of the same date. Why did you associate those three of the 8th?

WITNESS: I did not, sir.

Q. Who did, your own company?—A. No, I was given this list at a late date to go and pick out the B.13s and get these documents together. I could not go to work and look after that myself personally, it was passed on to someone else to pick them out.

MR. ROWELL: We will go on and test some of the others and see how they work out. 40

HIS LORDSHIP: How did you link the invoice with these B.13s? Have you any way of doing it?—A. There is with the one, there is not with the others.

Q. This one is there any way?—A. The invoice has the car number on it, but there is nothing on this—

HIS LORDSHIP: Ah yes, there is a common mark on the three first, the B.13 for the whole lot, and none for the others.

MR. TILLEY: The others were made out at the port, and there would not be any car, the car is a thing of the past when they are split up at the port, because they have arrived at the port.

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10 HIS LORDSHIP: If they had a right to do so.

MR. TILLEY: Well, that was the practice that was going on, then in 1926 they stopped it.

HIS LORDSHIP: That would tend to show that the sale was not made in London for the whole lot.

MR. TILLEY: If your Lordship will be good enough to look at the circular of the 13th March, Exhibit 21-B.

HIS LORDSHIP: But who would be the one, and on whose behalf was he acting at Windsor to get another B.13?

WITNESS: I do not know anything about the Windsor part.

20 MR. ROWELL: Look again at this 54-C. I notice the stamp is Customs and Excise, C.P.R. freight shed. What does that mean?—A. I do not know, sir.

HIS LORDSHIP: It seems to me it is the place where it was unloaded.

MR. TILLEY: We have had all these things discussed so many times.

MR. ROWELL: Not in this case.

HIS LORDSHIP: I do not know anything about the other cases, you have to inform me.

MR. ROWELL: Then have you got one of October 16th?—A. No, sir.

Q. You have not been able to locate that yet?—A. Well, here are B.13s that I got out covering Exhibit 51 that was not completed yesterday.

30 Q. We will get that in a minute. October 16th, 1925, was on your list, you have not got that?—A. No.

Q. Have you got the one of December 2nd?—A. Yes, sir.

EXHIBIT No. 55: Invoice, December 2nd, 1925, F. Savard, 1,500 cartons, with bill of lading and B.13s attached.

55-A to I (See page 290).

Q. It is marked F. Savard, Detroit, Michigan, C.P.R. dock, Windsor, Ontario. Invoice 03218, 1,500 cartons of lager at \$1.75, total \$2,625.—A. Yes, sir.

Q. Attached to that is bill of lading for how many cartons?—A. It looks like 1,200.

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Q. Of the same date, to F. Savard, Detroit, care of C.P.R. dock, Windsor, Ontario. Car No. 95684. Then attached to it are certain certified copies of B.13s?
—A. Yes, sir.

(Invoice 55-A, Bill of Lading 55-B and seven B.13s 55-C to 55-I)

HIS LORDSHIP: You have only one bill of lading for 1,200?

MR. ROWELL: Just one bill of lading for 1,200.

Q. Can you tell us why the difference between the amount shown on the invoice and on the bill of lading?—A. I think the shipper can explain that.

Q. Who do you mean by the shipper?—A. Mr. Hennessey.

Q. Can you not, as accountant in charge, explain it?—A. No, sir. 10

Q. Then the date of the shipment is December 2nd. B.13 55-C is for 28 cases.

The price on the invoice is \$1.75 a case?—A. Yes, sir.

Q. 55-C is dated January 29th, 1926, for 28 cases of beer, \$74?—A. Yes.

Q. That is about \$2.75 a case, is it?—A. It is about \$2.64.

Q. Then the next one 55-D is for 8 cases, \$24. \$3 a case?—A. Yes, sir.

Q. And it is dated December 15th, 1925?—A. Yes, sir.

Q. The next one 55-E is for 24 cases at \$3 a case?—A. Yes, sir.

Q. \$72, and it is dated December 28th, 1925?—A. Yes, sir.

Q. The next one 55-F is for 37 cases, \$111, which is \$3 a case?—A. Yes, sir.

Q. It is dated February 14th, 1926. The next is 55-G, 10 cases, \$30, \$3 a case, 20 and dated February 11th, 1926?—A. Yes, sir.

Q. And the next is 334 cases, \$1,002, or \$3 a case?—A. Yes, sir.

Q. It is dated January 30th, 1926.—A. Yes, sir.

Q. And the next is for 1,059 cases, \$3,177, or \$3 a case?—A. Yes, sir.

Q. And it is dated December 24th, 1925?—A. Yes, sir.

HIS LORDSHIP: That represents 1,500?

MR. ROWELL: Represents 1,500 cases.

HIS LORDSHIP: Although the bill of lading was only 1,200. You cannot explain that?—A. I cannot explain the difference between the bill of lading and the invoice. I told Mr. Rowell that I thought our shipper could explain that. 30

MR. ROWELL: Then I see these B.13s appear to be signed by E. Mason, Ford, Ontario, Attorney for Carling's Export Brewing & Malting Company. Who is E. Mason?—A. A Customs broker, I understand at Walkerville or Windsor.

Q. Was he paid by you?—A. I know nothing about it, sir.

Q. Was he paid from the London office?—A. I could not tell you, sir.

Q. Well, you are the accountant in charge of the books at this time. Is there any entry in the books of the Carling Company in the London office showing any payment to Mr. Mason?—A. No, sir.

Q. Then can you tell me why the prices in the B.13s differ from the price on the invoice?—A. Not on those B.13s, sir. 40

Q. The Customs stamp on these B.13s appears to be all of the same date as the B.13s? A. Yes, sir.

Q. Can you tell me where these goods were from the date of their shipment on December 2nd, 1925, up to the date of these respective B.13s running as late as February 11th, 1926?—A. No, sir, I cannot.

Q. You do not know where the goods were?—A. No, sir.

Q. You cannot explain that?—A. No, sir.

Q. Did they leave the Carling Brewery, London, on the 2nd of December?—

A. If that is the date of your bill of lading.

10 Q. Well just look. That is correct?—A. Yes, sir.

Q. Destined to Windsor as far as the railway was concerned?—A. Yes, sir.

Q. Now where is the B.13 that was made out for this carload at London?—A. I do not know, sir.

Q. I understood you to say before you got back that B.13—

MR. TILLEY: He did not say anything about it, he was not asked about it.

MR. ROWELL: Did you get back the B.13s that accompanied these carloads when they were shipped from London?—A. I stated that I did not check them up and could not tell you.

Q. Were you in the habit of getting back the B.13s, can you tell me, as a practice 20 did you get back the B.13s?—A. I got back a lot of B.13s, but as I stated before I did not check the B.13s against the invoices or the outgoing shipments to determine whether they covered them or not.

HIS LORDSHIP: Is there anything on these B.13s that could connect them with the invoice, any number?—A. No, sir.

MR. ROWELL: The bill of lading corresponds with the invoice.

HIS LORDSHIP: You really endeavoured to connect them only by their quantity?—A. Yes, sir.

HIS LORDSHIP: Because there is nothing to ear-mark it that it has reference to this shipment.

30 MR. ROWELL: This is the best you can do to show they are the B.13s for this shipment?—A. Well don't you think that is pretty good?

Q. I am not asking that, I am asking if that is the best you can do?—A. Yes, sir.

HIS LORDSHIP: I am not satisfied. There must have been another B.13 taken out from London. You have not got it?—A. No, sir, I cannot locate it if there was one. I have gone through my records.

Q. You cannot locate it if there was one?—A. Well I would not say that, there would be one because it could not leave London without. But as I stated we did not endeavour to tie them up distinctly with our shipments, did not keep track of them.

40 MR. TILLEY: When they returned?—A. When they were returned to us.

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MR. ROWELL: Then the next you produce is an invoice of April 22nd, 1926?—
Yes, sir.

Q. F. Savard, Cleveland, Ohio, care of E. Siegal, Port Stanley, for 200 cartons,
at \$1.75?—A. Yes, sir.

Q. \$350?—A. Yes, sir.

Q. Via truck. That would be sent by your truck, would it?—A. Yes, sir.

HIS LORDSHIP: Are you the witness who said that anything that was 2½ per cent
—or was it a previous witness?—A. It was not me, sir.

Q. Did you sometimes send strong beer by truck?—A. Yes, sir.

MR. ROWELL: Would a bill of lading accompany that?—A. Not with our own 10
truck taking it.

Q. Then where is the B.13 that accompanied that?—A. Attached to it.

Q. This is the B.13 attached to it?—A. Yes sir.

Q. Who signed that?—A. George W. Constable.

Q. Who was George W. Constable?—A. He was our truck driver.

Q. Your truck driver made out the certificate at the bottom of the B.13.

HIS LORDSHIP: What is the B-13 for?

MR. ROWELL: For 200 cartons.

Q. At how much?—A. It looks like \$3.05.

Q. \$3.05 a case. Why is that B.13 made out at \$3.05 a case when the invoice 20
is made out at \$1.75 a case?—A. Before making that B.13 out when that order was
given to me by Mr. Burns he told me when making out that B.13 to show the price
on the B.13 at that figure, and in his explanation to me—

Q. I just want,—he told you to put that figure on the B.13?—A. Yes.

Q. And you put it there because of instructions from Mr. Burns?—A. Yes, sir.

EXHIBIT No. 56 A and B: Invoice of April 22nd, 1926, and B. 13

Q. You say George W. Constable was your trucker?—A. Yes, sir.

MR. TILLEY: Had he a power of attorney?—A. Yes, sir.

MR. ROWELL: Then it is he who makes the statement, "I make oath and say
the above is a full and true statement of the kinds, quantities, values and destination 30
of all articles delivered by me for exportation." George W. Constable, as agent for
the Carling Company.—A. Yes, sir.

HIS LORDSHIP: What is the place of shipment?

MR. ROWELL: "Truck to Port Stanley" is all that appears in the B.13.

WITNESS: Truck to Port Stanley to boat.

Q. Oh yes, and "For exportation to the United States of America," and then
F. Savard, Cleveland, Ohio, appears on the face as the address of the consignee.

Then you have one here of May 17th, 1924, D. K. Grandi, care of D. Koven,
Kingsville.—A. Yes, sir.

Q. 600 cases, \$1,500, \$2.50 a case?—A. Yes.

Q. Then documents attached to it, what are these documents?—A. B.13s.

Q. But they are not originals?—A. No, they are copies of the Ottawa B.13s, filed at Ottawa.

EXHIBIT No. 57: Invoice of May 17th, 1924, with B.13s attached.

Q. Where did you get the copies from which to make that?—A. From Mr. Nash's men.

MR. TILLEY: From the Government files.

MR. ROWELL: You have no B.13 in your file to cover that particular shipment, that you have been able to find?—A. Not that I have been able to find.

Q. What is there that enables you to say that these two copies you have attached have any relation to this invoice?—A. Looking at it I see D. K. Grandi here and D. K. Grandi there, and the quantities naturally make me think they both belong to the same.

HIS LORDSHIP: You did not give the dates of the B.13s.

MR. ROWELL: Both May 17th, 1924.

MR. TILLEY: Certainly the Sales Tax would have to be paid, and the gallonage tax too, why bother about it?

MR. ROWELL: The tax on this particular one is paid. It shows the method of doing business.

Q. These are \$4 a case on the B.13?—A. Yes.

Q. And on the invoice it is \$2.50 a case. A. Yes.

MR. TILLEY: Does your Lordship think it worth bothering with a case away back when the Sales Tax is paid?

HIS LORDSHIP: I do not think so.

MR. ROWELL: Well we will leave that out.

MR. TILLEY: You will not leave it out. Just an illustration of your asking us to produce B.13s—

MR. ROWELL: Then you said you had looked up one other that we were at yesterday.—A. That was Exhibit 51. I handed you in the invoice I believe and the bill of lading and told you I would produce the B.13.

Q. The invoice is in the book is it?—A. Yes, sir. I think the boys have that.

Q. This is 100 halves—that is half barrels?—A. Yes.

Q. And 200 quarters, that is quarter barrels?—A. Yes, sir.

Q. And the bill of lading is dated August 10th, 1925, C. B. Grandi, Detroit, care of H. Low, LaSalle, destination LaSalle.—A. Yes, sir.

Q. Then what are these B.13s that you produce?—A. Certified copies of B.13s taken from the Customs records at Sandwich.

Q. These are copies you got on March 31st, 1928?—A. Yes, sir.

Q. Have you got among your records the B.13s that accompanied this shipment when it went to LaSalle?—A. I could not locate it, sir.

Q. Nor could you locate any B.13s returned to you in respect of that shipment in your own copies?—A. No sir.

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Q. But you have obtained copies of certain B.13s from Sandwich?—A. Yes, sir.

Q. How do you identify these copies—

HIS LORDSHIP: Do they represent the quantity?

MR. ROWELL: Perhaps we better identify this as we go. We better have the invoice from the book, that will be 51-A, bill of lading 51-B, then these copies of B.13s 51-C, D, E and F.

Q. B.13 51-C is made out at Sandwich?—A. Yes, sir.

Q. Dates August 12th, 1925, for 50—is it?—A. 50 half barrels and 34 quarter barrels.

Q. How much are the half barrels charged at on the B.13?—A. \$14 each. 10

Q. And the quarter barrels \$7 isn't it?—A. I think so.

Q. Do you remember what the figures were shown in the invoice?—A. No, sir.

Q. Then 51-D is for 50 half kegs and 100 quarter kegs, also dated August 12th, made out at Sandwich, and priced the same—no, that is not 100 quarter kegs, is not that 100 cartons?—A. It looks like cases.

Q. This is for 50 half kegs and 100 cases. 50 half kegs at \$14 and 100 cases at \$3 a case.—A. Yes, sir.

Q. The next is dated September 12th, 1925, for 21 cases of beer at \$3 a case?—A. Yes, sir.

Q. 17 half barrels of beer, \$238, would be \$14 a case?—A. Yes, sir. 20

Q. And 70 quarter barrels of beer at \$7 a keg?—A. Yes, sir.

Q. And 51-F, 96 quarter kegs of beer at \$672, which would be \$7 a case, and 45 half kegs, \$630, which would be \$14 a half keg?—A. Yes, sir.

Q. Dated August 18th, 1925. Now you cannot tell me whether these prices are the same as in the invoice or not?—A. Not without making reference to the invoice.

Q. That is away being checked up. Then the bill of lading was for 100 halves. Have you not got more than 100 halves shown on these B.13s?—A. No, I think there is 100.

Q. There are 50 on 51-C and 50 on 51-D, isn't that correct?—A. Yes, sir.

Q. And there are 21 halves on 51-E and 45 on 51-F?—A. Yes, sir. 30

Q. Then how do the quarter kegs compare? There were 200. You have 34 on 51-C?—A. Yes, sir.

Q. You have 70 on 51-E, and 96 on 51-F?—A. Yes, sir.

Q. That makes the 200?—A. Yes.

HIS LORDSHIP: There are the cases which are not mentioned.

WITNESS: I did not pick those out, I do not identify them distinctly, I handed them to you as they were handed to me.

MR. ROWELL: By your staff?—A. Yes.

Q. And picked out for you as being the best they could do in connection with this bill of lading?—A. I don't know that it was the best they could do, however it is 40 what they did.

Q. There is another of November 23rd, 1925, the invoice is F. Savard, Detroit, Michigan, C.P.R. dock, Windsor, then with LaSalle on it?—A. Yes, sir.

Q. What does LaSalle mean? Is that where it is to go to, the destination is La Salle?—A. Yes, sir.

Q. 1,500 cartons at \$2.25?—A. Yes, sir.

Q. And the bill of lading is also dated November 23rd, 1925?—A. Yes, sir.

Q. How much is that for?—A. 1,200 cartons.

Q. And again you cannot tell us why?—A. No.

Q. The B.13 is the London B.13?—A. Yes.

10 Q. What railway is it?—A. C.P.R.

Q. That is there is not an export stamp on, but there is a Customs stamp Canadian Pacific.

EXHIBIT No. 58-A, B and C; Invoice of Nov. 23rd, 1925 (58-A), Bill of Lading (58-B), B-13 (58-C)

Q. You have not been able to find any B.13s bearing the Customs export stamp for this particular shipment?—A. I did not look them up myself personally.

Q. Your office has not so far found any?—A. I do not know, that is what they handed me. I can have them look further.

Q. If you can get anything further we will be glad to have it.

20 HIS LORDSHIP: Is it customary to have a railway stamp on the B.13?

MR. ROWELL: There appear to be some in this case, my lord.

HIS LORDSHIP: And that stamp was put where the Custom stamp should be?

MR. ROWELL: Yes, it would appear on its face to be a stamp of the Customs, that it was received at the station, as distinct from a stamp that it was exported.

WITNESS: You will notice, my lord, it says Customs and Excise of Canada on it.

MR. ROWELL: C.P.R. station.

HIS LORDSHIP: How do you explain that? Is it a railway stamp or a Government stamp?

MR. ROWELL: We have no knowledge except what appears there, but I assume it 30 means receipt at the railway station, if it indicates anything.

HIS LORDSHIP: What I am astonished at is there is no signature.

MR. ROWELL: There is no signature on any so far.

MR. CLARK: If Mr. Rowell will permit, I may say there is a Customs officer at the C.P.R. sheds, Mr. McKee.

MR. ROWELL: Will you get the invoice book and the books that deal with these matters?

HIS LORDSHIP: It seems to me that the C.P.R. would not put such a stamp on it themselves.

MR. ROWELL: No, I would not think so, my lord.

40 HIS LORDSHIP: There is no stamp showing exportation.

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MR. TILLEY: They cannot expect us to watch and see what stamp the Customs people put on. Mr. Justice MacLean in the other case would not listen to that sort of discussion about the particular stamp that was used. He thought the Crown had some responsibility.

HIS LORDSHIP: All I am concerned with now is to understand what took place.

MR. ROWELL: My learned friend should not seek to invoke the view of the President of the Court, when your Lordship will find no such ruling or intimation in the record of the proceedings.

MR. TILLEY: We got over all this in about five minutes in the other case.

HIS LORDSHIP: I will allow anything that will throw any light on the case. The 10 invoice is for a certain number and the bill of lading for another number. I want that explained.

MR. TILLEY: Some people put more in a car than they pay for. The exportation is for 1,500, but the railway apparently got paid for carrying 1,200.

MR. ROWELL: Will you give me the invoice for this Exhibit 51-A, it is August 10th, 1925.

MR. TILLEY: That is coming out from what exhibit?

WITNESS: This whole book is put in as Exhibit 49, and they are extracting from that invoice of August 10th, No. 00755.

MR. ROWELL: I see the price of the half barrels in the invoice is \$15.50.—A. Yes, 20 sir.

Q. And of the quarter barrels \$8?—A. Yes, sir.

Q. Can you give me any explanation why the price is different on the invoice and on the B.13s?—A. Not on those B.13s.

Q. Then can you tell me where the payment came from to you for this shipment covered by Exhibit 51?—A. From the Dominion Bank at Windsor.

Q. From whose account?—A. From Carling's account.

Q. From the Carling Export Brewing & Malting Company's account at Windsor?
A. Yes, sir.

Q. Where did the payment come from for this shipment to Siegal, Exhibit 56-A? 30
Will you turn up your cash book? April 22nd, 1926. How much did you receive?—

A. There is marked there \$610.

Q. Which is the amount shown on the B.13?—A. Yes, sir.

Q. Whereas the invoice only show \$350?—A. Yes.

Q. Where did that money come from?—A. From Mr. Burns.

Q. He handed it to you?—A. Yes, sir.

Q. Then, how did you deal with it, as the invoice only showed \$350 and you actually received \$610, how did you deal with the difference?—A. I put the full \$610 into the Savard, Cleveland, account.

Q. You credited the Savard, Cleveland, account with \$610?—A. Yes, sir.

Q. Was that amount collected by Constable, the trucker, when he took it to Siegal?—A. No, sir.

Q. Was it paid before the truck went up?—A. It was given to me by Mr. Burns, when it was paid to him I do not know.

Q. Was it given to you by Mr. Burns before the truckload went out?—A. I do not recall.

Q. It appears on the same date, does it, entered in the book on the same date as the invoice?—A. Yes, sir.

Q. Turn up Siegal's account.—A. You mean Savard's account?

10 Q. Well Savard's, care of E. Siegal.—A. (Account shown.)

Q. The first item appearing to the credit of that account is dated April 15th, 1926.—A. I think if you will refer back to the Cash Book you will see that is the proper date on this.

Q. You gave me April 22nd.—A. I think you will find it is a misstatement. You made the statement, and I not looking distinctly at it agreed. It is marked the 15th.

Q. So you had the money before the goods were shipped?—A. Apparently.

Q. You say that money was not paid to you by Siegal?—A. I told you it came to me from Mr. Burns.

20 Q. Then will you take Exhibit 55-A?—A. Before you leave this other, you will notice that this (Cash Book) the invoice charged there is \$350, there is a credit balance left in this account which is transferred to Savard's commission account. I want to make it clear that the \$610,—that there was an explanation for the difference between \$610 and \$350.

Q. We will come back to that.

HIS LORDSHIP: I will be glad if you will clear that up.

MR. ROWELL: What is the Savard commission account to which you refer?—

A. Savard had an agreement—

Q. No, let us see the account.—A. (Account shown.)

30 Q. Account No. 5 appearing in Exhibit No. 50.

HIS LORDSHIP: Do you say that there is a contract in relation to this?

MR. ROWELL: Did you ever see any writing, any contract between Savard—

A. I got my particulars of it from Mr. Low.

Q. But you have not seen any document, any writing in reference to it?—

A. I never asked to see any.

Q. Then this account opens on October 30th, 1926. What is this opening entry?—A. Bermuda Export Company, Port Lambton.

Q. \$21,763.75, what does that represent?—A. That represents Savard's commission on goods shipped via the Bermuda Export Company through Port Lambton
40 dock.

Q. Let me put it another way. As far as your books show, that is your interpretation of it?—A. Well, you asked what it was.

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Q. Did you receive in respect of goods shipped by the Port Lambton Dock \$21,763.75 more than the invoice prices of those goods?—A. Please state your question again.

Q. Did you receive in respect of the goods shipped to the Port Lambton dock \$21,763.75 more than the invoice price?—A. Yes, sir.

HIS LORDSHIP: Does it represent Savard's commission?—A. Yes, sir.

MR. ROWELL: That is something Mr. Burns told you?—A. No, sir, I did not say that.

HIS LORDSHIP: You say \$21,000 odd over and above the amount realized from the sale—

10

MR. ROWELL: No, over and above the invoice.

HIS LORDSHIP: Well that is the amount of the sale. Is there any difference?

MR. ROWELL: What I understood the witness to say was that they received in respect of the goods—

HIS LORDSHIP: They would sell at a given price, and Savard would get a commission on that. Savard would get a commission on the amount realized from the sale?—A. Yes sir.

MR. ROWELL: That is what the witness says. We will come back to this account later, my lord.

Q. This particular item, Siegal, Port Stanley, we find a balance at the credit of 20 that account is transferred to the credit of Savard's commission?—A. Yes, sir.

Q. And this Savard Commission account contains a number of items transferred from various other accounts, in the same connection is it?—A. Yes, sir.

Q. Then the Smith item, Detroit—A. Well why refer to that? I think Mr. Tilley brought out that the tax was paid on that.

Q. That is included in the action, but before the trial you say you paid the tax on that item. Is that correct?—A. I think at the time the discussion came up it was set aside on Mr. Tilley bringing up that point.

Q. What was the date on which you paid the tax on that item?—A. I do not recall. There is a receipt somewhere.

30

Q. Well you can give us the date so that there will be no dispute about it.

HIS LORDSHIP: I do not understand what he refers to.

MR. ROWELL: We have not gone into that, there appears a credit to Smith, Detroit—

HIS LORDSHIP: What is the date?

MR. ROWELL: It is all apparently entered under October 30th, 1926. I suppose it is a transfer from other accounts at the end of the fiscal year, is it?—A. Yes, sir.

MR. ROWELL: My learned friend stated at the last trial that the Sales Tax with respect to that item had been paid since the action was brought.

MR. TILLEY: May 5th, 1928, if I am right in thinking that is the date.

40

WITNESS: That is the Government Customs stamp.

HIS LORDSHIP: Is there an amount covering that in the Crown's claim?

MR. ROWELL: It is part of the Crown's claim. It is simply one item they have paid.

Q. Look at that item and tell me if that arose in the same way as the Siegal item, namely it represented receipts for the goods in excess of the invoice price.—

A. What it represented was funds or receipts that Mr. Savard had sold to these different parties at in excess of our invoice to Savard.

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HIS LORDSHIP: Does that represent the commission?—A. It is simply this, that we had an agreement with Savard whereby he took our entire goods for export 10 at \$1.75 a carton—

MR. ROWELL: You have already told us that you have not seen any agreement or document. I object to the witness giving hearsay evidence.

HIS LORDSHIP: The witness said there was only a verbal agreement as far as he was concerned.

MR. TILLEY: He said he had not seen the document.

HIS LORDSHIP: If there was a document.

MR. TILLEY: My friend has a rather acute way about these things. He says, Now is this the same as the others, did it arise the same way? If the witness did not tell the full story and it was discovered later that he had not he would be chal- 20 lenged. Why should the witness not tell how the item arises?

HIS LORDSHIP: He told me a minute ago that this amount credited to Savard represented a commission on the actual amount of the sale.

MR. TILLEY: No—

WITNESS: No, sir, that is a misinterpretation.

HIS LORDSHIP: That is what you told me clearly.

WITNESS: My lord, that might have been the idea you took from the explanation, but I do not remember making the statement.

HIS LORDSHIP: You said it was a commission.—A. Yes sir, this is a commission account.

30 Q. Well you get your commission on a percentage I suppose?—A. No, sir.

MR. TILLEY: No, my lord, the witness is trying to explain.

WITNESS: My lord, if you will let me make the explanation it will be clear and there will be no misinterpretation.

HIS LORDSHIP: Tell me what you mean.—A. F. Savard had an agreement with the Carlings to take their entire export beer, and he was to pay \$1.75 a carton for it. These commission accounts are derived from where Savard has sold to someone else in the States and instructed us to ship the goods. We naturally bill the goods to Savard at the agreement price of \$1.75 a carton. But Savard had charged to his purchaser a higher price, and his arrangement with the purchaser was that they 40 would remit direct to Carlings. When we received that—

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Q. The total amount of the sale?—A. The total amount of the sale at the selling price, when we received that remittance we put it to the credit of the account it was supposed to go for in our Accounts Receivable.

Q. Just the difference?—A. No, sir, the whole amount.

MR. TILLEY: First the whole amount?—A. First the whole amount.

HIS LORDSHIP: Where did you put it?—A. To the credit of the Accounts Receivable account.

Q. Where would you make that entry?—A. In our Accounts Receivable ledger, sir. Then at the end of our fiscal year that credit balance in those various Accounts Receivable accounts was transferred to Savard's commission account— 10

MR. TILLEY: Over the \$1.75?—A. Over the \$1.75, for the simple reason that the money was Savard's, not Carling's.

HIS LORDSHIP: But you made another statement before.—A. Well I did not mean to if I made it.

MR. TILLEY: It is just as your Lordship said, I noticed it at the time, and I said I did not think it was strictly to be described as commission.

HIS LORDSHIP: When he said "commission" I thought it was a commission, a percentage.

MR. ROWELL: Now, having made that statement, which is hearsay—A. No, sir, it is not hearsay, it is instructions. You asked me at the beginning where I 20 received my reasons for doing things, and I told you.

Q. I did not ask what your instructions were from Mr. Burns in that connection, but now that you have stated that, I want you to turn up this Smith account and we will see how it carries out the explanation you have given.

It is William Smith, Detroit, Michigan.

A. Yes, sir.

Q. It extends over a considerable period?—A. Yes, sir.

Q. How were the goods sent to Mr. Smith?—A. I think Mr. Burns can explain that.

Q. You have been giving some explanation, now I want the full explanation. 30 How were the goods sent to Mr. Smith?—A. I do not know the details how they were sent.

Q. Were they shipped by car or by truck?—A. Mr. Burns can tell you.

Q. I ask you to turn up the records and tell me were those shipped by train or truck?—A. I do not know, sir.

Q. Well, turn up your records and see.—A. What records?

Q. Any records.—A. (Showing documents.)

Q. You start here with first an invoice of July 2nd, 1926. That is one of the invoices, is it?—A. Yes, sir.

Q. The Smith account starts when?—A. December, 1925. 40

Q. And it continues until what date?—A. February, 1927.

Q. And covers five pages of your ledger?—A. Something like that.

Q. Now, you have turned to one invoice. Did you not tell Mr. Troop of the Clarkson firm that these Smith goods were delivered at the brewery?—A. I do not recall telling Mr. Troop anything about it.

Q. Why did you pay the tax to the Government on these particular transactions after the auditors were in examining your books?—A. The tax was paid on Mr. Low's instructions.

Q. Why?—A. What is the difference in this case from any other?

MR. TILLEY: Do you want conversations now?

10 MR. ROWELL: I ask if he knows why it was paid in this case and not in others?—A. No, sir, I don't.

Q. Have you got any bill of lading showing the shipment of any of these goods to Smith at Detroit?—A. I would have to look it up.

Q. Have you ever looked up to see if you have any bill of lading?—A. No, sir, I did not.

Q. Well, will you?—A. Yes, sir, I will.

Q. You will check up and see if you have any bill of lading for any of these goods. And will you look and see if you have any B.13s for any of these goods?—A. Yes, sir, I will.

20 Q. Then, let us see how the account is dealt with. It is opened in your books, not in the name of Savard, but of Smith, Detroit, Michigan.—A. Yes, sir.

Q. And at what price are the goods entered in the account?—A. The invoices will disclose that.

Q. Start with the first one, and we will see.—A. Here is one.

Q. December 2nd, 1925. It is at \$1.75.—A. Yes.

Q. How much is it entered in the account at?—A. At \$5.25.

Q. Are they all entered in this Smith account at that price?—A. I believe they are, sir.

30 A. Q. Then did you receive more from Smith in payment than the invoice price?—A. We were sent money, there was money received by Carlings in excess of the invoice price for the credit of Mr. Smith's account.

HIS LORDSHIP: And the difference went to—?—A. Savard's commission account.

MR. ROWELL: Will you show me the entry of the receipt of some of the items on the Smith account in your cash book, so that we will see how they were received?—Here is one.

Q. Smith \$1,350, on what date?—A. December 5th.

Q. Can you tell me how much a case that would be?—A. Here is the first one, maybe it would be more easily explained. That would be two cases at \$1.75, \$8 in payment would be at the rate of \$4 a case.

40 Q. Then apparently he paid at \$4 a case?—A. Yes sir.

Q. Does your cash book indicate where you got the money from for that?—A. No sir, it does not.

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Q. Who did you get it from?—A. I did not get it at all, I had nothing to do with the cash, I did not run the Cash Book.

MR. TILLEY: What date is that?—A. December 1st, 1925.

MR. ROWELL: You were the bookkeeper at that time.—A. I was the accountant.

Q. Who advised you that the cash had been received?—A. The cashier.

Q. Who looked after the banking?—A. The cashier.

Q. Under your general supervision?—A. Yes sir.

Q. You do not know where the cashier got the money?—A. Yes sir, I know he got the money from Mr. Burns.

HIS LORDSHIP: A business like that, would he show you any document, the 10 deposit slip or anything of that kind?—A. No sir.

Q. He would just tell you?—A. The cash would be given to the cashier by Mr. Burns.

Q. How would you make your entry?—A. It simply went through the cash book in the ordinary way, it would be entered in the cash book—

Q. Who would make the entry in the cash book?—A. The cashier.

MR. TILLEY: And then it would follow through automatically after that.

MR. ROWELL: Will you turn again to the Savard commission account. The third item is F. Savard, Cleveland.—A. Yes sir.

Q. Is that the Siegal item?—A. Yes sir. 20

Q. Credit \$1,324.25. You have already explained that. Then E. Schreiber, Port Huron, is that the same character of item?—A. It is the credit balance of Savard's from an account where Savard had sold to Schreiber, Port Huron.

Q. How is the entry in your book of that account?—A. I can refer to the ledger sheet—

MR. TILLEY: How is it these are all loose sheets?—A. They should be in the ledger, they have been taken out for reference and were not put back.

Q. Who took them out?—A. They have been taken out I think by Mr. Edwards.

HIS LORDSHIP: I do not like the idea of these loose sheets.

MR. TILLEY: It would be convenient to have them put in order. 30

MR. ROWELL: The account is headed E. Schreiber, Port Huron, care of Lough-ead?—A. Yes sir.

Q. There is nothing showing any connection of Savard with it.—A. There is an entry through it to F. Savard, Detroit, Michigan.

Q. In October, closing out the account at the end of the year.—A. Yes sir.

Q. But nothing in the account as far as the goods are concerned indicating that Savard was connected with it?—A. Not in the ledger sheet.

Q. Where did the money come from in respect of this account?—A. From Mr. Burns.

Q. In the same way?—A. You mean through the cashier?—A. Yes sir. 40

Q. I do not want to go through the whole performance again. If there is any difference just tell me.—A. Well when you want me to speak in general I like to know, because when I try to speak about general ideas you pick me up on some small detail and I have a time explaining and making His Lordship clear on it.

Q. Well is there any difference between this transaction and the Siegal as far as the entries in the books are concerned?—A. I would not say that Schreiber living in Port Huron, Michigan, was the same consignee as a consignee of Savard in Cleveland.

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Q. I did not ask you that, I asked if there is any difference in the treatment of
10 the matter in the books.—A. The books themselves will disclose that.

Q. Then we will have to go through it. In this case the account shows a receipt of a sum in excess of the invoice price.—A. The account shows the invoice price posted to it, it shows a receipt, and it shows the balance or commission due Savard—

Q. Just a minute, one thing at a time. It shows a receipt of cash in excess of the invoice price.—A. It shows a receipt of cash.

Q. Of a sum in excess of the invoice price.—A. Yes sir.

Q. And that excess is transferred to the Savard commission account?—A. Yes sir.

Q. Turn again to the Savard commission account. Next is H. Robinson, Erie,
20 Pennsylvania. Will you turn to this account. This is headed H. Robinson, Erie, Pa., care of A. E. Sandal, Port Colborne, Ontario?—A. Yes, sir.

Q. There is nothing on the face of his account, except the transfer at the end of the year, showing any reference to Savard?—A. No, sir.

Q. In this account also the money received is in excess of the amount charged on the invoices?—A. You mean the amounts on the debit side show less than the amounts on the credit side.

Q. I mean exactly what I said, the cash received is in excess of the invoice prices charged?—A. Yes, sir.

Q. And the surplus is transferred to the Savard commission account?—A. You
30 said the amount of cash received is in excess of the invoice price of the goods, was that your question?

Q. Yes.—A. The amount of cash received as shown on our books is in excess of the amount shown on our invoice.

Q. That is what I asked, and that is what I understood you to answer. Now, will you turn to the Savard commission account and let us see the next item. The next is F. Savard, care of Harry Low.—A. Yes, sir.

Q. Do you understand that Mr. Low was a customer of Savard?—A. No, I did not. That word "care" did not indicate a customer.

Q. Who were these goods shipped to appearing in this account?—A. To F.
40 Savard, Detroit, Michigan.

Q. Care of who?—A. Care of H. Low.

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Q. Did you receive in respect of these goods more than the invoice price?—

A. You mean did we receive remittances—

Q. Yes, in excess of the invoice price.—A. We received remittances to place to that account.

Q. In excess of the invoice price?—A. Yes, sir.

Q. Who did you receive those remittances from? Mr. Low?—A. The Cash Book would disclose.

HIS LORDSHIP: Is this the same Mr. Low, the Vice-President of the Company?—A. Yes, sir, as far as I know.

MR. ROWELL: Now, will you tell us where you got the money from that was 10 placed to the credit of that account?—A. From Mr. Burns.

Q. And the surplus at the credit of this account was carried to the Savard Commission account?—A. Yes, sir.

Q. Then, what is the next item?—A. Bermuda Export Company, Point Edward.

Q. Tell us what that refers to?

HIS LORDSHIP: Would not the same transaction occur in every case?

MR. ROWELL: I thought the witness could tell us that, but he hesitated.

WITNESS: The general details.

HIS LORDSHIP: Would not all the transactions with Savard be on the same—20
A. The entries in general are the same.

HIS LORDSHIP: You need not go into every account.

MR. ROWELL: Then are we correct in saying that this item appearing, Bermuda Export, Port Lambton, represents cash received and credited to that account in excess of the invoice price?—A. Yes, sir.

Q. And transferred from that account to this Savard commission account?—
A. Yes, sir.

Q. Then F. Savard, A. V. Hall, Port Lambton, is that in the same situation?—
A. Yes, sir.

Q. Goods shipped care of A. V. Hall, Port Lambton, in respect of which you 30 received sums in excess of the invoice price?—A. Yes, sir.

Q. And those sums in excess carried to the credit of this account?—A. Yes.

Q. Then there are two Port Lambton are there?—A. Port Lambton and Point Edward.

Q. Another one Point Edward, Savard-Hall, is of the same kind, is it?—A. Yes, sir.

Q. Then transfer, F. Savard, expenses re Windsor Dock, \$51,415.50, what does that refer to?—A. That is a journal entry.

Q. Turn up the journal and let us see what it is.—A. (Entry shown).

Q. Where is the account that shows the details of that item?—A. In the general 40 ledger.

HIS LORDSHIP: What is the date of that entry?—A. October 13th, 1926.

MR. ROWELL: How is the account opened?—A. F. Savard, Detroit, Michigan, advances re expense at Windsor Dock.

Q. And it runs on from November, 1925, up to what date?—A. To February 1st, 1927.

Q. And it represents what?—A. It represents advances to Savard for expenses re Windsor dock.

HIS LORDSHIP: What was the amount to the credit of Savard on the 30th of October, 1926?—A. In what account?

10 Q. The commission account. A. \$51,415.50.

Q. It would represent the amount of his commission?—A. His commissions, the credit balance in this account was transferred against the advances re expenses at Windsor. The one amount is transferred to the other account.

HIS LORDSHIP: That is the way he is paid his commission? The amount of those commissions in the Savard commission account, were they ever paid to Savard in the full amount?—A. Indirectly. Savard owed us for expenses, money advanced him re expenses at Windsor dock, and we owed Savard these commissions, so we transferred the amount that was due Savard on commission against the amount Savard owed us.

20 Q. It was the exact amount of his commission?—A. No sir.

Q. That is what I asked you, and you told me so. I asked you the amount to the credit of Savard in his commission account on October 30th, 1926, and you told me \$51,415.50.—A. But I did not tell you that the amount of the advances made him re Windsor dock expenses was only that amount.

MR. TILLEY: I think what your Lordship is asking is, did he account to Savard to the total \$51,000 either by paying it to him or paying it for him?—A. We did, sir.

MR. ROWELL: I see these payments charged to Savard, Detroit, Michigan, re expenses at Windsor Dock, are drafts or cheques.—A. Yes sir.

30 Q. Drafts or cheques of the Carling Company?—A. The drafts are drafts drawn on the Carling E. B. & M. Company by Harry Low, marked Special Account.

Q. Then all the drafts we find here charged in this Savard Expense Account were drafts drawn by Harry Low, marked Harry Low, Special Account?—A. Yes sir.

Q. The cheques, who were they to?—A. The cheques were made payable to Mr. Sam Low.

Q. Who was Mr. Sam Low?—A. A brother of Harry Low.

Q. Then am I correct in this, that all the items charged to the Savard Expense Account at Windsor are either drafts drawn by Harry Low and paid by the Carling Company, or cheques to his brother Sam Low?—A. I would have to see the details on these last few, but the former ones are.

40 Q. Up to what point?—A. Up to October 30th, 1926.

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Q. Up to that time, the time of the credit of this \$51,000, how much had been advanced in this way to Harry and Sam Low on drafts or cheques?—A. You mean how much did these cheques and drafts represent?

Q. Yes.—A. \$81,450.

Q. Upon which was credited on October 30th, \$51,415.50?—A. Yes.

Q. Leaving a debit balance in this account of \$30,034.50.—A. Yes sir.

Q. Then what do you say about the subsequent items?—A. I would have to turn them up.

Q. Well you might check it up and finish that account?—A. All the advances against that account are that way. 10

Q. All the debits are either drafts of Harry Low or cheques to Sam Low?—A. Yes sir.

Q. October 30th was the end of the fiscal year, was it?—A. October 30th, 1926, was the end of one of our fiscal years.

Q. Then in the new fiscal year there are some further transfers. F. Savard, E. Siegal, Port Stanley, is that in just the same position as the other?—A. Yes sir.

Q. Then appear three items, transfers Thomas Reid, Courtright, is that in just the same position as the others?—A. On further recollection I believe that when the cash was received from Mr. Burns on this it was split at the time it went into the Cash Book rather than being transferred into the ledger and then transferred back. 20 These show cash book folios, while those others show journal folios.

Q. You think in the new fiscal year commencing first November the method of treatment was changed, so that when the money came in part of it was carried to the account to square off the invoice and the rest was carried to the credit of this Savard commission account?—A. Yes sir.

Q. And that applies to the Reid items and the Siegal items to which reference has been made?—A. Yes.

Q. Then there is June 10th, commission transferred from the Bermuda commission account. What is that?—A. That is Savard's commission due him, that would be handled, shown the same as these former ones. 30

Q. That is the same as the former Bermuda items, is it?—A. Yes sir.

Q. Then there is another, June 10th, Smith account \$3,314. A. These items are 1927, after the date—

Q. They are not marked 1927.—A. It should be.

Q. I do not want to go into anything after the date. Now that covers the Savard commission account?—A. Yes sir.

HIS LORDSHIP: Was Savard credited the full amount of the entries in that commission account, or was there any deduction in favour of the company?—A. No sir, he was credited with the full amount.

Q. But he was charged with the expense account in Windsor—A. No sir, you 40 have that a little confused.

Q. I was going to add, what you call expense account there was cheques and drafts by Mr. Low?—A. This is F. Savard, Detroit, Michigan, Advances re expenses at Windsor.

Q. You said a moment ago that the drafts and cheques were not Savard but were Low's.—A. The drafts and cheques charged in this account, the cheques were in favour of Mr. Sam Low and the drafts were drawn on the Carling Export B. & M. Company by Harry Low, marked Special Account.

Q. Special account of Low?—A. Yes.

Q. Not of Savard?—A. No, well it just said Harry Low Special Account, I do not know whose it was further than that. That is what the draft disclosed.

Q. Why did you charge that to Savard?—A. Because I was told to.

Q. But there does not seem to me any reason for it.—A. Maybe Mr. Burns or Mr. Low can give you a reason for it.

Q. That is why I am asking you.—A. I charged them there on their instructions.

Q. Did Mr. Savard get the full amount of the figures that are in his commission account, or were there any deductions made that were paid to the company through Mr. Low?—A. I do not know whether I get your question.

Q. I do not know why you should charge the account of Savard with cheques or drafts that Low would send on the company.

20 MR. ROWELL: May I put one question which I think will make the point clear?

—Q. The whole amount covered in the Savard commission account, taking the whole account, is that wiped out by cheques and drafts, drafts of Harry Low and cheques to Sam Low, charged in this expense account, Windsor Dock?—A. Yes sir.

HIS LORDSHIP: Is it just a manipulation of figures?—A. No sir, I would not say that.

Q. Or did the company get the full benefit?

MR. TILLEY: The company never got that money back, that was advances made by that means to Savard.

HIS LORDSHIP: How do you know, you cannot say that?

30 WITNESS: My lord, that is what the ledger says. I have nothing further to go by than that. If Mr. Low draws a draft on the Carling E. B. & M. marked Harry Low Special Account, and the officials of the company accept that draft for payment, and Mr. Burns or Mr. Low tell me that money represents advances made to F. Savard re expenses at Windsor Dock, what else have I to do as accountant but charge it to that account?

Q. That is your justification for charging it in the manner it is charged?—A. Yes, my lord.

MR. TILLEY: Did it come back to the company at all?—A. No sir, as far as—

40 MR. ROWELL: Your Lordship will appreciate that the Crown's contention is that Savard is a name that is used by these people. That is the reason I am going into these transactions, to get at the fact.

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MR. TILLEY: A name that is used how? Has this anything to do with liability? We are spending days on whether these amounts should be added to the sales or not.

HIS LORDSHIP: It must be a test of the modus operandi of the company to dispose of this money.

MR. TILLEY: If the goods go to the United States they go to the United States. This is an important matter perhaps on the question of accounting, but it has nothing to do with the question of liability, that I can see.

HIS LORDSHIP: What I am after is to get the actual facts, what took place. You cannot get the liability settled until you know what transpired. 10

MR. TILLEY: I would have thought the question was quite different from what we are on now. My friend was supposed to be through with his case, and I cannot see what he is now putting in evidence about except to create vague suspicion.

HIS LORDSHIP: At this point will you tell me, Did you deal with any of your consignees except Savard in a similar manner as you dealt with Savard?

WITNESS: My lord, will you define distinctly your question.

Q. Would you invoice at a given price, and he sell at a higher price, and you give him the difference between the invoice price and the sale price?—A. My lord, might I state it this way, that the Carling E. B. & M. had agreed with Savard that he would take take their entire output for export, and these other accounts that Mr. 20 Rowell has referred to were Savard's customers, he had made the sale to them and gave us instructions simply, we could have entered the whole thing in Savard's account, but it was carried in that way for a more clarifying identification.

Q. Do you mean to say that all the goods in question in this case were sold through Savard?—A. During Savard's period that is really the gist of the whole thing.

MR. TILLEY: He has said that several times.

HIS LORDSHIP: But he says Savard was not there during the whole period. What occurred during the other period?—A. During the previous period I was only there about two weeks and cannot state to any extent. 30

HIS LORDSHIP: Was Savard there during the whole time you were in office?—A. All but about two weeks, my lord.

MR. ROWELL: Does not the account change from Savard to Syringe at a certain period?—A. I believe it does, the name is changed, but I think a statement was made, I forget whether by Mr. Low or Mr. Burns, that Savard and Syringe were the same party.

Q. The name changes in the books, and at a certain period all the entries are in the name of B. Syringe. Is that correct?—A. Yes.

Q. What date does Syringe start?—A. January 4th, 1927.

Q. How long does he continue?—A. Through the period that has reference?—40

Q. The period covered by this action.—A. Yes.

Q. Who did you start with? Did you have some name like this entered in the books in the earlier period as the principal purchaser of the goods?—A. What do you mean by “start with”, what starting point have you reference to?

Q. I mean the commencement of the books, what the books show as to the name in which the principal amount of the goods are charged in the earlier period.—A. C. B. Grandi is the chief one.

Q. How long does C. B. Grandi continue?—A. Until about August, 1925, the former part of August.

Q. Was there a period in which there was an interruption? Did C. B. Grandi continue the whole time?—A. C. B. Grandi was a purchaser living in the United States that purchased our goods, I believe he started with the first of the period and carried through until we sold our products to Savard.

Q. Now, it is not L. B. Grandi whose name opens the account, in April, 1924?

HIS LORDSHIP: In any case Grandi was never Savard?—A. I did not know Grandi, I knew nothing about him. As I say, the shipments and sales were made to Grandi just about two weeks during the period of my accountancy, so that I cannot tell you anything definitely about Grandi.

Q. He would not be in the same position as Syringe, that is to say another name for Savard?—A. I would not think so.

MR. ROWELL: Do you know?—A. I cannot say definitely, I told you I did not know Grandi, I have seen Savard. Had I also seen Grandi then I could tell you.

Q. Can you not get the first Grandi account, under any initial? What is the first Grandi account?—A. Here is an account C. B. Grandi, care of C.P.R. dock, Windsor.

Q. But that is not the first, that starts in 1925. I want the first Grandi account.—A. In order to get the first Grandi account I would have to first refer to either the Recap. Sales of or else the invoices.

Q. You can check it up at lunch time. Refer to any books you like.

Then I want you to be able to refer to the LaSalle account; then the LaSalle new account; then C. B. Grandi, C.P.R. Windsor account, which is the one you just turned up; the F. Savard, C.P.R. dock, Windsor, and the Syringe.

(Court adjourned at 1 p.m. until 2.30 p.m.)

AFTERNOON SESSION

Wednesday, April 17th, 1929.

A. M. COWIE (Previously sworn). Examined by Mr. Urquhart.

HIS LORDSHIP: Am I to understand that this witness was heard before?

MR. URQUHART: Recalled, my lord, yes.

Q. You are Manager of the Dominion Bank at Windsor?—A. Yes.

Q. You have been asked to produce a number of accounts. Have you an account for David Koven?—A. I have.

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Q. Account and deposit slips for him, David Koven, 22 London Street. That is an address in Windsor, is it?—A. Yes.

Q. Do you know Mr. Koven?—A. I do.

Q. Is he here?—A. He was here this morning.

Q. Do you know where he resides?—A. I do not know where he resides at the present time.

Q. Where did he reside at the time this account was opened?—A. At this address in Windsor, I believe.

Q. This account starts on January 2nd, 1925.—A. Yes.

Q. Still running is it?—A. I do not know, I think it is still current. 10

Q. How much have you brought here?—A. I have brought from January, 1925, to December, 1927.

Q. As asked?—A. Yes.

Q. Have you any cheques for that account?—A. No.

Q. These are the deposit slips for that account?—A. Yes.

MR. ROWELL: Then I ask that these be filed.

MR. TILLEY: How can these be filed?

MR. ROWELL: There have been a number of transactions in which Kovens' name appears in the Company's books. We think we can show payments from this bank account to the Carling Company. We say Koven was the real purchaser of 20 the goods.

MR. TILLEY: I do not know on what theory a bank account of any person doing business with me is evidence against me.

HIS LORDSHIP: It is collateral. I may as well give a ruling that would cover all the accounts. I would have no hesitation in respect to Savard—

MR. ROWELL: There is no bank account of Savard's. But these are accounts of parties whose names appear in the books associated with Savard or Grandi.

HIS LORDSHIP: You mean the goods were supposed to be bought by Savard but his address was given as care of someone, and Koven was one of them.

MR. ROWELL: Yes, my lord. 30

MR. TILLEY: That does not make it evidence against us.

MR. ROWELL: I propose to connect it up. I cannot connect it up before it is in.

HIS LORDSHIP: As a general proposition I quite appreciate the objection of Mr. Tilley. But I take it the evidence is offered more in the nature of collateral evidence which might shed some light by conjecture or otherwise on the surrounding circumstances. That is what you are driving at.

MR. ROWELL: Yes, my lord.

HIS LORDSHIP: We have no jury in this case. I do not see that any injustice could be done.

MR. TILLEY: It is nothing to me to say that there is no jury here. The evidence 40 is either proper or improper. If it is improper I ask to have it ruled out.

HIS LORDSHIP: There is a class of evidence which as a general proposition is not allowed, but which in special circumstances becomes allowable, which is brought in as collateral proving surrounding circumstances.

MR. TILLEY: We shall come to it in a more serious way when my friend attempts to connect it up later, but at this stage I say that to call a bank manager and ask him to produce the account of a customer is not admissible evidence against me merely on the assertion that the customer is said to have done business with me. If there is business done that business can be proven, but that is not proof of the business is my submission.

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10 HIS LORDSHIP: For the reasons I have mentioned I take it it is in the nature of collateral evidence which may shed some light proving the surrounding circumstances, and it is allowable evidence in respect of the consignee. There is no doubt a consignee with whom the company is having dealings which become part of the *res gestae*. I will allow the evidence, reserving all your rights. It may turn out that there is nothing in it.

MR. TILLEY: Your Lordship appreciates that this witness has been heard before, has given evidence before.

HIS LORDSHIP: The case is not closed.

MR. URQUHART: Then I ask that this be marked as the next exhibit.

20 MR. TILLEY: That is in now as being the account of this party.

EXHIBIT No. 59: D. Koven's bank account.

EXHIBIT No. 60: D. Koven's 1925 deposit slips.

EXHIBIT No. 61: D. Koven's 1926 deposit slips.

MR. URQUHART: Is there any reason why these slips are in two bundles?—A. They just happened to make them up that way, and I think some of the ledger sheets are in the hands of the Court or the auditors now. On a previous occasion I have given a number of sheets and I have never had any return, my office in Windsor communicated with Major Nash last night, but this is all they were able to produce. There is no special reason why these are in two lots.

30 HIS LORDSHIP: Is that statement exhaustive, covering the whole thing?—A. I believe so. It is as exhaustive as my clerks could make it.

MR. TILLEY: Is your Lordship making all these deposit slips for a couple of years evidence? Surely these deposit slips are not evidence against me, and if there is any point to any of them they should be singled out.

HIS LORDSHIP: They may throw some light on some of the transactions.

MR. URQUHART: Have you the accounts of Diesbourg and Renaud?—A. Yes. (Produced.)

Q. Who are the members of this firm?

MR. TILLEY: Is that evidence, my lord?

40 MR. ROWELL: Diesbourg is one of the consignees whose name appears in connection with some of these transactions.

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MR. URQUHART: Diesbourg & Renaud, a joint account, either to sign.

HIS LORDSHIP: On the same ground I allow them.

MR. TILLEY: Your Lordship is admitting that subject to my objection?

HIS LORDSHIP: Yes, reserving all your rights.

MR. TILLEY: The Crown's case was supposed to be practically closed at one time. I submit this is very improper, to put in such evidence against me. I do not know for what purpose it is in.

HIS LORDSHIP: There is only one aim, to get at all the facts.

MR. TILLEY: There is great danger when one starts with the idea that they must get all the facts that you get a lot of things you should not think about. 10

HIS LORDSHIP: There is great danger about suppressing any fact, too. This is a link in the chain.

MR. TILLEY: My friend has had one Royal Commission inquiring into this traffic, surely we are not to turn this into another. The question here is, Were the goods exported? This has nothing to do with that.

HIS LORDSHIP: Were the goods sold for export?

MR. TILLEY: And were they exported? This does not prove or disprove that.

HIS LORDSHIP: Then it cannot hurt you.

MR. TILLEY: That is not the theory on which evidence should be admitted, I submit. 20

HIS LORDSHIP: I understand the plaintiff takes the view that it sheds light on the transaction. I am not going to close it out before I know what light it may shed.

MR. URQUHART: This account I see is headed Diesbourg & Renaud, exporters, care of Carling E. B. & M. Company, Limited.—A. That appears to be so, that is the address that was given.

Q. And you have the deposit slips for this account?—A. Yes.

EXHIBIT No. 62: Diesbourg & Renaud's bank account.

EXHIBIT No. 63: Diesbourg & Renaud's deposit slips.

Q. Do you know Mr. Diesbourg?—A. I do. 30

A. Is he here?—A. He is.

Q. Where does he reside?—A. I do not know where he resides at present.

Q. Where did he reside during the period of this account?—A. At Belle River I believe.

Q. That is near Windsor?—A. Not far.

Q. Have you anything to indicate, any document from Diesbourg and Renaud to indicate who are the members of the firm?—A. I have.

Q. The usual document as to the signing of cheques.

MR. TILLEY: Is that evidence?

HIS LORDSHIP: You mean did they deposit their signature beforehand? Was 40 that deposited with you?—A. It was, yes.

Q. It is in your safe-keeping?—A. Yes, it shows who comprise the firm.

Q. That form is supplied by the bank?—A. Supplied to them, yes.

EXHIBIT No. 64: Bank form authorizing signatures, Diesbourg & Renaud account.

MR. URQUHART: Mr. Cowie wants to keep that, we might put in a copy certified by Mr. Cowie.

Q. You were asked also to produce the account of S. J. Low. Have you that?—
A. Yes I have.

MR. TILLEY: I do not remember any transactions of that character with S. J. Low.

MR. ROWELL: It was stated this morning that the cheques charged to that Savard, Windsor dock account, were all cheques of S. J. Low.

MR. TILLEY: I do not think that was the evidence, I think it was that certain drafts were made.

MR. ROWELL: The drafts were Harry Low and the cheques S. Low.

MR. TILLEY: Certain cheques were issued by the Carling Company to Sam Low.

MR. ROWELL: Certain cheques were issued by the Carling Company to Sam Low and charged in that Savard Windsor dock expense account.

20 MR. URQUHART: You have no cheques for the Low account?—A. No.

MR. URQUHART: I ask then to mark this account as Exhibit No. 65.

MR. TILLEY: Your Lordship admits that too subject to my objection.

HIS LORDSHIP: For the same reasons, reserving your rights.

EXHIBIT No. 65: Certified copy of bank account of S. J. Low.

HIS LORDSHIP: Why a certified copy only in this case?—A. I would like to have that because the account is still current.

MR. TILLEY: I do not raise any objection that it is only a copy.

MR. URQUHART: These are the deposit slips for that account?—A. They are as far as they could get them in the time. There is a memorandum from my assistant.
30 He says, We could not find the deposit slips for September, October and November, 1926, did not have sufficient time.

EXHIBIT No. 66: Deposit slips for S. J. Low bank account.

Q. Then you were asked to produce an account of the Erie Transit Company.

HIS LORDSHIP: I do not remember that.

MR. ROWELL: It has not come up yet, it will come in my further examination of Morrison.

MR. URQUHART: This Low account is only since January 1st, 1926. Were you not to produce since 1924?—A. I presume they sent me all they had. I handed the instructions over to my assistant, and this is what he gave me.

40 Q. Where did Mr. Low live?—A. In Windsor.

Q. Is he here, Mr. Sam Low?—A. I have not seen him.

Q. Then this is the account of the Erie Transit Company for March 10th, 1926—

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A. M. Cowie
Recalled
Examination
April 17, 1929
(continued)

MR. TILLEY: I certainly object to this. I do not know anything about this company yet.

MR. ROWELL: As it has not so far come up I have no objection to the account being simply left here, so that we need not keep Mr. Cowie here.

HIS LORDSHIP: So far you have not laid any foundation. To act in strict conformity we will just take these and deposit them with the Registrar for the time being, and when you lay a foundation you can tender them.

MR. URQUHART: This is the account of the Erie Transit Company starting 10th March, 1927.—A. Yes.

Q. And these are the despoit slips which you produce?—A. Yes. 10

Q. Do you know who the Erie Transit Company were?—A. There is a copy of who they are. It is a limited company.

Q. Who are the signing officers?—A. S. J. Low and Walter Hardy.

Q. This is a certified copy of their by-law as to signing officers, is it?—A. Yes.

Q. You have the original here?—A. Yes.

Q. I ask that that be deposited with the Registrar too, my lord.

Now I believe you have found extra deposit slips in the Harry Low Special Account since the last hearing?—A. I submitted these to the auditors after the last sittings of the Court.

EXHIBIT No. 18-A: Additional deposit slips Harry Low Special Account. 20

HIS LORDSHIP: These are all transactions at Windsor?—A. They are, yes.

MR. URQUHART: Then some more deposit slips in the Carling Export B. & M. Company account.

MR. TILLEY: This is an awful way of encumbering the record. Have we got to go through these deposit slips to try to piece something out? Can you not point out which ones are wanted?

MR. URQUHART: Exhibits 13, 14 and 15 are the deposit slips of the Carling Brewing & Malting Company, Windsor account, for the years 1924, 1925 and 1926 respectively. These are extra deposit slips of that account for the three years. I suggest that they be put in as Exhibit 15-A. 30

MR. TILLEY: Your Lordship is admitting them?

HIS LORDSHIP: Just as I admitted the others.

MR. URQUHART: Were there any other accounts you were asked to produce?—

A. I was asked to produce the account of Walter Hardy, but he did not have an account during the period covered by the subpoena.

EXHIBIT 15-A: Additional deposit slips, Carling E. B. & M. Co. Windsor account.

Cross-examined by Mr. Tilley —

Q. Mr. Cowie, you have been producing exhibits periodically now for some, years I suppose in connection with this liquor or beer business?—A. I have. 40

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Q. A witness that turns up for all the cases, I think I have seen you several times giving evidence. Has the Crown examined all these accounts?—A. I will not say they have examined them all but they have examined some.

Q. All that they wanted to?—A. All that I was ordered to let them examine.

Q. Ordered by who?—A. I cannot tell you that.

Q. Who do you get your orders from?—A. When I am subpoenaed to give evidence concerning any particular account I let them see that account. Not until I am subpoenaed.

Q. Then may we take it that all the Crown has had to do to see an account is 10 serve a subpoena on you to attend at some time and place, and then they go in and look at the account?—A. That is practically correct.

Q. And see the deposit slips and every document you have about the account?—A. They have not seen the deposit slips, it takes us quite a while to find them.

Q. But you can get them if they want to after they have subpoenaed you?—A. Yes.

Q. And I suppose since you were here before and we were all assembled together a year ago they have subpoenaed you and then seen all these accounts, or such of them as they wanted to?—A. I do not know that they have seen these accounts but upon being subpoenaed to give certain particulars covering the accounts a 20 representative came up and we showed him the ledger sheets. I do not think he saw any further vouchers.

Q. It is assumed that the vouchers would back up the items I suppose. Who has been examining them?—A. A representative of Major Nash.

Q. Mr. Nash himself?—A. No, he has not been there himself. Some of his staff.

Q. Then a great many of these, or possibly all of them, or such as the Crown wanted, were examined at the time of the Royal Commission investigating this affair?—A. A great many were.

Q. And I think you were authorized at that time by Carlings that as far as they 30 were concerned you could show them anything?—A. They told me to show them everything I had.

Q. And I presume we may take it that all your records as they stand are exactly as they were, there is no suspicion that you have changed anything?—A. Of course not.

Q. Such suspicion would only attach to to us, I suppose. At any rate as far as you are concerned the records are—?—A. Correct.

Q. Are correct records as far as you know?—A. As far as I know.

Re-examined by Mr. Urquhart.

Q. When were you subpoenaed in regard to these accounts?—A. I cannot tell 40 you exactly.

Q. Within the last week?—A. About ten days ago with some, and then just the day before yesterday.

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A. M. Cowie
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J. G. MORRISON, Examination resumed by Mr. Rowell.

Q. You were going to look up some accounts. Starting with C. B. Grandi's opening account, the first transactions, when does the C. B. Grandi account open?—

A. In April, 1924.

Q. Then how long does that account continue active? Until the 2nd of August, is it?—A. The last debit in that is August 2nd. It apparently is carried forward.

Q. I think we will come to them, if we take them in order of date. How is that account closed out?—A. There is a credit balance in that account of \$589 which is closed off into Export Funds.

MR. TILLEY: Mr. Nash gave us all that. 10

MR. ROWELL: Closed off into Export Funds account?—A. Yes, in the general ledger.

Q. Is the next large account headed LaSalle, opening 5th of August, I suppose that will be 1924. And that is the only heading to that. And that lasts until the end of the year, from the 5th of August to December 30th, 1924.—A. Yes.

Q. That is the last charge for goods in it?—A. Yes, and the credit balance which appears in that account is closed off into export funds.

Q. What is the credit balance?—A. \$2,384.40.

Q. Then is the next LaSalle New Account, opening January 2nd, 1925?—A. Yes.

Q. How long does that continue active?—A. The last charge in that is June, 1925. 20

Q. June 29th, 1925, are my instructions. That would appear to be correct?—
A. Yes. Then the debit balance of that is carried forward to C-1, C.P.R. dock, Windsor.

Q. What would that be? The debit balance in that is how much?—
A. \$53,856.53.

MR. TILLEY: What date is the transfer?—A. That is transferred on June 30th, 1925.

HIS LORDSHIP: To what?—A. To C-1, C.P.R. dock.

MR. ROWELL: This account is headed C. B. Grandi, care of C.P.R. dock, Windsor. The \$58,000 is transferred and charged to his account which is opened on 30 June 30th, 1925. Then for how long does that account appear to be active?—A. To August 31st, 1925.

Q. That just runs for two months, July and August. How is that closed out?—
A. The balance in that, \$32,025.21—

Q. Is that a credit or debit balance?—A. That is a debit balance. That is transferred to an account that is an exhibit.

Q. What is the exhibit?—A. I do not know the number, it is F. Savard's account.

Q. (Exhibit F. shown witness). The F. Savard account opens, by balance brought forward, \$32,025.21, a debit balance?—A. Yes, sir.

Q. Then, how long does that continue?—A. It opens September 1st, 1925, and 40

continues until what date?—A. There is still a balance in it. There are entries in it past the date of this—

Q. Well, what is the last date upon which goods are charged to it.—A. I believe it is December 31st, 1926.

Q. Then what are the items that are charged to it subsequent to that date, what are the further entries in it in February, 1927?—A. There is an amount of \$2,712.23 transferred from F. Savard advances, an account in the general ledger, transferred as a debit balance against that account. This item is also a debit balance to that account. Transfer from F. Savard, advances re Windsor dock expenses, in the

10 general ledger.

Q. Then as a result of that transfer how did the account stand?—A. It stood with a debit balance of \$4.73.

Q. Practically closed. Then what is the other entry immediately following?—A. These two entries have been transposed. The next entry to that is, Balance credit note No. 427, \$40.

Q. What is this balance credit, \$1,100.41?—A. That is cancelling a credit note No. 394. Then there is another credit of \$700.

Q. But as far as activity is concerned we may take it as closing on December 31st, 1926.—A. Yes.

20 HIS LORDSHIP: With the \$4.73?

MR. ROWELL: That is on January 3rd. The last entry is on March 2nd, 1927 leaving a debit balance of \$365.14 in the account.

Q. But as far as sales are concerned the last charge is the end of December?—A. Of 1926, yes sir.

Q. Then when did the Syringe account open?—A. It opened on January 4th, 1927.

Q. B. Syringe, Detroit, care of Carling C.P.R. dock Windsor. And that continued up to the end of the period involved in the present action?—A. Yes sir.

Q. Now this series of accounts, do these represent the principal shipments of 30 the company during the periods covered?—A. They do, sir.

Q. But during the period there were other accounts, such as we have been going over, at other ports. These are the Windsor, C.P.R., Carling dock accounts?—A. Of the early period I cannot speak so definitely as I can during the period covering Savard and Syringe.

Q. Well these accounts do not include the accounts at the various docks which we have been going over yesterday and to-day, Amherstburg, Port Lambton, Kingsville, and so on?—A. I do not know sir whether they do or not, without checking from the invoices through to them. As I stated, those accounts, that is Savard and Syringe were really the only two accounts I had anything to do with during my period 40 of accountancy. The others were previous to my date.

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Q. Well if you find out that those came in you can let us know, but I do not see any evidence that they came into this account, and my instructions are that they do not come into these accounts.

MR. TILLEY: Which accounts?

MR. ROWELL: These half dozen we have now been dealing with.

WITNESS: If you will just state exactly what you are trying to get me to tell you—

Q. I just want you to tell me the facts. My question was. Did these six accounts which we have gone over, C. B. Grandi, LaSalle, LaSalle new account, C. B. Grandi care C.P.R. dock, F. Savard care C.P.R. dock, and B. Grandi care 10 Carling C.P.R. dock, did these represent the shipments of the company to the Windsor dock?—A. I do not know whether they did or not without looking up the shipments, comparing the majority of the shipments with the accounts.

Q. And the second question was, Did the shipments to any of the other docks get into these accounts, or are they entirely independent?—A. I would have to refer to the ledger.

Q. Well you can do that, I do not want to take time now. My instructions are that they did not.—A. I will make a memo of that.

HIS LORDSHIP: Does LaSalle mean Windsor?

MR. ROWELL: It is 7 or 8 miles from Windsor. 20

HIS LORDSHIP: Is there one landing called "Windsor?"

MR. ROWELL: There is the C.P.R. Carling dock at Windsor, and LaSalle is an outport of Sandwich.

Q. Then you have in the books another account, Windsor Investment account. When was that account opened?—A. The date in the general ledger is July 31st, 1925.

Q. It opens with a debit, Amherstburg, \$9,311.46.—A. Yes sir.

Q. What does that represent?—A. That is an account or an amount taken from the Accounts Receivable ledger.

Q. Under what heading?—A. Under the heading Amherstburg, I believe. 30

Q. The next is C.P.R. dock, F. Savard, \$53,856.53?—A. Yes sir.

Q. What is that item?—A. There is the same amount in F. Savard's account, in the Accounts Receivable ledger.

Q. In the account you have just shown us?—A. Yes.

Q. Then J. Bannon, a small amount, is that the amount to the credit of Bannon?—A. Yes sir—these would not be to the credit of this account, they would be to the debit.

Q. Then Diesbourg, \$13,276.35. What is that?—A. This is also taken from one of the accounts in the Accounts Receivable ledger.

Q. Appearing in the name of Diesbourg?—A. Yes sir, appearing in the name of 40 A. Diesbourg.

Q. Then the next is A. Grandi, \$7,309.60, is that the debit appearing to the credit of the Grandi account?—A. Yes sir.

Q. The next is—?—A. Johnnie.

Q. Who is Johnnie?—A. I do not know sir.

Q. Let us see Johnnie's account.—A. \$2,756.25.

Q. Account of Mr. Johnnie, LaSalle, and the amount standing to the debit is \$2,756.25, and it is transferred to this account. The next is J. A. Jones, that is small. Then D. Koven. What is that?—A. That is an account C. B. Grandi, Detroit, Michigan, D. Koven, Kingsville. The amount is \$3,329.85.

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10 Q. In writing it is D. Koven, Leamington?—A. Yes sir.

Q. And written in pencil over the top is C. B. Grandi, Detroit, Michigan?—
A. Yes, sir.

Q. Who wrote the name in ink?—A. I do not know, sir.

Q. When was C. B. Grandi, Detroit, Michigan, written in in pencil?—A. I do not know, sir, neither one of them is my writing.

Q. In the transfer is referred to only as D. Koven, and that is the only name appearing in pen and ink in the account.—A. Yes, sir.

Q. Then the next is M. Lillia, \$2,700. What is that?—A. That is also an account, \$2,700.

20 Q. That is a debit, and it is carried to the debit of this account.

The next is O. Paquette, \$7,725, Ford City. The only thing appearing on its face. And the debit balance of \$7,725 is carried to the debit of this account?—
A. Yes, sir.

Q. Then, LaSalle, a credit balance of \$2,384.40.—A. Yes, sir.

Q. Is that the credit balance of the LaSalle account, July 31st, 1925?—A. Yes, sir.

Q. Then, C. B. Grandi, \$589 credit?—A. Yes.

Q. Then, C. Burns, export fund, a credit of \$100,369.39, what is that?—A. That is a journal entry.

30 Q. It is a transfer of \$100,369. What is it taken from?—A. It is made up of various amounts, of those amounts that we have previously referred to.

Q. Where does the money come from to balance the account?—A. This account is closed out, or rather these entries reversed to C. Burns export fund account. (Account shown).

Q. In what is this?—A. The general ledger. (Exhibit No. 70).

EXHIBIT No. 70: Defendant's general ledger.

Q. In this general ledger, it is simply headed "Export Funds"?—A. Yes.

Q. And the items are carried over into this account?—A. Yes, sir.

HIS LORDSHIP: You called that Burns account.—A. The journal entry says
40 C. Burns' export fund, but the general ledger account is simply headed Export Funds.

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MR. ROWELL: Perhaps you can tell me what is the purpose of closing out the account in that way.—A. That Windsor investment fund, if I remember correctly, in giving evidence before the Royal Commission, I stated that that account had been opened up by Mr. Goodman.

Q. Who was Mr. Goodman?—A. He was an auditor for the Carling E. B. & M. Company. He opened it up without any reference, as I understand, to Mr. Burns or Mr. Low, and it should never have been opened up at all. Then the entries were all undone again or reversed and put back to where they were before.

Q. The company's auditor opened this account and carried these adjustments into it, and afterwards they were reversed on Mr. Burns' or Mr. Low's instructions, 10 is that correct?—A. I forget whose instructions they were reversed on.

Q. Was it on one or the other?—A. I do not remember definitely whether it was on either one of their instructions.

HIS LORDSHIP: But it was actually reversed?—A. They were reversed.

Q. And called from that date export funds, is that right?—A. These entries were transferred from Windsor investment fund to export funds account.

MR. ROWELL: Who are your present auditors?—A. After Mr. Goodman?

Q. Yes?—A. P. D. Ball.

Q. Then after Mr. Ball?—A. There was no auditors except at the close of the business when Price, Waterhouse & Company made a general audit of the books. 20

Q. They are the new company's auditors?—A. Yes, sir.

Q. Then take all the moneys received as far as you are concerned, in connection with all these accounts, as far as the London office is concerned, did they either come by way of transfer from the Carling Company's bank account in Windsor, or were paid for by Mr. Burns in cash?—A. Speaking generally, I believe, they were.

MR. TILLEY: That is these last lists you have given?—A. I understood Mr. Rowell to refer to the Accounts Receivable in the Accounts Receivable Ledger.

MR. TILLEY: I do not know what he is referring to, and you have made a guess.

MR. ROWELL: Let me put it so there will be no misunderstanding. For all the accounts for the sales of Carling Company goods did the Carling Company in London 30 receive payment either by way of transfer from the Carling Company's bank account in Windsor, or through cash handed in by Mr. Burns?—A. Speaking of the period before I was accountant I do not know. But speaking of the period while I was accountant, the payments came either—the amounts to the credit of these accounts in respect of payment came as transfers from the Windsor Bank account or as remittances direct from Mr. Burns.

Q. Well, Mr. Burns was in London at the time. Do you mean handed in in cash by Mr. Burns?—A. Yes, sir.

MR. TILLEY: You do not mean domestic business?

MR. ROWELL: I am not classifying it at all. I mean the accounts we have 40 been dealing with in this investigation.

Q. Then during this period as you are aware, it has been given in evidence that during part of this period the Bermuda Export Company agreement was in operation?

A. Yes sir, part of this period.

Q. It went into operation, I think the evidence was, on the 16th of July, 1926?—

A. Somewhere around that date, I believe.

Q. And it continued in operation throughout the remainder of the period covered by this suit?—A. That I cannot definitely state, but I believe it did.

Q. Under the Bermuda agreement the parties to it, including the Carling Company, were selling their goods, as far as cartons or cases are concerned, at \$3.25 a case, that was the amount specified in the agreement. Do you recall that?—A. As I understand that, the Carling Company—

Q. Let us confine it to the agreement.—A. That is what I am going to do.

HIS LORDSHIP: What agreement?

MR. ROWELL: The Bermuda agreement.

MR. TILLEY: You are asking the witness what he knows. I do not know that he ever saw the agreement.

WITNESS: I never saw the agreement.

HIS LORDSHIP: Bring the agreement.

MR. TILLEY: The agreement is filed.

20 HIS LORDSHIP: Is there not a right way to ask the price at which they were selling, then we can refer to the Bermuda agreement and find the price there.

MR. ROWELL: It is Exhibit No. 27. Section 7 deals with the prices.

Q. Evidence was given by a representative of the Bermuda Company on the first trial, and later by Mr. Stiff, giving the quantity of Carling goods sold under this agreement at \$3.25 a case. What I want to ask you is, How much of the proceeds of the beer sold through the Bermuda Company came into the books of the Carling Company in London?—A. That which was due to the Carling Company.

Q. How much a case?—A. \$1.75 a case.

30 Q. Your sales records only disclose \$1.75 a case as the selling price of the beer during the whole period covered by this Bermuda Agreement.

MR. TILLEY: The selling price to whom?

MR. ROWELL: To anybody, I am dealing now with the price received entered in the books. The price received on the sale of the beer.

Q. As far as the books of the Carling Company disclose you sold the beer for \$1.75 a case and only received \$1.75 a case therefor.

MR. TILLEY: How much would you expect to receive if you sold it for \$1.75?

MR. ROWELL: I want to get the answer of the witness. As far as the London books are concerned they only show recorded sales at \$1.75 a case and recorded receipts for the same amount?—A. Yes sir.

40 MR. TILLEY: Will you ask him if he got any more than that for them.

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MR. ROWELL: Did any more than that come into the books of the Company at London?—A. As we explained this morning—

Q. Please answer the question. I ask, Did any more money in respect of the Bermuda sales come into the books of the Carling Company at London?—A. Are you referring to the sales that passed through the Bermuda at Windsor?

Q. I am referring to the sales through the Bermuda Company. I am asking Did the Carling Company receive anything out of those sales from the Bermuda Company other than \$1.75 a case?—A. If you refer to the Accounts Receivable ledger you will find an account B-6, headed Bermuda Export Company Limited, Bermuda, care of Thibeau Dock, Port Lambton, Ontario, you will find various 10 charges or sales recorded there, and also credits, with a final debit balance transferred to F. Savard, Detroit account.

Q. Then did the Carling Company in London in respect of this particular account receive any more than \$1.75 a case?—A. In respect to this the Carling Company did receive more than \$1.75 a case, but the surplus over and above the \$1.75 is transferred to F. Savard's commission account.

Q. Then the net amount, the actual amount that remained in the Carling Company was \$1.75 a case?—A. Yes sir.

Q. There are two or three Bermuda accounts of this character where this applies.

HIS LORDSHIP: Ask him whether that applied only to the Savard account, or 20 to all the others.—A. The Bermuda Company only was in operation I believe during the same period as Savard.

MR. ROWELL: Savard and Syringe?—A. Yes.

Q. Then if we eliminate these two of three special Bermuda accounts that you have already referred to in the books, and deal with the goods that were actually sold through the Bermuda Company.—A. If you eliminate these few small accounts that I have drawn attention to, as far as the Bermuda Company is concerned I know nothing about it.

Q. I am not asking what you know about it, I am asking Did the Carling Company receive any more than \$1.75 a case in any shape or form for any of the goods 30 sold directly through the Bermuda Company?—A. As I stated, I do not know whether the Carling Company ever sold any goods through the Bermuda Company.

Q. Then in respect of goods sold during the period covered by the Bermuda Company agreement.—A. The amounts received are recorded in F. Savard's Accounts Receivable account, and further than that I know nothing of any amounts.

Q. Does it show more than \$1.75 a case?—A. No sir.

Q. Then why not answer that and be through?—A. Well I want to get you straight, you go picking me up.

Q. No, I want to get you straight.—A. Well we both want to be straight. I do not want you confusing the idea in His Lordship's mind as you did this morning. 40

Q. Then as far as that period is concerned, that covers your knowledge of where the moneys came from?—A. Yes sir.

Q. Have you any record during your period in the books of the Carling Company in London of the Carling bank account in Windsor?—A. Nothing except the transfers which are recorded through the Cash Book and the Accounts Receivable Ledger.

Q. Did you ever see the bank book of the Carling Windsor bank account?—A. No sir.

Q. Did you ever see any of the books of the Carling Company at Windsor?—A.

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10 What books are you referring to?

Q. I ask you any books.—A. I never saw anything at Windsor at all.

HIS LORDSHIP: That is not an answer to the question. You may have seen some Windsor books at London.

MR. ROWELL: Did you ever see any Windsor books at London?—A. No sir I never saw any Windsor books at any time.

Q. Then during this period of which you are giving evidence, and in which these accounts appear in the books, according to the books the Carling Company was carrying on its business at a loss?—A. They are not the only firm that has done that.

Q. I am not asking that, I am just asking what the books disclose. Is that
20 correct?—A. The general ledger and financial statement will show.

Q. Take your balance sheet and look at it. In 1924 you closed your financial year on the 30th of October.—A. I have not got the financial statement for 1924. I have 1925 and 1926.

Q. Then take 1925. You carried to the credit of your profits that year the amount to the credit of the Export Funds Account, didn't you?

HIS LORDSHIP: What was that Windsor Expense Account?

MR. ROWELL: All we have got is, it is a series of cheques and drafts.

HIS LORDSHIP: But what was the justification to issue the cheques and drafts?

MR. ROWELL: That will have to be explained by those who are concerned in it,
30 my lord.

Q. Your balance sheet of October, 1925, did you carry into your profits for that year the amount to the credit of the Export Funds Account?—A. I did, sir.

Q. Amounting to \$93,887.17?—A. Yes sir, but I have since found that a number of entries in that account were not correct, and that amount should not have been carried into the Profit and Loss account.

Q. You are learning late.—A. We all hope to.

Q. Then after giving credit for that amount what was the result of the year's operations?—A. A net loss of \$16,924.

Q. So that if any amount should be deducted from the Export Funds it could
40 increase that loss?—A. Yes sir.

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Q. Then for 1926 what did you show?—A. A net profit for the year of \$12,543.19.

Q. In that year did you carry anything in from any special fund?—A. Sales of 4·4 liquid, 4·4 packages, 9 per cent liquid, packages, and sundry sales of grains and hops; rent received, cash discounts on purchases, and freight on 9 per cent goods. That is practically the period over which we were selling to F. Savard at \$1.75.

Q. You say that was practically the Savard period. You did strike a balance sheet covering the balance of the Savard period up to 10th June, 1927.—A. That is beyond the period of this claim, isn't it?

Q. But it is during the period in which you were selling at \$1.75, and covers the 10 period of this claim for 6 months?—A. Yes.

Q. What did that show?—A. It showed a loss of \$236,177.91.

Q. It is from November 1st, 1926, to June 10th, 1927, and during that entire period the price of the goods entered in the books was \$1.75 a case.—A. I believe it was.

Q. Now since Price, Waterhouse.—A. By the way I would prefer to refer to the invoices before stating that.

Q. Well, if you want to make any correction of that do so.—A. I find upon referring to the invoices that during that period from January, 1927, the price was increased to \$2 for beer and \$1.90 for ale. 20

Q. Then, for four months, January, February, March, April, the prices would be \$2. and \$1.90?—A. Yes.

Q. If it had been \$1.75 the loss would be greater?—A. Yes.

MR. TILLEY: They might have sold more goods.—A. Maybe that is the reason the Carling E. B. & M. went out of business.

MR. ROWELL: For the six months following, from the 11th of June, 1927—

MR. TILLEY: Does you Lordship want to go into the profits or losses of this business?

MR. ROWELL: The Crown's point is that the books do not disclose the full prices, and as soon as they commence to disclose the full prices, the reorganized company 30 show very handsome profits.

MR. TILLEY: I suppose if we go back and change the figure to \$2.75 the profits resulting would be larger. Surely we do not need to follow that.

HIS LORDSHIP: That would become important in case I find that you are liable for the tax.

MR. ROWELL: Then what are the profits shown for the balance of that year, from June 11th to December 31st, 1927?—A. I do not know, sir. I did not prepare the financial statement or have anything to do with the general ledger accounts.

Q. Is this a copy of the financial statement of the Carling Breweries for that period? 40

MR. TILLEY: Is that another company?

MR. ROWELL: It is the reorganized company.

MR. TILLEY: Can I have a halt here? I am begging for it now?

MR. ROWELL: My submission is that when they commenced entering the true sale price in the books they show a handsome profit.

HIS LORDSHIP: How could that help me? Suppose I found that later on the company, having changed its name, or perhaps its management—

MR. ROWELL: No, there is no change in management.

WITNESS: The Ontario Liquor Control Act came into effect, and we were selling throughout Ontario, if I remember. Our Ontario legislation was changed, where it
10 was permissible to sell to the Ontario liquor stores and the brewery warehouses
That accounts for the increase in profits.

Q. At what price did you sell the goods after the 11th of June?

MR. TILLEY: Where, export or domestic?

MR. ROWELL: So-called export.—A. I cannot tell you, all the Carling Breweries, Limited, books, are in London.

Q. Did you include the Sales Tax in the price of this beer that is being referred to here, in these invoices?

HIS LORDSHIP: What period?

MR. ROWELL: The whole period covered by the suit.—A. State your question
20 again.

Q. Did you include the Sales Tax in the price of the beer we have been dealing with in this period?

HIS LORDSHIP: At \$1.75?

MR. ROWELL: At \$1.75 or the other figures given.—A. I believe the claim is for the Sales Tax that we did not pay during that period.

Q. I ask you is it included in the price?

MR. TILLEY: What does my friend mean? \$1.75 was the price charged, how can this witness say whether it did or did not include the Sales Tax? That is a question I do not understand, I do not know how the witness can understand it.

30 HIS LORDSHIP: The Sales Tax is determined by the sale price. I have to find what the Sales Tax is over and above.

MR. ROWELL: For the purpose of calculating the amount of the consumption or Sales Tax, Sales Tax shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto. My question to the witness is, does this price include anything for sales tax.

MR. TILLEY: I submit this witness cannot answer such a question.

HIS LORDSHIP: Can you answer that?

WITNESS: My lord, I don't know what he is driving at at all.

MR. ROWELL: Did you collect from the people who bought the beer then the
40 Sales Tax now being sued for?

MR. TILLEY: In addition to the \$1.75?

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MR. ROWELL: No, as part of the \$1.75.

MR. TILLEY: I object to such a question. Did you get anything except \$1.75?

—A. No, sir.

MR. TILLEY: Where the price is \$1.75.

We can argue what the result is later.

HIS LORDSHIP: With that evidence, if the Sales Tax is payable it would be payable on \$1.75.

WITNESS: The amount would be included in the \$1.75.

MR. TILLEY: I would like to have something to say about that later, that is surely not for this witness. 10

HIS LORDSHIP: Well I understand you agree the Sales Tax has not been paid.

MR. TILLEY: Oh the Sales Tax has not been paid, but I want my learned friend to stop the evidence while there is still something for the lawyers to argue about. He is now being asked the law on the subject.

HIS LORDSHIP: When you credited in your books \$1.75 you did not make any other entry in your books which would represent the Sales Tax?—A. Yes sir, on June 10th, 1927—

MR. TILLEY: That is not in the period.—A. In our financial statement of October 31st, 1926, we have an amount, Reserve for Taxes in Dispute.

MR. ROWELL: How much?—A. \$80,248.63. 20

Q. Does that represent what the Sales Tax would be as you computed it on the goods sold prior to that date?

MR. TILLEY: That is not material. It is a reserve set up because of a disputed account, we set up something in the balance sheet for the year.

HIS LORDSHIP: Those balance sheets are not filed. You might put that one in.

EXHIBIT No. 71: Balance sheet of Defendant Company for fiscal year 1925.

EXHIBIT No. 72: Balance sheet of Defendant Co. for fiscal year 1926.

MR. ROWELL: What does your next balance sheet show for your reserve?—A. That is the last one I have, of October 31st, 1926.

Q. What does the October 31st, 1925, balance sheet show?—A. It shows exactly 30 the same amount, it is carried on as a liability. The amount has remained unchanged, there was no reserve made during the year 1926, the account remains unchanged.

HIS LORDSHIP: How is that amount arrived at?

MR. TILLEY: It is the amount that was then in dispute I suppose. It was set up in 1925 as an amount at that date, and has never been altered.

MR. ROWELL: Can you tell us how you arrived at that amount when it was set up on that date? That was during your regime?—A. No sir, not without going in and analyzing the account to see how it was arrived at.

HIS LORDSHIP: Was that balance sheet prepared by you?—A. Yes sir.

Q. Then you should be able to speak of it.—A. My lord, that is not the question 40 he asked me. He asked me how I had built up the amount of \$80,000.

MR. ROWELL: Well how was it arrived at? If you arrived at it yourself His Lordship says you should be able to answer.

MR. TILLEY: Able to answer from memory?

HIS LORDSHIP: In any way he likes.

WITNESS: Speaking from memory I would say it had been arrived at by compiling the taxes for the period for which we had not paid. I think it runs from July or August, 1925, to October 31st, 1925.

HIS LORDSHIP: Did you have figures showing that?—A. There are figures available, our receipts would show how far we have paid, and our sales disclose the amount of sales we made during the other period, and the tax would be computed in the same manner in which it was during the period we paid tax.

MR. ROWELL: The company paid Sales Tax for April and May, 1924, I am instructed. And they paid the gallonage tax for about a year longer than they paid the Sales Tax?—A. Yes.

HIS LORDSHIP: That all comes back to your previous question, Did you reckon the \$80,000 on \$1.75?—A. Yes, if \$1.75 is the price that was invoiced at that period. But I do not think it was, because the \$80,000 is set up on October 31st, and we started charging \$1.75 to Savard on November 1st, 1925.

MR. ROWELL: I was going over these invoices and B.13s this morning when we got into the Savard commission account, and I thought we had better finish up those general matters.

Coming back to the B.13s, look for a moment at Exhibit 52, Grandi, Detroit, care of James Hugel, 600 cases, the invoice is February 17th, the bill of lading February 16th?—A. February 18th.

Q. It looks like 16.—A. I happen to know the way the writer makes his figures.

Q. Who is the writer of that?—A. Vincent.

Q. Then this B.13 attached to it is the original B.13 that went from London, is it?—A. It is dated at London. I do not know who wrote that.

Q. Who is Hugel?—A. I do not know, sir.

30 Q. The certificate is signed E. R. Hugel.—A. That is prior to the period of my accountancy, and I do not know him at all.

Q. Did you ever hear of him as an employee of the Carling Company?—A. Never, sir.

Q. Then Exhibit 53, July 8th, 1924, 1,000 cases of lager. Have you been able to find a bill of lading for this?—A. No sir. During the early part of 1924, from April through until the former part of August the bills of lading were not kept on the general file. Where they had been kept I do not know, but they are complete with the exception of what has been put in for exhibits and what has been handed over or taken by the Royal Commission officers since that period, August, 1924.

40 Q. What ones are you referring to, any particular ones, the Royal Commission?—A. No, not particular ones, except that they came in and had access to our files, and they took invoices, bills of lading and whatever they wanted to.

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Q. Do you say that there were any of them other than what are filed as exhibits in the Court?—A. I do not know where they are.

Q. If you say so I would like to know, because we will follow it up and get them.—A. Some of our invoices were brought down here for the Royal Commission on their orders, certain months, and bills of lading accompanying them, and we never got them back.

Q. Here you have got the invoice but you have not got the bill of lading.—A. No, and I said that during the early part of 1924 I do not know where the bills of lading are.

Q. Nor have you the B.13 that Left London accompanying that shipment?—10
A. Not to my knowledge.

Q. The B.13s attached as part of Exhibit No. 53 are copies obtained from Sandwich?—A. Copies obtained from the Customs records at Sandwich.

Q. On March 14th, 1928. A. Yes sir, that is the date the copies were procured.

Q. How do you identify these copies you have produced with this particular shipment?

MR. TILLEY: We have had that already.

MR. ROWELL: Not this one.

MR. TILLEY: Do we have to go through and exhaust them all with that same question? 20

MR. ROWELL: How do you identify these B.13s with this shipment?—A. To the best of my ability I identify them by the quantities to make up the quantity shipped on the invoice.

Q. You have picked out B.13s in the Sandwich office—

MR. TILLEY: He did not pick them out.

MR. ROWELL: Well they have been picked out in the Sandwich office in the name of C. B. Grandi sufficient in number to make up the 1,000 cases?—A. Yes sir.

MR. TILLEY: Is that quite right? You are suggesting that he picked those out from the office there to make up this particular list. I do not think it was done that way. When we were getting ready for the last trial we got some of the officers to 30 send in certain copies of their records, and then we matched them up. Now is that right?—A. No sir, I understood it the way you have explained it.

MR. ROWELL: Then having certified copies of the B.13s from the Sandwich office of the Department of National Revenue, you have now picked these out of that number, as you think representing this particular shipment?—A. To my knowledge, as nearly as I can figure it they would cover that shipment. They make up 1,000 cartons, the invoice calls for 1,000 cartons, billed to C. B. Grandi, Detroit, and the B.13s show 1,000 cartons exported to the United States, sworn to by the Customs as the goods leave Canada.

Q. Now the first B.13 is for 185 cases at \$4 a case, whereas the invoice is \$2.75 40 a case?—A. Yes sir.

Q. The second B.13 in this exhibit is 315 cases, also at \$4 a case?—A. Yes sir.

Q. And the third one is 240 cases also at \$4?—A. Yes sir.

Q. And the next is 260 cases, also at \$4 a case.—A. Yes sir.

Q. The last one is dated July 24th, and the first one is dated July 10th.—A. Yes sir.

Q. These would be B.13s made out at Sandwich, not the B.13s made out at London?—A. Not having seen the B.13s made out at London I have no way of comparing the two.

MR. TILLEY: I think you went over all that before.

10 MR. ROWELL: Not this particular one.

HIS LORDSHIP: Yes, yesterday afternoon.

MR. ROWELL: No, it was the other witness, my lord. And as this was the witness who picked them out—I wanted to go over them with this witness because he is the accountant.

(Court adjourned at 4.30 p.m. Wednesday, April 17th, to Thursday, April 18th, 1929, at 10.30 a.m.)

THURSDAY, April 18th, 1929, 10.30 a.m.

J. G. MORRISON, Examination by Mr. ROWELL (*Continued*):

20 Q. Mr. Morrison, have you the documents in connection with those sales we mentioned yesterday morning?—A. Which documents?

Q. August 30th, LaSalle; October 6th, Grandi, and so on. Have you the invoice, No. 00259 for the sale of August 30th, 1924?—A. Yes sir. In order to complete these this also has to be taken in. This covers the cases and this is the kegs. The transaction is not complete with the one invoice.

Q. Then you produce two invoices.—A. Two invoices to cover the goods.

Q. Both dated August 30th, 1924. The first, 00259, covers?—A. 6,067 cases.

Q. At \$2.75 a case. And the second, 00261, covers—?—A. The other invoice covers 1,100 quarter kegs.

Q. At \$7.75, making a total of \$8,525.

30 EXHIBIT 73-A and B: Invoices of August 30th, 1924, Nos. 00259, 00261.

Q. And the bill of lading?—A. There are I believe either two or three of the bills of lading making up that entire shipment that have become lost out of our files and I could not produce them.

Q. What bills of lading have you?—A. I have a bill of lading of August 23rd, car No. C. P. 287,113.

Q. How do you identify that with the invoice of August 30th?—A. By referring to the ledger.

Q. What do you find that identifies it?—A. I find that there are seven or eight carloads of beer covered by these two invoices.

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Q. Then the first bill of lading, 150 quarter kegs and 600 cartons, it is consigned to C. B. Grandi, Detroit, Michigan, care Carling docks, destination LaSalle, Ontario?
—A. Yes, sir.

Q. The next one is dated August 21st, 1924, bill of lading for 250 quarter barrels, the same destination?—A. Same destination.

Q. The next one is for?—A. 100 quarter kegs and 600 cartons.

Q. That is dated August 16th. How can you identify a bill of lading of August 16th with an invoice of August 30th?—A. As I stated, by referring to the ledger, which shows that these invoices cover those cars.

Q. Then these goods were shipped before the invoice was sent, is that it?—A. I do not know the details of it, as it was long before my time.

Q. Speaking as accountant does this bill of lading as of this date indicate that it was shipped on that date, August 16th?—A. It looks as though the goods were shipped on August 16th.

HIS LORDSHIP: Is there anything on the invoices that would show any number connecting it with the bills of lading?—A. On the invoice there is written, from August 7th to August 23rd.

Q. Was that put there after?—A. I would not think so, I would imagine that would be put there at the time the invoice would be made out. Both invoices bear the same notation, August 7th to August 23rd. 20

MR. ROWELL: Then as far as the documents show you will say that it looks as if the goods were shipped by various bills of lading commencing August 7th and running down to August 23rd, and then covered by two invoices on August 30th?—A. That is what the appearances show to me, the same as they would to you.

Q. Then the next bill of lading is for 1,000 cartons?—A. Yes, sir.

Q. The date is August 14th. The next is 100 quarters and 700 cartons?—A. This should be 800.

Q. The document is made out 100 quarters and 700 cartons on its face?—A. Yes, sir, with the notation that this should be 800 cartons.

Q. There is a note written on the face. When was that note put on?—A. I do not know, sir, I did not put it there.

Q. That is dated August 14th. Then the next is August 8th, that is torn so that you cannot see how many cartons.—A. But by referring to the car number posted in the ledger—

Q. Can you tell from the ledger how many cartons?—A. Yes, sir. 600 cartons.

Q. You might make a note on it referring to the page. And on this same page, this account marked LaSalle, appear the other car numbers and the amounts in the other items?—A. Yes, sir.

Q. Had you been shipping to LaSalle before this date?—A. I imagine they had been, I do not know, it is before my period. 40

Q. Then the next, 150 quarters, and 600 cartons?—A. Yes, sir. That is all the bills of lading that are there, but there are four, I think it is that as I stated had been missing from our files and I cannot produce, making up the balance, the difference in cartons and quarter barrels between the quantity shown on the invoices and the quantity shown on the bills of lading.

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EXHIBIT Nos. 73-C-I: Bills of lading relating to invoices Exhibits 73-A and B.

Q. Then the B.13s, are they all certified copies you obtained from the port?—

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A. Yes, sir.

Q. You obtained them on March 14th, 1928?—A. Yes, sir.

10 Q. How do you identify these with these shipments?—A. From the quantities shown, that is the numbers of cases and kegs.

Q. You do not know what stock they had in hand at the time these were shipped?—A. I know nothing at all about it. I have made a recapitulation, there are B.13s to cover 6,067 cases and to cover 1,100 quarter kegs.

MR. TILLEY: When you say cases—A. Cartons and cases, they both describe alike.

MR. ROWELL: And these B.13s will give the dates. How many are there?—A. 36.

EXHIBIT 73-J: 36 B.13s relating to Exhibits 73-A and B.

20 Q. How did you get at them? There are more B.13s than bills of lading?—A. The quantity shown on each B.13 is not the same number as the quantity on the bill of lading.

Q. You tried to get at the B.13s of date corresponding to these I suppose, is that the way you got at it?—A. I picked them from quantities.

Q. Not from dates also?—A. No sir.

Q. Did you not take into consideration dates?—A. To a certain extent. For instance I would not pick out B.13s dated 1927 for goods shipped in the former part of 1924.

30 HIS LORDSHIP: You could not put your hand on the B.13 that must have been issued from London in respect of these goods?—A. No sir, I could not locate it.

MR. ROWELL: These are all B.13s issued at the port.—A. They all appear to be issued at Sandwich.

Q. These, without going into them in too great detail, I understand you to say do not correspond in amounts individually with the bills of lading.—A. No. The aggregate covers the invoices and bills of lading.

Q. You have picked out a sufficient number of B.13s to make up the total amount of cartons, half barrels and quarter barrels?—A. The total number of cartons and quarter barrels, there are no half barrels billed.

Q. The total number shown on the invoice?—A. Yes.

40 HIS LORDSHIP: Have we any witness who would explain what would take place

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if you take a cargo from London with a B.13 and it got to Windsor, how they proceeded to get B.13s for the smaller quantity?

MR. TILLEY: They had attorneys at these ports, hadn't they?—A. I believe there were powers of attorney. I really know nothing about it.

Q. You were at London all the time?—A. Yes.

MR. TILLEY: My friend's customs officers will be able to tell.

MR. ROWELL: These B.13s run through from August 9th to September 17th?—
A. Yes sir.

Q. Bearing dates during that period. Did you pick out the B.13s that were nearest to the date of the invoices?—A. My staff picked them out, I do not know 10 just what procedure they followed.

Q. Have you got the other ones asked for yesterday?—A. No sir, they are not completed yet, they are working on them.

Q. Then will you turn and tell me where you received the payment for these shipments?—A. I can only speak from what I see in the ledger.

Q. I quite agree. What do the books show?—A. There is marked Transfer in one item \$7,000, and a further transfer of \$12,000.

HIS LORDSHIP: What is the meaning of "transfer"?—A. I suppose it means the same there as it did when I was accountant, it meant transfer from the Dominion Bank at Windsor to our bank account in the Dominion Bank, London. 20

MR. ROWELL: But that appears on this next page, running from September 4th,—that is a transfer of September 4th.—A. I do not really know what date it was.

Q. That appears to be the date. And then September 20th, transfer, \$12,000; September 27th, transfer \$3,529.42—A. Yes sir.

Q. Then were there payments in the month of August?—A. I do not know, sir.

Q. What are these credits?—A. They look like credit notes.

Q. Will you turn up one and see if these are not payments in the month of August.

HIS LORDSHIP: These would represent \$25,200, and the books show \$22,529.

MR. ROWELL: The B.13s all appear to be at \$4. 30

WITNESS: I do not appear to be able to find these credit notes.

Q. Will you look in your Cash Book and see if they are not cash receipts. I am instructed that they are.—A. (account shown).

Q. On the former page of this same account?—A. No this is the first page.

Q. The other items were on the second page?—A. Yes.

Q. On the first page, under date August 13th, and running to August 27th, are a series of credits in the LaSalle account in the Accounts Receivable ledger. Then you turn to the Cash Book, do you find entries in the cash book corresponding with these credits?—A. Checking over a few of them I do.

Q. Who were the cheques received from, according to the books?—A. I do not 40 know, sir.

HIS LORDSHIP: I do not follow that. You told me this amount of money, \$7,000, \$12,000 and \$3,000 odd was entered as having been transferred from one bank to the other. Is that right?—A. That refers to the \$7,000 and \$12,000 items.

Q. Have you any cheque or evidence other than the transfer?—A. There are other credits here.

MR. TILLEY: There are some transfers, and then some other credits.

MR. ROWELL: The credits to which you are now referring are earlier in the account than the transfers?—A. I believe they are.

Q. The earlier credits appearing on this first page of the LaSalle account appear 10 in your Cash Book as cheques A. S. Fitzgerald.—A. It is not on the same line.

Q. Start with the first one, there is a cheque A. S. Fitzgerald of \$3,964.10. Then do those represent a division of that cheque?—A. I do not know, sir, I did not make the entries.

MR. TILLEY: The book will speak for itself.

WITNESS: I do not know that those items there correspond with that, they are not on the same line of the Cash Book. The party that made the entries could answer that, I cannot read his mind.

MR. ROWELL: If that is the ground you are going to take we will take the entries.

20 MR. TILLEY: That is not a proper remark. The book speaks for itself.

WITNESS: This is all August, 1924, and I did not come there until June, 1925.

HIS LORDSHIP: But how would you read your own books?—A. If I made the entries I could read them distinctly and clearly without any interpretation, but when I try to interpret some other man's figures,—I do not want to state what he had in mind or what his idea was in making the entries he did.

HIS LORDSHIP: But what does the entry disclose on its face?

MR. TILLEY: That is the thing we cannot get, we are so anxious to reflect on the witness—

MR. ROWELL: If my learned friend will not interrupt by irrelevant and improper 30 observations.

Q. Does the book show the receipt of a cheque from A. S. Fitzgerald for \$3,964.10?—A. The books say, under date of August 13th, Cheque A. S. Fitzgerald, Amherstburg \$3,964.10.

Q. What has this reference to, Folio A-1?—A. I would imagine that would be Accounts Receivable ledger, A-1.

Q. Turn to it, and let us see what it refers to.—A. (Account shown.)

Q. Referring to Cash Book folio 33 there is an amount to the credit of Amherstburg \$347.50. Can you tell me what is the explanation of the difference?—A. No sir I cannot.

40 Q. Then the entry referred to, A-1, does not fully explain that item?—A. No sir.

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Q. Then try another one, also on August 13th, is cheque A. S. Fitzgerald, \$2,191.16, what other entry?—A. There is no amount opposite that.

MR. TILLEY: No index reference.

MR. ROWELL: Then on August 14th, Cheque A. S. Fitzgerald, \$2,988.73. There is no reference for that?—A. No sir.

Q. Then A. S. Fitzgerald, on what date?—A. On the 15th.

Q. Cheque for how much?—A. \$1,003.28, and no figure in the folio column, no reference.

Q. Then there appears a series of these cheques in the name of A. S. Fitzgerald.—
A. Yes sir. 10

Q. And under each one of these cheques A. S. Fitzgerald there appear certain other items. Take the first one to illustrate. Will you kindly add that group of figures and see if they correspond with that cheque.—A. They do, \$3,964.10.

MR. TILLEY: The pencil addition has just been made on the page.

MR. ROWELL: Now perhaps you can tell without adding—or test another of them and see if the items appearing under the cheque add up to the amount of the cheque, the items on the left hand side that follow the Fitzgerald cheque.

Then the items that appear on the lefthand side under the Fitzgerald cheque, when added up make up the amount of the Fitzgerald cheque of August 14th?—
A. Yes sir. 20

Q. And then are divided between LaSalle, Amherstburg, Sombra and Port Lambton?—A. Those are the names appearing opposite the amount.

Q. Are these credits?—A. These are credits.

MR. TILLEY: On the lefthand side of the book are credit items to these accounts?—A. Yes.

MR. ROWELL: Is this the interpretation: You received a cheque from Fitzgerald, in this case \$2,988.73, and credits are made to these four accounts aggregating that amount.—A. The credits to these four accounts total that amount. It is not for me to interpret whether they have a connection or not.

Q. I did not ask that, I asked if they total the amount?—A. Yes. 30

Q. Now turn to one of these accounts and see if you find a credit to that account of the amount to the left of the cheque.

MR. TILLEY: Are they not bound to be there?

MR. ROWELL: I should have thought the witness could say in a moment that those are credits to those accounts.

MR. TILLEY: Well we can say it. If he makes a slip, he is the witness.

MR. ROWELL: Under the LaSalle account you find a credit of the amount shown under LaSalle in connection with this particular cheque of August 14th?—
A. Yes, sir.

Q. Do you know Mr. Fitzgerald's connection with the matter?—A. I know 40
nothing about him, sir.

Q. Do you recognize the signature of the Carling Company to this agreement?—

A. That looks to me like Harry Low's signature.

EXHIBIT No. 74: Fitzgerald agreement, with brewers, May, 1924.

(Agreement read.)

MR. TILLEY: My lord, may I at this stage ask that we shall from this on direct our attention to whether the goods were exported rather than to matters of accounting? We are going on day after day turning up ledgers and turning up bank accounts, all on the idea of how much.

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HIS LORDSHIP: That suggests a great many other questions. I do not know
10 what position you are going to take. Take for instance Savard. Here is the company in London that takes this beer out of the warehouse and is supposed to sell to Savard. Is it or is it not selling to Savard? It goes to Windsor, is directed on the shipping bill to a given landing care of somebody. Is Savard the company? Is he an employee of the company? Is he acting for the company or on his own behalf? To ascertain that we must find what has been the actual transaction. I believe that is what Mr. Rowell is trying to get at.

MR. ROWELL: Yes, we want to show the actual transactions.

MR. TILLEY: My friend is not answering your Lordship's question. He says:
We want to show the actual transaction, but this is on the question of price. I do not
20 want to say a word to circumscribe your Lordship in determining the real question about export, but here we are day after day on questions of price. We have spent this morning an hour on certain questions to breed a sort of suspicious atmosphere, when my friend had a document in his own possession when he asked for it, all he had to do was to produce it and we would have got this Fitzgerald thing explained. Instead he goes on with this witness who does not know Fitzgerald as though he had to search and dig these things out.

I am going to argue that the question is export. I will not admit that I am in any particular dilemma no matter what conclusion your Lordship should come to as to what certain persons do in connection with the transaction. My friend says this
30 agreement has to do with the question of price. All he reads are the items in regard to price. I do not know what else it has in it, I have never seen the document before, I do not think for the moment I am at all concerned with it. As to what was done, how the goods were handled, and the part Savard played, I am not objecting. But why put on the record this document, if the only question is price, until we know whether we are liable?—If we are liable, I quite agree that my friend will have a good deal to say about the amount.

HIS LORDSHIP: You think we must first find whether the goods were exported or not? Suppose I find they were not, then the question would be, on what amount—

MR. TILLEY: If your Lordship came to the conclusion that they were exported
40 there would be no point to it at all. If you concluded that they were not exported, you would certainly have to direct an inquiry to know what was the right amount.

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I suppose with the knowledge Mr. Nash has of these books, and the knowledge our auditors have, they could sit down and make up a statement as to what happened in regard to the money. That has all been told about in the public inquiry.

HIS LORDSHIP: I do not know that, and I do not intend to read it.

MR. TILLEY: I am sure your Lordship does not. But that is an entirely different question. I do not want to circumscribe my friend at all as to anything that he says proves or disproves export. But why go into all these matters of account now?

Your Lordship will remember when we adjourned we adjourned ostensibly because the appeal was coming on on Gooderham & Worts.

HIS LORDSHIP: I am not aware of that.

10

MR. TILLEY: We told you that, my lord, it is on the record.

HIS LORDSHIP: I never attached any importance to it. I thought the case was adjourned because you were not ready to proceed.

MR. TILLEY: Because we were going to be in the appeal next week, our engagements. As soon as I got out of Court, I found that appeal was not coming on, we could have finished up then, and the Crown was ready to finish. Now we are starting on an entirely different thing, taking the witness over entries, discovering the name of Fitzgerald and that he actually paid us money, then we produce a document we have in our possession and could have started with that shows of course he had been paying us money. Why waste an hour and a half on an item of that kind?

20

MR. ROWELL: My lord, the Crown's claim in this case is for Sales Tax on certain specific sales, enumerated in the Information. The Crown is not here to determine the question of export or no export only, but to recover the amount which the Crown claims.

HIS LORDSHIP: There will be no tax if the export took place, if I were to find that.

MR. ROWELL: I submit there would. My submission is this, and it is the judgment of Mr. Justice Grant in the Gooderham & Worts case; my submission is they do not come under the proviso unless the export is made by the Carling Company itself. That is a point of law. Now we have to go into all the facts to ascertain who made the export, how it was done. Your Lordship cannot determine the question of export or no export until you know all the facts connected with how the goods were handled.

Then your Lordship cannot determine the amount without determining the price upon which the tax should be assessed.

HIS LORDSHIP: Mr. Tilley said we should now only determine the question of liability, and leave the adjustment of the amount until afterward.

MR. ROWELL: How can that be done? Take the period covered by this agreement to which my learned friend objects. Here is an agreement under which the Carling Company bind themselves to sell at \$4, in which the B.13s are at \$4, the invoice \$2.75, I must ask your Lordship to determine whether the Sales Tax is to be

based on the \$4 or on the amount in the books. We will show before I am through that the Carling Company actually received \$4 a case in respect of the goods covered by this agreement.

MR. TILLEY: Are we going into the accounting now? Why cannot we determine the liability?

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MR. ROWELL: The Crown intends asking your Lordship to find all these questions, to find as a matter of fact what is the price, and to find what the Sales Tax should be. It may be that in working out the details the auditors will have to get together, but your Lordship would have to determine first the basis upon which the
10 tax is to be computed.

HIS LORDSHIP: Will you admit, notwithstanding any evidence, that the defendant did receive the amount mentioned in this?

MR. TILLEY: No, my lord.

HIS LORDSHIP: Then let us go on with the evidence.

MR. TILLEY: No, my lord, pardon me. There are cases where the Court very properly will say, We are not going to spend a long time going into questions of account until we know whether there is liability. Your Lordship reserved that point when I raised it before, I have raised it a couple of times before. Is there not a time when one can say, This is prolonging the inquiry needlessly? We are pro-
20 longing this inquiry as to the amount to such an extent that one almost forgets what the main issue is.

HIS LORDSHIP: Do you not think we might go on on the question of liability, and leave the question of amount and rate of taxation, if any, until after the question of liability is decided?

MR. ROWELL: I submit not, for this reason: You cannot have an accounting in this case unless the principles upon which the accounting is to be taken are settled. Among the principles to be settled are: (1) Is the Carling Company bound by these agreements to pay Sales Tax on the prices mentioned in the agreement, provided we show they got the money? Then I will ask your Lordship to find that their tax should
30 be based on the amount which they actually received. How can your Lordship determine that question until I put in the evidence?

HIS LORDSHIP: We are on that document.

MR. ROWELL: I must take one step at a time. I intend following this up by calling Mr. Fitzgerald to show what took place under this agreement and what money was paid. I submit that is an essential feature of the case.

HIS LORDSHIP: Why submit that to this witness?

MR. ROWELL: Because if I had not shown in some way a connection with the books or the company my friend would object to the evidence going in.

HIS LORDSHIP: Well we are losing more time by discussing, let us get on with the
40 evidence.

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MR. TILLEY: If my friend had asked if there are entries in the books showing receipts from Fitzgerald we would have said Yes at once.

MR. ROWELL: I had to get it back to the actual cheques before my friend would admit it.

HIS LORDSHIP: Well, let us get on. Put that document in the hands of the witness.

MR. ROWELL: The witness has identified the signature.

MR. TILLEY: Would your Lordship allow me to show what happened? At page 242 of the evidence, of the witness Troop—(Refers to pages 242 and 245 of the record) the previous discussion on this point). 10

HIS LORDSHIP: I do not really intend, whatever judgment I give, if I find liability, to fix the amount.

MR. TILLEY: Then I do not see why my friend needs exact figures.

MR. ROWELL: Then Mr. Morrison, can you tell me whether the Carling Company has a record of the monthly statements sent in by Mr. FitzGerald under this agreement?—A. I have never seen any, sir.

Q. Can you tell me this from your knowledge of the books and records; Are these cases where the invoices have been produced and the bills of lading and the B.13s by Mr. Nash in his evidence and by you in yours fairly illustrative of the transactions?—A. I would like you to be more definite and state just what you mean 20 by that.

MR. TILLEY: I shall ask the witness not to attempt to answer any such question. I do not know what my friend has in mind or what he may use that to cover.

MR. ROWELL: Then I present to you the invoice, bills of lading and B.13s, Exhibits 51 to 58 inclusive.

HIS LORDSHIP: Take them one at a time.

MR. ROWELL: Can you tell me if this Exhibit 58-A, a shipment to C.P.R. dock, Windsor, LaSalle, Ontario, with the bill of lading and B.13s attached, fairly illustrates the shipments made to this particular dock and charged in this same account?—A. That, sir, is rather a broad question, that could be more easily deter- 30 mined by taking that specimen and referring to the charges made to C. B. Grandi, of Detroit, Michigan.

Q. If you cannot do it just say so. Can you tell me whether this is a fair illustration of the transactions charged to that account, without going into all the other items.

MR. TILLEY: Will you please specify in what respect? I do not know whether these are certified copies, I do not know what delay there was in shipment from the dock, I do not know what my friend may cover by that. If my friend is going to take that particular transaction and say, Now this is illustrative of them all, and see what happened here, if some special thing happened, I do not know where we will be. 40 I object to that way of covering it.

HIS LORDSHIP: If the witness is able to answer there is no reason why he should not.

WITNESS: My lord, I do not know whether it is or not.

MR. ROWELL: Then taking them all together, all that you have produced, do these fairly illustrate the transactions during the period covering by these productions as far as the books and documents disclose?—A. My lord, I do not know whether they do or not.

HIS LORDSHIP: However, you can say this much, that those exhibits and your evidence that you gave upon them explain the transactions in respect of the sale?

10 MR. ROWELL: Yes, to save going into all the detail, if this was illustrative of the others. If not, if the witness would point out in which respect it is not.

Q. Have you gone over the exhibits Mr. Nash put in, Nos. 4 to 12, dealing with the account of Savard and Syringe?—A. In what respect do you mean have I gone over them?

Q. In any respect? That is, have you looked at the documents?—A. Since they have been put in?

Q. Or before?—A. Since they have been put in I have never seen them.

Q. Did you look at them before they were put in?—A. I believe they were simply taken out of the files and handed over to Mr. Nash or yourself. Whether there
20 was any scrutiny made of them by myself at that time I am not now in a position to say.

Q. You took them off and handed them to us at the former sitting?—A. I believe I did.

Q. Then you cannot say whether these fairly illustrate the transactions of Savard and Syringe?—A. I have not gone through these to scrutinize them since taking them off the files.

Q. Can you tell me this, Did the Carling Brewing Company have a Sales Tax license under the Special War Revenue Act?—A. The Carling Export Brewing & Malting Company, did they have?

30 Q. The defendants in this action, did they have a Sales Tax license as manufacturers under the Special War Revenue Act?—A. I would have to refer to the records to find out. That would be on record at Ottawa wouldn't it?

Q. Well I am asking you the fact.—A. I do not know.

Q. Exhibit No. 43 is a certified statement by the American Consul at London of an application made by the Carling Export Brewing & Malting Company, signed by J. G. Morrison, Accountant, to have an invoice certified for sending to the United States certain empty kegs? (Document shown witness)—A. Yes sir, I remember that.

Q. Will you kindly turn up the bill of lading for that shipment?—A. I have
40 not got it here.

Q. Where is it?—A. I suppose it is in London.

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Q. You can have it sent down?—A. I think I could.

Q. I would like to have it.—A. I do not see how that has any bearing—

MR. TILLEY: Of course that is not given to you to see these things. There are others that are just as much in the dark.

MR. ROWELL: I ask you to have that sent.

Then have you the bill of lading for the next invoice, Exhibit 43, of April 19th, 1927, for the return of certain empty kegs.—A. I think I could get it also. I would like to make a note of them.

Q. The first is March 25th, 1927, for the return to Verdi Brothers, Hoboken, N.J., of 300 empty kegs, the other April 19, 1927, the same people, 400 empty used 10 half barrels.

Then you are going to let me know whether the accounts appearing at the various ports, C. B. Grandi, various amounts and Savard, various amounts at various ports were carried into these general accounts?—A. How do you mean?

Q. At the Windsor dock. You remember I asked you yesterday if the accounts at the other docks, Amherstburg, Port Lambton, various ports, were carried into the general account at the Windsor dock or C.P.R. dock or Carling dock?—A. I overlooked that request. I did get those different accounts that you mentioned into shape to present them, but I overlooked your other request.

HIS LORDSHIP: There is that Windsor expense account that I am absolutely in 20 the dark about. Do you intend to produce evidence, or leave it as it is? You said to me that that would be for the defendant.

MR. ROWELL: Yes, that is for the defendant to explain I submit.

Q. Then we have going through these accounts the name of Koven. Who is Koven?—A. I do not know, sir.

Q. We have had going through these accounts the name of Paquette. Who is Paquette?—A. I do not know.

Q. We have had Diesbourg, who is Diesbourg?—A. I do not know, sir.

Q. Does that apply to all these names?

HIS LORDSHIP: Not all. You know some of them. He said he knew some of 30 them.—A. I said I knew Savard.

MR. ROWELL: Do you know any of the others?—A. When you say the others it covers a number of names.

Q. Do you know Loughead?—A. I have seen Loughead.

Q. Where does he live?—A. I don't know, sir.

Q. Do you know Hugel, Port Lambton?—A. No sir.

Q. You do not know Koven, Leamington?—A. I met Koven one time.

Q. In connection with the business of the Carling Company?—A. No sir.

Q. Do you know Siegal?—A. I have seen Mr. Siegal.

Q. Where does he live?—A. I don't know.

Q. Do you know Sandal, Port Colborne?—A. No sir.

Q. Do you know Mr. Andridge, Walkerville?—A. No sir.

MR. ROWELL: That is all, subject to getting those documents.
(Documents wanted specified).

ARTHUR STANLEY FITZGERALD, sworn. Examined by HON. MR. ROWELL:

Q. Mr. FitzGerald, you are a chartered accountant?—A. Yes sir.

Q. Residing in and carrying on your business at Windsor?—A. Yes sir.

Q. You are the trustee I believe named in this agreement, Exhibit 74?—A. Yes
sir.

Q. When did that agreement come into effect?—A. On the 15th May, 1924.

10 Q. How long did it continue in operation?—A. In the terms of the agreement,
until July 31st, 1924.

Q. Then what happened after that?—A. The cashier, or my representatives at
the docks mentioned in the agreement were withdrawn, but the business was carried
on under my supervision for a longer period.

Q. When did you finally cease to supervise the business under the agreement?—
A. September 20th, 1924, was the last period during which any expenses in con-
nection with it were incurred.

Q. I see by section 8 of this agreement that you were to appoint representatives
at each of the shipping docks, take an inventory of all goods on such docks at the
20 date of coming into force of the agreement, and also keep a record of all goods subse-
quently brought on the dock. Did you do that?—A. Yes sir.

Q. Then I see: "All moneys are to be paid to the trustee or his representative
. . . without the written permission of the Trustee or his representative."
Did you appoint agents at the dock to receive the money?—A. Yes sir.

Q. As provided by the agreement?—A. Yes.

Q. When did your agents or representatives start to receive the money at the
dock under this agreement?—A. On May 15th, 1924.

Q. And they continued at the docks until what date?—A. July 31st, 1924.

Q. That is the change you mentioned, when you supervised afterward yourself
30 without the representatives?—A. Yes sir.

Q. Were any goods delivered at the dock during this earlier period at less than
the amount mentioned in the agreement?—A. How do you mean "delivered at the
dock?"

Q. I mean goods covered by this agreement.—A. Goods sold?

Q. Yes.—A. Our cashiers were instructed not to accept less than \$4 a carton
for the pints, and no goods were sold at less than that to my knowledge.

Q. Have you got a sample of the documents that were used in connection with
the matter?—A. Yes, sir.

Q. A sample sheet, your daily report and an order for delivery. Would that be
40 six orders for delivery?—A. Yes, sir, six requests for delivery.

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EXHIBIT No. 75: Sample daily report of Fitzgerald, Trustee, and sample orders.

Q. Now, will you outline the procedure at the dock? First you took stock of the goods in hand under the agreement at the time you took over the management?—

A. Yes, sir.

Q. How did you record the goods received and the goods sent out?—A. The goods received were recorded on a daily stock sheet kept by the cashier on the dock.

HIS LORDSHIP: Is that the first document that came into your possession with respect to any order, this order for delivery? Did that come into your possession?

A. It was handed to my cashier by the man who was taking the goods from the dock. 10

Q. It did not come from the Carling Company?—A. No, sir.

Q. It was the consignee that brought that to you?—A. Yes, sir.

MR. TILLEY: When you say "consignee" you mean?—A. The person taking delivery.

HIS LORDSHIP: This is a demand by someone on Carling to deliver the goods. That comes into your hands from the consignee?—A. Yes, sir, from his representative.

MR. TILLEY: Well, from the navigator who was going to carry the goods back to Detroit?—A. We did not make any investigation as to what he was doing.

Q. The person whose name is here you would assume was the person that handed 20 it to you?—A. Yes.

MR. ROWELL: Will you explain the procedure at the dock, and illustrate by one of your reports?

HIS LORDSHIP: Well, first thing he gets an order like this, Exhibit 75. Where did you get the goods to deliver?

MR. ROWELL: And where did you get the money?—A. Well, sir, the next procedure was, the cashier made out an invoice corresponding to the order for the goods to be delivered.

HIS LORDSHIP: The cashier made an invoice to Grandi in this case?—A. Well it may have been to Grandi, I have not any particular example of that here that I 30 know of, but he made out the invoice either to Grandi or to the man who was taking delivery for the consignee.

HIS LORDSHIP: Not to the consignee himself?

MR. TILLEY: There is a little distinction that should be present to your Lordship's mind. Your Lordship sees Grandi, and you have heard of him before as the purchaser of the goods. Grandi gives this order addressed to the Carling Company to deliver a certain number of cartons to a named person, Smith or Jones—

HIS LORDSHIP: That is not the first step. Grandi has bought before that.

Q. I want to know, where do you get your goods?—A. The beer is at the docks in the custody of the Carling Company's agent. 40

Q. There is a warehouse of the defendant company at the dock?—A. Either a warehouse or a car on the siding with the goods.

HIS LORDSHIP: Have they a warehouse?—A. At some docks, yes, sir, other docks they have not, they just bring a box car on the siding.

Q. Then you have nothing to do to get the beer?—A. With the handling of the goods.

Q. To come from London at all?—A. No, sir.

Q. You are supposed to find some beer belonging to Carling somewhere in Windsor?—A. No, sir, we had nothing to do with the handling of the goods at all.

Q. But you cannot make an invoice or get the money until delivery?

MR. ROWELL: Might I suggest that we permit the witness to explain the steps
10 of the transaction.

HIS LORDSHIP: I do not understand that anyone would give an order to this trustee on Carling to deliver so many barrels or cartons without any more to do than to take the money.

MR. ROWELL: (Reads paragraph 8 of the agreement).

HIS LORDSHIP: He says he has nothing to do with the stock.

WITNESS: We just keep track of the goods that are delivered to the dock.

Q. You had no control over it?—A. Only that we kept tab on everything that came in and went out.

MR. ROWELL: Perhaps if we take it step by step.

20 Q. First you took a record of all the stock of the Carling Company at these various docks on the date you took over, May 15th?—A. Yes, sir.

Q. Then as any shipment of beer would come into these docks you would take a record, or your representative.

HIS LORDSHIP: An inventory of what you have there.—A. Yes.

MR. ROWELL: Then as any beer went out on orders received that was entered on the inventory as beer going out?—A. Yes.

HIS LORDSHIP: That is where we part. I do not understand that he, being a trustee, could deliver any beer on the order of anybody, because the order was addressed to Carling.

30 MR. ROWELL: If he got the money.

HIS LORDSHIP: Then he was making a sale.

MR. ROWELL: Well what does the witness say? Were you making sales?—
A. No sir.

HIS LORDSHIP: What was your authority to give out any beer on any such order?—A. We did not hand out any beer, we took the money and turned over the order of the consignee to a representative of the brewery, who handed out the goods, the amount handed out by him being checked by my representative on the dock.

Q. You only kept tab of the quantity of beer, but you did not handle it at all?—

A. No sir.

40 Q. There was someone representing the Carling Company that handled it?—A
Yes sir.

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Q. And was an order of that kind sufficient authority for you? Oh well you got the money.

MR. ROWELL: You got the money and handed the order over to the Carling people, whoever was there?—A. Yes.

MR. ROWELL: "All money for goods are to be paid by the purchaser or his agent to the trustee or his representative, after which the trustee or his representative shall issue an order to the brewer or his representative to deliver the quantity of goods paid for to such purchaser or his agent."

HIS LORDSHIP: Then there is another order besides this order.—A. It was not carried out in that way, simply the order from the consignee was turned over. 10

Q. You gave him a receipt?—A. We gave him an invoice showing the receipt of the money.

Q. And that receipted invoice would be the order to deliver?—A. Yes sir.

MR. ROWELL: Then will you give a sample of the forms? Did you get a daily report?—A. A daily report, yes.

EXHIBIT No. 76: Cashier's daily report of stock, August 2nd, 1924.

Q. What was the cashier's name?—A. T. Tracy.

Q. It starts out Inventory. What does that item of 1,333 cartons indicate?—A. When the cashier went on duty he checked over the stock on hand that he took over from the cashier whom he was relieving. That is the inventory as checked by 20 him.

Q. That shows the number of cartons on that dock that morning when he took over?—A. Yes sir.

Q. Then if he received orders and payments how would he indicate on his daily report the cash receipts and the deliveries made?—A. This is a copy of the invoices which he gave, showing that on this particular invoice he received \$100 for 25 cartons sold to — — — That is signed by Tracy, cashier.

Q. Then each man who brought an order and paid the money would get an invoice for the amount of goods covered by the order, and showing the money paid for it?—A. I would say an invoice was made out. 30

Q. And that is the receipted invoice?—A. Yes sir.

Q. Did you have more than one copy?—A. Yes, the invoices were made out in triplicate.

Q. What was done with the other copies?—A. One copy sent to the brewery, to London, one retained in the office, and one for the consignee.

Q. Then these are similar copies attached to this daily report showing the sales of that day as entered on the report?—A. Yes sir.

HIS LORDSHIP: What is the pink document?—A. That is a summary of the sales for the day, and is called the cashier's daily report.

MR. ROWELL: Did you receive a report of that kind with similar documents 40 from the cashier at each dock?—A. Yes sir.

Q. What price did you receive for all the goods delivered pursuant to these invoices during the period you were in charge?—A. The price as called for by the agreement, sir.

Q. Did you pay over to the Carling Company the full amount of the price received?—A. It was either paid over to them by cheque or it was deposited in an account to their name.

Q. Whereabouts were the deposits made?—A. There were some deposits made at Amherstburg—

Q. In what bank?—A. I forget the name of the bank at Amherstburg,—and 10 deposits in the Dominion Bank, Windsor; deposits in the Royal Bank, Belle River; deposits in the bank of Montreal at Port Lambton, the head office of which is Wallaceburg, and there were some deposits I think made in Sarnia, but my recollection of those is not clear.

Q. Did you make these deposits to the credit of the Carling Company, you or your representatives, as the money came in from day to day?—A. Yes sir.

Q. For how long did that continue, that is making the deposit from day to day, as the money came in?—A. As far as I remember it was from the period of May 15th to some date in September.

HIS LORDSHIP: The 20th of September?—A. No sir, the week ending September 20th was the last time we received money for the Carling Brewing Company.

MR. ROWELL: You said part of the time you sent cheques.—A. Yes sir.

Q. What period was covered by the cheques?—A. From August 12th, 1924, to September 19th, 1924.

Q. Then is this correct, that you made the deposits from day to day to the credit of the Carling Company in these different bank accounts from May 15th to August 12th, and after that you sent cheques? Or did the deposits run contemporaneously with the cheques?—A. I think there were one or two places where deposits were made as well as cheques having been sent.

Q. What was the total amount you paid to the Carling Company either by 30 depositing to its credit or sending them cheques during the period you were acting as trustee under the agreement?—A. My record shows a total of \$301,122.50.

Q. Does that show it month by month?—A. Yes sir.

EXHIBIT No. 77: Mr. FitzGerald's statement of account with Carling Company.

Q. Then tell us at what docks were you dealing at this time, where did you take over stocks and operate?

MR. TILLEY: This time?

MR. ROWELL: The period covered by the agreement. The period under which he acted as trustee.

40 Q. For the Carling Company?—A. Yes.

Q. Yes.—A. Amherstburg, LaSalle, Belle River, Port Lambton, Corunna, Kingsville and Pelee Island.

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Q. Was there any dock at Sandwich or Walkerville or at Riverside?—A. There was a dock at Sandwich, Queen's dock, but there was no stock carried there.

Q. You have told us you made these deposits. Did you send reports to the Carling Company?—A. Yes sir.

Q. How frequently did you report to them?—A. They received a copy of the cashier's daily report.

Q. Sent every day?—A. Every day—I do not know whether it was sent every day, but they got a copy of every day's report.

Q. Then what was done with these orders that came from the consignee?—A. They were left on the dock, they were the property of the brewers. They were left 10 with their representatives on the dock.

Q. Were you down at these docks yourself at any time while you were trustee?—A. I think about twice I made the round.

Q. Did you see how the work was being done?—A. Yes.

Q. What kind of boats were being used?—A. Mostly speed boats.

Q. What do you mean by a speed boat?—A. Well a boat driven by a gasoline engine that will make good time.

HIS LORDSHIP: Small boats?—A. Well, yes sir, I suppose you would call them small boats.

Q. Were they 30 feet or 300?—A. I could not tell you that, I am not proficient 20 enough in the knowledge of the size of boats to be able to say.

Q. Well you know the difference between 25 feet and 300 feet.—A. Oh yes.

Q. That is what I mean. They were small boats?—A. Yes sir.

MR. ROWELL: Motor boats were they?—A. Yes.

Q. Speed launches?—A. Principally.

Cross-examined by Mr. Tilley:

Q. Mr. FitzGerald, your firm is Riddell, Stead & Company?—A. It was at that time.

Q. And they are described as chartered accountants of Windsor?—A. Yes sir.

Q. A reputable firm would you say?—A. Need you ask that, sir? 30

Q. Well I do not think so. Doing business outside of Windsor?—A. Yes sir.

Q. Where?—A. Over the Dominion, sir.

Q. A substantial accounting firm in Toronto, Montreal and elsewhere?—A. Yes sir.

Q. And as far as you are concerned this agreement was an agreement with respect to export trade?—A. Yes sir.

Q. That is exporting it out of Canada?—A. Yes sir.

Q. Is that what you intended it to be?—A. That is what it was intended to be.

Q. And what it was as far as you know?—A. Yes sir.

Q. The docks you referred to were owned did you say by Carlings, or leased, or 40 were they leased by others?—A. I do not know, sir.

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Q. Was one of them owned by Diesbourg?—A. I do not know, sir.

HIS LORDSHIP: Do you know whether at those ports you have mentioned there was a warehouse on each of them in which Carling's kept the goods in question?—A. I do not know whether on every dock there was.

Q. You said with respect to Sandwich that there was a dock there but they had no warehouse, kept no stock?—A. Shipments were made from the Queen's dock at Sandwich from time to time, but there was no warehouse there.

Q. No stock kept?—A. No, sir.

MR. TILLEY: That is no building in which the beer was stored there?—A. No.

10 Q. Does that mean that at the other docks there were buildings, or buildings at some of them?—A. Buildings at some of them.

Q. It is not accurate to say buildings at all?

HIS LORDSHIP: Did they have a building at Amherstburg?—A. Yes, sir.

Q. Was there one at LaSalle?—A. There was a building there, I am not as familiar—

Q. At Belle River?—A. Yes, sir.

Q. Port Lambton?—A. I do not think so, I am not sure.

Q. Corunna?—A. No, sir.

Q. Kingsville?—A. No, sir, there was no building there, I think it was kept on
20 a boat.

Q. Pelee Island?—A. I think there was a building at Pelee Island.

MR. TILLEY: Well, you are speaking from recollection?—A. Yes, sir.

Q. And you may or may not be accurate about it?—A. That is true.

Q. You never had to go into any question of what their arrangements were at the docks?—A. No, sir.

HIS LORDSHIP: Your office was not at the dock?—A. No, sir.

MR. TILLEY: Your office was uptown in Windsor, I gather?—A. Yes.

Q. And you had a cashier at each of these places?—A. Yes, sir.

Q. And do you know whether the Carlings had any lease, or whether some
30 person else leased the dock, or whether they owned it? The dock arrangements you were not concerned with, never were?—A. No, sir.

Q. Now, the agreement (I have not seen it before) I see it is made with several companies. I would rather gather that there was a little attempt to maintain prices by this means.—A. Yes, sir.

Q. The suggestion was that there was price cutting or rebates, or something of the kind to the purchasers, is that right?—A. I do not know, sir, I do not know what led up to the agreement.

Q. Did anything of that kind take place? Or was it discussed after the agreement?—A. I know that the agreement was made up to maintain a certain price.

40 Q. Have you any clause in the agreement whereby you could punish people if they did not keep the price right?—A. Yes, sir.

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Q. What clause is that? I have not had an opportunity of reading it yet.—
A. (Witness indicates No. 5).

Q. Now, where is the provision about finding him? You point to clause 16, which authorizes you on receiving notice of any breach to investigate. And the parties are bound to give information, and you will be permitted to examine the books, and then you have a right to impose a fine?—A. Or for any breach of the agreement.

Q. So that if Grandi on the other side of the river sent an order over and \$4 a case to be handed over when the goods were delivered, you got the \$4 and turned it over to Carlings for instance, and Carlings had an agreement with Grandi whereby 10 Grandi got something back, that would expose them to a fine under this agreement I suppose?—A. Yes, sir.

HIS LORDSHIP: Had you any occasion to put these penalties into operation?—
A. Yes, sir.

Q. Any with respect to Carlings?—A. Yes, sir.

MR. TILLEY: What was that?—A. The Carling Brewing Company were fined for not turning over, or their representative not turning over the money to my representative as called for under the agreement.

Q. When was that?—A. Some time in August, I think.

Q. How much were they fined?—A. \$1,000.

20

Q. Does that cover the whole of their misdeeds, were they good otherwise?—
A. To my knowledge.

HIS LORDSHIP: It would mean that, suppose Grandi gave an order on Carlings, he would go direct to the dock and overlook you and get delivery and pay at the dock?—A. No, sir. It was agreed after July 31st, as a matter of economy, that the cashiers would be withdrawn from the various docks, that the representative of the brewery would be responsible for the cash, for accounting for the sales to a representative of mine who visited the docks each day and checked over the sales and took the money. In this particular instance the money was deposited by Carling's representative in a bank, and we were given a copy of the deposit slip, which did not 30 afford us the check that we usually made,—

MR. TILLEY: Check on what?—A. Check on the sales.

Q. That is to say, after a certain date instead of carrying the expense for a cashier of yours on the dock all the time when business was going on, they said, now we will have a new arrangement, you will come and collect the money each day, and we will have it for you?—A. Yes.

Q. And account for the \$4 a case?—A. Yes, sir.

Q. And when you came to Carlings for the money Carlings showed you that they had put certain money in the bank, and that was supposed to satisfy you that they had got \$4 a case for the goods. Is that it?—A. As I recollect they simply had 40 not the money for us. Afterwards we were shown a duplicate deposit slip and they claimed they had deposited it.

HIS LORDSHIP: Instead of paying it to you they deposited it?

MR. TILLEY: He says they were not given anything at first, but later on they showed you a deposit slip?—A. Yes.

Q. How long afterward?—A. I do not remember.

Q. When their trial was on before you as Judge?—A. No sir.

HIS LORDSHIP: Did the deposit represent the quantity of beer at \$4, according to your inventory?—A. There was nothing to check it, sir.

MR. TILLEY: So that you could not check up Carlings. That was about August. Did you have like troubles with others?—A. I had no occasion to make 10 any other fine.

Q. But you had like troubles with them, had'nt you?—A. The reason I resigned was because it was not satisfactory.

Q. The thing was terminated by you?—A. Yes sir.

Q. Because it was not working right?—A. Yes sir.

Q. And you could not check them, and you said, If I cannot know what is going on I am going to stop?—A. Yes.

Q. And that did not apply to Carlings only?—A. No sir.

Q. They were all in the same boat, were they not, or probably not in the boat but on the dock,—in the same position?—A. Well the whole thing was unsatis- 20 factory, sir.

Q. It never really worked, isn't that the fact?—A. That I do not know.

Q. Never worked satisfactorily?

HIS LORDSHIP: Not to you?—A. No sir.

Q. Can you tell me what was unsatisfactory?—A. Just the whole method, there was so much backbiting and reports here and there of breaches, I simply laid down the rule that unless it was put in writing I would have nothing to do with it. A matter of gossip was not evidence, in my opinion.

MR. TILLEY: At any rate it was not working properly and you brought it to an end yourself?—A. Well, I resigned, sir.

30 *Re-examined by Hon. Mr. Rowell:—*

Q. My learned friend has referred to the fining of the Carling Company. I see there is a provision in section 19 for an appeal from the trustee to the members of the Association.

HIS LORDSHIP: Those who subscribed to that agreement?

MR. ROWELL: Those who subscribed to the agreement. Was there any appeal in the Carling case?—A. Yes sir.

Q. With what result?—A. That the brewers rebated the fine.

HIS LORDSHIP: Was that before or after you resigned?—A. I think it was following my resignation. It was rebated really following the dissolution of the 40 association.

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MR. ROWELL: What had you done with the money in the meantime?—A. Divided it up amongst the other brewers.

WILLIAM ALFRED JACQUES, sworn. Examined by Hon. Mr. Rowell:—

Q. Mr. Jacques you are an Inspector of the Department of National Revenue?—

A. Yes sir, Customs Preventive Service.

Q. For how long have you been an Inspector in the Customs Preventive Service?—A. It will be 17 years this June.

Q. Where are your headquarters?—A. My office headquarters are Walkerville, Ontario, now.

Q. For how long have you had your headquarters there?—A. I was transferred 10 to the Windsor District, with office headquarters in the Windsor Post office in November, 1920. It is just the past year or so that I moved to Walkerville.

Q. From 1920 up to April, 1927, the period covered in this action, you were Customs Preventive Inspector with your office at Windsor?—A. Yes sir.

Q. During that period did you have occasion to make an investigation in reference to Carling beer being sold at Sarnia?—A. Yes sir.

Q. What was the date of that?—A. I made my investigation on the 11th of October, 1924.

HIS LORDSHIP: What was the nature of your investigation?—A. I was instructed by my chief at Ottawa to proceed to Sarnia and investigate a complaint that the 20 Carling Brewing Company, who had a barge at Sarnia, was running a wide open bar.

HIS LORDSHIP: What do you mean by that?—A. I do not know what they meant by it, I presume they suggested that liquor was being sold openly on this barge.

MR. ROWELL: Tell us what you found.—A. I proceeded to Sarnia and went aboard this barge and saw beer being sold by the bottle there at 25 cents a bottle, saw the actual transaction.

Q. Who was in charge of the barge?—A. A Mr. Loughead was the man I interviewed.

MR. ROWELL: Your Lordship will remember his name appears in connection 30 with some of the Sarnia shipments.

HIS LORDSHIP: He was one of the consignees.

MR. ROWELL: One of the consignees.

MR. TILLEY: I do not know what you mean by that.

MR. ROWELL: His name appears in connection with shipments to Sarnia.

MR. TILLEY: That is a different matter.

MR. ROWELL: And some of them, one at least, was Grandi, care of Loughead, and my recollection is there is an account in his name, though I am not sure of that.

Q. Then just go on and describe the condition you found there. Was there stock on the barge?—A. There was no bar. There was a stock of beer on this barge, 40 a considerable stock of beer.

HIS LORDSHIP: Where was the barge?—A. The barge was situated at the foot of George Street in Sarnia, right up against the dock, the shore there.

Q. Was it against the dock or the shore?—Q. There is a dock. If my recollection serves me right it was moored to the dock, and I believe I walked across a short plank to get on the barge.

While I was there on the barge my business only consisted of about 15 minutes, there were about 6 or 7 men sitting around drinking beer or ale out of bottles, and while I was there about 8 or ten other men came in and purchased beer or ale at 25 cents a bottle and consumed same there.

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10 Q. Was anything said about cases while you were there?

MR. TILLEY: I object to what was said.

HIS LORDSHIP: Tell us what you saw, do not tell us what anyone else said.—A. That is all I saw, sir, actually saw.

MR. ROWELL: Your Lordship thinks his conversation with Loughead is not admissible?

HIS LORDSHIP: I did not know you were speaking of that. Do you intend to hear Loughead as a witness?

MR. ROWELL: No, my lord.

HIS LORDSHIP: How will you connect him, except that he bought beer?

20 MR. ROWELL: It is only showing this beer certainly was not exported.

HIS LORDSHIP: Do you know, witness, whether that was Carling beer?—A. Only one reason I would say it was Carling's beer—

Q. No, I want to know whether you verified there that what Loughead was selling was Carling beer.

MR. ROWELL: The witness can look at his report to refresh his memory.

WITNESS: I do not recollect that it was Carling beer, the only—

MR. TILLEY: That is the answer, I submit.

HIS LORDSHIP: You were going on to add something?—A. My report would suggest—

30 MR. TILLEY: A witness should not be telling what his report would suggest.

HIS LORDSHIP: I want to get his full answer.

MR. TILLEY: But it must be his own knowledge, refreshed from looking at his report.

WITNESS: There is only one thing that guides me now, that is what I have stated in my report.

MR. TILLEY: Then I object, that is not evidence.

MR. ROWELL: The witness can refresh his memory by looking at his report.

MR. TILLEY: But after he has done so he must then say, I have a memory of it myself. He cannot read from his report.

40 HIS LORDSHIP: I will allow him to look at his report to refresh his memory, and give an answer whether you can swear that this beer there was Carling beer.—A. I

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cannot swear, my report does not tell me, and I cannot swear that it was Carling beer. Can I go further than that?

HIS LORDSHIP: No, that is all that was asked of you.

MR. ROWELL: What did you report with respect to the charge, the complaint?

MR. TILLEY: I object to what he reported. How can that be evidence against me? He might have got his report from any hearsay source.

HIS LORDSHIP: If you can link it to Carling I will allow further evidence. If it was not Carling beer that is the end of it.

MR. ROWELL: Is the Carling Company referred to in your report?

MR. TILLEY: I object to that.

HIS LORDSHIP: You may ask him whether he has any means of finding whether or not it was Carling's.

MR. ROWELL: What was the stock on the barge?

MR. TILLEY: I object to that.

HIS LORDSHIP: He can say that, anything he saw.

WITNESS: The stock as far as I could see was cases of beer or lager.

(Court adjourned at 1 p.m. until 2.30 p.m.)

AFTERNOON SESSION

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W. A. JACQUES, Examination by Mr. Rowell—Continued.

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Q. Mr. Jacques, did you see the beer of any other brewery on this barge?—A.

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I do not recollect seeing any other beer.

MR. TILLEY: That is a very improper question, I submit.

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HIS LORDSHIP: Did you ascertain any beer that was there as belonging to any special manufacturer?—A. As far as my memory serves me, I was of the impression—

MR. TILLEY: You are not asked what your impression was.

10 HIS LORDSHIP: I want what you saw, what you can testify under your oath to be this or that.—A. That is five years ago.

Q. Well, we are not finding fault, but we only want you to state what you can swear to.—A. All I have to guide me is my report, at the present time, as to the accuracy of my memory.

Q. But you saw some men, eight or nine, that were drinking beer?—A. Yes, sir.

MR. ROWELL: Can he not refer to his report to ascertain if it throws any light?

HIS LORDSHIP: He can refer to his report as much as he likes, he can read it over, and you can ask him any question that he can answer. You can read your report and refresh your memory, I will give you all the time you want, and then answer.

20 MR. TILLEY: Your Lordship will observe that he has been reading it all the time he is in the box, and I suppose at noon hour as well.—A. I was familiar with my report, sir.

MR. ROWELL: Are you able, after refreshing your memory by reading the report, to say what beer you saw there?—A. My report—

HIS LORDSHIP: Use your report to refresh your memory, and then when you are asked the question you answer it under your oath.—A. From my report I would say—

HIS LORDSHIP: You cannot say that.

MR. TILLEY: He has said two or three times that he cannot say anything else.

30 HIS LORDSHIP: You have refreshed your memory, you have seen your report, and now we ask you, with all the information you have, to answer this or that question. If you cannot answer, say so.—A. If I have to answer Yes or No it is very difficult for me to do so.

MR. TILLEY: Then, I object.

HIS LORDSHIP: What is that?

WITNESS: If I have to answer Yes or No without an explanation as to why I say Yes or No, it is almost impossible for me to do so.

HIS LORDSHIP: You understand me, you take your report, you read it, refresh your memory, you put all your report in your head, then you put the report aside and
40 answer any question that is asked.

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MR. TILLEY: If he can pledge his oath to it.

HIS LORDSHIP: You must be able to pledge your oath. I do not want any impression or deduction, I want you to testify to this or that, or if you cannot testify say so.—A. I am here to tell the truth, sir.

MR. ROWELL: Then, what can you say, having refreshed your memory by reference to your report, what do you say as to the beer you saw on the barge?

MR. TILLEY: Can he say whose beer it was, that is the point.—A. I believe it to have been Carling' beer.

HIS LORDSHIP: Why do you say that?—A. Because I was sent there to make an investigation in connection with beer being sold on that barge— 10

Q. And find whether it was Carling's beer or not?—A. Yes.

Q. Then if you did not find it you took it for granted?—A. No, that is why I say now that in the space of time, that has gone since the date of my report, I feel in my own mind that if it had not been Carling's beer, I would have commented on it at the time.

HIS LORDSHIP: That is all deduction.

MR. ROWELL: Did you report on the complaint that you were sent to investigate?—A. Yes, sir.

Q. Did you deal with the Carling Brewery in making your report?

MR. TILLEY: I object. I suppose he gets gossip and everything else in his 20 report, that would be his duty.

HIS LORDSHIP: Apparently he does not deal with Carling's beer at all.

MR. TILLEY: I do not know what it deals with, but my friend asked what he knows about things that were there, and he says he does not know.

HIS LORDSHIP: Well, you have a conscience, and you have made your oath. If you cannot answer the question, say so.—A. I cannot under oath right here now, depending on my memory, swear that that was Carling's beer.

MR. ROWELL: I asked you, refreshed by reference to the report.

MR. TILLEY: Now, we have had this witness refreshed and refreshed and refreshed. Surely, my friend cannot coax the witness further. 30

MR. ROWELL: Did you see any liquor other than beer at the dock?—A. No, sir.

Q. On the barge, I mean?—A. No, sir.

Q. Did you report on the beer of any other brewery?—A. No sir.

MR. TILLEY: I object to that method of examining.

HIS LORDSHIP: We are not concerned with any other beer. If it was some other company's we have nothing to do with it.

MR. ROWELL: Then coming to another matter; have you seen from time to time during your residence at Windsor, and speaking now of from 1924 to 1927, the character of the boats used in the so-called liquor export business, coming to the docks for beer?—A. Yes sir. 40

Q. What is the character of the boats?—A. Small motor boats, speed boats, large open boats, possibly 30 to 40 feet long, 6 or 8 feet beam.

Q. At what different ports have you seen those?—A. Practically every port along that river front from Amherstburg to Sarnia.

Q. Have you ever seen a deck vessel used in connection with this business?—

A. No sir.

HIS LORDSHIP: There was a witness that gave evidence at the previous sitting, who said they were not small boats, they were big boats, that they wanted big boats because it was very stormy sometimes.

MR. ROWELL: He was speaking of a particular port on the lake.

MR. TILLEY: That was at Kingsville I think.

10 HIS LORDSHIP: This witness said there were small boats at all the ports. That is all the ports on what lake?—A. That would be on the Detroit River and the St. Clair River.

MR. ROWELL: You might just enumerate, if you can, the ports at which you have seen these small boats, and these small boats only, in which liquor is exported.—A. Amherstburg, LaSalle, Brighton Beach,—which is part of Sandwich, an outport of Sandwich,—Ford, Riverside, Belle River—

HIS LORDSHIP: Is that of any interest to us?

MR. ROWELL: No, I suppose he has spoken of the boats generally.

HIS LORDSHIP: The nature of the boat would not make any difference.

20 MR. ROWELL: It does under the Customs Act, as to when export commences. The Customs Act provides that in the case of undecked vessels the export does not begin until after the vessel has left the waters of Canada.

Q. Does what you have said about the boats apply during the whole period from 1924 to 1927 inclusive?—A. Yes sir.

Cross-examined by Mr. Tilley:—

Q. I did not quite follow the question my friend asked you. He asked you whether you saw any other liquor there, or any other beer, or what. Was it beer only you saw there?—A. That is all I can recollect having seen.

Q. No whisky?—A. I do not recollect having seen any whisky.

30 Q. Now as to the ports along the river, what is the northerly port on the Ontario side as you describe the river?—A. The river runs east and west.

Q. Well northeasterly then.—A. Belle River I would say.

Q. Then coming down the stream.—A. There are several docks in Riverside.

Q. There is a Customs officer at Belle River?—A. Yes sir.

Q. Who is he?—A. I believe his name is Strong.

Q. How long has he been there?—A. I could not say.

Q. Some years?—A. Some years to my knowledge, yes sir.

Q. Back to 1922, '23, '24?—A. I would not care to definitely say.

Q. Well you think five years roughly?—A. I would think so, yes.

40 Q. And next to Belle River is Riverside. A Customs officer there?—A. There is an officer at Riverside, yes sir.

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Q. Who is there?—A. There have been different officers stationed there for taking care of the clearance of these vessels.

Q. That is the liquor vessels?—A. Yes sir.

Q. Does the Government appoint special officers to clear these liquor vessels?—

A. There was an arrangement for an officer at Riverside to take clearances of boats clearing from Riverside.

Q. With liquor?—A. Yes sir. The new arrangement I am not familiar with.

Q. That continued down to when?—A. I have no personal knowledge of that.

Q. But roughly.—A. I would say until the change, until these ten docks—

Q. When was that change made?—A. Within the last two or three months. 10

Q. Within the last two or three months what is the change that has taken place?

MR. ROWELL: I submit we are not concerned with what happened since the period covered by the suit.

MR. TILLEY: Well let us take it prior to this change.

Q. Who was the Customs officer at Riverside prior to the change?—A. I do not know, that does not come under my jurisdiction. I believe there was a man named Smith at one time.

Q. Is he still a Customs officer?—A. Yes, sir, I believe so.

Q. At the same place?—A. I cannot say that. I believe there was a man named 20 Adams there at one time.

Q. Is he still there?—A. I do not know.

Q. He is at some one or other of the ports?—A. He is connected with the outport of Walkerville, I do not know how they use those officers, they may send one man there for one week and another for another, that does not come under my jurisdiction.

Q. What is the next one down the stream?—A. Ford.

Q. Who is the officer there?—A. I believe the same officer took care of the clearances from Ford.

Q. Riverside and Ford?—A. I believe so, either that or directly from Walkerville. 30

Q. Then the next down the stream?—A. Windsor.

Q. Who is there?—A. I do not know who the officer is that takes care of the clearances.

Q. There is a Customs officer there?—A. Yes, I believe there is.

Q. Do you know who he is?—A. Yes, but I cannot just recollect his name, but I know there is an officer there that accepts these clearances.

Q. Is it McKee?—A. McKee.

Q. How long has he been there?—A. To my knowledge for two or three years, I think.

Q. Then did you pass over Walkerville, is there an officer at Walkerville?—40
A. That is the outport, I do not think there is any clearances actually made at Walkerville of liquor.

Q. Why are there not clearances of liquor from Walkerville?—A. Because I do not think there is any liquor export dock there. I think the nearest to Walkerville would be Ford.

Q. So that the ones you are giving me now are places where they clear liquor?—
A. Yes, I believe that is what you asked.

Q. Then the next down stream from Windsor is Sandwich?—A. Yes, sir.

Q. And they clear these liquor boats there?—A. Do you mean at the present time?

Q. Well, prior to this last change.—A. Liquor has been cleared there, yes.

10 Q. For years?—A. As far as my knowledge goes.

Q. Prior to the last two or three months?—A. Yes, sir.

Q. At Sandwich, I believe, the dock over which the liquor is shipped is a Dominion Government dock?—A. I have never seen any liquor—I have been told liquor has been shipped on the Queen's dock, but I have never seen it.

Q. You mean boats cleared off that dock by a Customs officer?

HIS LORDSHIP: We have it that there was a wharfinger there who charges certain dues.

MR. TILLEY: It is a Government dock.

MR. ROWELL: No, that was at another point.

20 MR. TILLEY: This is the Government dock, and the Government take the fees there.

WITNESS: I could not tell you.

MR. ROWELL: That was Kingsville, my lord.

HIS LORDSHIP: At any rate there is a Government dock there.

WITNESS: There is at Queen's dock, I guess.

MR. TILLEY: And any revenue from shipments there would go direct to the Government.—A. I cannot say.

Q. What is the next down stream?—A. There were docks at Brighton Beach.

Q. Liquor docks?—A. Yes, sir.

30 Q. Where they clear liquor?—A. Yes, sir.

Q. A Customs officer there?—A. No, I do not know whether they report to the officer at LaSalle or whether they come to Sandwich to report, but there was no officer in attendance there.

Q. No officer in constant attendance?—A. No.

Q. But there is arrangement made to clear liquor from these docks, or ship it from there?—A. I believe so. Our regulations would demand that any liquor shipped from that dock be properly cleared.

Q. Then the next dock?—A. Is LaSalle.

Q. And an officer there. Who is he?—A. Maw, I think.

40 Q. Isn't it Wilson?—A. Wilson was there at one time, but more recently, I think, it is Maw. I am not certain of the name.

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No. 25

William Alfred
Jacques
Cross-
examination
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Q. And that dock clears practically nothing but liquor, possibly only liquor?

A. At these docks you are speaking of now?

Q. Yes.—A. Liquor and beer.

Q. Exclusively?—A. Well, they are known to us as liquor export docks.

Q. I am just finding out what conveniences the Government provides for the traffic. What is the next dock below LaSalle?—A. Amherstburg. Of course, LaSalle covers a number of docks.

Q. How many?—A. I would say four or five at least, possibly more.

Q. That is where it is dredged right in from the river?—A. Yes.

Q. And the boats can come right in to the source of supply?—A. You are asking 10 me questions now that I am not thoroughly familiar with. I am giving you the information to the best of my knowledge.

Q. Well, my friend did that, and I thought I would follow it up. At any rate there are these docks all up and down the river that are really liquor docks and beer docks for the exportation of beer and liquor?—A. Yes sir.

Q. And there are Customs officers there to see that the boats are entered at Customs when they come in, to see that they are cleared when they go out, and see that the business is carried on regularly.—A. Not at each dock.

Q. Well, in the way you have described, sometimes they would have to put these entries through at an adjoining dock?—A. There might be four or five docks in a 20 group, and that officer would only be at one.

Q. But they have the arrangements made so that they can clear at all these docks.

HIS LORDSHIP: You do not mean to convey the idea that they are exclusively used for beer and liquor?

MR. TILLEY: Oh, yes.

HIS LORDSHIP: They could not be used for other merchandise?

WITNESS: I do not know that it could not be used for other things than liquor, but I do not think it was.

MR. TILLEY: Whether or not other goods could be shipped over these docks, 30 nothing else was shipped. That is the fact isn't it?—A. I cannot say that.

Q. But that is your understanding?—A. That is my understanding.

HIS LORDSHIP: It is a port of export?

MR. TILLEY: It is a port of export, but take LaSalle, they are built and equipped and operated for the liquor and beer business are they not?—A. I would not care to say that. I suppose if someone brought down some goods there for export by boat I do not believe the officer in charge would refuse to certify to the export entry.

Q. If you put it that way I will leave it there. You think if someone happened to bring something else there the officer would not tell him, You must go away, I am only dealing in liquor?—A. Well, I say that because I do not want to say that these 40 export docks would not be used for any other purpose.

Q. I quite agree. That is all, thank you.

VERNON C. NAUMAN, sworn. Examined by Mr. Rowell:

Q. Mr. Nauman, what is your position with the Department of National Revenue?—A. Chief of the Excise Tax Branch.

Q. Where located?—A. At Ottawa, sir.

Q. For how long have you held that position?—A. Since May 4th, 1927.

Q. Were you in that branch before you became chief of the branch?—A. I was in the Excise Division, not in the Excise Tax Branch.

Q. How long have you been in the Excise Division?—A. Since September 20th, 1920.

10 Q. Has your Division to do with the regulations in connection with the Excise Taxes?—A. Yes, sir.

Q. Have you the regulations that have been from time to time made under the Special War Revenue Act in reference to Excise Taxes?—A. Yes, sir.

Q. Can you tell me what was the first regulation made in connection with that?

HIS LORDSHIP: Have they not already been filed?

MR. ROWELL: There are some additional ones.

WITNESS: The first regulation was in pamphlet form, known as Form G-31, issued in July, 1920.

Q. What followed that?—A. Do you mean as a general regulation?

20 Q. Or as a regulation affecting gallonage and sales tax in connection with liquors or beer?—A. There were rulings given from time to time. There was no general sweeping regulation applying only to liquor published, although individual rulings were given from time to time as cases arose.

Q. There was one we had evidence of in the Gooderham & Worts case, I think September, 1923.—A. Yes, there was an order issued on September 19th, 1923, to all inspectors of customs and excise, recalling to their attention certain provisions of the Department, certain requirements.

Q. Have you a copy of that order?—A. Yes, I have.

HIS LORDSHIP: Has the regulation of July, 1920, any effect on this case?

30 MR. ROWELL: It is prior to the date. It was not in force when these transactions took place.

HIS LORDSHIP: Do you say the regulation you call G-31 of July, 1920, has become obsolete, since when?

WITNESS: I would not say that G-31 was obsolete.

MR. ROWELL: Then we will put it in.

WITNESS: The regulation when it is made may carry on ad infinitum.

HIS LORDSHIP: Until another one comes, and either by implication or express language repeals the previous one.—A. Or it may continue in the new one.

EXHIBIT No. 78: Form G-31, regulations of July, 1920.

40 MR. ROWELL: Then you said there was one of September 19th, 1923.

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MR. TILLEY: I object to this. This is not a regulation at all.

Q. You are not saying this is a regulation, are you?—A. I would consider it as such.

HIS LORDSHIP: It is a letter addressed to an individual inspector.—A. Yes. I consider any order issued to him directing his attention to certain parts of his duty would be a regulation.

MR. ROWELL: It was addressed to all Inspectors?—A. It was issued to all Inspectors.

HIS LORDSHIP: I have had occasion to pass on instructions given by the Deputy. But I let the document go in, and when it became necessary to discuss the 10 authority I decided it. It is reported.

MR. TILLEY: I thought your Lordship had reached the conclusion that these were not regulations.

HIS LORDSHIP: I do not read them as regulations. I may be wrong. I have no objection to it being filed. Someone may take another view.

MR. ROWELL: Will you explain exactly what was done.

HIS LORDSHIP: You have told us so far that there was issued on the 19th of September, 1923, an order to all the inspectors of Excise and Revenue.—A. Yes sir.

MR. TILLEY: Then he produces this document. It is an original, and I want the original to be filed, or a copy of the original. 20

MR. ROWELL: This original, my lord, is one to the Inspector at the Port of Montreal. The original at Toronto could not be found. We proved that it was not available. Now the original at London is in the same position, they cannot find the original, they have a copy on the file. If my learned friend wishes I will bring down the officer from London to show that the original there cannot be found.

MR. TILLEY: I do not want to object to copies, but that document as an original document, whatever it is worth, may be filed, I am not objecting to that in view of your Lordship's ruling. Or a copy of that document.

HIS LORDSHIP: Is not that what we are doing?

MR. TILLEY: No, my friend has a different document, it is made up differently, 30 he seeks to file an altered document. I submit it should be this document.

EXHIBIT No. 79: Order of September 19th, 1923.

HIS LORDSHIP: Do you say you could not find the one to London?—A. It would be addressed to the Inspector at the port.

Q. But you have not got it?—A. Not the original of that one.

Q. But you say it is a similar one?—A. Yes sir, I have the copy from which it was taken, the office copy from Ottawa.

HIS LORDSHIP: Would that not be sufficient?

MR. TILLEY: I am willing to assume it is a copy of this document we have already got filed. 40

MR. ROWELL: Have you the office copy from Ottawa from which these were taken?—A. Yes sir.

HIS LORDSHIP: The office copy from Ottawa from which 79 was taken?—A. This is the Ottawa file, sir, and with your Lordship's permission I will show the way the Ottawa copy was marked, the copy in the file of the Department showing the officers to whom it was sent. (Showing copy.)

MR. TILLEY: That is different again from anything that has been shown to me.

HIS LORDSHIP: Is it different from 79?

MR. TILLEY: Yes, my lord.

MR. ROWELL: Only in the heading, my lord.

WITNESS: It is 79, sir.

10 HIS LORDSHIP: It is only the names to whom it is addressed.—A. That is the only difference, sir.

MR. TILLEY: I am not objecting to that. That document as it is there was not sent to any person. I understand this witness is saying, reading from this document, that a similar instruction was sent to certain persons whom he will name. I am not objecting to his doing that.

MR. ROWELL: Will you tell us to whom these were sent?

MR. TILLEY: According to your records.—A. The document now classed as Exhibit 79 was sent on the 19th of September, 1923, by the chief inspector of Customs and Excise at Ottawa, E. S. Busby, to inspectors Mumm, Vancouver, and to the
20 Inspectors of Customs and Excise, Miller, Victoria; Graham, Calgary; Patterson, Regina; Good, Winnipeg; Woods—I think his headquarters is Sault Ste. Marie; MacGuire, London; Bartle, Niagara Falls; Wood, Oakville;, Toronto; Martin, Kingston; Bernier, Montreal; Parmelee, Sherbrooke; Timmins, Quebec; Assistant Inspector Errington, who was in Saskatchewan, I am not sure of his headquarters; Casey, Charlottetown; McDonald, I think his headquarters were Pictou; White, Saint John; McLatchie, New Brunswick; McDonald, Nova Scotia; Boake, Halifax.

MR. TILLEY: I understood you were saying that a letter the same as 79 was sent to these officers—

30 MR. ROWELL: Just a minute, I am entitled to complete my examination.

MR. TILLEY: It would be better to have it go in in accordance with the facts.

MR. ROWELL: I want it in accordance with the facts, I resent my learned friend's insinuation.

MR. TILLEY: Will my learned friend have the witness look at the signature at the end, and look at the copy on his file and see who that is signed by. It is not signed by the same person. The copy on the file is not signed by the Commissioner of Customs at all.

WITNESS: The 79 I hold in my hand is signed by the Commissioner of Customs and Excise, its context is precisely similar to the document from which I read the
40 names of the others. The wording is the same.

HIS LORDSHIP: Who signed the other?—A. There is no signature on. It was evidently prepared for the Chief Commissioner of Customs and Excise.

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MR. TILLEY: When you commenced your statement in regard to this copy, you said it was signed by the Chief Inspector, Mr. Busby. Is that right or is it not?—
A. The document on file purported to be signed by the Chief Inspector. It is exactly similar in its context to Exhibit 79 which is signed by the Commissioner, the contents of the two are identical. I do not know that each and every one of those were signed by the Commissioner or by the Chief Inspector.

MR. TILLEY: But according to the copy the letter ends Chief Inspector of Customs and Excise, and that you say was sent to each one of these whose names were on the top?—A. It is quite probable that Mr. Bernier got a copy signed by Mr. Busby as well as this one. 10

Q. I am wondering if he got this one.—A. I am not prepared to say that Mr. Bernier did not get a copy of that, signed by Mr. Busby, as well as that one. The context is the same in either case.

MR. TILLEY: It is not the context, it is the source.

MR. ROWELL: Has that ever been modified or changed?—A. This has not been changed.

HIS LORDSHIP: It is still in force?—A. Still in force.

MR. TILLEY: Then, so that we can have the two as they appear, I think it would be well to have Exhibit 79-A a copy of this just as it is on the file.

EXHIBIT 79-A: Copy of Order of September 19th, 1923, as in Ottawa files. 20

MR. ROWELL: Then has there been any regulation since that, any regulation following that or confirming that?—A. Yes, sir, there is a regulation of April 16th, 1928.

MR. TILLEY: I object to that.

HIS LORDSHIP: That is outside of our time, that would not affect us.

MR. ROWELL: Only in this respect, my lord; my learned friend put in during the examination of one of our witnesses the Regulations of January, 1924, and drew you Lordship's attention to a provision whereby refunds might be granted under certain conditions. This deals with the whole question of refunds. It is 1928 it is true, but it is retroactive in this sense, that any application for refund, whether the ship-30 ment had been made prior to the date of this order or not, must comply with the terms of this, and some 6 months were given to any party who had made a shipment prior to the date to make application under the terms of this order, it gave them six months after the making of this to apply. Your lordship will see that in case a refund is asked on the ground that goods are exported at any date they come under the condition of this regulation, confirming the other, and they must comply with the conditions of this regulation. But they were given six months, where the goods were claimed to have been exported prior to the date of this regulation, they were give six months after the coming into force of this regulation to make application if they saw fit. So that if they have not made application for a refund pursuant to this 40 regulation—

HIS LORDSHIP: If they have not up to date made any application, they forego—?

MR. ROWELL: They are foreclosed under this.

MR. TILLEY: I am not making any application for refund. That is not the point of this as my friend sees it. How can it affect us here? Our rights to refund were on the law and regulations as they stood until 1928. This is going away beyond that period and gives another period of six months to comply with this regulation.

HIS LORDSHIP: Are you making any application for refund?

MR. TILLEY: No, my lord.

HIS LORDSHIP: Is there any question of an application for refund?

10 MR. ROWELL: My learned friend may argue that there is.

HIS LORDSHIP: Are you pressing any claim for refund?

MR. TILLEY: No, my lord. I will argue that the regulations as they stood back in 1924-1925, had certain provisions with regard to getting certain refunds if you applied for them. This is a change in that practice. It does not touch us at all, but it touches another point.

HIS LORDSHIP: Tell me what it is.

MR. TILLEY: My friend has not disclosed it yet. He will disclose it when he gets it in I suppose. I object to any regulation of 1928.

20 HIS LORDSHIP: If the regulation has any effect on the previous period I will allow it.

MR. ROWELL: It has, my lord.

MR. TILLEY: How can a regulation have an effect on a previous period?

HIS LORDSHIP: That is to say, if for instance between 1923 and 1927 you became entitled to apply for a refund and you have not applied, and you should make application to-day, this would bar you?

MR. TILLEY: I have not made any, and I do not propose to make any. There is no question of refund in this case. When I make an application I will have to make it to the Government and they will apply this regulation to me. Let them apply it in the proper place and time. But I have made no application for refund.

30 MR. ROWELL: If my learned friend is not going to argue anything about refund then I am not concerned with this. But my learned friend has not so stated.

MR. TILLEY: I am not going to suggest to your Lordship that I can get a refund now. I object to the document going in. As a document it could only affect me if I applied for a refund now.

MR. ROWELL: I will let your Lordship see the document.

MR. TILLEY: Your Lordship sees the point, that is to go back and try to give some validity to this regulation of 1923. Nothing to do with refunds.

HIS LORDSHIP: Why should I not consider it?

40 MR. TILLEY: Because it did not take place until 1928, and our taxes have to do with 1925-1926-1927.

HIS LORDSHIP: Then what is your objection to it going on the record for what it is worth?

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MR. TILLEY: Because it is worth nothing.

HIS LORDSHIP: Then it will not affect you.

MR. TILLEY: I do not know about that, there is so much here that has no bearing on the case now until my friend connects it up in some way.

HIS LORDSHIP: It only became a regulation in 1928. That would help you instead of hurting you. If that order had the same power as a regulation he would not in 1928 give that order the power of a regulation from that date. Subject to your objection I will let it in, although I do not see that it has any power.

MR. ROWELL: Then we may put in a copy I presume.

WITNESS: I would like to keep the original.

10

MR. TILLEY: I would like to see the original. That is in the condition it was when it was signed, is it?—A. It is.

Q. I would like to have the copy and compare it.—A. I have compared the copy, but if you wish—

MR. TILLEY: I do not know what you mean when you say you have compared these documents and then put in one as a true copy of the other. There is no address on one to any person, on the other there is. And the very first word is different. I do not think they have been compared at all.—A. The first word was plural instead of singular.

MR. ROWELL: We will have the copy compared.

20

HIS LORDSHIP: That is the proper way, and put it in when you are sure it is accurate.

EXHIBIT No. 80: (To be filed) Copy of original regulation from file.

Cross-examined by Mr. Tilley:—

Q. Now, Mr. Nauman, you are the chief of the Excise Branch, are you?—A. Excise Tax Branch.

Q. Does that give you jurisdiction over the collection of Sales Tax, does that come under you?—A. I should like you to make that more specific.

Q. I am asking whether under you comes the collection of Sales Tax.—A. Not at the present time.

30

Q. Did it at any time?—A. Each branch is under the control of the Commissioner.

Q. But does the question of Sales Tax come under your jurisdiction in your branch?—A. It does, but not the collection of it.

Q. The levying of it does?—A. The administration, the ruling.

Q. Are these documents in the custody of your Department?—A. Of my branch.

Q. That is, the regulation issued by the Minister on the 16th of April, 1928?—A. The document which you hold in your hand is under my control and jurisdiction.

Q. And the document that you have attached to that is a document of September 19th, 1923, signed by the Commissioner of Customs, Mr. Farrow, and you have no copy in your files of any such document, you have not any copy that agrees with the copy that is attached to that regulation, have you?—A. Yes sir.

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Q. Where?—A. I have a number of them here addressed to the various Inspectors.

MR. TILLEY: He has here just a general document of that kind.

HIS LORDSHIP: Probably that is the original.

WITNESS: No, this is a mimeograph copy.

HIS LORDSHIP: But here is the original.—A. This is the original.

MR. TILLEY: That is the original to one officer, but this is as though it were a circular issued generally and signed by the Commissioner.—A. But it is an exact duplicate of this.

10 Q. You mean the language in it is the same?—A. Its content is identical.

Q. Well you explained about the Busby part. You say Mr. Busby is the chief inspector?—A. He was at that time.

Q. How many inspectors had he under him?—A. I named them, I did not count them.

Q. Those were all?—A. No, they were not all.

Q. Were there others?—A. There were others attached to his office at Ottawa.

Q. That is sort of head office inspectors?—A. Yes.

Q. Who went out and made special reports?—A. Yes.

Q. What were their duties?—A. It is difficult for me to say, I had nothing to
20 do with that part of the work.

Q. Don't you know? You, or your Department, is addressing a letter to the Inspectors, I would have thought your Department would be quite conversant with what the duties of the Inspectors were before you would send them any communication.—A. The communication would go to the Chief Inspector, he would promulgate it to the officers under his control. Who those officers were, or their exact duties, I am not in a position to state.

Q. Well the instructions would be sent by Busby to his Inspectors?—A. It might be sent by the Commissioner or by Mr. Busby.

Q. And you do not know what their duties would be or why it would be sent to
30 them?—A. They were general inspectional duties having to do with the administration of Customs and Excise laws in the divisions over which they had jurisdiction.

Q. Seeing that proper returns were made by companies, checking them up?—
A. That would not be the duty of the inspector, it would be the duty of the assistant.

Q. You mean for instance a man like Maguire at London would have an assistant who would perform that work?—A. He might have more than one.

Q. And this letter of September, 1923, was sent out to all the Inspectors except those at Ottawa?—A. Yes.

Q. And not sent out to any person else?—A. It was sent out to the Inspectors, and they were told in the letter to communicate its contents to the collectors and the
40 assistant inspectors under their service.

Q. But it was never sent out from Ottawa to any person else?—A. I did not have

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charge of the despatch of the letters, I do not know whether it was sent to others or not.

Q. Are you sincere about that? You have the files.—A. It may have been sent by other branches of the Department, from the Chief Clerk of Refunds—

Q. As far as you can find out from the records it was sent to no person except the Inspectors?—A. The information was promulgated to others besides Inspectors.

Q. I am asking whether this document of September, 1923, was sent out officially from Ottawa to any except your Inspectors?—A. I am not in a position to answer.

Q. You do not know?—A. I do not know the details of the Department, I do not know who it might have been sent to. It may have been sent to all collectors. 10

Q. Are you familiar with the regulations and instructions to collectors of Customs such as Exhibits 19 and 20, do they come under your branch?—A. No sir, I have nothing to do with them.

Q. You are not familiar with those documents?—A. Only in a general way. They are issued by the Customs Division, not the Excise Division.

Q. And you have not been in the Customs Division?—A. No sir.

HIS LORDSHIP: Exclusively the Excise?—A. Exclusively the Excise, in the Department of Customs and Excise.

HIS LORDSHIP: Yes, it all comes under the same Department, but there are three branches. Income Tax, Excise, and Customs.—A. That is correct, sir. 20

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FRANCIS JOSEPH FINNER, sworn. Examined by Mr. Rowell:—

Q. Mr. Finner, what is your position at the Department of National Revenue?—

A. Examiner of Refund Claims.

Q. How long have you been in that Branch?—A. About nine years.

Q. Have you been engaged in the Refund work during that entire time?—

A. Yes, continuously during the entire period.

Q. Applications for refund in regard to Sales Tax come before you?—A. Yes, sir.

Q. And they are dealt with by you in your branch?—A. Yes, sir.

HIS LORDSHIP: I have not been able to grasp where this refund question comes up in this case. 30

MR. ROWELL: My learned friend put in Exhibit C, and drew your Lordship's attention specially to clause C. My friend argued in the other cases that he could get a refund if he provided a B.13, therefore he should not be liable for export if he provides a B.13.

Q. Exhibit 79, the circular letter to the Inspectors (shown to witness). Has your Department ever granted a refund in connection with intoxicating liquors, beer or whisky, without the production of a foreign landing certificate?—A. No, sir.

Q. They have never granted a refund without the production of a foreign landing certificate.

MR. TILLEY: That evidence is subject to objection, my lord. 40

HIS LORDSHIP: In connection with refunds do you act under the Customs Act?
—A. I am under the Excise Division and I take my orders—

HIS LORDSHIP: That would come under the Customs Act.

MR. ROWELL: Not the refund of Sales Tax, my lord.

HIS LORDSHIP: There is a clause in the Customs Act, something to the effect, "To the satisfaction of the Department of Customs." That came up in a whisky case in Saint John. I refer to section 101 of the Customs Act.

MR. ROWELL: I think that refers to goods in bond exported from a Customs warehouse. I do not think that touches this case at all.

10 Q. What evidence do you require in support of a refund claim where it is beer or spirits?—A. Proof of payment of the tax to the Crown, a certified copy of the B.13, and a foreign landing certificate.

Q. Has that always been your requirement since you have been in the branch?
—A. Yes, sir.

HIS LORDSHIP: Have you always exacted that?—A. Yes, my lord.

Q. After having entered it for consumption and sold for export afterward, then the manufacturer would come back and say, I want a refund because I did not use it for consumption, but used it for export. Is that correct?—A. Yes, my lord.

Cross-examined by Mr. Tilley.

20 Q. You have had how many claims for refund on spirituous liquor or beer since the Sales Tax came into force?—A. Two on beer and one on liquor.

Q. So that is the extent of the practice that has grown up, just three cases?—
A. Three cases, yes sir.

Q. When did the application come in for refund on spirituous liquor?—A. 1926, I think.

Q. What time in 1926?—A. The application is dated 18th March, 1925. I am wrong, it was 1925.

Q. How much was applied for, what was involved?—A. \$199.

Q. For Sales Tax was it?—A. For Sales Tax.

30 Q. This was a shipment of liquor, spirituous liquor as distinct from beer, that is the way you describe it isn't it?—A. Yes.

Q. Amounting to a couple of thousand dollars, that is the invoice?—A. Yes.

Q. And it was sent to Fargo, North Dakota, and who was the humorist that asked them to produce a foreign landing certificate for liquor that went to Fargo, North Dakota? You?—A. Yes, I am the humorist.

Q. I suppose you had a good laugh when you did it?—A. No, I didn't.

Q. You thought they might get it?—A. I did not think in the matter, I was simply following instructions.

Q. At that time the Government was making a claim to get Sales Tax on exported 40 liquor if it went to the United States, wasn't it?—A. They may have, I don't know.

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No. 27

Francis Joseph
Finner
Examination
April 18, 1929
(continued)

Francis Joseph
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Q. Well, if you had given back this money it would be like giving up something that you are suing for now?—A. You are asking me something I am not concerned with.

Q. Well, you were told to do this and you did it?—A. That is it exactly.

HIS LORDSHIP: You did not grant the refund did you?—A. No, my lord.

MR. TILLEY: I notice that it came to you with the certificate of your Customs Officer that it was in order, and he found the claim to be correct.

HIS LORDSHIP: As to export probably.

MR. TILLEY: As to the right to refund I presume.—A. No, the Department has the sole decision. 10

Q. The ultimate decision?—A. Yes.

Q. But I suppose in your procedure you have the local man make his recommendation?—A. Yes.

Q. And if it did not get past him it would never come to you at all, I presume?—A. Yes.

Q. That is by Mr.—what is the name?—A. I don't know what the name is, I had the name translated to me, but I have forgotten.

Q. It is also approved by your collector at the proper outport is it?—A. Yes, that is the port of Winnipeg.

Q. Is there a B.13 here?—A. Yes. 20

Q. This is a copy of the B.13?—A. That is what is required, a certified copy.

Q. Of course you would have to have that?—A. Yes sir.

Q. For every refund?—Yes.

Q. So that the B.13 is an essential part of your proof that the goods were exported before you would give the refund?—A. Yes.

Q. But as to the one thing, liquor, you simply, since this dispute has occurred, will not give back the money?—A. I will not say since the dispute has occurred, I did not know of any dispute when I requested a foreign landing certificate.

Q. Well we can find out when the dispute started, and it is just an arbitrary instruction to you, that any one who says he exported liquor to the United States, 30 you tell him to give the foreign landing certificate, he will be given something?—A. I was not instructed that he would be given something, I was told to ask for a foreign landing certificate.

Q. You were not told he would get something then?—A. No, I was not.

Q. But you were instructed to say, Give us a foreign landing certificate?—A. Exactly.

Q. Now that is the whisky case. When was the beer episode?—A. Signed on the 13th March, 1926.

Q. By the way the shipment of whisky, the B.13 is dated March, 1925. Now the beer you say is 1926. Are there two claims?—A. No, this is one claim on several 40 sheets—no there are two claims. It is four claims presented really as one.

Q. It is one claim for four shipments?—A. That would be it.

Q. Where are the B.13s?—A. There were no B.13s submitted with that.

Q. Then that could not be paid anyway?—A. No.

Q. Because of lack of B.13s?—A. Yes.

Q. Is that all?—A. That is all I have.

Q. So that there is just one instance with regard to beer, and in that instance the shipper of the beer could not supply you with B.13s?—A. His explanation is here as to why.

Q. Well I am not saying why, but he could not.—A. "We wish to say that we 10 have in our possession copies of export entries certified . . . if these documents furnish the information you desire we shall be pleased to forward them."

Q. Well, there was one case came up in regard to beer, the B.13s were not forwarded but the claimant told you he had them and could let you have them?—A. Yes.

Q. And the reply was, "Produce a foreign landing certificate." Will you tell me if that is right?—A. (Shows file).

Q. "The goods in question must have been carried by a regular carrier running on schedule to a point outside Canada. Copies of the export entries certified by the collector at the port of exit where the goods were entered for exportation from Canada 20 must be submitted." That would be the B-13?—A. That is the B-13.

Q. "If the goods were not taken out of Canada by a regular carrier running on schedule then foreign landing certificate must be produced." So you said there were two things, B.13, or a foreign landing certificate. And in case of whisky foreign landing certificate only?—A. Yes.

Q. And those are all the claims you ever had to deal with, the two?—A. Yes.

Q. Now you have never told—or have you—any applicant for a refund of Sales Tax, other than a claimant in respect of liquor or beer, that they must give you a foreign landing certificate?—A. No.

Q. In all other goods you give a refund on the production of the B-13 provided 30 you find that the Sales Tax has been paid?

(I want to show the difference in practice between liquor and other things.)

The Departmental regulations that were referred to—I am not asking you whether they are binding, His Lordship will pass on that, but they provided that you should give a refund on proof of the payment of the tax and the production of the B-13, that is your general regulation?—A. Yes, that is the general regulation.

Q. And you have always acted on that?—A. Yes.

Q. Except in the two instances you have referred to here, one of whisky and the other of beer?—A. Yes.

HIS LORDSHIP: So that with respect to any other goods you do not exact the 40 certificate of landing at a foreign port?—A. No, my lord.

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MR. TILLEY: So that if I am a manufacturer of pianos in Toronto and pay the tax because I am not sure where they are going, and I ultimately sell them out of the country, the person who has paid the sales Tax can go to the Government, prove he has paid the tax, produce his B.13 to show that the pianos have gone out of the country, and you give him his money back?—A. Yes.

Q. But being instructed differently with regard to whisky and beer you act differently?—A. Yes.

Q. And your instructions are verbal?—A. The instructions to me were verbal.

Q. And were given to you by whom?—A. By my chief.

Q. Who was your chief?—A. Mr. Urquhart, he is the chief Customs and Excise 10 checking clerk at Ottawa.

Q. At any rate some person above you gave you the verbal instruction that has resulted in a different treatment of two people who wanted a refund of Sales Tax on beer and whiskey from all other applicants for refunds on other goods?—A. It has, it has made a difference in the goods.

HIS LORDSHIP: That is easily explained. I do not know that it is a good reason; that the United States do not want any liquor—do not want it officially. But there is no inhibition with respect to the other goods.

Francis Joseph
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Re-examination
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Re-examined by. Mr. Rowell:—

Q. Do you in your branch get the bill of lading on the application for refund?—20
A. Not since January 1st, 1924. The regulations as laid down just call for a B.13. Since January 1st, 1924, I have not asked for a bill of lading in connection with an export where a claim was made for Sales Tax paid on materials or goods which were eventually exported, because the regulation states specifically that all that is required is proof of payment of the tax and a B.13.

Q. That applies to goods other than liquor?—A. Other than liquor.

MR. TILLEY: Well the regulation does not except liquor?—A. No.

No. 28

James N.
Hennessey
Examination
April 18, 1929

JAMES N. HENNESSEY, sworn. Examined by Hon. Mr. Rowell:—

Q. What is your position in the Carling Brewing & Malting Company?—
A. Shipper. 30

Q. When did you become shipper?—A. About the first of August, 1924.

Q. Did you continue shipper throughout the entire period?—A. Yes sir.

Q. From whom did you get instructions to make shipments?—A. Sometimes by written instructions from the office, sometimes verbally from Mr. Burns or other men in the office.

Q. Under what circumstances did you get written instructions as distinguished from verbal instructions?—A. They have a regular order form the clerks in the office make out and send to the shipping department.

Q. Have you any copies of those order forms?—A. No sir, I turn them back in the office.

Q. But there are in the office regular order forms?—A. We have used them, yes.

Q. And when these order forms are filled out one is sent to you?—A. Yes sir.

Q. And that contains your shipping instructions?—A. Yes sir.

Q. Could we have a copy of that order form?

HIS LORDSHIP: At one time it is verbal, and then—A. At some time it might be verbal and then get written.

HIS LORDSHIP: I thought at one time they were all verbal.—A. No sir.

MR. ROWELL: Did these order forms start at the commencement and continue through?—A. They were used when I went there.

10 Q. And did they continue through?—A. Yes sir.

MR. TILLEY: I think Mr. Morrison gave you the form, and told you he had not any of the originals because he destroyed them. One copy went to this witness, and when he shipped the goods he sent back one copy and that showed they had been completed and then he destroyed them both.

MR. ROWELL: He did not furnish us any form.

WITNESS: I heard Mr. Morrison tell you the other day the forms were not preserved in the office.

MR. ROWELL: I just wanted to get a form as used.

MR. TILLEY: I will try and get one.

20 MR. ROWELL: Then what did your duties consist of? I want to follow the procedure. You got an order form, assuming it was a written order. What would that form show?—A. The address of the customer and the quantity and possibly any special routing on it.

Q. Would it show the price?—A. No sir.

Q. Then you would make out the bill of lading?—A. Yes sir.

Q. Did you make out the B.13?—A. I did at one time.

Q. When did you commence to make out the B.13s.?—A. When I commenced with the firm.

Q. How long did you continue to make out the B.13s?—A. A year and a half
30 or two years.

Q. Well you commenced August, 1924?—A. Yes.

Q. Would it run on to August, 1926?—A. I did until the regulation came in, I don't know just what month, as far as I remember about a year and a half or two years. When I discontinued that there was a regulation came through that we had to give a split-up quantity of B.13s.

MR. TILLEY: I think it was March, 1926.—A. Well, a short time after that we had to have them made out in the office, I hadn't time to do it.

MR. ROWELL: Did you make them up for a while under the new regulation?—
A. Yes, sir.

40 Q. Then, take the B.13s during the earlier period, you made out one for each carload?—A. One set.

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Q. One set for each carload, and that would correspond with the number of cases or kegs as they might be, on the bill of lading?—A. Yes, sir.

Q. And on the order?—A. Well, not always on the order. Of the completed order.

Q. Well the instructions you got.—A. On the total load, that would correspond with the load in the car.

HIS LORDSHIP: Would the B.13 correspond with the car or correspond with your order?—A. No, with the car.

MR. ROWELL: Then at a later date, after this circular or instruction of March, 1926, you made out the B.13s in a variety of quantities—A. Yes, sir. 10

Q. In what quantities?—A. Oh, from 5 to 100.

Q. All denominations?—A. No, 5's, 10's—sometimes smaller than 5, but usually in 5's, 10's, 25's, 100's.

Q. Like so much legal tender?—A. So much to fit the boat.

Q. What did you do with the B.13s, take the earlier period, when you made them out? You made out the bill of lading and B.13, and you despatched the goods?—A. Yes, sir.

Q. What did you do with the bill of lading and the B.13s?—A. In the early days I put them in an envelope and tacked them inside the car. Later on I sent them to the different ports by mail. Later on I sent them by express. 20

Q. To whom would you address them at the different ports?—A. Usually to the person the car was consigned in care of.

Q. Then if you had one D. K. Grandi, care of D. Koven, Kingsville—well in this case, I think they have not been able to find the bill of lading, but in a case like that, that is Exhibit 57, you would send the bill of lading and the B.13 to D. Koven, Kingsville, would you?—A. Yes, one copy of the bill of lading and the B.13s to Koven.

Q. And the same in each case where there is an address appears upon the face of the bill of lading?—A. Yes, usually.

Q. It was always to some point in Ontario?—A. Yes, sir. 30

Q. And the bills of lading were all made out to some point in Ontario?—A. Yes.

Q. Then in two of these cases put in there is a difference of 300 cases between the bill of lading and the invoice. Mr. Morrison said you would be able to explain to us why the difference.—A. In some cases I would get an order to load a carload, and I would have to send my bill of lading to the freight office before the car was loaded, and the car would sometimes be loaded above and sometimes below the amount.

Q. Do you mean that where the bill of lading only called for 1,200 you might put in 1,500?—A. I might, yes.

Q. Then are we to take it that the bill of lading does not necessarily show the contents of any particular car?—A. Not the exact amount. 40

HIS LORDSHIP: If I bought a quantity large enough to fill four cars would you make one bill of lading or four?—A. One bill of lading for each car.

MR. ROWELL: There has to be a separate bill of lading for each car.—A. Yes, the numbers and so on.

Q. Where did you get the information as to the price to insert in the B.13s?—
A. From the office staff or Mr. Burns. I usually had a standard price, I would not ask every individual order. Say, I had \$2.25, I was making them out for a period at \$2.25, later they advised me to make them \$2.50, and so on.

Q. In the earlier period a good many appear to be made out at \$4.—A. Of course, I do not remember exactly now.

Q. Who did you get instructions from to put in the amount?—A. I think when
10 I started first Mr. Stewart was in charge of the office, and he advised me. Then later on Mr. Burns or whoever was in charge of that would tell me a different price.

Q. You always got the instructions from someone in the office as to the price to be inserted in the B.13?—A. Not for every shipment. For instance, I might go along for a month making them out at \$2.25, and they would change it, then no matter, where the shipment was I continued that price right along.

Q. You continued that price until you got instructions to the contrary?—A. Yes.

Q. Then evidence was put in of certain cars that were seized, Inspector Bolton spoke of three cars being seized on the C.P.R. siding in London, containing Carling beer, this was July, 1924. Were you with the company at that time?—A. No, that
20 was a week previous to when I started, I heard about it at the time.

Q. Then on September 17th, 1924, Inspector Loughhead at Windsor seized two cars—or Mr. Young—containing Carling beer billed as oil. That was during your period?—A. I did not hear of that case, I never heard of that until this week.

Q. Well you did not bill them as oil?—A. No sir.

Q. And cars that left containing beer you billed as beer?—A. As beer.

Q. Then the billing must have been changed by the consignee after it left Carlings?—A. I don't know anything about it, anything I billed was always beer.

Q. You do not know how that became billed as oil?—A. No. I never heard of it until this week, I heard it mentioned in the Court.

30 Q. You have heard of several cases of Carling cars having been seized billed as some other commodity?—A. I heard about them, but I never knew them billed that way.

Q. You did not know that they were billed as some other commodity?—A. No sir.

Q. How do you account for them being billed as some other commodity?—A. I cannot account for them, I don't know anything about them.

Q. The evidence in those two cases is that one was billed to a butcher in Windsor, and the other to a wholesale grocer in Windsor—

MR. TILLEY: Have you the numbers?

40 MR. ROWELL: Yes, 17260, and 23424.

Q. You cannot throw any light on that?—A. No sir, I never billed them.

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Q. And the others were billed as canned meat, the three seized in London?—A. As I stated, that was before my time.

Q. Did you have anything to do with these two shipments referred to in Exhibit 43? You might look at the exhibit and let me know.—A. Yes, I believe I billed them back. That was empty kegs going back?

Q. Yes.—A. I believe I billed them back.

Q. Where did you bill them back to?—A. To this Hoboken address. I do not know that this is the shipment, but I did bill back two cars of empty kegs to Hoboken.

HIS LORDSHIP: They were empty?—A. Yes, they came in and were not suitable, 10 and we sent them back.

MR. ROWELL: Well you made out bills of lading right through to Hoboken?—A. Yes.

Q. And certified invoices were obtained from the American Consul?—A. Well that was handled through our Customs broker.

Q. Well the evidence is that the Carling Company got them.—A. I don't know anything about it, but that would be handled through the Customs broker.

Q. Why did you bill those to some point in the United States, as distinguished from billing the beer to points in Canada?—A. Well those were empty kegs, nothing to prevent it. We are not allowed to bill the beer through to the United States, the 20 railroads would not accept it.

Q. Then all your beer was billed to a point in Canada?—A. For unloading in Canada.

Q. Then in what class of cases did you get the instructions verbally? Did that relate to truck shipments?—A. Both.

Q. Both truck and rail shipments?—A. Yes.

Q. What was the distinction between getting a written form and getting a verbal instruction?—A. For instance, Mr. Burns might call me early in the morning, right after seven o'clock, before the office was open, or he might in the evening, or he might during the day get a message and give it to me, and I would later obtain an order 30 from the office.

Q. Did you always get an order from the office for the rail shipments?—A. Yes sir.

Q. Did you always get an order from the office for the truck shipments?—A. Yes sir.

Q. So that you had in every case a written order indicating the parties to whom the goods were to go?—A. Yes, that is the practice that is still in force yet.

(Court adjourned at 4.30 p.m. Thursday, April 18th, to Friday, April 19th, 1929, at 10.30 a.m.)

FRIDAY, April 19th, 1929, 10.30 a.m.

Examination of J. N. HENNESSEY by Mr. Rowell (*Continued*):

Q. Mr. Hennessey, you told us yesterday you looked after the shipping and the bills of lading, and the B.13s up to a certain date?—A. Yes sir.

Q. Did you have charge then of all the goods that went out?—A. Yes sir.

Q. And no goods would go out without your knowledge.—A. No sir.

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HIS LORDSHIP: There is one point I do not know what to make of it, the two cases where there was a discrepancy, you got an order for 1,200 cartons and shipped 1,500.—A. My lord in that case, in a good many cases I would get you might say a 10 blanket order to ship all I could get away that day. There was a rush for beer at the border—

HIS LORDSHIP: That does not tally with your written order?—A. No, but as I explained, I would often change the orders.

Q. But the order remained the same. We have an invoice and bill of lading that do not agree.—A. In that case the invoice would be made for the exact amount loaded in the car. I do not know how much the order would be for. I would turn in the slip, the completed order for the exact amount in the car, and the invoice would be made in the office from that.

HIS LORDSHIP: Was it the bill of lading that was for the smaller amount?

20 MR. ROWELL: Yes, my lord.

HIS LORDSHIP: Then when we come to the other end, we find the B.13 covering 1,500?

MR. ROWELL: 1,500, yes.

HIS LORDSHIP: How do you explain that?

30 WITNESS: That would be caused by billing out my car before it is loaded, in order to get the bills into the freight office before they close. They close at five o'clock, and on Saturday at one o'clock, and often I was loading beer until midnight, in some cases the gang would work all night, we would get those cars away at two or three in the morning when the rush was on at the border. I would load all the beer I could get into the car.

MR. ROWELL: But why should there be just 300 cases difference, exactly 300, between the bill of lading and the invoice?—A. That is not the case in all cases. Unless it was a big car I would not put more than 1,500 in a car, that is close to the carrying capacity of the car unless it is a large car.

Q. Why do you make the bill of lading for 1,200?—A. That is only a nominal amount.

Q. Then you say no goods could go out without your knowing it?—A. That is except on days when I would be away from the plant. Not in the ordinary course of events.

Q. And you would get a record of the stock—A. Yes, sir.

40 Q. So that you knew what you had?—A. Yes, sir.

HIS LORDSHIP: Would you in any case ship more beer than the amount mentioned in your bill of lading?—A. Yes, sir.

Q. How do you explain that?—A. The bills of lading are only made out for a nominal amount, 1,200, to carry the car out. My shipping record and the B.13 would show the full amount. In some cases the car would be under the amount, it depends upon how much we produced that day.

HIS LORDSHIP: It is not a satisfactory answer, but I do not know that it is important.

MR. ROWELL: Who was George Constable?—A. One of our drivers.

Q. One of your truckers?—A. Yes, he drives one of our trucks.

Q. When you say he drives one of your trucks, did he use it for delivering goods on behalf of the Carling Company?—A. Yes, sir. 10

Q. I notice a series of invoices here. I am looking at exhibit 49. It is October 10th, I think the year is 1924, it is not put on, but that is the year in which I am told these transactions took place. It is headed Cash Sale, and the name below is George Constable; it is, 6 ale, quarts, \$19.50. That would be \$3.25 a case?—A. Yes.

Q. And 5 pints, \$19.25, that would be \$3.75 a case?—A. Yes.

Q. And one-quarter barrel, \$8. Then on the same invoice below marked 2½—would that be 2.5?—A. Yes, sir.

Q. There is 1 ale, \$1.80.—A. No, this is the whole thing.

Q. Well, what are these lower items, are these any part of the invoice?—A. Oh, yes. 20

Q. One ale, \$1.80, that would be 2.5, would it?—A. The whole thing is 2.5.

Q. Well, I want to take what the document shows. Heading this lower part is: 2.5, one ale, \$1.80. That is \$1.80 compared with \$3.25 for the 6 cases on the higher part of the invoice?—A. Well, I don't know about the invoicing, I had nothing to do with the invoicing.

Q. Well, this is a book of the Carling Company. We are just seeing what the invoice shows.

HIS LORDSHIP: What does one ale mean?—A. One case of ale.

MR. TILLEY: In one case my friend will not let him interpret the document, in another he will. This invoicing is not in the witness's department at all. 30

HIS LORDSHIP: He is in the habit of dealing with the invoices.

WITNESS: No, my lord, I have nothing to do with the invoices.

Q. But you have an order from which you make the bill of lading.—A. Of shipments out of town I would have an order where the bills of lading are made. All this stuff was delivered to our men for delivery in the city or surrounding counties.

MR. ROWELL: What does one ale mean?—A. That would be one case.

MR. TILLEY: Or a carton?—A. Or a carton; yes.

MR. ROWELL: And five lager, what does that mean?—A. It is the difference between ale and lager, different brands.

Q. Five lager would be five cartons of lager, \$9, that is \$1.80 too?—A. Yes. 40

Q. All on the one invoice?—A. But those would not necessarily be the same size, same quantities. That there looks to me to be very indistinct at least on the part of the girl who made them out. I had nothing to do with making them out.

Q. I will show you a score of them if necessary. I just want to get what you say about it. We have on the same invoice 6 cartons ale, \$3.25, then lower on the same invoice and under a heading 2½, you have one ale \$1.80, and 5 lager also \$1.80, or \$9?—A. Yes.

Q. Now you say you gave no bill of lading for those Constable handled?—
A. No sir.

10 Q. Those were for local delivery?—A. Yes sir.

Q. In and around London?—A. Yes.

Q. Do all that appear in the books in similar form, cash sale, George Constable, represent local deliveries in and around London?—A. Yes sir.

HIS LORDSHIP: Your contention would be that there was no tax paid on that?

MR. ROWELL: My contention would be there was no tax paid on these local sales of what we say was strong beer.

WITNESS: Those are not strong beer. 2½.

Q. You have 2½ marked there at a certain price, have you not?—A. I don't know, I have nothing to do with that, I did not mark that.

20 Q. We will look at another. Here is another invoice, No. 00396, October 9th, 1924, the day before; 18 ale pints, is it?—A. No, that is quarts.

Q. (Invoice shown His Lordship) 18 at \$59.50, that is \$3.25; then 3 pints \$11.75 that is \$3.75 a carton. Is that correct?—A. Yes, that is what it figures out.

Q. And 2 porter, pints, \$7.50, \$3.75 a carton.—A. Yes.

Q. And 1 lager, \$4. Then under a heading "2½" appears one ale \$1.80?—
A. I do not think that is a heading, I would not call it a heading. I don't know anything about the invoices, but it don't seem to me a heading, it seems to me the girl has marked it that way all the way through, that is where she places her "2½" mark.

30 Q. Will you explain the difference between \$1.80 for this carton of ale and \$3.25 for the 18.—A. Those are not all cartons, there is nothing to show they are cartons. I don't know anything about the invoice, I am not saying it authoritatively, I can only presume they were for different sized cases, for wooden cases, and some would be for cartons.

HIS LORDSHIP: Are we not taking this with the wrong witness? He is the shipper.

MR. ROWELL: Well, I will ask Mr. Morrison when he comes back.

HIS LORDSHIP: With those cash sales you must know what kind of beer, you must first see whether it is beer that is liable to the tax or not. You do not contend
40 that the 2½ is liable for the tax?

MR. ROWELL: No, my lord. If it is they paid on the 2½ I understand.

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Plaintiff's
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No. 28

James N.
Hennessey
Examination
April 19, 1929
(continued)

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Plaintiff's
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James N.
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Examination
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(continued)

HIS LORDSHIP: You are in charge of the warehouse, and the handling of goods from the order, and loading them?—A. Yes sir.

MR. ROWELL: Were all the B.13s made out by you at London dated the same day as your bill of lading and shipment?—A. In the early periods, yes. And I think covering all the dates here it was. They may have been made out the day before.

Q. The day before or the day of shipment?—A. Yes sir.

Q. There would be no B.13s made out by you at London after the date of shipment?—A. No.

Q. Did the B.13s you made out at London correspond with the goods loaded on the car?—A. Yes sir. 10

Q. Did they correspond with the order you got for the goods?—A. They would correspond with the order as I turned it back to the office.

Q. And we have been told that the invoice was made out from the order as turned back?—A. I presume it would be.

HIS LORDSHIP: That is for a certain period.

MR. ROWELL: That is so long as you made out the B.13s?—A. Yes sir.

HIS LORDSHIP: What do you refer to for another period?—A. At the present time we may make them two or three days ahead.

Q. When did you cease doing that?—A. 1926.

Q. And what did you do after?—A. They are made out now by the girls, the 20 stenographers in the office.

MR. ROWELL: Handed to you to forward when the shipment goes forward?—A. Yes sir.

Q. So that they are still made out, at least during the whole period covered by this suit, that is up to April 30th, 1927, they were made out as of the date of shipment?—A. Or the day previous.

Q. You sent them forward—

HIS LORDSHIP: With a copy of the bill of lading?—A. Yes sir.

MR. ROWELL: To the—?—A. To the export port.

Q. Addressed to?—A. Whoever the car is in care of. 30

HIS LORDSHIP: And sometimes you say you just shoved them in the car?—A. In the early days, yes, I explained that they were put in the car.

MR. TILLEY: How early was that?—A. From when I started first. I think that was the procedure from the first of the company.

Q. That would be August, 1924?—A. August, 1924, possibly for six months or a year, around 6 months I believe.

MR. ROWELL: Then if a car was sent to A. Deisbourg, you would send them to A. Deisbourg?—A. Yes.

Q. And if it was D. Koven you would send them to D. Koven?—A. That was the general practice. 40

Q. And if it was care of Carling's dock or C.P.R. dock, Windsor, who did you send them to?—A. To the office, Windsor.

Q. What office?—A. To care of Carling's C.P.R. dock, different individuals at different times.

MR. TILLEY: When you say Carling's office do you mean—A. Well I always addressed them care of Carling's, C.P.R. dock, that was the designation.

MR. ROWELL: This later invoice book I think has not been marked.

EXHIBIT 49-B: Defendant's invoice binder, from December 1925, to June, 1927

Q. Now I find this B.13, that is your signature?—A. Yes. (81-A).

10 Q. This one is dated London, July 12th, 1926. Would that be the date on which you made it out?—A. Yes.

Q. Then I see the car number is 287651.—A. Yes sir.

Q. That would be the car upon which you shipped the goods covered by that B.13?—A. Yes sir.

Q. Turning to the invoice bearing the same car number and the same date, and the same consignee, F. Savard, Detroit, Michigan—

HIS LORDSHIP: Is the quantity given in the B.13?

MR. ROWELL: Yes, my lord, it is 200 cartons, pints, beer.

Q. What does the invoice say?

20 MR. ROWELL: 200 half barrels lager, at \$12.50.

Q. Now, just look at that B.13 and see if you can tell me whether that has been altered since you made it out.—A. I cannot say whether it has been altered.

Q. Can you tell me whether there does not appear to have been a certain entry opposite the half barrels?—A. It looks like it.

Q. And a price carried out opposite the half barrels.—A. Yes sir, it looks as if it had been erased.

Q. And 200 put in opposite the cartons?—A. Yes, it reads, 200 cartons.

Q. Now if that was altered was it altered after it left your hands?—A. Well I would never send a B.13 out that way.

30 Q. That was one prepared by you, not by the girls in the office?—A. No, it is my own.

EXHIBIT No. 81-A and B: Invoice and B.13 of July 12th, 1926.

Q. Then will you kindly look at this B.13 dated July 7th, 1926. Is that your signature?—A. Yes sir.

Q. That B.13 was made out by you?—A. The typewriting would not be done by me, but I handled it.

Q. That is car No. 285404?—A. Yes sir.

Q. Now referring to the invoice, the same car number, same consignee, this invoice is also 200 half barrels at \$12.50?—A. Yes.

40 Q. And the B.13 is 125 cartons, \$343.75?—A. Yes, that is how it reads.

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EXHIBIT No. 82-A and B: Invoice and B-13, July 7th, 1926.

Q. That one also bears similar evidence of having been changed, doesn't it?—

A. Yes sir.

Q. The item opposite the barrels crossed out and the gallons and price erased and new figures put in. Was it in that condition when it left you?—A. I don't remember it being in that condition.

Q. Would you say what you did in reference to the other, that you would not send it out in that form?—A. I don't think so, no.

Q. And that would apply to any others in the same condition?—A. I might erase a B.13 and correct it, but I would send out B.13s for whatever the car was. 10 For instance if the girl made a mistake in putting it that way I would correct it.

Q. Then we turn to another. This is your signature?—A. Yes sir.

Q. On this B.13 of July 12th, 1925, car No. 287651.—A. Yes sir. That is the same you referred to before, same car.

Q. That shows on its face 30 half barrels?—A. Yes sir.

Q. With the item extended \$480. Does that also indicate that there has been an erasure, the number of barrels and value have been changed?—A. Well, it looks like an erasure, yes.

MR. ROWELL: The invoice is the one we had before, two B.13s relating to the same invoice, same car. 20

Q. 83-B is the invoice for car 287651, dated July 12th?—A. Yes, sir.

Q. It purports to cover part of the same shipment as shown on 81-B?—A. This one, yes, this B.13.

Q. This B.13 relates to the same shipment covered by 81-B?—A. Yes, sir.

Q. This is a B.13 of 30 at \$16 a barrel, \$480. The invoice is \$12.50 a barrel. I draw your attention, because the amounts and quantities appear to have been erased.—A. This B.13 is more correct than the other one.

Q. It is more correct than the other because this refers to barrels—A. Yes, I would not think but what I might have changed that one.

Q. Is that the way you would change them?—A. They might be changed in the 30 office, the stenographer would do that, or I might do it myself, I could do it, I would not deny that I didn't do that.

MR. TILLEY: How does that end up, he would not deny that he would not do it.

WITNESS: I would not deny that I didn't do it.

EXHIBIT No. 83-A and B: Invoice and B.13 of July 12th, 1925.

MR. ROWELL: Now, take this one, July 13th, 1926, car No. 287759. That bears your signature?—A. Yes, sir.

Q. 200 cartons, \$550, that is at \$2.75 a carton?—A. Yes, sir.

Q. Then, the invoice, on the same date, same car number, same consignee, is 200 half barrels at \$12.50?—A. Yes, sir. 40

Q. And this B.13 on the face of it appears to have had an entry of half barrels with a price, and that erased?—A. Yes, sir.

Q. What do you say about that one?—A. I would not send that out that way.

EXHIBIT No. 84-A and B: B.13 and Invoice, of July 13th, 1926.

Q. Without going further into that, you see others which also appear to have erasures?—A. Yes.

Q. Then, without going through the rest of these, I will deal with the rest of the bunch together. This one of July 13th, car 287759, appears to have been changed from certain barrels to other barrels.—A. Well, I don't know about that, that may
10 have been changed in our office.

Q. It has a certain number of barrels, and it is apparently crossed out and another item put in. Then the next one, July 13th, 1926, car 286435, also appears to have a similar change in the barrel numbers and price.—A. Yes.

MR. TILLEY: One likes to know what is being made. I do not know whether those two are two that agree with the invoice or not. I do not get anything out of this unless I know whether it is changed to suit the invoice or changed to differ from the invoice.

MR. ROWELL: We will turn up the invoices of these and see.

HIS LORDSHIP: Is the point you are driving at that there have been changes in
20 the B.13s, or is it that there is a difference between the quantity in the invoice and the quantity covered by the B.13?

MR. ROWELL: My contention is, first there is a change in the B.13s after shipment by the consignee or some person; then in respect of certain of them there is an entire difference.

MR. TILLEY: I do not want to be saddled with following anything up unless there is a point to it. There is nothing showing when it was changed.

MR. ROWELL: The next one, car 286435, July 13th, 1926, is a change in barrels and price only under the barrels item.—A. Yes, sir, that has been changed.

MR. TILLEY: Unless it is a change that my friend couples up now with some-
30 thing of some importance, why put this on the record?

HIS LORDSHIP: I do not know, I do not understand them.

MR. ROWELL: 85-A is a B-13, car 286435 for ten half barrels.

HIS LORDSHIP: Do you say that is covered by part of the invoice 84-B?

MR. ROWELL: No, that is a different invoice, it is an invoice for 200 half barrels at \$12.50, of the same date.

Q. That is correct?—A. Yes, this here refers to that.

EXHIBIT 85-A and B: B.13 of July 13th, 1926, and invoice.

HIS LORDSHIP: There is a change in that?

MR. ROWELL: There is a change in the barrels, in the number and price.

40 WITNESS: I do not say that was changed after it left me, it may have been changed in our office after I signed it.

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Q. Then the next one is a B.13 of 13th July, car 287759. In this case there has been a change in the barrels and price, a new number of barrels put in, and price.—
A. Yes sir, and erasures.

EXHIBIT No. 86: B.13, July 13th.

Q. Then the next is car No. 286309, dated June 8th, 1926, 30 half barrels, \$480.—
—A. Yes sir.

Q. You find the invoice of the same date, same consignee and car number, 200 half barrels at \$12.50?—A. Yes, the invoice reads that.

EXHIBIT No. 87-A and B: B-13, June 8th, 1926, and invoice.

Q. The next is June—what date is that?—A. I cannot see. 10

Q. It is some date in June; car number 286309, 250 cartons, for \$687.50, and there appears an erasure opposite the barrels and price.—A. Yes sir.

Q. The invoice is 200 half barrels. That has been changed apparently from barrels to cartons.—A. Yes sir.

EXHIBIT No. 88-A: B-13, of June . . (Relating to invoice 87-B).

Q. The next is July 13th, 1926, car 286435, same invoice 87-B?—A. Yes.

Q. That is 25 cartons, \$68.75. That also shows an erasure of barrels and price and substitution of cartons?—A. Yes sir.

EXHIBIT No. 89-A: B-13 of July 13th, 1926.

Q. The next is July 12th, is it?—A. 12th. 20

Q. 1926, car No. 287651, is it?—A. I cannot make that out.

Q. 100 cartons, \$275. That is the same as 81. Then the barrels are erased from the B.13s and cartons substituted?—A. Yes sir, it looks like it.

EXHIBIT 90-A: B.13, July 12th, 1926.

Q. Then there appears to be no change in this.—A. That is a different car altogether. That is O.K.

Q. It is 300 cartons, \$525, dated September 18th, 1926, car No. 58570.

EXHIBIT No. 91-A: B.13, September 18th, 1926.

Q. The next one, July 12th, 1926, 100 cartons, \$275, car No. 286999?—A. Yes sir.

Q. This invoice is the same car number, same consignee and same date, 200 30 half barrels lager at \$12.50. And this B.13 shows on its face an erasure of the barrels and price and substitution of cartons.—A. Yes sir.

EXHIBIT No. 92-A and B: B.13 and invoice, July 25th, 1926.

Q. The next is July 12th, 1926, car No. 286999, and that is for 25 barrels, \$312.50?—A. Yes sir.

Q. That also appears to have had an original entry of barrels and price erased?—
A. No, that has never been changed.

EXHIBIT No. 93-A: B.13, July 12th, 1926.

Q. Now all these B.13s commencing with 81-A and running through to the end and bearing the dates mentioned bear the same date of the Customs Excise stamp 40 at Sandwich? Just check through and satisfy yourself.—A. Yes sir.

Q. All the same date, October?—A. All October 4th.

HIS LORDSHIP: Do you say all those B.13s from 81-A to 93-A bear the same date?

MR. ROWELL: The same date export stamp, all stamped by the Customs of the same date.

HIS LORDSHIP: You mean they appear to have all passed the Customs on the same date?

MR. ROWELL: Same date.

MR. TILLEY: Am I right, that they all went through Sandwich?

10 MR. ROWELL: They are all stamped Sandwich.

MR. TILLEY: That is where the Government dock is.

MR. ROWELL: I do not think so, I do not know any Government dock at Sandwich.

Q. All these shipments covered by these B.13s would be sent out from the Carling Brewery, London, on the dates, or approximately the dates of the B.13s in London?—A. Yes sir.

Q. Not more than a day difference?—A. No, I do not think so, unless they are held up for some special reason.

Q. Can you tell me where these goods were between the dates they were shipped 20 from London and the date the stamp bears at Sandwich?—A. No sir, I had nothing to do with that.

Q. You cannot tell anything about it?—A. I presume they would be on the dock, but I don't know anything about it.

Q. In a warehouse there somewhere?—A. Yes sir.

HIS LORDSHIP: Can you give any explanation for the changes in the quantities and in the nature of the goods, some were barrels and some cartons?—A. No, I could not explain that, my lord, not why they are changed from one to another.

MR. ROWELL: Here is another B.13, it is not part of that same shipment, it is an interesting illustration. That is one of your B.13s, is it?—A. Yes sir.

30 Q. London, June 28th, 1926, 50 cartons, \$112.50, \$2.25 a carton.—A. Yes sir.

Q. It bears the Customs Excise stamp, Walkerville, April 4th, 1927?—A. Yes sir.

Q. You cannot tell us where the goods were in the meantime?—A. No, not authoritatively.

EXHIBIT No. 94: B.13, June 28th, 1926.

Cross-examined by Mr. Tilley:

Q. Mr. Hennessey, you are the shipper I gather. Do you have anything to do with any other part of the business?—A. I did at that time, I was looking after receiving.

40 Q. Receiving what?—A. Receiving supplies, bottles, malt, kegs and so on.

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HIS LORDSHIP: Receiving from whom?—A. From the railway company, whatever came in by railway or transport.

MR. TILLEY: That is you were in charge of the stock, and anything that came in you would receive and whatever was shipped out you would send?—A. Anything moving in and out of the plant.

Q. Anything moving in and out of the plant in the regular way of business came under your jurisdiction?—A. Yes sir.

Q. Now are you in charge of both?—A. No, I just have the shipping now. It has been divided.

Q. The duties have been separated between you and someone else?—A. Yes. 10

HIS LORDSHIP: I do not understand. What is there in London? Is the brewery there?

MR. TILLEY: Have you got a brewery in London?—A. Yes sir.

HIS LORDSHIP: Then you have a warehouse, I suppose that is close to the brewery?—A. A stock warehouse, yes.

Q. That is what you are in charge of?—A. In connection with it.

Q. Do you receive any beer from anywhere else than the brewery?—A. No, not beer, supplies.

Q. What do you mean by supplies?

MR. TILLEY: Bottles, malt, whatever is needed for the manufacture, that is 20 what you mean?—A. Yes sir.

Q. You say you had a sort of larger jurisdiction when the business was smaller than you have now when it has grown, you are now only shipper?—A. Yes, since the Ontario business opened up.

Q. The outward business has increased?—A. Yes sir.

Q. What strengths of beer were being manufactured during the time we are concerned with here?

MR. ROWELL: He does not know about the manufacture, nothing but the shipment.

MR. TILLEY: What did you have to ship out?—A. 2½ per cent beer, 9 per cent 30 beer, and 4·4 beer, when the 4·4 was brought into effect.

Q. That is for a time Ontario permitted the sale of 2·5, and later on they permitted the sale of 4·4?—A. Yes sir.

Q. Then there is the 9 per cent beer, which was illegal in Ontario?—A. For export.

Q. Except you sold it through the Government dispensaries?—A. Yes sir.

Q. But you could sell it to Quebec?—A. At that time we sold it to Quebec and New Brunswick.

HIS LORDSHIP: Do you mean to the Commission or to individuals?—A. No, the Quebec beer is not handled by the Commission, it is handled by different dealers. 40

MR. TILLEY: You could sell the beer—A. To any one who had a license.

Q. And then you had another market, that is the export market for the 9 per cent beer?—A. Yes.

HIS LORDSHIP: I suppose those three are liable to the tax.

MR. TILLEY: It has been paid on everything except the 9 per cent exported.

HIS LORDSHIP: Is that right?

MR. ROWELL: In so far as it is entered as 2·5 on these particular invoices I believe the tax has been paid. My instructions are that it has not been paid on the portions of those invoices not entered as 2½. Those are my instructions, but that is a question for the accountants.

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10 MR. TILLEY: Well I think there is no gallonage tax on the 2·5. The Sales Tax is paid. At any rate your Lordship is concerned only with what we call 9 per cent export. I say "what we call" in order to avoid a discussion about the use of the word "export."

Q. Now, Mr. Hennessey, do you parcel up your goods into bags or boxes, or whatever you put them in, differently from one class of trade from the other?—A. Yes sir.

Q. What difference do you make? We have some samples here, I wish you would explain to the Court how you parcel up the different goods?—A. When we started first we used a plain carton similar to this, when we started first on the export.

20 HIS LORDSHIP: You have two systems of packing, one for home consumption and one for export, is that it?—A. Yes.

MR. TILLEY: Might the witness show the changes made?

Q. This is a carton, I suppose?—A. Yes.

HIS LORDSHIP: What is that used for?—A. When we started first, we used a plain carton, same make as this, no printing on it, for export beer and for all beer, at the first.

Q. For home as well as for export?

MR. TILLEY: You are not making that clear. You say when you started you had one carton without any printing on it. This one has printing on it, hasn't it?—

30 A. Yes, sir.

Q. Then, this is not the carton you were using then?—A. No, sir.

Q. Do you mean you are showing it for the shape?—A. Well, that is the carton. We used a plain carton.

Q. You used a plain carton at first for what beer?—A. For 9 per cent beer for export, and for 2½ per cent beer for Ontario sales. When we sent the export beer out we stamped them with a rubber stamp, C. B. Grandi, or F. Savard, or whoever they were going to, that was stamped with a rubber stamp on every carton that went out.

40 Q. And for Ontario how did you stamp it?—A. It was also stamped on the end "C.C." or "B.L." to denote what brand of beer.

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Q. "C.C." meaning?—A. Canada Club, or "A" for ale.

Q. The Canada Club was a brand you had at that time?—A. Yes, sir.

Q. And that kind of carton was used, was it, for all beer at that time, but you stamped them differently, depending on whether they were for export or not for export?—A. No, that was the cartons. Then we used wooden cases of different sizes for the Ontario trade, for 2½ per cent.

Q. Did you use these cartons for 2½ per cent?—A. Occasionally, not so very much.

Q. And you used wooden cases?—A. For 2½ per cent.

Q. And not for export?—A. Not a regular beer case, you understand a beer case 10 with the partitions, commonly called an ordinary beer case.

Q. You did not use those for export?—A. No, sir.

Q. You used them for 2½ per cent only?—A. Yes.

Q. What did they hold?—A. One dozen quarts, 2 dozen quarts, 3 dozen quarts.

HIS LORDSHIP: Different from the box you had before?—A. Yes.

HIS LORDSHIP: He seems to say every one knows what it means. I do not know.

MR. TILLEY: You are not taking time to make it clear.

HIS LORDSHIP: You are here to instruct us. I know nothing about it.

WITNESS: A wooden box with partitions in it, known as an ordinary beer case.

MR. TILLEY: And you called them "cases".

20

A. They are known as cases.

Q. And if you had a certain number of cases, just by that description only, you would not be able to tell how many dozen there were in a particular case, you would have to know the size of the case as well?—A. Yes, the size.

Q. You have been asked about some of these invoices where cases are shown, and you say 2.5. Were those wooden cases being used for that kind of beer?—A. Yes, sir.

Q. So that when you show a certain number of cases for local delivery that would not tell you exactly what was in the cases?—A. No, it is a common mistake to confuse a carton with a case.

30

Q. It is common, when you are referring to these cases to confuse cartons with cases?—A. I say, for the ordinary public to confuse it. We do not, but the ordinary public do.

Q. The case is what you would refer to as this wooden case?—A. Yes.

Q. That might hold one, two or three dozen?—A. Yes.

Q. And the carton is something that holds two dozen pints or one dozen quarts?—A. Yes, sir.

Q. Always?—A. Oh, there was a few exceptions, very few.

Q. Then would you describe—A. Later on in the export trade we introduced this carton with the brands printed on it.

40

EXHIBIT I: Sample carton.

Q. Is there anything special in the carton?—A. That is for the Black label, it is printed B. L. on both ends. We also had C.C. for Canada Club, and "A" for ale.,

Q. What is the difference between B.L. and C.C.?—A. B.L. is a trade name, Black label, it is a rice beer, part rice.

Q. That is the beer referred to before as rice beer?—A. Yes, sir, commonly known as rice beer.

Q. And C.C.?—A. Is straight lager, malt and hops.

Q. Can you fix the time when you commenced using that carton?—A. I think 10 the beginning of 1925.

Q. Has it continued down to date?—A. No, we use this carton only for Quebec.

Q. Now?—A. Yes.

Q. What do you use for Ontario?—A. For Ontario we have a similar size carton, but it is printed "Carlings" on the side, and the quantity shown on the ends. That is the requirement of the Liquor Control Board, the name has to be printed in prominent letters.

Q. What do you use now for export?—A. We use these canvas bags.

HIS LORDSHIP: What do you put in them?—A. Two dozen pints.

MR. TILLEY: Or a dozen quarts?—A. One dozen quarts or two dozen pints.

20 EXHIBIT J: Bag used for export shipments, B.L.

HIS LORDSHIP: Are all your exports in these bags?—A. No sir, we use boxes.

HIS LORDSHIP: So far we have had only cartons and boxes.

MR. TILLEY: How long have the bags been used?—A. Oh, three years.

Q. Do you put them in a box?—A. No sir. They are sewed up and go out the way they are.

HIS LORDSHIP: We have never had any question of bags mentioned on those B.13s.—A. There are on the bills of lading.

HIS LORDSHIP: That is the first time my attention has been called to that.

MR. TILLEY: Will you explain the difference between the two bags?—A. This 30 bag (J.) is for Black Label shipments. It is marked "F.D.", that is for our present customer in the States, the man who takes our output now.

Q. A man named what?—A. Drusinski. B. L., that is the brand, and D. M. for Detroit, Michigan.

Q. Those are all stamped?—A. Printed on the bags.

Q. Is that the bag as it is being used now?—A. Yes.

Q. You say that has Drusinski's name on it, what had it before he was your man in the States?—A. F. S.

Q. Being?—A. F. Savard.

Q. So the bag was different in that respect, just the letters?—A. Yes.

40 Q. What do you put in that bag?—A. Two dozen pints of Black Label.

Q. Do you use the same thing for a dozen quarts?—A. Yes sir.

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Q. Then why don't you say so?—A. Well, or one dozen quarts.

Q. But the bulk of your sales are in pints?—A. Yes sir.

Q. And you say that bag has been in use, properly lettered according to the circumstances, for how long back?—A. Three years I believe.

Q. That carries us back to 1926. Prior to that you had cartons that were stamped in the way you have indicated?—A. Yes sir.

Q. Now will you explain the difference between bags J and K.—A. This (K) was a bag that was used for amber ale. It is a similar bag in construction, only the printing. It is printed F.S., D.M.

HIS LORDSHIP: That has the same meaning?—A. Frank Savard, Detroit, 10 Michigan, and A.A. stands for Amber Ale.

Q. Is that 9 per cent?—A. Yes sir.

EXHIBIT K: Bag used for export shipments Amber Ale.

MR. TILLEY: Did you have while you were shipper any 9 per cent beer, that is what we call export beer, to the United States, did you ever have any of it go out, as far as you can remember, without being put in bags or cartons that were labelled as you have indicated as for your United States customer for export to the United States?—A. Everything that was packed in bags or cartons is labelled as I say. But we did use boxes.

Q. But everything packed in bags or cartons— A. Were all marked. 20

Q. Were all marked showing by letters the person and the destination?—

A. Yes, in some cases in Grandi's time we put his full name on, and I think in Savard's time we put the full name on.

HIS LORDSHIP: Can you explain to me why you made your entires as cartons instead of bags?—A. My lord, I never made any entries— if they were bags I billed them as bags.

HIS LORDSHIP: I have not seen any so far.

MR. TILLEY: There is the same quantity in a bag as in a carton?—A. Yes sir.

Q. For the quantity it does not matter whether you describe it as a carton or a bag.—A. No sir, same weight and same quantity. 30

Q. Have you ever shipped out beer for Ontario or for Quebec in the cartons or bags that you have described as being used for your export trade to the United States?—A. Not with the markings on, no sir.

Q. You have used cartons and bags you have told us?—A. Plain cartons, no bags.

Q. But you have never sent, in your shipping out from your plant, anything for Ontario, Quebec or New Brunswick, in cartons or bags, that are labelled as for your United States trade?—A. No sir.

Q. And you have never sent beer out that we are concerned with here, for your United States trade, except in cartons or bags, when it was in a carton or bag, marked 40 as you have indicated?—A. No sir.

Q. That is right?—A. That is the way I never sent them out.

HIS LORDSHIP: Do you say everything you sent to the States was so marked on the label?—A. Everything that is in cartons or bags that we have dealt with so far.

MR. TILLEY: I am coming to the boxes in a moment, but everything in carton or bags shipped to the States has always been labelled as you have indicated?—A. Yes.

Q. Now is this the stamp that was used when you put the full name on?—A. Yes sir, that is one of the stamps.

Q. For?—A. F. Savard.

10 Q. "F. Savard, Detroit, Michigan."—A. Yes sir.

Q. Here is another one, "F.S. Detroit, Michigan," and another.—A. "B.S. Detroit, Michigan," that is when we were shipping to Syringe.

Q. At any rate you indicated either by initials or name, the customer for the United States goods?—A. Yes.

Q. And that, either initials or name, was always plainly stamped on the carton or bag?—A. Yes sir.

Q. Now will you take the box and tell us when you used the boxes and for what goods?—A. They were used for special orders, that is export trade, just when we got an order calling for boxes.

20 Q. This is a sample box that you would use?—A. Yes sir.

Q. When was it used?—A. Just for special orders for the United States.

Q. Do you use them for Ontario or Quebec or Canada?—A. No sir.

Q. If you were selling 9 per cent beer for Quebec would you use these boxes?—A. No sir.

Q. You use them?—A. Only for the United States.

Q. How long have you been using boxes of this type in the United States?—A. Two years, something like that.

Q. That may cover part of the time we are on here. How was the box labelled?

30 HIS LORDSHIP: Are they labelled?—A. They are stamped on the end with a stamp "R.C.", that stands for Red Cap, that is a new brand of ale. We also packed Black Label and Amber ale.

Q. Anything else but the brand marked on the box?—A. Yes sir, one of these stamps was used. At that time we had boxes with "B.L.," "R.C." or "A.A." on them, separate boxes printed. Then as they went out we stamped them with the rubber stamp, "F.S., D.M." or whatever was necessary.

EXHIBIT L: Stamp impressions.

MR. ROWELL: It does not appear that the box was used.

MR. TILLEY: Have you ever as shipper shipped out beer to the United States in any wooden box except a box stamped in the way you have indicated, the box you 40 are now holding in your hand?—A. No sir.

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Q. Then may we take it that all the beer we are concerned with here, when it left your plant, whether in carton, bag or wooden box, was stamped to indicate the brand, to indicate where it was going, and when it was box or carton to indicate who your customer was in the States.—A. Yes, with the exception of the brand, I would not say always the brand.

Q. You would not say it always had the brand?—A. No sir, that was not required.

Q. For—?—A. For the Customs. It always had the address on.

Q. Do you say that is necessary by some Customs requirement?—A. I understand it is. 10

Q. You are not able to speak of it?—A. No, but that is my understanding.

Q. You proceeded on the theory that that sort of thing was necessary?—A. I have been warned to have that on every carton. I was told if it was in the warehouse at Windsor without they would seize it.

Q. So that you had it on every one of them?—A. Yes sir.

Q. As far as you know did liquor ever go out, except for the United States, in bags, cartons or boxes so marked?—A. All exports for the United States was always marked.

Q. But when you were shipping for Ontario or Quebec or New Brunswick did you ever mark it in that way?—A. Oh no, sir. 20

Q. You always drew that distinction in the way you put up the goods?—A. Yes sir.

MR. TILLEY: I do not think I need put in the wooden box.

HIS LORDSHIP: You might get the witness to tell us the size of the box.—A. The length is about 28 or 30 inches by 14 by 6 or 8 deep.

MR. TILLEY: How much does it hold, 2 canvas bags?—A. No, 5 dozen, the same as 2½ bags.

Q. What else have you that you use in connection with your shipments?—A. These are used on kegs, half barrels, quarter barrels and so on.

Q. Are they all the same?—A. Yes, these are only samples. 30

EXHIBIT M: Tin tags.

Q. Is that for the United States, or for all your kegs?—A. At that time for the United States only.

Q. That time meaning how far back?—A. Until the Liquor Control Act came into effect in Ontario.

Q. Until the change of the Ontario law it was only for export?—A. Only for export.

Q. You do not use it for Quebec?—A. No, we don't send kegs to Quebec.

Q. Were these used on all your kegs that went to the United States?—A. Yes, sir.

Q. Where were they put on your kegs?—A. Tacked on the end of the keg, either 40 end.

Q. Was that some requirement or your own choice?—A. No, I believe it was a requirement of the Customs Department.

Q. You understood so?—A. Yes.

Q. Was it always observed?—A. Yes, sir.

Q. That is whenever any keg of yours was travelling—A. That was put on.

Q. Did you do anything else to identify the keg as yours?—A. Yes, we used a bung with a stamp on.

Q. Would that be the inside of the bung?—A. This is the inside.

Q. That is it has got on it 2.7—A. That has been in a keg.

10 Q. That is a used bung?—A. Yes.

Q. When you put it in is it marked as this bung is marked?—A. Yes, sir.

Q. What is the purpose, do these figures mean any special thing?—A. Yes, they indicate the shipment, when that beer was packed and shipped.

Q. That is the goods that were in the keg?—A. Yes.

Q. It would identify them?—A. Yes, sir.

HIS LORDSHIP: What do you mean?—A. Identify the shipment, about when they were packed.

MR. TILLEY: That is, if there was any question about quality or about whether it was bad—A. Yes, about the date of shipment.

20 Q. By taking the bung you could identify the time when the goods left your place?—A. Yes, sir.

HIS LORDSHIP: Were they all marked 27?—A. All in one shipment would be. If I send out 200 kegs all the 200 would have the same marking on the bung.

MR. TILLEY: That is every lot had a different number?—A. Every lot had a different number.

Q. You could identify how long it had been away from your plant by examining the bung?—A. Yes.

30 Q. Why do you have it on both sides?—A. There is a reason, that we were getting complaints of bad beer which we did not think was our beer, and this was proof, if they got that number we knew it was our beer. The customer in Detroit would complain of bad beer and claim on us for refund through Savard, and it might be for instance British American beer. If a keg did not have this bung we would not recognize that claim.

Q. That is you had that to identify the particular goods, the brew, and you had it for the purpose of watching claims made against you?—A. Yes, sir.

Q. So as to be sure they were your goods?—A. Yes, sir.

Q. Did you ever send out any kegs without these markings on them?—A. We did when we started business first.

40 Q. Well, when you once introduced this method of marking you stuck to it throughout?—A. Yes, sir.

Q. And you are still using it?—A. Yes, sir.

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Q. Any other labelling on the keg?—A. Yes, we used a paper tag, I have not got one here, an ordinary paper address tag on which we placed the stamp of F. Savard, Detroit, Michigan, and that was placed on the keg underneath the tin tag.

HIS LORDSHIP: That is you put the name of the consignee on the tag?—A. On the tag, yes, sir.

MR. TILLEY: Were your kegs marked so that they could be identified in any other way?—A. Yes, sir, some of them.

Q. How?—A. Well, they have a brander, a machine which brands them, burns them, we used that for some time, but that was abolished afterwards. Later on we had a lot of kegs moving that were painted with a blue head on them. 10

Q. A blue band.—A. A blue band around the top, 6 inches on the head, that was a special bunch we bought, and they were in service for some time, are in yet in fact.

Q. When you say "in service", would these go forward and come back?—A. Yes, sir, they have been over several times.

Q. Over where?—A. To Detroit.

MR. ROWELL: This witness cannot speak as to that.

MR. TILLEY: He did not go in them. But did the shipment come back to you?—A. They were sent out of the plant as export, and later on I received the kegs back and loaded them again and sent them out again. And we have the entries to show that they came through the Customs coming back. 20

EXHIBIT N: Two bungs.

Q. What other markings have you to identify your export beer?—A. The label and the crowns.

Q. Now you are speaking of the bottles?—A. Yes, on the bottles. There is the complete bottle for Black Label.

Q. And it has got on it "Properly aged export Carling," and on the band at the top and the band on the body of the bottle, "Carling Black Label lager beer, registered. The Carling E. B. & M. Company, Limited, London, Canada." And a number.—A. No, that is the bottle maker's number.

Q. That is the bottle for black label?—A. That is a special size bottle for us. 30

Q. You mean it is made up specially for you?—A. Yes.

Q. To hold a little less or a little more?—A. No, 11 ounces, all the same, but a special design.

EXHIBIT O: Sample bottle. Black Label lager beer.

Q. What sort of stopper goes on it?—A. There is the crown, "Carling, London, rice beer."

EXHIBIT O-2: Bottle crown.

Q. Now what bottle is this?—A. That is Canada Club lager.

Q. For export?—A. Yes sir.

Q. That is marked "Carling, London, Canada Club lager." Is there anything on that about export?—A. No, nothing particular. "Carling, London, Canada Club lager, Carling E.B. & M. Co., Limited, London, Ontario, contains 9 per cent proof spirits, net contents 11 fluid ounces."

Q. And is this the crown for that bottle?—A. Yes sir.

EXHIBIT P: Canada Club bottle.

EXHIBIT P-2: Stopper for same.

Q. Was there some requirement made about this stopper by the Ontario Liquor Commission?—A. Yes sir.

10 Q. What?—A. The Liquor Commission for Ontario requires a special stopper or crown with their name on it.

MR. ROWELL: Are we concerned with that?

MR. TILLEY: I am going to show that we put our goods up in the proper bottles.

MR. ROWELL: We are surely not concerned with the Ontario Liquor Commission.

HIS LORDSHIP: We have had it connected pretty often.

MR. TILLEY: We have had it that seizures were made, and you identified our bottles. I want to show how little seizures there have been considering the quantity sold.

20 WITNESS: I have no Liquor Control crown.

Q. At any rate in Ontario there was a special one that was required?—A. Yes sir. I have one here of the 4·4.

Q. Is that as required by the Government?—A. That was required by the Ontario Government when the 4·4 business came in.

HIS LORDSHIP: Is it similar to the one that goes with the 9 per cent?—A. No sir.

MR. TILLEY: What was required to be on it?—A. Carling Export Brewing & Malting Co., beer, 2·50 alcohol by volume, 60 degrees Fahrenheit, London.

Q. Did New Brunswick require a special cap?—A. Yes sir.

30 Q. What kind was it?—A. It was the requirement of the New Brunswick Liquor Control Board. It reads, "Carling, London, N.B., L.C.B." meaning New Brunswick Liquor Control Board.

Q. When you spoke of having a 4·4 you read the cap as being 2·5.—A. That was the technical term.

Q. But it was 4·4?—A. Yes sir, 2·5 by volume means 4·4.

Q. Did you ever ship any beer in bottles that were labelled for export except beer that was really for export to the United States?

MR. ROWELL: How can he say?

MR. TILLEY: I am not saying he proves it went there, but—. Q. You knew when you were shipping beer for this United States trade?

40 MR. ROWELL: He knew when he was shipping it according to particular orders. All he can speak of is he shipped it according to instructions.

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MR. TILLEY: Very well, you shipped it according to instructions. Did you ever ship any beer that was labelled for export except this beer we are concerned with here?—A. The same labels were used.

Q. For what?—A. On some we sold to the Ontario Government Dispensaries.

Q. To the Government?—A. Sold to the Government.

HIS LORDSHIP: The same label as they used for export?—A. Yes sir.

MR. TILLEY: And is that all?—A. That is all, yes.

Q. On that beer that you sold to the Government was the Crown the same?—

A. The Crown was the same at that time, that was in the early days.

Q. Then later the Government required that the Crown should be different?—10

A. Yes, we never used it. That is when we quit selling.

Q. Can you say how many cases of beer put up in that way you sold to the Government?—A. Very little, about 100 or 200 cases, not more than 200.

Q. All the rest was for this export trade?—A. All export, yes sir.

Q. You were asked about the delivery through a man named Constable, cash sales. Would you have charge of putting up those goods as shipper?—A. Charge of the loading, yes sir.

Q. Did you at any time load any of this 9 per cent beer for those shipments?—

A. Not on those shipments, no.

HIS LORDSHIP: You never made any cash sale of 9 per cent?—A. No sir. 20

Q. Could any cash sale of 9 per cent be made without you taking cognizance of it?—A. Without me delivering it, no sir.

Q. I mean without giving it for delivery to Constable?—A. No sir.

MR. TILLEY: Now something was said by one witness that there is a difference between the consumption of ale and beer as between the United States and Canada, or at any rate Ontario.—A. Yes.

MR. ROWELL: How can this witness speak of the consumption?

MR. TILLEY: I should think a man who was supplying it to be consumed would know what they are drinking.

HIS LORDSHIP: This witness has certainly gone beyond the scope I expected he 30 would be examined on. He has shown that he is doing more than shipping.

MR. TILLEY: No, my lord, this is all shipping.

HIS LORDSHIP: You do not understand what I mean. I did not expect that class of man, he is a better class than the ordinary shipper. I was expecting a man that is doing nothing but hand work, but he is doing head work as well.

WITNESS: I do not do hand work, my lord.

HIS LORDSHIP: That is what struck me. I was told he was the one that loaded the cars.

MR. TILLEY: When you say you load the cars, how do you load the cars?—A. I just check the cars and do the billing. 40

Q. You do not roll the barrels up yourself?—A. No, I have a gang of men that do that.

HIS LORDSHIP: You said you were loading?—A. I mean supervising the loading.

HIS LORDSHIP: I think he can speak about this.

MR. TILLEY: What percentage, prior to the change in the Ontario law, what percentage of your output was ale?

HIS LORDSHIP: I do not understand what difference there is between ale and beer. I am very ignorant.—A. It is a different drink my lord, altogether. Different taste and different manufacture. The different manufacture gives the different taste.

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MR. TILLEY: If it is not a trade secret let us know what the difference is.—
10 A. I could not tell you, I know there is a difference in manufacture. It acts altogether different when it is brewing for instance. I cannot say what the ingredients are.

HIS LORDSHIP: It is a different beverage?—A. Yes sir.

Q. Is one stronger or lighter?—A. No sir, I think they are both about the same. Ale is more bitter.

MR. TILLEY: Take the Ontario trade, what has been your experience in supplying the Ontario trade before and since the change in the law?—A. Ontario trade as we sell it is about 95 per cent ale. And the American trade is about 98 per cent lager. 90 per cent of our export trade is Black Label.

20 Q. Not only that, but it is—?—A. Rice beer, Black Label.

HIS LORDSHIP: You say 90 per cent—?—A. 95 per cent of our Ontario business is ale, and 98 per cent of our export business is lager, and 90 per cent of that lager is Black Label lager.

MR. TILLEY: That is to say, 98 per cent of your export business is lager, and 2 per cent ale, is that what you mean?—A. Yes sir.

Q. That is the way the export trade divides?—A. Yes sir.

Q. And of that lager that you send for export 90 per cent of it is Black Label?—
A. Yes sir.

Q. In other words, rice beer?—A. Yes sir.

30 Q. And the 10 per cent of what you export is—?—A. Canada Club.

Q. Or malt beer?—A. Yes.

Q. That is 10 per cent of what you export is malt beer, but the great bulk, 90 per cent, is rice beer?—A. Yes sir.

Q. Is that kind of beer, rice beer, consumed in Ontario at all?—A. Oh about 2 per cent of our trade.

HIS LORDSHIP: It would be 5 per cent of the Ontario trade?—A. No, not of Black Label. About 2 or 3 per cent, very little.

MR. TILLEY: Your Lordship sees, 95 per cent of Ontario is ale, 5 per cent lager, and of that 5 per cent lager probably half would be rice beer and the balance malt
40 beer.

Q. Is that what you mean?—A. Yes, sir.

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Q. What has been the result of the change in the law, how much has your ale increased because of the change in the Ontario law?

MR. ROWELL: This comes after our period expires.

MR. TILLEY: It is not this period, I am concerned with whether these goods were exported. If the Ontario public, when they can get it, drink 90 per cent ale, I must have that proven. They do not want that rice beer.

HIS LORDSHIP: We are not concerned with what took place after the period in question.

MR. TILLEY: Except as throwing light on whether this rice beer went to the States or was left in Ontario. If I show that Ontario does not want this kind of beer 10 at all, I have surely made a strong point.

MR. ROWELL: I submit that is entirely irrelevant, something that happened after the period had expired.

HIS LORDSHIP: I cannot see any serious objection. It will not help me one iota, but if the defendant thinks he can get something out of it from another Court, he may.

MR. ROWELL: Then for the sake of my position in another Court, I desire to have my objection registered.

HIS LORDSHIP: Yes, all your rights. I am not going to decide this case on deductions, I am going to decide on the facts.

MR. TILLEY: What do you say, Mr. Hennessey?—A. All the American trade 20 is lager, or 95 per cent of it, and all the Ontario trade and the Quebec trade and the Manitoba trade which we have at the present time is for ale, 95 per cent or thereabouts.

Q. What happened with the change in Ontario?

HIS LORDSHIP: What they want to know is, Since the change in Ontario have you been selling more rice beer in Ontario?

MR. TILLEY: Or ale?—A. Ale. In fact when the Ontario trade opened up we could not supply our ale trade, we did not have it in stock, the plant was not built with the capacity to make ale, we had to enlarge and renovate our plant.

Q. As a result of the change in the law in Ontario have you increased your sale 30 in Ontario of ale or beer?—A. Ale.

Q. Has the change in Ontario resulted in increasing your sale of rice beer in Ontario?—A. No sir.

Q. That is to say, although the Ontario people can now buy the rice beer there is no demand for it in Ontario?—A. Very little.

Q. Were you equipped to supply the Ontario trade when the change in the law came in?—A. No sir.

Q. Why?—A. Well, the plant previously had been rebuilt to manufacture lager, and when the Ontario trade came into operation the first summer we were short of ale all the time, we could not make it. The next winter we rebuilt the plant and 40 enlarged it.

Q. You rebuilt and enlarged the plant because the change in the Ontario law increased so enormously the consumption of ale?—A. We could not supply the ale.

HIS LORDSHIP: Coming back to this difference between ale and beer—

MR. TILLEY: Rice beer.

HIS LORDSHIP: Rice beer, would lager describe your rice beer?—A. Yes sir.

MR. TILLEY: Lager I suppose is—

HIS LORDSHIP: A generic term.

MR. TILLEY: Yes.

Q. What do you include under lager?—A. Strictly speaking, Black Label and
10 Canada Club are lager. But Black Label is a different kind of lager from Canada Club, Black Label has 20 per cent or more rice in the manufacture of it.

Q. Black label is a rice beer?—A. Yes sir.

Q. Where is there, as far as you know, in the North American Continent, any demand for rice beer?—A. Only in the States, the Western States.

Q. Do you find any in Ontario?—A. Very little.

Q. Has there been any real demand for rice beer in Ontario since they have been able to buy beer?—A. No sir.

Q. So that your export business, 90 per cent of which was rice beer, has turned out not to be suitable for Ontario trade?—A. That is correct.

20 HIS LORDSHIP: I suppose at a pinch they would use it.

MR. TILLEY: No, my lord, it costs us more to make, and we make it for the American trade. That is the point.

Q. It is more expensive to make?—A. It costs more to make it, and there is an additional tax on it from the Inland Revenue Department, 15 cents a gallon I believe extra, which amounts to 27 or 28 cents on one of those boxes.

Q. 27 or 28 cents is the additional cost of the beer that you have been making for export, and which is not demanded even now in Ontario when they can buy it legally?—A. No, sir. In other words, the big end of our plant, or three-quarters of
30 end was idle. Now they are both running heavy.

Q. The front end of it was making what?—A. Ale.

Q. And before the change in Ontario, so that 9 per cent ale could be bought, the busy part of your plant was where they were making the rice beer?—A. The lager department, yes.

Q. But when the change in the law occurred in Ontario you are now manufacturing ale as fast as you can too?—A. Yes sir.

Q. But the rice beer is still the export beer?—A. Yes sir.

Q. For instance can you say how much rice beer you sell to the Government liquor stores here in Ontario or ship to them?—A. Oh, 100 cartons a day.

40 Q. For the whole of Ontario?—A. I think so.

HIS LORDSHIP: That is of rice beer?—A. Yes.

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MR. TILLEY: And how much are your exports of rice beer?—A. 4,500 or 5,000 boxes a day.

Q. You have spoken of the way your bottles were put up and the way your kegs were put up. Did you get returns of those coming back to you?—A. From the United States, yes sir.

HIS LORDSHIP: Returns of ?

MR. TILLEY: Empties.

WITNESS: Secondhand bottles.

HIS LORDSHIP: You would not get returns of the bags?—A. Not the bags, just the bottles. 10

MR. TILLEY: And the kegs?—A. And the kegs.

Q. How did they come to you at London?—A. In carloads from Windsor and different ports.

HIS LORDSHIP: Your bottles would come how?—A. They came in bulk, just piled in rows in the car, and they came in old fish crates, and in the old cartons. When the cartons were being used we got them back in the old cartons.

MR. TILLEY: And they came in by the carload?—A. Yes sir.

Q. Do they come in bond?—A. Yes sir.

Q. And you release them in London?—A. Yes, they are released, and the Customs officer opens the cars, he breaks the seals and we unload them. 20

HIS LORDSHIP: You do not pay any duty on them?—A. I believe they do, they come in in bond.

MR. TILLEY: Oh yes, we pay duty.

Q. At any rate they come in in bond and you break the seals?—A. Yes, carloads of these B.L.'s come in, nothing else hardly but those Black Label bottles. I have seen carload after carload of those come back in the original cartons.

Q. But the cartons had been opened?—A. Oh yes.

Q. And the bottles had been opened?—A. Yes.

Q. And they came back empty, the bottles?—A. Yes.

Q. When you get empties, take the kegs, are you able to identify your own?—30
A. Yes sir.

Q. By what?—A. Well those tin tags are still on them, the majority of them, and they have those numbered bungs, they are never taken out only in the brewery. They open them through a cork in the end of the keg.

Q. That is when they are taking the beer out of the keg they do not take it out through the bung?—A. No, the bung hole is in the side. There is a patent vent in the end.

Q. So that the bung stays in?—A. Yes.

Q. And you are able to tell from the bung whether it is your bung?—A. Yes, we know them. 40

Q. Are all the secondhand empty kegs that you get back yours?—A. Not all, no.

Q. How much are not yours?—A. 75 per cent usually.

Q. Are what?—A. 75 per cent of the empties are ones we have sent out.

Q. And 25 per cent?—A. Mixtures, and some we are doubtful on.

Q. But can you say that up to 75 per cent of all the kegs are yours?—A. Yes, more than that, easily 75 anyway.

Q. Then what about the bottles?—A. On some carloads 95 to 100 per cent are ours. We only buy them, as I understand our contract with the bottle people calls for 10 our own bottles being brought back, we only want our own, those Black Label bottles.

Q. Other ones put in the car, if any are put in, are not much use to you?—A. No, we do not want them.

Q. You do not use them again?—A. Oh we may if they are good.

Q. I thought the bottles you used are made so that they go through your machinery, and other bottles will not.—A. Well yes that is the case with those Black Label bottles. The balance of that would be ale bottles.

HIS LORDSHIP: That is they are filled and corked by machinery?—A. Yes, those Black Label bottles that I brought here are a special size of our own.

MR. TILLEY: You see you go so fast you are not catching the point. The 20 Black Label bottle I understand is a special bottle made for you, and you cannot use other bottles in that machinery?—A. That is what I was going to state.

Q. When you sell your rice beer or the export beer or Black Label beer is that of necessity all in your own bottles?—A. Yes sir.

Q. Because you cannot use other bottles in that machinery?—A. They are a certain shape and size.

Q. And differing from the ordinary?—A. Yes.

Q. And made for you only?—A. Made for our special order.

HIS LORDSHIP: Can you fill either of those bottles on the same machinery?—A. No sir, not at the same time.

30 Q. I mean the two bottles as the samples?—A. No sir.

Q. They will fill on different machinery?—A. Yes. The machine has to be adjusted, it takes some time to adjust.

Q. The same machinery may be adjusted for it?—A. But we do not do it.

MR. TILLEY: Do you ever change the adjustment of the machinery that fills that bottle, the Black Label?—A. No sir.

MR. ROWELL: Does this witness operate the machinery? I thought he was the shipper.—A. Well I am around the plant.

MR. ROWELL: If this witness is not where the bottling is done can he speak?

HIS LORDSHIP: He must have seen it day in and day out.—A. I have seen it.

40 HIS LORDSHIP: We all have a general knowledge of that ourselves.

(Court adjourned at 1 p.m. until 2.30 p.m.)

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—
Plaintiff's
Evidence

—
No. 28

—
James N.
Hennessey
Cross-
examination
April 19, 1929
(continued)

FRIDAY, April 19th, 1929.

Plaintiff's
Evidence

No. 26

Vernon C.
Nauman
Recalled
Cross-
examination
April 19, 1929
(continued)

MR. TILLEY: There are one or two questions I would like to ask Mr. Nauman, and he wants to get away.

VERNON C. NAUMAN, recalled. *Cross-examined by Mr. Tilley:*

Q. In the Act of 1922, Chapter 47, there is a reference to an Order in Council repealed, No. 2031, of 13th June, 1921.—A. I have not a copy of that with me.

Q. And you do not know from memory what it deals with?—A. No, not without looking it up.

Q. I have tried to locate it—A. I would be glad to mail you a copy. 10

Q. Now one other matter. You referred to general regulations of 1920, I thought you said the only general regulations, but that answer I suppose is not at all inconsistent with the existence of these regulations that His Lordship has, Exhibit C, that is these regulations of October 15th, 1923, were under the Consumption and Sales Tax?—A. Yes sir.

Q. You are not suggesting that those regulations were not passed?—A. No.

Q. I thought you said there were no general regulations except 1920.—A. I did not intend to.

Q. I just wanted to be sure that no reflection was cast on Exhibit C.—A. No. The Act changed 31st December, 1923. 20

Q. 1922 don't you mean?—A. No, 1923. The Act changed its entire construction.

Q. Oh I see what you mean.—A. The whole construction of the Act changed.

Q. Effective from 1st January, 1924?—A. That is correct.

Q. Then it was in connection with the coming into force of the Statute as it would stand January 1st, 1924, that these regulations were promulgated of October 15th, 1923?—A. Yes sir. You will notice in these regulations throughout that the date is January 1st, 1924.

Q. It is so on the front too when you point that out?—A. Yes. That is it comes in with the new Act. 30

Q. To bring in suitable regulations for the working of the new Act?—A. Yes.

HIS LORDSHIP: Is there any section of the Act that refers to B.13?—A. No, my lord.

HIS LORDSHIP: Where does it come?

MR. TILLEY: In the regulations.

MR. ROWELL: It is in the Customs Act and the regulations under the Customs Act. It is Customs.

HIS LORDSHIP: Is it mentioned in the Act?

MR. ROWELL: Well it is required in the Customs Act.

HIS LORDSHIP: But there is no statutory form? 40

MR. ROWELL: The form is covered by the Order in Council I think, passed under the Customs Act.

MR. TILLEY: Would your Lordship let me carry out the promise I made to Mr. Nauman, first, and then I will refer your Lordship to the thing you ask.

Q. 1924 was the Consumption and Sales Tax Act, that is the name it is described as?—A. That is the name in the Act itself.

Q. The regulations of 1920, as far as they affect Sales Tax, were passed under Section 19-BBB, subsection 1?—A. Yes sir.

Q. As it stood in 1920, and then you have the 1924 regulations in Exhibit C?—
10 A. Commencing as from 1st January, 1924.

Q. You said you had some rulings. I do not know whether they are material, would you leave them with Mr. Rowell so that I can see them, and he will hand them back?—A. What rulings?

Q. I think yesterday you said you had some rulings. Have you given us all your rulings?—A. Mr. Rowell has everything I had yesterday.

Q. I think I will attach this—Exhibit No. 19 is No. 1098-B?—A. Yes, sir.

Q. And this is a communication from the Commissioner to the collectors regarding that same document?—A. That is what it purports to be.

Q. The only point is that the signature of the witness on export entries, Form
20 B-13, is dispensed with?—A. These are issued by the Customs division. I have no knowledge of that, I cannot say whether it is in existence now or not.

EXHIBIT No. 19-B: Memorandum referring to Exhibit 19.

Re-examined by Mr. Rowell.

MR. ROWELL: I was to put in yesterday certified copy of the Order in Council putting the administration of part 4 of the Special War Revenue Act under the Minister of Customs and Inland Revenue.

EXHIBIT No. 95: Copy of Order in Council, March 10th, 1921.

Q. Is this Order in Council still in force?—A. This Order in Council as far as I am aware was in force during the entire currency of the Act under which it was
30 passed. The Minister of National Revenue still administers the Special War Revenue Act.

Q. The name of the Minister has been changed from Customs and Excise to National Revenue, and he still administers the Special War Revenue Act?—A. Yes.

Q. Then I omitted to ask you yesterday if the Carling Export Brewing & Malting Company has a Sales Tax license, a manufacturer's license, under the Special War Revenue Act?—A. Yes, a Sales Tax license as manufacturers.

MR. TILLEY: What section covers that?

HIS LORDSHIP: 19-BBB speaks of it.

WITNESS: Yes. It is subsection 6, page 27 of the Consolidation.

40 MR. ROWELL: My learned friend asked you about any regulations, and you said counsel for the Attorney-General had them. If there is anything that has a

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bearing on this, I would be glad if you will indicate it, so that we will know if you are not here what the matter is.

HIS LORDSHIP: The question was asked yesterday whether the Bermuda Company had a license.

MR. ROWELL: That would not be Ottawa. I assume that would be here in Toronto, a license to do business in Ontario. It is a foreign corporation.

WITNESS: They were not licensed under our Act, the Bermuda Export Company were not licensed under the Special War Revenue Act.

There were no further regulations, as I understood. I was referring to the correspondence. 10

Q. Is there any regulation under 19-B relating to the Gallonage Tax other than such as may be covered by the exhibits you put in yesterday?—A. There is none other than those exhibits, of which I have any knowledge.

MR. TILLEY: Have you any correspondence between Mr. Taylor, who was the acting Deputy Minister and the Collector of Customs at Windsor such as that (Showing document) or is that in the other branch?—A. The other branch.

MR. TILLEY: Now, your Lordship was asking about the B.13.

HIS LORDSHIP: I want the origin of it.

MR. TILLEY: I do not know that I have the real origin historically, but the origin for our purposes. 20

HIS LORDSHIP: Where do you find the justification for it?

MR. TILLEY: Your Lordship will find it in Exhibits 19 and 20. The earlier of the two is Exhibit 20. It is a Customs Department circular or regulation. We put in a circular referring to the Order in Council, we have not put in the actual Order in Council, but my friend put that in and it is satisfactory to me. On the second page you will see the form of the B.13.

Then the later document comes in the Order in Council establishing regulations again about B.13, that is Exhibit 19.

HIS LORDSHIP: The B.13 is to be found nowhere in any Act?

MR. TILLEY: Your Lordship will find reference to export entries being required 30 under the Act, and these regulations make the B.13 the export entry.

HIS LORDSHIP: But there is nothing that might clash between the statute and the regulation?

MR. TILLEY: Oh, no.

HIS LORDSHIP: One lays down the law—

MR. TILLEY: And the other carries it out.

MR. ROWELL: Your Lordship will find the provision of the Statute relating to the export entry, section 104 of the Customs Act, Chapter 48, R.S.C. 1906.

James N. Hennessey, cross-examination resumed by Mr. Tilley:—

Q. Now, Mr. Hennessey, you were telling us about shipping the beer in kegs, 40 is that a seasonal operation or does it carry on during the year?—A. No sir, just the summer season, that is in any quantities. A small amount during the winter.

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Q. In the summer, prior to the Ontario Liquor Control Act, did you use kegs in Ontario or Canada?—A. Yes sir, but only for 4·4, and the old 2½ per cent.

Q. Was that seasonal business too, just the summer?—A. Yes, it would apply that way too.

Q. When that business was in operation what amount in your export business would be shipped in kegs?—A. From 2 to 10 carloads a week usually.

Q. I gather a carload is rather a flexible quantity in the neighbourhood of London.—A. I was going to add, usually 200 half barrels in a car.

Q. But if you find the trucks will not break down you sometimes get a little 10 more in?—A. No, you cannot get any more in.

HIS LORDSHIP: That is up to the top?—A. Yes sir, fills the car.

MR. TILLEY: Then since the change in the Act have you had these kegs for Ontario, the same kegs as export, or the same size?—A. No, in very small quantities. The export trade usually moved in half barrels, Ontario trade moves in eighths and quarters.

Q. Different sizes?—A. Although there are only a few in each case of half barrels.

Q. In each case did you say?—A. I mean only a very few half barrels in Ontario, and only very few quarter barrels in the United States.

20 Q. Mostly half barrels in the United States, and smaller barrels in Ontario?—
A. Yes sir.

Q. You were asked about the loading of cars and the amounts shown in the B.13s and the invoices. As far as you are concerned are you prepared to say that the invoices, as far as you know, show accurately the amount of the shipment?—
A. As far as I know.

Q. You believe that they do?—A. I believe they do, although I have nothing to substantiate that.

Q. As far as you made them out were they accurate?—A. I did not make them out, not the invoices.

30 Q. As to the B.13s, what about them?—A. They were correct as to quantity.

HIS LORDSHIP: Corresponding with your bill of lading, is that what you mean?—
A. No, they were correct as to the amount in the carloads.

MR. TILLEY: They were correct as to the amount that was shipped?—A. Yes sir.

Q. Do you say that the bill of lading shows the actual amount shipped?—
A. No sir.

Q. And you explained that this morning.—A. Yes.

Q. You said— A. As a matter of loading convenience, I had to supervise the loading and get those bills made out, and B.13s made out, and I had to get my bills away to the freight office before they closed at five o'clock, and one o'clock—
40 twelve o'clock I believe on Saturdays. I would be loading beer all evening very often, and we would load up all that we could get into the car, or all that we could produce.

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That would appear all summer long, in the hot season it would be coming right off the machines—

Q. Well never mind the reasoning, you say you put in as much as you could?—

—A. To get it away, yes.

Q. And you said you might have 1,500 cases or cartons in the car and 1,200 shown on the bill of lading?—A. Yes sir.

Q. If you erred I suppose you erred on that side?—A. Not always, for instance if I was going to load three cars I would bill them 1,200, and I might put in some car 900 or 800, whatever I could get from the bottling plant.

Q. Being a railway man in a way I would rather suggest that the freight you 10 pay depends on the amount they believe is in the car?—A. They might, but I never heard anything of it.

Q. At any rate you put in what you could get to put in as you were shipping, and the amount did not necessarily tally with the bill of lading?—A. No sir.

Q. But as to the B.13s, while you made them out you say they were all accurate?—A. Yes. I could make them out any time of night, when the car was loading.

Q. And as to the invoices, as far as you know they are accurate?—A. Yes, I guess so.

Re-examined by Hon. Mr. Rowell:—

Q. Mr. Hennessey, you have been telling us about the amounts sold of these 20 different classes of beer. Tell me how you keep your stock record.—A. I do not keep the stock at the present time.

Q. We are dealing with the period prior to the 1st of May, 1927. Did you keep it at that time?—A. Yes sir.

Q. Tell us what books you kept.—A. I kept it on loose sheets.

Q. What did you record, the amount of stock that came in each day?—A. The amount that was bottled, that came in from the bottling; the amount that was shipped, and if there was any shrinkage, breakage in the plant.

Q. Did you have a stock sheet each day, made up at the end of each day; or how often did you make them up?—A. No, once a week. 30

Q. Then you would start off say Monday morning with a certain stock on hand?—A. Yes sir.

Q. Then you would add to your stock sheets all that came from the bottling works?—A. Yes sir.

Q. From day to day as it came in?—A. Yes sir.

Q. And you would deduct from your stock the amount that went out from day to day?—A. Yes sir.

Q. And at the end of the week you would again balance your stock in hand?—A. Yes.

Q. Does that fairly represent the method by which you kept your stock sheets?—40
A. Yes sir.

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Q. You have nothing to add to that?—A. As to the method of keeping it. I do not say we could always balance it.

Q. What do you mean by not being able to balance it?—A. Well sometimes I would be over and sometimes short. That is in the early days of the plant.

Q. Then in these stock sheets did you keep a record of each class of beer?—A. Ale and lager.

Q. The ale was kept in one column and the lager in another?—A. On different sheets.

Q. Different sheets for ale and lager. Did you keep a record of the 2·5?—A. 10 Yes sir.

Q. That was on separate sheets too?—A. Yes sir.

Q. And a record for 4·4?—A. Yes, when it came in.

Q. And that was on separate sheets too?—A. Yes sir.

Q. What did you do with these sheets?—A. Kept them until a certain time then they were destroyed.

Q. Did you destroy them?—A. Yes, I think I did.

Q. Or did you return them to the office?—A. No, I never had to turn them in to the office, I think they were destroyed, I threw them out when we moved the office, when we rebuilt the plant two years ago.

20 Q. Did you keep them in a folder or binder?—A. Latterly I did, yes.

Q. During this period?—A. Well I think previous to two years ago.

Q. Previous to two years ago you kept them in a folder or binder. And that indicates each brand, did it?—A. No, just the ale and lager.

Q. Did that indicate the amount of rice beer you had on hand from day to day or week to week?—A. Rice beer and Canada Club.

Q. All lager was in one class?—A. Yes.

Q. Now rice beer, you have to keep that separate don't you in your brewing, under special regulations?—A. Yes sir.

Q. It has to be kept separate from the others. You should have a record some- 30 where, shouldn't you, of the rice beer brewed and sold?—A. Not me. That was kept between the Brewing Department and the office, that is what is in the tanks.

Q. There would be a record somewhere in the brewery then showing the rice beer brewed from week to week, and the rice beer sold?—A. I think there would be, I don't know anything about the office, but I think there would.

MR. TILLEY: Your officers have it all.

MR. ROWELL: Those records would show how much rice beer,—we would not be dependent on your memory or view, we would get those from the records?—A. I should think you could, but I think it is also kept by the Inland Revenue officers, they are very strict about that stuff.

40 Q. So that we can check up your statements of this morning by reference to the books showing the production of rice beer and other beer?—A. I could not say,

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because I have nothing directly to do with the office, only I have seen that being kept.

Q. I was wondering on what you based some of your statements this morning, because they seem very different from the information I have on the records.

HIS LORDSHIP: I do not remember that he gave any figure, but he gave proportions.

MR. ROWELL: I am speaking of the proportions, my lord. We have not got the figures yet.

Q. What date were you speaking of when you spoke of the proportion of rice beer?—A. Proportion of what is made for export, between ale and lager? 10

Q. No, the proportion of rice beer that you sold for export.—A. That is what I mean. From the time we started to brew rice beer and sell it until—well the end of this period we are dealing with.

Q. That is your recollection of the percentage covering that period?—A. Yes sir.

Q. From the time you commenced to brew it to the 30th of April, 1927—A. Yes sir.

Q. Can you tell me when you commenced to brew rice beer, according to your recollection.—A. I think in the spring of 1925. If it was not then it was the spring of 1926. I know it was early in the season. 20

Q. Early in the season of 1925 or 1926. And the percentage you have referred to is the percentage of your total output of lager after you commenced to brew the rice beer?—A. The percentage between lager and ale as far as I can recollect.

Q. Well, I mean the percentage of lager which is rice beer, as compared with the total lager.—A. I think so.

Q. Perhaps you will tell me again. Take the period from the time you commenced to brew the rice beer up to the 30th of April, 1927; what percentage do you say of the total lager which you packed as you describe for export was rice beer?—A. The percentage of the total lager at that time?

Q. Yes, taking the whole period.—A. Around 95 per cent I should think. 30

Q. And what percentage of the entire amount that you packed, both ale and lager, as being for export was rice beer?—A. I told you 98 per cent was lager, and I think when I state that now I can make it that 95 per cent of that was rice beer.

Q. 95 per cent of the lager was rice beer?—A. Yes, sir.

Q. Then what percentage of your entire production, from the time you commenced to produce rice beer, was rice beer?

MR. TILLEY: That is export?

MR. ROWELL: No, the whole business, the entire production from the time you commenced to brew rice beer until the 30th of April, 1927?—A. When did the 4.4 start?

Q. Well, perhaps you can tell us. A. Well, I cannot say. I will tell you how I recollect it. Up to the time the 4.4. law came in the only ale we sold for export would be about 2 per cent. Added to that 2 per cent was what we sent to Quebec, we opened up in Quebec, I think, the second year of our operation, if I remember correctly, and we would send about 1,500 cartons a week down there at that time.

Q. I am not sure that I follow you. What per cent would you put it at in round figures of the total production of beer, both ale and lager?—A. I could not figure that according to percentage. I am telling you from my memory of shipping, I know what the percentage of shipping was. I say of our export trade, all our trade
10 was export with the exception that for the second year of our operation we opened up in Quebec and we put into Quebec that year around 1,500 cartons a week. That was all ale, Quebec was all ale. And the balance was export. 98 per cent of that export was lager. Now, take your 2 per cent of our production and figure about 1,500 cartons, a carload a week, and you have the answer.

Q. You mean that is the residue, the balance that was not rice beer?—A. No, that is the percentage of our brewing, our sale, or shipping at least.

Q. I do not think you have answered me yet, or I have not understood you. My question is: What percentage in round figures of your total output was rice beer during the period in which you were manufacturing and selling rice beer up to 30th
20 April, 1927?

MR. TILLEY: I think you better let him sit down at a table with pencil and paper.

WITNESS: Well, roughly speaking, 90 to 95 per cent. I think if you will figure it is the same as I said.

MR. TILLEY: That is from one period to the other, beginning to end?—A. Yes, I think so.

HIS LORDSHIP: That is 95 per cent?—A. From the time we started to make rice beer,—the first year or year and a half was all Canada Club for export; then when we started to make rice beer the rice beer practically superseded it, put the Canada
30 Club off the market. Then it was all rice beer—well the majority of it.

MR. ROWELL: You mean in the percentage you have given?—A. Yes.

Q. The percentage you have given would indicate the ratio of the two for the period?

MR. TILLEY: When they got going, when you got the rice beer going, is that what you mean?—A. Yes.

MR. ROWELL: When you commenced to produce rice beer?—A. Yes, sir.

HIS LORDSHIP: Do I understand that your rice beer is 95 per cent of the total production?—A. No, I said I think from 90 to 95 per cent at that period.

Q. Of your total production?—A. All production, yes, from the time the rice
40 beer came on the market until the end of our period here, until the 4.4. came in.

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MR. ROWELL: What change did the 4.4. bring about?—A. The first season there was a large quantity of 4.4. sold. That would change the figures.

Q. Then what about the second year?—A. Well, the second year the 4.4. business fell off all over the country.

Q. And there was more ale and lager sold after that?—A. After that one season, I think, that is when the Liquor Control Act came into effect. We had one good season in 4.4.

Q. Can you tell me how the office kept track of the stock?—Did they have a duplicate stock list like you had?—A. No sir—I believe they did for a while, and it fell through, something like my own. 10

Q. Then do you tell me that there is not in existence today any record of the stock that you had during this period?—A. No sir, I do not think so.

Q. You said the beer, as I understood it, was all labelled with your name?—A. It was for the 4.4, and under the presnt L.C.A.

Q. Was it not labelled before that with your name?—A. The bottles were labelled, yes, and the kegs.

Q. You know that the Inland Revenue Act requires that?—A. Yes.

Q. Both bottles and kegs have to be labelled with your label?—A. Yes sir.

Q. Are those the labels you are referring to?—A. That I produced this morning, yes. 20

Q. Those are labels required by the Inland Revenue Act. Then you stated that at a certain period you changed from cartons to bags?—A. Yes sir.

Q. I have been looking at some of the bills of lading, and I have not found yet any bags. I do not say there are none, but I do not recall any B.13s upon which bags appear.—A. I do not know as they are made yet even. I think with our printed B.13s that we are using, unless they are a real late edition I do not think that there is any space on them for bags, and they are always as a matter of course entered as cartons. It didn't make any difference to the Customs.

MR. TILLEY: Would you mind asking if the bottles are put in the bag loose.

WITNESS: No sir. 30

Q. What are they put in?—A. First there is what we call a strip of corrugated paper goes around the bag as a protection, inside the bag. Then each bottle has a sleeve or paper cap that goes over the bottle to keep the bottles from hitting against each other. That is put on when it comes off the bottling machine. There is paper between every bottle, and then there is corrugated paper in the bag.

HIS LORDSHIP: Does the bag take any shape when it is filled?—A. Yes, practically square, the same as that carton.

MR. TILLEY: I should think from what he is saying that there is a carton inside the bag.

WITNESS: The railway company figure it as a carton. That is how we get it. 40

Q. What do you mean "figure it as a carton"?—A. In their classification.

MR. ROWELL: Why do you use the bags?—A. I think it is more convenient to the runners in the boats.

Q. Why?—A. For one thing they will stand the weather better. If you had cartons loaded in a heavy rain on the decks or in open boats and a storm comes up, and the cartons get wet, they go to pieces. The bag won't do so, on the contrary it will tighten up.

Q. Any other reason?—A. No, I think that is all that is necessary.

HIS LORDSHIP: Is it cheaper?—A. No, it costs more money.

MR. ROWELL: Then you told my learned friend that you always put the name 10 of the foreign consignee on either a tag, or the name stamped on?—A. Yes sir.

HIS LORDSHIP: On the bag?—A. Printed on the bag when we get them.

MR. ROWELL: And on the kegs you put a tag?—A. A tag.

Q. And you told my learned friend that that was required because if they didn't have the name on they might be seized?—A. I understand that is the reason.

Q. If they do not have the name of the foreign consignee on they might be seized. Is that seized under the O.T.A.?—A. Well anything that don't comply with the Customs export regulations than the Ontario officers step in and seize it.

Q. If they did not have the name of the foreign consignee on when they are in the warehouse or at the docks at the ports they would be liable to seizure by the 20 Ontario officials?—A. I am not certain, but that is my understanding of it.

Q. Therefore you always put on the name of the foreign consignee?—A. Yes sir.

Q. And that protects them from seizure by the Ontario Government officials?

MR. TILLEY: Why keep on giving evidence? My friend rolls that over and over, "to protect them from seizure". Let him give the evidence. You are putting an interpretation on it all the time for purposes of argument.

MR. ROWELL: My learned friend is very free when he is examining the witness, but when one fixes a point that affects his case he interrupts the examination of the witness.

MR. TILLEY: Oh that does not touch me at all.

MR. ROWELL: Then I understood you to say that the principal sales were of 30 pints?—A. Export, yes sir.

Q. And two dozen in each carton or bag?—A. Yes sir.

Q. When you use the boxes what are they used for?—A. Special orders.

Q. I do not recall having run across any in the invoices we have been looking at. Were there many cases where boxes were used?—A. No, not until last season we did quite a trade in boxes. We did use some before.

Q. Can you tell me if you used any prior to April 30th, 1927?—A. I believe we did.

Q. Can you show me any invoices or tell me any shipment?—A. I would say 40 that we did.

*In the
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Plaintiff's
Evidence

No. 28

James N.
Hennessey
Re-examination
April 19, 1929
(continued)

*In the
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Plaintiff's
Evidence

No. 28

James N.
Hennessey
Re-examination
April 19, 1929
(continued)

Q. Can you point out any shipment?—A. No, I am not familiar with the invoices.

Q. You said you painted a blue band on the head of the kegs. Is that something required by the Excise Act?—A. No sir, they were that way when we got them. We bought a quantity of them that way.

Q. Then you spoke of the bottles. As I understood, in answer to His Lordship you said the machine you have would fill all the bottles, but you have to adjust it if you wish to fill rice beer and then ale?—A. Yes sir.

MR. TILLEY: He did not say that, and I do not think the witness is listening to your question. You say they had to adjust the machine if they wanted to fill it 10 with rice beer or ale. What he said was that they had to adjust the machine if they wanted to fill a bottle other than their regular bottle with that particular lager.

WITNESS: I will correct myself there.

HIS LORDSHIP: Can you use the same machine and adjust it to fill both the quarts and the pints?—A. Yes, but it takes a considerable amount of adjusting, all through the whole set. There are five machines in a bottling set.

MR. TILLEY: You have more than one bottling set?—A. Yes, we have five.

Q. And you do not change them from one to the other?—A. No sir. There are six machines in each bottling set, and five different sets.

MR. ROWELL: Is one set used for each class of goods?—A. As far as possible. 20

Q. That facilitates their convenient use?—A. How do you mean, each class of bottle, pints and quarts?

Q. Pints and quarts?—A. Yes sir.

Q. Do you use different sets for lager and ale?—A. As far as possible. We never change the set off the Black Label, off those rice beer bottles, we have not changed that set.

Q. You have not changed that set?—A. No sir, not now.

Q. Did you ever?—A. Not in some years.

Q. When did you last change it?—A. Three years I guess.

Q. That is 1926?—A. Yes.

30

Q. The last change in 1926. Then are these machines all the same?—A. No sir.

Q. Are the ones that bottle the ale the same as those you bottle the lager with, except different adjustment?—A. Yes.

Q. Then in addition to the pints you sell a certain number of quarts in cartons?—
A. Yes sir.

Q. What percentage of quarts compared with pints?—A. In this period?

Q. I am always speaking of the period. And packed for export.—A. It is very seldom we ship quarts.

Q. What did you use in the 4·4?—A. Both quarts and pints.

Q. What did you use in the 2·5?—A. That is the old 2½—both quarts and 40 pints.

Q. How many in a carton?—A. A dozen quarts or two dozen pints. Anything beyond that was put into cases. That is, I am referring to the 2½.

Q. Then both 2½ and strong beer which you say was packed for export, would be either two dozen pints in a carton or a dozen quarts?—A. Or in boxes.

Q. In the larger boxes?—A. Export do you say?

Q. I said for both 2½ and strong beer.—A. Yes, in cartons and in larger boxes.

Q. So far as they are in cartons they would be two dozen pints or one dozen quarts?—A. Yes sir.

Q. Then what boxes did you use for 2·5?—A. One dozen pints, two dozen pints, 10 three dozen pints, and one dozen quarts, two dozen quarts and three dozen quarts.

Q. What was the distinction between boxes and cartons for the 2·5?—A. Boxes and cartons.

Q. But why did you use one in one case and the other in the other?—A. Well there is a certain trade you had to use cartons for. For instance, with the 2½ household trade,—not always, but that was the big demand. In other cases you would have to use cases, that is for instance restaurants and hotels on 2½ per cent; then there are other times we used the three dozens for our own convenience, if we were short of cases we used the three dozens which had been left over from the old firm, and have since gone out of use.

20 Q. What was the difference in the price between say two dozen pints of 2·5 and a dozen quarts?—A. I could not say anything in regard to price. I have never sold any, that is any quantity.

Q. You spoke of a difference in the marking, as I understood it, of the strong beer sent to Quebec and New Brunswick, or was it the 4.4?—A. No, strong beer went to Quebec and New Brunswick.

Q. What do you say was the difference in the marking between those and the other?—A. On Quebec traffic the labels read, and do yet, "Over 2½ per cent proof spirits."

30 Q. That is something required by the Quebec Liquor Law?—A. That is the regulation of Quebec Province. Really 9 per cent beer. And for New Brunswick we used, I believe, the same labels, I am not certain in regard to that, we do not sell there now. I think we used the same label, over 2½ per cent, and we had their own crown as I explained this morning. And on their cartons, when they ordered a shipment to New Brunswick through the Liquor Commission they would send us a blank permit to be pasted on every carton, a permit about four inches square. Those permits were numbered and we accounted for each permit.

Q. That covered your shipments to New Brunswick?—A. That was the regulations.

40 Q. Then you spoke of the plant being rebuilt to manufacture lager to meet the Ontario demand.—A. No, to manufacture ale.

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No. 28

James N.
Hennessey
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Plaintiff's
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No. 28

James N.
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(continued)

Q. To manufacture ale to meet the Ontario demand. What was the date of that?—A. It was enlarged two years ago, completed about this time of year—no it was a year ago last winter that the plant was enlarged for ale—

Q. That would be the winter of 1928, would it?—A. Of 1927-28, yes.

Q. Then you had changed the plant before in connection with the manufacture of rice beer, had you?—A. There have been three different changes that I know of. When this firm took over the plant five years ago they rebuilt it or did a certain amount of improvements. Two years ago last winter they pulled it you might say from top to bottom and added some ale accommodation on then. Then a year ago last winter, they added more on, added upper storeys, put in more tanks. 10

Q. Then you referred to the return of secondhand bottles and containers. These would be entered in your books, the company's books will show all the returned kegs?—A. Yes, sir.

Q. And all the returned bottles?—A. Yes, sir, I presume they would. There was receiving slips turned into the office for them.

Q. Would those records indicate whose they were that you got back?—A. You mean what breweries? No, sir, they would not.

Q. In your statement to my learned friend you said that 75 per cent of the empties would be Carlings and 25 per cent not yours?—A. No.

Q. That is of the barrels?—A. 75 per cent of the barrels carried our labels or 20 marks that we could say they were our kegs. The balance were other breweries and some of our own barrels that would not carry any marks, that there was no distinguishing marks on.

Q. Did you enter those separately in your returns?—A. No, there is no difference in the value provided they are good kegs.

Q. And no distinction was made in your entries as to whether they were yours or someone else's?—A. No, sir.

Q. We have no means of checking from the records than your estimate?—A. No, I don't think you would have.

Q. Then, the bottles, I think you said 95 per cent were yours?—A. Yes, sir. 30

Q. What was distinctive about the bottle which would enable you to identify it?—A. First the label and secondly the style of bottle.

Q. Will you tell me in what respect it differs from the bottle of other breweries?—A. Those lager bottles are shorter here.

MR. TILLEY: Shorter at the neck.—A. They are shorter in the body, and a little narrow, they are a kind of short stout bottle. That is an old-fashioned bottle.

MR. TILLEY: That is Exhibit P?—A. Yes, that is an old-fashioned bottle with all breweries.

Q. What do you mean, that all have changed from that?—A. No, but it is getting out of use. 40

MR. ROWELL: Exhibit P. Is Exhibit O a more modern type of bottle?—

A. Yes, sir.

Q. What is the purpose of changing from P to O?—A. I could not say, sir.

Q. Is the type like O used by other breweries, a bottle somewhat similar to that?—A. I could not say.

Q. This Exhibit O may be used by other breweries?—A. I might be, I don't know. I know Mr. Burns was always very particular about those bottles, that is all he would let us pack in.

Q. Do you order the bottles?—A. Not at the present time, no.

10 Q. Did you ever order the bottles?—A. Order new bottles, yes sir.

Q. Who do get them from?—A. Dominion Glass Company.

Q. Where, in London?—A. No, they have plants in Montreal, Hamilton and Wallaceburg, head office Toronto.

Q. Where do you get them from?—A. All the different plants.

Q. Do the salesmen come and show you various types of bottles and you pick out the one you want?—A. No not me. All I would say was, send me on so many cars of green lager bottles, and they know what we want, that is our bottle.

Q. When did you commence to use that bottle?—A. I could not say that, quite a long while ago.

20 Q. You were speaking of the number of carloads shipped per week of half barrels. That of course would all appear in the records, the invoices and bills of lading would show the actual figures in each case?—A. Yes sir.

Q. Then you have charge of the warehouse in which the beer is stored after it leaves the bottling room, is it?—A. I did at that time.

Q. Yes, I am speaking of that time.—A. Yes sir.

Q. And it comes from the bottling room to the warehouse where you had charge?—A. Yes sir.

Q. And stays there until shipped out?—A. Yes sir.

By Mr. Tilley;—

30 Q. My friend asked you about the records of the beer, and you spoke of the Excise officers. They keep records, do they?—A. I understand they do of the brewing.

HIS LORDSHIP: They look after the quantities of malt and everything that goes in.

MR. TILLEY: And do they keep it under lock and key?—A. The rice beer I believe they do, on account of the extra 15 cents a gallon tax, the same as they do the malt.

Q. And they keep records of that, you assume so at any rate?—A. I know they do, they have it locked up, and when they want to bottle it they have to pay the entry and get it out of bond. Our place is just like a bonded warehouse.

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Plaintiff's
Evidence

No. 28

James N.
Hennessey
Re-examination
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(continued)

James N.
Hennessey
Re-cross-
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April 19, 1929

*In the
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Plaintiff's
Evidence

No. 29

Joseph Real
Harp
Examination
April 19, 1929

JOSEPH REAL HARP, sworn. Examined by Mr. Urquhart:—

Q. Mr. Harp, you are the Manager of the Provincial Bank at Belle River?—

A. Yes sir.

Q. You were asked to produce an account of Arthur Diesbourg?—A. Yes sir.

Q. Is this the account?—A. That is the account, except the last part which is a copy. That was in a bound ledger.

Q. And you have brought here a true copy of the last part from April 13th, 1927, on?—A. That is right.

Q. Arthur Diesbourg, is he here?—A. Yes sir.

Q. What is his occupation? I see you have "Hotel keeper" marked here.—10
A. I have known Mr. Diesbourg about a year and a half. I understand he has a hotel.

Q. Where does Mr. Diesbourg live?—A. He lives at Belle River most of the time; he has property there.

MR. URQUHART: I ask to file this.

MR. TILLEY: I object.

HIS LORDSHIP: Same objection, and same ruling.

EXHIBIT No. 96: A. Diesbourg's bank account. (First part original, second a copy.)

MR. URQUHART: You were asked to produce some deposit slips.—A. Well I did not have any accounts like that. 20

Q. That is you thought you had not an account at first and sent a letter to the Registrar to that effect?—A. Yes.

Q. Then you were notified— A. To bring the accounts. Besides that, I did not have time. I had the letter yesterday.

Q. Can you pick out and send to the Registrar the deposit slips?—A. I can, but I will have to get the account to get them, according to the dates.

MR. TILLEY: As far as I am concerned the witness can take this back, and if he will send a letter stating what the documents are I will not raise any objection.

MR. URQUHART: And you have no cheques?—A. No, we have no cheques.

HIS LORDSHIP: Then the Registrar will hand back Exhibit No. 96, and you 30 will gather the deposit slips and send them to the Registrar, and they will be Exhibit No. 97.

MR. TILLEY: Subject to objection.

EXHIBIT No. 97: Diesbourg's deposit slips.

Cross-examined by Mr. Tilley;—

Q. What bank is it?—A. Provincial Bank.

Q. At Belle River?—A. Yes sir.

Q. What is the population of Belle River about?—A. I don't know exactly.

Q. 100,000?—A. Just a municipality, 500 to 800 maybe.

Q. It is quite large geographically, but small in numbers?—A. The town is 40 small.

Joseph Real
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Q. This is not the head office of your bank?—A. No. It is close to Windsor.

Q. About the only business at Belle River is the liquor business isn't it?—

A. Farming and storekeepers.

Q. And the liquor business. Is there a dock there, a liquor dock that liquor is shipped over?—A. It is not running now.

Q. But up to recently it was running?—A. It has been running.

Q. Is that one that has been closed in the last month or two?—A. I don't know.

Q. Is there no dock there now?—A. I do not know since when it has been closed.

JOHN GORDON MORRISON, recalled. Examined by Mr. Rowell.

10 Q. Have you got the balance of those special cases?—A. I believe I have. There was one I could find no documents to at all.

Q. Tell us which you have got.—A. I have December 4th, 1924, invoice No. 00492.

EXHIBIT No. 98-A-C: Invoice of December 4th, 1924, Bill of Lading and B.13s (10)

Q. That is an invoice of 600 cases lager and 300 cases ale at \$2.25 a case?—A. Yes, sir.

Q. And the bill of lading appears to be made out originally for 800 cases and changed to 900?—A. Yes, sir.

20 Q. That is to C. B. Grandi, Detroit, Michigan, care of O. Paquette, Ford, Ontario.—A. Yes.

Q. Then the B.13s, you have not got the London B.13 that accompanied this shipment?—A. No, sir, I do not appear to have it.

Q. Then the B.13s attached are certified copies of B.13s which you have obtained from the port of Sandwich?—A. Yes.

Q. The date of the certifying of the copy is March 30th, 1928.—A. Yes.

Q. Then the date of the first B.13 is December 8th, 1924, it is for 150 cases at \$2.50?—A. Yes.

30 A. Yes, sir.

Q. The next is 135 cases for \$303.75, is that it?—A. Yes, sir.

Q. That is the same, \$2.25 a case?—A. Yes.

Q. The next is 100 cases at \$2.25, December 13th?—A. Yes.

Q. The next is 180 cases, stamped December 13th?—A. Yes, sir.

Q. At \$2.25. The next is 25 cases, December 15th, same price. The next is 25 cases, December 15th, same price. The next is 85 cases, December 18th, same price. And the next 20 cases, December 19th, same price.?—A. Yes, sir.

Q. And the next is 10 cases, December 24th, same price?—A. Yes, sir.

40 —A. How do you identify these copies of B.13s with this bill of lading and invoice?—A. From the fact that it is to C. B. Grandi, Detroit, Michigan, and taking the quantities to make up the 900.

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No. 29

Joseph Real
Harp

Cross-
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April 19, 1929
(continued)

No. 19

John Gordon
Morrison
Recalled
Examination
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No. 19

John Gordon
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(continued)

Q. But the invoice is C. B. Grandi, care of O. Paquette. There is nothing on the B.13s to indicate that it is care of O. Paquette?—A. I do not see O. Paquette's name on the B.13s.

Q. O. Paquette's name appears also on the bill of lading?—A. Yes, sir.

Q. And there is nothing on the B.13s that indicates that O. Paquette has any connection with them?—A. No, sir.

Q. You have picked them out because they are the same name, C. B. Grandi?—A. C. B. Grandi, Detroit, is on the invoice, on the bill of lading, and on the B. 13s.

Q. But you were making other shipments to C. B. Grandi, Detroit, Michigan, at the same time?—A. The invoices and shipping bills would verify that. 10

MR. TILLEY: You say "would verify that". Do you mean you would have to look at them to know?—A. I would have to look at them.

MR. ROWELL: Will you turn up the invoice book and see if about these dates you were shipping to C. B. Grandi?—A. There appears to be another one.

Q. There appears to be another shipment on that same date of 600 cases. There appears to be a shipment on November 29th of 1,200 cases to C. B. Grandi, Detroit, Michigan, care of Carling's dock. And another shipment on November 26th to C. B. Grandi, Detroit, care of O. Paquette, Ford, 650 cases.—A. Yes, sir.

Q. Another on November 25th, C. B. Grandi, Detroit, 600 cases.—A. Yes.

Q. So there were many shipments being made about this time to C. B. Grandi, 20 Detroit?—A. Yes, sir.

Q. Is it possible for you to say to which of those many shipments these B.13s, 98-C, refer?—A. No, sir, it is not.

HIS LORDSHIP: Then how did you gather them? You gathered them because they represent the same quantity?—A. Yes, and bear C. B. Grandi's name.

MR. ROWELL: Then what others have you got?—A. October 6th, 1924, invoice 00387.

Q. That is care of H. W. Loughhead, Sarnia?—A. That is Grandi, Detroit.

Q. The invoice is for 600 cases, the ale is \$2.75, lager \$2.50, and porter \$3.00 a case?—A. Yes. 30

Q. The bill of lading (99-B) is for 600 cartons?—A. Yes sir.

Q. And that bears the same date?—A. October 6th, 1924.

Q. Then you produce certain B.13s, how many?—A. 18, making a total of 600. EXHIBIT No. 99-A, B & C: Invoice, October 6th, 1924, Bill of Lading and B.13s (18).

Q. You have not found in this case either the B.13 that was made out at London?—A. No sir.

Q. This shipment was October 6th, 1924, these B.13s (99-C) run from October to November 26th, from October 20th?—A. Yes sir.

Q. And in varying amounts?—A. From 20 to 110. 40

Q. There is one for 110, one for 100, one for 50, one for 40, and the rest are 20's and 30's?—A. Yes sir.

Q. This first one is signed H. W. Loughead, is it?—A. Yes.

Q. Was Mr. Loughead agent for the Carling Company at Sarnia?—A. I do not know, sir. That is before my period.

Q. Can you tell me if there are any payments to Loughead as far as you are aware, in the books, as an agent for the Carling Company?—A. I have no knowledge of it, sir.

Q. Then the next one is for 20 cases, the Customs stamp October 20th, also 10 made out by Loughead?—A. Yes sir.

Q. The first eleven are made out by Loughead?—A. Yes sir.

Q. Then what is this?—A. That is a copy taken from the Ottawa files.

Q. The next is a copy you have made of a B.13 appearing in the Ottawa files?—A. Yes sir.

Q. That is also Mr. Loughead?—A. Yes sir. I think there are three or four of those.

Q. There are five. Copies that you have made of B.13s in the Ottawa files, produced in this trial?—A. Yes.

Q. All Mr. Loughead?—A. Yes sir.

20 Q. Then the next one, for 100 cartons, is signed—who is that?—A. It looks like J. F. Famularo.

Q. He purports to sign as agent for the Carling Company. Can you tell me if he was an agent for the Carling Company?—A. No sir, I do not know.

Q. That is dated November 13th, 1924?—A. Yes.

Q. The shipment was October 6th?—A. Yes sir.

Q. The next is dated November —?—A. November 14th, 1924.

Q. For 40 cases.—A. Yes sir.

Q. Also signed by Famularo?—A. Yes.

30 A. Yes sir.

Q. Then what others do you produce?—A. April 22nd, 1925, invoice 00617, made out to C. B. Grandi, Detroit, Michigan, care of Diesbourg, Belle River, for 800 cases.

EXHIBIT No. 100-A, B & C: Invoice, April 22nd, 1925, Bill of Lading, and B.13s.

Q. Then the bill of lading is for the same amount, and bearing the same address?—A. Yes sir.

Q. You have not the London B.13?—A. No sir.

Q. And you have not yourself any Customs port B.13s?—A. I have copies taken from the Ottawa files.

40 Q. But you have not got your own stamped originals back yourself?—A. I could not find any.

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Q. You do find among the Ottawa B.13s a B.13 dated April 28th, 1925, 75 cases at \$2.25?—A. Yes sir.

Q. And signed Arthur Diesbourg, Belle River?—A. Yes sir.

Q. Was Arthur Diesbourg an agent for the Carling Company?—A. I do not know, sir.

Q. The next is for 75 cases, signed apparently in the same way, and dated April 30th, 1925?—A. Yes sir.

Q. The third is for 650 cases, dated May 14th, 1925?—A. Yes sir.

Q. Why do you associate these particular B.13s with this invoice and bill of lading?—A. From the name C. B. Grandi, and the quantities. 10

Q. Were you not at this time also shipping large quantities to Grandi in addition to this shipment?—A. Yes sir, there is another shipment on April 22nd, 1925, to C. B. Grandi, of 1,200 cases; April 24th 600 cases, and April 20th 100 cases.

Q. A great many cases around that time?—A. Yes sir.

Q. Then is it possible for you to say that these copies of B.13s which you have produced have any relation to this invoice or bill of lading?—A. Not other than what I have stated, sir.

Q. Then what others have you produced?—A. Invoice of November 11th, 1924, No. 00469.

Q. That is C. B. Grandi, care of D. Koven, Kingsville?—A. Yes sir. 20

Q. For 1,000?—A. 1,000 cases.

Q. That is accompanied by a bill of lading, C. B. Grandi, Detroit, Michigan, care of D. Koven, destination Kingsville, Ontario?—A. Yes, sir, and is for 1,000 cases.

Q. Have you been able to find the B.13 that accompanied this shipment?—A. No, sir, I have not.

Q. Have you been able to find among your own B.13s any B.13s which you can attribute to this shipment?—A. No, sir.

Q. You have made copies of certain Government B.13s?—A. Yes, sir.

Q. Which you have attached to this exhibit?—A. Yes, sir.

EXHIBIT 101-A, B, and C.: Invoice of November 11th, 1924, Bill of Lading, and B.13s (5). 30

Q. The first one is?—A. 151 cases.

Q. It is signed D. Koven?—A. Yes, sir.

Q. It is dated November 13th, 1924?—A. Yes.

Q. Was D. Koven agent for the Carling Company?—A. I do not know, sir.

Q. The next one is 151 cases, signed in the same way, and bearing date November 14th?—A. Yes, sir.

Q. Kingsville, Ontario?—A. Yes.

Q. The next is for 151 cases, signed in the same way, dated November 20th?—A. Those, if you will notice,—D. Koven, for Carling E. B. & M. Limited, but there is 40 no signature on them.

Q. They are made out in the name of D. Koven, but they do not appear to have been signed?—A. They do not appear to carry his signature.

Q. The fourth is for 151 cases, dated December 6th?—A. Yes.

Q. And the fifth is for—?A. 390 cases.

Q. Of beer, and 50 cases of whisky?—A. Yes, but at the top you will notice D. Koven, Carling E. B. & M. Company, Limited, and Consolidated Distilleries, and the same way at the bottom. Attorney for.

Q. And this one appears to have been signed?—A. Yes, sir.

Q. And dated December 12th, 1924?—A. Yes, sir.

10 Q. Why do you associate those copies of B.13s with this particular invoice and bill of lading?—A. Because they are to C. B. Grandi, Detroit, Michigan, and the quantities of them make up the quantity of the bill of lading and invoice.

Q. Are you aided by seeing the name of D. Koven on them?—A. No, sir, I did not figure it D. Koven, I figured C. B. Grandi. The name of D. Koven might possibly have figured in in the same way. I did not pick them out, it was handed to my staff to pick out.

Q. Perhaps you can tell me if there not a number of large shipments to C. B. Grandi about November 11th, 1924.—A. November 7th, there is 800 cases, November 12th 800, November 12th 1,200, but that appears to be the only one sent to 20 Belle River.

Q. That might aid you in associating those B.13s with that particular invoice?—A. Yes, sir.

Q. I see here is another one to C. B. Grandi, care of O. Paquette, Ford, of November 13th, 1924, for 800 cases?—A. Yes, sir.

Q. Does that cover the ones—A. That covers all but one, and I cannot find anything of it at all.

Q. Which one is it that you have not located?—A. October 16th, No. 00857.

Q. That is F. Savard, care of A. V. Hall?—A. Yes.

Q. Can you locate the invoice of that one?—A. No. This is the report handed 30 to me, they state that the invoice does not appear to be on the file, 857 and 858 appear to be missing.

Q. Have you got the bills of lading of those two London barrel shipments?—A. Do you refer to those two carloads of empty barrels returned to New York?

Q. Yes.—A. Yes, I have.

Q. This is a bill of lading of March 22nd, 1927, consigned Verdi Brothers, 68 Hudson Street, Hoboken, is it?—A. Yes, sir.

Q. 300 barrels empty returned in bond?—A. Yes.

EXHIBIT No. 102: Bill of lading, Verdi Brothers, March 22nd, 1927,
300 empty barrels

40 Q. Then you have the other one, have you?—A. Yes, it is dated April 18th, 1927, consigned Verdi Brothers, 68 Hudson Street, destination New York, and is for 400 empty half barrels returned.

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No. 19

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(continued)

EXHIBIT No. 103: Bill of Lading, April 18th, 1927, Verdi Brothers,
400 empty barrels.

Q. Attached to it is copy of your letter of advice to Verdi Brothers?—A. That I had returned the kegs. There is also a letter accompanying the other. (Exhibit 102).

MR. TILLEY: Will you please enlight me whether there is any suggestion of connection between these empty barrels and the empty barrels coming from Detroit?

MR. ROWELL: No, no suggestion of any relation.

MR. TILLEY: Or that there is any lack of bona fides about these?

MR. ROWELL: No.

Q. Now in those cases you applied to the United States Consul at London to 10 have your invoice certified in order to make those shipments from London to New York and Hoboken respectively, returning the barrels?—A. Yes sir.

Q. Why did you do that?—A. For the simple reason that we were not billing Verdi Brothers with those kegs, we were returning them to them. Had it been that we were selling those kegs to Verdi Brothers I would have simply made out my invoice in the ordinary manner and attached my B.13s, and let my B.13s accompany the shipment.

Q. Could it have got across the border without an American consular invoice?—A. I am sending samples to Chicago for analysis, and that is the manner in which they go forward, and they are not stopped. 20

Q. I am not dealing with samples, I am dealing with shipments of a value of \$100 or over.—A. As far as I know there would be no stoppage.

Q. You swear that?—A. As far as I know, yes sir.

Q. Then why did it require a consular certificate when you were simply returning them?—A. I did not prepare the consular certificate, I recall signing it. The kegs came in and were found unfit for our use, and we had not paid Verdi Brothers for them, we had not in fact unloaded but a few out of the car in order to test them, they were put back in the car and the car re-sealed, and I simply told the Customs broker to make arrangements to have them go back.

Q. I suppose he knew what to do?—A. In one sense of the word I really did not 30 send them back, Verdi Brothers' man, if I remember right his name is Curtis, was here, at the time these barrels were under inspection, and it was really he who gave the instructions to the London brokerage to return them, not myself.

Q. Well you signed the application for the consular invoice. Can you tell me why a consular invoice in the case of these shipments, and not in the case of the beer shipments?—A. I cannot tell you, sir.

Q. Did you ever apply for a consular invoice in connection with any beer shipment?—A. I do not believe so.

Q. Do you recognize the signature to this letter?—A. It looks like Harry Low's signature. 40

Q. And on the Carling Export Brewing & Malting Company's paper?—A. Yes
sir. (Letter read).

EXHIBIT No. 104: Letter, November 6th, 1924, to Deputy Minister of Customs,
Ottawa.

Q. Are these the books in which you record the production of the beer?—A.
They are headed, one is "Brewers' mash book, Inland Revenue," the other is also
headed "Brewers' Mash Book."

Q. These are the ones that have been produced to our auditors as the Carling
book, giving the beer manufactured by the Carling Company. This first book
10 appears to have been a continuation of the old form, it starts with the Carling Com-
pany before the Carling Brewing & Malting Company took it over.

MR. TILLEY: My friend insists on calling this company the Carling Brewing &
Malting Company, you leave out the word "Export."

MR. ROWELL: I am astonished that the word "Export" has been dropped in
the name of the present company.

MR. TILLEY: Because the Ontario liquor laws are changed, we have another
trade now.

MR. ROWELL: I see it starts apparently on April 1st, 1924, under the heading
"Carling Export Brewing & Malting Company, London, Ontario."—A. Yes.

20 Q. And the first book runs to the end of October the same year, and then it is
continued in the new book.—A. Yes sir.

MR. TILLEY: I would like to know what use is going to be made of it.

MR. ROWELL: It shows the record of what they produced.

MR. TILLEY: But I do not know whether I need to ask the witness something
about it.

MR. ROWELL: This is the official record of your production of different classes
of beer.

MR. TILLEY: But could you not draw our attention to anything you rely on in it?

MR. ROWELL: I am going to ask our accountants in reference to it.

30 MR. TILLEY: Then could not you put it in when we want to use it?

MR. ROWELL: We can put it in with the accountants.

(Court adjourned at 4.30 p.m. Friday, April 19th, 1929, to Monday, April
22nd, 1929, at 10.30 a.m.)

Monday, April 22nd, 1929, 10.30 a.m.

J. G. MORRISON, Examination by Mr. Rowell (Resumed).

Q. Mr. Morrison, you paid a special Excise Tax of 15 cents a gallon on the rice
beer, I understand (Under Section 201 of the Excise Act, R.S.C. 1906, Chap. 51).
That is a beer that contains a substance other than malt has a special Excise Duty of
15 cents a gallon?—A. Yes, sir.

40 Q. Then your books will show the amount you paid of Excise Tax on the rice
beer?—A. Yes, sir.

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Q. Will you turn to the account in your book which shows the tax paid on rice beer?

HIS LORDSHIP: For what period?

MR. ROWELL: From the time you commenced the manufacture of rice beer, up to the 30th April, 1927, the period covered.—A. The general ledger discloses the whole item.

Q. You are referring to Exhibit No. 70. This commences March 1st, 1926?—

A. Yes, sir.

Q. Is that the first excise duty you paid on rice beer?—A. Yes, sir. I might state that the duty is paid as the rice beer is released from bond by the Customs officer. 10

Q. Then the first rice beer released from bond was March 1st, 1926?—A. Yes, sir.

Q. That would mean that you did not export rice beer before that period?—
A. I have two journal entries there I would like to look them up and see the explanation.

HIS LORDSHIP: Is it contended, Mr. Tilley, that you exported within the purview of this case only rice beer?

MR. TILLEY: Oh, no.

HIS LORDSHIP: I thought there was some mention that they were manufacturing a certain quantity of rice beer, there was a very small quantity sold in Canada, the whole of it went to the United States. 20

MR. TILLEY: Practically the whole of the rice beer went to the United States, but that does not say that all that went to the United States was rice beer.

HIS LORDSHIP: You began exporting beer to the United States only in March, 1926?

MR. TILLEY: No, rice beer, and provided that is the right date, he is looking that up. Prior to that we were exporting malt beer. And after that also, but he said they found the rice beer more popular in the United States.

MR. ROWELL: Can you tell me from looking at your books the date when you took rice beer out of excise bond for sale for the first time?

WITNESS: The first batch of rice beer released from bond by the Customs was 30 January 8th, 1926.

Q. Where do you find a record of that?—A. Through my cash book. These first two entries were first charged as we issued the cheque to the Government—the first two entries in my general ledger account on page C-12, headed Customs Tax on Rice Beer, Tax 15 cents per gallon on Rice Beer as it is released from Bond—

MR. TILLEY: The first two items are dated what?—A. March 1st.

Q. Now explain why it should be January?—A. When we made out our cheque payable to the Collector of Customs for those they were charged to raw material.

Q. When was that?—A. On January 8th for \$600, January 20th, 1926, for \$694.20.

Q. That is you first issued your cheques on those dates and charged them to raw material?—A. Yes, sir, and on March 1st, those two charges were reversed by journal entry, Raw Material credited and Customs Tax on rice beer debited.

MR. ROWELL: And carried into this account as of March 1st?—A. Yes, sir.

HIS LORDSHIP: Then we must infer that you could have exported this rice beer from the 8th of January, 1926?—A. Yes, sir.

MR. ROWELL: The next entry I see is March 11th.

MR. TILLEY: What does that \$1,294.20 cover, the excise charges on a certain amount of rice beer?—A. At 15 cents a gallon.

10 MR. ROWELL: And we arrive at the gallonage by dividing 15 cents in the amount of tax paid?—A. Yes, sir.

HIS LORDSHIP: You have not got the number?—A. No, sir. There are receipts I believe in the files in London, I did not bring them.

MR. ROWELL: Then the next entry is March 11th, that would be the next occasion when you took rice beer out of bond?—A. Yes, sir.

Q. Then May 1st, and June 14th?—A. Yes, sir.

Q. And so on. Then from January 8th, 1926, up to the end of October, 1926, you paid out how much money?—A. \$60,971.85.

20 Q. As excise tax on rice beer?—A. Representing 15 cents per gallon on rice beer that was released from bond by the Government.

Q. Where is the account for the subsequent period from November 1st to April 30th?—A. (Account shown.)

Q. Then in the account following October, the amount is entered up month by month?—A. Yes, sir.

Q. Rather than from day to day?—A. The cheque is paid day by day, but the column in the cash book is entered at the end of the month.

Q. Then how much do we get up to April 30th, 1927, from November 1st, 1926?—A. \$38,751.45.

Q. And the item for April is \$8,559?—A. Yes sir.

30 Q. So that we can get at the amount of rice beer taken out of bond during this period by dividing 15 cents into the amount you paid?—A. Yes sir.

Q. Under the Excise Act you were entitled to a drawback if you exported this rice beer?—A. We were entitled to a draw-back of 3 cents a pound on the malt used in the manufacture of that beer, the three cents a pound that had been paid previously.

Q. If you exported it?—A. I do not know whether that clause was included or not.

Q. Did you ever apply for such a draw-back?—A. Yes sir.

Q. On this particular beer?—A. Yes sir.

40 Q. Under section 202 of the Act?—A. I do not know what section it was under, sir.

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Q. The malt is under section 201. (Section read). That particular draw-back has nothing to do with export. But under the regulations that are in, Exhibit 46, provision is made for a draw-back of this 15 cents a gallon under certain conditions. (G-249, pages 13 and 14.)

HIS LORDSHIP: If they desire the refund they must ship it in bond.

MR. TILLEY: It is the same as the other Excise Tax, we paid them because they insisted on them being paid because the boats were under 200 tons register. "Export entry shall be passed for each quantity of beer exported." That is the important thing.

HIS LORDSHIP: In any case this is only surrounding the main question. This 10 tax payment is not involved in this case?

MR. ROWELL: No, my lord, it is just to show the circumstances in connection with the transaction.

Q. In any case you have not made any application I think you told us for draw-back in reference to the 15 cents a gallon?—A. I never knew that we could, sir.

HIS LORDSHIP: I thought you said you had made application. A. No sir. We made application for the 3 cents a pound draw-back on the malt.

MR. TILLEY: You applied for it and got it?—A. Yes sir.

MR. ROWELL: Under 201 the draw-back has nothing to do with export.

HIS LORDSHIP: I do not see that this has much bearing.

20

MR. ROWELL: It is only the general situation. My learned friend has been suggesting that you could get a refund on beer on the same basis as you can on other goods.

HIS LORDSHIP: To get that they would have to ship in bond, and there are no shipments in bond here?

MR. ROWELL: No, my lord.

Q. Mr. Hennessey spoke on Friday of the kegs returned. Where did you enter in your books the kegs returned?—A. Through our Sales Recap., giving credit for them in our Accounts Receivable Ledger.

HIS LORDSHIP: Am I to understand that there have been a great many empty 30 barrels returned from the United States, or only those barrels that were shipped back?

MR. ROWELL: I want to get from this witness what their books show about it.

MR. TILLEY: Your Lordship will remember that when my friend last dealt with those shipments of certain empty barrels back to Hoboken and New York, I asked him whether he was suggesting that there was any connection between those barrels and the empty barrels we got back from the United States, and he said he was not suggesting that there was any connection. All the point he was making, as I understood, was that we went to the Customs and put through certain entries with regard to those that might be a little difficult to put through for beer.

40

HIS LORDSHIP: It just shows that we have got to approach this with an open mind, though it is dealing with liquor where so many people are prejudiced. I am not biased one way or the other.

MR. ROWELL: My lord, I am going to try to ascertain from the books the basis upon which Hennessey gave his evidence on Friday. Your Lordship will remember he gave certain evidence to my learned friend about barrels returned.

WITNESS: Here is the credit note.

Q. Here is a credit note which you say will illustrate the manner of dealing with kegs returned?—A. Yes sir.

10 Q. It is dated November 16th, 1926, F. Savard, Detroit, Michigan, care of C.P.R. dock, Windsor, Ontario, 101 empty half barrels, 2 empty quarter kegs, half barrels at \$6, kegs at \$3, \$612.—A. Yes sir.

Q. Show me where that is entered in the books.—A. In the Sales Recap., 421. That is a credit.

Q. Where is that carried to in the ledger?—A. The Sales Recap. is page 57, credits, the credit note itself is 421. The item it is entered in is Exhibit No. 7.

Q. The Savard account?—A. Yes.

EXHIBIT No. 105: Specimen credit note for returned kegs.

Q. Mr. Hennessey told us that according to his view 75 per cent of the kegs
20 returned were the Carling Company's own kegs which had been shipped away, and the balance were other kegs or ones they could not identify. Did you make any distinction in your entries in the books between the 75 per cent and the 25 per cent?—
A. Not that I am aware of. I think though that the practice or method employed should be explained to my lord so that he would see the reason for it.

Q. I want to get the fact first, then you can make any explanation you want to make. As far as the books are concerned there is no distinction in reference to kegs returned between Carling kegs and other kegs that came back?

HIS LORDSHIP: You gave a credit for their value?—A. Yes.

MR. ROWELL: Now you want to make some explanation?—A. Yes sir. The
30 same practice was followed through in the 4·4 per cent beer.

Q. Well that is not what you claim to be export?—A. No it is not export, but as I said the same practice with Savard was carried into effect in connection with the return of those kegs as it was on 4·4 accounts; we would sell a man a certain number of kegs of 4·4 beer—

MR. TILLEY: That would be in Ontario?—A. That would be in Ontario. When our driver took these around he left him say 5 kegs. Later on he took him another load of 10 kegs, and collected five empty kegs. Those five empty kegs might not all be ours, some might be Labatt's or other breweries, but if the keg was in good condition he took it, they did not hold out against the keg because it was some other
40 brewery's keg, other breweries were using our kegs and we were using theirs. But the tin tag on it was the name that it went by as we sent it out.

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Q. That is the explanation you wanted to make was it?—A. Yes sir.

MR. TILLEY: That is, you did not take back more kegs than you had sold a man, but you did not discriminate if they were not in fact your kegs?—A. No sir.

Q. As long as you got an equal number and not more you took them?—A. Yes.

MR. ROWELL: Therefore you kept no track of whether they were your kegs or other persons' kegs, in the books?—A. I do not believe any other brewery did either.

Q. We are not dealing with others, just yours. Then it is not possible to ascertain from checking the books how many of your own kegs came back as compared with the kegs from other breweries?—A. No sir.

Q. Then Mr. Hennessey spoke of bottles returned. How do you deal with the 10 bottles in your books?—A. For the 4·4 or export?

Q. I am speaking of your so-called export.—A. On the export bottles we do not bring them back ourselves. They are brought back by a Mr. Gootson, a bottle dealer, who sorts them out,—while they are billed to us we have an arrangement with him whereby he pays the duty and the freight, sorts all the bottles, and by figuring in a commission or an allowance to him for sorting out the bottles it figures out to a certain amount per gross.

Q. How much per gross do you pay him?—A. It runs about \$3, at the present time it is \$3.90 for pints and \$6.00 a gross for quarts.

Q. What was it during the period covered by this suit?—A. Pints ranged all 20 the way from \$3.50 to \$3.95.

Q. Will you show us how those items are dealt with in the books?—A. They would be charged in the Purchase Journal against bottles. (Showing account.)

Q. You turn to the account which starts in June, 1924. What is that book?—A. That is the Purchase Ledger.

Q. It is headed Gootson, Myer, London, 573 Otway Avenue, account No. 4, is it?—A. G-4.

Q. Then I see the account runs by invoices, showing the amount of the invoice, and then debtor to draft, a draft paying the account?—A. Yes sir.

Q. And it is treated as a purchase account throughout?—A. Yes sir. 30

Q. Then at a later date the names are reversed, instead of Gootson, Myer, it is Myer, Gootson. It refers to the same person?—A. Absolutely, Gootson is the surname.

Q. And he is a bottle dealer living in London, Ontario?—A. Yes sir.

Q. And the account throughout runs in the same way, invoices for the bottles and debits for the payments made?—A. Yes sir.

Q. And this account represents bottles you purchased from Myer Gootson, or Gootson, Myer?—A. Yes sir.

MR. ROWELL: I would like to have a copy of this account put in.

MR. TILLEY: I suggest that we just mark the book, and then we can copy the 40 account if we have to refer to it.

EXHIBIT No. 106: Gootson account in the Purchase Ledger.

HIS LORDSHIP: Do you pay about the same price when you buy them new?—

A. No, sir.

Q. You pay a little more?—A. Yes.

MR. ROWELL: What is the difference between the price of second hand and new bottles?—A. It varies.

Q. Well, a rough idea.—A. Roughly speaking, pints are worth about \$4.50 a gross, f.o.b. Hamilton.

Q. That is new ones?—A. Yes, sir.

10 MR. TILLEY: Hamilton being the manufacturing place?—A. Well, they sell the majority of their bottles freight on Hamilton.

Q. And those are f.o.b. London, are they?—A. Those are delivered and sorted in our plant ready for use.

HIS LORDSHIP: What are quarts new?—A. Quarts run up to \$7 f.o.b. Hamilton.

MR. ROWELL: Then this book would also contain the purchase account for your new bottles?—A. Yes, sir.

Q. Mr. Hennessy spoke of the new bottles and the type you purchase. Where is your purchase account of the new bottles?—A. Under Dominion Glass Company.

Q. That is kept in the same way as the Gootson account?—A. Just explain
20 what you mean, "in the same way".

Q. Well invoices and cheques.—A. It is credits we have given them for their invoices, and our cheques in payment against the purchases.

MR. ROWELL: This account might be marked too.

MR. TILLEY: Do you really need the accounts? Your auditors have seen them.

HIS LORDSHIP: I do not see what it has to do. I am going to decide whether you should or should not pay the tax . . .

This witness says we do not bring them back, it is a certain other party that brings them back for all the other beer manufacturers.

30 WITNESS: No, my lord, I did not say that.

HIS LORDSHIP: And he sorts them and we pay a certain rate for our own bottles.

WITNESS: No, my lord, I did not say we did not bring them back. I said, we did bring them back, and turn them over to this man to sort up.

HIS LORDSHIP: No, you did not say that. "We do not bring bottles back", those are your words. If you correct yourself—A. Then it is a mistake.

Q. The idea you conveyed to us is, you said you did not bring them back, there was a man of such a name who did it, and then he sorted them and gave them to the respective manufacturers, their own bottles. If that is not right, correct it.—

A. These bottles were brought back from the States consigned to us—

40 MR. TILLEY: That is the Carling Brewery?—A. The Carling Export Brewing & Malting Company.

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HIS LORDSHIP: Brought back or sent back?—A. Brought back.

Q. At your demand?—A. By arrangements that we had made, my lord. And we had arrangements with this M. Gootson, bottle dealer,—

MR. ROWELL: Did you make these arrangements yourself?—A. No, sir.

MR. TILLEY: My friend stops the witness just when he thinks he is getting something he does not want.

HIS LORDSHIP: Is there an arrangement in writing for that?—A. I cannot say, my lord.

HIS LORDSHIP: If there is an arrangement in writing, you will have to bring it.

WITNESS: But I have made the entries often enough to know the arrangement 10 off by heart.

MR. ROWELL: The entries we have, but I submit the witness cannot give verbal conversations of an agreement to which he was not a party himself, of which he has no personal knowledge.

MR. TILLEY: He has been asked repeatedly about the arrangements made, and has been giving his evidence fully and freely, but as soon as my friend thinks he is going to get something that does not help him he stops him.

HIS LORDSHIP: If there is no written contract or agreement, I think he can give what this company was in the habit of doing. If he gets instructions.

MR. ROWELL: He gets instructions to make the entries, we have the entries 20 which speak for themselves. I submit if my friend wants to prove any bargain that is not in writing he must call the witness who can speak as to it, the one who made the bargain.

HIS LORDSHIP: This man was like one who is paid wages to wash those bottles and sort them. I cannot see that there is any importance to it.

What did you deduct from your books in your dealings with those empty bottles?

MR. ROWELL: We have the entries, which show the purchase of the bottles from Gootson.

WITNESS: If I did not have these other conditions, I could not figure the account.

HIS LORDSHIP: That I understand; but you have two statements that conflict; 30 that you do not bring them back, now you say that you have an understanding with our purchasers that they send them back.

MR. ROWELL: Where are your import entries covering these bottles?—A. I have long room entries here to show where they have been cleared through the Customs.

HIS LORDSHIP: That question is so far afield that I do not see how it could come into the consideration.

MR. ROWELL: If my friend will concede that it does not come into consideration on the amount of claim I do not desire to go into it. But my friend does not concede that.

HIS LORDSHIP: I have had cases where they were asking a draw-back on coal or lumber used for certain purposes. But there is no draw-back provided by law in this matter. I cannot see that there is anything in it.

MR. ROWELL: My learned friend will contend that there is, that is my difficulty.

HIS LORDSHIP: Unless he makes a convert of me I will rule against it.

MR. TILLEY: If we show your Lordship that there is a provision for it I suppose a direction can be given to refer it, whether it comes into the account or not.

HIS LORDSHIP: But there is no law that provides for a draw-back in such circumstances.

10 MR. ROWELL: My learned friend will contend that there is a draw-back, my lord.

Q. Where have you got the entries for the period covered by the suit?—A. I do not believe these documents I have here are complete. I simply went through our files and picked out to the best of my ability what I could.

Q. I am asking the period covered by the suit. These are 1928.

MR. TILLEY: Those were referred to and gone into before.

MR. ROWELL: No, my lord. Mr. Morrison was not a witness at the first sitting.

MR. TILLEY: Mr. Nash was, and Mr. Troop, and they said there were no entries 20 about bottles in the books, and I pointed out that they were mistaken, and Mr. Troop was good enough to say that they would prepare a statement showing the situation about bottles. I assume he has it.

MR. ROWELL: I want to get from the witness, who is the accountant of the company, whatever documents he says relate to the bottles.

MR. TILLEY: If Mr. Rowell will be good enough to let us know in advance what documents he wants.

MR. ROWELL: I did not know there were these documents.

MR. TILLEY: They were produced the last time. Mr. Nash and Mr. Troop saw them, and took back their statement that there were no entries about them in 30 the books.

MR. ROWELL: My recollection is to the contrary.

Q. Will you pick out of your list the ones you say relate to the period covered by this claim?

HIS LORDSHIP: What are they, what do you call them?—A. That is what is known as a long room entry.

MR. TILLEY: If your Lordship will note page 44.

MR. ROWELL: Yes, my friend is correct.

MR. TILLEY: And it came up again at page 100, and he said he would ask Mr. Troop to try and collect the figures. I did not suppose I had to produce all these 40 documents here.

MR. ROWELL: Will you just pick out the documents that relate to the period?

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WITNESS: As I said, I am not in a position to say whether these cover the entries complete, whether this file is complete or not. They were picked out in a hurry, not by myself. I have entries here dating further on into 1927, as I figured that they would cover bottles that had been shipped at an earlier period but which would not be ready to be returned exactly at April 30th, 1927. I figured those would represent bottles shipped during the earlier period but which would not be empty or ready to be returned.

EXHIBIT No. 107: Ledger account of Dominion Glass Co., account No. D-4.

HIS LORDSHIP: Do you pay a duty when you bring them in that way?—A. Yes sir, 32½ per cent. 10

Q. Then when you say you pay so much to the man who sorts them do you include the duty?—A. Yes sir, we simply hand him the bill for the duty and the bill for the freight and the original invoice from the States for the bottles.

MR. ROWELL: Then where is the invoice for these bottles?—A. You mean our invoice?

Q. The invoice that came to you accompanying these goods?—A. They would be handed over to Gootson.

Q. Would they not come back to you?—A. No sir.

Q. Who were the shippers of these goods?—A. There were various shippers.

Q. Well who?—A. I could not tell you offhand now. 20

Q. Have you any entries in your books that will show who the shippers are?—A. No sir, I have not.

Q. Were they secondhand bottle dealers in the United States?—A. I could not tell you, sir.

Q. You do not know?—A. No sir.

HIS LORDSHIP: You have not got any of those invoices?—A. No sir, they were all turned over to Mr. Gootson.

MR. ROWELL: Did he not turn them back when he delivered the bottles to you?—A. No sir.

Q. And you tell us that you do not know the name of a single person from whom 30 you purchased those bottles?—A. I cannot tell you the name of a single person who the ones handled through Gootson were purchased from, but I can give you the names of others that we have brought back bottles from.

Q. No. Do these long room entries you have produced refer to the bottles covered by Gootson's account?—A. They refer to part of them.

MR. TILLEY: Do you mean they refer to part of them or they in part refer to them?—A. I mean the long room entries are not complete.

MR. ROWELL: Are there any long room entries in that bundle that do not apply to Gootson?—A. There may be, sir, for the simple reason that in one or two instances we have brought back bottles from other parties in the States, brought back 40 our own bottles.

Q. Then as far as the Gootson bottles are concerned you cannot tell me who they were purchased from?—A. No sir.

Q. Were the parties from whom they were purchased second-hand bottle dealers in the United States?—A. To the best of my knowledge and belief they were in the States, but whether they were second-hand bottle dealers or not I cannot say, I do not know them.

HIS LORDSHIP: Surely we are not expected to think that all this quantity of beer shipped to one man would be consumed by that man. He is a purchaser, but he would sell here and there.

10 MR. ROWELL: Yes, my lord.

Q. Then you referred to certain bottles you had brought back yourself. What are those?—A. They are our own bottles which had been shipped with our beer over to the States—

HIS LORDSHIP: Are we not wasting time? Are you in earnest in making a claim for rebate?

MR. TILLEY: I shall possibly point out something about that, but the main point I am making is that these things came back from the States. But on the question how it affects the tax, the amount of the tax—

HIS LORDSHIP: How it affects the price of the beer I cannot see. It is just 20 encumbering the records with trifles.

MR. TILLEY: I have not raised this point before, I have not told my friend I was raising it now. He seems to want me to raise everything that will take up time.

MR. ROWELL: If my learned friend says he is not going to raise it I will ask no more questions about it.

MR. TILLEY: I think you better go on with any further questions you can think of.

HIS LORDSHIP: I cannot see that it can affect the price of the beer. Those manufacturers make no difference in the price of the beer whether they get their bottles from the Dominion Glass or buy them second-hand.

30 WITNESS: In getting these records out I got them with the idea of simply proving that the beer had gone over there, or our bottles could not be there. Had it been otherwise I should have gone into it more in detail, got out quantities and so on.

MR. ROWELL: Does your company make any claim for a return on the basis of returned bottles?

MR. TILLEY: My friend knows very well we have never made any such claim.

MR. ROWELL: The claim has been made.

MR. TILLEY: Where? It has never been made or referred to at all until my friend said we were making it this morning.

MR. ROWELL: If my friend says they have no claim, all right.

40 MR. TILLEY: I am not saying we have no claim, you are trying to force us to

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have one. But I have never made any such claim in any case that has been up. The idea of export is helped in proof by the fact that the bottles are coming back.

HIS LORDSHIP: Collateral evidence in that sense.

MR. TILLEY: Yes. My friend has never heard me make the other claim at all. I am not bothering about accounting, I am contesting the main issue. Whatever is the proper basis of accounting we shall get I presume. I am not giving up anything.

MR. ROWELL: Will you turn up the books that have the cash sale entries?

MR. TILLEY: Are you putting in the long room entries?

MR. ROWELL: If you wish them in. I have not put them in. 10

HIS LORDSHIP: We have it in a general way that some bottles came back.

MR. TILLEY: They came back in carload lots.

HIS LORDSHIP: I do not know, he did not say.

WITNESS: The long room entries show the car numbers on the entries.

MR. ROWELL: What car numbers?—A. Where the empty bottles came back.

HIS LORDSHIP: That does not mean there was a carload because a car number is on.

MR. TILLEY: Hennessey said there were carload lots.

WITNESS: The quantity also signifies a carload. It says right on here, one car secondhand empty pint bottles, 452 gross. 20

HIS LORDSHIP: That is not in.

MR. TILLEY: We better file those. Let us file what are here.

HIS LORDSHIP: A certain number of long room entries as samples?

MR. TILLEY: Yes.

EXHIBIT No. 108: Long room entries of empty bottles returned.

MR. ROWELL: Will you turn to invoice No. 00264. You have a cash sale on that date of what?

HIS LORDSHIP: What date?—A. September 2nd. 67 of beer, it does not say whether cases or what.

MR. ROWELL: What is the price for the 67?—A. \$230.50. 30

Q. This is all lager?—A. \$22.50, 5 ale \$21, and 56 ale, quarts, \$187.

Q. Then turn to the next invoice. This is cash sale, George Constable, same date, 8 ale pints \$31, 2 lager \$6, and then on the lower part of the invoice under a heading what?—A. 2½ per cent.

Q. Under a heading, 2½ per cent, are 9 ale, 4 porter, 6 lager.—A. \$34.38.

Q. Making a total \$71.38?—A. Yes, sir.

HIS LORDSHIP: Does that evidence mean that there were a number of cash sales upon which they have not paid the duty except say for home consumption?

MR. ROWELL: Yes, my lord.

MR. TILLEY: Why do you say they have not paid the duty? 40

MR. ROWELL: That will be the evidence we will give.

MR. TILLEY: That is not what His Lordship asked. He asked whether what you are putting in shows that.

MR. ROWELL: This does not show anything about payment, it is only an invoice.

HIS LORDSHIP: But you say that those cash sales form part of what is now claimed by the defendant as having been sold for export?

MR. ROWELL: Not the $2\frac{1}{2}$ but the other. Except so far as it is $2\frac{1}{2}$ we claim these cash sales are what the defendants have claimed are sold for export. I want to trace it through the books to elicit how it is dealt with.

What the Crown desire to show from these documents is something of which I 10 was not aware until we got going through the books the last two or three days, that there are sales entered as cash sales which I had assumed up to date were all 2.5, but which I think examination of the books will show are largely strong beer.

MR. TILLEY: That is not the point. The point is you are going to show that what we have treated as 2.5 is not 2.5 but is strong beer?

MR. ROWELL: I am going to show that you have not treated it as 2.5, and that you have not paid Sales Tax on it, and that your books show that it is strong beer upon which Sales Tax has not been paid, and it is calculated in the total amount of our claim, it is not in addition to the existing claim, it is part of the existing claim.

Q. Where are these invoices carried to, the Sales Recapitulation?—A. Yes.

20 Q. Just turn to the Sales Recap. and let us see how that invoice is treated.

MR. TILLEY: How much strong beer do you say is in the cash sales?—

MR. ROWELL: I do not know the total.

MR. TILLEY: Could you find out from your accountants.

MR. ROWELL: Our accountants have identified items which they believe to be sales of strong beer, under the heading of Cash Sales, to the amount of \$44,000, covering a substantial number of transactions.

Q. Now, this invoice, will you show how these are dealt with in the Sales Recap.? Where is that particular invoice?—A. No. 265 (Shown).

Q. Appears on page 27 of the Sales Recap. What are these different headings?—

30 A. Cases, pints, quarter barrels, half barrels.

Q. And then lager and ale, and the cash received?—A. Yes, sir.

Q. Then on the other side, what do these indicate?—A. Ale, quarts; beer, pints sundry.

Q. Is this the side that indicates the $2\frac{1}{2}$ per cent beer in the Sales Recap.?—

A. It looks that way, but I could not tell you, sir. That is prior to my period.

MR. TILLEY: What date is that?—A. September, 1924.

MR. ROWELL: Then take this particular entry, how is that divided in the Recap.

—A. I see ten dollars under Pints Cases. Then \$6 under lager, and \$31 under Ale, \$71.38 under Cash; \$10.80 under Lager $2\frac{1}{2}$, \$7.80 under Porter $2\frac{1}{2}$, \$16.20 under 40 Ale $2\frac{1}{2}$, and 18 cents under Sundry.

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Q. So in the Sales Recap. it is carried through and divided in the same way as it is in the invoice, and the only amounts put under $2\frac{1}{2}$ are the items specified on the invoice under $2\frac{1}{2}$?—A. Yes, that is the amount there.

HIS LORDSHIP: What do you mean by ale?—A. You can have ale either strong or weak.

MR. ROWELL: If it is not strong beer why is it not put under $2\frac{1}{2}$ per cent with the other?—A. I do not know, sir, I did not make up the Recap. and know not what the practice was in writing it up.

Q. You cannot suggest any purpose in putting it over here under ale unless it was strong beer?—A. I do not suggest that their idea of putting it there was that it 10 was strong beer.

Q. Can you suggest any other purpose of having it over there?—A. I do not know the reason, sir.

Q. Where are these carried from?—A. The totals are carried into the general ledger.

Q. Will you show the account to which these items are carried in the general ledger?

EXHIBIT No. 109: General ledger of defendant, from incorporation until June 30th, 1925.

WITNESS: Let us follow the course of this one. The first column I notice is 20 posted as 52 outside ledger. That does not appear to be there.

MR. TILLEY: You are looking at page 27 of the Sales Recap.—A. For the individual invoice they have referred to.

Q. Being?—A. Invoice No. 265. I am referring to the totals of that Recap. for the month of September, 1924, to page 31 of the Recap. The first item I see posted to general ledger is outside ledger, and as there are no figures relative to that invoice in the outside ledger column I say we can dispense with the outside ledger column.

The next is lager \$6. Now I have the item there. The total of that whole column is posted to account No. 32, Sales "S." The amount is \$45,335. 30

Q. Sales "S?"—A. Sales "S" with "bottles" written after it.

MR. ROWELL: Is the ale, the first item \$31, is that total carried to the same account?—A. It is carried to the same account, C-3/2, total \$15,063.55.

Q. Tell me where the items marked " $2\frac{1}{2}$ " are carried.—A. Do you not wish to trace it all the way through?

MR. TILLEY: Yes, let us have it.—A. Then we come to the next column that that invoice is relative to. It is marked Cash and is posted to $\frac{5}{4}$ marked Cash Sales, and is a total of \$8,589.65.

MR. ROWELL: That is, the total amount of cash sales for the month is posted to this Cash Sales account?—A. The total amount from the Recap. bearing the 40 amounts entered under cash are posted to that.

Then the next column that has any bearing is under Lager 2½, and is posted to C/1, an amount of \$108.90.

The next one is, Porter 2½, and a total of \$45 is posted to the same account in the general ledger, C/1.

The next item is, Ale 2½, and a total for the month of \$140.85 is also posted to General Ledger account No. 3/1.

Q. What is that General Ledger account entitled?—A. It is marked, Sales 2½ per cent.

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Q. Then these three items marked in the Recap. as 2½ per cent on this invoice 10 are posted into the ledger under the head of, Sales 2½?—A. Yes sir.

Q. And the two items on that account appearing in the upper part of the invoice, and marked over \$6, \$31, lager and ale respectively, are posted into the other account?—A. Of cash sales.

Q. No they are both in the cash sales, but into the other account, the first you mentioned.—A. Sales "S" bottles.

Q. Now does not "S" mean strong beer?—A. I guess it would, it could stand for strong beer the same as "C" could stand for Cash.

Q. But I ask do you know from your knowledge as accountant, of these books?—A. No sir.

20 Q. Do you mean to say you do not know whether that account marked "Sales S" is not the account in which the strong beer is entered?—A. Sir, I do not know anything whatsoever about it. I started with this company the latter part of June, 1925, and transferred and closed out that general ledger, opening a new general ledger on June 30th.

Q. Well, perhaps you can tell me this. Point to any entry in that "Sales S," which I suggest to you is strong beer, that is not strong beer.—A. I do not know anything about it. Why ask me to do a trick like that?

Q. Will you tell me what is the total of the cash sales for that month of September? You have it on the face of the Recap. haven't you?—A. There is another 30 item from the same Recap. I was trying to find where it originates. It shows a total to the credit of \$253.75.

Q. Just look at your Sales Recap.—A. Cash shows \$8,589.65.

Q. And how much appears under 2½?—A. Different items making a total of \$253.75.

Q. Do they not make more? You have \$108.90, \$45, and \$140.85, isn't it \$294.75?—A. \$294.75.

Q. That is the total amount appearing for the month of September under the heading of 2·5 in the Sales Recap.?—A. Yes sir.

Q. Then do you recognize Mr. Burns' signature to the Sales Tax return?—40 A. It looks like his signature.

Q. (The returns are already in as Exhibit A.) Then this Sales Tax return shows the total taxable sales, September, \$294.75, which is the amount of the 2·5.

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HIS LORDSHIP: That is the return on which they paid taxes?

MR. ROWELL: Yes, my lord. That is sworn to by Mr. Burns.

Q. That is correct?—A. Yes sir.

Q. Now, take one other sample and go through to see if we get the same result.

Here is a cash sale, No. 00266, which does not show on its face any mark 2·5.—

A. Yes sir.

Q. September 2nd, 1924, total \$208. That invoice does not show on its face any reference to 2·5?—A. No sir.

Q. Where is that posted in the Recap.?—A On Recap., page 27, September, 1924. 10

Q. Under the heading?—A. Under the heading, Pint Cases, shows 31.

Q. And what amount?—A. Amount under Ale \$118.50, under Cash \$208.

Q. And under Ale Pints?—A. Under Ale Quarts, \$89.50.

Q. Making up the amount of the invoice?—A. Yes sir.

Q. Does it show anything under 2·5 in the Sales Recap.?—A. No sir.

Q. Then where is that carried to in the ledger? Is it under Sales "S" or Sales 2½?—A. It is under "Sales S, bottles", account No. 3/2 in the general ledger.

Q. And there is nothing in reference to that sale carried to the ledger in account for the 2½?—A. No sir.

Q. And that sale is not included in the sales in respect of which sales tax is paid 20 in Exhibit A?—A. It does not appear to be.

Q. Without taking further time can you say from the illustrations we have already taken if all the other invoices where the division is made in the same way as this are treated in the same way in the Sales Recap. and in the Ledger?—A. Well I did not go through them, sir, to prove it.

Q. Have you any doubt about it?—A. Not having had anything to do with them at any time I would not want to say whether it does or not.

MR. ROWELL: Just to identify this particular return, my lord, it is Entry No. 2113 for the month of September, in Exhibit A.

Q. There is also a marked difference in price between the ale which is marked 30 2·5, and the invoices you have turned up? The 8 ale pints are \$3.75, and 2 lager \$3?—A. Yes sir.

Q. Then the 2·5, 9 ale is \$16.20?—A. \$1.80.

A. And the 4 porter?—A. \$1.80, and 6 lager \$1.80.

Q. All the 2·5 appears to be at \$1.80?—A. Yes sir.

Q. And the other is \$3 and \$3.75?—A. Yes sir.

Cross-examined by Mr. Tilley:—

Q. You are being asked lately about accounts that were opened and carried on at a date prior to your having anything to do with the company?—A. Yes sir.

Q. They are not accounts which were under your direction at any time?—40
A. No sir.

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Q. Then dealing with other matters that my friend discussed this morning, in the first place you referred to kegs coming back from the United States. What kind of beer is put in kegs, rice beer or malt beer?—A. Malt beer.

HIS LORDSHIP: Rice beer is never put in kegs?

MR. TILLEY: Rice beer is entirely in bottles I am told.

Q. Is that right?—A. Yes sir.

Q. Always put in bottles. So that any kegs coming back from the United States would be kegs that went there containing malt beer?—A. Yes sir.

Q. As far as they were your kegs?—A. Yes sir.

10 Q. Or in substitution for your kegs containing malt beer?—A. Yes.

Q. Then you produce these long room entries. These are entirely for bottles, not for kegs?—A. Just for bottles.

Q. Did you get bottles otherwise, or were they all shipped in this way?—A. They were all shipped in that way with the exception of 4·4 which were picked up throughout Ontario.

Q. Bottles for 4·4 beer you mean?—A. Yes sir.

Q. How did the kegs reach you?

HIS LORDSHIP: You mean when they were exported?

MR. TILLEY: When they were returned, having been exported, how would the 20 kegs reach you?—A. By rail and by motor transport.

Q. Have you any entries relating to kegs?—A. The duty on the kegs was paid at the border. And I believe I have one long room entry—

Q. Duty paid at the Canadian border you mean on coming into this country?—A. Yes, sir. I have one long room entry covering a bunch of kegs returned.

Q. How would you come to get this?—A. I do not know how. Looking through some of our files, I located it.

Q. But when the kegs came in they were cleared at the border?—A. Yes, sir.

Q. And duty paid there?—A. Yes, sir. It states on it "duty paid", and it is marked with the receipt by the Customs at Sandwich.

30 Q. The duty paid on these was \$13.25?—A. Yes.

HIS LORDSHIP: What is that duty? Is it an import duty? Was it paid to the Canadian or the American Government?—A. To the Canadian Government.

MR. TILLEY: On the entry of these kegs?—A. Yes, sir.

Q. Or the re-entry, or whatever it would be called. This is one of April 19th, 1926, the entry form is dated April 15th, 1926, and the stamp is April 19th, 1926, and the amount of duty was \$13.25, and the Sales Tax was \$3.31?—A. Yes, sir.

EXHIBIT Q: Customs entry of returned kegs, April 19th, 1926.

Q. I see it says "duty paid under protest". Do you know what that refers to?—A. No, sir, I don't.

40 Q. So that in the ordinary way these receipts would not come on your files at London?—A. If I remember correctly that came back from the border among a number of B.13s.

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Q. But it would not ordinarily come to you, but you happen to have that one?—
A. No, sir.

Q. It says "Imported by Carlings".

HIS LORDSHIP: Where would you make the entry of that amount in your books?—A. I did not make any entry in my books.

Q. There must be an entry somewhere.—A. That would be paid at Windsor.

MR. TILLEY: So there would not be an entry in your London books?—A. No, sir, I have no record of it.

HIS LORDSHIP: Would it come as part of the Windsor expense account?—A. I imagine, sir, it would maybe be paid by Mr. Low. 10

Q. At Windsor?—A. Yes, sir.

MR. TILLEY: Is that where Mr. Low was?—A. Mr. Low's home is down there.

HIS LORDSHIP: It must come in the books, it must balance somewhere if it is an expenditure by Carling.—A. Well, there have been moneys sent to Mr. Low and I imagine that would be part of the way he would use them.

MR. TILLEY: The bottles you say were shipped into your plant, the empty bottles, and what was done with them on their arrival?

HIS LORDSHIP: Did he say that? Were they shipped to your plant?—
A. Yes, sir.

MR. TILLEY: They were shipped to your plant. For instance a carload of 20 bottles is shown here on an entry of 12th January, 1925, and the duty was \$523.25. Now, just trace what would happen to these bottles when they arrived at the plant. A. They would be sorted up by this Gootson, occasionally there would be chip-neck bottles that we could not use, we have to discard them. He would sort out all those bottles and pack the bottles in cases ready to go into our bottling machines.

Q. He was remunerated for that, was he?—A. We had an understanding with him he had the means of disposing of these chip-neck bottles to other sources—what they were I am not conversant with, but he would take these chip neck bottles, and if it was what we term a small chip-neck he would give us a good bottle in lieu of it. If it was a large chip-neck, he bought it at the rate of about 15 cents a dozen from us and paid 30 us for them.

Q. He had some market for them?—A. He had a market, what it was, I do not know.

Q. What Customs officer would release those cars, the Customs officer at the border or at London?—A. At London. The seals could not be broken except by the Customs officer himself.

MR. ROWELL: They were brought in in bond, were they—A. Yes.

HIS LORDSHIP: How did it come that the duty is paid at the border?—A. The duty on the bottles was not paid at the border.

MR. TILLEY: The duty was paid at the border on the kegs but not on the bottles. 40 That is the difference isn't it?—A. Yes, sir.

Q. Are you able to say whether there were any bottles in those cars that were not your bottles, or were they all your bottles, or do you know?—A. I do not know definitely.

Q. Have you the Gootson account here, was it filed?—A. It was filed.

Q. How much does that account amount to?—A. I never totalled it.

HIS LORDSHIP: Would it be large or small?—A. It would vary from \$1,500 to \$5,000, \$6,000, \$10,000 a month.

Q. And that would be just for the bottles returned from?—A. The United States.

10 Q. That passed back to the Canadian port?—A. Yes sir.

MR. TILLEY: You say he straightened up the Customs charges and freight?—A. The charge for the duty and the freight and the invoice all came to us, but we simply handed them over to Gootson and he paid them.

Q. Now you say that the rice beer was always in bottles. Will you tell us whether Mr. Hennessey was right in his estimate of the quantity of rice beer as compared with other beer?—A. I could not say just definitely what the quantity of rice beer was, for the simple reason that on our invoices export beer is shown, lager and beer were shown as beer.

Q. You did not differentiate in the invoice?—A. No sir.

20 Q. Then you cannot separate one from the other?—A. No sir.

Q. Should the Government be able to do that?—A. It shows in the Mash Book exactly the number of gallons that we brewed of rice beer, the number of ale, and the number of ordinary lager.

Q. In the Government book?—A. In the Mash Book which is a book kept by the Customs officer in charge of our brewery.

Q. Then to what extent did the Customs officer take control of the places where the rice beer and the malt beer were being made and were stored?—A. Speaking generally they had complete control.

Q. In what way?—A. They seemed to have a say in everything whether it 30 related to anything the Customs had to do with or not.

Q. Did they have things under lock and key?—A. From the time the malt comes in, as it is unloaded off the car it is put in bins under key, keys only held by the Customs officer. As each brew is made there is a certain amount of malt run down through the mill and that is all weighed and allotted out to us. The same way with Rice. It does not make any difference what goes into the beer the Customs officer supervises it.

Q. Then subject to what their books will disclose, are you able to form any estimate, would you say that in your view Mr. Hennessey's estimate was about right?

40 MR. ROWELL: Let him give his estimate.

MR. TILLEY: Well, what is your estimate?—A. Taking it actually from the books, the Customs Mash Book; there was about 25 per cent ale, and the grand

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total brewed from the first brew that the Carling E.B. & M. Company made up until the end of April, 1925, when 4·4 beer came into being, there was about 75 per cent lager as against 25 per cent ale.

Q. That is you are speaking now of a period of this company's business—A. Yes, up until 4·4 went on the market.

Q. That date is—?—A. That is figured from the 1st of May, 1925.

Q. Of course you have not got rice beer on the market yet?—A. No sir.

Q. You say during that period 75 per cent roughly was lager, and 25 per cent ale?—A. Yes sir.

Q. Following that, what?—A. From May 1st, 1925, to April 30th, 1927, the 10 total gallons brewed was 2,951,248 gallons. Of that total 932,725 was ale, 2,018,523 gallons was lager. In that total ale is included, the total shipments to New Brunswick and Quebec.

Q. You say the ale calculated in those figures covered all the ale for New Brunswick and Quebec?—A. And for the 4·4 used in Ontario.

Q. Such ale as was used in Ontario.

MR. ROWELL: And the 2·5?—A. No, the 2·5 was not covered in that period.

MR. TILLEY: That is the 4·4 period commenced in May, 1925, and ran to April, 1927?—A. Yes.

Q. When did the Liquor Control Act come in?—A. In May or June of 1927, I 20 believe.

Q. Can you tell me how the manufacture of ale changed when the Liquor Control Act came in?—A. I have not the figures before me, but I can give them this afternoon.

Q. All right. While we are on that will you tell us what changes you made in your plant from time to time for the manufacture of ale and lager, and what the significance of the change is?—A. Up to that period—

Q. Which period?—A. May or June of 1927, we had for ale 6 fermenters of about 180 barrels storage capacity each. When we made that change—

Q. That is the change getting ready for the Ontario Liquor Control?—A. Yes, 30 we threw out those six tanks and we now have 40 new tanks of 250 barrels capacity each.

Q. For ale?—A. Yes sir. That is for fermenting purposes. We have 6,500 barrels fermenting room capacity now where we used to have only about 1,100. So that it is increased a little better than 6 times.

Q. That is ale?—A. Yes sir.

Q. What about lager?—A. Lager is unchanged.

Q. Was that change made at the time the Liquor Control Act came into effect?—A. Well we started to make it as soon as we anticipated that there was going to be a change, that we knew more or less definitely that there would be a change. 40

Q. When it was definitely in the air?—A. It took some time to complete those, because we had to remodel our rooms, had to prepare storage rooms for these tanks.

HIS LORDSHIP: Why didn't you make any change in the lager?—A. We had sufficient capacity for lager as it was. Our lager business was practically all export to the United States, and the little additional that we had for Ontario could be crowded into the space we already had allotted for lager.

MR. TILLEY: The Ontario consuming public wanting ale, and the Americans wanting lager mainly, is that what you mean?—A. Yes. I might also state that at the same time we put in a new brew kettle of 7,750 gallons capacity, and a new mash tub of like capacity.

Q. What is the significance of that?—A. More beer.

10 MR. ROWELL: Since the Ontario Liquor Control came in?—A. No, getting ready for the Liquor Control.

MR. TILLEY: For ale?—A. Yes sir.

Q. Something was said about a stamp on one of the Customs entries, that is the Customs stamp, on the B.13. The stamp is "Customs and Excise, Canada, C.P.Ry., November 30th, 1925, Windsor, Ontario." That is on your copy.—A. Yes sir.

Q. This has not been marked yet.

EXHIBIT R: B.13, stamp November 30th, 1925.

Have you checked up to see the stamp on the Government copy?—A. C.P.R. 20 is shown on the stamp of the Government copies.

HIS LORDSHIP: The B.13 is first given in London. You take that to the port, and then when you come to pass a certain quantity there is a B.13 given?

MR. TILLEY: That is when they are splitting up there is a B.13 given.

HIS LORDSHIP: How many copies? One remains with the Customs officer?

MR. TILLEY: One remains with the Customs officer at the outport, another remains with the Customs officer I think at the main port, one to Ottawa, and one returned to the original shipper. There are several of them.

HIS LORDSHIP: The one sent to the Government must be the one that is completed at the time of shipment. How can they be different?

30 MR. TILLEY: I think it results from a man being busy and doing a lot of them at once.

HIS LORDSHIP: I thought it was countersigned.

MR. TILLEY: At a certain date they changed the instructions.

MR. ROWELL: I would not think that is any evidence at all, my lord. My submission would be that that simply means it arrived at the C.P.R. dock at Windsor. There are different forms. You will see the difference in the forms.

HIS LORDSHIP: I was reading the regulations, it says from a certain date we will dispense with anyone to countersign—

40 MR. TILLEY: I think your Lordship is misapprehending what that regulation does. It is an amendment of an earlier regulation that said the shipper when signing the document must have his signature witnessed. It did not apply to the Customs

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officer. But the regulations itself said the Customs officer shall stamp them. At a later date the Customs officer was to initial or sign them as well. But during practically the whole period we are concerned with they were told only to stamp them.

(Court adjourned at 1 p.m. until 2.30 p.m.)

AFTERNOON SESSION

MONDAY, APRIL 22nd, 1929, 2.30 p.m.

J. G. Morrison, cross-examination by Mr. Tilley—Continued.

Q. You produced Exhibit R, which shows a stamp as we have already described. Then you produce from the Government B.13s certain B.13s,—I am not suggesting for the same shipment—but you point out that the stamp is the same, Customs and 10 Excise, Canada, C.P.R. freight shed, November 21st, 1925, exported at Windsor, Ontario.

HIS LORDSHIP: What was the other?

MR. TILLEY: The other is dated November 26th, 1925. I am only pointing out that the stamp is practically the same, and it has in addition "Exported at".

EXHIBITS R-1, R-2: Two entries Nos. 58020 and 58021.

Q. Did you examine the stamps critically when they came back, or as long as it was a Customs stamp—A. As long as it had a Customs stamp on it we took for granted it was O.K.

HIS LORDSHIP: The B.13s we saw at the beginning had the signature of the 20 Customs officer?

MR. TILLEY: After some date in 1926. The later ones have some name or initials, the earlier ones have only a stamp. I think that is the result of a change in their instructions.

Q. Prior to your coming to the Carling Export Brewing & Malting Company, you of course cannot speak as to what care or lack of care there was in looking after B.13s?—A. No, sir.

Q. But will you describe the situation in the earlier part of your period as to the way the B.13s were looked after?

HIS LORDSHIP: That is from June, 1925?—A. From June, 1925, on. When 30 they came back, sometimes they came back a great number in an express parcel wrapped up in brown paper—

Q. Where did they come from?—A. From Windsor.

Q. How did you get them, who sent them to you?—A. I do not know whether it was the Customs officer in Windsor sent them to us, or whether it was Mr. Low, or some of Savard's men.

MR. TILLEY: At any rate they were returned to you sometimes a number at a time?—A. Yes. We would open the box and see what was in it, sometimes they

came back in whisky boxes, we would simply open the box and see what was in it, and put them away in storage, put them in our stationery room.

Q. Did you take any care about them in the way of indexing or numbering them or doing anything of that kind?—A. No, sir, we never.

HIS LORDSHIP: You did not try to connect them with any of your invoices?—
A. No, sir.

MR. TILLEY: You did not go matching them up afterwards?—A. No, sir.

Q. You just put them there and they remained until they came to be inquired about at the time of the Royal Commission?—A. Yes, sir.

10 Q. Which was when?—A. I believe it was January, 1927.

Q. Then from that time on to what extent have they been handled and examined?—A. If I can recall correctly we had somewhere around ten or twelve different sets of Customs or Government auditors in who had access to our entire books and records.

Q. You mean auditors connected with the Royal Commission or with law suits?—A. Chiefly with the Royal Commission and with this latter case.

Q. Have you always just turned these things over to them and let them do what they pleased?—A. They were given an entirely free hand to go through whatever they desired to.

20 Q. You were also asked about a draw-back that might be claimed in case the rice beer was sold in bond. I believe that none of this beer that we are concerned with in this action was sold in bond.—A. Not to my knowledge, sir.

Q. I produce a circular dated September 19th, 1923, giving an Order in Council No. 1794, approving a regulation which reads:

“No intoxicating liquors imported into Canada . . . on which such duties of excise have been paid may be exported from Canada in bond in any vessel under the burden of 200 tons gross registered tonnage.”

So that was the rule that was in force during the whole of this period?—A. Yes, sir.

EXHIBIT S: Circular of September 19th, 1923.

30 Q. So that according to the Order in Council in boats of that size you could not ship in bond?—A. No, sir.

Q. And as far as you know none was shipped in bond?—A. No, sir.

Q. Then something was asked of Mr. Hennessey, I think, or of you, with regard to these bottles, do you call them green bottles, these rice beer bottles?—A. The rice beer bottle is what is known by the Dominion Glass Company and ourselves, as a shoulder neck, emerald green, export lager pint bottle.

Q. That is this bottle, Exhibit O?—A. Yes, sir. (Shoulder neck shown on exhibit)

Q. Are they made exclusively for you that shape or color?—A. Mr. Burns does the buying of the bottles—

40 MR. ROWELL: Then if this witness does not know of his own knowledge, I submit he cannot give the evidence.

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WITNESS: I have correspondence, my lord, that verifies my statement.

MR. ROWELL: Then the correspondence should be produced.

MR. TILLEY: Is this the letter you refer to? (Letter of March 9th).—A. Yes, sir.

Q. From Dominion Glass to Mr. Springstein—he is one of your solicitors, I believe?—A. Yes, sir.

MR. ROWELL: I submit that cannot have any bearing.

MR. TILLEY: My friend asked for the letter. Do you want me to bring the Dominion Glass to prove their letter?

MR. ROWELL: I want my friend to prove his case.

HIS LORDSHIP: This witness can always say that he did not see any other but 10 these bottles used.

MR. TILLEY: I am obliged to your Lordship.

Q. Did you ever see any others using these bottles?—A. Never saw anyone else using that bottle.

HIS LORDSHIP: No, that is not what you are asked. Do you know whether Carling ever used any other bottle than this exhibit to bottle their rice beer?—A. Never, sir.

MR. TILLEY: Then something was said about bungs used in the kegs. Did you have anything to do with that?—A. I did, sir.

Q. What was your connection with it?—A. I designated the number that was 20 to go on the bung when it was embossed.

Q. Why did you have to designate it?—A. There was nothing definitely determined, I could pick on any number I chose. I made a record of it.

Q. Your record was, I gather, to preserve a number on the bung that would prove something. What?—A. Identify our beer.

Q. So that whenever there was a brew or bottling—A. No, what we call a racking. When they put beer in the racks they call it racking, and each racking for export was identified by a number embossed on the bungs.

Q. If you shipped out a quantity with a number on the bung and a keg came back and you used it for another racking would you put a new number on?—A. You 30 mean use the bung?

Q. Yes.—A. The bung was never used more than once.

Q. A bung was always supplied fresh for each racking?—A. Yes sir. I might state that those particular bungs that are in as an exhibit were bungs that I personally took from kegs brought back from the States.

Q. You mean that they were shipped back as you understood, from the States, you did not bring them back with you?—A. No.

Q. Well you must be more careful, we are getting more technical as we go along. Now that is Exhibit N, "A" and "B"?—A. Yes.

Q. You say you took them out of used barrels that had been shipped back and 40 returned to you?—A. Yes sir.

Q. I notice that many of the B.13s that are certified, possibly all of them for all I know, are certified as of 1928, that is the date of the certificate is 1928?—A. Yes.

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Q. What was the occasion of your asking for certified copies at that time?—
A. Thinking that there might possibly be some B.13s that we have not received back, knowing that there was a certain amount of laxity in the manner in which they had come back spasmodically, and from the way we had taken care of them after they did come back.

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Q. That would be when we were approaching the trial which was stopped last 10 spring, about a year ago now?—A. Yes sir.

Q. So that in preparation for that trial, or your investigation connected with the trial you called for certified copies of B-13s from the ports. Is that what you mean—A. Yes.

HIS LORDSHIP: Did the Commission extend its investigation into 1928?

MR. TILLEY: No, but for this trial a year ago.

HIS LORDSHIP: The investigation began in January, 1927. At any rate it was not required for the investigation.

MR. ROWELL: It finished in the summer of 1927.

MR. TILLEY: So you were arranging with your solicitors I suppose about pre-20 paration for the trial, and you just called for certified copies to see what were at the ports?—A. Yes sir.

Q. Did you follow that up to make it complete, or was it just partial?—Did you get from some ports?—A. We did not get them from all ports.

Q. You just got some, and that is how it is you have them dated 1928?—A. Yes.

Q. At that time had you seen the Government B.13s at Ottawa?—A. No sir, I had not seen any.

Q. Did you know they had them at Ottawa at that time?—A. No sir.

Q. So that later on in the course of the investigation the B.13s were sent to you from Ottawa?—A. Yes sir.

30 Q. And your auditors have had opportunity of looking at those?—A. Yes sir.

HIS LORDSHIP: What do you mean by your auditors?

MR. TILLEY: Edwards, Morgan & Company, Auditors for the Carlings.

Q. Mr. Rowell asked you about your Profit and Loss statements. I do not know if anything turns on that in this case, but if you have any short statement to make about it?—A. I do not know of any.

Q. Have you found cases where your bottle labels have been imitated?—A. I believe there have been.

Q. I have a note here of a book of labels.—A. I have that book of labels here. I do not know whether it was put in as an exhibit or not.

40 HIS LORDSHIP: Has that come up before?

MR. ROWELL: No, my lord.

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MR. TILLEY: It is just a book of labels.—A. Showing the difference between our export labels and our 4·4 labels. That is a label used for export.

Q. The first page. Each page is a label?—A. Each page is complete. This is quarts, that is pints.

Q. That label is for what?—A. Red Cap ale.

Q. Where is that sold?—A. In the United States.

Q. What is the top?—A. That is a tinfoil that goes on the neck of the bottle. This is the export ale. That is the Canada Club lager. This is the Black Label, that is the pint, and that a quart. This is the 4·4 ale.

Q. It is headed "The Old Name the Old Fame, Carling's Amber Ale." 10

HIS LORDSHIP: Is 4·4 on it?—A. Yes sir, it says, Contains not over 4·40 per cent proof spirit.

MR. TILLEY: That is on the end of the barrel, that is shown on the label.—A. Yes. This the Canada Club 4·4, it also contains the same thing, says "Not over 4·40 per cent proof spirit".

Q. So that the labels show whether it is for export sometimes?—A. It shows whether it is for export.

Q. Or whether it is of the strength that is sold in the Province?—A. Yes sir.

EXHIBIT T: Book of labels.

Q. Now I think there is only one other thing I want to ask, that is any state-20 ment you want to make in regard to any special account my friend asked about. I wish you would explain to His Lordship what those different accounts are.—A. Would it be better for me to refer to the books?

Q. Yes, bring the books and explain what the accounts include.

HIS LORDSHIP: There is one I would like to have some evidence on, that is the Windsor expense account.—A. Export insurance account is the first one. It is in the General Ledger under Liabilities, numbered 8/9. There are various credits and debits in that account. I have made some notes of these, would it be proper for me to refer to them?

Q. Yes. I do not want to go over everything that has been gone over.—30
A. Well this point is chiefly dealing with the amounts that have been added back, as stated, by the Crown auditors—

Q. By Mr. Nash?—A. Yes, added back I believe they call it, to sales.

Q. They added certain amounts back to sales and say the Sales Tax should be computed on the higher amount?—A. Yes sir, without first obtaining any information or explanation concerning them.

MR. ROWELL: This witness cannot speak as to that, my lord.

MR. TILLEY: Well, if you will wait.

WITNESS: Take first the export insurance account in that they have added back an amount totalling \$58,560.32. My connection with that account was when 40 I came to close my books at the end of the year, October 30th, 1925. I did not understand the account and I went to Mr. Burns for explanation.

MR. ROWELL: I submit the witness cannot give Mr. Burns' explanation of that account. Mr. Burns is here.

MR. TILLEY: What did you find in the account?—A. I found a credit balance, \$58,562, which I credited to Profit and Loss account.

Q. Why, what did it represent?—A. It represented moneys received to offset export charges—

MR. ROWELL: If the witness is speaking from entries in the book well and good, and I ask that he turn to them. But if he is speaking from something Mr. Burns told him I object.

10 HIS LORDSHIP: You understand? You can speak to what you know and what you have been acting upon.—A. My lord, you state that I can speak from what I have been acting upon—

HIS LORDSHIP: How did you treat that \$58,000?—A. I treated that as advances *re* export expenses.

MR. TILLEY: Advances by whom?—A. By purchasers in the United States.

Q. Along the border or inland?—A. Inland.

MR. ROWELL: I submit this witness is speaking of something that occurred prior to the time he came, as far as the account is concerned. The account accumulated in 1924, and he says his first connection with it was when he made this final
20 entry. The witness might tell your Lordship when this account ends, the period it covers.

HIS LORDSHIP: I have admitted his evidence as to how he treated that account in his books. If he can say where it came from—

MR. ROWELL: He started to, that was my objection.

HIS LORDSHIP: I want to know how you treated that account.—A. I closed it into Profit and Loss account.

MR. TILLEY: Now I want to know what justification you had for doing that.

HIS LORDSHIP: He can give his reasons why he did so.

MR. ROWELL: So long as it is confined to a bookkeeping reason, not information
30 he got from Mr. Burns.

MR. TILLEY: Mr. Nash has built up a statement picking these figures wherever he liked to get them apparently. Now my friend says we cannot criticise that from the standpoint of our own accountant.

HIS LORDSHIP: You can criticise it as much as you like, but the witness cannot give hearsay evidence.

MR. ROWELL: That is the point. My learned friend has the man here who can give the evidence.

MR. TILLEY: Will you explain why?—A. I closed it into Profit and Loss because
40 given to me by Mr. Burns.

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Q. That is all you can say about it then?—A. If they will not let me tell why.

Q. Is there anything in the items themselves that indicate any reason for that?—

A. Any reason for what?

Q. That you should put that into Profit and Loss?—A. No. When I looked at the account at first it meant nothing whatsoever to me. My actions were governed entirely upon explanations and instructions from Mr. Burns.

HIS LORDSHIP: You treated it as a credit in any event?—A. Yes, my lord.

MR. TILLEY: Now, take the Special Loan Account.—A. That, sir, is really an account that should come in prior to export insurance. The two accounts are practically identical, and one carries on really from where the other left off. 10

Q. So that is just the forerunner of export insurance account?—A. Yes, sir.

Q. Then is there anything in these books to justify Mr. Nash in charging that up, as he says, charging it back to sales?—A. I would not charge it back to sales without knowing what I was doing about it first. I would want detailed explanation, as I asked for before I closed it into my Profit and Loss account.

HIS LORDSHIP: What does it consist of?—A. Will you let me tell you—

MR. ROWELL: What the books show.—A. It shows different credits, but I cannot explain it unless you let me give you my instructions and information given me before I made my entry or dealt with the account. If you will let me do that it will be perfectly clear. 20

HIS LORDSHIP: Under instruction and information you made your entry because this, that, and so on. You can tell me that, without repeating the words that have been said to you by anybody.

MR. ROWELL: My lord, I submit he cannot give that instruction and information. They must call the witness to show it.

HIS LORDSHIP: I do not want the verbatim information, but an outline to explain his books. This account is called the Special Loan Account. He is the book-keeper, what does it mean?

MR. ROWELL: But he did not enter the Special Loan Account. All the entries in that account were made before this witness became the accountant of the company. 30

HIS LORDSHIP: Were these entries made before you came in charge as accountant?—A. The detailed items, my lord, were.

HIS LORDSHIP: Then why were you so reluctant to speak about any entry made before you before, and now—

MR. TILLEY: Because on certain instructions he made certain entries. Transfers to Profit and Loss.

HIS LORDSHIP: Did you make any entries in that?

WITNESS: Yes, my lord, I took the balance.

HIS LORDSHIP: Then he cannot speak about the nature of the Special Loan Account. 40

MR. TILLEY: Not the detailed items.

MR. ROWELL: And if he attempted to give it your Lordship sees we are deprived of the right of cross-examining the witness who may have told him that. We want the witness in the box to cross-examine as to what those items relate to, if there is anything in that.

HIS LORDSHIP: All you did with that account was to take the result of it and put it in your Profit and Loss?—A. I not only took that account but I also took Export Expenses and placed them against those credits. Export expenses, which was a debit account, I placed against those items.

Q. Before you struck your figure for your Profit and Loss?—A. Yes, my lord.

10 HIS LORDSHIP: There is no objection to that.

MR. ROWELL: I do not object to that, I am not objecting to his telling what he did.

WITNESS: For instance, this Export Insurance Account, \$58,560.32, the Special Loan Account was \$12,405, that went to the credit side.

HIS LORDSHIP: Does not that mean that while the invoice from London would show \$1.80, when it was actually sold it would be \$4, or as the case may be, and that would be the difference?

MR. ROWELL: More came in. One of the witnesses, I think Stuart, told us that some of these items at least represented the difference between the invoice price 20 and the amount realized.

MR. TILLEY: In some cases the expense of exporting had to be added. That is not the price of the goods. Some of these people, not having facilities for getting it across the river, had to have expense incurred for them.

MR. ROWELL: My friend is giving evidence now.

WITNESS: Against those two items I charged export charges, that is an account in the General Ledger under Selling, marked 3/7, and represents \$35,000. It represents \$10,200 up to November 1st, 1924, and from there to June 30th, 1925, it represents a further \$35,000.

HIS LORDSHIP: What would that cover?—A. What really should have been done 30 was, these two charges, Special Loan Account and Export Insurance Account, should have been placed to the credit of this Export Charges Account.

MR. TILLEY: That is to say, they were moneys that came in to cover the export charges.—A. Yes.

HIS LORDSHIP: How could the charges be so high, what items would they cover?

WITNESS: My lord, if you understood more distinctly the practice used in getting this beer across the river you would readily understand the size of the charges.

Q. That is what it means?—A. Yes, my lord.

Q. For instance, you have \$10,200, how is that made up?—A. That is made up of various cheques.

40 Q. Have you got the items?—A. Yes, my lord.

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Q. In your book there?—A. Yes.

Q. Tell us what it is.—A. It is \$2,000, \$1,000—

HIS LORDSHIP: But I do not want the figures, I want what it is for.

MR. ROWELL: Who was the cheque issued to?

HIS LORDSHIP: What was it for?—A. It was for advances for export charges, money given to Mr. Low.

MR. TILLEY: To Harry Low?—A. Yes.

HIS LORDSHIP: Which he is supposed to have expended?—A. Which he has expended.

Q. What did he pay with this \$2,000?—A. He paid the charges—

10

Q. What charges?—A. To get this beer across the river.

MR. ROWELL: That is before this witness's time, how can he speak as to that?

MR. TILLEY: But that is what the account is for.

MR. ROWELL: No, the account is Export Charges.

MR. TILLEY: Surely we know what export charges mean.

Q. Then these items you say in Special Loan Account and Export Insurance Account should go to offset those charges?—A. Yes sir.

HIS LORDSHIP: You think the exporter should foot those bills?—A. Under ordinary conditions, sir, he does, but these—

Q. I thought you got an order from Savard, for instance, and he would say, 20 Send that to So and So.—A. This is prior to Savard's time.

MR. TILLEY: That is the point. I just asked you and you did not answer I think. Those customers, where were they situated?—A. Inland from the border.

HIS LORDSHIP: On the Canadian side?—A. No.

MR. TILLEY: Inland in the United States?—A. Yes.

HIS LORDSHIP: The one who would give the order would be in the United States?—A. Yes.

Q. And they would say, Send that to a Canadian port, care of So and So?

MR. TILLEY: No, he said paying the expense of getting it across the river.

MR. ROWELL: There is absolutely no evidence to that effect. This witness 30 cannot speak of something that happened a year before he got there.

HIS LORDSHIP: I want him to explain his book, that is all.

Q. When you told me you paid \$2,000 I asked, what does it represent, what services, what duty.

WITNESS: The details of the services, my lord, would have to be explained by Mr. Harry Low.

MR. TILLEY: That is, he was at the border, and he got the cheques, and he expended the money, is that what you mean?—A. Yes sir.

HIS LORDSHIP: There is one thing I want to understand. You named two amounts, \$10,200, and \$35,000. Is that in the period in which you charged the 40 \$58,560 and \$12,400?—A. Yes, my lord.

Q. Well he pays more than the value of the goods.—A. No, my lord.

Q. Yes. Then there would be no profit left. Here is \$45,000 as against about \$60,000.—A. No, my lord. (Showing statement).

MR. TILLEY: What exhibit is that?—A. I think it is page 4 of Exhibit No. 2.

Q. The revised Statement of Claim?—A. Yes.

Q. Now identify these items.—A. I do not know whether it is page 4, it is an extract taken from that prepared by Mr. Troop. I do not believe it has been filed.

MR. TILLEY: It is a statement to be filed, I understand.

HIS LORDSHIP: Is that prepared by the Crown?—A. That statement was prepared by the Crown.

MR. ROWELL: When Mr. Troop was in the box he was asked to prepare a detailed statement of the amounts which had been added back and appear in the Crown's claim. It was to be put in as Exhibit No. 32. Mr. Troop has prepared it, I intended putting it in before the Crown's case is closed. Meantime a copy has been furnished to the defendant. It can go in as Exhibit 32 now.

EXHIBIT No. 32: Statement of amounts to be added back to sales.

MR. TILLEY: It may turn out to be better for me to leave this for whatever explanation is to be made about it.

Q. But you want to point out certain things, do you?—A. Yes. This Export Fund Account.

Q. You are referring to Exhibit 32, and you want to refer to certain items in it?—A. The amount of \$80,209.94 in Export Fund Account.

Q. That is column 3?—A. Yes.

Q. That is made up of what?—A. That is made up from certain items picked from this Export Fund Account. First we have an item of \$2,384.40.

Q. Do you know how they break it up?—A. Yes, I do.

Q. From what they have told you?—A. I asked for an analysis.

Q. I think we better leave that and let Mr. Troop put it in first. Have you got the analysis they gave you?—A. Yes sir.

Q. Well, go on then.—A. The first item they take is \$2,384.40, that is marked LaSalle Account. It is a balance taken from one of the C. B. Grandi accounts in the Accounts Receivable Ledger and posted to the credit of that account. They did not go on to analyze the account further and find where that had been taken out of that account again.

Q. It was taken out of the account, was it?—A. Yes sir.

Q. Where?—A. In October, 1925.

The next amount is \$589, another amount at the credit of one of C. B. Grandi's accounts in the Accounts Receivable Ledger. That has also been taken out back in 1925. It was a misinterpretation, and improper accounting ever going into that.

Q. Those are two items included in that \$80,000?—A. Yes sir.

Q. Anything else?—A. There is another item of \$35,494.10 which, through some misunderstanding, has also been posted to the credit of that account, and

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represents a personal cheque received from Mr. Burns and credited to the Carling Export Brewing & Malting Company in their books. But through improper book-keeping that has also been transferred into the Export Funds Account. It should never be there. I have the deposit slip from the Dominion Bank, London, showing where it was credited to the Carling E. B. & M. Co.

Q. What does the deposit slip show?—A. C. Burns, \$35,494.10, credited to Carling E. B. & M. Co. on June 2nd, 1925.

Q. You are saying that should not be?—A. No sir, that is Mr. Burns's own personal cheque and should never be in that account at all.

MR. ROWELL: How can the witness say that? He can produce this note and 10 it speaks for itself.

MR. TILLEY: No, it says "C. Burns, Personal" right on the books of the company.

Q. That is the way it is entered up at the time?—A. Yes sir.

Q. You say it has no relation to that account?—A. No sir.

Q. Anything else?—A. The next amount is \$10,000, which was also the same style of item. My deposit slip covering that is dated April 30th, 1925, and bears the words "C. Burns" for \$10,000.

The next item is \$30,000, and is made up of two items, \$20,000, which should really be \$20,316.25, and \$10,000. 20

HIS LORDSHIP: Well it would make more than \$30,000.—A. Yes, but the entry taken from the Cash Book is only posted part into this account and part into another.

MR. TILLEY: But the total is— A. The total they have added is \$20,000, the cheque was really \$20,316.25.

Q. What do you say about that?—A. The \$20,316.25 is a personal cheque of Mr. Burns deposited in the Carling E. B. & M. Company's bank account on July 11th, 1925, and is improperly credited to that account.

HIS LORDSHIP: The \$10,000?—A. The \$10,000 is a cheque of Burns and Low and charged in the Dominion Bank to personal funds, controlled by a joint account 30 of theirs, and should not appear in that account.

The next item in that total of \$80,000 is \$1,742.44. That is marked Charles Burns Personal Account. That was charged to Mr. Burns as he was supposed to have received remittances or payment for an account in our Accounts Receivable Ledger. We figured that he had received it and used it. He later stated that he did not—

MR. ROWELL: This witness cannot say what Mr. Burns stated.

HIS LORDSHIP: What did you do with it finally?—A. I reversed it again, took it out of Mr. Burns's Personal Account.

Q. Reversed it and treated it as a personal account?—A. No. It was charged 40 first to Mr. Burns personally.

MR. TILLEY: You charged an amount against Mr. Burns and afterwards reversed it because of some information you received. It was reversed in the books?—

A. Yes sir, and it is now charged against Export Insurance.

Q. So that it is in that account and it is not paid by Burns, is that right?—

A. Yes sir.

EXHIBIT U: Four Deposit slips.

WITNESS: There are three other items in this. There is Bermuda Export Company, \$5,838.90, also F. Savard Commission Account \$67,496.01. I believe I have given an explanation in direct evidence of those before.

10 Q. Well, to be sure, what is the explanation?—A. It is amounts taken from those two accounts in which the Carling E. B. & M. had no interest whatsoever, it was simply funds held in trust for these parties, that Mr. Nash's auditors have also added back to sales.

HIS LORDSHIP: That represented the case where Savard would get a higher price and the purchaser would pay the whole amount, and Savard be credited?—

A. Yes, my lord.

Re-examined by Mr. Rowell.

Q. All these items to which you have referred before you referred to the Bermuda Export Account are items that appear in the Export Funds Account?—A. In the
20 new General Ledger—

Q. In the original entry in the general ledger, and appeared in that form when you became accountant for the company?—A. No, sir.

Q. How did they appear then in the Export Funds Account?—A. The first item, Export Insurance Account—

Q. I am speaking now of the items which you said Mr. Nash had improperly included in this statement. You took them up cheque by cheque. I want to deal with those.

HIS LORDSHIP: You mean what goes to make the \$80,000?

MR. ROWELL: Yes. You said you took exception to certain items appearing in
30 this account. I have forgotten the first you mentioned. It was \$2,384.40.—A. No, sir. These items were all made after my time.

Q. All these items were made after your time?—A. Yes, sir.

Q. They were carried to the Export Funds Account?—A. Yes, sir.

Q. And every item which you have criticized is an item that appears to the credit of the Export Funds Account?—A. That showed on the credit side of the Export Funds Account, yes, sir.

Q. Then do you say they should not have been carried to the Export Funds Account?—A. I do, sir.

Q. Then what you are now complaining of is the book-keeping of the Carling
40 Company?—A. Yes, sir.

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Q. What is the date of the transactions?—A. The account is headed up September 30th, 1925.

Q. Did you carry them to the credit of the Export Funds Account yourself?—
A. No, sir.

Q. Who carried them to the credit of the Export Funds Account?—A. Mr. Goodman.

Q. The Auditor of the Company?—A. Yes, sir.

Q. They were carried to the credit of that account while you were there?—
A. Yes, sir.

Q. You told us I think that on certain occasions you got the cash from Mr. 10 Burns for the proceeds of certain sales?—A. Yes, sir.

Q. How do you know that these items, these cheques do not represent cash collected by Mr. Burns for sales, deposited to his own account and then checked in to the Company and credited to this account?—A. Will you state your question again?

Q. How do you know that these cheques do not represent moneys collected by Mr. Burns, deposited to certain accounts of his own and then transferred to the company?—A. I want to get your question distinctly in my mind before I answer. I want to give you a proper answer, yet I want to know what you are referring to.

HIS LORDSHIP: It is very clear.

20

MR. ROWELL: It is clear. Just stop and think.

HIS LORDSHIP: Did this amount ever come back to the Carling Company?—
A. These amounts are cheques received from Mr. Burns's personal account.

MR. ROWELL: And were received by the Carling Company from Mr. Burns. Now, what I ask you is: How do you know that these do not represent the proceeds of sales which Mr. Burns himself collected, deposited to his own account and then gave cheques to the Carling Company?—A. How can any one say that they were?

Q. Can anybody tell us the truth about it except Mr. Burns or the parties from whom he got the money?—A. I do not suppose any one knows anything about Mr. Burns's personal funds but himself.

30

Q. And as far as you know these cheques may be the proceeds of sales received by Mr. Burns and carried to his own credit and subsequently checked out by the company.

HIS LORDSHIP: But if they were checked out to the company there would be an entry made.

MR. ROWELL: There are entries. They are carried to this fund, they are entries credited to this fund.

HIS LORDSHIP: But he says it was reversed.

MR. ROWELL: It was reversed later.

HIS LORDSHIP: You mean the Carling Company would have had the benefit 40 of that money notwithstanding that it would not appear to its credit in the books?

MR. ROWELL: It does appear to the credit. I think we have had many cases, evidence that the amount received exceeded the invoice price. We also have evidence that Mr. Burns received cash himself and turned it over to the company. Here we have a case of Mr. Burns turning over cheques to the company. My question to the witness is: How does he know that those cheques do not represent cash received by Burns for goods, deposited to his own credit and checked out to the company?

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WITNESS: One reason that I would not attach or put the two together is that at the time these cheques were received from Mr. Burns our balance in the bank was 10 low, we were paying up a mortgage in favour of the Carling Malting Company, and at such times as those payments had to be made, if we were short in our bank account Mr. Burns would advance a personal cheque to build up our bank balance. Or if it came to the end of the month and we were short of funds at the bank—

Q. But it all comes back to Mr. Burns, as to what was the source, he is the man that can explain it?—A. Yes sir, he might have got it from the sale of butter and eggs as far as I know.

Q. That what are the other items? That deals with the \$80,000. The Bermuda Export, I think you explained that before.—A. I believe I did, sir.

Q. Then that represents a sum received, credited to that account in excess of 20 the invoice charges.—A. That represents funds received and held in trust for the Bermuda Export Company of Bermuda.

Q. Well it represents funds received in excess of the invoice price from the parties to whom the goods were shipped?—A. It represents remittances received.

Q. Does it represent remittances received in respect of the goods shipped?—A. It represents remittances received from certain parties.

Q. To whom goods had been shipped?—A. Yes sir.

Q. Then have you checked up that item 6, withdrawals from Windsor bank account?—A. Not having ever seen the Windsor bank account or bank book I had no way of checking it up, sir.

30 Q. You told us before you have no knowledge of the transactions that took place at Windsor?—A. No sir.

Q. Then you spoke of certain labels. Did you have any label for strong beer for sale in Ontario?—A. Just what do you mean?—Q. Exactly what I ask you. Did you have any label for strong beer for sale in Ontario prior to the coming into force of the present Liquor Control Act?—A. There were no sales of strong beer in Ontario during my period of accountancy covered by this claim; prior to that I do not know anything about.

Q. Do these labels cover the period during which the Carling Company has been in business?—A. I believe they do. Whether there are further labels or not I 40 cannot state.

Q. If strong beer was sold in Ontario, if lager was sold it would have one of these

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lager labels on it, would it?—A. I suppose if any kind of beer were sold it would be properly labelled.

Q. I say if it was strong beer sold in Ontario it would have one of these labels on it?—A. Yes sir.

Q. Which one, if it were lager?—A. As I say, I have no record of any strong beer having been sold in Ontario during my accounting period covered by this claim, so that I cannot point out what label it would have on.

Q. What labels had you for lager that was strong?—A. (Showing labels in book). That is ale, this is lager.

Q. The one called Canada Club is lager—A. Yes. And this is rice beer. 10

MR. TILLEY: He says the one labelled Export ale would be ale, and the Canada Club would be lager, and the one with the black label would be rice beer. That is pages 2, 3 and 4.

MR. ROWELL: Page 2 would be the ale, 3 the lager, Canada Club lager, and 4 would be the rice beer?—A. Yes.

Q. Then you spoke about certain B.13s, Exhibit R, R-1 and R-2. Exhibit R would be the B.13 made out at London for a shipment of 1,200 cases?—A. Yes sir.

Q. And dated November 26th, 1925?—A. Yes sir.

Q. And received apparently at the C.P.R. freight sheds, Windsor, on November 30th?—A. What date it was received I do not know, but the Customs Excise, Canada, 20 C.P.R., stamp, is dated November 30th, 1925.

Q. Then the other two entries, R-1 and R-2, are entries made out at Windsor?—A. Yes sir.

Q. They are signed by J. A. Kennedy?—A. Yes sir.

Q. They are dated November 21st, 1925?—A. Yes.

Q. And they bear the Customs Excise Stamp, the same day, November 21st, 1925?—A. Yes sir.

Q. Exported at Windsor?—A. Customs Excise, Canada, C.P.R. freight shed.

Q. With the "Exported at Windsor" on it?—A. Yes.

Q. And an initial below?—A. There are some letters there, I do not know what 30 they are.

Q. You do not know what they signify?—A. No.

Q. This would be in respect to part of a shipment which had been sent down at an earlier date, accompanied by a B.13 sent from London?—A. I presume so.

Q. Perhaps you could turn up for us the invoice and bill of lading that relates to that particular shipment.—A. Right away?

MR. TILLEY: That would take some time. That does not arise out of my cross-examination.

MR. ROWELL: It does, my friend put them in—

MR. TILLEY: If my friend takes that position, I object to hunting up more 40

B.13s at this stage of the witness's examination. All I put the B.13s in for was to show the B.13s taken from the Government files with that stamp on. Just the stamp.

HIS LORDSHIP: If you were in Quebec the objection would be well taken, but not in this Province. The door is open.

MR. ROWELL: You can look it up for us later. I will not take time now.

HIS LORDSHIP: I suppose your accountants have a list of the different invoices which are not covered by B.13s.

MR. ROWELL: No. We will give your Lordship the totals of all the Government B.13s as compared with the total recorded sales.

10 HIS LORDSHIP: We had from this witness last week the statement, I do not find any B.13 for this invoice. Are there many cases like that?

MR. ROWELL: There is a shortage in totals, we will show that, and there is a shortage in certain particular cases. But the Crown has not checked up all the invoices, we have not had them. You cannot check up against the B.13s unless you have the invoices and bills of lading, and unless the bill of lading shows the number of the car and the car number is carried to the B.13. There is no means of identifying a B.13 with a particular car number. So the Government auditors have found it impossible to check the B.13s against particular transactions except in cases where the car numbers are given on the bill of lading and on the B.13. We will give your
20 Lordship the totals. My learned friend has had access to all ours—

MR. TILLEY: I would not like to say we have had. We are getting them, you sent in a new bundle of B.13s to-day.

HIS LORDSHIP: I thought this witness said, We get the B.13s in different ways, some came in whiskey boxes. Then when this investigation came on I procured from the Department copies of the B.13s.

MR. TILLEY: We stopped that because we got the Government B.13s, but they are coming to us as we go along.

HIS LORDSHIP: You see the result, if we have an invoice that you sold beer on the other side and you have not got the B.13s you are liable.

30 MR. TILLEY: Well that will be subject to argument, as to whether at this late date we should be expected to have B.13s for all.

MR. ROWELL: Now, Mr. Morrison, you gave certain information as to the quantity of ale and beer produced, taken from the Mash Book, was it?—A. Yes sir, kept by the Customs officer.

Q. Well it is the sworn returns by your company checked by, not the Customs, the Excise officer?—A. Yes sir.

Q. You have spoken of officers being in your plant, those are the Excise officers?—
A. You mean the officer in charge of the plant.

Q. The Government officer is an Excise officer, you know that don't you?—
40 A. Yes sir.

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Q. You referred to him as being a Customs officer?—A. Well it all comes under the same heading now I believe.

Q. It is all under the same Minister, but two branches. The officers were distinct always. Did you prepare a statement extracted from the Mash Book showing the amount of ale and lager?—A. Just up to a certain period.

Q. Have you got that statement?—A. It is not completed. I told Mr. Tilley I would complete it and hand it in.

Q. Have you got it up to April 30th, 1927?—A. No sir.

MR. TILLEY: He told me he would have it to-morrow morning.

MR. ROWELL: Then there is no use pursuing that. Did you take out the number 10 of gallons of rice beer?—A. That is shown separately.

Q. Have you taken that out from the mash book?—A. Yes sir.

Q. And that will appear on your statement too?—A. Yes sir. The Government auditors have had the books, I had to borrow them from them in order to compile my statement.

MR. TILLEY: Then we will let them put in theirs first.

MR. ROWELL: Have you any entries in your books in reference to the import of kegs?—A. I believe we took an example this morning of how our kegs returned were handled, and I stated then that I had no record of where I had paid any duty on them, that the duty was paid by Mr. Low.

20

No. 30

David Koven
Examination
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DAVID KOVEN, sworn. Examined by Mr. Rowell:

WITNESS: Your Worship, I want to ask the protection of the Court.

HIS LORDSHIP: The Court will give you such protection as it can.

WITNESS: Because these dealings have been so long ago that my memory might be faint.

MR. ROWELL: Where do you reside?—A. Sandwich.

Q. How long have you been living there?—A. About four years.

Q. Where did you reside prior to that?—A. Kingsville.

Q. How long did you live in Kingsville?—A. About eight or nine months.

Q. Where were you living in 1924?—A. Kingsville.

30

Q. From April to the end of the season?—A. Yes sir.

Q. Then in 1925 you moved to Sandwich?—A. Yes sir.

Q. And you have been living there ever since?—A. Yes.

Q. What business were you doing during the years 1924 and 1925?—A. I was in the produce and real estate business until the export business came along. I had a dock—or not a dock, a scow, at Kingsville, that I figured, according to what I had seen at the other docks, would be very good for export. Well, Low and Grandi came down there and seen me one day and wanted me to take care of some export business, which I said I would.

Q. Had you ever met Grandi before?—A. No, I hadn't.

Q. Did Low introduce him to you?—A. Yes sir.

Q. What was the arrangement?—A. Well the arrangement was that they would put beer down there on the railway siding, and they claimed the legal way was to run it over the scow, to give me power of attorney and give me ten cents a case for looking after their business, to see it was properly exported.

Q. Then you unloaded the beer from the car?—A. Yes sir.

Q. And put it on your scow?—A. Yes.

Q. Where was the scow anchored?—A. She was tied to the Government dock 10 at Kingsville.

Q. How were the goods dealt with after you got them on the scow?—A. Well Mr. Grandi would send boats over there, different boats holding three or four hundred, some as high as one thousand, some would hold one hundred, with an order that he wanted so many cases, and if his pullers would bring the money along with them I was instructed to collect the money, take out 10 cents a case, call up Mr. Low and give it to him.

Q. Did that arrangement prevail throughout the year 1924?—A. It did, at Kingsville.

Q. Well, we are dealing with Kingsville. I notice in certain invoices and bills 20 of lading the goods are billed C. B. Grandi, care of D. Koven, Kingsville.—A. That is right.

Q. And you would take delivery from the railway company of the goods when they came to Kingsville?—A. Well I was instructed when the car came in, Mr. Low would come down and tell me, To-morrow or next day I will have a car or two down there, and if they come in, just as soon as Grandi send some boats to start and unload them.

Q. You took delivery of the goods from the car and put them on the scow?—A. No, not until such time as the boats came in with their orders.

Q. Did you have the car on the siding?—A. The car was shipped on the siding.

30 Q. And did the car stay there until—A. It stayed there until all the beer was unloaded. If the boats would not take it all I would put the balance on the scow.

Q. You used the scow as a kind of —?—A. Warehouse.

Q. So that the goods would be unloaded from the car and if there were not boats there they were put on the scow as a kind of warehouse?—A. Yes sir.

Q. Then your instructions were, if the runner came over you gave him the beer he paid for, is that it, whatever number of cases he paid for?—A. Not always. If he did not have enough money he might say, Grandi told me to get 800. I would say, Have you got the money for 800? No, I have only got it for 500. I would say, I can't load you, I will have to call up Mr. Low. I got in touch with Mr. Low, and he 40 would tell me either Go ahead and load him, or Wait until I come down there. So I would either load him with the 500 or with the 800.

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Q. Then how long did this continue? Did it continue in this form all summer?—
A. Not exactly. There was a time, I think along in June or July, that they formed some kind of little company between the brewers, it seems as though the money was paid in to them.

Q. Was that the one for which Mr. FitzGerald was trustee?—A. Yes, that is the time.

Q. And the money was paid to Mr. FitzGerald?—A. If Mr. FitzGerald had a man there he would pay to him, and if not they would give it to me and I paid it to Mr. FitzGerald.

Q. So that he either had a representative at the dock to receive the money 10 before the goods left?—A. Yes.

Q. Or you received the money and turned it over to FitzGerald?—A. Yes.

Q. Then according to Mr. FitzGerald's evidence, he resigned before the end of the season. Did you continue operating there after FitzGerald had resigned?—A. Yes, I did.

Q. After FitzGerald had resigned did you continue to receive the money, and when you got it deliver the goods the money paid for?—A. I did when they had money to pay for it. There was a lot of times they did not have it, and I had to get hold of Mr. Low, or—

Q. You would not let the goods go without the money?—A. That was my 20 instructions, unless they told me to let them go, then the next bunch that came along I would take my commission out of.

Q. What price did you collect there at the dock?—A. The prices ran differently, \$2.25, \$2.50—

HIS LORDSHIP: For what?—A. A case, 24 pints of beer. Later it was \$2.50, then I understand Mr. FitzGerald had instructions to collect \$4 a case.

MR. ROWELL: While FitzGerald was in charge \$4 a case was paid?—A. That was the ruling figure. But it did not last very well.

Q. Every runner had to pay that amount before he got his load?—A. Someone had to pay it. 30

Q. Well, you got it from the man who came for the goods?—A. At that time I think I only collected once or twice, but when I did it was the \$4. That is, FitzGerald's man for instance used to quit about four o'clock, and they would load up to six o'clock, and if he was not there he said it was all right for me to take the money and give it to him.

Q. But during all that period either FitzGerald's man or you collected \$4 a case from the runner before he got the goods?—A. It was only a short time, I think, three or four weeks.

Q. Well, according to the evidence, it was two or three months. May 15th to September 11th, I think. 40

MR. TILLEY: This witness is talking about when they actually paid \$4.

WITNESS: It did not last very well, it seemed to me like four or five weeks.

MR. ROWELL: Did you keep any books to show the records of the transactions?

—A. No, I did not, just put it down on little slips, and whenever Mr. Low was satisfied, or Grandi, they would either take them with them or destroy them.

Q. How often did you see Grandi during that period?—A. Oh, he was over during that summer, I imagine, a dozen times.

Q. Who was he acting for, or who was Low acting for?—A. Low was acting for himself, from what I understand, and Grandi was acting for himself.

Q. Then after that did you carry on any further business at Kingsville?—A. No, I didn't. The next year they closed the dock.

Q. Why did they close the dock at Kingsville?—A. It seems as though the people there did not want the export, there was a lot of people that claimed to be good church people and did not want the export there, and so we went to Leamington.

Q. It was not because goods were being short-circuited?—A. No, I don't think so, a sort of election coming on, I think.

Q. It did not seem to operate that way in other places.

MR. TILLEY: Are you giving the evidence?

WITNESS: I know I lost my salary next summer anyway, and I blamed it on that.

Q. Where did you operate the following season?—A. At Leamington. It is about 8 miles, I think, from Kingsville. There is no harbour there.

Q. How long did you operate from Leamington?—A. I did not do much. There was a few cars came there, on account of there being no harbour there. Savard, he started after Grandi, Grandi did not work in 1925, that is he did not ship anything to me, I don't think.

Q. Who took up the matter of arrangements with you for the year 1925?—A. Mr. Low and Savard.

Q. They both came to see you?—A. Yes, sir.

Q. And what was the arrangement for 1925?—A. The arrangement was the same, ten cents a case, only at Amherstburg, I was to get 15 cents.

30 Q. Did you have a warehouse at Amherstburg?—A. There was a man by the name of Hart, who died since, and he came to me and he says, seeing the way things were going he wanted to know if he couldn't make a few dollars, and I explained to him, and we cut the commission in two.

Q. Well you did have a warehouse to use at Amherstburg?—A. Yes. Well, he had a warehouse.

Q. And you used Hart's warehouse?—A. Used Hart's warehouse, between him and a man named Woods, I think he rented from Woods a while, then I bought a piece of property down there and built a little warehouse a year or two afterwards and rented it out myself.

40 Q. But I am dealing now with the period you were handling the Carling goods.—A. Yes, sir.

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Q. You told us the handling at Leamington was the same as at Kingsville?—
A. On the same order.

Q. And handled in the same way?—A. No, sir, it was sent down from the car on a truck, trucked on to the boat. There was no scow there, just a break-water, there is no harbour there.

Q. Sent down on the truck?—A. The railroad is just above the breakwater.

Q. Would the car remain on the siding— A. Until the goods were all unloaded.

Q. Whether it took one day or two?—A. Or a week.

Q. Or two weeks?—A. Well it never lasted that long. Weather conditions had something to do with it. 10

Q. Then at Amherstburg did you unload the cars into the warehouse?—A. At Amherstburg the railroad is quite a little way from the warehouse and they trucked it down there, put it in the warehouse, and whoever sent their boats for Grandi or Savard, they would load them according to instructions.

Q. Now take the operation at Amherstburg, was that operated the same way as at Kingsville, that is the runner brought over the money?—A. The runner brought over the money part of the time, not all the time.

Q. Take the times he brought the money over. He brought over the money and paid at the dock for the amount of goods he got?—A. No, he would leave the money with the dock man, the dock man would get hold of Windsor as a rule, ask 20 if it is all right to give him so many cases and the money was there. They would say Yes, or the man would get in touch with me and ask me about it.

Q. Well you got the money in some form before you delivered the goods?—
A. Not before I delivered the goods.

Q. Well before the goods were given by the dock man.—A. He would not get no goods from me without the money unless Mr. Low said so. That is not from me, from the Carling Brewing & Malting Company.

Q. Well from the dock where they were stored.—A. From the dock where they were stored, provided they had instructions from Grandi or Savard to get so many cases, and the money corresponded with the cases, they got them. 30

Q. They got the goods?—A. They got the goods.

Q. How long did the operations continue at Amherstburg?—A. I imagine it continued there about two years. Then I rented the dock to Mr. Low.

Q. Take the period during which you were using Hart's dock, Hart's and Wood's. Did it continue in the same way for the two years?—A. Well we did not do much in the winter-time, just in the summer. At that time it was not considered a winter dock.

Q. Well for the seasons, it continued for two seasons?—A. For two seasons.

Q. What year did that bring you down to?—A. About the latter part of 1925 I imagine. 40

Q. No, you were at the other place in 1924.—A. I was in Amherstburg in 1924 also.

Q. You operated both at Amherstburg and Kingsville in 1924?—A. Kingsville and Amherstburg in 1924, and Leamington and Amherstburg in 1925.

Q. Then you used the Hart dock at Amherstburg in 1924 and 1925?—A. Yes sir.

Q. Or at least Hart's warehouse I should have said.—A. Well he used it, I didn't. He done the exporting himself out of there.

Q. Then you built one, what dock?—A. I bought a piece of property there after Hart died, and put up a warehouse and rented it to Mr. Low.

10 Q. When did you put that warehouse up?—A. I think it was the early part of 1926.

Q. Did you have anything to do with the unloading of the goods in 1926?—A. Nothing more than collecting the rent.

Q. You had nothing to do with the runners in 1926?—A. No. I put a man there and I think Mr. Low paid him a salary during the time he was down there, that is the man that was working for me, he left me there because he knew Grandi and Savard or whoever it was, and his runners.

Q. And did the runners bring over the money in 1926 the same as in 1925 and 1924?—A. That I cannot say, I did not do any collecting in 1926.

20 Q. Did you have anything to do with the shipments from Pelee Island?—A. The beer was shipped to Kingsville, as there is no railroad down there, and then sent over on the steamer Pelee to Pelee Island. I forget what kind of clearances they used to get. A man named Rocheleau was there.

Q. It was unloaded at Pelee Island?—A. No. The beer was originally brought to Kingsville, and Rocheleau would either come over with his boat or it was sent on the Steamer Pelee, for export to points in Ohio.

Q. He would get the beer and take it to Pelee Island?—A. Yes.

Q. Pelee Island is in Ontario?—A. Yes, for export over there, then he would clear at Pelee with the Customs there.

30 Q. Well we are dealing with it step by step. As far as you were concerned he took it from Kingsville to Pelee Island?—A. Yes sir, for points in Ohio. I seen that it was to go for points in Ohio because I seen the papers were properly made out before the beer went over there.

Q. What papers?—A. The export and B.13s.

Q. When you got the papers from London you got an invoice and bill of lading and a B.13 covering the whole shipment did you?—A. Yes sir.

Q. Then did you make out new B.13s for each particular boatload?—A. I believe they did at that time.

Q. You believe you did?—A. I did not, the Customs man made them out.

40 Q. Did you sign them?—A. That I cannot say offhand. I might have at that, because I had a power of attorney for the brewery.

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HIS LORDSHIP: You received the bill of lading, invoice and B.13 for the whole shipment?—A. Yes.

Q. And the Customs officer would make out a new B.13?—A. No, he would make copies off the original, I think he sent the original back or held it there for record. I don't know so much about those B.13s because the Customs man would look after them himself.

MR. ROWELL: Did you have a B.13 made out, a new B.13, for each boatload?—A. Yes, a B.13 and clearance.

Q. And clearance made out for each boatload?—A. Yes, that is the way I think it was done. I am pretty sure it was. I know the proper papers were sent out with 10 each boatload.

Q. Where were the B.13s made out for the goods that went to Pelee Island?—A. I would not be sure whether there was B.13s went or not, but I know the Customs men used to give the captain some papers. I would ask him if everything was in order, he would say Yes. Then I understand he took these papers to the Customs man at Pelee Island—

Q. Were you there?

MR. TILLEY: My friend is asking him about the course of business. There is no use leaving a gap.

MR. ROWELL: I am asking what he knows. 20

WITNESS: There were certain papers made out—

HIS LORDSHIP: You say they were made by the Customs officer at—?—A. At Kingsville, to the Customs officer at Pelee Island, instructing him that beer was being exported from there instead of Kingsville.

MR. ROWELL: Have you got any of those papers?—A. I have not got any, this is all from my own memory.

Q. Did you go to Pelee Island yourself?—A. I have been there different times, I own a farm there.

Q. I mean in connection with the handling of this liquor?—A. No sir.

Q. You had nothing to do with handling it on Pelee Island?—A. No sir. 30

Q. As far as you were concerned you were through with it when it was loaded on the boat at Kingsville?—A. With the proper papers attached for the officer at Pelee Island.

Q. Then my information is that the B.13s for Kingsville from May 24th, 1924, to December, run \$4, \$3 and \$2.50.—A. I will tell you, there was times there that Grandi had a few special orders from some clubs he told me, and he said he was boosting the price on it. That is the time he came over different times. He would bring some man over from somewhere in Ohio, and the money was handed over to me, and I would say, You turn this over to the brewery. If it was \$3 it would be \$3, if it was \$2.50 it would be \$2.50. 40

Q. Did you have a pretty extensive bank account in connection with this liquor

business?—A. I don't know whether you would call it extensive or not, there was times I had a lot of money, entries.

Q. When you received the money did you deposit it to your own credit in Kingsville and then issue cheques?—A. No sir, I deposited it to a trust account.

HIS LORDSHIP: Where?—A. At Kingsville.

MR. ROWELL: What does this account refer to?—A. That is Windsor.

Q. Exhibit No. 59 is a Windsor account?—A. Yes sir. I would take the money from time to time if Mr. Low did not happen to come down there, if he was not in the office, sometimes I didn't have anything in—

10 HIS LORDSHIP: Do not let us mix up the one at Kingsville and Windsor.

MR. ROWELL: Did you have one at Kingsville?—A. I had a little trust account, and I would either give cheques or put it into this Windsor.

Q. Was the Windsor bank account the main bank account?—A. It was just about the main bank account at that time.

Q. And did the proceeds of the beer all get into this account either directly or through the trust account?—A. Oh no.

Q. It did not all get into that account?—A. Most of the money was paid over in cash.

Q. By you to who?—A. To Mr. Low, or if he did not show up say that evening, 20 or if he came around late, I would give him a cheque instead of the money.

Q. Then did Low collect the money from Grandi?—A. Well he was only down there the once with Grandi. The rest of the time when Grandi came over he used to come over in a speed boat.

Q. If Grandi was the consignee how did you come to give the money to Low?—A. I was instructed to pay the money over to the brewery, and Mr. Low was the man representing the brewery at that point.

Q. Grandi instructed you to pay the money over to Low?—A. Well the understanding was I was to get the money from the runner and turn it over to Mr. Low or whoever was in authority to collect for Carling's brewery.

30 Q. That was Grandi's instructions to you?—A. It was in the beginning, and I carried them out.

Q. Did you ever have any letter, any written instructions from Grandi?—A. Letter, no.

Q. No written instructions at any time?—A. No, sir.

Q. Then cheques that you issued on this account—

HIS LORDSHIP: It would be on the Kingsville account only?

MR. ROWELL: Did you give cheques to the Carling Company on both accounts or just the Kingsville account?

HIS LORDSHIP: These cheques were given to Low?

40 A. Not always. If I could not get hold of Mr. Low for two or three days they

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would call me up and say: How is Grandi doing? I have quite a bit of money in the bank. They would tell me to issue a cheque or draw a draft.

Q. The cheques you issued in respect of the money you received for the beer at the dock, were those cheques issued on the Kingsville account or on the Windsor account, or on both?—A. Well, they were mostly issued on the Kingsville account. I was in the produce business at the time, I was handling money for commission houses, and dabbling a little in real estate.

Q. And you cannot say what percentage would be issued from each?—A. No, I could not.

(Court adjourned at 4.30 p.m. Monday, 22nd April, 1929, to Tuesday, April 10 23rd, 1929, at 10.30 a.m.)

Tuesday, 23rd April, 1929, 10.30 a.m.

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D. KOVEN, Examination by Mr. Rowell (continued).

Q. You spoke yesterday of the shipments from Pelee Island. You said the man who handled those was—?—A. Fred Rocheleau.

• HIS LORDSHIP: I have the last note in my book—

MR. ROWELL: He said he had no letter or instructions.

WITNESS: I had instructions, but no letter.

MR. ROWELL: And I think he said cheques were issued on the smaller account to transfer from that to the Windsor account. 20

WITNESS: At times, but mostly Mr. Low picked it up himself, Harry Low.

Q. Who fixed the amount that you were to require the runner to pay before he could get delivery?—A. Mr. Low, from time to time.

HIS LORDSHIP: Did he ever get the invoice with the bill of lading?

MR. ROWELL: You got the invoice, bill of lading and B.13 that came down from London?—A. As to invoice, there was no price on the invoice, the price would be on the B.13.

HIS LORDSHIP: I thought the price would be on the invoice.

MR. ROWELL: It is on the invoices we have seen.

WITNESS: I think it is, I am not positive, but I remember the price always was 30 on the B.13.

Q. That would be the B.13 that came down from London?—A. Yes, sir.

Q. But the B.13 you issued when goods were delivered to the runner was at a different price, a higher price?—A. I would not say as to that. I understood the Customs officer took copies of the original B.13 the same way.

HIS LORDSHIP: How did you say it is so much a carton?—A. My instructions were from Mr. Low.

Q. Well, he was not always there.—A. He was there two or three days a week, and if he was not there, there was Savard or different people.

Q. Did you sell at the low price or the high price?—A. I never sold. 40

Q. You collected the money?—A. Yes.

Q. To collect the money you had to know the price?—A. Yes.

Q. Where did you get your price, was it from Mr. Low all the time, or did you get your price from either of those three documents you mentioned, the invoice, bill of lading or B.13?—A. From Mr. Low.

Q. All the time?—A. Yes, sir.

Q. You disregarded entirely the invoice?—A. Well, I had nothing to go by the invoice.

Q. Why?—A. Because I was not supposed to collect off the invoice.

10 Q. Why would you not collect on the invoice?—A. My instructions was to collect what Mr. Low told me to collect.

Q. And disregard whatever price might be on the invoice?—A. I never had no instructions from the invoice.

Q. Well, you had instructions to disregard the invoice?—A. No disregard. All I would do is take the invoice, put it in at my dock, and the bill of lading, and release the car, take the B.13 and give it to the Customs officer.

Q. And you would not sell anything until Low told you what price?—A. Well everything that I collected,—for instance they started in with \$2.25—

Q. Well do not— A. Well I am just saying from the beginning I collected
20 \$2.25.

Q. I am not asking what you collected, I am asking how you arrived at the price.—A. I never arrived at no price, I took Mr. Low.

MR. ROWELL: Well you told me on one occasion yesterday that Grandi had given you a price, I think you said \$4— A. \$3.

Q. There are certain B.13s made out at \$4?—A. Well if there was it must have been at \$4.

Q. You spoke about Grandi bringing someone over, some club man?—A. Yes sir.

Q. And you said, as I understood you, that he had said those were sold at \$4, he was getting a special price?—A. Mr. Low was there at the time.

30 HIS LORDSHIP: And that price also fixed by Low?—A. Yes sir, whatever arrangement they had, I don't know about fixed.

Q. However, Low told you to sell at that price?—A. Told me that is what I was to collect for the beer for that certain shipment.

MR. ROWELL: Then taking the ones handled by Fred Rocheleau, did he pay for them before you delivered them to him?—A. No sir.

Q. Who did he pay for the goods?—A. He never paid anybody, he was merely an agent the same as myself, that is between the two parties. He had a warehouse at Pelee Island. He was instructed by Savard to get a certain amount of beer or liquor for speed boats, he principally ran speed boats out of there.

40 Q. And he collected from the runners in the same way?—A. Yes sir.

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Q. Then you shipped them from your dock to Pelee Island, did you?—A. Yes sir, for further shipment.

Q. That is, they came down, you unloaded them, the first year into your floating dock?—A. No sir, not that stuff, right out of the car.

Q. You told us that if the boats were nor there— A. That is Grandi's boats were not there.

Q. Well, I am dealing with Grandi's period.—A. This don't happen to be Grandi's boat, this is Rocheleau's own boat, and the Steamer Pelee that took the beer over.

Q. They took them over, and he put them in his warehouse on Pelee Island?—10
A. Either put them in his warehouse or if the boat was there I imagine he loaded the boat with the Customs Inspector's clearance.

Q. What Customs paper did he take from Kingsville to Pelee Island?—A. At the beginning they used,—McKay used to make out the B.13s and send them along with the amount of the shipment and some other papers, I don't know, it might have been the coastwise paper, whatever it was, I would not just say.

Q. There was a B.13 came down with the shipment from London. Then in the case of the Rocheleau shipments a new B.13 was made out at Kingsville?—A. Not always. They were in the beginning, but I think McKay after that had some understanding with the Customs officer at Pelee Island, and I believe the Customs 20 officer at the island made out most of his own then, most of his own B.13s, to accompany the shipment.

Q. But after the goods came down there you dealt with them, after you took them off the car, as you have described, namely, delivering upon receiving the amount Grandi or Low told you to receive?—A. Yes sir, that is when they were loading the boat.

Q. When they were loading the boat, or you delivered a certain amount to Rocheleau upon instructions?—A. Upon instructions.

Cross-examined by Mr. Tilley:—

Q. I gather that there was a Customs officer at Pelee Island?—A. Yes sir. 30

Q. There was also a Customs officer at Kingsville?—A. Yes sir.

Q. You are referring now to certain shipments that came to you at Kingsville first, and some of them at any rate went on to Pelee?—A. That is right.

Q. Was the Customs officer at Kingsville conversant with the way in which the work was being done?—A. It had to be done through him before I could send it to Pelee.

Q. And whatever routine was gone through was routine that he approved of for the purposes of that business?—A. They had an understanding between themselves.

Q. The two Customs officers?—A. Yes.

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Q. That is at Pelee Island and at Kingsville?—A. Yes sir.

Q. And they were working together?—A. Yes sir.

Q. That is, there was a sort of, I think you said, coastwise clearance?—A. Yes, he issues coastwise clearance to Rocheleau's boat, and if I am not mistaken I think there was a coastwise went with the steamer Pelee.

HIS LORDSHIP: You would not like to say that Rocheleau and yourself were agents? Did you look upon yourself as an agent or employee?—A. I looked upon myself as a warehouseman. I got ten cents a case.

Q. That is the way you got paid?—A. Yes, through the proceeds of whatever 10 moved over my dock.

MR. TILLEY: That was your whole interest in the transaction?—A. That is all. I was not responsible for the money, it was merely an accommodation that I handled the money.

Q. I notice that you objected to the use of the word "selling" the beer. You did not buy and re-sell?—A. No sir.

Q. You were collecting, in order to give some accommodation to the people who were carrying on traffic across your dock?—A. I guess that is what they paid me my ten cents for.

HIS LORDSHIP: You do not think they paid you your ten cents to use your 20 warehouse?—A. No sir, there was a Government dock, they could just as well have used that. I had a scow alongside the Government dock, it cost me one cent a case to go over the dock, anyone could use it.

MR. TILLEY: Did you pay one cent a case to the Government?—A. Yes sir.

Q. Out of your ten?—A. Yes sir.

Q. And when you say you paid it to the Government, that is the Dominion Government?—A. Yes, gave it to the wharfinger, or whatever you call him.

HIS LORDSHIP: One cent a what?—A. A case of beer, 24 pints.

MR. TILLEY: Then is it right to say that on this beer that went across your dock the Government got one-tenth and you got nine-tenths of the receipts?—A. That is 30 right.

Q. Well you had a good partner in the Government. Then speaking of Pelee Island, is it well situated for access to any of the chief American cities?—A. It is the most southerly point in Canada, closer to the Ohio line.

HIS LORDSHIP: What distance is it from the shore?—A. It is 6 miles from the border, and about 16 miles from the Ohio shore.

MR. TILLEY: And that is about the narrowest place across the lake?—A. Yes sir.

Q. How far is Pelee Island south of the mainland of Ontario?—A. They figure the north end is 14 miles, and the south end 25, that is where the goods are 40 exported from, the south end, the closest spot.

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Q. So that you are 25 miles towards the United States from the mainland of Ontario when you are at the export docks?—A. No, you are 16 miles.

Q. No, you are 16 miles from the States.—A. 6 miles from the line and 16 miles from the shore.

Q. You are 16 miles from the United States shore?—A. Yes sir.

Q. And at the same place you are about 25 miles from the Ontario shore?—A. Yes sir, at the south end of the Island, and 6 miles from the International border.

HIS LORDSHIP: What is Pelee Island, is it inhabited?—A. About 900 people there, and there is tobacco farming and the like of that. It is a well inhabited island. 10

Q. And there is a Customs officer?—A. Yes sir, two Customs officers, a collector and sub-collector.

MR. TILLEY: But the industry is tobacco growing?—A. Tobacco and fishing, there is a lot of fish caught there.

Q. What cities are on the United States shore of Lake Erie opposite Pelee?—A. The Steamer Pelee, her regular course is to Sandusky, Ohio, that is the closest point.

Q. And where is Cleveland?—A. I imagine Cleveland would be probably 40 miles from there.

Q. Along the shore?—A. Yes, there is different cities along there.

HIS LORDSHIP: What distance did you say Sandusky is?—A. From the south 20 end of Pelee possibly 16 to 18 miles. There is a big summer resort, one of the biggest in the country, Cedar Point.

MR. TILLEY: And do these fast speed boats cross the lake there?—A. I have seen many a one pull out of there headed towards the American shore.

Q. Now you say you got ten cents a case?—A. Yes sir.

Q. How did the boats proceed in regard to Customs? Did they enter at Customs when they came in?—A. Yes sir.

Q. That is they made a formal entry.

HIS LORDSHIP: Even the small boats?—A. No matter how small. There was no really small boats coming to Kingsville, most of them came to Pelee Island because 30 it is a short run, and they have shelter between the Islands, there are several islands along there.

Q. You say all boats coming in there reported to the Customs?—A. All boats, yes sir.

Q. Did they report before they left also?—A. They all cleared, yes sir.

MR. TILLEY: They all entered and they all cleared?—A. Yes sir.

Q. They reported outward and got their clearance papers?—A. Yes. After they receive their shipment and the proper papers the Customs officer gives the clearance.

HIS LORDSHIP: Did they get a clearance both from Kingsville and Pelee Island? 40 —A. They got their clearance from Pelee Island, whoever ran from there. I had nothing to do with that.

Q. What did they get at Kingsville?—A. They got the clearance.

MR. TILLEY: His Lordship is asking, I think, about a boat that would leave Kingsville for Pelee. What did they get?—A. As a rule Rocheleau would call up or come over himself and take the necessary papers along with him and get his coastwise clearance.

Q. He got some sort of coastwise clearance to go back to Pelee Island?—A. Yes, at that time they gave it to him, but I understand after that the Government sort of kicked on account of his craft not being large enough, so after that they sent it on the Steamer Pelee, But during 1924, they sent it by coastwise, that is until the latter end.

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10 Q. By coastwise clearance?—A. Yes, sir.

Q. And later they sent it by regular steamer?—A. Yes.

Q. But always under the supervision of the Customs?—A. Absolutely.

Q. Is this what you refer to as the report outward, the clearance?—A. That is the inward report. That is the outward, that is the clearance.

EXHIBIT V-1, 2 and 3: Customs reports, Inward (1); Outward (2);
Clearance (3).

Q. Would the boats come in empty or laden?—A. They would come in empty.

Q. And so report?—A. Yes, sir.

Q. And reporting outward they would show the goods?—A. Would show the
20 goods on the report outward, on the clearance. They show the number of men they
have—

Q. The clearance shows the cargo?—A. So many cases,—I would not say as to the clearance, whether the cases were on.

Q. Do you remember?—A. Not exactly. It gave the tonnage, I believe.

Q. The form required it apparently?—A. I never bothered looking at the clearance. I had no—

HIS LORDSHIP: I would much rather have an actual form filled in.

MR. TILLEY: Probably my friend will produce some. The Government have them all.

30 HIS LORDSHIP: Available to either party.

MR. TILLEY: Yes, except it is so easy for them to ask for it.

MR. ROWELL: I do not think we have any here. We can send up and get one.

MR. TILLEY: Then by the rules these boats are all entered by the collector in his book, recorded?—A. I cannot say as to that, but I imagine he kept a record of them.

HIS LORDSHIP: Could they leave without having leave from the collector?—
A. They could not leave until they were cleared. I have never known any to leave without a clearance.

MR. TILLEY: Was the business at Kingsville a summer business only, or during
40 the summer and winter?—A. Just during the summer, until the fall. When the other
boats quit running the runners would quit too, I think along about the 10th of De-
cember.

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Q. Kingsville has rather an exposed position compared with points along the river, hasn't it?

HIS LORDSHIP: Is navigation carried on at these places?—A. No; the steamer Pelee itself ties up the first of December.

MR. TILLEY: How do they get across to the Island after that?—A. They get across the best they can. Sometimes they go over, in winter it generally freezes right over, the island isn't far, there is quite a bay and the ice freezes and they drive over. And now they have a mail plane.

Q. I think you said the Customs people make the B.13s out?—A. Yes, sir.

HIS LORDSHIP: At Pelee Island?

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MR. TILLEY: At Pelee and at Kingsville.

WITNESS: In the beginning the Customs officer at Kingsville used to make out B.13s for the shipment, and send it over with the boat to the Customs men.

Q. The Kingsville man made them out?—A. Yes.

Q. And for boats leaving from Kingsville he also made the B.13s out?—A. He made it out for his own port, yes.

Q. Now, of all the beer that left Kingsville, or your dock whenever it was, did you ever know of any of it getting back into Ontario?—A. No, sir. I always checked up with the Customs, he would come down—

HIS LORDSHIP: When would he check, when would he first check?—A. When the load came in in that car.

MR. TILLEY: And he kept track of all that went out?—A. He checked the truck loads as it went into the boat, that is he was standing there and would get the number along with them.

Q. And was it all done openly?—A. Yes, sir, in fact he was down there any time we wanted him, or anyone wanted him to clear a boat he would come down, and in the afternoon he stayed there, because that is when the boats went out.

Q. Now you said you got your instructions from Mr. Low about the price from time to time, and you also said something about Mr. Savard and Mr. Grandi. And you spoke about acting between them. Were they acting in concert, were they arranging these things as you saw, in concert?—A. When Grandi first came down with Low, I had heard of Mr. Low but I did not know him personally at the time. I had the scow rented, I understood they were going to export there that summer, and I knew at LaSalle and different places they had been exporting, and there was a nice living to be made, and it was a nice place to live in the summer, so I took my wife down there and Mr. Low came down with Grandi and told me they wanted to put some beer over my scow, they could not leave it on the dock, they had to have someone there to look after the scow, so they agreed to give me ten cents a case, and they arranged between them that I was to collect the money, I didn't hear no conversation, but the wind-up was Mr. Low said, you go ahead, and if I aint here bank 40

the money, and if am here turn it over to me. So whenever he would come down too late I would bank the money and give him a cheque, but mostly hand him the money.

Q. That arrangement that you were to carry on in that way was made when Low and Grandi both visited you?—A. Yes sir.

Q. And that was carried on with Savard?—A. It was carried on until Savard came on, and then the same arrangement was taken over.

Re-examined by Hon. Mr. Rowell:—

Q. You handled the goods of others besides the Carling Company didn't you?—

10 A. Yes sir.

HIS LORDSHIP: That is new.

MR. ROWELL: Yes, my lord, I should have asked it before.

WITNESS: I handled liquor.

MR. TILLEY: Do you mean distinct from beer?—A. Yes sir.

MR. ROWELL: Who did you handle the liquor for?—A. Gorsey.

MR. TILLEY: Are we concerned with that?

MR. ROWELL: It is just this, Morrison has produced many B.13s applicable to some of these shipments for both beer and whisky.

HIS LORDSHIP: You can ask him that.

20 MR. ROWELL: (Showing document to witness.) What does that mean?—A. That is the shipment.

Q. Did you make out B.13s in that form for both beer and whisky?—A. The B.13s came along with the whisky.

Q. How did you come to enter upon the B.13s with the whisky certain cases of beer?—A. I cannot just remember that shipment.

MR. TILLEY: What is the date?

MR. ROWELL: December 12th, 1924.

HIS LORDSHIP: Did you handle any beer but the Carling beer?—A. No sir.

Q. So that the beer on that would be Carling beer?—A. Yes sir.

30 HIS LORDSHIP: He is not the man who was in charge of the scow where that Customs officer went?

MR. ROWELL: No, my lord, that was at Sarnia.

ARTHUR DIESBOURG, sworn. Examined by Hon. Mr. Rowell:—

Q. Where do you live?—A. At the present time at Windsor.

Q. Did you live at Belle River?—A. Yes sir.

Q. During what years did you live at Belle River?—A. I lived there until four months ago.

Q. Were you living at Belle River in 1924, 1925, 1926 and 1927?—A. Yes sir.

Q. What business did you carry on there?—A. Export business.

40 Q. Export of liquor?—A. Yes sir.

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Plaintiff's
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No. 30

David Koven
Re-examination
April 23, 1929

No. 31

Arthur
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HIS LORDSHIP: When you say liquor what do you mean?—A. Well I understood him to say liquor. Beer is beer and liquor is liquor.

Q. You mean that is exclusive of beer?—A. Yes, it would be both.

Q. Then you mean inclusive?—A. It would be inclusive.

Q. So that with you liquor would mean strong liquor, and beer?—A. And beer.

MR. ROWELL: For how long had you been carrying on that business?—A. I carried on there for about three years I think.

Q. When did you commence?—A. At Belle River in 1924.

Q. Whose beers and liquor did you handle?—A. Carling's beer, O'Keefe's beer, Cromwell & White, and there was some Riverside came in there too. 10

Q. Did you buy and sell?—A. No sir.

Q. You did not buy and sell at all?—A. No sir.

Q. Did you handle them all on the same basis?—A. All on the same basis.

Q. What was the basis on which you handled Carlings?—A. Carlings was handled at ten cents a case.

HIS LORDSHIP: What did you do for that?

MR. ROWELL: Did you have a warehouse?—A. Yes sir.

Q. You had a warehouse at Belle River?—A. Yes sir.

Q. Tell us what you did for the ten cents a case?—A. We unloaded from the car and put it in the warehouse and loaded it on the boats. 20

Q. You received from London an invoice and bill of lading and B.13?—A. Yes sir.

Q. When would they reach you, about the day after the goods were shipped?—

A. About the same time as the carload. It is not far, in a straight line.

Q. Does it get in about the day after shipment?—A. Yes sir.

Q. Then you unloaded the beer that came down into your warehouse?—A. Yes sir.

Q. Then who came to get the beer from the warehouse?—A. There was different boats came to get the beer, some boats were sent there by Grandi, and some other boats used to come in, and under instructions from Mr. Low I gave him the beer.

Q. Now the boats sent by Grandi, what did you do? Did you collect?—A. 30 No sir, I didn't collect.

Q. If Grandi sent a boat what happened? You delivered—A. Delivered the goods, I didn't collect no money.

Q. What authority did you get from Grandi to make the delivery?—A. Through telephone calls, or there was certain boats that he owned himself which he told me was his own boat and to give the amount.

Q. Who made the arrangement with you?—A. Mr. Low and Mr. Grandi.

Q. Did they both come together?—A. Yes sir.

Q. That is when the arrangement was first made?—A. First made.

Q. What was the arrangement?—A. The arrangement was that I was going to 40 handle the beer through my dock for ten cents a case, and the arrangement was

further on, that some of the other boats came in and wanted some beer, and I said, What arrangement am I going to make with them, And he says, You collect so much a case for the other boats.

Q. Who fixed the price you were to collect?—A. Mr. Low.

Q. Did you follow the invoice price, or did you charge the price Mr. Low told you?—A. According to the price Mr. Low told me.

Q. And if a man came in and paid that price you delivered to him the goods he wanted?—A. Yes.

Q. And did that procedure prevail throughout the entire period you were
10 handling the warehouse?—A. Yes sir.

Q. At first the goods were consigned to C. B. Grandi, care of?—A. Myself.

Q. And later Savard.—A. Savard was the man.

Q. Care of yourself?—A. Yes.

Q. But in all cases you took delivery from the railway company and stored it in your warehouse?—A. Yes sir.

Q. Then how long did the Grandi arrangement continue, how long did they come consigned to Grandi?—A. Well I could not exactly tell.

Q. Your best recollection.—A. Probably a year, probably 1925 was the end, I can't say.

20 Q. When did you first see Savard?—A. Oh I knew Savard prior to the business I have done with him.

Q. Who saw you when you changed from Grandi to Savard, Low or Savard?—
A. Mr. Savard and Marko Leon.

Q. That is one of Mr. Low's associates?—A. Yes.

Q. He came to see you. What arrangement did they make?—A. It was the same arrangement.

HIS LORDSHIP: You mean the same arrangement you had made with Low and Grandi?—A. Yes, the same.

MR. ROWELL: Then we will deal with the Grandi period. You say when
30 Grandi's own boat came he got whatever goods he sent for without any payment?—
A. Without any payment, yes.

Q. But when other boats came you required them to pay the price that Mr. Low had mentioned?—A. Yes sir.

Q. And if they paid the price they got whatever goods they wanted?—A. Yes, according to instructions.

Q. Then during the Savard period did you collect for all the goods?—A. No sir.

Q. Tell us what you did during the Savard period.—A. There was a man by the name of Malidgee, or something.

Q. Now Malidgee used to come in. Whenever he came what did you do?—A.
40 I gave him the goods according to instructions. They would phone me up and tell me what to put on his boat.

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Q. Whatever goods he wanted he got without payment?

HIS LORDSHIP: He came on account of Savard?—A. Yes.

Q. And whenever it was Malidgee?—A. I did not collect.

MR. ROWELL: And when anyone else came you collected?—A. Yes, my book-keeper did, I had a bookkeeper.

Q. And they had to pay the price you were informed you should collect. Who told you the price to collect during the Savard period?—A. Mr. Low.

Q. Mr. Low fixed the price?—A. Yes, their office in Windsor.

HIS LORDSHIP: Were those prices changed?—A. Yes, sir.

Q. They would change?—A. Yes, sir. 10

MR. ROWELL: And you did not go by the invoice at all?—A. No, sir.

Q. Then who instructed you as to the price to insert in the B.13s?—A. Well, according to the price, the broker used to make the B.13s, the bookkeeper must have instructed him, I guess, how to make them, the value.

Q. What broker?—A. A young gentleman in town made the papers, Mr. Strong.

MR. TILLEY: A Customs broker do you mean?—A. Yes sir.

MR. ROWELL: You do not know the price that was put on the B.13s?—A. No, sir.

Q. Who would give him the price to put on the B.13s?—A. It possibly came from the bookkeeper.

HIS LORDSHIP: Your own bookkeeper?—A. Yes, sir. 20

MR. ROWELL: Then did you sign the B.13s?—A. Yes, sir, some I signed, and some my bookkeeper, I gave a power of attorney to my bookkeeper to sign.

HIS LORDSHIP: How did you sign, as what?

MR. ROWELL: (Showing paper to witness). Is that one of your B.13s that you made out?—A. Yes, sir.

Q. It is signed Arthur Diesbourg, it is not described in what capacity.

MR. TILLEY: Did you have a power of attorney?—A. Yes, sir.

HIS LORDSHIP: "Owner, shipper or consignor". He would be the shipper.

EXHIBIT No. 110: B.13 dated June 1st, 1924, bearing Customs stamp of June (date not legible) for 40 cases of beer at \$4. 30

MR. ROWELL: I see this is made out at \$4 a case.—A. That is what it is, I see.

Q. Does that illustrate the way you made out the B.13s?—A. Well, I didn't have nothing to do with the B.13, the Customs broker was there and made out the B.13, I don't know what they done with it, they handed over a certain amount and I signed them, or my bookkeeper signed them, and that was all there was about it.

Q. You were concerned with getting the money if it was other than Savard's or Grandi's boat?—A. Yes.

Q. And once you got the money you were no longer concerned?—A. No, sir.

Q. What did you do with the money?—A. Some was transferred to Mr. Low, he generally used to call for it. That was the bookkeeper's end, he used to check up 40 with him and make settlement in cash or transfer to the bank.

Q. We find in your bank account certain cheques. Did you deposit part of it in your bank account and then check it out?

MR. TILLEY: Is my friend trying to certify a whole bank account by such a process as that? Your Lordship will remember this is one of the cases where there is a bank account filed. If my friend is going to direct attention to any item he should do so.

HIS LORDSHIP: When you or your bookkeeper got some cash, some of it you paid in cash to Low?—A. Yes, sir.

Q. And some you deposited in the bank?—A. Yes, sir.

10 HIS LORDSHIP: You can deal with the bank account if you like.

MR. ROWELL: The money you deposited in the bank, what did you do with that?—A. It was transferred to Mr. Low at Windsor.

Q. By cheques on your bank account?—A. Yes, sir.

Q. Who paid you your ten cents a case?—A. Mr. Low.

HIS LORDSHIP: You did not deduct that?—A. No, sir.

Cross-examined by Mr. Tilley.

Q. Now, Mr. Diesbourg, you had of course other business than just the Carling beer?—A. Oh, certainly.

Q. And other business with Mr. Low than just Carling beer?—A. Yes, sir.

20 Q. That is, there was what you call strong liquor as well, that we are not concerned with here?—A. Yes, sir.

HIS LORDSHIP: So that there was other beer passing besides that connected with Carlings?—A. Yes.

MR. TILLEY: And your bank account would concern other business than the Carling beer, whisky and so on?—A. Yes.

Q. Now, you said the B.13s were made out by a broker?—A. Yes.

Q. A regular Customs broker?—A. Yes.

Q. Carrying on business in Windsor?—A. Belle River.

30 Q. By the way is there any traffic through the Customs at Belle River except liquor and beer?—A. Well, there is a Customs man stationed there.

Q. But is there anything else for him to do?—A. Oh certainly, he has got a lot of inward and outward, different stuff going through.

Q. Of other things?—A. Yes, sir.

Q. So that this is part of his business?—A. Yes.

Q. But practically a very large part?—A. It is a good portion.

Q. So that there is business for Customs brokers there I mean?—A. Customs men.

40 Q. And the Customs broker would get some information from your bookkeeper at times, I suppose, and sometimes from you?—A. I did not have much to do with it, they just went to the office and made out the papers according to their—, they used to check up.

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Q. My friend asked you whether when you signed a B.13 you were through with it. I assume you meant—

MR. ROWELL: I submit my friend cannot say he assumes what he meant. He is entitled to ask what the witness meant.

MR. TILLEY: I will assume you meant by that that you did not see whether the goods were taken away in the boat or not, or put on the boat.—A. Oh well they were all taken on the boat.

Q. And did those boats all report inward?—A. Yes sir.

Q. To the Customs. And report outwards?—A. Outward.

Q. And got their clearance papers, and the Customs House records?—A. Yes sir. 10

Q. That would show the beer and so on being shipped out?—A. Transferred, yes sir.

Q. Who was the owner of your dock?—A. We were.

Q. Who was it built by?—A. By ourselves.

Q. And you were the owner of that, were you?—A. Yes sir.

Q. What did it cost, was it an expensive operation?—A. No.

MR. ROWELL: Surely my lord we are not concerned—

WITNESS: The first dock I had was small, the other one was bigger.

MR. TILLEY: You had a warehouse on it?—A. Yes sir.

HIS LORDSHIP: You built the dock and put the warehouse on it?—A. Yes. 20

MR. TILLEY: Now was all that Carling beer that came in to the dock shipped out for export?—A. Yes sir.

HIS LORDSHIP: None of it found its way on Canadian soil?—A. No sir, not that I know of.

MR. TILLEY: As far as your knowledge goes the beer was all in fact exported?—A. Yes sir.

Q. Did not come back to Canada?—A. No sir.

HIS LORDSHIP: Neither came back nor remained.

MR. TILLEY: Neither remained in Canada nor returned to Canada, is that right?—A. Right. 30

Q. Have you ever seen it on the other side, in the United States, or is that a question to ask?—A. I have seen it on the lake, quite a way on the lake.

HIS LORDSHIP: What do you mean by "a way on the lake"?—A. I have seen it on the way on the lake.

HIS LORDSHIP: But that would not say much, it might turn back.

MR. TILLEY: Well I will not press you to say what you have seen in the United States.

HIS LORDSHIP: Did we not have one witness—I have forgotten the first part of this trial—who went across and saw it in the taverns in the United States.

MR. TILLEY: Oh yes. 40

HIS LORDSHIP: What is the name of that witness.

MR. TILLEY: Dunford was one.

Q. Then you say you had dealings with Grandi and Low came to you, and also when Savard and Leon came to you?—A. Yes.

Q. And of the same nature in each case, arranging for the method of carrying on the business?—A. Yes sir.

Q. And Savard and Grandi were both interested, I do not know whether they told you how, but they were interested—A. Well that is their own affairs.

Re-examined by Hon. Mr. Rowell:—

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Q. You told my learned friend that Low was dealing with other goods than 10 beer?—A. Yes sir.

Q. What other goods was Low dealing in?—A. Well he had a firm in Windsor that he delivered whisky for, they exported whisky.

Q. Did you get whisky then from Low as well as beer?—A. Yes sir.

Q. Now you said it all went out. Did you ever sell beer to Hoffman and Dunford?—A. No sir.

Q. What did you sell them?—A. I didn't sell them nothing, I just collected for another firm.

Q. But you made deliveries to them, did you?—A. Yes sir.

Q. And collected the money?—A. Yes sir.

20 MR. TILLEY: Deliveries of what?

MR. ROWELL: What goods were those?—A. I don't know if I am allowed to say, it was not concerning beer at all.

ONESIME PAQUETTE, SWORN. Examined by Hon. Mr. Rowell.

Q. Mr. Paquette, where do you live?—A. Ford City, Ontario.

Q. What business are you engaged in?—A. Export.

Q. Liquor export?—A. Liquor export, yes sir.

Q. How long have you been engaged in that business?—A. Oh for the last five years I believe.

Q. Ever since 1924?—A. Yes sir.

30 Q. Have you a warehouse there?—A. Yes sir.

Q. At Ford City?—A. Yes.

Q. Have you a dock in connection with your warehouse?—A. Yes sir.

Q. And have you handled goods of the Carling Company at your warehouse?—
A. Yes, sir.

Q. When did you commence to handle the goods of the Carling Company?—

A. I don't just remember the exact date, 1924 or 1925.

Q. Who arranged with you to handle these goods?—A. Mr. Harry Low.

Q. Was he the only man you saw in connection with it?—A. I saw Mr. Grandi.

Q. When did you see Grandi—A. With Mr. Low.

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Q. And what was the arrangement made with you in reference to handling the goods?—A. Mr. Low was to pay me ten cents a case for handling the liquor, that is unloading the beer from the cars and putting it in the warehouse and loading the boats.

Q. Then the invoices and bills of lading and B.13s, that is the original B.13s made out at London, came down to you?—A. In care of me, yes.

Q. Came down in care of you. Did you take delivery of the car into your warehouse, the goods in the car into your warehouse?—A. Yes, sir.

Q. Then what was the arrangement as to delivering the goods out of the warehouse?—A. They were putting in calls by telephone to load up the boats of Grandi's 10 or other boats that would come in there.

Q. First, what did you do in case you were advised the boat was Grandi's?—A. In which way?

Q. Did you collect the price?—A. Yes, sometimes we cleared—

HIS LORDSHIP: For Grandi, do not mix Grandi with the others.

MR. ROWELL: What did you do other times?—A. And other times it was arranged between Low and him to send the boat over and load it up.

Q. Without—A. Money.

Q. Who fixed the price?—A. Mr. Low, to me.

Q. Did you have any regard to the invoice prices, or did you go entirely on the 20 price fixed by Mr. Low?—A. Entirely to Mr. Low.

Q. You paid no attention to the price on the invoice or the B.13?—A. No, sir.

Q. Then how did you know what boats came from Grandi? Did they bring any order or direction?—A. We knew their boats.

Q. How did you know their boats?—A. Because they brought them over, and there was a number on the boats, and we recognized the boats by the numbers and the colour of the boat.

Q. Then how did you know whether to demand payment or not?—A. We would know through our telephone conversation.

Q. In some cases you would demand payment before delivery at the price fixed 30 by Mr. Low, and in other cases you would deliver without payment?—A. Yes, sir.

Q. Then you said there were other boats that came over in addition to these. What did you do in the case of the other boats?—A. If we had orders to collect the money for these boats we would.

Q. How did you determine how many cases to deliver to one of these boats?—A. Through the telephone orders.

Q. You would get an order for say 50 or 100 cases, at so much,—or you already had the price?—A. Yes, we knew what to collect.

Q. And the man would come and pay you the money and you would deliver him the goods?—A. Yes, sir.

Q. Was that the rule with all the boats other than the Grandi boats?—A. Practically all. Not all, I would not say all.

Q. Practically all?—A. All depends, it was orders issued by Grandi over there whether to collect the money or not.

Q. How did you get the information whether to collect it or not?—A. Through telephones.

Q. Always through telephones?—A. Yes, sir.

Q. You had no written order from Grandi at all?—A. No, sir.

Q. On any occasion?—A. No, sir.

10 Q. Then you would keep the beer in your warehouse until boats came over from time to time to get it?—A. Yes, sir.

Q. And unless you got instructions to deliver without payment you collected the price that had been named to you by Mr. Low?—A. Yes, sir.

Q. In all cases?—A. Yes, sir.

Q. Then did you handle any that was consigned to your care for Savard?—
A. I don't remember.

Q. You don't remember Savard?—A. I know Savard, yes.

Q. But the question of handling any goods consigned to Savard in your care?—
A. There might have.

20 Q. How long did you handle the Carling goods?—A. A very short time.

Q. But you have described the method during the whole time you handled the Carling goods?—A. Yes.

Q. Did you make out the B.13s for these boat shipments?—A. Yes, we have made some.

Q. And you signed them?—A. Yes, sir, I had a power of attorney to sign the B.13s.

HIS LORDSHIP: From whom?—A. From Mr. Low, or the Carling Brewing.

MR. TILLEY: Well the Carling Company?—A. Yes.

Cross-examined by Mr. Tilley:—

30 Q. You say you carried on the business for Carling's beer for a relatively short time?—A. Yes.

Q. Then I think Mr. Low put up his own dock near you.—A. Bought a piece of property right next door, that is a dock.

Q. And then the traffic left your dock?—A. Yes sir.

HIS LORDSHIP: A warehouse and dock too?—A. Yes sir.

MR. TILLEY: I think that was a dock owned by Low and Leon and Burns?—A. As far as I know, yes sir.

Q. At any rate it was a dock that you could not compete with in that sense?—
A. No, he was saving ten cents a case, that is the idea I suppose.

40 Q. Had you a warehouse on your dock?—A. Yes sir.

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Q. And when the goods came into the warehouse, I am speaking now of Carling's beer, did any of it go out of the warehouse except for export?—A. No sir.

Q. And when it went out for export it went out on boats that came in and reported inward to the Customs?—A. They were reported inward and outward.

Q. And got their clearance?—A. Yes sir.

Q. Sometimes making more than one trip a day?—A. Yes, they were making trips sometimes every ten minutes.

Q. And in that way they carried on a lively trade?—A. Yes sir.

Q. Was that beer exported, as far as you were concerned?—A. Absolutely.

MR. ROWELL: The witness can say what he did, he cannot say anything more 10 than that.

WITNESS: Well, it was exported.

MR. TILLEY: I want to know whether there was any camouflage about it or— A. It was absolutely exported.

HIS LORDSHIP: They were going through the writing of documents for the purpose of exporting.

MR. ROWELL: Quite so, I have no objection to him saying anything about the documents, but how can he say anything more?

WITNESS: I have seen boats landed right in Detroit from our place.

MR. TILLEY: You say you have seen the boats landing on the other side of the 20 river?—A. Yes sir, I have, it is only half a mile across, and we can see them go in and unload right off the boats.

HIS LORDSHIP: You say you saw those boats that left the Canadian shore unloading on the—?A. On the American side.

Q. Did you say unloading on to other boats, or—A. No, unloading on the dock.

Re-examined by Mr. Rowell:—

Q. These boats are speed boats, aren't they?—A. Yes, they are speed boats that make the trips that fast.

MR. TILLEY: They make the trip that fast?—A. Yes. Other boats— 30

Q. The other boats would be slower?—A. Yes, the gasoline engine slower.

ROBERT A. GRIMM, sworn. Examined by Mr. Rowell:—

MR. TILLEY: Is this our Mr. Grimm, might I say? Why are you being sworn now? You have been sworn once in this case.

I object to this witness being called again. Surely the law of the United States has not changed while we have been going on. I do object to having a new trial now.

HIS LORDSHIP: Mr. Rowell should not have put him in the box without asking leave first.

MR. ROWELL: I did not realize that he was being sworn, my lord. I was speak- 40 ing to one of the auditors.

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No. 11

Robert A.
Grimm
Recalled
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HIS LORDSHIP: You cannot bring a witness the second time without leave.

MR. ROWELL: No, my lord, I apologize. I wanted Mr. Grimm to cover a point that was not covered in his former testimony, matters that have been brought out in evidence here in the course of the trial, as to which I want to ask Mr. Grimm in reference to the American law.

HIS LORDSHIP: I do not see any objection. We are all liable to forget. If I remember aright Mr. Grimm is an attorney-at-law practicing in the United States?

WITNESS: I am First Assistant United States District Attorney for the Western District of New York.

10 Q. What does that mean? Do you practice at the Bar?—A. Yes.

Q. Or does your work consist of office work?—A. It is for the United States Government.

MR. ROWELL: Just explain to His Lordship what your practice is.

HIS LORDSHIP: What is your daily occupation?—A. I am employed by the United States Government as an Assistant United States Attorney to see to the enforcement of the laws that come within the jurisdiction of the Western District of New York. That district takes in all the territory inclusive of Buffalo to Rochester, and south to Elmira, and around the New York State border.

Q. What is the nature of your work?—A. Prosecution of criminal matters.

20 MR. TILLEY: Where is your headquarters?—A. Buffalo.

MR. TILLEY: None of these shipments go into Buffalo.

MR. ROWELL: Have you looked at these Exhibits 51 to 58 inclusive?—A. Yes sir.

HIS LORDSHIP: What are they?

MR. ROWELL: 51-A is the Invoice, 51-B the Bill of Lading, 51-C etc., are the Export Entries; and similar documents in the following exhibits.

HIS LORDSHIP: These are all Canadian documents?

MR. ROWELL: Yes, my lord.

WITNESS: I have, sir.

30 MR. ROWELL: You examined them here I believe on Friday last?—A. Yes sir.

Q. Then taking Exhibit 52 as an illustration, an invoice made out to C. B. Grandi, Detroit, Michigan, care of James Hugel, and a bill of lading made out in the same way, and a B.13 made out for exportation to the United States, with a Customs stamp on it,—I think the others are substantially the same; taking that one document, if that export entry were followed by the shipment and landing of the goods in the United States, what would the law of the United States be in reference to that transaction?

HIS LORDSHIP: Oh I will find with you that all these exportations are against the law of the United States.

40 MR. ROWELL: I want to make clear what law it is, that covers this particular transaction?

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Examination
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HIS LORDSHIP: I am not going to decide this case on the laws of the United States.

MR. ROWELL: True, my lord, but in a certain view of the case I will submit it is necessary that your Lordship should know what the law of the United States is.

HIS LORDSHIP: I am not going to burden myself about that at all, what the laws of any other country are. I am going to decide whether these people have complied with Canadian law. I do not care whether this went to the United States against their laws at all. I will find, if you wish, that the whole of this was taken to the United States against the laws of the United States.

MR. ROWELL: Will your Lordship permit me to state the proposition of the 10 Crown in the matter?

The Crown's contention is that the word "exported", the proviso providing that the Sales Tax shall not apply to goods "exported" only applies to goods that may be exported lawfully and landed lawfully.

HIS LORDSHIP: I will find against you on that.

MR. ROWELL: I want to get the evidence in connection with the American law as applicable to these particular transactions.

HIS LORDSHIP: He cannot throw any light on the interpretation of our Canadian Statute.

MR. ROWELL: No. All I want to get before your Lordship is what the American 20 law is as applicable to these particular transactions if carried out. Because I will submit to your Lordship that if these transactions are illegal and contrary to the criminal law of the United States, such transactions do not come within the proviso.

HIS LORDSHIP: I will find against you on that all through. This proposition to me is extraordinary, not to say more, that I should enquire what foreign laws are before putting an interpretation on our Canadian law. That is a proposition that destroys any freedom or independence in our own country.

MR. ROWELL: No, my lord, may I respectfully submit it does not touch that. It touches the point whether a transaction which is illegal and contrary to the Criminal Law of the United States is one that comes within the proviso. 30

HIS LORDSHIP: You are going to build up a syllogism and your premises will be false. I am not going to inquire, before putting an interpretation on our law, into the laws of another country. As long as you comply with our law I do not care what the law of the Medes or Persians or any other country is.

MR. ROWELL: May I give you authority on the matter?

HIS LORDSHIP: You can give me all the authorities you want. I come of a civil training that does not make me attach so much importance to authority and previous decisions. I am not one of those who go blindly on the doctrine of *stare decisis*.

MR. ROWELL: I recognize that your Lordship is the one to decide the matter, but I submit I should be allowed to put the evidence before the Court. 40

HIS LORDSHIP: All right, put it in, some other Court may take another view. I tell you frankly now it is no use as far as I am concerned, but I have no objection, your rights are open.

(Question on page 483 lines 31 sqq. read to witness.)

HIS LORDSHIP: Do you want his evidence in regard to that? I think Mr. Tilley would admit that if they were to go to the Customs House in the United States with these documents they would be refused.

MR. TILLEY: They would meet with some difficulty.

MR. ROWELL: Now, with His Lordship's permission will you tell us what the law would be on that?

HIS LORDSHIP: There are things that are so self-evident that one must give credit for some intelligence in others.

MR. ROWELL: Our Courts have held that things must be proven if they are to be discussed.

HIS LORDSHIP: I think there was a judgment in your Court of Appeal, reported in the Ontario Weekly Notes, in which Sir William Mulock said that we are not going to interpret our Customs Law through the laws of the United States.

MR. ROWELL: The Court also held that they could not deal with the matter in any case without the law of the United States having been proven.

HIS LORDSHIP: What does it matter?— If you throw yourself in the river you will get wet. Do you want to prove that?

MR. ROWELL: No, I think that is self-evident.

HIS LORDSHIP: The other is too.

MR. ROWELL: The Court of Appeal held the judgment of Mr. Justice Hodgins, as I recall, that the Court could not take cognizance of the matter unless the law were proven.

HIS LORDSHIP: I do not want to know the law of another country.

MR. ROWELL: I wish to submit it, my lord.

HIS LORDSHIP: On the ground that I have no right to presume what the law of another country is, and that if it is necessary to know the law of another country it has got to be proven. But I say I do not need to know the law of another country to decide this case.

MR. TILLEY: It seems to me the matter is in rather a small compass—

HIS LORDSHIP: As far as I am concerned it has no bearing whatsoever. So that reserving all your rights, I give all the latitude possible to the Crown.

MR. ROWELL: Will you tell us what your law in reference to that transaction would be?

WITNESS: The facts set forth in your hypothetical question involving the Exhibits marked 52 would involve a violation of what is known as the Conspiracy Section of the Criminal Law. The substantive offence involved in the conspiracy would be violating the 18th Amendment and the Volstead Act or National Pro-

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hibition Act which was enacted by Congress to give force and effect to the 18th Amendment, and also Section 593-B of the Tariff Act, 1922, prohibiting the importation into the United States of merchandise contrary to law.

Q. You said the Criminal Code. Is the substantive offence to which you have referred a civil or criminal offence under your Code?—A. The substantive offence is criminal, as well as the conspiracy itself.

MR. TILLEY: The substantive offence being what?

MR. ROWELL: Will you just explain that?

A. The conspiracy is a crime against the substantive law which it is the aim of the conspirators to offend. For instance, we have the National Prohibition Act 10 which prohibits the importation into the United States of intoxicating liquors fit for beverage purposes. That is penal in its nature. The Conspiracy Section is also penal, it is conspiring to commit the offence as set forth in the National Prohibition Act. They are separate and distinct acts and if an indictment were found upon a set of facts of this nature the first count would set up the facts, showing the violation of the substantive law or the violation of the provision of the National Prohibition Act, and the second count would set forth a conspiracy in which the crime set forth in the first count would be the means or the law which the conspirators had in mind.

Q. You gave us the section and the law when you were here before, I think.

HIS LORDSHIP: Yes, page 267.

20

MR. ROWELL: I just wanted it as applied to particular transactions.

Q. Then what you have said in reference to that one transaction applies to all others of a similar character?—A. It would, sir.

Cross-examined by Mr. Tilley.

HIS LORDSHIP: Are you cross-examining reserving all your objection?

MR. TILLEY: Yes, if your Lordship pleases.

Q. I do not want to follow it up, but I would just like to ask: Are you speaking about the law of the United States as applied to transactions shown by documents?

HIS LORDSHIP: Not as applied, as enacted, a big difference.

MR. TILLEY: Making out of these documents?—A. Not the making out of the 30 documents themselves.

Q. Then what is it, the importation into the United States?—A. It is the concerted action between the manufacturers on this side, together with their agents and employees on the other side.

Q. As shown by Exhibit 52?—A. Well the hypothetical question—

Q. It is not a hypothetical question, it was Exhibit 52 you were asked about.

MR. ROWELL: Coupled with this, assuming that those documents were followed up by shipment of the goods described in them, and the actual landing in the United States.

HIS LORDSHIP: And assuming, as he says, that these people to whom this is 40 sent are the agents—

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MR. TILLEY: But Mr. Rowell did not have that in his question at all.

WITNESS: I would not narrow it down to agents.

Q. Then assuming that all this is done on the Canadian side in co-operation with anyone in the United States, would your answer be different?—A. An isolated transaction on this side—

Q. What do you mean by isolated? Only one, or a thousand?—A. I mean a transaction in part not being completed in the United States.

Q. By any person in the United States?—A. Yes.

Q. Then it would not be contrary to the law of the United States?—A. We have 10 no jurisdiction.

Q. I was wondering how you got your jurisdiction. Then it is not the making out of these documents in Canada and shipping the liquor from Canada that is an offence according to the law of the United States?—A. No. That would go to the proof of the offence.

Q. That is a different matter. Now in giving your opinion are you basing it on statutes or on decisions?—A. I am basing it upon both.

Q. What decisions?—A. We have a long line of decisions over there. The leading case I believe, the most recent expression in the United States was that involving the captain of the Quadra, Ford versus U.S., reported in 273 U.S. That is 20 United States Supreme Court decision.

Q. If we take that decision and the statutes you have referred to we can apply the law ourselves, can we?—A. Not that one decision alone. I say all other decisions.

Q. That lead up to that, is that right?—A. That is one of the leading cases.

MR. ROWELL: I put in that case, the Ford case.

MR. TILLEY. You are not putting in the Ford case.

HIS LORDSHIP: Mr. Rowell can put that case as part of his argument, not part of the case.

MR. ROWELL: My lord, I submit that in proving the law of a foreign country it is competent to file as an exhibit a particular case.

30 HIS LORDSHIP: No. I had occasion not long ago to consider this very point, and I followed what they do in England. Much as we have consideration and respect for the decisions of the United States, we are not bound by any of their decisions. You can show decisions, but that is not the law of the United States, there is a big difference between the legislation and the interpretation.

ALBERT E. NASH (previously sworn). Examined by Hon. Mr. Rowell.—

MR. ROWELL: Your Lordship will recall that when Mr. Nash was in the box before he was asked if he had made an examination of the B.13s received from the Government as to quantities compared with invoices.

40 HIS LORDSHIP: That is a very important point. I am very anxious to know whether the quantities invoiced are covered by B.13s.

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MR. ROWELL: Mr. Nash, have you had an examination made of all the B.13s received from the Government at Ottawa with a view to ascertaining the quantities covered by those B.13s?

HIS LORDSHIP: Covered by the invoices.

MR. ROWELL: Well both.

HIS LORDSHIP: Do the B.13s tally with the invoices?

MR. ROWELL: Have you ascertained from the invoices the total number of cartons, barrels, half barrels and quarter barrels of the goods that have been sold covered by the Information in this case? Have you ascertained the quantities covered by the invoices?

10

HIS LORDSHIP: All the invoices.

WITNESS: Yes, but not entirely confining it to invoices. If an invoice was missing and another document was there to indicate the sale, we have taken whatever document was there. There were very few cases, but there may be a few, I would not like to say we have not had a missing invoice.

MR. ROWELL: I understand that where there is a missing invoice, if you found the record of the sale you have ascertained the quantity from the record?—A. Quite.

HIS LORDSHIP: You have not got the total of the invoices we have got?—A. Yes, I have, but I have not confined it entirely to invoices. If an invoice was missing, and there was obviously a sale—

20

Q. What would be the other document that showed the sale?—A. First there is the invoice, then the sales records in the books, consisting of the monthly recapitulations of sales and the annual recapitulations of sales.

Q. Trying to reconcile your invoices with the monthly statement?—A. Oh we have certainly, we have had to do that to be satisfied that we had got all the sales.

Q. Can you give me another figure, can you tell me whether all the items that appear in the Information are covered by an invoice, or how much of it is not covered by invoices?—A. No, I cannot tell you that. I can say this, that all the items covered in the Information are covered in the figures I am giving you now as to quantity, and no more and no less. I am giving the quantities of all the sales made 30 by Carling.

MR. TILLEY: You say the total figure you are taking to represent sales is the figure that is in your exhibit 2?—A. Yes.

Q. As showing your claim here?—A. Yes.

MR. TILLEY: Then I understand Mr. Nash says that some particular document in the course of the transaction may be missing, but he has satisfied himself that those were the sales.

WITNESS: Absolutely. I do not want to go on record that there is not a single missing document.

MR. TILLEY: I think I understand what Mr. Nash is saying. He says, When you say, Do I get all these sales from the production of actual invoices, I am not saying I do, I may have to take it from the books as to some, because I do not find an invoice.

WITNESS: That is quite so.

MR. TILLEY: If I had hunted longer I might have found it.—A. Yes.

MR. TILLEY: I am not objecting to that.

HIS LORDSHIP: Then can you give me the figures of the total sales made by Carling during this period upon which there was no duty paid?

10 MR. TILLEY: Would your Lordship pardon me a moment? I suppose I reserve my right to object to this witness being recalled, but I presume your Lordship will follow—

HIS LORDSHIP: Oh I am anxious to get at the truth, I try and do justice between the parties, and I want to know all the facts, I shut out no evidence.

MR. TILLEY: Would your Lordship permit me to say this, that my experience of Mr. Nash is, if we take the exhibit that he has prepared and follow it as he has prepared it, we get along quicker than by any other process.

HIS LORDSHIP: I want to know what is the total of the sales.

WITNESS: It is right on the exhibit I am going to give your Lordship. 1,324,863
20 cartons.

EXHIBIT No. 111: Statement showing comparison between B.13s and sales.

HIS LORDSHIP: Now you give me an exhibit.

WITNESS: If you will look at the last figure but one of the first column under the heading of Cartons you will find that the net sales for export as shown by the Company's books to the 30th of April, 1927, is 1,324,863 cartons.

Q. That is the total sales of Carling's for export, according to their books?—
A. In cartons. And of quarter barrels 21,529, and of half barrels 36,833.

Q. Those three items would be the total of sales for export by the Carling Company?—A. Yes. Now as against that figure I have matched the quantities as
30 shown by the B.13s as handed to me by the officials in Ottawa. And they total, in cartons, 1,085,655; quarter barrels 17,853, and half barrels 31,320. The difference is shown in the last figure of the three columns.

Q. Then the difference is a shortage of?—A. A difference of 239,208 cartons, 3,676 quarter barrels, and 5,513 half barrels.

HIS LORDSHIP: Those are all in quantities, not dollars and cents.

MR. ROWELL: No, all in quantities.

Q. Then you draw a distinction between the cartons, the upper part, and the B.13s. Will you explain that item of 23,350 under the head of Cartons?—A. The B.13s dated at London prior to the first of May, but bearing a port stamp of a later
40 date, those are B.13s which presumably were forwarded to Ottawa, must have been forwarded to Ottawa subsequent to April 30th, 1927.

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MR. TILLEY: Now, Mr. Nash, is it going to be proved otherwise, or are you supposed to be giving evidence now that these are all the B.13s at Ottawa?—A. I was coming to that point.

MR. TILLEY: I do not want to interrupt, but I do not want to be taken, without proof from the Government, as admitting that those are all the B.13s.

WITNESS: As far as I can say is, they are all the B.13s that have been handed to me by the Government.

MR. TILLEY: I presume that will be covered otherwise because that is not the way to prove it.

HIS LORDSHIP: Who handed you those B.13s?—A. The chief of the Statistical Branch of the Department of National Revenue. 10

HIS LORDSHIP: That is where they ultimately go, is it?

MR. ROWELL: Yes, my lord.

HIS LORDSHIP: Is there a copy left with the Department of Inland Revenue?

MR. ROWELL: No, my lord. They go to the Statistical Branch. There is a copy remains at the port.

HIS LORDSHIP: It remains there all the time?

MR. ROWELL: Well they destroy them after two or three years, they do not remain permanently. The collector at the port transmits them to Ottawa, to the Statistical Branch. Each outport sends in the B.13 to the port. To illustrate, 20 Windsor would receive the B.13s for the outports adjoining Windsor, and the collector at Windsor would send them all to Ottawa, not only his own but the outports associated with Windsor.

HIS LORDSHIP: Your point would be that all he could prove would be that it was all—

MR. TILLEY: All that was handed to him.

HIS LORDSHIP: —that the Department received at Ottawa?

MR. TILLEY: No, all that the Department at Ottawa handed to Mr. Nash.

HIS LORDSHIP: There is still something back of that. Have the local Customs officers sent all their B.13s in? 30

MR. TILLEY: I only want to identify it with Mr. Nash, I do not want to interrupt his presentation of his exhibit by fanciful objection, but I want to preserve that point. What Mr. Nash is saying I understand is, I have taken certain B.13s that have been sent to me by the Government at Ottawa, as I understand representing all they have, but I do not know. I have taken them to tabulate this statement from.

Q. Is that correct?—A. That is perfectly right, with one more step. I also visited the ports and have taken off their export books the numbers of the B.13s which according to the books were sent to Ottawa, and I have seen that I have got everyone of those from Ottawa. The differences, there were some small differences, I have sent to Ottawa and told them, Find the balance of those B.13s if you have 40 them, because, according to the port records, they were sent to you.

HIS LORDSHIP: Then you went to the source, to the collector?—A. To this source, through the port record or index, the particular book purporting to contain the numbers sent to Ottawa.

MR. TILLEY: Do you mean you did that yourself?—A. No, I could not compile this myself.

MR. ROWELL: We will put in the box the man who examined the port records at the port.

MR. TILLEY: Would your Lordship not think it convenient that we have, I do not say for every port, but the books of one or two ports just to see how they did 10 keep them.

HIS LORDSHIP: As long as they sent them that is the principal thing.

MR. ROWELL: There is no objection to having the port books produced, my lord.

HIS LORDSHIP: Have you not got a copy of all the B.13s?

MR. TILLEY: We have got a great many.

HIS LORDSHIP: Can you not check them from our own?

MR. TILLEY: Mr. Nash has compared ours too I suppose.

WITNESS: I have not, no.

HIS LORDSHIP: Can you not hand that over to your own auditors?

20 MR. TILLEY: I just handed this statement to our own auditors.

MR. ROWELL: And my learned friend's auditors have had access to all these Government B.13s, so that they are able themselves to make their own computation.

MR. TILLEY: We have had access to all that Mr. Nash has. Of course some of them only came in yesterday.

MR. ROWELL: Those are the ones Mr. Nash referred to, that he wrote down to get.

WITNESS: I want to make the answer quite complete. While I did not go to the ports myself, I sent a man, but I did actually compare some of the books to see that my man had absolutely tested.

30 MR. TILLEY: You checked that up?—A. Yes, I tested two or three to see that they were doing their work.

Q. As you accountants do?—A. Yes, test each other to see that our work is as accurate as it can be.

HIS LORDSHIP: It is generally accepted that a chief engineer in the execution of big works has his resident engineer, and we take the evidence of the chief engineer. But technically you are right.

MR. TILLEY: My friend says he is going to call him, and we will see how the business is carried on. I do not want to interpose any further objection to Mr. Nash going on and saying what he has to say about it.

40 MR. ROWELL: Have you anything further to say in reference to that particular exhibit?—A. I think now we have discussed it—

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HIS LORDSHIP: I think you have explained it very fully. He has no information to give us I suppose as to price?

MR. ROWELL: Yes, I am coming to the question of price.

WITNESS: May I still refer to this last one? I might say that as a last minute check to try and arrive as accurately as possible at this comparison, this morning, I put on six men to again go through the B.13s to see if by any chance any B.13 that came to me from Ottawa had been overlooked in the previous search. There will be a report later if anything should be added to these.

MR. ROWELL: Then have you made a comparison between the prices appearing in the Company's books, the invoice prices, and the prices appearing on the B.13s throughout the period?—A. Yes.

HIS LORDSHIP: You make a general statement that somewhat clashes with what you said before, that you ascertained the prices that appear on the invoice and the Company's books. You should limit yourself to the invoice, because there is this difficulty which we will have to decide somehow, about this money that came back. Can you segregate or not?

MR. ROWELL: What I understand Mr. Nash has done is to take the price appearing in the books as the invoice or sales price.

HIS LORDSHIP: All right, so long as you qualify it.

MR. ROWELL: And comparing that with the prices appearing in the B.13s. Now have you prepared a statement covering that?—A. Yes.

EXHIBIT No. 112. Comparative summary of prices as shown on B.13s and invoices.

Q. Will you explain to His Lordship what this exhibit shows?—A. First I should say that this particular exhibit has been checked by me in detail, so that I am able in this case to speak as having checked it after the exhibit was prepared in the rough.

The first column shows the prices shown on the invoices, or the sales records of the company. I do not want any mistake to be made in the explanation of this exhibit those may not be all the prices that were ever charged by the Carling Brewery, they are however the prices that occur most frequently and in relation to the great bulk of the goods of the Carling Company.

HIS LORDSHIP: As derived from the information given by the invoices?—A. And sales records, that is the actual Sales Recapitulations, which show item by item, sale by sale, the price of the goods.

HIS LORDSHIP: Of course, that sales record is different from the invoice.

MR. ROWELL: No, my lord.

HIS LORDSHIP: Because you have the cash sales come in.

MR. TILLEY: I do not think Mr. Nash is suggesting, or that it has been suggested by my friend, that en route through the books there is any difference in price.

WITNESS: No.

MR. TILLEY: Mr. Nash is quite satisfied that if he took an item in the Recap. and worked back and found possibly a missing invoice, that that invoice would agree with the Recap.

WITNESS: I do not think there is any doubt about it.

MR. TILLEY: I think your Lordship can treat Mr. Nash's expression Invoice or Sales Record as being just the same as if we had all the invoices for all the goods.

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WITNESS: I think that is quite right. But I did not want anyone to think there was no other price ever charged for a small quantity of beer than what I have shown here. There were occasional small quantities sold at prices different to these, but they

10 are so small—

HIS LORDSHIP: In the majority of cases these were the prevailing prices?—

A. Exactly.

MR. TILLEY: These are fair prices, according to the books?—A. Yes.

Q. I mean a fair illustration of what the books show.

WITNESS: And the remaining columns are as headed up under the different ports showing the prices that appear on the B.13s that were stamped with the port stamp as indicated by the heading.

MR. ROWELL: Let us illustrate that. Take the month of June, you have the invoice price \$3?—A. Yes.

20 Q. You have certain B.13s at Windsor, \$2.75. At Walkerville the price is?—
A. \$4. Belle River, Sandwich, Port Lambton, Amherstburg, West Dock and Kingsville, \$4.

Q. That is for the month of June, with the exception of Windsor itself—A. And Sarnia.

Q. The B.13s at the other ports show \$4 a case?—A. Yes.

Q. Then take another month to illustrate, take October. The invoice in that case is how much?—A. \$2.25.

Q. Then what are the B.13s at the respective ports?—A. \$2.50 Walkerville, \$3 Belle River, \$2.25 Sandwich, \$3 Port Lambton, \$2.50 Amherstburg, \$4 West Dock, 30 \$3 Kingsville, \$4 Sarnia, and at Port Colborne we find both \$2.50 and \$2 a case. Where the two figures were bracketed it was difficult to determine which was the prevailing price, so we put both prices.

Q. Then take the year 1925, November, I notice the invoice is \$1.75.—A. Yes.

Q. Then what are the B.13s for the respective ports for that month?—A. \$3, with the exception of Amherstburg and Sarnia, which show \$2.50, and Port Colborne \$2.80.

Q. Then take another month to illustrate, say April, 1926. The invoice is again \$1.75, and the B.13s?—A. \$2.50, \$3, \$3, \$2.25, \$2.30, \$2.50, \$2.25.

Q. As shown by the exhibit. Then in 1927 there appears to be a change. The 40 invoice in 1927 is how much?—A. \$1.90 and \$2.

Q. And the B.13s continue at—?—A. They are all \$1.75.

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Q. The B.13s commence at \$1.75 in November, 1926?—A. No, some in September, 1926.

Q. Then in November and December all the B.13s are made out at \$1.75?—
A. Yes.

Q. And they continue at \$1.75 for January, February, March, April, although the invoice price goes up?

I think your Lordship will remember that Hennessey said that once he had a price he continued it until he was instructed to change it.

HIS LORDSHIP: There is a very material question flows from that; What price did go into the coffers of the Carling Company? 10

WITNESS: That is a very comprehensive question. I will try and answer. During the early period of Grandi—

MR. TILLEY: Do you mean the early part of Grandi, or the early period as represented by Grandi?—A. The early part of Grandi's period.

HIS LORDSHIP: Could you even give the calendar time?—A. I think my examination in chief a year ago covered the segregation of those four groups. I would like to refer to that before I give dates.

MR. ROWELL: You can refer to any documents.—A. I will have to take a little time.

HIS LORDSHIP: Supposing we leave the question of time and deal with the 20 general question. What we have put into our exhibit as the claim of the Government for Sales Tax is on the price that was received for the beer, plus the money that came from the Export Funds and Export Insurance Accounts. Therefore to answer your question fully, what Exhibit 2 says is, that the Carling Company received a price plus certain moneys. So that you cannot divide the price from the extra money that is claimed in Exhibit No. 2 as having been received by the Carling Company.

So that answering your question broadly, the prices received by the Carling Company were first of all a price of \$1.75 or \$2.25 as the case may be—

Q. The invoice price?—A. The invoice price, plus the money that came through the Export Funds and Export Insurance accounts, and later through the Windsor 30 Bank Account.

HIS LORDSHIP: But we have all those figures. That is a question that will have to be threshed out. It is a question that is pretty difficult to thresh out at this moment because we have not got all the information I would like to have. I do not know what information you are going to give me, and I do not know what information Mr. Tilley is going to give me.

WITNESS: I could give you a memorandum showing in relation to this particular Exhibit the prices that are charged to the Carling Company in Exhibit 2, if that would help your Lordship, tying up Exhibit 2 to Exhibit 112.

Q. From your own viewpoint you have charged the greater price as compared 40 with the invoice price?—A. Yes,—I am not expressing my view—

MR. TILLEY: I think your Lordship must bear in mind the way Mr. Nash put it before. He says, I prepared Exhibit 2 on such a basis—

HIS LORDSHIP: His viewpoint.

MR. TILLEY: Not that he is expressing the view that that is right. He has prepared the exhibit and he is pointing out in respect of it certain things that he submits should be taken into consideration in determining whether it is right.

HIS LORDSHIP: I am not sure that he does not go further. We want to know what he has done, his expression of opinion is another thing.

10 WITNESS: I think we had that in Examination in Chief. I could not express my opinion, that that was my view. I prepared the exhibit in that way because of discussions I had with the Government officials as to what price should be charged.

HIS LORDSHIP: We quite understand what the statement represents.

WITNESS: And because of certain things which have now later been brought out in evidence, but at that time I was unable to state.

HIS LORDSHIP: Well you will be asked before you leave the box what is your opinion as a chartered accountant.

MR. TILLEY: Oh no. I am going to ask your Lordship what your opinion is.

HIS LORDSHIP: I want to get all the information.

MR. ROWELL: Well, if we may pass that in the meantime, as Mr. Nash has
20 not the data here.

Q. Then when you were in the witness box before you were asked as to how the total value on the B.13s compared with the sales as indicated by the invoices and sales record. Is there any correction you wish to make in connection with that?—

A. Well, the statement stands with the values shown,—

HIS LORDSHIP: What statement do you refer to?—A. The statement made in cross-examination to Mr. Tilley.

MR. ROWELL: Mr. Tilley asked Mr. Nash if he had computed the values—

30 WITNESS: What Mr. Tilley asked me a year ago was: Had I computed the value shown for the sales in the books of Carling's, and the values according to the B.13s. I said, I had. He asked me what the result was, and I told him the values on the B.13s were greater than the values in the books. Now, on re-checking that statement, I find that the values are somewhat less on the B.13s than they were in the books.

Q. Somewhat less than what?—A. Than the values in the books. If you take the total values on all the B.13s, they are less than the total of all the values in the books.

HIS LORDSHIP: I thought it was the reverse.

A. It was the reverse, and I am correcting that statement now. I might give your Lordship the figure. In the previous examination, Mr. Tilley asked me if I
40 compared the values of all the goods on the B.13s with the values of the goods for

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export in the Carling books, and I said I had, and the comparison then as I had it showed slightly more in the B.13s than shown in the books, and your Lordship expressed great surprise that the B.13s should be more. Now, I am correcting that statement, to say that I have re-checked that and I find that the values in the B.13s were \$3,300,000 and the values in the books were \$3,461,000, or a difference, the B.13s being less than the books by \$160,000.

But in giving that explanation, I wanted first to correct the statement I had made and to say this, that by comparing the B.13s and the books it is impossible to arrive at any conclusion on the values.

MR. ROWELL: That is from the totals?—A. Yes—

10

MR. TILLEY: I do not follow that.

HIS LORDSHIP: Neither do I.

A. Well, it is impossible really to compare values on the B.13s with values in the books, for the reason that the prices in the books and the prices on the B.13s are not the same.

HIS LORDSHIP: Well, you could compare those prices.—A. You cannot compare the computation of two sets of figures if you have not got the same figure to work on. You have got to get quantities before you can make the comparison.

Q. Have you not got that by your Exhibit 112?—A. Yes, the quantity. I am speaking of trying to compare the total value. You cannot apply the \$3 price on a 20 B.13 to a certain quantity when you have got \$1.75 in the books, the result means nothing.

MR. ROWELL: This, I think, will clear it, my lord.

Q. In the making of this comparison of totals now, you took the total sales as disclosed in the books and shown by your exhibit, in which there are larger quantities than are shown on the B.13s?—A. I think, if I may put it in my own words. There is no sense, if I may use the expression, in trying to arrive at a comparison by values unless you have the same price in both figures you are going to compare.

HIS LORDSHIP: But if you have all the sales ear-marked with the amount is not that sufficient?—A. That is all right for quantities—

30

Q. No, for price. You could get from the books the amount charged.—A. Yes, but you have not got the same amount on the B.13, therefore you cannot multiply your quantities by one price and compare it with quantities multiplied by another price.

Q. At any rate by the result shown by Exhibit 111, you show that there is a difference between the B.13s and the sales, whatever prices were paid?—A. That is correct.

MR. ROWELL: That is the principal thing. And Mr. Nash just wanted to correct the statement he made at the former prior.

HIS LORDSHIP: You see, Mr. Tilley, I might as well say how it strikes me at 40 this stage. First, there is 19-BBB, and there is a proviso that you invoke. There

is provision for the machinery of export. You are short B.13s for so much. You have got to pay on that quantity, that is if you do not pay on the bulk of the other, that is the view I take now. So when you come to adduce evidence, I would like you to meet that point.

MR. ROWELL: Then have you endeavored to check up B.13s with entries indicating the particular shipments, that is to say, what B.13s representing original entries are represented in a single entry.

HIS LORDSHIP: Well, what is your view about this; suppose the company makes a shipment from London of 1,000 cartons and gets a B.13 for 1,000, then it goes to 10 some of the ports and they sell that in quantities of 200 and get other B.13 locally, what is done with the first B.13? Is it destroyed, or what?

MR. ROWELL: We have no record here of that. There appears no record of the original B.13s.

HIS LORDSHIP: I suppose a B.13 without the certificate of the Customs officer at the bottom should be cast aside.

MR. ROWELL: We say so, my lord. We will submit they are not evidence at all of export.

MR. TILLEY: Your Lordsh'p means a B.13 without any Customs stamp on?

HIS LORDSHIP: Yes.

20 MR. TILLEY: I do not think your Lordship will have to decide that. Unless we find that there are some there is no use us meeting that difficulty.

HIS LORDSHIP: You followed my question?

MR. TILLEY: Yes, my lord, I follow it exactly.

HIS LORDSHIP: If you distributed your shipment of 1,000.

MR. TILLEY: There would be no occasion to hold the old one.

HIS LORDSHIP: But it would not be a proper B.13 unless it passed through the Customs.

MR. TILLEY: I do not think your Lordship will have to deal with that. If you have to, and I find I have to argue about it, nothing could prevent me making an 30 argument.

MR. ROWELL: Now, Mr. Nash, you have prepared another exhibit. Will you explain to His Lordship what is the significance of this exhibit?—A. We have taken all the B.13s we could find stamped with the Walkerville outport stamp appearing on the righthand top corner, report No. 104, and I have these B.13s, and we have listed them—

HIS LORDSHIP: That was the total number on the 9th of April?

MR. ROWELL: On the one entry.

WITNESS: On the one report No. 104. You see every B.13 is stamped on the righthand corner with the report number, in addition to the entry number, which is 40 the B.13 entry number at the port, it is also stamped with the report number.

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HIS LORDSHIP: What is that?—A. It is the report of the boat.

MR. TILLEY: That is the report outward?—A. It is commonly called the report outward.

MR. ROWELL: This might be said to be what is loaded on this one boat on this one trip.

HIS LORDSHIP: Is that right, witness, that that would represent the cargo of that day?—A. It would represent all those stamped with that port outward number and stamped with that date. They all bear the Customs stamp on the 9th of April, they all bear the report No. 104. The conclusion as to what that means I think I must leave to your Lordship. I have listed those on an exhibit to show the entry 10 number, the entry being the port entry number of the B.13.

Q. Export entry number?—A. Export entry number. And I have also shown in the second column the car number.

HIS LORDSHIP: What you call "entry" in your statement is really the export entry?—A. The export entry number that is put on at the port.

MR. TILLEY: I am asking Mr. Nash to check up whether that is right, what that number represents.—A. The lower number is the sub-port or outport number. The higher number is the main port number, and the middle number is the boat report number.

EXHIBIT No. 113: List of Walkerville reports, April 9th. 20

MR. ROWELL: Will you explain to His Lordship why there are the two port numbers, the outport and the main port?—A. The outport has to number all the entries both inward and outward. It puts its own number on, and it sends a copy of all entries inward and outward to the chief port, which again numbers them on a numbering machine as they come in from the outport. So that if Ottawa has to refer a port to a certain entry it would refer to it as your number so and so, Walkerville outport number so and so.

Q. Let us get a concrete illustration. What are the outports of Walkerville?—A. Walkerville is an outport of Windsor.

Q. Then the lower number would be?—A. The Walkerville outport number. 30

Q. Put on by the Walkerville outport?—A. Yes.

Q. The highest one would be the number put on by Windsor?—A. The main port.

Q. When it received?—A. Immediately as it receives it, I understand they are put on immediately they are received in the main port.

HIS LORDSHIP: Am I to understand that Windsor is the main port for all that territory we have been dealing with?—A. Not the whole territory.

MR. ROWELL: It includes Walkerville though?—A. Yes. Walkerville is an outport of Windsor.

Q. Then will you continue the explanation of this exhibit?—A. The first column 40 on the exhibit represents the main port entry number. The second column gives the

car number as shown on the face of the B.13. The third column gives the number of cases on each B.13. The last column on the righthand side gives the date of the London stamp.

HIS LORDSHIP: It would make it easier for them to issue the B.13s in London in small quantities like that, they would not have to break a B.13 for further shipment.

MR. ROWELL: Then entered for export on this boat on the 9th of April you have shipments sent from London, varying according to the date of the B.13s, running from the 7th February to the 2nd of March?—A. Yes—well if I may answer the question this way, that we have in respect to report No. 104, dated 9th April, twenty
10 odd B.13s dated from the 4th of February to the 2nd of March inclusive for varying amounts.

Q. Then you have the B.13s of which this is a summary?—A. I have them all together.

EXHIBIT 113-A: 33, B.13s to accompany Exhibit 113.

(At 1 p.m. adjourned to 2.30 p.m.)

AFTERNOON SESSION

Tuesday, April 23rd, 1929.

A. E. NASH, examination by Mr. Rowell. (Continued).

Q. Have you brought with you one or two of the port entry books?—A. Yes.

20 MR. TILLEY: What port is this?—A. This is the port of Windsor, Ontario.

MR. TILLEY: I submit my friend ought to put in some person who kept the book.

MR. ROWELL: My learned friend asked me to bring them up.

MR. TILLEY: Have you got them all here?

MR. ROWELL: You can have them all if you wish. My learned friend asked to bring up two or three to illustrate. If my friend wishes to see them all, he is at liberty to do so.

MR. TILLEY: But in addition we ought to have some person who kept the books, to see how they proceeded.

HIS LORDSHIP: You are technically correct no doubt.

30 MR. TILLEY: The point is what opportunity there would be for B.13s being mislaid and not entered. Mr. Nash cannot tell us that. He has got just what were entered.

HIS LORDSHIP: I would think the onus is on you to show if there are any B.13s lost, where are they?

MR. TILLEY: I would not like to have that decided.

HIS LORDSHIP: All I am concerned with today is to find whether these goods went to the United States, and the only way they could go lawfully would be through these B.13s.

40 MR. TILLEY: That may be so, but I submit, if my learned friend is relying on these as proof—

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HIS LORDSHIP: This is a technicality.

MR. TILLEY: In what way?

HIS LORDSHIP: I mean with respect to having the Customs officer.

MR. TILLEY: If he came here to say this is his book, I would have a right to cross-examine as to how it was kept and how the entries were made.

HIS LORDSHIP: This book, if it was in the safekeeping of the Department, and an employee of the Department would come and say: This is my book, that would be evidence prima facie.

MR. TILLEY: Of the book, but not of the accuracy of all that was in the book.

HIS LORDSHIP: If you want to question him you can call the officer who kept it 10 if he is alive.

MR. TILLEY: My friend is seeking to establish that these are all the B.13s, I submit he ought to do it by some evidence of officers or an officer that was responsible for their entry in this book.

HIS LORDSHIP: The book itself is prima facie evidence.

MR. TILLEY: It is prima facie evidence of what is in the book, but it is not prima facie evidence that something else should not be in the book.

HIS LORDSHIP: That book may be produced legally without being produced by the officer who kept it.

MR. TILLEY: I would submit it could not, but that does not go to the root of 20 my point.

HIS LORDSHIP: No, it only answers the technicality of the objection. Strictly speaking, we are entitled to get the best evidence. The best evidence would be the one who kept the book. We have not got that. But the book may be produced without that.

MR. TILLEY: I do not want, even if I could, to rest my objection on that. I understand Mr. Nash is now going to tell us that this is the book from which he took these B.13s. That does not at all verify that all the B.13s that should be in this book are in it. That is the point of my objection.

HIS LORDSHIP: I think the law is that whenever there is an export there should 30 be a B.13, and the B.13 be left with the Customs officer, and the officer has to send these afterwards to the Department.

MR. TILLEY: But there is no presumption that he does all his duty properly.

HIS LORDSHIP: Oh, yes. Everything is presumed to be rightly done until it is attacked.

MR. TILLEY: If my friend comes forward with so-called proof that these are all the B.13s because these are all that he finds in that book my submission is that that is not evidence.

HIS LORDSHIP: You can argue that, but that does not prevent us going into the book. I must say that I feel very much like taking that view myself. I want B.13s 40 to show that the goods have been exported.

MR. ROWELL: The onus is not on the Crown I submit.

MR. TILLEY: Well, my lord, that will be argued later. We have been about 12 or 15 days on this case, and you are still putting in your evidence. You realize there is some onus on you.

MR. ROWELL: Would you just explain to His Lordship how those books—take the Carling case and illustrate how it is entered.

WITNESS: I explained before lunch that we had taken the B.13s that had been sent to us by the chief of the Statistical Branch in Ottawa and had from those compiled the quantities. Then to satisfy ourselves and the Court that we had all the 10 B.13s as far as we could in connection with the Carling case we went to the different ports in Ontario, I think all the ports that there was any evidence from B.13s that goods had been handled at, and we examined what is called the Exporters' Index at each port or outport—

MR. TILLEY: Now this is going too far. I would like the witness who did that to describe what he examined. Mr. Nash was not there himself.

WITNESS: No, except in two or three cases I compared the results afterwards with the books as they came to Toronto. I did not visit the ports.

Q. Which two or three?—A. I could not tell without referring to my notes. I do not pretend to have done this work myself.

20 MR. ROWELL: But you did check two or three books?—A. I checked two or three books to satisfy myself that they were following the ground I had instructed them to follow.

In the Exporters' Index appears, in alphabetical order the names of the exporters or persons dealing with all goods as a matter of fact, not only these. They are arranged in alphabetical order, and under C would appear Carlings—

MR. TILLEY: I do object to this. That cannot be the book in which the entries are made from day to day. They do not put entries in from day to day under the heading of the particular shipper. Those are just a lot of numbers opposite a shipper's name. That cannot be the book of original entry.

30 WITNESS: I would like to know what it is then. I believe this to be the book of original entry.

HIS LORDSHIP: That is the Customs officers' book? Not the Carling's book?—A. No, no, the officers' book.

MR. TILLEY: You have the heading "Carling's," and the name of the port, and a lot of numbers opposite it. You are not suggesting that is the way these things are recorded as they occur in the first instance at the port?—A. I am not saying as they occur, I am suggesting that is the way they are recorded at the ports. I have seen them record them on many occasions in this book right from the B.13s, the number that they give to the B.13, and then send it on to Ottawa. That is 40 recorded here, and I believe in all cases.

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Q. You say this book, I do not know whether you mean this particular book or a book like it.—A. This particular book, I do not think there is any other book.

Q. That is the Windsor book?—A. Yes.

Q. And this is from the outport of Sandwich?—A. That is from Sandwich, Walkerville, Belle River, and that is from Windsor itself.

MR. TILLEY: Well I do not want to interrupt now.

WITNESS: Well I have told what I believe it to be, merely a record at the port of the B.13s that are passing through their hands for transmission to Ottawa.

HIS LORDSHIP: I do not think he is trying to prove any more than he has proven already. He is trying to corroborate what he has proven. 10

MR. TILLEY: I am not suggesting at all that Mr. Nash is trying to prove anything beyond the limit that he ought to go. But I am simply putting it to Mr. Nash that that book, which is a book kept at Windsor, recording documents as they are passing through on the way to Ottawa, cannot be the book that keeps track of the B.13s as they are issued. I may be wrong.

HIS LORDSHIP: As they are used.

MR. TILLEY: As they are used. That is just in transit between the outport and Ottawa.

WITNESS: No, more than that.

Q. And for Windsor?—A. For Windsor. This is merely an example of what is 20 kept at every port.

Q. Now it cannot be an example of what is kept at every port, because the ordinary outport— A. I said every port and outport. Every port and outport has what is called an Exporters' Index, and they are supposed to put in that the number of every B.13 that is sent to Ottawa for statistical purposes. Whether they do it I do not know.

Q. That is not an Export Entry book?—A. Yes, it is the Exporters' Index.

MR. TILLEY: Well you are giving your evidence, I just want to reserve all my objections. I do not know why some of my friend's Government officials cannot be brought here to explain how they did it. 30

MR. ROWELL: My learned friend asked us this morning to bring up two or three of these books. I have brought them in accordance with his request.

MR. TILLEY: I am asking you to prove your case. I did not know this was the sort of book he was producing, an index of the shippers.

WITNESS: That is exactly what it is, showing the numbers of the B.13s.

Q. And those numbers surely must get on the B.13s by some other means than from that index.—A. They do not get on the B.13s from the index, the index is taken from the B.13s.

Q. Then where is the book that gives to the export entry its index number?—A. There is no book. There is a numbering machine that they simply stamp, and 40 as the stamp falls it records the number next to the one recorded before.

Q. Now haven't you any number that has the figures on in pen and ink—?
A. I don't think so. In that case it would be because the port is a small one and the stamp is not used.

Q. There are any number.—A. It does not alter the habit of putting the number on consecutively at the port, whether by stamp or by hand. And from these is entered this book. I am positive of that, because I have seen the book entered, I have stood by the man entering it.

MR. TILLEY: I want to record my objection. Because I asked to have a book produced does not mean that I am accepting everything. I object to Mr. Nash
10 founding his statement that these are the only B.13s because, he says, I produce certain books in which I find no others recorded.

WITNESS: I did not say that.

MR. TILLEY: That is what it comes to.

EXHIBIT No. 114: Exporters' Index Book.

MR. TILLEY: Where are the rest of them?

MR. ROWELL: You can see them all.

HIS LORDSHIP: You should have also a full copy of those B.13s.

MR. TILLEY: We did not keep them.

HIS LORDSHIP: But you should.

20 MR. TILLEY: Possibly we should, but we did not keep them as though they should be kept on file all the time. This is years ago.

MR. ROWELL: My learned friend's clients have known that the Crown has been claiming this throughout the whole period, and they have known that they would have to substantiate their claim in Court if they claimed they were not liable.

MR. TILLEY: And we have known that if the Crown wanted to have any test made at any minute about the B.13s they could walk in and have it done, we could have checked it from day to day as we were going on. I want to enter my objection. That is a book that I do not see how it is useful to any person.

MR. ROWELL: Then you put in just before adjournment an exhibit showing a
30 number of different dates of the B.13s. Have you made any other test to see whether there is a similar variety on other occasions?—A. (Producing statement).

EXHIBIT No. 115: Statement comparing B.13s and outward entries at certain ports.

HIS LORDSHIP: What is the meaning of "Spray," is that the name of a vessel?—It appears to be the name of a vessel.

Q. You found that in the book?—A. Yes, it says the boat, Spray on the B.13. I have selected all those that bear the port number 5441, I have listed them according to the entry number on the left hand side, and entered the freight car number in the second column, the number of cases of beer on the B.13 in each case in the third
40 column, and in the last column the date of the B.13 with the London stamp on it.

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MR. ROWELL: What is the date of the Customs stamp on those B.13s, what port is it?—A. Sandwich, 19th March.

Q. Then on that particular report of the boat Spray, No. 5441, you have shipments from how many different cars?—A. Five cars.

Q. You have cartons from five different cars, and varying in dates of shipment from London, or the date of the B.13 at London, from the 4th to the 25th February?—

A. That is right.

Q. Then what is the next on this same exhibit?—A. Perhaps I should file as 115-A the B.13s relating to it.

EXHIBIT 115-A: B.13s relating to report 5441. 10

The next group is three B.13s all bearing report number 5674.

EXHIBIT 115-B: Three B.13s relating to report 5674.

Q. That particular one shows cases from three different cars?—A. Yes.

Q. And bearing dates from the 29th December to the 21st of March?—A. Yes.

Q. Then the next?—A. The third group is all the B.13s from Walkerville dated 11th April, 1927, with report No. 125 on them, showing two freight car numbers. In that case there are ten B.13s.

EXHIBIT 115-C: Ten B.13s relating to report No. 125.

Q. And varying in dates at London from the 8th to the 26th of February?—

A. Yes. 20

Q. Made out for one case each?—A. One each.

Q. Then as to these—I will deal first with the earlier period, that is prior to March 13th, 1926—is it possible to compare B.13s with the invoices and bills of lading, so as to attach the B.13s to the particular transaction?—A. What period?

Q. From the commencement in April, 1924, to March, 1926, when they commenced to make out the B.13s in smaller denominations in London. Is there any means of identifying B.13s with particular shipments prior to that date?—A. I do not know of any means.

Q. Did you check, or perhaps it was Mr. Troop, those B.13s put in the other day of October 4th, 1926, on which Mr. Hennessey said there had been changes made 30 after he had made out the B.13s? Are you familiar with that?—A. I am familiar generally with it, I would like you to go on further to see if I can answer the question.

Q. I was going to ask you if you have knowledge—if not do not answer—whether that is an exceptional occurrence shown on those exhibits of October 4th, 1926, or is that found in other B.13s?—A. Do you mean the changing?

Q. The changing.—A. There are changes in other B.13s than those Mr. Hennessey filed.

Q. Are you in a position to say how generally?—A. Perhaps that is a matter Mr. Troop can answer better, he has been into that more thoroughly, but I can say that there are changes in others. 40

Q. Have you prepared another exhibit in reference to B.13s at Sombra?—A. Yes. In this case we took all the B.13s that we could find with the stamp on them, Sombra, and we show them listed in this exhibit by date and by entry number, first giving the port entry number, and second the outport entry number, and then the quantity on each B.13 and the consignee stated on the B.13, and the person signing as owner, shipper or consignor.

EXHIBIT No. 116: Statement re B.13s at Sombra.

Q. Have you the B.13s?—A. I have the B.13s here. There are 62 B.13s.

EXHIBIT No. 116-A: B.13s relating to Exhibit 116.

10 Q. Is the consignee named in the B.13s in all cases the person who signs the B.13?—A. I cannot say he is the same party, but the name is exactly the same in every case except where "Jno." appears in some cases for John, and similar abbreviations in one or other of the signatures.

Q. Then have you made an analysis of the mash book to ascertain the quantity of rice beer as compared with other beer produced?—A. Yes.

Q. Have you got the mash book? I did not put it in the other day, my friend suggested we should defer it until we were putting in the evidence.—A. I thing Mr. Morrison has the mash book.

HIS LORDSHIP: What is the quantity that these represent, is it by gallons?

20 EXHIBIT 117: Analysis of mash book.

A. Gallons. At the foot you will find the total of the compilation. You will see that the total of the ale column is 999,525 gallons, the total of the lager 1,346,274 gallons, and the total of the "beer for duty at 15 cents" column is 688,923 gallons, or a total production as recorded by the mash book of 3,034,723 gallons. Underneath that is shown, first the percentage of rice beer which is taken from the column "beer for duty at 15 cents", the percentage that bears to the whole production during the period.

Q. During the entire period?—A. During the entire period. And as perhaps that is not a fair comparison, because in a certain period there was no beer manu-
30 factured for duty at 15 cents, I have also made a comparison of the percentage of rice beer for the period in which it was produced, according to the mash book, to the whole production during the same period, which shows 31.9 per cent from December, 1925, to April, 1927.

Q. In 1924 and part of 1925 there was no duty?—A. There was no 15-cent duty beer made.

MR. ROWELL: The mash books do not show any rice beer manufactured in the earlier period?—A. Well, according to this record, if the mash book records the production accurately.

HIS LORDSHIP: It is not a fair proportion?—A. The first percentage would not
40 be fair, but the second percentage is fair during the period for which it is made. But I thought the first might be useful.

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MR. ROWELL: Will you explain to His Lordship how these various brews are entered in the mash book?—A. The mash book is departmental book T-238, it is a book supplied by the Department to every licensee.

MR. TILLEY: Is that book kept by Carlings or by the Excise officer?—A. I think it is kept by the Excise officer, but it is signed by both the officials of the brewery and the Excise Department.

Q. I am told it is kept by the Excise officer.—A. I think it is. The book shows the date of the brewing, the number of the brew—I would think that would be the number of the brew, every brew is given a distinctive number—the quantity of malt used, the quantity of hops used, the quantity of other commodities, if any, to be used, it shows the date of the racking of the particular brew, in which the brew number is again quoted, so that it is possible to determine the interval between the commencement of the brew and the racking of the brew, and then it gives the quantity of beer produced under the captions of Ale, Porter, Lager and Beer for Duty at 15 cents, which is commonly known, as far as I know, as rice beer.

Q. What date are you reading from?—A. I am reading from the record of August, 1925, page 11. It is signed at the foot by the representative of the brewery and by the brew master, and sworn before a notary public.

MR. ROWELL: On that particular date there is no rice beer?—A. Not in that month, no. 20

EXHIBIT No. 118: Mash book.

MR. TILLEY: What is the other book?—A. The other book is merely the earlier book of the two. It ceases in October, 1924, and the second commences in October, 1924.

HIS LORDSHIP: Then Exhibit 119 will be another similar book?—A. I do not think the first book has any bearing on this, it is prior to October, 1924.

MR. ROWELL: Then I think there was put in yesterday a statement showing the items added to the claim?—A. Yes.

Q. Then have you prepared an analysis of the items deducted from the claim appearing on Exhibit No. 2?—A. Yes. 30

HIS LORDSHIP: What does that mean?—A. In Exhibit 2, the main portion, we have shown "less credits", certain credits. The Exhibit I propose to put in is an analysis of those credits arranged in a little clearer form perhaps.

EXHIBIT No. 119: Analysis of credits allowed on claim.

MR. ROWELL: Will you explain to His Lordship what those credits are that you have allowed on the claim?—A. We have shown on Exhibit No. 2 certain credits allowable as deduction from the sale price before computing tax. The statement I am now putting in is an analysis of those credits in a separate statement by themselves, and showing computation of tax upon those credits. The statement shows first the date and month, then the total credit allowed, and in the subsequent two 40 columns divided between containers and liquid returned and freight paid.

HIS LORDSHIP: What is the meaning of those?—A. In computing the claim in the first place we allowed as deductions from sales, as being that part of the goods that were not sold, first, the containers that came back to Carlings and were credited by them in their books to the customer who first bought the goods; secondly, we allowed the beer that was returned to the brewery as bad or spoiled in some way and which was destroyed at the brewery under the regulations of the Department; and third, we allowed that freight which was noted on the invoice as being freight to the point of destination.

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MR. ROWELL: And paid by?—A. Paid to an independent carrier. This state-
10 ment attempts to show month by month the amount of those credits as we allowed them.

MR. TILLEY: But they are all shown in Exhibit No. 2.—A. And deducted in Exhibit No. 2.

MR. ROWELL: Can you make any division between the containers and the liquid returned, appearing in the second column, of \$470,974.52?—A. It would be a very long piece of work, and it would mean another tedious investigation into the books. We could only do it by examining every single invoice.

Q. Well all I wanted, perhaps you can say roughly what percentage of that total item—A. I think perhaps Mr. Troop can answer that, he is more familiar
20 with the make-up of those figures.

HIS LORDSHIP: I suppose if you had the number of gallons you could do it.—
A. What Mr. Rowell was asking was whether we could segregate now the containers from the liquid returned. I think to do it accurately would take a long time, but I think Mr. Troop has the figures very closely.

HIS LORDSHIP: At any rate you did give credit for the amount?

MR. ROWELL: Credit has been given by Mr. Nash in his statement for the amount set out in Exhibit No. 2.

HIS LORDSHIP: You gave credit for the whole thing?

WITNESS: We gave credit for everything that is in the certificate.

30 HIS LORDSHIP: What Mr. Rowell suggests now would mean you have to make some further deduction?

MR. ROWELL: No, my lord. That heading covers two items, containers returned and certain liquid returned. I wanted to know if Mr. Nash could tell me what percentage of that would be containers, and what percentage liquid. Mr. Nash says he cannot give that.

HIS LORDSHIP: You have already credited for the whole amount?

MR. ROWELL: These have been credited by Mr. Nash.

HIS LORDSHIP: You do not want to go back of that?

MR. ROWELL: Except this, my lord: If my learned friend contends that item
40 should be deducted from the claim on the ground that we have included too much in the sales, then I think I should be permitted to ask your Lordship to say whether

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under the Statute and regulations these items are properly deducted. It is all a question of the construction of the Statute. This has been made up on the basis of other claims, both as to the amounts charged as sales price and also as to the credits allowed. If my learned friend is going to contend that he should not pay a price on the same basis as other brewers have paid, say during the Bermuda period, and that he should only pay on \$1.75 a case, then my submission is that the matter should be determined in both cases by your Lordship on what is the effect of the law and regulations.

In our claim we sue for a specific sum, which is computed in a certain way. I would submit your Lordship then should determine on the law and the regulations 10 what are the proper amounts to be paid. This is just so that your Lordship will have all the facts before you.

HIS LORDSHIP: Do you mean that I should determine, if there is any duty to be paid, whether it should be paid on the invoice price or the actual sale?

MR. ROWELL: Your Lordship will determine that first. Then your Lordship will have to consider what deductions, if any, should be made from that. In the account presented to your Lordship the auditors have deducted the amounts mentioned for this purpose. I think if your Lordship is determining the principle involved your Lordship would consider what is the proper interpretation of section 19-BBB and the regulations. 20

HIS LORDSHIP: Yet I do not understand how these deductions come in. As far as I am concerned I would say the actual sales would be either the invoice price or the actual amount. But why would the deductions be different in either case.

MR. ROWELL: They would not be different as a matter of law, my lord. The law must be the same in both cases. But, as a matter of practice, the Department has allowed certain items as credits in dealing with these claims. And this statement has been made up on that basis. But if my learned friend is going to invoke the strict construction of the Statute, then I submit the Crown should also be entitled to invoke the strict construction, and let your Lordship determine just what allowances or deductions should be made. 30

HIS LORDSHIP: You are not listening, Mr. Tilley. I would like to know what difference does it make. They are giving credit for what was actually paid.

MR. ROWELL: No, my lord, in this case they are giving credit for what was returned.

HIS LORDSHIP: On the basis of what they have paid?

MR. ROWELL: Well on the basis of what was credited to the customers' account for the returns. It may not become important, but that is the explanation of that item.

HIS LORDSHIP: I have not yet formed an opinion as to the rate.

MR. ROWELL: Then there was one question I omitted to ask when you put in 40 those two exhibits in reference to the boats, Exhibits 113 and 115; whether those are isolated cases.

WITNESS: No, they are not.

Q. How do they represent the situation?

MR. TILLEY: I do not know the point of these exhibits in the first place, and I do not know on what theory the witness is saying that there are others like them. Like them in what respect?

HIS LORDSHIP: I thought he took those books and said they were all kept in similar manner.

MR. TILLEY: But what is the feature of them that is the same?

WITNESS: The feature that is the same is there are other instances where a number of B.13s bear the same report outward number and the same stamp at the port of export and cover shipments from several different freight cars and bear several different dates from the date of the origin point. There are other cases like those.

MR. ROWELL: Then in connection with the Exhibits you put in when you were examined before, have any additional B.13s been received from Ottawa in connection with them?—A. Yes.

Q. You told us certain additional B.13s had been received.—A. Yes, they have, in the last few days, as a result of our inquiring at Ottawa, having looked at the Exporters' Index—

20 MR. TILLEY: Is my friend calling an official from Ottawa who gets out these B.13s and keeps them?

MR. ROWELL: Yes, I intend to call him.

MR. TILLEY: That is Mr.—?

MR. ROWELL: Mr. Telford.

MR. TILLEY: Mr. Nash is simply saying he got them from Ottawa, I suppose.

WITNESS: Quite. This bundle I hold in my hand are additional B.13s which should be attached to Exhibit 3 already in, to complete Exhibit 3 as far as B.13s are concerned, as having come into our hands.

EXHIBIT 3-Z: Additional B.13s, relating to Exhibit 3.

30 HIS LORDSHIP: Received by you when?—A. Received by me within the last 48 hours,—some were received within the last 48 hours, some previously some few weeks ago.

Q. Since you were last examined?—A. Yes, my lord, since the last hearing.

MR. ROWELL: Do all those bear the Customs stamp of the port of exit of a date subsequent to April 30th, 1927?—A. Yes, they all do.

Q. The first of these B.13s on this Exhibit 3-Z is five cartons, it is dated at London, December 4th, 1926, and it bears the Customs Excise stamp "Walkerville" as of May 19th, 1927.

40 HIS LORDSHIP: Then should your statement of all the B.13s be altered?—A. It has been, my lord. That is why we are putting these in now.

Q. So that you have nothing to change?—A. No, not in the statement.

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MR. ROWELL: In fact they all appear to bear date at London, I think, December 4th, 1926, and all bear the Customs stamp at Walkerville as of May, 1927, different dates in May.

HIS LORDSHIP: I am to understand that all these B.13s are included in what is styled at the foot of Exhibit 111, "Difference"?—A. No, your Lordship, these B.13s I am referring to, the quantities in these are included in the first part of the exhibit. In other words, that exhibit is complete including these B.13s. And the difference is outside.

HIS LORDSHIP: That is what I say. But when you reckon your difference you have taken cognizance of these B.13s?—A. Quite. 10

Then the second bundle I have in my hand are a few more that should be added to Exhibit No. 10.

EXHIBIT No. 10-Z: Additional B.13s relating to Exhibit 10.

MR. ROWELL: These B.13s all bear date at London within the period, that is they bear a date in April, 1927, and they all bear the Customs stamp—A. At a date later than the 30th of April.

Q. I see they run through the month of May.

Then have you made up a schedule of all the special cases that have been put in, that is a schedule of all the cases where we have put in invoice, bill of lading and B.13, listing them where it can be easily referred to, the dates and everything.—A. And the 20 account charged.

MR. TILLEY: We have the exhibits.

HIS LORDSHIP: Well, that cannot hurt.

MR. TILLEY: Has it got so far now that we have to put in an index to the exhibits we file?

HIS LORDSHIP: I think they have got a human heart, they want to help the Judge.

MR. TILLEY: If I thought it was that, I would waive my objection.

MR. ROWELL: Will you explain what that contains?—A. It is an index of those cases which have been referred to. On page 1 is shown the cases, under Date and 30 Exhibit Number. Then there is a sheet devoted to each of those cases, giving particulars.

EXHIBIT No. 120: Index to Special Cases.

Cross-examined by Mr. Tilley.

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Q. Now, Mr. Nash, the B.13s that you have added to Exhibit No. 3 and Exhibit No. 10, are not all the additional B.13s that you have got from Ottawa within the last day or two, are they?—A. No.

Q. Those that you have filed as 3-Z and 10-Z are merely those lately received that relate to those particular exhibits as originally filed?—A. That is right.

Q. To what extent have you received B.13s recently? I do not know whether it 40 is all within 48 hours?—A. No, in the last few weeks, I think on two separate occasions.

Q. When was the earlier occasion?—A. It was some weeks ago.

Q. What was the incident that produced those B.13s?—A. The examination of the Exporters' Indexes at the ports and our consequent application to the Statistical Department, Ottawa, to see if they could find those B.13s which seemed to be lacking.

Q. And to what extent did you get B.13s then?—A. Not a great number, very few compared to the whole.

Q. Well ten or a dozen or fifty, or what?—A. Well fifty,—well less than 100, I did not count them. We did not ask for 100.

Q. You do not mean to tell me that the Government just hand you what you ask 10 for? Do you say: Send me 100 more B.13s?—A. No, we asked them to research their records and send us everyone they could lay their hands on.

Q. Of course they had already professed to send you all they had a year ago?—A. They had sent us some B.13s.

HIS LORDSHIP: But there is a difference, in that some of the B.13s were issued before the date in question, but the shipment took place after.

MR. TILLEY: But we have been through enough of these cases for them to know that that happened and that they had to search beyond the date to find B.13s issued at the earlier date.

WITNESS: Had to search beyond the date, yes.

20 Q. Then they found some more. Were they all B.13s for shipments that were stamped later than April 30th?—A. I believe they were.

Q. They were all after April 30th, according to the stamp?—A I understand so, yes.

Q. And yours was just a general request to make a more careful search?—A. To make another careful search.

Q. Another careful search or a more careful search. Then you still found some lacking?—A. We found a few, yes.

HIS LORDSHIP: What do you mean, you found a few as distinguished from what?

30 MR. TILLEY: Well you still found some shown on the books at the port that were not produced to you from Ottawa?—A. No, I do not think we are getting it quite right. After going to the port and taking off the numbers, and comparing those with the numbers we had, we found numbers in the port book that we had no B.13s for. We gave a list of those numbers to Ottawa.

Q. That is the later occasion?—A. No, that is the first occasion. And we asked them to search again through their B.13s, to see if they could find those. They did so and sent us—

Q. Oh say 50 or 75.—A. Well the majority of them. Then at a later date Mr. Telford reported to us that he had found a few more bearing a date later than 30th 40 of April, as the result, if I make use of what he said to me, of searching beyond the

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date he had searched before. In other words, he did not go over the ground and find any more in relation to the earlier period.

Q. Did you actually give him the numbers of the B.13s you wanted?—A. Of a few that we could not find.

Q. Well you gave him those before you got the batch two or three weeks ago?—
A. It was some weeks ago.

HIS LORDSHIP: But did you find that there were some exports, from the books of the Customs officer, for which there were no B.13s.

MR. TILLEY: That is what they found, that no B.13s had been sent—

WITNESS: I think those are now all cleared up, your Lordship, but what has 10
come through from Ottawa in the last 48 hours are B.13s bearing date later than—

HIS LORDSHIP: They did not use their heads.

MR. TILLEY: No, it is not a case of heads.

Q. Mr. Nash, you gave them the numbers of these documents, and you told me they have a machine that just stamps the numbers one after another; therefore why could they not just go to the files and pull out the numbers?—A. That is what they did do.

Q. How is it when you sent them the numbers two or three weeks ago they sent only a partial return, and they are still coming in?—A. No, they did not, they accounted for the numbers on the first return, and those that have come through 20
subsequently are additional B.13s stamped at a later date. A B.13 for instance will in some cases turn up in Ottawa a year after the goods were sold, according to the books. For example, if we say that we are making our claim to the 30th of April, and on the 31st of December Ottawa searched for the B.13s, they could not find one dated the 15th of January.

Q. No, I think I can follow that.—A. If it carries its search beyond the 31st of December it finds additional B.13s filed in that period.

Q. But I thought you were giving them the numbers, and if they had the numbers they would be able to find them without difficulty.—A. We gave them the numbers to identify them. 30

Q. Well how is it if they have the numbers and they are all arranged in numerical order they cannot put their hand on them?—A. I suppose an odd one or two might be mislaid.

Q. Have you found any at Ottawa not shown in the books at the port?—A. I do not know of any. There was one case where Ottawa had in the Carling B.13s a couple that did not belong to the Carling Company, but I do not recollect any not shown in the books that were Carling B.13s.

Q. What do you mean, give me an illustration.—A. For instance, you will find occasionally the outport in reporting the B.13s may put under the Carling name some that are not Carling B.13s. We found that, and we reported these numbers 40
to Ottawa, and Ottawa reported, We have not got these. We discovered afterwards that they were not Carling B.13s.

Q. That is in the books at the port you found cases where there were numbers for Carling B.13s and you looked them up and found that they were not Carling goods.—A. Yes.

Q. What port was it?—A. Amherstburg.

Q. Have you the book for Amherstburg here?—A. No, it is coming.

Q. Did you get the other side—I suppose you could not, because you would not be trying—where B.13s would be under the name of Smith or Jones and might be Carlings? Did you find that?—A. No.

10 Q. Did you look for it?—A. Yes, we looked for it. When I say we looked for it, we instructed Ottawa to look for it. This search at Ottawa was a great deal more comprehensive than picking out Carling B.13s. They have all the B.13s separate at Ottawa, and they have checked and re-checked to see whether there are any Carlings in any other bundle, or any others in Carlings.

Q. You have got me to Ottawa, when I thought I was at a port. What about that port? Did you find any B.13s with a Carling stamp on, numbered as Carlings, but when you came to the index was under some other name?—A. No.

Q. Never found anything like that?—A. No.

Q. Well your man who made the search I suppose is here?—A. Yes, he will know more about it.

20 HIS LORDSHIP: Did you find a B.13 for every entry in the Customs book that showed an export?—A. I think eventually we cleared that up, I think we have found one now for every one.

MR. TILLEY: You have found what?—A. One B.13 for every entry that appears in the Exporters' Index. I would like to confirm that by Mr. Troop.

Q. I notice Mr. Troop nods and gives signals, which is quite all right.—A. Two or three they are still looking for.

HIS LORDSHIP: That would go to correct your statement?—A. Yes, if they are found, my lord.

30 MR. TILLEY: Now you said you went to the ports and saw them at work entering these B.13s?—A. I said I have.

Q. At Windsor?—A. No, I did not see them at Windsor.

Q. What port?—A. I have seen them at Vancouver—

Q. Well really—A. I have seen them at the ports. I have been investigating Customs matters for three years.

Q. Yes, and I think you get these cases mixed up.—A. I am answering your question; in connection with that investigation I made a point of seeing what everyone in one or other of the ports was doing in the matter of duties—I am coming down to it. In respect of the entering of the Exporters' Index I have sat at the side of Customs officers and seen—

40 Q. Who?—A. I do not remember.

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Q. But we have such a goodly list here, Windsor, Walkerville, Belle River—how many are there?—A. There are four or five hundred ports in Canada.

Q. But we have not been shipping beer from all of them.—A. I am not speaking of beer, I am speaking of the practice of the ports.

Q. You are not speaking then of the practice at these ports?—A. No, not particularly.

Q. That are shown in Exhibit No. 112?—A. No, I said I was speaking of the practice of entering the Exporters' Index at the Customs ports in Canada.

Q. I think—not intentionally, but I think it was misleading, it was to me at any rate. I understood you to say you were able to speak of a practice of the people at 10 these ports that we are concerned with.—A. I did not say anything of the kind. I said I was able to speak of a practice of entering Exporters' Indexes, and I am able to speak very much first hand of the practice.

Q. In Vancouver the person there might do it very differently, might do it every day or every hour, at Belle River they might do it once a week. I think there is quite a difference.—A. If they do there is a difference.

Q. But you do not know, do you, whether they do or not?—A. I cannot tell you what every Customs officer is doing, but I can tell you what the practice is.

Q. You cannot tell me what the practice is with regard to those offices that are shown on that list, can you?—A. I can tell you what the practice is in relation to the 20 Customs Department.

Q. (Previous question read to witness.)—A. I would not like to say I could not, I would not like to say I could, I do not know. I have been to these ports, and have done so much—

Q. Please do not talk so much. We must take the answer that you do not know?—A. It is not the answer.

Q. Then what is the answer:—A. The answer is that I am familiar with the custom of entering the Exporters' Index, not in one port, but in many.

Q. At these offices?—A. I do not know, Mr. Tilley.

Q. The answer is You do not know the practice at these ports?—A. No I cannot 30 say specifically.

Q. Then notwithstanding your objection to it we must take it that you do not know at these offices, unless you will say you do.—A. I am not going to stretch my imagination to say I do, but I know the practice.

Q. Well do not stretch your imagination, and please do not evade the answer.—A. I am not evading the answer. When I gave the evidence I spoke of a practice in the Customs Department.

Q. If you are speaking of a practice in Vancouver— A. And other places.

Q. Well, other places than what we are concerned with, I do not want such an answer. A. I must answer the way I am trying to tell the facts to the Court. You 40 are speaking of a practice, and I have told you the practice.

Q. Well, I think we have had that out, and we will go on. You do not know whether they enter up their B.13s at these ports and stamp them every day or every week, at any one of these ports we are concerned with here.—A. Well, I know what the practice is.

Q. At these ports?—A. I did not watch these men enter those particular entries in their books.

Q. Now is that just a stupid answer?—A. No, it is not.

Q. Or is it your intention to evade?—A. No, I am not trying to evade.

Q. Did you ever see any of these offices or any of the people in these offices stamp-
10 ing their B.13s so as to be able to tell what their practice was as to the length of time that would intervene between the stamping up— A. That is a very different question I have been so close to these Customs officers, I was in the Windsor port quite a time—

Q. Well, your answer is you do not know?—A. I do not remember distinctly.

Q. We will leave it at that, you do not remember. I suppose, as to the possibility of B.13s being mislaid and not stamped, a good deal would depend upon how frequently the stamping was done, would'nt it?—A. I cannot answer that question.

Q. You cannot even answer that. It is astonishing how well you can answer when you are explaining how we are liable, but you do not seem to be able to answer—
A. Will you repeat your question?

20 Q. (Question read to witness).—A I think a good deal would depend upon how anything was done, to have it accurate.

Q. Did you answer the question I asked you.—A. I do not think I can.

Q. Well, you cannot answer that question?—A. Everything must depend upon the man.

Q. You cannot answer that question. I should think that with any man the chance of things being mislaid and not stamped would be increased if there was substantial delay in doing the stamping. I would think that is obvious, but you say you cannot answer?—A. I do not know that it is obvious.

Q. Well, it is not so obvious to you that you can answer it?—A. No, because
30 you might have a delay—

*Q. I am not asking you to argue with me, I am asking if you can answer that question.—A. No, I cannot answer that question.

Q. Now, when you present Exhibit 111, you have first the fiscal year 1924-5?—
A. Yes.

Q. What month does that commence?—A. It ends on the 31st of March and commences on the 1st of April.

Q. You have cartons, 217,161. Does that include all the cartons which according to the books were sold in that period?—A. You are referring to the B.13s?

Q. The B.13s in that year. Is that the dates of them or what?—A. That is the
40 number of the cartons.

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Q. That is the number of the cartons shown by the B.13s dated in that period
A. Yes.

Q. No matter when the port stamp was on the B.13?—A. Dated as per Customs stamp of export.

Q. That is per the stamp?—A. Per the port of exit stamp.

Q. Not when it is dated by the person who made it out. Now in 1924-5, there are 217,161; in 1925-6, 219,000; in 1926-7,—that would be from the first of April, which brings in an extra month?—A. Thirteen months.

Q. There are 626,140?—A. Yes.

Q. And that is the year in which the rice beer commenced to be manufactured?— 10
A. Rice beer was commenced in 1926.

HIS LORDSHIP: Commenced to be manufactured or to be dutiable?

MR. ROWELL: It was always dutiable, my lord.

HIS LORDSHIP: And the reason why it was not charged is because it was not manufactured?

MR. ROWELL: It was not manufactured.

MR. TILLEY: Do you say there are no B.13s dated London prior to the 1st of May but bearing a port stamp of a later date for quarter barrels, none at all?—A. No.

Q. There are none?—A. No.

Q. You are agreeing that there are none?—A. There are none, the item is blank. 20

Q. So that there were none outstanding on the 1st of May, 1927?—A. I do not know what you mean by none outstanding. There were none on the B.13s dated at a later date than April 30th, 1927.

Q. In your Exhibit 111, do you include shipments like Quebec and New Brunswick?—A. We include the shipments for export. There are no B.13s for Quebec.

Q. Now, take the prices in your next exhibit. In 1927—the latter part of 1926 and 1927 the B.13s show the price as \$1.75 in many, if not all cases.—A. I think all the cases in 1927.

Q. And at the same time some of the invoices show prices higher than that?—
A. That is right. 30

Q. The price that is shown in column 1 is the price that is actually carried into the books?—A. Yes.

Q. So that these prices that are on the B.13s, where they are lower than the price in column 1, have no effect on the price entered in the books of the Carling Company as the price received?—A. No effect. They are not the books, in the sense that they are not the books they have no effect on the books. They are different prices.

Q. But they do not at all come into the records of the company as to the price it received for the beer?

HIS LORDSHIP: We have had a lot of evidence on that before. 40

MR. TILLEY: No, my lord, not on this.

Q. Where the price on the B.13 is say \$1.75 that figure is not taken in at all to the record of the sale price as shown in the books of the company?—A. No.

Q. The price that is shown there as the sale price is the price that is in column 1?—A. Yes.

Q. In fact throughout the whole time column 1 is the price that governs?—
A. The books.

Q. In the books.

HIS LORDSHIP: Do I understand that you find there are cases where the beer was actually sold at a lower price than the invoice price and the price entered in the 10 books of the company?—A. That, my lord, I cannot answer. Mr. Tilley did not say "sold", he said the price that appears in the books.

HIS LORDSHIP: Do you take the price in the books and the price in the invoice as the same.

MR. TILLEY: I am assuming that it is.

WITNESS: Yes.

Q. In all cases throughout the period?—A. Yes, I do not know of any differences.

Q. Are you suggesting at all that the entries in the books have been tampered with or changed?—A. No, I never made that suggestion.

Q. Mr. Rowell asked some questions along that line, but you are making no 20 such suggestion?—A. I did not suggest that. But I cannot answer His Lordship's question as to whether those were the sale prices, that is another question.

Q. Say the sale price according to the records?—A. According to the Carling books in London, and, if I might go that far, excluding the question of the bank account in Windsor.

Q. We will leave the bank account in Windsor for the time being. Those are the prices shown in the Company's records, but you are excluding now the items that you referred to as having been added back to sales?—A. Yes, that is so.

Q. It is the price that appears in the accounts as they run through the books?—
A. In the sales records.

30 HIS LORDSHIP: That is another question by itself.

MR. TILLEY: Yes, that is another question by itself.

Q. Then I am told that in some instances B.13s do not show the price at all. Is that correct, or do you remember any case of that kind?—A. I have not any recollection at the moment of cases of that kind. I would not doubt it if it is stated, it may be so. I said at the beginning of this exhibit that we would not want to say that we have given every price that is shown on the B.13s.

Q. Where you have bracketed two you say?—A. Pretty prevalent.

Q. You did not work out the average?—A. An average would not give the picture, I thought.

40 Q. At any rate you did not attempt that?—A. No.

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HIS LORDSHIP: An average price might perhaps be made out of that statement?—A. Not without the quantities.

Q. But you could make an average rate?—A. But if you sold 1,000 cartons at \$4 and one at \$1, the average would still be almost \$4, and have practically no relation to \$1.

MR. TILLEY: It depends on the amount sold at the different prices.

Q. Now, Exhibit 113, shipment by the boat Jane; did you examine the books at these ports, any of them, to see whether they kept proper record of the entry, report inward, and report outward, of these boats?—A. It would be impossible to say. 10

Q. I am asking whether you made any examination.—A. No, if you did it would be impossible to say whether it was accurately kept.

Q. I did not ask you whether it was accurately kept, I asked you if you made any examination to ascertain that.—A. I have seen the outward reports.

Q. That is kept in a book?—A. No, I think they are mostly loose.

Q. Loose sheets. Do you mean to say that the reports inward and reports outward of the vessels are just kept on loose sheets of paper?—A. On regular forms of course.

Q. Of course on regular forms, but they are not entered in a book. Do they enter them up in a book?—A. I think they do, I know they do at the big ports. 20 I know they do at Montreal for instance.

Q. No, you are taking us east now. I want you to stay in the Detroit river.—A. I am trying to answer the question by giving you the practice.

Q. I do not want the practice, I asked you if you examined any of these ports.—A. I did, and I saw the reports outward.

Q. Did you examine to see if they entered them up in a book?—A. I did not in this case.

Q. You have an Exporters' Index here, Exhibit 114. Are you able to say how often this book at Windsor was entered up?—A. No.

Q. Would you say that these entries look as if they were made pretty well at the 30 one time, in a bunch?—A. I could not say.

Q. I thought you were accustomed to examining books with such matters in mind.—A. Yes, but I could not say that.

Q. You really could not say whether it has that appearance to you?—A. No.

Q. I thought accountants could usually tell how a book struck them as to whether it was entered up frequently or at a sitting or two. You could not tell from that?—A. I could not tell from that.

Q. You could not even say that you yourself would draw any conclusion from it?—A. No, I do not think I could.

Q. Who kept this book do you know?—A. I do not know. 40

Q. Who is the collector?—A. Mr. Dalziel. He would not keep that book.

Q. He would not keep it himself. But do you not see that they are practically all of a certain shade? You come to a certain point and then you have a darker shade? You could not help us about that?—A. I do not think I could.

Q. All you have through the book is a list of numbers, and what I am pointing to seems to run continuously through it. At any rate you cannot help us on that. Those are supposed to be stamped periodically as they come in from the outports, are they not, those B.13s?—A. The B.13s, yes.

Q. When they are put in that book they have been stamped for the second time if they come from an outport?—A. Yes, I think so.

10 Q. Does not the outport keep any record of the numberings?—A. They should.

Q. Where is that?—A. At the outport.

Q. Have you got those books?—A. No, not the outport ones here.

MR. TILLEY: Well, I want the outports. I thought you said you had them all.

MR. ROWELL: We have all the ports in which they are all entered. I do not think we have the outports, it is the port that sends them in.

MR. TILLEY: It is the port that sends them in to Ottawa, but the outport sends them in to the port?—A. Yes.

A. Does it keep an index?—A. I believe they do.

Q. And they would have their own numberings on that?—A. Yes, if they 20 keep a record.

Q. That is, these numbers are the numbers put on them at the port, and then at the outport they would have the outport number. Now your man that is going to report here, has he seen the outport?—A. I know he has seen a number, I just wanted to find how far he had gone on the outports. He will let you know how many he has seen.

Q. Well he is going to be in the box, so I will not bother you.—A. He has seen some of the outports, not all of them.

Q. Your Exhibit No. 117 starts with October, 1924. Do you know why you start with October?—A. There is no record of rice beer in the previous mash book.

30 Q. Well there was no record of rice beer in October, November or December, 1924.—A. Quite so.

Q. Then I ask why did you start in October, 1924?—A. I do not know any reason. There was nothing in the old mash book that would help us.

Q. Your Exhibit No. 112 starts with April, 1924.—A. There is nothing in this mash book that would help the question of rice beer.

Q. Was your point in Exhibit 117 only rice beer?—A. That is all.

Q. It had nothing to do with lager as distinct from ale?—A. No, I made it up just as the mash book showed, from the beginning of the present mash book.

Q. You just took mash book No. 2 and disregarded No. 1?—A. Yes, I saw No. 1, 40 but I did not make any extracts from it.

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HIS LORDSHIP: My remark was that it was not a fair proportion.—A. It would make the proportion less still if we took the old mash book.

MR. TILLEY: I am not concerned with what proportion you get comparing a fixed thing like the rice beer manufactured in a certain year with a quantity of beer manufactured in 5 or 10 or 20 years, but I am concerned with knowing, when we emphasize the sale of lager as compared with ale, why you started at October, 1924. But you say it is just that that book commenced then?—A. I did not think there was any useful purpose to be served in going back to the old book.

Q. I notice in the period covered by your exhibit that lager and rice beer—and they are both lager I suppose are they not?—A. I don't know sir. 10

Q. At any rate the lager and the rice beer would make about two-thirds of the total output?—A. Yes.

Q. That is, ale would be only about one-third?—A. Yes.

Q. Less than a million—is this gallons?—A. Gallons.

Q. Now looking at your exhibit 119, you there separate into two columns certain totals that have been included by way of deduction in your statement Exhibit No. 2?—A. Yes.

Q. And the deduction consist of containers and liquid returned as one item, and freight paid as the other?—A. Yes.

Q. Now take the containers and liquid returned, you allow that credit under 20 what circumstances when you are building up your Sales Tax claim?—A. I have to deal with them separately. In connection with containers we allow it where the empty kegs or empty bottles have as recorded in the books come back and been credited to the customer's account.

Q. That is to say, if a large shipment is made to customer "A"—and this would apply in Canada or anywhere else I suppose—and later on he returns the containers and they are credited to his account in the accounting between the customer and the manufacturer, in computing Sales Tax you would deduct the amount credited from the amount originally billed?—A. Yes, but with this, that we allowed them in all cases where they were credited to the customer's account, not necessarily the 30 customer to whom they were originally sold, because we could not find that out.

Q. It appears as a credit item in the customer's account?—A. It appears as a credit item in a customer's account. But whether it appears in the same customer's account to which the original goods were billed it is impossible to say.

Q. That is, you cannot ear-mark them?—A. You cannot ear-mark them.

HIS LORDSHIP: In other words, you really annul the sale pro tanto?

MR. TILLEY: You annul, as his Lordship says, the original sale pro tanto, that is you take off from the original sale?—A. What has not been sold.

Q. The container, what was not the object of the sale at any rate.—A. What did not stay as a sale. 40

Q. But you only do that where it is credited in some customer's account?—A. Yes.

Q. Now is that a rule of the Department, or do you do that on your interpretation of some regulation?—A. Oh that is the practice of the Department, it was the practice of the Department at any rate.

Q. Well I am not concerned with what has been since, but was that a practice of the Department that related to liquor and beer only, or to general merchandise?—

A. Generally I think. There again I would not like to say that there are no exceptions, but generally, yes.

Q. You mean to say that it was not a special ruling made in favour of or against a particular business, but was one of general application?—A. One of general application.

Q. Now if you know you can tell me, if you do not you will say you do not know. Would not a manufacturer be allowed to make that deduction if he paid cash and just brought in the returns as equipment to be used again?—A. I think not.

Q. Why not?—A. A man might buy containers which he had never himself sold, and if he was allowed to buy them free of tax and to have the deduction from the selling price the Government would not collect the Sales Tax on those containers from anyone.

Q. That is to say, if he had not been the original purchaser of them he would be thereby buying bottles or boxes, or whatever it might be, and not paying Sales Tax on the manufacture of them?—A. Quite.

Q. If then it was quite clear that he did use the containers it would be a matter of making a rule to prevent fraud in some cases I suppose that would prevent him getting something back. If one could be sure that he had originally paid for the bottles and they were his bottles, for instance if they were made according to his manufacture so that no person else was buying such bottles, it would seem to be a hardship that he should not get his deduction?—A. Then the Government provided this particular means of dealing with it.

Q. What was the means?—A. By saying, you credit the customer with the goods that come back, and we will allow you a deduction, as being a deduction from the selling price.

Q. Then it comes to this, that any person carrying on a cash business could not get his deduction?—A. You mean cash in the way of purchases?

Q. Cash in selling his goods, and cash when he got his return empties. If he paid cash and got cash, so that he had no running account, he could not get his money back?—A. It would not affect the running account. If he got paid cash in full for his sales, without any deduction, and paid cash for all his purchases, he would find it difficult to get it under the Government regulations.

HIS LORDSHIP: But would there not be a cash book?

MR. TILLEY: That would not be crediting it.

40 HIS LORDSHIP: Supposing there is a cash book kept, there must be.

WITNESS: Yes, there is a cash book.

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Q. Supposing I buy \$1,000 worth, and it is entered in the cash book, and I come back with my empty bottles and buy another lot of \$1,000, and I say, Deduct the price of these—? A. Then, my lord, he is allowed it.

MR. TILLEY: I think that would be crediting it to the Customer's account within the meaning of what Mr. Nash is saying. But if he did not choose to buy anything more, if he says: What do I get for these containers, if I bring them back? \$200. Well, if it was cash-over-the-counter business he would not get it?—A. Well, it could be done, he would get it by merely crediting his account with the \$200. They have provided a means of accounting for these empties.

Q. In your account as contained in Exhibit No. 2, you do not allow anything 10 for the returns of empty bottles from the United States?—A. Unless they are credited to a customer's account.

Q. Are they credited to a customer in Carling's case?—A. We have allowed all those that are credited.

Q. I am talking about the United States. And are they credited in our books so that you could give a deduction for them from the amount you compute for Sales Tax?—A. The majority would not be.

Q. I am assuming not, but I want to know whether any of them are?—A. No.

Q. Because my recollection was that you did not know that bottles were returned? —A. Kegs are, yes, not bottles. In other words, the bottles are not credited to the 20 customers' accounts, that you bring back, but the kegs have been credited.

Q. Then from your standpoint it would really be a matter of how we handled the returns in the books at the time we got them back, wouldn't it?—A. Very largely.

Q. And if the item were to be credited to us, it would be the full amount allowed for the bottles?—A. The full amount that you allow the customer would be allowed you.

Q. For the bottles.

HIS LORDSHIP: But he will have to take into consideration the transportation and the duty.

MR. TILLEY: Well, they would not credit us with the duty?—A. No, if the 30 customer is credited with the bottles or kegs, the total amount of the allowance—

HIS LORDSHIP: I am not speaking of that, I am speaking of the kegs where they come back to the company. You say the kegs are?—A. The kegs are, they are credited to the customer's account.

Q. The bottles, if they come back are not credited?—A. They are not.

Q. But if they should be you would have to take then into consideration the question of transportation?—A. Oh, no, my lord, the transportation would not enter into the case.

MR. TILLEY: We would have to transport them.—A. Whoever brings them back to the brewery must bring them back free of any transportation charges. 40

Q. As far as any Sales Tax computation is concerned?—A. Yes.

HIS LORDSHIP: It would not be a set-off for the same amount, because they would have to disburse to get them back.

A. Well, it might be so.

MR. TILLEY: I just want to get it clear on the record. It may be our misfortune, but it seems to be the misfortune of not conducting the books according to the rule of the Department to get that credit, provided bottles came back that had been sent over to the United States as filled bottles by us.

Q. It is a matter of the method of accounting?—A. Yes, provided you receive back from customers bottles which you had originally sold to them, then it is a matter of how you account for the return of those whether you get the Sales Tax.

HIS LORDSHIP: Of course, if the customer paid the transportation, well and good.

(Court adjourned at 4.30 p.m. Tuesday, April 23rd, 1929, to Wednesday, April 24th, at 10.30 a.m.)

WEDNESDAY, April 24th, 1929, 10.30 a.m.

A. E. NASH, Cross-examination by Mr. Tilley, resumed:—

Q. Mr. Nash, I was asking you about the containers as they entered into your computation shown by Exhibit 119. You have in the same column—you spoke of the inconvenience of breaking it up—containers and liquid returned. That would be beer returned?—A. Yes.

20 Q. Will you tell us, if you know, whether beer returned is processed again and goes out again, or is it refuse?—A. I know that some is destroyed.

Q. By the company, do you mean?—A. Yes.

HIS LORDSHIP: Did you allow the full value?—A. We allowed the value of all that was destroyed.

MR. TILLEY: I am not complaining, it is another aspect. But some I understand is re-processed.—A. I do not know in respect to the Carling Company, but I do know that beer has been returned to breweries and is re-processed.

30 Q. That is it would seem to be a possible thing to do. I am not concerned with that for the moment, but what I want to ask you is, do you know where the beer is returned from? Was it sometimes returned from the border before it had been exported? I am not asking you to agree that it was exported in fact, but before exportation is said to have taken place by us, returned before being exported, or exported and then returned. Or do you know?—A. I do not know.

Q. I was going to suggest that if it was returned before it was exported there would be no B.13 to show with the Customs stamp for that beer that would go back again to the plant.—A. If it had not been exported?

Q. If it had not in fact been exported.

40 HIS LORDSHIP: There might be a B.13 that would have been taken out in London at the time the invoice and bill of lading were sent, and if it was found out afterwards that the beer was bad it would be returned and the B.13 not be used.

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MR. TILLEY: It would not be stamped. I am treating B.13s as stamped B.13s. I do not know whether it amounts to much in figures—

HIS LORDSHIP: There would be something material in what you suggest if beer came from the other side—

MR. TILLEY: I was just going to ask what Mr. Nash knows about it; first, was there beer returned from the border, or would the records that you can take off from the Company's books show whether it returned from the border before exportation, so that there would be no stamped B.13 for that beer—

HIS LORDSHIP: To make the matter clear, this credit is given generally, but the important point is, was it credited to any individual or is it a general credit to the 10 company? Suppose you have sold beer to "A" and he says "this is bad and I am sending it back"; if "A" had been charged with that beer the credit would be given to "A."

MR. TILLEY: The credits for beer returned I am assuming are all right.

HIS LORDSHIP: Well I would like to know that.

WITNESS: We have given credit where the Company has given credit.

HIS LORDSHIP: Did the company give credit in their ledger to one of their customers where they had charged him with the value of the goods?—A. Yes.

MR. TILLEY: Your Lordship will appreciate that there are two points connected with the beer returned. First, there is the credit on the sale, a sort of offset, 20 because it is sold, and if it is re-processed it is sold again. But I am on the point about the B.13s.

Q. I want to know whether you can tell from the records if beer reached the border and was returned to the Carling Company at London, so that it would be shown as a sale out of their plant, but no B.13 ever brought into existence in the way of a stamped B.13, because it was returned before it actually crossed the river.—A. I could not tell you from the returns whether it had got to the border or farther.

Q. Would I have to ask Mr. Troop about that, or can you confirm that?—A. In connection with those returns that we have allowed we saw freight bills indicating that the goods came from Windsor back to the brewery in London. 30

Q. So that there would be a quantity of beer that would be shown as an original sale that was shipped back, on some question of quality or something of the kind, from Windsor, and never exported.—A. Well we only saw the freight records.

Q. You saw records that would indicate that?—A. We do not know where they came from to Windsor, if from anywhere. We saw them from Windsor.

Q. You saw the freight shipment from Windsor back to the brewery?—A. Back to London.

Q. And whether it had moved about before it started back from Windsor you cannot say, is that what you mean?—A. I cannot say.

Q. You were totalling the B.13s. Can you inform the Court what percentage 40 of the export beer that we are concerned with here is covered by Government stamped B.13s from Ottawa? Is it 50 per cent—100 per cent?

HIS LORDSHIP: We have got that in statement No. 111.

MR. TILLEY: No, my lord, I think that is not in any statement.

WITNESS: I think No. 111 will give you that, only the percentage is not struck.

Q. Will you strike it?—A. That is for the fiscal year 1924, that would be March 31st.—A. Yes.

Q. Is that the time this claim for Sales Tax commences?—A. Commences 31st April, 1924.

Q. I thought it was paid for April and May.

HIS LORDSHIP: It is supposed to start in July.

10 MR. TILLEY: That is my point, I do not think that quite covers the same period.

WITNESS: The tax was paid for April and May, 1924.

Q. So that there are two months there that we are not concerned with?—
A. There is no claim for Sales Tax for two months.

Q. I do not know whether you are changing. I say we are not concerned with Sales Tax for those two months, is that right?—A. That is right.

Q. I do not think this statement was being prepared to show precisely what I am asking about now.—A. No, it was not.

Q. This was just a statement to indicate generally how the B.13s stood. I am asking him to be a little more precise. I would like him to make it just for the period
20 we are concerned with.

HIS LORDSHIP: Yes, I would like the statement to be correct to that extent.

MR. TILLEY: And to show it by a percentage figure. Then I would like to have you suggest what elements might come into that figure that are missing, so to speak. For instance we have paid Smith, do you remember?—A. Yes.

Q. Where does that appear in this figure? Is Smith treated as a sale—because you originally claimed for it—is it still included in Net Sales for export?—A. Yes, and in B.13s.

Q. No, I am sorry to tell you we have no B.13 for it.—A. Then, in that case, it would be in the sales and not in the B.13s.

30 HIS LORDSHIP: What do you mean by Smith?

MR. TILLEY: Your Lordship will remember we paid on the Smith items before the trial commenced.

HIS LORDSHIP: I do not know anything about that.

WITNESS: There were some payments made, your Lordship.

MR. ROWELL: It is not credited on this. They were paid, I think Mr. Tilley said, the other day.

MR. TILLEY: I have got the vouchers here, I will put them in.

MR. ROWELL: Something of which the solicitors had no knowledge. They paid to the Department the amount of some particular sale.

40 MR. TILLEY: It was not done through me.

Q. Will you just verify that as being right according to your information? I do not know that I can ask you to verify the figures, they are subject to check.

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(Witness asks Mr. Troop).

Q. Well, Mr. Troop is going to be in the box later. Could I mark this now subject to Mr. Troop checking it?

HIS LORDSHIP: Could not this statement be corrected and credit given, instead of filing more?

MR. TILLEY: I think that would be the better way.

Q. That would not be much trouble, would it?—A. I think to get what you want a comparison of the B.13s and of the sales from the first of May, 1924 instead of from the beginning of the fiscal year would mean going through all the B.13s—

MR. TILLEY: I do not think you are quite on the point His Lordship is on. 10 His Lordship suggests that if the claim you have presented does not give credit for what we have paid on Smith it would be well to adjust the figures, so that His Lordship would know just what the balance of the claim is.

HIS LORDSHIP: Yes, that is one thing.

MR. TILLEY: Now, I am on another point at the moment, that is the B.13s. I am trying to find, first, what percentage of the beer shipped for export is covered by B.13s in the Government files at Ottawa. I am taking their own files. Then when I have got that, I will know what percentage is missing. Then I would point to a few things as probably explaining that.

You were going to say it would involve a good deal of work—

20

HIS LORDSHIP: I do not think this witness would acquiesce in your question to the full extent. You throw in a suggestion that you would have exported all the goods and that you would have found B.13s for a certain proportion. That is not the position taken by the Crown. You should have a B.13 every time you have an export, and that is the only way to prove your export. You are just begging the question by saying: What is the proportion of our exportation which has no B.13s. The exportations that have no B.13s are not exportations.

MR. TILLEY: No, my lord, I never try to make evidence for myself by that form of question. I have explained to Mr. Nash that I have not asked him to agree that it is exported; all I ask is: What percentage of what we put in our books as 30 export sales, or what he has headed here under Sales for Export, merely as indicating that we claim it is for export. He does not admit it is export by any such expression. But I want to get what help Mr. Nash can give. There is nothing involving any concession in the use of the word "export". I want to know to what extent there are actual B.13s with the Government for what we claim we exported. Whether I use the word "claim" or not, that is all I have in mind.

Now Mr. Nash is going to say that will take some time, is that right?

WITNESS: Yes, I do not think we can get any closer to it, without a great deal of work, than we have in Exhibit 111. I think Exhibit 111 is the answer.

Q. It cannot be the answer, because you have two months there that we are 40

not concerned with. Can you not take them off?—A. We would have to go through the B.13s again.

Q. How does the percentage stand? Will you figure it there?

HIS LORDSHIP: Do I understand that statement in which it is contained, if it were used to get the proportion, would not hurt you, but be in your favour, since you gather the B.13s for a couple of months more?

MR. TILLEY: Oh no, he has got the sales in for a couple of months more too.

Q. So it is as broad as it is long that way, is it not?—A. Yes.

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Q. Are you saying really—and possibly it makes an end of it,—that April and
10 May being in on both sides of the problem will possibly not change the percentage appreciably?—A. I would not think so at all.

Q. Then will you give me the percentage as you and Mr. Troop think it is?—

A. On the basis of gallons it is 82 per cent.

HIS LORDSHIP: Please repeat that. What does the 82 per cent represent according to your own wording?—A. 82 per cent represents the ratio of the B.13s in gallons to the sales for export in gallons, using the expression Net sales for export.

MR. TILLEY: In the Net Sales figure is a certain amount for Smith, possibly not very large, but a certain amount. That is included still in the Sales?—A. I think so, yes.

20 Q. Although the Sales Tax has been paid on that since the litigation started?—
A. It is included.

Q. In addition to Smith are the cash sale items that we were discussing with some witness in these sales, in so far as it represents beer that was not shown on the invoices, you say, to be 2½ per cent?—A. They are included.

Q. So that we have those two things included on the Sales side when you are getting at that percentage. Then included in the Sale side also would be something, I do not know how much, for beer that was re-shipped from Windsor—I just want to identify the beer that we were discussing already this morning.—A. No, that is deducted.

30 Q. From the Sales side?—A. That is deducted.

HIS LORDSHIP: You said one thing there that I did not grasp. You say that in the cash sales which we have been discussing we had an invoice divided, and some sales of 2½ and others unmarked. Those unmarked and calling for a larger price, you treated them—?—A. As for export.

MR. TILLEY: In the figure they built up for export that is included.

Q. Now one other question on this Exhibit 119. The statement shows in the third column, Freight Paid, and it does not commence until November, 1925. Does that indicate that the company did not pay any freight before November, 1925?—

A. No, not necessarily. It would indicate that they did not charge the freight and
40 show it on their invoices as an item of freight paid before that date.

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Q. And because it is not shown as a separate item on the invoice, even though it was paid, the claim as you make it up, rightly or wrongly, would require payment of Sales Tax on the freight before November, 1925?—A. Yes, You use the expression “even though it was paid”. Of course we do not know that it was paid.

Q. I am really and sincerely trying to put my question in a way not to embarrass you. You say, Even if it was paid. How in the world does that make an admission by you that it was paid? Please do not stop everything because there seems to be something you can quibble about. The question was put plainly and properly. You seem to be afraid that the Government might lose this case.

Now just so that His Lordship will understand, Is the division that you are referring to shown on this sales slip number 03202 in Exhibit 47, is that the kind of division you are referring to?—A. There is a division made on this particular invoice between Returnable packages, Transportation, and Liquid.

Q. And on the earlier ones the division does not appear?—A. No.

Q. Because it is not stamped in that way they do not allow the freight.

So it is the absence of a notation that brings about that result?

HIS LORDSHIP: There is the price too, that controls to some extent.

MR. TILLEY: But if the notation was put on the price would be adjusted having regard to the freight paid. That is, the freight is indicated on the invoice, the idea is that the sale is taken as made at the plant and the freight deducted from whatever price the customer paid. His price included freight on the shipment, provided it is noted on the account?—A. That is not the interpretation of the Department. They do not say that. They say, You can allow freight if it is shown separately on the invoice and paid to an independent carrier.

Q. Where does it say, Paid to an independent carrier?—A. In the Government rulings. So that the question goes a little deeper.

HIS LORDSHIP: I do not remember any invoice with that notation in it.

MR. TILLEY: Oh yes.

HIS LORDSHIP: Saying that it is \$1.75 f.o.b. at the brewery?

MR. TILLEY: Would your Lordship be good enough to look at Exhibit 119, the 30 third column of figures. November, 1925, is where it first appears.

Q. Now is it right to say that all the invoices—well there may be some exceptions, but from that date the invoices are usually stamped in that way?—A. Yes.

Q. So that the division is on and after that date.

HIS LORDSHIP: I do not remember ever seeing any.

MR. TILLEY: I am afraid we did not draw your Lordship's attention to it. This is the second volume. Just to show that when it once started it ran on—I am not saying there are not exceptions, I do not know, but in the earlier years it was not done, and in the later period it was done.

The way the regulation, which is Exhibit “C,” number 6, reads—

MR. ROWELL: Those are not regulations, those are instructions published with and following the regulations.

MR. TILLEY: Whatever it is. It reads:

“Consumption or Sales Tax is not to apply on the charge for freight for transporting the taxable liquid from a licensed manufacturer or producer to the purchaser provided the charge is shown as a separate item on the invoice on which the tax is accounted for by the manufacturer or producer.”

I am not concerned for the moment with whether that is a regulation or instruction, all I am concerned with is asking Mr. Nash whether, added to that in the Department's instructions to you or the rulings you say they have made is the further thing that it must be paid to an independent carrier.

WITNESS: Quite.

Q. Therefore—what is involved in the independent carrier?—A. May I describe it this way: It came up as a result of one brewery charging a flat rate per carton for freight by their own trucks. We asked the Department, Is that in the sense of the regulation a payment of freight for transportation? And they said No, because it is paid to their own trucks, it must be paid to an independent carrier so as to establish the price for freight.

Q. The independence of the charge?—A. The independence of the charge.

20 Q. And the probable fairness of the charge. Now there is nothing appreciable that enters into that question in this case?—A. No.

Q. That may be important as to others but it is not here.—A. I only wanted to make it clear that the Department has gone a little deeper than the regulation.

Q. Now you have prepared in a convenient form a certain index of special cases, Exhibit No. 120. I have not had time to check it.

HIS LORDSHIP: I think it is very helpful, I admire it.

MR. TILLEY: Yes, it is helpful, but the trouble is you are liable to get things stated inaccurately.

HIS LORDSHIP: It is a copy of—

30 MR. TILLEY: No it is not a copy, it is an index or summary.

WITNESS: Yes.

HIS LORDSHIP: If I find any liability I am not going into details. All these trifles that you have suggested this morning, I would not go into them.

MR. TILLEY: No. I am only mentioning them for the purpose of showing your Lordship that they exist as matters to be kept in mind.

HIS LORDSHIP: Yes, they should all be taken into account when you come to adjust the amount. I would not undertake to do it myself.

MR. TILLEY: No, there is no real reason why this case should not come to an end. I would not want to follow these all through. A good deal could be done by 40 the accountants, after the principle is established.

Q. Now just to illustrate, would you take page 1, (Exhibit 120). You have got

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the date of the Invoice, the number, the name, particulars. That is of course by reference to the invoice itself?—A. Yes.

Q. Then you have Bill of Lading; No Bill of Lading filed. You are not commenting on the absence of the Bill of Lading as indicating that there never was one?—A. No. It is not in the Exhibit.

Q. Then, Account Charged. Then below that, How Payment Received. Is that taken from the document or from Mr. Morrison's evidence?—A. From Mr. Morrison's books, that is taken from the books.

Q. I thought probably from his statement in the witness box.—A. No, from the books. 10

Q. If that is so, I am not going to bother you about any details. Would you find me a Diesbourg item?—A. Turn to the seventh page.

Q. Not Diesbourg as a consignee.

MR. ROWELL: Shipped to someone in care of Diesbourg.

MR. TILLEY: "Account to which Charged", is that what you mean?—A. Yes.

Q. Taking that account as it stands it shows that 800 cases of beer are covered by B. 13s?—A. Yes.

Q. And when you are referring to B. 13s. you mean Government B.13s in all cases?

HIS LORDSHIP: You mean B.13s stamped by a Government officer? 20

MR. TILLEY: No, I mean B.13s at Ottawa.

WITNESS: No, that is Company B.13s, the ones that were filed.

HIS LORDSHIP: I do not quite appreciate that.

MR. TILLEY: Mr. Nash is saying that this is merely a reference to what the exhibits show, and as Morrison or some witness was asked to produce his B.13s for this shipment he produced his own, therefore these happen to be the Company's.

WITNESS: Yes, we have taken those that were filed as exhibits. This is an index to the exhibits, therefore we have taken what was filed as exhibits.

MR. TILLEY: Your Lordship will see why I want this. I do not want it to appear that this is the only evidence that will be possible. This is not a summary of 30 the case, it is a summary of the exhibits.

Q. That is the point, isn't it?—A. Yes, a summary of the exhibits.

Q. Have you looked to see whether the Government has at Ottawa, or among the ones you got from Ottawa, any B.13s in addition to those Mr. Morrison was able to produce from his custody?—A. I have not, no. I have taken the B.13s for that whole period from the Government, but I have not taken them in respect to every sale.

Q. I thought from the fact that you produced Government B.13s for exhibits 3 and 10—but I presume you did that because you had already produced Government B.13s and you wanted to add some more that had subsequently come in?—A. That is right. 40

HIS LORDSHIP: Have you looked among the exhibits, the B.13s supplied by the

defendant, to see whether you had not borrowed them as coming from the Department.

WITNESS: No, your Lordship, we have not compared the defendant's B.13s.

MR. TILLEY: Well, I just want to get at the fact. Have you checked up the Company's B.13s?—A. No.

HIS LORDSHIP: You see we had a statement here yesterday that it was all, yet they were finding two or three entries for which there was no B.13. You may find it among those.

MR. TILLEY: At any rate the B.13s are the ones that are attached to the 10 Exhibit. That is all I am concerned with for the moment. May I have Exh bit 100-A? Now, we ought to correct the record in regard to that. The B.13s attached to that exhibit are copies of the Government B.13s.—A. Well, they are the Company's in that they were filed by the company.

Q. But they are not the Company's in the sense that they were stamped and returned to the Company in the course of business. The ones produced are copies of what you brought from Ottawa.—A. Well, I did not know that.

Q. I know, I am not saying you did, I am just keeping your evidence right. Now, I am not going away from Diesbourg permanently, just a little excursion for the moment. I am now looking at Exhibit 98 with its subs. Mr. Troop is looking 20 something up for me about that, I will come back to it.

Would it be possible for you to give us a statement showing the shipments that we will refer to as Diesbourg shipments, that is shipments of this kind that we have been discussing, say Diesbourg shipments to Belle River, and the B.13s for Belle River? You remember Diesbourg said that all the goods that came to his dock were checked by the Customs and as the car came in and were checked to the trucks and checked away. I would like to know whether the B.13s are complete or whether they are not complete. I am putting my point plainly?—A. I think it would be possible, it would take some time.

Q. Well, if we can get it you will be good enough to get it.

30 HIS LORDSHIP: It means you would have to segregate all Diesbourg?—A. I think so. Presumably they would not be at more than one or two ports. That would be possible.

MR. TILLEY: We have just a little desire to put our friends to a little work, having regard to the work they have put us to. But that is not the real point.

WITNESS: Belle River is an outport of Windsor, which makes it longer, because Windsor is a very big port for business.

Q. You have a Belle River index haven't you?—A. But still you have to pick out the B.13s from the bundle at Windsor.

Q. But they are all numbered?—A. Yes, they are numbered in the Windsor 40 file, not the Belle River number.

HIS LORDSHIP: It can be done?—A. It can be done.

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MR. TILLEY: You are suggesting greater difficulty than I think really exists.—
A. I do not think you will get it immediately.

Q. Well it is not a fraction of the work we have gone to in connection with other things to establish them here.—A. No it is not.

HIS LORDSHIP: This is all work that may turn out to be for nothing.

MR. TILLEY: I am not going to pursue it further. I just want to get one illustration of a case where a witness has come into the box, called by my friend, and says every bit of it went through under Government supervision, and see whether the Government's B.13s are complete with regard to it. Just a test.

HIS LORDSHIP: Assuming that there are two phases of this case; that there 10
would be a judgment establishing the principle, under which a taxation would be made, should not all this be done only when you come to ascertain the amount?

MR. TILLEY: I think so. I think in view of what your Lordship says I will just leave it there.

HIS LORDSHIP: I think it would be wasting time.

MR. TILLEY: I do not think any doubt has been thrown upon it—but you will confirm this for me I am sure, that the records show, and the fact is, as far as you have been able to ascertain it, that the 15-cent duty was paid on the rice beer properly?—A. Yes, I think so.

HIS LORDSHIP: Would you make that clear?—What tax is that? 20

MR. TILLEY: That is the special tax for rice beer.

HIS LORDSHIP: You are not mixing it with the Sales Tax and the gallonage?—

MR. TILLEY: No, my lord.

Q. Then the same answer would apply to the malt duty or tax?—A. Yes.

HIS LORDSHIP: They are not in question in this case.

MR. TILLEY: No.

Q. Then, I think I covered it before, but this Company's record is unique as to wastage as compared with all others in Canada?—A. I have not the figures in front of me, but I do remember that it was a low wastage figure.

Q. I think you said about 2 per cent.—A. It was very low I remember. 30

Q. It sometimes turns up as high as 18 per cent in some breweries?—A. It has done, yes.

Q. So that the Company's record, apart from their iniquities in connection with paying sales tax, would seem to be rather all right,—Sales Tax and Gallonage Tax?—A. Well I am not expressing any opinion as to their books.

Q. Either for or against?—A. Either for or against.

MR. ROWELL: If you want the record you can get it in the report of the Royal Commission.

MR. TILLEY: I do not go to documents you draw to get the record.

MR. ROWELL: I had nothing to do with drawing it. 40

MR. TILLEY: Now to return again to the question I was asking you yesterday,

you spoke about how these things are done by a numbering stamp. I ask you to look at Exhibit 98-C, I do not see any numbering stamp about that.

HIS LORDSHIP: He did not say it was covered everywhere by a numbering stamp, he said, in the large ports.

MR. TILLEY: Well Windsor is one of the large ones isn't it? A good busy one about this time. I produce to you Exhibit 98-A, which is our copy of the B-13.

HIS LORDSHIP: Shipping at Windsor or one of the outports?

MR. TILLEY: Sandwich. It goes through Windsor.

Q. Which of these numbers is the Windsor number?—A. The entry number.

10 Q. That is 4180?—A. It should be.

Q. It should be if it is done right, and we are assuming it is. 3792 is the Sandwich number?—A. No that is the port number.

Q. From Windsor to Ottawa?—A. The boat port.

Q. That would be Sandwich?—A. There would be another number for Sandwich.

Q. Here is your own copy with the three numbers on it. The report number, which is the report of the vessel?—A. Yes, the vessel.

Q. That would be made at Sandwich?—A. Yes.

Q. And that is in manuscript?—A. Pen and ink.

20 Q. And the entry number, 4180, is the Sandwich entry number?—A. That is the Sandwich outpost entry number.

Q. That is in ink. Then the 54408 being the highest of the three figures, is the Windsor export number, as it passes through the Windsor head office, so to speak, on its way to Ottawa.—A. That is right.

HIS LORDSHIP: And you did not say whether it is hand-written.

MR. TILLEY: It is stamped. And that is the only one that is stamped.

Q. I think you said you found sometimes some confusion in those numbers.—
A. Yes; we have found confusion.

MR. TILLEY: Yes, that would be natural. That is all.

30 WITNESS: May I at this point make a correction in an answer I gave your Lordship yesterday.

You asked me yesterday if we had found any B.13s that were not in the port books, the books we call the Exporters' Index. I answered that we had not. I should say to your Lordship that the Windsor Exporters' Index is not at this time available, if it was ever available prior to October, 1925, so that I cannot speak as to that period in respect of that particular port.

MR. TILLEY: I think I have some questions to ask about those Indexes, but I was going to ask Mr. Troop rather than bother you.

40 WITNESS: He is much more capable. But I want to correct what I said so that your Lordship would not have a wrong impression.

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Plaintiff's
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No. 3

Albert E. Nash
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Re-examined by Hon. Mr. Rowell:—

Q. My learned friend has been referring to Exhibit No. 119, the Analysis of Credits allowed. I want to make clear what item in Exhibit No. 2 is covered by this particular exhibit.—A. The fifth item in the claim, the second, long sheet, the fifth item in the first column, and it will be the sixth item in the second one, because there are three kinds of beer instead of two.

Q. It does not represent all the deductions that have been made, it only represents that particular item "Less Credits Allowable"?—A. Yes.

Q. The other deductions you have made are Gallonage Tax, and other items?—
A. Gallonage Tax, Luxury Tax. 10

Q. Then yesterday His Lordship asked you a question as an accountant as to the basis upon which the price should be taken from the books. You wanted time to look the matter up, to check up certain items. I would like to know if you are in a position to answer His Lordship's question; whether as an accountant, speaking from the books, those items—

MR. TILLEY: What items?

HIS LORDSHIP: The rate on which the tax should be paid on whatever you are liable for.

MR. TILLEY: I object to the witness giving any expression of opinion about that at all. 20

HIS LORDSHIP: We have had additional evidence within the last couple of days on that matter, that Low was fixing the price before any shipment was put on the boat, and Low was receiving the money, and he was one of the officers of the company. That throws a great deal of light on that question.

MR. TILLEY: At any rate I object to Mr. Nash expressing any opinion.

HIS LORDSHIP: Well I know what took place and how those amounts came back.

MR. ROWELL: The only point is, Mr. Nash had included in that exhibit certain items added. I gather your Lordship wanted to know whether he, as an accountant, thinks those items are properly added. 30

HIS LORDSHIP: I think in view of this new evidence I do not require it.

MR. ROWELL: That is all.

WITNESS: There is one thing more I should mention. I filed the Exhibit as to the Comparison of quantities on B.13s with quantities in the books, Exhibit No. 111. I told you at that time that commencing yesterday morning we had put on a large staff of men to again re-check all the B.13s and see if there was any possible difference. I now want to report that there is one B.13 found as a result of that re-check. I think the explanation is it is signed Hamilton Brewing Association, although it looks as if it is Carling's beer. That is why I think it was missed.

MR. TILLEY: How much?—A. 130 cartons. It would not alter— 40

MR. ROWELL: Your Lordship will see Hamilton Brewing Association appear

at the bottom as signing the declaration for export, but the heading is Carling Brewing & Malting Company.

MR. TILLEY: I suppose it is Carling Export Brewing & Malting Company.

MR. ROWELL: No, really it is headed Carling's Brewing.

HIS LORDSHIP: That all goes to the taking of accounts, not the principle. All due credit should be given.

MR. ROWELL: That is all.

MR. TILLEY: There is an exhibit that I think you are still responsible for, that you were to put in, showing exports or traffic through Windsor.

10 WITNESS: Yes, I have that.

EXHIBIT E: Statement of beer exported at Windsor.

MR. TILLEY: We will look at that.

J. G. MORRISON, recalled. Examined by Hon. Mr. Rowell:—

Q. You were going to look up the Invoice and Bill of Lading for the B.13s you put in the other day.—A. I have the Invoice and Bill of Lading covering Exhibit R, but I could not locate the Bill of Lading and Invoice covering R-1 and R-2, as our file was not just complete.

Q. You have found the Invoice covering Exhibit R. It is Savard, Detroit, Michigan, C.P.R. Dock, Windsor, care of F. Rymal, Amherstburg, 1,200 cartons, 20 price \$1.75.—A. Yes.

Q. The invoice bears no date?—A. No, sir, the date has been omitted. But it bears the car number.

Q. And you are able therefore to identify it with the bill of lading?—A. Yes, sir.

Q. Which bears date November 26th, 1925?—A. Yes, sir.

Q. And that is for 1,200 cartons, and bears the stamp of the railway, as received November 26th, 1925?—A. Yes, sir.

Q. Then attached to it is the B.13 you produce, which is the London B.13 for that shipment?—A. Yes, sir.

HIS LORDSHIP: Any stamp of the officer?

30 MR. ROWELL: It is the C.P.R., no export stamp.

Q. Then did you find the export B.13s for this shipment, that is the B.13s made out at Windsor?—A. No, sir, I did not.

Q. Have you hunted to see if you could locate them?—A. I looked through a number of them but I did not locate them.

Q. Then this will be attached to Exhibit R. R-3 is the Invoice, R-4 the Bill of Lading relating to London B.13 Exhibit R.—A. Yes.

EXHIBIT R-3,-4: Invoice and Bill of Lading, relating to Exhibit R.

Q. Then the B.13s R-1 and R-2, you are not able to locate the Invoice or Bill of Lading for those you say?—A. No, sir, there are a number of documents, invoices and 40 bills of lading missing from the files in November.

Q. You cannot say to what shipments those relate?—A. No, sir.

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Morrison
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Plaintiff's
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John Gordon
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Q. Then Mr. Diesbourg yesterday in answer to my learned friend Mr. Tilley stated that Mr. Low was in the liquor business as well as dealing with the beer. Have you any knowledge of that, who was associated with him in the liquor business?

A. Just hearsay, sir.

Q. Can you tell me if that is Mr. Low's signature, and Mr. Burns' on that document? (Showing document to witness).—A. They look like Mr. Low's and Mr. Burns' signatures.

Q. And Mr. Leon's?—A. And Mr. Leon's, yes, sir.

MR. ROWELL: This, my lord, is an agreement—

MR. TILLEY: Respecting what? 10

MR. ROWELL: Respecting Low and Leon—

MR. TILLEY: I object to the liquor business of Low and Leon. It has nothing to do with Carling beer.

HIS LORDSHIP: It is not within the ambit of this case.

MR. ROWELL: My submission is it is relevant for this reason; my learned friend has developed the fact that Low was in the liquor business as well as dealing with the beer. This document discloses certain names that are brought in here. I will submit to your Lordship that Mr. Low, or Low, Burns and Leon are the real purchasers of these goods.

MR. TILLEY: Which goods? 20

MR. ROWELL: Of the beer that is shipped under the name of Savard and Grandi. It shows, I submit, a more or less similar arrangement with respect to the liquor business. My learned friend has introduced it.

MR. TILLEY: I didn't introduce it.

HIS LORDSHIP: Suppose I find that, I am no further. It is on the record that they do.

MR. ROWELL: Yes, my lord.

Q. Then can you tell me who were associated with Burns and Leon,—were Burns and Leon associated with Low in this liquor business?—A. As I said, all I know about their liquor business is hearsay. 30

HIS LORDSHIP: Is there any entry in the books of the company with respect to any strong liquor that would have been handled by the company, besides beer?—A. No, sir, to my knowledge there has never been any strong liquor, that is what we call strong spirituous liquors like whisky and so forth near the brewery, outside of beer.

MR. ROWELL: Then you said in reference to Exhibit 108, these were the long room entries in connection with bottles.—A. Yes, sir.

Q. Did I understand you to say that all the goods covered by these long room entries were imported by the Carling Company?—A. I do not recall making that statement, sir. 40

Q. I understood when you put them in that that was the effect. I just want to

know whether that is what you said, whether those were all imported by the Carling Company.—A. Carling's name appears on them all, sir.

Q. My question is, were those importations by the Carling Company direct?—

A. To the best of my knowledge sir, they were.

Q. Did not Mr. Gootson and other people import and then transfer them to you and you made the long room entry?—A. I did not make any long room entries.

Q. Just look at this one. You can identify it by the entry number 18843, the second one on Exhibit 108. To whom is the invoice made out?

MR. TILLEY: Whose papers are these?

10 MR. ROWELL: These are the Customs House papers in London? The witness can see it is the same entry.

WITNESS: It bears the same number.

MR. TILLEY: I object to my friend putting documents before this witness from the London office and asking what these show.

MR. ROWELL: I produce a document bearing the same number—

MR. TILLEY: I do not know who put the number on or anything about it. There is no Carling name on this document.

MR. ROWELL: It is "Transfer to Carling E. B. & M. Company, Siegal Bottle & Metal Company," the invoice appearing in the name of Siegel Bottle & Metal
20 Company of Toronto, "Transfer Carling E. B. & M. Company" Signed Siegel Bottle & Metal Company. Can you tell anything about it?—A. No sir, I cannot.

Q. Did you have to do with making these long room entries.—A. No sir.

Q. You do not know then who imported the goods covered by this, whether they were imported by other people and transferred to the Carlings when they got here or whether they were imported by Carlings direct?—A. I know nothing about them, sir, except that the long room entries were handed to me.

Re-cross-examined by Mr. Tilley;—

Q. On the sales invoices that were produced this morning, at a certain date a notation commences to appear showing freight as a separate item—A. Yes sir.

30 Q. The first of them is November, 1925?—A. November, 1925.

Q. Would it be right to say that prior to that invoice No. 00302 such a notation did not appear at all?—A. Yes sir.

Q. Well subject to any little slip there might be, I mean speaking generally?—
A. Yes sir.

Q. And speaking generally from that date on it does appear?—A. Yes sir.

Q. How did that come to be done?—A. There was a Sales Tax Inspector in making a check-up I understand of our Sales Tax accounts, and it was his—

MR. ROWELL: Did you have the conversation with him?—A. Yes sir. It was at his suggestion that we put that on.

40 MR. TILLEY: What was the conversation you had with him?—A. As nearly as I can recall it he said, Why do you not show the break-up showing the freight and so

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No. 19

John Gordon
Morrison
Examination
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John Gordon
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(continued)

forth on your export invoices? And I told him we did not figure that taxes were payable on export invoices. He said, Well I think it would be wisdom on your part to put it on anyway, and at his suggestion it was done.

Q. That is you said you did not think it necessary, because Sales Tax was not payable in the Company's opinion?—A. We did not consider it payable.

Q. And he said, Put it on anyway.—A. Yes sir.

Q. Now a statement was filed by Mr. Nash, but it did not cover the whole period, showing the amount of beer brewed. That is Exhibit No. 117, Analysis of the Mash Book. It commences?—A. October, 1924.

Q. In order to show the Company's business you carried it back to January, 1924?—A. I carried it back to where the company first started to brew beer.

Q. Does this statement show the result when you carry it back to the commencement of the Company's business?—A. It does, sir.

Q. I do not understand that you are in disagreement with Mr. Nash as to his figures, but you are carrying it back to an earlier date, is that it?—A. Well to this extent, that Mr. Nash's statement does not disclose the actual facts as comparison between the quantities of ale brewed and the quantity of lager brewed.

Q. The point you are seeking to emphasize is the proportion of lager as compared with ale in the Carling business?—A. Yes sir.

Q. You carry it back to the beginning of the business?—A. Yes. 20

Q. That is the beginning of this company's business, which was January, 1924?—
A. Yes sir.

EXHIBIT W: Statement prepared by Morrison relating to Exhibit 117.

HIS LORDSHIP: To be read with—?

MR. TILLEY: Mr. Nash's Exhibit 117.

Q. Now that shows the percentage of lager as compared with beer throughout the Company's business as being what?—A. The ale represents 22 per cent of the entire amount of beer brewed, and the lager represents 78 per cent.

HIS LORDSHIP: In lager you include the rice beer?—A. Rice beer is a lager, my lord. 30

MR. TILLEY: I do not think he is disagreeing with Mr. Nash as to the rice beer.

WITNESS: There is a very slight difference in the figures.

Q. Is it material?—A. No.

By Mr. Rowell:

Q. Exhibit 49-B, the one you were speaking of, the invoice with the amount stamped, who was the Sales Tax officer?—A. The Sales Tax officer I believe was Captain Butler.

Q. The Sales Tax officer in London?—A. Yes.

Q. Did he tell you you could not get freight allowed unless you showed it on the invoice? 40

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HIS LORDSHIP: He did not tell him that, he told him it would be safer for him to put it on.

MR. ROWELL: Well, I want to ask him that question. Did he tell you you could not get freight allowed unless you showed it on the invoice?—A. No, sir, he did not say those words.

HIS LORDSHIP: But that was the meaning? You said you did not think it was necessary, because it was exported, and you were not going to pay tax on it?—A. Yes, sir, we did not consider the tax was payable on it.

Q. But then why did you put it on?—A. At his suggestion, my lord.

10 Q. You did not do it to please him, did you?

MR. TILLEY: It would be safer to do it, that is all.

MR. ROWELL: Then, how did you arrive at the amount? You have split the amount between returnable packages, transportation and liquid. Does that item Transportation represent actual freight paid, or is it simply a division of the items of the sale?—A. It represents freight and cartage.

HIS LORDSHIP: Actual disbursement?—A. Actual freight and cartage.

Q. Actual disbursements?—A. Yes, sir.

MR. ROWELL: Have you an account, in which will appear as actual freight paid the amounts appearing on the faces of these invoices?—A. Part of it will be 20 quite easily—

Q. Just answer the question.

MR. TILLEY: You are asking if he has an account which it is all in.—A. The part that represents railway freight is shown in one account. The amount that represents cartage is included in Advances re Windsor Expenses.

MR. ROWELL: There was no actual disbursement there but they made the charge. Does that apply to the invoices throughout?—A. Where that notation is on them, yes, sir.

GEORGE R. F. TROOP, recalled. Examined by HON. MR. ROWELL:

30 Q. Have you made an analysis of the cash sales items appearing in the books of the Carling Company?—A. I have a statement of the cash sales.

Q. What is the amount?—A. It shows a total for cash sales for the period April, 1924, to June, 1925, of \$61,823.63.

HIS LORDSHIP: I thought we had had a statement of the cash sales at \$44,000.

WITNESS: That is accounted for in this way, that if you take from that total cash sales the total that represents 2½ per cent beer you get a net of approximately \$44,000. The exact net figure as I have it is \$44,392.98.

MR. TILLEY: That item, according to Mr. Troop, represents the total of the cash sale invoices, less such as are shown on the invoices to represent 2.5 beer.

HIS LORDSHIP: Does the \$44,000 represent sales of 9 per cent and over?

40 MR. ROWELL: Of strong beer. Speaking from the books.

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George R. F.
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MR. TILLEY: Mr. Troop's way of putting it is, it represents the total of the cash sales invoices except such sales as are shown on the invoices to be 2.5.

HIS LORDSHIP: But what are the others?

MR. TILLEY: Well, he did not drink it or examine it.

MR. ROWELL: If my learned friend questions it, I will have to follow through.

MR. TILLEY: I am not saying your Lordship will not draw that inference—

HIS LORDSHIP: I want to know what his statement shows.

MR. ROWELL: I will ask two or three further questions if my friend raises the point.

MR. TILLEY: I am not raising any point. 10

MR. ROWELL: Did you follow these invoices into the Sales Recap. to see how they were recapitulated as between 2.5 and other beer?—A. I did.

Q. And where are they, in what column are they recapitulated as compared with the beer that is exported?—A. If I might have the Recap. I can make it clearer.

MR. TILLEY: I think, I have shown that once.

MR. ROWELL: If it is admitted that it is strong beer—

MR. TILLEY: I am not admitting anything, but I was trying to interpret Mr. Troop's answer.

MR. ROWELL: Is it carried into the same column in the recapitulation as the strong beer claimed to be exported?—A. To some extent it is. That is, all sales are 20 analyzed in the Recap. under the following heading: Ale; Porter, pints; Porter, quarts; Lager 2½; Porter 2½; Ale 2½; both the cash sales and those shown as export sales.

Q. Now take the portion of these invoices that are not marked 2½, are they carried into the same columns in the Sales Recap. as the invoices of so-called export?—A. Yes.

MR. TILLEY: In all cases?—A. In all cases, yes.

MR. ROWELL: Then Mr. Morrison has told us they are carried into the ledger, there are two accounts, there is 2.5 sales—A. There is the account numbered 3/1, which is marked, Sales 2½, and Account No. 3/2, which is marked, Sales S, Bottles. 30

Q. Then are all these items carried into the account marked Sales S?—A. All except that portion which is marked on the invoices as 2½.

Q. And that 2½ is carried into the—?—A. Into the account shown as Sales 2½ per cent.

Q. Then are the items for the so-called export 9 per cent beer,—which account are they carried into?—A. They are carried into the Sales S account.

Q. So that the items on these invoices not marked 2½ are all carried into the ledger in the same account, Sales S, as the strong beer for export?—A. That is correct.

Q. Then did you check through the Sales Tax returns, that is the returns filed 40 as Exhibit A, to see if these items are omitted from the returns of taxable sales upon

which tax has been paid?—A. I have checked a number of the Sales Tax returns, and the sales as shown in the return agree very closely with the sales shown as 2½ per cent, that is after May, 1924. As you go on to December, 1924, and later, they agree exactly.

Q. That is the Sales Tax returns agree exactly with the 2·5 sales?—A. Yes, that is correct.

Q. And do not include any part of these sales shown on these invoices that are not marked 2·5?—A. That is correct.

Q. Then we put in the other day certain B.13s, while Mr. Hennessey was in the 10 box, that show on their face changes from barrels to cartons. You picked those out, did you?—A. I did.

Q. Is that something exceptional, or did you find other cases of similar character of which this is an illustration?—A. Many more cases.

Q. Do you find any other changes in B.13s as sent from London, apart from changes in the quantities, during the period they were made out in London?—A. I find cases where the B.13s as originally typed appear to have been altered, pencil figures put in.

Q. How altered?—A. Altered in respect both as to prices, amounts, and number of cartons or of half or quarter barrels.

20 Q. Will you give us one case to illustrate what you mean?

HIS LORDSHIP: Do you attach much importance to that? You see it had to be changed very often to suit the capacity of the vessel.

MR. ROWELL: My lord, this is after the period when the instruction from the Department was that they must be all made out and sworn to in London in various denominations, and they are made out and sworn to in London.

HIS LORDSHIP: Suppose they shipped 2,000 cartons from London, and for some reason when they came to the place of export they find they are 200 short, they would have to correct the B.13. There would be nothing wrong in that.

30 MR. ROWELL: I submit they cannot change a B.13 once made out and sworn to, by putting in new items.

HIS LORDSHIP: How could you pass it through the Customs? If they sent three loads for a vessel in one shipment, and then you come to put them on board, you pass only one boat at a time, how could you do? You have to alter the B.13.

MR. ROWELL: Not after a period, because they made them out in London in all denominations from 1 up. After a certain period the Customs required them to do it, and they did make them out in that way within certain limits apparently. Then we find changes made after they are sworn to and sent to Windsor.

HIS LORDSHIP: What conclusion do you want me to draw?

40 MR. ROWELL: That whoever was the purchaser changed and manipulated these B.13s to suit his own purposes.

HIS LORDSHIP: There is nothing very wrong in that.

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MR. ROWELL: I am not dealing with it because it is morally wrong, but because it shows that, not the Carling Company but someone else was dealing with the B.13s at the border.

HIS LORDSHIP: Suppose Savard came with his boat and could not take all, what would he do? Change your B.13s. I may be wrong, but I do not see much in it.

MR. ROWELL: Well I did not intend to pursue it except just to give an illustration of the way the changes are made.

HIS LORDSHIP: Is there fraud in it? Is there forgery? I cannot see that.

MR. ROWELL: It is not from that point of view I am dealing with it. 10

Q. You had a good deal to do with checking these B.13s?—A. I did.

Q. Is it possible to compare the B.13s of the earlier period, that is from the time the shipments commenced up to March, 1926, with invoices and bills of lading, so as to pick out the B.13s that relate to particular invoices and bills of lading?—A. Speaking generally I should say I have not found it possible to do so.

Q. Why?—A. Because while the invoices are usually for fairly large quantities the B.13s for the most part are for fairly small quantities, and also made out at border points, and there is no way of definitely identifying the B.13s with a particular invoice, because one has a date at a border point and the other a date at London.

Q. Is there any number on them by which you can identify the B.13s with the 20 shipment?—A. The earlier ones differ from the later ones in this respect, that the later ones made out at London almost invariably have on them the number of the freight car in which the goods went; the earlier ones, made out at the border points, do not show that.

Q. Then you prepared the list of what we may term the special cases, that is the cases in which we have asked for the production of the invoice, bill of lading and B.13s from the defendant, that are summarized in Exhibit No. 120?—A. Yes.

Q. On what principle are they picked out, are they typical or exceptional?—A. I do not think there are any of those cases that could be characterized as exceptional in any way. The principle followed was to make them representative of ship-30 ments through different points. You will find on the list Diesbourg, Koven, and a number of Savard and Syringe shipments.

Q. What was the principle adopted in selecting certain particular transactions to ask for the documents?—A. That they should be fairly representative of the Company's business, covering as many different points as would be reasonable.

Q. Then you had to do with the checking of the bank accounts?—A. Yes, I have done some work on that.

Q. Have you found any cheques from Mr. Stiff of the Bermuda Export carried into any account other than the Carling Bank Account?—A. There was a cheque referred to by Mr. Stiff for the amount of \$4,034.74, dated 23rd March, 1927, I 40 found a similar amount deposited in an account in the name of Leon, Burns & Low, at the Dominion Bank at Windsor.

Q. Do you find that cheque from Mr. Stiff anywhere in the Carling Bank Account?—A. No.

Q. But you do find it in the account of?—A. Leon, Burns & Low.

Q. In the Dominion Bank, Windsor?—A. That is correct.

Q. Then were you able to check up any items from Segal's Bank Account into the Carling Bank Account?—A. I found three amounts charged to Mr. Segal's account, which corresponded with amounts recorded as deposits in the London books, and credited to account of F. Savard care of E. Segal. Those amounts are in September, 1926.

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10 MR. TILLEY: I object to this sort of evidence. I do not know what it is leading to.

HIS LORDSHIP: I cannot see any objection to questions of fact like that. It goes to the general question as to the rates.

MR. ROWELL: Are the cheques for odd amounts?—A. One is a broken amount, \$321.75, credited to this account on the 16th of September, 1926, that is the account of F. Savard, care of Segal, Port Stanley.

MR. TILLEY: That is the Carling Brewery account?—A. In the Carling books. The second item is for \$725, credited to the same account on the same date. The third item, \$750, credited to the same account on the 28th September, 1926.

20 MR. ROWELL: Were you able to trace any of the cheques from the Carling Bank Account, Windsor, to any other account than the Carling Bank Account, London? In Exhibit No. 32, which you have prepared, and which was put in by me, you have withdrawals from the Windsor Bank Account, \$644,583.68. What does that represent?—A. Those represent amounts withdrawn from the Carling Bank Account at Windsor and not recorded as receipts in the Carling books at London. It is included in the amounts marked on Exhibit No. 2 as items added back to sales.

Q. Would you point out on Exhibit No. 2 where those items occur?—A. Those particular items commence on page 2, August, 1926, commencing with an item of
30 \$87,592.81.

MR. TILLEY: You went over all that before.

MR. ROWELL: I want to bring it up now to show where it has been traced, if he has been able to trace where any of that has gone to from an examination of any bank account.

Q. You find that amount withdrawn from the Carling Bank Account from August, 1926, up to the end of April, 1927?—A. That is correct.

Q. And not entered in the London books for that period?—A. Yes. I have found six items entered in that bank account as withdrawals which correspond in date and amount with six amounts credited to Harry Low Special Account in the
40 Dominion Bank.

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MR. TILLEY: That is items from the Windsor account?—A. The Windsor account.

Q. Of the company?—A. Of the company.

Q. To Harry Low Special Account?—A. Special Account.

MR. ROWELL: What do those amount to?—A. \$39,000 in total.

Q. Any others?—A. I have also found two withdrawals from the Carling Bank Account which correspond in date and amount to deposits in an account in the name of M. Leon in the Dominion Bank, Windsor.

Q. What do those amount to?—A. Those amount in total to \$70,000.

Q. What are the dates of those?—A. The first is an item of \$50,000, shown as a 10 withdrawal in the Carling account on the 15th of February, 1927, and shown as a deposit in the Leon account on the same date.

The second is an item of \$20,000, shown as a withdrawal in the Carling account on the 4th March, 1927, and deposited in the Leon account on the same date.

Q. The balance you have not been able to trace?—A. The balance I have not traced.

Q. Then Mr. Morrison, in answer to questions of my learned friend, criticised the inclusion of the Export Funds Account in your Exhibit No. 2, the amount added to Exhibit No. 2 from the Export Funds Account, and shown in your Exhibit No. 32. You heard Mr. Morrison's evidence?—A. Yes. 20

Q. What do you say about that?—A. With reference to the first items referred to, that is those credited to the Special Loan Account, the cash book of the Company shows on a number of dates cheques received from certain individuals as one amount, which are divided by the Company, part credited to Accounts Receivable, and part being credited to this Special Loan Account.

Q. That is you find entries in the books of cash received and divided between the two accounts?—A. Between Accounts Receivable and Special Loan Account. In the same way the Export Insurance Account shows as credits a substantial number of items of cash received from names which appear on the invoices as those of customers of the company. We have included, as items to be added back to sales, the 30 credits in this account, and taken off the deductions, the debits to it, which appear to represent refunds to those same customers.

MR. TILLEY: We have had all that before, and we have had these conclusions discussed before.

MR. ROWELL: I only want to deal with the points my learned friend raised in Morrison's examination.

MR. TILLEY: He did not raise anything that this witness is now talking about.

MR. ROWELL: He raised the principle in connection with the Export Funds Account.

MR. TILLEY: But the witness stated all this before. It was because he gave 40 this evidence that we gave some evidence.

MR. ROWELL: If it is covered in the former evidence, I do not want to repeat it.

WITNESS: There is a point or two that I think I did not bring out in my former evidence, that the cheques received from names which appear to be customers of the company, are divided, part credited to the Accounts Receivable and part to the Special Loan Account, but the money appears to be received from customers of the Company.

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MR. TILLEY: When you say Customers of the Company, who do you mean?—

A. The persons to whom sales were made.

Q. Who?—A. Beradino.

10 Q. Where is there a sale to him?—A. There are a number of sales in the books to Beradino.

Q. Can you identify one?—A. Invoice No. 00296, September, 1924, it is a sale to Beradino, amount \$2,700.

Q. That is one of those inland points that Mr. Morrison spoke of?—A. There is also in the Accounts Receivable ledger of the company an account headed Beradino containing sales which run from 9th September, 1924, to 15th April, 1925, totalling \$18,922.50.

MR. ROWELL: And that is an illustration of that class of item, where you found part of the proceeds carried to Accounts Receivable, and the balance of the proceeds
20 carried to one of these other accounts?—A. That is so.

HIS LORDSHIP: How do you characterize that in your bookkeeping, would that be juggling of the figures to suit some purpose?—A. It is impossible for me to specifically characterize it, without knowing—

Q. Is there any necessity in the bookkeeping to do so?—A. To say positively, I would have to know what the intention was, or the reason was.

Q. You see none yourself?—A. It depends what purposes were to be served.

MR. TILLEY: What do you mean?—A. The reason for dividing these amounts would depend on what purpose was to be served by doing it. I cannot speak of that.

MR. ROWELL: Was there any other point on this as dealt with by Mr. Morrison,
30 on which you have any comment to make?—A. I do not think I have anything to add except perhaps one more point. I think I stated before that our primary reason for including these amounts—

MR. TILLEY: I object, it is just repeating.

MR. ROWELL: We do not want anything repeated that you said before, but if you have anything to add.

HIS LORDSHIP: If there is something new flowing from the examination of Morrison, well and good.

WITNESS: There is one point that arises in connection with the Export Funds Account. There is a journal entry at folio 22 of the journal, at the end of July, 1925,
40 covering certain amounts charged to this account—

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MR. TILLEY: If this is a new matter let us see the journal.—A. (Showing entry). The opening entries in the Export Funds Account consist of a series of debits from the Windsor Investment Account, commencing with an item A. Grandi, \$7,309.60. Referring back to the Windsor Investment Account to which those amounts were originally charged, I see in the journal, Folio 22, a notation that these amounts were first charged to the Windsor Investment Account "To adjust accounts, payments have been made to Windsor from time to time and no report received at London office. If it is found that these accounts cannot be collected they will be written into Bad Accounts."

MR. ROWELL: What bearing has that on the matter?—A. The point in that 10 that appeared to me to be of significance is simply the statement that payments had been made to Windsor from time to time, and no reports received at London. As this Export Funds Account contains a number of cash credits, items received from Burns, and as the Export Funds Account follows from the Windsor Investment Account it appeared to me that there might be some connection between those two. This of course was entirely secondary to the information that we received that Mr. Lalonde gave in his evidence.

Q. Anything further on that?—A. That is everything.

Q. Then one other matter. You have investigated the books of other breweries of Ontario?—A. To a considerable extent, yes sir. 20

Q. Have you found in any brewery in Ontario sales at the price of \$1.75, the low prices appearing in the books of the Carling Company?

MR. TILLEY: I object to that. We want the people who know about sales, if my friend is entitled to put that in at all.

HIS LORDSHIP: You want to see whether that is the market price?

MR. ROWELL: Yes, my contention being that that is not the market price, that no one sold at that price.

MR. TILLEY: We are not concerned with entries in other companies' books.

HIS LORDSHIP: That would not tell me any more that this is an entry by this company that is false. But if he knows at what they are selling, if he is in the busi- 30
ness.

MR. ROWELL: No, he could only speak from the prices recorded in the books.

HIS LORDSHIP: If it can be proved by someone who knows it, it would put us in this dilemma, that we would not know any more after. That company might have done the same thing this company has done.

MR. ROWELL: The company would not be likely to enter more than they received. My point was whether he found anything as low as this.

HIS LORDSHIP: No, that is not the best evidence. That is the test.

Cross-examined by Mr. Tilley:—

Q. Mr. Troop, what would be the Sales Tax on that \$44,000?—A. A portion of 40
that \$44,000 represents amounts for April and May, 1924, where the tax is paid in full.

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Q. Then I was misled. I thought \$44,000 was a net figure that had to do with the goods we are concerned with here.—A. A net figure that was not specifically indicated as 2½ per cent beer.

Q. But if it is outside the time,—could we not get it net for our time?—A. I have the further net figure here.

HIS LORDSHIP: Give us the net figure.—A. It is \$33,389.75.

MR. TILLEY: What would be the tax on that?—A. At 5 per cent, \$1,669.48.

Q. So that it is a matter of some \$1,600?—A. That is the amount.

Q. Now the gallonage tax on that for the period that the Gallonage tax was not paid, would be what? Or is it paid on that?—A. The Gallonage Tax was paid on that.

Q. On the whole of the item?—A. I think so, yes.

MR. ROWELL: All Gallonage Tax was paid up to what month?—A. Up to August, 1925. Yes, that is later than the period.

HIS LORDSHIP: Then that should be amended.

MR. ROWELL: There are certain differences in calculation in the earlier period.

HIS LORDSHIP: Well the statement of this witness clashes with your information.

MR. TILLEY: Would you explain it?

20 WITNESS: I explain that by saying that for August, 1925, and later months the company ceased paying Gallonage Tax on export sales as they recorded them. Prior to that they paid Gallonage Tax on all sales as they calculated them. Any additional amounts shown as due by Exhibit No. 2, or I take it by the Information, any additional amounts shown as due result from small differences in calculation between ourselves and the officers of the company.

Q. That are not really material?—A. They are not material, they arise principally, if my recollection is correct, on the rates of conversion of cartons into gallons.

Q. What is the point behind that?—A. If my recollection is correct the company used a rate of 13 gallons to the half barrels whereas we used 12½. I think they 30 used the rate for some time of 2 gallons to the carton of pints, whereas we used 1.8.

Q. In that way there is a certain difference in quantity brought about, which is a matter of computation?—A. It is a matter of computation.

(Noon adjournment.)

AFTERNOON SESSION

WEDNESDAY, 24th April, 1929.

G. R. F. TROOP, Cross-Examination by MR. TILLEY—*Continued*

Q. Now, Mr. Troop, you referred to a couple of accounts this morning, the Export Insurance and the Special Loan. Now we are referring to the account called what?—A. Export Funds Account.

40 Q. In Exhibit No. 70. As I understand, you took these two items LaSalle and Grandi, \$2,384.40 and \$589 respectively, credited back to sales?—A. That is right.

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Q. That is those are two credit items in that account?—A. Correct.

Q. Did you do anything of the same kind with the debit items that are shown just above it, being a list of Grandi accounts, are they not?—A. They are not all Grandi accounts.

Q. Well I do not want to get into that discussion. Many of them are?—
A. Some of them are.

Q. Those are debit items?—A. Yes.

Q. Just above these two credit items that you carried back to sales?—A. Quite so.

Q. Did you carry back any of the debit items to sales?—A. No sir.

Q. You took the credits and left the debits alone?—A. Quite right. 10

Q. Now you were asked about the B.13s and the possibility of identification prior to March, 1926. Mr. Nash was asked on the same subject. And you have said it was impossible. The difficulty is caused by the shipments being split up at the border, that is so, is it not?—A. That is one cause of difficulty.

Q. Well it is the main cause is it not?—A. It is not in itself an absolute bar, because in a later period,—

Q. No, I have got to add something to that. When they were split up at the border there were no marks put on them to identify the cars from which different shipments were taken, different lots were taken?—A. That is quite right.

Q. So that the difficulty may be summarized in this way, that the practice of 20 splitting up at the border was carried on without continuing on the records those car numbers or other identification marks that would indicate the shipment.—A. Yes, those other identification marks that would tie up the shipment with the London record.

Q. Is there any requirement that you know of that the car number should be put on the B.13s?—A. No.

Q. But Carlings have, I do not know whether I am justified in using the word "uniformly", but they have apparently as a practice— A. To a large extent.

Q. They have to a large extent, we will use that expression, put the car numbers on the B.13s?—A. That is right. 30

Q. Now did they do that, or are you in a position to say whether they did that prior to March, 1926, or have you not seen those original B.13s that were issued for the lump shipments?—A. I have seen some of those. Those do bear the car numbers.

Q. So that apparently as B.13s left the Carlings they had marks on them, put there as far as we can gather without any compulsion, to tie up the B.13s to the particular shipments, or that did tie them up.—A. I think I can say that is so, from all I have seen.

Q. Can you throw any light on what the practice was when the split-up occurred at the border with regard to the original B.13s that left London? Were they just 40

destroyed, or were they preserved, as far as you have been able to ascertain?—A. I do not think I can help you there, I do not know what the practice was in this particular case. In connection with other breweries I have sometimes heard, merely been informed, that they were destroyed.

Q. At the port?—A. At the port.

Q. That is probably after they had served their purpose they would be destroyed?

—A. And I think in some cases they were used as a means of checking up the port officers with those at the docks.

Q. As a matter of fact the circular that is in speaks of the Customs checking up 10 to see that the amount of the original was exported in split-up entries. But when that had all been done, so far as you know did the port officers destroy them, or did they preserve them longer, or do you know,—the Customs officer?—A. I am afraid that all I can say is that some must have been preserved, as the brewery has them.

Q. We have some possibly that went out as one shipment?—A. I can hardly speak positively on that.

Q. But speaking generally, they were destroyed?—A. I doubt if I could even say that. I recall particularly one small brewery that they were destroyed.

MR. ROWELL: He is speaking of some other brewery.

20 MR. TILLEY: My friend need not prompt him.

Q. I am asking what you know about it as a practice. If you can throw any light on what the practice was I would like to have it. State it in your own way. — A. I think I have said all that I can recall.

Q. What do you think you have said?—A. That in some cases these B.13s made out at the brewery and covering one shipment were destroyed at the border point.

HIS LORDSHIP: That is not with respect to Carlings?

MR. TILLEY: No. The practice you say you know that in some cases they were destroyed by the Customs officer at the port.

30 MR. ROWELL: He did not say by the Customs officer.

MR. TILLEY: I am asking.

Q. Is that right?—A. I cannot speak—

Q. Destroyed by whom?—A. I cannot speak positively on that.

Q. Now you have not got afraid to tell us what you know?—A. I have told you all I know.

Q. Destroyed in some instances by the Customs?—A. I could not add that.

Q. Then you were asked whether the shipments that were made the subject of evidence, and later included in your summary, Exhibit No. 120, were typical or exceptional, or how. I gather from what you say that they are illustrations from 40 different ports.—A. Different points of exit and also with reference to different accounts in the books.

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Q. First you took different accounts.—A. Quite so.

Q. You would make a selection so as to get different ports of exit?—A. Yes.

Q. Then having done that you drew at random, or did you select the cases
If so, what was the basis of selection?—A. I think I can fairly say they were taken
at random.

Q. So that what you say is, they are not selected because they are exceptional?
—A. Undoubtedly not.

Q. Nor are they selected because you examined them and found that they were
typical, but you wanted to get different ports, different persons, and then having got
that group you would take at random?—A. That is so, keeping in mind the idea of 10
having typical shipments.

Q. Do you mean in quantity?—A. No, in reference to different consignees.

Q. I thought you covered that by "persons".—A. I wanted to make that quite
clear.

Q. Now you have had a good deal to do with checking up these export entries,
and you have been good enough to produce some of the books. Have you found the
books at some places, if they ever existed, do not now exist?—A. I cannot speak at
first hand on that, I did not myself personally check the books.

Q. Have they been available to you, or are they non est as far as you are con-
cerned?—A. In one instance I think we found the port records were not available. 20

Q. In what case?—A. At the port of Windsor, for certain months.

Q. Can you say what months?—A. I am only speaking from recollection, I
think from about April, 1924, to the latter part of 1925, about a year and a half.

Q. You are speaking now of the Exporters' Index?—A. The Exporters' Index in
the port of Windsor.

Q. Did you find that they had their reports of vessels inward and outward, and
record of boats they had cleared at that point?—A. I cannot speak of that at all,
I do not know.

Q. Did you examine those books at all?—A. No.

Q. You saw them I suppose?—A. I do not think we even saw them, I think we 30
confined our examination entirely to the Exporters' Indexes.

Q. Then are we right in assuming that as far as you were concerned you found no
record of B.13s that was what you might call a book of original entry, except those
Exporters' Indexes?—A. That is all.

Q. That appears to be the book of original entry. And as far as the method of
carrying on that book is concerned, it seems to be that they must have their B.13s
lying in front of them, or get them, and then they have the name of an exporter on the
B.13 and they enter that in their index and put the number for the B.13?—A. That .
seems to be the procedure.

Q. Therefore the documents that they are using in that way are not scheduled 40
or listed in any other way as far as that port is concerned?—A. I am not aware of
any list.

Q. Of course the Windsor book would be an important book, but I am taking this as an example. This is the book for 1927 and 1928?—A. That appears to be a Customs book for 1927. I think that is an outport book.

Q. I gather that when you were hunting for what might be described as additional B.13s recently you went through these numbers under the head of Carlings for say Walkerville.—A. In the examination we made we confined our work to the port books, not the outport. This is an outport book. I cannot say whether we have seen it before or not.

Q. Now let us make a test. Here is a B.13, will you find me that in the Windsor book or this book?—A. I do not see that number in this book. It may be in the Windsor book.

Q. I am told this is a Windsor book containing Walkerville entries.—A. I can not speak as to that. I myself did not examine these books.

Q. Where is the man that did?

MR. ROWELL: I am going to put him in. He went to Windsor and saw them in Windsor, and we have produced here all that were sent down to us.

MR. TILLEY: We are trying to check up this process of the Government of sending here what they have got. I want to find what they should have.

MR. ROWELL: If my learned friend had asked for this before he would have had 20 them. It was only yesterday he asked.

MR. TILLEY: At any rate here is a B.13, that is from the Ottawa B.13s, it is numbered 6031 at the top, that would be the Windsor number?—A. Yes.

Q. And it is numbered 1119, which would be the Walkerville number?—A. That is the Walkerville number.

Q. And this is the Walkerville book, it is said now, and it is not in the book?—A. I do not see it in the book.

HIS LORDSHIP: Have you got the Windsor book that would show the Windsor number?

MR. TILLEY: That is what I am asking for, they say they have not got it.

30 Q. This is the Walkerville book, this T-60?—A. That is what it appears to be.

Q. Therefore if that B.13 is in the Windsor book it is certainly in the Windsor book without being in the original book, the Walkerville book?—A. If that is the Walkerville book.

Q. Well, I would like to know where we are.—A. I really cannot identify it.

Q. (Showing another B.13). Do you find this one in the Walkerville book?—A. No, that does not appear to be in the book.

Q. To make clear that it ought to be in the book, those two follow several that are in a series and are in the book?—A. Here is one, 1117 is entered in the book.

Q. And 1118 and 1119 are not?—A. I do not see them.

40 Q. Now possibly to counter-balance I think they have got this one in twice, 1189.—A. Yes, that number appears to be entered twice.

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EXHIBIT X: Two B.13s numbered 1118 and 1119.

HIS LORDSHIP: Is it possible that this entry would be made, and that it would be shipped from another port, and that you could find it in a book of another port?

MR. TILLEY: They are obviously two of a series, are they not?

WITNESS: I could hardly think it would be in any other book than the one from which the stamp is.

Q. Amherstburg, that is a head port like Windsor, it is not a sub-port?—A. No.

Q. Will you try and find this one for me, No. 1872, dated 31st October, 1924.—

A. That B-13 is not there.

Q. Do you find this one, 1873? If you will just say that it is not there, and you find afterward that it is there, I do not want to take up time now, I am sure His Lordship would let you correct the answer. You cannot find it so far?—A. No.

Q. The only identification is the number, and the name Carlings. This book does not give any date to go by. And the same applies to 1874?—A. Yes, I have not found that one.

Q. As a matter of fact they are in sequence with other numbers that are actually in the book are they not?—A. I have not seen the other numbers.

Q. (Handing papers to witness).—A. Some of these are here, 1856, 1858, 1861, 1862-3-4-5-6. 1874 I do not see.

Q. So that they follow in sequence except when you come to these three, practical sequence, and these three are not there?—A. They do not appear to be there.

Q. And these three are from the Government depository at Ottawa, those are your Ottawa B.13s?—A. I suppose they are.

Q. Well, we got them from you. I wish you would verify that.—A. I have no doubt about it.

Q. Now that is a head port. So that apparently B.13s have been completed and have gone through and are found at Ottawa, and are not recorded in the books at all?—A. Those particular ones do not appear to be recorded.

EXHIBIT Y: Three B.13s numbered 1872-3-4.

HIS LORDSHIP: The sequence of numbers is not limited to one exporter? 30

MR. TILLEY: Oh no, they may jump from one to another.

Q. I am now bringing direct from your envelope some of the Government B.13s. Will you get me No. 259, June 13th, 1925? This is a book showing both Port Colborne and Welland. Welland is the chief port is it not?—A. Welland is the chief port. That does not appear to be there.

EXHIBIT Z: B.13 numbered 259.

Q. Now this is a book I had when I was examining Mr. Nash last evening, Exhibit No. 114.—A. This particular book has the name C. B. Grandi against Carling's brewery items, so I think it would hardly be as late as 1927.

Q. If it does not help us— A. It does not seem to. 40

HIS LORDSHIP: You say the numbers are in sequence. Why would there be a

gap in certain numbers?—A. You might have Carling Brewery items followed by items of some other brewery.

MR. TILLEY: Is this the way it is done; Say at an outport the B.13s are numbered consecutively, or should be numbered consecutively in the order in which the B.13s are handed in or completed at the port, there might be some to Carlings, the next apply to Massey-Harris machinery, and the next two or three to some other person's goods; just as they come in they are numbered?—A. I understand so.

Q. Or ought to be. I put the question to Mr. Nash yesterday, I do not know if I dare put the same one to you, if that process is carried on and the person who is attending to it permits them to accumulate, you are apt to get mistakes are you not?—
10 A. I find that rather hard to answer. It depends on the person concerned.

Q. I should think in an office such as this where people are working around, you are apt to have them picked up and mislaid, and so on.—A. I have not seen any evidence that they are carelessly handled in any of the ports I have been in.

Q. Have you been at any of the ports?—A. I have been at the head office at Windsor.

Q. Have you been any place else that we are concerned with?—A. No.

Q. Then that volunteered statement does not help us very much I suggest.—
A. It covers at least the one port.

20 Q. Well we have not got the books for that port apparently. That is where some books are non est, according to you. They are not produced.

Re-examined by Hon. Mr. Rowell:—

Q. My learned friend asked you as to your inability to identify B.13s with invoices prior to March, 1926, and stated that the fact that there was no car number on the new B.13s made out at the port would be a reason why they could not be identified.—A. That would be one reason.

Q. You said one reason. I want to know what other reasons there are if there are any.—A. Another reason would be that in the earlier period the B.13s were made out at the point of exit, and the dates on which they are stamped by the Customs
30 are almost invariably the same as the dates on which they appear to have been made out. As there is sure to be some days interval in transit between London and the exit point it is not possible to match them up with any particular shipment made from London.

MR. TILLEY: They are not dated the same?—A. No they are not dated the same.

MR. ROWELL: And the dates vary from the date of the invoice according to the date of the stamp?—A. I cannot relate them to the invoices at all.

FRED S. QUIRK, sworn. Examined by Hon. Mr. Rowell:—

Q. You are employed in the accounting firm of Clarkson & Company?—
40 A. Yes sir.

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George R. F.
Troop
Re-examination
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Fred S. Quirk
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Q. Did you have to do with checking up the B.13s in connection with the Carling Export Brewing & Malting Company?—A. I did, sir.

Q. In that connection did you visit Windsor or any other ports with a view of examining the Exporters' Index books as to the B.13s entered in these books?—A. I did, sir.

Q. What ports did you visit?—A. In connection with the Carling case, Windsor, Wallaceburg, Sarnia, Hamilton and Welland.

Q. Simcoe?—A. There are no B.13s from Simcoe.

Q. Did you later examine the books when sent to Toronto?—A. I did, sir.

Q. What port books did you examine subsequently?—A. Whitby, Goderich, 10 Toronto, Amherstburg, St. Catharines, Niagara Falls.

Q. St. Thomas?—A. And St. Thomas.

Q. Did you find the Export Index books in all these ports you visited, or were there any lacking?—A. I found export entry books in all the ports, but in Windsor. I found no export entry book for the period from April, 1924, to the 1st of October, 1925.

Q. With that exception did you find export entry books in all the ports you visited covering the period?—A. Yes, sir.

Q. Did you have export entry books covering the period involved in this suit in the other ports where the books came down, Amherstburg, St. Catharines, Niagara 20 Falls, Toronto, Goderich, Whitby and St. Thomas?—A. Yes, sir, I think so.

Q. What was the purpose you went for?—A. To endeavor to tie up the port records with the copies of the B.13s that we received from Ottawa.

Q. What was the result?—A. With the exception of a few errors in transcription in the port books, I was able to tie them up with the B.13s.

Q. You were able to tie them up—? A. To the Ottawa B.13s.

Q. What do you speak of as errors in transcription?—A. In Amherstburg a number of entry numbers were missing, and there were also entry numbers for which we had no Ottawa B.13s. That was due, I believe, to the fact that a certain man, D. Koven, at Amherstburg, was agent for the Consolidated Distilleries, and Carlings 30 as well, and some of the entry numbers were posted under Consolidated Distilleries, which had beer on the B.13s, and vice versa.

Then at Sarnia there were certain entries for which we had no Ottawa B.13s. I discovered one or two B.13s at Sarnia which related to shipments of other merchandise than beer by Carlings, such as machinery parts and empty malt bags. And a certain number of entry numbers for which we had no Ottawa B.13s were later sent to Ottawa with the result that those B.13s were found.

Q. Then what is the net result, how many B.13s did you find in the entry books for which you have so far no corresponding B.13s in the Ottawa files?—A. Twenty-two.

HIS LORDSHIP: When you say "Ottawa" you mean—?

MR. ROWELL: No B.13 in Ottawa for that particular number.

Q. You have found 22 in the different port books—? A. That are yet unaccounted for.

MR. TILLEY: I thought Mr. Nash told us he had all but one.

HIS LORDSHIP: Two or three.

MR. ROWELL: Some of them that were unaccounted for when you first took note of them have since been accounted for, in what port?—A. In Wallaceburg, Sarnia, Windsor and St. Thomas.

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Q. And some of them that appeared in the port books under Carling's name are
10 the B.13s of some other brewery?—A. Yes, sir.

Q. There are certain entries under Carlings in the Export Index book that were the B.13s of another brewery?—A. Yes.

HIS LORDSHIP: You say you found 22 entries in these books of exports for which you could not find B.13s?—A. Ottawa B.13s, yes, my lord.

Q. And then you have now found that some of the B.13s had been used with respect to export by other people?—A. Yes, my lord.

Q. When you say there are 22 missing—A. Of that 22 some have been found.

Q. That is in that 22, that would go to reduce the 22?—A. Yes, my lord.

Q. How many did you find like that?—A. Six, that the B.13s belonged to other
20 breweries or distilleries.

Q. That would reduce to 16 the entries in the Customs book of exports for which you have no B.13s?—A. Yes. I am speaking of the ports I visited personally year ago.

MR. ROWELL: My learned friend produced certain B.13s here. Exhibit Y. Can you tell us whether you found that somewhere in the Amherstburg book?—A. I think there is possibly a transposition of one figure here in this book. Following 1861-2-3-4-5-6, 1972-3-4 appears, which I took as perhaps a slip of a figure, meaning 1872-3-4.

HIS LORDSHIP: What figures follow 1972?

30 MR. ROWELL: 1977.

Q. Then you said you found some other breweries and distilleries entered under the Carling numbers. Are those some you found (showing documents to witness)?—A. They are, sir.

Q. You have the National Breweries?—A. National Breweries, Montreal.

Q. And what others?—A. The Foreign Exporting Company, Consolidated Distilleries—

Q. Quite a substantial number of Consolidated Distilleries.—A. And one for the Kuntz Brewery.

Q. In which port were those entered as Carling's?—A. Amherstburg.

40 Q. You have how many in all?—A. Thirteen.

EXHIBIT No. 122: 13 B.13s relating to other exporters indexed as Carling's

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MR. TILLEY: Mr. Nash told us yesterday that there were no Carling's indexed under any other name, I thought.

Cross-examined by Mr. Tilley:—

Q. Now, Mr. Quirk, I do not understand why you mentioned some of these ports. Are any of the shipments we are concerned with out of St. Thomas?—A. Yes sir.

Q. What ones? I do not see St. Thomas in the list that Mr. Nash gave us.—A. St. Thomas is the main port of Port Stanley.

Q. Well, why did you not go to Port Stanley?—A. Because Port Stanley was an outport, and whatever was entered in the Port Stanley books would be entered in the St. Thomas books. I did not go to St. Thomas.

Q. Or have the St. Thomas books sent here. Now, Exhibit 122, are all B.13s from Amherstburg, 1924. Will you show me the place where these are entered in the book?— Amherstburg is a main port isn't it?—A. Yes sir.

Q. Then where do you find No. 543?—A. I do not see it here.

Q. You have put in a bundle of exhibits as showing that certain numbers were in the Carling B.13 lists at the port, and that when you examined you found they were appropriate to the National Breweries or someone else?—A. Yes sir.

Q. Now the very first one I ask you is not in the Carling list?—A. I do not see 543. 20

Q. Let us take 544.—A. This number here—

Q. Give us the number.—A. 540, is followed—

Q. 540 is a number under Carling Brewing Company, Kingsville?—A. Yes, is followed by 533, 534, which is again followed by 580.

Q. In Kingsville?—A. In Kingsville, under Carling's.

HIS LORDSHIP: Well, that does not give us 544.—A. No sir.

MR. TILLEY: Then 543 is not there, 544 is not there.

Q. Now, 1220 is the next.—A. 1220 is there.

Q. Will you turn up Consolidated Distilleries?—A. 1220 is not entered under that. 30

Q. When you have numbers with a stroke between them does that mean the two numbers, or a continuous series?—A. It is difficult to tell. In some places they are bracketed.

Q. It is rather a crude way of keeping a record of B.13s you will agree?—A. This Amherstburg seems to be.

Q. Amherstburg as an example seems to be a crude carrying out of a crude plan of keeping B.13 entries?—A. Yes, I think so.

Q. Will you get No. 1313—A. (Shown).

Q. Do you find it also under Consolidated?—A. This is the Consolidated following. No sir, 1298 and 1323. 40

Q. Now will you find me 1407?—A. (Shown). It is not under Consolidated where it should be.

Q. Will you agree that you find Amherstburg full of mistakes, tak'ng it by and large?

HIS LORDSHIP: Mistakes to that extent.

MR. TILLEY: No, my lord, right along.

Q. Have you checked up any other people's goods besides the Carling's?—A. Yes sir. Not for Amherstburg.

Q. No mistakes in Amherstburg in other people's goods?—A. No, I have not 10 checked Amherstburg for other people's goods.

Q. Have you found that these mistakes that you have described with regard to Carling's permeate other B.13s as well?—A. No sir, I think Amherstburg—

Q. Is worse?—A. I do think that the great majority of them do tie up at Amherstburg.

Q. You think that over 50 per cent of the entries are right?—A. Over 75, over 80.

HIS LORDSHIP: Have you any explanation to offer yourself why 543 and 544 have been there, and you find—A. Except, following 540, seeing that the rest are in consecutive order I took 533 following 540 as a slip of the pen and called it 543.

Q. How could you pledge your oath to that?—A. I could not, sir.

20 MR. TILLEY: Now did you suggest that possibly the figure 1972 in a previous book might really have been 1872?—A. Yes sir.

Q. But you withdraw that?—A. I do.

Q. Because I have the 1972 here as well, so that would not account for the error.

You also spoke of some B.13s of the Carling's that were under the names of other people, actual B.13s produced, didn't you?—A. Yes.

Q. That is where B.13s were produced at Ottawa that when you hunted for them you found them in other distilleries' lists?—A. You mean in the Export Index.

Q. Yes, you found some of that, did you?—A. No, I don't think so.

Q. How long were you at the port, some of these ports that you visited, Windsor, 30 Sarnia, Hamilton.—A. I spent a day and a half in Windsor.

Q. How long ago?—A. Over a year, sir. I spent a day in Wallaceburg and a day in Sarnia.

Q. Did you see them carrying on their work in any of these places, or did you just attend to your investigating?—A. I saw a few things, sir.

Q. Well, were you able to see the system by which they entered these up?—A. Not the entire system, sir.

Q. You did not follow that through?—A. No sir.

FRED J. SHANNON, sworn. Examined by Hon. Mr. Rowell:—

Q. Mr. Shannon, what is your position in the Department of National Revenue, 40 Ottawa?—A. In charge of the export statistics. I am head clerk in the Department.

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No. 33

Fred S. Quirk
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No. 34

Fred J.
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Q. Do the B.13s come under your charge?—A. Yes sir.

Q. How do they come to you?—A. They come from the different ports.

Q. Do they come direct from the ports to you?—A. Direct from the ports to me.

Q. You get the port envelopes and they are opened in your branch?—A. Yes sir.

Q. How long are they kept, the B.13s?—A. They are kept for three years, and the current year.

Q. Then after they are three years old what is done with them?—A. Destroyed.

Q. Did you supervise the selection or the hunting up of the B.13s relating to the Carling Company in connection with this suit?—A. I did.

Q. What were the first ones you selected?—A. We selected all the liquor and 10 beer and wine entries for all the exporting ports in the Province of Ontario, took everything out.

Q. You first selected all the beer and wine and liquor entries for all the export ports in Ontario.—A. Yes.

Q. Took those all out?—A. Yes.

Q. Then having done that did you out of the beer, wine and liquor export entries then select the Carling's?—A. That was the system, sir.

Q. Up to what date did you make your first selection of the Carling's?—A. We picked them for the three years, and the month of April, 1927.

MR. TILLEY: Does he mean calendar years?

20

WITNESS: No sir, fiscal years.

MR. ROWELL: How far back does that go?—A. 1st of April, 1924.

Q. Up to and including April, 1927?—A. That is right.

Q. Those were the first ones you sent to the accountant Mr. Nash, in Toronto?—
A. Yes.

Q. Then subsequently did you make a further search, later than the 30th of April?—A. We made a further search for the London dated entries, the entries dated in London for the month of April, 1927.

Q. Entries dated prior to the 30th of April, 1927, in London?—A. Yes.

Q. Over what period did that search extend?—A. We went through until the 30 middle of September, 1927.

Q. You went through all the beer and liquor export entries up to the middle of September, 1927, searching for any Carling B.13s that were dated in London prior to April 30th?—A. Yes.

Q. And I believe you found certain additional ones that bore the port stamp between the 1st of May and the date you mentioned?—A. That is the London stamp.

Q. The London stamp before the 30th of April and the port stamp subsequent to the 30th of April?—A. Yes.

Q. Then did you make search for certain particular B.13s which you were 40 advised by the auditors they had found entries for in the Port Index book?—A. Yes, we did.

HIS LORDSHIP: Did you make that search personally?—A. No, I did not make it personally. The staff.

MR. ROWELL: And you found—

MR. TILLEY: Well the staff found.

MR. ROWELL: —certain additional ones were found by the staff. Dealing with certain entries that were found bearing the London stamp prior to the 1st of May, 1927, and the port stamp subsequent to that date—

MR. TILLEY: This gentleman does not know anything about this, does he? He sat in his office and told them to do something.

10 MR. ROWELL: No, he did a great deal more.

Q. Can you speak as to this list (showing document to witness)?—A. I imagine that is the list—

MR. TILLEY: Well not imagining. You know, or you do not know.—A. I could not say anything about that.

MR. ROWELL: Did you bring from Ottawa to Toronto all the beer and liquor B.13s covering the period, for a further examination?—A. I brought everything except what was here on Tuesday last.

HIS LORDSHIP: What did you bring?—A. All those liquor entries that were picked from the Ontario entries.

20 Q. Reaching from what date to what date?—A. From the 1st of April, 1924, until the 1st of April, 1927.

MR. ROWELL: Did you make a further examination of all those liquor entries of all breweries and distilleries to see if there were any more Carling entries?

MR. TILLEY: This witness?

MR. ROWELL: Under your supervision?—A. We went through everything. I helped.

Q. At the office of?—A. Clarkson, Gordon & Dilworth.

Q. And with what result?—A. We found one entry. I think, one Carling entry.

Q. Where did you find that particular one?—A. With the Hamilton Brewing
30 Company's entries.

HIS LORDSHIP: You have not a book in the Department in which you make an entry of all these B.13s coming in?—A. No, we have no record of that, just the B.13s themselves kept for three years.

MR. ROWELL: Is that the one that was found?—A. That is it.

MR. TILLEY: Surely it is not material.

MR. ROWELL: Well, after a further search that is the only one that was found. There is no objection to adding that.

MR. TILLEY: How much goods covered?

MR. ROWELL: Only 130 cartons.

40 HIS LORDSHIP: We are being very much involved in small matters.

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MR. ROWELL: I only wanted to show that this witness had been present yesterday when the whole matter was checked over, and this is the only one found after going through all relating to beer and liquor.

HIS LORDSHIP: Well, it brings this question; you did first examine them, and you thought you had got them all, and you sent them. You examined again and found some more, and you examined a third time and found some more. How can we rely as to what is absolutely accurate? Is there a percentage that should be allowed for lost B.13s in your Department?

MR. ROWELL: There is one point your Lordship has overlooked. In the first place they only searched to April 30th. 10

HIS LORDSHIP: But they should know better.

MR. ROWELL: That is all that they were asked to do, my lord.

HIS LORDSHIP: Can you swear now that you have no other B.13s in your Department in connection with any export by the Carling Company?—A. Well, my lord, I would not like to swear that, no, there might be an odd one.

Cross-examined by Mr. Tilley.

Q. I thought Mr. Telford was the man in charge of B.13s?—A. He is the chief of the branch.

Q. Are you his assistant?—A. I am under him.

HIS LORDSHIP: You describe yourself as head clerk?—A. Yes, sir. 20

Q. That comes under chief clerk?—A. That comes under chief clerk.

MR. TILLEY: Now, you gave the instructions and then the staff carried them out at Ottawa?—A. Yes, sir.

Q. And then this last search that you made consisted merely of thumbing over the B.13s?—A. Yes.

Q. For beer and whiskey and wine?—A. You mean this one we just made?

Q. Here in Toronto?—A. Yes.

Q. That is I understand you first got out down to 30th of April, 1927, such B.13s as you had relating to all liquors?—A. Exactly.

Q. Including beer and wine?—A. That is right. 30

Q. Then you put a staff on those to select the Carling's out of them?—A. Quite right.

Q. Then you sent those to Toronto as being what you thought the complete B.13s?—A. Yes.

Q. But it was incomplete, because B.13s might be issued before the 30th of April 1927, but not be stamped at a port of exit until after that date. Therefore you had to continue the search?—A. We had to continue the search.

Q. Then having gone through those two steps you got a list from some person of B.13s you missed or that had not been produced?—A. Yes.

Q. Then you searched to find these specific documents?—A. Yes. 40

Q. And such of them as you could find you sent on to Toronto?—A. Exactly.

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Q. Then when you got to Toronto recently you thumbed over again the B.13s you originally took out of the heaps?—A. Yes.

Q. So that the only search you have made in the Departmental files is the original search for B.13s, first to April 30th, 1927, and later continued to a later date, not going over the original ones again, and then third when you were hunting for specific B.13s.

—A. Well, no. In taking out some of the other companies we had to go through them just the same.

Q. Do you mean in going through the other companies you would run across Carling?—A. No, but we had our eyes open to see if there were any missed.

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10 Q. How do you file the B.13s at Ottawa, do you file them under the commodity or under the port?—A. Under the port.

Q. So that to get these B.13s you have to go over all the B.13s for all goods exported from the port?—A. Yes, that is what we did originally.

Q. And you put a staff, and they go through them, and they first picked out the liquor and beer as you have described?—A. Yes.

Q. Now, just to trace it up, are you responsible for the system that involves recording the B.13s in books such as the Canadian Exporters' Index?—A. I have nothing whatever to do with that.

Q. Who has to do with that?—A. I imagine the regulations—

20 HIS LORDSHIP: If you do not know do not say.—A. The regulations of the Department I suppose.

MR. TILLEY: But that does not come under your jurisdiction?—A. Not at all, nothing to do with that.

Q. So that the steps would seem to be; an exporter goes into the port, if he is at the port of exit himself, and makes out his B.13, then the Customs man enters it by a number under the heading of his name?—A. Exactly, the exporter's.

Q. Even though there is only one shipment by that man?—A. Yes.

Q. He gets a place in the book?—A. Apparently, yes.

30 Q. But you are not responsible for that. Then they are sent to the head port, and the head port sends them on to you?—A. Yes.

Q. How often do they send them on to you?—A. We get them daily from the larger ports.

Q. Windsor?—A. Daily.

Q. Amherstburg?—A. Not daily.

Q. Do you not find this, that while you get them daily from Windsor, you only get the outports of Windsor in with the Windsor B.13s occasionally, that is to say, a spread of several days sometimes before they are sent in?—A. Do you mean—

Q. The outport sending them in to Windsor?—A. They may not send them in every day.

40 Q. They would probably send them in once a week or once in two weeks?—A. I do not know.

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Q. At any rate they do not profess to send them in every day?—A. I do not know a thing of what the outports profess to do at all.

Q. Now I want it to be clear, these B.13s in Exhibit 122 are B.13s of some other company, National Breweries, is that not right?—A. Yes sir.

HIS LORDSHIP: Does he know anything about those?

MR. TILLEY: These come from your files.—A. Yes. All we would be interested in would be for statistical purposes, quantity and value, and country of destination. We do not care about this part.

Q. Do you total these things all up?—A. Yes.

Q. And then put them away?—A. And publish it monthly—it is published 10 quarterly now.

Q. In books such as this, Quarterly Report of the Trade of Canada?—A. Yes.

Q. And do you show in this book—will you find me the exports of liquor and beer?—A. (Shown).

Q. You show me page 195 of one book, ale and beer, and distilled, gin and whisky. It shows that the shipments are actually to the United States?—A. That is the country of destination.

MR. ROWELL: I submit that is not evidence of anything. It is the summation of the B.13s.

MR. TILLEY: But the Government of Canada shows in its Blue Book returns 20 that liquors and beer shown on these B.13s as having been exported—

HIS LORDSHIP: Are rated as exportation.

MR. TILLEY: And are shown as exported to the United States.

WITNESS: Correct.

Q. And it runs into millions of dollars?—A. Yes.

Q. And the trade is growing?—A. Every month.

Q. The Government getting anxious to collect more and more all the time.

That is all, thank you.

MR. ROWELL: Then as this book has been referred to I suggest that it should be marked, so that if those particular B.13s turn up they can be checked. 30

MR. TILLEY: Let us settle it now. I do not want to file a book to be searched through later.

MR. ROWELL: We can have it checked up, and I will show it to my learned friend.

HIS LORDSHIP: I do not see why you do not put this last B.13 in.

MR. TILLEY: I would like to have the Government B.13s all identified and marked. They are all here, let them all be identified so that they are available. They are of the same importance as this one.

HIS LORDSHIP: They are not all in?

MR. TILLEY: They are not all filed. I think we had better file them all.

MR. ROWELL: No objection if my learned friend wishes. 40

HIS LORDSHIP: Put that one in as No. 123, that you found here.

EXHIBIT No. 123: B.13 last found.

HIS LORDSHIP: The question of that book you will try and settle?

MR. ROWELL: Yes.

MR. TILLEY: But I think the other B.13s should be marked so that they could be identified, just in bundles. We will take care of them and they will be available to your Lordship any time you want them.

EXHIBIT Z-1: Remainder of Ottawa B.13s.

MR. ROWELL: Then your Lordship has already before the Court in Exhibits 19 and 20 the regulations of 1897 and 1900 relating to B.13s. There is a subsequent one of June 30th, 1916.

MR. TILLEY: Your Lordship will see it is a memorandum of the Department of Customs, addressed to the Collectors of Customs, agents of railway and steamship lines, and others concerned, printed on the back of the B.13s.

EXHIBIT No. 20-A: Department of Customs Regulation dated June 30th, 1916.

MR. ROWELL: That is the case, my lord.

HIS LORDSHIP: We have in the course of the trial examined some of the bankers, and they have produced statements of accounts of certain individuals, to be marked for identification.

20 MR. ROWELL: They should be filed as exhibits the same as the others.

MR. TILLEY: My submission is that those accounts are certainly not now evidence, because my friend was going to connect them up. He is now closing his case without connecting them up.

HIS LORDSHIP: I do not think I am going to use them at all. But we have already put some in.

MR. TILLEY: They were put in on the understanding that they were to be connected up, and were left with the Registrar until evidence to connect them was put in. We have bank accounts of individuals filed as exhibits, but nothing at all to show how they have any relationship to us. As to the two accounts not yet marked, I submit 30 they are not evidence.

HIS LORDSHIP: I am speaking of No. 67, 68, 69, only those that have been marked.

THE REGISTRAR: Those numbers were reserved, they were to be marked.

MR. ROWELL: There is a connection between these accounts established in the evidence. Some of those accounts relate to Paquette, who admitted in the box that he had received and collected moneys and deposited them to his account and transferred them to Carling's. It therefore did not become necessary for me to ask the Auditors to connect the items, when we already had it from Paquette.

HIS LORDSHIP: I have allowed you to put them in before, I am going to allow it 40 again subject, to all objections. The exhibits already marked 67, 68 and 69 for

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identification are filed, reserving all objections. If they do not apply they do not hurt you. But remember, if you go to appeal it will mean something for you, it is a big undertaking.

MR. ROWELL: We do not want the deposit slips, it will be sufficient to have the bank accounts.

THE REGISTRAR: Nos. 68 and 69 are the deposit slips and authority for signature of one account.

They were never left with me. The number was reserved.

MR. ROWELL: These particular ones are those that were left when Mr. Cowie was here. The deposit slips may be sent back. We want the accounts, but not the 10 deposit slips.

Now there is another one, which was marked for identification—

MR. TILLEY: No, this was not marked at all.

MR. ROWELL: These were presented in my absence when Mr. Cowie was in the box.

MR. URQUHART: In the evidence of Mr. Weinert of Ford City.

HIS LORDSHIP: We did not put them in, we said it would be spoken to afterward because Mr. Rowell was not here.

MR. TILLEY: Not only that, I took it that if my friend put in evidence that would connect it up so that your Lordship would think that these were evidence, I 20 would not object on the ground that they were not produced by the right authority.

HIS LORDSHIP: I did not commit myself to anything.

MR. TILLEY: No. If your Lordship will note the size of this thing—

MR. ROWELL: Well, it is not worth quarrelling over. We have got from Paquette himself his own story.

Then I should have said before closing that I desire to file the affidavit of service by George William Fish of the Royal Canadian Mounted Police of the subpoena upon John Kennedy and Samuel J. Low for the last Court.

MR. TILLEY: I object to it going in.

HIS LORDSHIP: I cannot see any serious objection. I do not know that it would 30 help me.

MR. TILLEY: It is not material to the issue.

HIS LORDSHIP: He can say, this is our case, we want some further evidence, but although we have served a subpoena we could not get the witness.

MR. TILLEY: Kennedy is dead, as my friend has said—

HIS LORDSHIP: I do not know. It has been insinuated here, but I do not take judicial notice of that.

MR. TILLEY: I object to it going in as part of the trial.

HIS LORDSHIP: Objection overruled.

EXHIBIT No. 124: Affidavit of service of subpoena on John Kennedy and
S. J. Low on April 28th, 1928.

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MR. TILLEY: Would you have it noted that Mr. Low was here in Court every day at the last—

HIS LORDSHIP: I do not know, nobody drew my attention to it.

MR. TILLEY: Why does my friend put in an affidavit of the service on a witness who was here?

HIS LORDSHIP: I will allow you to put in an affidavit that Mr. Low was here.

MR. TILLEY: I am making the statement that he was here.

10 HIS LORDSHIP: Will Mr. Rowell accept your statement?

MR. ROWELL: I accept Mr. Tilley's statement that Mr. Low was here at the last Court but is not available for this Court.

MR. TILLEY: He has not been asked for at this Court until the trial started.

MR. ROWELL: I beg pardon, he was asked for before the trial started, and we were advised that he was away in Europe and could not be here.

MR. TILLEY: And that is why you are so anxious to have him. We got the letter asking to have him here at 4.40 p.m. the day before the trial reconvened for this sitting. Then finding that he is not here he is another witness that is very much desired.

20 HIS LORDSHIP: If I had to decide the case on that I would not know very much of the case.

MR. TILLEY: It might also be noted that Mr. Burns, for whom my friend called very loudly last time, is here and was not called.

MR. ROWELL: I did not call for him last time. What occurred was, my learned friend objected to certain evidence going in because he had not his client Burns here to answer, and I said it was not our fault he was not here, we had asked for him and had been advised by my friend's firm that Mr. Burns was in Florida.

(Court adjourned at 4.45 p.m., Wednesday, 24th April, to Thursday, 25th April, 1929, at 10.30 a.m.)

30

THURSDAY, April 25th, 1929, 10.30 a.m.

DEFENCE

No. 35

HARRY LOW, sworn. Examined by Mr. Tilley:—

Q. Mr. Low, what position do you occupy in the Carling Brewing Company as it exists today?—A. Vice-President and Sales Manager.

Q. That Company has been in existence only for a short time relatively?—

A. Yes, about two years.

Q. And it does not enter into this question at all?—A. No.

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Q. The Company we are concerned with here is the Carling Export Brewing & Malting Company. What position did you hold in the defendant Company?—A. Vice-President and Sales Manager, the same.

Q. The same position in both companies?—A. Yes.

Q. Of course the defendant company is not now carrying on business?—A. No.

Q. It is now a new company?—A. The new company that is carrying on business.

Q. When was that company formed, the Carling Export Brewing & Malting Company, Limited?—A. I do not know exactly when the company was formed. We bought the company already formed, we bought the stock. 10

Q. That is there was a company existing?—A. Yes.

Q. And you bought the shares?—A. We bought the shares of the company.

Q. How long ago did you acquire the shares of that company?—A. October, 1923.

Q. Prior to that what was the position of that company's business? Was it operating or closed down?—A. It was closed down for several years, five or six years.

Q. During the time it was closed down, and prior to that when it was operating, had you any interest in it or anything to do with it?—A. Nothing whatsoever.

Q. So you took it up in 1923 as a new venture for you?—A. Yes.

Q. And it has been said that Mr. Leon and Mr. Burns were associated with you?—A. Yes. 20

Q. And were at that time?—A. Yes, at that time.

HIS LORDSHIP: There must have been more than three.—A. There was my wife and Mrs. Leon.

MR. TILLEY: So that you had the lawful number?—A. Yes.

Q. And your interests were pretty much one?—A. Yes.

Q. That company as I understand it did not issue stock to the public?—A. No, it did not.

Q. I suppose you acquired the shares from the old Carling interests did you?—A. No, the old Carling interest had sold their interest to the Carling Export Brewing & Malting Company, and we acquired the stock of that company. 30

Q. The old people had incorporated the company and transferred their assets to it, is that what you mean, and you bought the stock of that company?—A. They could not make it go, the promoters could not sell the stock, so we bought it.

Q. I do not want to go into details, but reference has been made to certain stages in the development of your business. Will you tell us what the first stage was? What did you do first by way of arrangement of plant.—A. This plant was formerly an ale plant, Carling's ale, and we remodelled the plant, renovated it—

MR. ROWELL: My lord, may I submit that what they did in connection with their plant is not relevant.

HIS LORDSHIP: I do not know that it can hurt. We are finding what they can 40 produce I suppose.

MR. TILLEY: Yes, that is the point, it is just leading up.

HIS LORDSHIP: There is no contention that they were exporting or trying to export any other beer than their own.

MR. TILLEY: No. That is right is it?—A. That is right.

Q. What was the Canadian market before the law was changed, ale or beer?—

A. Ale market.

Q. And what is the United States market?—A. Lager market.

Q. What is the difference between lager and ale?—A. It is a different process of manufacture. One is an internal fermentation, just fermented at a very low temperature, a temperature of 40 degrees. That is lager beer.

Q. It is a different process?—A. A different process.

Q. It is not a mere matter of strength?—A. No difference in strength, it is a matter of process.

Q. And so reflected in the taste?—A. Oh yes.

Q. There is a noticeable difference in taste between ale and lager?—A. A noticeable difference in taste.

Q. Now you say when you took over the plant it was equipped for ale?—A. Yes.

HIS LORDSHIP: Now that you have asked about ale and lager get him to say about rice beer.

20 MR. TILLEY: What is rice beer?—A. It is a lager beer.

Q. So when you say lager you include?—A. Rice beer and malt beer, they are both lager beers.

HIS LORDSHIP: I suppose each would be treated differently?—A. The lager beer and rice beer are treated in the same way.

MR. TILLEY: But one is made from malt and the other from rice?—A. Yes sir, exactly.

Q. But the process of manufacture is a lager process for both?—A. Lager process for both.

Q. Now when you took over the plant, finding it equipped for ale, what did you 30 do?—A. We changed the plant to a lager beer plant.

HIS LORDSHIP: Not exclusively?—A. Not exclusively, my lord, but we would make it 80 per cent lager and possibly 20 per cent ale. We left the ale equipment that was there intact.

MR. TILLEY: When you first started did you commence the manufacture of rice beer?—A. No.

Q. You said the United States market was mainly lager and the Canadian mainly ale. Now taking the lager for each country, where, if at all, was rice beer sold, or where was the bulk of the rice beer sold, not by you, but as a market proposition where was the market for rice beer?—A. All through the United States.

40 Q. Was there a market for rice beer in Canada?—A. We have never had it. Very very small, our market for rice beer in Canada.

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Q. Did you at first equip yourselves to make lager in the form of rice beer?—
A. No.

Q. When did you do that?—A. In 1926.

Q. What conditions existed that induced that change?—A. Our competitors were able and found out how to make a better lager beer from malt than we were producing.

Q. You found your competitors making better malt beer than you were, and—?
—A. We were forced to take and make something better than what they had, to suit the American taste.

Q. Was that the object of the change?—A. That was the object of the change. 10

Q. Does it cost you more or less, or how, to make rice beer?—A. It costs us more.

Q. Where do you get the rice from?—A. I am not acquainted with just where we purchase it. That is done in London.

Q. Then there is 15 cents duty on it?—A. There is 15 cents a gallon Excise Tax.

Q. Are there any other changes in your plant that you want to refer to?—A. No, except since the Liquor Control Act has come into effect.

Q. What is the point under the Liquor Control Act?—A. We have had to multiply our ale department. 20

Q. That is when the Liquor Control Act came into force and liquor could be sold in Ontario again through the Government stores, you had to increase your ale capacity?—A. Yes, because we could not sell lager beer.

Q. Could not sell lager beer where?—A. In Ontario, very little demand for it.

Q. Now you commenced business. What part of the business did you attend to?—A. The export business.

Q. Commencing in 1924?—A. In April, 1924.

Q. And where were you located?—A. In Windsor.

Q. Did you have anything, or anything substantial, to do with the manufacturing operations at London?—A. No. I assisted in renovating the plant from 30 October to April, until we had beer ready for the market. I was living in London.

Q. At that time?—A. Yes.

Q. That would be between what dates?—A. October, 1923, and April, 1924.

Q. Then from April, 1924, when the plant was in running order, operating?—
A. Ready to produce.

Q. You went to Windsor?—A. I went to Windsor.

Q. And then has that been your headquarters since?—A. Yes, that is where I live. I moved my family there.

Q. And you live in Windsor?—A. Yes, in Walkerville, it is the same, they are adjoining municipalities. 40

Q. Did you have anything to do with the keeping of the books or bookkeeping in connection with the matter at London?—A. No. I do not get to London very often, I am kept constantly at the border.

Q. Did you make the arrangements for the carrying on of the business as to selling the product?—A. Yes.

Q. With whom did you first arrange?—A. With Grandi.

Q. Where did he reside?—A. In Detroit.

Q. Did you come to terms with him, you on behalf of the Company, and he for himself?—A. Yes.

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10 Q. What was the arrangement with him—

HIS LORDSHIP: Anything in writing?—A. No, my lord. He was to take all our beer for export.

MR. TILLEY: And the terms what?—A. Well, at the prevailing market price. The price would fluctuate a lot in the beer market in those days.

Q. That is back in 1924?—A. 1924.

Q. How long did that arrangement continue?—A. Until late in 1925.

Q. Did you operate under that agreement?—A. Yes.

Q. What part did you take in those operations?—A. I looked after the beer on this side of the river to see that it was properly exported to the United States, and
20 received orders from Grandi to despatch to the different docks where he required his wares.

Q. And that covers the period you say down to 1925?—A. 1925.

Q. As to those shipments that are identified with Grandi what do you say about the beer, what was done with it?—A. It was all exported.

MR. ROWELL: The witness can only say what he knows was done. All he can say is that it was entered for export, unless he can speak further.

MR. TILLEY: Mr. Low, you are not suggesting I suppose that you went over with each boatload and saw it landed on the other side?—A. I did not go on each boatload, no.

30 Q. But you are speaking now of the conduct of the business?—A. Yes.

Q. And as it passed through you, under your supervision, what do you say about the business during Grandi's time?—A. I say it was all exported, and none of it came back to Canada.

HIS LORDSHIP: Let us make it clear. What would lead you to say that the beer was all exported?—A. Because I was looking after that business, looking after the docks.

Q. I will put the question direct to you: Do you say the beer was all exported because you saw that the beer was put in a boat with a B.13 for the purpose of being taken away out of Canada?—A. No, I went further than that, I seen that there was
40 none of it landed back in Canada.

HIS LORDSHIP: That is a great undertaking. You would not pledge your oath to it, would you?

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MR. TILLEY: This beer that you are selling to Grandi, had Grandi anything to do with any market except the export market in the United States?—A. None, whatsoever.

Q. As to all that beer, did you get any intimation that any of it had not been delivered pursuant to the arrangement between you?—A. There was one case.

Q. But I mean substantially?—A. Substantially.

Q. You were watching it and following it through?—A. Following it through.

Q. Now, I am not suggesting that you actually rowed the boat, or anything of that kind—

HIS LORDSHIP: What does the witness mean about one case? 10

WITNESS: There was one case that beer was shipped to Grandi that I remember was seized on the Canadian side, that had not got to him.

Q. Seized on the Canadian side?—A. Yes.

Q. That was after it had left the Canadian side?—A. No, it had not left the Canadian side, my lord.

Q. Tell us how it was seized, under what circumstances.—A. It was seized in a car, a carload.

MR. TILLEY: A carload was seized. I think one of the witnesses told us about a carload that was seized.—A. Yes.

Q. It was seized and did not reach the purchaser at all?—A. Did not reach the 20 purchaser at all.

HIS LORDSHIP: It did not reach— —A. The point of export.

Q. And it was not covered by a B.13, and was not put on board a boat that had its clearance to go, is that what you mean?—A. I believe it was covered by a B.13.

MR. TILLEY: On the car?—A. On the car, but it had not reached the boat.

Q. It never reached the point of being a stamped B.13?—A. No.

Q. Then what change did you make about Grandi?—A. We changed to Savard.

Q. What arrangement did you make with Savard?

HIS LORDSHIP: Do you know the date?—A. In 1925, it would be in the autumn of 1925. 30

MR. TILLEY: What was the arrangement with Savard?—A. Savard was to take all our beer for export to the United States, and to give us as large a distribution in the States as it was possible to give us.

Q. When you say as large a distribution, what do you mean?—A. I mean we wanted the beer distributed in more than the City of Detroit and the State of Michigan, because we hoped to keep on enlarging our plant.

Q. That is to say, as large a distribution you mean geographically?—A. Yes, that is what I mean.

Q. Hoping in the end it would produce it in quantity?—A. That is it.

Q. And what were the terms on which he was to act?—A. He was to get the 40 beer for \$1.75 a case, and the money that he sold it for in the United States to sub-

purchasers was to be divided equally between himself and myself, less the expense of handling on the Canadian side and the American side.

Q. That is to say, he was to pay \$1.75, and whatever difference there was between that price and the price got in the United States—that is taking out the expenses?—

A. Yes.

Q. On the Canadian side and the American side, was to be divided between him and you?—A. Yes.

Q. In what proportion?—A. Fifty-fifty, equal division.

Q. Was the bargain between him and you?—A. Between him and myself.

10 Q. Personally?—A. Yes.

Q. What about Burns & Leon?—A. I later split with them. They were my associates.

Q. So that each of you got one-third of one-half of the difference between the cost of the goods to Savard, and the price realized after taking out expenses on the Canadian side and the American side?—A. That is right.

HIS LORDSHIP: The bargain was made by you, or was it, or was it not, on behalf of the defendant company?—A. I made the bargain on behalf of the defendant company for \$1.75.

Q. And you made a bargain on behalf of yourself personally?—A. Yes.

20 Q. Then you had another bargain personally with your co-officers in the defendant company?—A. That is right.

MR. TILLEY: The \$1.75 is what the company was to get for its beer?—A. Yes.

Q. Regardless of whether it was sold at a loss or profit?—A. Yes, or being it was a loss. If a boatload had sunk or any misfortune, the company got \$1.75 for each and every case.

Q. Was the company to assume any risk about the charges?—A. No risk, all charges or expenses whatsoever.

Q. Now did you operate under that agreement?—A. Yes.

30 Q. Was it operating under that agreement that brought about the practice of the men paying their money as has been described?—A. Yes.

HIS LORDSHIP: Did you never get paid from either Savard or Grandi except when the price was fixed for the American buyers?—A. Oh yes, my lord, I got paid by Savard and Grandi. Savard has paid me hundreds of thousands of dollars.

MR. TILLEY: When you speak of Savard, it is a different arrangement from the one you had with Grandi?—A. Oh yes.

Q. The Grandi arrangement was not of the same nature as Savard's at all?—A. No, it was not.

40 Q. Then you made your bargain with Savard, the company was to get \$1.75; and the profit, after taking out expenses,—for which you would all be equally liable with him?—A. Yes.

Q. Was divided as you have described?—A. Yes.

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Q. Now when you were shipping to Savard it has been said that Savard did not always pay as the goods were shipped to him.—A. Oh no, Mr. Tilley.

Q. How would you get that money?—A. Savard used to collect it and pay it to me.

Q. So you would get money direct from Savard in that way?—A. Oh yes.

Q. And then the balance where certain drivers came across they would bring the money with them?—A. Well, Savard would sell the beer to different people in the United States, but their credit was none too good, and he did not care to trust them, let them run a week's account, therefore they would have to pay cash for their goods when they got them. 10

Q. And did pay?—A. And did pay.

Q. Then did you carry out the division with Savard?—A. Yes.

Q. As you say the arrangement was?—A. Yes.

Q. And that continued until when?—A. On in 1926, he changed the name from Savard to Syringe.

Q. Was that a mere change in name?—A. A mere change in name.

Q. Due to what?—A. Well his name got so prominent in the United States, and he was arrested so often that he thought it was good business to change his name.

MR. ROWELL: Of course the witness cannot say as to what happened in the 20 United States.

HIS LORDSHIP: Unless he knows.

MR. TILLEY: Well that is the reason given to you?—A. Yes, that is the reason given to me.

Q. Did the change in name alter the bargain between you and Savard?—A. Yes—not the bargain, but it altered the price we were selling for.

Q. Why, what change was made?—A. The Carling Export Brewing & Malting Company felt that they should get more money than the \$1.75, because by this time we could not supply beer enough, and the price was raised to \$2 for lager beer or black label which he was getting, and \$1.90 for any ale he got or malt beer. 30

Q. That is a higher price for the rice beer?—A. Yes, because it cost more to produce.

Q. When you speak of the rice beer, you were then manufacturing it?—A. Yes.

Q. And is Exhibit "O" the bottle in which it was put up?—A. That is it.

Q. Did you ever put up anything other than rice beer in that bottle?—A. No.

Q. And it was made for you by the Dominion Glass Company?—A. Made for us by the Dominion Glass Company.

Q. Did you ever see such a bottle used by any person else, I mean that shape and colour?—A. That colour has been used since by other breweries, but not that shape. 40

Q. I mean the combination of shape, size and colour has not been imitated?—

A. No, it is known as Carling's bottle, and it is made expressly for us.

Q Now you say the new price for rice beer was what?—A. \$2.

Q. And the malt beer?—A. \$1.90.

Q. And ale?—A. \$1.90.

Q. That is you charged ten cents a bottle more for the rice beer?—A. A case.

Q. The lager price became divided at that time, and the price for the rice beer, which was lager, was ten cents a case higher than the malt beer?—A. Yes.

Q. The price altered because your rice beer had got on the market then?—A. It had got on the market and was established.

Q. What do you say, from your knowledge of the way the business was carried 10 on, as to what was done with the beer in Savard's and Syringe's time?—A. It was exported to the United States.

Q. Did you sell any beer for consumption in Canada?—A. None.

Q. Or deliver any beer for consumption in Canada?—A. None.

HIS LORDSHIP: That is a very general question and a very general answer.

MR. TILLEY: I am asking whether he did, Low.

Q. I put that to you personally. You are the Sales Manager.—A. For export at that time.

Q. And you were attending to the export sales?—A. The export sales.

Q. And you say that you, Low, sold none— —A. None.

20 Q. And delivered none— —A. And delivered none in Canada.

Q. —for consumption in Canada or for use in Canada?—A. Or for use in Canada.

Q. Now an account has been referred to here on which Sales Tax was paid just before the trial started, under the heading Smith?—A. Yes.

Q. Did you have anything to do with the Smith sales?—A. None whatever.

Q. Where were they made?—A. In London.

HIS LORDSHIP: If you had nothing to do with it you better not speak about it.

MR. TILLEY: It is said you gave the instruction that the Sales Tax should be paid,—Sales Tax and Gallonage Tax. Is that right?—A. Yes.

30 Q. What prompted you to give it?

MR. ROWELL: I submit his motive is not material.

MR. TILLEY: Very well, I will withdraw it.

Q. You had nothing to do with the account?—A. Nothing to do with the account.

Q. Except to order that the Sales Tax and Gallonage Tax on it should be paid?—
A. I did that.

Q. Was that when you found out about the account?—A. That is when I found out about the account.

Q. Did you have anything to do with these transactions that are entered in the 40 books as cash sales?—A. No, Mr. Tilley.

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Q. I understand the Gallonage Tax has been paid on the cash sales, but it is said that the Sales Tax has not been paid on those sales to the extent to which they were beer not listed as 2½ per cent.—A. I did not know anything about that account until I heard of it in Court here.

Q. It is said the tax on that is \$1,600 or something of that kind. But you have nothing to do with that personally?—A. No.

Q. It is said that there was a contract for a time under which a Mr. Fitzgerald was more or less controlling the operations?—A. Yes.

Q. Will you tell the Court about that, from your standpoint?—A. The brewers have formed so many contracts I do not know just what the contents of that one 10 were. I have a faint recollection, but I don't remember—

Q. At any rate Mr. Fitzgerald told us that certain prices were to be paid.—
A. Yes.

Q. And that he found the brewers were not carrying it out to his satisfaction and he resigned?—A. We did not carry it out.

Q. What do you mean by you did not carry it out? When you say "we" who do you mean?—A. I mean the Carling Brewing.

Q. Did other breweries carry it out?—A. No.

MR. ROWELL: I submit this witness cannot speak about what other breweries did. 20

HIS LORDSHIP: We are not concerned with that.

MR. TILLEY: All right, as long as we understand.

Q. Carlings you say did not carry it out?—A. No.

Q. How do you know they did not?—A. I had charge of the export sales.

Q. And what happened that you know that shows it was not carried out?—

A. Well, none of the breweries were getting \$4 a case for their beer.

Q. Why not?—A. They were selling some for \$4, and possibly when the cashier went to lunch or when he quit at four o'clock in the afternoon they continued to sell at \$3 or \$2.75 a case.

Q. So that while there was an agreement that the sales were to be at \$4 you say, 30 speaking for Carlings at any rate, that was not carried out?—A. No.

Q. And I understand from Mr. Fitzgerald that he put a fine on you?—A. Yes, he fined us.

Q. And later on was it repaid?—A. Well, the other breweries could not very well keep it when they were all in the same boat, so they returned us our money.

Q. Reference has been made to the Bermuda Export Company. Would you just tell the Court about that.—A. The Bermuda Export Company was formed to stabilize prices, eliminate any beer getting into Ontario, and to forward the wares or the beer of the different brewers to their respective consignees or agents.

MR. ROWELL: That is all in the agreement is it not?—A. —to the United 40 States. That is what it was formed for.

MR. TILLEY: How did it operate? For instance was that Bermuda Export Company in charge or operation during the time of your agreement with Savard or Grandi?—A. With Savard.

Q. As between you and Savard what was the effect of the Bermuda agreement on your previous agreement with Savard, as to the price at which you would sell to him?—A. Oh, it meant that it was of great advantage to Savard and great advantage to us.

Q. Did it rescind your bargain with Savard?—A. Oh, no.

Q. That is your arrangement with Savard operated under the new arrangement 10 with the Bermuda?—A. Exactly so.

Q. And whatever price resulted from the Bermuda became the price you would ultimately divide with Savard?—A. That I would divide with Savard.

Q. After taking out the expenses?—A. After taking out the expenses.

Q. How did you arrange for the payment of expenses, or what was done about that?—A. I would make a draft on the Carling Export Brewing & Malting Company at London for sums of money, around \$2,000 to \$3,000 at a time, sometimes greater, and deposit it to an account known as the Harry Low Special Account. Out of that account money was paid to men on the docks handling the beer into the boats, truck drivers that trucked the beer from the car to the dock, and for a steam 20 tug to break the ice during the winter—

Q. Well, expenses?—A. —to make it convenient for the boys to get out.

Q. Now, when you say that out of that account moneys were paid, do you mean that you paid those things by cheque to the parties, or do you mean that the money was taken out of that account for the purpose of paying?—A. For wages, that is the dock handlers, and that class of men, it would be drawn in one cheque for wages.

Q. And then split up you mean?—A. Then split up. That was my receipt to Savard, that I had paid out so much expenses on the front.

Q. Now were there expenses for Savard?—A. Oh, yes, he had expenses.

Q. Was there any connection between his expenses and that account?— 30 A. Oh, no.

Q. That is, whatever he had he disbursed—?.—A. He disbursed himself.

Q. Is that then the origin and the explanation of that expense account at Windsor?—A. Yes, sir.

Q. Reference has been made to some other accounts. Reference has been made to charging back certain things to sales because of items appearing to be moneys received from Mr. Burns?—A. Yes.

Q. Were there any transactions with Mr. Burns that were outside of the brewery, that is outside of the ordinary income and outgo for the brewery?—A. Oh, there was, Mr. Tilley. That was prior to Savard's period.

40 MR. ROWELL: The witness has already said he knows nothing of the London books.

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MR. TILLEY: I am not asking about the London books.

HIS LORDSHIP: But the witness has said that when they got what I might call the American price for the goods, that price was divided. He divided first with Savard, and then he divided with Leon & Burns. That made another account.

MR. TILLEY: Well did Burns in addition make any advances to the Company?—

A. Yes.

Q. For what purpose?—A. To pay off the mortgage.

Q. That is to say there were personal advances from Burns?—A. Yes, Mr. Tilley.

Q. I do not know whether I am right in putting it in the plural or singular, but 10 at any rate there were personal accommodations in that way that had nothing to do with the routine of the Company's business?—A. No, it was personal.

Q. You had mortgages to pay off, and that sort of thing?—A. Yes.

Q. Well, my friend can follow this up if he wants to. Now I think I covered Grandi and Savard. You say yours were export sales; does that cover all the sales, when you speak of the export sales do you mean all the export sales that we are concerned with here except Smith and the cash sales?—A. I believe there was a couple of small purchasers during the Grandi time that had bought beer from Carlings too.

Q. That did not go through you?—A. It went through me, but it did not go 20 through the Grandi account.

Q. I am not speaking of whether it went through Grandi, but when you say that you were in charge of the export sales, I am asking whether that covers all the sales we are concerned with here except the Smith and the cash sales?—A. Yes.

HIS LORDSHIP: And he says that there are others.

MR. TILLEY: No.

Q. Are there any others that are to be put in with Smith and the cash sales, not being export sales, that you looked after?—A: No, there are no others.

HIS LORDSHIP: I thought you just said you controlled everything that was sold to Grandi, and out of Grandi's there was some that was not exported. 30

WITNESS: Oh no, my lord.

MR. TILLEY: He said that there were one or two in Grandi's time that did not get it through Grandi, but they were export sales.

WITNESS: They were export sales sold to a different consignee than Grandi.

HIS LORDSHIP: But they were American consignees?—A. Yes.

MR. TILLEY: And it passed through you?—A. Yes, it came under me.

Q. And as to all the export sales that you were concerned with in that way, which would exclude Smith and the cash sales, if they are called export sales, what do you say as to whether they were really export sales, as far as your knowledge can extend?—A. They were really export sales. 40

Q. You say that as to you they were bona fide export sales?—A. Bona fide export sales.

Q. Have you any reason to think that they were not exported, except possibly where you say the car was seized?—A. I have no reason. I believe everything was exported to the United States.

Q. Now just one or two other things that I should ask you about. A good deal of reference has been made to a C.P.R. dock, and if I am correct I think it was sometimes referred to as Carling's dock?—A. Yes, Mr. Tilley.

Q. Where is that dock that is thus referred to?—A. That is the C.P.R. freight sheds at Windsor.

Q. When you say the C.P.R. freight sheds, where are they situated with regard to the river?—A. Right on the river. The railroad car comes to one side of the dock and the river is on the other side.

Q. So that they are freight sheds both for rail and boat shipments?—A. Both, Mr. Tilley.

Q. Just like a terminal warehouse?—A. It is a terminal, yes.

Q. And is it a C.P.R. dock in the sense that the C.P.R. lease or own it, or is it a Carling dock, or whose is it?—A. It is the Canadian Pacific Railroad's dock.

Q. How does it come to be called Carling's, if it is called Carling's?—A. Well, I don't know where it originated, that name, but the C.P.R. put their freight through the same dock to Buffalo and Milwaukee and other points by the lake and rail route.
20 That is a terminal.

Q. And it is an important C.P.R. terminal?—A. Yes.

HIS LORDSHIP: Are you aware that any other breweries were shipping beer at that dock?—A. No. There has been some, my lord, but not very great quantities.

MR. TILLEY: As far as beer is concerned it seems to have been almost exclusively used by you?—A. Yes, as to beer.

Q. That is for your goods?—A. For our goods.

Q. Are there Customs officers there?—A. Yes, they are stationed there, have an office there.

Q. Will you describe the extent to which the Customs supervised these transactions that you have referred to as export sales?—A. Well the beer is counted out of the dock into the boat.

Q. Now, before that, the bulk of it I gather arrives in cars?—A. Yes, in this period it practically all arrived in cars.

Q. When these cars arrive are they under seal?—A. Yes.

Q. And what happens?—A. During the period of this suit—

Q. Yes, that is what I want.—A. We had to have them released by the Customs.

Q. That is the car itself released by the Customs?—A. Yes.

HIS LORDSHIP: The seals broken?—A. The seals broken by the Customs.

MR. TILLEY: And what happened then? Were they unloaded in the presence of the Customs, or did they check them?—A. The Customs officers are continually on duty there in the daytime.

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Q. And where would it be taken from the car?—A. Into the freight shed, not all, but what was required for that particular dock or shed.

HIS LORDSHIP: Is there any part of the freight shed that is a Customs warehouse?—A. A bonded warehouse do you mean?

Q. Yes.—A. No, it is not a bonded warehouse.

Q. Just an ordinary freight shed?—A. It is an in-transit shed.

Q. A freight shed?—A. They do not use the freight shed for anything this last number of years back except for goods going through Canada to the United States.

MR. TILLEY: That is the use that is made of that, is it?—A. That is the use that is made of it. 10

Q. So that whatever you want to send to the United States from that dock you put in there?—A. Yes—well, not all, but what is coming from that dock.

Q. Whatever you want to send from that dock?—A. Yes.

Q. Then at other docks how is it done?

HIS LORDSHIP: I suppose, Mr. Tilley, you better name the dock, because it seems to be different at all the docks.

MR. TILLEY: Well, you have many docks?—A. LaSalle dock—

Q. Illustrate by SaLalle. Are there Customs officers there?—A. Yes, Mr. Tilley.

Q. Is there any business for the Customs except the liquor and beer business?—

A. I have never seen any. 20

Q. They seem to be appointed there to look after that business?—A. Yes.

Q. How is it carried on there?—A. The beer would be moved from the C.P.R. freight sheds or freight yards by truck to the dock at LaSalle, checked out by the Customs officer at the C.P.R. freight sheds, Windsor, B.13s given to the driver for the number of cases that would be on the truck, and transported to the LaSalle warehouse, LaSalle dock, and there received by our warehouse man, put in, and the B.13s filed with the Customs officer there.

MR. ROWELL: The witness cannot be at all these points at the same time.

MR. TILLEY: Have you seen this going on?—A. I have went to each dock, I have followed the trucks from the C.P.R. to each dock, and I have been doing it 30 these last five years.

Q. That is your business?—A. That is my business.

HIS LORDSHIP: If I understand, there was a Customs officer at the C.P.R. freight sheds?—A. Yes, my lord.

Q. And he is the one that gave the B.13 to whoever was in charge?—A. Yes.

Q. And then you went down to the pier and there was another Customs' officer there?—A. Yes, my lord.

MR. TILLEY: And you gave him the B.13?—A. Yes.

HIS LORDSHIP: And he is the one that stamped it and got it ready for clearance?

MR. TILLEY: For clearance. 40

Q. As it went out to the boat he would stamp it?—A. Yes, Mr. Tilley.

HIS LORDSHIP: What is the distance between the C.P.R. shed and LaSalle dock?—A. It would be about three miles.

MR. TILLEY: Now, was it in your interest, speaking as to your business interest, to see that those shipments were moved about regularly and kept intact?

MR. ROWELL: I submit it is not whether it was in his interest or not, it is what happened.

MR. TILLEY: Well, were you watching for that sort of thing? Were you watching to see that it was kept and moved properly, and not lost, were you watching those things?—A. Yes, Mr. Tilley, our very existence depended on the stuff getting to the United States.

Q. And you were there keeping track of that sort of thing?—A. Yes, sir.

Q. Was there any complaint to you that any had been lost or did not go to LaSalle when it left the C.P.R. dock?—A. Oh, no, it went to the LaSalle dock when it would leave the C.P.R. dock.

Q. Were you checking these quantities from time to time?—A. Yes, Mr. Tilley, we had to check these quantities.

Q. Does what you say as to LaSalle apply to other docks?—A. Yes.

Q. Diesbourg gave us an illustration of his dock, I think.—A. Yes.

Q. Is there anything for you to add or take away from what Diesbourg said, that the goods would come to his dock,—where was it, at Kingsville or Belle River?—A. At Belle River. The goods would come in there by rail from London, would come under the supervision of the Collector of Customs.

Q. Under seal as you have described?—A. Yes. It would be moved from the car to the dock, and before the Government built the new canal there for to export out of we used to have to bring it out to the heavier boats in a lighter.

Q. What do you mean, did the Government build a new place there for you to ship liquor from?

HIS LORDSHIP: You mean dredged the channel?—A. They dredged the channel, put in a slip.

MR. TILLEY: Well they dredged right up—A. Right up to our warehouse.

Q. Is there any business there except liquor?—A. I never saw any.

HIS LORDSHIP: What would be the length of that?—A. I judge half a mile, my lord.

MR. TILLEY: That is, I gather, these places like Belle River have a slip from the river?—A. From the lake.

Q. Dredged right up to where the warehouse is?—A. Yes.

Q. And it is a slip how wide?—A. Oh, 100 feet wide.

Q. Dredged by the Government?—A. Yes.

Q. And the only business is liquor and beer?—A. I never knew a boat to come in there outside of one.

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Q. And did the Government build a dock there too?—A. Yes—they built a breakwater.

HIS LORDSHIP: That is at Belle River?—A. Belle River.

MR. TILLEY: I think that illustrates it.

Q. Now you have spoken of lager seeming to meet the Ontario palate. I suppose the palate is the same whether they get beer legally or illegally?

HIS LORDSHIP: No, it is not the same.

MR. TILLEY: To what extent has the Rice beer or your lager been sold to the Government, do you know?—A. About five per cent.

Q. Has been sold to Government agencies?—A. Sold to Government agencies 10 since the Liquor Control Act.

Q. And 95 per cent?—A. Would be ale.

Q. That is of what you supply the Government?—A. Of what we, Carling's brewery, supply the Government.

Q. Prior to the Liquor Control Act where could beer be bought legally in Ontario, if at all, and how? That is, I mean strong beer.—A. Strong beer could be purchased from the Government vendors stores on a doctor's prescription.

Q. Did you ever sell much or any to these people who supplied the prescriptions?—A. That is the Ontario Government?

Q. The Ontario Government.—A. Prior to the Liquor Control Act of Ontario 20 we sold about 200 cases to the Ontario Government.

Q. In what period of time?—A. In about three years.

Q. That is to say per year?—A. No, altogether.

Q. So that yours was only sold to the Government in that relatively small quantity, 200 cases. You are speaking approximately, are you?—A. Approximately, I think it would be less than that.

Q. What importance do you attach to that, would you just explain it to the Court?

MR. ROWELL: Is that evidence, what importance he attaches? I submit it is not relevant. 30

HIS LORDSHIP: I do not know what Mr. Tilley means.

MR. TILLEY: What was done with this beer? Did this strong beer that was sold in the Government dispensaries sometimes find its way into blind pigs and so on?—A. That is what it was practically for.

HIS LORDSHIP: Do you know?—A. Yes, my lord.

MR. TILLEY: What was the object of that?—A. A bootlegger could purchase a case of strong beer from a Government dispensary under a permit, and keep it in his establishment, and then buy export beer from the breweries and continue to fill the case. As he would empty the case he would put back some more export beer, he would have it back in a shed, and it would protect him against the law. 40

Q. That is, he had a case lawfully got?—A. Lawfully got.

Q. What importance do you attach to the fact that you sold so little to the Government in those three years?—A. Because they could not get our export beer.

Q. That is to say, your export beer was not being bootlegged?—A. It was not being bootlegged.

Q. I suppose you know about the markings on export beer and other beer as has been described here?—A. Yes, Mr. Tilley.

Q. I need not go over that with you.

Mr. Palmer gave some evidence to show that at one time he went into the Bermuda records and checked up their sales slips, and he did not find perfect agree-
10 ment at any rate between the sales registered there and the B.13s. Is that explain-
able?—A. Oh, he could not check it in that short period of time.

Q. Why?—A. Why we have B.13s coming back from Ottawa now. He checked the sales of the Bermuda export for a period of two weeks, and then went and checked it against the B.13s at Ottawa for that period. It would give a very inaccurate count.

Q. That is,—does the beer necessarily move out at once when the entry of sale is made?—A. Oh, no.

MR. ROWELL: My learned friend should not suggest the answer.

MR. TILLEY: I quite agree, I should not.

20 Q. What happened?—A. The boats may load today and not be able to get across the river for a day or two days or three days, if the American law would sit right out in front of the slip or canal they could not get out, they would be bottled up. In other cases they would purchase beer or have their orders ready to take their beer the sales slip may show it, but the beer would not be carried down and put on the boat for possibly several days. In Kingsville for instance, or Leamington, or Amherst-
burg when there is a wind on the lake, or the lake is rough the boys can't get across to Cleveland or Sandusky.

Q. That is, the sale may be made, and the man entitled to his beer, and he gets it when he is ready to start?—A. When he is ready to start. Then it is exported.

30 *Cross-examined by Hon. Mr. Rowell:*

Q. Mr. Low, where was the record kept of these transactions you have been describing as taking place at Windsor?—A. Just what record do you mean?

Q. Any record?—A. There is no record at Windsor.

Q. There is no record at Windsor. Where was the record kept of the sales of the Grandi or Savard beer made at the docks, in the profits of which you say you participated?—A. In London.

Q. Well the record in London is only the record of the original sale?—A. That is the only sale there was, Mr. Rowell.

Q. So far as the Carling Company is concerned?—A. So far as the Carling
40 Company is concerned.

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Defendant's
Evidence

No. 35

Harry Low
Examination
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(continued)

Harry Low
Cross-
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Q. Where is the record kept of the Grandi and Savard sales at the border, of which you collected the money?—A. There was no sales made. The sale was made from London to Grandi or Savard.

Q. You do not understand my question. Assume a sale was made in London to Grandi or Savard, then you have told us that another sale was made, and you shared with Savard in the profit on that sale?—A. That sale was made in the United States.

Q. I ask you where was the record kept of the cash received and distributed as the result of those sales?—A. There was no sale made except to Savard or Grandi, from the Carling Export Brewing and Malting.

Q. I am not dealing with the Carling Export Brewing and Malting, I am dealing 10 with the sales at the border which you have described.—A. Will you please tell me who you are dealing with, and I will try and answer.

Q. I am dealing with the sales you have described, in which you participated in a portion of the profits, you personally.—A. That sale was made in the United States.

Q. Where was the record kept of the money you received?—A. There is no record kept. The money was all deposited in the Windsor Bank account.

Q. The money was all deposited in the Windsor Bank account?—A. Yes, Mr. Rowell.

Q. And did you control, did you make all the deposits?—A. No, Mr. Rowell.

Q. Who made them?—A. Oh, I made some, Mr. Kennedy has made some, Pat 20 Kellner has made some, Mr. Hardy has made some.

Q. Was there any record kept from day to day of the amount of goods sold, which entered the warehouses as being Savard's goods?—A. Mr. Rowell, all the records was kept at London, and all the goods sold to Savard.

Q. Mr. Low, you know I am not asking that question at all. Please pay attention to the question I am asking.—A. I am paying attention.

Q. The goods, you have already told us, came to Windsor, Savard being the purchaser?—A. Yes.

Q. You have already told us that Savard resold them, and you shared in the profits with Savard?—A. Yes, Mr. Rowell. 30

Q. That is what I am talking about.—A. Yes.

Q. I ask where is the record kept of those sales made at the border in which you shared in the profits?—A. Mr. Rowell—

Q. Please answer the question.—A. I am going to answer that question.

Q. Was any record kept?—A. The sales was made in the United States.

Q. I am not asking where they were made, I am asking was there any record kept?—A. No, there was no record kept.

Q. Then how did you know at the end of the day how many cartons or kegs had been sold, and the amount received?—A. By the stock that would be on the dock, and the amount of cash. 40

Q. Did you keep a record of the stock on the dock?—A. We could not get stock in fast enough—

Q. Please answer the question, do not try to dodge it. Did you keep a record at the dock of the amount of stock on hand each day?—A. No, Mr. Rowell.

Q. How would you know them? You told me a moment ago that you would ascertain the number of the cartons sold by checking the stock. How did you check the stock?—A. We did not check the stock. During this period we could not get beer in fast enough—

Q. Please pay attention to my question.—A. I am paying strict attention.

Q. Do you swear that no record was kept at all at Windsor of the goods received at the dock, and of the amount that went out each day, or was sent to other docks from Windsor?—A. I would not swear to that, Mr. Rowell. I say we did not keep—

Q. I am not asking "we," I ask if a record was kept?—A. I can answer for the Carling Breweries, or for Harry Low.

Q. I am dealing with transactions which you have sworn you managed.—A. Yes.

Q. For Savard you say.

MR. TILLEY: He did not say he managed them for Savard. Please be accurate.

MR. ROWELL: I will go back again. Was any record kept; first, of the goods that were delivered from the cars to the dock at Windsor?—A. The B.13s were kept.

Q. Was any invoice or daily record of stock kept?

HIS LORDSHIP: What was done with the B.13s?

20 MR. ROWELL: What did you do with the B.13s at the Carling dock?—A. They were given to the Customs officer.

Q. Do you swear they were all handed to the Customs officer?—A. No, I would not. The Customs officer got them.

MR. ROWELL: His Lordship asked were they handed to the Customs officer.

HIS LORDSHIP: No, I did not ask that, I asked what was done with them.

MR. ROWELL: When the goods came to the dock, when they were unloaded off the cars, who had custody of the B.13s?—A. During this period, Mr. Rowell, the B.13s was sent with the bill of lading. Before the car was released to us the Customs had the B.13s.

30 Q. Will you describe the process of one car? The goods came down with the invoice, bill of lading and B.13s?—A. Well no, I will give the evidence if you wish.

Q. Did the invoice come?—A. The invoice was shipped to the C.P.R. dock, the B.13 was attached to the way bill—

Q. During the Savard time?—A. During the Savard time, the greater part.

Q. Well that is not the evidence we have had. I want to take an illustration during the Savard period.—A. I am trying to give it.

Q. During the Savard time we have been told, by Mr. Morrison I think it was, that the invoice, the bill of lading and the B.13s were sent to the consignee named, and in case of Windsor to the care of the C.P.R. dock?—A. Yes.

40 HIS LORDSHIP: We have that, and we have also by Hennessey that sometimes he took the bill of lading and B.13s and the invoice, and put them in the car.

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Defendant's
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No. 35

Harry Low
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MR. ROWELL: In the earlier period. I was dealing with the Savard period.

WITNESS: At the earlier period of Savard—

MR. ROWELL: Now please confine yourself to the Savard period. Did you receive at the C.P.R. dock, or did someone there receive the invoice, bill of lading and B.13s.?—A. That has been done.

Q. Who received them at the C.P.R. dock?—A. Oh, possibly, I would receive it.

Q. Then you know whether it is or is not, was that the general rule during the Savard period?—A. No, it was not.

Q. What was the general rule?—A. That is what I am trying to tell you.

Q. Well, your evidence in that respect appears to differ from the others, but we 10 will take your evidence.—A. The general rule was that the waybill and the B.13s were attached and came along with the shipment of goods. The railroad people would give the B.13s to the Customs officer, which would release the car to us for export.

Q. Then who got the B.13s?—A. We would get them.

Q. After the car was released you would get the B.13s?—A. Yes.

Q. And then you had the custody of the B.13s after that, did you, until the export entries were made?—A. Yes, Mr. Rowell.

Q. Now coming back again, you have told us that runners would come over with money?—A. Yes. 20

Q. And get the goods at the dock?—A. Yes.

Q. And at higher prices than were charged to Savard?—A. Oh, I did not say that, Mr. Rowell.

Q. Well you have told us that you shared in the profits.—A. Oh yes, higher prices, pardon me, I misunderstood the question.

Q. Higher prices than charged to Savard?—A. That is quite right.

Q. I want to know where the records were kept of those transactions where higher prices were charged than were charged to Savard. The cash sales and the stock on hand from day to day.—A. Mr. Rowell, there was no records kept. All moneys was deposited to the Carling Export Brewing & Malting Company account at Wind- 30 sor.

Q. And no books at all kept?—A. No, I did not keep any. The Carling Brewery—

Q. I am not asking Carling Brewery, I am asking about any books kept at Windsor by anybody in connection with this business.—A. Oh, Savard kept books.

HIS LORDSHIP: How do you know?—A. He had a portion of the lower part of our office, which was two storeys.

MR. ROWELL: Savard kept books?—A. Yes.

Q. Where were those books kept?—A. In Savard's office.

Q. What books did he keep?—A. Oh, I could not tell you. 40

Q. Well, you were interested in the profits.—A. Oh, yes.

HIS LORDSHIP: You say Savard had an office at Windsor in your own building?

—A. In the same building, yes, my lord.

Q. What do you mean the same?—A. It is a two-storey building. He had the lower floor.

Q. It is your building?—A. It is the C.P.R. building, owned by the C.P.R., it is the old C.P.R. station.

Q. You had also an office there?—A. Yes, the upper part.

MR. ROWELL: You had it rented from the C.P.R.?—A. Yes.

HIS LORDSHIP: Who paid the rent for Savard?—A. He did.

10 MR. ROWELL: Was it paid out of the Windsor Bank account as part of the expenses?—A. The dock and freight sheds and the office building was all rented together.

HIS LORDSHIP: He occupied a room that was covered by your lease?—A. Yes, my lord.

MR. ROWELL: Who were the lessees?—A. I believe the Erie Transit Company is the lessee.

Q. I am not asking now, I am asking then, when you started to deal with Savard.—A. Then, it would be the Carling Export Brewing & Malting Company. I was dealing with Savard during the Erie Transit too.

20 Q. You were interested in the books kept and in the profit on the transactions. Did you ever examine the books kept by Savard?—A. No, Mr. Rowell.

Q. Can you tell me what books were kept by Savard?—A. No, Mr. Rowell.

Q. Who was the man in charge of Savard's books?—A. Mr. Kennedy.

Q. The late John A. Kennedy?—A. Yes, Mr. Rowell.

HIS LORDSHIP: It is said that he kept no books, the company or himself, and that he deposited all these moneys in the bank. How did the money get out of the bank, what was done with the money, how was it disposed of?

MR. ROWELL: How was that money disposed of?—A. The moneys that was due to the Carling Export Brewing & Malting Company was transferred from that
30 account—

HIS LORDSHIP: Who would ascertain that?—A. The London office would draw on that account for the amount of money due.

Q. But they did not know what quantity?—A. Oh, they would know.

Q. How would they know if you kept no books?—A. They telephoned me, they knew how much I had deposited, there was always ample money there.

Q. But they did not know what shipments it covered, if you kept no books.—A. They sold to Savard, the London Company.

Q. But how would you know what you had sold if you kept no books?—A. I sold all we got hold of, sold everything.

40 Q. I cannot see how they could make their entry in London with accuracy. There was an account in the bank?—A. Yes.

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Q. What did that cover?—A. Covered the amount of the account at London.

MR. ROWELL: Well, did they draw on the Windsor Bank account for \$1.75 a case?—A. Yes, Mr. Rowell.

HIS LORDSHIP: They would not draw on the bank.

MR. ROWELL: They exercised their power to transfer from the Windsor Bank account to the bank account in London at \$1.75 a case.

HIS LORDSHIP: It was deposited in the name of the Carling Company?

WITNESS: Yes, everything went in the name of the company.

HIS LORDSHIP: And they had a transfer of what they thought would cover what was sent out by the invoices? 10

MR. ROWELL: Yes, that is what I understood from Mr. Morrison. They would send out invoices and then transfer from the Windsor Bank account a sum equal to perhaps several invoices together. In bulk sums?

WITNESS: Yes.

Q. \$15,000, \$20,000, \$30,000, \$40,000, to cover several invoices.

HIS LORDSHIP: Then how is the balance taken out of the bank?

WITNESS: I drew the balance out of the bank.

Q. In the name of the company?—A. Yes, in the name of the company.

MR. TILLEY: Your Lordship will appreciate that this account is Savard's account— 20

HIS LORDSHIP: You mean Savard's bank account?

MR. TILLEY: No, his account with the company. His account with the company would show at all times what he owed the company. Then there would be credits in bulk as my friend has intimated, at \$1.75.

HIS LORDSHIP: I do not understand that. I understood that what we had with respect to Savard was his bank account.

MR. TILLEY: Oh we have got our own, the company's account.

MR. ROWELL: No, we have not Savard's bank account at all. We do not know of any. What we have in the record is Savard's account with the Carling Company.

MR. TILLEY: With the defendants. 30

MR. ROWELL: It is the account of the defendant company.

HIS LORDSHIP: Let me look at that. Is that the account kept by Savard at Windsor?

MR. TILLEY: No, my lord, by the Company at London.

HIS LORDSHIP: Of course I know the company kept an account at London when they shipped to Savard. But I am speaking of the account Savard was keeping at Windsor that the witness has just spoken of.

WITNESS: It was not a bank account, my lord.

HIS LORDSHIP: No, but it is an account.

MR. ROWELL: That is what I have been trying to find out, if there is any record of it. The witness has said he kept no record. 40

Q. Then let us follow the point His Lordship has mentioned. You say they transferred from the Carling Bank account at Windsor.—A. Yes.

Q. To the Carling Bank account at London?—A. Yes.

HIS LORDSHIP: You better not say then.—A. The Carling Company had a certain amount deposited to their name at Windsor and they transferred what they thought necessary to cover their sales at \$1.75.

MR. ROWELL: In London.

HIS LORDSHIP: What was done with the rest of the money in the bank which was in the name of the company?

10 MR. ROWELL: What was done with that?—A. I drew that money out, my lord.

HIS LORDSHIP: That is to say you used the name of the company?—A. I had the right to use the Company's name.

Q. You had a power of attorney?—A. Yes, I was one of the signing officers.

Q. And you drew it and you kept it, and did not account to the company for it? —A. No, I did not account to the company for that, my lord.

MR. ROWELL: Where is the record of how those moneys, deposited to the credit of the company, had been disbursed?—A. Now, Mr. Rowell, I do not understand the question.

20 Q. My question is, where is the record of how those moneys, standing to the credit of the defendant's bank account in Windsor, were disbursed?—A. You mean the money I drew out?

Q. The money you drew out.

HIS LORDSHIP: No, he did not draw it, it was the Company that drew it through him.

MR. ROWELL: That the company drew through you. Where is the record of how it was disbursed?—A. I have no record.

Q. Was no record ever kept?

HIS LORDSHIP: Surely if that is the money of the company, and you took money belonging to the company—

30 MR. TILLEY: No, that money never belonged to the company.

HIS LORDSHIP: It was deposited in the name of the company.

MR. TILLEY: That does not make it their money.

HIS LORDSHIP: You do not take money that is in my deposit and keep it.

MR. TILLEY: If the Company gets all it is entitled to out of the account, and it is kept in their name so that they may make that transfer, the balance is not theirs at all.

HIS LORDSHIP: But I say that whoever withdraws money that is in the name of the company should account to the company.

40 MR. TILLEY: Not if you have accounted to the company for all the money the company is entitled to.

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Harry Low
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HIS LORDSHIP: If you give me a power of attorney to draw on your account and you may owe me some money, surely you do not allow me to draw on your account without my accounting to you for what I am drawing.

MR. TILLEY: If your Lordship will let me illustrate. Supposing your Lordship had the power to deposit to my credit and withdraw moneys from that account, the account standing in my name, and it is kept there so that I can get what I am entitled to from your Lordship out of that account; when I have got all that I am entitled to out of that account, and my account is paid and squared, the balance is your Lordship's, not mine.

HIS LORDSHIP: There is no contest about that.

10

MR. TILLEY: You do not have to account to me what you do with the rest.

HIS LORDSHIP: I would not draw on your account without saying I drew so much, accounting for what I draw.

MR. TILLEY: Your Lordship is not doing me the fairness to follow through what I am saying.

HIS LORDSHIP: I do not say that in the end it does not come to what you say but I say it was due to the Company to be told, I drew in your name that amount, and kept it for this or that purpose.

MR. TILLEY: In the case I was illustrating, if I were to say to your Lordship, How much have you taken? You would say, none of your business, because you 20 have got all you are entitled to.

HIS LORDSHIP: I will say this, that perhaps in the end it makes no difference, but to have straight dealings you should account. This is shadowy, I cannot use any other word. Perhaps in the end it does not come to anything—

MR. TILLEY: I better reserve my argument to the end.

HIS LORDSHIP: This is a plain fact, we are just discussing the fact, not the effect. As a plain fact that money was deposited in the name of the Carling Company, and the Carling Company drew on it for a certain amount—

MR. TILLEY: And that is all the interest they had in it.

HIS LORDSHIP: And someone who had the power to draw for the company drew 30 the balance.

MR. TILLEY: Not draw for the company. If your Lordship will let me state the position—

HIS LORDSHIP: I am speaking of the fact, not of the effect of the facts, that you may mention in the argument.

MR. TILLEY: I will deal with it in the argument. But supposing A and B enter into this arrangement; they say, now you B, are entitled to be paid for the goods you supply to A. In order to carry out the arrangement we will open a bank account in the name of you B, it will stand in your name, and out of that account you B are only to be entitled to be paid for your goods, the balance of that account is no concern of 40 yours at all, and I am to be allowed to draw it out as I please.

HIS LORDSHIP: Do you think it would ever have been done if it did not happen that Mr. Low was an officer of the company, was dividing this price that he got for the beer with two other officers of the company.

MR. TILLEY: That is not the point we are on. The question we are on was whether in a case of that kind, assuming that to be the transaction, the company would say, well you must give me an accounting of all that you got.

HIS LORDSHIP: The proper accounting for the company is, they had to their credit there a sum of so much, and that should be accounted for in some manner.

MR. TILLEY: If it was their money, yes.

10 HIS LORDSHIP: It was in their name.

MR. TILLEY: That is not saying it is their money.

HIS LORDSHIP: No, but they have the control of it.

MR. TILLEY: They had this control, that under an arrangement when they got their own there was to be no more control.

HIS LORDSHIP: There should be an entry in their books to show how it was disposed of. I do not know that it has much effect, but that is the straight way of doing it.

MR. TILLEY: I am afraid this liquor and beer business is not carried on just exactly with all the niceties of accounting.

20 HIS LORDSHIP: It does not affect me because it is liquor, but I want to do what is right, and I want to understand it. You see there is a question there that is going to become very important, that is the question of the rights, what was actually done. And then, what does it mean?

MR. ROWELL: Now, Mr. Low, you have told us you have no record of how you disbursed the moneys from that bank account that were not transferred to London?

—A. Yes, Mr. Rowell.

Q. No record?—A. No record.

Q. Have you the returned cheques from the Bank?—A. No, Mr. Rowell, I have not.

30 Q. What was done with those cheques?—A. I don't know whether the Royal Commission got them, you were there at that time.

Q. No, the Royal Commission did not get them.—A. Well, I did not get them.

Q. What was done with the cheques?—A. I do not know, Mr. Rowell, I never got them.

Q. You never got them back from the bank?—A. I will not say that, I have not got them and do not know where they are, and have not seen them.

Q. Hold on, not too fast. Did you get them back from the bank?—A. I just told you I do not know, I do not remember ever having them.

HIS LORDSHIP: You do not remember them ever coming to your hands?—
40 A. No.

HIS LORDSHIP: I suppose the cheques would go to the Company.

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Defendant's
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No. 35

Harry Low
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MR. ROWELL: The banker who produced the bank account here, as I recall his evidence, stated that they did not have the cheques, they had gone back.

HIS LORDSHIP: Yes, that is according to their practice.

MR. ROWELL: Who made the deposits, who handed that bank account?

WITNESS: I told you there was various people made the deposits in that account.

HIS LORDSHIP: He said Kennedy, and this man's name I did not catch very well, the first you named.

WITNESS: Kellner.

MR. ROWELL: Did you inquire where the cheques were?—A. Yes, Mr. Rowell, I did. 10

Q. When?—A. At the time of the Royal Commission.

Q. And what answer did you get?—A. I never was told where they were.

Q. Who did you inquire from?—A. From the bankers.

Q. And they said they had been returned to the Company?—A. Yes, that is what they said.

Q. The bankers told you they had returned them to your company?—A. Yes,—they were not returned to London, they would be returned to me or someone connected with me.

HIS LORDSHIP: Now if you do not know do not say. Do not assume, do not imagine, do not conjecture. 20

A. They would not be returned to the London Company, your Honour.

Q. If you do not know who got them you cannot say they did not get them.—

A. No. I did not get them.

HIS LORDSHIP: You are on your oath, and matters of detail of that kind may weaken your testimony, if you assert things that you do not know.

MR. ROWELL: Did you inquire of Mr. Kennedy at that time where the cheques were?—A. Mr. Kennedy was not here at that time.

Q. Mr. Kennedy was not there at that time?—A. Was not in Windsor.

Q. Was not in Windsor at that time?—A. No.

HIS LORDSHIP: Were not those people with you depositing this money in the 30 bank at Windsor?—A. Yes.

Q. And they were not there?—A. Mr. Rowell just asked me at the time of the Royal Commission. He was not there at that time.

MR. ROWELL: Why was not Kennedy there at the Royal Commission time?—A. I do not know, Mr. Rowell.

Q. Kennedy was not available at that time for subpoena—

MR. TILLEY: Well do not make statements about witnesses, because I cannot follow them up and check them.

HIS LORDSHIP: Whatever this witness knows he can answer.

MR. ROWELL: He has said he was not there at that time. 40

Q. Then who did you inquire of for the cheques? You have told us several people were making deposits.

MR. TILLEY: This is at the time of the Royal Commission?

MR. ROWELL: At the time of the Royal Commission, because he said he made inquiry at that time.

WITNESS: Of the banker.

HIS LORDSHIP: I am not concerned with the Royal Commission.

MR. ROWELL: No, my lord, I am only concerned because he has fixed that as the date he made the inquiry. He says that at the time of the Royal Commission he went to the banker and inquired for the cheques and the banker told him they had been returned to the company.

HIS LORDSHIP: I assume they would be returned to the Company.

MR. ROWELL: From whom did you inquire?—A. Mr. Cowie.

Q. No, in respect of the company, to find out if they had come back. Did you inquire from any official who had made deposits to ascertain whether he had them?—A. There was no other official of the company had made deposits in the Windsor Bank account except myself. I made that clear.

HIS LORDSHIP: No, you did not, you said there were two or three making deposits.—A. They were not officials of the company.

20 MR. TILLEY: There were not officials of the company. Kennedy was not an official of this company.

HIS LORDSHIP: Then why did you not say it?

MR. TILLEY: He has said that. My friend knows all about it.

HIS LORDSHIP: He said the money was deposited by him and those different parties, that they were employed by the company.

WITNESS: Not officials.

Q. They were employed by the company?—A. No, they were not.

Q. Then what was their connection? How is it they were depositing these moneys?

30 You know all this and I do not.

MR. TILLEY: No, my lord. Do not look at me. I do not profess to try and find out a good many of these things, because I do not think they have anything to do with the case. But Mr. Rowell seems to think—

MR. ROWELL: I want to get at the truth.

HIS LORDSHIP: How was it these people deposited money to the credit of the company?

MR. ROWELL: How did Kennedy come to make deposits in the name of the Carling Company to the credit of the Carling Bank account at Windsor?—A. He was bookkeeper for Savard, and he was depositing to our account. He had no power to draw out.

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HIS LORDSHIP: But the money that Savard was paying he was paying to the company, and instead of paying it to you he paid it by deposit in the bank.

MR. TILLEY: He put it in that account. That is the point.

MR. ROWELL: Did you inquire of Kennedy when he came back— A. I never seen him.

Q. You did not see him after he came back?—A. No—I seen him when he came back, but it was several months after the Royal Commission. I had no interest in checking up those cheques.

HIS LORDSHIP: But suppose Savard paid a certain amount to the company and he told Kennedy to go and deposit that in the bank, there would be no control kept 10 by you, you would not know what that would cover, you kept no book?—A. Savard kept the books, my lord. We kept books at London.

Q. And you would go and look into Savard's books when Savard would make a deposit in your name?—A. No. He made it in the name of the company.

Q. That is what I say. When Savard would make a deposit at Windsor in favour of the company you did not know what that covered unless you went to Savard's books. Had you access to Savard's books?—A. I used to make my split with Savard, my fifty-fifty split, on his books, but the company got the \$1.75 on his account at London.

Q. But you kept no books yourself?—A. I kept no books myself at all. 20

MR. ROWELL: You made the split on Savard's books, did you?—A. On what he would have.

Q. Tell me what books Savard kept?—A. Well, he had a great many whisky books—

Q. We are dealing now with beer.—A. They were in the beer books, he was keeping the books for his split on whisky, beer, wine, champagne and everything that he was purchasing for the other side of the river.

Q. I do not care what he was doing with other things. I want to know what books he kept upon which he made entries of these purchases and sales of beer, upon which you could make your split.—A. I do not know what books he kept. I only 30 was interested in the split.

Q. But did you not check the figures?—A. Mr. Rowell—

Q. Just a moment. Did you check the figures?—A. No. Now, can I answer you?

Q. You took his word for it?—A. No. Can I answer you?

Q. You told us you took it from his books, I want to know what books of Savard you made the split on.—A. I say he had a book with the gross amount that he had pulled across. He had an expense account, and what his expense account was and what my expense account would be, that is the Harry Low Special Account in Windsor. the residue in between that and the \$1.75 was the amount Carlings got. I did not have to have any books. 40

MR. TILLEY: You say the residue?—A. The amount that would be left from the \$1.75 less the 25 cents was divided among the brewers in the Bermuda Export Agreement—

MR. TILLEY: Well, do not let us introduce that.

WITNESS: —and the expense he had and the expense I had, the residue that was left was what was split between himself and myself.

HIS LORDSHIP: And you took his word for whatever— A. Oh, yes, my lord.

Q. You were entirely in his hands?—A. Well, I am entirely in the hands of anyone I am selling to. They owe us great quantities of money and we cannot sue 10 them. It is a credit business.

MR. ROWELL: That is what you want us to believe.

MR. TILLEY: I do not know whether he wants you to believe it. I do not think he can get you to believe anything.

MR. ROWELL: Not that story certainly. I know too much about the thing from investigation.

MR. TILLEY: You think you do. You have a magnificent imagination.

MR. ROWELL: Then we cannot find the cheques anyway, the cheques are not available?—A. No.

MR. TILLEY: We have settled that.

20 MR. ROWELL: So that there is no document or record in existence from which we can ascertain what was done with the surplus in the defendant's bank account at Windsor?—A. Except what I tell you.

Q. I am asking about records.—A. No records.

Q. No records at all. Then perhaps you will turn to another matter. My learned friend asked about the Fitzgerald agreement. That is in as Exhibit No. 74, I think. Were you at Windsor while this agreement was in operation?—A. Yes, Mr. Rowell.

Q. And you heard the evidence that Mr. Fitzgerald gave?—A. Yes, Mr. Rowell.

HIS LORDSHIP: Fitzgerald was very weak about that, he said it was unsatis- 30 factory, but he did not go into any detail.

MR. ROWELL: I will deal with the actual transactions, my lord. He put in a statement.

Q. I see on the agreement the Carling signature there is signed by you?—A. Yes.

Q. You are the party signing on behalf of the defendant this agreement between the brewers and Mr. Fitzgerald?—A. Yes.

Q. I see one of the covenants which you signed at that time is the following:

“7. No brewer or brewer's agent shall directly or indirectly sell or cause to be sold beer for export from the above territory during the currency of this agreement for less than the following prices or upon terms more favourable to 40 the purchaser than the following:—”

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Then the prices are given. For cartons containing two dozen pint bottles \$4.—A. Yes, Mr. Rowell.

Q. And other prices corresponding?—A. Yes.

Q. You signed that agreement on behalf of the Carling Company?—A. Yes, Mr. Rowell.

Q. Do you mean to tell us you never intended to keep it, and that you had an agreement at the time to sell for a less sum, and did continue to sell for a less sum?—

A. Yes, Mr. Rowell.

Q. And you had no intention of keeping that agreement at the time you signed it?—A. No, Mr. Rowell. 10

Q. Then what did you do? Mr. Fitzgerald has told us that he paid over \$4 a carton for all that was sold during his period.—A. Yes, Mr. Rowell.

Q. And the Carling Company got the \$4?—A. Yes, at London.

Q. At London. Not at the Windsor Bank account.

HIS LORDSHIP: Oh, at London?—A. Yes, my lord.

MR. ROWELL: None of that went into the Windsor Bank account.—A. No, Mr. Rowell.

Q. What did the Carling Company do with the difference between the \$4 and the invoice price charged in the Carling books during this period?—A. Gave Grandi back a dollar. 20

Q. You gave Grandi back a dollar?—A. Yes, Mr. Rowell.

Q. Well some of Grandi's were I think less than \$3. A. Well then he got a little bit more.

Q. And you credited to Grandi you say, or paid to Grandi— A. Yes, Mr. Rowell.

Q. —the difference between the price collected by Fitzgerald and paid to your company—A. Yes.

Q. And the amount charged Grandi in the books?—A. Yes, Mr. Rowell.

Q. And you say the Bermuda Export was then selling for Grandi and not for you?—A. This is not the Bermuda Export.

Q. I mean Fitzgerald. These sales made at \$4 were sales to runners, he collected from the runners?—A. He had nothing to do with it, they collected the money, the \$4, they did not own the goods, they could not sell them. 30

HIS LORDSHIP: Who do you mean?—A. Fitzgerald did not own the goods, he could not sell it.

MR. ROWELL: No one said he did. The terms of the agreement provided that Mr. Fitzgerald's representative should collect that amount before the goods could be delivered:—A. Yes.

Q. And Mr. Fitzgerald's representative did collect that amount?—A. In some instances.

Q. In the instances covered by the statement he made and the money he paid?—A. Sometimes he got it. 40

MR. TILLEY: And he says sometimes he got it from the companies themselves.

MR. ROWELL: Sometimes you collected it and paid it over to him?—A. Yes, Mr. Rowell.

Q. But in all cases it was paid on the basis of \$4 a case?—A. Oh no, Mr. Rowell.

Q. Mr. Fitzgerald has said so.

MR. TILLEY: No, he did not.

HIS LORDSHIP: If I remember correctly he said at the beginning he had an officer there and the officer was collecting the money, and after a while it was abandoned and someone else was doing it, and then he began to be dissatisfied, and when he realized that they were not living up to this agreement he threw it up.

MR. ROWELL: My recollection is that while that is all true he said that during all the period he actually collected or received the money—

HIS LORDSHIP: Whatever money he received was at \$4.

MR. TILLEY: I thought he said they would give him part and show him a bank deposit for something else.

MR. ROWELL: That was at a later date. One of his complaints was that instead of the Carling Company paying over the \$4 to him they showed him bank deposits.

HIS LORDSHIP: He fined them because they did not account.

MR. ROWELL: What I want to know is, your statement is that in all cases where Fitzgerald received either directly or indirectly from the parties who took the liquor off the dock, \$4 a case?—A. Yes.

Q. You returned to Grandi the difference between \$4 and the amount charged on the invoice?—A. Yes, Mr. Rowell.

Q. Where are the cheques that would show that return?—A. Oh, Mr. Rowell, I paid it in cash.

Q. Where did you get the cash to pay it?—A. From collections on beer that was sold and that did not go through Fitzgerald.

Q. What were those?—A. Beer that Grandi would come and get and bring across the river and did not go through Fitzgerald. He would have a credit and debit with me from day to day.

Q. Where was the record of that kept?—A. There is no record. We kept a little tab,—we were working against this agreement, we were not keeping books for an agreement that lasted for three weeks, we had no reason.

Q. According to Mr. Fitzgerald it lasted from the 15th of May until September.—A. That is when he resigned, but we did not—

Q. You swear you have no record of those transactions?—A. Yes, I will.

Q. Then you were a party to the Bermuda agreement. (Exhibits 22 and 27). I believe you were one of the Directors of the Bermuda Company?—A. Yes, Mr. Rowell.

Q. And you were one of the signing officers of that company who signed cheques to send the amounts to the different breweries?—A. That is right.

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Q. I see your name appears as one of the parties signing the agreement with Mr. Stiff on behalf of the Carling Company, Exhibit No. 22.—A. That is right.

Q. Then, Exhibit No. 27, I see you also appear as one of the signing officers.—

A. What is that?

Q. This is the agreement between the Bermuda Company and the Carling Company.—A. Yes.

Q. There was first an agreement between all the breweries, parties to the Bermuda, at the time it was formed, with Mr. Stiff to act as trustee?—A. Yes.

Q. That is No. 22. Then there was a separate agreement between the Bermuda and each of the breweries.—A. The individual breweries. 10

Q. Then, the Board of the Bermuda Company consisted of representatives of the individual breweries?—A. Yes, sir.

Q. And you represented the Carling Company on the Bermuda Company?—A. Yes.

Q. And you were one of the officers of the Bermuda Company?—A. Yes, I was.

Q. What was your position?—A. I don't remember, but I know I was one of the officers.

Q. Then I notice this agreement with Mr. Stiff, to which all the breweries were parties, contains this provision:

"7. None of the first parties or their officers, employees or agents, shall 20 directly or indirectly sell or cause to be sold malt products for export from any of the above places during the currency of this agreement for less than the following prices or upon terms more favorable to the purchaser than the following:

Per carton of 2 dozen pint bottles..... \$3.25

Per dozen quart bottles..... \$2.50"

and so on.—A. Yes.

Q. Do you swear that you signed that without intending to carry it out?—A. I did carry it out.

Q. Do you swear you signed it without any intention of carrying it out?—A. I say I carried it out as long as the Bermuda kept together. 30

Q. Did the Carling Company always sell during the period of this Bermuda agreement at \$3.25?—A. No.

Q. What did the Carling Company sell at?—A. \$1.75, their malt products. We were selling rice beer in this period to Savard.

Q. Do you swear you were selling nothing but rice beer?—A. I am speaking about rice beer.

Q. But let us deal with this agreement.—A. That is what I am dealing with.

Q. (Reading paragraph 7 again). Do you swear that you did not sell any malt products during this period for less than the following prices—? A. No, we sold malt products. 40

Q. Did you sell them at less than these prices?—A. Yes, Mr. Rowell.

Q. Did you sell them to Savard?—A. Yes, Mr. Rowell.

Q. Then do you swear that at the time you signed this you had an agreement with Savard at \$1.75 for malt products?—A. Yes, Mr. Rowell.

Q. And you had no intention of carrying out this agreement?—A. I carried out this agreement.

MR. TILLEY: That agreement speaks for itself. There is nothing inconsistent in what he says.

MR. ROWELL: May I read the clause again so that your Lordship will get it?

10 “7. None of the first parties or their officers, employees or agents shall directly or indirectly sell or cause to be sold malt products for export from any of the above places during the currency of this agreement for less than the following prices or upon terms more favorable to the purchaser than the following:”

And that is \$3.25 and so on.

Q. I understood you to say to my learned friend that throughout the period covered by the Bermuda agreement and while you were one of the officers of it, you continuously sold to Savard malt products at \$1.75 per carton?—A. Yes, Mr. Rowell.

Q. Then, how do you say you carried out that agreement?—A. The agreement was made to stop the large credits—

20 Q. I am asking about the price. Please confine yourself to the price and do not dodge. How do you say you carried out that agreement as to the price of \$3.25 a carton?—A. Well, can I explain?

HIS LORDSHIP: Explain.—A. The agreement was formed for to stop the large credits that we had on the other side, and to have a uniform price of beer for all brewers that were signatories of that agreement; that is that all beer was sold in Detroit and the United States at \$3.25 instead of the prevailing prices which had been before, where the brewers were giving large credits to their consignees in the United States and lost enormous sums of money. The agreement was carried out, until the Bermuda Company broke up, by our Company, that they did sell and
30 Savard did not cut the price lower than \$3.25.

HIS LORDSHIP: I understand that you were selling to Savard at \$1.75?—A. Yes, my lord.

Q. But there was an agreement with the other brewers?—A. Yes, my lord.

Q. That when you were selling in the United States your price would be—A. \$3.25, yes, my lord.

Q. Therefore notwithstanding that your price of \$1.75 might be contended to be your price for export, it was not the price for export, but the actual price for export was really \$3.25?—A. Yes, my lord.

MR. ROWELL: But the Carling Company did not get the \$3.25, they only got
40 the \$1.75?—A. Yes, that is what they got.

HIS LORDSHIP: And the price was \$3.25.

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MR. ROWELL: Then this agreement provided that if you sold any goods outside the territory covered by this, or at ports where the Bermuda Company did not have representatives, you should account to the Bermuda Company in connection with those goods?—A. Yes.

Q. Did you account to the Bermuda Company in connection with those goods?—
A. No, Mr. Rowell.

Q. You did not carry out the agreement?—A. That clause was in the agreement, but none of the breweries accounted, it was amended.

Q. I am asking you, Did you ever carry it out?—A. No. It was amended that we did not have to carry it out. 10

Q. Now I see this provides that the first parties shall at the commencement of this contract elect an executive committee from among their number of three supervisors. Were you one of the three?—A. Yes.

Q. You were one of the three who were to see that this agreement was carried out?—A. No, I was one of the three to see that the docks were built for the proper export of this beer. I had nothing to do with seeing that the agreement was carried out.

Q. Well as an officer of the company you would have to see?—A. The same as each and every brewer was an officer. Every brewery interested in the Bermuda was a director of the company. 20

Q. Then do you remember this clause:

“18. In cases ale, porter, lager or other malt liquors are sold in the territory above mentioned by any of the first parties, whether a party to this agreement or not, on terms lower than those provided for by this contract, and so as to interfere unfairly with the trade or traffic in question, the second party shall, at the written request of any two of the first parties to this contract, call a meeting of all the parties hereto, and at such meeting the said parties shall take such action in the premises and give such direction as to them may seem just and proper in order to the carrying out of this contract according to its true intent and meaning.” 30

A. Yes.

Q. The agreement was designed to prevent any brewer, a member of it, from selling lower than the prices fixed in the agreement?—A. In the United States, Mr. Rowell.

Q. Selling for export?—A. In the United States.

Q. Well the agreement speaks for itself.—A. Yes, very well.

Q. Under this agreement the Bermuda Company collected at the dock \$3.25 for all goods before they were delivered?—A. Yes, Mr. Rowell.

Q. And they collected that from the runners who came over?—A. Yes.

Q. Of that amount they immediately paid \$2.50 to your company?—A. Yes, 40
Mr. Rowell.

Q. On all goods handled through them?—A. Yes.

Q. And Mr. Stiff subsequently paid the difference between \$2.50 and \$3.25 less the Bermuda Company's expenses and Mr. Stiff's own expenses?—A. And the 25 cents a case. That was not expenses. There was the expenses, the division of 25 cents a case amongst all the breweries signatories to this agreement, Mr. Stiff's expenses, and the residue was sent back to the breweries.

Q. Well perhaps I did not quite accurately state it. \$2.50 a case went to the breweries, and came to you?—A. Came to me in—

Q. In Windsor?—A. Yes.

10 Q. Deposited in the defendant's bank account in Windsor?—A. Yes.

Q. Then 25 cents a case was to be distributed among all the breweries parties to the agreement, in equal amounts?—A. Yes.

Q. You received your share of that?—A. That 25 cents, yes.

HIS LORDSHIP: Was that over and above the \$2.50?—A. Yes, my lord.

MR. ROWELL: Then after the \$2.50 and the 25 cents had been paid the balance came to you less the Bermuda expenses and Mr. Stiff's expenses?—A. Yes, Mr. Rowell.

Q. Through Mr. Stiff?—A. Through Mr. Stiff.

Q. And what was done with the difference between \$1.75 a case and the amount
20 that the Carling Company actually received?—A. Divided between Savard and myself.

HIS LORDSHIP: Savard and yourself, and Leon and Burns?—A. I did that afterwards, my lord.

MR. ROWELL: When afterwards?—A. I do not know how soon, probably a week or a month.

Q. In other words, whenever you drew a cheque out you divided up did you?—
A. No, I did not.

Q. Well tell us how?—A. I just deposited to Low, Leon and Burns account.

Q. That is, your share of the profits you deposited to the credit of Low, Leon
30 and Burns?—A. Yes.

Q. And then that was distributed between you?—

HIS LORDSHIP: You had to draw one-third each?—A. My lord, that is an account on business of our own, still running yet.

Q. That does not answer the question. I said, you had a right to draw, according to your arrangement, one-third each in that account?—A. Yes, well the account belongs to the three of us, it is there, we do not draw.

Q. A joint account?—A. Yes.

MR. ROWELL: Then we noticed one of Mr. Stiff's cheques was deposited directly to the credit of Low, Leon and Burns?—A. Oh, that is quite possible.

40 Q. Some of the cheques payable to the defendant company were endorsed and deposited directly to the Low, Leon and Burns' account?—A. That is possible.

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Q. Were you the one who endorsed and deposited it?—A. I do not know whether I did or not. If I seen the particular cheque, I would know.

HIS LORDSHIP: You see, they were all one, the company and those three men. I suppose your accounts were all mixed up?—A. Our liquor accounts and beer accounts did get mixed up. We did not segregate each dollar.

MR. ROWELL: You say your liquor and beer accounts you did not segregate?—
A. We did not ear-mark the money when it came in, it all went in a pile.

Q. When you say your liquor accounts, who were interested in the liquor accounts the three of you?—A. Yes.

Q. Were the three of you carrying on the liquor business at the same time?—
A. Yes, Mr. Rowell.

Q. And the funds went into a common account, that is the Low, Leon and Burn's account; the money you got from Mr. Stiff and the liquor cheques you got went into the Low, Leon & Burns' account?—A. They would go into the Low, Leon & Burns' Account, and you know the rest of the accounts, about 16 of them, it got mixed up among them.

Q. I am only dealing with the two things you have mentioned, the liquor business that Low, Leon & Burns were doing at this time— A. Well, that involved all the other companies.

Q. I am only speaking of the money deposited to the credit of this account you 20 have mentioned. It went to the credit of Low, Leon & Burns?—A. Yes, that cheque did.

Q. This cheque did, and then the liquor moneys you say also went to the same account?—A. Oh, I believe it did, yes.

Q. Now, whose name was used as consignee for the liquor?—A. Savard.

MR. TILLEY: That is not a very nice way to put the question to a witness: Whose name was used. It is all right unless you propose to argue that you had something rolled up in the question that he did not see.

MR. ROWELL: I am going to on develop it.

Q. The liquor was all shipped in Savard's name, was it?—A. Yes, Mr. Rowell. 30

Q. And as far as the consignments are concerned the beer was shipped in Savard's name, consigned to him, and the liquor was shipped in Savard's name consigned to him?—A. Yes, Mr. Rowell.

Q. Was this liquor business running contemporaneously with this whole period?—
A. Well, yes, Mr. Rowell.

Q. Pretty well the whole period.—A. Pretty well the whole period.

Q. Well was Savard the consignee during the whole period for the liquor business, or was Grandi the consignee?—A. No, Grandi never purchased any liquor.

MR. TILLEY: That is whisky?—A. Yes, strong liquors I am speaking of.

MR. ROWELL: When Savard's name appears as consignee and as purchaser in 40 the books of the defendant company, I think about October, is it, or November, 1925?—
A. The latter part of 1925.

Q. At that time, or how soon after that time did you have liquor shipments consigned to Savard?—A. I don't remember.

Q. You do not remember whether it was before or after?—A. I do not remember.

MR. TILLEY: Does you Lordship think—

MR. ROWELL: I submit on cross-examination I am entitled to show the method of dealing. I am going to argue that Savard is simply a name used. It is a question that will come up later. I want to show the course of dealing.

HIS LORDSHIP: Well, we have got all that now.

MR. ROWELL: Is this the agreement under which you were handling the goods 10 which were consigned in the name of Savard? (Showing document to witness).

—A. Yes, that is my signature.

Q. Made with the Consolidated Exporters Corporation of Vancouver?—A. Yes.

MR. TILLEY: This is liquor, this is not beer.

MR. ROWELL: I ask to put this in. It shows the method of dealing with the liquor. I am going to argue to your Lordship that exactly the same method was used in dealing with the beer. We have not got a record of the agreement in the case of the beer, we have for the liquor, and I submit it will throw light on what was the real nature of the transaction.

HIS LORDSHIP: You better lay a foundation for that. Ask him if he was carry- 20 ing on this liquor business on the same basis as the beer.

MR. ROWELL: He said he carried them on at the same time.

Q. Were they carried on on the same basis?—A. Savard purchased this liquor from the Consolidated Export Corporation in Vancouver, of which I am an agent.

Q. Did you divide the profits in the same way?—A. The same way, Mr. Rowell.

Q. The two businesses were carried on in the same?—A. In different places, but in the same way.

MR. ROWELL: Then I submit I should be permitted to put in the agreement.

HIS LORDSHIP: Yes, subject to any objection, reserving all rights.

EXHIBIT No. 125: Agreement, dated April 3rd, 1926, between Consolidated 30 Exporters Corporation, Limited, and Low, Leon and Burns.

HIS LORDSHIP: Well he did not carry on with Savard during the whole time, because he began the beer with Savard during the autumn of 1925.

MR. ROWELL: It recites an earlier agreement, copy of which I have not got.

MR. TILLEY: I have not seen this. Would it not be well to read it?

MR. ROWELL: (Reads Exhibit 125).

HIS LORDSHIP: Might we have a little explanation about the parties? Is that a company that was carrying on business in Vancouver?

WITNESS: Yes, my lord.

Q. How did you get your goods?—A. Shipped by rail from Vancouver to 40 Savard, Detroit.

Q. In bond?—A. No, not in bond.

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MR. ROWELL: Imported liquors imported from England to Vancouver?—A. Yes.

Q. The duty paid, and then resold and shipped to Windsor?—A. Shipped to Detroit. They would be shipped to Windsor to be transported across the river.

Q. The bill of lading was in all cases to Windsor, the same as your beer was shipped to Windsor?—A. Yes.

HIS LORDSHIP: It would be to someone in the States at a given place, care of so and so?

MR. ROWELL: It was shipped to Savard, Detroit, care of?—A. Myself.

Q. Now is this agreement still in force, or has it been cancelled?—A. That has 10 been changed. I do not know whether that one was ever in force.

Q. Now, Mr. Low, were you not asked about this on the Customs Commission?
A. Yes.

Q. And was not Mr. Burns, and did you not both admit that you were operating under that agreement?—A. I would not say we were operating under that agreement. We are still operating in the whisky business.

Q. Has any notice been given cancelling that agreement?—A. I do not know whether there has. I think we have a different arrangement with them.

Q. When did you make the different arrangement?

HIS LORDSHIP: Who made it?—A. Mr. Leon made it. 20

Q. Who with?—A. The Consolidated Export Corporation.

MR. ROWELL: For how long did you continue to receive liquor consigned in Savard's name at Windsor from the Consolidated Exporters?—A. To some time in 1927.

Q. Then from April, 1926, until some time in 1927 you received liquor consigned in Savard's name?—A. Yes, Mr. Rowell.

Q. And you paid for it, as the agreement provides, before shipment?—A. No, Mr. Rowell. That is the reason that I do not believe that agreement is in effect.

Q. You got credit did you, from them?—A. He got credit.

Q. Marco Leon got credit?—A. No, Savard got credit. 30

Q. But Savard is not a party to this agreement.—A. I don't know whether he ever was to any agreement with them. He is not any signature to that agreement.

Q. No he has not signed it. Why do you three, Low, Leon and Burns, undertake to covenant on behalf of Savard?—A. I think that is the reason it did not go through.

Q. But you have signed it?—A. Why sure.

Q. And here you provide:

"4. No liquor shall henceforth be bought, sold, acquired, obtained, dealt in, or disposed of by Frank Savard of the City of Windsor in the Province of Ontario except through the agents." 40

A. I think when we looked over that with our solicitors they told us it was no good, and there was another agreement made.

Q. You think your solicitors told you it was no good?—A. Yes.

Q. Did they object to Savard being described as of the City of Windsor?—

A. No. I think they objected that we could not turn around and sign for Savard.

Q. Well, you signed this agreement for Savard?—A. Yes, but I do not think it ever worked.

MR. TILLEY: What is that again?

MR. ROWELL: The three of you undertook to covenant on behalf of Savard?

10 WITNESS: YES.

Q. Why did you undertake to covenant on behalf of Savard?—A. We are not lawyers. We signed an agreement which we thought was an agreement.

Q. The agreement prepared by solicitors?—A. I believe so.

Q. Where was it signed?—A. The agreement was drawn in Vancouver. I think I signed it in Windsor, probably Mr. Burns signed it at London, and Mr. Leon signed it in Vancouver, and there is no witness, Savard never signed it, and he is not a party to it.

Q. No, he is not a party.

HIS LORDSHIP: Is Savard a dummy for the company?—A. No, my lord.

20 Q. Then, how do you explain it?—A. Savard was not a party to this agreement. I do not think it was ever carried into effect.

Q. The reason you would sign this document, was it because he was a dummy for the company?—A. No, he is not a dummy for the company.

(Noon adjournment).

AFTERNOON SESSION

THURSDAY, 25th April, 1929, 2.30 p.m.

Cross-examination of H. Low by Mr. Rowell (Continued).

Q. Mr. Low, you told me you thought it was possible that there was some other agreement between the Consolidated Exporters and Mr. Burns, Mr. Leon and 30 yourself, than this Exhibit 125.—A. Yes, Mr. Rowell.

Q. If there is any other agreement will you have it looked up for us?—A. Mr. Leon has those agreements that was made.

Q. You can get Mr. Leon in Montreal and have him send it up?—A. I will try.

Q. If there is any other agreement than this covering your transactions with the Consolidated you will try and get it here for us tomorrow?—A. I will try.

Q. Then you spoke of the Bermuda agreement only covering the Malt beer Did you not receive through the Bermuda Company \$3.25 per case for the rice beer. as well as the malt beer?—A. Yes.

Q. So whatever may be the technical construction of the Bermuda agreement, 40 the Bermuda Company collected and paid over to the Carling Company the amount

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specified in the agreement with respect to rice beer just as it did with reference to ale and other lager?—A. Yes.

Q. So for practical purposes, as far as the operations of the Bermuda Company were concerned, during the period it was in operation it covered all the beer handled through those ports?—A. No, it did not handle all the beer.

Q. Well, the agreement covered. If you handled it yourself then you reported to the Bermuda Company?—A. Yes. We did not report though, that clause was amended.

Q. Well, save as to reporting.—A. Yes.

Q. It covered all the beer handled through those ports?—A. Handled through 10 the Bermuda.

Q. At those ports?—A. At those ports.

Q. When you say, Save that you did not report, what are you referring to?—
A. Ports that the Bermuda did not have docks at.

HIS LORDSHIP: Do you mean also the sales made after hours?—A. No, my lord, not through the Bermuda, it was the other agreement.

MR. ROWELL: Then as far as the Bermuda is concerned, from the time it commenced operations in July, 1926, until the end of the period covered by this suit, all beer was handled through the Bermuda that was received at the docks of the Bermuda Company?—A. Yes.

20

Q. And in respect of all that beer, they paid over to the Carling Company the amounts mentioned in the agreement?—A. Yes.

Q. Then what were the ports where you say you did not report to the Bermuda Company?—A. Windsor.

Q. The Bermuda covered Windsor?—A. They did not have a dock there.

Q. Where?—A. In Windsor.

Q. Then from what dock are you referring to shipments being made?—A. I would go over the Nathanson dock.

Q. Where is the Nathanson dock?—A. In Windsor.

Q. How far from the so-called Carling dock?—A. I don't know the "so-called"—30

Q. Well the Carling dock, or the C.P.R. dock?—A. The C.P.R. dock.

Q. How far from that?—A. Half a mile.

Q. About half a mile. Then you shipped, or Savard shipped some beer over the Nathanson dock that was not handled by the Bermuda Company?—A. The Carlings—

Q. The Carlings, or anyone you like.—A.—exported the beer to Savard.

Q. Any other dock, which did not go through the Bermuda Company in this period?—A. The C.P.R. dock.

Q. Any other?—A. I believe Port Lambton, or Sombra, I would not be sure on that point.

40

Q. Any other?—A. Eriean.

Q. Any other?—A. That is all I can recollect, Mr. Rowell.

Q. Where is Erieau?—A. On Lake Erie.

Q. Whereabouts in relation to Windsor?—A. It is south of Chatham.

Q. What you say is that certain beer was shipped from those docks which was not reported to the Bermuda Company?—A. Yes, Mr. Rowell.

Q. And in respect of which the Carling Company only received \$1.75 per case?—

A. That is what the Carling Company received.

Q. Did you receive your share of the profit over and above the \$1.75 a case?—A. My split with Savard, I did.

10 Q. You got that?—A. Yes.

Q. So that your split with Savard covered this beer whether shipped through the Bermuda Company or over these other docks?—A. Yes.

Q. Then where was the money collected at these other docks, and to what account was it deposited?—A. To the Carling Export Brewing & Malting Company's account at Windsor.

Q. And where was it collected? At the docks?—A. In some instances it was.

MR. TILLEY: Did he say that was deposited in a particular account, or at Windsor?

MR. ROWELL: The defendant's bank account at Windsor?

20 WITNESS: Yes.

Q. Then you saw some of that was paid over at the dock?—A. Yes.

Q. In the same way as the Bermuda received payment?—A. Yes, it was brought over by the haulers, the money was.

Q. And they paid the money?—A. They brought the money over.

Q. And who did they pay the money to?—A. Whoever was the representative at the dock, or to the trucker.

Q. Whoever was the representative at the dock?—A. Or the trucker.

Q. Well the representative of whom?—A. Of the Carling Export Brewing & Malting Company.

30 Q. Then who was the representative of the Carling Export Brewing & Malting Company at the Nathanson dock?—A. Harry Low.

Q. Who was the representative at Erieau?—A. Mr. Dunford.

Q. Who was the representative at Port Lambton?—A. Ray Rosebush.

Q. And who was the representative at Windsor?—A. Myself.

Q. Then how did Savard get track of the moneys that you collected at these docks?—A. Well we knew how much beer was going to him.

Q. But how did he keep track? You have told us it was divided on the record in his books?—A. Yes.

Q. How did Savard get the record of the transactions at these particular docks?—
40 Through his bookkeeper.

Q. Who was the bookkeeper?—A. Mr. Kennedy.

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Q. Did you report to Kennedy the amount of the sales at these different docks, and the amount of cash received?—A. No.

Q. How did Kennedy get the knowledge?—A. It was all Savard's beer, there was no such thing as sales.

Q. How did Kennedy find out how many cases you had delivered at each of these docks and how much you had received in respect of these cases?—A. Through Savard.

Q. Kennedy would get it through Savard?—A. Yes.

HIS LORDSHIP: How did Savard know about the shipments at Eriean?—A. He would order it to be sent there, my lord. 10

MR. ROWELL: He would order it to be sent there. And he would know how much was there and how much was delivered? How would he know how much was delivered?—A. Well all that would go there would be delivered.

Q. We are dealing with each boat now.—A. If you state the boat I will talk about the boat. Which boat do you mean?

Q. I mean any boat dealing with these docks. I am not dealing with any particular boat.—A. Well, take a boat at Eriean.

Q. How would Savard know how much that boat would receive?—A. It would receive all that went there.

Q. But it would not take all that went there at one time.—A. Yes. 20

Q. At Eriean?—A. Yes.

Q. Then take at Windsor, how would he know the amount received at Windsor?—Mr. Kennedy was there at Windsor.

Q. Then Savard's man was present and knew how much was delivered and how much money was received at Windsor?—A. At Windsor he would know how much was delivered to the boat.

Q. And how much money was received?—A. Yes.

Q. How would he know at Nathanson's dock?—A. It would be trucked from the Windsor C.P.R. freight sheds to the Nathanson dock.

Q. And he would know how much was trucked?—A. Yes. 30

Q. And would keep track of it that way?—A. Yes.

Q. And would the truck driver bring back the money?—A. Oh, not always.

Q. Did he ever bring back the money?—A. He would bring back the money in some instances.

Q. Who would bring it back in the other cases?—A. Savard would collect it or I would collect it.

Q. Either you or Savard would be there at the time of shipment?—A. No, sir.

Q. Was Savard ever over on this side?—A. Yes, Mr. Rowell.

Q. At Windsor?—A. Yes.

Q. Did he ever attend at these docks?—A. Yes. 40

Q. Then why did he not collect it himself?—A. There was a great number of docks, and he was just one man, and he had other business to look after.

Q. If Savard was there he would take the money himself?—A. He would collect what money had come in to that particular dock during the day or two days.

Q. He would collect the money that came in to that particular dock. And what would he do with it?—A. Bring it to the office and give it to Mr. Kennedy.

Q. His bookkeeper?—A. Yes.

Q. And what would his bookkeeper do with it?—A. Deposit it to the credit of the Carling Export Brewing & Malting Company.

10 Q. Would that fairly describe the method of handling at the other docks, that is other than through the Bermuda, apart from Eriau; that is either the truck driver would bring it back and give it to Kennedy?—A. Yes.

Q. Or Savard or someone would collect it?—A. Or myself.

Q. Collect it and report it to Kennedy, and Kennedy would deposit it in the bank account?—A. What was not charge accounts.

Q. That is the way the cash would be handled?—A. Yes.

Q. Who determined whether credit should be given or not?—A. Savard.

Q. If Savard sent over word to deliver on credit the goods were delivered on credit?—A. Yes.

20 Q. I see a great many deposit slips are marked J.A.K. or J.A. Kennedy.—
A. Yes.

Q. I am referring to the deposit slips, exhibit 15, on the Carling Bank account at Windsor. J.A.K. would be J. A. Kennedy?—A. I presume so.

Q. Wherever we have deposit slips J.A.K. or J.A. Kennedy, or Kennedy, they would be deposits by Kennedy to the defendant's bank account in Windsor?—
A. Yes, Mr. Rowell.

Q. And these you say would be deposits by him of money received as representing Savard?—A. Yes, Mr. Rowell.

Q. And deposited to the credit of this Account?—A. Yes.

30 Q. Then this account at Windsor, was this the bank account in which all the proceeds received by Savard in respect of this liquor was deposited?—A. In respect of beer, yes.

Q. All the proceeds received by Savard in respect of the beer shipped, consigned to him, were deposited to the credit of the defendant's bank account in Windsor?—
A. Yes.

MR. TILLEY: That is that we are concerned with here.

WITNESS: That we are concerned with beer.

MR. TILLEY: For the period we are concerned with.

MR. ROWELL: For the period we are concerned with, yes.

40 Q. You say beer, you mean by that a distinction as between beer and liquor?—
A. Yes.

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Q. I am dealing now with beer only. Then is this your point, that for the purpose of deposits this bank account represented Savard as well as yourself, and Savard's moneys as well as your own went to the credit of this account?—A. Savard's split in the transaction, as well as my own, went to this account.

Q. You said the goods were Savard's?—A. They were.

Q. And they were sold by Savard?—A. Yes.

Q. And the entire proceeds were Savard's, but out of the proceeds there was paid to the Carling Company \$1.75 a case?—A. Yes.

Q. The entire proceeds of \$3.25 a case were Savard's, but out of that he had to pay the Carling Company \$1.75 a case?—A. That is correct. 10

HIS LORDSHIP: Did Savard deposit the whole amount collected?—A. Yes, my lord.

Q. No deduction before deposit?—A. No.

Q. Deductions were made afterward.

MR. TILLEY: All the money went through the account, I understand.

WITNESS: Everything.

Q. Expense money and everything?—A. Everything went into the account.

MR. ROWELL: So there is no use us looking for a Savard Bank account in Windsor, all the money went into this account?—A. Yes, Mr. Rowell.

HIS LORDSHIP: But Savard might have had another account.—A. He did not 20 that I know of, my lord. He had an American account, but not in Windsor.

MR. ROWELL: We have not been able to locate any Savard bank account in Windsor, my lord.

Q. Then I see that there are also deposits to the credit of this account made by Mr. Sam Low. Who was Mr. Sam Low?—A. He is my brother.

Q. Who was he acting for?—A. Well if you would give me the date I might be able to tell you.

Q. At the date he was making deposits.—A. If you will give me the date of the deposit then I will probably be able to tell you.

Q. This is August, 1924.—A. In 1924 Sam was working with me. That is 30 under the Grandi period.

Q. Was Sam ever working with Savard?—A. Yes, Mr. Rowell.

Q. Was he ever an employee of Savard?—A. Yes, Mr. Rowell.

Q. When did he enter the employ of Savard?—A. I don't remember the dates. During the Savard period, just what dates I don't remember.

Q. Did he continue with him throughout the period?—A. No, he did not.

Q. When did he cease to act for Savard?—A. I don't know.

Q. How long was he acting for Savard, approximately?—A. Several months.

Q. He is away at the present time I believe?—A. Yes, Mr. Rowell.

Q. Then who looked after the Harry Low Special Account?—A. Mr. Kennedy. 40

Q. Savard's representative?—A. Yes.

Q. And did he make the deposits to the credit of the Harry Low Special Account?
—A. Yes.

Q. Did he draw the cheques on the account?—A. Yes, Mr. Rowell.

Q. Had he a power of attorney to sign them?—A. No.

Q. He prepared them and you signed them?—A. Yes, Mr. Rowell.

MR. TILLEY: When you say he drew the cheques you mean he made them out and Mr. Low signed them?

MR. ROWELL: Yes.

Q. Where was the record kept of that Harry Low Special Account? — A. There
10 was no record kept of that account. The object of that account was for a record.

Q. But the account does not show to whom the payments were made.—A. No.
The cancelled cheques would be a voucher for the money paid out.

Q. Where are the cancelled cheques?—A. Mr. Savard has them.

Q. Why did you give Savard the cheques on the Harry Low Special Account?—
A. Because it was an account that was opened to look after the disbursement of
expenditures on the Canadian side, and had nothing to do with my personal affairs.

Q. Then was that Harry Low Special Account really a Savard account, covering
the expenses of handling Savard's goods?—A. Yes.

Q. Though it stood in your name it was really a Savard account?—A. It was
20 really an account for to look after the disbursements on the Canadian side of handling
the goods.

Q. And disbursements for which Savard was responsible?—A. With the arrange-
ment that I had with Savard it was 50-50 over and above disbursements.

Q. Then perhaps it would be more accurate to describe it as an account repre-
senting the expenses of Savard and yourself?—A. Yes.

Q. In connection with handling the goods. We may describe it then as the
Low-Savard Expense Account?—A. I don't know what you will describe it as. I
have tried to tell you the fact of what the account was.

Q. Will you just tell me again,—you told my learned friend but I would like
30 you to repeat it so as to make sure I have got the items, because we have not got the
cheques,—what class of expenditures were paid out of this account?—A. The dock
handlers, the truckers, the general wages of the employees putting the beer on the
boats, and for a boat to break ice during the winter to make it convenient for the boys
to get across.

Q. Let us take them in order. First the dockmen you say.—A. Dock handlers.

Q. What do you refer to there?—A. Stevedores.

Q. The men who handled the beer on the docks and loaded it on the boats?—A.
Yes.

Q. Then the truckers, what do you refer to?—A. The men who would truck it
40 to and fro on the docks.

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Q. The men who trucked from the railway cars to the dock?—A. During that period we used to hire trucks for that purpose, the Savard period. The earlier period the cars were shipped right to LaSalle.

Q. We are dealing with the Savard period.—A. I am referring to the earlier period of Savard.

Q. The earlier part of Savard's?—A. Yes.

Q. I am keeping quite clear of the Grandi period for the present purpose, I am dealing wholly with Savard, and you say Syringe is Savard under another name?—A. Yes.

Q. We will include the whole period from October, is it, 1925?—A. Yes, the 10 latter part of October.

Q. Up to the 30th of April, 1927?—A. Yes.

Q. Now, taking that period, I want to keep also to the question of the expenditures paid out of this Harry Low Special Account?—A. Yes.

Q. You have included truckers as one of the items. What items were paid out of that account for truckers, what class of truckers?—A. The truckers who would put it on hand trucks, which would carry 40 or 50 cases.

Q. A hand truck which would carry 40 or 50 cases?—A. Yes.

Q. From where?—A. From the warehouse to the water's edge, when we would have low water. 20

Q. Was that in the early Savard period or the later Savard period?—A. The early part.

Q. The early part of the Savard period?—A. Yes.

Q. What did it cover in the later part of the Savard period?—A. We changed our dock and did not have the truckers, we dredged the canal so that the boats could come right in to the dock.

Q. You are speaking of Windsor?—A. Of LaSalle.

HIS LORDSHIP: Then you had the handling from the car to the boat?—A. Yes.

MR. ROWELL: Was that paid out of this fund too?—A. Yes, Mr. Rowell.

Q. Then, is this correct, without troubling with too much detail, that all expenses 30 from the unloading of the car to the placing on the boat were paid out of this account?—A. Yes.

Q. And did that include the unloading from the car?—A. Yes, Mr. Rowell.

Q. Then you said something to my learned friend about it being carried in trucks from one warehouse to another, or one port to another.—A. Yes, to LaSalle dock.

Q. Was that also paid out of the account?—A. Yes.

Q. Then did you truck it to other docks, to Amherstburg?—A. From Windsor?

Q. From Windsor.—A. Occasionally it was.

Q. Occasionally it would be trucked from Windsor to Amherstburg?—A. Yes.

Q. Would that be included as paid out of that account?—A. No, I don't think 40 it was.

Q. Who would pay for the trucking from Windsor to Amherstburg?—A. The Carling Export Brewing & Malting Company.

Q. Where is the entry for that payment?—A. The bill would be sent to the Carling Export Brewing & Malting Company at London.

Q. Will we find that entry then in the London books?—A. I presume you will.

Q. Well, I want to know what you say as Vice-President.—A. I know nothing of the London books.

Q. Then, why the distinction, if your present statement be correct why do you distinguish between the charges for trucking from Windsor to LaSalle and the 10 charges for trucking from Windsor to Amherstburg?—A. Well, Savard was purchasing this beer at \$1.75, and the Carling Export Brewing & Malting Company could not get enough beer to Amherstburg fast enough for him, and there was beer at Windsor, the Carling Export Brewing & Malting Company would have to pay that charge and not the split between me and Savard, because it was a long haul, twenty miles.

Q. In other words, if it was an expensive operation the Carling Company had to pay it, and it would not come out of the split between you and Savard?—A. Yes.

MR. TILLEY: Of course, Mr. Low, you must watch some of these questions. I do not know if you watched that one. "If it was an expensive item it would come 20 out of the company."—A. Well, it was not if it was an expensive item. It was a bigger item than what the general expense would be along the dock, and it did not happen but very very rarely.

Q. And the company was to ship to Windsor and Amherstburg, and took that route to get to Amherstburg?—A. The company took that route to get to Amherstburg.

HIS LORDSHIP: Who paid the freight?—A. The Carling Export Brewing & Malting Company.

Q. That was part of the freight?—A. That was a part of the freight to Amherstburg.

30 MR. ROWELL: Then did the Carling Company sell the beer for so much delivered at Windsor or Amherstburg, \$1.75 a case?—A. The agreement I had with Savard was that we were to put the beer at the most convenient spots along the river front and the lake at \$1.75 a case for export.

Q. Was there much movement from Windsor to LaSalle?—A. No. The cars used to go direct into LaSalle. We built a railroad siding right down to the water, and dredged a canal right in beside so that it was convenient for the boats to come in and get loaded.

Q. Now, this agreement with Savard continued through the entire period, you have told us, covered by the suit, that is from the time it started?

40 HIS LORDSHIP: Part under Savard and part under Syringe.

WITNESS: And Grandi.

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MR. ROWELL: But I am dealing now with the Savard period. And it was still in operation when this period ended.—A. Yes.

Q. You told my learned friend that you hold the same position in the reorganized company that you held in the defendant company?—A. Yes.

Q. Did Burns and Leon hold the same positions?—A. Yes.

Q. Is the management the same, of the reorganized company, as of the defendant company?—A. Yes, Mr. Rowell.

Q. The difference being that you have the outside public in now as holder of certain portions of the stock in the reorganized company?—A. Yes.

Q. Now did the Bermuda business continue into the period of the new company?—A. Yes, Mr. Rowell.

Q. So long as the old company continued the Carling Company received \$1.75 a case?—A. No.

Q. Well it got up to \$2, and \$1.90 in 1927.—A. Yes, Mr. Rowell.

Q. \$1.75 up to the end of 1926, \$2 and \$1.90 in 1927?—A. Yes.

Q. The moment the new company was formed the new company received?—A. \$3.25 a case. But not from Savard. Savard ceased to do business, as he would not pay the higher price, and we have been since selling to Frank Brazinski at \$3.25.

Q. But the moment we change from the defendant company to the new company there is a change in the price received by the Carling Company for the beer 20 from \$2 or \$1.90 to \$3.25 a case?—A. Yes, Mr. Rowell.

Q. And the Carling Company since then has been receiving \$3.25 a case so long as the Bermuda handled it?—A. Well as long as they handled it, it was not very long. But through Brazinski, not Savard.

Q. Then during the period of the Savard regime, the Grandi, Savard and Syringe regime, the company carried on its business at a loss?—A. I do not believe it did, Mr. Rowell.

Q. Well your annual statements show a loss.—A. One year a loss.

Q. A loss the first year?—A. Yes.

Q. A loss the second, 1924-25. That is from the time you commenced in 30 April, 1924, until the end of October, your first fiscal year, less than a year, a loss. The statements are in. Then for 1924-25 a loss; 1925-26 a small profit.—A. Mr. Rowell, the statements are in, they speak for themselves, I do not remember.

Q. Do you not remember that from October, 1926, until June, 1927, when the old company ceased to do business you showed a loss for that period in your statement of I think something over \$200,000? Exhibit No. 71 is for the year ending 31st October, 1925.—A. The net loss seems to be \$16,000.

Q. Then Exhibit 72 is to the 31st October, 1926. What does that show? A net profit of \$12,543.19.—A. Yes.

Q. Mr. Morrison gave us the figures for April to October, 1924, I have forgotten 40

the exact amount, but my recollection is something over \$20,000. Can you speak as to that?—A. No, I could not, Mr. Rowell.

Q. Well I do not know that the exact amount is material. Nearly \$200,000, a substantial loss.

HIS LORDSHIP: A minute ago you said \$20,000.

MR. ROWELL: That is in 1924. But from 31st October, 1926—

HIS LORDSHIP: They made a profit of \$12,000.

MR. ROWELL: It is in the evidence. A loss for the period November, 1926, to June, 1927.

10 MR. TILLEY: Mr. Morrison tells me it is around \$200,000.

MR. ROWELL: Yes, I see it is in the statement, \$236,000.

HIS LORDSHIP: That is up to the end of the period of this company.

MR. ROWELL: Up to the end of the period, less than a year. From November 1st, 1926, to June 10th, 1927, a loss of \$236,000.

Q. So that according to your financial statements, during the entire period covered by this suit, if we take them all together, the company was carrying on business at a substantial loss,—at a moderate loss put it.

MR. TILLEY: At a loss.

MR. ROWELL: At a loss.—A. Yes.

20 Q. And during that same period, Low, Leon and Burns, by reason of the split to which you have referred and any other moneys received, were making a substantial profit?—A. We made some profit, yes.

Q. Now as you were carrying on business at a loss the company did not have to pay any Income Tax to the Government?—A. No, but we had to pay very very heavily.

Q. Of course you would have to pay whether you got it as dividend or—A. We had to pay it. We paid on all our profits.

Q. You paid of course on the income you got?—A. Yes.

30 Q. But the Government did not get Income Tax from the Company during this period because the Company's records showed a loss.

HIS LORDSHIP: It was not earned.

MR. ROWELL: Then if you are correct in your view that \$1.75 a case was the sale price, the result would be you would pay a very much smaller Sales Tax on a very much smaller sum than if you had entered the price in your books in respect of which you and Leon and Burns shared in the profits?—A. Our selling price was \$1.75.

HIS LORDSHIP: I do not know that you are accurate in that. If they were selling at another price and did not get more money it would be the same.

MR. ROWELL: I am speaking of Sales Tax, my lord. By keeping the price down in the books of the company the Sales Tax is less than if a higher price appeared 40 in the books

Q. Then you say you paid the Income Tax—

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HIS LORDSHIP: Personally;

WITNESS: Yes.

HIS LORDSHIP: The company avoided paying Income and Sales Tax.

MR. TILLEY: There is no connection between Sales Tax and Gallonage Tax.

Then in addition, I suppose their Income Tax paid personally would be a good deal more than if it had gone in to the Company. These questions are rather collateral I think.

HIS LORDSHIP: How did they manage to float the new company? Did the prospectus show that the old company was carrying on at a loss?

MR. TILLEY: I think the first company did very well, having regard to starting 10 up.

MR. ROWELL: Now you said you paid the Income Tax on that. When did you pay it, after the Customs investigation?—A. Well I could not very well pay it before, when you had possession of all the books.

MR. TILLEY: I cannot hear.

MR. ROWELL: I said when did you pay the Income Tax, after the Customs Investigation? Mr. Low's answer was, He could not pay it before.

Q. Why?—A. Because the Royal Commission had my books during the month of April, and the tax was payable then, and I could not make up my returns. But immediately we got our books we made our return and paid our Income Tax. 20

HIS LORDSHIP: That is, the Commission had your private books?—A. All our books, they had my bank account.

Q. Your private books?—A. Yes, and the Company's books.

MR. TILLEY: Is it material for us to follow these things?

MR. ROWELL: I thought you had no books in which you showed any records of these transactions. A. Mr. Nash knows of my private bank account.

Q. I am not asking of your private bank account, you said your books. If there are any books we would like to see them.—A. There was the Harry Low in trust Harry Low personal, and Harry Low Special Account.

Q. But the books?—A. That is books 1, 2, 3. 30

Q. Then you have no books showing a record of these transactions?—A. No, Mr. Rowell.

HIS LORDSHIP: Your only books were your pass books with the bank, and your cheque books?—A. Yes, my lord.

MR. ROWELL: Have you the cheque book of this Carling Bank Account, Windsor, which would show to whom the cheques were issued?—A. Just what do you mean?

Q. I mean the stubs of the cheque book on the Carling Bank Account, Windsor, which would show to whom the cheques were issued?—A. Whenever I drew money from there it was made out on a cheque, stamped "Carling Export Brewing & Malt-40 ing Company," and signed by myself, and no bank book, we do not issue so many as to require a cheque book.

Q. So you have no stubs?—A. No.

HIS LORDSHIP: You have no stubs?—A. The London account stubs, for all the business they did.

Q. What cheques did you issue without stubs?—A. Oh possibly five or six cheques, when I withdrew money out of that account.

MR. TILLEY: And you just used loose cheques?

MR. ROWELL: On the Carling Bank Account, Windsor, only 5 or 6 cheques?—A. That I drew out.

Q. Exhibit No. 16 is the Carling Export Brewing & Malting Company account, Dominion Bank, Windsor. Apparently it commenced June 5, 1925?—A. Yes.

Q. Then the deposits are pretty continuous day after day?—A. Yes.

Q. And there are a good many withdrawals?—A. Yes, Mr. Rowell.

Q. Do you say that those are all transfers to London, except 5 or 6 cheques?—A. That is what I said.

Q. Those must have been pretty large cheques.—A. Oh yes, they were.

Q. Now from this account cheques went to the Low Special Account, you have already told us.—A. This would be money drawn out of that account.

Q. Did you not issue cheques upon this account to the Harry Low Special Account, for expenses?—A. No, Mr. Rowell.

Q. Where did the money come from for the Harry Low Special Account? Did that all come from London?—A. From London, I drew on London for them.

HIS LORDSHIP: He said he was drawing drafts for \$2,000 or \$3,000.—A. Yes, by draft.

MR. ROWELL: When did Kennedy commence to act for Savard?—A. I have no idea.

Q. Did Kennedy act for Grandi also?—A. No, he did not.

Q. Was Kennedy ever in the defendant company's employ?—A. No, Mr. Rowell.

Q. His first work was for Savard?—A. Yes.

MR. TILLEY: His first work as far as we are concerned.

WITNESS: His first work as far as we are concerned.

MR. ROWELL: Did he commence with Savard when Savard commenced with you?—A. I do not remember.

Q. Was he with Savard throughout the entire period covered by this suit, from the time he commenced?—A. Yes, he was with Savard.

Q. Do you remember the date of Kennedy's death approximately?—A. No, Mr. Rowell.

Q. He is not available now?—A. I do not believe so, you have told us several times he is not.

Q. And you accept that?—A. Yes, I accept what you tell me.

Q. You saw the reports of his death shortly before the last trial, didn't you?—A. Yes.

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Q. And you have no knowledge of where the books or records are that Kennedy kept?—A. No.

Q. My attention is drawn to this, that apparently Kennedy's deposit slips in this account commenced at an earlier date than the Savard transactions. Here is one in Exhibit No. 15 of 28th May, 1925.—A. Yes.

Q. Here are others in May, 1925, June, 1925. You told us Savard commenced in October, 1925.—A. Yes, he did.

Q. How did Kennedy happen to be making deposits to the credit of this account in May and June, 1925?—A. He was working for Savard.

Q. But you told us that Savard did not commence until October, 1925.—A. 10
Did not commence buying our entire output until October, 1925.

Q. What was he buying prior to October, 1925?—A. He was a sub-purchaser from Grandi.

Q. For how long was he a sub-purchaser from Grandi?—A. I could not tell you. Mr. Grandi could answer that.

Q. But you were getting deposits in your bank account?—A. Oh yes, money was coming in.

Q. Now give me your best recollection of it.—A. Oh possibly the middle of the winter—

Q. That is of 1924-25?—A. Of 1925, somewhere around there, I don't remember. 20

Q. Somewhere about the middle of the winter of 1924-5. Just for convenience of reference, to avoid using too many words, about the 1st of January?—A. I don't know, Mr. Rowell, but I am trying to give you my best recollection.

Q. Would you say about the 1st of January?—A. I would not say when I do not know.

Q. The best you can do is about the middle of the winter of 1924-5. Then just tell us under what arrangement deposits were being made in the Carling Bank account by Kennedy during this period from the middle of the winter 1924-5 until October, 1925, when you say Savard commenced to purchase.—A. I don't know. He would deposit the money for goods, he was working with Grandi, a sub-purchaser. Savard 30
or he was not purchasing the entire output, they were paying a higher price at that time.

Q. How much was he paying to Grandi more than Grandi was paying to you?—
A. 25 cents I believe.

Q. And Grandi was re-selling to Savard at 25 cents advance?—A. Yes.

Q. And Savard was re-selling to purchasers in the United States?—A. Yes.

Q. At a still further advance?—A. Yes.

Q. And Kennedy was handling Savard's business?—A. Yes.

Q. In Windsor, or at the border points?—A. No, in Detroit.

Q. Well Kennedy was living in Windsor.—A. Oh he lived in Detroit.

Q. Was not Kennedy living in Windsor at this time?—A. I don't know. 40

Q. Kennedy was a Canadian?—A. I don't know.

Q. You don't know?—A. No, I don't. You seem to know, Mr. Rowell, would you give the evidence?

Q. Then Kennedy was collecting the money for Savard?—A. Yes.

Q. From runners at the border?—A. On the other side.

Q. Where did he collect it?—A. Kennedy was a sub-purchaser of Grandi and—

HIS LORDSHIP: Kennedy was a sub-purchaser?—A. At least Savard was a sub-purchaser of Grandi's in that earlier period, and I don't know where he collected it.

MR. ROWELL: How did he come to deposit money to the credit of the defendant's bank account in Windsor? That is what I cannot understand.—A. He would come over and deposit it.

Q. Why did he deposit it?—A. They would deposit it and give me a copy of the deposit slip.

Q. But why should Savard be depositing money, he was not your purchaser?—A. No.

Q. Why should Savard be depositing money to the credit of your bank account?—A. On behalf of the other man, Grandi.

Q. Then how did you keep track of the money that Savard deposited or that Kennedy deposited on behalf of Savard?—A. For the Grandi account?

20 Q. For the Grandi account?—A. A copy of the deposit slip was given to me and it was forwarded to London.

Q. Would London have those deposit slips?—A. I guess they would.

Q. I would be glad if you will have London produce them.

MR. TILLEY: Really we must come to an end. I do not know what we are to do next. The auditors have been through our place all the time.

MR. ROWELL: We have not found any.

MR. TILLEY: Have you asked for them?

MR. ROWELL: We have asked for all the records, and particularly everything relating to the Windsor business.

30 HIS LORDSHIP: You might ask Mr. Morrison.

(Mr. Morrison not present.)

MR. ROWELL: Then did Kennedy have anything to do prior to that with Grandi?—A. Not that I know of.

Q. He first came in connection with it acting for Savard as a sub-purchaser from Grandi?—A. Savard was a sub-purchaser from Grandi.

Q. Well I want to keep away from the Grandi period for the present and deal with Savard.

Q. Was Kennedy ever in the employ of the Carling Company?—A. No, Mr. Rowell.

40 Q. Was he not in your London office for a time?—A. Yes, Mr. Rowell.

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HIS LORDSHIP: You have answered before that Kennedy was never in the Company employ.—A. He never was. He was at the London office checking up records of these sale slips to Savard.

Q. Not in the employ of the Company?—A. Not in the employ of the company.

MR. ROWELL: And there will be no record in the Company's books in London of any salary paid to him while he was in London?—A. I don't know anything of the books in London.

Q. When was he at London?—A. I believe in July, June or July, 1927.

Q. After the—A. After the formation of the new company.

Q. In connection with the new company or the old?—A. In connection with 10 checking up the daily notes of Savard's business, because we had ceased to sell to him or have any more business with him.

Q. Do you know how much Savard was selling for at this time?—A. At what time?

Q. The time of this Grandi period.—A. No, I have no idea.

Q. Then coming to the Grandi period, what do you say was the arrangement with Grandi?—A. We were to sell all our wares to Grandi at the market price.

Q. But you did not sell quite all to Grandi, you told us there were a few other accounts?—A. Yes.

Q. But the bulk of it was to Grandi?—A. The bulk of it was to Grandi. 20

Q. Who fixed the market price?—A. I did—well I did not fix the market price, but I kept pace with the market price.

Q. You determined what was—A. The market price.

Q. And what Grandi was to pay?—A. Yes.

HIS LORDSHIP: What price did he return, the price of the invoice?—A. No, my lord, the price my competitors were selling at. I had to meet competition, or if beer would go up I would raise the price. It was made to suit conditions.

Q. You determined the actual price that was ultimately paid?—A. Yes, my lord.

MR. ROWELL: You say that did not follow the invoice price?—A. The invoice 30 prices were pretty accurate.

Q. But the invoice price did not finally determine the price, it might be up or down, according to the market?—A. It might be up or down.

Q. Did you report to London whether it was up or down?—A. Yes, Mr. Rowell.

Q. How is it we have no record in the London books—or can you tell me if there is any record in the London books of any price variation up or down, on the Grandi invoices?—A. I do not know anything of the London books, but this was not a stock exchange we were running, the price used to run two or three weeks, or a month or two months, at a certain price, and if there would be a change of 25 cents or 15 cents I would telephone or notify Mr. Burns that we would have to reduce the 40 price of beer, or that we could raise the price, and then the invoices would come along at that price.

Q. But you told us before that there were certain occasions in which the price was not in accordance with the invoice price.—A. Oh, that is possible.

Q. How were those adjusted, can you tell me? If you cannot tell me say so.—
A. Prior to Savard, all the money was deposited in the Windsor Bank Account, and all drawn down by the London office.

MR. TILLEY: You mean transferred to London?—A. Transferred to London.

MR. ROWELL: All transferred to London?—A. Yes.

Q. And it all then got into the London books?—A. All that was collected for.

Q. All that was collected got into the London books?—A. Yes.

10 Q. Just returning to Savard for a moment, I overlooked one point; during the Bermuda period you have already told us the whole amount received from the Bermuda Company passed into the defendant's bank account in Windsor?—A. Yes.

Q. Well except certain that went to Low, Leon and Burns?—A. There may have been that error, it was possible for that error of that one cheque.

Q. But take the period prior to Bermuda, from October, 1925, to July, 1926, when the Bermuda started.—A. Yes.

Q. Where was the money deposited that was received above the \$1.75 a case?—A. To the Windsor Bank account.

Q. My instructions are that there is no such deposit, that during the period
20 from October, 1925, to July, 1926, there is only \$1.75 a case.—A. That was the price of the beer.

Q. But where did you get the amount that you split?—A. We were not making any money in those days before the Bermuda. We anticipated to make more money.

Q. Well you told my learned friend and the Court that the arrangement with Savard was that he was to buy all the beer at \$1.75 a case?—A. Yes.

Q. You were to deliver it at the most convenient port?—A. Yes.

Q. And you were to split even with him on the amount he received for the beer above the \$1.75?—A. Yes.

Q. Less expenses?—A. Less expenses.

30 Q. Now I want you to tell me where the money went that was received for the beer between October, 1925, and July, 1926.—A. Mr. Rowell, it all went into the bank account at Windsor, that was received.

Q. And the expenses were—?—A. Drawn from London.

Q. The expenses were drawn from London?—A. Yes.

Q. And during that period Savard resold at \$1.75 a case?—A. No, at \$2, and \$2.10, and \$2.25.

Q. Then what did he do with the difference between \$1.75 and \$2, \$2.10 and \$2.25?—A. There was very little difference. It was eaten up in expenses.

Q. But what I want to get is, where was the money deposited. Was that
40 deposited in the Carling Bank account?—A. All moneys was deposited in the bank account in Windsor.

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Q. So that whatever the amount received was it all went into the Windsor Bank Account?—A. All went into the Windsor Bank account.

Q. And as far as the business was concerned was it handled in the same way in both periods, except that in the Bermuda period the money came through the Bermuda Company?—A. Yes.

Q. Whereas in the earlier period it came through Kennedy or Savard?—A. Savard had several men on the other side collecting for him, and Savard used to come over with forty or fifty thousand dollars at a time.

Q. And deposit it to the credit of the defendant's bank account?—A. Yes sir.

Q. Have you any agreement in writing with Savard?—A. Mr. Rowell, we are 10 in the liquor business. We don't make agreements with rum runners on the other side of the river in writing. There is a Conspiracy Law that I do not care to get into.

Q. Then, coming back to the Grandi period, it was during that period was it that Diesbourg and Paquette and Koven were handling the goods?—A. Yes, Mr. Rowell.

Q. Now Koven gave evidence that you came down and introduced I think Grandi to him?—A. Yes.

Q. And that he collected the money from the runners and received ten cents a case I think for handling it over his barge?—A. Over the dock, the Government dock. He got ten cents a case, and received the money from the runners or freighters 20 on the lake that had to bring over the bundle.

Q. They had to bring over the money?—A. Those that Grandi did not extend credit to.

Q. And he told us how he handled it, and stored it on the barge until the boats were loaded. And he deducted the 10 cents from the amount?—A. Yes.

Q. Now he told us he turned the money over to you?—A. Yes.

Q. That is correct is it?—A. That is correct.

Q. And he told us you fixed the price?—A. Yes.

Q. You fixed the price during this period?—A. Yes.

Q. If you had sold the beer, as you say, to Grandi, how did you come to fix the 30 price for resale of it?—A. Well, Mr. Rowell, we will cover the whole three people at the one time. We did not run a stock exchange, the price was not fluctuating up and down each day. It would run along for a period at a certain given price, and the price would be raised or lowered according to market conditions. That is what Koven means by my fixing the price.

Q. No, the price collected there was a price substantially higher than the invoice price.—A. Will you tell me about it then please?

Q. Take the first period that Fitzgerald was operating. The price collected in each case through Fitzgerald was \$4 a carton?—A. Yes.

Q. Which was substantially higher than the invoice price?—A. And Grandi got 40 the dollar.

Q. I am not asking—A. I just want to tell you though, so that you will remember.

Q. What I asked you is, how you could fix the price at which Grandi was selling goods to the runners, that the runners would have to pay to get the goods.—A. The runners? The freighters.

Q. Well, the freighters, whatever you choose to call them, the men who brought over the money, Mr. Koven told us, and Diesbourg and Paquette the same, they came over with a certain amount of money which gave them the right to get a certain number of cartons or cases at a price fixed.—A. Yes.

HIS LORDSHIP: That is a price fixed by you, some of them said.

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10 WITNESS: My lord, if I could explain to you or to Mr. Rowell how that works. The freighters, as we call them, on the lake, are men that make a specialty of pulling beer across the lake or across the river. They have no interest in it other than to land it on the other side. It is not their goods. They get 50 cents, 75 cents, and \$1 a case for transporting this across. The purchaser of the beer is in the United States, the man that owns the goods. These men make a business of going back and forward and freighting, they will freight anyone's beer. They had nothing to do with buying it, and the amount of money that would be sent over from the representative of the ultimate purchaser in the United States would be \$1.75, \$2.25, \$2.50, or the price that Grandi sold it at.

20 MR. ROWELL: It would be the price that Grandi sold it at?—A. Yes.

Q. That is the reason I cannot quite understand. You know the price Carlings sold at according to your story?—A. Yes.

Q. But how did you know the price Grandi sold it at so as to give information to Koven and Diesbourg and Paquette of the amount they should collect before they made deliveries to these carriers?—A. Grandi would telephone me, it was generally 25 cents a case higher than what he paid, in some instances it would be 50 cents higher, when he would telephone.

Q. Then Grandi would telephone you?—A. Yes.

Q. And you would instruct the men at—A. Speaking of Kingsville, Mr.
30 Koven.

Q. Well you group them all together. We will take them separately. Take Koven at Kingsville, Grandi would telephone you?—A. Yes.

Q. And you would telephone Koven the amount of money he was to collect before making delivery? A. To a certain boat.

Q. To a certain boat, yes. And that is the way the business was carried on?
—A. Yes.

Q. And in telephoning Koven you were acting for Grandi, just passing on the information from Grandi, is that what you mean? A. Yes, I was passing the information on.

40 Q. From Grandi?—A. Yes.

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Q. Then if Grandi's price was only 25 cents, 50 cents, or 75 cents more than he was paying the Carling Company, who paid the boatmen for carrying it over?—A. The man who purchased the beer.

Q. That is the man who purchased from Grandi?—A. Yes.

Q. He would have to pay Grandi's price plus the cost of transportation?—
A. Yes.

Q. Now pass up the river to Paquette's dock. Was there the same arrangement there?—A. Well, there was not very much fluctuation at Paquette's dock.

Q. Well Paquette says he got word from you about prices.—A. Yes, he got word from me. 10

Q. And did you get it from Grandi in the same way?—A. Well it was mostly Grandi's own boats working from there, and there was very little fluctuation there.

Q. But any information you passed on?—A. Yes, I passed on.

Q. You passed it on who for, for Grandi?—A. Yes.

HIS LORDSHIP: Koven told us that he had been collecting \$2.25, \$2.50, and then in Fitzgerald's time \$4.—A. Exactly so, my lord.

MR. ROWELL: Then when we come to Belle River, how long did Diesbourg handle the goods?—A. I don't remember exactly. The big year was 1924 I know.

Q. He spoke I think of handling in 1924, 1925 and 1926 I think his bank account showed.—A. Yes, but not an awful lot. 20

Q. He told us I think that you had leased his dock or warehouse.—A. No, I never leased his warehouse.

Q. Did Diesbourg have a warehouse?—A. Yes.

Q. Did you lease it?—A. No.

Q. Who leased it?—A. I don't know.

Q. Who made the arrangement with Diesbourg?—A. I did.

Q. For whom, on whose behalf?—A. Carling Export Brewing & Malting Company.

MR. TILLEY: Arrangement for what?

MR. ROWELL: I am speaking of the warehouse. 30

WITNESS: I did not make no arrangements about a warehouse.

Q. Then let us deal with the Diesbourg, Belle River, situation. Diesbourg told us that he collected the amount before he would deliver the goods, and the amount he collected was determined by you, or you advised him?—A. Yes, when he collected. Most of the business there was credit business.

Q. Where did you get the information from to pass on to him for Belle River?—A. From Grandi.

Q. And you told him from Grandi how much to collect before he would make delivery, when cash was being received?—A. When cash was being received.

Q. Then he told us he did not make any deliveries without the cash unless he 40 was instructed.—A. That is right.

Q. Did you on Grandi's behalf instruct him when to deliver the goods without receiving the cash?—A. At Belle River there was two boats working that pulled 90 per cent of the beer across Lake St. Clair to Grosse Point, that were working on credit by Malaki, and did not pay anything to Diesbourg. The other small quantity, I instructed Diesbourg what price to charge.

Q. On information received from Grandi?—A. On information received from Grandi.

Q. Who instructed Diesbourg to deliver to these two particular boats you mentioned?—A. I did.

10 Q. On whose instructions?—A. Grandi's.

Q. Then take the Grandi period when Savard was a sub-purchaser from Grandi, plus 25 cents a case, how did Koven deal with the matter at that time, or was Koven in it at that time?—A. Mr. Rowell, I don't know that.

Q. Was Diesbourg shipping or loading at the time that Savard was a sub-purchaser from Grandi?—A. I would not know.

Q. You do not know?—A. No, I don't know.

Q. You do not know whether any of the goods you are referring to as being purchased by Savard from Grandi would be shipped through Diesbourg?—A. Through his dock, I would not know what dock it was shipped through.

20 Q. You would not know whether the goods that were going out from Belle River were goods that Grandi had sold to some purchaser other than Savard, or sold to Savard?—A. No, I would not know what dock.

Q. You have no light to throw upon that?—A. None whatsoever.

Q. Then you told my learned friend that there were some goods seized that had been shipped from London for export but which were not in fact exported?—A. Yes.

Q. What are you referring to?—A. The Bannon car.

Q. Is that one of the cars given in evidence?—A. No.

HIS LORDSHIP: That has nothing to do with the Smith incident?—A. No, my lord.

30 MR. ROWELL: In addition to the cars given in evidence there was a car called the Bannon car that was seized?—A. It was one of the cars.

MR. TILLEY: It was one of the cars mentioned in the evidence.

MR. ROWELL: He says not.

WITNESS: No, I did not say that.

MR. TILLEY: The witness told me it was one of the cars referred to in the evidence.

HIS LORDSHIP: I do not remember a Bannon car, and I do not remember that a Bannon car was seized, all I remember is Bannon bought some goods, about \$5,000, and he sold it, and among that there was some beer and some liquor.

40 MR. TILLEY: Your Lordship's memory of it is accurate. That is what he did say.

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HIS LORDSHIP: And he said he had about \$2,000 worth of the Carling beer. He bought about \$5,000 altogether.

I do not understand what you mean by the Bannon car seized.

MR. ROWELL: It is not the liquor referred to by Bannon, it is something different.

HIS LORDSHIP: Is it the Bannon car or not?

MR. ROWELL: It is a Grandi car, but Bannon had something to do with it.

HIS LORDSHIP: That car from which Bannon got his liquor was seized afterwards?

MR. ROWELL: No, my lord, this is a different car. 10

HIS LORDSHIP: Then why associate it with Bannon?

MR. ROWELL: Well perhaps the witness can explain it.

Q. To whom was the car consigned?—A. C. B. Grandi.

Q. To what port?—A. Windsor. To Detroit via Windsor.

Q. And where was it seized?—A. It was seized in the Canadian Pacific Railways yards, Windsor, the freight yards.

Q. Can you tell me why it was seized?—A. They were trying to get it across through the tunnel to Detroit.

Q. Billing it as what?—A. It was billed as waste paper.

MR. TILLEY: Billed where from as waste paper?—A. I don't know. 20

Q. Did you bill it as waste paper?—A. No, we did not.

MR. ROWELL: It was a car billed to Grandi, to Windsor, consigned to Grandi, Windsor.—A. For export to Detroit, by the Carling Export Brewing & Malting Company.

Q. It was seized at Windsor because you say they were trying to get it across the tunnel billed as waste paper?—A. That is my understanding.

Q. Who billed it as waste paper?—A. I have no idea.

Q. Who took delivery of the car on behalf of Grandi at Windsor?—A. The Customs, they seized it.

Q. But when was it billed as waste paper?—A. I have no idea. It was billed 30 out of the Carling Breweries as beer for export, with the B.13 to C. B. Grandi, Detroit, Michigan.

Q. What I want to get is where was the change made?—A. I don't know.

Q. But at Windsor it was being billed through to Detroit as waste paper?—A. As waste paper.

HIS LORDSHIP: Does that car come within the scope of our case?

MR. ROWELL: It is part of the Sales Tax and Gallonage Tax sued for, my lord.

HIS LORDSHIP: What became of the liquor?

A. The Customs destroyed it, the Canadian Customs.

Q. They did not sell it and levy the amount taxed?—A. No they did not, they 40 destroyed it.

Q. Did they bill you for the tax?—A. No. The tax was paid on this car at this time I believe.

MR. TILLEY: Was that during the time the Sales Tax was being paid?—A. I believe so, I am not certain.

MR. TILLEY: Have you the date?

MR. ROWELL: I think it is May, 1924. So that it is not one of the cars that is in. The Sales Tax was paid in May, 1924. That is not one of the cars then that we have had given in evidence, because they are much later.

HIS LORDSHIP: Then we eliminate this from the inquiry.

10 MR. ROWELL: Then we had evidence given that three cars of Carling beer were seized on the C.P.R. siding at London and confiscated, being billed as canned meat. Page 319 of the evidence at the former sitting. The date of that seizure I think is July 31, 1924.

HIS LORDSHIP: Does it come within this case?

MR. ROWELL: Yes, my lord.

MR. TILLEY: It would come within this period for Sales Tax, but not Gallonage Tax.

MR. ROWELL: It comes within this period for Sales Tax. Gallonage Tax was paid until June or July, 1925.

20 Q. Now how would these cars containing Carling's beer be on the C.P.R. siding at London, billed as canned meat?—A. Those three cars was sold to Johnston of Buffalo, New York. He sent a draft from the Power City Bank, Niagara Falls, New York, to the Carling Export Brewing & Malting Company at London for the three cars of beer.

Q. Are you speaking of something you know?—A. I sold the cars.

HIS LORDSHIP: Do you know what price?—A. \$3 per case. It was over 3,000 cases of beer—I may be in error a little—

Q. 3,599 are the figures.

30 WITNESS: We were to bill them to Johnston or Jones, some place in New York State. The cars left the Carling Brewery with B.13s, billed as beer for export to this consignee in New York State, in care of the Canadian Pacific Railroad. The cars got to some small terminal point, I forget the name—Wallaceburg, they were set off on a siding and were there for several days, and returned by the C.P.R.

Q. To where?—A. To London. Not to our brewery but to London, sent over the interchange—

MR. TILLEY: What does that mean?—A. The interchange between the Canadian National and Canadian Pacific Railway, the interchange switch, to the Canadian National, where they were billed out by Johnston as canned milk, as I recall it.

40 MR. ROWELL: Well it may be canned milk.—A. Yes, I believe it was. The cars were later seized. There was a Police Court proceeding taken—

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Q. Well, we have the record of that.—A. I am just going to tell you now I have started. Johnston came into the Police Court, produced his cancelled draft that he had got back from the Power State Bank where he paid for the beer—

HIS LORDSHIP: Cancelled draft as having been paid?—A. Been paid, and made claim for the beer, and took the responsibility of having the cars set off on the siding and switched over to the C.N., and done the re-billing himself.

Q. Then what is your point? That you were not concerned in it after you had billed it out?—A. We had billed it for export, and handed it to a common carrier, the C.P.R., to export it to the United States.

MR. ROWELL: Did you not bill it to some Ontario port, was it not billed on your 10 bill of lading to an Ontario port?—A. I do not remember.

HIS LORDSHIP: He has not said so so far.

MR. ROWELL: I am asking that. Did you not know you could not bill it through on a railway to any point in the United States?—A. I cannot recall those particular cars. I believe they were billed right through.

MR. TILLEY: Well you could at one time, and later on you could not. I do now know what period this is in.

WITNESS: I believe they were billed right through to the United States.

MR. ROWELL: Can you produce any bill of lading showing that the Carling Company shipped that beer from London billed right through to the United States? 20 —A. I don't know.

Q. If you can we will be glad to have it. Mr. Morrison is here, if he could give us any bill of lading of any car of beer shipped through to the United States.

HIS LORDSHIP: These cars were seized and the beer destroyed?—A. The beer was confiscated.

MR. ROWELL: And came down to the Ontario Government Control, my lord.

HIS LORDSHIP: It was never sold outside.

MR. TILLEY: It was never sold inside either.

HIS LORDSHIP: Yes, it was sold and paid for.

MR. TILLEY: It was paid for from New York by a New York draft. I do not 30 know how my friend can make that a sale inside.

HIS LORDSHIP: They were not exported.

MR. TILLEY: That may be one thing, but they were not sold and consumed in Canada, they were taken by the Government. It went to the Government dispensary, the Government took it and sold it.

HIS LORDSHIP: They used to sell and levy the tax out of the sale.

MR. TILLEY: Here they took the whole thing.

HIS LORDSHIP: They used to manufacture whisky on the south shore below Murray Bay, buy an old schooner, and when it was ready one would go and denounce the two others, and it would be seized, and they would sell the goods by auction, and 40 they were paid as informers.

They were doing the same in the United States, and there was a serious correspondence between the United States and Canada. They used to sell the whisky and collect the tax out of the sale.

But that was not done here?

MR. ROWELL: No, my lord.

HIS LORDSHIP: Then you will have had the benefit of the beer, and then you will have your tax besides?

MR. ROWELL: We do not get the beer, my lord, it goes to the Ontario Government.

10 MR. TILLEY: It is the Crown that you are representing. The Crown accounts to you, does it not, for part of it?

MR. ROWELL: No, we have nothing to do with the Ontario Government.

HIS LORDSHIP: Well the Ontario Government buys its wares, would they not buy this from the defendant?

MR. ROWELL: No, the Dominion Government got no Sales Tax on this at all.

HIS LORDSHIP: I am not saying Sales Tax. It gets consideration for the goods.

MR. ROWELL: No, my lord, it is confiscated under an Ontario Act as being beer in Ontario for sale here, not export.

MR. TILLEY: I presume my friend is using that as an illustration of the way the 20 traffic is carried on, rather than getting Sales Tax for that car.

HIS LORDSHIP: We have not got under what law the seizure took place.

MR. ROWELL: Can you tell us that, Mr. Low?

WITNESS: Yes, it was false billing.

MR. ROWELL: I think the evidence given by Inspector Bolton at the former hearing covers that. My recollection is that Inspector Bolton stated that it was seized under the Ontario Temperance Act, and confiscated under Section 70 of that Act, which provides for confiscation under certain conditions.

HIS LORDSHIP: Well in this case you sold, and it never went out of Canada, and you got your price.

30 MR. TILLEY: We sold and got payment from the United States, it was an export sale.

HIS LORDSHIP: Your beer did not go to the other side.

MR. TILLEY: But there is the question of whether or not it is a sale in the circumstances. I will have to come to that.

HIS LORDSHIP: If ever there was a complete sale there was here. There was delivery of the goods, and payment, that is a complete sale in law.

MR. TILLEY: Well we will have to argue that.

MR. ROWELL: Where was the draft deposited that paid for the beer?

WITNESS: At London.

40 Q. Before the beer was delivered?—A. Yes, Mr. Rowell.

Q. And once the beer was shipped the Carling Company had no further interest

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in it?—A. Oh, Mr. Rowell, this particular beer was handed to the C.P.R. for shipment. We had every interest in the world in this beer to get it over to our customer.

Q. But your customer, you had delivered it, and he switched it himself.—A. Well you did not expect us to sit on top of the car and see it got there. We had every interest—

HIS LORDSHIP: Did you return the money to your vendee?—A. No, he made the error, it was not us.

MR. ROWELL: You have stated that it was shipped to the United States, and in view of what we have seen of the records it is something we want you to check—

MR. TILLEY: We have your request on that. 10

MR. ROWELL: —to see if you can find that bill of lading, or any bill of lading.

Now, you remember two other cars being seized at Chatham?—A. No, I don't.

Q. Inspector Elliott told us of them—I beg your pardon, Windsor, two cars seized in Windsor. (Pages 312 and 327 of the evidence.) One billed to A. H. Phillips, wholesale butcher, Windsor, and the other to H. E. Guppy Company, wholesale grocer, Windsor.—A. I remember that evidence being given.

HIS LORDSHIP: These appear not to have been shipped for export.

MR. ROWELL: The billing was not for export. I want to know what Mr. Low has to say about those.

WITNESS: Nothing to say about them, I don't know a thing about them. 20

Q. Did you inquire into the circumstances?—A. Never did, and I didn't know anything about it, never informed me about it.

Q. And you never inquired?—A. I never heard anything about it, until I heard it in court here.

Q. Did the Carling Company ship strong beer from London billed as barrels of oil—it was billed as barrels of oil?—A. No, the Carling Company did not ship anything in that manner.

Q. How do you explain these being seized in Windsor billed as barrels of oil?—A. The Carling Company, as I have just stated, has never shipped anything as barrels of oil. 30

Q. But how did the Carling beer get into the cars in Windsor billed as barrels of oil?—A. I don't know, Mr. Rowell, I never heard anything of it until I heard it in Court.

Q. You cannot explain it at all?—A. No, I cannot explain it at all.

Q. You can throw no light on the transaction?—A. None whatsoever.

Q. In reference to the Smith sale, can you tell me the price—

HIS LORDSHIP: I thought the duty had been paid on that.

MR. TILLEY: It has.

MR. ROWELL: I just want to get on the record the amount.

MR. TILLEY: Could we not have that made up separately? 40

MR. ROWELL: Well when I see the statement we will check that up.

Q. Then you say you knew nothing about the cash sales of strong beer?—A. No, Mr. Rowell, I did not.

Q. Who would be responsible for that?—A. I have no idea. That took place at London, I was not there.

Q. George Constable was one of your truckmen, we were told. Did you know Constable?—A. I don't know him. He is at London.

Q. In connection with the Carling Brewery?—A. I daresay he is, I do not know the man.

Q. How do you know he is at London?—A. I know he is not at Windsor, or the 10 export docks.

Q. Then how do you explain this: You have in the books, as it is given in evidence, certain transactions in which B.13s during the Grandi period show a substantially higher price than the prices entered on the invoice. How do you explain the B.13s being made out at a higher price than the invoice price?—A. That is during the Fitzgerald regime?

Q. Well, it covers more or less perhaps the first year or two or longer. Take the year 1924 first, if you like.—A. I do not know that there is much difference.

Q. The evidence shows that there is a substantial difference.—A. Between the price when Fitzgerald was there—

20 Q. Between the B.13 and the price at which they are charged in the books —A. Well, I cannot remember any that far back.

Q. Well I will have to refresh your memory.

HIS LORDSHIP: Did you know you were selling to Grandi at an advanced price on your invoice price?—A. Yes, the sub-purchasers were—

Q. Grandi?—A. Grandi was selling to the sub-purchasers.

MR. TILLEY: His Lordship says you were selling to Grandi.—A. Grandi was paying the invoice price.

HIS LORDSHIP: The position you take is that the price on the invoice is the price to the American purchaser.

30 MR. TILLEY: To the American purchaser.

HIS LORDSHIP: As between yourself and the company?

MR. TILLEY: Yes, my lord.

HIS LORDSHIP: What was Fitzgerald collecting? He was collecting the price actually paid?

MR. ROWELL: At the border, when he delivered the goods.

MR. TILLEY: By Grandi's sub-purchasers.

MR. ROWELL: To turn it over to the Carling Company in London.

Q. Now perhaps you can answer this: Take the Fitzgerald period, the B.13s during a portion of that period at least, June, July and August, 1924, appear to be 40 made out almost uniformly at \$4 a case?—A. Yes, Mr. Rowell.

Q. Why was that \$4 a case inserted in the B.13s when you were selling to Grandi,

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as you have told us, at a substantially lower figure?—A. Because we had an agreement among the brewers that they were to get \$4. We gave Grandi back a dollar, so that he could come and purchase at \$4, or \$1.75, he actually only paid \$2.75 or \$3 for the beer.

MR. TILLEY: You have explained that already.—A. Yes.

MR. ROWELL: But I am dealing with the B.13s. Do you say the price put in the B.13s—who fixed it? Because these B.13s are made out at the border.—A. The agreement you brought in this morning fixed it.

Q. Fixed the price?—A. For the B.13s, not for the beer.

Q. Then the B.13s were made out to conform to the agreement?—A. Yes sir. 10

Q. Now are those the only B.13s where the price was higher than the invoice price?—A. Oh no, I guess there would be others.

HIS LORDSHIP: You can take it that all the B.13s were higher than the invoices.

MR. TILLEY: No, my lord, not all.

HIS LORDSHIP: Some a very little difference, others much.

MR. TILLEY: Yes.

MR. ROWELL: That is what I want to get at. Why were the B.13s made out at the border at a higher price than the invoice price? Leave out this Fitzgerald period.

WITNESS: To suit the sub-purchasers of Grandi or Savard, the price that they 20 paid Grandi or Savard in the United States.

Q. Who instructed that the B.13s should be made out at this higher price?—A. I did.

Q. You gave the men at the ports the information as to the price at which they should make out the B.13s?—A. Yes sir.

Q. And where did you get that information from?—A. From the purchaser.

Q. From Mr. Marco?—A. Yes.

(Court adjourned at 4.30 p.m., Thursday, April 25th, to Friday, April 26th, 1929, at 10.30 a.m.).

FRIDAY, April 26th, 1929, 10.30 a.m. 30

Cross-examination of H. Low, by Hon. Mr. Rowell, Resumed

Q. Mr. Low, Mr. Morrison told us that in the office in London they had no written orders for any of these goods?—A. None, Mr. Rowell.

Q. Did you ever have any written orders for any of these goods?—A. Well at one time Grandi used to send over written orders.

Q. What did you do with them?—A. Destroyed them when they fulfilled their usefulness.

Q. You destroyed them?—A. Yes.

Q. When did Grandi send over written orders?—A. At the very beginning.

Q. Were those written orders to secure delivery at the dock, as Mr. Fitzgerald 40 described?—A. That is what they were.

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Q. They were not the original orders for the shipment from London?—A. No.

Q. Then did you ever have any written orders for the shipments from London?—

A. No.

Q. The only orders you ever had from Grandi were the orders he sent over with runners to get delivery of a certain amount from the docks?—A. That is right.

Q. Which Mr. Fitzgerald received and turned in to the company or whoever was at the dock?—A. Whoever was at the dock.

Q. Then how did they get the orders at London?—A. By telephone.

Q. Did you telephone them?—A. Yes.

10 Q. You telephoned the orders to Mr. Burns at London?—A. Yes.

Q. Then are all these goods which are entered in the books as sold for export, were all the orders telephoned by you to Mr. Burns at London, speaking generally?—

A. I do not just get your question. There was a general order for all the goods. I would telephone Mr. Burns at London to send 1,000 or 3,000 to a particular dock.

Q. All I want to know is, Did you give Mr. Burns all the orders, or did Mr. Burns get independent orders from anyone else?—A. That is so long ago I would not like to swear to that. I would swear that he got 90 per cent of the orders from me.

Q. But you cannot say whether he got them all or not?—A. No, I could not.

HIS LORDSHIP: But notwithstanding that, you say that Grandi or Savard, as
20 the case may be, was taking all your output as you state?—A. Yes, my lord.

Q. How do you explain that they were selling in Canada also?—A. They were not selling in Canada.

MR. TILLEY: Who, my lord?

HIS LORDSHIP: Carling.

MR. TILLEY: What, the export beer?

HIS LORDSHIP: Not export. But we have got sales in Canada.

MR. TILLEY: He was buying all the export beer.

HIS LORDSHIP: Is that what you mean?

WITNESS: That is what I mean.

30 MR. TILLEY: That is what he said.

HIS LORDSHIP: No, he did not qualify it. I thought it better to call his attention to it. He said the output.

MR. TILLEY: Savard would have no use for 2·5 beer.

MR. ROWELL: Well all the strong beer we will say.

HIS LORDSHIP: Well there were the cash sales.

WITNESS: Who are we speaking of now, Grandi's or Savard's period?

MR. ROWELL: I was speaking, as far as the orders were concerned, of the whole period.—A. You will have to segregate them if you wish me to answer that question.

Q. Take first the Grandi period. Did you telephone all the Grandi orders to
40 Mr. Burns at London?—A. All the Grandi orders.

HIS LORDSHIP: I understand you said at the beginning you had written orders

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from Grandi. Is that right?—A. Written orders would come across to get delivery at the docks, yes, my lord.

Q. And then afterward that was done by telephone. Am I right?—A. Yes, my lord.

MR. ROWELL: I did not understand Mr. Low quite in the way your Lordship has. What I understood Mr. Low to say was that the order to Carlings for a carload was always verbal.

HIS LORDSHIP: But you asked him before that whether he had any written orders for those shipments, and he said No, but at the beginning we had some. And you asked him what he did with them, and he said he destroyed them. 10

MR. ROWELL: Will you tell us what these Grandi orders you have referred to as being in writing, related to?

WITNESS: Related to goods that Grandi sold to sub-purchasers in the United States, giving them an order to come over to the different docks in Windsor, and get a supply of his goods.

Q. They did not relate to the original order to the Carling Company? A. No.

MR. ROWELL: That is the way I understood the witness, my lord.

HIS LORDSHIP: But do I understand that your company, manufacturing this strong stuff, were making invoices and shipping it to Windsor?—A. To Grandi, yes.

MR. ROWELL: Who determined when a new carload was required at Windsor? 20 —A. I determined the different places that it went to.

Q. Who determined when you wanted a carload at Amherstburg, say?—A. If there was no beer at Amherstburg, and Grandi's boats were coming in every day I would order beer to be shipped to Amherstburg for Grandi.

HIS LORDSHIP: Would you ship beer to Amherstburg without having an order for Amherstburg?—A. I would get the telephone.

Q. Would London send beer to Amherstburg without having an order from you for Amherstburg?—A. No, my lord.

Q. Then what do you mean when you say, If I got an order for Amherstburg, and there was some of our beer,—there might be some beer at Amherstburg before you 30 gave the order?—A. Oh that is quite possible, my lord. We could not get beer down to these distributing spots fast enough, we were short of beer most of the time.

MR. ROWELL: Then let us continue this, dealing with the Grandi period. You determined yourself when additional quantities were required at the different ports? —A. I did not determine that myself. Grandi would order it from me and I would order it from London, and tell London what port to ship it to.

Q. You told us just a moment ago that you determined.—A. Pardon me, you try to give the evidence.

Q. No, do not say that, you know it is not true.—A. I do know it is true. I ask you to take that back. 40

HIS LORDSHIP: Just answer the question.

WITNESS: I do not care for that class of remark.

MR. ROWELL: We can turn up the record and see that you said differently before. You said you determined. What do you want to say now, who determined when a carload was required at Windsor or Amherstburg or LaSalle?—A. Grandi, in Grandi's period, ordered it.

Q. And how did you learn that he wanted a carload there?—A. He would telephone me.

Q. Was Grandi ever in Windsor?—A. Yes.

Q. Would he see you in Windsor and tell you, or would he telephone to you?

10—A. He has seen me in Windsor, and he has telephoned to me.

Q. And you would get word from Grandi in Windsor?—A. Yes.

Q. That he wanted a carload at a particular place?—A. Yes.

Q. And you would telephone Burns in London?—A. Yes.

Q. And the goods would be shipped accordingly?—A. Yes.

Q. Were any goods shipped from London, either in the Grandi period or the Savard period, without an order having been received from Grandi or Savard for the goods before shipment?—A. Possibly there may have been.

Q. Under what circumstances?—A. The shipper may ship goods to Windsor without an order from me, that I did not receive from Grandi that particular day, 20 as it was a blanket order for all the goods that we could get up to those ports.

Q. Then would he ship to Windsor without any order from you?—A. It would be possible for that to happen.

Q. Well I ask you did it happen?—A. I cannot answer that question. To the best of my recollection it might be possible that it did happen.

Q. Let us continue through with the Grandi period. You told us before, as I understood your evidence, that all the goods ordered in Grandi's name during the Grandi period were ordered through you by telephone message to Mr. Burns in London?—A. Through me, yes.

Q. Is that correct?—A. Through me after I had received the orders from 30 Grandi.

HIS LORDSHIP: I did not understand you that way. It does not make much difference. I understood you to say that at the beginning you got some written orders from Grandi, and that was discontinued.

MR. TILLEY: I think my friend has stated it rightly. What he said was that for the individual boatloads that were taken across the river the puller would produce Grandi's order for his boatload. But that is not the order for the goods to get there ready to go across.

HIS LORDSHIP: Oh no, I did not understand that. Grandi was buying everything they had. Now as to the way of shipment, at the beginning Grandi had given 40 some written orders.

WITNESS: No.

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MR. TILLEY: To London.

HIS LORDSHIP: Not to London. What did you mean by the written orders you got?

WITNESS: The written orders would be the same orders that Mr. Fitzgerald produced, would be orders for goods that Grandi sold to sub-purchasers in Detroit, an order to go to the dock and get so many cases.

Q. Then you got a written order from Grandi to bring these goods to a given port?—A. I do not know that you quite understand me. It would be the sub-purchaser that would come.

Q. It does not matter, Grandi bought everything, according to you.—A. Yes, 10 my lord.

Q. And he was saying, Ship goods there.

MR. TILLEY: Not Ship a car there, but out of the goods that are there at the dock or warehouse, or whatever it may be—

HIS LORDSHIP: Well he has been saying the goods were going so fast they never had enough. I do not think there is anything turning on it, but I do not know what you mean when you say you had written orders, and when I say these orders were to go and bring these goods to one port you say No.

MR. ROWELL: In the Savard period who transmitted the order to Mr. Burns?—A. Oh in the Savard period there would be several transmitting the orders to Mr. 20 Burns.

Q. Well, who?—A. Mr. Henderson, Mr. Kennedy, Mr. Roy McKay and myself.

Q. Who are Henderson and McKay?—A. Men that was on docks, foremen of docks.

Q. In the same position as Kennedy?—A. No.

Q. What was the difference in their position and that of Kennedy?—A. They were employed as foremen of docks.

Q. Under Mr. Kennedy?—A. No, under me.

Q. What docks were they foremen of?—A. LaSalle Dock.

Q. Who was foreman of LaSalle dock?—A. Henderson. 30

Q. And what dock was McKay foreman of?—A. The C.P.R. dock.

Q. And they would telephone direct, would they?—A. Yes.

Q. To send a certain quantity to Savard?—A. Yes.

Q. To Savard at Windsor or LaSalle?—A. Yes.

Q. What authority had they to order on behalf of Savard?—A. They were employees, and they were trying to get all the goods—

Q. Employees of who?—A. Of mine.

Q. Paid out of?—A. This Harry Low Special Account.

Q. The expenses of which were deducted before you had the split between Savard and yourself?—A. Yes, Mr. Rowell. 40

Q. So that they were employees paid out of that fund which was charged up against the profits on the Savard transactions?—A. Yes.

Q. Were they employees of Savard, or were they employees of yours?—A. I engaged them and I paid them.

Q. Whose employees were they, yours or Savard's?—A. I engaged them and I paid them, I think that would be a question of law, I cannot tell you.

Q. I want you to tell me.—A. Well I am not going to tell you. I will tell you the facts, that I engaged them and I paid them.

Q. Well you know whether they were your employees or not, I want you to state whether they were or not.

MR. TILLEY: He has given you the answer.

10 WITNESS: I have given you the facts, I cannot give you further, that I engaged them, and I paid them, and I had power to discharge them.

HIS LORDSHIP: This is what you want to know; were you the only one that could give them orders?—A. No.

MR. ROWELL: Could Savard give them instructions?—A. Yes.

Q. Could Kennedy give them instructions?—A. Yes.

Q. When they ordered would it be on Savard's instructions, or Kennedy's, or yours?—A. They would order—

Q. But on whose instructions?—A. I did not give them instructions.

Q. They would order in Savard's name?—A. For Savard.

20 Q. When you ordered where did you get the information?—A. I was in contact with Savard all the time.

Q. Did you order on your own judgment as to the amount required?—A. We could not get beer out fast enough.

Q. Please answer the question, it is a perfectly simple one. Did you order on your own judgment as to the amount required?—A. I ordered beer for the dock as Savard required it.

Q. Did you ascertain from Savard what he required before you sent in the order?—A. Yes.

Q. In every case?—A. He wanted all we could manufacture.

30 Q. Did you ascertain in every case before you telephoned in an order whether Savard wished it or not?—A. He wanted all the beer—

Q. Please answer the question, it is perfectly simple.—A. I am answering. All that we could manufacture.

Q. Did you before telephoning in each particular order ascertain from Savard if he required or desired it?—A. Savard's order was for 500,000 cases.

Q. Please answer the question. Did you before you telephoned in an order for a particular car to go to a particular place ascertain from Savard if he desired that shipment to that place?—A. Yes.

Q. In every case?—A. Not in every case, but I have done that.

40 Q. You have done that?—A. Yes.

Q. In other cases you did it yourself?—A. I ordered it to come on forward.

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Q. Who determined how much the B.13s should be made out for?—A. In which period?

Q. The first period.—A. Now we are done with Savard and are back to Grandi?

Q. I am back now about the B.13s.—A. I just want to know in what period, and then I can answer intelligently.

Q. The Grandi period. Who determined the amount the B.13s should be made out for in the Grandi period?—A. I did.

Q. In all cases as far as you can recollect?—A. As far as I can remember, Mr. Rowell.

Q. Was the B.13 made out in London at the invoice price in the early period? 10
—A. Yes, Mr. Rowell.

Q. In the early period the B.13s in London—A. There was no invoice price put on the B.13s in the early period.

Q. There was a price put on the B.13?—A. Not in the early period.

Q. We have it here on the B.13s produced.—A. I think if you look hard you will find a lot of them that have no price on, the first B.13s that came from London. The B.13 accompanied the full shipment. There is the quantity—

Q. But it had a price.—A. There may be some with a price.

HIS LORDSHIP: Would the price be put on the B.13 at the time of shipment?—
A. Oh yes, my lord. 20

MR. ROWELL: Well I will check up one of these exhibits. I will pass on.

HIS LORDSHIP: I suppose the price was put on the B.13 at the time of shipment.

MR. ROWELL: Yes, there was a price, and the price put on the B.13 at the time of shipment was a different price from the invoice price.

WITNESS: There would be changes.

HIS LORDSHIP: I think that is conceded. I think you need not go back to that.

MR. ROWELL: I just want to know who determined it, and Mr. Low says he determined it.

Q. Then who was H. W. Loughead of Sarnia?—A. H. W. Loughead?

Q. Who was he, what was he doing in Sarnia?—A. He owns a dock there which 30
has been authorized by the Dominion Government as a liquor export dock.

Q. Thank you. If you will just answer the questions you will get just as far ahead.

Did you instruct shipments to A. Grandi, Detroit, Michigan, care of Loughead, Sarnia?—A. Yes, Mr. Rowell.

Q. And shipments were made from London to A. Grandi, care of Loughead, Sarnia?—A. Yes, via Loughead's dock, Sarnia.

Q. And the price, I see on the invoice Exhibit 99-A, was for ale \$2.75 a case?
—A. Yes.

Q. And the lager \$2.50 a case?—A. Yes. 40

Q. And the porter \$3?—A. Yes.

Q. Then the B.13s appear to be \$4 a case?—A. Yes.

Q. Did you authorize the \$4 a case to be put on the B.13s at Sarnia?—A. Yes.

Q. Who did Mr. Loughead represent there?—A. Himself. He had power of attorney to clear the goods for the Carling Export Brewing & Malting Company.

Q. Who did he represent in receiving the goods at Sarnia?—A. The Carling Export Brewing & Malting Company.

Q. And he had a barge or floating dock moored there near the dock?—A. I don't know whether he had or not.

Q. Well there was one there?—A. There was one there.

10 Q. That you inspected?—A. Yes.

Q. And you found Carling's beer on it?—A. Yes, Mr. Rowell.

Q. And you found that Loughead had been convicted under the Ontario Temperance Act?—A. Yes.

Q. And Loughead was in charge of this dock or barge, whatever it was?—A. He was in charge of the dock. I am not speaking of the barge. Just determine which you want to talk of.

Q. Well we will deal with the barge.—A. I do not know whether he was in charge of it or not.

Q. Did you inquire to find out?—A. Yes, I did.

20 Q. What did you ascertain?—A. I did not ascertain whether it was his barge or whose it was.

Q. But you did ascertain that there was Carling beer on it?—A. Yes.

Q. And you ascertained that he had been convicted?—A. Yes.

Q. Under the Ontario Temperance Act, for selling beer?—A. Yes.

Q. From the barge?—A. No, I did not ascertain that at all.

Q. Where had he been selling the beer in respect of which he was convicted under the Ontario Temperance Act?—A. I don't know.

Q. Was he acting for the Carling Company in selling beer there?—A. He was not selling no beer there for the Carling Company.

30 Q. Who was he selling for?—A. Selling what beer?

Q. Any beer he sold that was Carling's beer.—A. We are on the barge now?

Q. Yes.—A. I don't know that he ever sold any Carling beer on the barge.

Q. Did you see any beer sold on the barge?—A. I seen beer sold on the barge.

Q. And you saw Carling beer on the barge?—A. I seen a few cases of Carling beer on the barge, together with other beers.

HIS LORDSHIP: Does that mean that you saw some beer sold on the barge but you did not know it was Loughead that was selling it?—A. It was not Loughead present.

MR. TILLEY: And he said he did not see any Carling beer sold.

40 WITNESS: I did not see any Carling's sold. I seen beer sold, but there was various brands. I could not say what they were selling.

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Harry Low
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MR. ROWELL: This is your letter, is it, Exhibit No. 104?—A. Yes, Mr. Rowell.

Q. Written to the Deputy Minister of Customs and Excise, Mr. Farrow, dated November 6th, 1924?—A. Yes.

Q. Was this following your visit to Sarnia?—A. Yes, Mr. Rowell.

Q. And following your inspection of the barge, or your going on the barge?—A. Yes.

Q. In this you state: "We beg to draw your attention to the very important fact that since commencing operations we never had any barge or scow on the river shore at the foot of George Street, Sarnia, or any other place around Sarnia, nor have we had any person representing us in Sarnia." Is that true?—A. That is true. 10

Q. "All our transactions were carried out conforming with the Customs Act by shipping the goods from the brewery, London, to our purchaser, A. Grandi, Detroit, Mich., via C.P.R., to Sarnia, and via boat 'Francis' accompanied with the proper export papers made out on Form B.13.?" Is that true?—A. That is true.

Q. "Referring to paragraph 2 of your letter, re open bar, Mr. Low found a house-boat at the foot of George Street, Sarnia, which contained Carling's beer, Dow's ale of Montreal, considerable quantity of Corby whiskies and gin, also a large quantity of Gooderham & Worts whiskies, just exactly as stated in your letter as a wide-open bar." Is that right?—A. That is right.

Q. Did you ascertain how long that had been carried on?—A. No, Mr. Rowell. 20

Q. Are you prepared to say it was not carried on for months?—A. I am not prepared to say anything.

Q. "This appears to have been going on for some time, and the proprietor of the place has been fined under the Ontario Temperance Act several times." Is that correct?—A. That is correct.

Q. Who are you referring to as the proprietor of the place?—A. I don't know who is the proprietor.

Q. Who are you referring to in your letter as the proprietor of the place, when you say he has been fined several times?—A. I don't remember who was the proprietor of the place. 30

Q. You told us you had ascertained that Loughhead had been fined?—A. I did.

Q. Is it Loughhead you are referring to when you say, The proprietor of the place has been fined several times?—A. Loughhead was not on the barge when I went there.

Q. Please answer the question. Are you referring to Loughhead in this letter when you say, The proprietor of the place has been fined several times?—A. No.

Q. Who are you referring to?—A. Whoever was running the barge.

Q. "This state of affairs we did not and could not have any control over as this open bar handles many brands of beer and whiskies, and the proprietor of the place is not connected directly or indirectly with our firm." Who are you referring to?— 40
A. The proprietor of the barge.

Q. Loughead?—A. I don't know who was the proprietor. Loughead was not on the barge, I don't know who owned the barge.

Q. That is the best explanation you can make of that?—A. Yes, Mr. Rowell.

HIS LORDSHIP: Do you know how they got some Carling's beer on board that barge?—A. I don't know my lord how they got it. There was some there.

MR. ROWELL: Then we have here Exhibit No. 100-A, C. B. Grandi, care Mr. Diesbourg, Belle River, 500 cartons of lager?—A. Yes.

Q. At \$2.75 it would be, \$1,425.—A. Yes.

Q. And 300 cartons of ale, pints, at the same price, \$2.75?—A. Yes.

10 Q. And the B.13s are all made out at \$3 a case?—A. Yes.

Q. Who determined the price at which the B.13s should be made out at Belle River?—A. I did.

Q. What price did that represent?—A. \$3 a case?

Q. Yes, why was it fixed at \$3?—A. The price may have went up from the time the shipment had left London, the price may have raised 25 cents a case next morning. The B.13s were made out in split-ups.

Q. Was that Grandi's re-sale price?—A. Oh no.

Q. You told us yesterday afternoon that in a number of cases the B.13 prices were fixed at the re-sale prices?—A. It has been done, the re-sale price that Grandi had re-sold at in Detroit in some instances, for a greater amount, and had us collect it. He would then have the price raised.

Q. And would you instruct that the B.13 should be made out at the increased price?—A. Yes.

Q. Then referring to Sarnia for a moment again, I notice that is made out at \$4. Does that represent the re-selling price?—A. I cannot remember all transactions five years back, with millions of cases of beer. You are showing me one document, I try to assist the best I can, but 5 years back, millions of cases, I cannot remember.

Q. Well, where we find \$4 charged on the B.13s, and the invoices substantially lower, does the \$4 represent the re-selling price?—A. I have already answered that question in other cases that I remember of. This of Loughead's I do not remember of.

Q. I am asking generally now; where we find \$4 on the B.13, and the invoice substantially lower, does the \$4 represent the reselling price?—A. No.

Q. What does it represent?—A. It represents fluctuation in the price of beer, or the agreement we had with FitzGerald.

Q. But assume it is after FitzGerald's period had expired.—A. Well I am not going to assume, let me see the B.13. I do not believe there is any after FitzGerald's time.

Q. Well this Sarnia one is one.—A. Let me see it. This is 1924.

40 Q. Yes. FitzGerald finally retired in September, 1924. That is October.—A. Well I don't recall this of Sarnia, I cannot speak of this.

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Harry Low
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HIS LORDSHIP: Did you ship much beer from Sarnia?—A. Not very much, my lord.

Q. What do you mean by, Not very much?—A. Well the other ports were terribly busy, Sarnia was not.

Q. Was LaSalle your biggest port?—A. Yes, my lord.

Q. You did not ship from Sarnia anything like as much as you shipped from LaSalle?—A. No.

MR. TILLEY: I think Mr. Nash's exhibit shows the different ports.

MR. ROWELL: It is a comparison of prices, but not quantities.

Q. Then coming to the Savard period, we have here Exhibits 6 and 6-A, invoice, 10 1,000 cases Canada Club, 200 Amber Ale, and 100 Black Label, all \$1.75?—A. Yes.

Q. And the B.13s show how much a case?—A. About \$2.25.

Q. Then these B.13s are made out at London?—A. Yes.

Q. At the time the goods were ordered?—A. Yes.

Q. Why the difference between \$1.75 on the invoice and \$2.25 on the B.13s, made out at the same time in respect of the same shipment?—A. This is one via Hall at Point Edward. Savard did not want other competitors to know he was paying \$1.75 for beer.

Q. Was Hall a competitor?—A. No, he was not.

Q. Who was Hall?—A. An agent for the Carling Export Brewing & Malting 20 Company.

Q. Why should there be any difference between the price at Point Edward and in other places?—A. Oh at different places the price would be different. He would sell to different sub-purchasers in different cities.

Q. Then does the \$2.25 represent the price that he was selling to his sub-purchaser at?—A. I believe it would.

Q. And did you put in the B.13s at his request his re-selling price?—A. Yes.

MR. TILLEY: Your Lordship was asking about the shipments to Sarnia. While the quantities are not shown, your Lordship will see by Exhibit No. 112 the months in which shipments were made, prices are shown for certain months, indicating that 30 beer was sent there in those months. It was sent there only six months out of the period we are concerned with, apparently it stopped in November, 1924, and did not start again until July, 1926. This letter is written in November, 1924, and apparently then there is no shipment to Sarnia at all until on in 1926. So there must have been very few shipments to Sarnia.

MR. ROWELL: Then look at Exhibit 9 and 9-A, F. Savard, Detroit, C.P.R. dock, Windsor, 600 amber ale, and 600 black label, \$1.75.—A. Yes.

Q. And the B.13s, also made out at London on the same date?—A. For \$2.25.

Q. Is that another case of where you inserted the re-sale price of Mr. Savard in the B.13, or have you any other explanation of it?—A. That is the price, \$2.25. 40

Q. That is the re-sale price?—A. That he would sell it at on the other side.

Q. And you inserted it in the B.13?—A. Yes.

HIS LORDSHIP: Coming back to Sarnia, it looks as though the beer that was on board that barge was coming back to Canada, beer that you had shipped for export and came back to Canada.

MR. TILLEY: It may have done it, but I do not know whether there is any connection between the two things. Apparently when the letter was written and this investigation took place there were no more shipments made to Sarnia for a year and a half.

HIS LORDSHIP: Well I am only dealing with what he saw there.

10 MR. ROWELL: When you saw the barge it was stationary there and being used as an open bar?

MR. TILLEY: What do you mean by a stationary barge?

HIS LORDSHIP: Well it was in the water?

WITNESS: It was afloat out in the water.

MR. ROWELL: Moored to what?—A. To the ground.

HIS LORDSHIP: In to the pier?—A. No, there was a gang plank to go out to it.

Q. On the bank?—A. No, it is all dockage along Sarnia there.

Q. Is it shallow there?—A. No, 35 or 40 feet of water, right in the channel.

Q. They can come with a barge to nose the shore?—A. They could not get up
20 on the shore though.

Q. But they would come to the shore?—A. Yes.

MR. ROWELL: I understood you to say to my learned friend that sometimes it was some time after the date of the B.13—I am dealing now with the period when the B.13s were all made out at London—some time after they were dated at London before they were returned stamped by the Customs. I think you said sometimes you got a B.13 back as long as a year after.—A. I have said no such thing.

MR. TILLEY: He said it might be some time.—A. It must be some other witness, I was not asked that question.

MR. ROWELL: Certainly yesterday, referring to Palmer's evidence, you said—
30 A. Not to you, Mr. Rowell.

Q. You said to Mr. Tilley—A. Yes, it would be sometimes a long time.

Q. How long would it be?—A. Oh it might be a year.

Q. From the date on which the B.13 is dated at London?—A. Yes.

Q. And the date it bears the Customs stamp?—A. Yes.

Q. Might be a year?—A. Yes.

HIS LORDSHIP: How do you explain that?—A. My lord, when the B.13s come into the export dock they are filed in a shelf, and there is beer coming in and going out every day, so that a B.13 that would come in possibly to-day—

Q. Come in to-day from London?—A. London, and the beer that would come
40 in from London may be at the bottom of the pile. The last in is the first out, and it is possible for it to be standing there for a long time. And the beer too.

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MR. ROWELL: Then I find here, just looking at this list of B.13s—this was one of the later lists that came up from Ottawa after the 30th of April—I find here B.13s dated at London, April 27th, and bearing the stamp June 22nd.—A. Yes.

Q. That does not surprise you at all?—A. Not at all.

Q. Then I see another bearing the London stamp, April 16th, 1927, and bearing the Customs stamp at Walkerville September 12th.—A. Yes.

Q. That does not surprise you?—A. Not at all, Mr. Rowell.

Q. Then there is one here, entry 41368, dated November 12th, 1926, and bearing the stamp at Sandwich of June 29th, 1927.—A. That is quite possible.

Q. That does not surprise you?—A. No, not at all. The last in the dock is 10 first out. It is possible to have it.

HIS LORDSHIP: Who would get these B.13s coming from London?—A. I would get them in some instances. In other instances the Customs used to get them.

Q. Would they get the B.13 before passing the beer?—A. Oh yes, they would always get them before passing the goods.

MR. TILLEY: Before opening up the car.

MR. ROWELL: Just now my learned friend should not give the evidence.

MR. TILLEY: Well he said so yesterday. Ask the witness.

WITNESS: They checked the car and the B.13s that accompany the goods wherever they go. 20

Q. Into the warehouse?—A. Yes.

MR. ROWELL: Then coming to that, this method of handling; you said the cars come down sealed?—A. Yes.

Q. Is that the railway seal?—A. Yes.

Q. Not the Customs seal?—A. No.

Q. No Customs seal?—A. No.

Q. It is just like all railway cars carrying goods are sealed?—A. Yes.

Q. And this car would be sealed just the same as any other railway car carrying goods?—A. Yes.

MR. TILLEY: Now my friend is putting that. That is so as to the seal itself, 30 but the direction on the bill of lading is, Not to be opened—

MR. ROWELL: I submit my learned friend should not interrupt when I am asking the witness on points like this. I am coming to both forms of bills of lading.

Q. The seal has to be broken before the goods can be taken out?—A. Yes.

Q. And you say when the goods were taken out the Customs officer was there? —A. Yes.

Q. And the goods are removed from the car?—A. Yes.

Q. And transferred to the warehouse or dock?—A. Yes.

Q. And the Customs officer was there when they were taken out of the car —A. Yes. 40

Q. Then you told me yesterday that after he seized the B.13s when they are taken out of the car the B.13s were handed to you or someone there at the dock?—A. Yes.

HIS LORDSHIP: Then you brought them into the warehouse?

MR. ROWELL: You bring the goods into the warehouse.—A. Yes.

Q. And you put the B.13s, you have told us, in a case there was it?—A. In the broker's office there.

HIS LORDSHIP: Has the Customs officer any control of those when they are in the warehouse?—A. No, not of the B.13s.

MR. TILLEY: Your Lordship will please remember that the B.13s are not yet stamped at that time.

HIS LORDSHIP: No, but they are out of the sealed car, and they go to a warehouse over which the Customs have no control.

WITNESS: Well the Customs officer is present.

Q. When it is moved?—A. He is present at both warehouses.

Q. Has he an office there?—A. At the LaSalle warehouse, yes, my lord.

MR. ROWELL: Has he an office at the Windsor warehouse?—A. Yes.

Q. Is it a Customs warehouse over which the Customs have control?—A. Yes.

Q. You swear that?—A. Now just—

Q. Is it a Customs warehouse over which the Customs have control, a bonded warehouse?—A. No, it is not a bonded warehouse.

MR. TILLEY: Well please be accurate in your questions.

MR. ROWELL: I will be accurate, and my learned friend should not interrupt.

MR. TILLEY: You have stated the question two or three times, as if you were not getting an answer, and the third time you put in the word "bonded."

MR. ROWELL: Because I want to make the witness understand I mean bonded.

Q. It is not a bonded warehouse?—A. It was an office, and in this office the Customs officer stands with his stamps, and next to the office at the LaSalle dock was the Customs broker.

HIS LORDSHIP: A Customs broker is not a Customs officer.—A. He would make the Inward and Outward for the Customs officer to stamp and check the goods into the boat.

MR. ROWELL: The Customs broker is not a Customs official.—A. I know that.

Q. He is not in the employ of the Customs at all?—A. No. But the Customs officer was there.

Q. Well, please deal with the Customs broker now.—A. Well now it is the broker.

Q. It is now the broker. Did the Customs broker have custody of the B.13s?—A. Yes.

Q. The Customs broker had custody of the B.13s?—A. Yes.

HIS LORDSHIP: From what time to what time?—A. From the time it will come from the car, after it is taken from the car on a truck to the dock. When it gets into the dock the B.13s are handed to the Customs broker.

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MR. TILLEY: By whom?—A. By the truck driver that carries the goods. It is put into the dock and the B.13s handed to the Customs broker on the dock.

MR. ROWELL: Then the Customs broker keeps the B.13s?—A. Yes.

Q. And he is there to make out the—?—A. Inward and Outward.

Q. The Inward and Outward entries, and to facilitate the shipments?—A. Yes.

Q. Who was your Customs broker at LaSalle?—A. Mr. Peachey.

Q. Who was your Customs broker at Walkerville?—A. Mr. Mason.

Q. Mr. Morrison has told us that these were not paid from London, he has no entry of any payments being made to these Customs brokers from the Carling Brewing & Malting Company in London.—A. No. 10

Q. They were not paid by the Carling Export Brewing & Malting Company of London?—A. No.

Q. Who paid them?—A. I did.

Q. Out of what fund?—A. Harry Low Special Account. I got that money from London.

Q. But you have told us that was deducted from the profits before the split was made?—A. Yes.

Q. It did not come out of the price the Carling Company was to receive?

HIS LORDSHIP: Deducted from the sale price?

MR. ROWELL: From the sale price of Savard, yes. 20

Q. It did not come out of the Carling Company, out of their price?

WITNESS: No.

Q. And the moneys you got from London in the Harry Low Special Account were all recouped to the Carling Company? You say they did not come out of the \$1.75?—A. No.

Q. How did the Carling Company get repaid those moneys?—A. The Carling Company got \$1.75.

Q. But you have told us you got this money from London for the Harry Low Special Account?—A. Yes.

Q. I want to know how it was repaid to the Carling Company.—A. It was paid 30 in a lump sum.

Q. Paid back to the Carling Company?—A. The Harry Low Special Account, none of that money was paid to the Carling Company. That was money I drew from the Carling Company.

Q. Well how did the Carling Company get it back?—A. They did not get it back.

Q. Then was not that deducted from the sale price?—A. No, that was in the split of profits.

MR. TILLEY: Mr. Rowell was asking, You got the money for those expenses in the Harry Low Special Account from the Carling Company, and then you used it?—40
A. Yes.

Q. How did the Carling Company get their money back?—A. They charged it up against the Savard account in London.

MR. ROWELL: And it was paid by Savard?—A. Yes.

Q. That is your statement, is it?—A. The \$1.75, Savard paid \$1.75 all the way through for the beer.

Q. Did he pay this account in addition?—A. No. This money was paid in addition.

MR. TILLEY: Well repaid in addition?

HIS LORDSHIP: We have been talking a great deal, and we have not got it.

10 Q. Savard paid \$1.75?—A. Yes, my lord.

Q. Who paid these charges that we are now mentioning? You said it was the company that gave you the money to pay.—A. I got the money from the company for to pay those charges.

Q. Do I understand that though Savard sold at \$2, when you came to adjust you would deduct that amount?—A. The expenses from it.

Q. And then you would—A. Split the profits.

MR. ROWELL: Now that does not quite clear the point. The Carling Company you say got \$1.75—A. Yes.

Q. In the meantime the Carling Company had paid out these moneys to you?—
20 A. Yes.

Q. How did the Carling Company get those moneys back again, if they ever got them back again?—A. That is a matter for London, I don't know.

HIS LORDSHIP: They did not get it, since you split between the three of you outside of the company.

MR. ROWELL: You do not know how they got it back?—A. I cannot answer an accounting question, because I do not know.

HIS LORDSHIP: It looks as if the company was the milch cow, they would milk it until there was nothing left, and divide their profits among themselves, which came to the same thing as far as they were concerned.

30 MR. ROWELL: Then when you came to transfer the goods from one dock to the other you told my learned friend yestereay that they were accompanied by B.13s.—
A. Yes.

Q. If they were not accompanied by B.13s they would be liable to seizure by the Ontario liquor officers?—A. We could not export them if they had not B.13s.

Q. I am not asking that. I am asking, if they were not accompanied by B.13s they would be liable to seizure under the Ontario Temperance Act?

MR. TILLEY: That is a matter of law, what the Ontario Temperance Act could operate on.

HIS LORDSHIP: We do not care about that.

40 WITNESS: I could not operate without B.13s, I would have to have them.

MR. ROWELL: I am not asking that, I am asking if you did not know they were

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liable to seizure under the Ontario Temperance Act unless accompanied by B.13s indicating that they were goods for export.

MR. TILLEY: That is a matter of law.

HIS LORDSHIP: That question does not arise here.

MR. ROWELL: Then you said to my learned friend that the boat sometimes stayed a day or two days, was it, because of a blockade on the river? I did not quite understand what you meant.—A. Storms and blockades.

Q. Well you spoke of the American officers.—A. Yes.

Q. Just tell us what you mean.—A. Well, when the boats would get into the canal at LaSalle and get loaded the American officers used to stop sometimes at the 10 head of the canal, stay there in his boat, and our boats could not get out to the American side.

Q. How long would they remain there?—A. Until they were moved.

Q. Until they got a chance to get out?—A. Yes, until the American officer moved away.

Q. Would they remain there as long as all night?—A. Oh yes.

Q. Remain all night loaded ready to go, but could not get out because of the American officer?—A. Yes.

HIS LORDSHIP: Do you not think, if the Americans really did not want that beer they could stop it? 20

MR. ROWELL: Well, my lord, we are not now determining that.

HIS LORDSHIP: But I hate a canting policy.

MR. ROWELL: That is a matter for the American Government, my lord.

MR. TILLEY: Your Lordship will remember Mr. Grimm swore that they were doing everything they could to stop it.

MR. ROWELL: You spoke of a Customs officer being down there. Where did he have his office? Did he have a desk in the dock office?—A. Yes.

Q. It was the office of the dock or warehouse in which you gave him a desk for the purpose of—A. Facilitating his work.

Q. And his work was to deal with the clearances and the B.13s?—A. The Inward 30 and Outward clearance of the boats.

Q. And that is what you mean by referring to the Customs officer having an office there?—A. Yes.

Q. Then you told my learned friend yesterday that you often received, I think you said hundreds of thousands of dollars, from Savard?—A. Yes.

Q. Are you speaking of moneys that were collected at the docks and paid into the account, or moneys received directly from Savard?—A. Directly from Savard.

Q. And will we find deposits of hundreds of thousands of dollars apart from the receipts from the docks in that Carling Bank account, Windsor?—A. You will find \$20,000, \$40,000, \$60,000 deposits, yes. 40

Q. Savard was a man of financial responsibility?—A. Yes.

Q. And you were prepared to trust him, to let goods go out without paying?
—A. Yes, quite proper.

Q. Any goods he wanted he could have without paying?—A. Yes, up to a couple of hundred thousand.

Q. Was that equally true of Grandi?—A. No.

Q. Did you get the money from Grandi before the goods left the shore?—A. No, we did not, but we lost about \$60,000 with Grandi.

Q. You did trust him, but you lost on it?—A. Yes.

Q. Do you recognize Kennedy's signature of that letter? (Showing document to 10 witness).—A. Yes.

Q. Who was Mr. Goodman?—A. Mr. Goodman was some auditor that had come to the London office.

Q. An auditor at the London office?—A. Yes.

Q. Mr. Morrison told us he was the Company's auditor for a certain period.
—A. For about three days, or four days, I believe.

Q. Well, we have not had that information, that is we have not been informed of such a limited period. How do you happen to know how long he was auditor at the London office?—A. I don't know, but I know it was very very short.

Q. This is a letter from J. A. Kennedy to the auditor, on the Carling Export 20 Brewing & Malting Company's paper, dated Windsor, Ontario, September 7th, 1925.

MR. TILLEY: I do not know how it is evidence against us.

MR. ROWELL: It is dealing with accounts at Windsor. It is addressed to Mr. Goodman, who was the auditor of the company.

MR. TILLEY: At a certain time.

HIS LORDSHIP: At such time as he was auditor.

MR. TILLEY: Where was he auditor?

WITNESS: London. This is not addressed to him in London.

MR. ROWELL: His office was in Montreal, you know that.—A. No, I don't know 30 that.

Q. Well, that has been told us by Mr. Morrison. He was auditor, and at a certain period he ceased being auditor, he resigned.—A. I don't think he resigned, he was fired out.

MR. TILLEY: Well I do not know that that is material. I do not want to get into that discussion.

MR. ROWELL: As to the dates, is that Mr. Burns's letter?—A. That is his signature.

Q. That is a letter accepting Mr. Goodman's resignation as auditor. The resignation is September 8th, this letter is September 7th.

40 MR. TILLEY: And apparently his resignation was before the 8th, because this is written from Montreal apparently.

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HIS LORDSHIP: Well, Mr. Rowell, unless it is important, I do not see that in those circumstances it should carry any weight. If the man is thanked for his services on the 8th, and the letter to him is the 7th, it looks as if there was some friction, and probably animus.

MR. ROWELL: No, my lord, this letter does not deal with any question of that at all.

HIS LORDSHIP: But the animus might have been there. It is dangerous evidence.

MR. ROWELL: I think if your Lordship sees the letter—

HIS LORDSHIP: Do you object to it? 10

MR. TILLEY: I do not want to take up much time about it. Subject to my objection I am willing your Lordship should admit it.

HIS LORDSHIP: There is a great deal of it which in my view of the case will be absolutely useless.

EXHIBIT No. 126: Letter, dated Sept. 7th, 1925, J. A. Kennedy to M. Goodman.

MR. ROWELL: (Reads Exhibit 126.)

HIS LORDSHIP: Kennedy was Savard's clerk?

MR. TILLEY: No matter who he was, I cannot see what that has to do with this case. I see it was made an exhibit at the Royal Commission too.

MR. ROWELL: Kennedy states that "I have taken off and balanced my beer 20 Accounts Receivable." Did Kennedy have records then of the shipments of beer in and out?—A. That would be Receivable from Savard, I presume. I don't know what else he is talking about.

Q. But he is writing your auditor in connection with the accounts.—A. He is writing after he had resigned.

MR. TILLEY: Well never mind about the date, just the letter.

MR. ROWELL: He says: "I am having Mr. Low phone for these to-night." Did you ever discuss with Kennedy the question of the accounts, and getting the accounts in shape?—A. The amount Savard owed us, yes I have discussed that with him. 30

Q. Then he said: "I am going ahead with my whisky trial balance." Is that the liquor accounts we were referring to, Low, Leon and Burns?—A. No, that is liquor accounts that Savard owed.

Q. Well you told us yesterday Savard was connected with that Low, Leon and Burns transaction. Now I want to know if the reference to whisky accounts here referred to the transactions covered by the Low, Leon and Burns agreement.—A. No.

Q. What did they refer to?

MR. TILLEY: Has this case anything to do with whisky? I object to dragging this out, something that has nothing to do with my case at all.

MR. ROWELL: Then you referred yesterday to your offices in the freight office 40

at Windsor. That is not the main C.P.R. station at Windsor?—A. No, it is the old main station.

Q. And you now have it rented, the Carling Company has it rented?—A. No, the Security Transportation Company now.

Q. But in the time we are discussing here the Carling Export Brewing & Malting Company had these freight sheds rented?—A. Yes.

Q. And you used those freight sheds for the purpose of storing your goods.

MR. TILLEY: We have had that three or four times.

MR. ROWELL: I rather gathered from the way the witness put it yesterday that
10 it was the C.P.R. station.

WITNESS: Their freight sheds.

Q. But it is not their main freight sheds?—A. It is a subsidiary, it was the main station.

Q. It was at one time?—A. They have now built a larger one.

Q. And you have rented it and used it—

MR. TILLEY: I think the fact is that at that time it was.

WITNESS: It was some years ago the main freight sheds.

MR. ROWELL: It was not at any time, during which you were in occupation, the main freight shed of the C.P.R.?—A. It is one of their freight sheds.

20 Q. Please answer the question, it was not the main freight shed at any time you were operating there?

MR. TILLEY: What does the word "main" mean? Where the larger quantity goes, or age, or what?

MR. ROWELL: Then do you know Mr. Hawker, who was the Yardmaster of the C.P.R. at Windsor?—A. Yes.

Q. Did the handling of the cars come under Mr. Hawker?—A. He was the Yardmaster.

Q. And consequently had to do with handling the cars that came over the C.P.R.?—A. Yes.

30 Q. Were you acquainted with Mr. McGowan?—A. Mr. McGowan the Yardmaster of the Michigan Central?—A. Yes, I have met Mr. McGowan.

Q. You are acquainted with both of them?—A. Yes.

Q. Did you see Mr. McGowan in Mr. Hawker's company in reference to arranging for switching cars?—A. Yes, I seen him.

Q. Switching cars of Carling beer?—A. I never seen him about that now. I will give the evidence. We have been through this about four times, so you know I am pretty well familiar with it.

Q. You saw them?—A. Yes.

Q. And had a conversation with them in reference to switching cars?—A. Yes.

40 Q. And you heard what McGowan said in reference to it?—A. I read what he said.

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HIS LORDSHIP: Has it any bearing on the case?

MR. ROWELL: Bringing it in as Carling beer and sending it out as something else, that is the point, my lord.

MR. TILLEY: Sending it out where, Mr. Rowell?

HIS LORDSHIP: You better not use the word "switching" in that meaning, because the word "switching" by itself does not mean that.

MR. ROWELL: Well sending out cars camouflaged as something else.

WITNESS: No, that was never stated.

Q. Do you remember Hawker saying that you had called on him?—A. Yes.

Q. And asked for him to go with you to see McGowan?—A. Yes. Hawker said 10 he could not ship the cars into the United States over his railroad, because it was the C.P.R., but they could do it through the Michigan Central Railroad.

Q. And you went with him to see McGowan?—A. Yes.

Q. Do you remember him saying this: "He wanted to know from me—"

MR. TILLEY: We are not concerned with this. My friend's question to this witness, he is asking this witness to verify extracts from the Royal Commission. I was not there to cross-examine McGowan. Let him ask this witness what he has to say about it. I do not know why my friend should seek to prove that we were trying to get things into the United States.

MR. ROWELL: Do you remember him saying that this was your proposition:— 20

"The proposition was to have the cars of beer brought in I presume from their brewery in London to Windsor, which would be accompanied by a regular bill, and be delivered to the Michigan Central on their interchange. Everything was to be above board in connection with the C.P.R. movements, but the movement of the beer or whisky from Windsor would be an illegal movement.

"Q. And concealed under a false bill of lading?—A. No. The car would be originally billed from some point in the United States with a regular bill of lading, but the car would not be loaded, it would be an empty car accompanied by all seals, and when it got into Windsor it was to be placed so that the car of beer that came in on the C.P.R. could be trans-shipped into it, and could be 30 forwarded again under all Customs seals intact."

Do you remember him saying that was your proposition?—A. There was never no cars in that—

Q. Please answer the question. I ask you, Do you remember Hawker stating that that was your proposition?—A. No, I never heard Hawker state it at all.

HIS LORDSHIP: Well what do you say to what has just been read to you?—A. I can say what I know myself.

Q. That is what I am asking you.—A. This is what some other man said, that I did not hear or see.

Q. What do you say to it yourself?—A. I can make an explanation of my own. 40

MR. TILLEY: That is what you are asked.

HIS LORDSHIP: What was the transaction to which this refers?—A. I went to see Hawker of the C.P.R. to see whether he could put cars of Carling's beer direct into the United States, and he told me that the C.P.R. did not run into Detroit, and he could not put them in on his railroad, but he would bring me to a Mr. McGowan of the Michigan Central Railroad who could take and transfer the car from the C.P.R. to the Michigan Central and shoot it through the tunnel into Detroit. That was the basis of my conversation.

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MR. ROWELL: Shoot it through the tunnel billed as what?—A. I am not a railroad man.

10 Q. Billed as what?—A. Whatever commodity they would bill it as. We billed it as beer from London.

Q. You are speaking of the conversation you were telling His Lordship of. What were the goods to be billed as in that way?—A. Mr. McGowan stated, my lord, that we would have to bill it as some other commodity besides beer, else we could not get it through.

HIS LORDSHIP: Did I not understand that this company billed the car to Windsor? Your car was sent to Grandi or Savard, as the case may be, to someone on the Canadian frontier?—A. Yes.

Q. And it was your American purchaser who was supposed to direct what would 20 be done from that, and not you, as I understand?—A. Yes, we exported. The purchaser took it into the United States, it was not us.

Q. Then you had no business in respect to that. Your delivery was on Canadian soil?—A. Yes, our delivery was on Canadian soil.

MR. TILLEY: No business was done under this that my friend is talking about. I do not know why it is referred to.

MR. ROWELL: It goes to the credit of this witness.

MR. TILLEY: Oh very well, if it is credit.

MR. ROWELL: Then McGowan was the Yardmaster of the Michigan Central?—
A. Yes.

30 Q. Do you remember his stating this, referring to your conversation with him when Hawker was there? He said he would like to work some cars down to an eastern point on the New York Central loaded with beer, he would like to have the cars handled one or two each week over to Windsor, and I would be advised of the number of the car, and I was to mishandle this car by handing it to the C.P.R. in error, and the beer would be transferred into the car—

MR. TILLEY: Just a moment. I do not know why my friend should read all this statement by someone else. Mr. Low did not hear it, was not there.

HIS LORDSHIP: If Mr. Low says he is not telling the truth and I am telling the truth, that will not shake the confidence I have in Mr. Low as a witness unless you 40 bring that man here and I can see him.

MR. ROWELL: Yes, my lord, I can only ask Mr. Low in reference to this.

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MR. TILLEY: But you are reading it first, and going to get the statement from Mr. Low that he did not hear this evidence at all, as I understand.

HIS LORDSHIP: He has already said that he did not hear that evidence being given.

MR. ROWELL: Do you say, Mr. Low, that you were not present when McGowan and Hawker gave their evidence?—A. I say I was not present, and never heard one word of what you are reading there.

Q. And were never asked about it?—A. I have been asked about it and denied it all.

Q. Does this letter (showing document to witness) bear your signature?—A. 10
That is my signature.

Q. That is a letter addressed to the General Superintendent of the C.P.R. at Toronto?—A. Yes, and my brother stated and took an oath that he wrote that letter. It was his letter.

Q. Please just answer the question. Was Hawker dismissed?—A. Yes.

Q. —because of his participation in this matter?—A. I don't know.

Q. And this letter, which bears your signature?—A. Yes.

HIS LORDSHIP: Where is it written from?

MR. ROWELL: Written from Windsor on the 30th of July, 1925, addressed to Mr. Grout, the General Superintendent, Canadian Pacific Railway, Toronto." 20

(Reading Exhibit No. 127 down to "I can assure you, Mr. Grout, that the dismissal of Hawker through one of my men has distressed me greatly.")

May I pause there? Your brother Sam Low did not see them at all? He had not had any interview at all?—A. No, I had the interview.

Q. It was Mr. Low himself who had the interview?—A. Yes.

Q. This statement in the letter that it was Sam Low who had the interview is not correct?—A. Not correct.

Q. (Continues reading of Exhibit, to end.)

Now Mr. Sam Low, as you say, had not seen the parties at all? You were the party who saw them?—A. Yes. 30

Q. And the man who saw them was not half inebriated, he was in his sober senses, that is correct, is it?—A. Yes.

EXHIBIT No. 127: Letter of July 30th, 1925, Carling E.B. & M Co. Ltd., signed Harry Low, to H. C. Grout, Gen'l. Supt. C.P.R., Toronto.

HIS LORDSHIP: I suppose he will admit it is not a very manly letter, to deny that it was himself and put his brother, but it is not illegal.

MR. TILLEY: Mr. Rowell I presume is going to ask the explanation.

HIS LORDSHIP: It was your brother who wrote that letter?—A. Yes, my lord.

HIS LORDSHIP: Well the one who misstated the fact did an unmanly thing.

MR. TILLEY: I suppose my friend has heard this two or three times, from this 40
witness and Sam Low, and all the rest, is he not going to ask Mr. Low what he has to say about the letter?

HIS LORDSHIP: It is not Mr. Low's letter.

MR. ROWELL: Mr. Low has signed it.

HIS LORDSHIP: Is this the witness's letter?

MR. TILLEY: His signature is on it, but it was dictated by Sam Low, and he will explain the circumstances if my friend gives him an opportunity.

HIS LORDSHIP: Did you not read it before you signed it?

WITNESS: No, I did not, my lord. I read the first page.

HIS LORDSHIP: Do not tell me things I cannot believe you know.

MR. TILLEY: Let the witness explain.

10 HIS LORDSHIP: Just ask whatever question you want.

Q. You are not the man who interviewed these people?—A. Yes, I am the man that interviewed them.

MR. ROWELL: Mr. Hawker was not reinstated?—A. I do not know, Mr. Rowell.

Re-examined by Mr. Tilley:—

Q. Mr. Low, at the time this letter was written Mr. Hawker apparently had been dismissed or suspended by the C.P.R.?—A. Yes sir.

Q. Did you dictate this letter?—A. No sir.

Q. Or instruct it to be given?—A. No sir.

Q. When did you first see the letter?—A. When I came back from Halifax.

20 Q. Were you away at the time it was prepared?—A. Yes, I was in Halifax.

Q. When you came back from Halifax were you asked to sign it?—A. Yes, I was.

Q. By whom?—A. By my brother.

Q. Were you given an explanation by him as to why it was to be signed?—A. He said Hawker was going to lose his position, and Hawker had come to see my brother and asked him to write a letter to the C.P.R., which he had done.

Q. That is Hawker had come to him and asked him to write a letter, and he had done it?—A. He had done it.

Q. And he wanted you to sign it?—A. Yes.

30 Q. Did you read the letter through?—A. No, I did not.

HIS LORDSHIP: You must have read enough to see that it was a misstatement.—A. Oh I knew it was a misstatement.

MR. TILLEY: Why did you sign it if it was a misstatement?—A. For to assist Hawker.

Q. Who was losing his job?—A. Yes.

Q. And it was prepared by your brother at Hawker's request?—A. Yes.

Q. And it was sent to Mr. Grout, and you do not know whether Hawker kept his job or not?—A. I don't.

40 Q. Now did you ever carry on business under the proposition discussed with Hawker?—A. None whatsoever.

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Q. Did you ever yourself, or through your company, or by any of your officials bill any beer otherwise than as beer?—A. No, never was, not to my knowledge.

Q. Your suggestion at that time was to see whether the car itself with the beer in it could be got into Detroit?—A. Got into Detroit.

Q. And the C.P.R. told you they could not carry it into Detroit?—A. Because they did not run into Detroit.

Q. And it would have to be done by the Michigan Central if it was done?—A. Yes.

Q. And this discussion amounted to nothing except that Hawker lost his job?—A. Yes. 10

Q. And your brother wanted you to sign that letter to try and save him his job is that it?—A. Yes.

Q. Is there anything else you want to say about the letter?—A. Nothing else.

Q. You have been over this letter two or three times?—A. Oh quite often.

Q. You gave evidence at the Royal Commission, and Mr. Burns gave evidence?—A. Yes.

Q. Now let us deal with one or two other things. You were asked about a barge that was adjacent to the shore at Sarnia.—A. Yes.

Q. Do you know where the liquor that was on the barge came from?—A. No, I don't. 20

HIS LORDSHIP: We do not care about liquor, but the Carling beer.

MR. TILLEY: Yes, I mean that.

Q. Do you know where that came from, that is as between the Canadian side or the American side, or what?—A. I do not know where it came from, but Loughead has a dock which we were shipping through to Grandi, and I presume that he must have taken some of the beer or sold some of the beer to this party, and for that reason—

HIS LORDSHIP: He sold it?—A. Stole some of the beer.

MR. TILLEY: And for that reason what did you do?—A. Moved everything off his dock. 30

Q. That is to say when you found there was suspicion as to where this Carling beer might have come from you stopped using his dock?—A. Yes.

Q. And does that account for the gap from November, 1924, to on in 1926, before you shipped anything more to Sarnia?—A. Yes, we transferred from there to Port Lambton.

Q. You changed to Port Lambton. Now Johnston gave some evidence about a seizure in Huron County, do you remember that?—A. Yes.

Q. I think he spoke of some proceedings connected with it, in Court. Was it up in the Police Court?—A. Yes, the Police Court.

HIS LORDSHIP: Are these the three cars? 40

MR. TILLEY: It was 207 cases, I think.

WITNESS: 200 odd cases.

Q. Will you explain what happened about that?—A. That was at Goderich.

MR. ROWELL: Was Mr. Low present?

WITNESS: I was present in Court, yes. The beer was moved out of the box car into the freight sheds at Goderich. The freight sheds adjoin the water there.

MR. TILLEY: Was it ever export beer?—A. Export beer. The Ontario Provincial Police seized the beer for it being in a place other than a private dwelling.

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Q. Claiming it was in an illegal place?—A. Claiming it was in an illegal place. There was a charge laid against the Carling Brewery for having beer in a place other than a private dwelling, and we were fined \$200. We appealed it, and the decision

10 was reversed, but when we were fined the \$200 the Government confiscated the 200 cases of beer, and it was six or eight months afterwards before our appeal was settled, and we never got our beer back, and did not bother trying to, because it would not have been any good. That would account for 200 and some odd cases there.

HIS LORDSHIP: Did you get the value of it?—A. It was not our beer, it was Grandi's.

MR. TILLEY: That is it was shipped to Grandi for export?—A. Yes.

Q. And it was seized in a place claimed to be an illegal place, but held by the Court to be a legal place for export beer?—A. Yes.

Q. And the fine was remitted?—A. Yes.

20 Q. And the beer, which was quite legally there, went to the Government Dispensary?—A. Yes. We could not claim to get it back because it was sold to Grandi for export.

Q. At any rate you got the fine back?—A. Yes.

HIS LORDSHIP: Was not the beer under your control from London?—A. Yes, my lord.

Q. It was under your control when it was seized?—A. Yes, and we were fined for it, but we afterwards had it remitted by the Appeal Court.

Q. That beer never went across?—A. No, it did not go across.

MR. TILLEY: Then you were asked about the Customs broker having the B.13s.
30 How long did they stay with him?—A. Until the beer was exported.

Q. Then what happened?—A. He would hand the Inward and the Outward—at least the Outward and the B.13 to the Customs officer, who would check the number of cases of beer out of the warehouse into the boat.

Q. So that the Customs officer would check them into the warehouse and check them out of the warehouse?—A. Into the boat.

Q. And then clear the boat?—A. He would clear the boat.

Q. Then you explained I think how it was that a boat might be loaded before it could be cleared, because they did not want to go out.

MR. ROWELL: He did not say before it was cleared.

40 MR. TILLEY: He did to me, and I noticed you did not follow it up.

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Q. You said boats would have a load on sometimes in the slip and not be able to get out?—A. Yes.

Q. When would they be cleared?—A. When they were getting their outward.

Q. And when would that be? When they were ready to go?—A. When they are ready to go.

Q. You were asked about shipment to Baradino I think?—A. I have not been asked.

HIS LORDSHIP: That name was mentioned.

MR. ROWELL: It was mentioned by some other witness, I did not ask anything about it. 10

MR. TILLEY: Where was he located?—A. Pittsburgh.

Q. Were there any special arrangements about shipments of that kind?—A. Yes there was with Baradino.

Q. What?—A. I agreed that I would see the beer laid down in Pittsburg for him.

Q. That is to say, instead of the purchaser paying the haulers you agreed to see that it was laid down in Pittsburgh?—A. Yes.

Q. Is that what accounts for the higher price there?—A. Yes, he had to pay quite a bit higher.

Q. Did the Company get, according to this arrangement, its regular price?—A. 20 Yes, its regular price.

Q. From Grandi or Savard?—A. No, this to Baradino was sold to Baradino.

Q. Were there other cases like that?—A. Yes, there was some.

Q. Many? Were those the ones Mr. Morrison referred to in his evidence?—A. Yes.

MR. ROWELL: If he is going to speak of that he should particularize them, when he says there were others of that kind.

WITNESS: Well there was others, but I can't—

MR. TILLEY: There were others where goods had to be laid down at some inland place.—A. Inland place. 30

HIS LORDSHIP: The question that is important there is whether that was shipped with a B.13.

WITNESS: Yes, it was shipped with a B.13, and exported to the United States, and then carried inland.

MR. TILLEY: And of course there were special charges for doing that?—A. Yes, there was.

Q. You spoke of getting substantial sums of money from Savard direct?—A. Yes.

Q. Did that occur with Savard personally only, or with any others acting for him?—A. Oh I got it from others acting for him. 40

Q. For instance——?—A. Kellner.

Q. Up to what time did you receive money in that fashion?—A. The formation of the Bermuda Export, that is speaking of beer.

Q. Yes, I am speaking of beer. Then you were asked about certain shipments that I need not follow through again. You say that the shipment to Johnston was actually paid for by United States draft?—A. Yes.

Q. And it was shipped by you for export with the B.13s and the documents, to be exported?—A. Yes.

Q. And something was done by the consignee or some person other than you?—A. Yes.

10 Q. And it resulted in the cars getting into difficulty?—A. Yes.

Q. You had not anything to do with that at all?—A. Nothing whatsoever.

Re-Cross-Examined by Mr. Rowell:—

MR. ROWELL: Might I ask a question in reference to what my friend asked about the boats clearing? I understood him to say to my learned friend that when they were ready to go,—I understood the witness somewhat differently in his answers to me.

Q. You told us that the goods, after being loaded, on certain occasions would stay in the boats all night, because of the American officers.—A. Yes.

20 Q. If the American officer was not there, if they got word, would they leave in the night?—A. They could not without a clearance.

Q. Do you swear that the boats when loaded and ready to go did not have a clearance?—A. Just ask that question again.

Q. I say will you swear that the boats, when loaded at the dock, did not receive their clearance, the outward clearance during the daytime before the Customs officer left at 6 o'clock?—A. Yes.

Q. They did?—A. They received their clearance.

Q. They received their clearance before the Customs officer?—A. Not always.

Q. Well as a rule they received their clearance before the Customs officer left at 6 o'clock?—A. Yes, as a rule.

30 Q. And there would be frequently many boats at the dock at six o'clock that had not gone out for various reasons?—A. Yes.

Q. And the Customs officer had left the dock at six?—A. He would leave at six.

Q. Would not those boats then, having got their clearance before he left, go out whenever they had the opportunity?—A. They would have their B.13s stamped when they got their clearance.

Q. Would they not go out whenever they got their opportunity?—A. Yes, they would go out when they got the opportunity.

Q. They got the clearance before he left at six o'clock?—A. The clearance and

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the B.13 stamped for the load, and they would go out whenever they got the opportunity.

Q. And these papers would all be stamped before the Customs officer left at 6 o'clock?—A. Yes.

MR. TILLEY: Does that apply to the cases you have described where they were held up because the Customs officer from the American side was outside?—A. No, that don't describe that at all.

MR. TILLEY: It is a different thing entirely.

MR. ROWELL: Then what is the situation when the American Customs officer is outside?—A. They would not get their clearance. 10

HIS LORDSHIP: You mean they would not ask for it?—A. They would not ask for it, they would leave it, stay there a day or two days sometimes.

MR. ROWELL: But the usual thing would be to get the clearance before the Customs officer left at 6 o'clock?—A. That is usual.

Q. That is the usual practice. Then one other point. You said you stopped shipments to Sarnia after you discovered that situation?—A. After I found that.

Q. Did not the Department of Customs and Excise threaten to cancel your license because of that situation?—A. They threatened to cancel our license for finding beer on this barge.

Q. And you stopped it, and your license was not cancelled. 20

MR. TILLEY: Now "you stopped it."

MR. ROWELL: Stopped shipping.

WITNESS: I did not stop the barge.

Q. The Carling Brewery stopped shipping to Sarnia to Loughhead?—A. Now listen, do you wish me to give the evidence?

Q. Yes, I wish you to give me the evidence.—A. Just ask me the questions.

Q. I ask you if as a result of the Government's threat, and of your own investigation, you stopped shipping care of Loughhead at Sarnia?—A. Not of the Government's threat. The Government's threat was of the barge. The barge had nothing to do with the Carling Breweries, there was numerous kinds of beer on it, and whisky 30 and that is where I found the bar room, not the dock.

MR. TILLEY: Was there any person that was annoying you at that time?—A. Yes.

Q. Who?—A. Mr. Egan, and Mr. Healy.

Q. In what way?—A. Mr. Egan was prosecutor for the Government, and Mr. Healy was a member of Parliament at Ottawa, and if we did not pay ten cents a case for our export beer they threatened to put me out of business.

HIS LORDSHIP: Pay ten cents to whom?—A. Graft.

Q. To whom?—A. To Egan.

Q. To both of them?—A. Egan was the Collector, he was the Government 40 prosecutor.

MR. TILLEY: A solicitor there, wasn't he?—A. Yes, a solicitor.

Q. And unless he got ten cents a case they threatened to put you out of business. Was that about this time?—A. Just around this time.

HIS LORDSHIP: Did you pay the ten cents?—A. No, I did not.

MR. TILLEY: Did you ever pay them ten cents?—A. No, I did not.

Q. What happened to Egan shortly after that?—A. He skipped the country.

MR. ROWELL: Of course, my lord, I submit this has nothing to do with this particular transaction.

MR. TILLEY: Well it is the barge.

10 Q. Do you connect that with the barge incident?—A. Yes.

MR. ROWELL: There is no evidence of any connection whatever.

HIS LORDSHIP: Well I would not say that. It shows an animus that might have stirred the letter coming from Ottawa, We will stop your license.

WITNESS: If they found any beer in Ontario they would stop our license. I have been told that a dozen times, my lord.

ARCHIBALD GRAY, sworn. Examined by Mr. Clark:—

Q. What is your occupation?—A. At the present time vendor of store 32, Liquor Control Board of Ontario, Windsor.

Q. During the period in question in this suit, during 1925, 1926, and the first 20 part of 1927, what was your occupation?—A. I was Manager of store No. 5, Ontario Government Dispensaries, at Windsor.

Q. How many Government stores were there in the days of the Ontario Temperance Act?—A. Eight.

Q. In the border cities?—A. Just the one in Windsor.

Q. That was for the whole County of Essex?—A. Well London was the nearest one.

Q. And you were the man in charge of that store?—A. Yes sir.

Q. Would you tell His Lordship how many cases, if any, of Carling's beer were for sale at that store during the Ontario Temperance Act days?

30 HIS LORDSHIP: 1924.—A. From the time I went there in 1920, until the Act went out of force, I received 15 cases.

MR. ROWELL: I submit that evidence is not relevant.

HIS LORDSHIP: I suppose we are going to get what he sold.

MR. ROWELL: I cannot see how it has any bearing on this claim, my lord.

HIS LORDSHIP: There is a great deal that is suggested. Here is another conjecture. There was a store there and they had some Carling beer. Where did it go? It might have gone to this, that and the other. Just a matter of conjecture.

MR. CLARK: How many cases did you have between 1924 and 1927?—A. Fifteen.

40 HIS LORDSHIP: I thought it was 1920.—A. From the period I was there that is all the cases I handled.

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Q. How many did you sell?—A. Fifteen, my lord, in that period.

MR. CLARK: And is that all of Carling's products that were in that Government store during the Ontario Temperance Act days?—A. Yes sir.

BERTI HENRY HAWKSWORTH, sworn. Examined by Mr. Clark:—

Q. What is your occupation?—A. Police Sergeant in the City of Windsor.

Q. During the year 1924 what was your occupation?—A. I was a patrol man attached to the Clean-up Squad of the City of Windsor.

Q. The duty of the Clean-up Squad of the City of Windsor consisted of what?—
A. Raiding what we call blind pigs, disorderly houses, gambling joints, opium dens, anything contrary to the law. 10

Q. Then in 1925 and 1926, and the first part of 1927, what were you doing?—A. I was the Sergeant in charge of the Clean-up Squad.

Q. The first year you were an officer and the latter two years you were the sergeant in charge of that Squad?—A. Yes, or one of the sergeants: We used to take it in turn to take part.

Q. How many raids on blind pigs did you conduct say in a month, on an average, speaking generally?

MR. ROWELL: I submit this has no relevancy.

HIS LORDSHIP: Where are we driving?

MR. CLARK: To show, my lord, that no Carling's beer was obtained in blind pigs 20 in the district during that time.

HIS LORDSHIP: It is negative evidence, isn't it?

MR. ROWELL: I submit it is very far afield.

MR. TILLEY: My friend has put in evidence of seizures.

HIS LORDSHIP: All right, it cannot hurt.

MR. ROWELL: Subject to my objection.

MR. CLARK: How many raids would you conduct on an average in a month during that 3½ year period?

WITNESS: Some days we would not raid any, then we would raid 5 or 6. We would average around 20 to 30 a week, roughly speaking. 30

Q. During that period. And I suppose you seized considerable quantities of beer?—A. Yes.

Q. Different brands?—A. Yes.

Q. Did you ever get any of Carling's beer on any of those raids during that period?—A. There was one occasion where we did, as far as what I can recollect at the present time.

Q. How many bottles were there on that occasion?—A. It was around a dozen. It was under a case anyhow.

Q. Where was that?—A. At the King George Hotel, corner of Sandwich and Goyeau Street, Windsor. 40

Q. That is the only occasion during that period that you can remember seeing any of Carling's beer?—A. Yes sir.

Q. Can you give His Lordship any reason for that, Sergeant?—A. I can explain, I think. The routine under which these places was run, the people of the house or premises would go to a medical practitioner—

Q. You are speaking of what is ordinarily termed a blind pig now?—A. Yes, they would go to a local doctor and get a prescription for a case of beer or ale—

MR. ROWELL: I suppose it is not necessary for me to renew my objection. I object to all this as being irrelevant.

10 HIS LORDSHIP: It is so remote that I do not know that I will attach much importance to it.

WITNESS: And they would take this doctor's prescription to the Government vendor, and they would deliver to this house one case containing ale or beer, whatever they had ordered.

And with that case would be what we used to call a chit, that designated specifically the brand of ale or beer which had been supplied to them.

Q. And the date?—A. And the date. Then on the case there would be a little round stamp with Ontario Government Dispensary, and the date of that delivery would be marked on the case.

20 We would go to these places and check them up, count up the bottles and all that, and if we found any other brand of beer or ale than was delivered to them by the Government Dispensary then we had a conviction on them right there. The consequence was that these people did not buy any other brand only what was on the case designated.

HIS LORDSHIP: What about this Carling beer that you saw in the King George Hotel, had it the mark of the Dispensary?—A. No, my lord, it was loose.

MR. CLARK: Then if you found on a raid a brand of beer that was not obtainable at the Government vendor's what did that mean?—A. I am afraid the folks would be out of luck. They would be prosecuted and fined.

30 Q. What kind of evidence would you call that?—A. They would be charged with illegal purchasing under the O.T.A., it would be absolute conclusive proof that they had not bought that liquor under their doctor's prescription.

Q. Did you on these raids, did you on many occasions get brands of beer in these blind pigs that were obtainable at the Government's vendor's?—A. That was the only kind we used to find.

MR. TILLEY: I would like to recall Mr. Gray.

A. GRAY, recalled. Examined by MR. TILLEY:—

Q. Mr. Gray, you spoke of having in your store during this whole period of time only 15 cases of Carling's ale?—A. Yes sir.

40 Q. How does that compare in quantity with the ale of other breweries that you had?—A. There was no comparison, sir.

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Q. Why?—A. Well we had two local brewery products, that is Walkerville and British American. Walkerville we had three different brands of theirs, the British American only one brand; and then we had Labatt's, there was quite a demand for that.

Q. Were there quantities of these?—A. Yes.

Q. And you had demands for these other beers?—A. We got our supplies weekly from those breweries.

Q. But what demand did you have for Carlings by comparison with others?
—A. Well we could not get any more than the 15 cases of Carling's, because the law changed regarding the caps, and they refused to comply with the new law. 10

Q. And therefore you had no beer of theirs to sell?—A. Exactly.

Q. They were selling for export and would not—

MR. ROWELL: Now my learned friend—

MR. TILLEY: Did they insist on putting the export caps—

MR. ROWELL: He said they refused to comply with the Ontario Law as to caps.

MR. TILLEY: What did the Ontario Law require?

WITNESS: It required that the breweries would put the brewer's name on, and the word beer, and the strength of the beer, on an embossed cap. And the Carling Brewery refused to comply with that law, and we could not legally sell their beer.

Q. Therefore the traffic in that beer through the dispensary came to an end?—
A. Exactly, yes. 20

Q. And did it ever amount to anything at all by comparison with others?—A.
Oh no.

Q. So that Carlings were not seeking your trade apparently?—A. Apparently not.

MR. TILLEY: Mr. Troop has checked up the Smith payment, and he is satisfied of the correctness of the amount, and we have the receipt. Possibly we might file the papers.

EXHIBIT Z-2: Excise Department receipt for Sales Tax and Gallonage Tax
on the Smith items. 30

HIS LORDSHIP: You have not amended yet.

MR. ROWELL: The amendment will be the substitution of the figures.

HIS LORDSHIP: I gave you leave to amend, you did not avail yourself of it.
If you will give a praecipe of your amendment to the Registrar.

I suppose, Mr. Tilley, there will be no amendment to your Pleading?

MR. TILLEY: No, my lord.

(Court adjourned at 12.50 p.m. to 2.30 p.m.)

AFTERNOON SESSION

FRIDAY, April 26th, 1929, 2.30 p.m.

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No. 38

James Pratt
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JAMES PRATT, sworn. Examined by Mr. Tilley:—

Q. Mr. Pratt, what position do you occupy in connection with the Canadian National Railways?—A. I am Regional Counsel, Central Region, Canadian National Railways.

Q. Acting in that capacity did you have some discussion with the Minister of Customs at one time about shipments of liquor and beer destined to the United States?—A. I had a conversation with him respecting the shipment of liquor to be 10 exported from Canada.

Q. Would you just tell His Lordship the circumstances under which the discussion took place, and what happened?—A. I was asked to go to Ottawa and meet there certain traffic officers of our company and confer with the Minister of Customs to ascertain under what conditions the Canadian National Railways might accept shipments of liquor for export from Canada.

HIS LORDSHIP: To where?

MR. ROWELL: The witness did not say to the United States.

WITNESS: My discussion was general. That the shipments were going to the United States. This was in March, 1926. I met the Honourable Mr. Boivin, 20 Minister of Customs—

MR. ROWELL: May I submit that this evidence is not relevant to this issue, a conference between the railway and the Minister on general questions.

HIS LORDSHIP: I do not think this is proper evidence. He is not going to give us the law is he?

MR. TILLEY: Not the law, but how it was arranged with the Minister that the shipments should be put through. The Minister of Customs has a good deal to do with regard to Sales Tax.

MR. ROWELL: He was not dealing with Sales Tax.

MR. TILLEY: He was dealing with exporting of intoxicating liquor, and directing 30 how it should be consigned.

HIS LORDSHIP: The Minister cannot bind the Government.

MR. TILLEY: We can argue that later, but my friend has got a good deal of that sort of thing in. My submission is we ought to know the circumstances under which some of these notations were put on the bills. We have bills of lading filed with certain notations on them. I want to show how they came to be put on, by arrangement with the Minister of Customs.

HIS LORDSHIP: The Minister cannot bind the Crown.

MR. TILLEY: I am not making any claim against the Crown.

HIS LORDSHIP: But you cannot escape because the Minister said this or that.

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MR. TILLEY: But on the question whether goods are exported, surely we must know how it came to be that it was done in a particular way. On questions of bona fides.

HIS LORDSHIP: You might ask this witness what was the modus operandi after having consulted with the Minister. But you were going to relate a conversation. I do not want that.

MR. TILLEY: It has been admitted in every case that we have tried here so far. I submit it is the most cogent evidence on the question whether these goods were exported. If we put it through, consigned it to the railway and the railway carried it under bills of lading with certain notations on them pursuant to arrangement with the Minister of Customs, I think that is the very best evidence that we were exporting the goods. 10

HIS LORDSHIP: We do not hear the Minister. Just his statement of what the Minister said.

MR. TILLEY: I suppose he is going to tell it truthfully.

HIS LORDSHIP: But I want the best evidence. If it is what the Minister said that is going to bind, it is the Minister I want as a witness. If the evidence is not objected to—

MR. TILLEY: Your Lordship may be sure it will be objected to now. I suppose it is. 20

HIS LORDSHIP: I am at a loss to see that that has any relevancy. The evidence is not proper evidence, because he is going to relate a conversation with another.

I will allow the evidence if you say, Let us give the modus operandi of his company, after having consulted the Minister. But you are going to get this witness to tell me what the Minister said.

MR. TILLEY: I am tendering it.

HIS LORDSHIP: That is not proper evidence.

MR. TILLEY: If your Lordship rules it out—

HIS LORDSHIP: I am not going to allow it.

MR. TILLEY: Then your Lordship rules out any conversation— 30

HIS LORDSHIP: I say I will not allow this witness to come and relate a conversation with the Minister that would control the manner in which the export by rail ought to be made. I will not allow this witness to come and relate the conversation with the Minister as to the way this might be exported. I will allow the witness to tell me what his railway does after having discussed with the Minister, if you like.

MR. TILLEY: What was done by your railway as a result of the conversation with the Minister?

WITNESS: Following the conference which I had with the Minister, a telegram of instructions was prepared in my room, in the Chateau Laurier, by the Freight Traffic Officer of the C.N.R. who was present, and myself— 40

HIS LORDSHIP: Have you got that telegram?—A. I have not the telegram. I have here—

HIS LORDSHIP: This is again loose.

WITNESS: I can identify this.

MR. TILLEY: You have your record of the telegram you sent?—A. I have here the telegram as it was issued, and as a copy was telephoned to me from the Montreal office before they issued it, to see if this corresponded with—

HIS LORDSHIP: In other words, you say a telegram was prepared under your direction?—A. I can, my lord.

10 Q. And you controlled the wording of it?—A. Yes, I can, my lord

This is the telegram which was sent to address to F. G. Watson, then Freight Traffic Manager of the Central Region, W. G. Maunders, Freight Traffic Manager, Western Region, and signed by Mr. Martin, General Traffic Manager:—

“You may now accept liquor, beers and spirits, under the following conditions; a shipping order and bill of lading must consign goods to a person at a port or outport on the Canadian border from which it is physically possible for exportation to be made via water, as for example Windsor or Walkerville, and must bear notation ‘for export from Canada, deliver only under supervision of Collector of Customs.’ ”—

20 HIS LORDSHIP: Did you give me the date?—A. It was telephoned to me, my lord, on the 15th of March, 1926.

“This notation to be transferred to the waybill. Nothing must be shown on the bill of lading or waybill as to country of ultimate destination, but this must be shown on the export entry Canada Customs form B.13, which must be supplied us at shipping point, and accompany the waybill to port of exportation as provided in my circular No. 5. Customs Department will not give clearance from Canada to any vessel which obviously cannot carry its cargo to destination specified in application for clearance, nor will they accept substitution of export entries showing United States as ultimate destination for entries originally issued showing other countries as ultimate destination. See my letter February 20th. Shipments must be prepaid, and in the case of shipments made by others than established licensed distillers or brewers a guarantee bond should be obtained from the shippers that they will pay full charges on the goods to Customs Department or order shipment returned.”

30

MR. TILLEY: I notice that was a form communicated for Mr. Martin.—A. It was telephoned to me. The notation on my original is “Phoned by Mr. Spalding, Freight Traffic Department, Montreal, March 15th, 1926, for my approval.”

Q. And you did approve it as being in accordance with your arrangement with the Minister?

40 MR. ROWELL: My friend should not suggest why he did it or what it represented.

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MR. TILLEY: Then to whom was that addressed as it was sent out?—A. It was addressed to Mr. Watson, then Freight Traffic Manager of the Central Region, and Mr. Maunders, Freight Traffic Manager, Western Region.

Q. That is the two persons concerned?—A. East and west, it did not include the Atlantic Region, which is the former Canadian Government Railways.

Q. But included the balance of the system?—A. Yes.

Q. How did you come then to send that out or authorize it to be sent out?—A. I authorized it to be sent out because it was in accordance with my understanding of the method to be adopted following the conference I had at Ottawa.

EXHIBIT Z-3: Copy of telegram to Freight Traffic Managers, C.N.R., March 15th, 10 1926.

MR. ROWELL: This Exhibit will be subject to my objection, the same as the evidence, as not being relevant.

HIS LORDSHIP: Reserving all your rights.

MR. ROWELL: And not being the best evidence. As your Lordship has pointed out, if evidence should be given of what the Commissioner has done it should be from the Commissioner.

HIS LORDSHIP: But he acted himself, that is the best evidence of what he did, after having spoken to the Minister. But I am not allowing the words of the Minister to be put in as evidence. 20

MR. TILLEY: That was the Minister of Customs at the time.—A. The Honourable Mr. Boivin, Minister of Customs, and the Conference was in his office. His Deputy, Mr. Farrow, was also present, he sent for him.

Q. Can you fix the date?—A. Yes, the Conference was had at the Minister's office on Friday, March 12th, 1926.

Q. Now will you look at Exhibit 6-B and let me see whether that is in accordance with the wording. I see it is noted on the bottom of that "For export from Canada, deliver only under supervision of Collector of Customs."—A. That complies strictly with the instructions that were issued.

James Pratt
Cross-
examination

Cross-examined by Hon. Mr. Rowell:— 30

MR. ROWELL: Subject to my objection, my lord.

Q. This was a matter in which you were concerned from the standpoint of the railway?—A. Yes.

Q. And the railway only?—A. That is correct, it was a traffic matter.

Q. Purely a traffic matter, in which you were concerned. And your railway would not undertake shipments of liquor for delivery in the United States.—A. A circular had been issued by the Deputy, Mr. Farrow, earlier, which made it appear that if we did so we were going to get into trouble, and I was asked by my Vice-President to go to Ottawa and find under what conditions we could accept this class of traffic which was being tendered. 40

HIS LORDSHIP: But you did not accept any liquor to transport to the United States?—A. It was to be destined to a point in Canada for export from Canada.

Q. That is not answering my question. You did not accept liquor to transport it yourself to the United States?—A. Subject to these instructions.

HIS LORDSHIP: Does that allow you to do so?

MR. TILLEY: Yes—

MR. ROWELL: It does not allow them to transport it to the United States, not the railway.

HIS LORDSHIP: That is what I am asking. You, I mean the railway.

10 WITNESS: No, the railway company did not accept liquor for the United States.

MR. TILLEY: Did not accept liquor to be hauled by the railway to the United States.—A. That is what I mean.

MR. ROWELL: In all cases the railway made delivery of the goods in Canada?—A. Well, I don't know.

Q. Well the Railway bill of lading in all cases provided for delivery in Canada?—A. Yes.

MR. TILLEY: I do not know. The Railway bill of lading has this notation on it, and the delivery is only under the control of the Customs. I do not know whether that is delivery or not.

20 HIS LORDSHIP: What I was asking is very clear. The railway itself could not continue with the liquor.

MR. TILLEY: On a continuous haul, no. They would lose their bonding privileges, I suppose that is what you are afraid of, if I might put it that way?

WITNESS: Our transportation ended in Canada.

MR. ROWELL: Other goods though you did transport direct to the United States, goods other than liquor?—A. Oh certainly.

Q. And are constantly accepting shipments of goods for transport by railway to the United States, other than liquor, beer and wine?—A. Yes.

HIS LORDSHIP: That is their business. That is, provided they were not under 30 any prohibition in the United States.

Re-examined by Mr. Tilley:—

Q. The difficulty with regard to liquor, from the standpoint of the railway, as between that and the goods my friend has been referring to, being what?—A. We were told we could not carry it into the United States.

Q. Is this the circular you are referring to?—A. That is it.

Q. Circular, Exhibit No. 21-A, dated 13th February, 1926, it reads:—

40 "It has come to the notice of the Department that beer and other intoxicating liquors are being shipped to frontier ports and outports in Ontario, for export, on bills of lading showing the ultimate destination of the goods to be a place in a foreign country other than the United States,—for example Mexico, Cuba, etc—"

*In the
Exchequer
Court
of Canada*

Defendant's
Evidence

No. 38

James Pratt
Cross-
examination
April 26, 1929
(continued)

James Pratt
Re-examination

*In the
Exchequer
Court
of Canada*
—
Defendant's
Evidence

No. 38

James Pratt
Re-examination
April 26, 1929
(continued)

HIS LORDSHIP: Is that what you call your letter of 28th February, Circular No. 5?

MR. TILLEY: No, my lord, they are departmental matters between Mr. Martin and his staff in connection with your railway?—A. Yes.

Q. That we are not concerned with, but he had been issuing these to your Traffic Officers?—A. To our own Traffic Officers.

Q. This circular 21-A is the circular that caused you to see the Government?—A. That is correct.

Q. It was in order to straighten out that difficulty?—A. That is correct.

Q. Of course the railways have valuable bonding privileges to bond goods through the United States?—A. Very valuable bonding privileges. 10

Q. And was it because of that—

MR. ROWELL: My friend should not tell this witness what it was because of.

MR. TILLEY: Well what was it because of?—A. The United States authorities had threatened to cut off our bonding privileges, which meant that each car would be stopped at the United States frontier, unloaded, the goods examined to see if there was any contraband. Under the bonding privilege the car is bonded and sent right through the United States.

Q. They threatened to cut off your bonding privileges unless you did what?—A. Unless we stopped sending cars in there that contained liquor,—or not sending them but permitting them to be carried. 20

Q. Therefore you wanted to arrange the matter with the Department?—A. Yes.

No. 39

William
Frederick
Chapman
Examination

WILLIAM FREDERICK CHAPMAN, sworn. Examined by MR. TILLEY:—

Q. Mr. Chapman, what is your occupation?—A. Divisional Sales Manager, Dominion Glass Company.

Q. Does the Glass Company manufacture beer bottles?—A. Yes sir.

Q. For the defendants, amongst others, the Carling Company?—A. Yes sir.

Q. Would you look at Exhibit O and tell me if that is one of your manufacture?—A. Yes.

Q. For whom do you manufacture that bottle?—A. That would be the Carling Brewery bottle. 30

Q. Do you manufacture that bottle for any person else?—A. No sir, that is theirs exclusively.

Q. And do any other manufacturers that you know of manufacture that bottle for any other beer makers?—A. Not to my knowledge. I have never seen any.

Q. Are you familiar with the trade?—A. For 30 years.

Cross-Examined by Mr. Rowell;—

Q. Mr. Chapman, are you familiar with the bottles manufactured in the United States?—A. I have seen several samples.

Q. But are you in a position to say that bottles of this type are not manufactured anywhere in the United States?—A. No, I could not say absolutely. 40

Q. You could not say that?—A. No sir.

William
Frederick
Chapman
Cross-
examination

G. R. F. TROOP, recalled. Cross-Examination by MR. TILLEY, resumed:—

Q. You have prepared a statement I understand?—A. I have.

Q. Showing what?—A. A statement showing a comparison of quantities and values of shipments recorded in the Company's books as having been made to Belle River, and B.13s stamped at the outport of Belle River.

Q. What does it show?—A. This statement shows in total the shipments as shown in the Company's books to Belle River; these totalling 46,709 cartons, 200 half barrels, and 204 quarter barrels, of a total value of \$127,926.75.

And B.13s a total of 44,843 cases or cartons, 103 half barrels, and 12 quarter 10 barrels, total value shown on the B.13s \$175,941.

Or comparing the totals for shipments and B.13s, a shortage of B.13s, for cases, 1,866 cases; a similar shortage for half barrels, 97 half barrels; and a shortage for quarter barrels of 192.

The values shown on the B.13s are \$48,014.25 in excess of the values for the shipments as shown by the Company's invoices.

Q. We have discussed the question of value before. And the question of quantity is now shown in the rest of this statement.—A. Shown in that statement.

Q. Now when you say B.13s stamped with the Customs stamp of the port of Belle River, you are referring to the B.13s found at Ottawa?—A. Found at Ottawa.

20 Q. And sent up to us here now, Exhibits here?—A. On exhibit.

HIS LORDSHIP: I do not know that I understand. You did not examine the Customs books?—A. We had merely a list from the outport of Belle River of their B.13s, and we examined the Ottawa B.13s here.

Q. And you find that there has been more beer exported—A. No, the other way, my lord.

MR. TILLEY: If your Lordship will leave out the question of value, taking the amount the number of cartons or cases is,—the number shown on their B.13s at Ottawa for that port is short 1866 from the amount shown in the books of the company as having been sold and shipped there.

30 Q. That is it, isn't it?—A. That is it.

MR. TILLEY: Then we can argue later what that means.

Q. You have checked the Smith statement, and I think you did give me the amount of what we are now going to describe as strong beer in the cash sales.—A. That is in evidence.

Q. And that item stands correct?—A. As given.

Q. Mr. Nash got from you and gave to us the figure of 82 as being roughly the percentage of B.13s to the quantity shipped?—A. 82.8 I think.

Q. That is the Government have at Ottawa, and have produced here, B.13s for 82.8 per cent of the Carling beer in quantity?—A. In gallons, that is reducing 40 cartons and quarter and half barrels to gallons, comparing it with the gallons sold as shown by the books.

*In the
Exchequer
Court
of Canada*

Defendant's
Evidence

—
No. 9
—

George Robert
Ferrier Troop
Cross-
examination
April 26, 1929
(continued)

*In the
Exchequer
Court
of Canada*

Defendant's
Evidence

No. 9

George Robert
Ferrier Troop
Cross-
examination
April 26, 1929
(continued)

Q. That figure I suppose does not exclude from the amount sold according to the books the amount of the Smith items?—A. No.

Q. That would not alter the percentage much?—A. I doubt if it would alter it more than .1 per cent.

Q. If you exclude from the computation the Smith items and the cash sale items of strong beer, probably you would have a percentage of about 83 per cent of the beer sold according to the books, and claimed for here, shown by the B.13s.—A. I should think it would be approximately that.

MR. TILLEY: That is the defence.

MR. ROWELL: I omitted to ask Mr. Low this morning if he had found any other 10 agreement dealing with the liquor matter at Montreal.

MR. LOW: I could not locate it.

MR. ROWELL: You did not locate Mr. Leon and have not found any other agree-
ment?

MR. LOW: No.

MR. ROWELL: Then Mr. Morrison was going to tell us whether they could find any bill of lading during any period of the shipments which provided for carrying the goods beyond the Canadian port.

MR. TILLEY: I did not know he was to do that. He is not here. I do not
remember seeing any. 20

MR. ROWELL: We have not found any.

MR. TILLEY: I am not going to argue that there was any.

MR. ROWELL: That will do. I should have mentioned that the Bank Manager at Belle River sent down the deposit slips to the Sheriff.

THE REGISTRAR: They are marked now.

(At 3.10 p.m. Mr. Rowell commenced his argument.)

(At 4.30 p.m. Friday, April 26th, 1929, Court adjourned to Monday, April 29th,
at 10 a.m.)

MONDAY, April 29th, 1929, 10 a.m.

MR. TILLEY: Your Lordship will remember that Mr. Nauman promised to 30 secure for us copy of an Order-in-Council. My learned friend Mr. Rowell and I have examined it, neither of us think it has anything to do with matters we are concerned with. We thought that might be put on the record to clear it up.

It is Order-in-Council No. 2031, dated 30th June, 1921.

The only thing left outstanding was an actual sample of the completed clearances and entry Inward and Outward. We can file that along with the form.

(Hon. Mr. Rowell's argument continued, followed by argument by Mr. Tilley,
and Reply by Mr. Rowell.)

Reasons for Judgment

*In the
Exchequer
Court
of Canada*
—
No. 40
—

HIS LORDSHIP: The hearing of this case has been somewhat long, but after all the controversy resolves itself into a question of fact, controlled by the laws of this country. And because the case deals with liquor is no reason why it should not be approached with an open mind free from any bias one way or the other.

Reasons for
Judgment
April 29, 1929

The action is for the recovery of Sales Tax and Gallonage Tax upon Carling beer manufactured by the defendant. The facts of the case are all, at this stage, present in our minds, and it becomes unnecessary to review or relate them again in 10 detail, and the questions of law arising therefrom have been extensively discussed from all angles in the course of the argument of the respective counsel, the Court expressing its view on most points.

The whole question resolves itself into determining as to whether or not the goods in question have been duly exported, and whether they have been exported in the manner provided by our Canadian laws.

To that question I am of opinion that there can be but one answer, that is that the greater portion of these goods and merchandises have been lawfully and *de facto* duly exported to a foreign purchaser, and did not return to Canada, and that with respect to the same the defendants are exempted from paying any such taxes or duty.

20 The fact that these goods were exported to the United States is amply proved by the B.13s, which are the manner and the forms provided by law to show that the goods were duly exported according to the usual practice. But there is more, the evidence clearly discloses that these goods were actually placed on board vessels for foreign destination, after due clearance from the Customs. The boats came in reported inward to the Canadian Customs, reported outward, and they obtained their clearance after the goods on board had been duly verified by the Customs officer.

30 Corroborating this exportation to the United States we have the evidence establishing that Rice beer or lager, which constituted the largest proportion of the exportation, is very little used in Canada and that it is the preferred beverage of the United States. Moreover, also by way of corroboration, a large quantity of Carling's special bottles and kegs were returned empty to Canada through the Customs, upon which a duty was duly paid. The identification of the kegs is ascertained by the special bungs marked with specific cut figures for that purpose.

One witness stated that after seeing some boats clear from the Canadian shore with the goods he saw them being unloaded on the American shore. Another witness testified that he saw the Carling beer in the roadhouses in the American towns.

Coming now to the other branch of the case, with respect to the sales without B.13s, I find that the defendants are liable for the Sales Tax and Gallonage Tax upon such sales of strong beer, as the real and only lawful evidence or acknowledgment of exportation is established by such B.13s. The defendants are also liable for these taxes upon the sales mentioned in the evidence of the witness Bannon, as having been sold to him and resold in Canada. Moreover they are liable for such taxes upon the cash sales in Canada of the strong beverage.

The invoices from London did not show the true selling prices, and the goods were sold at an advanced price. Therefore I find that the tax, when payable, must be calculated on such advanced prices, with such deduction, if any, as is customary 10 for the Crown to allow.

I take it that these amounts can be easily ascertained between the parties (as so many accountants have already been working upon the books of the defendants). If, however, the parties fail to come to any agreement upon these amounts, leave is hereby reserved to either party to apply, upon notice, to the Court for further direction in respect of the same.

There will be judgment accordingly, with costs in favour of the plaintiff.

MR. TILLEY: Does your lordship give the Crown costs?

HIS LORDSHIP: I have considered that question very carefully. I find you are liable upon certain goods. That could only be ascertained by the work that the 20 Crown has done over your books, and that involves the whole enquiry upon every branch of the case.

MR. TILLEY: The work they did on our books was largely in connection with the investigation; if they found there was some 16 per cent for which there were not B.13s, that is a mere bagatelle; they press their claim—

HIS LORDSHIP: Successfully.

MR. TILLEY: It is successful only on a fraction which they would not concede, and only a fraction of the claim they made. Their claim disregarded whether it went to the States or not. That has been the bone of contention.

HIS LORDSHIP: They could not come to a conclusion with respect to what you 30 were liable for without making a thorough investigation of all your books.

MR. TILLEY: No, my lord, all they had to say was: We have got B.13s for 83 per cent of this product, now what about the other? It was a bagatelle as compared with the 83 per cent.

HIS LORDSHIP: I would not say that. They succeeded for nearly one-fifth of \$417,000. It should carry costs.

MR. TILLEY: What has protracted this trial is, they came back after having an adjournment and tried it all over again. I suggest that it is a hardship on the defendants to make them pay costs when they have succeeded substantially.

HIS LORDSHIP: They should not have refrained from paying their taxes on the cash sales and the like, they have failed where they should not have contested the claim.

MR. TILLEY: The cash sales are only \$1,600.

HIS LORDSHIP: It does not matter, the principle is there.

If I am wrong, I may be corrected, but I have considered it carefully after putting everything in the scale, and I have come to that conclusion. I did not do it without due consideration.

*In the
Exchequer
Court
of Canada*

No. 40

Reasons for
Judgment
April 29, 1929
(continued)

10

Certified correct,

GEO. H. PLAYLE,

of Nelson R. Butcher & Company.

No. 41

Judgment at Trial

In the Exchequer Court of Canada

Monday, the 29th day of April, A.D., 1929

PRESENT: The Honourable Mr. Justice Audette

BETWEEN:

HIS MAJESTY THE KING, on the Information of The Attorney-General of
Canada,

20

Plaintiff,

AND

THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED

Defendant.

This action having come on to be tried before this Court at the City of Toronto on the 7th, 8th, 9th, 10th and 11th days of May, 1928, and on the 16th, 17th, 18th, 19th, 22nd, 23rd, 24th, 25th, 26th and 29th days of April, 1929, in the presence of counsel for the Plaintiff and the Defendant, upon hearing read the pleadings, and upon hearing the evidence adduced at the trial and what was alleged by counsel
30 aforesaid;

1. THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff do recover from the Defendant the sum of \$1,590.00 for sales tax on certain sales of strong beer entered in the books of the Defendant as cash sales, upon which sales tax has not been paid.

*Seal
Exchequer
Court
of Canada*

*Law
Stamps
\$2.00*

*In the
Exchequer
Court
of Canada*

No. 41

Judgment at
Trial
April 29, 1929
(continued)

2. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff is entitled to recover from the Defendant sales tax and gallonage tax on all strong beer sold by the Defendant to one Basil Bannon and re-sold by the said Bannon in Canada.

3. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff is entitled to recover from the Defendant sales tax on all other sales of strong beer upon which sales tax has not been paid and in respect of which Customs export entry forms commonly known as B.13's, were not produced and put in as exhibits at the trial.

4. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the 10 Plaintiff is entitled to recover from the Defendant gallonage tax upon all sales of strong beer upon which gallonage tax has not been paid and in respect of which Customs Export entry forms commonly known as B.13's were not produced and put in as exhibits at the trial.

5. THIS COURT DOTH DECLARE that the invoices of the Defendant Company do not show the true selling price of the goods sold by them and that the goods were sold at an advanced price and that the tax should be calculated on such advanced price with such deduction, if any, as is customary for the Crown to allow, and DOTH ORDER AND ADJUDGE the same accordingly.

6. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the 20 Defendant do pay to the Plaintiff his costs of this action forthwith after the taxation thereof.

7. And upon application of the Plaintiff being made on the 25th day of June, 1929, in the presence of counsel for the Plaintiff and the Defendant, THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant is liable to pay to the Plaintiff interest at the rate of five per cent per annum upon such gallonage and sales tax in respect of all transactions prior to the 14th day of April, 1927, from the due date thereof until paid and interest at the rate of two-thirds of one per centum per month upon such gallonage and sales tax in respect of all transactions subsequent to the said 14th day of April, 1927, from the due date thereof until paid. 30

8. And THIS COURT upon said application DOTH FURTHER ORDER that it be referred to the Registrar of this Court to ascertain and determine the amount payable by the Defendant under this Judgment and that the costs of such reference be reserved to be disposed of after the conclusion of such reference.

9. AND THIS COURT upon said application DOTH FURTHER ORDER AND DIRECT that there be no costs to either party of such application.

By the Court.

(Sgd.) CHAS. MORSE,
Registrar.

675

No. 42

Notice of Appeal

In the Exchequer Court of Canada

No. 8809.

*In the
Exchequer
Court
of Canada*

—
No. 42

—
Notice of
Appeal
May 14, 1929

BETWEEN :

HIS MAJESTY THE KING, on the information of the Attorney-General of
Canada,

Plaintiff,

AND

10 THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED,

Defendant.

TAKE NOTICE that the Attorney-General of Canada is dissatisfied with the
Judgment of the Honourable Mr. Justice Audette of the Exchequer Court, dated
29th April, A.D., 1929, and proposes to appeal therefrom.

DATED at Ottawa this 14th day of May, A.D., 1929.

F. P. VARCOE,
for the Attorney-General of Canada.

To: The Registrar of the Exchequer Court;

20 To: S. RUPERT BROADFOOT,
Ottawa Agent for the Defendant.

Notice of Setting Down Appeal

In the Supreme Court of Canada

BETWEEN:

HIS MAJESTY THE KING, represented by the Attorney-General of Canada,
Appellant,

AND

THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED,

Respondent. 10

TAKE NOTICE that this appeal is set down to be heard at the Sittings of the Supreme Court of Canada commencing the First day of October, A.D., 1929.

DATED at Ottawa, this Fifteenth day of May, A.D., 1929.

F. P. VARCOE,
for the Attorney-General of Canada.

To: S. RUPERT BROADFOOT,
Ottawa Agent for Respondent.

No. 44

Agreement as to Contents of Case

In the Supreme Court of Canada*In the
Exchequer
Court
of Canada*—
No. 44
—Agreement as to
Contents of
Case
May 31, 1929

BETWEEN:

HIS MAJESTY THE KING, on the Information of the Attorney-General of
Canada,

(Plaintiff) APPELLANT,

AND

THE CARLING EXPORT BREWING & MALTING COMPANY, LTD,

10

(Defendant) RESPONDENT.

IT IS HEREBY AGREED by and between the parties hereto that the case in
appeal herein to the Supreme Court of Canada shall be composed of and comprise
the following documents and papers; to wit:

- (1) Amended Information.
- (2) Statement in Defence.
- (3) Evidence.
- (4) Exhibits.
- (5) Formal judgment of the Exchequer Court of Canada.
- (6) Reasons for judgment.
- 20 (7) Notice of setting down appeal.
- (8) Order dispensing with printing exhibits.
- (9) This agreement.
- (10) Registrar's Certificate.
- (11) Notice of Appeal
- (12) Notice of Cross-Appeal
- (13) Order extending time for Cross-Appeal

Dated the 31st day of May, A.D., 1929.

W. STUART EDWARDS,

Solicitors for the Appellant,

30

"McTAGUE, CLARK AND RACINE,"

Solicitors for the Respondent.

*In the
Exchequer
Court
of Canada*

No. 45

Order Extending Time for Cross-Appeal

No. 45

In the Supreme Court of Canada

Order
Extending
Time for
Cross-Appeal
June 10, 1929

Before The Honourable Mr. Justice Lamont,
in Chambers.

BETWEEN :

HIS MAJESTY THE KING

Plaintiff

AND

THE CARLING EXPORT BREWING & MALTING CO., LTD.

10

Defendant

L. S.
\$2.00

Upon the application of the Defendant, upon hearing counsel for the Plaintiff and the Defendant, It is hereby ordered that the time for the service of Notice of Cross Appeal upon the Plaintiff by the Defendant be and the same is hereby extended to ten days after the settlement of the Minutes of Judgment herein by the learned Trial Judge, or ten days after the expiration of Long Vacation of this year, whichever shall be later.

DATED at OTTAWA this 10th day of June, A.D. 1929.

“ J. H. Lamont ”

Ent'd Fol. 134

J.

20

O.B. No. 7

“ G.A.A. ”

Order Dispensing with Printing of Certain Exhibits

In the Supreme Court of Canada

The Acting Registrar
in Chambers.

Saturday the 29th day of June, 1929.

*In the
Exchequer
Court
of Canada*

No. 46

Order Dispens-
ing with
Printing of
Certain
Exhibits
June 29, 1929

BETWEEN:

HIS MAJESTY THE KING, on the Information of the Attorney-General of
Canada,

(Plaintiff) APPELLANT,

10

AND

CARLING EXPORT BREWING AND MALTING COMPANY, LIMITED,

(Defendant) RESPONDENT.

Upon motion made this day by Counsel on behalf of the Appellant and upon reading the consent of the Respondent's Solicitors filed,

1. IT IS ORDERED that the printing in the case herein of the following exhibits and parts of exhibits may be dispensed with, the Appellant undertaking to print as part of the case such additional exhibits or parts of exhibits as may be requested by the Respondent after the Respondent has been furnished with copies of the Appellant's factum, saving any objections which the Appellant might have
20 to so doing if such request were made as of this date, viz:—

Exhibits 1, 3, 4, 5, 6-A.

Exhibit 6-B—except the face of the Bill of Lading.

Exhibit 6-C—except B.13 which is entry number 8552.

Exhibits 7 to 15 inclusive.

Exhibits 15-A, 18 and 18-A.

Exhibit 33, United States Regulations re Intoxicating Liquors, except:

(a) The 18th Amendment to the Constitution of the United States, page 211;

(b) The National Prohibition Act, page 211; Heading, page 211; Title II, Section I, page 214; Section 3, page 215; Section 14, page 219; Section 19, page 219; Section 28, page 222; Section 29, page 222; and Section 21, page 229;

30

(c) Act Supplemental to National Prohibition Act, Heading and Section 1, page 229, and Paragraph 1 of Section 5, page 231.

<i>Law Stamps \$2.00</i>

*In the
Exchequer
Court
of Canada*
—
No. 46
—
Order Dispens-
ing with
Printing of
Certain
Exhibits
June 29, 1929
(continued)

Exhibit 34—except:

Section 401-A, Page 101.

“ 401-C,	“ 101.	
“ 431,	“ 103.	
“ 433,	“ 104.	
“ 434,	“ 104.	
“ 435,	“ 104.	
“ 441,	“ 105.	
“ 447,	“ 107.	
“ 593,	“ 139.	10
“ 593-B,	“ 139.	
“ 623,	“ 146.	

Exhibit 35—except:

Article 2, Page 1.

“ 124,	“ 103.	
“ 132,	“ 108.	
“ 135,	“ 110.	
“ 189,	“ 136.	
“ 195,	“ 138.	
“ 247,	“ 165.	20
“ 260,	“ 172.	
“ 581,	“ 313.	

Exhibit 38—except one specimen.

Exhibit 39.

Exhibit 40-A—except cheque, July 23rd, 1926, for \$36,969.85, and a list of all the cheques in this exhibit.

Exhibit 40-B—except cheque, July 30th, 1926, for \$2,325.00, and a list of all the cheques in this exhibit.

Exhibits 41-A and 41-B.

Exhibit 43—except one specimen copy. 30

Exhibit 45-B.

Exhibit 46—except Heading and Date, page 3; Heading near bottom of page 13, and from there to end of page 14.

Exhibit 48—except pages 61 and S-36.

Exhibit 49—except Invoice No. 03202, dated 5th November, 1925, provided that underneath this Invoice is printed an explanatory note as follows: “the above invoice is a sample of the invoices used by the defendant company after November 1st, 1925.”

Exhibit 49-B.

Exhibit 50—except Savard commission account and Schreiber account. 40

Exhibit 51—except a summary of this exhibit.

Exhibits 52, 53 and 55.

Exhibit 56—except a summary of this exhibit.

Exhibit 57.

Exhibit 58—except a summary of this exhibit.

Exhibits 59 to 69 inclusive.

Exhibit 70—except Export Funds Account, F. Savard advances re expenses at Windsor Dock account and Export Insurance account.

Exhibit 73—except a summary of this exhibit.

Exhibit 75—except specimen copy.

10 Exhibits 81 to 93, inclusive—except a summary of each of these exhibits.

Exhibits 96, 97 and 98.

Exhibit 99—except a summary of this exhibit.

Exhibits 100 and 101.

Exhibits 106 and 107—provided that there is printed a statement showing the total amount indicated by each of these accounts as purchases and the period covered by each of them.

20 Exhibit 108—except entry No. 24161, provided that there is printed with this entry a statement what this exhibit consists of, as follows: "This exhibit consists of a bundle of forms 'B.1,' entitled 'Customs Canada-Entry for Home Consumption' which covers 86 cars loads of secondhand empty bottles. The following is a sample form taken from this exhibit."

Exhibit 109—except Export Charges account, Special Loan account and Export Insurance account.

Exhibits 110 and 113-A.

Exhibit 114—except pages 24 and 25.

Exhibits 115-A, 115-B, 115-C, 116-A.

Exhibit 118—except page 19 as an illustration.

Exhibit 122—except a summary of this exhibit.

Exhibit 123—except a summary of this exhibit.

30 Exhibit A—except Entries numbered 618, 619 and 2113, provided that with the first two is printed the following note: "This exhibit consists of the monthly returns made by the defendant to the Collector of Customs and Excise in respect of sales and gallonage tax for the period in question in this action. The two returns printed hereunder are illustrations of the return in respect of sales tax and gallonage tax respectively."

Exhibits B-1 and B-2.

Exhibit C—except:

40 (a) The title and Section 1, page 3; The Heading to Part IV, page 21; Section 19-A and Section 19-B, 1, (a), (b), (c) and (d) down to Sub-section 3 at middle of page 22; Section 19-BB, 1, page 22; Section 19-BBB, 1, 2, 3, 6, 9, 10, 12, 13, pages 23, 24, 27, 28 and 29; Section

19-C, page 29; Section 19-D, 1, page 29; Section 19-D, 2, page 29; Section 19-E, page 29 and Section 20 (1), page 30; Schedules I and II, page 32.

(b) Title page 33; page 34 commencing with "Regulations issued under Authority of Section 19-C" down to but not including the heading "Regulations issued under Authority of Subsection 1" on page 35; page 36 commencing at heading "Consumption or Sales Tax Regulations" down to the paragraph commencing five lines from the bottom of page 37; page 39 paragraph (c); page 40 down to paragraph eleven, page 41; page 44, the first paragraph only; page 45, the signature and 10 title of R. R. Farrow.

Exhibit I—provided description as follows is printed:

"Carton for black label beer with letters BL printed on each end of the carton."

Exhibit J—provided description is printed as follows:

"Bag with the following letters stamped thereon FD—BL—DM."

Exhibit K—provided that the following description is printed:

"Bag with the following letters stamped thereon FS—AA—DM."

Exhibit L—provided that the following description is printed:

"Samples of three rubber stamps as follows: 20

"1. F. Savard Detroit Michigan.

"2. F.S.

" D.M.

"3. B.S.

" D.M."

Exhibit M—provided the following description is printed:

"Tin tag with the following printed thereon:

"The Carling E. B. and M. Co., Ltd., London, Ont."

Exhibit N (a), (b)—provided the following description is printed:

"Two bungs." 30

Exhibit O (1)—provided that the following description is printed:

"Bottle having two labels, one with the wording 'Carling Black Label Lager Beer finest rice and malt beer,' the other label having the words 'Export Carling'."

Exhibit O (2)—provided that the following is printed:

"Stopper with the words 'Carlings London rice beer'."

Exhibit P (1)—provided that the following description is printed:

"Bottle with label with wording 'Carling London Canada Club Lager'."

Exhibit P (2)—providing that the following description is printed:

"Stopper for Canada Club Lager bottle." 40

Exhibit R—except entry number 58021 and a summary of this exhibit.

Exhibit T—provided that the following description is printed:

“Book containing samples of labels used by defendant company.”

Exhibits X, Y and Z—except a summary of each of these exhibits.

Exhibit Z (1).

Exhibit Z (2)—except the pink and blue returns,

and that the printing of the backs of the Export Entries, except the back of Exhibit 94, and the backs of the Bills of Lading may be dispensed with.

DATED the 29th day of June, A.D., 1929.

*In the
Exchequer
Court
of Canada*

—
No. 46
—

Order Dispens-
ing with
Printing of
Certain
Exhibits
June 29, 1929
(continued)

ARMAND GRENIER,
Acting Registrar.

Notice of Cross Appeal

In the Supreme Court of Canada

BETWEEN:

HIS MAJESTY THE KING, represented by the Attorney-General of Canada,
Appellant,

AND

THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED,

Respondent.

10

TAKE NOTICE that the Respondent intends upon the hearing of this appeal to contend that the judgment of the Honourable Mr. Justice Audette pronounced on the 29th day of April, 1929, herein, should be varied in the following amongst other respects:

- (1) The action should be dismissed with costs.
- (2) The plaintiff should not be awarded interest or penalties.
- (3) In determining the amount, if any, payable by the defendant, credit should be given for all payments made by the defendant to the Crown for gallonage or sales taxes on goods exported.
- (4) Any sales taxes for which the defendant is liable should be calculated on the 20 price of the goods as shown in the invoices and not at any so called advanced price.
- (5) In determining the amount, if any, payable by the defendant, account should be taken of any further B.13s produced which were not produced and put in as exhibits at the trial.

DATED this 2nd day of July, 1929.

McTAGUE, CLARK & RACINE,
Security Building, Windsor, Ontario,
Solicitors for the Defendant.

To:

W. STUART EDWARDS, Esq., K.C.,
Solicitor for the Attorney-General of Canada.

30

Reasons for Judgment of Supreme Court of Canada

*In the
Supreme
Court of
Canada.*

No. 48.
Reasons for
Judgment of
Supreme
Court of
Canada.
4th February
1930.

DUFF, J.—

(Concurred in by NEWCOMBE, RINFRET, LAMONT and SMITH, JJ.)

In the action out of which the appeal arises the Crown claims \$163,828.07 sales tax in respect of beer sold between the 1st of April, 1924, and the 1st of May, 1927; and the sum of \$260,662.21 gallonage tax in respect of beer manufactured and sold during the same period; and interest on these sums up to the 1st of June, 1927, at the rate of 5% per annum, and thereafter at the rate of two-thirds of 1% per month. The ground of defence was that
10 all this beer was manufactured for export and exported in fact, and that consequently under the provisions of the Revenue Act upon which the Crown's claim is based, there is no liability.

The learned trial judge held that in respect of certain cash sales in London and the vicinity of London, the respondents are liable to sales tax, and in respect of certain sales by one Bannon, in Windsor, to both sales and gallonage taxes. These items constituted a comparatively trifling element in the Crown's claim, and in respect of the claim as a whole the learned trial judge drew a distinction between shipments of beer sold by the respondents for
20 which export entries were produced, and those for which evidence of such entries was not forthcoming. He accepted the export entry as evidence of export and held that in respect of sales of goods, of which export was thus proved, no liability rested on the respondents for either sales or gallonage tax. Export was in this manner established in respect of about 83% in value of the goods sold. As to interest and penalties, the learned trial judge allowed the Crown's claim for interest, but disallowed the claim for penalties under the statute of 1927 in respect of taxes payable upon transactions prior to the date of the statute.

It will be convenient first to consider the learned trial judge's view as to
30 the Crown's claim for gallonage tax. The statute is Section 19B.1 (b) of The Special War Revenue Act, 1915, as amended by 12-13 George V., Chap. 47, Sec. 14 :

19B.1. (b) "There shall be imposed, levied and collected upon all goods enumerated in Schedule II. to this Part, when such goods are imported into Canada or taken out of warehouse or when any such goods are manufactured or produced in Canada and sold on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two, in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule II."
40

(c) "Where the goods are imported such excise tax shall be paid by the importer and where the goods are manufactured or produced and sold in Canada, such excise tax shall be paid by the manufacturer or producer; provided that if an automobile is, on the twenty-fourth

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day of May, one thousand nine hundred and twenty-two in the hands of a dealer and not sold to a *bona fide* user the tax shall be paid by such dealer when such automobile is sold.”

(d) “The Minister may require every manufacturer or producer to take out an annual license for the purposes aforesaid, and may prescribe a fee therefor, not exceeding two dollars, and the penalty for neglect or refusal shall be a sum not exceeding one thousand dollars. Provided that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise.”

Schedule II. “Ale, beer, porter and stout, per gallon, twelve and one-half cents.” 10

The respondents base their defence upon the proviso which takes effect when the goods are manufactured for export “under regulations prescribed by the Minister of Customs and Excise.” The construction advanced on behalf of the respondents turns upon the effect of the word “under.” “Under regulations prescribed by the Minister” means, it is argued, “in compliance with such regulations, if any.” That does not appear to be a natural reading of the words. Obviously an exemption on the ground that the goods affected are manufactured for export could not be generally allowed to take effect upon the unsupported representations of the manufacturer without grave risk or fraud upon the revenue, and it is this consideration, no doubt, which accounts for the requirement that export in order to attract the exemption must be under government regulation; in the absence of regulations the proviso can have no operation. Counsel for the Crown called attention to the distinction in the statute between cases in which export is made simpliciter the condition of exemption, and cases where the condition is manufacture for export. In the last mentioned cases (the proviso to section 19B and the proviso to 16A) regulations, and export under them, are required. In other cases, as, for example, sections 19BB1 (b), 19BB1 (e), 19BBB 1, regulations are not required; proof of export is enough. Mr. Tilley argues that the present case is distinguishable from the case of the excise taxes which were in question in *Dominion Press Ltd. v. Minister of Customs and Excise*, 1928 A.C. 340, and there are no doubt distinctions, but the reasoning in the Lord Chancellor’s judgment in that case seems to extend in substance to this case. “The proviso,” his Lordship said, “is an exempting proviso, and, in order to obtain its protection a tax-payer must bring himself within its language.” That you cannot do unless there are regulations. This claim for exemption seems to be unfounded. 20 30

I shall next mention the sporadic cash sales in London and Windsor. The contention in respect to these is that they are not subject to the tax because they are not sales. The Ontario Temperance Act, which was in force during this period, unquestionably did mark down as unlawful (indeed “criminal” if we adopt the recently sanctioned terminology) sales of liquor, except sales of specified categories to which those in question do not belong. Furthermore, by force of the statute, such transactions had no legal effect 40

except for the protection of *bona fide* purchasers for value, and no moneys or other consideration, received for liquor sold, became the property of the receiver as against the payer, who could recover it back. The effect of the Act was undoubtedly to deprive such transactions of the character of sales in contemplation of law, except for a limited purpose, that is to say, for the purpose of protecting a *bona fide* purchaser for value. The point made is that they are consequently not sales within the meaning of the statute the Crown is seeking to enforce.

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10 The answer to the contention appears to be this. The Ontario Act did not apply to all sales within Ontario. Sales made in course of interprovincial or foreign trade, and sales made to the Ontario Government were not affected. Where transactions have taken place which contain all the elements of a sale according to the ordinary language of business, which, but for such a prohibiting statute as the Ontario Temperance Act, would have legal effect as sales, and the parties have treated them as such, the purchaser receiving the goods as purchaser, and the vendor receiving the purchase price as vendor, then the vendor having received the price, which has passed into and become a part of his assets, the Court will not for fiscal purposes inquire into the application or effect of a statute such as the Ontario Temperance Act.

20 The case is not precisely the same as, but is not easily distinguishable from, the decision of the Privy Council in *Minister of Finance v. Smith*, 1927 A. C. 193. Smith was an Ontario bootlegger, and he was assessed for income derived from his bootlegging business. This Court held that he was not assessable in respect thereof because by the provisions of the Ontario Temperance Act, above adverted to, every transaction in which he engaged in that business was an offence against the Ontario Temperance Act and punishable by imprisonment, and that no moneys received by him from such transactions, and consequently no apparent profits, made in the course of his business, were his property; and that it must be assumed that the Income War
30 Tax Act was not intended to apply to incomes made up of the aggregate of apparent profits of such transactions. That judgment was reversed on grounds which were stated in the following passage of Lord Haldane's judgment :

40 "Construing the Dominion Act literally, the profits in question, although by the law of the particular Province they are illicit, come within the words employed. Their Lordships can find no valid reason for holding that the words used by the Dominion Parliament were intended to exclude these people, particularly as to do so would be to increase the burden on those throughout Canada whose businesses were lawful. Moreover, it is natural that the intention was to tax on the same principle throughout the whole of Canada, rather than to make the incidence of taxation depend on the varying and divergent laws of the particular Province. Nor does it seem to their Lordships a natural construction of the Act to read it as permitting persons who come within its terms to defeat taxation by setting up their own wrong. There is nothing in the Act which points to any intention to curtail the statutory definition of income, and it does not appear

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appropriate under the circumstances to impart any assumed moral or ethical standard as controlling in a case such as this the literal interpretation of the language employed. There being power in the Dominion Parliament to levy the tax if they thought fit, their Lordships are therefore of opinion that it has levied income tax without reference to the question of Provincial wrongdoing.”

I see no substantial ground for holding these considerations (held decisive in the circumstances of Smith’s case) to be without application here.

I now come to the critical question in the case, the question, namely, of the liability of the respondents in respect of sales tax. The statute is Section 19BBB.1 of The Special War Revenue Act, 1915, as amended by 13-14 George V., Chap. 70, Sec. 6, and 14-15 George V., Chap. 68, Sec. 1: (1):

“19BBB.1. In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of five per cent. on the sale price of all goods produced or manufactured in Canada, including the amount of excise duties when the goods are sold in bond, which tax shall be payable by the producer or manufacturer at the time of the sale thereof by him; and in the case of imported goods the like tax upon the duty paid value of the goods imported payable by the importer or transferee who takes the goods out of bond for consumption at the time when the goods are imported or taken out of warehouse for consumption. For the purpose of calculating the amount of the consumption or sales tax, ‘sale price’ shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto.

“Provided that the consumption or sales tax specified in this section shall not be payable on goods exported. . . .”

It was urged by Mr. Rowell that the phrase “consumption or sales tax” should be read distributively, the designation “sales tax” being applicable only to the tax payable in respect of “sales” under the first limb of the subsection. I doubt if a strict analysis of the language would justify this; the phrase “consumption or sales tax” seems rather to be a designation of the tax levied in respect of sales of goods produced or manufactured in Canada, as well as of that which affects the case of imported goods only. In my view of the section, I cannot convince myself that the point is of any importance. The statute, for the purpose of this particular head of taxation, classified goods as those produced or manufactured in Canada, and those imported. It is only with the first of these categories that we are concerned, and as to goods coming within it, there is “imposed, levied and collected” a “tax of 5% on the sale price” of all such goods. This tax, it is declared, is to be payable by the producer or manufacturer at the time of the sale of the goods by him. The tax is described as a “consumption or sales tax” or according to the view suggested by the Crown a “sales tax.” It does not seem to me to matter in the least whether you think of this tax as a tax upon a sale, or upon goods sold, or upon the price of goods sold. The rubric is “sales tax”; and any such compendious label might serve if it be distinctly understood that it is

only a summary way of indicating the tax, which becomes exigible, according to the terms, and under the conditions, laid down in this sub-section. The statute seems clearly enough to assume that the liability to pay is completely ascertainable, as well as completely constituted, at the time of the sale. And this seems to be the cardinal thing, for the purpose in hand. In terms, the taxes are payable in respect of all sales of goods produced or manufactured in Canada, and the phrase "tax . . . on the sale price" is employed by the principal clause. The proviso employs a different turn of expression and seems to treat the impost as a tax "payable on goods"; and declared that it shall not be payable upon a designated class of goods, namely, "goods exported," but there is absolutely nothing in the proviso to indicate any qualification of the enactment in the principal clause that the tax is payable at the time of sale. On the contrary the proviso explicitly and exclusively legislates for "the tax specified in this section." What it seems to effect is a qualification of the general terms of the principal clause, which literally embraces all sales of goods produced or manufactured in Canada (or all such goods when sold), and it does so by excluding from that comprehensive category "goods exported"; that is to say, the seller, by force of it, is not to come under the liability declared by the principal clause if he sells, not goods manufactured or produced in Canada simply, but such goods "exported." In other words, the proviso seems to exempt from the operation of the tax cases in which the goods are exported by the vendor in execution of the contract of sale. That seems to be the fair and reasonable meaning of the language, and there is no context by which the natural construction of the language is controlled.

This exposition of the statute is criticized on two distinct grounds. First, it is said that the principal clause in itself, read apart from the proviso, would only apply to sales complete in Canada and that on this reading the proviso is merely pleonastic. Such inelegances are not uncommon in statutes; and the criticism, if well founded, would not appear to be a satisfactory reason for departing from what appears rather plainly to be the effect of the language the legislature has seen fit to employ.

The alternative construction was not very precisely formulated in argument; but those suggested seemed to be open to the practicable objection that the exigibility of the tax would under them remain indeterminate for a more or less indefinite period after the completion of the sale. The second objection is that this construction would be productive of great inconvenience in practice. The purpose of the exemption being, it is said, to reinforce Canadian producers in their competition in foreign markets, it could not have been intended to restrict the scope of it so narrowly as to make it non-available in, for example, such frequently occurring transactions as sales through a foreign agent stationed here. But the ingenuity of commerce can hardly be supposed to be so limited in range as to justify a doubt that such transactions would quite legitimately assume a form within the proviso. It is difficult to suppose that any considerable inconvenience would arise in such cases from putting the transaction in some such form. In any case, provision is made by sub-section 10 for a refund of the tax where domestic goods are exported under regulations prescribed by the Minister of Customs and Excise. Further,

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there is a general provision by which the government has authority to remit taxes and other claims where justice requires it. The argument *ab inconvenienti* has little cogency.

The Crown contends that on this construction of the statute, the liability of the respondents to sales tax is indisputable, and that contention seems to be unanswerable. It is not seriously open to dispute, in view of the repeated admissions of Low, that the sales proved were sales completed in Canada; nor indeed was this denied on the argument. Neither is it possible to argue, assuming there was export in fact, that such export was effected by the respondents in execution of the contract of sale. The contention of the respondents was that the sales proved were sales to individual purchasers, first to one, Grandi, and afterwards to one, Savard, and that it was part of the arrangement with them that the beer delivered to them should be exported to the United States; that the sales were export sales in the sense that the beer was under the control of the respondents until it was placed in a boat (always an undecked boat) and entered for export, and that these boats cleared for the United States under the eyes of the respondents' agents. Shipment, in these craft, it is said, took place under the superintendence of Low acting for the respondents, for whom it was vital in a business sense that the goods should reach the United States. 10

Assuming for the moment the point of fact in favour of the respondents, they do not bring themselves within the proviso. The contract for sale was completed by delivery in Ontario. The export, on any assumption, was a subsequent fact, in respect of which the respondents assumed no responsibility. In the view above stated as to the effect of the statute, the liability thereupon attached, and there is nothing in the statute to indicate that export effected a defeasance of the obligation to pay the duty. The remedy of the respondents in such circumstances would be by way of the procedure laid down in sub-sec. 10. 20

Turning to another branch of the argument, let it be allowed that export, in the circumstances indicated, if proved in fact, would be sufficient to bring the respondents within the benefit of the proviso. The onus is of course upon them, to establish export in fact, and one observation is necessary as to what that means. The claim of the Crown is a claim for taxes payable in respect of sales of beer during the period mentioned. It was incumbent upon the Crown to prove such sales and that has been done. The respondents, if they are to escape taxation in respect of any shipment, must shew it was in fact exported. Generally speaking, export, no doubt, involves the idea of a severance of goods from the mass of things belonging to this country with the intention of uniting them with the mass of things belonging to some foreign country. It also involves the idea of transporting the thing exported beyond the boundaries of this country with the intention of effecting that. The concrete question here is, have the respondents shewn that these goods passed beyond the boundaries of Canada in course of transport to the United States, and that they did not return to this country. I assume that goods passing within American territory and there seized by American Customs officials, were exported within the meaning of the proviso. As I shall point 30 40

out, there are difficulties in reconciling with the ordinary notion of export, as commonly understood in commerce, and as contemplated by this statute, the kind of operation in which the respondents were engaged. But putting this aside for the moment, the respondents must face the question whether export in fact, in the sense just indicated, has been proved.

The case they put is this. They were engaged, they say, in exporting beer to the United States. The beer that they manufactured was a beer which found its principal market there, and their aim throughout was to secure and maintain that market. The persons to whom they sold beer were engaged in the business of selling in the United States, and large quantities of their beer were sold in Detroit and the vicinity. And they go so far as to argue that the onus is on the Crown to shew that the goods did not reach their intended destination.

It is first necessary to remember that the learned trial judge has found virtually that 17% of the beer with which we are concerned was not exported. The learned trial judge was evidently satisfied that the export entries produced were all that could be produced; and I think it is right to say that, considering the opportunities the respondents have had of searching for export entries, and considering the fact that such export entries were in their own possession, it must be found against them, that of the beer in question, not more was entered for export than that covered by the export entries proved. This of course is a very important fact. It is inconsistent entirely with the theory that the respondents were exclusively engaged in carrying on an export trade, and it is also irreconcilable with any assumption that they have laid before the Court an accurate account of the disposition of their beer. There is, moreover, another state of facts of decisive import. The persons concerned in the export of these goods were engaged in a trade which involved the introduction into the United States, and the sale there, of things which could neither be lawfully introduced nor sold there, nor, except in circumstances not here at all relevant, could be the subject of property or ~~judicial~~ possession there. The boundary waters were patrolled by police whose duty it was to prevent the entry of such goods into the United States, and to capture and confiscate craft endeavouring to effect such entry. The evidence abounds in indications that this is by no means a theoretical consideration. One witness, Dunford, says that in one month six craft owned by him personally, were captured and confiscated. It is also clear from the evidence that there was an extensive trade carried on in Ontario in beer of all kinds. In view of the non-production of the export entries, in relation to 17% of the goods in question, I do not think we can accept the suggestion that there was no market for lager beer in Ontario. The learned trial judge dwells upon the fact that rice beer is peculiarly an American taste, and infers that it is not sold in Ontario. The evidence in support of this does not proceed from disinterested sources, and I wonder whether the boundary line so sharply affects the taste in illicit liquor. In truth, it is stated by Low that it was not until some time in 1926 that the respondents began the manufacture of rice beer, and we are not told at what date, if ever, in their brewery, rice beer wholly superseded malt beer. My conclusion is that while there is some evidence of export, while no doubt beer

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was exported in large quantities, it is impossible to say judicially with regard to any particular shipment that that shipment reached the United States side and was landed there, or that it was captured by the United States preventive officers, or that it was returned to the Canadian side and sold there. I may add that I hope, as a judge of fact, I shall not be supposed to have divested myself of all knowledge of human habits and modes of thinking.

The Crown argues that as the export alleged in this case involves, as already indicated, a deliberate violation of the United States laws to the extent pointed out, it cannot be treated as “export” within the meaning of the statute. I think there is a great deal to be said in favour of the view that “export” in the sense of the statute may be limited in such a way as to exclude export so entirely beyond the ordinary course of commerce. The considerations in favour of this view are so numerous and so obvious that they need not be dwelt upon. As against this contention, however, one must not overlook the point, very moderately put by Mr. Tilley, that the Crown is proposing that we overlook the criminal law from one point of view, while giving decisive effect to it, from another. Personally, I do not think this last contention, although far from being without force, is conclusive. It may well be that here, not for the first time in the history of human affairs, the way of the transgressor is hard. In my view, it is hardly conceivable that Parliament should contemplate such transport beyond the country as is now relied upon as constituting a ground of exemption. But after all we are only concerned with the meaning of the words used. It is risky to speculate upon parliamentary motives, and I prefer not to express any opinion upon this point.

The only remaining point concerns interest and penalties. As for interest, we are governed by Lord Macnaghten’s judgment in *Toronto v. Toronto*, 1906, Appeal Cases, 117. As to the other point, I think we are bound to give effect to the precise words of the statute.

The appeal should therefore be allowed and the case remitted to the Court of Exchequer to be dealt with in accordance with the views herein expressed. The respondents must pay the costs of the appeal.

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IN THE SUPREME COURT OF CANADA

Tuesday, the Fourth day of February, A.D. 1920.

Present :

THE RIGHT HONOURABLE MR. JUSTICE DUFF, P.C.
THE HONOURABLE MR. JUSTICE NEWCOMBE,
THE HONOURABLE MR. JUSTICE RINFRET,
THE HONOURABLE MR. JUSTICE LAMONT,
THE HONOURABLE MR. JUSTICE SMITH.

BETWEEN :

HIS MAJESTY THE KING, on the Information of the
Attorney-General of Canada,

(Plaintiff) APPELLANT,

AND

THE CARLING EXPORT BREWING AND MALTING
COMPANY, LIMITED,

(Defendant) RESPONDENT.

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10 The appeal of the above named appellant from part of the judgment of
the Exchequer Court of Canada pronounced in the above cause on the twenty-
ninth day of April in the year of our Lord one thousand nine hundred and
twenty-nine, having come on to be heard before this Court on the twelfth,
thirteenth, sixteenth, seventeenth and eighteenth days of December, in the
year of our Lord one thousand nine hundred and twenty-nine, in the presence
of counsel as well for the Appellant as the Respondent, whereupon and upon
hearing what was alleged by counsel aforesaid this Court was pleased to
direct that the said appeal should stand over for judgment, and the same
coming on this day for judgment, this Court did ORDER AND ADJUDGE that
20 the said appeal should be and the same was allowed, and that the said judg-
ment of the Exchequer Court of Canada should be and the same was as
regards the part thereof in the next paragraph mentioned reversed and set
aside.

THIS COURT DID DECLARE that the appellant is entitled to recover from
the respondent sales tax on all sales in respect of which sales tax is claimed in
this action and gallonage tax on all sales in respect of which gallonage tax is
claimed in this action as to which the said Exchequer Court held no liability
rested on the respondent, and DID ORDER AND ADJUDGE the same accordingly.

THIS COURT DID FURTHER ORDER AND ADJUDGE that the appellant is
30 entitled to recover from the respondent interest upon such sales tax and
gallonage tax in respect of all sales prior to the fourteenth day of April, A.D.
1927, from the due date thereof until the said fourteenth day of April, A.D.
1927, at the rate of five per centum per annum and a penalty thereafter until
paid at the rate of two-thirds of one per centum per month; and a penalty
upon such sales tax and gallonage tax in respect of all sales subsequent to the
said fourteenth day of April, A.D. 1927, from the due date thereof, until paid
at the rate of two-thirds of one per centum per month.

THIS COURT DID FURTHER ORDER AND ADJUDGE that this action be
remitted to the Exchequer Court of Canada which shall determine the amount
40 payable by the respondent under the judgment of the Exchequer Court of
Canada as varied by this Court and all subsequent costs, and, except as herein
varied, the said judgment of the Exchequer Court of Canada be affirmed.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the respondent
do pay to the appellant the costs of this appeal.

(Signed) E. R. CAMERON,
Registrar.

*In the
Privy Council*

No. 50
Order of His
Majesty in
Council
13th June
1930.

[L.S.]

No. 50
Order of His Majesty in Council

AT THE COURT AT BUCKINGHAM PALACE

The 13th day of June, 1930.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY	
LORD PRESIDENT	HON. SIR WILLIAM ERSKINE
LORD PRIVY SEAL	DR. ADDISON
MR. SECRETARY THOMAS	MR. NOEL-BUXTON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 15th day of May 1930 in the words following, viz.:— 10

“WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Carling Export Brewing and Malting Company Limited in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and Your Majesty on the information of the Attorney-General of Canada Respondent setting forth (amongst other matters) that the Petitioners desire to obtain special leave to appeal from a Judgment of the Supreme Court dated the 4th February 1930 allowing the Respondent's Appeal from a Judgment of the Exchequer Court of Canada dated the 29th April 1929 whereby the Respondent's claim under the Special War Revenue Act 1915 and amendments for Gallonage or Excise Tax and for Sales Tax on goods sold by the Petitioners between the 1st April 1924 and the 1st May 1927 had been dismissed in respect of about 83 per cent. of the claim and allowed in respect of the balance : that under the Judgment of the Supreme Court the taxes interest and penalties payable by the Petitioners are estimated to amount to about \$475,728 : that the Special War Revenue Act 1915 imposing the taxes in question contained provisos exempting from the Gallonage or Excise Tax “goods . . . manufactured for export, under regulations prescribed by the Minister of Customs and Excise” and exempting from the Sales Tax “goods exported” : that the substantial question in dispute is whether these provisos on their true construction exempted from the taxes in question the goods of the Petitioners which had been in fact exported : that the effect of the Judgment of the Supreme Court is :— (1) that the exemption proviso in regard to Excise Tax had no effect because no “regulations” had been “prescribed by the Minister of Customs and Excise” and (2) that in order to obtain exemption from the Sales Tax it was necessary to show not merely that the goods had been exported but that they had been “exported by the vendor in execution of the contract of sale” and reciting the facts of the case : 20 30 40

that the Exchequer Court (Audette J.) on the 29th April 1929 delivered judgment holding that the whole question depended on whether or not the goods in question had been duly exported and whether they had been exported in the manner provided by Canadian law that to that question there could be only one answer that the goods had been lawfully exported to a foreign purchaser and did not return to Canada and that the Petitioners were therefore exempt from both the taxes : that the Respondent having appealed and the Petitioners having cross-appealed to the Supreme Court that Court (Duff, Newcombe, Rinfret, Lamont, and Smith, JJ.) gave judgment on the 4th February 1930 allowing the Respondent's Appeal : And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the said Judgment of the Supreme Court of Canada dated the 4th February 1930 or that Your Majesty may be pleased to make such further or other Order as to Your Majesty in Council may appear fit :

*In the
Privy Council*
—
No. 50
Order of His
Majesty in
Council
13th June
1930.

—continued.

10

20

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and for Your Majesty Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 4th day of February 1930 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

30

“And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General Lieutenant-Governor or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

40

COLIN SMITH.

No. 51.

Certificate of Registrar on application to correct formal Judgment.

*In the
Supreme
Court
of Canada.*

THE CARLING EXPORT BREWING AND MALTING
COMPANY, LIMITED (*Defendant*) *Appellant*,

No. 51.
Certificate of
Registrar on
application to
correct formal
Judgment.

and

HIS MAJESTY THE KING, on the information of
the Attorney-General of Canada (*Plaintiff*) *Respondent*.

I, Edward Robert Cameron, Registrar of the Supreme Court of
Canada, hereby certify that on the 5th day of September, 1930, application
10 was made, on consent, before the Right Honourable Mr. Justice Duff,
to correct the formal judgment of the Supreme Court of Canada entered
on this appeal.

The paper writing now shown me, marked "A," annexed hereto, is a
true copy of the judgment pronounced on the said application.

I am informed by Counsel for the said Carling Export Brewing and
Malting Company, Limited, that an application will be made to the
Supreme Court of Canada at the opening of the fall session, October 7th,
to have the formal judgment of the Supreme Court amended in accordance
with the judgment of the said Right Honourable Mr. Justice Duff.

20 All of which I hereby certify under the official Seal of the Supreme
Court of Canada.

E. R. CAMERON,
Registrar.

Ottawa, this 6th day of Sept., A.D. 1930.



Reasons for Judgment of Mr. Justice Duff on application to correct formal Judgment. [“ A ”]

No. 52.
Reasons for
Judgment of
Mr. Justice
Duff on
application to
correct formal
Judgment.

Duff J. (In Chambers).

An application is made on behalf of the Crown to correct the formal judgment as entered in this appeal. On the argument of this appeal, Mr. Rowell admitted that the judgment of the Exchequer Court was wrong in providing for the computation of sales tax on the basis of the “ advanced price ” referred to in the judgment of that court, and that the basis of computation should be the price shown in the invoice. It 10 was the intention of the court in delivering judgment that this admission should take effect, and that the judgment of the Exchequer Court should be varied accordingly. Nothing was said upon the point in the reasons for judgment written by myself, and it was not mentioned in the note of the disposition of the appeal handed to the Registrar on the formal delivery of judgment.

It further appears that before judgment was entered, the amount to which the Crown would be entitled under the judgment of this court computed according to Mr. Rowell’s admission, was ascertained by the auditors, Clarkson & Co., whose figures were accepted by both parties ; 20 and that the parties requested the Registrar to frame the judgment as a judgment vacating that of the Exchequer Court, and ordering the recovery by the Crown of the sum so ascertained. This, the Registrar conceived, he was unable to do. In the result, the Crown has a judgment directing a reference to determine the amount due according to the principle of the judgment of this court, but leaving undisturbed the direction of the learned judge of the Exchequer Court above mentioned, as to the basis of computation of sales tax.

Had these matters been brought to our attention before the settlement of the judgment, we should have directed that the formal judgment should 30 be expressed in accordance with the desire of both parties. The judgment having been settled and entered, I have no authority, sitting as a judge in Chambers, to direct any alteration in it ; although of course the court has as a rule full authority to correct the formal judgment in so far as it may be necessary to do so in order to bring it into conformity with its intention in pronouncing its decision.

In the present case, however, leave to appeal to the Privy Council has been granted, and the court no doubt, would not consider itself at liberty now to make any change in the judgment, and there would be no object therefore in convening a special sitting. 40

In the circumstances, unfortunately, I am powerless to assist the applicants.

No. 53.

Formal Judgment (as agreed).

In the Supreme Court of Canada.

Tuesday the Fourth day of February, 1930.

Present :

- THE RIGHT HONOURABLE MR. JUSTICE DUFF, P.C.
- THE HONOURABLE MR. JUSTICE NEWCOMBE.
- THE HONOURABLE MR. JUSTICE RINFRET.
- THE HONOURABLE MR. JUSTICE LAMONT.
- THE HONOURABLE MR. JUSTICE SMITH.

10

Between :

HIS MAJESTY THE KING, on the Information of
the Attorney-General of Canada (*Plaintiff*) *Appellant*,

and

THE CARLING EXPORT BREWING AND MALTING
COMPANY, LIMITED (*Defendant*) *Respondent*.

The appeal of the above named Appellant and the cross-appeal of the above named Respondent from the Judgment of the Exchequer Court of Canada pronounced in the above cause on the 29th day of April, A.D. 1929, having come on to be heard before this Court on the 12th, 13th, 16th, 17th and 18th days of December, A.D. 1929, in the presence of counsel as well for the Appellant as the Respondent, and Counsel for the Appellant having contended on the argument that the sales in question were made by the Respondent at the brewery in London and that the sales tax for which the Respondent is liable should be calculated on the price of the goods as shown in the invoices and not at the so-called advanced price referred to in the Judgment of the Exchequer Court, whereupon and upon hearing what was alleged by counsel aforesaid this Court was pleased to direct that the said appeal and cross-appeal should stand over for judgment, and the same coming on this day for judgment.

30

This Court did Order and Adjudge that the said appeal should be and the same was allowed, and that the said cross-appeal be and the same was dismissed except as to price of the goods on which the sales tax is to be computed, which is to be the price shown in the invoices and not the so-called advanced price referred to in the Judgment of the Exchequer Court, and that the said Judgment of the Exchequer Court of Canada except paragraphs 6 and 9 thereof should be and the same was reversed and set aside.

This Court did further Order and Adjudge that the Appellant do recover from the Respondent \$375,298.80 for sales and gallonage tax and

40

*In the
Supreme
Court
of Canada.*

No. 53.
Formal
Judgment (as
agreed),
4th February
1930.

*In the
Supreme
Court
of Canada.*

No. 53.

Formal
Judgment (as
agreed),
4th February,
1930.

—continued.

\$15,808.30 for interest to 14th April 1927 on taxes due before that date, at five per cent. per annum, and \$84,621.66 for interest or penalty after 14th April 1927 on all taxes at two-thirds of one per cent. per month, making together \$475,728.76.

This Court did further Order and Adjudge that the Appellant is entitled to recover from the Respondent interest or penalty on the said principal sum of \$375,298.80 from this date to the date of payment, at the rate of two-thirds of one per cent. per month.

This Court did further Order and Adjudge that except as herein varied the said judgment of the Exchequer Court of Canada be affirmed. 10

And this Court did further Order and Adjudge that the Respondent do pay to the Appellant the costs of this appeal and of said cross-appeal.

RECORD OF PROCEEDINGS

*In the
Exchequer
Court of
Canada*

PART II EXHIBITS

Exhibits

(NUMBERED EXHIBITS FILED BY PLAINTIFF; LETTERED EXHIBITS BY DEFENDANT)

EXHIBIT No. 20.

(Plaintiff's)

Memorandum, Customs Department, Circular 953B

No. 20
Memoran-
dum
Customs
Department,
Circular
953B
Dec. 1, 1897.

File No. 30, 169.

(Amended.)

No. 953 B.

MEMORANDUM

10

CUSTOMS DEPARTMENT,

OTTAWA, 1st December, 1897.

Collector of Customs,

RE REPORT OUTWARDS AND ENTRY OF GOODS EXPORTED.

1. By an Order of the Governor General in Council on the 15th November, 1897, the declaration in the form Schedule "A" hereto, is prescribed to be substituted for the oath to be made in Canada, on the entry for export of articles not liable to any export duty, and other than are exported under Customs or Excise Bond.

2. An Export Entry prepared, in duplicate, and signed by the owner of the goods exported or by his agent (who may also be the agent of the transportation line carrying the goods), in the presence of a subscribing witness, in the said prescribed form, shall accompany and be attached to the way bill of all goods or merchandise exported by sea, by land, or by inland navigation, and all such goods and merchandise shall be reported outwards in the said form at the nearest Custom House and at the Customs port of exit from Canada, (saving and excepting goods exported under Customs or Excise Bond, and goods liable to export duty, all of which shall be reported and entered for export in accordance with special forms prescribed therefor).

*In the
Exchequer
Court of
Canada*

—
Exhibits

No. 20
Memoran-
dum
Customs
Department,
Circular
953B
Dec. 1, 1897.

—Continued.

3. The duplicate copy of the Export Entry accompanying the way bill of the goods shall be filed at the port of exit from Canada and shall be marked with the stamp of the Custom House where the original entry has been filed. The Export Entries may be thus stamped by Customs Officers in attendance at railway stations and other places where goods are laden for export.

4. All Export Entries shall, as far as possible, be made at the Custom House nearest the place of shipment for export, and the Export Entries so made shall be compiled at the Chief Port of such Custom House :

(a) Provided, however, that all goods exported from Canada, excepting such as are entered outwards at another Custom House as aforesaid and are accompanied by Entries marked with such Custom House Stamp, shall be entered for export at the Canadian port of exit and the entries thereof shall be compiled at the Chief Port of the port of exit;

(b) Provided, also, that in cases of urgency, the Export Entries of goods forwarded by Express may be made at the port of exit from Canada.

5. The Master, Officer or other person in charge of any vessel, railway car, or other vehicle is liable to the penalties provided by the Customs Act if he departs from Canada before bringing and delivering to the Collector or other proper officer of Customs, at the port of exit, a content, in writing, of the goods laden for export, and the names of the respective shippers and consignees of the goods, with the marks and numbers of the packages.

6. Railway companies, steamship companies, express companies, and other carriers engaged in the exportation of goods, are enjoined to strictly observe the law in respect to the report outwards at Customs of *all* goods carried by them for export from Canada, and are requested to be particularly careful that the *quantities* and *values* of the goods exported are accurately stated.

7. Nothing herein contained shall be held as applicable to goods passing through Canada in transit by rail from one point in the United States to another point in the United States.

8. The form of Export Entry, as per Schedule "A" hereto, shall be used on and after 1st January, 1898.

9. In all cases where goods are entered for export at an inland or other port which is not the frontier port of exit from Canada for said goods, the Collector of Customs at such inland or other port shall forward, by mail, without delay one copy of the Export Entry (marked with the Customs Stamp and the word "copy") to the Collector of Customs at the Frontier Port of Exit, for his information in checking the exports passed outwards,—but such stamped "copies" of entries shall not be aggregated in the Export Returns at the Chief Port of the Port of Exit.

JOHN McDOUGALD,
Commissioner of Customs.

30

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EXHIBIT No. 20.—Continued.

SCHEDULE "A."

*In the
Exchequer
Court of
Canada*

(Form B. 13—Customs, Canada.)

Exhibits
No. 20
Memoran-
dum
Customs
Department,
Circular
953B
Dec. 1, 1897.

Entry of articles of domestic production and of foreign articles, which are not subject to export Customs or Excise Duties, delivered by.....(owner or agent),
to..... for exportation
to..... via

—Continued.

10	Marks and Nos. of Package.	Description of Articles.	DOMESTIC ARTICLES.		FOREIGN ARTICLES.	
			Quantities	Values	Quantities	Values
				\$		\$

I,.....(owner, shipper or consignor), hereby certify that the above is a full and true statement of the kinds, quantities and values, and destination of all the articles delivered by me for exportation, as aforesaid.

Signed by.....

Residence.....

Date.....

In the presence of.....

EXHIBIT No. 19.
(Plaintiff's)

Memorandum, Customs Department, No. 1098B.

No. 1098-B

CUSTOMS DEPARTMENT, CANADA,
OTTAWA, 26th May, 1900.

*In the
Exchequer
Court of
Canada*

Exhibits
No. 19.
Memoran-
dum
Customs
Department,
No. 1098 B
May 26,
1900.

To Collectors of Customs and others concerned :

ALL EXPORT ENTRIES TO BE FILED AT THE CANADIAN PORT OF EXIT, ON AND
AFTER 1ST JULY, 1900.

ALL STATISTICAL RETURNS OF IMPORTS TO BE AGGREGATED
AND COMPILED FROM ENTRIES IN OTTAWA.

10

1. On and after 1st July, 1900, all Export Entries are to be filed at the Canadian "Port of Exit," being the last port in Canada through which goods for exportation pass outwards for places beyond the limits of Canada—in accordance with the terms of the Regulations approved by Order in Council of 26th May, 1900, hereto appended, the provisions of which are to be strictly observed.

2. The Statistical Record Books and Returns of Imports and Exports, heretofore kept and prepared at the various ports of Entry in Canada, shall, in respect of import and export entries on and after 1st July, 1900, be kept, prepared and aggregated at the Statistical Branch of the Customs Depart-²⁰ment in Ottawa, from the Customs Entries and papers connected with the entries.

3. When goods entered for export ex-warehouse at one port in Canada pass outwards at another port in Canada, one copy of the Export Entry shall be forwarded by mail with the manifest, to the port of exit to be filed thereat and numbered consecutively with B 13 Series of Export Entries.

The Collector at the port of exit shall prepare a copy of the said Entry for export ex-warehouse thus received from another port and shall forward same in due course along with B 13 Series of Entries to the Commissioner of Customs, Ottawa.

30

(a) When the Entry for Export ex-warehouse is *made* at the port of exit in Canada, a copy of such entry shall be numbered consecutively with B 13 Series of Entries, and shall be forwarded therewith by the Collector in due course to the Commissioner of Customs, Ottawa,—this copy being in addition to the usual copy which is still required to be sent to the Department.

(b) All entries for Export ex-warehouse forwarded to the Department with B 13 Series of Export Entries, shall be plainly marked with the stamp of the "Port of Exit," and B 13 Series of Export Entries shall also be marked with the stamp of the port of exit. ⁴⁰

4. It is the duty of the Customs Collector at each "Port of Exit" to see that proper Export Entries shall be delivered at his port for all goods permitted to pass outwards thereat for exportation, and every such Collector is specially required to use his best endeavours to this end, so that full and correct returns of Exports may be obtained.

When the "Port of Exit" is an "Outport" or "Preventive Station," all Export Entries delivered thereat shall be forwarded regularly by the Sub-Collector or other proper officer of Customs to the Chief Port having survey over the "Port of Exit," to be *there* consecutively re-numbered, and to be
10 forwarded without delay from such Chief Port to the Commissioner of Customs, Ottawa,—until otherwise ordered.

5. The Regulations established by the Order in Council hereto appended are to supersede those contained in Memo. No. 953 B, of 1st December, 1897, in respect of Export Entries (Form B 13) on and after 1st July, 1900,—Form B 13, however, remaining unchanged.

JOHN McDOUGALD,
Commissioner of Customs.

APPENDIX.

Note.—The special attention of Railway Companies and other carriers of
20 goods is directed to the following provisions of the Regulations as to export entries, in force 1st July, 1900,—particularly as to an *export entry* (on Form B 13) *in duplicate accompanying the way bill* of all goods laden at an inland port or place when consigned as for exportation, from Canada.

PRIVY COUNCIL, CANADA,
AT THE GOVERNMENT HOUSE AT OTTAWA,
SATURDAY, the 26th day of May, 1900.

PRESENT :
HIS EXCELLENCY IN COUNCIL.

His Excellency, in virtue of the provisions of "The Customs Act," and
30 the Acts in amendment thereto, and by and with the advice of the Queen's Privy Council for Canada, is pleased to make the following regulations respecting Customs Entries and Statistical Returns of goods exported from Canada, and the same are hereby made accordingly, namely :—

REGULATIONS RESPECTING CUSTOMS ENTRIES AND STATISTICAL RETURNS OF GOODS EXPORTED FROM CANADA, IN FORCE AND EFFECT ON AND AFTER THE 1ST JULY, 1900.

1. Export entries in duplicate for statistical purposes shall be delivered to the Collector of Customs at the last port in Canada through which goods

*In the
Exchequer
Court of
Canada*

—
Exhibits

No. 19.
Memoran-
dum
Customs
Department,
No. 1098 B,
May 26,
1900.

—Continued.

*In the
Exchequer
Court of
Canada*

Exhibits

No. 19.
Memoran-
dum
Customs
Department,
No. 1098 B
May 26,
1900.

—Continued.

for exportation pass outwards for places beyond the limits of Canada when exported by land, and at the port where laden on the exporting ship if the goods be exported by water—each such port being herein designated as “the port of exit from Canada.”

2. Goods not liable to any export duty, and other than are exported under Customs or Excise Bonds shall be reported and entered outwards at the port of exit from Canada *in duplicate* in accordance with the form schedule “A” approved by Order in Council 15th November, 1897, (known as Customs Form B. 13.) Goods exported under Customs or Excise Bonds, and goods liable to export duty shall be reported and entered for export in accordance¹⁰ with the special forms prescribed therefor.

3. All goods laden at an inland port or place in Canada, consigned as for exportation, shall be accompanied by an export entry prepared in duplicate and signed by the owner of the goods exported or by his agent, in the presence of a subscribing witness in the prescribed form, B 13, except as to goods under Customs or Excise Bond, or subject to export duty. Such entries for export shall be delivered by the Carrier of the goods to the Collector of Customs at the port of exit from Canada, and shall serve, in respect of such goods, in lieu of the entry for export heretofore required to be made at the nearest Customs House.

20

4. The penalties provided in the Customs Act and the Acts in amendment thereto, in respect of goods exported, carried or conveyed contrary to any regulations made by the Governor in Council, shall apply in respect of all exported goods which have been exported, carried or conveyed without delivery of the export entry thereof to the Collector of Customs at the Port of Exit from Canada.

5. Railway Companies, Steamship Companies, Express Companies and other carriers engaged in the exportation of goods are required to strictly observe the law in respect to the export entry of goods carried by them for export from Canada, taking particular care that the quantities and values of³⁰ the goods exported are accurately stated.

6. The Collector at the port of Exit shall number entries consecutively and shall keep a register thereof in the form prescribed by the Minister of Customs. He shall forward by mail promptly addressed to the Commissioner of Customs, Ottawa, for compilation, one copy of each export entry as received from day to day, numbered consecutively as aforesaid, and plainly marked with the stamp of the Port of Exit.

(Signed) JOHN J. MCGEE,
Clerk of Privy Council.

EXHIBIT No. 19-B.

(Plaintiff's)

Memorandum Customs Department No. 1168 B.

*In the
Exchequer
Court of
Canada*

—
Exhibits

No. 1168 B.

No. 19B.
Memoran-
dum
Customs
Department,
No. 1168 B,
Nov. 15,
1901.

MEMORANDUM.

CUSTOMS DEPARTMENT, CANADA,
OTTAWA, November 15th, 1901.

To Collectors of Customs at Ports of Exit :—

EXPORTS.—ULTIMATE DESTINATION AND ENTRY FORMS.

10 (Referring to Memos. 1098 B.—1111 B. and 1114 B.)

Collectors at Ports of Exit are directed to carefully scrutinize all export entries and see that the country of ultimate destination to which the goods are destined for a market is correctly stated therein as the "country for exportation" so far as practicable.

The country of *ultimate destination* to which the goods are destined for a market is to be stated in the Export Entry as the country to which *Exported*, and this rule is to be strictly observed, and particularly as to exports of the forest, and of Animals and of Dairy and other Agricultural produce shipped *viâ* United States, as articles may be carelessly declared by shippers as for . 20 exportation to the United States when in fact the ultimate destination of the shipment is to Great Britain or some other country beyond the United States, the transit through United States being merely an incident in the course of the exportation to the ultimate market beyond.

Export Entries are to be legibly filled in with ink : in urgent cases an indelible pencil may be used if the writing and figures be plain and distinct, but in no case is a "carbon" or "lead pencil" impression to be accepted for Export Entry.

The signature of a *witness* on Export Entries (on Form B. 13) is dispensed with.

30 Export Entries on paper half length of "foolscap" (or longer) may be accepted for Express goods and in other cases where necessary if the full information required be plainly and legibly stated therein.

JOHN McDOUGALD,
Commissioner of Customs.

EXHIBIT No. 20A.
(Plaintiff's)

Memorandum Customs Department, No. 2020 B.

No. 2020 B.

Exhibits

No. 20A.
Memoran-
dum
Customs
Department,
No. 2020 B.
June 30,
1916.

MEMORANDUM.

DEPARTMENT OF CUSTOMS, CANADA.

OTTAWA, 30th June, 1916.

*To Collectors of Customs,
Agents of Railway and Steamship Lines and Others Concerned :—*

CUSTOMS EXPORT ENTRIES

The special attention of Railway Companies and other carriers of goods is directed to the following provisions of the regulations as to Export Entries,¹⁰ in force 1st July, 1900, particularly as to an Export Entry (on Form B. 13) in duplicate accompanying the Way Bill of all goods laden at an inland port or place when consigned as for exportation from Canada.

**REGULATIONS RESPECTING CUSTOMS ENTRIES AND STATISTICAL RETURNS OF
GOODS EXPORTED FROM CANADA, IN FORCE AND EFFECT ON AND
AFTER 1ST JULY, 1900.**

1. Export entries in duplicate for statistical purposes shall be delivered to the Collector of Customs at the last port in Canada through which goods for exportation pass outwards for places beyond the limits of Canada when exported by land, and at the port where laden on the exporting ship if the²⁰ goods be exported by water, each such port being herein designated as "the port of exit from Canada."

SUMMARY of Customs Regulations respecting EXPORT ENTRIES of goods, required to be observed by shippers and Railway Carriers in Canada, when goods are laden at Inland Railway stations and sidings and consigned for exportation from Canada.

Note particularly that an Export Entry (on Form B. 13) *in duplicate*, is required for Customs Statistical purposes to be forwarded *along with the way bill* from the place of lading, in all cases where goods are laden at an inland port or place in Canada and consigned as for exportation from Canada. ³⁰

2. The Export Entry may be *signed* by the shipper or his agent (who may also be the Railway Agent) in the presence of a witness, and is not required to be attested to.

3. Goods for exportation are classed in the Export Entry form as "Domestic Articles" or "Foreign Articles." Goods exported from a Customs Bonded Warehouse are to be reported on the same form (B. 13) but under the heading "Foreign Articles.

Goods exported from an Excise Warehouse are to be reported also on the same form (B. 13) but under the heading "Domestic Articles."

Export Entries from Customs or Excise Bonded Warehouse as aforesaid are to be marked at the top as "Ex-Warehouse for Statistics."

4. Export Entries are required for *coin or bullion* exported, as in the case of other exports.

5. REMEMBER that the Export Entries in duplicate for statistical purposes as above stated and as ordered by the *Governor in Council* are to be *delivered by the carrier* of the goods to the Collector of Customs at the port of exit from Canada (being the *last port in Canada* through which the goods for exportation pass outwards for places beyond the limits of Canada when exported by land); and that it is MOST IMPORTANT to have the Export Entries furnished and firmly attached to the way bill from inland places in order to avoid the necessity for detention and side-tracking of the goods at the frontier until Export Entries therefor are obtained and delivered to the Canadian Customs Officer.

6. When goods for exportation arrive at the frontier unaccompanied by Export Entries from inland stations, the Collector of Customs is to report the facts to the Commissioner of Customs and state particularly the *place of lading*, in order that the *neglect* to forward Export Entries may be traced to the proper railway agent, and that the manager of the Railway may be notified through the Department of Customs of such irregularity and neglect.

7. The country of *ultimate destination* to which the goods are destined for a market is to be stated in the Export Entry as the country to which *Exported*, and this rule is to be strictly observed and particularly as to exports of the forest, and of Animals and of Dairy and other Agricultural produce shipped via the United States, as articles may be carelessly declared by shippers as for exportation to the United States when in fact the ultimate destination of the shipment is to Great Britain or some other country beyond the United States, the transit through United States being merely an incident in the course of the exportation to the ultimate market beyond.

30 *Note Particularly—*

That a separate Export Entry in duplicate should be delivered for each shipment, showing the name of the shipper and consignee respectively in each case.

A "general" entry is not acceptable, in which the shipments of several shippers to the same consignee are "bulked" together without specifying the particulars of each shipment and the name of the shipper in each instance.

Note also, when drawback of Customs duty is claimed, that a *third copy* of Export Entry, marked "subject to drawback" should accompany the goods to the frontier port of exit.

40

JOHN McDOUGALD,
Commissioner of Customs.

Penalty for neglect to deliver Export Entry, \$400.

*In the
Exchequer
Court of
Canada*

Exhibits
No. 20-A.
Memoran-
dum
Customs
Department,
No. 2020 B,
June 30,
1916.

—Continued.

In the
Exchequer
Court of
Canada

EXHIBIT No. 20A.—Continued.
CUSTOMS, CANADA

Exhibits FORM B. 13—(Amended 1916). EXPORT ENTRY.

No. 20A.
Memoran-
dum
Customs
Department,
No. 2020B.
June 30,
1916.

Report No.....

Entry No.....

(Place of lading)

Entry and List of Articles of domestic production and Foreign Articles, which are not

—Continued. subject to Export, Customs, or Excise Duties, delivered by.....
(Address of Owner or Agent)

to..... for exportation to..... 10
(Name of Railway or Vessel, &c.) (Country of final or ultimate destination)

via (1)..... consigned as below :

N.B.—(1) State if shipped *via* United States Port, or direct from Canadian Port.

ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT	
				Domestic pro- ducts, including imported goods re-manu- factured in Canada	Foreign or imported pro- ducts in same condition as imported

STAMP OF PORT OF EXIT

I,.....
(owner, shipper, or consignor), hereby certify that the above is a
full and true statement of the kinds, quantities, values and desti-
nation of all the articles delivered by me for exportation as afore-
said.

Signed by.....

Residence.....

Date.....

SEE REGULATIONS ON OTHER SIDE.

EXHIBIT No. 78.

(Plaintiff's)

In the
Exchequer
Court of
Canada

Excise Tax Regulations No. 493

493

Excise.

G 31

200,000-7-20

Exhibits
No. 78.
Excise Tax
Regulations
No. 493,
July 30,
1920.

DEPARTMENT OF CUSTOMS AND INLAND REVENUE.

EXCISE TAXES.

July 30, 1920.

Under the provisions of the 1920 Amendment to The Special War Revenue Act four classes of taxes are imposed, viz :—

- (1) *Excise (Luxury) Taxes*, as under section 19BB, subsections 1 (a) to (d) and subsections 2 (a) and (b);
- (2) *Manufacturer's Tax*,—as under section 19BB, subsections 4 (a) to (h);
- (3) *Tax on Importations* of alcoholic preparations as under section 19BB, subsection 6 (a) to (c);
- (4) *Sales Tax*,—under section 19BBB, subsection (1).

EXCISE (LUXURY) TAXES.

Method of Collection :

(A) The Luxury Taxes as provided under section 19BB, subsection 1 (a) to (d) and subsection 2 (a) and (b) of the Amendment to The Special War Revenue Act are collectible at the time of the sale of the articles specified in these sections, for consumption or use or on importations for consumption or use other than for re-sale.

The Luxury Taxes of 10 per cent, 15 per cent, 20 per cent and 50 per cent, as provided in section 19BB, subsections 1 (a) to (d), are collectible on the full purchase price of the articles specified in this subsection.

Examples :—

Hats, men's or boys', sold at \$7 each or less, are exempt from the Luxury Tax. A man's hat sold at \$8 is subject to a tax of 80 cents, this tax being computed upon the full purchase price of the hat.

House jackets are subject to the Luxury Tax of 10 per cent on the full purchase price and without any exemption allowance.

NOTE.—RESPECTING THE ITEM "SILK CLOTHING, INCLUDING ARTIFICIAL SILK CLOTHING NOT ELSEWHERE SPECIFIED."

*In the
Exchequer
Court of
Canada*

—
Exhibits

No. 78.
Excise Tax
Regulations
No. 493,
July 30,
1920.

—Continued.

THE FOLLOWING ARTICLES, KIMONAS, PETTICOATS AND WAISTS, THE SELLING PRICE OF WHICH IS IN EXCESS OF TWELVE DOLLARS EACH, OR, PYJAMAS IN EXCESS OF FIVE DOLLARS PER PAIR ARE SUBJECT TO LUXURY TAX OF TEN PER CENT ON THE TOTAL PURCHASE PRICE. IF MADE OF SILK OR ARTIFICIAL SILK OR ANY OTHER MATERIAL AND SOLD FOR LESS THAN THE PRICES STATED THESE ARTICLES ARE EXEMPT FROM THE LUXURY TAX.

The Luxury Tax on the following articles is collectible at the rate of 15 per cent on *so much of the amount* paid for any of these articles *as is in excess* of the price specified in the subsection of the Act, viz: Carpets and rugs, boots, shoes, etc., men's outer clothing, separate trousers, separate coats, overcoats, men's waistcoats, women's and misses' dresses, skirts, suits and separate coats and knitted sweaters and sweater-coats.

Example :—

Boots sold at \$9 or less per pair are exempt from the Luxury Tax. Boots sold at \$10 are subject to the Luxury Tax of 15 per cent computed on the amount of \$1, the selling price in excess of \$9.

CLOTHING CONSISTING OF COAT, VEST AND PANTS, OR COAT
AND PANTS, MEN'S AND BOYS'. 20

Clothing as defined above which is made to order by merchant tailors or *journeymen tailors* in the employ of such merchant tailors is exempt from the payment of luxury tax except when sold in excess of \$60. If sold in excess of \$60 such clothing is subject to a luxury tax of 15 per cent on so much of the amount paid for such suit, as is in excess of \$60. Thus a suit of clothing made by a merchant tailor to the order of a customer and sold at \$70 is subject to a luxury tax of \$1.50, being at the rate of 15 per cent on \$10, the excess over \$60.

Semi-ready or ready-made clothing or clothing made to special measure by clothing workers operating under the sectional system is subject to the payment of the luxury tax if such clothing is sold in excess of \$45. The tax on such clothing is collectible at the rate of 15 per cent on so much of the amount paid for the clothing as is in excess of \$45.

In addition to the above-mentioned taxes on men's clothing *the sales tax is applicable*. Tailors are regarded as manufacturers for purposes of the sales tax and sales made by them direct to their customers are therefore subject to the payment of 2 per cent sales tax, which is collectible on the net selling price of such clothing.

A sales tax of 2 per cent is payable on clothing when sold to the consumer or user by a merchant tailor or by clothing manufacturers operating on the sectional system. 40

STAMPS.

*In the
Exchequer
Court of
Canada*

The Luxury Tax, *except on importations*, or unless otherwise specifically authorized by the Department, will be collected by means of stamps which may be obtained from all customs and inland revenue offices and banks.

Exhibits

No. 78.
Excise Tax
Regulations,
No. 493,
July 30,
1920.

—Continued.

Vendors selling articles subject to Luxury Tax *are required to furnish the purchaser*, at the time of sale, with a voucher or sales slip, representing such sale and showing the tax as a separate item. Before delivering such voucher or sales slip to the purchaser the vendor must affix to such voucher or sales slip a stamp or stamps of the requisite denomination sufficient to cover the tax payable upon such article. The vendor must cancel the stamp or stamps, *after* they have been affixed to the voucher or sales slip, by means of an authorized perforator in such manner that the cancellation is entirely surrounded by the outer edges of the stamps.

The Act provides that :—

“Every person who, being thereto liable, refuses or neglects to pay the taxes prescribed by sections 19BB and 19BBB of this Act, or if such duty is payable in stamps, neglects or refuses to duly affix such stamps and to duly cancel the same, shall be liable on summary conviction to a penalty equal to not less than ten times the amount of such duty, but in no case less than fifty dollars.”

The perforators will be issued, on loan, to merchants by the Department through Collectors of Divisions. The merchant, being issued with such perforator, will be required to furnish the Collector with a receipt therefor and such receipt shall contain :—

- (a) The serial number of the perforator;
- (b) An acknowledgment that the perforator is the property of the Department, and
- (c) An agreement to return the perforator to the Collector of the Division when not further needed by the merchant, or when called upon to do so by the Department.

The perforators will be serially numbered. Collectors of Divisions will keep a record of the name, address and nature of business conducted by persons receiving such perforators and note in such record the serial number of the perforator issued.

All vendors of articles subject to the Luxury Tax will be required to keep on hand a stock of stamps sufficient to meet their requirements in order that delay in replenishing supplies will not deplete their stock. Delay in transmission of stamps will not be accepted as an excuse for non-affixing of stamps to sales vouchers or slips.

Sales of stamps will be accounted for by Collectors on Form 93.

*In the
Exchequer
Court of
Canada*

Exhibits

No. 78.
Excise Tax
Regulations,
No. 493,
July 30,
1920.

—Continued.

VENDORS OF ARTICLES SUBJECT TO LUXURY TAX WILL BE REQUIRED TO TAKE OUT A LICENSE TO SELL SUCH ARTICLES.

The *Luxury Tax* payable on *imported articles* will not be collected by means of the stamp, but will be collected by customs officers and shown on Import Entry Forms provided for that purpose.

SALES BY JEWELLERS.

Under the provisions of the Amendment to The Special War Revenue Act, 1915, jewellers are required to obtain a special license to sell jewellery and other articles.

"Jeweller" includes any person, firm or corporation, including the¹⁰ jewellery branch of a departmental store, whose chief business is the selling of jewellery by retail.

Firms such as men's haberdashers, 15 cent stores, general stores, tobacconists exposing jewellery for sale in their establishments, but not in a segregated department, are not entitled to operate under the special jeweller's license, and must collect, on any sales of jewellery, or other articles, the tax specifically provided for under section 19BB.

Applications for jeweller's license to operate a jewellery branch in a departmental store, which branch was not established prior to June 17, 1920, are to be referred to the Department for approval. ²⁰

All sales made by jewellers (as above defined) are subject to a tax of 10 per cent except pipes selling in excess of \$2.50 each, plain stationery, plain gold wedding rings, books, magazines, spectacles, eye glasses and goods specified in subsection 4 of section 19BB.

Pipes selling in excess of \$2.50 each are subject to a tax of 20 per cent when sold by jewellers or other vendors.

Plain gold wedding rings, plain stationery, books, magazines and the other articles specified are not subject to any tax when sold by jewellers.

Jewellers operating under special jeweller's license are required to furnish a sworn return, accompanied by remittance, for the tax on their sales, not later³⁰ than the last day of the month covering the transactions of the preceding month. The books and records of jewellers shall be open at all times for inspection, examination or investigation by departmental officials, and shall be kept in such manner that sales, of articles specially mentioned as being exempt, may be determined therefrom as distinct from sales of articles which are subject to the 10 per cent tax. Such books and records must show separately sales of pipes at a price in excess of \$2.50.

MANUFACTURER'S TAX.

(B) The manufacturer's tax is payable at the time of sale by the manufacturer except in respect of the tax provided for articles specified in sub-40

sections 4 (f), (g) and (h) of the Act, on which the tax is payable at time of delivery from warehouse for duty.

The tax on rum, whiskey, brandy, gin, cordials, liquors, spirituous and alcoholic liquors, is payable on the proof gallon.

The tax on wines containing more than 40 per cent proof spirit and on articles in subsection 4 (g) and (h) and in subsection 6 (b) and (c) is payable on the quantity computed in Imperial gallons.

The tax on importations of articles specified in subsection 6 (a) and (h) will be collected by Customs Officers and will be shown in the column provided 10for that purpose on the amended entry forms.

The tax on ale, beer, porter and stout, is payable on the Imperial gallon and is computed on quantities not less than as follows :—

Pints.....	0.97	gallons	per	dozen.
Quarts.....	1.82	“	“	“
Hogsheads.....	50	“	“	hogshead.
Barrels.....	25	“	“	barrel.
Half barrels.....	12½	“	“	half barrel.
Quarter barrels.....	6¼	“	“	quarter barrel.
Eighth barrels.....	3⅓	“	“	eighth barrel.

20 Regulations concerning the manufacturer's tax provided for in section 19BB, subsection 4 (a) to (h).—

Manufacturers of articles or goods specified in the above-mentioned subsections are required to furnish the Collector of Inland Revenue for the division in which their manufactory is located, between the first and last day, inclusive, of each month, with a sworn return showing the sales made by them of such articles during the period of the preceding month.

Such returns must be accompanied by a marked cheque payable at par at the head office of the division or cash for the amount of the tax represented.

Such manufacturers are required to obtain a special license.

30 Manufacturers of such articles are required to furnish the Collector of Inland Revenue with one of the following forms of security, in a sum represented by the manufacturer's tax on the estimated maximum production of such articles manufactured during any one month in the fiscal year which the bond or other security is intended to cover, viz:—

(1) The bond of an approved Guarantee Company;

(2) The guarantee of a chartered Canadian Bank signed by the General Manager and approved by the Department;

(3) War Loan Bonds;

40 and such bonds shall be conditioned for the payment of the manufacturer's tax on such articles manufactured; the payment of all penalties incurred; and generally shall bind the manufacturers to a faithful and complete observance of the Regulations which are, or may be established under the authority of the Act.

*In the
Exchequer
Court of
Canada*

Exhibits
No. 78.
Excise Tax
Regulations
No. 493,
July 30, 1920.

—Continued.

*In the
Exchequer
Court of
Canada*

Exhibits

No. 78.
Excise Tax
Regulations
No. 493,
July 30, 1920.

—Continued.

In the case of War Loan bonds, when furnished, a letter agreeing to the conditions above mentioned shall accompany same.

(C) The tax on imported alcoholic preparations as under section 19BB, subsection 6 (a) to (c) will be collected by Customs Officers at time of the passing of Customs Entry.

SALES TAX.

(D) The Sales Tax is collectible at the time of sale by manufacturers, wholesalers or jobbers, or on importation.

The Sales Tax collected by manufacturers, wholesalers or jobbers, must be returned by the vendor to the Collector of Inland Revenue for the Division¹⁰ in which the collection was made, or as otherwise authorized by the Department, not later than the last day of the month following the monthly transactions covered by the return.

Returns of Sales Tax must be made on Form 93 and must be supported by affidavit. Sales records showing total of sales and amount of tax represented thereby may be accepted.

Certificates from chartered accountants or independent auditors covering sales of companies may be accepted in lieu of the affidavit of the dealer.

The Sales Tax on importations will be collected by Officers of Customs at the time of passing Customs Entry for duty. ²⁰

For purposes of the Sales Tax, the term manufacturer, wholesaler, jobber, retailer and consumer, shall have the meaning as hereinafter defined :—

Manufacturers are persons, firms or corporations, who produce, manufacture, process or assemble articles or materials into saleable articles or materials for sale.

Wholesalers or *jobbers* are persons, firms or corporations who sell for the purpose of re-sale.

Retailers are persons, firms or corporations, who sell to the user or the consumer, or who have a retail counter.

Examples of status :— ³⁰

Manufacturers.—Job printers, sash and door manufacturers, lumber planing mills, foundries.

Wholesalers.—Regular wholesalers and also concerns having wholesale and retail departments which are segregated,—the wholesale department is regarded as a wholesaler.

Retailers.—Regular retailers, building or similar contractors, concerns having wholesale and retail departments, but not segregated, are held to be retailers for purposes of the Sales Tax.

Consumer.—Individual users or consumers, also municipalities, railways, shipping and other public utility companies are regarded as consumers of⁴⁰ materials, including materials used in manufacturing articles for use in their service. Manufacturers are consumers in respect of machinery and material for plant equipment purchased by them.

All manufacturers, wholesalers or jobbers, selling articles subject to sales tax are required to take out a license.

Sales by manufacturers direct to retailers or consumers are subject to a sales tax of 2 per cent.

Sales by manufacturers to wholesalers or jobbers, or by wholesalers or jobbers are subject to sales tax of 1 per cent.

Importations by manufacturers, wholesalers or jobbers are subject to the sales tax of 1 per cent unless said importations consist of equipment for their own use, in which case the tax is 2 per cent.

10 Importations by retailers or consumers are subject to sales tax of 2 per cent.

METHOD OF DETERMINING RATE OF SALES TAX.

Wholesalers or jobbers ordering from manufacturers must state conspicuously on such order the serial number and character of license held by them, thus :—

“Wholesaler’s License No.”

Manufacturers purchasing material from other manufacturers, such material to be used and incorporated in or attached to their finished product, must certify on their orders that such materials are for use as above and
20 must also state the nature and serial number of their license.

Manufacturers selling materials to other manufacturers on orders which do not bear the above certificate, must charge the second manufacturer the 2 per cent sales tax.

Manufacturers will charge a sales tax of 1 per cent when the orders received from wholesalers or jobbers state that such wholesaler or jobber is in possession of a sales tax license and note the number thereof, otherwise they will charge 2 per cent.

Manufacturers must charge a sales tax of 2 per cent unless orders for materials show that the purchaser has a manufacturer’s or wholesaler’s license
30 and states the number thereof. The status of persons purchasing from manufacturers is subject to special corroboration by officers of this Department.

Customs officers will collect the 2 per cent sales tax unless the importer can show that he is in possession of a wholesaler’s or manufacturer’s license and states the number thereof. When importers have manufacturer’s license, customs officers will be required to ascertain whether or not the importation is for manufacturer’s plant equipment. Materials imported by manufacturers for their own use or for plant equipment are subject on importation to the sales tax of 2 per cent.

40 Customs officers and manufacturers will be able to verify the character of license held by persons, firms or corporations, by reference to Collectors of Inland Revenue, who will keep a record of all licenses issued.

Every manufacturer, wholesaler or jobber dealing in articles subject to the sales tax *must furnish the purchaser with a written invoice* of such sale.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 78.
Excise Tax
Regulations
No. 493,
July 30, 1920.

—Continued.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 78.
Excise Tax
Regulations
No. 493,
July 30, 1920.

—Continued.

Such invoice *must show, as a separate item, the amount of tax upon such sale to at least the extent of 1 per cent.*

Manufacturers only are allowed to absorb a portion of the tax, and that only when the sale is made by the manufacturer to the retailer or user whereby the tax is 2 per cent; in this event the manufacturer may absorb 1 per cent tax, but must show 1 per cent on the invoice to the purchaser as a separate item.

The tax paid by manufacturers, wholesalers or jobbers at the time of purchase of goods may be charged to the person purchasing from such manufacturer, wholesaler or jobber provided it is not shown as a separate item on the invoice and not included in the seller's cost upon which profit is calculated.¹⁰

As regards goods destined for export, the sales tax is applicable except on sales and deliveries direct to a foreign purchaser, that is to say, material sold by a dealer to a foreign purchaser is not subject to sales tax if such material is shipped to the foreign purchaser direct from the mill. If the material is shipped from the mill to a Canadian dealer and is exported by such dealer, the sale and delivery by the mill to the dealer is subject to the tax, but the delivery by the dealer to the foreign purchaser is exempt from the tax; in this event, however, the tax paid on the sale and delivery by the mill to the dealer is subject to drawback upon furnishing proof of export and of payment of the tax. ²⁰

When goods are exempt from the sales tax conditionally,—such as materials used only in the construction of ships,—orders placed for such goods must bear the certificate of the purchaser as respects the purpose for which the goods are to be used.

VALUE FOR EXCISE TAXES.

(a) The Sales Tax on domestic sales must be computed upon the regular (open) market value at point of shipment, provided, however, that the excise tax must in no case be collected on less than the actual net selling price of the goods.

When goods are sold at a delivered price and estimated or actual freight³⁰ charges have been *added* to the price *f.o.b. point of shipment* to arrive at such delivered price, the actual charges so added may be deducted from the gross invoice value to ascertain the value upon which to compute the sales tax.

A concern which has wholesale and retail departments that are segregated must, upon the sale of the goods from the wholesale to the retail department, pay the sales tax on such sale and the tax so payable must be computed on the value of the transferred goods as if sold to the regular retail trade.

Trade Discounts which are regularly allowed under like condition of sale may be allowed for excise tax purposes if such discounts are allowed and deducted on the face of the invoice by the shipper. ⁴⁰

Cash discounts may be allowed for excise tax purposes if allowed and deducted on the face of the invoice by the shipper. If the shipper grants to the purchaser the privilege of deducting from the gross invoice price a dis-

count for cash payment in a stated period, and if the purchaser, when making settlement of the bill, avails himself of the condition under which the discount is allowable,—the tax paid on the amount of such cash discount may be credited in the next succeeding tax return furnished by the shipper, provided that such next succeeding return is made within 60 days of the payment of the tax upon the amount of discount allowed. If the adjustment of the tax paid on the amount of the discount cannot be made within the 60 days, such adjustment can only be made by application for refund to the department.

(b) The sales tax on importations must be computed upon the duty paid value of such importations. If the article is subject to the Luxury Tax the Sales Tax is not collectible on the amount of such luxury tax.

GENERAL.

The books and records of manufacturers, wholesalers and jobbers, shall be open at all times for inspection, examination or investigation by departmental officials.

Returns of sales tax furnished by manufacturers, wholesalers or jobbers, will be audited by Inland Revenue auditors as frequently as deemed necessary.

Manufacturers, wholesalers and jobbers will be required to retain on file for a period of two years all invoices and vouchers relating in any way to sales and deliveries of articles subject to sales tax, for purposes of adjustments found necessary by means of the audit and also for requisite investigation for purposes of refund or drawback, where legally payable.

RETURNABLE CONTAINERS.

Manufacturers dealing in goods shipped in returnable packages may make to the Government, not later than the end of March in each year, an annual sales tax return as to such packages, instead of monthly returns, and the sales tax so payable to the Government by the manufacturer shall be paid on the difference between the amount charged for the returnable containers shipped during the year and the equivalent amount rebated for containers returned during the same period, and it shall be optional with the manufacturer to charge the sales tax on the value of returnable containers in invoices to the purchaser subject to credit when returned, or to pay such sales tax himself.

EXHIBIT No. 95.

(Plaintiff's)

ORDER IN COUNCIL.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Thursday, the 10th day of March, 1921.

PRESENT :

40 HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL :

WHEREAS by an Act to amend The Special War Revenue Act, 1915, being chapter 46 of the Statutes of 1918, a Part IV. was added to the said Act,

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 78.
Excise Tax
Regulations
No. 493,
July 30, 1920.

—Continued.

Exhibits

No. 95.
Order-in-
Council,
Mar. 10,
1921.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 95.
Order-in-
Council,
Mar. 10,
1921.

—Continued.

and by Sec. 19A of said Part IV, it was provided that “the term ‘Minister’ shall mean the Minister charged by the Governor in Council with the administration of the law contained in this Part;”

AND WHEREAS the administration of the law contained in the said Part IV has been carried on wholly by the Minister of Customs and Inland Revenue, though no specific Order in Council has been passed charging him formally with the administration thereof;

AND WHEREAS regulations have been made by the Minister of Customs and Inland Revenue which were deemed by him necessary and advisable for carrying out the provisions of the said Part, and various Orders in Council¹⁰ have been passed upon the recommendation of the said Minister and which were necessary in the administration by him of the said law;

AND WHEREAS it is deemed expedient to ratify and confirm any acts done by the said Minister in the administration of the said law and to formally charge him with the administration thereof;

THEREFORE His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, is pleased to order and it is hereby ordered as follows :

The MINISTER OF CUSTOMS AND INLAND REVENUE is hereby charged with the administration of the law contained in PART IV,²⁰ added to the Special War Revenue Act, 1915, by Chapter 46 of the Statutes of 1918, and shall be deemed to have been charged with the administration thereof since the date of the coming into force thereof; and all acts done by the Minister of Customs and Inland Revenue in the administration thereof are hereby ratified and confirmed.

E. J. LEMAIRE,

Clerk of the Privy Council.

No. 79.
Letter R. R.
Farrow to
J. A. Bernier,
Sept. 19,
1923.

EXHIBIT No. 79.

(Plaintiff's)

**Letter R. R. Farrow to J. A. Bernier
DEPARTMENT OF CUSTOMS AND EXCISE.
CANADA**

30

OTTAWA, September 19th, 1923.

J. A. BERNIER, ESQ.,

Inspector of Customs and Excise, MONTREAL, Que.

SIR :

Information has reached the Department to the effect that certain Breweries are delivering to Canadian Railways, brewery products, these products being taken by the Railways to a point near the United States frontier where transit is broken, and the goods enter the United States by various conveyances such as small boats, etc., etc.

There have been instances such as the above where Breweries have not⁴⁰ accounted for excise tax of 12½c. per gallon, considering that the merchandise

was exported. In these cases Export Entries, B. 13, were furnished to our officials at the point of lading.

As the Railway Companies apparently complete delivery in Canada of the goods entrusted to them for transport, these goods afterwards being laden in other conveyances, the Department holds that Excise Tax of 12½c. per gallon, as well as sales tax, is payable on the beer, and further that the consignor is not entitled to refund or draw-back of such taxes unless a foreign landing certificate is produced.

You are requested to advise each Collector in the district under your survey of the above conditions, and also instruct Assistant Inspectors employed on audit duties to immediately investigate conditions in any breweries in your district, whether these have previously been audited or not.

I have the honour to be, Sir,
Your obedient servant,
R. R. FARROW,
Commissioner of Customs and Excise.

EXHIBIT No. 79A.

(Plaintiff's)

**Copy of Same Letter to Various Inspectors
DEPARTMENT OF CUSTOMS AND EXCISE.
CANADA.**

OTTAWA, ONTARIO, September 19th, 1923.

To Inspectors Munn, Miller, Graham, Paterson, Code, Woods, McQuire, Bartle, Wood, Clewlo, Martin, Bernier, Parmelee, Timmons; also to Asst. Inspector Errington; also to Inspectors Casey, McDonald, Hoyt, MacLatchy, MacDonald, Boak.

Sir :—

Information has reached the Department to the effect that certain Breweries are delivering to Canadian Railways, brewery products, these products being taken by the railways to a point near the United States frontier where transit is broken, and the goods enter the United States by various conveyances such as small boats, etc., etc.

There have been instances such as the above where Breweries have not accounted for the Excise Tax of 12½c. per gallon, considering that the merchandise was exported. In these cases Export Entries, B. 13, were furnished to our Officials at the point of lading.

As the Railway Companies apparently complete delivery in Canada of the goods entrusted to them for transport, these goods afterwards being laden in other conveyances, the Department holds that Excise Tax of 12½c. per gallon, as well as Sales Tax is payable on the beer, and further that the consignor is not entitled to refund or drawback of such taxes unless a foreign landing certificate is produced.

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. 79.
Letter R. R.
Farrow to
J. A. Bernier,
Sept. 19,
1923.

—Continued.

No. 79-A.
Copy of same
Letter to
various
inspectors,
Sept. 19,
1923.

*In the
Exchequer
Court of
Canada.*
—

Exhibits

No. 79-A.
Copy of same
letter to
various
inspectors,
Sept. 19,
1923.

—Continued.

No. S.
Circular to
Customs
Collectors,
No. 275-C,
Sept. 19,
1923.

You are requested to advise each Collector in the district under your survey of the above conditions, and also instruct Assistant Inspectors employed on audit duties to immediately investigate conditions in any breweries in your district, whether these have been previously audited or not.

I have the honour to be, Sir,
Your obedient servant,

.....
Chief Inspector of Customs and Excise.

EXHIBIT No. S.

(Defendant's)

Circular to Customs Collectors, No. 275C

10

File 113108

No. 275-c

CIRCULAR.

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA

OTTAWA, 19th September, 1923

To Collectors of Customs and Excise :

INTOXICATING LIQUORS

For your information and guidance there is set forth below, copy of Order in Council, P.C. 1794, dated 12th September, 1923, prescribing regulation fixing minimum tonnage of vessels in which intoxicating liquors may be exported from Canada in bond.

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R. R. FARROW,
Commissioner of Customs and Excise.

P.C. 1794
Privy Council,
Canada

AT THE GOVERNMENT HOUSE AT OTTAWA

WEDNESDAY, the 12th day of September, 1923.

PRESENT :

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

His Excellency the Governor General in Council, on the recommendation of the Minister of Customs and Excise, and under and by virtue of the powers

in that behalf conferred on the Governor General in Council by Section 81 of The Customs Act (R.S.C. 1906, Chap. 48) and Section 140 of The Inland Revenue Act (R.S.C. 1906, Chap. 51) or otherwise vested in the Governor General in Council, is pleased to make the following regulation, and the same is hereby made and prescribed accordingly :—

“No intoxicating liquors imported into Canada and no intoxicating liquors subject to duties of excise and on which such duties of excise have not been paid, may be exported from Canada in bond in any vessel under the burthen of two hundred tons gross registered tonnage.”

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(Sgd.) G. G. KEZAR,
Asst. Clerk of the Privy Council.

*In the
Exchequer
Court of
Canada*

Exhibits

No. 5
Circular to
Customs
Collectors,
No. 275-C.
Sept. 19,
1923.

—Continued

EXHIBIT No. 46.

(Plaintiff's)

Departmental Instructions No. G. 249.

157

Excise

Malting

G. 249

Revised.

DEPARTMENT OF CUSTOMS AND EXCISE

OTTAWA, 11th November, 1924.

**DEPARTMENTAL INSTRUCTIONS FOR THE SURVEY OF MALT-
HOUSES, ETC.**

* * * * *

422

Excise

Malt Flour

G 1215

850

DEPARTMENT OF CUSTOMS AND EXCISE

The following Regulations are hereby established for government of the manufacture and sale of Malt Flour by all dealers who produce same from Malt upon which duty has been paid.

REGULATIONS

* * * * *

**MANUFACTURE OF BEER SUBJECT TO A DUTY OF FIFTEEN
CENTS PER GALLON.**

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1. Fermenting Tuns which are to be used for fifteen cent beer to be gauged or measured and the number of gallons to the inch accurately obtained;
2. The Malt is to be weighed into the Mash Tub by the Officer of Customs and Excise in charge of Brewery;
3. The *first dip* is to be taken in Hop Jack;
The *second dip* is to be taken when beer is run into fermenting tun; and,
The *final dip* immediately before beer is transferred to Storage Vat.

No. 46.
Depart-
mental
Instructions
No. G249,
Nov. 11,
1924.

*In the
Exchequer
Court of
Canada*

—
Exhibits

No. 46.
Depart-
mental
Instructions
No. G249,
No. 11.,
1924.

—Continued.

4. If more than $7\frac{1}{2}$ per cent. difference is found between any two gauges, the gauge yielding the greatest quantity of beer is that which shall be taken to calculate the quantity of beer brewed;

5. Beer when placed in Storage Vat shall be warehoused and secured by Crown Lock, and the key thereof shall remain in possession of the officer;

6. No beer shall be delivered from Vat until Ex-warehouse Entry has been passed;

7. The officer shall keep a book in which will be recorded full particulars of every brew from the time the Malt has been weighed into the Mash Tub by the officer until the beer is placed in warehouse; 10

8. A record of the beer placed in each storage vat shall be kept by the officer;

9. Application for rebate of quantity of Malt used in completed brews may be made at the end of each month, and shall be certified by the officer in charge;

10. Bottling of beer for export shall be under supervision of officer of Customs and Excise;

11. Export Entry shall be passed for each quantity of beer to be exported. The contents of Quart bottles will be calculated at 1.70 gallons per dozen bottles, and pints at the rate of .90 gallons per dozen bottles; 20

12. An Export Bond shall be taken for thirty (30) cents per gallon (double the duty);

13. Export Bond shall be cancelled by the production of the duly authenticated certificate of some principal officer of Customs at the place to which the goods were exported stating that the goods were actually landed at said place, as provided by the Bond;

14. No less quantity than one complete brewing may be warehoused;

15. No less quantity than one complete brewing may be entered for Duty Ex-Factory.

R. R. FARROW, 30
*Deputy Minister,
Customs and Excise.*

OTTAWA, ONTARIO, 11th November, 1924.

EXHIBIT No. C.

(Defendant's)

Special War Revenue Act, 1915

Pamphlet containing office consolidation of The Special War Revenue Act, 1915, and Amendments and Regulations to date.

8-9 George V. c. 46, 1918

10-11 George V. c. 71, 1920

11-12 George V. c. 50, 1921

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No. C.
Special
War Revenue Act,
1915,
July, 1925.

12-13 George V. c. 47, 1922
 13-14 George V. c. 70, 1923
 14-15 George V. c. 68, 1924
 15-16 George V. c. 26, 1925

*In the
 Exchequer
 Court of
 Canada*

Exhibits

Published by the Department of Customs and Excise
 July, 1925

No. C.
 Special
 War Revenue Act,
 1915,
 July, 1925.

—Continued.

5 GEORGE V.

CHAP. 8.

An Act to supplement the Revenue required to meet War Expenditures.

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[Assented to 8th April, 1915]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Short title.

1. This Act may be cited as *The Special War Revenue Act, 1915.*

* * * * *

PART IV

Definition,
 "Minister"

19A. In this Part, unless the context otherwise requires,—“Minister” means the Minister of Customs and Excise. 13-14 Geo. V, c. 70, s. 4.

* * * * *

Tax on
 auto-
 mobiles.

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19B. 1. (a) There shall be imposed, levied and collected upon goods enumerated in Schedule I to this part, when such goods are imported into Canada or taken out of warehouse on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two, on the duty paid value in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule I; and there shall also be imposed, levied and collected when any such goods are manufactured or produced in Canada and sold on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two, in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule I on the price for which the same is sold. 12-13 Geo. V, c. 47, s. 14.

30 Tax on
 ale, etc.
 and cigars.

(b) There shall be imposed, levied and collected upon all goods enumerated in Schedule II to this Part, when such goods are imported into Canada or taken out of warehouse or when any such goods are manufactured or produced in Canada and sold on and

*In the
Exchequer
Court of
Canada.*

Exhibits

No. C.
Special
War Rev-
enue Act,
1915.
July, 1925.

—Continued.

- after the twenty-fourth day of May, one thousand nine hundred and twenty-two, in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule II. 12-13 Geo. V. c. 47, s. 14.
- (c) Where the goods are imported such excise tax shall be paid by the importer and where the goods are manufactured or produced and sold in Canada such excise tax shall be paid by the manufacturer or producer; provided that if an automobile is, on the twenty-fourth day of May, one thousand nine hundred and
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twenty-two, in the hands of a dealer and not sold to a *bona fide* user the tax shall be paid by such dealer when such automobile is sold. 12-13 Geo. V, c. 47, s. 14.
- (d) The Minister may require every manufacturer or producer to take out an annual license for the purposes aforesaid, and may prescribe a fee therefor, not exceeding two dollars, and the penalty for neglect or refusal shall be a sum not exceeding one thousand dollars. 12-13 Geo. V, c. 47, s. 14.
- Provided that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the
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Minister of Customs and Excise.
- Provided further that the value on imported cigars shall be the duty paid value as defined in section 19A of this Act; the value on cigars manufactured in Canada shall include the amount of the excise duty payable thereon. 12-13 Geo. V, c. 47, s. 14.
- Subsection 2 repealed by 11-12 Geo. V, c. 71, s. 3 (3).
- * * * * *
- Excise taxes. 19BB. 1. The following excise taxes shall be imposed, levied, and collected on the articles hereinafter specified, namely :—
- Playing cards. (a) A tax on playing cards for every fifty-four cards or fraction of fifty-four in each package,—when selling at twenty-four dollars
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or less per gross packages, eight cents per pack; when selling in excess of twenty-four dollars per gross packages, fifteen cents per pack. 11-12 Geo. V, c. 50, s. 1.
- When tax payable. (b) The excise taxes as imposed by the preceding paragraph (a) shall be payable at the time of importation or when taken out of warehouse for consumption in addition to the present duties of customs or at the time of sale by the Canadian manufacturer, but shall not apply on playing cards when exported, and shall be accounted for to His Majesty in accordance with such regulations as may be prescribed by the Minister of Customs and Excise. 11-12 Geo. V,
40
c. 50, s. 1.

Excise tax on wines.	(c) A tax of seven and one-half cents per gallon on wines of all kinds, except sparkling wines, containing not more than forty per cent of proof spirit. 13-14 Geo. V, c. 70, s. 5 (1). (Effective from date of proclamation of Governor in Council.)	<i>In the Exchequer Court of Canada.</i> —
Sparkling wines.	(d) A tax of one dollar and fifty cents per gallon on champagne and all other sparkling wines. 13-14 Geo. V, c. 70, s. 5. (1). (Effective from date of proclamation of Governor in Council.)	Exhibits
When tax payable	(e) The excise taxes as imposed by the preceding paragraphs (c) and (d) shall be payable at the time of sale by the Canadian manufacturer, but shall not apply to such wines when exported, and shall be accounted for to His Majesty in accordance with such regulations as shall be prescribed by the Minister of Customs and Excise. 11-12 Geo. V, c. 50, s. 1.	No. C. Special War Revenue Act, 1915, July, 1925. —Continued.

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* * * * *

19BBB. 1. In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of five per cent on the sale price of all goods produced or manufactured in Canada, including the amount of excise duties when the goods are sold in bond, which tax shall be payable by the producer or manufacturer at the time of the sale thereof by him; and in the case of imported goods the like tax upon the duty paid value of the goods imported payable by the importer or transferee who takes the goods out of bond for consumption at the time when the goods are imported or taken out of warehouse for consumption. 14-15 Geo. V, c. 68, s. 1. (1).

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"Sale price" defined.

For the purpose of calculating the amount of the consumption or sales tax, "sale price" shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto.

Proviso.

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Provided that the consumption or sales tax specified in this section shall not be payable on goods exported; or on goods sold by a licensed manufacturer or producer to another licensed manufacturer or producer if the goods are to be used in, wrought into, or attached to articles to be manufactured or produced for sale and which are articles subject to the consumption or sales tax; or on goods imported by a licensed manufacturer or producer if the goods are to be used in, wrought into, or attached to articles to be manufactured or produced for sale and which are articles subject to the consumption or sales tax; or on goods imported by a licensed wholesaler or jobber whose sales are to be accounted for under the provisions of subsection seven; or on goods sold by a licensed manufacturer or producer to a licensed wholesaler or jobber whose sales are to be accounted for under the provisions of subsection seven of this section. 13-14 Geo. V, c. 70, s. 6 (1).

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*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. C.
Special
War Rev-
enue Act,
1915,
July, 1925.

—Continued.

Tax on
imported
matches or
playing
cards.

In the case of importations of matches or playing cards, the taxes specified in this section shall be based upon the duty-paid value of the goods imported, plus the excise taxes imposed by section 16A, Part Three, and section 19BB, Part Four, of this Act, respectively. 14-15 Geo. V, c. 68, s. 1 (2).

Sales tax
on Cana-
dian goods
sold by
licensed
wholesaler
or jobber.

2. A like tax shall be imposed, levied, and collected on goods manufactured or produced in Canada sold by a licensed wholesaler or jobber to other than a licensed manufacturer or producer computed on the price for which the same are sold by the licensed manufacturer or producer to the said wholesaler or jobber, which price shall include the amount of the excise duties on goods sold in bond. 13-14 Geo. V, c. 70, s. 6 (1).

Powers of
Minister
where
sales tax
evaded by
licensed
manufac-
turer, etc.

3. Notwithstanding anything contained in this section, if at any time it appears to the Minister of Customs and Excise that payment of the consumption or sales tax is being evaded by a licensed manufacturer or producer or licensed wholesaler or jobber the Minister may require that the consumption or sales tax be imposed, levied and collected on any material specified by the Minister sold to any licensed manufacturer or producer or licensed wholesaler or jobber or to any class or licensed manufacturers or producers or licensed wholesalers or jobbers specified by the Minister, at the time of sale of such material when produced or manufactured in Canada, or at the time of entry for consumption by such licensed manufacturer or producer or licensed wholesaler or jobber when such material is imported, subject to deduction thereafter on submission by the licensed manufacturer or producer or licensed wholesaler or jobber of proof that such material has been used in the manufacture of an article which is subject to the consumption or sales tax and on which the said tax has been paid. 14-15 Geo. V, c. 68, s. 2.

* * * * *

All manu-
facturers
or produ-
cers to
take out
licenses.

6. Every manufacturer or producer shall take out an annual license for the purpose aforesaid, and the Minister may prescribe a fee therefor, not exceeding two dollars, and the penalty for neglect shall be a sum not exceeding one thousand dollars. Provided that the Minister may direct that any class of small manufacturer or producer selling his product exclusively by retail shall be exempt from payment of consumption or sales tax on goods manufactured or produced by him and persons so exempted shall not be given a license. Such exemption may be withdrawn by the Minister. 14-15 Geo. V, c. 68, s. 5.

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Refund on
goods
imported
free of
duty.

9. When goods may be imported into Canada free of customs duty, there may be granted a refund or reduction of the consumption or sales tax on similar goods manufactured or produced in Canada, when

evidence satisfactory to the Minister is produced that such Canadian goods are at a disadvantage with respect to similar imported goods. Such refund or reduction shall not exceed twenty-five per cent of the amount of the said tax paid or to be payable. 13-14 Geo. V, c. 70, s. 6 (4).

Refund on
exportations.

10. A refund of the consumption or sales tax may be granted on imported goods on which customs duties have been refunded on exportation; and a refund of the said tax may be granted on domestic goods exported, under regulations prescribed by the Minister of Customs and Excise. 13-14 Geo. V, c. 70, s. 6 (4).

Refund on
exportation of
imported
free goods.

A refund of the consumption or sales tax may also be granted on imported goods which are free of customs duty and which are found not to be according to order, provided such goods are exported under customs supervision within three months from the date of the customs entry. 14-15 Geo. V, c. 68, s. 7.

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Invoice on
sales to
wholesaler
or jobber
not
licensed.

12. (a) When goods are sold by a licensed manufacturer or producer or by a licensed wholesaler or jobber to a wholesaler or jobber not licensed under this Act, the purchaser shall be furnished with a written invoice of the goods sold, which invoice shall state separately the amount of the consumption or sales tax. 13-14 Geo. V, c. 70, s. 6 (4).

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Invoice or
sales by
wholesaler
or jobber
not
licensed.

(b) When goods are sold by a wholesaler or jobber not licensed under this Act to a licensed manufacturer or producer the purchaser shall be furnished with a written invoice of the goods sold, which invoice shall state separately the amount of the consumption or sales tax. 13-14 Geo. V, c. 70, s. 6 (4).

Minister
may
determine
value for
tax in
difficult
circumstances.

13. Whenever goods are manufactured or produced in Canada under such circumstances or conditions as render it difficult to determine the value thereof for the consumption or sales tax because,—

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(a) a lease of such goods or the right of using the same but not the right of property therein is sold or given; or,

13-14 Geo. V, c. 70, s. 6 (4).

(b) such goods having a royalty imposed thereon, the royalty is uncertain, or is not from other causes a reliable means of estimating the value of the goods; or,

13-14 Geo. V, c. 70, s. 6 (4).

(c) such goods are manufactured by contract for labour only and not including the value of the goods that enter into the same, or under any other unusual or peculiar manner or conditions; or,

13-14 Geo. V, c. 70, s. 6 (4).

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(d) such goods are for use by the manufacturer or producer and not for sale.

13-14 Geo. V, c. 70, s. 6 (4).

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. C.
Special
War Revenue
Act,
1915,
July, 1925.

—Continued.

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. C.
Special
War Revenue Act,
1915,
July, 1925.

—Continued.

Regula-
tions.

Penalty
for neg-
lecting or
refusal to
pay tax.

Records,
books and
accounts
to be open
to inspec-
tion by
officers.

Failure or
refusal to
keep books

Penalty

Recovery
of taxes.

the Minister may determine the value for the tax under this Act and all such transactions shall for the purposes of this Act be regarded as sales. 13-14 Geo. V, c. 70, s. 6 (4).

19C. The Minister may make such regulations as he deems necessary or advisable for carrying out the provisions of this Part. 8-9 Geo. V, c. 46, s. 5.

19D. 1. Every person who, being thereto liable, neglects or refuses to pay any tax imposed by this Part, and any person who contravenes any requirement of this Part or any regulation of the Minister under this Part for which no other penalty is provided, shall be liable on summary conviction, to a penalty of not less than fifty dollars and not exceeding one thousand dollars. 13-14 Geo. V, c. 70 s. 7 (1).

2. The records, books, accounts and vouchers of all manufacturers, producers, wholesalers and jobbers and of importers and dealers which are required to be kept under the provisions of this Part shall be open at all reasonable hours to the inspection of the officers or other persons authorized by the Minister to inspect the same, and any person who in any way prevents or attempts to prevent any such officer or other person from having access to or inspecting the same, or refuses to produce the same or any of them, shall be liable, on summary conviction, to a penalty not exceeding one thousand dollars. 13-14 Geo. V, c. 70, s. 7 (2).

19E. If a manufacturer or producer fails or refuses to keep adequate books or accounts, in English or French, for the purposes of this Act, the Minister may, by notice in writing, require the manufacturer or producer to keep such records and accounts as the Minister may prescribe. For every default in complying with the requirements of such notice the manufacturer or producer shall be liable, on summary conviction, to a penalty not exceeding one hundred dollars for each day during which the default continues. 13-14 Geo. V, c. 70, s. 8.

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GENERAL.

20. All taxes or sums payable under this Act shall be recoverable at any time after the same ought to have been accounted for and paid, and all such taxes and sums shall be recoverable, and all rights of His Majesty hereunder enforced, with full costs of suit, as a debt due to or as a right enforceable by His Majesty, in the Exchequer Court or in any other court of competent jurisdiction.

* * * * *

SCHEDULE I

Automobiles adapted or adaptable for passenger use :—

(a) valued at not more than twelve hundred dollars
each..... five per cent.

- (b) valued at more than twelve hundred dollars each,
on the value of twelve hundred dollars each. five per cent.
on the value in excess of twelve hundred dollars. . . ten per cent.
Not to include automobiles entered as settlers' effects.

12-13 Geo. V, c. 47, s. 14.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. C.
Special
War Revenue Act,
1915,
July, 1925.

—Continued.

SCHEDULE II

Ale, beer, porter and stout, per gallon. twelve and one
half cents.

Cigars :—

- 10 (a) valued at not more than forty dollars per
thousand, per thousand. fifty cents.
- (b) valued at more than forty dollars per thousand
and not more than one hundred and ten dollars
per thousand, per thousand. three dollars.
- (c) valued at more than one hundred and ten dollars
per thousand and not more than one hundred and
fifty dollars per thousand, per thousand. seven dollars.
- 20 (d) valued at more than one hundred and fifty
dollars per thousand and not more than two hun-
dred dollars per thousand, per thousand. ten dollars.
- (e) valued at more than two hundred dollars per
thousand, per thousand. sixteen dollars.

12-13 Geo. V, c. 47, s. 14.

Carbonic acid gas, per pound. one cent.

Provided that carbonic acid gas manufactured or produced in
Canada and used in the manufacture of other products shall be deemed
to be carbonic acid gas manufactured or produced in Canada and sold.
13-14 Geo. V, c. 70, s. 12.

REGULATIONS

30 **DEPARTMENT OF CUSTOMS AND EXCISE, CANADA.**

The Regulations herein are issued by the Minister of Customs and Excise,
under authority of The Special War Revenue Act, 1915, and amendments
thereto.

* * * * *

**REGULATIONS ISSUED UNDER AUTHORITY OF SECTION 19-C,
OF THE SPECIAL WAR REVENUE ACT AND AMENDMENTS
THERE TO**

RETURNS.

Manufacturers of the following goods, viz :—automobiles adapted or
adaptable for passenger use, ale, beer, porter and stout, cigars, and carbonic

*In the
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Court of
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acid gas, shall submit monthly tax returns and account for the tax on goods manufactured by them, in a manner similar to sales tax returns required to be furnished in accordance with the regulations.

Exhibits

AUTOMOBILES (Tax as in Schedule 1 of the Act).

No. C.
Special
War Revenue Act,
1915,
July, 1925.

A person, firm or corporation purchasing a chassis to which a passenger body is subsequently attached is required to account for the tax to the Crown on such completed automobile.

Any person, firm or corporation selling a chassis, and separately a body therefor, not mounted, is required to collect the tax on the combined price of the chassis and the body. 10

Any person, firm or corporation purchasing an automobile chassis from one manufacturer or dealer and a passenger body from another manufacturer or dealer and assembling the same into a complete passenger automobile for his own use, shall account to the Crown at the time of such completion, for the excise tax at the rate of 5 per cent or 5 per cent and 10 per cent.

When a manufacturer of a passenger body or other person mounts the body upon a chassis, the property of his customer, such manufacturer or other person shall account for the excise tax computed upon the combined price of the chassis and the body. In such cases the purchaser shall produce to the manufacturer or other person his invoice for the chassis. 20

CARBONIC ACID GAS.

Manufacturers or producers of carbonic acid gas, used in the manufacture of their own products, shall account for the excise tax on such gas in the same manner as if the same were sold.

* * * * *

CONSUMPTION OR SALES TAX REGULATIONS

The following regulations are hereby established, under authority of Section 19C of The Special War Revenue Act, 1915 :

I. LICENSES.

(a) The annual fee for a license required under this Act shall be \$2, payable on the 1st day of April in each fiscal year.

(b) The Collector of Customs and Excise of the Port where the Head Office of a licensee is situated may, upon application therefor, issue certified copies of the license, for the branches situated in other Ports. Such certified copies shall be forwarded by the Collector of Customs and Excise at the Port where the license was issued to the Collector at the Port where the branch is situated, there to be recorded and delivered by him to the branch office of the firm. 30

(c) Every licensed manufacturer, when purchasing or importing goods which cannot be used in, wrought into or attached to articles to be manufactured or produced for sale, shall not quote his license number nor give the certificate on the order or entry. On all other purchases or importations licensed manufacturers shall quote their license number and give the certificate on the order or entry.

(d) Licensees shall not quote their license number nor give a certificate as above when purchasing or importing plant equipment, articles or goods for their own use and not for resale.

10 Licensed manufacturers shall not quote their license number nor give a certificate as above when purchasing or importing goods to be used in, wrought into or attached to articles specified as exempt from the Consumption or Sales Tax. (NOTE.—Except in respect of goods exempt from tax conditional on use.)

Licensed wholesalers or jobbers, when purchasing or importing goods for resale, shall quote their license number on the order or entry and certify thereon that the goods are for resale. Such wholesalers or jobbers are not required to pay the tax on imported goods at the time of entry for consumption, but are required to account to the Department monthly for Consumption
20 or Sales Tax when the goods are sold to other than licensed manufacturers or producers or licensed wholesalers or jobbers, the tax to be computed on the duty paid value.

2. RETURNS AND PAYMENT OF TAX.

(a) Every one subject to license under Section 19-BBB of The Special War Revenue Act, shall make a monthly return showing the total amount of his taxable sales, and the tax payable thereon.

(b) Each return shall be delivered to the Collector of Customs and Excise and the amount of the tax paid to him on or before the last day of the month next succeeding the month covered by the return.

30 (c) The monthly return shall be made on a form prescribed by the Deputy Minister of Customs and Excise and shall be sworn to before a proper Officer of Customs, Justice of the Peace or Commissioner for taking affidavits. Certificates in the following prescribed form from Chartered Accountants or independent Auditors, endorsed on the face of the return, may be accepted in lieu of the declaration of the licensee; and a person, firm or corporation located at a point where no Officer of Customs and Excise is situated may, if the return is for an amount of \$10 or under, likewise endorse on the face thereof a certificate in the following terms in lieu of the statutory declaration :—

40 "I,....., do hereby certify that the above amount truly represents all the tax accrued upon sales of merchandise, as imposed by law."

(d) Returns shall be delivered to the Collector or Sub-Collector of Customs and Excise at the Port or Outport where the licensee is located.

*In the
Exchequer
Court of
Canada.*

—
Exhibits
No. C.
Special
War Revenue Act,
1915.
July, 1925.

—Continued.

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. C.
Special
War Rev-
enue Act,
1915,
July, 1925.

—Continued.

(e) Persons, firms or corporations operating with Offices or Branches in more than one locality may, if they so desire, make one return, to be filed by the Head Office covering the entire business of the firm.

(f) Returns delivered to Ports shall be in triplicate and to Outports in quadruplicate. A copy of the return is to be stamped by the Cashier and returned to the licensee, who shall keep such copy on file for a period of not less than three years; one copy of the return is to be retained at each Port and Outport, the original to be forwarded to the Department with the Excise Tax Cash Sheet.

(g) Returns shall be signed by the proprietor or a partner of the business,¹⁰ President, Manager, Secretary or Treasurer, of a company, or by any person duly authorized by Power of Attorney to sign on their behalf. When the return is to be signed by a person other than the proprietor, partner, President, Manager, Secretary or Treasurer, Power of Attorney executed in due form shall be filed with the Collector of Customs and Excise.

(h) The return delivered by a licensed wholesaler shall show the amounts of the non-taxable sales and the taxable sales separately and the amount of the tax payable.

Licensed wholesalers or jobbers are required to account to the Department monthly for Consumption or Sales Tax on goods sold to them by licensed²⁰ manufacturers or producers in Canada, when such goods are resold to other than licensed manufacturers or producers or licensed wholesalers or jobbers. Under the provisions of Subsection 2 of Section 19BBB, such tax is to be computed on the price for which the goods were sold by the licensed manufacturer or producer, which price shall include the amount of excise duties on the goods sold in bond.

* * * * *

4. REFUNDS AND DEDUCTIONS.

(c) Claims for refund of the tax paid on domestic goods exported shall be accompanied by a certified copy of Customs Export Entry and proof of payment of the tax. Claims shall not be allowed on goods sold and used for³⁰ domestic consumption and subsequently exported.

* * * * *

5. BOOKS AND RECORDS.

(a) Each licensee shall be furnished with a copy of these Regulations and a notice in writing from the Collector of Customs and Excise that by direction of the Honourable the Minister he is required to keep adequate books and accounts in English or French at his place of business in Canada, for the purposes of this Act. (See Appendix A for form of notice.)

(b) Such books or accounts shall show the details of every transaction of the licensee and shall be preserved by him available for inspection for a period of two years.

(c) Licensed manufacturers or producers, or licensed wholesalers or jobbers who also conduct a retail branch or branches shall keep separate records for each of their branches and the license of such manufacturers, producers, wholesalers or jobbers shall not be used in connection with purchases or importations by the retail branch or branches.

6. COMPUTATION OF TAX.

In respect of goods subject to consumption or sales tax sold by retail by the manufacturer or producer thereof in Canada, the value of the goods for purposes of the tax will be determined by the Minister of Customs and Excise
10 in each class of cases.

In respect of goods subject to consumption or sales tax sold or transferred by the manufacturer or producer thereof in Canada, to his own wholesale houses, the value for purposes of the tax shall not be less than the wholesale price.

7. RETURNABLE CONTAINERS.

Licensed manufacturers and licensed wholesalers, dealing in goods shipped in returnable packages, may make to the Government, not later than the end of March in each year, an annual consumption or sales tax return as to such packages, instead of monthly returns, and the tax so payable to the Govern-
20 ment by the manufacturer shall be paid on the difference between the amount charged for the returnable containers shipped during the year and the equivalent amount rebated for containers returned during the same period.

8. RETURNED GOODS.

Where goods are returned as unsatisfactory or as damaged in transit, and goods of the same value are supplied, in exchange, no charge being made for the goods so supplied, no tax is applicable on the goods supplied in exchange.

Where the articles supplied in exchange for those returned as unsatisfactory or as damaged in transit are of greater value, sales tax is collectible on the difference in value as payable by the purchaser.

30 Where the goods supplied in exchange for those returned as unsatisfactory or as damaged in transit are of a less value, the amount of tax on such difference may be refunded or credited to the purchaser, if the original amount of tax was charged to him or paid by him; or, if in the meantime, the tax has been paid to the Department, credit for the amount of the tax on the difference may be taken by the vendor in his next succeeding tax return.

If goods are returned as unsatisfactory or as damaged in transit, and are not replaced, and further, if the total purchase price is refunded or credited, the vendor may refund or credit the amount of tax collected or charged to the purchaser. If the tax has been paid by the vendor to the Department, credit
40 may be taken in the vendor's next succeeding tax return.

9. DAMAGED GOODS (DOMESTIC).

When a licensed manufacturer or wholesaler ships taxable goods for which he is required to submit a tax return and if such goods are received in bad

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. C.
Special
War Revenue Act,
1915,
July, 1925.

—Continued.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. C.
Special
War Revenue Act,
1915,
July, 1925.

—Continued

condition or are damaged or destroyed in transit, and are not returned to the shipper, the licensee may make a deduction on his tax return for the tax on the amount of the allowance granted by him to the consignee, provided that notice of damage or destruction is given in writing to the local Collector of Customs and Excise within fourteen days. If the licensee desires, he may submit an application for refund of the tax on the allowance for damage or destruction in lieu of taking a deduction on his tax return.

* * * * *

10. INVOICES.

(a) Licensed manufacturers and licensed wholesalers, when selling to retailers or consumers, need not show the tax as a separate item on the invoice.¹⁰

(b) The provisions of paragraph (b) Subsection 12, Section 19-BBB, will be deemed to have been complied with if, when the unlicensed wholesaler sells to the licensed manufacturer or licensed wholesaler, he states on his invoice that the price of the goods does not include consumption or sales tax.

* * * * *

CANCELLATION OF PREVIOUS REGULATIONS

All previous Regulations issued under Part 4 of The Special War Revenue Act are hereby cancelled effective from January 1, 1924.

R. R. FARROW,
Deputy Minister of Customs and Excise.

No. 21-A.
Circular to
Customs
Collectors
Feb. 13, 1926.

EXHIBIT No. 21A
(Plaintiff's)

20

Circular to Customs Collectors

FILE No. 126325.

DEPARTMENT OF CUSTOMS AND EXCISE

OTTAWA, 13th February, 1926.

To Collectors of Customs and Excise :

EXPORTATION OF BEER AND OTHER INTOXICATING LIQUORS (SPIRITS)

It has come to the notice of the Department that beer and other intoxicating liquors are being shipped to frontier Ports and Outports in Ontario,³⁰ for export, on bills of Lading, showing the ultimate destination of the goods to be a place in a foreign country other than the United States,—for example, Mexico, Cuba, etc.

If any such shipments arrive at your Port or Outports, with Export Entry attached to the billing showing a place in a foreign country, other than the United States, as the destination, you are instructed not to accept a substitute Export Entry for shipment to the United States.

In all such cases, you are to notify the shipper that the liquors are to be returned to the place of shipment, as shown by the Bill of Lading.

You are instructed to immediately notify Outports accordingly.

R. R. FARROW,
Deputy Minister.

40

EXHIBIT No. 21-B
(Plaintiff's)
Circular to Customs Collectors

In the
Exchequer
Court of
Canada

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA

File

OTTAWA, 13th March, 1926.

126525.

Exhibits

No. 21-B.
Circular to
Customs
Collectors
Mch. 13,
1926.

To Collectors of Customs and Excise,—
at Frontier Ports and Outports in Ontario.

SUBJECT : EXPORTATION OF BEER AND OTHER INTOXICATING LIQUORS
(SPIRITS)

10

(Supplementary to Circular Letter, same subject, dated 13th February, 1926.

Heretofore, bulk shipments from interior points of lading accompanied by a single export entry have been accepted at frontier ports of exit although the goods covered thereby are actually exported in part shipments, the original export entry being accounted for when the entire shipment has gone forward.

You are instructed that this is no longer to be permitted and that hereafter separate export entries are to be furnished at interior point of lading for each quantity to be carried forward from the port of exit in a single shipment, these to be attached to the waybill.

20

Notify all exporters or their agents promptly of this requirement.

While the general instructions of the Department admit of the acceptance of export entries signed by the shipper and not verified by oath, it is required under the provisions of the Act (see Section 99) that the export entry be verified by oath of the actual owner of the goods or of his duly authorized agent, and this requirement is to be observed in respect of beer and other spirituous liquors and wines.

The party making the oath will be described as owner, shipper or consignor, as may be, striking out the two words not applicable and leaving the one word that is applicable.

30

The form of certificate on export entry B. 13 may be changed to read as follows : "I, owner, shipper or consignor (as the case may be), hereby make oath and say that the above is a full and true statement," etc., and this affidavit will require to be sworn before the Collector or some official authorized to take oaths.

.....

DEPUTY MINISTER OF CUSTOMS AND EXCISE,
OTTAWA :

Receipt of a copy of this circular is hereby acknowledged.

(Signature).....

40

Date of receipt.....1926.

Sub-Collector, Aultsville.

*In the
Exchequer
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Canada.*

Exhibits

No. 80.
Document
Produced
from
Department
of National
Revenue,
April 16,
1928.

EXHIBIT No. 80.

(Plaintiff's)

**Document produced from Department of National Revenue
REGULATION ISSUED BY THE MINISTER OF NATIONAL
REVENUE UNDER AUTHORITY OF THE SPECIAL
WAR REVENUE ACT,
R.S.C., 1927, Cap. 179.**

1. The regulation or ruling of the 19th day of September, 1923, made and issued by the Commissioner of Customs and Excise, in reference to Excise and Sales Taxes on brewery products, a copy of which is hereto annexed, and which has been acted upon by the Department since the date thereof in respect of both brewery and distillery products other than dried grains, is hereby confirmed and made and declared to be a regulation under the authority of The Special War Revenue Act applicable to both brewery and distillery products other than dried grains.

2. Every manufacturer of ale, beer, porter or stout who desires to claim the benefit of Subsection (3) of Section 80 of The Special War Revenue Act, R.S.C. 1927, Cap. 179, in reference to Excise Tax imposed by the said Section 80 must (a) give notice to the Department of National Revenue of his intention to manufacture for export within the provisions of the said subsection, (b) produce to the proper collector of National Revenue within six months from the date of the entry for exportation thereof the duly authenticated certificate of some principal officer of Customs at the place to which the goods were exported stating that the goods named in the entry were actually landed and left at some place (naming it) out of Canada, and (c) no such manufacturer shall be entitled to exemption from payment of such excise tax unless the notice is given and the landing certificate produced as required by this regulation.

3. No manufacturer, of ale, beer, porter, stout or spirits shall be entitled to the exemption provided for in sub-section (2) (a) of Section 86 of The Special War Revenue Act, R.S.C. 1927, Cap. 179, unless within six months from the date of the entry for exportation thereof there is produced to the proper Collector of National Revenue the duly authenticated certificate of some principal officer of Customs at the place to which the goods were exported, stating that the goods named in the entry were actually landed and left as some place (naming it) out of Canada.

4. All claims for refund of the Excise Tax or Sales Tax paid on ale, beer, porter, stout or spirits claimed to have been exported or manufactured for export shall be accompanied by the duly authenticated certificate of some principal officer of Customs at the place to which the goods were exported, as designated in the export entry, stating that the goods were actually landed and left at some place (naming it) out of Canada, and in no case shall the period within which such certificate is produced exceed six months from the making of the export entry unless special authority has been granted by the

Department : Provided that in the case of goods claimed to have been exported or manufactured for export prior to the date hereof the period within which such certificate may be produced shall be six months from the date hereof.

Dated at Ottawa this 16th day of April, A.D. 1928.

(Sgd.) W. D. EULER,
Minister of National Revenue.

OTTAWA, September 19th, 1923.

Information has reached the Department to the effect that certain
10 Breweries are delivering to Canadian Railways, brewery products, these products being taken by the Railways to a point near the United States frontier where transit is broken, and the goods enter the United States by various conveyances, such as small boats, etc. etc.

There have been instances such as the above where Breweries have not accounted for Excise Tax of 12½c. per gallon, considering that the merchandise was exported. In these cases Export Entries B. 13 were furnished to our officials at the point of lading.

As the Railway Companies apparently complete delivery in Canada of the goods entrusted to them for transport these goods afterwards being laden
20 in other conveyances, the Department holds that Excise Tax of 12½c. per gallon, as well as sales tax, is payable on the beer, and further that the consignor is not entitled to refund or drawback of such taxes unless a foreign landing certificate is produced.

You are requested to advise each Collector in the District under your survey of the above conditions, and also instruct Assistant Inspectors employed on audit duties to immediately investigate conditions in any breweries in your district, whether these have been previously audited or not.

I have the honour to be

Sir

Your obedient servant,
(Sgd.) R. R. FARROW,
Commissioner of Customs and Excise.

30

EXHIBIT No. 74.

(Plaintiff's)

Agreement Between Brewers and A. S. FitzGerald

THIS AGREEMENT made the ——— day of May, A.D. 1924, between the several persons, firms and corporations, being Brewers whose hands and

*In the
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Court of
Canada.*

Exhibits

No. 80.
Document
produced
from
Department
of National
Revenue.
April 16,
1928.

—Continued.

No. 74
Agreement
between
Brewers and
A. S. Fitz-
Gerald,
May, 1924.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 74.
Agreement
between
Brewers and
A. S. Fitz-
gerald.
May, 1924.

—Continued.

seals or corporate seals are hereto affixed, of the First Part; and Arthur S. FitzGerald C.A., Resident Partner of Riddell, Stead, Graham and Hutchison, Chartered Accountants, of Windsor, Trustee of the Second Part.

WITNESSETH,

1. In this agreement "Person" includes persons, firms and corporations, the singular number includes the plural, and the plural the singular, and the masculine includes the feminine, "Brewer" or "Brewers" means one or more of the parties of the First Part. "Trustee" means the party of the Second Part, and includes any new trustee appointed under this agreement.

1A. This agreement shall apply only to goods that have been or may be¹⁰ sold for export from Canada—from the Ports on Lake Erie West of Port Stanley, along the Detroit River, Lake St. Clair, St. Clair River and Lake Huron up to and including St. Joseph in the County of Huron, and shipments from Port Stanley to any points in the United States West of but not including Cleveland, Ohio, or to the State of Michigan as far North as Port Huron inclusive, together with all Islands in Lake Erie West of Port Stanley.

2. In consideration of the mutual covenants and agreements herein contained the Brewers severally, and not for each other, covenant and agree with the Trustee, and also severally and not for each other, covenant and agree with the others of them and with each other as follows : 20

3. This agreement shall not take effect unless and until the Trustee shall certify in writing that it has been executed by or on behalf of the following Brewers :—Viz :—British American Brewing Company, Carling Export Brewing and Malting Co. Ltd., Grant Spring Brewery, Hamilton Brewing Association, Kuntz Brewery, John Labatt Ltd., O'Keefe's Beverages Limited, Walkerville Brewing Company, Cosgrove Export Brewery Company, Soo Falls Brewing Company, and Sudbury Brewing and Malting Company.

In such Certificate the Trustee shall designate the date when this agreement shall take effect, such date to be as soon as possible after this agreement has been executed as aforesaid. 30

Upon the Trustee certifying that this agreement has been executed as aforesaid, it shall take effect and be binding, and shall continue in force for one year thereafter, unless sooner terminated as herein provided, and no Brewer shall be entitled to withdraw from this agreement while it continues in force without the consent of two-thirds of the parties hereto to be given at least a regularly called Meeting.

4. Any Brewer may, upon written notice to the Trustee of his intention in that behalf, withdraw from this agreement, and thereafter, so far as he is concerned, this agreement shall be terminated, but shall continue as to any who may not so withdraw, provided, however, that no Brewer so withdrawing⁴⁰ before this agreement terminates shall be entitled to any part of the cash deposited by him with the Trustee, under section 5 as hereinafter set forth, but the same shall be forfeited, and devoted to such uses and purposes as the Trustee may determine.

Provided, however, that any Brewer who desires to permanently withdraw from the Export business in the above described territory may upon written notice to the Trustee to that effect withdraw from this agreement and any sums to his credit with the Trustee shall be repaid to him sixty days after his complete and actual withdrawal of his goods and operations from the above territory. No such payment shall be made until at least sixty days after the receipt of the notice of withdrawal by the Trustee, such notice to be by registered letter.

5. So soon as this agreement takes effect each Brewer having executed the same, and each Brewer thereafter executing this agreement, shall deposit with the Trustee \$5,000.00 in cash. Such deposit shall be retained by the Trustee as security for the payment by the Brewer making the same of any fines imposed upon him by the Trustee under this agreement, but if, when this agreement terminates, such Brewer is not in default for any such fines, and has not previously withdrawn from this agreement, said deposit or so much thereof as then remains to his credit with the Trustee is to be returned to him. The cash so deposited with the Trustee shall be deposited by him in a special interest-bearing account in a Chartered Bank.

No Brewer party to this agreement, not shipping through the above territory shall be required to make the cash deposit of \$5,000.00 until such time as he purposes shipping into such territory.

6. There shall also be filed with the Trustee by each of the Brewers, within the said time, statutory declarations made by the Manager, Secretary and Travellers of each of the Brewers, and such other parties as the Trustee may direct, showing that the provisions of this agreement have not been violated. Such declarations shall be in such form and contain such information as may be required by the Trustee.

7. No Brewer or Brewers' Agent shall directly or indirectly sell, or cause to be sold Beer for export from the above territory during the currency of this agreement for less than the following prices or upon terms more favorable to the purchaser than the following :—

1 Carton containing 2 dozen standard so-called Pint Bottles \$4.00.
So-called Pint Bottles packed in any other way shall not be sold for less than \$2.00 per dozen.

Lager, Ale and Porter reputed Quarts shall not be sold for less than \$3.00 per dozen; Splits, \$1.50 per dozen.

Draught Beer Prices : Half Barrel, \$18.00, Quarter Barrel, \$9.25, with a refund for return of empties as follows : Half Barrel, \$6.00; Quarter Barrel, \$3.00.

40 All goods are to be paid for in American Currency, or its equivalent in Canadian Funds.

Provided that an arbitrary allowance of 1% shall be made by the Brewer and accepted by the purchaser in lieu of breakages on bottled goods.

*In the
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May, 1924.

—Continued.

*Exchequer
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—Continued.

No credit allowance or refund for leaking kegs or damage on imperfect goods shall be made excepting upon the written authority of the Trustee or his representative.

All orders for Beer for export shall be forwarded to the Brewer.

All payments for same to be made to the Trustee or his representative, and the Trustee shall be responsible for all such monies paid to him.

8. For the purpose of carrying the above provisions into effect the Trustee shall appoint one or more representatives at each of the shipping docks and shall take an inventory of all goods on such docks at the date of the coming into force of this agreement, and also keep a record of all subsequent goods brought on the dock. 10

All monies for goods are to be paid by the purchaser or his Agent to the Trustee or his representative, after which the Trustee or his representative shall issue an order to the Brewer or his representative to deliver the quantity of goods paid for to such purchaser or his Agent, and no other goods save only such goods so paid for are to be removed from said dock without the written permission of the trustee or his representative. All final shipments from the Province shall be made by boat.

All such monies so received by the Trustee are to be deposited by him in a Chartered Bank, to be designated by each Brewer. Each Brewer shall remit promptly to the Trustee for his share of the cost of collecting the money for sales and the Brewer failing to remit the Trustee is at liberty to deduct such expenses from the daily receipts of such Brewer. The Trustee shall give to each Brewer each month a statement showing the total receipts and total payments of the Trustee during the preceding month, together with a statement of all expenses paid or deducted by him. The amount of fines, and the interest on all deposits shall be deposited to another special account, and shall be used and dealt with as hereinafter provided for. The Brewer shall replace with the Trustee within ten days any fine imposed upon him and failing to do so he shall forfeit the balance of his deposit. 30

10. Where a Brewer deals through a forwarding agent at the Border such agent is to be remunerated by the Brewer on the basis of a commission not exceeding 75c. per carton of two dozen pints, 50c. a dozen on quarts and 25c. a dozen on splits, \$2.00 for one half barrel of draught beer, \$1.25 for one quarter barrel of draught beer. The Brewer shall pay the freight F.O.B. track main line, and the forwarding agent is to pay all subsequent charges, including switching, demurrage and all other selling expenses. The commission to be remitted to the forwarding agent by the Brewer at such times as may mutually be agreed upon. The selling expenses of Agents in U.S. are to be limited to 25c. per package. 40

11. Where a Brewer handles his beer direct, the total selling commission must not exceed 25c. per package, and such commission must not be paid to any hauler nor to anyone connected with such hauler.

12. Should any person fail to comply with any of the provisions hereof, each Brewer who may have knowledge or notice of such non-compliance shall without delay inform the Trustee thereof, and it shall be the duty of the Trustee forthwith to notify each of the Brewers of such non-compliance.

13. No Brewer, shall, during the continuance of this Agreement, directly or indirectly, by express or implied agreement, or by understanding howsoever, or for any reason whatsoever, make or allow to be made, any discount or rebate from the prices fixed under Section Number 7 hereof, or give, or allow to be given, to any purchaser of bottled or draught ale, porter, lager or other malt liquor in the territory above mentioned, any advantage or consideration whatsoever in any way, manner, or form whatsoever, in connection with, or by reason of, or in advance of his purchase, whereby the price to the purchaser would, in the opinion of the Trustee, in effect be reduced, or the terms of purchase would in such opinion in effect be made more favorable to him.

14. No Brewer, Purchaser, Agent or Bottler shall use at any time for bottling ale and porter any bottle holding more than what is known as the standard ale and porter quart and pint bottles, with a capacity, respectively, of twenty-five and one-half and thirteen and one-half ounces. For bottling lager, no bottles shall be used that hold more than what is known as the standard quart and pint bottles, with a capacity, respectively, of twenty-four and twelve and a half ounces. This shall not prevent any brewer using any larger pint bottles which he may have in stock at the time of signing this Agreement.

15. The acts, omissions and knowledge of the President, Vice-President, Secretary, Treasurer, Manager, or Bookkeeper of any Brewer being a corporation shall, for the purpose of this Agreement, be deemed the acts, omissions and knowledge of the corporation, and the corporation shall be responsible therefor; and the acts, omissions and knowledge of any Secretary, Manager or Book-keeper of any Brewer not a corporation shall, for the purpose of this Agreement, be deemed the acts, omissions and knowledge of the Brewer, and the Brewer shall be responsible therefor; and the acts, omissions and knowledge of any partner in a firm of Brewers shall be deemed the acts, omissions and knowledge of the firm, and the firm shall be responsible therefor. The acts, omissions and knowledge of any traveller, selling agent, or any person who sells or takes part in selling ale, porter, lager or other malt liquors, for any Brewer, shall, with respect to any sale and to all arrangements and understandings relating thereto, and to the carrying out thereof, be deemed, for the purpose of this Agreement, the acts and omissions of the Brewer, and the Brewer shall be responsible therefor.

16. So soon as the Trustee has received notice that any breach of this Agreement has occurred, he shall, without delay, make or cause to be made, investigation into the circumstances relating thereto, and for such purpose, and for the purposes of Sections 5, 6, 7, 8 and 9, 10 and 11 hereof, and

*In the
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Exhibits
No. 74.
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between
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A. S. Fitz-
gerald.
May, 1924.

—Continued.

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—
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May, 1924.

—Continued.

for the purpose of any duties to be performed by the Trustee hereunder, each Brewer, including the one, of any, alleged to have committed the breach, shall give to the Trustee all such information as the Trustee may require, and shall allow the Trustee or whom they may appoint, to examine all books of account, and other books and documents connected with the business, and shall cause all officers, clerks servants, agents and employees to give such information to the Trustee as he may require for the proper investigation of the alleged breach and circumstances connected therewith, and for any of the purposes aforesaid. Should any Brewer, or the President, Vice-President, Secretary, Treasurer, Manager, Assistant Manager, or Book-keeper or Agent,¹⁰ of a Brewer, being a corporation, or the Secretary, Manager or Book-keeper of a Brewer not a corporation, or a partner, in a firm of Brewers, refuse to give the information to the Trustee above mentioned or refuse to allow the Trustee or whom he may appoint to examine any book or document above referred to, or refuse to cause any officer or any other person above mentioned to give information to the Trustee, as above provided for, the Trustee may by way of fine withdraw from the amount deposited with them by such Brewer, corporation or firm, as the case may be, such sum as he may think, proper and deposit the same to the account in his name as, Trustee for fines and interest, as provided in Section 9 hereof, and the amount so withdrawn shall be used²⁰ and dealt with as hereinafter provided for.

17. In making investigation into the circumstances relating to any breach or alleged breach of the Agreement, the Trustee shall not be bound to observe the strict rules of law, or evidence, or procedure relating to investigations or trials or arbitrations, but he may proceed and acquire information in such manner as in his judgment may seem best, provided, however, that no finding shall be made that any breach has occurred until the Brewer alleged to have committed the breach has been notified of such allegation, and has been given an opportunity of being heard before the Trustee and of submitting to him information and evidence in reference thereto. 30

18. Should the Trustee find that any breach of any part of this Agreement has been committed, he may, by way of fine, withdraw from the amount deposited with him under Section 5, or otherwise howsoever, by the Brewer found by the Trustee guilty of or responsible for such breach, such sum as they may think proper, and deposit the same in the account to be kept in his name as Trustee for fines and interest, as provided in Section 9 hereof, and the amount so withdrawn shall be used and dealt with as hereinafter provided for.

19. The findings and decisions of the Trustee in respect of any matters or things under this Agreement shall be final. Any Brewer party to this Agreement may appeal to the Brewers parties to this Agreement against any⁴⁰ finding or decisions of the Trustee and the decision of the majority of the Brewers may confirm, amend or cancel, such finding of the Trustee. No proceedings of any kind at law or in equity to set aside or vary any such findings, or decisions, or to prevent the same from being carried out or given effect to,

or to restrain the Trustee from exercising the powers and discretions vested in him by this Agreement, shall be taken by or on behalf of any party hereto, and neither this Agreement nor any part thereof shall be made a rule of any court.

20. Any expenses incurred by the Trustee not provided for in section 8, and any other expenses incurred with the authority of the parties hereto shall be paid by the Trustee out of the monies collected by him under Section 7, after being approved of at a regular Meeting.

The cost of the cashier at the docks shall be paid by the Brewer at whose dock the Cashier is operating, but the general expenses of the workings of this Agreement shall be charged to the Brewers on the basis of the total business done by each, and the ascertained share of each Brewer shall be paid to the Trustee by the Brewer.

21. The remuneration of the Trustee and officers shall be fixed from time to time by the Brewers. The accounts and expenses of the Trustees shall be audited by the Brewers, or by some one appointed by them, when and so often as the Brewers may think fit.

22. Should the Trustee die, resign, refuse, neglect or become incapable to act, or go to reside permanently out of the place of residence at the time of appointment, his position as Trustee shall become vacant and the President or Secretary shall without delay call a meeting of the Brewers for the purpose of appointing a person to fill the vacancy.

23. A meeting of the Brewers may be called at any time by the Trustee, and on the written request of one-third of the Brewers such meeting shall be called. The Brewers shall meet on the third Tuesday of every month during the continuance of this Agreement. All meetings shall be held at Windsor, or such other place as the Trustee shall designate.

One week's notice of any special or Trustee's meeting shall be given by registered letter to each Brewer, and so far as possible the purpose of each meeting shall be stated in said notice.

30 A Brewer may attend a meeting either in person or by proxy, provided that such proxy be the President, Director, Secretary, Treasurer, Manager, Assistant Manager, or Book-keeper of such Brewer. One vote only shall be allowed to each Brewer, including the Chairman of the meeting, but in case of a tie the Chairman shall have the casting vote. All questions and matters shall be decided at the meeting by the votes of the majority present or represented thereat, except as herein otherwise provided for.

24. Should any question be raised by any Brewer, or any dispute arise between the Brewers or any of them as to the true effect, meaning and intentions of this Agreement or any part thereof, such question or dispute shall be referred to the Trustee for decision, and his decision shall be final, excepting as provided for appeal in Section 19.

25. Within a reasonable time before the expiration of this Agreement and before the expiration of any subsequent period during which this Agreement may be continued, the Trustee shall call a meeting of the Brewers for

*In the
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Court of
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—
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Agreement
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gerald.
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—Continued.

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gerald,
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—Continued.

the purpose of considering the advisability of continuing this Agreement; and if it be decided by resolution duly passed thereat to continue this Agreement for a specified period, the written assent of each Brewer party hereto to such continuance shall be requested; and upon the same being obtained before the expiry of the then current period, but not otherwise, this Agreement shall continue in force for such other specified period, and so on from time to time.

26. Upon the termination of this Agreement the amount at the credit of the special account mentioned in Section 7 hereof shall be distributed among the Brewers respectively upon the basis established by Sections 7 hereof, less¹⁰ any sum, if any, which may be due to the Trustee on account of the payments provided for in Section 8 hereof, and any sum due to the Trustee for expenses and remuneration, the moneys deposited to the special account for fines and interest shall first be used in payment of Trustee's remuneration and expenses, and should there be on hand any balance of such moneys, such balance shall be paid over to the Brewers pro rata.

27. In case ale, porter or lager are sold in the territory above mentioned by any brewer, whether a party to this Agreement or not, on terms lower than those provided for by this Agreement, and so as to interfere unfairly with the trade or traffic in question, the Trustee shall, at the written request of any two²⁰ Brewers, parties to this Agreement, call a meeting of the Brewers, and of the Trustee, and at such meeting the said Brewers and Trustee shall take such action in the premises and give such direction as to them may seem just and proper in order to the carrying out of this Agreement according to its true intent and meaning.

28. The Brewers shall appoint a Trustee, and shall elect a Chairman and Secretary, and such other officers as may be deemed advisable and prescribe the duties of such officers.

The Trustee's term of office shall be for one year from the date upon which these presents come into effect and until his successor is appointed.³⁰ The term of office of any successors of the Trustee and of the officers and committee men shall be for one year from the date of their appointment and until their successors are appointed.

Any Trustee, officer or committee man may be removed at any time by a meeting of the Brewers, called specially for that purpose in the manner hereinbefore provided.

29. This Agreement shall extend to, be binding upon and enure to the benefit of the successors and assigns of a corporation party hereto, the executors, administrators and assigns of a party not a corporation, and the successors of the Trustee.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and corporate seals.

*In the
Exchequer
Court of
Canada.*

SIGNED, SEALED
AND
DELIVERED
in the
presence of

O'KEEFE'S BEVERAGES, LIMITED,
W. T. KERNAHAN, Managing Director.
COSGRAVE EXPORT BREWERY CO., LIMITED,
J. F. COSGRAVE, President.
JOHN LABATT, LTD.,
E. M. BURKE, Mgr.
THE KUNTZ BREWERY LIMITED,
F. F. KUNTZ, Secy.
GRANT'S SPRING BREWERY CO., LIMITED,
H. J. McINTYRE. Per G. R.
THE HAMILTON BREWING ASSN. LIMITED.
GEO. RUSSELL, Manager.
BRITISH AM. BREW. CO. LTD.
W. R. BONDS, Vice-Prest.
THE WALKERVILLE BREWING CO. LTD.
By S. A. GRIGGS, Pres.
WALKERVILLE BREWERY LIMITED
By S. A. GRIGGS, Pres.
THE CARLING E. B. & M. CO. LTD.
Per HARRY LOW

Exhibits

No. 74.
Agreement
between
Defendant
and other
Brewers and
A. S. Fitz-
gerald,
May, 1924.

—Continued.

10

20

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 75.
(Plaintiff's)
Specimen Delivery Slip.
[SPECIMEN COPY]

Exhibits
No. 75
Specimen
Delivery
Slip
Aug. 4, 1924

[This is a specimen of several similar delivery slips.]

Amherstburg.

DETROIT, MICH, 4/8/24 19

THE CARLING EXPORT BREWING & MALTING CO., LIMITED,
LONDON, ONTARIO.

Dear Sirs :

10

Please deliver to A. W. S. Quaglia
100 Cartons, Halves,

Quarters of order

I placed with you.

50 Beer.
50 Ale.

Yours truly, C. B. Grandi.

EXHIBIT No. 77.
(Plaintiff's)

No. 77.
Statements of
Deposits re
presenting
business
done by
Defendant
May 1st to
Sept. 20,
1924.

**Statement of Deposits Representing Business Done by Defendant
BREWERS' EXPORT ASSOCIATION.**

Total Deposits representing business done by Carling Export Brewing Co., Ltd. 20

May 15th to May 31st, 1924.....	\$15,179.78	
		\$15,179.78
Week ending June 7th, 1924	\$2,329.66	
“ “ June 14th, “	3,669.93	
“ “ June 21st, “	16,699.34	
“ “ June 28th, “	34,600.11	
		57,299.04
“ “ July 5th, “	49,205.33	
“ “ July 12th, “	22,393.10	
“ “ July 19th, “	31,392.58	30
“ “ July 26th, “	19,858.75	
		122,849.76
“ “ Aug. 2nd, “	18,131.88	
“ “ Aug. 9th, “	19,613.52	
“ “ Aug. 16th, “	23,062.64	
“ “ Aug. 23rd, “	24,919.75	
“ “ Aug. 30th, “	17,308.38	
		103,036.17
“ “ Sept. 6th, “	2,757.75	
“ “ Sept. 13th, “ .....	.....	40
“ “ Sept. 20th, “ .....	.....
		2,757.75
		<u>\$301,122.50</u>

EXHIBIT No. 76.
(Plaintiff's)

Reports and Invoices used by FitzGerald

CASHIER'S DAILY REPORT OF STOCK

Port Lambton, Ont.

BREWER CARLING BREWING CO. CASHIER

T. TRACY

12 HOURS ENDED

7 p.m.

DATE AUG. 2, 1924

Dominion Office Supply Co., Ltd., Walkerville.

In the
Exchequer
Court of
Canada.

Exhibits
No. 76.
Cashier's
Daily Report
of Stock.
Aug. 2, 1924.

10

Car or Invoice Number	BEER			PALE ALE			OLD STOCK ALE			STOUT			KEGS			LEAKERS			EMPTIES		
	Cartons	Brkge	Shrkge	Cartons	Brkge	Shrkge	Cartons	Brkge	Shrkge	Cartons	Brkge	Shrkge	¹ / ₆ Bbls.	¹ / ₄ Bbls.	¹ / ₂ Bbls.	¹ / ₆ Bbls.	¹ / ₄ Bbls.	¹ / ₂ Bbls.	¹ / ₆ Bbls.	¹ / ₄ Bbls.	¹ / ₂ Bbls.
INVENTORY	1333												48						15	22	
TOTAL	1333																				
2045	25																				
46	30																				
48	38																				
49	38																				
50	25																				
			4																		
TOTAL	156		4																		
INVENTORY	1173												48						15	22	

735

**EXHIBIT No. 76.—Continued.
Sample Invoice FitzGerald Period
INVOICE**

*In the
Exchequer
Court of
Canada.*

DATE.....Aug. 2.....1924.....

No. 2045

Exhibits

No. 76.
Sample
Invoice
FitzGerald
Period
Aug. 2, 1924.

—Continued.

24	CARTONS	@	4.00	100	00
	"	@			
	"	@			
	DOZ. QUARTS	@			
	"	@			
10	DOZ. PINTS	@			
	DOZ. SPLITS	@			
	"	@			
	LESS 1% ALLOWANCE				
	½ BBLs.	@			
	¼ BBLs.	@			
	⅛ BBLs.	@			
	LESS EMPTIES ½ BBLs.				
	" ¼ BBLs.				
	" ⅛ BBLs.				
20	PREMIUM @ %			100	00

SOLD TO.....Badger.....
 OF SHIP.....Lizie II.....
 GOODS DESCRIBED ABOVE.
 VALUE.....One Hundred...../100..... DOLLARS
 FOR.....Carling Brewing Co.....
 (Name of Brewer)

ARTHUR S. FITZGERALD
 Trustee.
 Per.....T. Tracey,.....
 Cashier

EXHIBIT No. 76.—Continued.
INVOICE

*In the
Exchequer
Court of
Canada.*

DATE..... Aug. 2..... 1924.....

No. 2046

Exhibits
No. 76.
Sample
Invoice
FitzGerald
Period
Aug. 2, 1924.
—Continued.

30	CARTONS	@	4.00	120	00
	"	@			
	"	@			
	DOZ. QUARTS	@			
	"	@			
	DOZ. PINTS	@			
	DOZ. SPLITS	@			
	"	@			
	LESS 1% ALLOWANCE				
	½ BBLs.	@			
	¼ BBLs.	@			
	⅛ BBLs.	@			
	LESS EMPTIES ½ BBLs.				
	" ¼ BBLs.				
	" ⅛ BBLs.				
	PREMIUM @ %				
				120	00

10

20

SOLD TO..... Tony Hugo.....
OF SHIP..... Best Pal.....
GOODS DESCRIBED ABOVE
VALUE..... One Hundred Twenty...../100..... DOLLARS
FOR..... Carling Brewing Co.....
(Name of Brewer)
ARTHUR S. FITZGERALD, Trustee.
Per..... T. Tracey..... Cashier.

EXHIBIT No. 76.—Continued.

INVOICE

No. 2048

DATE.....Aug. 2.....1924.....

In the
Exchequer
Court of
Canada.

Exhibits
No. 76.
Sample
Invoice
FitzGerald
Period
Aug. 2, 1924.
—Continued.

28	CARTONS	@	4.00	152	00
	"	@			
	"	@			
	DOZ. QUARTS	@			
	"	@			
	DOZ. PINTS	@			
10	DOZ. SPLITS	@			
	"	@			
	LESS 1% ALLOWANCE				
	½ BBLs.	@			
	¼ BBLs.	@			
	⅛ BBLs.	@			
	LESS EMPTIES ½ BBLs.				
	" ¼ BBLs.				
	" ⅛ BBLs.				
	PREMIUM @ %				
20				152	00

SOLD TO..... Paul Dougal.....
 OF SHIP..... Lizie.....
 GOODS DESCRIBED ABOVE.
 VALUE..... One Hundred Fifty-two..... /100..... DOLLARS
 FOR..... Carling Brewing Co.....
 (Name of Brewer)

ARTHUR S. FITZGERALD
Trustee.

Per..... T. Tracey.....
Cashier.

**EXHIBIT No. 76—Continued
INVOICE**

No. 2049

*In the
Exchequer
Court of
Canada.*

DATE.....Aug. 2.....1924.....

Exhibits
No. 76.
Sample
Invoice
FitzGerald
Period
Aug. 2, 1924.
—Continued.

38	CARTONS	@	4.00	152	00
	"	@			
	"	@			
	DOZ. QUARTS	@			
	"	@			
	DOZ. PINTS	@			
	DOZ. SPLITS	@			
	"	@			
	LESS 1% ALLOWANCE				
	½ BBLs.	@			
	¼ BBLs.	@			
	¼ BBLs.	@			
	LESS EMPTIES ½ BBLs.				
	" ¼ BBLs.				
	" ¼ BBLs.				
	PREMIUM @ %				
				152	00

10

20

SOLD TO Paul Dougal.....
 OF SHIP Lizie.....
 GOODS DESCRIBED ABOVE.
 VALUE One Hundred Fifty-two /100 DOLLARS
 FOR Carling Brewing Co.
 (Name of Brewer)

ARTHUR S. FITZGERALD
 Trustee
 Per T. Tracey
 Cashier

EXHIBIT No. 16.—Continued.
INVOICE

RECORD
—
In the
Exchequer
Court of
Canada.

No. 2050

DATE.....Aug. 2.....1924.....

25	CARTONS	@	4.00	100	00
	"	@			
	"	@			
	DOZ. QUARTS	@			
	"	@			
	DOZ. PINTS	@			
10	DOZ. SPLITS	@			
	"	@			
	LESS 1% ALLOWANCE				
	½ BBLs.	@			
	¼ BBLs.	@			
	⅛ BBLs.	@			
	LESS EMPTIES ½ BBLs.				
	" ¼ BBLs.				
	" ⅛ BBLs.				
	PREMIUM @ %				
				100	00

Exhibits
No. 76.
Sample
Invoice
FitzGerald
Period
Aug. 2, 1924.
—Continued.

20 SOLD TO Mr. Badger.....
OF SHIP Lizie II.....
GOODS DESCRIBED ABOVE.
VALUE One Hundred /100 DOLLARS
FOR Carling Brewing Co.
(Name of Brewer)
ARTHUR S. FITZGERALD
Trustee.
Per..... T. Tracey..... Cashier.

In the
Exchequer
Court of
Canada.

**EXHIBIT No. 76—Continued
CASHIER'S DAILY REPORT**

BREWER.....Carling Brewing Co.....No.....

Exhibits
156
No. 76.
Sample
Cashier's
Daily Report
FitzGerald
Period
Aug. 2, 1924.
—Continued.

CARTONS	@	4.00	624	00
"	@			
"	@			
DOZ. QUARTS	@			
"	@			
DOZ. PINTS	@			
DOZ. SPLITS	@			10
"	@			
LESS 1% ALLOWANCE				
½ BBLs.	@			
¼ BBLs.	@			
⅛ BBLs.	@			
LESS EMPTIES ½ BBLs				
" ¼ BBLs.				
" ⅛ BBLs.				
PREMIUM @ %				
BREAKAGE.....			\$624	00
SHRINKAGE..... 4.....				20

SUMMARY OF INVOICES

2045	100	00					
46	120	00					
48	152	00					
49	152	00					
50	100	00					
	\$624	00					

PERIOD ENDED.....7 P.....M.....1924

DOCK.....Port Lambton.....T. Tracey,
CASHIER

EXHIBIT NO. 22.

(Plaintiff's)

*In the
Exchequer
Court of
Canada.***Contract Brewers with G. U. Stiff.**

THIS CONTRACT made the _____ day of June, One Thousand Nine
Hundred and Twenty-Six,

BETWEEN :

The several persons, firms and Corporations,
being Brewers, whose hands and seals or
corporate seals are hereto affixed,

10

THE FIRST PARTIES :

AND

GEORGE U. STIFF, of the City of Toronto,
Chartered Accountant,

THE SECOND PARTY.

WITNESSETH that in consideration of the mutual covenants and
agreements herein contained, the First Parties severally and not for each
other covenant and agree with the Second Party, and also severally and not
for each other, covenant and agree with the others of them and with each
other, as follows :—

20 1. In this Contract person includes persons, firms and corporations,
the singular number includes the plural and the plural the singular, and the
masculine includes the feminine and includes any new Trustee appointed under
this Contract.

2. This Contract shall apply only to goods that have been or may be
sold for export by water from one or more places in the Province of Ontario,
on Georgian Bay to St. Mary's River, Lake Huron, River St. Clair, Lake St.
Clair, Detroit River, Lake Erie, Niagara River, Welland Canal, Lake Ontario
and River St. Lawrence west of the western boundary of the Province of
Quebec.

30 3. All of the first parties hereby undertake to subscribe for one share
in The Bermuda Export Company, Limited, the Forwarding Company, and
during the period of three years from the date this contract becomes operative
shall forward all their malt products intended for export to the said Forward-
ing Company for shipment as aforesaid.

4. This contract shall take effect and become operative upon such date
as shall be decided upon at a meeting of the first parties and shall remain in
force for a period of three years from that date.

5. Concurrently with the delivery from time to time of any of its pro-
ducts by any of the first parties to the Bermuda Export Company, Limited,

Exhibits

No. 22.
Contract
Brewers
with
G. U. Stiff.
June, 1926.

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. 22.
Contract
Brewers
with
G. U. Stiff.
June, 1926.

—Continued.

for foreign shipment from any of the said places, each of the first parties shall send particulars of its shipment to the second party.

6. Promptly from time to time the Second Party shall collect from The Bermuda Export Company, Limited, the Forwarding Company, that portion of the purchase money due to the Brewers' Trust on the sale of the products of the first parties and the second party shall deposit the moneys received by him in a Chartered Bank at Toronto, to the credit of the Brewers' Trust and no money shall be withdrawn from the said Bank account, except on the signatures of the second party and two of the first parties.

7. None of the first parties or their officers, employees or agents shall directly or indirectly sell or cause to be sold malt products for export from any of the above places during the currency of this Agreement for less than the following prices or upon terms more favourable to the purchaser than the following :—

Per carton of 2 dozen pint bottles	\$ 3.25
Per dozen quart bottles	2.50
For $\frac{1}{2}$ barrels, including deposit on packages	16.00
For $\frac{1}{4}$ barrels, including deposit on packages	8.25

In case of sales to countries having other than Canadian currency the prices shall be adjusted so as to show the sale price in the currency of such countries the equivalent of the Canadian currency. Returned packages in good condition shall be credited at the following prices :—

For half barrels	\$6.00
For quarter barrels	3.00

The Second Party shall appoint one man not connected with any of the first parties to make adjustments on draught beer for all the first parties and his adjustments shall be final.

8. None of the first parties shall employ more than one sales representative in any territory covered by this agreement and such representative shall be paid not more than ten cents per package on deliveries for such representative's territory from which he shall pay his own expenses, or such representative may be employed on a salary and expense basis in which event not more than One Hundred and Twenty-Five Dollars per week salary shall be paid and Two Hundred Dollars per week expenses, but such representative shall not be engaged in any other business than as such representative and shall be in no way connected in business or blood in such territory with the purchaser. Such territory shall be defined by the Second Party upon the advice of the Executive Committee.

Each of the parties shall file with the Trustee a list of representatives already acting, and also the names of the proposed representatives, together with the territory which such representative shall cover.

PROVIDED, however, that none of the first parties shall without the approval of the former employer, appoint anyone as representative who has

acted as such for any other of the first parties until at least three months shall have elapsed since he ceased to act for any other of the first parties.

No representative shall be interested in the sale of any spirituous liquors.

Where a representative is paid on the basis of ten cents per package, each of the first parties shall retain 25% of this sum for at least six months as an evidence of good faith, and thereafter the parties of the first part shall always have on hand a sum equal to 25% of the previous six months' sales.

9. The Second Party on the last week day of each month shall deduct his expenses for that month from the total receipts from the Forwarding
 10 Company for bottled and draught goods and divide twenty-five cents per carton of the revenue remaining on hand from bottled goods, equally among the first parties. On the last week day of the fourth month he shall divide the residuary receipts for the first month thereof among the first parties "In proportion to the business done by each in that month" and thereafter he shall on the last week day of each month repeat the said division of the residuary receipts as aforesaid for the month preceding the last two. From the receipts for draught beer after deducting its proportionate share of expenses as above provided, he shall similarly on the last week day of each month divide fifteen per cent among such of the first parties as have shipped draught
 20 beer in proportion to the business done by each in that month and the remainder of the receipts therefrom he shall similarly on the last week day of each month after the third month distribute among such of the first parties as have shipped draught beer in proportion to their sales during that month. The above mode of distribution shall continue until the expiration of this contract provided that the second party shall make no payments to any of the first parties until the second party shall have retained and set aside five thousand dollars for each of the first parties which sum shall always be the minimum sum to the credit of each of the first parties during the continuance of this contract. And it is further provided that when any of the first parties
 30 discontinues its export business the second party shall retain his last three months' credit for one year after such discontinuance.

10. The first parties shall at the commencement of this Contract elect an Executive Committee from among their number, of three supervisors of the export trade of the first parties from the places above named, one of whom shall be elected for three months, one for two months and one for one month, and the said Executive Committee shall thereafter be maintained to three in number for three months each during the continuance of this Contract, but none of the first parties shall be eligible for re-election on the said Committee until all of the first parties have served thereon, and this rotation shall continue
 40 during the life of this contract and the said Executive Committee shall act in an advisory capacity to the Forwarding Agent and to the Second Party. If he so desires any one of the first parties may appoint someone to act on his behalf as a member of the Executive Committee.

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. 22.
Contract
Brewers
with
G. U. Stiff.
June, 1926.

—Continued.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 22.
Contract
Brewers
with
G. U. Stiff.
June, 1926.

—Continued.

11. Should any of the first parties export or sell for export any malt products other than to or through the forwarding Agent, or violate any of the terms of this contract, such party shall surrender to the second party as pre-estimated damages the current six months of his share of the distribution funds in the hands of the second party provided for under this Contract. The Second Party shall have the right from time to time to examine all books, accounts, papers, vouchers, letters and writings connected with or referring to the said export business of any of the first parties for the purpose of determining whether or not there has been a violation of the terms of this contract and in making such investigation it shall not be necessary to observe the¹⁰ rules of law or evidence but the investigator may acquire information in such manner as he in his judgment thinks best. Provided that no finding shall be made that any breach has occurred until the alleged offender has been notified of the charge and has been afforded an opportunity of being heard and of submitting information and evidence in reference thereto. Should the finding of the second party be against the alleged offender he may appeal to the first parties in which case the second party shall forthwith call a meeting of all of the first parties to this contract to which all facts and findings shall be submitted and if the alleged offender is not guilty the finding of the second party may be modified, cancelled or reversed only upon a vote of three-fourths of²⁰ the first parties to this contract present at such special meeting called for the purpose of considering the same.

12. The second party may at any time require any of the first parties, his or its officials, employees or agents to file with the second party a Statutory Declaration showing that the provisions of this contract have not been violated, and such declaration shall be in such form and contain such information as may be required by the second party.

13. This Contract is made for the purpose of placing the export business on a proper and legal basis, with the express intention that each of the parties hereto will observe all legal requirements, and, prevent the coming back of³⁰ any of the beer into Ontario, and each of the parties agrees with the others, that he will notify any of the first parties who is directly or indirectly violating the same, so that such irregularities shall be discontinued or prevented and such violation shall be subject to such penalty as may be determined upon at a meeting of the first parties. The second party is hereby empowered to take up in the meantime the question of the complaint with the offending party and remedy it forthwith if at all practicable. If he is unable to do this then he is to call a meeting of the first parties forthwith for the purpose of considering the same.

14. Any fines imposed by the second party shall be used by him towards⁴⁰ the payment of the expenses incurred by or under this Contract; any surplus to be divided among the remaining Breweries.

15. Subject to the provisions of paragraph 11 hereof of the findings and decisions of the second party in respect of any matters or things under this

contract shall be final. No proceedings of any kind at law or in equity to set aside any such findings or decisions, or to prevent the same from being carried out or given effect to, or to restrain the second party from exercising the powers and discretions vested in him by this contract, shall be taken by or on behalf of any party hereto, and neither this contract nor any part thereof shall be made a rule of any Court.

16. One week's notice of any special or Trustee's meeting shall be given by registered letter to each of the first parties and so far as possible the purpose of such meeting shall be stated in said notice.

10 Any of the first parties may attend a meeting either in person or by proxy, provided that such proxy be to the President, Director, Secretary, Treasurer, Manager, Assistant Manager, or book-keeper of such first party. One vote only shall be allowed to each of the first parties including the Chairman of the meeting, but in case of a tie the Chairman shall have the casting vote. All questions and matters shall be decided at the meeting by the votes of the majority present or represented thereat, except as herein otherwise provided for.

17. Should any question be raised by any of the first parties or any dispute arise between them or any of them as to the true effect, meaning and
20 intentions of this contract, or any part thereof, such question or dispute shall be referred to a joint meeting of all the parties hereto, and no contention shall be sustained unless supported by the vote of two-thirds of those present at such meeting.

18. In case Ale, Porter, Lager, or other malt liquors are sold in the territory above mentioned by any of the first parties, whether a party to this Agreement or not, on terms lower than those provided for by this contract, and so as to interfere unfairly with the trade or traffic in question the second party shall, at the written request of any two of the first parties, to this contract, call a meeting of all the parties hereto, and at such meeting the said parties
30 shall take such action in premises and give such direction as to them may seem just and proper in order to the carrying out of this Contract according to its true intent and meaning.

19. Upon the termination of this contract the amount at the credit of each of the first parties shall be paid to each of the first parties.

20. No Brewer, nor his Agent, shall directly or indirectly be interested in any boats or other means of Transportation for the purpose of assisting in the transportation of the Beer beyond the docks of the Forwarding Company.

The purpose of the Agreement is that the Brewers' interest in the delivery of the Beer shall cease when it has been cleared from the dock.

40 IN WITNESS WHEREOF the Corporate seals of the within named Companies of the first part have been hereunto attached, attested by the hands of the proper officers, and the party of the Second Part has hereunto set his hand and seal.

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. 22.
Contract
Brewers
with
G. U. Stiff.
June, 1926.

—Continued.

*In the
Exchequer
Court of
Canada.*
—
Exhibits
No. 22.
Contract
Brewers
with
G. U. Stiff.
June, 1926.
—Continued.

SIGNED, SEALED,
AND
DELIVERED
in the
presence of

“CHAS.E.HENRI”

“DORA DWYER”

“CHAS.E.HENRI”

BRITISH AMERICAN BREWING CO., LIMITED,
L. A. IRION, President.

W. R. BONDS, Vice-President. [SEAL]

THE CARLING E. B. & M. CO., LTD.

Per : HARRY LOW

CHAS. BURNS. [SEAL]

WALKERVILLE BREWERY, LTD.

E. C. ANDRICH, Pres. [SEAL]

H. RADNER, Secretary.

JOHN LABATT, LIMITED

E. M. BURKE, Manager. [SEAL]

JOHN S. LABATT, Pres.

THE CROWMILLER & WHITE BREWING &
MALTING CO., LIMITED.

W. M. GERMAIN, President. [SEAL]

CONRAD HAMMER, JR., Secretary.

O'KEEFE'S BEVERAGES, LIMITED.

W. T. KERNAHAN, Managing Director.

FRED T. WALSH, Secretary-Treasurer. [SEAL]

COSGRAVE EXPORT BREWERY CO., LIMITED. 20

J. F. COSGRAVE, President. [SEAL]

JNO. A. MULDOON, Secretary.

THE HAMILTON BREWING ASSOCIATION, LTD.

S. W. C. SCOTT, Vice-Pres. [SEAL]

GEO. RUSSELL, Treas.

THE KUNTZ BREWERY, LIMITED.

Per : WM. A. KUNTZ, [SEAL]

HERBERT F. KUNTZ.

TAYLOR & BATE, LIMITED.

Per : MARGARET F. DICK, President. [SEAL]30

JOHN F. MALLON, Manager.

THE BIXEL BREWING & MALTING CO., LTD.

F. G. BIXEL, President, [SEAL]

CHAS. HANSER.

GEO. U. STIFF. [SEAL]

THE GRANT'S SPRING BREWERY CO., LIMITED

R. S. BARNES, Director. [SEAL]

GEO. RUSSELL, Secretary.

THE DOMINION BREWERY COMPANY, LTD.

R. S. Barnes, Director. [SEAL]40

JAS. LOW, Manager.

Witness :
PERCY F.
HARMAN.

EXHIBIT NO. 27.

(Plaintiff's)

Agreement Bermuda Export Co. Ltd. and Defendant.

AGREEMENT made this 15th day of June, One Thousand Nine Hundred and Twenty-six,

BETWEEN :

THE BERMUDA EXPORT COMPANY, LIMITED,

THE FIRST PARTY,

AND

CARLING EXPORT BREWING & MALTING COMPANY, LIMITED

THE SECOND PARTY.

WHEREAS the First Party has agreed to act as Forwarding Agent for the Second Party and for others and each principal is to bear the part of the First Party's expenses proportioned to the business done by the First Party for each :—

WITNESSETH that the parties mutually agree as follows :—

1. The Second Party hereby appoints the First Party its only Forwarding Agent for three years from the date hereof, and the First Party hereby accepts the appointment, to handle the Second Party's products for export by water from any place or places on Georgian Bay to St. Mary's River, Lake Huron, River St. Clair, Lake St. Clair, Detroit River, Lake Erie, Niagara River, Welland Canal, Lake Ontario and St. Lawrence River West of the West boundary of the Province of Quebec, delivery to be made by the Second Party to the First Party F.O.B. the docks or shelters of the First Party in any of the above shipping places.

2. The First Party shall collect for the said products at the time of delivery to the purchasers thereof not less than the following prices :—

	Per Carton of 2 dozen pint bottles.....	\$ 3.25
	Per Dozen quart bottles.....	2.50
30	For ½ barrels including deposit on packages.....	16.00
	For ¼ barrels including deposit on packages.....	8.25

in Canadian currency or the equivalent of it if in a foreign currency, and as often as it has received collections of the price of two thousand dozen pint bottles or one thousand dozen quart bottles, or the equivalent of fifty barrels of draught beer, it shall remit to the Second Party therefor at the following rates :—

	For cartons of 2 dozen pint bottles.....	\$ 2.50
	For dozen quart bottles.....	2.20
	For ½ barrels including deposit on packages....	14.75
40	For ¼ barrels including deposit on packages....	7.55

The Forwarding Agent shall monthly send to the Second Party a statement showing the deliveries and collections made for the Second Party at each shipping point, together with a statement of expenses charged to the Second

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 27.
Agreement
Bermuda
Export Co.
Ltd. and
Defendant.
June 15,
1926.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 27.
Agreement
Bermuda
Export Co.
Ltd. and
Defendant.
June 15,
1926.

—Continued.

Party, accompanied by a cheque to cover balance owing for collections, and monthly the first party shall deduct seventy-five dollars remuneration and the First Party's rateable expenses for the month based on the total receipts from all its malt product principals, and at the same time the First Party shall pay the residue of the said proceeds to George U. Stiff, in trust, and at the same time deliver to the said George U. Stiff an itemized statement of receipts of goods from the Second Party, and deliveries to and collections from the purchasers for account of the second party, and expenses charged to the Second Party.

3. The Second Party shall pay as a debt to the First Party fifty cents¹⁰ per two dozen pint bottles or one dozen quart bottles and four dollars per barrel on all its malt products which are shipped by it from any of the places aforesaid for export or by it sold for export from any of the said places to any person, firm, association or corporation other than the First Party, and the First Party shall also be entitled to an injunction against the Second Party to restrain any sale or shipment by the Second Party in violation of this agreement.

4. The Second Party hereby grants to the First Party the right and privilege for it and its auditors or agents at all times during business hours to investigate all its books and vouchers to ascertain and verify the export ship-²⁰ments it has made after this contract comes into effect and it will produce at such investigation all documents referring to export shipments or payment therefor for inspection by the First Party or its auditors or agents.

5. Both parties agree that the Second Party shall not ship under this agreement any malt products carrying 5.5 alcohol crown.

6. The Second Party shall be responsible for the keeping quality of its products and agree that the first party may return to it at the expense of the Second Party any of the products it ships to it which may be unfit for sale.

7. The Second Party shall replace any breakage in its goods delivered to the First Party and an allowance of one per cent shall be made to the pur-³⁰chaser upon the second party's products to cover breakage.

8. The First Party shall confine its agency to forwarding and collecting the purchase money and shall not act as Sales Agent for any manufacturer of malt products and shall not suggest, influence or recommend the sale of any manufacturer's products.

9. The First Party shall upon request have the right to require an assignment of any lease of docks under the control of the Second Party within the limits of the territory hereinbefore described, and where the docks, if any, are owned by the Second Party hereto the First Party shall have the right to take over the use and occupation thereof during the period that this agree-⁴⁰ment remains in force at a rental of

10. The First Party shall comply with all laws affecting the performance of this contract and shall provide the necessary broker facilities for customs regulations.

11. The Second Party shall be chargeable with a proper shrinkage allowance proportionate to its shipments.

12. If the Second Party delivers a car of its products to one of the said places to which it has not previously made a delivery and sixty per cent thereof is not delivered to the purchasers therefrom within forty-five days thereafter, the First Party may return the products to the Second Party at the Second Party's expense.

13. Should the Second Party reduce the delivery prices to the purchaser at any time he shall forthwith give written notice by registered mail to the First Party, but notwithstanding such change the First Party shall deduct therefrom seventy-five cents per carton of two dozen pints, thirty cents per carton of one dozen quarts, one dollar and twenty-five cents for one-half barrel of draught beer and (seventy cents for one quarter barrel of draught beer) for remission to the Trustee less the proportionate part of the expenses thereon.

14. The Second Party agrees to pay freight and receive car of empty kegs and pay sight draft attached to bill of lading for the empties at six dollars for half barrels and three dollars for quarter barrels plus amount paid for duty.

15. This contract shall extend to, include and bind, Parties hereto, as well as their Successors and Assigns.

20 IN WITNESS WHEREOF the Corporate Seals of the within named Companies have been hereunto attached, attested by the hands of the proper officers.

WITNESS :

THE BERMUDA EXPORT COMPANY LIMITED,

By "GEO. RUSSELL," Pres.

"L. A. IRION," Secy.

[SEAL]

CARLING EXPORT BREWING & MALTING
COMPANY LIMITED,

By "CHAS. BURNS," Pres.

"HARRY LOW."

30

[SEAL]

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. 27.
Agreement
Bermuda
Export Co.
Ltd. and
Defendant,
June 15,
1926.

—Continued.

EXHIBIT NO. 24.

(Plaintiff's)

Trustee's Distribution of Receipts Bermuda Co.

ABSTRACT OF TRUSTEE'S DISTRIBUTION OF RECEIPTS FROM
BERMUDA COMPANY.

Exhibits

No. 24.
Trustees'
distribution
of Receipts
Bermuda
Co.,
July 15,
1926.
-May 5, 1927.

	Quantities				Business Done		Distribu- table Funds	
	½ Bbls.	¼ Bbls.	Cartons	Qts.	Bottled	Draft		
1926								
July 15 } Carling	6122	123	99149	.....	\$322,234.25	\$ 98,966.75	\$24,344.65	10
Aug. 25 } Aggregate	20943	7939	157180	1050	513,460.00	400,584.75	82,320.57	
Aug. 26 } Carling	3081	185	83138	.....	270,198.50	50,822.25	22,603.34	
Sept. 22 } Aggregate	11009	3892	132981	3490	440,913.25	208,253.00	71,151.46	
Sept. 23 } Carling	2750	127	59915	.....	194,723.75	45,047.75	15,185.19	
Oct. 20 } Aggregate	10261	1770	90428	934	296,226.00	178,778.50	47,244.51	
Oct. 21 } Carling	2541	71	65769	.....	213,749.25	41,241.75	14,974.00	
Nov. 17 } Aggregate	6903	1439	87339	.....	283,851.75	122,319.75	40,837.18	
Nov. 18 } Carling	509	.....	34361	.....	111,676.25	8,144.00	3,888.35	
Dec. 16 } Aggregate	2400	800	48000	.....	156,123.00	45,000.00	16,150.33	
Dec. 17 } Carling	32	7	16759	.....	54,466.75	569.75	747.33	20
1927								
Jan. 13 } Aggregate	913	913	33917	.....	110,321.75	22,140.25	8,696.93	
Jan. 14 } Carling	52	3	20406	.....	66,321.50	856.75	2,678.70	
Feb. 10 } Aggregate	1153	870	40532	200	132,408.50	25,625.50	13,993.33	
Feb. 11 } Carling	86	.....	28697	.....	93,266.25	1,376.00	4,190.19	
Mar. 10 } Aggregate	1463	1381	54585	.....	177,572.75	34,801.25	19,486.36	
Mar. 11 } Carling	103	1	32859	.....	106,791.75	1,656.25	6,864.31	
Apr. 7 } Aggregate	3825	1796	67269	.....	218,926.75	76,017.00	29,050.28	
Apr. 8 } Carling	80	1	37354	.....	121,407.50	1,288.25	9,266.48	
May 5 } Aggregate	4767	1594	92069	.....	299,513.75	89,422.50	43,023.00	
1926								
July 15 } Carling	15356	518	478407	.....	1,554,835.75	249,969.50	104,742.54	
1927								
May 5 } Aggregate	63637	22394	804300	5674	2,629,317.50	1,202,942.50	371,953.95	30

EXHIBIT NO. 26.

(Plaintiff's)

In the
Exchequer
Court of
Canada.

Memo of Defendant's Share of Bermuda Export Co.'s Receipts.

MEMORANDUM of The Carling Export Brewing & Malting Company, Limited, share or apportionment of the receipts from The Bermuda Export Company, Limited, by Geo. U. Stiff, Trustee.

Exhibits

No. 26.
Memo of
Defendant's
Share of
Bermuda
Co.'s
Receipts.
15 July,
1926-
May 5, 1927.

PERIOD.	AMOUNT.
15th July 1926 to 25th Aug. 1926.....	\$ 24,344.68
26th Aug. 1926 to 22nd Sept. 1926.....	22,603.34
23rd Sept. 1926 to 20th Oct. 1926.....	15,185.19
21st Oct. 1926 to 17th Nov. 1926.....	14,974.00
18th Nov. 1926 to 16th Dec. 1926.....	3,888.35
Sub-total for 1926.....	<u>\$ 80,995.56</u>
17th Dec. 1926 to 13th Jan. 1927.....	747.33
14th Jan. 1927 to 10th Feb. 1927.....	2,678.70
11th Feb. 1927 to 10th Mar. 1927.....	4,190.19
11th Mar. 1927 to 7th Apl. 1927.....	6,864.31
8th Apl. 1927 to 5th May 1927.....	9,266.48
Total to 5th May 1927.....	<u>\$104,742.57</u>
Cash paid to 5th May 1927.....	<u>\$80,208.71</u>
Balance on hand 5th May 1927.....	<u>\$24,533.86</u>

NOTE :—In order to synchronize with the weekly settlements which The Bermuda Export Company Ltd. makes with the export brewers, that Company makes settlement with me every four weeks, instead of in periods of a month.

The Company's settlement with me is as follows :—

Total number of cartons sold (pints) at 75c.....	.....
do. (qts.) at 30c.....	.....
Total number of half barrels at 1.25.....	.....
Total number of qtr. barrels at 70c.....	.....
Less Export Co.'s expenses.....	<u>.....</u>
Trustee's receipts.....	.....
Less Trustee's expenses.....	.....
Brewer's Trust (Distributable Fund).....	<u>\$.....</u>

Distribution formula :—The number of cartons sold. by 25c divided equally amongst brewers : balance of bottled goods divided amongst brewers in proportion to business done.

For Draught Goods :—15% divided at once and 85% at the end of three months in proportion to business done.

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In the
Exchequer
Court of
Canada.

EXHIBIT NO. 37.

(Plaintiff's)

Schedule of Defendant's Collections and Payments

CARLING E. B. & M. CO.,

Exhibits

SCHEDULE OF COLLECTIONS AND PAYMENTS FOR THE PERIOD FROM JULY 15TH 1926 TO

Schedule of
Defendant's
Collections
and Pay-
ments.
July 15,
1926-Apr. 30,
1927.

WINDSOR				LONDON			
1926	Collections after deducting margin	Deduct value of empties and duty, etc.	Net payment		1926	Collections after deducting margin	
July 22	\$ 45,452.20		\$ 36,969.85	c	July 29	\$ 2,325.00	c 10
29	54,729.05		41,781.61	c	Aug. 6	1,603.00	c
Aug. 6	54,852.35		45,691.13	c	13	2,257.50	c
12	44,843.00		312.00	} 81353	20	4,868.50	c
			35,313.13	c	27	12,590.00	c
19	50,679.25		25.00	x 81333	Sept. 3	14,484.00	c
			45,564.82	c CKNO	10	7,402.50	c
25	5,317.50		5,317.50	81352	17	5,165.00	c
27	54,990.20		51,041.93	c	23	2,377.50	c
Sept. 3	64,348.55		60,671.80	c	Oct. 1	1,860.00	c
10	41,245.75		36,786.15	c	8	1,985.00	c 20
17	55,274.35		49,456.13	c	15	2,662.50	c
23	65,893.85		58,242.05	c	21	5,522.50	c
Oct. 1	47,007.20		40,945.07	c	29	2,685.00	c
8	48,216.60		41,945.28	c	Nov. 5	3,635.50	c
15	39,899.10		36,366.72	c	12	4,002.50	c
21	41,631.10		36,450.73	c	18	1,425.00	c
29	47,692.00		42,888.16	c	26	4,620.50	c
Nov. 5	53,298.30		46,620.36	c	Total	\$8,147.50	
11	48,285.00		44,717.94	c			
18	41,880.00		36,105.20	c			30
26	26,430.50	*See Tape	24,954.60	c			
Dec. 3	21,153.50		20,534.07	c			
10	23,370.00		23,370.00	c			
17	18,072.75		17,493.25	c			
24	12,352.65		12,109.05	c			
31	9,523.20		9,204.33	c			
1927							
Jan. 7	10,344.00		10,276.19	c			
13	10,202.50		9,874.80	c			
21	4,622.65		4,572.25	c			
28	14,265.00		13,515.26	c			
Feb. 4	16,319.50		16,079.56	c			40
11	16,635.50		16,050.31	c			
18	17,665.75		16,925.54	c			
18	1,087.50						
25	15,893.25		15,726.20	c			
Mar. 4	23,034.25		21,827.80	c			
10	16,234.75		15,424.50	c			
	250.00						
17	16,795.00		16,463.60	c			
			250.00	x 7145			
24	20,149.25		19,836.95	c			50
Apr. 1	19,072.00		19,072.00	c			
7	18,618.05		18,212.65	c			
16	27,987.55		27,764.35	c			
22	19,579.50		19,579.50	c			
29	23,090.50		23,090.50	c			
Total	\$1,308,284.45	\$122,864.63	\$1,185,419.82				

*Pencil Note

EXHIBIT NO. 37.—Continued.

*In the
Exchequer
Court of
Canada.*

Adding machine statement of \$122,864.63, the total shown in Column 3 of the foregoing Exhibit No. 37.

	7,485.00	435.40	157.50	77.81
	997.35	31.35	546.00	1,110.00
	11,394.00	4,941.00	73.43	144.55
	1,553.44	654.38	75.00	1,068.00
	8,067.00	5,541.00	642.00	138.45
	1,094.22	730.32	83.75	70.00
10	73.50	3,108.00	196.00	657.00
	8,091.00	424.38	42.00	83.25
	1,126.87	75.00	5.60	182.90
	4,491.00	4,506.00	228.00	132.00
	623.43	599.37	36.87	16.50
	134.12	14.40	67.81	276.00
	75.00	136.00	70.00	36.30
	3,228.00	4,119.00	228.00	70.00
	437.65	538.44	29.70	297.00
	3,243.00	5,898.00	50.40	38.40
20	433.75	775.94	651.00	258.00
	4,080.00	3,153.00	98.74	34.20
	537.35	414.06	204.00	
	5,139.00	75.00	35.94	123,116.38*
	679.22	5,037.00	70.00	
	12.50	662.80	258.00	69.00
	75.00	8.40	35.94	182.75
	880.30	134.00	77.40	
	6,684.00	1,176.00	585.00	251.75*
				<u>122,864.63</u>

Exhibits

No. 37.
Schedule of
Defendant's
Collections
and
Payments,
July 15,
1926-
April 30,
1927.

—Continued.

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EXHIBIT NO. 40A.

(Plaintiff's)

Cheques Bermuda Export Co. to Defendant.

This consists of a bundle of cheques drawn by the Bermuda Export Company, Limited, on the Imperial Bank of Canada, Windsor, payable to the order of Carling Export Brewing & Malting Company, Limited, bearing the respective dates and being for the respective amounts below specified.

No. 40-A.
Cheques
Bermuda
Export Co.
to Defend-
ant.
July 23,
1926-May 6,
1927.

	1926. July 23.....	\$36,969.85
	“ “ 30.....	41,781.61
	“ Aug. 6.....	45,691.13
40	“ “ 13.....	35,313.13

EXHIBIT No. 40A—Continued.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 40-A.
Cheques
Bermuda
Export Co.
to Defend-
ant.
July 23,
1926-May 6,
1927.

—Continued.

“	“	20.....	45,564.82	
“	“	26.....	51,041.93	
“	Sept.	3.....	60,671.80	
“	“	10.....	36,786.15	
“	“	17.....	49,456.13	
“	“	23.....	58,242.05	
“	Oct.	1.....	40,945.07	
“	“	8.....	41,945.28	
“	“	15.....	36,366.72	10
“	“	22.....	36,450.73	
“	“	29.....	42,888.16	
“	Nov.	5.....	46,620.36	
“	“	12.....	44,717.94	
“	“	18.....	36,105.20	
“	“	26.....	24,954.60	
“	Dec.	3.....	20,534.07	
“	“	10.....	23,370.00	
“	“	17.....	17,493.25	
“	“	24.....	12,109.05	20
“	“	31.....	9,204.33	
1927.	Jan.	7.....	10,276.19	
“	“	14.....	9,874.80	
“	“	21.....	4,572.25	
“	“	28.....	13,515.26	
“	Feb.	4.....	16,079.56	
“	“	10.....	16,050.31	
“	“	18.....	16,925.54	
“	“	25.....	15,726.20	
“	Mar.	4.....	21,827.80	30
“	“	11.....	15,424.50	
“	“	18.....	16,463.60	
“	“	25.....	19,836.95	
“	Apl.	1.....	19,072.00	
“	“	8.....	18,212.65	
“	“	14.....	27,764.35	
“	“	22.....	19,579.50	
“	“	29.....	23,090.50	
“	May	6.....	23,864.90	

EXHIBIT No. 40A—Continued.

The following is a copy of one of such cheques :—
WINDSOR, ONT., Jul. 23 1926.

No. 104

IMPERIAL BANK OF CANADA

PAY TO THE ORDER OF

CARLING EXPORT BREWING AND MALTING CO. LTD. **\$36969.85**

{Registered} \$36969 and 85 cts.
{854035 }

/100 Dollars.

BERMUDA EXPORT CO. LTD.

W. R. BONDS

HARRY LOW

C. F. CLAPP MGR.

10[STAMP \$1.00] PAID

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 40A.
Cheques
Bermuda
Export Co.
to Defend-
ant.
July 23,
1926-May 6
1927.

—Continued

BACK OF CHECK

ENDORSEMENTS AND STAMPS:

Deposit to the Account of
Carling E. B. & M. Co. Ltd.

Dominion Bank, Windsor, Ont.
July 26 1926
2nd Teller

EXHIBIT No. 38.

(Plaintiff's)

No. 38.
Refund Slip.
July 26,
1926.

20

REFUND SLIP.

DOCK.....No. 2.....

DATE.....July 26.....

BREWERY.....Carling.....

RECEIVED
EMPTIES

Class	Number		Amount
½	100	One Hundred	\$600.00
¼	2	Two	\$ 6

.....A. Monforton.....

This is a specimen Refund Slip selected from several similar such refund slips.

*In the
Exchequer
Court of
Canada.*

EXHIBIT 40-B.

(Plaintiff's)

Exhibits

Bundle of Cheques Bermuda Export Co. to Defendant

No. 40-B.
Bundle of
Cheques
Bermuda
Export Co.
to Defend-
ant.
July 30,
1926-
Nov. 26,
1926.

This consists of a bundle of cheques drawn by the Bermuda Export Company, Limited, on the Imperial Bank of Canada, Windsor, payable to the order of Carling Export Brewing & Malting Company, Limited, bearing the respective dates and being for the respective amounts below specified.

1926.	July	30.	.....	\$ 2,325.00	
"	Aug.	6.	.....	1,603.00	
"	"	13.	.....	2,257.50	10
"	"	20.	.....	4,868.50	
"	"	26.	.....	12,590.00	
"	Sept.	3.	.....	14,484.00	
"	"	10.	.....	7,402.50	
"	"	17.	.....	5,165.00	
"	"	23.	.....	2,377.50	
"	Oct.	1.	.....	1,860.00	
"	"	8.	.....	1,985.00	
"	"	15.	.....	2,662.50	
"	"	22.	.....	5,522.50	20
"	"	29.	.....	2,685.00	
"	Nov.	5.	.....	3,635.50	
"	"	12.	.....	4,002.50	
"	"	18.	.....	1,425.00	
"	"	26.	.....	4,620.50	

The following is a copy of one of such cheques :

	WINDSOR, ONT., Jul. 30, 1926.	No. 183
	IMPERIAL BANK OF CANADA	
	PAY TO THE ORDER OF	
	CARLING EXPORT BREWING & MALTING CO.	\$2325.0030
REGISTERED	\$02325 and 00 cts.	/00 Dollars.
854035	PAID	
	BERMUDA EXPORT CO. LTD.	
	HARRY LOW.	
	W. R. BONDS.	
(See next page)	C. F. CLAPP, MGR.	(stamp 2c)

EXHIBIT No. 40B—Continued.

RUBBER STAMPS ON FACE :—

Imperial Bank of Canada, Windsor, Ont.
Accepted Aug. 3 1926The Dominion Bank, London
Bank Sundries No. 455

ENDORSEMENTS AND STAMPS ON BACK :—

For deposit only to the credit of Carling E. B. & M. Co. Ltd.

The Dominion Bank, London, Ont.

Jul 31 1926 Cleared 3 a.m.

First Teller.

The Dominion Bank, Windsor.

4 Aug 1926 Paying Teller.

Imperial Bank, Windsor, Ont., Aug 4, 1926

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 40-B.
Bundle of
Cheques
Bermuda
Export Co.
to Defend-
ant.
July 30,
1926-
Nov. 26,
1926.

—Continued.

10

EXHIBIT No. 42

(Plaintiff's)

Letter Bermuda Export Co. to Hoffman & Dunford.**BERMUDA EXPORT COMPANY, LIMITED
OF BERMUDA**No. 42.
Letter
Bermuda
Export Co.
to Hoffman
& Dunford.
Aug. 21,
1926.C. F. CLAPP
20 MANAGER.WINDSOR OFFICE
408 Bartlet Building

Phones—Sen. 2075—2076

August 21, 1926.

Messrs. Hoffman & Dunford,
Kingsville, Ont.

Dear Sirs,

We enclose herewith our cheque for \$2918.25 being payment at the rate of 3.25 per case for products owned by you and sold at Kingsville and 25c. per case on all the remaining sales at that point for the period from July 15th to August 19th, 1926. Also we have deducted the amount of your indebtedness to various breweries, full details of which is set forth in the attached statement.

Yours very truly,
BERMUDA EXPORT COMPANY, LTD.C. F. CLAPP,
*Manager.*Encls.
HAC/WA.

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EXHIBIT No. 23.

(Plaintiff's)

Specimen of Periodical Return of Trustee for Four Weeks.

Specimen of periodical return made to Geo. U. Stiff, Trustee, by The Bermuda Export Company, Limited.
Summary of Sales in Units for the Four weeks ended September 23rd, 1926.

Exhi
No.
Spec
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endi
23,

	La Salle No. 1		La Salle No. 2		Riverside				Amherstburg				Pt. Lambton		Point Edward	Kingsville			Outside Points	Grand Total			Expenses					
	Ctns.	B.H.	½	¼	½	¼	Ctns.	B.H.	½	¼	Ctns.	B.H.	½	¼	Ctns.	Ctns.	¼	Ctns.	B.H.	Ctns.	½	¼	Ctns.	Draught Beer		Bottled Beer		
Bixel.....	148		146						1		1		122		100						269		249	Bixel.....	2.08%	\$ 106.15	.19%	\$ 25.38
10 British Amer.....	4970	725	2120	1046	120	10	268	40		10	471	15						3	100	2240	1066	6592	British Amer.....	21.40%	1,094.23	4.95%	672.06	
Carlings.....	47005		3081	185			12858				8017				11732 o.s. 4	34		2688		800	3081	185	83138	Carlings.....	24.48%	1,252.26	62.52%	8,475.98
Cosgrave.....	68																			260 qts. 112			260 qts. 180	Cosgrave.....			.14%	18.35
Cronm. & White.....	159						21				3				452								635	Cron. & White.....			.48%	64.74
Hamilton.....	5992		28				214			304	5449				405			1701			28	304	13761	Hamilton.....	1.43%	73.00	10.34%	1,402.94
Kuntz.....	4847		45				66				2035				157			1456		1000	45		9561	Kuntz.....	.35%	17.75	7.19%	974.75
Labatts.....	3219	81					702				253	9		1201	16			533		100 o.s. 375—25			6514	Labatts.....			4.90%	664.11
O'Keefe's.....	413						265				1467							1612		3130 qts. 1000			3130 qts. 4757	O'Keefe's.....			3.58%	484.98
Taylor & Bate.....														62						100 qts.			100 qts. 62	Taylor & Bate.....			.05%	6.32
Walkerville.....	3507		3033	872	2167	1362	2488				602		146		123			103	812				7532	Walkerville.....	50.26%	2570.62	5.66%	767.90
	70328	806	8453	2103	2287	1372	16882	40	1	314	18298	24	268	14232	20	34	103	8802	3	3490 qts. 3512	11009	3892	132981 3490 qts		100.00%	\$5,114.01	100.00%	\$13,557.51

EXHIBIT No. 25 (Part)

(Plaintiff's)

*In the
Court of
Court of
Canada.*

Cheques, Brewers Trust to Defendant

Exhibits

709 YONGE STREET.

No..... One Block South of Bloor Street.

TORONTO, 6th October, 1926.

No. 25
(Part)
Cheque
Brewers
Trust to
Defendant
Oct. 6, 1926

B. THE DOMINION BANK

YONGE & HAYDEN STREETS BRANCH

Pay to THE CARLING EXPORT BREWING & MALTING CO., LTD or Order

10 Twenty-six hundred and seven 66/100 Dollars

THE BREWERS' TRUST Acct. No. 4711

\$2607.66

GEO. U. STIFF
W. T. KERNAHAN
J. F. COSGRAVE

[Stamp \$1.00]

RUBBER STAMPS ON FACE :—

20 The Dominion Bank
Paid.
Nov 11 1926
Yonge & Bloor Sts. Br.
Toronto

The Dominion Bank
London, Ont.
No. protest

ENDORSEMENTS AND STAMPS ON BACK :—

For deposit only to the credit of
Carling E.B. & C. Co. Ltd.

The Dominion Bank
London, Ont.
Nov. 6, 1926
Cleared 9
Second Teller.

30 Pay to the order of any Bank
or Banker
Nov 6 1926
The Dominion Bank
London, Ontario.

The Dominion Bank
Toronto
Nov 9 1926
Cleared
Nov. 10 1926
Eighth Teller

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 25 (Part) Continued.

(Plaintiff's)

Exhibits

No. 25
(Part)
Cheque
Brewers
Trust to
Defendant
Nov. 2, 1926

No. 16

B.

—Continued.

Cheques, Brewers Trust to Defendant

709 YONGE STREET

ONE BLOCK SOUTH OF BLOOR STREET

TORONTO, November 2nd, 1926.

THE DOMINION BANK

YONGE & HAYDEN STREETS BRANCH

Pay to **CARLING EXPORT BREWING & MALTING CO. LIMITED** or OrderTwo thousand, three hundred and forty-nine 89/100 Dollars¹⁰**THE BREWERS' TRUST %**

GEO. U. STIFF
W. T. KERNAHAN
J. F. COSGRAVE

\$2,349.89

[Stamps, Excise Tax, 94c.]

RUBBER STAMPS ON FACE :

The Dominion Bank
Paid
Yonge & Bloor Sts. Br.
Toronto

The Dominion Bank
London, Ont.
No Protest

20

ENDORSEMENTS AND STAMPS ON BACK :

For deposit only to the credit of
Carling E. B. & M. Co. Ltd.

The Dominion Bank
London, Ont.
Nov. 6 1926
Cleared 9
Second teller

Pay to the order of
any Bank or Banker
Nov. 6 1926
The Dominion Bank
London Ontario

The Dominion Bank
Toronto
Nov. 9 1926
Cleared
Nov. 10 1926
Eighth Teller

30

EXHIBIT No. 25 (Part)

(Plaintiff's)

*In the
Exchequer
Court of
Canada.***Cheques, Brewers Trust to Defendant**

Exhibits

709 YONGE STREET

No. 27 47. One Block South of Bloor Street

TORONTO, Decr. 6th, 1926.

No. 25
(Part)
Cheque
Brewers
Trust to
Defendant
Dec. 6, 1926**THE DOMINION BANK**

YONGE & HAYDEN STREETS BRANCH

Pay to CARLING EXPORT BREWING & MALTING CO. LIMITED or Order

10 Twenty-two thousand, three hundred and fourteen 72/100 Dollars

THE BREWERS' TRUST %W. T. KERNAHAN
GEO. U. STIFF
J. F. COSGRAVE

\$22,314.72

[Stamp, Excise Tax, \$1.00]

RUBBER STAMPS ON FACE :—

The Dominion Bank

Paid

Dec. 13, 1926

20 Yonge & Bloor Sts. Br.
Toronto**ENDORSEMENTS AND STAMPS ON BACK :—**

For Deposit to the Credit of Carling

E. B. & M. Co. Ltd.

H.F.R.

Pay to the order of any Bank or Banker

Dec 9 1926

The Dominion Bank, London, Ontario

The Dominion Bank, London, Ont.

30 Dec. 9 1926 Cleared 10 a.m. First Teller.

The Dominion Bank Toronto Dec 10 1926.

Cleared Dec 11 1926

Eighth Teller

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 25 (Part)

(Plaintiff's)

Exhibits

No. 25
(Part)
Cheque
Brewers
Trust to
Defendant
Jan. 3, 1925

Cheques, Brewers Trust to Defendant

709 YONGE STREET

No. 37 4711 One Block South of Bloor Street

TORONTO, January 3rd, 1927.

THE DOMINION BANK

YONGE & HAYDEN STREETS BRANCH

Pay to **CARLING EXPORT BREWING & MALTING CO., LTD.** or Order
Twenty thousand, two hundred and eighty-four 38/100 Dollars¹⁰

THE BREWERS' TRUST %

**J. F. COSGRAVE
GEO. U. STIFF
W. T. KERNAHAN**

\$20,284.38
[Stamp, Excise Tax, \$1.00]

RUBBER STAMPS ON FACE :

**THE Dominion Bank
Paid
Jan 11 1927
Yonge & Bloor Sts. Br.
Toronto**

20

ENDORSEMENTS AND STAMPS ON BACK :—

Deposit to the credit of
Carling E. B. & M. Co. Ltd.

**The Dominion Bank
Jan 7 1927
2nd Teller
Windsor, Ont.**

Pay to any Bank or Banker
For The Dominion Bank
Windsor, Ont.
A. M. Cowie, Manager.

**Pay any Bank or Banker
The Dominion Bank
Toronto
Jan 8 1927
Cleared Jan 10 1927
Seventh Teller**

30

769

EXHIBIT No. 30.

(Plaintiff's)

Sales Slip

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 30.
Sales
Slip,
Jan. 21,
1927.

DATE.....Jan. 21st,.....1927

Point of Export.....La Salle No. 1

Brewery.....Carlings.....

10

No.	BEER		\$	c
	1/2 Bbls.			
	1/4 "			
	Cartons			
20	Cartons	B. Label	65	
	ALE			
	Cartons			
	Cartons			
	Total			
	REFUNDS			
	1/2 Bbls.		\$	c
	1/4 "			
	Total Refunds			
20	Net Cash		65	

Autographic Register Systems, Limited, Montreal, Toronto, Winnipeg. 36487

No. 22675

ORIGINAL

771

EXHIBIT No. 25 (Part.)

(Plaintiff's)

*In the
Exchequer
Court of
Canada.***Cheques Brewers Trust to Defendant**

Exhibits

709 YONGE STREET

No. 49

One Block South of Bloor Street.

B.

TORONTO, February 8th, 1927.

No. 25
(Part).
Cheque
Brewers'
Trust to
Defendant,
Feb. 8, 1927.**THE DOMINION BANK**

YONGE & HAYDEN STREETS BRANCH

Pay to CARLING EXPORT BREWING & MALTING CO. LTD.

or Order

10 Thirteen thousand, six hundred and seven

21/100 Dollars

THE BREWERS' TRUST $\frac{1}{2}$

\$13,607.21

GEO. U. STIFF
W. T. KERNAHAN
J. F. COSGRAVE

[Stamp, Excise Tax, \$1.00]

RUBBER STAMP ON FACE :—

The Dominion Bank

Paid

Feb. 17 1927

20 Yonge & Bloor Sts. Br.
Toronto.**ENDORSEMENTS AND STAMPS ON BACK :—**Deposit to the credit of
Carling E. B. & M. Co. Ltd.The Dominion Bank
Feb 16 1927
2nd Teller
Windsor, Ont.Pay any Bank or Banker
For the Dominion Bank
Windsor, Ont.

30 A. M. Cowie, Manager.

Pay any Bank or Banker
The Dominion Bank
Toronto
Cleared Feb 17, 1927
Seventh Teller

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 25.—(Part.)

(Plaintiff's)

Cheques, Brewers Trust to Defendant

Exhibits

No. 25
(Part).
Cheque
The Brew-
ers' Trust
to
Defendant,
Feb. 27,
1927.

No. 59 4711 709 YONGE STREET
One Block South of Bloor Street
TORONTO, February 25th, 1927.
THE DOMINION BANK

YONGE & HAYDEN STREETS BRANCH

Pay to CARLING EXPORT BREWING & MALTING CO. LIMITED or Order
Thirteen thousand, seven hundred and forty-two 27/100 Dollars¹⁰
THE BREWERS TRUST %

\$13,742.27

GEO. U. STIFF
W. T. KERNAHAN
J. F. COSGRAVE

[Stamp, Excise Tax, \$1.00]

(Signature.)

RUBBER STAMP ON FACE :—

The Dominion Bank
Paid
Mar 2 1927
Yonge & Bloor Sts. Br.
Toronto

20

ENDORSEMENTS AND STAMPS ON BACK :—

Deposited to the credit of
Payee
In the Dominion Bank
Windsor, Ont.
Signature guaranteed
(Signature illegible)

Pay any Bank or Banker
For the Dominion Bank
Windsor, Ont.
A. M. Cowie, Manager

.....
Manager

30

The Dominion Bank
Mar. 1 1927
2nd Teller
Windsor, Ont.

The Dominion Bank
Toronto
Mar 1 1927
Cleared Mar 2 1927
Seventh Teller

EXHIBIT No. 31.

(Plaintiff's)

*In the
Exchequer
Court of
Canada.***Return of Bermuda Export Co. to Defendant**

Exhibits

No. 31.
Return to
Bermuda
Export Co.
to Defend-
ant,
Mar. 11,
1927.

March 11, 1927.

**THE CARLING EXPORT BREWING & MALTING CO., LTD.,
WINDSOR, ONT.**

Dear Sirs,

We enclose herewith our cheque for \$15424.50, for collections made on your account for the week ending 6 p.m. March 9, 1927, as per the following summary :—

Dock.	$\frac{1}{2}$ Bbls. @ \$14.75	Rpls. @ \$6.00	Cartons @ \$2.50
LaSalle No. 2	17	1	3214
Reaume's	2	6	1492
Riverside	..	..	234
Amherstburg	..	..	1252
Port Lambton	..	..	173
Total	19	7	6365

We have deducted from the above collections at the usual rates for cooperation accepted by us for your account and Duty and Sales Tax thereon as listed below, also other deductions as noted :—

Dock.	$\frac{1}{2}$ Bbls.	$\frac{1}{4}$ Bbls.	Duty & Sales Tax.	F. Fee for Period.
LaSalle No. 1	107	4		
Reaume's	...	1		
Total	107	5	\$83.25	\$70.00

Yours very truly,

**BERMUDA EXPORT COMPANY LTD.,
C.F.C.**

Encl.

Manager.

30 Your monthly statement will go forward in a few days.

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 25. (Part).

(Plaintiff's)

Cheques, Brewers Trust to Defendant

Exhibits

No. 25
(Part)
Cheque
Brewers
Trust to
Defendant
March 22,
1927

No. 70
4711

One Block South of Bloor Street.

709 YONGE STREET

TORONTO, March 22nd, 1927.

THE DOMINION BANK

YONGE & HAYDEN STREETS BRANCH

Pay to CARLING EXPORT BREWING & MALTING CO. LIMITED or Order 10
Four Thousand and thirty 74/100 Dollars

THE BREWERS' TRUST %

GEO. U. STIFF
GEO. RUSSELL
J. F. COSGRAVE

\$4,030.74

[Stamp \$1.00]

RUBBER STAMP ON FACE :

The Dominion Bank
Paid
Apl 4 1927
Yonge & Bloor Sts. Br.
Toronto

20

ENDORSEMENTS AND STAMPS ON BACK :—

Carling Export Brewing &
Malting Co. Ltd.
Cr. a/c Low, LEON & BURNS

The Dominion Bank
Apr. 1 1927
2nd Teller
Windsor, Ont.

Pay any Bank or Banker
For the Dominion Bank
Windsor, Ont.
A. M. Cowie, Mgr.

Pay any Bank or Banker
The Dominion Bank
Toronto
Apr 1 1927
Cleared Apr 2 1927
Seventh Teller

30

EXHIBIT No. 25 (Part).—Continued.

*In the
Exchequer
Court of
Canada.*

ADDING MACHINE STATEMENT :—

	2607.66
	2349.89
	22314.72
	20284.38
	13607.21
	13742.27
	4030.74
	<hr/>
10	78936.87

Exhibits
No. 25
Cheque
Brewers
Trust to
Defendant
March 22,
1927
—Continued.

EXHIBIT No. 40C.

(Plaintiff's)

No. 40-C.
Cheque
Bermuda
Export Co.
to Defendant,
July 25,
1927.

Cheque, Bermuda Export Co. to Defendant.

Negotiable at par at any branch of this bank in Ontario.

WINDSOR, ONT., Jul 25 1927 No.1406
BERMUDA EXPORT COMPANY LTD
 PAY TO THE ORDER OF
 CARLING EXPORT BREWING & MALTING CO. LTD. \$62353.62
 {Registered} \$62353 and 62 cts. /100 Dollars
 20 {3558359 }
BERMUDA EXPORT COMPANY, LTD.
 IMPERIAL BANK OF CANADA HARRY LOW
 WINDSOR, ONT. C. F. CLAPP,
 [Stamp, 2c.] **PAID** Mgr.
 (Accepted Imperial Bank of Canada, Aug. 11/27)

BACK OF CHECK

ENDORSEMENTS AND STAMPS

Carling E. B. & M. Co. Ltd.
 Per.....
 30 The Dominion Bank Windsor, Ont.
 12 Aug. 1927
 Paying Teller

EXHIBIT NO. 33.

(Plaintiff's)

*In the -
Exchequer
Court of
Canada.*

18th Amendment and National Prohibition Acts. U. S. A.

Exhibits

No. 33.
18th Amend-
ment and
National
Prohibition
Acts, U.S.A.,
Oct. 22,
1919.

I**EIGHTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES**

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

II**THE NATIONAL PROHIBITION ACT**

(41 Stat. 305.)

20

AN ACT To prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this act shall be the "national prohibition act."

TITLE II

PROHIBITION OF INTOXICATING BEVERAGES

*In the
Exchequer
Court of
Canada.*

SECTION 1. When used in Title II and Title III of this act (1) the word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes : *Provided*, That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter, or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of this title, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

Exhibits
No. 33.
18th Amend-
ment and
National
Prohibition
Acts, U.S.A.,
Oct. 22,
1919.

—Continued.

(2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations.

(3) The word "commissioner" shall mean Commissioner of Internal Revenue.

(4) The term "application" shall mean a formal written request supported by a verified statement of facts showing that the commissioner may grant the request.

(5) The term "permit" shall mean a formal written authorization by the commissioner setting forth specifically therein the things that are authorized.

(6) The term "bond" shall mean an obligation authorized or required by or under this act or any regulation executed in such form and for such a penal sum as may be required by a court, the commissioner, or prescribed by regulation.

(7) The term "regulation" shall mean any regulation prescribed by the commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this act, and the commissioner is authorized to make such regulations.

Any act authorized to be done by the commissioner may be performed by any assistant or agent designated by him for that purpose. Records required to be filed with the commissioner may be filed with an assistant commissioner or other person designated by the commissioner to receive such records.

* * * * *

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 33.
18th Amend-
ment and
National
Prohibition
Acts, U.S.A.,
Oct. 22,
1919.

—Continued.

SEC. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: *Provided, That* nothing in this act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts.

* * * * *

SEC. 14. It shall be unlawful for a person to use or induce any carrier, or any agent or employee thereof, to carry or ship any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport nor shall any person receive liquor from a carrier unless there appears on the outside of the package containing such liquor the following information: 20

Name and address of the consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and number of the permit to purchase or ship the same, together with the name and address of the person using the permit.

* * * * *

SEC. 19. No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from any person any order for liquor or give any information of how liquor may be obtained in violation of this act.

* * * * *

SEC. 28. The commissioner, his assistants, agents, and inspectors, and all other officers of the United States, whose duty it is to enforce criminal laws, shall have all the power and protection in the enforcement of this act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the law of the United States.

SEC. 29. Any person who manufactures or sells liquor in violation of this title shall for a first offence be fined not more than \$1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be not fined

less than \$200 nor more than \$2,000 and be imprisoned not less than one month nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report, or affidavit required by this title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than \$500; for a second offense not less than \$100 nor more than \$1,000, or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less than \$500 and be imprisoned not less than three months nor more than two years. It shall be the duty of the prosecuting officer to ascertain whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment. The penalties provided in this act against the manufacture of liquor without a permit shall not apply to a person for manufacturing nonintoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered except to persons having permits to manufacture vinegar.

* * * * *

SEC. 21. Titles I and III and sections 1, 27, 37, and 38 of Title II of this act shall take effect and be in force from and after the passage and approval of the act. The other sections of Title II shall take effect and be in force from and after the date when the eighteenth amendment of the Constitution of the United States goes into effect.

F. H. GILLETT,
Speaker of the House of Representatives.
THOMAS R. MARSHALL,
*Vice-President of the United States and
President of the Senate.*

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES
October 27, 1919.

The President of the United States having returned to the House of Representatives, in which it originated, the bill (H. R. 6810) entitled "An act to prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries," with his objections thereto, the House proceeded in pursuance of the Constitution to reconsider the same; and

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest :

40

WM. TYLER PAGE,
Clerk.

*In the
Exchequer
Court of
Canada.*

—
Exhibits
No. 33.
18th Amend-
ment and
National
Prohibition
Acts, U.S.A.,
Oct. 22,
1919.

—Continued.

*In the
Exchequer
Court of
Canada.*

IN THE SENATE OF THE UNITED STATES

Legislative Day, October 22, 1919, Calendar Day, October 28, 1919.

Exhibits

No. 33.
18th Amend-
ment and
National
Prohibition
Acts, U.S.A.,
Oct. 22,
1919.

—Continued.

The Senate having proceeded to reconsider the bill (H. R. 6810) "An Act to prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries," returned by the President of the United States to the House of Representatives, in which it originated, with his objections, and passed by the House on a reconsideration of the same, it was

10

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest :

GEORGE A. SANDERSON,

Secretary.

3.40 p.m.

III

AN ACT SUPPLEMENTAL TO THE NATIONAL PROHIBITION ACT

(42 Stat. 222.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "person," "com-20 missioner," "application," "permit," "regulation," and "liquor," and the phrase "intoxicating liquor," when used in this act, shall have the same meaning as they have in Title II of the national prohibition act.

* * * * *

SEC. 5. That all laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the national prohibition act was enacted, shall be and continue in force, as to both beverage and nonbeverage liquor, except such provisions of such laws as are directly in conflict with any provision of the national prohibition act or of this act; but if any act is a violation of any of such laws and also of the national prohibition act or of this act, a conviction for such act³⁰ or offense under one shall be a bar to prosecution therefor under the other. All taxes and tax penalties provided for in section 35 of Title II of the national prohibition act shall be assessed and collected in the same manner and by the same procedure as other taxes on the manufacture of or traffic in liquor.

EXHIBIT No. 34.

(Plaintiff's)

U. S. Customs Tariff Act of 1922

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 34.
U.S. Customs
Tariff Act of
1922.

SECTION 401. When used in this title—

(a) VESSEL—The word “vessel” includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water or in water and in air.

(c) MERCHANDISE.—The word “merchandise” means goods, wares, and chattels of every description and includes merchandise the importation of
10 which is prohibited.

* * * * *

PART 2.—REPORT, ENTRY, AND UNLOADING OF VESSELS AND VEHICLES.

SEC. 431. FORM OF MANIFEST.—The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain :

First. The names of the ports at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port :
20 *Provided*, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo “for orders,” and within fifteen days thereafter, but before the unloading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the
30 master of such vessel.

Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages, according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag.

Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the
40 number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

*In the
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Court of
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Sixth. An account of the sea stores and ship's stores on board of the vessel.

* * * * *

Exhibits
No. 34.
U.S. Customs
Tariff Act of
1922.
—Continued.

SEC. 433. REPORT OF ARRIVAL.—Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, at any port or within any harbor or bay at which such vessel shall come to, the master shall, unless otherwise provided by law, report the arrival of the vessel at the customhouse, under such regulations as the Secretary of Commerce may prescribe.

SEC. 434. ENTRY OF AMERICAN VESSELS.—Except as otherwise provided¹⁰ by law, and under such regulations as the Secretary of Commerce may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the collector the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register and that the manifest was made out in accordance with section 431 of this Act. ²⁰

SEC. 435. ENTRY OF FOREIGN VESSELS.—The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him : *Provided*, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers³⁰ of vessels entering the ports of such nations.

* * * * *

SEC. 441. VESSELS NOT REQUIRED TO ENTER.—The following vessels shall not be required to make entry at the customhouse :

(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade;

(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise : *Provided*, That⁴⁰

the master of any such vessel shall be required to report such baggage and merchandise to the collector within twenty-four hours after arrival.

(3) Yachts of fifteen gross tons or under not permitted by law to carry merchandise or passengers for hire;

(4) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, or necessary sea stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any merchandise other than bunker coal, bunker oil, or necessary sea stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the collector the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, or necessary sea stores taken on board; and

(5) Tugs enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers when towing vessels which are required by law to enter and clear.

* * * * *

SEC. 447. UNLADING—PLACE.—It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, That upon good cause therefor being shown, the Secretary of Commerce may permit entry of any vessel to be made at a place other than a port of entry designated by him, under such conditions as he shall prescribe: *And provided further*, That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unloading such cargo, under the supervision of customs officers if the collector shall consider the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

* * * * *

SEC. 593. SMUGGLING AND CLANDESTINE IMPORTATIONS.—(a) If any person knowingly and wilfully, with intent to defraud the revenue of the United States, smuggles, or clandestinely introduces, into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding \$5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court.

(b) If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding \$5,000 nor less than \$50, or be imprisoned for any time not exceeding

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Court of
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Exhibits
No. 34.
U.S. Customs
Tariff Act of
1922.

—Continued.

*In the
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two years or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

Exhibits

* * * * *

No. 34.
U.S. Customs
Tariff Act of
1922.

SEC. 623. GENERAL REGULATIONS.—In addition to the specific powers conferred by this Act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

No. 35.
U.S. Customs
Regulations.
May 27,
1924

EXHIBIT No. 35.

(Plaintiff's)

10

U. S. Customs Regulations

CUSTOMS REGULATIONS.

ART. 2. PORT OF ENTRY—DEFINITION.—The term “port of entry,” as used in these regulations, refers to any place at which a customs officer is stationed with authority to enter and clear vessels and collect duties on imports.

* * * * *

LANDING AND DELIVERY OF CARGO.

Tariff act
of 1922,
secs. 447,
448, 450,
453, 586,
587.

ART. 124. PERMIT TO UNLADE.—No merchandise, passengers, or baggage shall be unladen from any vessel arriving from a foreign port or place until entry, preliminary or formal, of such vessel has been made. At the time of making entry of his vessel at the customhouse, the master will make application in duplicate on Customs Form 3171 for a permit to unlade (same form).

No merchandise, baggage, or passengers from a foreign port, and no bonded merchandise or baggage transported from one port to another port, shall be unladen on Sunday, a holiday, or at night except under special license granted by the collector.

If any such merchandise or baggage is unladen without a permit, the master of the vessel and every other person who knowingly is concerned, or who aids therein, in removing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so unladen, and if the value thereof is \$500 or more, the vessel shall be subject to forfeiture.

The master of a vessel bound to the United States from a foreign port who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within 4 leagues of the coast of the United States and before such vessel has come to the

proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$1,000, and such vessel and the merchandise shall be subject to seizure and forfeiture.

*In the
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If any such merchandise or sea stores is transhipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, will be liable to a penalty equal to twice the value of the merchandise, but not less than \$1,000, and such vessel and such merchandise will be liable to seizure and forfeiture.

Exhibits
No. 35.
U.S. Customs
Regulations,
May 27,
1924

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—Continued.

* * * * *

Act June
5, 1894,
sec. 2.

ART. 132. DELIVERY OF CARGO.—Entry having been made of the merchandise, and any duties thereon having been estimated and paid, or secured, to be paid, the collector, jointly with the comptroller, shall grant a permit (Customs Form 7501a or 7502a) to deliver such merchandise, and then, and not before, it shall be lawful to deliver the same.

* * * * *

Tariff act
of 1922,
sec. 447.
T.D. 37128.

ART. 135. DISCHARGE OF CARGO AT UNUSUAL PLACES.—It shall be unlawful to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry; but collectors may, if they consider the same necessary, permit any vessel laden with merchandise in bulk to proceed after entry of such vessel and its cargo to any place within their respective districts for the purpose of unloading such cargo.

20

In such case a deposit of a sum sufficient to reimburse the Government for the compensation, travel, and subsistence expenses of the officers detailed to supervise the unloading and delivery of the cargo shall be made by the party in interest.

* * * * *

VESSELS TRADING WITH CONTIGUOUS COUNTRIES.

Tariff act
of 1922,
secs. 459,
460.
T. Ds. 2669,
4400, 4808,
7782, 8285,
19011,
19363.

ART. 189. VESSELS OF NOT LESS THAN 5 NET TONS.—REPORT—MANIFEST—PENALTY.—The master of any vessel of less than 5 net tons carrying merchandise arriving from a contiguous foreign country shall immediately report his arrival to the collector or other customs officer at the nearest port of entry or customhouse, and produce a manifest of such merchandise. No such vessel shall proceed farther inland or discharge any merchandise, passengers, or baggage without receiving a permit from such customs officer.

30

If the master fails to report arrival in the United States, he will be subject to a fine of \$100 for each offense; and if any merchandise or baggage is unladen or discharged from such vessel without a permit therefor, the same together with the vessel will be subject to forfeiture.

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*In the
Exchequer
Court of
Canada.*

Exhibits

No. 35.
U.S. Customs
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tions,
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—Continued.

Failure to report arrival of *any* vessel from a contiguous foreign country, or the neglect or failure to file a manifest for the merchandise on board, will subject the vessel and merchandise to forfeiture, and the master to a penalty equal to the value of the merchandise imported in such vessel. The master will also be liable to a penalty equal to the value of all merchandise imported in such vessel and not included in the manifest.

The manifest of every vessel importing merchandise from a contiguous foreign country must be verified by the person delivering the same under oath taken before the collector or other customs officer¹⁰ authorized to administer oaths.

Entries must be made by the owners or consignees of such merchandise and the powers and duties of the customs officers shall be exercised in like manner as is prescribed in respect to merchandise imported in vessels from the sea, and generally all such importations will be subject to like regulations, penalties, and forfeitures.

* * * * *

R. S. 3119. ART. 195. PERMIT TO UNLADE.—The master of a vessel with cargo, passengers, or baggage from any foreign port or place must obtain a permit from the collector and comply with these regulations before discharging or landing any portion thereof; and merchandise destined²⁰ for any foreign port must be reported as the law directs; but no permit will be required for the unloading of cargo brought from an American port.

* * * * *

Tariff act
of 1922,
sec. 482.

ART. 247. INVOICES OVER \$100, ADDITIONAL REQUIREMENTS AS TO.—(a) every invoice covering merchandise, except as specified below, exceeding \$100 in value shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States—

(1) For the consular district in which the merchandise was³⁰ manufactured, or purchased, or from which it was to be delivered pursuant to contract;

(2) For the consular district in which the merchandise is assembled and repacked for shipment to the United States, if it has been purchased in different consular districts.

(b) Such invoices shall have indorsed thereon, when so produced, a verified declaration, in a form prescribed by the department, stating whether the merchandise is sold or agreed to be sold, or whether it is shipped otherwise than in pursuance of a purchase or an agreement to purchase, that there is no other invoice differing from the invoice⁴⁰

so produced, and that all the statements contained in such invoice and in such declaration are true and correct.

(c) Every certified invoice shall be made out in triplicate or in quadruplicate, if desired by the shipper, for merchandise intended for immediate transportation, under the provisions of section 552 of the tariff act of 1922, and shall be signed by the seller or shipper, or the agent of either. Where any such invoice is signed by an agent, he shall state thereon the name of his principal.

(d) Consular invoices will not be required for—

- 10 (1) Merchandise not exceeding \$100 in value, including such merchandise imported through the mails;
- (2) Merchandise damaged by fire or marine casualty on the voyage of importation;
- (3) Merchandise recovered from a wrecked or stranded vessel;
- (4) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;
- (5) Articles sent by persons in foreign countries as gifts to persons in the United States;
- 20 (6) Articles carried on the person or contained in the baggage of a person arriving in the United States;
- (7) Tools of trade of a person arriving in the United States.
- (8) Personal effects of citizens of the United States who have died in a foreign country.
- (9) Merchandise within the provisions of sections 465 and 466, tariff act of 1922, at the first port of arrival;
- (10) Merchandise when in the opinion of the Secretary of the Treasury the value thereof can not be declared.

* * * * *

Tariff act of 1922, sec. 484 (b) (1,2,3), (g); sec. 498 (a) (1).
 30 ART. 260. INVOICE TO BE FILED WITH ENTRY.—No merchandise, except as provided in article 247, valued over \$100 shall be admitted to entry without the production of a certified invoice therefor, except that entry may be permitted if—

The collector is satisfied that the failure to produce such invoice is due to causes beyond the control of the person making entry;

Such person makes a verified declaration in writing that he is unable to produce such invoice and (a) files therewith a seller's or shipper's invoice, or (b) if he is not in possession of a seller's or shipper's invoice, files therewith a statement of value, or the price paid, in the form of an invoice; and

40 Such person gives a bond for the production of such certified invoice within six months, and the payment of the sum of \$5 as liquidated damages in the event such invoice is not so produced.

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Court of
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—
Exhibits
No. 35.
U.S. Customs
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—Continued.

*In the
Exchequer
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Exhibits

No. 35.
U.S. Customs
Regula-
tions.
May 27,
1924

—Continued.

National
prohibition
act of Nov.
23, 1921.
Tariff act
of 1922,
pars. 801,
813, 814,
sec. 401.
Int. Rev.
3474, 3484.

Whenever it shall be determined by the collector, acting as appraising officer or the appraiser, that information as to the cost of production as provided in section 402 of the tariff act of 1922 is necessary in the appraisement of certain merchandise, the importer shall be notified by such collector or appraiser that invoices covering shipments of the merchandise shall contain a verified statement by the manufacturer or producer of the cost of production as defined in section 402 (e).

LIQUORS.

ART. 581. PROHIBITED IMPORTATIONS.—No wines, spirits, or other liquors or articles containing one-half of 1 per cent or more of alcohol shall be imported or permitted entry except on a permit issued therefor by the Commissioner of Internal Revenue. Any such wines, spirits, or other liquors or articles imported or brought into the United States without a permit shall be seized and forfeited in the same manner as for other violations of the customs laws.

See article 1007 for procedure governing seizure, forfeiture and disposition of liquors, etc.

EXHIBIT No. 45-A

(Plaintiff's)

Customs Department Memorandum No. 63, Re Canada—U. S. Treaty
Respecting Smuggling, Sept. 30, 1925

File 121348.

No. 63.

MEMORANDUM.

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA

OTTAWA, September 30, 1925.

To Collectors of Customs and Excise and Others Concerned :

CANADIAN-UNITED STATES TREATY FOR SUPPRESSION OF
SMUGGLING AND FOR OTHER PURPOSES
DATED 6TH JUNE, 1924.

Herewith is printed for your information and guidance the "Treaty for the Suppression of Smuggling Operations along the International Boundary between the Dominion of Canada and the United States and Assisting in the Arrest and Prosecution of Persons Violating the Narcotic Laws of either Government and for Kindred Purposes" together with Order in Council (P.C. 1743) dated 23rd September, 1925, under and by virtue of Chapter 54, Statutes of Canada 1925, making Regulations to give effect to the Treaty.

No. 45-A.
Customs
Department
Memo-
randum,
No. 63, re
Canada—
U.S. Treaty
respecting
Smuggling,
Sept. 30,
1925.

While you will note that these Regulations have effect in so far only as they relate to Canada or are intended to govern officers or employees of the Government of Canada, similar Regulations or Orders are being issued by United States authorities to govern officers or employees of that country.

You are asked to familiarize yourselves thoroughly with the provisions of this Treaty and Regulations in order that the fullest co-operation authorized thereby may exist between the respective officers of the two Governments in giving effect to the Treaty.

R. R. FARROW
*Deputy Minister of Customs
and Excise.*

10

TREATY

FOR THE SUPPRESSION OF SMUGGLING OPERATIONS ALONG THE INTERNATIONAL BOUNDARY BETWEEN THE DOMINION OF CANADA AND THE UNITED STATES AND ASSISTING IN THE ARREST AND PROSECUTION OF PERSONS VIOLATING THE NARCOTIC LAWS OF EITHER GOVERNMENT AND FOR KINDRED PURPOSES.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America being desirous of suppressing smuggling operations along the boundary between the Dominion of Canada and the United States of America, and of assisting in the arrest and prosecution of persons violating the narcotic laws of either Government, and of providing as to the omission of penalties and forfeitures in respect to the carriage of alcoholic liquors through Alaska into the Yukon territory, have agreed to conclude a Convention to give effect to these purposes and have named as their Plenipotentiaries :

His Britannic Majesty, in respect of the Dominion of Canada : The Honourable Ernest Lapointe, K.C., a member of His Majesty's Privy Council for Canada and Minister of Justice in the Government of that Dominion; and

The President of the United States of America : Charles Evans Hughes, Secretary of State of the United States;

Who, having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following articles :

ARTICLE I

The High Contracting Parties agree that the appropriate officers of the Governments of Canada and of the United States of America respectively shall be required to furnish upon request to duly authorized officers of the other Government, information concerning clearances of vessels or the trans-

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Exhibits
No. 45-A.
Customs
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—Continued.

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Exchequer
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Exhibits

No. 45-A.
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Department
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randum,
No. 63, *re*
Canada—
U.S. Treaty
respecting
Smuggling,
Sept. 30,
1925.

—Continued.

portation of cargoes, shipments or loads of articles across the international boundary when the importation of the cargo carried or of articles transported by land is subject to the payment of duties; also to furnish information respecting clearances of vessels to any ports when there is ground to suspect that the owners or persons in possession of the cargo intend to smuggle it into the territory of Canada or of the United States.

ARTICLE II

The High Contracting Parties agree that clearance from Canada or from the United States shall be denied to any vessel carrying cargo consisting of articles the importation of which into the territory of Canada or of the United States, as the case may be, is prohibited, when it is evident from the tonnage, size and general character of the vessel, or the length of the voyage and the perils or conditions of navigation attendant upon it, that the vessel will be unable to carry its cargo to the destination proposed in the application for clearance.

ARTICLE III

Each of the High Contracting Parties agrees with the other that property of all kinds in its possession which, having been stolen and brought into the territory of Canada or of the United States, is seized by its customs authorities shall, when the owners are nationals of the other country, be returned to such owners, subject to satisfactory proof of such ownership and the absence of any collusion, and subject, moreover to payment of the expenses of the seizure and detention and to the abandonment of any claims by the owners against the customs, or the customs officers, warehousemen or agents, for compensation or damages for the seizure, detention, warehousing or keeping of the property.

ARTICLE IV

The High Contracting Parties reciprocally agree to exchange information concerning the names and activities of all persons known or suspected to be engaged in violations of the narcotic laws of Canada or of the United States respectively.

ARTICLE V

It is agreed that the customs and other administrative officials of the respective Governments of Canada and of the United States shall upon request be directed to attend as witnesses and to produce such available records and files or certified copies thereof as may be considered essential to the trial of civil or criminal cases, and as may be produced compatibly with the public interest.

The cost of transcripts of records, depositions, certificates and letters rogatory in civil or criminal cases, and the cost of first-class transportation both ways, maintenance and other proper expenses involved in the attendance of such witnesses shall be paid by the nation requesting their attendance at

the time of their discharge by the court from further attendance at such trial. Letters rogatory and commissions shall be executed with all possible despatch and copies of official records or documents shall be certified promptly by the appropriate officials in accordance with the provisions of the laws of the respective countries.

*In the
Exchequer
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Exhibits

No. 45-A.
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No. 63, *re*
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ARTICLE VI

The following offences are added to the list of offences numbered 1 to 3 in Article 1 of the Treaty concluded between Great Britain and the United States on May 18, 1908, with reference to reciprocal rights for Canada and the United States in the matters of conveyance of prisoners and wrecking and salvage, that is to say :

4. Offences against the narcotic laws of the respective Governments.

—Continued.

ARTICLE VII

No penalty or forfeiture under the laws of the United States shall be applicable or attached to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors when they are in transit under guard by Canadian authorities through the territorial waters of the United States to Skagway, Alaska, and thence by the shortest route, via the White Pass and Yukon Railway, upwards of twenty miles to Canadian territory, and such transit shall be as now provided by law with respect to the transit of alcoholic liquors through the Panama Canal or on the Panama Railroad, provided that such liquors shall be kept under seal continuously while the vessel or vehicle on which they are carried remains within the United States, its territories or possessions, and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE VIII

This Convention shall be ratified, and the ratifications shall be exchanged at Washington as soon as possible. The Convention shall come into effect at the expiration of ten days from the date of the exchange of ratifications, and it shall remain in force for one year. If upon the expiration of one year after the Convention shall have been in force no notice is given by either party of a desire to terminate the same, it shall continue in force until thirty days after either party shall have given notice to the other of a desire to terminate the Convention.

In witness whereof, the respective Plenipotentiaries have signed the present Convention in duplicate and have thereunto affixed their seals.

Done at the city of Washington this sixth day of June, one thousand nine hundred and twenty-four.

(Sgd.) ERNEST LAPOINTE.

(Sgd.) CHARLES EVANS HUGHES

P.C. 1743
Privy Council
Canada

Exhibits

No. 45-A.
Customs
Department
Memo-
randum.
No. 63, *re*
Canada—
U.S. Treaty
respecting
Smuggling,
Sept. 30,
1925.

—Continued.

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 26th day of September, 1925.

PRESENT :

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

Whereas by Chapter 54 of the Statutes of Canada, 1925, the Governor in Council is authorized to make such orders and regulations as are deemed necessary to carry out the provisions and intent of the Treaty signed on 6th¹⁰ June, 1924, between His Majesty in respect of Canada, and the United States of America, for the suppression of smuggling operations and for other purposes;

And Whereas upon the invitation of the United States Government representatives of the several departments concerned at Ottawa attended at Washington to confer with officials of the United States Government before framing the requisite regulations to give effect to the Treaty;

And Whereas at the said conference, which was held on the 20th, 21st and 22nd days of August, 1925, it was considered that it would be a convenience to the officers and employees affected thereby if the regulations of both countries were made in similar form so as to apply indifferently to either country,²⁰ it being understood that each country in enacting the regulations would provide in terms that they would apply to and govern only the territory and officials of such Government, and that they would be subject to be varied or revoked as occasion might require, and —

Whereas, pursuant to said understanding the Canadian representatives expressed their willingness to recommend the enactment of orders and regulations in the form hereinafter set out, and have made their recommendation accordingly.

Therefore His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under and by virtue of the pro-³⁰visions of Chapter 54 of the Statutes of Canada, 1925, is pleased to make and doth hereby make the following orders and regulations, to have effect in so far only as they relate to Canada or are intended to govern officers or employees of the Government of Canada.

ARTICLE I OF THE TREATY

Section 1.—The officers authorized to furnish, request and receive information as provided in Article I of the Treaty shall be as follows :—For the Dominion of Canada, the Deputy Minister of Customs and Excise, the Chief

Customs-Excise Preventive Service and Collectors of Customs and Excise; for the United States of America, Consuls, Collectors of Customs and United States District Attorneys. In addition, other officers may be designated and authorized, for Canada by the Minister of Customs and Excise, and for the United States by the Secretary of the Treasury or the Attorney General.

Section 2.—Advance or immediate information respecting the clearance of vessels to any port shall be so furnished where there is reasonable ground to suspect that the owners or persons in possession of the cargo intend to smuggle or illegally introduce it into Canada or the United States. It shall be the
10 duty of any such officer of either government having reasonable ground to suspect an intent to smuggle or illegally introduce any merchandise into the other country, immediately to inform by telegram or telephone, at the expense of the receiving government, the appropriate officer of such government, as provided in Section 1. Arrangements may be made to furnish such information to a specially-named officer when it is deemed advisable to do so.

Section 3.—For the purpose of Section 2, reasonable ground to suspect an intent to smuggle or unlawfully to introduce goods or merchandise shall be deemed to exist not only when the officers of the country from which the goods are being conveyed suspect that unlawful operations are contemplated but also
20 when the Minister of Customs and Excise, for Canada, or the Secretary of the Treasury, for the United States, or the duly authorized representative of either, certifies, one to the other, that he has reasonable grounds for believing that such vessel or the owner or possessor of its cargo or of such goods or merchandise is engaged in or about to engage in such unlawful operations.

Section 4.—All information furnished under the provisions of this article of the Treaty shall be for official use only and may be designated as confidential by the officer furnishing it. The source of all information furnished as confidential shall not be disclosed without the consent of the officer who furnished it and any officer who violates the provisions of this section will be
30 subject to severe disciplinary action.

ARTICLE II OF THE TREATY

Collectors of Customs and Excise of Canada and Collectors of Customs of the United States will refuse to clear any vessel in accordance with the provisions of Article II of the Treaty. Lists of articles, the importation of which is prohibited and to which it is desired that the provisions of Article II shall be applied, will be exchanged between the Minister of Customs and Excise of Canada and the Secretary of the Treasury of the United States.

ARTICLE III OF THE TREATY

Section 1.—A national of the United States or of Canada desiring to make
40 claim under the provisions of Article III of the Treaty shall file a petition with the Minister of Customs and Excise or the Secretary of the Treasury, as

*In the
Exchequer
Court of
Canada.*

—
Exhibits

No. 45-A.
Customs
Department
Memo-
randum.
No. 63 *re*
Canada—
U.S. Treaty
respecting
Smuggling,
Sept. 30,
1925.

—*Continued.*

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 45-A.
Customs
Department
Memo-
randum,
No. 63, re
Canada—
U.S. Treaty
respecting
Smuggling,
Sept. 30,
1925.

—Continued.

the case may be, setting out the facts and making request for the return of the property.

Section 2.—The claimant must produce evidence of his ownership and of the absence of collusion on his part in the theft of the property.

Section 3.—Upon the submission of satisfactory evidence, the return of the property will be authorized by the appropriate official, provided the claimant pays to the Collector of Customs or Collector or other proper officer of Customs and Excise, as the case may be, all expenses incurred in the seizure and detention of the property and files in writing a waiver and release of all possible claims for compensation and damages incident to the seizure and10 detention of the property against the Government and any and all Govern- ment officers involved.

Section 4.—Customs officials of the United States or Customs and Excise officials of Canada will give assistance to the nationals of the other Govern- ment by permitting the inspection by such nationals of property under seizure, provided the Customs or Customs and Excise officials are satisfied that such requests for inspection are made in good faith. When such stolen property is identified, such nationals will be furnished, so far as known, with the names and descriptions of persons from whom the property was seized and other persons who have had possession of such property subsequent to the theft20 thereof.

ARTICLE IV OF THE TREATY

Section 1.—The information to be exchanged under Article IV of the Treaty shall be the name, and, where available, the description, Bertillon measurements, finger-prints, photograph, and record, or other relevant information regarding the following persons :—

- (a) Every person known or suspected to be engaged or about to engage in smuggling or unlawfully importing narcotic drugs from the United States to Canada, or *vice versa*.
- (b) Every person arrested for smuggling or unlawfully importing or30 bringing any narcotic drugs into the United States from Canada, or *vice versa*.
- (c) Every person arrested in the United States or in Canada for a serious violation of the narcotic laws of either government, if there is reasonable ground for believing that such person has unlawfully imported or brought in narcotic drugs.

Section 2.—This information shall be exchanged between the Head, Narcotic Division, Prohibition Unit, Washington, D.C., and the Chief, Nar- cotic Division, Department of Health, Ottawa, Canada.

Section 3.—If prompt information is necessary to enable the officers of40 either government to apprehend a person in the act of smuggling or unlawfully importing narcotic drugs, it may be communicated to the appropriate officers of the other government by mail, or, if necessary, by telegraph or telephone, at

the expense of the government receiving the information A report containing the substance of the communication shall be mailed to the officers named in section 2.

ARTICLE V OF THE TREATY

Section 1.—In case documentary evidence or the testimony of any officer or employee of the United States is desired in Canada under the provision of Article V of the Treaty, request therefor will be made by the appropriate officer of the Canadian Department of Justice through the Consul General of the United States at Ottawa, to the Secretary of State, who will transmit the request to the head of the department or independent organization of the United States Government having such evidence or employing such official. After consideration thereof, the head of the department or independent organization will make the appropriate order in the premises.

Section 2.—In case documentary evidence or the testimony of any official of Canada is desired in the United States under the provisions of Article V of the Treaty, request therefor will be made by the proper officer of the Department of Justice to the Secretary of State, who will transmit it through the Consul General of the United States at Ottawa to the minister of the Canadian Government under whom the documentary evidence is to be found or the officer or employee is employed. After consideration thereof the minister will make the appropriate order in the premises.

Section 3.—Whenever any officer or employee of the United States is required to go to Canada under the provisions of Article V of the Treaty, and whenever any Canadian officer or employee is likewise required to go to the United States, transportation from his official station to the place to which he is required to go, or sufficient money to pay the same, shall be furnished to him by or on behalf of the Government requesting his attendance before he leaves his official station. All other expenses required by Article V to be paid by the requesting nation shall be paid in full before he departs from the place at which his testimony was required.

ARTICLE VI OF THE TREATY

Section 1.—If, under Article VI of the Treaty, a narcotic agent or other officer of either the United States or Canada desires to convey a prisoner charged with an offence against the narcotic laws of his own Government across the territory of the other Government, as provided by the Treaty of May 18, 1908 (35 U.S. Stat., Part 2, p. 2035), he may, in having the warrant or process endorsed, or backed, by a judge, magistrate or justice of the peace, or in obtaining the authority of the Secretary of State or of the Minister of Justice, as the case may be, at the expense of his own Government, call upon the nearest United States attorney or the Department of Justice of Canada for advice and assistance.

Section 2.—A United States attorney or the Department of Justice of Canada, so called upon by a narcotic agent or other officer of either Govern-

*In the
Exchequer
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Canada.*

Exhibits
No. 45-A.
Customs
Department
Memo-
randum,
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Canada—
U.S. Treaty
respecting
Smuggling,
Sept. 30,
1925.

—Continued.

*In the
Exchequer
Court of
Canada.*

ment, will give advice and render assistance in accordance with the law and the Treaty of May 18, 1908.

ARTICLE VII OF THE TREATY

Exhibits
No. 45-A.
Customs
Department
Memo-
randum,
No. 63, *re*
Canada—
U.S. Treaty
respecting
Smuggling,
Sept. 30,
1925.

—Continued.

Section 1.—When a shipment of liquors is to be made to Canadian territory under Article VII of the Treaty, a full description of the packages, and contents thereof, will be furnished by Canadian authorities to United States customs authorities at Skagway, Alaska. A second copy thereof will be delivered to and retained by the master of the vessel having such liquors on board for transportation.

Section 2.—Said shipment, consisting of the packages as listed and¹⁰ described in the document furnished as required by section 1, will be locked securely in a separate and safe compartment on the vessel transporting the same from the Canadian port to Skagway, Alaska, and the owners and master of the vessel, under penalties of the law of Canada and of the United States, will be responsible for the safe delivery of said liquors to Skagway, Alaska.

Section 3.—Before leaving Canada, said compartment will be placed under Canadian and United States customs seals, and remain under the two seals continuously until the vessel arrives at its destination at Skagway.

Section 4.—The shipment will be accompanied on the vessel by one or more guards representing Canadian authorities.

Section 5.—After arrival of the vessel at Skagway, Alaska, the seals on the compartment will be broken in the presence of an officer of the United States Customs service, the Canadian Customs officer at Skagway, and the master of the vessel or his representative. The packages of liquor will be checked and will be removed from the vessel under supervision of United States and Canadian Customs officers to a car of the White Pass and Yukon Railway. Such car will then be securely locked and placed under United States and Canadian customs seals. A Canadian guard or guards will accompany the car and shipment until it arrives in Canadian territory. Upon arrival at the point of exit from the United States the car will be examined by²⁰ a United States customs officer, and, if the seals are found intact, such officer shall certify to that effect upon the carrier's manifest, allow the car to proceed into Canadian territory, and return to the deputy collector at Skagway the mail copy of the carrier's manifest as a certificate of exportation. If the seals are not found intact, the customs officers of the two governments shall prepare a joint report stating the condition in which the shipment arrived at such point of exit, and the shipment shall then be allowed to proceed to destination.

Section 6.—If, at Skagway, or at such point of exit, the shipment is not found intact when checked, the authorities of both governments will co-⁴⁰ operate in proceedings to apprehend and prosecute the person or persons responsible for the loss or diversion of the liquor.

(Sgd.) H. A. MAY, *for Clerk of the Privy Council.*

EXHIBIT No. 2.

(Plaintiff's)

Summary of Plaintiff's Claim.

In the
Exchequer
Court of
Canada.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SUMMARY OF CLAIM FOR SALES AND GALLONAGE TAXES

Exhibits

No. 2
Summary
of Plaintiff's
Claim
Apl., 1924-
1927

		Sales Tax	Gallonage Tax	Total
10	1924. April.....	\$ 288.66	\$.05	\$ 288.71 *
	May.....	620.26	1.05	619.21
	June.....	6,930.17	56.19	6,986.36
	July.....	5,119.79	65.30	5,054.49
	August.....	5,130.91	43.31	5,087.60
	September.....	5,093.27	43.42	5,136.69
	October.....	3,346.05	124.86	3,221.17
	November.....	2,114.41	23.22	2,092.19
	December.....	549.49	252.15	801.64
	1925. January.....	1,261.14	15.06	1,243.08
	February.....	1,299.10	327.24	1,626.34
	March.....	3,131.30	61.33	3,192.63
	April.....	3,285.01	16.94	3,301.95
20	May.....	3,775.56	69.94	3,705.62
	June.....	7,695.22	533.66	7,161.56
	July.....	3,893.49	76.70	3,970.19
	August.....	3,250.58	8,091.44	11,342.02
	September.....	6,608.79	7,543.80	14,152.59
	October.....	1,820.40	4,760.69	6,581.09
	November.....	1,209.69	4,992.57	6,202.26
	December.....	580.04	2,615.14	3,193.18
	1926. January.....	1,426.05	4,726.73	6,152.78
	February.....	1,437.94	4,751.66	6,189.60
30	March.....	2,937.05	9,269.84	12,206.89
	April.....	3,096.95	10,359.89	13,456.84
	May.....	5,252.09	17,821.75	23,073.84
	June.....	7,644.65	27,414.73	35,059.38
	July.....	9,547.09	34,362.70	43,909.79
	August.....	9,933.61	23,590.51	33,524.12
	September.....	9,404.09	26,275.94	35,680.03
	October.....	12,077.55	19,213.25	31,290.80
	November.....	7,023.44	16,746.99	23,770.43
	December.....	3,277.71	6,787.03	10,064.74
40	1927. January.....	10,451.35	3,870.70	14,322.05
	February.....	7,849.92	7,129.15	14,979.07
	March.....	3,086.87	8,876.47	11,963.34
	April.....	4,196.22	11,505.63	15,701.85
		\$163,828.07	\$260,662.21	\$424,490.28
	<i>Less Additional Amounts Paid</i>			
	July, 1927.....	\$ 969.52	.....	.....
	August, 1927.....	1,035.48	.....	.....
	October, 1927.....	2,650.56	.....	.....
		4,655.56	2,023.90	6,679.46
50		\$159,172.51	\$258,638.31	\$417,810.82

* Italics Indicate "RED"

EXHIBIT No. 2.—Continued.
CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
STATEMENT OF SALES TAX CLAIM, 1ST APRIL, 1924, TO 30TH APRIL, 1927.

		1924									1925			
		APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	
	Sales, 9% Beer	\$ 41,296.30	\$100,422.25	\$160,821.25	\$127,301.35	\$126,538.65	\$106,196.00	\$ 76,502.95	\$ 53,867.50	\$ 14,700.00	\$ 20,070.00	\$ 33,512.00	\$ 49,405.00	
	do. 2½% Beer		254.85	768.29	12,258.65	758.76	294.75	207.00	936.80	1,093.60	3,684.00	1,297.80	1,604.70	
	Items added back to Sales						11,477.50	927.50		293.84	10,700.00	1,310.98	21,182.50	
	Total gross sales	\$ 41,296.30	\$100,677.10	\$161,589.54	\$140,560.00	\$127,297.41	\$117,968.25	\$ 77,637.45	\$ 54,804.30	\$ 16,087.44	\$ 34,454.00	\$ 36,120.78	\$ 72,192.20	
	Less credits allowable		6,556.75	2,654.75	9,042.76	7,934.20			3,909.50	1,883.00	1,880.00	4,064.00	324.56	
	Net Sales	\$ 41,296.30	\$ 94,120.35	\$158,934.79	\$131,517.24	\$119,363.21	\$117,968.25	\$ 77,637.45	\$ 50,894.80	\$ 14,204.44	\$ 32,574.00	\$ 32,056.78	\$ 71,867.64	
	Less Gallonage Tax	3,378.82	7,688.07	12,194.56	10,082.45	10,700.56	11,009.50	7,370.36	5,637.28	1,516.87	2,121.94	3,412.94	4,425.31	
	Tax payable on	\$ 37,917.48	\$ 86,431.68	\$146,740.23	\$121,434.79	\$108,662.65	\$106,958.75	\$ 70,267.09	\$ 45,257.52	\$ 12,687.57	\$ 30,452.06	\$ 28,643.84	\$ 67,442.33	
	Tax due at 5/105	1,805.59	4,115.79	6,987.63	5,782.61	5,174.41	5,093.27	3,346.05	2,155.12	604.17	1,450.09	1,363.99	3,211.53	
	Tax paid	2,094.25	4,736.05	37.46	662.82	43.50			40.71	54.68	188.95	64.89	80.23	
	Balance due	* \$ 288.66	\$ 620.26	\$ 6,930.17	\$ 5,119.79	\$ 5,130.91	\$ 5,093.27	\$ 3,346.05	\$ 2,114.41	\$ 549.49	\$ 1,261.14	\$ 1,299.10	\$ 3,131.30	
		<hr/>												
		1925									1926			
		APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	
	Sales, 9% Beer	\$ 50,819.85	\$ 67,577.50	\$165,340.10	\$ 83,601.66	\$ 89,004.06	\$ 76,714.50	\$ 59,523.15	\$ 44,047.90	\$ 28,512.25	\$ 44,814.00	\$ 44,617.00	\$ 79,114.25	
	do. 2½% Beer	2,869.15	2,422.60	431.25										
	do. 4.4% Beer		52,278.21	83,555.24	63,968.56	44,283.18	30,616.30	11,060.55	9,369.98	7,576.22	2,342.28	4,427.67	5,654.51	
	Items added back to Sales	25,073.00					80,209.94							
	Total Gross Sales	\$ 78,762.00	\$122,278.31	\$249,326.59	\$147,570.22	\$133,287.24	\$187,540.74	\$ 70,592.70	\$ 53,417.88	\$ 36,088.47	\$ 47,156.28	\$ 49,044.67	\$ 84,768.76	
	Less credits allowable	2,143.75	1,167.50	20,597.42	22,109.51	28,579.70	26,260.79	23,430.92	16,587.27	13,952.51	8,344.75	9,914.12	6,745.98	
	Net Sales	\$ 76,618.25	\$121,110.81	\$228,729.17	\$125,460.71	\$104,707.54	\$161,279.95	\$ 47,161.78	\$ 36,830.61	\$ 22,135.96	\$ 38,811.53	\$ 39,130.55	\$ 78,022.78	
	Less : Gallonage Tax	4,558.01	9,443.75	21,864.36	12,743.98	11,705.38	9,532.59	5,527.79	5,919.38	3,676.89	5,381.50	5,467.68	10,275.21	
	Luxury Tax		2,964.78	5,343.20	3,503.39	2,661.45	1,591.15	323.17	403.26	477.70	153.84	249.39	340.91	
	Total Deductions	\$ 4,558.01	\$ 12,408.53	\$ 27,207.56	\$ 16,247.37	\$ 14,366.83	\$ 11,123.74	\$ 5,850.96	\$ 6,322.64	\$ 4,154.59	\$ 5,535.34	\$ 5,717.07	\$ 10,616.12	
	Tax payable on	\$ 72,060.24	\$108,702.28	\$201,521.61	\$109,213.34	\$ 90,340.71	\$150,156.21	\$ 41,310.82	\$ 30,507.97	\$ 17,981.37	\$ 33,276.19	\$ 33,413.48	\$ 67,406.66	
	Tax due at 5/105	3,431.44	5,176.29	9,596.27	5,196.34	4,301.93	7,150.29	1,967.17	1,452.76	856.25	1,584.58	1,591.12	3,209.84	
	Tax paid	146.43	1,400.73	1,901.05	1,302.85	1,051.35	541.50	146.77	243.07	276.21	158.53	153.18	272.79	
	Balance due	\$ 3,285.01	\$ 3,775.56	\$7,695.22	\$ 3,893.49	\$ 3,250.58	\$ 6,608.79	\$ 1,820.40	\$ 1,209.69	\$ 580.04	\$ 1,426.05	\$ 1,437.94	\$ 2,937.05	
		<hr/>												
		1926									1927			
		APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL
	Sales, 9% Beer	\$ 95,312.50	\$146,642.45	\$227,379.50	\$286,406.27	\$218,145.82	\$224,237.25	\$164,535.75	\$149,555.31	\$ 72,794.76	\$ 51,614.93	\$ 78,542.34	\$ 99,938.15	\$133,151.15
	do. 4.4% Beer	9,152.96	11,438.59	15,608.76	16,829.26	12,463.02	7,827.66	4,994.11	3,070.25	3,012.95	1,247.52	1,488.66	1,604.69	2,727.59
	Items added back to Sales				87,592.81	51,000.00	154,274.65	51,979.27	21,575.00		193,661.60	120,000.00	20,000.00	17,835.26
	Total Gross Sales	\$104,465.46	\$158,081.04	\$242,988.26	\$303,235.53	\$230,608.84	\$282,064.91	\$220,504.51	\$204,604.83	\$ 77,362.71	\$246,524.05	\$200,031.00	\$121,542.84	\$153,714.00
	Less credits allowable	19,138.16	20,680.08	39,577.38	50,619.04	67,887.48	46,683.16	41,975.93	31,961.45	11,798.52	15,193.50	11,950.87	19,570.03	18,415.19
	Net Sales	\$ 85,327.30	\$137,400.96	\$203,410.88	\$252,616.49	\$262,721.36	\$235,381.75	\$218,528.58	\$172,643.38	\$ 65,564.19	\$231,330.55	\$188,080.13	\$101,972.81	\$135,298.81
	Less Gallonage Tax	11,954.43	19,064.50	29,654.22	37,090.15	26,622.28	28,751.81	20,995.26	18,287.40	9,123.24	5,693.26	8,606.64	11,003.44	14,395.01
	Luxury Tax	597.63	555.90	933.71	929.08	759.83	430.32	278.06	168.49	178.56	77.80	62.92		
	Total Deductions	\$ 12,552.06	\$ 19,620.40	\$30,587.93	\$ 38,019.23	\$ 27,382.11	\$ 29,182.13	\$ 21,273.32	\$ 18,455.89	\$ 9,301.80	\$ 5,771.06	\$ 8,669.56	\$ 11,003.44	\$ 14,395.01
	Tax payable on	\$72,775.24	\$117,780.56	\$172,822.95	\$214,597.26	\$232,339.25	\$206,199.62	\$207,256.26	\$154,187.49	\$ 56,262.39	\$225,559.49	\$179,410.57	\$ 90,969.37	\$120,903.80
	Tax due at 5/105 and 4/104	3,465.48	5,698.59	8,229.66	10,218.91	10,615.80	9,866.54	12,407.41	7,342.25	3,632.49	10,740.91	8,123.82	3,498.82	4,650.15
	Tax paid	368.53	356.50	585.01	671.82	682.19	429.45	329.86	318.81	354.78	279.56	273.90	411.95	453.93
	Balance due	\$3,096.95	\$5,342.09	\$7,644.65	\$ 9,547.09	\$ 9,933.61	\$ 9,437.09	\$ 12,077.55	\$ 7,023.44	\$ 3,277.71	\$ 10,469.95	\$ 7,849.92	\$ 3,086.87	\$ 4,196.22

* Italics indicate "RED"

EXHIBIT No. 2.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SUMMARY OF CLAIM *Re* GALLONAGE TAX

1924	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	1925 JANUARY	FEBRUARY	MARCH
Net gallons sold	27,030.60	61,509.35	97,556.50	80,659.60	85,604.45	88,076.00	58,962.90	45,098.25	12,135.00	16,975.50	27,303.50	35,402.50
Gallonge Tax at 12½c. per gallon.....	\$3,378.82	\$7,688.67	\$12,194.56	\$10,082.45	\$10,700.56	\$11,009.50	\$7,370.36	\$5,637.28	\$1,516.87	\$2,121.94	\$3,412.94	\$4,425.31
Gallonge Tax Paid.....	3,378.87	7,687.62	12,138.37	10,147.75	10,743.87	10,966.08	7,495.24	5,659.50	1,264.72	2,140.00	3,085.70	4,363.98
Gallonge Tax Unpaid.....	* .05	1.05	56.19	65.30	43.31	43.42	124.88	92.22	252.15	18.06	327.24	61.33

1925	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	1926 JANUARY	FEBRUARY	MARCH
Net gallons sold	36,464.05	75,550.00	174,914.90	101,951.85	93,643.05	76,260.70	44,222.30	47,355.05	29,415.10	43,052.00	43,741.45	82,201.70
Gallonge Tax at 12½c. per gallon.....	\$4,558.01	\$9,443.75	\$21,864.36	\$12,743.98	\$11,705.38	\$9,532.59	\$5,527.79	\$5,919.38	\$3,676.89	\$5,381.50	\$5,467.68	\$10,275.21
Gallonge Tax Paid.....	4,541.07	9,513.69	22,398.02	12,667.28	3,613.94	1,988.79	767.10	926.81	1,063.75	654.77	716.02	1,005.37
Gallonge Tax Unpaid.....	16.94	69.94	533.66	76.70	8,091.44	7,543.80	4,760.69	4,992.57	2,613.14	4,726.73	4,731.66	9,269.84

1926	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	1927 JANUARY	FEBRUARY	MARCH	APRIL
Net gallons sold	95,635.45	152,516.00	237,233.75	296,721.20	212,978.25	230,014.45	167,962.05	146,299.20	72,985.95	45,546.10	68,853.10	88,027.55	115,160.10
Gallonge Tax at 12½c. per gallon.....	\$11,954.43	\$19,064.50	\$29,654.22	\$37,090.15	\$26,622.28	\$28,751.81	\$20,995.26	\$18,287.40	\$9,123.24	\$5,693.26	\$8,606.64	\$11,003.44	\$14,395.01
Gallonge Tax Paid.....	1,594.54	1,242.75	2,239.49	2,727.45	3,031.77	2,475.87	1,782.01	1,540.41	2,336.21	1,822.56	1,477.49	2,126.97	2,889.38
Gallonge Tax Unpaid.....	\$10,359.89	\$17,821.75	\$27,414.73	\$34,362.70	\$23,590.51	\$26,275.94	\$19,213.25	\$16,746.99	\$6,787.03	\$3,870.70	\$7,129.15	\$8,876.47	\$11,505.63

* Italics indicate "RED"

EXHIBIT No. 2.—Continued.
CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
STATEMENT OF NET GALLONS SOLD.

	1924												1925																
	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY			
Cases and Cartons—Pints	27,080.60	54,675.00	82,803.60	65,124.00	63,800.60	47,635.30	32,463.00	34,926.00	10,260.00	11,538.00	22,221.00	31,050.00	30,502.80																
do.—Quarts		1,178.10	2,740.40	1,983.60	2,206.60	14,278.30	1,524.90	178.50		1,062.50	1,030.00	2,040.00	1,742.50																
Quarter Barrels		3,168.75	6,923.00	7,023.00	16,272.25	15,500.00	15,137.50	9,593.75	1,875.00	4,375.00	4,062.50	1,568.50	4,218.75																
Half Barrels		2,487.50	5,087.50	6,523.00		10,662.50	9,837.50	1,000.00				730.00																	
4.4% Cases and Cartons—Pints																													
do.—Quarts																													
4.4% Quarter Cartons—Pints																													
do.—Half Cartons																													
4.4% Quarter Barrels																													
do.—Half Barrels																													
4.4% Gallons sold	27,080.60	61,509.35	97,556.50	80,659.60	85,604.45	88,076.00	58,962.90	43,098.25	12,135.00	16,975.50	27,303.50	35,492.50	36,464.05																

	1925												1926																	
	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY					
Cases and Cartons—Pints	37,728.00	70,588.80	39,645.00	43,909.30	43,567.30	26,308.80	32,838.00	18,432.00	32,918.40	36,376.60	70,174.80	75,203.80	126,273.40																	
do.—Quarts	935.00	510.00	1,783.00	1,633.40	1,395.70	1,395.70	1,340.80	3,066.80	3,553.00	5,101.70	6,426.00	8,268.80	1,997.50																	
Quarter Barrels	1,250.00	13,268.75	7,418.75	6,918.75	6,800.00	1,712.50	1,250.00	3,137.50	5,000.00	3,425.00	3,12.50	3,12.50	625.00																	
Half Barrels	6,250.00	41,587.50	16,512.50	14,723.00	10,537.50	11,937.50	5,000.00	3,879.00	880.00	1,436.40	1,850.40	2,975.00	18,125.00																	
4.4% Cases and Cartons—Pints	27,932.30	33,327.00	24,768.00	17,227.80	9,737.80	874.80*	3,879.00	1,814.40	433.90	883.00	1,247.80	2,746.80	4,258.80																	
do.—Quarts		8,267.10	7,774.00	6,097.00	2,417.40	3,843.70	2,762.50	2,762.50	433.90	883.00	2.70		33.75																	
4.4% Quarter Cartons—Pints	49.95	600.75	292.50	48.15	27.00	4.95	60.30	3.60	3.60	3.60	10.80	518.75	868.75																	
do.—Half Cartons	48.60	1,327.50	263.50	197.10	38.80	77.40	130.80	212.50	68.75	143.75	237.50	518.75	868.75																	
4.4% Quarter Barrels	6.25	1,100.00	523.00	600.00	600.00	6.25	256.25	75.00	75.00	25.00	75.00	800.00	112.50																	
do.—Half Barrels	1,325.00	4,337.50	1,800.00	1,087.50	2,300.00	172.50	50.00	75.00	75.00	25.00	75.00	50.00	100.00																	
4.4% Gallons sold	75,550.00	174,914.90	101,951.85	93,643.05	76,260.70	44,222.30	47,353.05	29,413.10	43,052.00	43,741.45	82,301.70	95,633.45	152,316.00																	

	1926												1927																	
	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY						
Cases and Cartons—Pints	170,663.40	193,841.80	135,801.00	135,635.00	116,197.30	110,790.00	54,833.40	30,828.60	60,123.40	75,839.40	94,874.40	75,203.80	126,273.40																	
do.—Quarts	6,633.40	11,815.00	16,304.70	16,915.00	10,328.10	9,443.50	10,368.30	13,638.30	6,322.90	9,990.00	17,057.80	8,268.80	1,997.50																	
Quarter Barrels	2,050.00	981.25	687.50	2,500.00	956.25	481.25	31.25	1,250.00	492.50	1,225.00	1,375.00	312.50	625.00																	
Half Barrels	48,537.50	78,787.50	32,600.00	50,675.00	37,500.00	23,925.00	1,135.80	473.40	525.60	390.60	1,139.40	5,975.00	18,125.00																	
4.4% Cases and Cartons—Pints	5,792.40	6,044.40	4,674.60	2,624.40	3,514.60	1,150.30	1,135.80	473.40	525.60	390.60	1,139.40	2,746.80	4,258.80																	
do.—Quarts	3,449.70	2,592.50	1,404.30	1,174.70	215.90	363.50	709.30	173.40	341.70	487.90	600.10	2,975.00	4,258.80																	
4.4% Quarter Cartons—Pints	27.00	33.75		33.75		45							33.75																	
do.—Half Cartons	90	90		90		45							45																	
4.4% Quarter Barrels	381.25	823.00	443.75	87.50	137.50	93.75	106.25	106.25					106.25																	
do.—Half Barrels	723.00	150.00	862.50	250.00	172.50	50.00	23.00	23.00					23.00																	
4.4% Gallons sold	237,233.75	296,721.30	212,978.25	230,014.45	167,962.05	146,299.30	72,983.95	45,346.10	68,853.10	88,027.35	115,160.10	95,633.45	152,316.00																	

* Italics indicate "RED"

EXHIBIT No. 119.

(Plaintiff's)

Analysis of Credits Allowed

CARLING EXPORT BREWING & MALTING COMPANY
LIMITED

ANALYSIS OF CREDITS ALLOWED

In the
Exchequer
Court of
Canada.

Exhibits

No. 119
Analysis
of Credits
Allowed
Apl., 1924-
1927

	Month	Total	Containers and liquid returned	Freight paid
1924.	April.....			
	May.....	\$ 6,556.75	6,556.75	
	June.....	2,654.75	2,654.75	
10	July.....	9,042.76	9,042.76	
	August.....	7,934.20	7,934.20	
	September }			No credit notes seen
	October }			
	November.....	3,909.50	3,909.50	
	December.....	1,883.00	1,883.00	
1925.	January.....	1,880.00	1,880.00	
	February.....	4,064.00	4,064.00	
	March.....	324.56	324.56	
	April.....	2,143.75	2,143.75	
20	May.....	1,167.50	1,167.50	
	June.....	20,597.42	20,597.42	
	July.....	22,199.51	22,199.51	
	August.....	28,579.70	28,579.70	
	September.....	26,260.79	26,260.79	
	October.....	23,430.92	23,430.92	
	November.....	16,587.27	13,367.52	3,219.75
	December.....	13,952.51	9,714.07	4,238.44
1926.	January.....	8,344.75	5,748.51	2,596.24
	February.....	9,914.12	6,657.25	3,256.87
30	March.....	6,745.98	2,884.67	3,861.31
	April.....	19,138.16	11,780.73	7,357.43
	May.....	20,680.08	14,806.36	5,873.72
	June.....	39,577.38	24,084.79	15,492.59
	July.....	50,619.04	34,999.39	15,619.65
	August.....	67,887.48	53,930.66	13,956.82
	September.....	46,685.16	32,286.73	14,398.43
	October.....	41,975.33	30,992.78	10,982.55
	November.....	31,961.45	22,671.98	9,289.47
	December.....	11,798.52	4,962.83	6,835.69
40	1927. January.....	15,193.50	11,915.34	3,278.16
	February 1-17.....	8,899.10	5,344.63	3,554.47
	February 18-28.....	3,051.77	1,832.84	1,218.93
	March.....	19,570.03	9,905.16	9,664.87
	April.....	18,415.19	10,459.17	7,956.02
		\$613,625.93	\$470,974.52	\$142,651.41

SUMMARY.

	April, 1924—17 February, 1927.....	\$572,588.94
	18 February, 1927—30 April, 1927.....	41,036.99
		<u>\$613,625.93</u>
50	Tax at 5/105.....	\$27,266.14
	Tax at 4/104.....	1,578.34
	Total (tax included basis).....	<u>\$28,844.48</u>
	Tax at 5/100.....	\$28,629.45
	Tax at 4/100.....	1,641.48
	Total (straight percentage).....	<u>\$30,270.93</u>

EXHIBIT No. 111.
(Plaintiff's)

*In the
Court of
Court of
Canada.*

Comparison of Ottawa B 13's with Sales on Defendant's Books.

Exhibits

**CARLING EXPORT BREWING AND MALTING COMPANY
LIMITED**

No. 111
Comparison
of Ottawa
B 13's with
Sales on
Defendant's
Books,
1924-7

COMPARISON OF OTTAWA B-13's WITH QUANTITIES SOLD AS SHOWN
BY THE BOOKS OF THE COMPANY

B-13's		Cartons	$\frac{1}{4}$ Bbls.	$\frac{1}{2}$ Bbls.
	Fiscal Year			
10	1924-5	217,161	12,135	2,603
	1925-6	219,004	4,488	6,153
	1926-7 (including April, 1927)	626,140	1,230	22,489
		<u>1,062,305</u>	<u>17,853</u>	<u>31,245</u>
	B-13's dated at London prior to 1st May, 1927, but bearing port stamps of later date	23,350	.....	75
	Total B-13's	<u>1,085,655</u>	<u>17,853</u>	<u>31,320</u>
20	Net Sales "for export" as shown by the Company's books to 30th April, 1927	1,324,863	21,529	36,833
	Difference	<u>239,208</u>	<u>3,676</u>	<u>5,513</u>

EXHIBIT No. 116.

(Plaintiff's)

List of B 13's from Sombra.

THE KING vs. CARLING EXPORT BREWING AND MALTING
COMPANY, LIMITEDLIST OF B-13's FROM THE OUTPORT OF SOMBRA FILED WITH THE
STATISTICAL BRANCH OF THE DEPARTMENT OF
NATIONAL REVENUE AT OTTAWA.In the
Exchequer
Court of
Canada.

Exhibits

No. 116
List of
B13's from
Sombra
Aug. 9-
Spt. 25, 1924

10	Date	Port Entry Number	Outport Entry Number	Quantity	Consignee	Name of person signing as owner Shipper or Consignor
	1924					
	Aug. 9	918	61	5 cases Beer	Jos. Burr, Marine City	Jos. Burr, Marine City
		919	62	5 " "	P. Walsh, "	P. Walsh, "
		920	63	10 " "	A. Montie, Port Huron	A. Montie, Port Huron
		921	64	5 " "	John Reed, Mt. Clemens	John Reed, Mt. Clemens
	11	922	65	5 " "	Vaughan Springhorn, Marine City	Vaughan Springhorn, Marine City
	12	923	66	12 " "	C. J. Garlick, Mt. Clemens	C. J. Garlick, Mt. Clemens
20		924	67	5 " "	Jno. O'Brien, St. Clair	John O'Brien, St. Clair
		925	68	5 " "	Jno. Jones, Marine City	Jno. Jones, Marine City
	14	928	71	5 " "	Jno. Bartell, "	John Bartell, "
		929	72	5 " "	R. H. Brown, Port Huron	R. H. Brown, Port Huron
		931	74	20 " "	Wm. Givig, Mt. Clemens	Wm. Givig, Mt. Clemens
	15	932	75	10 " "	Geo. White, Marine City	Geo. White, Marine City
	16	935	78	5 " "	Jos. Burr, "	Jos. Burr, "
		936	79	5 " "	Jno. O'Brien, St. Clair	John O'Brien, St. Clair
		937	80	21 " "	J. W. Burns, "	J. W. Burns, "
		938	81	10 " "	Ed. James	Ed. James, Marine City
30	18	939	82	10 " "	A. Montie, Port Huron	A. Montie, Port Huron
		940	83	3 " "	Geo. White, St. Clair	Geo. White, St. Clair
		942	85	10 " "	Geo. Whitefoot, "	Geo. Whitefoot, "
	20	947	90	55 " "	Geo. Williams, "	Geo. Williams, "
		948	91	2 " "	Geo. White, "	Geo. White, "
		949	92	10 " "	Jno. O'Brien, "	John O'Brien, "
		950	93	4 " "	Geo. Gailey, "	Geo. Gailey, "
	22	952	95	5 " "	Jno. Essen, Marine City	John Essen, Marine City
		953	96	6 " "	Geo. White, St. Clair	Geo. White, St. Clair
		955	98	10 " "	A. L. Beck, Algonac	A. L. Beck, Algonac
40		956	99	16 " "	Joseph Brush, St. Clair	Jos. Brush, St. Clair
		957	100	10 " "	Gene Smith, "	Gene Smith, "
	23	958	101	10 " "	Jno. O'Brien, "	John O'Brien, "
		959	102	20 " "	Ed. Sanger, "	Ed. Sanger, "
		960	103	5 " "	Jno. Brown, "	John Brown, "

In the
Exchequer
Court of
Canada.

EXHIBIT NO. 116.—Continued

Exhibits

THE KING vs. CARLING EXPORT BREWING AND MALTING
COMPANY, LIMITED

No. 116
List of
B13's from
Sombra
Aug. 9-
Sept. 25, 1924

LIST OF B-13's FROM THE OUTPORT OF SOMBRA FILED WITH THE
STATISTICAL BRANCH OF THE DEPARTMENT OF
NATIONAL REVENUE AT OTTAWA

—continued.

Date	Port Entry Number	Outport Entry Number	Quantity	Consignee	Name of person signing as owner, shipper or Consignor	
1924						
Aug. 25	961	104	10 cases Beer	Geo. White, St. Clair	Geo. White, St. Clair	10
	962	105	5 " "	Fred Roberts, "	Fred Roberts, "	
	963	106	1 " "	Robert Eldridge, "	Robert Eldridge, "	
26	965	108	175 " Lager	A Grandi, Detroit	A. Grandi, per T.J.W.	
	967	110	6 " Beer	J. S. Smith, 214 Howard St., Port Huron	J. S. Smith, 214 Howard St. Port Huron	
	968	111	1 " "	Jno. O'Brien, St. Clair	John O'Brien, St. Clair	
	972	115	10 " "	Jno. O'Brien, "	John O'Brien, "	
27	973	116	5 " "	Geo. Brown, "	Geo. Brown, "	
	974	117	5 " "	Jno. Baker, "	John Baker, "	
30	1142	120	10 " "	Harry Brown, "	Harry Brown, "	20
	1143	121	4 " "	Geo. Hill, Mt. Clemens	Geo. Hill, Mt. Clemens	
31	1145	123	10 " "	W. E. Warner, St. Clair	W. E. Warner, St. Clair	
Sept. 1	1146	124	5 " "	Fred Green, "	Fred Green, "	
	1147	125	20 " "	John Bissell, Detroit	John Bisell, Detroit	
	1148	126	14 " "	J. Stone, St. Clair	J. Stone, St. Clair	
	1149	127	20 " "	Geo. Monis, "	Geo. Monis, "	
	1150	128	10 " "	Ed. Schrader, St. Clair	Ed. Schrader, St. Clair	
Sept. 2	1151	129	5 " "	Geo. Thatcher, "	Geo. Thatcher, "	
3	1152	130	5 " "	Geo. White, "	Geo. White, "	
4	1153	131	8 " "	Jos. Grady, "	Jos. Grady, "	30
5	1156	134	10 " "	Jno. Essen, Marine City	John Essen, Marine City	
6	1159	137	12 " "	Jas. James, Algonac	James James, Algonac	
	1160	138	13 " "	Ed. Graham, "	Ed. Graham, "	
	1161	139	20 " "	J. O'Brien, St. Clair	J. O'Brien, St. Clair	
8	1162	140	2 " "	Geo. White, "	Geo. White, "	
18	1185	163	15 " "	Geo. Norris, "	Geo. Norris, "	
19	1186	164	8 " "	John Brown, "	John Brown, "	
	1188	166	5 " "	John Bishop, Algonac	John Bishop, Algonac	
20	1189	167	15 " "	Geo. White, St. Clair	George White, St. Clair	
22	1190	168	3 " "	Sam Beal, Algonac	Sam Beal, Algonac	40
25	1199	177	15 " "	Geo. Jacobs, St. Clair	George Jacobs, St. Clair	

EXHIBIT No. 117.

(Plaintiff's)

Extract from Brewer's Mash Book.**THE KING vs. CARLING EXPORT BREWING AND MALTING
COMPANY, LIMITED****EXTRACT FROM THE BREWER'S MASH BOOK OF "BEER PRODUCED"***In the
Exchequer
Court of
Canada.*

Exhibits

No. 117
Extract
from
Brewers
Mash Book
Oct., 1924-
Apr., 1927

	Month	Ale	Lager	Beer for duty at 15c.
10	1924. October	56,700	19,575	.....
	November	10,925	6,525	.....
	December . . . . .	.....	6,525	.....
20	1925. January . . . . .	.....	10,575	.....
	February	20,250	8,000	.....
	March	20,250	16,900	.....
	April	24,300	46,250	.....
	May	44,100	72,000	.....
	June	48,000	147,750	.....
	July	44,000	124,675	.....
	August	16,000	48,000	.....
	September	20,000	13,500	.....
	October	24,000	.....	.....
	November	24,000	.....	.....
	December	28,000	.....	4,000
30	1926. January	4,000	12,000	12,760
	February	16,000	24,000	20,374
	March	36,000	38,000	28,777
	April	48,000	104,000	19,895
	May	40,000	60,000	.....
	June	90,000	126,000	.....
	July	62,000	118,000	50,195
	August	66,000	70,000	99,195
	September	56,000	78,000	105,155
	October	36,000	60,000	86,302
	November	24,000	54,000	73,555
	December	28,000	30,000	40,305
40	1927. January	16,000	10,000	13,485
	February	20,000	8,000	20,230
	March	23,750	16,000	47,830
	April	53,250	18,000	66,865
	Totals	999,525	1,346,275	688,923
	From December, 1925	647,000	826,000	688,923

A total of 2,161,923

TOTALS

Ale	999,525
Lager	1,346,275
"Rice" Beer	688,923
Total	<u>3,034,723</u> gallons.

"Rice" Beer 22.7% total production.

" " 31.9% production Dec., 1925-Apr., 1927.

EXHIBIT No. W.

(Plaintiff's)

In the
Exchequer
Court of
Canada.

Analysis of Beer Brewed.

Exhibits

No. W.
Analysis
of Beer
Brewed,
Jan. 1, 1924-
Apr. 30,
1927.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED

ANALYSIS OF BEER BREWED.

FROM JANUARY 1, 1924, TO APRIL 30, 1927

Reductions Gallons	Ale Brewed Gallons	Net Ale Gallons	Lager Gallons	Net Lager Gallons	Total Beer Brewed Gallons	
	1,132,175		2,622,208		3,754,383	10
4.4 Beer	214,375					
Quebec	156,855					
New Brunswick . . .	12,196		3,870		387,296	
	383,426	748,749		2,618,338	3,367,087	
		22%		78%	100%	

Canada Club	1,924,873
Black Label	693,465
	<u>2,618,338</u>

The first Brew of Black Label was made in December, 1925. We had brewed 1,094,475 Gallons Canada Club before Black Label was started. During the period that they 20 ran concurrently, there was not a great deal of difference.

Canada Club Brewed . . .	832,000
Black Label Brewed . . .	695,733

EXHIBIT No. W.—Continued.
BEER BREWED BY
CARLING EXPORT BREWING AND MALTING COMPANY, LIMITED.

*In the
Exchequer
Court of
Canada.*

YEAR	MONTH	ALE	LAGER	RICE BEER	LAGER
10	1924	January	16,200	.....	.....
	"	February	20,250	45,675	.....
	"	March	8,100	58,725	.....
	"	April	6,875	97,875	.....
	"	May	.....	84,825	.....
	"	June	4,050	71,775	.....
	"	July	40,500	91,350	.....
	"	August	16,200	78,300	.....
	"	September	8,100	45,675	.....
	"	October	56,700	19,575	.....
	"	November	10,925	6,525	.....
	"	December	.....	6,525	.....
20	1925	January	.....	10,575	.....
	"	February	20,250	8,000	.....
	"	March	20,250	16,900	.....
	"	April	24,300	46,250	.....
	"	May	44,100	72,000	.....
	"	June	48,000	147,750	.....
	"	July	44,000	124,675	.....
	"	August	16,000	48,000	.....
	"	September	20,000	13,500	.....
	"	October	24,000	.....	.....
	"	November	24,000	.....	.....
		472,800	1,094,475		
30	"	December	28,000	.....	4,000
	1926	January	4,000	12,000	12,760
	"	February	16,000	24,000	20,374
	"	March	36,000	38,000	28,777
	"	April	48,000	104,000	19,895
	"	May	40,000	60,000	.....
	"	June	90,000	126,000	.....
	"	July	62,000	118,000	50,195
	"	August	66,000	70,000	99,195
	"	September	56,000	78,000	105,155
	"	October	36,000	60,000	86,302
	40	"	November	24,000	54,000	73,555
"		December	28,000	30,000	40,305
1927		January	16,000	10,000	13,485
"		February	20,000	8,000	20,230
"		March	23,750	16,000	47,830
"		April	65,625	24,000	73,675
		659,375	832,000	695,733	
First Period, November, 1925.		472,800	1,094,475	.....
Second Period, April, 1927		659,375	832,000	695,733	
		1,132,175	1,926,475	695,733	
50	Total Ale.....		1,132,175		
	" Lager.....		2,622,208		

Exhibits

No. W.
Analysis
of Beer
Brewed,
Jan. 1, 1924-
Apr. 30,
1927.

—Continued.

EXHIBIT No. 120.

(Plaintiff's)

Index to Special Cases.

THE KING vs. CARLING EXPORT BREWING & MALTING
COMPANY LIMITED

INDEX TO SPECIAL CASES

	Date.	Sale to	Filed as Exhibit Number	
1924.	May 17.	D. K. Grandi.....	57	
	July 18.	C. B. Grandi.....	53	10
	Oct. 6.	A. Grandi.....	99	
	Nov. 11.	C. B. Grandi.....	101	
	Dec. 4.	C. B. Grandi.....	98	
1925.	Feb. 17.	A. Grandi.....	52	
	April 22.	C. B. Grandi.....	100	
	June 5.	C. B. Grandi.....	54	
	Dec. 2.	F. Savard.....	55	
1926.	April 22.	F. Savard.....	56	
	May 22.	F. Savard.....	5	
	June 2.	F. Savard.....	6	20
	“ 12.	F. Savard.....	9	
	“ 28.	F. Savard.....	8	
	July 1.	F. Savard.....	11	
	Dec. 4.	F. Savard.....	3	
1927.	Jan. 4.	B. Syringe.....	7	
	Feb. 4.	B. Syringe.....	4	
	Mar. 30.	B. Syringe.....	12	
	April 11.	B. Syringe.....	10	

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EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED

SPECIAL CASE FILED AS EXHIBIT No. 57.

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Cases,
May 17,
1924-
April 11,
1927.

—Continued.

Invoice

Date 17th May, 1924. Number 02698
Name D. K. Grandi c/o D. Koven, Kingsville.
Particulars 500 lager.
100 ale. \$1,500.00.

Bill of Lading

10 No Bill of Lading filed.

Account Charged

1924 May 17 D. K. Grandi, Detroit.

How Payment Received

Cash Received—D. Koven.

B. 13's (Company's)

Entry No.	Consignee	Goods	Dated at Kingsville	Customs Stamp	Name of Boat
20	D. K. Grandi, Detroit do.	400 ctns. pts. 200 " " <u>600</u>	1924 May 17 " " 31	Kingsville, 1924 May 17 " " 31	Zarkin Anna B.

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EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT No. 53.

Exhibits

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Cases,
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1927.

—Continued.

Invoice

Date : 8th July 1924.
Number : 00120
Name : C. B. Grandi, Carlings Dock.
Via—C.N.R. to Walkerville, Essex Terminal, Carlings Dock.
Particulars : 1,000 Lager at \$2.75. \$2,750.00.

Bill of Lading :

No Bill of Lading filed.

10

Account Charged :

1924 July 8 C. B. Grandi, Walkerville (Sawart).

How Payment Received :

Commission \$1,134.00.
Balance \$1,616.00 transferred to account C. B. Grandi, Windsor.

B. 13's (Company's)

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
2308	C. B. Grandi, Detroit, Mich.	185 c/s Beer	7/10/24 Sandwich	July 10, 1924	Blue
2340	do.	315 do.	7/11/24 do.	11	Toad
2395	do.	240 do.	7/15/24 do.	15	Old Pal
2548	do.	260 do.	7/24/24 do.	24	Old Pal
		1000			

20

EXHIBIT No. 120.—Continued.

In the
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CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 101A, 101B, 101C.

Exhibits

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Cases,
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1924-Apr. 11,
1927.

—Continued.

Invoice :

Date : 11th November 1924. Number 00469.
Name : C. B. Grandi, c/o D. Koven, Kingsville.
Particulars : 700 cases lager at \$2.25 \$1,575.00
300 cases ale pints at \$2.25 675.00
\$2,250.00
Car No.: C. P. 124800.

10

Bill of Lading :

Date : 11th November 1924. Number 00207.
Consignee : C. B. Grandi, Detroit, c/o D. Koven.
Destination: Kingsville, Ont.
Route : C.P. and Lake Shore.
Car : C.P. 124800.
Goods : 1,000 cases lager and ale.

Account Charged :

11th November, 1924 Kingsville.

How Payment Received :

November, 1924. \$8,306.35.
\$7,106.35 Transfers from Kingsville.
1,200 Klovinsky note paid.

20

B-13's (Company's) :

Entry No.	Consignee	Goods	Dated Kingsville	Customs Stamp Kingsville	Signed by	Boat
617	C. B. Grandi	151 c/s beer	1924 Nov. 13	1924 Nov. 15	D. Koven	Anna H.
604	"	151 " "	" 14	" 14	"	"
621	"	151 " "	" 20	" 20	"	"
632	"	151 " "	Dec. 6	Dec. 6	"	"
637	"	390 " "	" 12	" 12	"	Shark
		994				

30

Entry No. 637 also shows the export of 50 cases Whiskey to J. Gorsick, Detroit.

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EXHIBIT No. 120.—Continued.

**CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT No. 52.**

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1927.

—Continued.

Invoice :

Date : 17th February 1925.
Number : 00540.
Name : A. Grandi, Detroit, Michigan,
c/o James Huggell, Port Lambton.
Particulars : 500 cases Lager \$1,250.00
100 " Ale 250.00
Car No. : C.P. 286206. \$1,500.00 10

Bill of Lading :

Date : 16th February 1926. Number : 00280.
Consigned to : A Grandi, Detroit, Michigan, c/o J. Huggell, Port Lambton, Ont.
Route : C.P.R. Chatham and P.M.
Car No. : C.P. 286206.
Goods : 100 Ale and Lager.
Signed : T. Vincent for Carling Brewing and Malting Co. Ltd.
W. C. Whitaker, per A.J., for the Railway. 20
Marked—"Complying with Dominion and Ontario Temperance Act."

Account Charged :

17th February, 1925 — Jas. Huggell, Pt. Lambton.

How Payment Received :

March, 1926 \$1,102.17 } These are shown as received from
April, 1926 557.15 } Jas. Huggell by Cash Book.

B-13's (Company's) :

Entry No.	Consignee	Goods	Dated, London	Customs Stamp	Name of Boat
....	C. B. Grandi, Detroit, Mich	600 Ale	1925 Feb. 18	Pt. Lambton, 1925, Mar. 6	....

30

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 100A, 100B, 100C.

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Exhibits
No. 120.
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1927.

—Continued.

Invoice :

Date : 22nd April 1925. Number : 00617
Name : C. B. Grandi, Detroit, Michigan.
c/o Mr. Diesberg, Belle River.
Particulars : 500 cases lager \$1,425.00
500 " ale Pts. 855.00
Car : C.P. 106662. \$2,280.00

10

Bill of Lading :

Date : 22nd April 1925. Number : 00371.
Consignee : C. B. Grandi, Detroit, Michigan, c/o Mr. Diesberg.
Destination : Belle River, Ont.
Route : C.P.
Car : C.P. 106662.
Goods : 800 cartons ale and lager.
Marked : "Complying with Dominion and Ontario Temperance Act."

20 *Account to which Charged :*

A. Disberg.

How Payment Received :

Debited to Windsor C.P.R. Dock. Journal entry p. 20.
Notation in account "Ck. received by Kennedy \$3,253.65"

B-13's (Company's) :

Entry No.	Consignee	Goods	Dated Belle River	Customs Stamp	Boat
5920	C. B. Grandi	75 c/s beer	1925 Apl. 28	Belle River 1925 Apr. 28	Letta
6601	"	75 " "	" 30	" " 30	Martha
30 10733	"	650 " "	May 14	" May 14	LaFrance
		800			

EXHIBIT No. 120.—Continued.

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CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT No. 54A.

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1927.

Invoice:

Date : 5th June 1925.
Number : 00670.
Name : C. B. Grand, Detroit, Michigan,
LaSalle, Dock.
Car No. : C.P. 112622.
Particulars : 500 cartons lager at \$2.65 \$1,325.00
200 " ale pints at 2.65 530.00
\$1,855.00

10

Bill of Lading :

Date : 6th June 1925.
No 01723.
Consigned to : C. B. Grandi, Detroit, Michigan, c/o Carlings Dock.
Destination : La Salle, Ont.
Route : C.P., E.T. and Hydro.
Car : C.P. 112622.
Goods : 700 cartons lager and ale.
Signed : J. Hennessy for the Carling E.B. & M. Co.
(C.P.R. agents signature unreadable).

20

Account to which Charged :

5th June, 1925. La Salle, new account.

How Payment Received :

Cash received June, 1925, \$92,721.15, "Windsor Transfer," per Cash Book.

B.13's (Company's) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
...	C. B. Grandi Detroit, M.	500 lager 200 ale	1925 June 6	Windsor, 1925 June —	
845	"	300 beer	" 8	Sandwich " 8	Omar
854	"	300 beer	" 8	Sandwich " 8	Nancy
847	"	100 "	" 8	" " 8	Bill
		1400			

30

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT No. 55, A TO I.

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—Continued.

Invoice :

Date : 2nd December 1925. Number : 03218.
Name : F. Savard, Detroit.
C.P.R. Dock, Windsor, Ont.
Particulars : 1500 ctns. lager pints. \$2,625.00.
Car : C.P. 95684.

10 *Bill of Lading :*

Date : 2nd December 1925. Number : 02287.
Consigned to : F. Savard, Detroit.
c/o C.P.R. Dock.
Car : C.P. 95684.
Route : C.P. Destination : Windsor.
Goods : 1200 lager pts.

Account Charged :

2nd December 1925. F. Savard, Detroit.
c/o Carling C.P.R. Dock, Windsor.

20 *How Payment Received :*

Cash received December, 1925—\$51,000.00—received from C.P.R. Dock.
“Windsor transfer” per Cash Book.

B-13's (Company's)

Entry No.	Consignee	Goods	Dated at Ford	Customs Stamp	Name of Boat
8433	F. Savard	28 c/s beer	1926 Jan. 29	Walkerville, 1926 Jan. 29	Spray
7390	“	8 “ “	1925 Dec. 15	“ 1625 Dec. 15	Dorien
7754	“	24 “ “	“ 28	“ “ 28	Red Devil
30 8665	“	37 “ “	1926 Feb. 11	“ 1926 Feb. 11	Whale
8688	“	10 “ “	“ 11	“ “ 11	Scout
8428	“	334 “ “	Jan. 30	“ Jan. 30	Cat
7710	“	1059 “ “	1925 Dec. 24	“ 1925 Dec. 24	President
		1500			

EXHIBIT No. 120.—Continued.

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CARLING EXPORT BREWING AND MALTING COMPANY LIMITED

SPECIAL CASE FILED AS EXHIBIT Nos. 56A AND 56B.

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1927.

Invoice :

—Continued.

Date : 22nd April 1926. Number 03362.
Name : F. Savard, Cleveland.
c/o E. Sigal, Pt. Stanley.
Particulars : 100 S.A. pints.
100 A.A. pints. \$350.00.

Bill of Lading :

10

No Bill of Lading filed.

Account Charged :

F. Savard, Cleveland, Ohio.
c/o E. Sigal, Pt. Stanley, Ont.

How Payment Received :

Cash received 15th April, 1926—\$610.00.
From F. Savard, E. Sigal.

B. 13's (Company's)

Entry No.	Consignee	Goods	Dated at London	Customs Stamp
5	F. Savard	200 ctns. pts.	1926 April 20	Port Stanley, 1926 June 5 20

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT No. 5A, 5B AND 5C.

In the
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Invoice :

Date : 22nd May 1926. No. 03420.
Name : F. Savard, Detroit, Mich, C.P.R. Dock, Windsor, Ont.
Particulars : 300 cartons Ale pints \$1.75 \$ 525.00
1200 " Lager " 1.75 2,100.00
\$2,625.00.

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—Continued.

10 Car No. : C.P 197732.

Bill of Lading :

Date : 22nd May 1926. No. 04859.
Consigned to : F. Savard, c/o C.P. Dock, Windsor, Ontario.
Route : C.P.
Car No. : C.P. 197732.
Goods : 1200 Cartons ale and lager.
Bears notation : "For export from Canada, deliver only under supervision of
Collector of Customs."

Account Charged :

20 F. Savard, Detroit, c/o Carling's Dock, C.P.R. Dock, Windsor.

How Payment Received :

Transfers from Windsor.

B-13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London 1926	Customs Stamp 1926	Boat
17628	F. Savard, Detroit, Mich	200 ctns pts.	May 22	Sandwich, June 2	Blue
19610	" " "	25 " "	" "	" " " 6	Annie
19669	" " "	25 " "	" "	" " " 7	
30 19685	" " "	50 " "	" "	" " " 5	Bull
19691	" " "	50 " "	" "	" " " 5	Bill
		350			

The above B-13's all bear the notation, "Transferred to Carling Dock, LaSalle," and various dates.

EXHIBIT No. 120.—Continued.

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CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT 6A, 6B AND 6C.

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—Continued.

Invoice :

Date : 2nd June 1926. Number 03447.
Name : F. Savard, Detroit, Mich.
A. V. Hall, Point Edward.
Particulars : 1000 Canada Club \$1.75 \$1,750.00
200 Amber Ale 1.75 350.00
100 Black Label 1.75 175.00
\$2,275.00

10

Car No. : C.P. 127806.

Bill of Lading :

Date : 2nd June 1926. Number 04922.
Consignee : A. V. Hall, Pt. Edward, Ont.
Route : C.N.R. Car : C.P. 127806.
Goods : 1,400 ctns. beer. 57,400 lbs.
Bears Notation, "For Export from Canada. Deliver only under supervision of
Collector of Customs."

Account Charged :

F. Savard, Detroit, Michigan,
c/o A. V. Hall, Point Edward, Ontario.

20

How Payment Received :

A. V. Hall, Point Edward, per Cash Book.

B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
8550	F. Savard, Detroit, Mich	25 Ctns. Beer	1926 June 2	1926 Pt. Edward, June 8	
8551	do.	25 do.	do.	do.	8
8552	do.	100 do.	do.	do.	10
8553	do.	25 do.	do.	do.	11
8554	do.	100 do.	do.	do.	12
8555	do.	100 do.	do.	do.	14
9256	do.	100 do.	do.	do.	16

30

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY, LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 6A, 6B AND 6C—Continued

In the
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B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
9257	F. Savard, Detroit, Mich.	25 Ctns. Beer	June 2	Pt. Edward, June 16	
9258	do.	25 do.	do.	do.	17
9259	do.	100 do.	do.	do.	17
10 9260	do.	100 do.	do.	do.	18
9261	do.	100 do.	do.	do.	22
9262	do.	25 do.	do.	do.	22
9263	do.	25 do.	do.	do.	22
9264	do.	25 do.	do.	do.	22
10209	do.	100 do.	do.	do.	26
10210	do.	100 do.	do.	do.	26
10211	do.	100 do.	do.	do.	26
10212	do.	100 do.	do.	do.	26
		1300			

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20

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 9A and 9B and 9C and 9D.

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—Continued.

Invoice :

Date : 12th June 1926. Number : 03474.
Name : F. Savard, Detroit, Mich.
C.P.R. Dock, Windsor, Ont.
Particulars : 600 Ale pts. \$1.75 \$1,050.00
600 Black Label \$1.75 1,050.00
\$2,100.00

30 Car : M.C. 87356—to Amherstburg.

Bill of Lading :

Date : 12th June, 1926. Number : 04997.
Consigned to : F. Savard, c/o H. Low.
Destination : Amherstburg, Ont.
Route : M.C. Car! M.C. 87356.
Goods : 1200 ctns. Ale and B.L. Lager
Bears Notation : "For Export from Canada deliver only under supervision of
Collector of Customs."

EXHIBIT No. 120.—Continued.

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CARLING EXPORT BREWING BND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 9A AND 9B AND 9C—*Continued*

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Account Charged :

F. Savard, Detroit.
c/o Carling C.P.R. Dock.

How Payment Received :

Transfers from Windsor.

—Continued.

B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat	
1211	F. Savard	100 ctns.	1926, June 12	1926, July 15, Amherstburg	....	10
2	"	100	"	" "	....
3	"	100	"	" "	....
4	"	100	"	" "	....
5	"	100	"	" "	....
6	"	100	"	" "	....
7	"	100	"	" "	....
8	"	100	"	" "	....
9	"	100	"	" "	....
1220	"	100	"	" "	....	20
1	"	100	"	" "	....
2	"	100	"	" "	....
3	"	50	"	" "	....
4	"	50	"	" "	....
5	"	50	"	" "	....
6	"	50	"	" "	....
7	"	50	"	" "	....
8	"	50	"	" "	....
9	"	50	"	" "	....	30
1230	"	50	"	" "	....
1	"	50	"	" "	....
2	"	50	"	" "	....
	Forward	1700 ctns.				
25252	F. Savard	100	1926, June 12	1926, June 21, Sandwich	Bull	
65	"	100	"	" 19 "	It	
73	"	100	"	" 18 "	Essex	
5	"	100	"	" "	"	
7	"	100	"	" "	"	
8	"	100	"	" "	Mary Ann	40
9	"	100	"	" "	"	
25280	"	100	"	" "	"	
1	"	100	"	" "	"	
		2600 ctns.				

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CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 8A AND 8B AND 8C.

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Invoice :

Date : 28th June, 1926. Number 03529.
Name : F. Savard Detroit, Michigan.
C.N.R. Dock, Windsor, Ontario.
Particulars : 1500 cartons Black Label at \$1.75—\$2,625.00.
Car: C.P. 210083 C.P.R. Dock, Windsor

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—Continued.

10 *Bill of Lading :*

Date : 28th June, 1926. Number 05139.
Consignee : F. Savard c/o C.P.R. Dock, Windsor, Ontario.
Route : C.P. Car : C.P. 210083.
Goods : 1,500 cartons B.L. Lager.
Bears notation, "For Export from Canada. Deliver only under supervision of
Collector of Customs."

Account Charged :

F. Savard, Detroit, c/o Carling C.P.R. Dock.

How Payment Received :

20 Transfer from Windsor.

B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
28925	F. Savard	100 Cartons.	1926, June 28	1926, July 2, Sandwich	Violet
6	"	100 "	"	"	Annie
7	"	100 "	"	"	"
8	"	100 "	"	"	"
9	"	100 "	"	"	"
30	"	100 "	"	"	"
30	"	100 "	"	"	Elk
1	"	100 "	"	"	"
2	"	100 "	"	"	"
3	"	100 "	"	"	"
4	"	100 "	"	"	"
5	"	100 "	"	"	"
		1100			

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 11A AND 11B.

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Date : 1st July 1926.
No. : 03545.
Name : F. Savard, Detroit, Michigan.
C.P.R. Dock, Windsor.
Particulars : 1,500 cartons Black Label pints at \$1.75. \$2,625.00.
Car No: N.P. 13845

10

—Continued.

Bill of Lading :

Date : 1st July 1926.
No. : 05155.
Consignee : F. Savard, c/o C.P.R. Dock, Windsor, Ontario.
Route : C.P.
Car : N.P. 13845.
Goods : 1,200 cartons pints Beer.
Signed by : J. M. Hennessy for Brewery.
Notation : For Export from Canada, deliver only under supervision of
Collector of Customs.

20

Amounts Charged :

F. Savard, Detroit.

c/o Carling C.P.R. Dock.

How Payment Received :

Transfer from Windsor.

B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
33689	F. Savard	100 Cartons	1926, July 1	1926, July 14, Sandwich	Seal
90	"	100 "	" "	" "	" 30
1	"	100 "	" "	" "	"
2	"	100 "	" "	" "	"
3	"	100 "	" "	" "	"
4	"	100 "	" "	" "	May
5	"	100 "	" "	" "	"
6	"	100 "	" "	" "	Elk
7	"	100 "	" "	" "	"
33718	"	100 "	" "	13	Annie
9	"	100 "	" "	" "	"
33720	"	100 "	" "	" "	"
		1200			

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT NOS. 3A AND 3B AND 3C.

*In the
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Invoice :

Date : 4th December 1926.
No. : 03838.
Name : F. Savard, Detroit, Mich.
C.P.R. Dock, Windsor, Ont.
Particulars : 1,500 Black Label at \$1.75. \$2,625.00.
Car No: N.Y.C. 18296

10

Exhibits

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—Continued.

Bill of Lading :

No. : 02648. Date : 4th December 1926.
Consignee : F. Savard, C.P.R. Dock, Windsor, Ont.
Route : C.P.
Car : N.Y.C. 18296.
Goods : 1,200 ctns. B.L. ale, 49,200 lbs.
Signed by : J. M. Hennessy for the Brewery.
W. C. Whittaker per J. W. Weir for the C.P. Ry.
Notation : "For export from Canada—deliver only under supervision of
Collector of Customs."

20

Account Charged :

F. Savard, Detroit, c/o Carlings C.P.R. Dock.

How Payment Received :

Transfer from Windsor.

B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp		Name of Boat
82857	F. Savard, Detroit	5 ctns pts	1926 Dec. 4	Sandwich	1926 Dec. 15	Lark
30 85680	"	15 "	"	"	" 27	Dora
85682	"	15 "	"	"	" 27	Boy
85706	"	5 "	"	"	" 24	Fannie
85716	"	15 "	"	"	" 23	Dora
85737	"	10 "	"	"	" 22	Dora
85753	"	15 "	"	"	" 21	
85755	"	5 "	"	"	" 21	Davis
85778	"	10 "	"	"	" 20	Tom
85804	"	15 "	"	"	" 18	Jeny
85813	"	10 "	"	"	" 17	Alva
40 85812	"	15 "	"	"	" 17	Tom
87212	"	20 "	"	"	" 24	Violet
88083	"	15 "	"	"	" 20	Helen
88088	"	15 "	"	"	" 29	Sap
88113	"	15 "	"	"	" 29	Boy
88142	"	10 "	"	"	" 27	Jay
88143	"	15 "	"	"	" 27	Tub

EXHIBIT No. 120.—Continued.

SPECIAL CASE FILED AS EXHIBIT Nos. 3A AND 3B AND 3C—Continued

In the
Exchequer
Court of
Canada.

B. 13's (Ottawa) :

Exhibits	Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
	88813	F. Savard	5 ctns pts	1926 Dec. 4	Walkerville, Dec. 30	Violet
No. 120.	89683	"	10 "	"	Sandwich, 1927 Jan. 4	Sylph
Index to	89713	"	15 "	"	" " 3	Chutt
Special	90874	"	15 "	"	" " 8	Sun
Cases,	90875	"	15 "	"	" " 7	Babe
May 17,	90897	"	15 "	"	" " 6	Tom
1924-Apr. 11,	90895	"	15 "	"	" " 7	Boy
1927.	91235	"	20 "	"	Walkerville, 1926 Dec. 31	Ice Cutter
—Continued.	92459	"	10 "	"	Sandwich, 1927 Jan. 12	Stanley
	92463	"	20 "	"	" " 12	Ian
	92470	"	10 "	"	" " 10	Sun
	92487	"	20 "	"	" " 11	Devil
	92502	"	10 "	"	" " 11	Skylark
	92505	"	10 "	"	" " 11	Mable
	92524	"	10 "	"	" " 11	Skylark
	92525	"	10 "	"	" " 11	Sylph
	92528	"	10 "	"	" " 11	do.
	92532	"	20 "	"	" " 11	May
	95293	"	10 "	"	" " 18	King
	95306	"	10 "	"	" " 14	James
	95406	"	20(?) "	"	" " 20	Nan
	98006	"	25 "	"	Walkerville " 31	Susie
	98007	"	25 "	"	" " 31	Susie
	98008	"	25 "	"	" " 31	Sussie
	3276	"	5 "	"	Sandwich, Apl. 9	Said
	3281	"	5 "	"	" " 9	Bob
	11204	"	5 "	"	Walkerville, " 28	....
	3275	"	5 "	"	Sandwich " 9	Lard
	3285	"	5 "	"	" " 9	John
	5402	"	5 "	"	" " 12	Sally
	5419	"	5 "	"	" " 11	Harry
	5420	"	5 "	"	" " 11	Harry
	5421	"	5 "	"	" " 11	Harry
	5427	"	5 "	"	" " 11	Boy
	22848	"	5 "	"	Walkerville, May 19	....
	22850	"	25 "	"	" " 19	....
	22851	"	25 "	"	" " 19	....
	22852	"	25 "	"	" " 19	....
	22853	"	5 "	"	" " 18	....
	22855	"	5 "	"	" " 17	....
	22856	"	5 "	"	" " 17	....
	22857	"	25 "	"	" " 17	....
	22846	"	25 "	"	" " 19	....
	22845	"	25 "	"	" " 19	....
	14422	"	25 "	"	" " 11	....
	19840	"	50 "	"	" " "	....
			875 ctns pts			

EXHIBIT No. 120.—Continued.

CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 7A AND 7B, 7C, 7D, 7E.

In the
Exchequer
Court of
Canada.

Exhibits
No. 120.
Index to
Special
ases,
May 17,
1924-Apr. 11,
1927.

Invoice :

Date : 4th January 1927.
No. : 04586
Name : B. Syringe, Detroit, Mich.
c/o Carling C.P.R. Dock, Windsor, Ont.
Particulars : 1,500 ctns. B/L at \$2.00. \$3,000.00.
Car No. : C.P. 287867.

10

Bill of Lading :

Date : 4th January 1928.
No. : 02748.
Consignee : F. Savard, c/o C.P.R. Dock, Windsor, Ont.
Route : C.P.
Car : C.P. 287867.
Goods : 1,200 ctns. B.L. Lager. 49,200 lbs.
Signed by : J. M. Hennessey for the Brewery.
Notation : For Export from Canada,—delivery only under supervision of
Collector of Customs.

20

Account Charged :

B. Syringe, Detroit

c/o Carlings C.P.R. Dock.

How Payment Received :

Transfer from Windsor (March 1927).

B-13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
95297	F. Savard Detroit, M.	5 ctns. pts	1927 Jan. 12	Sandwich, 1927 Jan. 19	Reta
30 95298	"	25 "	"	" " 19	Reta
95349	"	25 "	"	" " 22	Nan
95350	"	25 "	"	" " 22	Nan
95374	"	25 "	"	" " 22	Bat
95380	"	25 "	"	" " 21	Alice
95387	"	25 "	"	" " 22	Flash
95390	"	10 "	"	" " 22	Ella
95397	"	25 "	"	" " 21	Duke
95399	"	25 "	"	" " 21	Tom
40 95404	"	5 "	"	" " 20	Alma
97687	"	25 "	"	" " 28	Mary
97688	"	25 "	"	" " 28	Mary
97689	"	25 "	"	" " 28	Mary
98003	"	5 "	"	Walkerville " 29	Greyhound
98004	"	5 "	"	" " 29	Greyhound

—Continued.

In the
Exchequer
Court of
Canada.

EXHIBIT No. 120.—Continued.
SPECIAL CASE FILED AS EXHIBIT 7A AND 7B, 7C, 7D, 7E.—Continued.

Exhibits	Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
No. 120. Index to Special Cases, May 17, 1924-Apr. 11, 1927.	98005	F. Savard	10 ctns. pts	1927 Jan. 4	Sandwich " 29	Greyhound
	100036	"	5 "	"	" Feb. 4	Susie
—Continued.	95294	"	25 "	"	" Jan. 18	
		Detroit, M.			(Filed as Ex. B1) 1927 Jan. 7	Pal
	90851	"	25 "	"	" 7	Pal 10
	90852	"	25 "	"	" 7	Pal
	90853	"	25 "	"	" 7	Pal
	90854	"	25 "	"	" 7	Pal
	90855	"	25 "	"	" 7	Pal
	90856	"	25 "	"	" 7	Pal
	90885	"	25 "	"	" 7	
	90886	"	20 "	"	" 7	Low
	90887	"	20 "	"	" 7	Low
	90888	"	20 "	"	" 7	Low
	90889	"	20 "	"	" 7	Low
	90890	"	20 "	"	" 7	Low 20
	90891	"	20 "	"	" 7	Low
	90892	"	20 "	"	" 7	Low
	90893	"	20 "	"	" 7	Low
	90894	"	20 "	"	" 7	Low
	92497	"	20 "	"	" 11	Aggie
	92539	"	20 "	"	" 10	Olive
	92540	"	20 "	"	" 10	Olive
	92541	"	20 "	"	" 10	Olive
	92542	"	20 "	"	" 10	Olive
	92543	"	20 "	"	" 10	Olive 30
	92555	"	20 "	"	" 10	
	95353	"	20 "	"	" 22	Dixie
	95365	"	25 "	"	" 22	Pat
	95392	"	25 "	"	" 22	Ruth
	95393	"	25 "	"	" 22	Ruth
	95394	"	25 "	"	" 22	Ruth
	95395	"	25 "	"	" 22	Ruth
	7303	"	10 "	1927 Jan. 12	Amherstburg, 1927 Feb. 8	Small boat
	7139	"	10 "	"	" Jan. 28	Small boat
	7408	"	20 "	"	" Feb. 11	Elk 40
	7409	"	20 "	"	" 11	Elk
	7410	"	20 "	"	" 11	Elk
	7411	"	20 "	"	" 11	Elk
	7413	"	10 "	"	" 11	Elk
	7578	"	15 "	"	" 16	Small boat
	7579	"	15 "	"	" 16	Small boat
	7581	"	10 "	"	" 16	Small boat
	7582	"	10 "	"	" 16	Small boat
			1145			

In the
Exchequer
Court of
Canada.

EXHIBIT No. 120.—Continued.

SPECIAL CASE FILED AS EXHIBIT 4A, AND 4B AND 4C—Continued.

B. 13's (Ottawa) :

Exhibits	Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
No. 120.	5	B. Syringe	25 Cartons	1927 Feb. 4	1927 Feb. 9 Sandwich	Rex
Index to	6	"	10 "	"	"	Ted
Special	7	"	10 "	"	"	Ted
Cases,	8	"	50 "	"	8	Annie
May 17,	9	"	50 "	"	"	"
1924-	60	"	10 "	"	"	Jim
April 11,	1	"	15 "	"	"	"
1927.	2	"	100 "	"	"	"
—Continued.	7	"	50 "	"	"	Olive
	8	"	20 "	"	"	Bob
	9	"	50 "	"	"	Cat
	72	"	20 "	"	"	Eva
	5	"	25 "	"	"	Chubb
	100887	"	100 "	"	7	Alice
	102083	"	25 "	"	11	Pa
	4	"	25 "	"	"	"
	5	"	25 "	"	"	"
	6	"	25 "	"	"	"
	7	"	25 "	"	"	"
	90	"	25 "	"	"	"
	102104	"	15 "	"	10	.....
	5	"	15 "	"	"	.....
	6	"	20 "	"	"	.....
	8	"	50 "	"	"	Jim
	9	"	50 "	"	"	"
	102110	"	25 "	"	10	Lap
	1	"	50 "	"	"	"
	2	"	50 "	"	"	"
	3	"	50 "	"	"	"
	4	"	50 "	"	"	"
	8	"	20 "	"	"	Tub
	9	"	20 "	"	"	"
	20	"	20 "	"	"	"
	1	"	20 "	"	"	"
	2	"	5 "	"	"	Rex
	32	"	15 "	"	"	Spray
	3	"	25 "	"	"	"
	4	"	50 "	"	"	"
	6	"	10 "	"	9	May
	8	"	10 "	"	"	.....
	45	"	20 "	"	"	Mush
	6	"	20 "	"	"	"
	54	"	20 "	"	"	Sally
	6	"	25 "	"	"	Nora
	104516	"	15 "	"	19	Bird
	106464	"	20 "	"	22	Jury

EXHIBIT No. 120.—Continued.

SPECIAL CASE FILED AS EXHIBIT 4A AND 4B AND 4C—Continued

In the
Exchequer
Court of
Canada.

B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat	Exhibits	
106925	B. Syringe	50 Cartons	1927 Feb. 4	1927 Feb. 25	Sandwich	Mary Ann	No. 120.
49	"	5 "	"	"	"	Tom	Index to
107030	"	5 "	"	" 24	"	Chubb	Special
8	"	5 "	"	"	"	Spray	Cases,
107685	"	5 "	"	Mar. 1	"	Betty	May 17,
109229	"	15 "	"	" 3	"	Ida	1924-Apr. 11,
48	"	20 "	"	" 2	"	Mary Lou	1927.
116097	"	10 "	"	" 24	"	Ned	—Continued.
116825	"	2 "	"	" 25	"	Jane	
6	"	2 "	"	"	"	.....
117738	"	5 "	"	" 29	"	Dot	
45	"	10 "	"	" 28	"	Sally	
52	"	5 "	"	"	"	Tub	
63	"	5 "	"	"	"	Bird	
20 67	"	5 "	"	"	"	Bum	
116089	"	5 "	"	" 24	"	Cat	
114514	"	10 "	"	" 19	"	Spray	
5	"	15 "	"	" 19	"	"	
117776	"	5 "	"	" 26	"	Margy	
92	"	10 "	"	" 25	"	Chris	
98	"	10 "	"	"	"	Devil	
117822	"	15 "	"	" 24	"	Margy	
118424	"	2 "	"	" 28	"	Romp	
2017	"	2 "	"	" 31	Walkerville	Ellen	
30 2829	"	2 "	"	Apr. 9	"	Jane	
38	"	10 "	"	"	"	"	
61	"	2 "	"	"	"	"	
62	"	2 "	"	"	"	"	
3	"	2 "	"	"	"	"	
4	"	2 "	"	"	"	"	
5	"	2 "	"	"	"	"	
6	"	2 "	"	"	"	"	
7	"	1 "	"	"	"	"	
8	"	1 "	"	"	"	Mary Lou	
40 9	"	1 "	"	"	"	"	
2870	"	1 "	"	"	"	"	
1	"	1 "	"	"	"	"	
2	"	1 "	"	"	"	"	
3	"	1 "	"	"	"	"	
4	"	1 "	"	"	"	"	
5	"	1 "	"	"	"	"	
6	"	1 "	"	"	"	"	
2886	"	1 "	"	"	"	"	
96	"	1 "	"	"	"	Ellen	
50		1724					

In the
Exchequer
Court of
Canada.

EXHIBIT No. 120.—Continued.

**CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT 12A AND 12B AND 12C.**

Exhibits
No. 120.
Index to
Special
Cases,
May 17,
1924-Apr. 11,
1927.
—Continued.

Invoice :
Date : 30th March 1927.
No. : 04647
Name : B. Syringe, Detroit, Michigan.
c/o C.P.R. Dock, Windsor, Ont. 10
Particulars : 1,500 amber ale pints at \$1.90. \$2,850.00.
Car No. : C.P. 286029.

Bill of Lading :
Date : 30th March 1927.
No. : 04928.
Consignee : B. Syringe, c/o C.P.R. Dock, Windsor, Ont.
Route :
Car : C.P. 286029.
Goods : 1200 cartons ale. 49,200 lbs.
Signed by : J. M. Hennessy for Brewery.
Notation : For Export from Canada,—deliver only under supervision of 20
Collector of Customs.

Account to which Charged :
B. Syringe, Detroit,
c/o Carlings, C.P.R. Dock.

How Payment Received :
Transfers from Windsor.

B. 13's (Ottawa) :

Entry No.	Consignee	Goods	Date London	Customs Stamp		Name of Boat	
				April	Sandwich		
1309	B. Syringe	50 Cartons	1927 March 30	7		Bird	
1317	"	25 "	"	"	"	"	30
8	"	100 "	"	"	"	"	
9	"	50 "	"	"	"	"	
1346	"	100 "	"	5	"	Bee	
7	"	100 "	"	"	"	Tot	
8	"	25 "	"	"	"	"	
1350	"	25 "	"	6	"	Chub	
1362	"	100 "	"	"	"	Tot	
74	"	100 "	"	"	"	Wave	
3270	"	50 "	"	11	"	Bee	
3287	"	50 "	"	9	"	Pup	40
3292	"	50 "	"	"	"	Wave	
3	"	50 "	"	"	"	"	
3304	"	25 "	"	8	"	Rut	
5	"	25 "	"	"	"	"	
6	"	25 "	"	"	"	"	
7	"	50 "	"	"	"	"	
3343	"	25 "	"	7	"	Bark	
6	"	100 "	"	"	"	Pup	
3350	"	25 "	"	"	"	Pet	
5387	"	50 "	"	12	"	Tot	50
		<u>1200</u>					

EXHIBIT No. 120.—Continued.

**CARLING EXPORT BREWING AND MALTING COMPANY LIMITED
SPECIAL CASE FILED AS EXHIBIT Nos. 10A, 10B AND 10C.**

*In the
Exchequer
Court of
Canada.*

Invoice :

Date : 11th April 1927. Number : 04664.
Name : B. Syringe, Detroit, Michigan.
c/o C.P.R. Dock, Windsor, Ontario.
Particulars : 800 Amber Ale Pints at \$1.90 \$1,520.00
400 Black Label at \$2.00 800.00

\$2,320.00

Exhibits
No. 120.
Index to
Special
Cases,
May 17,
1924-Apr. 11,
1927.

10

Car No. : C. P. 287433.

—Continued.

Bill of Lading :

Date : 11th April 1927. Number : 04977.
Consigned to : B. Syringe, c/o C.P.R. Dock, Windsor, Ontario.
Car : C.P. 287433.
Goods : 1,000 Cartons—pints.
Bears notation, "For Export from Canada, deliver only under supervision of
Collector of Customs.

20

B. Syringe, Detroit, c/o Carlings C.P.R. Dock.

Account Charged :

How Payment Received :

Transfer from Windsor.

B-13's (Ottawa) :

Entry No.	Consignee	Goods	Dated London	Customs Stamp	Name of Boat
8966	B. Syringe	25 Cartons	1927 Apr. 11	1927 Apr. 22 Sandwich	Betty
7	"	25 "	"	" "	"
8	"	25 "	"	" "	"
9	"	25 "	"	" "	"
30 5298	"	50 "	"	" 16 "	Sap
5367	"	100 "	"	" 13 "	Mike
7669	"	50 "	"	" 18 "	Aggie
5351	"	50 "	"	" 13 "	Bob
3230	"	50 "	"	May 30 Amherstburg	
3205	"	25 "	"	" "	
2	"	25 "	"	" "	
3189	"	25 "	"	" "	
3190	"	50 "	"	" "	
5	"	25 "	"	" "	
40 9	"	25 "	"	" "	
3200	"	25 "	"	" "	
1	"	25 "	"	" "	
19840	"	50 "	"	" 16 Sandwich	
16606	"	50 "	"	" 5 "	
5	"	50 "	"	" "	
16580	"	100 "	"	" 6 "	
		<u>875</u>			

EXHIBIT No. D.
(Defendant's)

Export by Countries Alcoholic Beverages.

DEPARTMENT OF CUSTOMS AND EXCISE.

**TOTAL EXPORTS BY COUNTRIES OF ALCOHOLIC BEVERAGES DURING THE FISCAL YEARS
ENDED MARCH, 1924, 1925, AND 1926, AND SIX MONTHS ENDED 30TH SEPTEMBER, 1926.**

*In the
Exchequer
Court of
Canada.*

Exhibits

No. D.
Export by
Countries
Alcoholic
Beverages,
Mar., 1924-
Sept., 1926.

CANADIAN PRODUCE	1924		1925		1926		April to September, 1926	
	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE
10 United Kingdom.....	175,430	\$810,491	34,451	\$123,859	11,088	\$ 38,347	40,485	\$162,774
British East Africa.....								
British South Africa.....	38	150	76	300	454	1,806	490	1,950
Gold Coast.....	2,385	3,379	356	344				
Nigeria.....								
Sierre Leone.....			70	89				
British West Africa, other.....			16	20				
Bermuda.....	78,723	327,966	115,259	569,170	6,588	9,636	2,240	1,483
British India.....	77	360	2,723	4,130				
Ceylon.....								
British Straits Settlements.....			91	473	32	130	15	60
20 British Guiana.....	6,731	27,241	2,662	30,005	2,207	29,291	267	390
British Honduras.....	26,723	106,725	4,057	15,373	2,204	5,784	2,564	6,102
Barbados.....	1,427	1,637	4,392	3,537	1,680	1,126	9	15
Jamaica.....	17,287	66,351	3,301	13,012	1,387	4,672	492	774
Trinidad.....	822	3,910	802	2,478	731	1,623	341	1,020
British West Indies, other.....	244,612	1,157,605	135,420	537,987	321,932	1,789,803	92,972	479,710
Hong Kong.....	42,501	51,525	23,244	31,113	24,379	35,002	5,667	6,849
Newfoundland.....	88,035	354,213	88,484	547,257	2,603	40,437	1,888	2,688
Australia.....	2,268	7,127	3,279	8,788	2,012	6,221	1,075	3,266
New Zealand.....	15	27			264	766	43	62
30 British Oceania, other.....								
Argentina.....	907	3,348	1,367	5,063	2,492	9,300	1,256	4,650
Belgium.....	11,000	64,588	2,855	12,056	1,119	5,250	13,506	35,592
Bolivia.....								
Brazil.....	148	700	556	2,642	900	4,561		
Chile.....	237	1,120	534	2,520	104	490	494	2,342
China.....	14,664	31,949	17,784	69,045	6,778	28,331	4,869	19,493
Columbia.....			14,779	53,570	114	284	117	555
Costa Rica.....	372	1,627	509	2,280	400	1,582	253	1,114
Cuba.....	281,937	964,070	291,175	1,337,278	141,735	859,356	38,516	197,937
40 Czecho Slovakia.....								
Denmark.....	232	1,008	213	968	213	955	143	626
Ecuador.....	234	1,106	330	1,566	74	350	51	246
Egypt.....	1,276	5,700	1,076	4,750	1,219	5,794	792	3,750
France.....	12,531	72,404	1,493	6,500	1,075	5,118	1,118	5,000
French East Indies.....	540	800	1,298	1,960	2,043	2,426	1,238	1,344
French Oceania.....					31	120	33	140
French West Indies.....					184	1,250		
St. Pierre.....	152,930	1,356,692	116,256	658,206	5,816	64,400	622	7,171
Germany.....	4,770	28,626	306	1,315				

EXHIBIT No. D.—Continued.

DEPARTMENT OF CUSTOMS AND EXCISE

TOTAL EXPORTS BY COUNTRIES OF ALCOHOLIC BEVERAGES DURING THE
FISCAL YEARS ENDED MARCH, 1924, 1925 AND 1926, AND
SIX MONTHS ENDED 30TH SEPTEMBER, 1926.In the
Exchequer
Court of
Canada.

Exhibits

No. D.
Export by
Countries
Alcoholic
Beverages,
Mar., 1924-
Sept., 1926.

—Continued.

	1924		1925		1926		April to September, 1926	
	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE
CANADIAN PRODUCE								
Guatemala.....	3,015	14,394	34,602	113,908	3,369	15,943	955	4,546
Hayti.....	5,010	7,705	1,171	2,946	696	3,361	1,368	6,888
10 Honduras.....	20,614	89,921	32,043	155,853	13,861	106,524	3,004	14,814
Italy.....	450	1,900	151	610				
Japan.....	2,018	9,059	3,114	13,485	1354	5,126	1,656	7,082
Korea.....	47	210						
Mexico.....	97,220	417,308	3,925	23,974	2,585	12,732	2,394	11,430
Netherlands.....	152	690	246	1,114	188	829	94	423
Dutch East Indies.....	16	60	16	65	16	60	22	111
Dutch Guiana.....								
Dutch West Indies.....	48	80	118	560	219	1108	152	786
20 Nicaragua.....	17,834	80,557	3,694	17,804	3,794	18,587	1,518	7,597
Norway.....								
Panama.....	1,675	8,121	4,014	19,040	1,171	5,448	926	4,516
Peru.....			70	241	424	2,263	328	1,978
Portugal.....								
Portuguese Africa.....			37	150	75	300		
Russia.....								
Salvador.....	3,986	18,664	49,355	197,321	14,759	76,192	2,703	13,253
San Domingo.....	37	190					147	727
Siam.....								
Sweden.....								
30 Syria.....	151	700						
Turkey.....								
United States.....	3,100,679	8,714,709	3,401,973	11,610,169	4,580,055	17,995,758	3,296,454	10,679,506
Alaska.....	7,289	15,286						
Virgin Islds, U.S.A.....								
Hawaii.....								
Philippine Islds.....	2,219	11,633	1,965	9,723	596	3,026	597	2,913
Porto Rico.....								
Uruguay.....	841	3,100	840	3,100	1,271	5,260	760	1,982
Venezuela.....	1,641	7,443	1,706	7,822	210	969	291	1,299
40 Total.....	4,433,894	\$14,854,175	4,409,054	\$16,225,533	5,166,501	\$21,207,777	3,524,925	\$11,706,937
FOREIGN PRODUCE								
United Kingdom.....			13	\$ 73	12	\$ 159	142	\$ 335
British West Indies, other.....	2,073	\$ 42,798						
Newfoundland.....	75	620	18	71	7	20	13,438	107,504
Cuba.....	40	190						
France.....	230	1,000			4	88		

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EXHIBIT No. D.—Continued.

DEPARTMENT OF CUSTOMS AND EXCISE.

TOTAL EXPORTS BY COUNTRIES OF ALCOHOLIC BEVERAGES DURING THE
FISCAL YEARS ENDED MARCH, 1924, 1925, AND 1926, AND
SIX MONTHS ENDED 30TH SEPTEMBER, 1926.In the
Exchequer
Court of
Canada.

Exhibits

No. D.
Export by
Countries
Alcoholic
Beverages,
Mar. 4, 1924-
Sept., 1926.

—Continued.

	1924		1925		1926		April to September, 1926		
	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	
BEER (CANADIAN PRODUCT)									
	French Guiana.....	.....	.....	.....	.....	.....	.....	.....
	French East Indies.....	540	1,298	1,960	2,043	2,426	1,238	1,344	
10	French West Indies.....	.....	.....	.....	.....	.....	.....	.....
	St. Pierre.....	2,216	647	622	.....	.....	150	155
	Guatemala.....	.....	20,070	32,400	.....	.....	.....	.....
	Hayti.....	4,486	783	985	32	41	.....	.....
	Honduras.....	2,750	1,800	2,345	900	1,275	.....	.....
	Japan.....	50	.....	.....	.....	.....	.....	.....
	Mexico.....	42,761	59,285	.....	.....	.....	.....	.....
	Dutch East Indies.....	.....	.....	.....	.....	.....	.....	.....
	Dutch Guiana.....	.....	.....	.....	.....	.....	.....	.....
	Dutch West Indies.....	48	.....	.....	.....	.....	.....	.....
20	Nicaragua.....	5,400	.....	.....	.....	.....	.....	.....
	Panama.....	.....	.....	.....	.....	.....	.....	.....
	Peru.....	.....	.....	.....	.....	.....	.....	.....
	Salvador.....	.....	10,875	19,900	.....	.....	.....	.....
	San Domingo.....	.....	.....	.....	.....	.....	.....	.....
	Siam.....	.....	.....	.....	.....	.....	.....	.....
	United States.....	2,852,877	4,902,077	2,970,702	4,634,751	3,749,741	2,847,481	3,712,555	
	Alaska.....	7,289	15,286	.....	.....	.....	.....	.....
	Virgin Islds.....	.....	.....	.....	.....	.....	.....	.....
	Philippines.....	.....	.....	.....	.....	.....	.....	.....
30	Porto Rico.....	.....	.....	.....	.....	.....	.....	.....
	Uruguay.....	.....	.....	.....	.....	.....	.....	.....
	Venezuela.....	.....	.....	.....	.....	.....	.....	.....
	Total.....	3,192,491	\$5,335,668	3,142,048	\$4,860,984	3,786,164	\$5,156,103	2,861,753	\$3,727,775
BEER (FOREIGN PRODUCE)									
	British West Indies, other.....	37	\$ 107	.....	.....	.....	.....	.....
	Cuba.....	20	70	.....	.....	.....	.....	.....
	Mexico.....	118	280	
	United States.....	1,351	1,799	
	Alaska.....	2,800	6,720	
40	Total.....	4,326	\$8,976	

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EXHIBIT No. D.—Continued.

DEPARTMENT OF CUSTOMS AND EXCISE

TOTAL EXPORTS BY COUNTRIES OF ALCOHOLIC BEVERAGES DURING THE
FISCAL YEARS ENDED MARCH, 1924, 1925 AND 1926, AND
SIX MONTHS ENDED 30TH SEPTEMBER, 1926.In the
Exchequer
Court of
Canada.

Exhibits

No. D.
Export by
Countries
Alcoholic
Beverages,
Mar., 1924-
Sept., 1926.

—Continued.

	1924		1925		1926		April to September, 1926	
	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE
WHISKEY (CANADIAN PRODUCE)								
British India.....	77	360	203	910	.....	.....	.....	.....
British Straight Settlements.....	.....	.....	91	473	32	130	15	60
10 British Guiana.....	5,266	24,821	1,849	28,700	1,894	28,780	.....	.....
British Honduras.....	25,703	105,628	3,160	14,250	809	4,001	753	3,801
Barbados.....	147	700	222	1,050	.....	.....	.....	.....
Jamaica.....	14,984	63,606	2,280	11,521	564	3,520	85	390
Trinidad.....	817	3,900	409	1,950	186	814	163	745
British West Indies, other.....	203,833	1,109,881	109,418	504,665	317,551	1,783,976	92,344	478,650
Hong Kong.....	811	3,340	436	1,971	356	1,126	154	723
Newfoundland.....	77,220	341,694	86,964	545,467	2,518	40,151	1	8
Australia.....	2,348	7,091	3,277	8,781	2,012	6,281	1,075	3,266
New Zealand.....	.....	.....	.....	.....	84	402	.....	.....
20 British Oceania, other.....	.....	.....	.....	.....	.....	.....	.....	.....
Argentina.....	907	3,348	1,367	5,063	2,492	9,300	1,256	4,650
Belgium.....	11,000	64,588	2,855	12,056	1,119	5,250	749	3,500
Bolivia.....	.....	.....	.....	.....	.....	.....	.....	.....
Brazil.....	148	700	556	2,642	883	4,411	.....	.....
Chile.....	237	1,120	534	2,520	104	490	494	2,342
China.....	3,984	17,806	10,966	58,356	5,210	25,694	4,073	18,589
Colombia.....	.....	.....	7,279	43,570	28	174	117	555
Costa Rica.....	372	1,627	509	2,280	400	1,582	253	1,114
30 Cuba.....	138,276	767,256	235,918	1,262,099	139,490	855,786	37,450	191,630
Denmark.....	232	1,008	139	629	213	955	143	626
Ecuador.....	234	1,106	330	1,566	74	350	51	246
Egypt.....	1,276	5,700	1,076	4,750	1,219	5,794	792	3,750
France.....	12,529	72,360	1,493	6,500	1,075	5,118	1,118	5,000
French West Indies.....	.....	.....	.....	.....	146	1,000	.....	.....
French Oceania.....	.....	.....	.....	.....	31	120	31	120
St. Pierre.....	150,714	1,354,016	115,609	657,584	5,816	64,400	472	7,016
Germany.....	4,770	28,626	.....	.....	.....	.....	.....	.....
Guatemala.....	3,015	14,394	13,142	77,095	3,369	15,943	955	4,546
Hayti.....	524	2,670	388	1,961	664	3,320	1,368	6,888
40 Honduras.....	17,864	86,744	31,043	153,508	12,961	105,249	3,004	14,814
Italy.....	450	1,900	150	600	.....	.....	.....	.....
Japan.....	1,703	7,841	3,034	13,045	1,354	5,126	1,455	6,659
Korea.....	47	210	.....	.....	.....	.....	.....	.....
Mexico.....	54,019	355,823	3,515	21,095	2,585	12,732	2,394	11,433
Netherlands.....	152	690	246	1,114	188	829	94	423
Dutch East Indies.....	16	60	16	65	16	60	22	111
Dutch Guiana.....
Dutch West Indies.....	118	560	219	1,108	152	786

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EXHIBIT No. D.—Continued.

DEPARTMENT OF CUSTOMS AND EXCISE.

TOTAL EXPORTS BY COUNTRIES OF ALCOHOLIC BEVERAGES DURING THE
FISCAL YEARS ENDED MARCH, 1924, 1925, AND 1926, AND
SIX MONTHS ENDED 30TH SEPTEMBER, 1926.In the
Exchequer
Court of
Canada.

Exhibits

No. D.
Export by
Countries
Alcoholic
Beverages,
Mar., 1924-
Sept., 1926.

—Continued.

	1924		1925		1926		April to September, 1926		
	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	
WHISKEY—CANADIAN PRODUCE									
10	Nicaragua.....	12,434	73,457	3,694	17,804	3,794	18,527	1,518	7,597
	Panama.....	1,675	8,121	4,014	19,040	1,168	5,428	926	4,516
	Peru.....			70	241	424	2,263	284	1,578
	Portuguese Africa.....			37	150	75	300		
	Russia.....								
	Salvador.....	3,986	18,664	24,480	164,471	14,759	76,192	2,703	13,253
	San Domingo.....	37	190					147	727
	Sweden.....								
	Syria.....	151	700						
	United States.....	244,576	3,776,211	415,282	6,777,099	794,624	12,572,011	422,346	6,748,016
	Alaska.....								
20	Hawaii.....								
	Philippine Islands.....	2,219	11,633	1,965	9,723	596	3,026	597	2,913
	Uruguay.....	841	3,100	640	3,100	1,188	4,900	428	1,600
	Venezuela.....	1,641	7,443	1,706	7,822	210	989	291	1,299
	Total.....	1,229,947	\$9,462,428	1,227,348	\$11,129,118	1,330,647	\$15,712,222	607,355	\$7,684,096
WHISKEY (FOREIGN PRODUCE)									
	United Kingdom.....			1	25	7	118	1	8
	British West Indies, other.....	1,732	37,370						
	St. Pierre.....	3,790	15,750			120	547		
	Salvador.....					74	657		
30	United States.....	24,618	598,361	9,740	223,365	16,105	341,016	30,527	619,122
	Alaska.....	4,442	109,272	136	3,310				
	Total.....	34,572	\$760,753	9,877	\$226,700	16,306	\$342,338	30,528	\$619,130
WINES (CANADIAN PRODUCE)									
	United Kingdom.....	215	\$ 452	260	\$ 483	128	\$ 237	128	\$ 224
	Bermuda.....	15	60	20	37			16	9
	British Guiana.....	298	584	298	576	259	481	132	245
	British Honduras.....							5	7
	Barbados.....	20	80	389	382	60	226		
	Jamaica.....	293	595	386	718	257	479	137	269
	Trinidad.....	5	10	43	81	44	82	43	80
40	British West Indies, other.....			44	81	43	79	43	80

EXHIBIT No. D.—Continued.

DEPARTMENT OF CUSTOMS AND EXCISE

TOTAL EXPORTS BY COUNTRIES OF ALCOHOLIC BEVERAGES DURING THE
FISCAL YEARS ENDED MARCH, 1924, 1925 AND 1926, AND
SIX MONTHS ENDED 30TH SEPTEMBER, 1926.In the
Exchequer
Court of
Canada.

Exhibits

No. D.
Export by
Countries
Alcoholic
Beverages,
Mar., 1924-
Sept., 1926.

—Continued.

	1924		1924		1926		April to September, 19	
	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE
WINES (CANADIAN PRODUCE)								
	Hong Kong.....	.....	.....	.....	.....	.....	.....	.....
	Newfoundland.....	163	62	202	62	226	42	124
10	Australia.....	.....	2	7	.....	.....	.....	.....
	New Zealand.....	.....	.....	.....	.....	.....	.....	.....
	Cuba.....	.....	.....	.....	.....	.....	116	557
	Guatemala.....	.....	410	2,879	.....	.....	.....	.....
	Mexico.....	.....	.....	.....	.....	.....	.....	.....
	Salvador.....	.....	.....	.....	.....	.....	.....	.....
	United States.....	938	4,363	21,444	20,043	88,696	13,892	43,859
	Alaska.....	.....	.....	.....	.....	.....	.....	.....
	Total.....	1,949	6,277	\$26,890	20,896	\$90,506	14,554	\$45,454
WINES (FOREIGN PRODUCE)								
20	United Kingdom.....	.....	12	\$ 48	5	\$ 41	4	\$ 18
	British West Indies, other.....	13	281	.....	.....	.....	.....	.....
	Newfoundland.....	39	154	18	71	20	.....	.....
	Cuba.....	20	120	.....	.....	.....	.....	.....
	France.....	.....	.....	.....	3	60	.....	.....
	St. Pierre.....	.....	.....	.....	.....	.....	1,003	4,720
	Guatemala.....	.....	272	1,515	.....	.....	.....	.....
	Mexico.....	37	400	.....	400	15,800	.....	.....
	Salvador.....	.....	100	243	256	3,126	625	3,203
	United States.....	401	8,554	351	3,343	1,291	4,828	87,002
30	Alaska.....	30	446	.....	.....	.....	.....	.....
	Total.....	540	753	\$5,220	1,962	\$46,192	6,460	\$94,943
OTHER POTABLE SPIRITS (CANADIAN PRODUCE)								
	United Kingdom.....	5,082	\$10,200	20	\$ 54	4,422	13,920	\$34,813
	Bermuda.....	951	982	1,212	1,359	139	277	.....
	Barbados.....	.....	.....	1	5	.....	.....	.....
	Jamaica.....	.....	.....	500	600	.....	.....	.....
	Trinidad.....	.....	.....	.....	.....	.....	.....	.....
	British West Indies, other.....	.....	.....	.....	.....	.....	.....	.....
40	Hong Kong.....	86	1,695	1,625	3,250	7,738	14,457	.....

EXHIBIT No. D.—Continued.

DEPARTMENT OF CUSTOMS AND EXCISE

TOTAL EXPORTS BY COUNTRIES OF ALCOHOLIC BEVERAGES DURING THE
FISCAL YEARS ENDED MARCH, 1924, 1925, AND 1926, AND
SIX MONTHS ENDED 30TH SEPTEMBER, 1926.In the
Exchequer
Court of
Canada.

Exhibits

No. D.
Export by
Countries
Alcoholic
Beverages,
Mar., 1924-
Sept., 1926.

—Continued.

	1924		1925		1926		April to September, 1926	
	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE	GALLONS	VALUE
OTHER POTABLE SPIRITS CANADIAN PRODUCE								
Newfoundland			505	417			45	41
New Zealand					22	200		
10 Belgium							12,757	32,092
Brazil					17	150		
China	129	500	773	2,876	599	1,465	26	64
Cuba			1,075	2,663				
Denmark			74	333				
France	2	24						
French Oceania							2	20
St. Pierre								
Germany			306	1,315				
Guatemala			1,390	4,413				
20 Italy			1	10				
Japan			36	175			201	403
Mexico	440	2,200						
Peru							44	400
Salvador			14,000	12,950				
United States	9	158	3,956	63,296	10,753	140,982	6,792	82,244
Alaska								
Uruguay					1	10		
Total	6,699	\$15,750	25,474	\$93,716	23,691	\$168,597	33,787	\$150,077
OTHER POTABLE SPIRITS (FOREIGN PRODUCE)								
30 United Kingdom							135	\$ 277
British West Indies, other	22	\$ 555						
Newfoundland	36	466					13,438	107,504
France	230	1,000			1	20		
St. Pierre			2,852	5,636				
United States	489	11,445	390	8,190	1,710	38,683	1,418	25,884
Alaska	98	2,537	4	101				
Mexico	2	60						
Salvador							615	1,927
04 Total	877	\$16,063	3,246	\$14,127	1,711	\$38,711	15,606	\$135,592

EXHIBIT No. E.

(Defendant's)

*In the
Exchequer
Court of
Canada.*

Exhibits

No. E.
Statement
of Exports
Through
Port of
Windsor and
Canada,
Mar., 1924-
Sept., 1927.**Statement of Exports Through Port of Windsor, and Canada.**

**MEMORANDUM OF RECORDED EXPORTS OF ALE, BEER AND PORTER
FOR THE PORT OF WINDSOR (INCLUDING OUTPORTS) AND FOR
THE DOMINION OF CANADA FOR THE GOVERNMENT'S
FISCAL YEARS ENDING 31ST MARCH, 1925-1926 AND
1927 AS EXTRACTED FROM THE STATISTICAL
RECORDS OF THE DEPARTMENT
OF NATIONAL REVENUE.**

10

	DOMINION		WINDSOR	
	GALLONS	VALUE	GALLONS	VALUE
1925.....	3,142,048	\$4,860,984.00	1,735,504	\$2,678,243.00
1926.....	3,786,164	\$5,156,103.00	2,654,315	\$3,523,504.00
1927.....	4,252,583	\$5,554,092.00	2,993,547	\$3,863,340.00

EXHIBIT No. 114.
(Plaintiff's)

Extract from Canadian Exporters Index, Windsor

EXTRACT FROM CANADIAN EXPORTER'S INDEX T25, PORT OF WINDSOR, WITH LABEL "LIQUOR EXPORT OCT. 1925, To MAR. 1926," PAGES 24 AND 25.
CARLINGS B. AND M. CO. C. B. GRANDIE

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 114.
Extract from
Canadian
Exporters'
Index,
Windsor,
Oct., 1925-
Mar., 1926.

10

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Sandwich	46405	46414	46446-7	46468	46489	46509	46517	46542-5	46558	46565	46568	46576	46610	46618-9
	46660-1	46676	51311	51317	51338	51357-8	51369	51371-2	51403-4	51412	51422	51459-60	51474	51476
	51497	51509-10	51527	51535	51537-8	51595	53019	53035-6	53065	53092-4	53187	53939	53950-1	53976-7
	56205-6	56212	56233	56284-6	57214-6	57241-2	57263-5	57287	58653	58661-4	58684-5	60906	60920-1	61554-6
	61579	61602-4	61619	61689-91	61693	61695	63738	63753	67518	67545	67571	67577	68379	70849
	70869	72717	72779	73872	75844	78107	78109	78150	78197	78801	78851	81619	81666	82224-5
	83917-23	84307-9	86002-3	86601	86803									
Walkerville	50957	51019	51177	51248	51255	51298	53187	53225	53239	54190	54192	54199	54278	54294
	55103	55162	55901	55933	55986	55990	56930	57542	58313	60733	60748	60807	60831	62180
	63115	63156	63221	63890	67173	68210	68254	68280	69122	69546	70512	70554	70587	70599
	71665	72628	73952	75928	75933	75950	76069	76446	76465	76488	76494	77900	77923	80505
	81771	81856	83017	84271	85370	86886								
Windsor	57420	57637	58020-2	60382	63922	65496	66218	67327	68076	68703-5	69247	69619	69807	70113-8
	70292	71432	71435-6	71998-9	72310	73393	74257	74318-9	74589-90	74593	74901-4	77616-29	80781-91	80993-5
	82493-8	84676-7	85285-8	86782										
B' River	53303	53316	53328	53331	53345	61004	61017	68673						

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EXHIBIT No. 36.

(Plaintiff's)

Comparison of Sales with B 13's.

BERMUDA EXPORT COMPANY

COMPARISON OF QUANTITIES OF CARLING'S BEER SOLD AS PER THE BOOKS OF THE COMPANY FOR THE PERIODS 15TH TO 23RD SEPTEMBER, 1926, AND 3RD TO 11TH NOVEMBER, 1926, WITH THE QUANTITIES SHOWN ON B-13's ON FILE WITH THE DEPARTMENT OF NATIONAL REVENUE, OTTAWA, FOR THE SAME PERIODS.

In the
Exchequer
Court of
Canada.

Exhibits

No. 36.
Comparison
of Sales with
B-13's, Sept.
15-23, 1926,
Nov. 3-11,
1926.

10	Windsor District.			Amherstburg District			Wallaceburg District			Belleville	Sarnia	Total			Shortage of B-13's or Overage of B-13's			
	Date.	¼	½	Cases	¼	½	Cases	¼	½	Cases	Cases	Cases	¼	½	Cases	¼	½	Cases
	September 15 to 23...	83	1,169	21,148	...	...	3,390	...	...	1,606	....	10	83	1,169	26,154	...	...	...
	“ “ ...	60	1,088	15,814	...	...	3,000	...	...	1,350	....	...	60	1,088	20,144	23	81	6,010
	November 3 to 11.....	37	655	19,707	...	...	3,552	...	...	2,089	....	...	37	655	25,348	...	...	...
	“ “	28	604	18,020	...	...	4,335	...	...	1,700	....	...	28	604	24,035	9	51	1,313

Black figures represent Company's figures.

Italic figures represent Export Entries.

EXHIBIT No. 115.

(Plaintiff's)

Reports re Boats Spray, Tot and Whippet.

THE KING vs. CARLING EXPORT BREWING AND MALTING COMPANY LIMITED.

Report No. 5441 (Sandwich) 19th March, 1927, boat "Spray"

In the
Exchequer
Court of
Canada.Exhibits
No. 115
Reports re
Boats Spray,
Tot and
Whippet
Feb., 1927

Entry No.	Car No.	No. Cases.	Date of B 13's (London)
114516	C.P. 287503	10	1927 February 7
7	287502	10	" " 18
8	"	10	" " 18
9	"	10	" " 18
20	286377	10	" " 17
1	"	10	" " 17
2	"	10	" " 17
3	"	10	" " 17
4	"	10	" " 17
5	285397	10	" " 25
114514	287672	10	" " 4
15	"	15	" " 4

20 Report No. 5674 (Sandwich) 28th March, 1927, boat "Tot"

117749	C.P. 287041	10	1926, December 29
50	287209	50	1927, March 16
1	284438	25	" " 21

Report No. 125 (Walkerville). 11th April, 1927, boat "Whippet"

2817	C.P. 287225	1	1927, February 26
8	285173	1	" " 23
9	"	1	" " 23
20	"	1	" " 23
1	"	1	" " 23
2	"	1	" " 23
3	"	1	" " 8
4	"	1	" " 8
5	"	1	" " 8
6	"	1	" " 8

EXHIBIT No. 113.

(Plaintiff's)

In the
Exchequer
Court of
Canada.

Report re Boat "Jane."

Exhibits

No. 113.
Report re
Boat "Jane,"
Feb.-Mar.,
1927.

THE KING vs. CARLING EXPORT BREWING AND MALTING COMPANY
LIMITED

Report No. 104 (Walkerville) 9th April, 1927, boat "Jane"

Entry No.	Car No.	No. Cases	Date of B-13's (London)	
2830	C.P. 287225	2	1927, February 26	10
1	286266	2	" " 12	
2	286266	2	" " 12	
3	285173	2	" " 23	
4	"	2	" " 23	
5	"	2	" " "	
6	"	2	" " "	
7	"	2	" " "	
9	"	2	" " 8	
40	"	2	" " "	
1	287503	2	" " 7	20
2	"	2	" " "	
3	"	2	" " "	
4	"	2	" " "	
5	"	2	" " "	
6	"	2	" " "	
7	"	2	" " "	
8	"	2	" " "	
9	"	2	" " "	
50	285173	2	" " 23	30
1	"	2	" " "	
2	5509	2	" " 25	
3	"	2	" " "	
4	"	2	" " "	
5	"	2	" " "	
6	"	2	" " "	
7	"	2	" " "	
8	286284	2	" " 3	
9	287503	5	" " 7	
60	284108	15	" March 2	
2829	287672	2	" February 4	40
2838	"	10	" " 4	
2861-6	"	12	" " 4	
		100		

EXHIBIT No. 123.

(Plaintiff's)

Export Entry No. 323.*In the
Exchequer
Court of
Canada.*

Exhibits

STATEMENTS APPEARING ON FACE OF B.13.

No. 123.
Export
Entry
No. 323,
June 9, 1924.

Report No. : 338.
Entry No : 323.
Place of Lading : Port Lambton, Ont.
Delivered by : The Carlings Brewing Co. Ltd., London, Ont., to Launch Grace
(Name of Railway or Vessel, etc.) for exportation to Mt.
Clemens, Mich., U.S.A. (Country of final or ultimate
destination)
Address of Consignee : A. Grandi, Detroit, Mich.
Goods : 130 Cartons Beer.
Quantity : 260 gals.
Value : \$520.00.
Certificate signed by : Hamilton Brewing Association, Hamilton, Ont.
Date of Certificate : June 9th, 1924.
Customs Stamp : H. M. Customs,
Jun. 9, 1924.
Exported at
Port Lambton, Ont

EXHIBIT No. Z4.

(Defendant's)

Comparison of Shipments to Belle River with B 13's of same place.No. Z4.
Comparison
of Shipments
to Belle
River with
B-13's of
same place.

CARLING EXPORT BREWING AND MALTING COMPANY, LIMITED

COMPARISON OF QUANTITIES AND VALUES OF SHIPMENTS RECORDED
AS HAVING BEEN MADE TO THE OUTPORT OF BELLE RIVER, AND
THOSE RECORDED ON B-13's STAMPED WITH THE CUSTOMS
STAMP OF THE OUTPORT OF BELLE RIVER.

30

Shipments

	Cases or Cartons	½ bbls.	¼ bbls.	Value
D. K. Grandi Account.....	600	...	...	\$ 1,500.00
A. Disburg Account.....	26,800	100	200	84,865.00
do.—1925.....	5,800	...	...	16,530.00
C. B. Grandi, c/o A. Dis- burg, Belle River.....	13,509	100	4	25,031.75
	<u>46,709</u>	<u>200</u>	<u>204</u>	<u>\$127,926.75</u>

B-13's

40

No. of Cases.....	44,843
No. of ½ bbls.....	103
No. of ¼ bbls.....	12
Value.....	\$175,941.00

EXHIBIT No. Z4.—Continued

In the
Exchequer
Court of
Canada.

Comparison

Exhibits
No. Z4.
Comparison
of Shipments
to Belle
River with
B-13's of
same place.
—Continued.

Shortage	of B-13's for cases.....	1,866 cases.
do.	of B-13's for $\frac{1}{2}$ bbls.....	97 $\frac{1}{2}$ bbls.
do.	of B-13's for $\frac{1}{4}$ bbls.....	192 $\frac{1}{4}$ bbls.

The values shown on the B-13's above is \$48,014.25 in excess of the value for the shipments as shown by the invoices.

EXHIBIT No. 122.

(Plaintiff's)

Certain B 13's Entered in Port Books as Defendant's.

STATEMENTS APPEARING ON FACE OF B 13's

In the
Exchequer
Court of
Canada.Exhibits
No. 122.
Certain
B 13's
Wrongly
Entered in
Port Books
as Defend-
ant's.
July, 1924-
No. 15,
1926.

Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For exportation to (Country of Final or Ultimate Destination)	Via	Address of Consignee	Goods	Value	Signature on behalf of shipper	Date of certificate or affidavit	Customs Stamp Customs Excise, Canada	
												Place.	Date.
10	297	Amherstburg, Ont.	National Breweries Co. Ltd., Montreal, Que.	Gas Boat "Martha"	U.S.A.	Direct	F. Wiser, Detroit, Mich.	2 c/s 9% Ale	\$ 9.00	National Breweries Co. Ltd., Montreal, Que.	July 5/24	Long Room, Amherstburg	July 5, 1924
	297	Amherstburg, Ont.	Foreign Exporting Co., Montreal, Que.	Gas Boat "Martha"	U.S.A.	Direct	J. House, Detroit, Mich.	5 c/s 9% Beer	20.00	W. G. E. Harris, Montreal, Que.	July 5/24	Long Room, Amherstburg	July 5, 1924
	697	Amherstburg, Ont.	Consolidated Distilleries	Gas Boat Bertha	United States	Direct	C. A. Savard, Detroit, Mich.	Two Whiskey (Corbys)	70.00	Marshall Squire, Amherstburg, Ont.	Aug. 30	Long Room, Amherstburg	Sept. 3, 1924
	789	Amherstburg, Ont.	Consolidated Distilleries, Thurlow.	Gas Boat Stiff	United States	Direct	C. A. Savard	14 cases Liquor	485.00	A. Flowers, Amherstburg, Ont.	Sept. 11	Long Room, Amherstburg	Sept. 12, 1924
	795	Amherstburg, Ont.	Consolidated Distillery Co., Thurlow	Gas Boat Snooker	United States	Direct	C. S. Savard, Detroit, Mich.	4 Cs. Whisky	160.00	A. Flowers, Amherstburg.	Sept. 13	Long Room, Amherstburg	Sept. 13, 1924
	209	Kingsville, Ont.	Consolidated Distilleries Ltd.	Boat Muskrat	U.S.A.	Direct	C. A. Savard, Detroit	10 cases whisky	550.00	D. Koven, Kingsville.	Sept. 13/24	Long Room, Kingsville Ont.	Sept. 13, 1924
20	70	Amherstburg, Ont.	Consolidated Dis. Co. Ltd. Montreal, P.Q.	Gas Boat Spray.	Detroit, Mich.	Amherstburg, Ont.	A. Richert, Detroit, Mich.	35 cases whisky	1,050.00	Amherstburg, Ont.	May 2nd, 1925	Long Room, Amherstburg.	May 2, 1925
	70	Amherstburg, Ont.	Consolidated Dis. Co. Ltd. Montreal, P.Q.	Gas Boat Spray	Detroit, Mich.	Amherstburg, Ont.	A. Richert, Detroit, Mich.	9 cases whisky	270.00	Amherstburg, Ont.	May 2nd, 1925	Long Room, Amherstburg.	May 2, 1925
	72	Amherstburg, Ont.	Consolidated Dis. Co. Ltd. Montreal, P.Q.	Gas Boat Go-Devil.	Detroit, Mich.	Amherstburg, Ont.	J. Gorsick, Detroit, Mich.	61 cases whisky	2,440.00	A. J. Woods, Amherstburg, Ont.	May 4th, 1925	Long Room, Amherstburg.	May 4, 1925
	900	Belleville, Ont.	Consolidated Distilleries Limited, Thurlow	C.N.R. to Walkerville H.E. to Benoit Dock and Major's Siding, LaSalle and Boat Mary.	United States		J. M. Arron, Detroit, Mich.	50 cases whisky	1,400.00	P. A. Henthorn	Nov. 15, 1926	Long Room, Amherstburg.	Nov. 25, 1925
30	900	Belleville, Ont.	Consolidated Distilleries Limited, Thurlow	C.N. to Walkerville, H.E. to Benoit Dock and Major's Siding, LaSalle and Boat Mary.	United States	Direct	J. M. Arron, Detroit, Mich.	25 cases whisky	725.00	P. A. Henthorn	Nov. 18, 1926	Long Room, Amherstburg.	Nov. 25, 1926
	900	Belleville, Ont.	Consolidated Distilleries Limited, Thurlow	C.N. to Walkerville, H.E. to Benoit Dock and Major's Siding, LaSalle and Boat Mary.	United States	Direct	J. M. Arron, Detroit, Mich.	10 cases whisky	290.00	P. A. Henthorn	Nov. 15, 1926	Long Room, Amherstburg.	Nov. 25, 1926
40	786	Waterloo, Ont.	The Kuntz Brewery, Ltd. Waterloo, Ont.	Restless III. No. R548	United States	Direct	Harry Whiteside, Detroit, Mich.	40 Cartons 9% Beer	110.00	Kuntz Brewery, Limited, Waterloo, Ontario. Raymond LaPorte.		Long Room, Amherstburg.	Sept. 12, 1924

EXHIBIT No. 73.

(Plaintiff's)

Documents of Shipments.

In the
Exchequer
Court of
Canada.

Exhibits

No. 73.
Documents
of Ship-
ments.
Aug. 9-30,
1924.

(a) Invoice :

Date : Aug. 30, 1924.
No. : 00259.
Name : LaSalle

10 Particulars : August 7 to 23.
6067 Cases at \$2.75 \$16,684.25
Notation : Charge.

(b) Invoice :

Date : Aug. 30.
No. : 00261.
Name : LaSalle.

Particulars : August 7 to 23.
1100 ¼'s at \$7.75. 8,525.00
Notation : Charge.

(c) Bill of Lading :

20 Canadian Pacific Railway Company.
No. 00045.
Date : Aug. 23rd, 1924.
Consigned to : C. B. Grandi, Detroit, Mich.
Destination : c/o Carling Dock, LaSalle, Ont.
Route : C.P. and Essex Terminal.
Car No. : C.P. 287113.
Goods : 150 Quarters.
Signed by : 600 Cartons Bottled Goods.
The Carling Export Brewing and Malting Co., Ltd.
Per J. N. Hennessy,
30 W. C. Whittaker, Agent, per A.J.
Notation : Seals : 3554211, 3554212.

(d) Bill of Lading :

40 Canadian Pacific Railway Company.
No. : 00038.
Date : Aug. 21st, 1924.
Consigned to : C. B. Grandi, Detroit, Mich.
Destination : c/o Carling Dock, LaSalle, Ont.
Route : C.P.R.
Car No. : C.P. 286597.
Goods : 250 Quarters.

EXHIBIT No. 73.—Continued.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 73.
Documents
of Ship-
ments.
Aug. 9-30,
1924.

—Continued.

(d) *Bill of Lading : Continued*

Signed by : Carling Export Brewing and Malting Co. Ltd.
Per J. N. Hennessy.
W. C. Whitaker, Agent, per "M."
Notation : Seals 3554205 }
206 }

(e) *Bill of Lading :*

Canadian Pacific Railway Company.
No. : 00026. 10
Date : Aug. 16th, 1924.
Consigned to : C. B. Grandi, Detroit, Mich.
Destination : c/o Carling Dock, LaSalle, Ont.
Route : C.P. and Essex Terminal.
Car. No. : C.P. 287876.
Goods : 100 Quarters (possibly 100 Eighths)
600 Cartons Bottled Goods.
Signed by : Carling Export Brewing and Malting Co. Ltd.
Per J. N. Hennessy.
W. C. Whitaker, Agent, per A.J. 20
Notation : Seals 3554595 }
596 } S.L.C.

(f) *Bill of Lading :*

Canadian Pacific Railway Company.
No. : 00024.
Date : Aug. 14th, 1924.
Consigned to : C. B. Grandi, Detroit, Mich.
Destination : c/o Carling Dock, LaSalle, Ont.
Route : C.P. and Essex Terminal.
Car No. : C.P. 204835. 30
Goods : 1000 Cartons Bottled Goods.
Signed by : The Carling Export Brewing and Malting Co. Ltd.
Per J. N. Hennessy.
W. C. Whitaker, Agent, per A.J.
Notation : Complying with Ontario and Dominion Temperance Acts.
Seals 3554593—94 S.L.C.

(g) *Bill of Lading :*

Canadian Pacific Railway Company.
No. : 00021.
Date : Aug. 14th, 1924. 40
Consigned to : C. B. Grandi, Detroit, Mich.

EXHIBIT No. 73.—Continued.

*In the
Exchequer
Court of
Canada.*

(g) *Bill of Lading : Continued*

Destination : Carling Dock, LaSalle, Ont.
Route : C.P.R. and Essex Terminal.
Car. No. : C.P. 287936.
Goods : 100 Quarters.
700 Cartons Bottled Goods. *Note.*—"This should be 800 Cartons."
Signed by : Carling Export Brewing and Malting Co. Ltd.
Per J. N. Hennessy.
10 W. C. Whitaker, Agent, per A.J.
Notation : Complying with Ontario and Dominion Temperance Acts.
Seals 3554591—592.

Exhibits

No. 73.
Documents
of Ship-
ments.
Aug. 9-30,
1924.

—Continued.

(h) *Bill of Lading :*

Canadian Pacific Railway Company.
No.
Date : Aug. 8th, 1924.
Consigned to : C. B. Grandi, Detroit, Mich.
Destination : Carling Dock, Windsor, Ont.
Route : C.P. and Essex Terminal.
20 Car No. : C.P. 52800.
Goods : 600 Cartons.
Signed by : Carling Export Brewing and Malting Co. Ltd.
Per J. N. Hennessy.
W. C. Whitaker, Agent, per A.J.
Notation : 3554580—81 S.L.C.

(i) *Bill of Lading :*

Canadian Pacific Railway Company.
No. : 00011.
Date : Aug. 11, 1924.
30 Consigned to : C. B. Grandi.
Destination : c/o Carling's Dock, Windsor, Ont.
Route : C.P.R. and Hydro Radial Essex Terminal.
Car No : C.P. Ref. 285346.
Goods : 150 Quarters.
600 Cartons Bottled Goods.
Signed by : Carling Export Brewing and Malting Co., Ltd.
Per J. N. Hennessy.
W. C. Whitaker, Agent, per A.J.
Notations : Complying with Ontario and Dominion Temperance Acts. S.L.C.
40 Seals 3554583—584.
"for C. B. Grandi, Detroit, M."

EXHIBIT No. 73-J.

(Plaintiff's)

STATEMENTS APPEARING ON FACE OF B.13's.

In the
Exchequer
Court of
Canada.

Exhibits
No. 73.
Documents
of Shipments
Aug. 9-30,
1924-

—Continued

Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For Exportation to (Country of Final or Ultimate Destination)	Via	Address of Consignee	Goods	Value	Signature on behalf of shipper	Date of certificate or affidavit	Customs Stamp National Revenue, Canada		
												Place.	Date.	
10	2423	2744	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	150 Cases Beer	\$ 600.00	Carling E. B. & M. Co. Ltd.	8/8/24	Sandwich, Ont.	Aug. 8, 1924
	2688	3025	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	238 cases Beer	952.00	Carling E. B. & M. Co. Ltd.	8/28/24	Sandwich, Ont.	Aug. 28, 1924
	2427	2748	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	300 cases Beer	1,200.00	Carling E. B. & M. Co. Ltd.	8/9/24	Sandwich, Ont.	Aug. 9, 1924
	2478	2794	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Sarah	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	260 cases Beer	1,040.00	Carling E. B. & M. Co. Ltd.	8/13/24	Sandwich, Ont.	Aug. 13, 1924
	2482	2798	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Retta	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	275 cases Beer	1,104.00	Carling E. B. & M. Co. Ltd.	8/13/24	Sandwich, Ont.	Aug. 13, 1924
	2483	2799	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Blue	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	125 cases Beer	500.00	Carling E. B. & M. Co. Ltd.	8/13/24	Sandwich, Ont.	Aug. 13, 1924
	2480	2796	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Mary Ann	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	275 cases Beer	1,100.00	Carling E. B. & M. Co. Ltd.	8/13/24	Sandwich, Ont.	Aug. 13, 1924
	2481	2797	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	350 cases Beer	1,400.00	Carling E. B. & M. Co. Ltd.	8/13/24	Sandwich, Ont.	Aug. 13, 1924
	2496	2811	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Buster	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	275 cases Beer	1,100.00	Carling E. B. & M. Co. Ltd.	8/15/24	Sandwich, Ont.	Aug. 15, 1924
	2497	2812	Sandwich	Carling E. B. & M. Co. Ltd.	Boat My Buddy	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	300 cases Beer	1,200.00	Carling E. B. & M. Co. Ltd.	8/15/24	Sandwich, Ont.	Aug. 15, 1924
20	2498	2813	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Mary Ann	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	256 cases Beer	1,024.00	Carling E. B. & M. Co. Ltd.	8/15/24	Sandwich, Ont.	Aug. 15, 1924
	2490	2814	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	260 cases Beer	1,040.00	Carling E. B. & M. Co. Ltd.	8/15/24	Sandwich, Ont.	Aug. 15, 1924
	2500	2815	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	325 cases Beer	1,300.00	Carling E. B. & M. Co. Ltd.	8/15/24	Sandwich, Ont.	Aug. 15, 1924
	2740	3088	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	395 cases Beer	1,580.00	Carling E. B. & M. Co. Ltd.	8/20/24	Sandwich, Ont.	Aug. 20, 1924
	2575	2900	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	100 cases Beer	400.00	Carling E. B. & M. Co. Ltd.	8/20/24	Sandwich, Ont.	Aug. 20, 1924
	2579	2904	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	200 cases Beer	800.00	Carling E. B. & M. Co. Ltd.	8/21/24	Sandwich, Ont.	Aug. 21, 1924
	2605	2929	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	111 cases Beer	444.00	Carling E. B. & M. Co. Ltd.	8/22/24	Sandwich, Ont.	8/22/24
	2604	2928	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	200 cases Beer	800.00	Carling E. B. & M. Co. Ltd.	8/22/24	Sandwich, Ont.	Aug. 22, 1924
	2479	2795	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Bessie M.K.	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	200 cases Beer	800.00	Carling E. B. & M. Co. Ltd.	8/13/24	Sandwich, Ont.	Aug. 13, 1924
	2719	3064	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	350 cases Beer	1,400.00	Carling E. B. & M. Co. Ltd.	8/30/24	Sandwich, Ont.	Aug. 30, 1924
30	2720	3065	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Sunset	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	550 cases Beer	2,200.00	Carling E. B. & M. Co. Ltd.	8/30/24	Sandwich, Ont.	Aug. 30, 1924
	2877	3243	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	350 cases Beer	787.50	Carling E. B. & M. Co. Ltd.	9/11/24	Sandwich, Ont.	Sept. 11, 1924
	2876	3242	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	222 cases Beer	499.50	Carling E. B. & M. Co. Ltd.	9/11/24	Sandwich, Ont.	Sept. 11, 1924
	2425	2745	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Nancy	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	70 1/4 Kegs Beer	630.00	Carling E. B. & M. Co. Ltd.	8/8/24	Sandwich, Ont.	Aug. 8, 1924
	2502	2817	Sandwich	Carling E. B. & M. Co. Ltd.	Boat A.O.H.	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	110 1/4 Kegs Beer	990.00	Carling E. B. & M. Co. Ltd.	8/15/24	Sandwich, Ont.	Aug. 15, 1924
	2541	2861	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Toad	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	17 1/4 Kegs Beer	153.00	Carling E. B. & M. Co. Ltd.	8/18/24	Sandwich, Ont.	Aug. 18, 1924
	2570	2892	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	53 1/4 Kegs Beer	477.00	Carling E. B. & M. Co. Ltd.	8/20/24	Sandwich, Ont.	Aug. 20, 1924
	3636	3066	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Mary Ann	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	99 1/4 Kegs Beer	891.00	Carling E. B. & M. Co. Ltd.	8/25/24	Sandwich, Ont.	8/25/24
	3644	2981	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	70 1/4 Kegs Beer	630.00	Carling E. B. & M. Co. Ltd.	8/25/24	Sandwich, Ont.	8/25/24
	2672	3014	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Leroy B.	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	22 1/4 Kegs Beer	198.00	Carling E. B. & M. Co. Ltd.	8/27/24	Sandwich, Ont.	8/27/24
40	2686	3023	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	98 1/4 Kegs Beer	882.00	Carling E. B. & M. Co. Ltd.	8/28/24	Sandwich, Ont.	Aug. 28, 1924
	7687	3024	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Mary Ann	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	90 1/4 Kegs Beer	810.00	Carling E. B. & M. Co. Ltd.	8/28/24	Sandwich, Ont.	Aug. 28, 1924
	2819	3178	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Buster	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	110 1/4 Kegs Beer	990.00	Carling E. B. & M. Co. Ltd.	9/5/24	Sandwich, Ont.	Sept. 5, 1924
	2820	3179	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Buster	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	188 1/4 Kegs Beer	1,242.00	Carling E. B. & M. Co. Ltd.	9/6/24	Sandwich, Ont.	Sept. 6, 1924
	2838	3204	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	78 1/4 Kegs Beer	702.00	Carling E. B. & M. Co. Ltd.	9/8/24	Sandwich, Ont.	Sept. 8, 1924
	2881	3247	Sandwich	Carling E. B. & M. Co. Ltd.	Boat Mary Ann	U.S.A.	Direct	C. B. Grandi, Detroit, Mich.	145 1/4 Kegs Beer	906.25	Carling E. B. & M. Co. Ltd.	9/11/24	Sandwich, Ont.	Sept. 11, 1924

EXHIBIT No. 99.

(Plaintiff's)

Documents of Shipment

In the
Exchequer
Court of
Canada.

Exhibits
No. 99.
Documents
of Ship-
ment.
of Oct. 6,
1924.

(a) Invoice :

Date : Oct. 6 1924.
No. : 00387
Name : A. Grandi, Detroit, Mich.
H. W. Longhead, Sarnia.
Particulars : 300 Ale at \$2.75 \$ 825.00
275 Lager at 2.50 687.50
25 Porter at 3.00 75.00
Car No. : C.P. 115318. \$1,587.50

10

(b) Bill of Lading :

Canadian Pacific Railway Company.
No. : 00149.
Date : Oct. 6, 1924.
Consignee : A. Grandi, Detroit, Mich.
c/o H. W. Longhead.
Destination : Longhead Siding, Sarnia, Ont.
Route : C. P. & P. M.
Car : C. P. 115318.
Goods : 600 cartons lager, ale and porter.
Signed by : The Carling Brewing and Malting Co. of London, Limited,
shippers per J. N. Hennessy.
Notation : W. C. Whitaker, agent, per A.J. for the Canadian Pacific Railway
Notation : Seals { 3624811
3624812.

(c) STATEMENTS APPEARING ON FACE OF B-13's

20

Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For exportation to (Country of final or ultimate Destination)	Address of Consignee	Goods	Value	Signature on behalf of Shipper	Date of Certificate or Affidavit	Customs Stamp Customs Excise, Canada	
											Place	Date
..	..	Sarnia	Carling Brewing Company Ltd.	Rowboat	U.S.A.	A Grandi, South Park, Mich.	20 Cases Beer	\$ 80.00	H. W. Loughheed, Sarnia	Oct. 20, 1924	Ferry Dock, Sarnia, Ont.	Oct. 20, 1924
..	..	Sarnia	Carling Brewery Company Limited	Rowboat	U.S.A.	A. Grandi, Port Huron.	20 c/s Ale	80.00	H. W. Loughheed, Sarnia	Oct. 20, 1923	Ferry Dock, Sarnia, Ont.	Oct. 20, 1924
..	..	Sarnia	Carling Breweries	Rowboat	U.S.A.	A. Grandi, South Park.	20 c/s Ale	80.00	H. W. Loughheed Sarnia	Oct. 21, 1924	Ferry Dock, Sarnia, Ont.	Oct. 21, 1924

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EXHIBIT No. 99.—Continued

(c) STATEMENTS APPEARING ON FACE OF B-13's—Continued.

*In the
Exchequer
Court of
Canada.*

Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For exportation to (Country of final or ultimate Destination)	Address of Consignee	Goods	Value	Signature on Behalf of Shipper	Date of Certificate or Affidavit	Customs Stamp Customs Excise, Canada	
											Place	Date
10	..	Sarnia	Carling Brewing Co. Ltd.	Rowboat	U.S.A.	A. Grandi, Port Huron.	20 c/s Beer	80.00	H. W. Lougheed, Sarnia	Oct. 21, 1924	Ferry Dock, Sarnia, Ont.	Oct. 21, 1924
	..	Sarnia	Carling Brewing Co. Ltd.	Rowboat	U.S.A.	A. Grandi, Port Huron	25 Ale	100.00	H. W. Lougheed, Sarnia	Oct. 21, 1924	Ferry Dock, Sarnia, Ont.	Oct. 21, 1924
	..	Sarnia	Carling Brewery Co.	Rowboat	U.S.A.	A. Grandi	25 Beer	100.00	H. W. Lougheed, Sarnia	Oct. 22, 1924	Ferry Dock, Sarnia, Ont.	Oct. 22, 1924
	..	Sarnia	Carling Brewery Co.	Rowboat	U.S.A.	A. Grandi	20 c/s Ale	80.00	H. W. Lougheed, Sarnia	Oct. 22, 1924	Ferry Dock, Sarnia, Ont.	Oct. 22, 1924
	..	Sarnia	Carling Brewery Co.	Rowboat	U.S.A.	A. Grandi	20 c/s Ale	80.00	H. W. Lougheed, Sarnia	Oct. 22, 1924	Ferry Dock, Sarnia, Ont.	Oct. 22, 1924
	..	Sarnia	Carling Brewery Co.	Rowboat	U.S.A.	A. Grandi	15 c/s Ale	60.00	H. W. Lougheed, Sarnia	Oct. 25, 1924	Ferry Dock, Sarnia, Ont.	Oct. 25, 1924
20	..	Sarnia	Carling Brewery Co.	Rowboat	U.S.A.	A. Grandi	15 c/s Beer	60.00	H. W. Lougheed, Sarnia	Oct. 24, 1925	Ferry Dock, Sarnia, Ont.	Oct. 25, 1924
	..	Sarnia	Carling Brewery Co.	Rowboat	U.S.A.	A. Grandi	20 c/s Ale	80.00	H. W. Lougheed, Sarnia	Oct. 24, 1925	Ferry Dock, Sarnia, Ont.	Oct. 25, 1924
	19953	Sarnia	Carling E. B. & M. Co. Ltd.	Rowboat	U.S.A.	A. Grandi	15 c/s Beer	60.00	H. W. Lougheed, Sarnia	Oct. 27, 1924	Ferry Dock, Sarnia, Ont. (No Stamp)	Nov. 3, 1924
30	19958	Sarnia	Carling E. B. & M. Co. Ltd.	Rowboat	U.S.A.	A. Grandi	15 c/s Beer	60.00	H. W. Lougheed, Sarnia	Oct. 27, 1924	Ferry Dock, Sarnia, Ont. (No Stamp)	Nov. 3, 1924
	19957	Sarnia	Carling E. B. & M. Co. Ltd.	Rowboat	U.S.A.	A. Grandi	20 c/s Beer	80.00	H. W. Lougheed, Sarnia	Oct. 31, 1924	Ferry Dock, Sarnia, Ont. (No Stamp)	Nov. 3, 1924
	19955	Sarnia	Carling E. B. & M. Co. Ltd.	Rowboat	U.S.A.	A. Grandi	20 c/s Ale	80.00	H. W. Lougheed, Sarnia	Oct. 30, 1924	Ferry Dock, Sarnia, Ont. (No Stamp)	Nov. 3, 1924
	19954	Sarnia	Carling E. B. & M. Co. Ltd.	Rowboat	U.S.A.	A. Grandi	20 c/s Beer	80.00	H. W. Lougheed, Sarnia	Oct. 28, 1924	Ferry Dock, Sarnia, Ont. (No Stamp)	Nov. 3, 1924
40	1277	Pt. Lambton	Carling E. B. & M. Co. Ltd.	Boat	U.S.A.	A. Grandi, Detroit, Mich.	20 c/s Ale	80.00	H. W. Lougheed, Sarnia	Oct. 27, 1924	Ferry Dock, Sarnia, Ont. (No Stamp)	Nov. 3, 1924
	1277	Pt. Lambton	Carling E. B. & M. Co. Ltd.	Boat	U.S.A.	A. Grandi, Detroit, Mich.	100 ctns. Beer	250.00	Carling Exp. B. & M. Co.	Nov. 13, 1924	Pt. Lambton, Ont.	Nov. 13, 1924
	1280	Pt. Lambton	Carling E. B. & M. Co. Ltd.	Boat	U.S.A.	A. Grandi, Detroit, Mich.	40 ctns. Beer	100.00	J. Famularo, Agt. Carling Exp. B. & M. Co.	Nov. 14, 1924	H. M. Customs Pt. Lambton, Ont.	Nov. 14, 1924
..	1360	Pt. Lambton	Carling E. B. & M. Co. Ltd.	Boat	U.S.A.	A. Grandi, Detroit, Mich.	110 ctns. Beer	275.00	J. Famularo, Agt. Carling Exp. B. & M. Co.	Nov. 26, 1924	Pt. Lambton, Ont.	Nov. 26, 1924

Exhibits
No. 99.
Documents
of Ship-
ment.
of Oct. 6,
1924.

—Continued.

EXHIBIT No. Y.

(Defendant's)

Certain B 13's of Amherstburg.

In the
Exchequer
Court of
Canada.

Exhibits
No. Y.
Certain
B-13's, Am-
herstburg.
Oct. 31-
Nov. 3, 1924.

STATEMENTS APPEARING ON FACE OF B-13.

Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For Exportation to (Country of final or ultimate Destination)	Route	Address of Consignee	Goods	Value	Signature on behalf of Shipper	Date of Certificate or Affidavit	Customs' Stamp Customs Excise, Canada	
												Place	Date
1057	1874	Amherstburg	Carling Brewery Co. London, Ont.	Gas Boat, Sea Lark	United States	Direct	C. B. Grandie, Detroit	100 c/s 15 kegs (1/2) 9% Beer 26 kegs (1/4)	\$250.00 210.00 105.00	Arthur Flowers	Nov. 3, 1924	Long Room, Amherstburg.	Nov. 3, 1924
1056	1873	Amherstburg	Carling Brewery Co. London, Ont.	Gas Boat Lotus	United States	Direct	C. B. Grandie, Detroit	22 c/s 9% Beer	55.00	Arthur Flowers	Oct. 31	Long Room, Amherstburg	Oct. 31, 1924
1055	1872	Amherstburg	Carling Brewery Co. London, Ont.	Gas Boat Sea Lark.	United States	Direct	C. B. Grandie, Detroit	40 c/s 25 kegs (1/2) 9% Beer 12 kegs (1/4) 100 c/s	\$100.00 350.00 90.00 250.00	Arthur Flowers	Oct. 31, 1924	Long Room, Amherstburg.	Oct. 31, 1924

EXHIBIT No. 54-C.
(Plaintiff's)
Documents of Shipment
CUSTOMS, CANADA

*In the
Exchequer
Court of
Canada.*

Form B 13—(Amended 1916)
500,000—1-24

Export Entry.

Exhibits
No. 54-C.
Documents
of Ship-
ment.
June 6, 1925.

..... *London, Ont.*
(Place of lading)

Report No.....

Entry No.....

10 Entry and List of Articles of domestic production and Foreign Articles, which are not subject to Export, Customs, or Excise Duties, delivered by..... *Carling E. B. & M. Co.*
(Address of Owner or Agent)

to..... *Dom. Expr.* for exportation to..... *U.S.A.*
(Name of Railway or Vessel, &c.) (Country of final or ultimate destination)

viâ (1)..... *Direct.* consigned as below :

N.B.—(1) State if shipped *viâ* United States Port, or direct from Canadian Port.
C.P. 112622

ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT	
				Domestic products, including imported goods re-manufactured in Canada	Foreign or imported products in same condition as imported
<i>C. B. Grandi</i>	<i>500</i>	<i>Lager</i>			
<i>Detroit, M</i>	<i>200</i>	<i>Ale</i>			
	<i>700</i>		<i>1360</i>		

30 STAMP OF PORT OF EXIT

*Customs-Excise
Canada
C.P.R. Freight Shed
(Date Illegible)
Windsor, Ont.*

I,..... *Carling E. B. & M. Co.*
(owner, shipper or consignor) hereby certify that the above is a full and true statement of the kinds, quantities, values and destination of all the articles delivered by me for exportation as aforesaid.
Signed by..... *Carling E. B. & M. Co.*
Residence..... *London*
Date..... *June 6/25*.....

—SEE REGULATIONS ON THE OTHER SIDE.

In the
Exchequer
Court of
Canada.

EXHIBIT No. 54-D.
(Plaintiff's)
Document of Shipment
CUSTOMS, CANADA

Exhibits

No. 54-D. Documents of Shipment.
June 6, 1925. Form B 13—(Amended 1926)
1,000,000—8-27
Sandwich, Ontario
(Place of lading)

Export Entry.

Report No.....848.....

Entry No.....845.....

Entry and List of Articles of domestic production and Foreign Articles, which are not subject to Export, Customs, or Excise Duties, delivered by *Carlings E.B. & M. Co. Ltd., London* (Address of Owner or Agent)

to *Boat Omar* for exportation to *U.S.A.*
(Name of Railway or Vessel, &c.) (Country of final or ultimate destination)

via (1) *Direct* consigned as below :

N.B.—(1) State if shipped via United States Port, or direct from Canadian Port.

ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT	
				Domestic products, including imported goods re-manufactured in Canada	Foreign or imported products in same condition as imported
<i>C. B. Grandie,</i>					
<i>Detroit, Michigan</i>					
	300	cases Beer	gals 600	\$900	
		Certified G. Fells			
				STAMP NATIONAL REVENUE CANADA CUSTOMS AND EXCISE MAR 31, 1928 SANDWICH ONT	

STAMP OF PORT OF EXIT

*National Revenue
Canada
Customs and Excise
June 8 - 25
Sandwich, Ont.*

*Officer of Customs and
Excise*

I, *Carlings E. B. & M. Co. Ltd.*
(owner, shipper or consignor), hereby certify that the above is a full and true statement of the kinds, quantities, values and destination of all the articles delivered by me for exportation as aforesaid.

Signed by *Carlings E. B. & M. Co. Ltd.*

Residence *London*

Date *6/8/25*

—SEE REGULATIONS ON THE OTHER SIDE

EXHIBIT No. 54-E.
(Plaintiff's)

*In the
Exchequer
Court of
Canada.*

Documents of Shipment

CUSTOMS, CANADA

Form B 13—(Amended 1926)
1,000,000—8-27

Export Entry.

Exhibits
No. 54-E.
Documents
of Ship-
ment.
June 6, 1925

.....*Sandwich. Ont.*.....
(Place of lading)

Report No.....*857*.....

Entry No.....*854*.....

10 Entry and List of Articles of domestic production and Foreign Articles, which are not sub-
ject to Export, Customs, or Excise duties, delivered by *Carlings E.B. & M. Co.Ltd.,London,*
(Address of Owner or Agent)

to.....*Boat Nancy*.....for exportation to.....*U.S.A.*.....
(Name of Railway or Vessel, &c.) (Country of final or ultimate destination)

Via.....*Direct*.....Consigned as below.

N.B.—(1) State if shipped *via* United States Port, or direct from Canadian Port.

ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT	
				Domestic products, including imported goods re-manufactured in Canada	Foreign or imported products in same condition as imported
<i>C. B. Grandie,</i>					
<i>Detroit, Mich.</i>					
	<i>300 cs</i>	<i>Beer</i> gals	<i>600</i>	<i>\$900</i>	
		<i>Certified G. Fells</i>			
			STAMP NATIONAL REVENUE CANADA CUSTOMS AND EXCISE MAR. 31 1928 SANDWICH ONT.		

40 STAMP OF PORT OF EXIT
*National Revenue
Canada
Customs and Excise
June 8 - 25
Sandwich, Ont.
Officer of Customs and
Excise*

I,.....*Carlings E. B. & M. Co.*.....
(owner, shipper or consignee), hereby certify that the above is a full and true statement of the kinds, quantities, values and destination of all the articles delivered by me for exportation as aforesaid.

Signed by.....*Carlings E. B. & M. Co.*.....

Residence.....*London*.....

Date.....*6/8/25*.....

—SEE REGULATIONS ON THE OTHER SIDE

In the
Exchequer
Court of
Canada.

EXHIBIT No. 54-F.
(Plaintiff's)
Documents of Shipment
CUSTOMS, CANADA

Exhibits

No. 54-F. Form B 13—(Amended 1926)
Documents of Shipment. 1,000,000—8-27
June 6, 1925. *Sandwich, Ontario*
(Place of lading)

Export Entry

Report No.....850.....

Entry No.....847.....

Entry and List of Articles of domestic production and Foreign Articles, which are not sub- 10
ject to Export, Customs, or Excise Duties, delivered by *Carlings E.B. & M.Co., Ltd., London,*
(Address of Owner or Agent)

to.....*Boat Bill*.....for exportation to.....*U.S.A.*.....
(Name of Railway or Vessel, &c.) (Country of final or ultimate destination)

via (1).....*Direct*.....consigned as below :

N.B.—(1) State if shipped *via* United States Port, or direct from Canadian Port.

ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT	
				Domestic products, including imported goods re-manufactured in Canada	Foreign or imported products in same condition as imported
<i>C. B. Grandie</i>					
<i>Detroit, Mich.</i>					
	100	<i>cases Beer gals</i>	200	\$300	
		<i>Certified G. Fells</i>			
				STAMP NATIONAL REVENUE CANADA CUSTOMS AND EXCISE MAR 31, 1928 SANDWICH ONT	

STAMP OF PORT OF EXIT

*National Revenue
Canada
Customs and Excise
June 8 - 25
Sandwich, Ont.*

*Officer of Customs and
Excise*

I,.....*Carlings B. E. & M. Co. Ltd.*.....
(owner, shipper or consignor), hereby certify that the above is a full and true statement of the kinds, quantities, values and destination of all the articles delivered by me for exportation as aforesaid.

Signed by.....*Carlings E. B. & M. Co. Ltd.*..... 40

Residence.....*London*.....

Date.....*6/8/25*.....

—SEE REGULATIONS ON THE OTHER SIDE.

EXHIBIT No. Z.

(Defendant's)

Export Entry No. 103259.*In the
Exchequer
Court of
Canada.*

Exhibits

No. Z.
Export
Entry
No. 103259,
Jun. 13, 1925.*Statements appearing on face of B.-13's :*

Report No. :

Entry No : 103, 259.

Place of Lading : Port Colborne, Ont.

Delivered by : Carling Brewing and Malting Co. to Motor Boat Nero (Name
of Railway or Vessel, etc.), for exportation to U.S.A.
(Country of final or ultimate destination) via Direct.

10 Address of consignee : H. J. Jones, Buffalo, N.Y.

Goods : 10 ctns. Export Ale.

Quantity : 18 gals.

Value : \$25.00.

Certificate signed by : H. W. Carrick, Port Colborne, Ont.

Date of Certificate : June 13/25.

Customs Stamp : Customs—Excise—Canada.

Jun. 13, 1925.

Exported at

Port Colborne, Ont.

EXHIBIT No. 51.

(Plaintiff's)

Documents of Shipment

In the
Exchequer
Court of
Canada.

Exhibits
No. 51.
Documents
of Ship-
ment.
of Aug. 10,
1925.

(a) Invoice :

Date : Aug. 10th, 1925.
No. : 00755.
Name : C.P.R. Dock, Windsor, Ont.
To La Salle, Ont.
C. B. Grandi, Detroit.
Particulars : 100 $\frac{1}{2}$ s at \$15.50 \$1,550.00
200 $\frac{1}{4}$ s at \$ 8.00 1,600.00
Car No. : C.P. 284586. \$3,150.00

(b) Bill of Lading :

Canadian Pacific Railway Company.
No : 02084.
Date : Aug. 10th, 1925.
Consigned to : C. B. Grandi, Detroit, c/o H. Low.
Destination : LaSalle, Ont.
Route : C.P. E.T. and Hydro.
Car : C.P. 284586.
Goods : 100 Halves Lager.
200 Quarters Lager.
Signed by : The Carling Brewing and Malting Co. of London, Limited,
per J. N. Hennessy.
W. C. Whitaker, Agent, per N.Y. for Canadian Pacific Railway.
Notations : Complying with Ont. and Dom. Temperance Acts.
Seals 3779375—376.

Statements Appearing on Face of B.13's.

20	Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For Exportation to (Country of final or ultimate destination)	Via	Address of Consignee	Goods	Value	Signature on behalf of Shipper	Date of Certificate or Affidavit	Customs Stamp National Revenue, Canada		
													Place	Date	
30	(c)	1742	1835	Sandwich, Ont.	Carlings Export Brewing and Malting Co., Ltd., London, Ont.	Boat Old Pal	U.S.A.	Direct	C. B. Grandi, Detroit	50 $\frac{1}{2}$ Kegs Beer 34 $\frac{1}{4}$ Kegs Beer	\$900.00 238.00	Carling's Export Brewing and Malting Co. Ltd., London	8/12/25	Sandwich,	Aug. 12, 1925 Aug. 12, 1925
	(d)	1740	1833	Sandwich, Ont.	Carling's Export Brewing and Malting Co. Ltd., London, Ont.	Boat Blue	U.S.A.	Direct	C. B. Grandi, Detroit	50 $\frac{1}{2}$ Kegs Beer 100 Cases Beer	900.00 300.00	Carling's Export Brewing and Malting Co., Ltd., London	9/12/25	Sandwich	Aug. 12, 1925
	(e)	2460	2514	Sandwich, Ont.	Carling's Export Brewing and Malting Co. Ltd., London, Ont.	Boat Blue	U.S.A.	Direct	C. B. Grandi, Detroit	21 Cases Beer 17 $\frac{1}{2}$ bbls. Beer 70 $\frac{1}{4}$ kegs Beer	63.00 238.00 490.00	D. Piche, Sandwich	9/12/25	Sandwich	Sept. 12, 1925
	(f)	1863	1966	Sandwich, Ont.	Carling's Export Brewing and Malting Co. Ltd., London, Ont.	Boat Violet	U.S.A.	Direct	C. B. Grandi, Detroit	96 $\frac{1}{4}$ kegs Beer 45 $\frac{1}{2}$ bbls. Beer	672.00 630.00	Carling's Export Brewing and Malting Co. Ltd., Sandwich	8/18/25	Sandwich	Aug. 18, 1925

EXHIBIT No. R.

(Defendant's)

Documents of Shipment.

897

In the
Exchequer
Court of
Canada.Exhibits
Exhibit R.
Documents
of Shipment
Nov. 21,
1925.

STATEMENTS APPEARING ON FACE OF B.13's.

Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For Exportation to (Country of final or ultimate destination)	Via	Address of Consignee	Goods	Value	Signature on behalf of Shipper	Date of Certificate or Affidavit	Customs Stamp Customs—Excise—Canada		
												Place	Date	
10 (1)	—	58020	Windsor, Ont.	The Carling E. B. & M. Co. Ltd.	Gas Launch "Clifford" from C.P.R. dock to Detroit, Michigan.	United States	—	F. Savard, Detroit, Mich.	606 Cases Beer	\$1,515.00	J. A. Kennedy, Windsor, Ont.	Nov. 21st, 1925	Can. Pac. Ry. Freight Shed, Windsor, Ont.	21 Nov. 1925
(2)	—	58021	Windsor, Ont.	The Carling E. B. & M. Co. Ltd.	Gas Launch Murphy from C.P.R. Dock to Detroit, Michigan.	United States	—	F. Savard, Detroit, Mich.	253 Cases Beer	683.00	J. A. Kennedy, Windsor, Ont.	Nov. 21st, 1925	Can. Pac. Ry. Freight Shed, Windsor, Ont.	21 Nov. 1925
20	—	—	London	Carling E. B. & M. Co. Ltd.	M. C. Ry.	U.S.A.	Direct	F. Savard, Detroit, Mich.	1000 Cartons Ale 200 Cartons Lager	—	Carling E. B. & M. Co. Ltd., London	Nov. 26/25	Can. Pac. Ry. Windsor, Ont.	Nov. 30, 1925

(3) Invoice :

Date :
No. : 03215.
Name : F. Savard, Detroit, Mich.
C.P.R. Dock, Windsor, Ont.
F. Rymal, Amherstburg.

Particulars :
1,000 Cartons Ale pints at \$1.75 \$1,750.00
200 Cartons Lager pints at \$1.75 350.00
\$2,100.00

Car. No. : E.R.D.X. 151508 M.C.R.
Rubber Stamp Notation : The above charge is made up as follows :
Returnable Packages \$ 864.00
Transportation 180.00
Liquid 1,056.00

(4) Bill of Lading :

Michigan Central Railway Company.
No. : 02280.
Date : Nov. 26th, 1925.
Consigned to : F. Savard, Detroit, c/o E. Rymal, Amherstburg, Ont.
Route : M. C. Ry.
Car : E. R. D. X. 151508.
Goods : 1,200 cartons ale pints.
Signed by : The Carling Brewing and Malting Company of London Limited, per J. N. Hennessy.
D. Watts, Agent, per M for Michigan Central Railway.

EXHIBIT No. R-2.
(Defendant's)
Export Entry No. 58021
CUSTOMS, CANADA

*In the
Exchequer
Court of
Canada.*

Form B 13—(Amended 1916)
500,000—6-25

Export Entry
Report No.....
Entry No..... *58021*.....

Exhibits
No. R-2.
Export
Entry
No. 58021,
Nov. 21,
1925.

.....*Windsor, Ontario*.....
(Place of lading)

10 Entry and List of Articles of domestic production and Foreign Articles, which are not subject to Export, Customs, or Excise Duties, delivered by.....*The Carling E. B. & M. Co. Ltd.*
(Address of Owner or Agent)

to.....*by Gas Launch "Murphy" from C.P.R. Dock*.....to *Detroit, Michigan*
(Name of Railway or Vessel, &c.)

for exportation to.....*United States*.....
(Country of final or ultimate destination)

via (1).....consigned as below :
N.B.—(1) State if shipped *via* United States Port, or direct from Canadian Port.

20 ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT	
				Domestic products, including imported goods re-manufactured in Canada	Foreign or imported products in same condition as imported
<i>F. Savard</i>					
<i>Detroit, Mich.</i>	<i>253</i>	<i>c's Beer</i>	<i>506 Gal</i>	<i>\$633.00</i>	
.....
.....
.....

30 STAMP OF PORT OF EXIT
*Customs-Excise-Canada
Can. Pac. Ry.
Freight Shed
Nov. 21, 1925
Exported at
Windsor, Ont.
C.M.*

I,.....*The Carling E. B. & M. Co. Ltd.*.....
(owner, shipper or consignor), hereby certify that the above is a full and true statement of the kinds, quantities, values and destination of all the articles delivered by me for exportation as aforesaid.
Signed by.....*J. N. Hennessy*.....
Residence.....*Windsor, Ontario*.....
Date.....*Nov. 21st, 1925*.....

40

SEE REGULATIONS ON THE OTHER SIDE

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 58.

(Plaintiff's)

Documents of Shipment

Exhibits

No. 58.
Documents
of Ship-
ment.
of Nov. 23,
1925.

(a) Invoice :

Date : 23rd November, 1925.
No. : 03212.
Name : F. Savard, Detroit, Michigan,
C.P.R. Dock, Windsor, Ont., La Salle.
Particulars : 1500 Cartons Ale Pints at \$2.25. \$2,625.00
Car No. : C.P. 129790. 10
Rubber Stamp Notation : The above charge is made up as follows :
Returnable Packages \$1,080.00
Transportation 225.00
Liquid 1,320.00

(b) Bill of Lading :

Canadian Pacific Railway Company.
No. : 02276.
Date : Nov. 23, 1925.
Consigned to : F. Savard, Detroit, c/o H. Low.
Destination : La Salle, Ontario. 20
Route : C.P., E.T., and Hydro.
Car : C.P. 129790.
Goods : 1200 cartons Pints Ale.
Signed by : The Carling Brewing and Malting Co. of London, Limited,
shippers, per J. N. Hennessy.
W. C. Whitaker, agent, per A.J. for the Canadian Pacific
Railway.
Notation : "Complying with Ont. and Dom. Temperance Acts."
Seals : 3849458-459.

(c) Statements appearing on face of B-13.

30

Report No. : —
Entry No. : —
Place of Lading : London, Ontario.
Delivered by : Carling E. B. & M. Co. to C. P. (name of Railway or Vessel,
etc.), for exportation to U.S.A. (country of final or
ultimate destination), via Direct.
C.P. 129790.
Address of Consignee : F. Savard, Detroit.
Goods : 1500 Cartons Ale Pints.
Quantity : 2700 Gals. 40
Value : —
Certificate signed by : Carling E. B. & M. Co.
Date of Certificate : 23rd November, 1925.
Customs Stamp : Customs—Excise—Canada.
C.P. Ry.
Nov. 30, 1925.
Windsor, Ont.

EXHIBIT No. 56.

(Plaintiff's)

Documents of Shipment.*In the
Exchequer
Court of
Canada.***(a) Invoice :**

Date : Ap. 22, 1926.
 No. : 03362.
 Name : F. Savard, Cleveland, Ohio.
 c/o E. Siegal, Port Stanley.
 Particulars : 100 Ctns. Stock Ale Pts. at \$1.75 \$175.00
 100 Ctns. Ale Pts. at 1.75 175.00

10

\$350.00

Rubber Stamp Notation : The above charge is made up as follows :
 Returnable packages \$144.00
 Transportation 30.00
 Liquid 176.00

Notation : Via Truck.

(b) Statements appearing on face of B-13 :

Report No. : 5
 Entry No. : 5
 Place of Lading : London, Ont.
 Delivered by : The Carling E. B. & M. Co. Ltd. to truck to Port Stanley, to
 Boat (Name of Railway or Vessel, etc.), for exportation
 to U.S.A. (Country of final or ultimate destination),
 via Direct.

Address of Consignee : F. Savard, Cleveland, Ohio.

Goods : 200 cartons Pts. Beer.

Quantity : 360 Gals.

Value : \$610.00.

Certificate signed by : George W. Constable, London, Ont.

Date of Certificate : April 20th, 1926.

Customs Stamp : Customs—Excise—Canada.

June 5, 1926.

Exported at Port Stanley, Ont.

30

EXHIBIT No. 88.

(Plaintiff's)

Documents of Shipment.*No. 88.
Documents
of Ship-
ment.
June 1,
1926.***(a) Statements appearing on face of B-13 :**

Report No. : 2230.
 Entry No. : 9642, 56826.
 Place of Lading : London, Ont.
 Delivered by : The Carling E. B. & M. Co. Ltd., to C. P. Ry. to Windsor
 to boat "Fatima" (name of Railway or Vessel, etc.), for
 exportation to U.S.A. (country of final or ultimate
 destination), via Direct.

Notation : C. P. 286309.

40

EXHIBIT No. 88.—Continued.

In the
Exchequer
Court of
Canada.

—
Exhibits

No. 88.
Documents
of Ship-
ment.
June 1,
1926.

Address of Consignee : F. Savard, Detroit, Mich.
Goods : 250 cartons Pts. Beer.
Quantity : 450 gals.
Value : \$687.50.
Certificate signed by : J. N. Hennessy, London, Ont.
Date of Certificate : June 1/26.
Customs Stamp : Customs—Excise—Canada.
Oct. 4, 1926.
Sandwich, Ont.

10

—Continued.

EXHIBIT No. 87.

(Plaintiff's)

Documents of Shipment.

No. 87.
Documents
of Ship-
ment.
June 8,
1926.

(a) Statements appearing on B-13 :

Report No. : 2230.
Entry No. : 9644 ; 56825.
Place of Lading : London, Ont.
Delivered by : The Carling E. B. & M. Co. Ltd. to C. P. Ry. to Windsor to
Boat Fatima (name of Railway or Vessel, etc.), for
exportation to U.S.A. (Country of final or ultimate 20
destination), via Direct.
Notation : C. P. 286309.
Address of Consignee : F. Savard, Detroit, Mich.
Goods : 30 ½ bbls. Beer.
Quantity : 390 gals.
Value : \$480.00.
Certificate signed by : J. N. Hennessy, London, Ont.
Date of Certificate : June 8/26.
Customs Stamp : Customs—Excise—Canada.
Oct. 4, 1926. 30
Sandwich, Ont.

(b) Invoice :

Date : June 8, 1926.
No. : 03464.
Name : F. Savard, Detroit, Mich.
C.P.R. Dock, Windsor, Ont.
Particulars : 200 ½ bbls. at \$12.50. \$2,500.00.
Car. No. : C.P. 286309.
Notation : To LaSalle.
Rubber Stamp Notation : The above charge is made up as follows : 40
Returnable Packages \$1,200.00
Transportation 130.00
Liquid 1,170.00

EXHIBIT No. 94.—Continued.

*In the
Exchequer
Court of
Canada.*

(Back)

INSTRUCTIONS.

Exhibits

No. 94.
Export
Entry
No. 167.
June 28,
1926.

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA.

*To Collectors of Customs,
Agents of Railway and Steamship Lines and Others Concerned :—*

—Continued.

CUSTOMS EXPORT ENTRIES.

The special attention of Railway Companies and other carriers of goods is directed to the following provisions of the regulations as to Export Entries, in force 1st July, 1900, particularly as to an Export Entry (on Form B. 13) in duplicate accompanying the Way Bill of all goods laden at an inland port or place when consigned as for exportation from Canada. 10

REGULATIONS RESPECTING CUSTOMS ENTRIES AND STATISTICAL RETURNS OF
GOODS EXPORTED FROM CANADA, IN FORCE AND EFFECT ON AND AFTER
1ST JULY, 1900.

1. Export entries in duplicate for statistical purposes shall be delivered to the Collector of Customs at the last port in Canada through which goods for exportation pass outwards for places beyond the limits of Canada when exported by land, and at the port where laden on the exporting ship if the goods be exported by water, each such port being herein designated as “the port of exit from Canada.” 20

SUMMARY of Customs Regulations respecting EXPORT ENTRIES of goods, *required to be observed by shippers and Railway carriers* in Canada, when goods are laden at Inland Railway stations and sidings and consigned for exportation from Canada.

Note particularly that an Export Entry (on Form B. 13) *in duplicate*, is required for Customs Statistical purposes to be forwarded *along with the way bill* from the place of lading, in all cases when goods are laden at an inland port or place in Canada and consigned as for exportation from Canada.

2. The Export Entry may be *signed* by the shipper or his agent (who may also be the Railway Agent) in the presence of a witness, and is not required to be attested to. 30

3. Goods for exportation are classed in the Export Entry form as “Domestic Articles” or “Foreign Articles.” Goods exported from a Customs

EXHIBIT No. 94.—Continued.

In the
Exchequer
Court of
Canada.

Bonded Warehouse are to be reported on the same form (B. 13) but under the heading "Foreign Articles."

Goods exported from an Excise Warehouse are to be reported also on the same form (B.13) but under the heading "Domestic Articles."

Export Entries from Customs or Excise Bonded Warehouse as aforesaid are to be marked at the top as "Ex-Warehouse for Statistics."

4. Export Entries are required for *coin* or *bullion* exported, as in the case of other exports.

10 5. REMEMBER that the Export Entries in duplicate for statistical purposes as above stated and as ordered by the *Governor in Council* are to be *delivered by the carrier* of the goods to the Collector of Customs at the port of exit from Canada (being the *last port in Canada* through which the goods for exportation pass outwards for places beyond the limits of Canada when exported by land); and that it is MOST IMPORTANT to have the Export Entries furnished and firmly attached to the way bill from inland places in order to avoid the necessity for detention and side-tracking of the goods at the frontier until Export Entries therefor are obtained and delivered to the Canadian Customs Officer.

20 6. When goods for exportation arrive at the frontier unaccompanied by Export Entries from inland stations, the Collector of Customs is to report the facts to the Commissioner of Customs and state particularly the *place of lading*, in order that the *neglect* to forward Export Entries may be traced to the proper railway agent, and that the manager of the Railway may be notified through the Department of Customs of such irregularity and neglect.

30 7. The country of *ultimate destination* to which the goods are destined for a market is to be stated in the Export Entry as the country to which *Exported*, and this rule is to be strictly observed and particularly as to exports of the forest, and of Animals and of Dairy and other Agricultural produce shipped via the United States, as articles may be carelessly declared by shippers as for exportation to the United States when in fact the ultimate destination of the shipment is to Great Britain or some other country beyond the United States, the transit through United States being merely an incident in the course of the exportation to the ultimate market beyond.

Note Particularly :—

That a separate Export Entry in duplicate should be delivered for each shipment, showing the name of the shipper and consignee respectively in each case.

40 A "general" entry is not acceptable, in which the shipments of several shippers to the same consignee are "bulked" together without specifying the particulars of each shipment and the name of the shipper in each instance.

Exhibits

No. 94.
Export
Entry
No. 167.
June 28,
1926.

—Continued.

*In the
Exchequer
Court of
Canada.*

Note also, when drawback of Customs duty is claimed, that a *third copy of Export Entry*, marked "subject to drawback," should accompany the goods to the frontier port of exit.

R. R. FARROW,
Commissioner of Customs and Excise.

Exhibits

No. 94.
Export
Entry
No. 167.
June 28,
1926.

—Continued.

Penalty for neglect to deliver Export Entry, \$400.00.

NOTE A.—Customs Officers are instructed to specially direct the attention of Shippers or their Agents in the execution of Export Entries (Form B. 13) that a separate Export Entry (Form B. 13) executed in duplicate is required to be made for each shipment less than a car load lot, also that Export Entries in duplicate are required to be executed for each car used in comprising a total consignment or shipment. Also that great care is required to be exercised by the shipper or his Agent in giving the correct quantities and values on such Export Entries. 10

No. 82.
Documents
of Ship-
ment.
July 7,
1926.

EXHIBIT No. 82.

(Plaintiff's)

Documents of Shipment.

(a) *Statement appearing on face of B-13 :*

Report No. :	2236.	
Entry No. :	9670, 56820.	
Place of Lading :	London, Ont.	20
Delivered by :	The Carling E. B. & M. Co. Ltd., to C.P. Ry. to Windsor (Name of Railway or Vessel, etc.), to Boat Jennie, for exportation to U.S.A. (Country of final or Ultimate destination), via Direct.	
Notation :	C.P. 285404.	
Address of Consignee :	F. Savard, Detroit, Mich.	
Goods :	125 Cartons Pts. Beer.	
Quantity :	225 Gals.	
Value :	\$343.75.	
Certificate signed by :	J. N. Hennessy, London, Ont.	30
Date of Certificate :	July 7, 1926.	
Customs Stamp :	Customs—Excise—Canada. Oct. 4, 1926. Sandwich, Ont.	

(b) *Invoice :*

Date :	July 7, 1926.	
No. :	03567.	
Name :	F. Savard, Detroit, Mich., c/o C.P.R. Dock, Windsor.	
Particulars :	200 ½ Barrels at \$12.50.	\$2,500.00. 40
Car No. :	C. P. 285404.	
Notation :	To La Salle.	
Rubber Stamp	The above charge is made up as follows :	
Notation.	Returnable Packages	\$1,200.00
	Transportation	130.00
	Liquid	1,170.00

*In the
Exchequer
Court of
Canada.*
—

EXHIBIT No. 90.

(Plaintiff's)

Summary Export Entry No. 56828.

Exhibits

No. 90.
Export
Entry
No. 56828,
July 12,
1926.

(a) *Statements appearing on face of B-13 :*

Report No. :	2226.	
Entry No. :	9613, 56828.	
Place of Lading :	London, Ont.	
Delivered by :	The Carling E. B. & M. Co. Ltd., to C.P. Ry. to Windsor to Boat Olive (Name of Railway or Vessel, etc.), for exportation to U.S.A. (Country of final or ultimate destination), via Direct.	10
Notation :	C.P. 287651.	
Address of Consignee :	F. Savard, Detroit, Mich.	
Goods :	100 cartons pts. Beer.	
Quantity :	180 gals.	
Value :	\$275.00.	
Certificate signed by :	J. N. Hennessy, London, Ont.	
Date of Certificate :	July 12/26.	
Customs Stamp :	Customs—Excise—Canada. Oct. 4, 1926. Sandwich, Ont.	20

No. 83.
Export
Entry,
No. 56821,
July 12,
1926.

EXHIBIT No. 83.

(Plaintiff's)

Export Entry No. 56821.(a) *Statements appearing on face of B-13 :*

Report No. :	2235.	
Entry No. :	9660 ; 56821.	
Place of Lading :	London, Ont.	
Delivered by :	The Carling E. B. & M. Co. Ltd., to C.P. Ry. to Windsor to Boat Peach (Name of Railway or Vessel, etc.), for exportation to U.S.A. (Country of Final or Ultimate Destination), via Direct.	30
Notation :	C. P. 287651.	
Address of Consignee :	F. Savard, Detroit, Mich.	
Goods :	30 ½ bbls. Beer.	
Quantity :	390 Gals.	
Value :	\$480.00.	
Certificate signed by :	J. N. Hennessy, London, Ont.	
Date of Certificate :	July 12, 1926.	
Customs Stamp :	Customs—Excise—Canada. Oct. 4, 1926. Sandwich, Ont.	40

EXHIBIT No. 92.

(Plaintiff's)

Documents re Shipment.*In the
Exchequer
Court of
Canada.*Exhibits
No. 92.
Documents
re Shipment
of July 12,
1926.*(a) Statements appearing on face of B.-13 :*

Report No. : 2225.
 Entry No. : 9610, 56830.
 Place of Lading : London, Ont.
 Delivered by : The Carling E. B. & M. Co. Ltd. to C.P. Ry. to Windsor
 10 to Boat Ino (name of Railway or Vessel, etc.), for
 exportation to U.S.A. (Country of final or ultimate
 destination) via Direct.
 Notation : C.P. 286999.
 Address of Consignee : F. Savard, Detroit, Mich.
 Goods : 100 Cartons pts. Beer.
 Quantity : 180 gal.
 Value : \$275.00.
 Certificate signed by : J. N. Hennessy, London, Ont.
 Date of Certificate : July 12/26.
 20 Customs Stamp. Customs—Excise—Canada.
 Oct. 4.
 Sandwich, Ont.

(b) Invoice :

Date : July 12th, 1926.
 No. : 02908.
 Name : F. Savard, Detroit, Michigan,
 c/o C.P.R. Dock, Windsor, Ont.
 Particulars : 200 ½ bbls. Lager at \$12.50. \$2,500.00.
 Notation : C.P. 286999.
 To LaSalle.
 30 Rubber Stamp The above charge is made up as follows :
 Notation : Returnable Packages \$1,200.00
 Transportation 130.00
 Liquid 1,170.00

EXHIBIT No. 84 AND 86.

(Plaintiff's)

Documents of Shipment

Export Entry No. 56822.

911

In the
Exchequer
Court of
Canada.Exhibits
No. 84.
Documents
of Ship-
ment,
of July 13,
1926.No. 86.
Export
Entry
No. 56822,
July 12,
1926.

STATEMENTS APPEARING ON FACE OF B.13's.

	Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For Exportation to (Country of final or ultimate destination)	Via	Notation	Address of Consignee	Goods	Value	Signature on behalf of Shippers	Date of Certificate or Affidavit	Customs Stamp Customs—Excise—Canada	
														Place	Date
10 84 (a)	2233	9653 56823	London, Ont.	Carling E. B. & M. Co. Ltd.	C.P. Ry. to Windsor to Boat Mary	U.S.A.	Direct	C.P. 287759	F. Savard, Detroit, Mich.	200 cartons Pts. Beer	\$550.00	J. N. Hennessy London, Ont.	July 13, 1926	Sandwich.	Oct. 4, 1926
86 (a)	2234	9657 56822	London, Ont.	Carling E. B. & M. Co. Ltd.	C.P. Ry. to Windsor to Boat Toad	U.S.A.	Direct	C.P. 287759	F. Savard, Detroit, Mich.	30 ½ Bbls. Beer	480.00	J. N. Hennessy London, Ont.	July 13, 1926	Sandwich.	Oct. 4, 1926

84 (b) Invoice :

Date : July 13th, 1926.
 No. : 02912
 Name : F. Savard, Detroit, Michigan,
 c/o C.P.R. Dock, Windsor, Ont.
 Particulars : 200 ½ Bbls. Lager at \$12.50. \$2,500.00
 Car. No. : C.P. 287759.
 Notation : To La Salle.

Rubber Stamp Notation : The above charge is made up as follows :

Returnable packages \$1,200.00
 Transportation 130.00
 Liquid 1,170.00

EXHIBIT No. 93.

(Plaintiff's)

*In the
Exchequer
Court of
Canada.***Summary of Export Entry No. 56831.**

Exhibits

No. 93.
Export
Entry
No. 56831,
July 12,
1926.*(a) Statements appearing on face of B.13's :*

Report No. : 2218.
 Entry No. : 9586, 56831.
 Place of Lading : London, Ont.
 Delivered by : The Carling E. B. & M. Co. Ltd. to C.P. Ry. to Windsor
 to Boat Seal (Name of Railway or Vessel, etc.), for
 exportation to U.S.A. (Country of final or ultimate
 destination), via Direct.

10

Notation : C.P. 286999.
 Address of Consignee : F. Savard, Detroit, Mich.
 Goods : 25 1/2 Bbls. Beer.
 Quantity : 312 1/2 Gals.
 Value : \$312.50.
 Certificate signed by : J. N. Hennessy, London, Ont.
 Date of Certificate : July 12, 1926.
 Customs Stamp : Customs—Excise—Canada.
 Oct. 4, 1926.
 Sandwich, Ont.

20

EXHIBIT No. 85.

(Plaintiff's)

No. 85.
Summary
Documents
re Shipment
of July 13,
1926.**Summary Documents re Shipment to Windsor.***(a) Statements appearing on face of B-13 :*

Report No : 2232.
 Entry No. : 9650.
 Place of Lading : London, Ont.
 Delivered by : The Carling E. B. & M. Co. Ltd., to C.P. Ry. to Windsor
 to Boat Omar (Name of Railway or Vessel, etc.), for
 Exportation to U.S.A. (country of final or ultimate
 destination), via Direct.

30

Notation : C. P. 286435.

EXHIBIT No. 89—Continued

Delivered by : The Carling E. B. & M. Co. Ltd. to C.P. Ry. to Windsor to Boat Ruby (name of Railway or Vessel, etc.), for exportation to U.S.A. (Country of final or ultimate destination), via Direct.

Notation : C.P. 286435.

Address of Consignee : F. Savard, Detroit, Mich.

Goods : 25 cartons Pts. Beer.

Quantity : 45 gals.

Value : \$68.75

10 Certificate signed by : J. N. Hennessy, London, Ont.

Date of Certificate : July 13, 1926.

Customs Stamp : Customs—Excise—Canada.
Oct. 4, 1926.
Sandwich, Ont.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 89.
Export
Entry
No. 56827,
July 13,
1926.
—Continued.

EXHIBIT No. 91.

(Plaintiff's)

Entry No. 56829.

No. 91.
Export
Entry
No. 56829,
Sept. 18,
1926.

(a) *Statements appearing on face of B-13 :*

20 Report No. : 2225.

Entry No. : 9609, 56829.

Place of Lading : London, Ont.

Delivered by : The Carling E. B. & M. Co. Ltd. to C.P. Ry. to Windsor to boat Ino (name of Railway or Vessel, etc.), for exportation to U.S.A. (country of final or ultimate destination), via Direct.

Notation : C.P. 58570.

Rubber Stamp Notation : Transferred to Carling Dock, LaSalle.

Address of Consignee : F. Savard, Detroit, Mich.

30 Goods : 300 Cartons Pts. Beer.

Quantity : 540 gals.

Value : \$525.00.

Certificate signed by : J. N. Hennessy, London, Ont.

Date of Certificate : Sept. 18/26.

Customs Stamp : Customs—Excise—Canada.
Oct. 4, 1926.
Sandwich, Ont.

917
EXHIBIT No. X.
 (Defendant's)
Two B. 13's, Walkerville.

*In the
 Exchequer
 Court of
 Canada.*

Exhibits
 No. X
 Two B-13's,
 Walkerville
 Feb. 8,
 1927.

STATEMENTS APPEARING ON FACE OF B.13's.

Report No.	Entry No.	Place of Lading	Delivered by	Name of Railway or Vessel	For Exportation to (Country of final or ultimate destination)	Route	Notation	Address of Consignee	Goods	Value	Signature behalf of Shipper	Date of Certificate or Affidavit	Customs' Stamp Customs—Excise—Canada	
													Place	Date
10 163	{ 6030 1118	London	The Carling E. B. & M. Co. Ltd.	C. P. Ry. to Windsor to Boat	U.S.A.	Direct Boat	C.P. 285173	B. Syringe, Detroit, Mich.	1 Carton Pts. Beer	\$1.75	B. J. Irvine	Feb. 8, 1927 (Note)	Walkerville, Ont.	Apr. 12, 1927
	{ 6031 1119	London	The Carling E. B. & M. Co. Ltd.	C. P. Ry to Windsor	U.S.A.	Direct Boat Marie	C.P. 285173	B. Syringe, Detroit, Mich.	1 Carton Pts. Beer	\$1.75	B. J. Irvine	Feb. 8, 1927 Note	Walkerville, Ont.	Apr. 12, 1927

NOTE.—Signed by W. A. C. Lindsay (Customs' Officer), on taking affidavit, and stamped Feb 8, 1927.

EXHIBIT No. 107.

(Plaintiff's)

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 107.
Dominion
Glass
Company
Account,
March 31,
1924-June
25, 1927.**Dominion Glass Company Account.**

This exhibit consists of the account in the books of the Defendant Company in the name of Dominion Glass Co. Ltd., Toronto, Ont. The total credits in this account amount to \$1,068,600.41. The period covered by this account is from March 31st, 1924, to June 25th, 1927.

EXHIBIT No. 106.

(Plaintiff's)

No. 106.
Gootson,
Meyer
Account,
June 2,
1924 to June
10, 1927.

10

Gootson, Meyer Account.

This exhibit consists of the account in the books of the Defendant Company in the name of Gootson, Meyer, London, 573 Ottawa Ave. The total credits in this account amount to \$134,764.77. The period covered by this account is from June 2nd, 1924, to June 10th, 1927.

In the
Exchequer
Court of
Canada.

EXHIBIT No. 16.
(Plaintiff's)
Defendant's Windsor Bank Account.

Signing Officers
or Partners

Chas. Burns, Pres
Marco Leon, Secy-Treas
Harry Low, Vice-Pres
Any Two To Sign

Exhibits
No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.

THE DOMINION BANK
IN ACCOUNT WITH
THE CARLING E. B. & M. CO. LTD., EXPORTERS, LONDON

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance	
1924						
May 12	Dep.....		3,049.50		.....
	.....		8,906.02		11,955.52	10
13	.....		8,451.40		.....
	.....		381.00		20,787.92	
14	.....	20,787.00			.92	
	.....		3,660.00		.....
	.....		1,517.05		5,177.97	
15	.....		3,015.86		8,193.83	
16	.....		1,854.25		10,048.08	
17	.....		4,072.60		14,120.68	
20	.....		2,247.42		16,368.10	
21	.....		1,571.72		17,939.82	20
22	Fitz.....		40.80		17,980.62	
	.....		2,842.10		20,822.72	
23	.....	16,368.10			4,454.62	
	Fitz.....		1,530.85		5,985.42	
26	Fitz.....		575.75		6,561.22	
	Fitz.....		1,227.00		7,788.22	
	Fitz.....		1,992.27		9,780.49	
27	.....		219.79		10,000.28	
28	Fitz.....		85.80		.....
	Fitz.....		1,561.26		.....	30
	Fitz.....		136.69		.....
	Fitz.....		97.60		11,881.63	
	.....		2,369.20		14,250.83	
29	C.B.....	10.00			14,240.83	
	Fitz.....		1,129.95		15,370.78	
30	Fitz.....		1,003.61		.....
	Fitz.....		868.49		17,242.88	
31	Fitz.....		101.05		17,343.93	
	Fitz.....		1,624.89		18,968.82	
June 2	Fitz.....		197.10		19,486.31	40
	.....	14,985.40			4,500.91	
4	.....		5,990.45		10,491.36	
	D. Koven.....		1,764.00		.....
	Do Pieu (on us)		24.70		.....
5	.....		2,073.99		14,354.05	
	Fitz.....		384.22		14,738.27	
6	.....		1,192.06		15,930.33	
7	.....		3,340.85		19,271.18	
9	.....		2,085.89		21,359.07	
	C.B.....	930.69			20,426.38	50
10	.....		7,081.47		27,507.85	

EXHIBIT No. 16.—Continued.

THE DOMINION BANK
 IN ACCOUNT WITH
 THE CARLING E. B. & M. CO. LTD. - - LONDON

In the
 Exchequer
 Court of
 Canada.

Exhibits
 No. 16.
 Defendant's
 Windsor
 Bank
 Account,
 May 12,
 1924. Sqq.
 —Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1924		21,357.07			5,150.78
11	C.B.....	1,007.32			4,143.46
	Prem. on 930.69	11.62			4,131.84
12			6,576.75		
10			3,109.11		14,817.70
		75,457.20	99,274.90		
1924					
June 12	Ford.....		14,817.70		14,817.70
13			876.51		15,694.21
14			3,100.40		18,794.61
16		15,694.21			3,100.40
17			3,924.35		7,024.75
			1,948.29		8,973.04
19			1,043.26		10,016.30
20			618.30		10,634.60
20			3,048.59		13,683.19
	Fitz..... 4		365.33		
	Fitz..... 4		1,268.04		
	Fitz..... 4		52.29		15,368.85
21			106.58		15,473.43
	Fitz.....		42.17		15,517.60
23	Fitz.....		366.25		
	Fitz.....		80.12		
	Fitz.....		489.51		16,453.48
30	24 Fitz.....		1,400.48		17,833.96
	25 Fitz.....		140.15		
	Fitz.....		96.11		
	Fitz.....		1,221.41		
	Fitz.....		40.08		19,331.71
26		16,453.48			2,978.23
	Fitz.....		1,408.54		
	Fitz.....		107.97		
	Fitz.....		1,035.56		5,430.30 S
27			325.16		
40			1,036.09		6,791.55
			449.89		....58
			112.14		7,353....
30			104.18		
			2,385.44		9,853.20
July 2			1,246.78		
			2,066.12		
			672.70		
			31.61		

EXHIBIT No. 16.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
Exchequer
Court of
Canada.

Exhibits

No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1024 Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1924	1,910.22		15,770.63
3	7,353.58		8,417.05
	403.51		.....
	559.75		9,380.31
4	1,459.99		10,840.30
5	160.88		11,001.18
4	1,459.99		10,840.30
5	160.88		11,001.18
7	1,729.92		12,731.10
8	110.49		.....
	1,187.74		14,029.33
9	12,731.10	.....		1,298.23
	478.33		1,776.56
10	683.92		2,460.48
11	1,782.74		4,243.22
		52,232.37	56,475.59		
1924					
July 11	Forward.....	.....	4,243.22	Cr.	4,243.22
14	383.25		.....
	2,142.54		676.90
	4,243.22	.....		2,525.57
15	910.97		343.67
16	589.24		4,026.00
17	1,365.70		5,391.70
18	536.75		5,928.45
19	1,348.23		7,276.68
21	3,141.30		10,417.98
	C.B.....	50.00	.....		10,367.98
22	1,739.14		12,107.12
23	2,430.09	R 2,430.09		14,537.21
	2,515.89		14,623.01
	7,276.68	.....		7,346.33
24	2,133.43		9,479.76
25	549.24		10,029.00
26	471.74		10,500.74
28	585.64		11,086.38
29	10,029.00		1,057.38
29	537.74		1,595.12
30	146.64	
	727.18		2,468.94
31	444.90	
	5.15		2,918.99

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EXHIBIT No. 16.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH
THE CARLING E. B. & M. CO. LTD. - - - LONDON

*In the
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Canada.*

Exhibits
No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1924 Aug. 1	2,468.94	.....		450.05
2	226.05		676.10
10 5	1,490.58		2,166.68
6	2,319.58		4,486.26
7	3,600.00		8,086.26
8	23.76		.....
	1,559.34		9,669.36
	1,207.81		10,877.17
	M. Leon.....	.....	225.00		11,102.17
	M. Leon.....	.....	102.66		.....
	182.23		.....
	56.07		11,443.13
20 11	15,043.13	3,600.		15,043.13
12	3,602.08		3,602.08
13	1,419.14		5,021.22
16	3,600.00		8,621.22
19	2.25		8,623.47
21	4,223.		12,846.47
22	3,600.	3,606.		16,446.47
30 25	8,623.47	.....		12,846.47
	1,395.		4,223.00
	1,474.50		5,618.00
	53,764.53	60,857.03		7,092.50
1924 Aug. 24	Ford.....	.....	7,092.50		7,092.50
26	209.50		7,302.00
27	135.38		7,437.38
28	2,869.50	.....		4,567.88
40 29	4,223.	.....		344.88
30	576.25		921.13
Sept. 2	1,265.75		2,186.88
3	2,530.50		4,717.38
4	2,398.75		7,116.13
5	235.		7,351.13
5	530.50		7,881.63
	202.		8,083.63
	R 200.		8,283.63
	7,000.		1,283.63
	J. P. Burch Co..	200.		1,083.63

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EXHIBIT No. 16.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD. - - - LONDON

Exhibits

No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.

—Continued

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1924	J. P. Burch Co..	200.	R		1,083.63
6	.....		442.50		1,526.13
8	.....		1,742.04		3,268.17
9	.....		147.		3,415.17
11	.....		86.		3,501.17
12	.....		1,385.		4,886.17
13	.....		6,700.50		11,586.67
			370.00		11,956.67
16	.....		374.50		12,331.17
17	.....		43.75		12,394.82
18	.....		239.25		12,614.17
19	.....		1,181.50		13,795.67
20	.....		466.75		11,262.42
22	.....		193.		14,455.42
		1,200.00			2,455.42
	Mint.....	R 500.00	R		1,955.42
		R	R 500.		2,455.42
23	.....		320.25		2,775.67
24	.....		350.		3,125.67
25	.....		403.75		3,529.42
26	.....		1,000.25		4,529.67
27	.....		4,522.75		9,052.42
29	.....		170.25		9,222.67
		3,529.42			5,693.25
30	.....		251.		5,944.25
Oct. 1	.....		206.50		6,150.75
2	.....		4,915.15		6,641.90
3	.....		1,017.50		7,659.40
4	.....		622.25		8,281.65
7	.....		807.75		.....
			614.		9,703.40
		8,281.65			1,421.75
8	.....		1,024.75		2,446.50
9	.....		727.00		3,173.50
			4,683.50		7,857.00
			106.00		7,963.00
		38,603.57	46,566.57		
1924					
Oct. 13	Ford.....		7,963.		7,963.
			191.25		8,154.25
14	.....		57.75		8,212.00
15	.....		246.25		8,458.25

EXHIBIT No. 16.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
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Exhibits
No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1924					
16	.....	8,154.25	.....		304.00
17	.....	.....	5,559.75		5,863.75
20	.....	.....	961.50		4,902.25
10	.....	4,902.25	.....		1,923.00
21	.....	.....	609.75		2,532.75
22	.....	.....	1,281.25		3,814.00
23	.....	.....	507.25		4,321.25
24	.....	.....	663.50		4,984.75
25	.....	.....	473.50		5,458.25
27	.....	4,984.75	.....		473.50
	.....	.....	6,000.		6,473.50
28	.....	.....	147.50		6,621.00
	.....	.....	570.		7,191.00
20	29	.....	3,960.50		11,151.50
	30	.....	419.75		11,571.25
	31	11,571.25	.....		.....
		.....	497.00		497.00
Nov.	1	.....	407.50		904.50
	3	.....	609.50		1,514.00
	4	.....	474.25		1,988.25
		.....	905.75		2,894.00
	6	1,988.25	.....		905.75
		.....	561.		1,466.75
30	8	.....	759.25		2,226.00
	11	.....	2,843.25		5,069.25
	12	.....	1,894.25		6,963.50
	13	.....	5,716.75		12,680.25
	14	.....	508.50		13,188.75
	15	12,680.25	.....		508.50
		.....	247.25		755.75
	17	.....	3,804.25		4,560.00
	19	.....	111.25		4,671.25
	20	.....	465.75		5,137.00
40		4,560.	.....		577.00
	21	.....	112.00		690.00
	24	.....	1,145.55		1,835.55
	25	577.	.....		1,258.55
		.....	243.50		1,502.05
	26	.....	228.75		1,730.80
	27	.....	3,066.25		4,797.05
	28	1,730.80	.....		3,066.25
	29	3,066.25	.....		.....
		.....	694.50		694.50

EXHIBIT No. 16.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH
THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
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Exhibits

No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1924					
Dec. 2	250.		944.50
3	1,212.25		2,156.75
		54,215.05	56,371.80		
1924					
Dec. 3	Ford.....	.....	2,156.75	Cr.	2,156.75
	94.		2,250.75
	C.B.....	47.31	.....		2,203.44
4	944.50	.....		1,258.94
5	1,212.25	.....		46.69
5	118.		164.69
6	60.		224.69
8	455.50		680.19
11	3,278.50		.....
	119.50		4,078.19
12	568.		4,646.19
	4,078.19	.....		568.00
13	372.		940.00
16	940.00	.....		.....
17	752.50		752.50
18	234.00		986.50
19	256.75		1,243.25
19	256.75		1,243.25
	C.B.....	152.10	.....		1,091.15
20	1,051.50		2,142.65
22	986.50	.....		1,156.15
	153.81		1,309.96
23	1,156.15	.....		153.81
24	224.25		378.06
	150.		.....
	2.10		530.16
26	85.		615.16
29	586.25		1,201.41
30	265.		1,466.41
31	1,079.40		2,545.81
1925					
Jan. 2	1,466.41		1,079.40
	338.25		1,417.65
6	338.25	
	346.50		2,102.40
8	152.10		2,254.50
9	2,102.40		152.10

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EXHIBIT No. 16.—Continued.

THE DOMINION BANK
 IN ACCOUNT WITH
 THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
 Exchequer
 Court of
 Canada.

Exhibits
 No. 16.
 Defendant's
 Windsor
 Bank
 Account,
 May 12,
 1924. Sqq.
 —Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925					
12		225.70		377.80
13		141.		518.80
14		325.75		844.55
10 15		203.		1,047.55
16		7,200.		8,247.55
17	7,200.00			.....
	1,047.55			.....
20		701.		701.00
21		314.25		1,015.25
22		169.75		1,185.00
23		1,782.		2,967.00
		230.25		3,197.25
24		6,100.		9,297.25
26	3,197.25			6,100.00
20		24,530.61	30,630.61		
1925					
Jan. 26	Ford.....		6,100.		6,100.
27	6,100.		Cr.	.....
		222.95		222.75
28		162.		384.75
30		654.50		1,039.25
Feb. 2	1,039.25			.....
		135.50		135.50
3		281.25		416.75
7		206.50		623.25
30 9		349.25		.....
		275.25		1,247.75
11	1,247.75			.....
		126.50		126.50
14		474.75		601.25
17	601.25			.....
		679.75		679.75
18		357.		1,036.75
	C.B. 90.00, fees	1.27	91.27		945.48
20		290.75		1,236.23
21		141.		1,377.23
23	1,036.75			340.48
40 24		332.50		672.98
27		419.10		1,092.08
Mar. 2	1,092.00			.....

EXHIBIT No. 16.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
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Exhibits

No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925	.....	.....	102.50		102.50
6	.....	.....	686.38		688.88
7	.....	.....	2,602.25		3,291.13
9	.....	.....	486.		3,877.13
		3,291.13	.....		486.13
		586.	.....		.....
11	.....	.....	455.		455.
13	.....	.....	1,370.50		1,825.50
16	.....	.....	193.40		2,018.90
17	.....	.....	433.50		2,452.40
18	.....	2,018.90	.....		433.50
24	.....	.....	123.		556.50
		.....	900.		1,456.50
27	.....	1,456.50	.....		.....
28	.....	.....	2,956.75		2,956.75
31	.....	.....	139.50		3,096.25
April 1	.....	2,956.75	.....		139.50
6	.....	.....	1,056.10		1,195.60
7	.....	.....	10,000.50		2,196.10
8	.....	1,195.60	.....		1,000.50
		.....	3,118.25		4,118.75
9	.....	.....	390.50		4,509.25
11	.....	4,118.75	.....		390.50
		.....	1,606.		1,996.50
		.....	1,000.		2,996.50
		26,831.98	29,828.48		.....
1925					
April 11	Ford		2,996.50	Cr.	2,996.50
14	Ont. Creamery	941.79	941.79		2,054.71
		.....	.....		2,996.50
15	.....	.....	682.50		3,679.00
17	.....	.....	200.		3,879.
11	.....	3,679.00	.....		200.
		.....	600.		800.
20	.....	.....	800.		1,600.
22	.....	.....	869.50		2,469.50
		.....	1,075.		3,544.50
26	.....	.....	1,793.55		5,338.05
25	.....	3,544.50	.....		1,793.55
		.....	2,226.50		4,020.05
30	.....	4,020.05	.....		.....
May 1	.....	.....	2,201.70		2,281.70

EXHIBIT No. 16.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD.

LONDON

In the
Exchequer
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Exhibits

No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925					
5			2,941.25		5,242.95
9		5,242.95			
			2,135.50		2,135.50
10	11		2,416.85		4,552.35
	12		327.		4,879.35
	13	4,552.35			327.00
					307.00
			1,314.25		
			833.50		2,454.75
	14	C.B. 60.00			
		" 17.29			2,377.46
	15		324.75		2,702.21
	18		2,912.		5,614.21
20	20		3,868.50		9,482.71
			2,666.75		12,149.46
	22		646.50		12,795.96
			185.		12,980.96
		2,702.21			10,278.75
	26		198.		10,476.75
			2,452.		12,928.75
	27	Trans. 12,000.			928.75
			4,189.50		5,118.25
			566.75		5,685.00
30		69.77			5,615.23
		2,050.85			3,564.40
	28		582.50		4,146.90
	29		900.		5,046.90
	30		3,869.		8,915.90
			1,237.75		10,153.65
			67.50		10,221.15 B
June	1	5,046.90			5,174.25
			617.75		5,792.00
40	4	M. 13,221.15		Dr.	7,429.15
	5		872.31		
			5,641.25		915.59
			198.00		717.59
		57,148.79	56,431.20		
1925					
June	5	Ford. 717.59		Dr.	717.59
	8		2,000.	Cr.	1,282.41
	9		9,905.83		11,188.24
			5,496.		16,684.24

EXHIBIT No. 16.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
Exchequer
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Exhibits

No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance	
1925						
10		10,000.			6,684.24	
	C.B.	176.77			6,507.47	
11			100.75		6,608.22	
			5,897.25		12,505.47	10
12		11,000.			1,505.47	
			6,775.75		8,281.22	
13			1,965.00		10,246.22	
15		8,000.			2,246.22	
			38.94			
			11,158.50		13,443.66	
16			300.		13,743.66	
17		10,000.			3,743.66	
			3,502.25		7,245.91	
18			13,658.45		20,904.36	20
19			5,024.25		25,928.61	
			2,371.35		28,299.96	
	C.B.	60.			28,239.96	
20			433.50		28,673.46	
		14,000.				
		6,000.			8,673.46	
22			2,472.25		11,145.71	
23	M	8,000.			3,145.71	
23			1,504.25		4,649.96	
			1,120.		5,769.96	30
24			1,766.00		7,535.96	
26		7,500.			35.96	
			2,878.75		2,914.71	
27			613.75		3,528.46	
29			890.25		4,418.71	
		5,000.		Dr.	581.29	
30			109.50		471.79	
July 2			11,514.15	Cr.	11,042.36	
3			945.25		11,987.61	
6		11,514.15			473.46	40
			722.25		1,195.71	
7			3,149.85		4,345.56	
8			3,317.45		7,663.01	
	Exchag. Acc.	2.06	R		7,660.95	
			R	2.06	7,663.01	
9		5,000.			2,663.01	
			1,250.50		3,913.51	
11		5,000.		Dr.	1,086.49	
			7,682.45	Cr.	6,595.96	
			4,674.75		11,270.71	50

EXHIBIT No. 16.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH
THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
Exchequer
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Date 1925	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
13	10,000.		1,270.71
		111,970.57	113,241.28		
10 July 13	For'd.....		1,270.71	Cr.	1,270.71
		1,274.50		2,545.21
14		659.50		3,204.71
15		888.50		4,093.21
18	4,000.	.....		93.21
		1,871.50		1,964.71
21		3,909.60		5,874.31
22	6,000.	.....	Dr.	125.69
23		5,410.	Cr.	5,284.31
	7,000.	.....	Dr.	1,715.69
25		4,634.55		2,918.86
27		5,743.50		8,662.36
20 Exch..... R		20.14	R 20.14		8,662.36
28		1,021.75		9,684.11
29	8,662.36	.....		1,021.75
		1,543.25		2,565.00
31 Ex.....			1,592.25		4,157.25B
Aug. 4	4,167.25	.....	Dr.	10.
		9,265.75	Cr.	9,255.75
5	C.B.....	1,024.52	.....		8,231.23
6	9,255.00	.....	Dr.	1,023.77
		4,849.30	Cr.	3,825.53
7		1,023.00		4,848.53
10	M.....	3,825.53	.....		1,023.
30		1,780.00		2,803.
12	M.....	3,000.	.....	Dr.	197.
		3,974.50	Cr.	3,776.50 x
13		8,810.00		12,586.50
				12,587.50
14	8,000.	.....		4,587.50
	3,676.50	.....		911.00
		1,187.50		2,098.50
17		245.75		2,344.25
	C.B.....	401.77	.....		1,942.48
18		x 2,382.25		4,324.73
	3,000.	.....		1,324.73
40 19		2,448.75		3,773.48
20		x 2,010.		5,783.48
	4,000.	.....		1,783.48

Exhibits
No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.
—Continued.

EXHIBIT No. 16.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
Exchequer
Court of
Canada.

Exhibits

No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925					
21	.....	.....	13,649.75		15,433.23
		5,000.	.....		10,433.23
24	.....	.....	1,904.25		11,337.48
		11,000.	.....		337.48
25	.....	.....	x 6,421.15		6,758.63
27	.....	.....	1,338.75		8,097.38
28	.....	.....	1,833.50		9,930.88
29	.....	7,000.	.....		3,930.88
		.....	x 4,488.75		8,419.63
Sept. 2	.....	.....	8,055.75		16,475.38
5	.....	16,475.38	.....		.....
		105,508.45	105,508.45		
1925					
Sept. 9	.....	.....	6,848.05	Cr.	6,848.05
		5,000.	.....		1,848.05
10	.....	.....	2,170.		4,018.05
11	.....	.....	2,614.95		6,633.
12	.....	.....	5,929.		12,562.
14	.....	6,633.	.....		5,925.
		.....	983.50		6,912.50
15	.....	.....	990.50		7,903.
17	.....	.....	985.		8,888.
18	.....	.....	100.		8,988.
		8,000.	.....		988.
	C.B.	179.	.....		.....
		271.50	.....		537.50
21	.....	.....	5,276.25		5,813.75
		.....	8,643.50		14,457.25
		.....	1,927.62		16,384.87
22	.....	10,000.	.....		3,684.87
23	.....	.....	695.50		7,080.37
		6,000.	.....		1,080.37
25	.....	.....	989.25		2,069.62
26	.....	.....	3,033.75		5,103.37
28	.....	.....	4,225.25		9,328.62
29	.....	5,000.	.....		4,328.62
		.....	2,812.50		7,141.12
30	.....	7,000.	.....		141.12
		5,464.50		5,604.62 B
Oct. 2	2,895.95		8,501.57
	C.B.	500.		8,001.57
5	8,000.		1.57

EXHIBIT No. 16.—Continued.

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Exhibits
 No. 16.
 Defendant's
 Windsor
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 1924 Sqq.
 —Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925		3,631.75		3,633.32
	C.B.....	123.62			3,509.70
8		824.		4,333.70
9	3,500.			833.70
10		1,023.		1,856.70
12		1,929.75		3,786.45
14	C.B.....	50.02			3,736.43
15		724.25		4,460.68
	4,000.			460.68
20		5,494.35		5,955.03
	5,000.			955.03
		5,498.95		6,453.98
	C.B.....	50.			6,403.98
21	2,149.30			4,254.68
20	22	.....	2,149.30		6,403.98
		664.50		7,068.48
	6,000.			1,068.48
		2,202.50		3,270.98
26	3,000.			270.98
30		1,979.25		2,250.23
		80,456.44	82,706.67		
1925					
Oct. 30	Ford.....		2,250.23	Cr.	2,250.23
31	2,000.		R	250.23 B
30 Nov. 2		1,773.75		2,023.98
3		899.50		2,933.48 x
6		3,287.25		6,220.73
	4,000.			2,220.73
10		5,369.15		.....
	5,000.			2,589.88
12		8,779.25		11,369.13
13	5,000.			6,369.13
14	6,000.			369.13
17		1,311.25		1,670.38 x
40	20	.....	9,319.25		10,989.63
23	10,000.			989.63
		894.15		1,883.78
28		1,632.60		3,516.38
30		4,521.75		8,038.13 B
Dec. 1	5,000.			3,038.13
		4,680.		7,718.13
2		4,973.25		12,692.18

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EXHIBIT No. 16.—Continued.

THE DOMINION BANK
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THE CARLING E. B. & M. CO. LTD. - - - LONDON

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—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
3	10,000.		2,692.18
7	2,624.75		5,316.93
	3,000.	.....	Cr.	2,316.93
		2,316.13
8	1,786.60		4,103.53
		4,102.73
10	8,710.75		12,813.48
11	12,000.	.....		813.48
15	3,943.75		4,757.23
17	3,928.50		8,685.73
19	3,506.		12,191.73
	10,000.	.....		2,191.73
21	6,296.79		8,488.52
28	8,000.	.....		488.52
	2,012.74		2,501.26
29	6,327.95		8,829.21
31	112.51		8,941.72 B
1926 Jan. 2	8,000.	.....		941.72
	C.B.	307.56	.....		634.16
	"	1,815.27	.....	Dr.	1,181.11
	2,617.75	Cr.	1,436.64
5	5,344.25		6,780.89
9	3,523.26		10,304.15
11	5,000.	.....		5,304.15
	2,767.50		8,071.65
18	3,569.16		11,640.81
19	4,369.04		16,009.85
21	11,000.	.....		5,009.85
23	M.	5,000.	.....		9.85
26	2,627.		2,636.85
28	5,513.83		8,150.68
		111,122.83	119,273.51		
1926 Jan. 28	Ford .....	.....	8,150.68	Cr.	8,150.68
29	1,446.		9,596.68
	8,500.	.....		1,096.68 B
Feb. 1	1,167.10		2,263.78
2	645.		2,908.78
4	1,694.47		4,603.25
6	641.11		5,244.36
	5,000.		244.36

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Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
8		12,527.14		12,771.50
	C.B.	476.56			12,294.94
9	8,000.			4,294.94
10		1,198.		5,492.94
10	4,000.			1,492.94
11		840.91		2,333.85
15		896.80		3,230.65
16		2,791.20		6,021.85
18	5,000.00			1,021.85
19		1,048.		2,069.85
	C.B.	351.56			.....
	700.			1,018.29
22		1,890.76		2,909.05
20		4,255.69		7,164.74
23		3,683.73		10,848.47
25				3,848.47
26	7,000.			7,246.79
		3,398.32		1,246.79
27	6,000.			1,946.79 B
		700.		5,404.97
Mar. 1		3,458.18		5,345.10
	C.B.	59.87			6,663.10
2		1,318.00		1,663.10
3	5,000.			3,459.10
30		1,796.		6,459.10
4		3,000.		.....
	C.B.	200.			.....
	1.77			.....
	200.			.....
	1.77			6,055.56
8		4,034.50		10,090.06
9	8,000.			2,090.06
10		1,803.54		3,893.60
11	C.B.	600.			.....
40	600.			2,693.60
12		1,923.75		4,617.35
16	5,000.			.....
		6,329.15		5,946.50
17	5,000.			946.50
		2,000.		2,946.50
18		2,175.		5,121.50
20	5,000.			121.50
		74,691.53	74,813.03		

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THE DOMINION BANK
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THE CARLING E. B. & M. CO. LTD. - - - LONDON

Exhibits

No. 16.
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—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
Mar. 20	Forward		121.50	Cr.	121.50
22		1,681.00		1,802.50
		5,000.		6,802.50
25	C.B.	700.			.....
	700.			5,402.50
	N.S.F. . . . M.C.	6,000.	6,000.	Dr.	597.50
			Cr.	5,402.50
		3,093.75		8,496.25
	6,000.			2,496.25
		1,400.		3,896.25
27	5,000.			.....
	..... R	400.	R 400.	Dr.	1,503.75
		1,261.25		157.50
29		4,257.50	Cr.	4,415.00
30		7,602.75		12,017.75
	11,000.			1,017.75
31		7,134.25		8,152.00 B
April 3		2,000.00		10,152.00
6		3,033.75		13,185.75
8	10,000.			3,185.75
		3,875.		7,060.75
9	7,000.			60.75
12		2,865.		2,925.75
13		6,508.25		9,434.00
16		2,761.70		12,195.70
	10,000.			2,195.70
19		2,000.00		4,195.70
20		19,038.50		23,234.20
	15,000.			8,234.20
21		9,237.		17,471.20
22	10,000.			7,471.20
	C.B.	3,466.83			4,004.37
26		4,115.75		8,120.12
		16,774.75		24,894.87
	10,000.			14,894.87
29		6,176.25		21,071.12
	18,000.			3,071.12
	C.B.	134.75			2,936.37
30		1,200.00		4,136.37 B
May 3	C.B.	1,774.56			2,361.81
4		3,834.75		6,196.56
5		11,973.81		18,170.37
6		4,902.25		23,072.62

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EXHIBIT No. 16.—Continued.

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Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
7		15,000.	1,091.		24,163.62
					9,163.62
10			198.		9,361.62
10			1,726.50		11,087.12
11	C.B.	3,326.62	14,823.50		25,910.62
12			6,789.75		22,584.
					2,9374.75
		1,335,402.76	162,877.51		
1926					
May 12	Ford	25,000.	29,374.75	Cr.	29,374.75
					4,374.75
			1,451.75		5,826.50
20	14		3,764.		9,590.50
	17		6,761.90		16,352.40
	18		15,611.75		31,964.15
	19	M.	30,000.		1,964.15
	21		7,872.		9,836.15
	22		3,535.65		13,371.80
	25		15,312.99		28,684.79
	27		1,281.		29,965.79
			8,166.		38,131.79
		30,000.			8,131.79
30	28		3,628.47		11,760.26
	29		2,797.50		14,557.76
			3,324.97		17,882.73
			3,597.27		21,480.
June 1		10,000.			11,480. B
			9,472.87		20,952.87
	2		2,102.65		23,055.52
	4		12,018.23		35,073.75
		30,000.			5,073.75
	7		8,598.44		13,672.19
40	8		22,770.		36,442.19
	10	35,000.			1,442.19
			8,764.54		10,206.73
	11		7,463.		17,669.73
	12		7,269.85		24,939.58
	14		3,743.57		28,683.15
	15		27,571.75		56,254.90
		C.B.	1,502.06		54,752.84
			5,736.		60,488.84
	17	50,000.			10,488.84

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—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926			6,832.50		17,321.34
18			4,577.00		21,893.34
21			3,523.25		25,416.59
	C.B.	2,000.			23,416.59
22			2,000.00		25,416.59
			31,786.50		57,203.09
23		50,000.			7,203.09
			8,032.51		15,235.60
24			3,072.75		18,308.35
26			6,090.50		24,398.85
28			2,638.77		27,037.62
29			23,303.60		50,341.22
	C.B.	3,461.62			46,879.60
30		35,000.			11,879.60
			12,019.		
			3,461.62		27,360.22
		301,963.68	329,323.90		
1926					
June 30	Ford.		27,360.22	Cr.	27,360.22 B
July 2	C.B.	67.80			27,292.42
3			16,171.77		43,464.19
5			9,728.80		53,192.99
6			7,864.49		61,057.48
		10.			61,047.48
7			34,799.75		95,847.23
8		50,000.			45,847.23
			11,732.57		57,579.80
			9,087.81		66,667.61
10	C.B.	700.			65,967.61
12			6,333.32		72,300.93
			700.		73,000.93
	C.B.	4,636.66			68,364.27
13			41,703.25		110,067.52
			4,636.66		114,704.18
14		100,000.			14,704.18
			4,461.50		
			3,505.		22,670.68
15			9,288.		31,958.68
17			9,563.93		41,522.61
20			3,600.		
			1,243.75		
			22,004.75		68,371.11

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Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
21		1,000.		69,371.11
22		1,000.		70,371.11
	C.B.	3,461.62			66,909.49
10 24	C.B.	27.27			66,882.22
26	.....		37,549.		104,431.22
27	C.B.	101.83			104,329.39
	.....		2,512.50		106,841.89
28	.....	50,000.			56,841.89
	.....		2,214.50		59,056.39
29	.....		2,567.		61,623.39
30	.....		1,789.30		63,412.69
31	.....		42,981.61		106,394.30
Aug. 3	.....		1,500.		107,894.30
4	.....	50,000.			57,894.30
7	.....		46,130.55		104,024.85
11	.....	30,000.			74,024.85
20 12	C.B.	200.			73,824.05
13	.....		1,469.81		75,294.66
14	.....	57,592.81			17,701.85
18	.....		35,941.13		53,642.98
	.....	50,000.			3,642.98
	.....		5,670.85		9,313.83
21	.....		47,364.82		56,678.65
23	C.B. Cur. Def..	1,350.			55,328.65
	.....		5,539.58		60,868.23
		398,147.99	459,016.22		
30 1926					
Aug. 25	Ford.....		60,868.23	Cr.	60,868.23
28	.....		51,041.93		111,910.16
31	.....	50,000.			R 61,910.16 B
Sept. 2	.....		800.		62,710.16
4	.....		60,740.55		123,450.71
8	.....	50,000.			73,450.71xx
	.....	1,000.			92,450.71
11	.....		38,471.15		130,921.86
	.....	50,000.			60,921.86
18	.....		51,434.13		112,355.99
	35,000.			77,355.99
40 21		5,525.75		82,881.74
23		160.80		85,042.54
25	50,000.			33,042.54
		58,242.05		91,284.59

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—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
29			670.		91,954.59
30			1,348.		93,302.59 B
Oct. 2		35,000.			58,302.59
			41,595.07		99,897.66
6	Exchg a/c M.C.	100,000.		Dr.	102.34
		3,586.47 R			84.13
					3,688.81
8			1,647.67		2,041.14
	M.C.		3,586.47 R	Cr.	1,545.33
9			41,945.28		43,490.61
13		50,000.		Dr.	6,509.39
16			37,289.22	Cr.	30,779.83
23			36,450.73		67,230.56
26			5,000.		72,230.56
27		50,000.			22,230.56
30			42,888.16		65,118.72
	To Exchg. a/c	3,781.89			61,336.83
Nov. 6			46,620.36		107,957.19
9		50,000.			57,957.19
13			44,717.94		102,675.13
		50,000.			52,675.13
16			550.		53,225.13
		5,000.			48,225.13
18		43,329.27			4,895.86
22			36,735.20		41,631.06
		3,000.			38,631.06
23		41,958.36		Dr.	3,327.30
24		494.70		"	3,822.00
27			24,954.60	Cr.	21,132.60
30	To exchge a/c	71.09			21,061.51
Dec. 1		20,000.			1,061.51
			10,048.		11,109.51
4			21,259.98		32,369.49
		10,000.			22,369.49
	Fd.	724,591.27	724,591.27		
		22,369.49			40
1926					
Dec. 4	Fd.		22,369.49		22,369.49
8			105.		22,474.49
11			23,370.		45,844.49
14			300.		46,144.49
16	C.B.	252.	252.		45,892.49

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Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					46,144.49
18		10,000.			36,144.49
20			17,493.25		53,637.74
21		100.			53,537.74
10 23			82.05		53,619.79
28			12,109.05		65,728.84
31		643.50			65,085.34
		1,000.			64,085.34
		1.84			64,083.50
1927					
Jan. 3			9,204.33		73,287.83
6			306.50		73,594.33
7			20,284.38		93,878.71
8			10,826.19		104,704.90
20 10			1,200.		105,904.90
11	N.	50,000.			55,904.90
13			50,000.		105,904.90
		15,000.			
		15,000.			
		47,000.			
	200	R 20,000.	R 20,000.		8,904.90
17			9,874.80		18,779.70
		R 2,000.	R		36,779.70
18			7,245.35		44,025.05
30 25		16,013.43			28,011.62
28			47,000.		75,011.62
		46,661.60			28,350.02
29			13,804.01		42,154.03
31	To exch	20.26			42,133.77 B
		R	R 2,000.		
		20,000.			R 24,133.77
2		40,000.		Dr.	15,866.23
5			16,279.56	Cr.	413.33
9			371.75		785.08
40 15			30,756.52		31,541.60
			15,000.		46,541.60
		50,000.		Dr.	3,458.40
18		100.			3,558.40
19			3,720.25		161.85
22			16,925.54		18,087.39
23		10,000.			7,087.39
			1,013.75		8,101.14
25		20,000.		Dr.	11,878.86
26			15,726.20		3,827.34

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—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1927					
28	Fd.....		13,742.00		17,569.34
	Fd.....	17,569.34			
		381,361.97	381,361.97		
Feb. 28	Fd.....		17,569.34	Cr.	17,569.34
	To Exchag.....	55.56			17,513.78 B 10
Mar. 2			782.50		18,296.28
4		20,000.00		Dr.	1,703.72
5			21,927.80	Cr.	20,224.08
7			2,815.93		
			225.		23,265.01
	Sts. R.....	.72	R		23,264.29
	R.....		R		23,265.01
8			141.67		23,406.68
9			836.		24,242.68
14			15,677.50		39,920.18 20
16			3.		39,923.18
		40,000.		Dr.	76.82
18			126.00	Cr.	49.18
21			142.50		191.68
22			16,463.60		16,655.28
25		15,000.			1,655.28
			403.		2,058.28
26			19,836.95		21,895.23
28			300.		22,195.23
29		20,000.			2,195.23 30
31	To Exch.....	2.22		R	2,193.01 R
April 2			190.72		21,265.01
4		20,000.			1,265.01
6			500.		1,765.01
7			100.		1,865.01
9			18,720.15		20,585.16
12		20,000.			585.16
			204.42		789.58
13			454.50		1,244.08

EXHIBIT No. 16.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH
THE CARLING E. B. & M. CO. LTD. - - - LONDON

In the
Exchequer
Court of
Canada.

Exhibits
No. 16.
Defendant's
Windsor
Bank
Account,
May 12,
1924. Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1927	C.B.....	857.50			386.58
16	.....		27,955.35		28,341.93
19	.....		857.50		29,199.43
20	.....	30,000.		Dr.	800.57
10 22	C.B.....	857.50		Dr.	1,658.07
26	.....	20,000.		Dr.	21,658.07
	.....		19,579.50	Dr.	2,078.57
30	To Exchg.....	3.55		Dr.	2,082.12
May 3	.....		23,090.50	Cr.	21,008.38
6	.....	100.		Cr.	20,998.38
	.....				20,908.38
9	.....		23,964.90		44,873.28
	.....	25,000.			19,873.28
	H.....	.04	.04		19,873.28
20 12	.....M	20,000.		Dr.	126.72
14	.....		17,777.50	Cr.	17,650.78
16	.....		252.		17,902.78
17	.....	20,000.		Dr.	2,097.22
		251,877.09	251,877.09		
May 17	Fd.....	2,097.22		Dr.	2,097.22
	.....		510.		
	.....		144.50	Dr.	1,442.72
	.....4.4	252.		Dr.	1,694.72
18	.....		600.	Dr.	1,094.72
30 21	.....		15,014.35	Cr.	13,919.63
	C.B.....	105.			13,814.63
23	.....		18.		13,832.63
	Osterhout.....		105.		13,937.63
25	.....	16,000.		Dr.	2,062.37
	.....		200.	Dr.	1,862.37
28	.....		16,110.25	Cr.	14,247.88
30	.....		275.		14,522.88
31	To Exchg.....	7.98			14,514.90
	To Seagram.....	12,000.		Dr.	2,514.90 B
40 June 1	.....		12,000.		14,514.90
4	.....		15,876.30		30,391.20
6	.....		450.		30,841.20
7	.....		400.		31,241.20
8	.....	280.	R 280.		31,521.20
	.....				31,241.20
	.....		675.		31,916.20
9	.....	30,000.			1,916.20

In the
Exchequer
Court of
Canada.

EXHIBIT No. 16.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

THE CARLING E. B. & M. CO. LTD. - - - LONDON

Exhibits	Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
No. 16.	1927					
Defendant's	11	.....		18,694.50		20,610.70
Windsor	14	.....	20,000.			610.70
Bank	18	.....		18,963.45		19,574.15
Account,	25	.....		21,073.10		40,647.25
May 12,	27	.....		19.50		40,666.75
1924. \$qq.	29	.....		21.		40,687.75
—Continued.	30	To Exchag.....	1.			40,686.75
		Seagram.....	17,000.			
		London B.....	7,000.			
		Erie Transit...	1,100.		R	15,586.75 B
July	4	.....		18,441.05		34,027.80
	5	.....		1,500.		35,527.80
		.....		1,100.		36,627.80
	6	.....		17,000.		
		.....		7,000.		60,627.80
	8	.....	R	580.	R	61,207.80
		.....	R	912.	R	62,119.80
		.....	R	580.	R	
		.....	R	912.	R	60,627.80
	7	.....		31,793.60		92,421.40
	12	.....		300.		92,721.40
		.....	20,000.			72,731.40
	14	.....	72,000.			721.40
	30	To Exchg.....	15		R	721.25
Aug.	9	.....		618.25		1,340.00
		.....				1,339.50
	11	.....		62,353.62		63,693.12
	15	.....		1,584.		65,277.12
			199,335.35	264,612.47		
1927						
Aug.	15	Ford.....		65,277.12	Cr.	65,277.12
	18	.....		313.		65,590.12
Sept.	12	4.4 a/c.....	68.	R 68.		65,658.12
	30	To Exchag.....	50			65,589.62 B
Oct.	5	.....	13,224.40			52,365.22
Nov.	24	Int. for Oct....		R 88.95		52,454.17
		.....	88.95	R		52,365.22
		Int. for Oct....		80.45	Cr.	52,445.67
Dec.	3	Int. for Nov....		77.85	Cr.	52,523.52
	30	Int. for Dec....		80.70	Cr.	52,604.22 B
Mar.	26	Int. to date....		224.30		52,828.52
	26	.....	52,828.52			
			66,210.37	66,210.37		

EXHIBIT No. 109 (Part).
(Plaintiff's)

ACCOUNT No. 8/8
*In the
Exchequer
Court of
Canada.*

SPECIAL LOAN ACCOUNT.

(IN GENERAL LEDGER TO JUNE 1925)

Exhibits
No. 109
(part).
Special
Loan
Account,
Sept. 9-
Oct. 31, 1924

Date			Dr.	Cr.		
1924	Sept. 9.	No. 3. P. J. Knotlock*	J11		1,877.50	c 1,877.50
	6.	No. 2. Chq. Berardino	C41		2,600.00	c 4,477.50
	10.	No. 1. " Mark and Schutte	C42		2,500.00	c 6,977.50
10	18.	No. 5. " Johnston	C43		2,000.00	c 8,977.50
	22.	No. 5. " A. E. Johnston	C44		4,000.00	c 12,977.50
	22.	No. 5. " "	C44		400.00	c 13,377.50
	22.	No. 5. " "	C44		400.00	c 13,777.50
	25.	No. 5. " Jos. M. Sottile	C44		2,400.00	c 16,177.50
	25.	No. 1. " Schutte	C44		2,500.00	c 18,677.50
	Oct. 1.	No. 6. " Joe Famularo	C47		250.00	c 18,927.50
	4.	No. 2. " Berardino	C47		677.50	c 19,605.00
	4.	No. 1. " Schutte	C47		1,693.75	c 21,298.75
	6.	No. 1. " "	C47		500.00	c 21,798.75
20	18.	No. 1. " "	C50	2,193.75		c 19,605.00
	21.	No. 5. " Sottile/Johnstone	C51	7,200.00		c 12,405.00
	31	Private Ledger	J13	12,405.00		Balance
	Apr. 30.	Mr. Burns	C83		10,000.00	c 10,000.00
	Apr. 30.	do. Pers.	8/6	10,000.00		

* The names hereunder are in pencil.

EXHIBIT No. 109 (Part).

(Plaintiff's)

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 109
(Part)
Defendant
Export
Insurance
Account
General
Ledger,
Dec. 29,
1924.

Defendant's Export Insurance Account, General Ledger.

ACCOUNT No. 8/9

EXPORT INSURANCE ACCOUNT

(FROM GENERAL LEDGER TO JUNE 1925.)

Date			Dr.	Cr.	Balance
1924.		*			
Dec. 29.	No. 2.	Mr. Berardino		293.84	c 293.84
1925					
Jan. 9.	No. 2.	Mr. Berardino		3,000.00	c 3,293.84
	16.	No. 7. Johnie		4,500.00	c 7,793.84
	26.	No. 7. Mr. Low	J15	900.00	c 8,693.84
	29.	No. 2. Mr. Berardino	C65	2,300.00	c 10,993.84
Feb. 28.	No. 4.	Hopt	J16	2,850.00	c 8,143.84
	26.	No. 2. B. K. Vengel	C68	160.98	c 8,304.82
	28.	No. 2. M. B.	C70	4,000.00	c 12,304.82
Mar. 7.	No. 4.	Hopt	C71	5,400.00	c 17,704.82
	13.	No. 2. M. B.	C73	4,000.00	c 21,704.82
	17.	No. 4. Leon	C73	150.00	c 21,854.82
	23.	No. 2. M. B.	C74	1,500.00	c 23,354.82
	21.	No. 8. Lillian	C74	6,120.00	c 29,474.82
	24.	No. 4. Fraid	C74	5,332.50	c 34,807.32
	24.	No. 4. "	C74	5,572.30	c 40,379.62
	30.	No. 4. Bank Charges	J17	15.20	c 40,394.82
	31.	No. 4. Hopt	J17	4,925.00	c 35,469.82
	31.	No. 8. Lillian	J17	2,650.00	c 32,819.82
	31.	No. 2. M. B.	J17	667.50	c 33,487.32
Apr. 4.	No.	Export Ins	C77	6,600.00	c 40,087.32
	3.	No. 4. Fraid	C77	5,580.00	c 45,667.32
	7.	Newark	C77	6,013.00	c 51,680.32
	9.	No. 2. M. B.	C78	2,500.00	c 54,180.32
	13.	No. 10. No. 10	C79	4,000.00	c 58,180.32
	14.	No. 4. Fraid	C79	5,580.00	c 63,760.32
		M. B.			
May 5.		Hopt.	J19	5,200.00	c 58,560.32

* Names hereunder are in pencil.

EXHIBIT No. 70 (Part).

(Plaintiff's)

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 70
(Part)
Defendant's
Export
Insurance
Account,
June 30,
1925.

Defendant's Export Insurance Account.

ACCOUNT No. 2

EXPORT INSURANCE

Date	Items	Folio	Debit	Credit	Dr. or Cr.	Balance
1925						
June 30.	Tsfrs. from Export Ins.	J41		58,560.32	C.	58,560.32
Sept. 30.	Export Funds.....	J31	58,560.32			
10 July 7, 26	Export Ins. Ck.....	C.B. 205-21	30,000.00		D.	30,000.00
July 15.	Jos. Tito.....	C.B. 208-20	3,750.00		D.	33,750.00
Aug.	C. Burns.....	J155	1,742.44		D.	35,492.44
Sept. 30.	Journal.....	J157		30,000.00	D.	5,492.44
Oct. 9.	Cash Book.....	C.B. 235-14	242.62		D.	5,735.06
30.	[red] P. & L.....	J163		5,735.06		.....

In the
Exchequer
Court of
Canada.

EXHIBIT No. 109 (Part).
(Plaintiff's)
Export Charges, H. Low.

ACCOUNT No 3-7.

Exhibits

No. 109
(Part).
Export
Charges
H. Low,
Sept. 12,
1924.

EXPORT CHARGES
H. LOW.
(FROM GENERAL LEDGER TO JUNE, 1925)

Date.		Folio	Dr.	Cr.	Balance
1924.					
Sept. 12.	Cheque 599	C42	2,000.00		10
17.	" 614	C43	1,000.00		
23.	" 631	C44	2,500.00		
24.	" 639	C44	2,000.00		
30.	" 663	C45	2,500.00		
Oct. 1.	Balance*		10,000.00		
15.	735	C50	100.00		
21.	756	C50	100.00		
Nov. 1.	Balance*		10,200.00		
1.		J13		10,200.00	
Dec. 31.		C60	403.83		20
	Sdry. Salaries				
1925					
Jan. 26.		J15	900.00		
Jan. 19.	H. Low \$1200				
" 20.	" 750				
31.		C65	4,018.44		
	Sdry. Salaries				
Feb. 1.	Balance*		5,322.27		
Feb. 2.	H. Low \$900				
28.		C70	1,761.00		30
Mar. 1.	Balance*		7,083.27		
Mch. 5.	H. Low, \$1000.				
" 7.	" 1200.				
" 17.	" 1025.				
31.		C76	6,674.73		
Apr. 1.	Balance*		13,758.00		
Apr. 3.	H. Low, \$ 950				
" 7.	" 1900				
" 20.	" 950				
30.		C83	5,747.58		40
May 1.	Balance*		19,505.58		
May 1.	H. Low, \$950				
" 7.	" 500				
" 11.	" 500				
" 13.	" 950				
30.		CB91	6,880.15		Dr. 26,385.73
			26,385.73		
June 30.	Ck. No. 1466 cancelled	CB97		25.00	Dr. 26,360.73
June 2.	H. Low \$1900				
" 11.	" 1000				
" 17.	" 1450				
	Cash Book	CB99	8,662.50		Dr. 35,023.23
30.	By Journal	22		35,023.23	

* Balances are in red ink.
The lines printed in smaller type are written in lead pencil.

EXHIBIT No. 108.

(Plaintiff's)

Long Room Entries—Second-Hand Empty Bottles.

This exhibit consists of a bundle of forms "B.1", entitled "Customs, Canada—Entry for Home Consumption" which covers 86 carloads of secondhand empty bottles. The following is a sample form taken from this exhibit :—

CUSTOMS CANADA—ENTRY FOR HOME CONSUMPTION

B. 1—AMENDED } Port of London
 1922 } Arriving per C.N.R. 14 Mch. 1925 Imported by Carling B. & M. Co. Ltd.
 3,000,000—2-24 } Goods Exported to Canada Direct from U.S.A. Via (Country through which carried in transit if any)

Report No. _____
 Entry No. 24161

10

Marks and Numbers	Number of Packages	Description of Goods	Quantity	Invoice Value in Currency of Invoice	Value for Duty in Dollars.	Rate of Duty or Price.	Total		Customs Duty. Duty Paid Value.		Sales Tax.		Rate of Excise Tax	Excise Tax.		Tariff Applied.
							\$	c.	\$	c.	\$	c.		\$	c.	
Car																
409956	1	Car Second Hand	200	712.50	713	32½	231	72								Gen.
		Empty Pint Bottles	Gr.						Duty		\$231	72				

Customs—Excise—Canada
 Duty Paid
 Mar. 26, 1925
 W. _____ Cashier
 London, Ont.

Customs—Excise—Canada
 Checked
 Mar. 24 1925
 _____ Checker
 London, Ont.

20

In the
 Exchequer
 Court of
 Canada.

Exhibits
 No. 108.
 Long Room
 Entries re
 Second-
 hand Empty
 Bottles,
 Sample
 Dated
 Mar. 14,
 1925.

950

EXHIBIT No. 108 (Part).

(Plaintiff's)

The back of this exhibit contains Forms 1 and 2 and Form 4 in printing similar to that on back of Exhibit H, which is printed. These forms are not filled in nor signed, but Form 1 bears in the margin the following stamp :—

Customs—Excise—Canada

Manifest Clerk

Mar. 24, 1925

London, Ont.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 108
Long-Room
Entries Re:
Second
Hand
Empty
Bottles
Sample
Dated
Mar. 14,
1928

—Continued

EXHIBIT No. 17.
(Plaintiff's)
Harry Low Special Account (Dominion Bank)
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW - - - - - **SPECIAL**
Exporter, 262 Devonshire Rd.,

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925					
10 May 23	Dep.	1,000.	1,401.85	Cr.	1,401.85
	401.85
27	221.	.....	.....	180.85
	N. S. F.	260.	260.	.....	180.85
30	2,500.	.....	2,680.85
June 1	1,800.	.....	.....	880.85
	710.	.....	1,590.85
4	1,090.85	.....	.....	500.00
8	250.	.....	.....	250.00
	610.27	.....	Dr.	360.27
20 9	65.	.....	"	425.27
11	999.25	Cr.	573.98
12	..... M	43.	.....	.....	530.98
13	50.	.....	.....	.....
	200.	.....	.....	280.98
	..... M	573.74	.....	Dr.	292.76
16	998.75	Cr.	705.99
17	16.25	.....	.....	689.74
18	79.16	.....	.....	610.58

30 20	..... M	576.66	.....	.....	33.92
	1,000.	.....	1,033.92
	172.90	.....	.....	861.02
	835.12
22	222.90	.....	.....	612.22
	142.52	.....	.....	469.70
23	45.	.....	.....	.....
	77.50	.....	.....	347.20
24	15.	.....	.....	332.20
25	120.25	.....	.....	.....
40 25	43.50	.....	.....	168.45
27	6.35	.....	.....	162.10
	593.	.....	Dr.	430.90
	500.	Cr.	69.10
	146.25	.....	Dr.	77.15
29	..... M	5.08	.....	"	82.23
	Int.	50	.....	"	12.73
30	121.75	.....	"	204.48
	62.46	.....	"	266.94 B
	500.	Cr.	233.06 B
July 2	32.75	.....	.....	.....

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH

HARRY LOW SPECIAL

Exporter, 262 Devonshire Rd.

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925	5.40	.....	.....	.....
	71.10	.....	.....	723.81
	71.52	.....	.....	42.29
3	4.25	.....	.....	38.04
	50.83	.....	Dr.	12.79
	Int.....	.50	.....	"	13.29
4	509.05	.....	"	522.34
	250.	"	272.34
	2.68	.....	"	265.02
		9,384.87	9,119.85		
July 4	Ford	265.02	.....	Dr.	265.02
6	1,000.	Cr.	734.98
7	28.55	.....	.....	706.43
11	..... M	522.50	.....	.....	183.93
	2.30	.....	.....	181.63
14	71.30	.....	.....	110.33
15	75.	.....	.....	35.33
17	7.50	.....	.....	27.83
	15.28	.....	.....	12.55
	3.69	.....	.....	8.86
	541.92	.....	Dr.	533.06
	34.77	.....	"	567.83
	500.50	.....	"	1,068.33
18	1.50	.....	"	1,069.83
	89.48	.....	"	1,159.31
	289.78	.....	"	1,449.09
	25.32	.....	"	1,484.41
	"	1,474.41
20	5.	.....	"	1,479.41
21	49.22	.....	"	1,528.63
	50.	.....	"	1,578.63
	70.60	.....	.....	.....
	37.56	.....	.....	.....
	Int.....	1.45	.....	"	1,688.24
22	38.	.....	"	1,726.24
	98.60	.....	"	1,824.84
23	41.59	.....	.....	.....
	123.40	.....	.....	.....
	4.	.....	"	1,993.83
25	495.50	.....	"	2,489.33
	2,000.	.....	489.33

EXHIBIT No. 17.—Continued.

In the
Exchequer
Court of
Canada.

THE DOMINION BANK
IN ACCOUNT WITH
HARRY LOW - - - - - SPECIAL
Exporter, 262 Devonshire Rd.

Exhibits
No. 17.
Harry Low
Special
Account
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925				Dr.	
		15.08		"	504.41
		25.		"	529.41
10 27		331.61		"	861.02
29		275.95		"	1,136.97
	Int.	3.25		"	1,140.22
31		66.13		"	1,206.35
		32.80		"	1,239.15
			2,000.	Cr.	760.85
	Carling Ex.	94.08			666.77 B
1		437.			229.77
Aug.		134.			95.77
		332.10		Dr.	236.33
20 5		31.28		"	205.05
7				"	267.61
		42.05		"	309.66
		50.		"	359.66
8		450.50		"	810.16
		120.25		"	930.41
10		28.50		"	
		10.39		"	969.30
		5,969.30	5,000.		
1925					
30 Aug. 10	Ford	969.30		Dr.	969.30
		25.		"	
		10.		"	
		4.19		"	
		13.50		"	
		16.05		"	1,038.04
11		27.		"	1,065.04
12		3.25		"	1,068.29
		231.69		"	
40 14		31.33		"	1,331.31
		120.25		"	
		65.81		"	1,517.37
15		228.		"	1,745.37
17		109.06		"	
		231.09		"	
		40.		"	2,125.52
		444.		"	2,569.52
			2,000.	"	569.52
22	M.	420.50		"	990.02

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW - - - - - **SPECIAL**
Exporters, 262 Devonshire Rd,

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925	214.75	.....	Dr.	.....
	327.86	.....	"	.....
	207.88	.....	"	1,740.51
24	39.	.....	"	1,779.51
	Int.....	5.	.....	"	1,784.51
25	19.42	.....	"	.....
	50.	.....	"	1,853.93
26	39.50	.....	"	1,893.43
29	446.75	.....	"	2,340.18
	95.	.....	"	2,435.18
31	Int.....	6.70	.....	"	2,441.88
	144.65	.....	"	2,586.53
	208.58	.....	"	2,795.11
Sept. 1	105.32	.....	"	2,900.43
2	150.	.....	"	3,050.43
	56.93	.....	"	3,107.36
4	50.00	.....	"	.....
	25.00	.....	"	3,182.36
5	196.60	.....	"	3,378.96
8	155.81	.....	"	3,534.77
9	2,500.	/	1,034.77
	100.	.....	"	.....
	100.	.....	"	1,234.77
12	..... M	495.45	.....	"	1,730.22
	447.50	.....	"	2,177.72
14	406.30	.....	"	2,584.02
	50.	.....	"	2,634.02
15	252.82	.....	"	2,886.84
	Stamp.....	.98	.....	"	2,887.82
16	48.44	.....	"	2,936.26
		7,436.26	4,500.		
1925					
Sept. 16	Ford	2,936.26	.....	Dr.	2,936.26
	Int., B.S. 194	5.	.....	"	2,941.26
17	50.	.....	"	2,991.26
18	2.	.....	"	.....
	5.50	.....	"	2,998.76
19	7.40	.....	"	3,006.16
	523.50	.....	"	3,529.66
	1,495.65	/	2,034.01
	50.	.....	"	2,084.01
21	170.96	.....		.....

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW "SPECIAL"
 Exporters, 262 Devonshire Rd.,

*In the
 Exchequer
 Court of
 Canada.*

Exhibits

No. 17,
 Harry Low
 Special
 Account
 May 23,
 1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925	7.97	.....		.....
	34.65	.....	"	2,297.59
10	4.35	/	2,293.24
	.....M	42.67	.....	"	.....
	2.40	.....	"	2,338.31
22	145.05	.....		.....
	103.69	.....		.....
	15.75	.....		.....
	30.73	.....	"	2,633.53
	1.90	.....	"	2,635.43
23	3.81	.....	"	2,639.24
	50.	.....	"	2,689.24
	5.75	.....	"	2,694.99
20 24	5.64	.....	"	.....
	209.38	.....	"	2,910.01
25	2,500.	/	410.01
	350.	.....	"	.....
	92.04	.....	"	852.05
26	544.25	.....	"	.....
	50.	.....	"	1,446.30
29	17.71	.....	"	1,464.01
	13.65	.....	"	1,477.66
30 Oct. 30	Carling.....	60.04	.....	"	1,537.70 B
2	105.05	.....	"	1,642.75
3	1,000.	/	642.75
	521.25	.....	"	1,164.00
7	408.76	.....	"	1,572.76
9	Stamp.....	1.42	.....	"	1,574.16
10	1,000.	/	.....
	472.40	.....	"	1,046.58
12	56.87	.....	"	1,103.45
13	199.	.....	"	1,302.45
15	512.93	.....	"	1,815.38
40 19	.....M	482.90	.....	"	2,298.28
20	50.	.....		.....
	50.	.....		.....
	427.19	.....	"	2,825.47
23	25.70	.....	"	2,851.17
	Int.....	13.15	.....	"	2,864.32
		8,864.32	6,000.		
1925 Oct. 23	Forward	2,864.32	.....	Dr.	2,864.32
24	1.22	.....	"	2,865.54

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW "SPECIAL" - - - SPECIAL ACCT.

Exporter, 262 Devonshire Rd.

Exhibits

No. 17.
Harry Low
Special
Account
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925		490.90		"	3,356.44
			1,000.	"	2,356.44
28		255.		"	2,611.44
		50.		"	2,661.44
30		167.		"	2,828.44
		22.		"	2,850.44
	M	4.60		"	2,855.04
		15.		"	2,870.04
		20.40		"	2,890.44
		82.03		"	2,972.47
	Int.	11.10		"	2,983.57
31		2.			
		5.			
		297.			
		1.91		"	3,289.48
		5.63		"	3,295.11
		475.75		"	3,770.86
			1,000.	/	2,770.86
		102.99		"	2,833.85 B
Nov. 2		195.75		"	
		39.69			
		37.51			
		21.40			
		5.		"	3,173.20
		50.		"	3,223.20
3		42.		"	3,265.20
	Int.	2.30		"	3,267.50
5		63.84		"	3,331.34
7		1.05		"	3,332.39
		536.		"	3,868.39
			1,000.	"	2,868.39
11		5.35		"	2,873.74
12		50.		"	2,923.74
13		1.15		"	2,924.89
	Stamp	1.16		"	2,926.05
14			1,500.	/	1,426.05
		522.70		"	1,948.75
16		500.		"	2,448.75
17		291.67		"	2,740.42
19		49.04			
		10.97		"	2,800.43
21			2,000.	/	800.43
		503.		"	1,303.43
		203.76			

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW "SPECIAL" - - - - - SPECIAL ACCT

Exporter, 262 Devonshire Rd.

In the
Exchequer
Court of
Canada.

Exhibits
No. 17.
Harry Low
Special
Account
May 23,
1925. Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
	372.05	.....	"	1,879.24
24	200.	.....	"	.....
	50.	.....	"	2,129.24
10		8,629.24	6,500.00		
1925					
Nov. 24	Ford.	2,129.24	.....	Dr.	2,129.24
28	521.40	.....	"	2,650.64
	25.	.....	"	2,675.64
	O/D Int.	14.75	.....	"	2,690.39
	1,500.	"	1,190.39
30	2.15	.....	"	1,192.54
	20.33	.....	"	1,210.87
	O/D.	213.30	.....	"	1,426.17 B
20 Dec. 1	59.65	.....		.....
	42.50	.....		.....
	99.	.....	"	1,627.32
2	11.60	.....	"	1,638.92
3	89.65	.....	"	1,728.57
4	34.10	.....	"	1,762.67
5	573.50	.....	"	1,189.17
		2,336.17
	1,500.	/	836.17
	43.00	.....		879.17
30 7	50.00	.....	C	929.17
8	3.83	.....		.....
	9.	.....		.....
	95.	.....		.....
	1.00	.....		.....
	77.68	.....	"	1,115.79
9	110.66	.....		.....
	4.	.....		.....
	9.	.....		.....
	28.50	.....		.....
40 10	150.30	.....	"	1,418.25
	39.60	.....	"	.....
	291.67	.....	"	1,749.52
12	19.30	.....		.....
	219.14	.....	"	1,987.96
	1,000.		987.96
	588.	.....	"	1,575.96
14	12.65	.....	"	1,588.61
15	352.56	.....	"	1,941.17

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW "SPECIAL" - - - SPECIAL ACCT
Exporter, 262 Devonshire Rd.,

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
	84.37	.....	"	.....
	50.	.....	"	.....
	50.	.....	"	2,125.54
16	77.55	.....	"	2,203.09
	1.34	.....	"	2,204.43
19	..... M	492.50	.....	"	2,696.93
	1,500.	"	1,196.93
	50.	.....		.....
	50.	.....		.....
	50.	.....		.....
	54.89	.....	Dr.	1,401.82
23	50.	.....		.....
	17.10	.....	Dr.	1,468.92
		6,968.92	5,500.		20
1925					
Dec. 23	Ford	1,468.92		Dr.	1,468.92
24	332.50	.....		.....
	50.	.....		.....
	25.72	.....	Dr.	1,877.14
	5.64	.....	"	1,882.78
26	498.50	.....	"	2,381.28
	500.	/	1,881.28
28	50.	.....		.....
	50.	.....	"	1,981.28
30	42.75	.....		.....
	52.31	.....		.....
	53.50	.....		.....
	3.25	.....		.....
	5.25	.....		.....
	258.17	.....	"	2,396.51
	Int. O/D....	10.40	.....	"	2,406.91
31	23.45	.....		.....
	20.	.....		.....
	16.71	.....		.....
	230.	.....	"	2,697.07
	120.98	.....	"	2,818.05 B
1926					
Jan. 2	1,750.	.....	"	.....
	499.60	.....	"	5,067.65
	..... M	30.	.....	"	5,097.65
	2,750.	/	2,347.65
4	104.92	.....		.....

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW

“SPECIAL”

Exporter, 262 Devonshire Rd.,

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1925	46.50	.....	“	2,499.07
5	4.	.....	“	2,503.07
	500.	.....	“	3,003.07
10 9	29.	.....	“	3,032.07
11	309.46	.....	“	3,341.53
12	1,500.	/	1,841.53
	75.	.....		.....
	50.	.....		.....
	488.50	.....	“	2,455.03
	Int.	5.75	.....	“	2,460.78
16	19.69	.....	“	2,480.47
	..... M	540.50	.....	“	3,020.97
	1,500.		1,520.97
20 23	36.	.....	“	1,556.97
	548.50	.....	“	2,105.47
	1,500.		605.47
27	Stamp.	1.06	.....	“	606.53
29	91.90	.....	“	698.43
	Int.	11.65	.....	“	710.08
30	521.	.....	“	1,271.08
	1,500.	Cr.	268.92
Feb. 1	60.21	.....		208.71 B
	27.83	.....		180.88
30	9,069.12	9,250.		
1926		
Feb. 1	For'd .	.....	180.88	Cr.	180.88
	17.95	.....		162.93
	50.	.....		.....
	50.	.....		.....
	15.10	.....		47.83
2	3.75	.....		44.08
	Int.	8.40	.....		35.68
40 3	89.09	.....	Dr.	53.41
	261.79	.....	“	315.20
	50.	.....	“	365.20
4	230.53	.....		.....
	14.48	.....		.....
	19.30	.....		.....
	117.04	.....	“	.....
	100.	.....	“	846.55
5	74.65	.....	“	.....
	2.	.....	“	923.20

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW "SPECIAL"
Exporter, 262 Devonshire Rd.,

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
6	.....	497.75		Dr.	1,420.95
	.....		1,000.	"	420.95
8	.....	207.08			10
	.....	61.63		"	689.66
	.....	132.20		"	821.86
9	.....	246.17		"	1,068.03
11	.....	156.66			
	W. O.S.....	1.34		"	1,226.03
12	.....	44.51		"	1,270.54
	.....		1,000.	/	270.54
	.....	526.50		"	797.04
17	.....	70.		"	867.04
20	.....		1,500.	Cr./	632.96
	.....	513.			20
	.....	90.			119.96
	.....	244.76		Dr.	29.96
23	.....	373.90		"	214.80
	Int.....	20.75		"	588.70
26	Int.....	3.25		"	609.45
27	Low-Leo.....	942.24R	942.24	"	612.70
	.....	521.		"	1,133.70
	.....		1,500.	Cr./	366.30
	.....	13.75		R	352.55
Mar. 3	Int.....	4.90			30
5	Stamp.....	.52			347.65
6	.....	112.82			347.13
	.....	39.00			195.33
	.....		1,000.		1,195.33
	.....	516.75			678.56
8	.....	50.			628.56
9	.....	68.94			559.62
	.....	471.			88.62
		7,034.50	7,123.12		40
1926					
Mar. 13	Ford		88.62	Cr.	88.62
	.....		1,000.	/	1,088.62
	.....	20.			1,068.62
17	.....	7.			1,061.62
18	.....	12.93			
	.....	24.27			
	.....	8.57			
	.....	14.30			

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW "SPECIAL"
 Exporter, 262 Devonshire Road.

In the
 Exchequer
 Court of
 Canada.

Exhibits

No. 17.
 Harry Low
 Special
 Account
 (Dominion
 Bank),
 May 23,
 1925 Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926				Cr.	
		275.58			
		15.			710.97
10	19	262.21			
		7.13			
		72.50			
		12.74			
		120.			
		14.70			
		866.93	591.90	/	221.69
					813.59
	20	520.75			292.84
			1,500.	/	1,792.84
20	22	15.49			1,777.35
	23	20.			
		13.			1,744.35
	25	24.05			1,720.30
	26	10.15			1,710.15
	27	3.10			
		33.91			
		10.04			1,663.10
		529.50			1,133.60
			1,500.		2,633.10
30	29	2.58			
		22.45			
		75.00			2,533.57
			50.14		2,583.71
	In trust R	1750. R			833.71
	R		1750.		2,583.71
30		130.			
		409.31			
		33.06			
		226.44			1,784.90
40	31	221.27			
		82.65			1,480.98
	Int.	42.14			1,438.84
April	1	25.52			1,413.32
	3	14.74			1,398.58
		551.25			847.33
	Stamp	22			847.11
	9	3.28			843.83

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW "SPECIAL"
Exporter, 262 Devonshire Rd.

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
10	.....	5.	.....		.....
	.....	.75	.....		838.08
		5,642.58	6,480.66		
1926					
April 10	Ford		838.08	Cr.	838.08
	Low & Leon R	..... R	3,000.		3,838.08
	.....	511.75	.....		3,326.33
	..... R	3,000. R	.....		326.33
	.....	633.	.....	Dr.	306.67
12	.....	147.36	.....		.....
	.....	3.75	.....		.....
	.....	20.	.....		.....
	.....	4.90	.....	"	482.68
	.....	7.02	.....	"	489.70
13	.....	48.20	.....	"	537.90
	.....	283.25	.....	"	821.15
14	.....	78.13	.....	"	899.28
	.....	.....	645.03	/	254.25
	.....	1070.	.....	"	1,324.25
15	.....	47.61	.....	"	1,371.86
17	.....	53.30	.....	"	.....
	.....	2.	.....	"	1,427.16
	.....	598.50	.....	"	2,025.16
19	.....	44.24	.....	"	2,069.40
	.....	.....	1157.	"	912.40
	.....	34.50	.....	"	947.40
	Int.....	2.10	.....	"	949.50
21	.....	14.	.....	"	.....
	.....	294.	.....	"	1,257.50
	M.....	95.99	.....	"	1,353.49
23	.....	44.	.....	"	1,397.49
24	.....	633.25	.....	"	2,030.74
	.....	38.61	.....	"	2,069.35
	Int.....	4.30	.....	"	2,073.65
29	Int.....	5.05	.....	"	2,078.70
30	.....	76.27	.....	"	2,154.97
	.....	24.90	.....	"	2,189.87
	Low-Leo..... M	380.12R	"	2,566.99
	Int.....	248.59	"	2,808.58
May 1	126.05	"	2,934.63
	604.25	"	3,538.88
5	1,500.	"	2,038.88

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EXHIBIT No. 17.—Continued.
THE DOMINION BANK

HARRY LOW IN ACCOUNT WITH "SPECIAL"
 Exporter, 272 Devonshire Rd.

*In the
 Exchequer
 Court of
 Canada.*

Exhibits
 No. 17.
 Harry Low
 Special
 Account
 (Dominion
 Bank),
 May 23,
 1925. Sqq.
 —Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
7	16.50	.....	"	2,055.38
8	391.21	.....	"	2,446.59
	1,500.	"	946.59
10	597.50	.....	"	1,544.09
	R 380.12	"	1,163.97
11	6.35	.....	"	1,170.32
12	20.16	.....		.....
	31.50	.....		.....
	26.06	.....	"	1,248.04
13	11.50	.....		.....
	49.20	.....	"	1,308.74
		10,328.97	9,020.23		
1926					
20 May 13	Ford	1,308.74		Dr.	1,308.74
	675.04	.....		.....
	51.48	.....	"	2,035.26
14	63.72	.....	"	2,098.98
15	83.65	.....	"	2,182.63
	5.	.....	"	2,187.63
	93.81	.....	"	2,281.44
	677.	.....	"	2,958.44
	1,500.	"	1,458.44
30 18	M.C.	83.65R	83.65	"	1,458.44
	2,822.	.....	"	4,280.44
	20.	.....	"	4,300.44
19	405.05	.....	"	4,705.49
22	56.37	.....	"	4,761.86
	637.50	.....	"	5,399.36
25	8.	.....	"	5,407.36
27	84	.....	"	5,408.20
28	1,500.	"	3,908.20
	71.62	.....	"	3,979.82
40 29	Int O/D.....	18.15	.....	"	3,997.97
	58.38	.....	"	4,056.35
	227.39	.....	"	4,283.74
	3,000.	"	1,283.74
	660.	.....	"	1,943.74
31	36.01	.....		.....
	376.72	.....	"	2,356.47
	25.	.....	"	2,381.47
	257.96	.....	"	2,639.43B
June 1		1,159.59	.....	"	3,799.02

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW SPECIAL ACCOUNT
Exporter c/o Carlings E. B. & M. Co., Ltd. Special

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925 Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
4	75.11	.....	Dr.	.....
	136.	.....	"	4,010.13
	1,578.10	"	2,432.03
5	648.75	.....	"	3,080.78
	1,500.	"	1,580.78
	66.67	.....	"	1,647.45
7	915.08	.....	"	2,562.53
8	764.11	.....	"	.....
	16.56	.....	"	3,343.20
10	946.54	.....	"	4,289.74
	Stamps.....	2.16	.....	"	4,291.90
12	598.75	.....	"	4,890.65
14	97.82	.....	"	.....
	64.72	.....	"	5,053.19
	1,622.50	"	3,430.69
15	8.30	.....	"	.....
	80.49	.....	"	.....
	58.68	.....	"	3,678.16
	50.	.....	"	.....
	27.79	.....	"	3,655.95
		14,440.20	10,784.25		
1926					
June 15	Ford	3,655.95	.....	Dr.	3,655.95
16	112.39	.....	"	.....
	1.10	.....	"	.....
	16.80	.....	"	.....
	86.55	.....	"	3,872.79
17	4.	.....	"	3,876.79
19	1.79	.....	"	3,878.58
1	672.50	.....	"	4,551.08
	3,000.	"	1,551.08
21	50.	.....	"	1,601.08
25	34.85	.....	"	.....
	10.24	.....	"	.....
	234.84	.....	"	1,881.01
26	23.44	.....	"	1,904.45
	1,500.00	"	1,104.45
	M.	682.50	"	1,086.95
28	131.25	"	1,218.20
29	38.69	"
	832.50	"	2,089.39
	Int.....	16.25	"	2,105.64

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EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW SPECIAL ACCOUNT
 Exporters, c/o Carlings E. B. & M. Co., Ltd. Special

*In the
 Exchequer
 Court of
 Canada.*

Exhibits
 No. 17.
 Harry Low
 Special
 Account
 (Dominion
 Bank),
 May 23,
 1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926					
July 30	Carling Ex..	529.49	.....	"	2,635.13B
July 2	.....	120.	.....	"	2,755.13
10 3	.....	25.	.....	"	2,780.13
	.....M.	690.	.....	"	3,470.13
5	.....	48.60	.....	"	3,518.73
6	.....	720.	.....	"	4,238.73
8	.....	.....	297.11	/	3,941.62
9	Stamp.....	1.72	.....	"	3,943.34
10	.....	.....	2,000.	/	1,943.34
	.....	801.50	.....	"	2,744.84
12	.....	1.72	.....	"	2,746.56
15	.....	85.	.....	"	.....
20 16	.....	1,015.22	.....	"	3,846.78
	.....	1,033.16	.....	"	4,979.94
17	.....M.	765.40	.....	"	5,745.34
	.....	.....	1,500.00	"	4,245.34
20	.....	27.90	.....	"	4,173.24
24	.....	586.75	.....	"	4,759.99
26	.....	23.05	.....	"	4,893.04
	.....	3,773.17	.....	"	8,556.21
28	.....	.....	2,000.	/	6,556.21
30	.....	15.	.....	"	6,571.21
30 31	Int.....	24.65	.....	"	6,595.86
	.....	64.85	.....	"	6,660.71
	.....	252.09	.....	"	.....
	.....	20.25	.....	"	.....
	.....	2.87	.....	"	6,935.92
	.....M.	532.	.....	"	7,467.92
	.....Ex.....	441.44	.....	"	7,909.36
		18,206.47	10,297.11		
1926					
July 31	Forward.....	7,909.36	.....	Dr.	7,909.36
40 Aug. 3.	.....	2.	.....		.....
	.....	1.58	.....		.....
	.....	15.75	.....		.....
	.....	50.60	.....	"	7,979.29
	.....	7.	.....	"	7,986.29
4	.....	6.10	.....	"	7,992.39
5	.....	10.	.....	"	8,002.39
	Stamp.....	2.64	.....	"	8,005.03
6	.....	4.40	.....	"	8,009.43
7	.....	57.66	.....	"	8,067.09

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW

SPECIAL ACCOUNT

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq,
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926			137.34	Dr.	7,929.75
		535.		"	8,464.75
11			6,000.	"	2,464.75
12		9.		"	2,473.75
		973.81		"	3,447.56
		4.75		"	3,452.31
14		8.			
		643.			
		6.50		"	4,109.81
		482.50		"	4,592.31
			1,500.		3,092.31
16		53.01			
		3.75		"	3,149.07
18		565.		"	3,714.07
		18.		"	3,732.07
		462.50		"	4,194.57
23		1,221.20		"	5,415.77
		5,291.92		"	10,707.69
28		452.50		"	11,160.19
30		200.		"	
		281.		"	11,641.19
	Int	37.85		"	11,679.04
31		29.55		"	11,707.39
			8,000.		3,707.95
		320.15			
	Ex. Carling	53.98		"	4,081.72
Sept. 1		240.27		"	4,321.99
		44.06		"	4,366.05
3	Stamp	4.30		"	4,370.35
4		452.50		"	4,822.85
			1,500.		3,322.85
7		37.35		"	3,360.20
11			1,500.		1,860.20
		487.50		"	2,347.70
13		464.84		"	2,812.54
14		6.75		"	2,819.29
		27.36		"	2,846.65
15		129.85		"	2,976.50
		21,613.84	18,637.34		
1926					
Sept. 15	Ford	2,976.50		Dr.	2,976.50
16		78.79			

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW

SPECIAL ACCOUNT

In the
Exchequer
Court of
Canada.

Exhibits
No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926		19.03		Dr.	
		8.40			
		37.53		"	3,120.25
10	17	1.75			
		12.58		"	3,134.58
	18	8.53			
		111.			
		5.			
		501.76		"	3,760.87
		555.00		"	4,315.87
			3,000.	/	13,15.87
	23		5.	/	1,310.87
	25	586.88		"	1,897.75
20		760.		"	2,657.75
	27	50.		"	2,707.75
	28	90.10		"	2,797.85
	29	O/D Int.	18.70	"	2,816.55
	30		170.	"	2,796.55
		tr Carling Ex	82.81	"	3,069.36
Oct.	2		2,000.	/	1,069.36
		671.50		"	1,740.86
	4	8.17		"	1,749.03
		35.00			
30		250.00		"	2,034.03
	7	291.35			
		500.		"	2,825.38
		tr. in	1.64	"	2,827.02
	8	557.05		"	3,384.07
	9	17.68		"	3,401.75
		500.		"	3,901.75
		663.50		"	4,565.25
	11	3.		"	4,568.25
	12	3.			
40		6.			
		318.33		"	4,895.58
	13	19.55			
		5.		"	4,920.13
	14	16.07			
		4.67			
		424.		"	5,364.87
	15	3.77		"	5,368.64
	16	776.50		"	6,145.14
	18	175.			
50		25.33			

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW

SPECIAL ACCOUNT

Exhibits

No. 17.
Harry Low
Special
Account
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance	
1926		301.29	.....	Cr.	6,473.51	
20	8.	.....	"	6,481.51	
	200.	.....	"	6,681.51	
		11,686.51	5,005.			
1926						
Oct. 20	Fd.....	6,681.51		Dr.	6,681.51	10
23	2,000.		4,681.51	
	881.65	.....	"	5,563.16	
26	73.72	.....	"	5,636.88	
29	185.95	.....	"	5,822.83	
	26.40	.....	"	5,847.23	
30	888.95	.....	"	6,738.18	
Nov. 3	814.62	.....	"	1,552.80	
	402.97	.....	"	7,955.77	
5	133.98	.....	"	8,087.75	
6	Stamp.....	2.60	.....	"	8,092.35	20
	95.20	.....		.....
	266.23	.....		.....
	5.	.....		.....
	1.75	.....		.....
	2.47	.....	"	8,463.00	
	2,000.		6,463.00	
	981.65	.....	"	7,444.65	
10	150.26	.....	"	.....
	25.	.....	"	7,619.91	30
	5.05	.....	"	7,624.96	
12	31.54	.....	"	7,656.50	
13	813.	.....	"	8,469.50	
15	1,423.09	.....	"	9,892.59	
16	5,000.	"	4,892.59	
	1,811.35	.....		.....
	1,000.	.....		.....
	600.	.....		.....
	400.	.....	"	8,703.94	
17	42.49	.....	"	8,746.43	40
18	3.	.....		.....
	28.04	.....		.....
	25.50	.....		.....
	585.	.....		.....
	259.42	.....		.....
	50.	.....		.....
	51.75	.....	"	9,746.14	

EXHIBIT No. 17.—Continued.

THE DOMINION BANK
IN ACCOUNT WITH
HARRY LOW "SPECIAL ACCOUNT"
Exporter, Walkerville, Ont.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 17.
Harry Low
Special
Account
May 23,
1925. Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1926				Dr.	
		63.		"	9,809.14
10 19		6.50			
		241.57			
		165.			
		95.75		"	10,320.96
20	Payroll.....	779.50		"	11,100.46
22			3,000.		8,100.46
	Rs. 234 Carling EB & M 2,000.				
	Overdue Int. R s 234	4.20		"	10,104.66
23		51.73		"	10,156.39
24		233.42		"	10,389.81
	Fd.....		10,389.81		
20		22,389.81	22,389.81		
1926					
Nov. 24	Fd.....	10,389.81		Dr.	10,389.81
		21.26		"	10,411.07
25		111.22			
		86.81			
		267.53		"	10,876.63
27		819.50		"	11,696.13
29		47.65		"	743.78
30 Dec. 4		794.50		"	12,538.28
			10,000.	Dr.	2,538.28
		45.		"	2,583.28
6		5.			
		3.75			
		63.75			
		1.60			
		46.12			
		33.		"	2,736.50
		4.08		"	2,740.58
40 7		60.80			
		398.21			
		4.90		"	3,214.49
8		5.40		"	3,219.89
10		28.25		"	3,248.14
11		18.68			
		3.45		"	3,270.27
		691.50		"	3,961.77
15		50.		"	4,011.77
16		319.62		"	
		11.03		"	4,342.42

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.

THE DOMINION BANK

IN ACCOUNT WITH

HARRY LOW

“SPECIAL ACCOUNT”

Exporter, Walkerville, Ont.

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.

—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance	
1926 17	3.	.....	Dr.	.....
	12.	.....	“	.....
	7.50	.....	“	4,364.92	
	378.82	.....	“	.....	10
	1,696.57	.....	“	6,440.31	
18	30.	.....	“	.....
	7.70	.....	“	.....
	645.	.....	“	7,123.01	
	10,000.	Cr.	2,876.99	
	564.50	.....	“	2,322.49	
20	43.03	.....	“	.....
	34.	.....	“	2,245.46	
	135.	.....	“	2,110.46	
22	352.90	.....	“	1,757.56	20
	22.61	.....	“	1,734.95	
23	842.	.....	“	892.95	
28	900.	.....	Dr.	7.05	
	268.82	.....	“	275.87	
29	Int.....	25.60	.....	“	301.47	
31	1,000.	Cr./	698.53	
	567.	.....	“	131.53	
		20,868.47	21,000.			
1926 Dec. 31	Ford.....		131.53	Cr. R	131.53	30
1927 Jan. 6	77.50	.....	“	54.03	
8	587.	.....	Dr.	532.97	
11	682.50	.....	“	1,215.47	
13	W. Tax.....	4.70	.....	“	1,220.17	
14	134.	.....	“	1,354.17	
15	572.	.....	“	1,926.17	
19	50.	.....	“	1,976.17	
20	30.66	.....	“	2,006.83	40
21	50.	.....	“	2,056.83	
22	562.	.....	“	2,618.83	
24	83.	.....	“	.....
	13.50	.....	“	.....
	4.13	.....	“	.....
	9.67	.....	“	.....
	29.34	.....	“	.....
	12.60	.....	“	.....
	14.	.....	“	.....

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

HARRY LOW - - - - - SPECIAL ACCT.
 IN ACCOUNT WITH
 Exporter, Windsor, Ont.

*In the
 Exchequer
 Court of
 Canada.*

Exhibits
 No. 17.
 Harry Low
 Special
 Account
 (Dominion
 Bank),
 May 23,
 1925. Sqq.
 —Continued

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1927	364.19	.....	Dr.	3,14.926
	5.	.....	"	3,154.26
25	2.55	.....		.....
10	2.10	.....		.....
	34.	.....		.....
	238.08	.....		.....
	41.80	.....		.....
	235.96	.....	"	3,708.75
27	3.	.....		.....
	13.80	.....	"	3,725.55
28	47.	.....	"	3,772.55
	O.D. Int.	7.55	.....	"	3,780.10
29	7.09	.....	"	3,787.19
20	50.65	.....		.....
	547.	.....	"	4,384.84 B
Feb. 5	547.	.....	"	4,931.84
10	239.	.....	"	5,170.84
11	W. Tax.	1.28	.....	"	5,172.12
	25.00	.....	"	5,197.12
12	502.00	.....	"	5,699.12
19	537.00	.....	"	6,236.12
23	Trans. from Carlings		10,000.	Cr.	3,763.88
25	322.25	.....		.....
30	246.87	.....		.....
	50.	.....		.....
	27.90	.....		3,116.86
	Int on O/D. .	25.70	.....		3,091.16
2565	.....		3,090.51
26	169.98	.....		.....
	9.40	.....		2,911.13
	Fd.	2,911.13	.....		.....
		10,131.53	10,131.53		
1927					
40 Feb. 26	Fd.		2,911.13	Cr.	2,911.13
	492.	.....		2,419.13
28	716.	.....	"	.....
	22.52	.....		2,389.45
Mar. 1	5,092.05	.....	Dr.	2,702.60 B
	18.95	.....		.....
	16.50	.....		.....
	51.	.....		.....
	4.22	.....	"	2,793.27

In the
Exchequer
Court of
Canada.

EXHIBIT No. 17.—Continued.
THE DOMINION BANK

IN ACCOUNT WITH
HARRY LOW - - - - - **SPECIAL ACCOUNT**
Exporter, - - - - - **WINDSOR, ONT**

Exhibits

No. 17.
Harry Low
Special
Account
(Dominion
Bank),
May 23,
1925. Sqq.
—Continued.

Date	Particulars	Dr.	Cr.	Dr. or Cr.	Balance
1927	5,092.05	Cr.	2,298.78
2	6.	.....		2,292.78
5	537.	.....		.....
	200.	.....		1,555.78
7	War Tax....	2.50	.....		1,553.28
	350.	.....		.....
	42.75	.....		1,160.53
9	150.	.....		1,010.53
10	33.50	.....		977.03
12	507.	.....		470.03
	530.	.....	Dr.	59.97
	200.	.....	"	259.97
18	1,250.25	Cr.	990.28
	21.75	.....		.....
	2.20	.....		.....
	4.20	.....		.....
	21.09	.....		.....
	7.50	.....		.....
	6.30	.....		.....
	1,780.93	.....		.....
	11.20	.....		.....
	2.75	.....		.....
	50.	.....		.....
	15.	.....		.....
	3.75	.....		.....
	4.42	.....		.....
	1.	.....	Dr.	942.81 x
	50.	.....	"	992.81
	300.	.....	"	1,292.81 x
	"	1,291.81
26	[?-?-?] ..	35. R	.....	"	1,326.81
 R	1,500	Cr.	173.19
	35.		208.19
30	Int. on o/d..	3.25	.....	R	204.94 B
April 6	War Tax....	.52	.....		204.42
12	To Carling E. B. & M.	204.42	.....		.....
	M	10,788.43	10,788.43		
	R				

EXHIBIT No. F.

(Defendant's)

Defendant's Account with F. Savard

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

ACCOUNT No. 1.

SHEET No. 3.

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

-Continued.

		Date	Folio	Dr.	Cr.	Dr. or Cr.	Balance
		1925					
		Brought Forward...		32,025.21		D.	32,025.21
10		Aug. 12. 368 Emp. 1/2's					
		82 " 1/4's, 3 full lager	235		2,478.00		
		" 15. 119 " 1/4's					
		301 " 1/2's, 2 Full 1/4's	236		2,179.00		
		" 24. 320 " 1/4's					
		197 " 1/2's	237		2,142.00		
		" 27. Transfer	C.R. 64		7,000.00		
		" 31.	" 65		8,400.00	D.	9,826.21
		Sept. 12.	C.B. 116		6,633.00	D.	3,193.21
		Sept. 8.	C.B. 118		5,000.00	C.	1,806.79
		Sept. 4.	C.B. 117		16,475.38	C.	18,282.17
20	Sept. 7. 700 Cartons ale pts. 500 Cns. lager pts.	M.C. 46303		789	2,700.00	C.	15,582.17
	7. 1500 cts. lager pts.	C.P. 127818		791	3,375.00	C.	12,207.17
	7. 1500 cts. ale pts.	C.P. 95240		792	3,375.00	C.	8,832.17
	7. 700 cts. ale pts., 500 cts. lager pts.	M.C.R. 144057		793	2,700.00	C.	6,132.17
	8. 150 1/2 kegs lager, 150 1/4 kegs lager	C.P. 286731		795	3,525.00	C.	2,607.17
	8. 847 cart. ale pts.; 653 cart. lager pts.	C.P. G.T.P. 309389		796	3,375.00	D.	767.83
	8. 1500 cts. lager pts.	C.P. 145692		797	3,375.00	D.	4,142.83
	9. 200 1/4 kegs lager; 142 1/2 kegs lager	C.P. 285128		798	3,801.00	D.	7,943.83
	9. 1500 cts. ale pts.	C.P. 116732		799	3,375.00	D.	11,318.83
	10. 750 cts. ale pts.; 750 cts. lager pts.	C.P. 100828		802	3,375.00	D.	14,693.83
30	11. 1500 cts. lager pts.	C.P. 145894		803	3,375.00	D.	18,068.83
	11. 300 1/4 kegs lager	C.P. 287875		804	2,400.00	D.	20,468.83
	12. 1000 cts. ale pts.	M.C.R., P.F.E. 19163		805	2,250.00	D.	22,718.83
	14. 150 1/2 bbls., 200 1/4 bbls.	C.P. 286793		806	3,925.00	D.	26,643.83 OK
	15. 145 1/2 kegs lager; 225 1/4 kegs lager	C.P. 287463		808	4,047.50	D.	30,691.33
	16. 1500 cts. ale pts.	C.P. 90866		815	3,375.00	D.	34,066.33
		Sept. 17. Cash	C.B. 119		8,000.00	D.	26,066.33
		Sept. 21. Transfer	C.B. 121/44		10,000.00	D.	16,066.33
		Sept. 23. Transfer	C.B. 122-27		6,000.00	D.	10,066.33
			824	3,375.00		D.	13,441.33
40	Sept. 23. 700 ctns. lager pts; 800 ctns. ale pts.	C.P. No. 110262		C.B. 122/44	8,400.00	D.	21,841.33
	24. 1500 ctns. ale pts, 1000 ctns ale pts.	C.P. No. 160235		825	3,375.00	D.	25,216.33
	25. 500 ctns. lager pts.	C.P. No. 116732		826	3,375.00		
	25. 630 ctns. ale pts.; 870 ctns. lager pts.	C.P. No. 133032		827	3,375.00		
	25. 150 1/2 kegs lager	C.P. No. 286448		828	2,325.00	D.	34,291.33 OK
	26. 118 1/2 kegs lager	C.P. No. 286781		829	1,829.00	D.	36,120.33
		Sept. 28. Transfer	C.B. 124-4		5,000.00	D.	31,120.33
		Sept. 29.	C.B. 124-34		7,000.00	D.	24,120.33
		Sept. 7. 247 1/2 kegs, 12 full 1/2 kegs,	123070	239			
		250 1/4 kegs	Truck	241	2,418.00	D.	21,702.33
		" 24. 100 empty 1/2 kegs			600.00	D.	21,102.33
50	" 25. 265 1/2 kegs, 295 Mt. 1/4 kegs, 2 full 1/4 kegs...		127818	242	2,476.00	D.	18,626.33
				110,427.71	91,801.38	D.	18,626.33

EXHIBIT NO. F.—Continued

ACCOUNT No. 1

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.
F. SAVARD, DETROIT, MICHIGAN - - - - - c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

SHEET No. 4.

In the
Exchequer
Court of
Canada.

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued.

Date	Folio	Date.	Folio	Dr.	Cr.	Dr. or Cr.	Balance
1925		Brought Forward		18,626.33		D.	18,626.33
Oct. 1.	260	1/4 kegs lager C.P. 287745	835	2,150.00		D.	16,476.33
		Sept. 24. 180 1/2 bls., 388 1/4 bls. 7 full	243	2,080.00		D.	16,556.33
		Oct. 3. Cash.	C.B. 126-31	8,000.00		D.	10,556.33
		Oct. 8. Trans.	C.B. 127-38	3,500.00		D.	7,056.33
10	7.	300 1/2 kegs lager C.P. No. 285010	844	4,650.00		D.	11,706.33
	8.	1200 ctns. ale pts. P.M. No. 81358	848	2,700.00		D.	14,406.33
	10.	1500 ctns ale pts. C.P. 197728	850	3,375.00		D.	17,781.33
	12.	Transfer	C.B. 129-42	4,000.00		D.	13,781.33
		Oct. 8. 248 1/2 bls., 214 1/4 bls., 2 1/4 kegs full. C.N. 6995		2,146.00		D.	11,635.33
	10.	Stock taken over from Bannon	J-31-22	82,946.80		D.	14,573.33 x
	10.	Packages from Bannon	J-31-29	1,804.80		D.	16,378.13 x
		Oct. 10. Stock of Bannon's delivered to Davis	J31-43	4,132.90		D.	12,245.23
20		14. 3 Mt. 1/2 bls. from Ban- non's stock to Davis	J32-1	18.00		D.	12,227.23
	15.	1500 cartons ales pints C.P. 124042	856	3,375.00		D.	15,602.23
	20.	168 1/2 bls. lager C.P. 286869	862	2,436.00		D.	17,079.73 *
		Oct. 21. Transfer	C.B. 131-34	6,000.00		D.	19,515.73
		Oct. 21. 13 bls. full, 27 1/2 bls. full, 278 bls mt, 114 1/2 bls. mt. Car No. C.O.54862	248	2,427.50		D.	19,717.73 x
		21. Mt. 293 bls., 157 1/2 bls. Car No. C.P. 197728	249	2,229.00		D.	13,717.73
30	Oct. 21.	1500 ctns ale pts.; 100 ctns. stock ale pts.; 1153 ctns. ale pts. C.P. 101784	863	3,725.00		D.	9,061.23
	24.	347 cts. lager pts. C.P. 118182	870	3,375.00		D.	12,786.23
	24.	1500 ctns. lager pts. C.P. 53912	871	3,375.00		D.	
	24.	250 1/2 kegs lager C.P. 285310	872	3,625.00		D.	23,161.23
		17. Transfer	C.B. 130-43	5,000.00		D.	18,161.23
		26. "	C.B. 132-24	3,000.00		D.	15,161.23
	Oct. 27.	1500 ctns. ale pts. C.P. 124042	874	3,375.00		D.	18,536.23
		Balce				D.	18,536.23
	28.	1500 ctns. ale pts. C.P. 144120	878	3,375.00		D.	21,911.23
40	29.	250 1/2 kegs lager C.P. 286217	880	3,625.00		D.	25,536.23
		30. Transfer	C.B. 133-33	2,000.00		D.	23,536.23
		31. 835 ctns. lager pts. from A Diesburg, Belle River, in C.P. 101784	252	1,878.75		D.	21,657.48
	31.	To correct entry of July 31/25, charged to C.P.R. should have been charged to Northern Ex. Co.	J-33-28	(1,590.00)		D.	22,451.08
Nov. 5.		Transferred to New Ledger.				D.	20,863.58
						D.	22,453.58
						D.	20,976.08

EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1925						
Oct. 31.	Balance of acc. at October 31/25		20,976.08			
	Reversing entry J23		53,856.53			
	Bad Accounts Losses Jan. 1 to May 31/25			2,201.75		
	C. B. Grandi, Amherstburg, Account, as at May 31/25, less Losses		12,649.70			
	(A. Diesburg) C. B. Grandi, c/o A. Diesburg, Belle River, Bal. as at May 31/26		14,820.00			
	C. B. Grandi, c/o La Salle, Car. No. C.P. 197385. Invoiced twice on 676 and 680			3,975.00		
	Car No. M.C. 49512, Amherstburg, June 8	J36 1/2 C	1,710.00			
	Car No. D. and L.W. 28203, Amherstburg, June 26		3,180.00			
	Transfer Amherstburg, June 2nd. C93			7,422.75		
	Transfer Amherstburg, June 18th. C.B. 98			2,400.00		
	Allowances C. B. Grandi for adjustments			2,830.05		
	Allowances C. B. Grandi for bad accounts			9,473.10		
	Car No. C.P. 214251, Inv. 661, June 1, charged to C. B. Grandi in error			1,590.00		
	Car No. C.P. 128348, June 11, charged to C. B. Grandi, c/o A. Diesburg		1,710.00			
	Cancelling entry J20, A. Diesburg, Belle River			3,253.65		
	Koven acc.		3,329.85			
	Paquette acc.		7,725.00		D.	86,810.86
	Allowance for losses June 1 to October 31/25			9,803.60	D.	77,007.26
Nov. 3.	1300 ale pts, 200 stock ale, pts	C.P. 95088	3201	2,625.00		
	5. 1000 c.c., 500 a.a. pts	C.P. 78260	2	2,625.00		
	11. 400 a.a. pts., 1100 c.c.	C.P. 210581	3	2,625.00		
	13. 1500 a.a. pts.		4	2,625.00		
	13. 1500 c.c. pts.	C.P. 108006	5	2,625.00		
	13. 200 1/2's, 100 1/4's	C.P. 285287	6	3,150.00		
30	14. 1500 a.a. pts.	C.P. 202427	7	2,625.00		
	18. 1200 a.a. pts.	C.P. 153812	9	2,625.00		
	19. 1500 a.a. pts.	C.P. 38630	3210	2,625.00		
	20. 550 a.a. pts., 150 c.c. pts	C.P. 85018	1	1,225.00		
	23. 1500 a.a. pts.	C.P. 129790	2	2,625.00		
	24. 628 a.a. pts., 872 c.c. pts	C.P. 96842	3	2,625.00		
	24. 1000 a.a. pts., 200 c.c.	Amherstburg, E.R.&D.R 151508	5	2,100.00		
	24. 200 1/2's, 100 1/4's	C.P. 287516	4	3,150.00		
	30. 1500 c.c.	C.P. 51852	6	2,625.00		
Nov. 5.	Cash		C.B. 135-22	4,000.00		
40	7. "		C.B. 135-36	5,000.00		
	12. "		C.B. 136-26	5,000.00		
	13. "		C.B. 136-35	6,000.00		
	20. "		C.B. 140-37	10,000.00		
	30. "		C.B. 141-35	5,000.00		
Nov. 6.	387 MT. 1/2's, 63 MT. 1/4's, Returned C.P. 210581		255	2,511.00		
Nov. 23.	333 MT. 1/2's, 151 MT. 1/4's, 21 1/2 bbls. full, 2 1/4 bbls. full. Returned C.P. 210581		259	2,726.50	D.	75,269.76

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

EXHIBIT No. F.—Continued.

ACCOUNT No. C1

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1925						
Nov. 30.	Brought Forward		75,269.76		D.	75,269.76
Dec. 2.	1500 Lager	C.P. 95684	3218	2,625.00		
3.	1500 a.a.	C.P. 133888	9	2,625.00		
10 3.	250 1/2's	C.P. 287258	3220	3,125.00		
5.	1500 a.a.	C.P. 89158	2	2,625.00		
10.	1500 c.c.	C.P. 285397	5	2,625.00		
21.	1302 c.c., 198 a.a.	C.P. 286575	6	2,625.00		
30.	1038 c.c.	C.P. 286313	9	1,816.50		
18.	492 a.a. qts., 748 c.c. pts. ret'd	C.P. 95684	260	2,170.00		
7.	305 Mt. 1/2's, 227 Mt. 1/4's, 1 1/2 liquid, 1 1/4 liquid Retd.	C.P. 107710	261	2,530.00		
1.	Cash			10,000.00		
5.	"			3,000.00		
10.	"			12,000.00		
18.	"			10,000.00		
20 24.	"			8,000.00		
31.	"			8,000.00		
31.	Express on ctns to D. Koven			4.80	D.	37,641.06
Jan. 14.	1200 cts. c.c. pts.	C.P. 287939	3238	2,100.00		
5.	700 ctns. a.a., 100 1/2's	C.P. 286982	9	2,475.00		
8.	1070 c.c.	C.P. 285448	3241	1,872.50		
10.	700 a.a., 100 1/2's	C.P. 287711	2	2,475.00		
11.	940 a.a., 382 c.c.	C.P. 282924	3	2,313.50		
30 11.	200 1/2's	C.P. 286473	4	2,500.00		
11.	600 a.a., 900 c.c.	C.P. 287548	5	2,625.00		
12.	123 a.a., 1077 c.c.	C.P. 282882	6	2,100.00		
18.	1500 c.c.	C.P. 287423	3255	2,625.00		
18.	1000 c.c., 500 a.a.	C.P. 284888	6	2,625.00		
19.	1500 c.c.	C.P. 286007	7	2,625.00		
19.	1500 c.c.	C.P. 286098	8	2,625.00		
Jan. 27.	500 a.a. pts., 2 a.a. qts.	Soo Line 38850	3260	878.50		
27.	1200 a.a. qts.	A.R.Q. 16371	1	2,100.00		
27.	7 1/2's full, 92 1/2's Mt, 22 1/4's Mt. Ret'd	C.P. 286007	270	705.50		
28.	48 Mt. pts, 1 Mt. pt. es., 193 1/2's, 76 1/4's, 21 1/4's full, 16 ctns. liquid, 22 1/2 bbls. full.		271	1,827.28		
30.	Freight paid on Car C.P. 286007 from Windsor.		272	91.90		
40 9.	Cash			5,000.00		
20.	"			11,000.00		
22.	"			5,000.00		
27.	"			8,500.00	D.	37,455.88

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

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EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING-BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING E.B. & M. DOCK, WINDSOR,

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926						
Jan. 31.	Forward.....		37,455.88		D.	37,455.88
Feb. 2.	1500 c.c.....	C.P. 384472 3268	2,625.00			
3.	1500 c.c.....	C.P. 284534 9	2,625.00			
10 4.	750 a.a., 750 c.c.....	C.P. 282870 3270	2,625.00			
4.	1415 c.c.....	C.P. 286425 1	2,476.25			
4.	Car No. C.P. 78016 chgd. to F. Savard, C.P.R. Dock, should be c/o H. Low, Windsor.....	J142		3,375.00		
4.	Money advanced V. Craig for Savard chgd. to Windsor Expense.....	J142	1,750.00			
5.	1500 ctns. ale pts.....	C.P. 286946 3274	2,625.00			
6.	1500 c.c. pts.....	C.P. 286898 5	2,625.00			
6.	274 1/2 bbls. ret'd. in Car No. C.P. 286473.....	274		3,425.00		
16.	1000 c.c. pts.....	C.P. 287853 7	1,750.00			
16.	700 a.a., 800 c.c.....	C.P. 287586 8	2,625.00			
18.	1500 a.a.....	C.P. 287088 9	2,625.00			
20 23.	Allowances for losses Nov. and Dec., Bad Beer.....			19,242.79		
25.	1500 c.c.....	C.P. 284468 3286	2,625.00			
26.	1000 c.c., 500.....	C.P. 286095 7	2,625.00			
27.	700 c.c., 800 a.a.....	C.P. 286679 3290	2,625.00			
5.	Cash.....			5,000.00		
8.	".....			8,000.00		
9.	".....			4,000.00		
16.	".....			5,000.00		
25.	".....			7,000.00		
30 26.	".....			6,000.00	D.	8,639.34 OK
Mar. 1.	1500 c.c.....	C.P. 284282 3295	2,625.00			
1.	1500 a.a.....	C.P. 286098 6	2,625.00			
9.	1500 c.c.....	C.P. 287283 8	2,625.00			
9.	1500 B/L.....	C.P. 286812 9	2,625.00			
9.	632 a.a., 868 B/L.....	C.P. 286231 3300	2,625.00			
9.	213 c.c., 977 a.a.....	C.P. 287756 1	2,082.50			
10.	1000 c.c. E. Rymal, Amherstburg.....	E.R.&DR. 152022 2	1,750.00			
11.	1200 a.a. E. Rymal, Amherstburg.....	M.D.T. 145677 3	2,100.00			
13.	900 a.a., 300 c.c.....	E.R.&DR. 152952 6	2,100.00			
15.	1500 c.c.....	C.P. 285372 7	2,625.00			
40 15.	1200 a.a.....	E.R.&DR. 151563 8	2,100.00			
16.	1300 c.c.....	C.P. 287690 9	2,275.00			
17.	700 c.c., 800 a.a.....	C.P. 287001 3310	2,625.00			
18.	700 c.c., 800 a.a.....	C.P. 286013 1	2,625.00			
22.	1500 a.a.....	C.P. 287783 3	2,625.00			
23.	1000 a.a., 200 c.c., 200 B/L., E. Rymal, Leamington.....	M.D.T. 144465 4	2,450.00			
25.	1500 a.a.....	C.P. 129696 5	2,625.00			
25.	1500 c.c.....	C.P. 77096 6	2,625.00		D.	52,371.84

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

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EXHIBIT No. F.—Continued.

ACCOUNT No. CI.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING E. B & M DOCK, WINDSOR

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926.						
Mar. 29.	Forward.....		52,371.84		D.	52,371.84
	Allowance D. Koven.....	281		1,000.00		
Mar. 26.	1500 a.a. pts.....	C.P. 98402 3318	2,625.00			
10 26.	1500 c.c. pts.....	C.P. 94884 9	2,625.00			
29.	1500 c.c. pts.....	C.P. 207545 3321	2,625.00			
29.	1500 a.a. pts.....	C.P. 58454 2	2,625.00			
30.	150 1/2's, 50 1/4's.....	C.P. 286812 3	2,200.00			
30.	1500 c.c.....	C.P. 46374 4	2,625.00			
2.	Cash.....	C.B. 168-7		5,000.00		
8.	".....	C.B. 168-35		8,000.00		
15.	".....	C.B. 170-17		5,000.00		
16.	".....	C.B. 170-33		5,000.00		
19.	".....	C.B. 171-16		5,000.00		
20 24.	".....	C.B. 172-6		6,000.00		
26.	".....	C.B. 173-18		5,000.00		
29.	".....	C.B. 174-1		11,000.00		16,696.24
April 1.	Allowance re losses for March.....	287		35.50		
April 3.	1500 a.a. pts.....	C.P. 51742 3332	2,625.00			
3.	1000 a.a., 500 c.c. La Salle.....	C.P. 72230 3	2,625.00			
7.	22 1/2 bbls. full, 10 1/2 bbls. Mt., 4 crns. pts. Ret'd in Car No. C.P. 286812.....	283		342.00		
8.	1000 a.a. pts.....	C.P. 56988 7	1,750.00			
8.	500 a.a. pts., 700 c.c.....	C.P. 122914 8	2,100.00			
20 20.	609 ctns. c.c., 392 a.a. Ret'd. Car No. C.P. 56988.....	288		1,751.75		
30 10.	400 a.a. pts., 400 c.c. qts., 400 B/L., Amherstburg.....	M.D.T. 155383 3340	2,100.00			
13.	F. Savard, 1500 a.a. pts.....	C.P. 134722 1	2,625.00			
13.	1200 c.c. pts.....	C.P. 127992 2	2,100.00			
13.	1000 a.a. pts., 500 c.c. pts., La Salle.....	C.P. 204851 3	2,625.00			
14.	1500 c.c. pts.....	C.P. 149424 4	2,625.00			
15.	1500 c.c. pts.....	C.P. 199918 5	2,625.00			
15.	400 a.a. pts., 400 c.c. pts., 400 B/L. M. D. T. 144378, Amherstburg.....	6	2,100.00			
16.	1500 a.a. pts., La Salle.....	C.P. 102112 7	2,625.00			
19.	1500 c.c. pts., La Salle.....	C.P. 127992 9	2,625.00			
19.	1200 a.a. pts., 300 c.c., c.c. pts., La Salle.....	C.P. 150780 3353	2,625.00			
40 19.	300 1/2's c.c. La Salle.....	C.P. 212377 3354	3,750.00			
20.	1000 c.c., 500 a.a.....	C.P. 133632 5	2,625.00			
20.	575 a.a. qrt., 925 a.a. pts., Walkerville.....	Wab. 79463 6	2,625.00			
20.	495 a.a., 155 c.c.....	C.P. 76572 7	1,137.50			
21.	850 a.a. pts., 650 a.a. qts.....	Wab. 77511 8	2,625.00			
21.	469 a.a. pts., 750 c.c. pts.....	C.P. 215594 9	2,133.25			
22.	1500 c.c. pts.....	C.P. 204521 3360	2,625.00			
22.	572 a.a. pts., 200 c.c., La Salle.....	C.P. 120446 1	1,351.00			
23.	1200 c.c.....	C.P. 121398 3	2,100.00			
23.	1000 a.a., 500 c.c., La Salle.....	C.P. 201593 4	2,625.00		D.	71,938.74 ^{OK}

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

EXHIBIT No. F.—Continued

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.
F. SAVARD, DETROIT, MICHIGAN

c/o C.P.R. DOCK, WINDSOR.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Forward		71,938.74		D.	71,938.74D.
April 24.	408 B/L., 300 a.a.	C.P. 98448	3365	1,239.00		
	376 a.a., 945 c.c.	C.P. 92530	6	2,311.75		
10 27.	200 1/2's, 50 1/4's, La Salle	B. & D. 165214	7	2,825.00		
27.	1000 ctns. c.c., La Salle	C.P. 84910	8	1,750.00		
28.	1200 a.a., La Salle	C.P. 93154	3370	2,100.00		
28.	850 c.c.	C.P. 55830	1	1,487.50		
29.	700 ctns. a.a., 800 c.c., La Salle	C.P. 103090	6	2,625.00		
27.	1300 a.a. pts., 3 a.a. qts., Taken from H. Low, Windsor		7	2,280.25		
29.	A. Diesburg, Belle River a/c		J146			487.41
19.	Massey (Rent)		J146	600.00		
19.	Reversing entry of Feb. 4/26, J142, J. Craig		J146			1,750.00
April 7.	Cash					10,000.00
20 8.	"					7,000.00
13.	"					10,000.00
19.	"					15,000.00
21.	"					10,000.00
26.	"					10,000.00
28.	"					18,000.00
May 1.	500 B/L., 500 c.c.	C.P. 73198	3378	1,750.00		
4.	1500 c.c., La Salle	C.P. 77948	3380	2,625.00		
4.	1500 a.a., La Salle	C.P. 77424	1	2,625.00		
5.	F. Savard, Detroit, Mich., 800 B/L., 700 c.c.	P.M. 42652	2	2,625.00		
30 6.	1500 c.c.	C.P. 121398	3	2,625.00		
7.	1500 c.c., La Salle	C.P. 132334	4	2,625.00		
7.	1500 a.a., La Salle	C.P. 213340	5	2,625.00		
7.	400 B/L., 400 c.c., 400 a.a., Kingsville	C.P. 83424	6	2,100.00		
7.	1200 c.c., Amherstburg	T.H. & B. 3644	7	2,100.00		
8.	441 B/L., 600 a.a., 459 c.c.	C.P. 203281	3388	2,625.00		
8.	1200 c.c.	C.P. 204891	9	2,100.00		
8.	1060 B/L., 60 a.a.	C.P. 114194	3390	1,960.00		
10.	1200 a.a., La Salle	C.P. 205061	1	2,100.00		
40 10.	200 1/2 bbls., La Salle	C.P. 285004	2	2,500.00		
11.	1500 B/A	C.P. 204352	3	2,625.00		
11.	450 c.c., 1050 a.a.	C.P. 136924	4	2,625.00		
11.	1200, La Salle	C.P. 147480	5	2,100.00		
12.	225 B/L., 1275 a.a.	C.P. 143336	6	2,625.00		
14.	200 1/2's, Lager, La Salle	C.P. 284336	9	2,500.00		
14.	1500 c.c., La Salle	C.P. 211172	3400	2,625.00		
11.	1500 a.a., La Salle	C.P. 106292	1	2,625.00	D.	57,629.83

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

EXHIBIT No. F.—Continued.

ACCOUNT No. C1

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926						
	Forward.....		57,629.83		D.	57,629.83
May 14.	600 B/L.....	C.P. 205928	3402 1,050.00			
10	1. Allowance <i>re</i> losses for April.....		298	4,756.12		
15.	1500 a.a.....	C.P. 45574	3 2,625.00			
15.	1810 c.c.....	C.M. & S. P. 503902	4 3,167.50			
15.	400 B/L, 400 a.a. pts., 400 c.c.....	M.C. 82706	6 2,100.00			
	Amherstburg.....	C.P. 297052	7 2,625.00			
17.	386 a.a., 500 B/L., 614 c.c.....	C.P. 160112	8 1,925.00			
18.	1100 c.c.....	C.P. 90538	9 1,592.50			
18.	910 a.a., La Salle.....	C.P. 207696	3410 2,506.00			
18.	488 a.a., 944 c.c., La Salle.....	C.P. 280808	1 2,825.00			
19.	200 ½'s, 50 ¼'s, La Salle.....	C.P. 209071	2 2,625.00			
19.	1500 c.c.....	C.P. 112916	3 1,925.00			
20	19.	C.P. 201016	4 2,625.00			
20.	725 a.a., 775 c.c.....	Erie 110511	5 2,625.00			
21.	700 a.a., 800 c.c.....	C.P. 286435	6 2,500.00			
21.	200 ½'s, La Salle.....	C.P. 134594	7 2,625.00			
21.	744 a.a., 756 c.c.....					
31.	24 Mt. ½'s, 8 Mt. ¼'s, 5 ½'s liquid, 1222 ctns a.a., 893 bottles, pts., cc. 225 bottles pts. a.a.		296	2,450.51		
22.	1500 a.a.....	C.P. 211801	8 2,625.00			
22.	1500 a.a.....	C.P. 111586	9 2,625.00			
22.	300 a.a., 1200 c.c.....	C.P. 197752	3420 2,625.00			
26.	358 a.a., 1142 c.c.....	C.P. 206348	1 2,625.00			
30	31.	C.P. 126336	297	1,772.50		
26.	29 ½'s liquid, 189 ½'s Mt., 92 ¼ bbls. Mt.	C.P. 125982	2 2,625.00			
26.	1500 B/L.....	C.P. 160172	3 2,625.00			
26.	800 a.a., 700 c.c.....	C.P. 287047	4 2,500.00			
25.	200 ½'s, La Salle.....	C.P. 85494	5 2,625.00			
26.	850 a.a., 650 c.c.....	Penn. 92152	6 2,625.00			
26.	249 B/L., 1251 c.c.....	C.P. 133278	7 2,975.00			
27.	500 a.a., 1200 c.c.....	C.P. 216133	8 1,785.00			
27.	200 ctns. Lager, 820 B/L.....	T.H.B. 3609	3430 2,100.00			
27.	600 B/L., 300 c.c., 300 a.a., Amherstburg.....	C.P. 286563	1 2,825.00			
28.	200 ½'s, 50 ¼'s, La Salle.....	C.P. 202504	2 2,625.00			
40	28.	C.P. 202504	2 2,625.00			
28.	1500 B/L.....	C.P. 280860	3 3,125.00			
29.	250 ½ bbls., La Salle.....	P.M. Key 80214	4 2,625.00			
29.	500 c.c., 1000 B/L.....	C.P. 204891	5 2,625.00			
29.	1500 c.c.....	C.P. 119664	6 2,625.00			
29.	1500 a.a.....	C.P.M. & Sp. 87212	7 1,400.00			
31.	800 c.c. Amherstburg.....	C.B. 185-21		15,000.00		
21.	Cash.....	C.B. 186-25		25,000.00		
11.	Cash.....	C.B. 188-34		30,000.00		
18.	Cash.....	C.B. 189-19		30,000.00		
25.	Cash.....	C.B. 190-13		10,000.00		
29.	Cash.....					
50	26.	C.P. 121398	293	1,801.56		
26.	252 ½'s, Mt., 35 Mt. ¼'s, 1 ½ bbl. liquid, 48 ctns. 1290 bottles Ret'd Beer.....		294	2,378.50	D.	18,021.64
31.	335 ½'s, Mt., 104 Mt. ¼'s, 4 bbls. liquid, 1 ¼ keg liquid.....					

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.
—Continued

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EXHIBIT No. F.—Continued.

SHEET No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED
 F. SAVARD, DETROIT, MICHIGAN - - - - - c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
 Exchequer
 Court of
 Canada.

Exhibits

No. F.
 Defendant's
 Account with
 F. Savard,
 Aug. 12,
 1925-June,
 1927.

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926		Forward.....		18,021.64			
June	2.	200 1/2's, La Salle.....	C.P. 286317	3444	2,500.00		
	2.	600 B/L., 900 a.a.....	C.P. 101540	5	2,625.00		
	2.	400 B/L., 400 a.a., 200 c.c. Walkerville.....	C.P. 197152	6	1,750.00		
10	2.	1500 c.c.....	C.P. 104784	9	2,625.00		
	3.	200 1/2's, 100 1/4's.....	C.P. 285372	3450	3,150.00		
	4.	200 1/2's, La Salle.....	C.P. 287076	3	2,500.00		
	4.	700 c.c., 800 a.a.....	C.P. 122548	4	2,625.00		
	4.	600 B/L., 900 a.a.....	C.P. 134594	5	2,625.00		
	5.	700 B/L., 800 c.c.....	C.P. 200772	6	2,625.00		
	5.	800 B/L., 700 a.a.....	C.P. 80736	7	2,625.00		
	5.	700 a.a., Kingsville.....	C.P. 200130	8	1,225.00		
	5.	185 1/2's.....	C.P. 285404	9	2,312.50		
	7.	200 1/2's, 50 1/4's, La Salle.....	C.P. 285364	3460	2,825.00		
20	7.	800 c.c., 700 a.a.....	C.P. 116784	1	2,625.00		
	7.	400 a.a., 50 B/L., 600 c.c., Amherstburg to Pelee Island.....	M.C. 49166	2	1,837.50		
	8.	1500 c.c.....	C.P. 197917	3	2,625.00		
	8.	200 1/2's, La Salle.....	C.P. 286309	4	2,500.00		
	8.	800 B/L., Kingsville.....	M.C. 49934	5	1,400.00		
	8.	1500 a.a.....	C.P. 206520	6	2,625.00		
	8.	600 B/L. 900 c.c.....	C.P. 98398	7	2,625.00		
	10.	158 B/L., 1342 c.c.....	C.P. 107468	8	2,625.00		
	10.	1500 a.a.....	C.P. 214178	9	2,625.00		
	10.	200 1/2's, La Salle.....	C.P. 287158	3470	2,500.00		
30	11.	200 1/2's.....	C.P. 287216	1	2,500.00		
	11.	1500 a.a.....	C.P. 104784	2	2,625.00		
	11.	1500 c.c.....	N.P. 12587	3	2,625.00		
	12.	600 a.a., 600 B/L, Amherstburg.....	M.C. 87356	4	2,100.00		
	12.	1500 B/L.....	C.P. 160170	5	2,625.00		
	12.	1500 c.c.....	C.P. 210494	6	2,625.00		
	12.	600 B/L., 800 c.c., 100 a.a.....	C.P. 212948	7	2,625.00		
	14.	200 1/2's, La Salle.....	C.P. 285372	9	2,500.00		
	14.	50 1/4's, 123 1/2's, La Salle.....	C.P. 286054	3480	1,862.50		
	14.	800 a.a., Amherstburg.....	N.Y. & N.H. 89347	1	1,400.00		
40	14.	1500 B/L.....	C.P. 129284	2	2,625.00		
	15.	400 B/L., 400 a.a., 200 c.c., Walkerville.....	C.P. 91142	3	1,750.00		
	15.	200 1/2 bbls., La Salle.....	C.P. 287076	4	2,500.00		
	16.	1500 c.c.....	C.P. 211152	5	2,625.00		
	16.	1500 a.a.....	C.P. 55558	6	2,625.00		
	16.	1500 a.a., Y. Clix, Walkerville.....	C.P. 125762	7	2,625.00	D.	112,259.14

—Continued

EXHIBIT No. F.—Continued.

ACCOUNT No. C1

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Forward.....	D.	112,259.14			
June 16.	1500 c.c., A. J. Clix, Walkerville.....	C.P. 214021	3488	2,625.00		
3.	372 Mt. 1/2's, 10 Mt. 1/4's, 7 1/2's liquid, Ret'd.....	C.P. 134594	300		2,349.50	
10 17.	1407 B/L, 93 c.c.....	C.P. 213305	9	2,625.00		
11.	431 Mt. 1/2's, 20 Mt. 1/4's, 1 1/4 liquid, 1 1/2 bbl. liquid, Ret'd.....	C.P. 160172	301		2,665.00	
16.	1500 a.a.....	C.P. 210731	3490	2,625.00		
17.	4 Mt. 1/4's, Ret'd.....	C.P. 160172	303		12.00	
16.	1500 c.c.....	C.P. 88988	1	2,625.00		
17.	900 B/L, 600 ale pts.....	C.P. 85940	2	2,625.00		
17.	1500 c.c.....	C.P. 101314	3	2,625.00		
17.	200 1/2's, 50 1/4's, La Salle.....	C.P. 287581	5	2,825.00		
17.	1000 B/L, A. V. Craig, Amherstburg.....	M.C. 49163	6	1,750.00		
18.	1000 a.a. pts. Patterson.....	C.P. 96130	8	1,750.00		
20 18.	1200 a.a., 300 c.c.....	C.M. & St. P.	93382 9	2,625.00		
19.	1500 a.a. pts.....	C.P. 204698	3500	2,625.00		
19.	550 B/L 950 c.c.....	C.P. 211641	1	2,625.00		
21.	200 1/2's, La Salle.....	C.P. 285051	2	2,500.00		
21.	200 1/2's, La Salle.....	C.P. 286027	3	2,500.00		
21.	1500 ctns. a.a. pts.....	N.P. 13845	4	2,625.00		
21.	1000 a.a. pts., Amherstburg.....	N.Y.C. 245231	6	1,750.00		
22.	200 1/2 bbls.....	C.P. 286175	7	2,500.00		
22.	1500 c.c.....	C.P. 70836	8	2,625.00		
22.	1500 a.a.....	C.P. 204137	9	2,625.00		
30 23.	1500 c.c.....	C.P. 135022	3510	2,625.00		
23.	1200 a.a., Amherstburg, V. Craig.....	M.C. 50063	1	2,100.00		
24.	1500 a.a.....	C.P. 470920	2	2,625.00		
24.	1500 c.c.....	N.Y.C. 239717	3	2,625.00		
24.	200 1/2's, 25 1/4's, La Salle.....	C.P. 287691	4	2,662.50		
25.	175 1/2's, La Salle.....	C.P. 285404	5	2,187.50		
25.	1500 ctns. c.c.....	C.P. 120878	6	2,625.00		
30.	1500 c.c.....	C.P. 109830	3543	2,625.00		
30.	716 B/L, 784 c.c.....	C.M. & S.P. 70	2321 4	2,625.00		
40 ↓	Cash.....				30,000.00	
9.	".....				35,000.00	
16.	".....				50,000.00	
22.	".....				50,000.00	
28.	".....				35,000.00	
18.	4 1/2 liquid, 234 Mt. 1/2's, 51 1/4 bbs. Mt.....	C.P. 152954	304	1,607.00		
21.	397 1/2's, Mt., 11 Mt 1/4's, 6 1/2's liquid, 1 1/4 keg.....	C.P. 70836	305	2,496.50		
22.	500 a.a. pts., 1000 shipped instead of 1500. S.W. 3504.....	N.P. 13845	307	875.00		
25.	342 Mt. 1/2's, 43 Mt. 1/4's, 1 bbl. liquid, 1 1/4 keg liquid.....	C.P. 212948	308	2,200.00		
30.	425 Mt. 1/2's, 50 1/4's Mt., 2 1/2's liquid, 2 1/4 kegs.....	N.P. 13845	309	2,738.00		
30.	383 Mt. 1/2's, 26 Mt. 1/4's.....	C.P. 210494	310	2,376.00		
1.	Allowance, May, 1926.....		311	857.36	C.	36,142.22

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

EXHIBIT No. F.—Continued

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR.

In the
Exchequer
Court of
Canada.

Exhibits

No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Carried Forward			36,142.22	C.	36,142.22
June 25.	1500 a.a. pts.	C.P. 131602	3517	2,625.00		
26.	1500 c.c.	C.P. 118404	8	2,625.00		
10 26.	1500 a.a.	C.P. 125184	9	2,625.00		
26.	200 1/2's, 25 1/4's, La Salle	C.P. 287452	3520	2,662.50		
28.	1500 c.c.	C.P. 205168	3	2,625.00		
26.	200 1/2 bbls., La Salle	C.P. 287909	4	2,500.00		
28.	1500 a.a.	C.P. 113532	5	2,625.00		
28.	1200 a.a., Belle River	C.P. 116146	6	2,100.00		
28.	1200 a.a., Belle River	T.H. & B. 3249	7	2,100.00		
28.	200 1/2's, 25 1/4's, La Salle	C.P. 286510	8	2,662.50		
28.	1500 B/L	C.P. 210083	9	2,625.00		
20 28.	1200 B/L, Amherstburg	C.C.C. & St. L.	41311 3530	2,100.00		
29.	1500 c.c.	C.P. 215520	1	2,625.00		
29.	1160 B/L, A. J. Clix, Walkerville	C.P. 215742	2	2,030.00		
29.	1450 a.a., 50 B./L.	C. & O. 3711	3	2,625.00		
29.	200 1/2's, 25 1/4's, La Salle	C.P. 284120	4	2,662.50		
30.	1500 B/L	C.P. 213411	3541	2,625.00	D.	6,300.28
July 1.	1500 B/L	N.P. 13845	5	2,625.00		
1.	200 1/2's, 25 1/4's, La Salle	C.P. 287724	6	2,662.50		
1.	1281 a.a., 219 B/L	C.P. 210494	7	2,625.00		
2.	1200 B/L, A. J. Clix, Walkerville	C.P. 49346	8	2,100.00		
2.	200 1/2's, La Salle	C.P. 285051	9	2,500.00		
30 2.	1000 a.a. pts., V. Craig, Amherstburg	C.C.C. & St. L.	52482 3550	1,750.00		
2.	566 a.a. 934 c.c., C.P.R.	C.P. 206180	2	2,625.00		
2.	1500 c.c., C.P. 212313	C.P. 212313	3	2,625.00		
3.	1500 a.a.	C.P. 127088	4	2,625.00		
3.	1500 B/L	C.P. 142012	5	2,625.00		
3.	125 1/2's, La Salle	C.P. 287357	6	1,562.50		
2.	200 1/2's, La Salle	C.P. 286376	7	2,500.00		
3.	366 c.c., 1134 B/L	C.P. 206840	8	2,625.00		
3.	To correct Jun. 3556. Billed as 125, there was 159 shipped		3559	425.00		
5.	200 1/2's, La Salle	C.P. 287157	3561	2,500.00		
40 5.	870 a.a., 180 c.c., 450 B/L	C.P. 212549	3	2,625.00		
6.	1000 B/L, 200 a.a., V. Craig, Amherstburg	M.C. 47667	4	2,100.00		
6.	200 1/2's, La Salle	C.P. 286054	5	2,500.00		
6.	1500 B/L	C.P. 120878	6	2,625.00		
7.	200 1/2's, La Salle	C.P. 285404	7	2,500.00		
7.	163 1/2's, 25 1/4's, La Salle	C.P. 287452	8	2,200.00		
7.	700 B/L, 800 c.c.	C.M. & S.P. 701	946 9	2,625.00	D.	57,850.28

EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR

In the
Exchequer
Court of
Canada.

Exhibits

No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926							
Forward							
July	8.	1500 c.c.		57,850.28			
	8.	200 1/2 bbls., La Salle	C.P. 118404	3571	2,625.00		
	8.	200 1/2's, La Salle	C.P. 284646	2	2,500.00		
10	8.	1500 ctns. B/L	C.P. 287226	2896	2,500.00		
	8.	800 B/L, 400 c.c., Amherstburg	C.P. 209250	3573	2,625.00		
	7.	1500 a.a.	T.N.C. 80126	4	2,100.00		
	9.	1500 c.c.	C.P. 152096	5	2,625.00		
	10.	1500 c.c.	C.P. 83352	6	2,625.00		
	10.	200 1/2's, La Salle	C.P. 122362	7	2,625.00		
	10.	1422 B/L, 78 c.c.	C.P. 286190	2902	2,500.00		
	10.	1105 c.c., 395 B/L	C.P. 215826	3578	2,625.00		
	10.	1130 B/L, 370 c.c.	C.M. & St. P. 84958	9	2,625.00		
20	10.	200 1/2's, La Salle	C.P. 203137	3580	2,625.00		
	12.	200 1/2's, La Salle	C.P. 286072	2906	2,500.00		
	14.	200 1/2's, La Salle	C.P. 286999	8	2,500.00		
	12.	1500 ctns. a.a.	C.P. 287651	9	2,500.00		
	13.	1500 B/L	C.P. 94136	3582	2,625.00		
	13.	200 1/2's, La Salle	C.P. 215054	3	2,625.00		
	13.	200 1/2's, La Salle	C.P. 287759	2912	2,500.00		
	12.	1098 c.c., 341 a.a., 61 B/L	C.P. 286435	3	2,500.00		
	13.	1200 a.a., V. Craig, Amherstburg	C.P. 78270	3584	2,625.00		
	14.	163 1/2's, La Salle	M.C. 94772	5	2,100.00		
30	14.	1500 B/L	C.P. 286834	2917	2,037.50		
	14.	1500 B/L	C.P. 82796	3586	2,625.00		
	14.	200 1/2's, La Salle	C.M. & S.P. 703918	7	2,625.00		
	14.	1500 a.a.	C.P. 287158	2920	2,500.00		
	14.	1500 a.a.	C.P. 118404	3589	2,625.00		
	15.	200 1/2's	C.P. 118404	3590	2,625.00		
	15.	200 1/2's	C.P. 282552	1	2,500.00		
	15.	1500 B/L	C.P. 286388	2	2,500.00		
	15.	1364 B/L, 136 c.c.	C.P. 80958	3	2,625.00		
	16.	610 B/L, 890 a.a.	D.L. & W. 32440	5	2,625.00		
40	16.	200 1/2's	C.P. 205631	6	2,625.00		
	16.	1500 a.a.	C.P. 287706	8	2,500.00		
	17.	1200 B/L	C.P. 52806	9	2,625.00		
	17.	1500 c.c.	C.P. 44610	3601	2,100.00		
	17.	1500 a.a.	C.P. 111738	2	2,625.00		
	19.	200 1/2's, La Salle	C.P. 208420	7	2,625.00		
	19.	200 B/L, 600 a.a., 400 c.c., V. Craig, Amherstburg	C.P. 284120	8	2,500.00		
			M.C. 48503	9	2,100.00	D.	155,912.78
				155,912.78			

EXHIBIT No. F.—Continued.

ACCOUNT No. CI.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING E. B. & M. CO. C.P.R. DOCK, WINDSOR.

In the
Exchequer
Court of
Canada.

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Carried Forward			155,912.78			
July 19.	1500 ctns. a.a.	C.P. 208241	3610	2,625.00			
20.	800 B/L, 400 a.a., Mr. Dunford, Kingsville	C.P. 108864	5	2,100.00			
20.	200 1/2's, La Salle	C.P. 285457	4	2,500.00			
10 20.	200 1/2's, 25 1/4's, La Salle	C.P. 286435	5	2,662.50			
20.	1312 c.c., 38 a.a.	C.P. 145416	6	2,362.50			
21.	892 B/L, 508 c.c.	C.P. 104480	9	2,450.00			
21.	1500 B/L	C.P. 43446	3627	2,625.00			
21.	244 B/L, 610 a.a., 646 c.c.	C.P. 129146	9	2,625.00			
22.	1500 B/L	C.P. 703918	3630	2,625.00			
22.	720 c.c., 780 a.a.	C.M. & S.P. 713797	1	2,625.00			
23.	1500 a.a.	C.P. 122362	2	2,625.00			
23.	230 a.a., 1210 B/L, 60 c.c.	R.I. 37697	3	2,625.00			
20 24.	1500 a.a.	C.P. 201763	4	2,625.00			
24.	1195 a.a., 305 B/L	C.P. 107476	5	2,625.00			
24.	216 1/2's, 25 1/4's, La Salle	C.P. 286388	7	2,862.50			
26.	200 1/2's, La Salle	C.P. 287405	8	2,500.00			
26.	200 1/2's, 25 1/4's, La Salle	C.P. 284342	9	2,662.50			
26.	890 a.a., 610 c.c.	C.P. 80958	3641	2,625.00			
26.	1500 B/L	C.I.L. 8096	3	2,625.00			
27.	700 B/L, Mr. Dunford, Kingsville	C.P. 111780	4	1,225.00			
27.	200 1/2's, La Salle	C.P. 284400	5	2,500.00			
27.	200 1/2's, La Salle	C.P. 287057	6	2,500.00			
30 27.	1500 B/L	C.P. 87306	7	2,625.00			
27.	1500 B/L	N.K.P. 78316	8	2,625.00			
19.	1220 c.c., 280 a.a.	C.P. 51658	3650	2,625.00			
20.	700 B/L, 500 a.a.	T.H. & B. 3617	1	2,100.00			
28.	366 a.a., 1134 B/L	C.P. 52806	3	2,625.00			
28.	366 B/L, 1134 a.a.	C.P. 200493	4	2,625.00			
28.	600 B/L, 600 a.a., V. Craig, Amherstburg	M.C. 80928	5	2,100.00			
28.	200 1/2's, La Salle	C.P. 287759	6	2,500.00			
28.	200 1/2's, La Salle	C.P. 286999	7	2,500.00			
28.	1134 B/L, 366 a.a.	C.P. 57930	8	2,625.00			
40 29.	175 B/L, 525 a.a., V. Craig, Amherstburg	M.C. 90640	3660	1,225.00			
29.	200 1/2's, 25 1/4's, La Salle	C.P. 286388	1	2,662.50			
29.	700 a.a., 800 B/L	C.P. 76642	2	2,625.00			
30.	1500 B/L	N.Y.C. 253911	3	2,625.00			
30.	1500 B/L	T.H. & B. 3781	4	2,625.00			
31.	1500 a.a.	C.P. 90002	6	2,625.00			
31.	600 B/L, 600 a.a., V. Craig, Amherstburg	M.C. 28525	7	2,100.00		D.	252,550.28
				252,550.28			

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIOAN

c/o CARLING E.B. & M. C.P.R. DOCK, WINDSOR.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Forward.....		252,550.28		D.	252,550.28
July 14.	372 Mt. 1/2's, 20 Mt. 1/4's, 6 1/2 barrels liquid, Ret'd.....	C.P. 118404 321		2,367.00		
July 31.	800 B/L, 700 a.a.....	C.P. 286190 3668	2,625.00			
10	5. 395 Mt. 1/2's, 11 Mt. 1/4's..... Ret'd	C.P. 120878 316		2,403.00		
9.	384 Mt. 1/2's, 18 Mt. 1/4's, 4 1/2's liquid. Ret'd.....	C.P. 118444 317		2,408.00		
10.	359 1/2 bbls., 16 1/2's liquid, 34 Mt. 1/4's. Ret'd.....	C.P. 210494 318		2,456.00		
13.	368 Mt. 1/2's, 34 Mt. 1/4's, 4 1/2's liquid. Ret'd.....	C.P. 127088 320		2,360.00		
20.	333 Mt. 1/2's, 91 1/4's Mt., 6 1/2's liquid. Ret'd.....	C.P. 152096 323		2,346.00		
24.	369 Mt. 1/2's, 42 Mt. 1/4's, 2 1/2's liquid. Ret'd.....	C.P. 236500 325		2,365.00		
26.	F. S. 364 1/2's, Mt., 62 Mt. 1/4's, 4 1/2's liquid. Ret'd.....	C.P. 52806 326		2,420.00		
21.	456 Mt. 1/2's, 50 Mt. 1/4's, 2 1/2's liquid. Ret'd.....	C.M. & S.P. 703 918 327		2,911.00		
29.	Allowance for leakers and bad beer. Cassidy, Murphy, Booster, French, Elliott.....			30,000.00		
27.	389 Mt. 1/2's, 12 1/2's liquid. Ret'd.....	C.P. 44610 331		2,484.00		
20	28. 356 Mt. 1/2's, 6 1/4's Mt., 8 1/2's liquid. Ret'd.....	C.P. 208420 332		2,254.00		
7.	Cash.....	C.B. 204-19		50,000.00		
12.	".....	C.B. 206-29		100,000.00		
27.	".....	C.B. 211-13		50,000.00	C.	1,598.72
Aug. 2.	610 B/L, 890 a.a.....	C.P. 203819 3677	2,625.00			
2.	200 1/2's, La Salle.....	C.P. 284342 3678	2,500.00			
3.	1500 B/L.....	C.P. 48050 3680	2,625.00			
3.	200 1/2's, La Salle.....	C.P. 287562 1	2,500.00			
3.	700 B/L, 500 a.a., V. Craig, Amherstburg.....	M.C. 47174 2	2,100.00			
4.	200 1/2's, La Salle.....	C.P. 286780 3	2,500.00			
30	4. 200 1/2's, La Salle.....	C.P. 287158 4	2,500.00			
4.	1500 B/L.....	T.H. & B. 3255 5	2,625.00			
4.	1500 B/L.....	C.M. & S.P. 713 797 6	2,625.00			
5.	188 1/2's.....	C.P. 284400 7	2,350.00			
5.	200 1/2's, La Salle.....	C.P. 284052 8	2,500.00			
5.	1500 B/L.....	C.P. 44238 9	2,625.00			
5.	1500 B/L.....	C.M. & St. P. 71 3340 3690	2,625.00			
6.	200 1/2's, La Salle.....	C.P. 286834 2	2,500.00			
6.	200 1/2's, La Salle.....	C.P. 286626 3	2,500.00			
6.	1500 B/L.....	C.P. 122362 4	2,625.00			
40	6. 1500 B/L.....	C.P. 115752 5	2,625.00			
7.	200 1/2's, La Salle.....	C.P. 286901 7	2,500.00			
8.	200 1/2's, La Salle.....	C.P. 286562 8	2,500.00			
7.	1500 B/L.....	C.P. 201763 9	2,625.00			
7.	1500 B/L.....	N.K.P. 28316 3700	2,625.00			
9.	200 1/2's, La Salle.....	C.P. 287740 1	2,500.00			
9.	1094 B/L, 106 a.a.....	C.P. 43428 2	2,100.00			
11.	1500 B/L.....	C.P. 286947 3029	2,625.00			

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

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EXHIBIT No. F.—Continued

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Forward					
Aug. 12.	1500 B/L	C.P. 104430 3030	2,625.00			
12.	800 B/L, A. Diesburg, Belle River	A.T.F. 34484 1	1,400.00			
10 13.	200 1/2 bbls., La Salle	C.P. 287970 3	2,500.00			
13.	1200 B/L, A. Craig, Amherstburg	M.C.R. 61664 4	2,100.00			
14.	1200 B/L	C.O. 203819 6	2,100.00			
14.	1500 B/L	C.P. 125576 7	2,625.00			
16.	1317 B/L, 183 a.a.	C.P. 197578 3050	2,625.00			
17.	200 1/2's, 25 1/4's, La Salle	C.P. 284522 1	2,662.50			
17.	700 B/L, A. V. Craig, Amherstburg	M.C. 47909 2	1,225.00			
17.	1000 B/L, 200 a.a. See Folio B.6. Courtright	M.C. 82830 3707				
18.	1500 B/L	C.P. 135912 3055	2,625.00			
19.	200 1/2 bbls., La Salle	C.P. 287740 3059	2,500.00			
20 19.	1500 B/L	C.N.W. 28444 3060	2,625.00			
19.	1500 B/L	C.P. 210395 1	2,625.00			
20.	1500 B/L	C.P. 211197 5	2,625.00			
20.	200 1/2's, La Salle	C.P. 287610 6	2,500.00			
21.	200 1/2's, La Salle	C.P. 284646 8	2,597.50			
21.	1500 B/L, C.M. and St. P.	C.M. & St. P. 71 3340 9	2,625.00			
21.	1410 B/L., 90 a.a.	C.P. 201667 3070	2,625.00			
24.	1195 B/L, 305 a.a.	C.P. 109816 3079	2,625.00			
24.	200 1/2's, La Salle	C.P. 284522 3080	2,500.00			
24.	200 1/2's, La Salle	C.P. 287970 1	2,500.00			
30 24.	1500 B/L, La Salle	C.P. 46254 2	2,625.00			
25.	700 B/L, Kingsville	C.P. 48844 4	1,225.00			
25.	200 1/2 barrels, La Salle	C.P. 287697 5	2,500.00			
25.	1500 a.a.	C.P. 47010 7	2,625.00			
25.	1500 B/L	C.P. 94440 8	2,625.00			
25.	1500 B/L	C.P. 201763 9	2,625.00			
26.	1500 B/L	C.P. 102586 3090	2,625.00			
26.	200 1/2's, 25 1/4's, La Salle	C.P. 286465 2	2,662.50			
26.	750 B/L, 550 a.a., 200 c.c.	C.M. & St. P. 71 1397 3	2,625.00			
27.	200 1/2's, 50 1/4's, La Salle	C.P. 284646 4	2,662.50			
40 27.	1500 B/L	C.P. 152096 5	2,625.00			
27.	800 B/L, Kingsville	C.P. 105912 7	1,400.00			
28.	1500 B/L	C.P. 90598 3100	2,625.00			
28.	813 a.a., 257 c.c., 430 B/L	C.P. 118536 1	2,625.00			
27.	500 c.c., 200 a.a., 800 B/L	C.P. 116936 2	2,625.00			
30.	854 a.a., 646 B/L	C.P. 197578 5	2,625.00			
30.	930 B/L, 570 a.a.	N.Y.C. 248216 6	2,625.00			

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

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EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR.

In the
Exchequer
Court of
Canada.

Exhibits,
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Forward.....					
Aug. 31.	610 B/L, 890 c.c.....	C.P. 201015	3108	2,625.00		
31.	1170 B/L, 330 a.a.....	C.P. 287893	9	2,625.00		
10 31.	1500 B/L.....	C.P. 103928	3110	2,625.00		
31.	700 B/L, 500 c.c.....	C.P. 105172	1	2,100.00		
11.	427 Mt. 1/2's, 52 Mt. 1/4's, 2 full 1/2's, 2 full 1/4's.....	N.P. 13845	335			2,756.00
12.	394 1/2's, Mt, 1 1/4 keg Mt, 3 1/2's full.....	C.P. 104430	338			2,404.50
12.	391 Mt. 1/2's.....	C.P. 203819	339			2,346.00
12.	313 Mt. 1/2's, 100 Mt. 1/4's, 4 full 1/2's.....	N.K.P. 28316	340			2,228.00
13.	322 Mt. 1/2's, 113 Mt. 1/4's, 9 full 1/2's.....	C.P. 52806	341			2,383.50
12.	390 Mt. 1/2's.....	C.P. 201763	342			2,340.00
12.	312 Mt. 1/2's, 17 Mt. 1/4's, 1 full 1/2's.....	C.P. 122362	343			1,935.50
12.	398 Mt. 1/2's, 112 1/4's, 2 full 1/2's.....	C.M.S.P. 713797	344			2,749.00
20 10.	391 Mt. 1/2's, 2 full 1/2's.....	C.P. 145416	345			2,371.00
20.	470 Mt. 1/2's, 3 Mt. 1/4's, 3 full 1/2's.....	C.M.S.P. 713340	350			2,866.50
18.	133 Mt. 1/4's, 2 Mt. 1/2's, 9 full 1/2's.....	C.P. 52480	351			523.50
16.	91 Mt. 1/2's, 181 full 1/2's.....	C.P. 284052	352			2,808.50
16.	337 Mt. 1/2's, 77 Mt. 1/4's, 4 full 1/2's.....	T.H. & B. 3255	353			2,303.00
17.	236 Mt. 1/4's, 263 Mt. 1/2's, 9 full 1/2's.....	C.P. 201763	357			2,398.50
28.	310 Mt. 1/2's, 151 Mt. 1/4's, 4 full 1/4's.....	C.P. 197578	358			2,363.00
31.	Shortage on Car C.P. 197598, 644 billed as 646 B/L.....	C.P. 197598	361			3.50
Aug. 3.	Cash.....		C.B. 214-3			50,000.00
17.	".....		C.B. 216-26			50,000.00
30 30.	".....		C.B. 220-31			50,000.00
Aug. 31.	Bermuda Ex. Co.....		J155	616.00	C.	22,577.72
Sept. 1.	1500 c.c.....	C.P. 133060	3112	2,625.00		
1.	771 B/L, 429 c.c.....	C.P. 96072	3	2,100.00		
1.	1500 B/L.....	C.P. 149308	4	2,625.00		
1.	200 1/2's, 25 1/4's.....	C.P. 282898	5	2,662.50		
2.	1500 c.c.....	C.P. 108044	7	2,625.00		
2.	582 a.a., 918 c.c.....	C.P. 119970	8	2,625.00		
2.	524 a.a., 976 c.c.....	C.P. 45908	9	2,625.00		
3.	1500 a.a., Kingsville.....	C.P. 210595	3121	2,625.00		
40 3.	854 c.c., 646 a.a.....	C.P. 214491	2	2,625.00		
5.	200 1/2's, 25 1/4's.....	C.P. 288063	3	2,662.50		
4.	915 c.c., 584 a.a.....	C.P. 208045	40	2,625.00		
4.	200 1/2's, 25 1/4's.....	C.P. 287209	7	2,662.50		
4.	1062 c.c.....	C.P. 105950	8	1,858.50		
4.	452 c.c., 865 a.a., 183 B/L.....	C.P. 90334	9	2,625.00		
6.	204 1/2's, 25 1/4's, La Salle.....	C.P. 284646	3130	2,712.50		

—Continued

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EXHIBIT No. F.—Continued.

ACCOUNT No. CI.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR

In the
Exchequer
Court of
Canada.

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926							
		Forward.....					
Sept.	7.	200 1/2's..... La Salle.....	C.P. 288116	3131	2,500.00		
	7.	850 a.a.....	C.P. 114558	2	1,487.50		
10	8.	1500 a.a.....	C.P. 205134	5	2,625.00		
	8.	150 1/2's, 100 1/4's.....	C.P. 287454	6	2,525.00		
	8.	863 a.a., 488 B/L.....	C.P. 214162	7	2,364.25		
	9.	200 1/2's, La Salle.....	C.P. 286467	3140	2,500.00		
	9.	427 a.a., 1073 B/L.....	C.P. 204680	1	2,625.00		
	9.	1500 B/L.....	C.P. 98160	2	2,625.00		
	9.	1500 B/L.....	C.P. 135666	3	2,625.00		
	10.	1500 B/L.....	C.P. 205265	4	2,625.00		
	10.	1500 B/L.....	C.P. 148294	5	2,625.00		
	10.	1500 a.a.....	C.P. 102586	6	2,625.00		
20	11.	200 1/2's, 25 1/4's.....	C.P. 287473	8	2,662.50		
	11.	657 B/L.....	N.Y.C. 247835	9	1,149.75		
	11.	1500 B/L.....	C.P. 210458	3150	2,625.00		
	11.	1500 B/L.....	C.P. 201079	2	2,625.00		
	13.	200 1/2's, 25 1/4's.....	C.P. 287724	3	2,662.50		
	13.	1500 B/L.....	C.P. 204925	4	2,625.00		
	13.	1200 B/L.....	C.P. 200910	5	2,100.00		
	14.	800 B/L.....	C.P. 137002	7	1,400.00		
	14.	100 1/2's, 150 1/4's.....	C.P. 287903	8	2,225.00		
	14.	400 a.a., 400 B/L.....	M.C. 48487	9	1,400.00		
30	14.	1500 B/L.....	C.P. 96072	3160	2,625.00		
	14.	200 1/2's.....	C.P. 288061	2	2,500.00		
	15.	1500 B/L.....	C.P. 95002	3	2,625.00		
	15.	1500 B/L.....	C.P. 213415	4	2,625.00		
	15.	1000 B/L.....	C.P. 214152	5	1,750.00		
	15.	800 B/L, Amherstburg.....	M.C. 94622	6	1,400.00		
	16.	700 B/L.....	C.P. 120090	3170	1,225.00		
	17.	1200 B/L.....	C.P. 137622	3	2,100.00		
	17.	1500 B/L.....	C.M. & St. P. 706943	4	2,625.00		
	18.	1500 B/L.....	C.P. 197526	7	2,625.00		
40	18.	1500 B/L.....	C.P. 214491	3178	2,625.00		
	18.	1500 a.a.....	C.P. 58570	9	2,625.00		
	18.	200 1/2 Bbls., La Salle.....	C.P. 286560	3180	2,500.00		
	20.	1012 B/L, 488 a.a.....	C.P. 87922	2	2,625.00		
	20.	1500 B/L.....	C.P. 52806	3	2,625.00		
	23.	200 1/2's.....	C.P. 284646	4	2,500.00		
	21.	1500 B/L.....	C.P. 20035	5	2,625.00		

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

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EXHIBIT No. F.—Continued.

ACCOUNT No. C1

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.
F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR,

In the
Exchequer
Court of
Canada.

Exhibits

No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926							
	Forward.....						
Sept. 21.	1500 B/L.....	C.P. 204136	3187	2,625.00			
21.	1500 a.a.....	D. & R. G. W.	63665 3188	2,625.00			
10 21.	200 1/2's, La Salle.....	C.P. 286388	9	2,500.00			
22.	1500 B/L.....	C.P. 128738	3190	2,625.00			
22.	200 1/2's, La Salle.....	C.P. 282920	1	2,500.00			
22.	600 B/L, 200 a.a., V. Craig, Amherstburg.....	M.C. 47117	2	1,400.00			
22.	1500 B/L.....	C.P. 203280	3	2,625.00			
22.	1500 a.a.....	C.P. 139826	4	2,625.00			
22.	1200 B/L, 300 a.a.....	C.P. 203067	5	2,625.00			
22.	1500 B/L.....	C.P. 127160	6	2,625.00			
23.	1500 B/L.....	C.P. 112908	7	2,625.00			
23.	200 1/2's, La Salle.....	C.P. 285421	9	2,500.00			
20 24.	200 1/2's, La Salle.....	C.P. 287062	3200	2,500.00			
24.	1500 B/L.....	C.P. 150554	3620	2,625.00			
24.	1500 B/L.....	C.P. 145394	1	2,625.00			
24.	707 B/L, 793 ale pts.....	C.P. 84042	2	2,625.00			
25.	1500 B/L.....	C.P. 210458	3	2,625.00			
25.	1500 B/L.....	C.N.W. 109966	4	2,625.00			
25.	200 1/2's La Salle.....	C.P. 287028	5	2,500.00			
25.	1500 ale pts.....	C.P. 71804	6	2,625.00			
27.	200 1/2's, La Salle.....	C.P. 287536	7	2,500.00			
28.	200 1/2's, La Salle.....	C.P. 287453	3740	2,500.00			
30 29.	200 1/2's, La Salle.....	C.P. 286644	1	2,500.00			
30.	1500 B/L.....	C.P. 210898	6	2,625.00			
30.	1500 B/L.....	C.P. 102586	7	2,625.00			
2.	367 Mt. 1/2's, 4 Mt. 1/4's.....	C.P. 210395	365		2,214.00		
9.	369 Mt. 1/2's 22 Mt. 1/4's, 8 full 1/2's.....	C.P. 102586	366		2,380.00		
13.	320 Mt. 1/2's, 71 full 1/2's.....	C.P. 96072	367		2,807.50		
20.	171 Mt. 1/2's, 1 full 1/4.....	C.P. 214491	371		1,032.50		
18.	288 Mt. 1/2's.....	G.T. 102701	373		1,728.00		
20.	385 Mt. 1/4's, 6 full 1/2 bbls.....	C.P. 105950	3		2,385.00		
24.	355 Mt. 1/2's, 36 Mt. 1/4's, 3 full 1/2's.....	C.P. 210458	5		2,275.50		
40 25.	315 Mt. 1/2's.....	C.P. 284646	6		1,890.00		
29.	355 Mt. 1/2's, 34 Mt. 1/4's, 2 full 1/2's, 3 full 1/4's.....	C.P. 102586	383		2,276.50		
7.	Cash.....	C.B. 227-7			50,000.00		
17.	".....	C.B. 228-24			35,000.00		
24.	".....	C.B. 228-41			50,000.00		
22.	325 Mt. 1/2's, 3 full 1/2's, 1 full 1/4.....	C.P. 287724	387		1,994.00		
30.	Cancelling entry July 29. Jr. Note No. 329.....		J157	30,000.00		D.	44,574.25

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EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
Exchequer
Court of
Canada.

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926							
Sept. 30.	Brought Forward			44,574.28		D.	44,574.28
Oct. 1.	1500 B/L	C.P. 150434	3749	2,625.00			
1.	200 1/2's, La Salle	C.P. 282920	3750	2,500.00			
2.	200 1/2's, La Salle	C.P. 287903	2	2,500.00			
2.	1500 a.a.	C.P. 201760	3	2,625.00			
2.	1500 B/L	C.P. 85370	4	2,625.00			
4.	200 1/2's, La Salle	C.P. 286997	5	2,500.00			
4.	1500 B/L	C.P. 206246	6	2,625.00			
5.	1500 B/L	C.P. 122356	8	2,625.00			
6.	1200 B/L, Amherstburg	M.C. 49350	3762	2,100.00			
6.	1500 B/L	C.P. 88230	1	2,625.00			
5.	200 1/2's, La Salle	C.P. 287062	3760	2,500.00			
6.	1500 B/L	C.P. 76318	3759	2,625.00			
8.	1500 B/L, 10 1/4's	C.P. 147006	3763	2,690.00			
8.	1500 B/L	C.P. 109174	4	2,625.00			
8.	1500 B/L	C.P. 205883	5	2,625.00			
9.	1500 B/L, 10 1/4's	C.P. 215355	6	2,690.00			
9.	1500 B/L	C.P. 161158	7	2,625.00			
9.	1200 B/L, Amherstburg	M.C. 38284	8	2,100.00			
12.	1500 a.a.	C.P. 208876	9	2,625.00			
12.	1500 B/L	C.P. 102586	3770	2,625.00			
12.	600 B/L, 600 a.a., Amherstburg	N.Y.C. 219406	1	2,100.00			
13.	1500 B/L	C.P. 105994	3774	2,625.00			
13.	200 1/2's, 25 1/4's	C.P. 285421	5	2,662.50			
14.	200 1/2's, La Salle	C.P. 287453	6	2,500.00			
14.	1500 B/L	C.P. 120706	7	2,625.00			
15.	1500 B/L	C.P. 47890	8	2,625.00			
15.	200 1/2's, 10 1/4's, La Salle	C.P. 286687	9	2,565.00			
16.	1500 B/L	C.P. 197514	3780	2,625.00			
16.	200 1/2's, La Salle	C.P. 287903	1	2,500.00			
16.	1500 B/L	C.P. 205013	2	2,625.00			
18.	200 1/2's, La Salle	C.P. 286190	3788	2,500.00			
18.	1500 B/L	C.P. 201626	3787	2,625.00			
18.	1500 a.a.	C.P. 105594	6	2,625.00			
16.	10 1/4's	C.P. 197514	5	65.00			
20.	1500 B/L	C.P. 121752	3790	2,625.00			
20.	200 1/2's, 25 1/4's, La Salle	C.P. 286997	1	2,662.50			
20.	800 B/L, 200 a.a., Amherstburg	M.C. 91959	2	1,750.00			
22.	1500 B/L	C.P. 205883	3	2,625.00			
22.	1500 B/L	C.P. 58486	4	2,625.00			

Exhibits

No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

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EXHIBIT No. F.—Continued.

ACCOUNT No. CI.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
Exchequer
Court of
Canada.

Exhibits

No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926							
Oct.	Forward						
	22. 1500 B/L	C.P. 140210	3795	2,625.00			
	22. 1500 B/L	C.P. 214837	6	2,625.00			
10	23. 1500 B/L	C.P. 54880	7	2,625.00			
	23. 200 1/2's, 25 1/4's	C.P. 286787	8	2,662.50			
	23. 1500 B/L	C.P. 201853	9	2,625.00			
	23. 976 a.a., 524 B/L	C.P. 129146	3800	2,625.00			
	25. 1500 B/L	C.P. 204231	1	2,625.00			
	26. 1500 B/L	C.N.W. 90154	3	2,625.00			
	26. 200 1/2's, 25 1/4's	C.P. 280678	4	2,662.50			
	26. 1500 B/L	C.P. 210022	5	2,625.00			
	27. 200 1/2's, La Salle	C.P. 287699	6	2,500.00			
	27. 1500 B/L	C.P. 124310	7	2,625.00			
20	27. 1200 B/L, Amherstburg	M.C. 48359	8	2,100.00			
	28. 200 1/2's, La Salle	C.P. 286190	9	2,500.00			
	28. 1500 B/L	C.P. 130174	3810	2,625.00			
	30. 1500 B/L	C.P. 102198	1	2,625.00			
	30. 200 1/2's	C.P. 286997	2	2,500.00			
	1. 313 Mt. 1/2's, 2 full 1/2's	C.P. 285421	385		1,903.00		
	4. 325 " 4 " "	C.P. 287062	384		2,000.00		
	11. 324 " 3 " "	C.P. 287536	391		1,981.50		
	11. 322 " 4 " "	C.P. 287453	2		1,982.00		
30	12. 4007 Mt. pts., 120 Mt. pts. c/s, 267 Mt. 1/2's, 83 full 1/4's	C.P. 102586	3		2,463.31		
	14. 21743 Mt. gts., 442 Mt. pts.	C.P. 120706	4 x		(1,100.41)	x	
	15. 314 Mt. 1/2's, 1 Mt. 1/4 keg, 11 full 1/2's, 2 full 1/4's	C.P. 287903	5		2,037.50		
	19. 328 Mt. 1/2's, 2 full 1/2's	C.P. 286997	6		1,993.00		
	20. 379 " 14 Mt. 1/4's	C.P. 205883	7		2,316.00		
	25. 332 " 1 full 1/2's	C.P. 298876	8		2,004.50		
	25. 353 " 3 full 1/2's, 1 full 1/4's, 10 Mt. 1/4's, 62 Mt. pt. c/s, 1478 Mt. pts.	C.P. 102586	9		2,284.70		
	28. 330 Mt. 1/4's	C.P. 286190	406		1,980.00		
	30. 80 Mt. 1/2's	Earley	407		480.00		
Oct.	1. Trans.		C.B. 234-4		35,000.00		
	8. " "		C.B. 234-13		50,000.00		
40	26. " "		C.B. 236-31		50,000.00		
	30. Trans. credited to 4.4 a/c in error		J159		1,000.00		
	F. Savard, claim against Bannon		J160		1,711.69		
	Cheque paid by F. Savard		J160		3,493.88	D.	19,277.29
Jan. 10/27	Rev. Entry, J160		J188	1,711.69		D.	20,989.48
	" " J160		J188	3,493.88		D.	24,483.36

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EXHIBIT No. F.—Continued

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN.

c/o CARLING E. B. & M. CO., LTD., C.P.R. DOCK, WINDSOR.

In the
Exchequer
Court of
Canada.

Exhibits

No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926						
Nov.	1. 600 B/L, 600 a.a., Amherstburg	M.C. 81986	4401	2,100.00		
	1. 200 1/2's, La Salle	C.P. 284252	4402	2,500.00		
	1. 1500 B/L	C.P. 152614	3	2,625.00		
10	1. 1500 B/L	C.P. 11862	4	2,625.00		
	2. 1500 B/L	C.P. 203012	6	2,625.00		
	2. 1500 B/L	C.P. 116738	7	2,625.00		
	3. 200 1/2's, La Salle	C.P. 286787	8	2,500.00		
	3. 1500 B/L	C.P. 97722	9	2,625.00		
	4. 1500 B/L	C.P. 215150	4412	2,625.00		
	4. 1500 B/L	C.P. 201919	3	2,625.00		
	4. 1500 a.a.	C.P. 287699	4	2,625.00		
	5. 1500 B/L	C.P. 78638	6	2,625.00		
	5. 900 B/L, 300 a.a., Amherstburg	M.C. 92657	7	2,100.00		
20	6. 1500 B/L	C.P. 2025	8	2,625.00		
	6. 200 1/2's, 25 1/4's, La Salle	C.P. 288192	9	2,662.50		
	6. 1200 B/L, Amherstburg	P.McKy 81593	4420	2,100.00		
	8. 200 1/2's, La Salle	C.P. 286997	1	2,500.00		
	8. 1500 B/L	C.N.W. 55254	2	2,625.00		
	8. 400 B/L, Pt. Lambton	Truck	3	700.00		
	9. 1500 B/L	C.P. 86658	4	2,625.00		
	9. 900 B/L, 300 a.a., Amherstburg	C.M. & St. P. 7	11120	2,100.00		
	9. 568 a.a., 932 B/L	C.P. 56562	6	2,625.00		
	9. 175 B/L, 200 a.a., Pt. Lambton	Trucks	7	656.25		
30	10. 1500 B/L	C.P. 286891	8	2,625.00		
	10. 1500 B/L	D.L. & W. 43361	9	2,625.00		
	10. 175 B/L, Pt. Lambton	Trucks	4430	306.25		
	11. 1500 a.a.	C.P. 209929	1	2,625.00		
	11. 200 1/2's, La Salle	C.P. 98052	2	2,500.00		
	11. 200 B/L, Pt. Lambton	Truck	3	350.00		
	12. 1500 a.a.	C.B.O. 115487	4	2,625.00		
	12. 549 B/L, 951 a.a.	C.P. 45470	5	2,625.00		
	12. 326 a.a., 674 B/L	C.P. 211154	6	1,750.00		
	12. 1500 B/L	C.P. 133434	7	2,625.00		

EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
Exchequer
Court of
Canada.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926						
Nov. 13.	Forward.....					
13.	1000 B/L.....	C.P. 215821 4438	1,750.00			
13.	1500 B/L.....	C.P. 148146 9	2,625.00			
10 4.	114 1/2's, La Salle.....	C.P. 286301 4441	1,425.00			
15.	1500 B/L.....	C.P. 286787 2	2,625.00			
15.	200 B/L, Pt. Lambton.....	Truck 3	350.00			
6.	Allowance, 5 kegs short in Car C.P. 287699, October 29/26.....	408		62.50		
10.	Transfer.....	C.B. 241-32		50,000.00		
2.	1150, Pt. Lambton.....	4444	2,012.50			
16.	1500 B/L.....	C.P. 208876 4446	2,625.00			
16.	200 B/L, Pt. Lambton.....	4447	350.00			
17.	200 1/2's, Lager, 15 1/2's ale, La Salle.....	C.P. 104160 4449	2,687.50			
19.	200 1/2's, La Salle.....	T.H. & B. 303 9 4450	2,500.00			
20 19.	549 a.a., 951 B/L.....	C.P. 80998 1	2,625.00			
20.	300 a.a., 1200 B/L.....	C.P. 210023 2	2,625.00			
22.	1200 a.a., Amherstburg.....	M.C. 46631 3	2,100.00			
22.	200 1/2's, 25 1/4's, La Salle.....	C.P. 206015 4	2,662.50			
22.	1200 B/L, Amherstburg.....	M.D.F. 144279 5	2,100.00			
6.	600 B/L, Pt. Lambton.....	4458	1,050.00			
12.	200 B/L " ".....	9	350.00			
19.	300 B/L, 100 a.a., Pt. Lambton.....	4460	700.00			
20.	350 B/L " ".....	1	612.50			
22.	400 B/L " ".....	2	700.00			
30 23.	425 B/L " ".....	3	743.75			
23.	1500 B/L.....	C.P. 209610 4	2,625.00			
23.	1500 B/L.....	C.P. 216210 5	2,625.00			
24.	1500 B/L.....	C.P. 209553 7	2,625.00			
4.	200 1/2's, La Salle.....	C.P. 83058 8	2,500.00			
24.	375 B/L, Pt. Lambton.....	9	656.25			
26.	1200 B/L, Amherstburg.....	M.C. 97796 4470	2,625.00			
25.	425 B/L, Pt. Lambton.....	1	743.75			
27.	1500 B/L.....	C.P. 160025 2	2,625.00			
26.	175 B/L, Pt. Lambton.....	3	306.25			
40 27.	625 B/L " ".....	4	1,093.75			
3.	80 Mt. 1/2's.....	Earley 411		480.00		
3.	314 " " 1 full 1/2 barrel.....	C.P. 287699 412		1,896.50		
3.	55 " " 26 Mt. 1/4's.....	Truck 414		1,356.00		
8.	338 " " 3 full 1/2's.....	C.P. 286997 415		2,065.50		
15.	85 " " 2 Mt. 1/4's.....	Earley 417		516.00		
13.	341 " " 1 full 1/2's.....	C.P. 286287 419		2,058.50		

Exhibits
No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED

F. SAVARD, DETROIT, MICHIGAN

c/o CARLING C.P.R. DOCK, WINDSOR

In the
Exchequer
Court of
Canada.

Exhibits

No. F.
Defendant's
Account with
F. Savard,
Aug. 12,
1925-June,
1927.

—Continued

Date			Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926							
Nov.	13.	150 Mt. 1/2's	Earley	420			900.00
	16.	101 " " 2 Mt. 1/4's	"	421			612.00
	17.	76 " " 10 " "	"	422			486.00
10	19.	84 " " 2 " "	"	423			510.00
	22.	51 " " 10 " "	Atchison	426			336.00
	24.	45 " "	"	427			230.00
	2.	329 1/2's Mt, 1 full 1/2's	C.P. 286787	428			1,986.50
	2.	Trans.			C.B. 241-14		50,000.00
	3.	"			C.B. 242-33		41,958.36
	5.	55 Mt. 1/2's, 26 Mt. 1/4's	Earley	413			408.00
30.		Trans.			C.B. 242-38		20,000.00
30.		200 B/L, 200 a.a., Pt. Lambton	Truck	4475	700.00		
30.		200 B/L, 200 a.a., "	"	6	700.00		
20	27.	72 Mt. 1/2's, 3 Mt. 1/4's	Earley	429			441.00
Dec.	1.	200 B/L, 200 a.a., Pt. Lambton	"	3834	700.00		27,281.32
	2.	400 B/L, 225 a.a. "	"	5	1,093.75		
	3.	250 a.a., 1025 B/L "	"	7	2,231.25		
	4.	1500 B/L	N.Y.C. 18296	8	2,625.50		
	4.	475 a.a., 650 B/L, Pt. Lambton	"	3839	1,968.75		
	6.	675 B/L	"	3840	1,181.25		
	6.	1500 B/L	C.P. 99212	1	2,625.00		
	7.	641 B/L, 184 a.a., "	"	2	1,443.75		
	8.	850 B/L, 425 a.a., "	"	4482	2,231.25		
30	9.	650 B/L, "	"	3	1,531.25		
	10.	1675 B/L	"	4	2,931.25		
	11.	675 B/L, 200 a.a., "	"	5	1,531.25		
	13.	600 B/L	"	6	1,050.00		
	15.	1500 B/L	C.P. 212308	8	2,625.00		
	18.	1000 B/L	C.P. 115806	4492	2,625.00		
	21.	1500 a.a.	C.P. 133634	3	2,625.00		
	21.	1500 B/L	C.P. 205259	4	2,625.00		
	24.	1500 B/L	C.P. 285429	9	2,625.00		
	28.	1500 B/L	C.P. 286547	4503	2,625.00		
40	28.	750 B/L, 500 a.a.	C.P. 287867	4	2,187.50		
	29.	1500 B/L	C.P. 287041	5	2,625.00		
	30.	1500 B/L	C.P. 287694	6	2,625.00		
	30.	700 B/L, Amherstburg, V. Craig	M.D.T. 19589	4511	1,225.00		
	1.	32 Mt. 1/2's, 79 Mt. 1/4's	Earley	438			429.00
	14.	103 1/2's, 3 Mt. 1/4's, 2 full 1/4's	"	440			652.00

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EXHIBIT No. F.—Continued.

ACCOUNT No. C1.

THE CARLING BREWING AND MALTING CO. OF CANADA, LIMITED.
 F. SAVARD, DETROIT, MICHIGAN - - - - - c/o CARLING C.P.R. DOCK, WINDSOR, ONT.

In the
 Exchequer
 Court of
 Canada.

Exhibits
 No. F.
 Defendant's
 Account with
 F. Savard,
 Aug. 12,
 1925-June,
 1927.

—Continued

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance
1926	Forward.....					
Dec. 17.	87 Mt. 1/2's.....	Earley 442		522.00		
20.	52 Mt. 1/2's, La Salle.....	450		312.00		
10 30.	60 Mt. 1/2's, La Salle.....	" 456		360.00		
31.	Cash.....					
Jan. 3.	173 full 1/2's, 1 full 1/4.....	C.B. 253-19		16,013.43	D.	1,986.50
Jan. 3.	200 1/2's ret'd.....	C.P. 287867		2,194.00	C.	207.50
Feb. 1.	Transferred from F. Savard, Advances.....	C.P. 286011		2,500.00	C.	2,707.50
24.	Balance Credit Note, No. 427.....	*J169	2,712.23		D.	4.73
March	Cancelling Credit Note No. 394, Car No. 120706.....	468	40.00		C.	35.27
2.	400 ctns. c.c. Taken over by A. V. Hall, Pt. Edward.....	J171	(1,100.41)		D.	1,065.14
June 10.	Bal. Tsfr. from Bermuda Export Co. to Port Lambton.....	493		700.00	D.	365.14 ^{OK}
10.	" " " " " Point Edward.....	J401	525.50			
		J401	185.00		D.	1,075.64

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EXHIBIT No. 48 (Part).

(Plaintiff's)

Recapitulation Sales.

In the
Exchequer
Court of
Canada.

Exhibits

No. 48
(part),
Recapitulation
Sales,
Aug., 1925.

Sales 9%. No. 61.

RECAPITULATION OF SALES FOR MONTH ENDING AUGUST, 1925

	No.	Name	Ledger	Sales	Freight	Con- tainers	Lager Pints		Ale Pints		Ale Quarts		Stock Ale Pts.		Stock Ale Quarts		¼ Kegs		½ Kegs		
							Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.
	747	Hudon, Hebert	2,505.00	1,255.00	350.00	900.00							975.00	500	280.00	100 Cs.					
10	749	C.P.R. Dock	3,375.00	3,375.00			3,375.00	1,500													
	750	C.P.R. Dock	3,375.00	3,375.00					3,375.00	1,500											
	751	C.P.R. Dock	2,852.00	2,852.00															2,852.00	184	
	752	C.P.R. Dock	3,375.00	3,375.00			3,375.00	1,500													
	753	C.P.R. Dock	3,968.50	3,968.50			2,187.00	486	1,606.50	714			175.00	25 ctns							
	754	Mr. Anderson	3,300.00	3,300.00					2,700.00	1,200	600.00	300									
	755	C.P.R. Dock	3,150.00	3,150.00					2,250.00	1,000							1,600.00	200	1,550.00	100	
	756	C.P.R. Dock	2,250.00	2,250.00																	
	757	C.P.R. Dock	2,700.00	2,700.00			900.00	400	1,800.00	800											
	758	C.P.R. Dock	2,092.50	2,092.50													1,240.00	155	852.50	55	
	759	G. Anderson	1,450.00	1,450.00					1,000.00	400	450.00	200									
20	760	A. V. Hall	1,427.50	1,427.50			900.00	400	352.50	150			175.00	50 ctns.							
	761	C.P.R. Dock	3,100.00	3,100.00															3,100.00	200	
	762	B. Grandi, c/o C.P.R. Dock	2,400.00	2,400.00													2,400.00	300			
	763	B. Grandi, C.P.R. Dock	3,375.00	3,375.00					3,375.00	1,500										4,340.00	280
	764	B. Grandi, C.P.R. Dock	4,340.00	4,340.00																	
	765	C. B. Grandi, c/o C.P.R. Dock	1,675.00	1,675.00			900.00	400	775.00	300											
30	766	Hudon Hebert	2,370.56	1,087.30	582.00	701.36							195.00	100 cts.	369.60	132 Cs.					
	767	F. Savard, C.P.R. Dock	2,700.00	2,700.00			900.00	400	1,800.00	800			522.60	268 cases							
	768	F. Savard, "	2,475.00	2,475.00			2,475.00	1,100													
	769	G. Anderson	3,375.00	3,375.00					3,375.00	1,500											
	770	F. S. Savard	1,350.00	1,350.00					128.25	57	1,221.75	543									
	771	F. Savard	5,697.50	5,697.50					1,125.00	500	1,125.00	500					1,200.00	150	2,247.50	145	
	772	F. Savard	2,700.00	2,700.00					1,125.00	500	1,575.00	700									
	773	F. Savard	3,145.50	3,145.50					2,351.25	1,045	794.25	353									
	774	F. Savard	3,375.00	3,375.00					1,125.00	500	2,250.00	1,000									
40			77,899.06	75,365.70	932.00	1601.36	20,866.50	8,788	29,375.00	12,960	1,050.00	500	2,042.60	768 Cases 175 Ctns	649.50	232	6,440.00	805	14,142.00	964	

EXHIBIT No. 70 (Part)

(Plaintiff's)

Defendant's Export Funds Account.

In the
Exchequer
Court of
Canada.

Exhibits
No. 70
(part).
Defendant's
Export
Funds
Account,
Sept. 30,
1925.

EXPORT FUNDS.

ACCOUNT No. 4. E

Date	Items	Folio	Debit	Credit	Dr. or Cr.	Balance
1925						
Sept. 30.	Windsor Investment					
10	Grandi	J30-34	7,309.60			
"	Johnnie	J30-35	2,756.25			
"	Jones	J30-36	34.75			
"	Lillian	J30-37	2,700.00			
"	Amherstburg	J30-38	9,311.46			
"	Bannon	J30-39	69.60			
"	Koven	J30-40	3,329.85			
"	Paquette	J30-41	7,725.00			
"	Disburg	J30-42	13,276.35			
"	C.P.R. Dock	J30-43	53,856.53			
20	La Salle	J30-44		2,384.40	Dr.	100,369.39
"	C. B. Grandi	J30-45		589.00		
"	Windsor Investment					
"	Fund	J31-1		43,922.71		
"	C. Burns personal	J31-6		35,494.10		
"	Special Loan a/c	J31-7		10,000.00	D.	7,979.18
"	Windsor Expense	J31-22	35,023.23			
"	C. Burns Personal a/c	J31-28		30,000.00		
"	Export Expense	J31-29	5,673.36			
"	Export Insurance	J31		58,560.32		
30	C. Burns Personal a/c	J31		1,742.44	C.	41,626.99
Oct. 30.	C.P.R. Dock	J33-28		1,590.00		42,316.99
"	Cash (H. Low) see Private Ledger	CB143-35			C.	43,216.99
"	a/c Rec. 9%	J36 1/2		100,369.39		
"	La Salle Old a/c	J36 1/2 B		2,384.40		
"	C.B.G.	"		589.00		
"	W. Inv. a/c	"	43,922.71			
"	Northern Exp.	J36 1/2 C	1,590.00			
"	La Salle	"	2,384.40			
40	C. B. G.	"	589.00			
"	Export Exp. Res.	"		5,000.00		
"	Private Ledger	J36 1/2	9,186.50		C.	93,887.17
"	Profit and Loss a/c	J35	93,887.17			.....

EXHIBIT No. 70 (Part)—Continued.

In the
Exchequer
Court of
Canada.

F. SAVARD, DETROIT, MICH.

ADVANCES *Re* EXPENSES AT WINDSOR DOCK

ACCOUNT No. W 1.

Exhibits

No. 70
(part).
F. Savard
Account *re*
Expenses,
Windsor
Dock,
Nov. 5, 1925.

—Continued

Date	Items	Folio	Debit	Credit	Dr. or Cr.	Balance
1925						
Nov. 5.	Draft.....	C.B. 135-29	1,000.00			
5.	ck.....	135-44	100.00			
12.	Dft.....	136-29	1,000.00			10
12.	ck.....	137-19	100.00			
19.	".....	140-34	100.00			
24.	Dft.....	141-3	1,500.00			
	".....	-4	1,000.00			
26	ck.....	141-30	100.00		D.	4,900.00
Dec. 5.	Dft.....	143-20	2,000.00			
4.	ck.....	27	100.00			
12.	".....	145-17	100.00			
18.	".....	35	100.00			
18.	Dft.....	39	1,000.00			20
24.	ck.....	147-20	100.00			
24.	Dft.....	31	1,000.00			
24.	".....	32	1,500.00			
29.	".....	148-13	1,500.00			
30.	ck.....	147-16	100.00		D.	12,400.00
1926						
Jan. 7.	".....	151-29	100.00		D.	12,500.00
	Dft.....	156-1	1,500.00			
Jan. 2.	".....	157-2	1,750.00			
2.	".....	157-3	500.00			30
15.	ck.....	152-5	100.00			
22.	".....	154-38	100.00		D.	16,450.00
26.	Dft.....	C.B. 158-12	1,500.00			
29.	ck.....	157-6	100.00		D.	18,050.00
Feb. 4.	Dft.....	159-28	1,500.00			
5.	Ck.....	157-43	100.00			
13.	Dft.....	160-27	1,500.00			
12.	Ck.....	162-4	100.00			
12.	Dft.....	45	1,500.00			
19.	Ck.....	163-22	100.00			40
26.	".....	164-32	100.00			

EXHIBIT No. 70 (Part)—Continued.

In the
Exchequer
Court of
Canada.

1926									
Feb.	26.	Dft.	-33	1,000.00					Exhibits
	26.	"	-38	1,500.00					No. 70
	27.	"	165-44	1,000.00					(part).
	27.	"	167-7	1,500.00					F. Savard
	27.	F. Savard, C.P.R.	J142		1,750.00				Account re
Mar.	5.	Ck.	C.B. 169-16	100.00					Expenses,
	12.	"	169-40	100.00					Windsor
10	9.	Dft.	168-42	1,000.00					Dock,
	19.	Ck.	171-12	100.00					Nov. 5, 1925.
	20.	Dft.	171-43	1,500.00					—Continued
	26.	Ck.	173-6	100.00					
	13.	Dft.	174-4	1,000.00					
	27.	"	-5	1,500.00					
Apr.	2.	Ck.	176-14	100.00					
	9.	Ck.	C.B. 177-25	100.00					
	16.	"	178-37	100.00					
	23.	"	180-24	100.00					
20	30.	"	183-5	100.00					
	29.	Rev Entry J143	J146-36	1,750.00					
	24.	Dft.	C.B. 183-15	1,500.00					
May	8.	"	185-28	1,500.00					
	15.	"	188-32	1,500.00					
	7.	Ck.	186-7	100.00					
	26.	Dft.	191-12	1,500.00					
	31.	"	192-3	3,000.00					
June	5.	"	195-35	1,500.00					
30	19.	"	198-16	1,500.00					
	26.	"	199-25	3,000.00					
July	10.	Dft.	201-27	1,500.00					
	21.	"	206-30	2,000.00					
	29.	"	209-37	1,500.00					
Aug.	9.	"	211-44	2,000.00					
	14.	"	219-19	6,000.00					
	31.	"	-20	1,500.00					
Sept.	30.	"	221-42	8,000.00					
	25.	"	227-13	1,500.00					
40	27.	"	228-25	1,500.00					
Oct.	1.	"	C.B. 229-27	3,000.00					
	23.	"	C.B. 234-9	2,000.00					
	30.	"	C.B. 239-44	2,000.00					
	30.	Commissions	J160		51,415.50				
	30.	Windsor Exp.	J161		50.00				
Dec.	8.	Cheque	C.B. 247-13		22,314.72				
	8.	"	14		2,349.89				
	8.	"	15		2,607.66				
Feb. 1/27		Journal	J169		2,712.23				

EXHIBIT No. 71.
(Plaintiff's)

*In the
Exchequer
Court of
Canada.*

Defendant's Financial Statement

Exhibits

No. 71.
Defendant's
Financial
Statement
for year
ending Oct.
31, 1925.
Feb. 18, 1926.

THE CARLING EXPORT BREWING AND MALTING COMPANY, LIMITED.
LONDON, ONTARIO.

FINANCIAL STATEMENT FOR THE YEAR ENDED OCT. 31, 1925.

LONDON, ONTARIO.

February 18: 1926.

To the President and Board of Directors.

The Carling Export Brewing & Malting Company, Limited, London, Ont. 10

GENTLEMEN :—

I beg to report that acting on instructions received from Mr. Burns in December last, I have audited the Books and Accounts of The Carling Export Brewing & Malting Company, Limited: of London, Ontario, for the three months ending October 31: 1925, and find same correct. I hereby certify that the attached statements are true extracts from the Company's books, and, in my opinion, fairly set forth the position of the Company's affairs, as at the above-mentioned date.

CASH ON HAND : \$1,749.60 : After checking all entries in the Cash Book, this agrees with the balance shown therein as on hand. 20

ACCOUNTS RECEIVABLE : \$148,322.68 : I have checked all entries in both the 4.4% and 9% ledgers, also the summary of balances unpaid, and find that these agree with the Control Accounts in the General Ledger.

INVENTORIES : I am informed that these were carefully taken, also checked and approved by Mr. Burns.

BANK LOAN : \$100,000.00 : I have verified this with Mr. B. B. Manning, Manager London branch of the Dominion Bank: the Company's bankers.

BANK OVERDRAFT AND OUTSTANDING CHEQUES : \$13,613.44 : I have reconciled this with the outstanding cheques, and the Bank Pass Book, and find same correct. 30

TRADE ACCOUNTS PAYABLE : \$63,443.38 : I have checked all invoices and payments into the Purchase Ledger, also compared the balances owing with the summary, and find same agrees with the Control Account in the General Ledger.

INSURANCE : I have gone over your Insurance Policies, and find the following insurance was in force on October 31, 1925 :

EXHIBIT No. 71.—Continued.
Defendant's Financial Statement

	Main Building, Plant and Stock.....	\$133,002.00
	Boiler House, Outbuildings, Stable and Store	10,652.00
	Garage.....	400.00
	Dwelling.....	2,000.00
	Messenger Hold-up Policy.....	18,500.00
	Burglary Safe Policy.....	10,000.00
	Boiler Insurance Policy.....	15,000.00
10	Guarantee Bond : H. W. Stone.....	5,000.00
	Auto Fleet Policy.....	.....

*In the
Exchequer
Court of
Canada.*

—
Exhibits
No. 71.
Defendant's
Financial
Statement
for year
ending Oct.
31, 1925.

—Continued

In addition to the above, I am informed that you have an Excise Bond, lodged with the Department of Customs of the Dominion Government.

RESERVE FOR DEPRECIATION : This, as arranged with Mr. Burns, has been figured on the balances shown in the various accounts in the Private Ledger, as follows :

	Buildings.....	\$529,008.94
	Plant.....	320,743.65
	Trade Marks and Formulæ.....	115,000.00
20	Incorporation Expense.....	39,300.00
	Garage Equipment.....	14,306.33
	Switches, Sidings, etc.....	6,996.23

SUGGESTIONS : If I may be permitted, would suggest that accounts for Cash and Bank be opened in the General Ledger, and totals posted each month. This would bring these accounts actually into the General Ledger, instead of being kept only in the Cash Book, as at present. Would also suggest that a Bill Book be kept.

I very much regret that owing to various circumstances, entirely beyond my own control, there has been considerable delay in completing this report, and would like to express my deep appreciation of your forbearance and patience. However, I think I may safely promise that there will be no such delay at the end of your current year, and hope to have my audited statement and report in your hands within a reasonable time after October 31st, next.

All of which is respectfully submitted.

I beg to remain, Gentlemen,

Yours faithfully,

P. D. BALL,
Auditor.

EXHIBIT No. 71.—Continued.

In the
Exchequer
Court of
Canada.

Exhibits

No. 71.
Defendant's
Financial
Statement
for year
ending Oct.
31, 1925.

—Continued

ASSETS.

Cash on Hand		\$	1,749.69	
Accounts Receivable 9%	\$	88,185.93		
Accounts Receivable 4.4%		60,136.75		
			<u>148,322.68</u>	
ADVANCES TO SHAREHOLDERS :				
Mr. C. Burns		1,768.31		10
Mr. M. Leon		615.95		
Mr. H. Low		216.45		
			<u>2,600.71</u>	
Real Estate and Buildings		529,008.94		
Machinery and Plant		320,743.65		
			<u>849,752.59</u>	
Trade Marks and Formulæ			115,000.00	
Incorporation and Organization Expense			39,300.00	
Garage and Equipment			14,306.33	
Switches, Sidings, Docks (LaSalle)			6,996.23	
Office Furniture and Fixtures (Windsor)			750.97	
				20
INVENTORY :				
Raw Material		24,353.29		
Containers Bottles		31,590.18		
Containers Barrels		11,035.98		
Manufactured Goods		65,562.71		
			<u>132,542.16</u>	
DEFERRED CHARGES :				
Insurance		895.02		
Taxes, Municipal		2,017.00		30
Mchy. Expense, and Repairs		544.42		
Bottling Expense		170.34		
Motor Car Expense		141.90		
Brewing Expense		631.95		
General Expense		177.50		
L. H. P. W. and Refrigeration		1,157.70		
Office Supplies and Expenses		843.10		
Excise and Postage Stamps		6.42		
Advertising		3,117.23		
			<u>9,702.58</u>	
Treasury Stock (Preferred Shares)			273,700.00	

EXHIBIT No. 71.—Continued.

*In the
Exchequer
Court of
Canada.*

Balance Profit and Loss Account :

Bal. P. and L. Acct.....	24,110.29
Loss, 1925, per Loss and Gain Statement.....	16,924.00

41,034.29
\$1,635,758.23

Exhibits
No. 71.
Defendant's
Financial
Statement
for year
ending Oct.
31, 1925.

—Continued

LIABILITIES.

10	Bank Bills Payable.....	\$100,000.00	
	Bank Overdraft and Outstanding Cheques.....	13,613.44	
			\$113,613.44
	Trade Accounts Payable.....		63,443.38
	TAXES :		
	Manufacturers' Tax.....	2,392.87	
	Sales Tax.....	793.27	
	Quebec Sales Tax.....	187.98	
			3,374.12
	CHARGES ACCRUED :		
20	Salaries.....	215.50	
	Windsor Expense.....	50.00	
	General Wages.....	180.60	
	Brewing Wages.....	171.65	
	Bottling Wages.....	126.50	
	Trucking Wages.....	21.80	
	Labor Wages.....	66.55	
	Traveller's Wages.....	80.00	
	L. H. P. W. and Refrigeration.....	400.00	
	Auditor's Fees.....	50.00	
	Interest.....	2,100.00	
			3,462.60
30	Special Loan Account.....		163,257.04
	Mortgage Carling E. B. and M. Co.....		60,000.00

EXHIBIT No. 71.—Continued.

In the
Exchequer
Court of
Canada.

		RESERVES :		
Exhibits No. 71. Defendant's Financial Statement for year ending Oct. 31, 1925. —Continued	Depreciation.....	125,526.75		
	Taxes in dispute.....	80,248.63		
	Bad Debts.....	14,832.27		
	Taxes on Stock Transfers.....	8,000.00		
			<u>228,607.65</u>	
		CAPITAL STOCK :		
Preferred.....		500,000.00		
Common.....		500,000.00		
			<u>1,000,000.00</u>	10
			<u>\$1,635,758.23</u>	

PROFIT AND LOSS STATEMENT.

OCT. 31, 1925.

Cost of goods made... \$538,124.79	Sale 9%..... \$587,324.04	
Inventory Mfg. Goods	Sales 4% Lq..... 123,265.85	
Nov. 1-24..... 88,888.60	Sales 4% Pkg..... 26,333.24	
	Sundry..... 5,059.05	
<u>627,013.39</u>		
Less Inventory		20
Oct. 31-25..... 65,562.71		
	\$561,450.68	
Gross Profit.....	191,531.50	
	<u>\$752,982.18</u>	
Advertising..... \$ 30,718.09	Gross Profit..... \$191,531.50	
Amherstburg Expense..... 2,892.93	Rent received..... 240.00	
Auditor's Fees..... 680.00	Export Funds..... 93,887.17	
Bad Accounts..... 16,676.21	Net Loss for Year.. 16,924.00	
Commission Account..... 454.67		30
Equalization Account..... 946.14		
Freight and Cartage..... 48,323.44		
General Expense..... 22.47		
Insurance..... 2,445.88		
Interest and Exchange..... 9,344.67		
Labor Wages..... 17,350.77		
Motor Car Expense..... 3,580.68		
Mchy. Expense and Repairs..... 13,406.61		
Office Expense and Supplies..... 719.49		
Postage and Excise Stamps..... 566.57		

EXHIBIT No. 71.—Continued.

*In the
Exchequer
Court of
Canada.*

Rent Paid.....	2,055.76	
Salaries.....	17,458.50	
Solicitors' and Coll. Fees.....	1,181.89	
Travellers' Salaries.....	1,340.00	
Travellers' Expense.....	2,608.20	
Trucking Wages.....	4,573.54	
Telephones and Telegrams.....	1,546.55	
Windsor Expense.....	29,547.23	
10 Reserve for Taxes in dispute.....	27,914.88	
Reserve for depreciation.....	62,859.83	
Reserve for bad debts.....	3,367.67	
	<hr/>	
	\$302,582.67	\$302,582.67

—
Exhibits
No. 71.
Defendant's
Financial
Statement
for year
ending Oct.
31, 1925.

—Continued

TRADING ACCOUNT.

OCTOBER 31: 1925.

Cost of Goods manufactured.....		\$538,124.79
Inventory Raw Material, Nov. 1: 1924.....	\$ 13,764.39	
Purchases for year.....	156,454.43	
	<hr/>	
	170,218.82	
20 Less Inventory Oct. 31: 1925.....	24,353.29	\$145,865.53
	<hr/>	
Inventory Bottles, Nov. 1: 1924.....	\$ 13,239.00	
Purchases for year.....	306,343.01	
	<hr/>	
	\$319,582.01	
Less Inventory Oct. 31: 1925.....	31,590.18	\$287,991.83
	<hr/>	
Inventory Barrels, Nov. 1: 1924.....	\$ 19,366.20	
Purchases for year.....	7,117.76	
	<hr/>	
	\$26,483.96	
30 Less Inventory, Oct. 31: 1925.....	11,035.98	\$ 15,447.98
	<hr/>	
Municipal Taxes.....	\$ 4,741.08	
Light, Heat, Power, Water and Refrig.....	14,075.62	
Brewing Expense.....	8,162.65	
Brewing Wages.....	20,310.25	
Bottling Wages.....	22,746.76	
Bottling Expense.....	6,893.44	
General Wages.....	11,889.68	
	<hr/>	
	\$ 88,819.45	
	<hr/>	
40	\$538,124.79	\$538,124.79

In the
Exchequer
Court of
Canada.

EXHIBIT No. 50.

(Plaintiff's)

Accounts Receivable Ledger of Defendant

(Note: The following 2 accounts are taken from Exhibit 50, the Accounts Receivable ledger of Defendants.)

E. SCHRIEBER, PORT HURON c/o Mr. Lougheed, Sarnia, Ont.
ACCOUNT No. S3.

Exhibits

No. 50.
Accounts
Receivable,
Ledger of
Defendant,
May 26,-
Jun. 1927.

Date		Folio	Dr.	Cr.	Dr. or Cr.	Balance	
1926							10
May 27.	500 a.a., 400 c.c., 100 B/L, 10 s.a. C.P. 104394	3429	1,767.50		D.	1,767.50	
28.	Cash..... C.B. 190-6			2,430.00	C.	662.50	
Oct. 30.	F. Savard, Detroit Mich.	J160	662.50				

EXHIBIT No. 50.—Continued.

F. SAVARD, DETROIT, MICH. COMMISSION A/C
ACCOUNT No. 5

Date.	Folio	Cr. Liquid	Cr. Packages	Dr. or Cr.	Balance for Liquid	
1926						20
Oct. 30.	B. Ex. Co., Pt. L.....	J160	21,763.75			
	Mr. Smith, Detroit.....	160	8,330.60			
	F. Savard, Cleveland...	160	1,324.25			
	E. Schrieber, Pt. Huron	160	662.50			
	H. Robinson, Erie, Pa...	160	2,100.00			
	F. Savard, c/o H. Low.	160	2,599.75			
	B. Ex. Co. B. Pt. E.....	160	63.00			
	F. Savard, Det., c/o A. V. Hall, Pt. L.....	160	4,942.55			
	F. Savard, c/o A. V. Hall, Pt. L.....	160	9,629.10	C.	5,141.50	30
	Trans. F. Savard Ex- pense a/c re Windsor Dock.....	J160	5,141.50		— | —	
Nov. 5.	F. Savard, c/o E. Sigal, Port Stanley.....	C.B. 242-43	250.00	C.	250.00	
	Thos. Reid, Courtright.	C.B. 245-27	150.00	C.	400.00	
Dec.	" " " " " "	C.B. 251C-8	150.00	C.	550.00	
Dec.	" " " " " "	C.B. 251C-11	150.00	C.	700.00	
10.	Cash.....	C.B. 299-11	75.00	C.	775.00	40
1927						
Jun. 10.	Com. Trfrs. from Ber- muda Com. a/c which was.....	J401	29.50	C.	804.50	
10.	Com. Tsfrs. from Mr. Smith a/c.....	J401	3,314.77	C.	4,119.27	
10.	Com. Tsfr. from A. V. Hall, Pt. Edward a/c.	J401	7,871.47	C.	11,990.74	

EXHIBIT No. 118.
(Plaintiff's)
BREWER'S MASH BOOK

(Note: Page 19 is printed hereunder as an illustration)

Statement of the quantity of Malt, Hops and other materials used and of Beer produced in the Brewery of Carling E.B. & M. Co. at London, Ont., during the month of April, 1926.

Exhibits
No. 118.
Brewer's
Mash Book,
Page 19.
April, 1926.

1		2		3		4		5		6		7		8		9		10		11		12		13			
Date of		No. of		Malt		Hops		Other Commodities Used					Racked		Beer Produced												
Brewing 1926		Brewing		Used Lbs.		Used Lbs.		Sugar Lbs.		Rice Lbs.		Lbs.		Date 1926		No. of Brewing		Ale Galls.		Porter Galls.		Lager Galls.		Beer for Duty at 15 Cents Galls.			
April	1	1	14000	225										April	1	185											
	5	2	14000	225										1	191	4000						6000					
	5	3	11200	225										3	184												
	6	4	14000	225										3	180										4100		
	6	5	11200	225										5	182											4046	
	7	6	14000	225										5	186								6000				
	7	7	11200	225										5	196	4000											
	8	8	14000	225										6	198	4000											
	9	9	10000	210										6	188								6000				
	12	10	14000	225										7	200	4000											
	12	11	11200	225										8	190								6000				
	13	12	14000	225										9	193								6000				
	13	13	11200	225										12	3	4000											
	14	14	14000	225										12	192											3780	
	14	15	11200	225										13	194											3976	
	15	16	14000	225										13	195											3993	
	15	17	11200	225										13	197								4000				
	16	18	10000	210										13	5	4000											
	16	19	11200	225										14	7	4000											
	19	20	14000	225										14	199								6000				
													15	1								6000					
													19	2								6000					
													19	11	4000												
													20	13	4000												
													21	15	4000												
													21	9								6000					
													22	4								6000					
													22	6								6000					
													22	17	4000												
													23	19	4000												
													26	8								6000					
													27	10								6000					
													28	12								6000					
													29	14								6000					
													30	18								6000					
		20	249600	4470											35	48000						104000			19895		

I, *Chas. Burns* do solemnly swear that the above account is true according to its purpose. *So help me God.*

Signature *Chas. Burns* Licensee.

I, *Otto P. Rindelhardt* do solemnly swear that the above account is true according to its purpose. *So help me God.*

Signature *Otto P. Rindelhardt* Brew Master.

Entered for duty ex Factory galls. Duty, \$.....
Entered for Warehouse - - - 19895 "

Total as per Col. 13 - - - 19895 "

Sworn before me at *London* this *30th* day of *April* 1926.
W. A. C. Lindsay for Collector of Customs and Excise.

Sworn before me at *London* this *30th* day of *April* 1926.
W. A. C. Lindsay for Collector of Customs and Excise.

EXHIBIT No. 48.—(Part)

(Plaintiff's)

In the
Exchequer
Court of
Canada.

Recapitulation Sales

RECAPITULATION OF SALES FOR MONTH ENDING AUGUST, 1926.

S 36

Exhibits

No. 48
(part).
Recapitula-
tion Sales.
Aug., 1926.

—Continued

No.	Name	To QUEBEC.		To U.S.A.				Ledger	Pkgs.	Freight	Liquid	To QUEBEC.				
		Cases Pts.	Qts.	Cartons Pts.	Qts.	Cartons Pts.	Qts.					Barrels ¼	½	Pkgs.	Freight	Liquid
Forward	d.....			25	3650	14100			1788	54,241.25	20,880.00	3,277.20	22,867.80	2,080.00	1,966.25	3,170.00
10	3698								200	2,500.00	1,200.00	130.00	1,170.00			
	9					1500				2,625.00	1,080.00	225.00	1,320.00			
	3700					1500				2,625.00	1,080.00	225.00	1,320.00			
	1								200	2,500.00	1,200.00	130.00	1,170.00			
	2									2,100.00	864.00	180.00	1,056.00			
	3					450				787.50	324.00	67.50	396.00			
	3029					1500				2,625.00	1,080.00	225.00	1,320.00			
	3030					1500				2,625.00	1,080.00	225.00	1,320.00			
	1					800				1,400.00	576.00	120.00	704.00			
	3704					1000				1,750.00	720.00	150.00	880.00			
20	3033								200	2,500.00	1,200.00	130.00	1,170.00			
	4					1200				2,100.00	864.00	180.00	1,056.00			
	5			100	1325					2,980.00				870.00	712.50	1,397.50
	6					1200				2,100.00	864.00	180.00	1,056.00			
	7					1500				2,625.00	1,080.00	225.00	1,320.00			
	3046			50	1250					2,665.00				787.50	650.00	1,227.50
	3705					200		17	12	610.50	267.00	43.75	299.75			
	6					150				262.50	108.00	22.50	132.00			
	3050					1500				2,625.00	1,080.00	225.00	1,320.00			
	1							25	200	2,662.50	1,275.00	138.75	1,247.75			
	2					700				1,225.00	504.00	105.00	616.00			
30	3707					1200				2,100.00	864.00	180.00	1,056.00			
	8					1200				2,100.00	864.00	180.00	1,056.00			
				175	6225	32400		42	2600	102,334.25	39,054.00	6,564.70	43,854.30	3,737.50	3,328.75	5,795.00

1035

EXHIBIT No. 72.

(Plaintiff's)

*In the
Exchequer
Court of
Canada.*

Defendant's Financial Statement, October 31, 1926.

Exhibits

No. 72.
Defendant's
Financial
Statement.
Oct. 31, 1926.

THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED,

FINANCIAL STATEMENT OCTOBER 31ST, 1926.

ASSETS.

	Cash on hand.....		\$ 9,868.07
	Accounts Receivable 4.4%.....	\$ 37,944.91	
	" " 9%.....	52,426.93	
10		<hr/>	\$ 90,371.84
	Bills Receivable.....		400.00
	Mr. Low.....		198.99
	Real Estate Buildings.....	\$533,608.03	
	Machinery Plant.....	328,745.65	
		<hr/>	862,353.68
	Motor Truck and Garage Equipment.....		22,661.67
	Incorporation and Organization Expenses.....		39,300.00
	Switches, Sidings and Docks.....		6,996.23
	Trade Marks and Formulas.....		115,000.00
	Windsor property.....		14,310.00
20	Office Furniture and Fixtures.....		786.97
INVENTORY			
	Raw Material.....	\$ 18,541.60	
	Containers Bottles.....	52,313.54	
	Containers Barrels.....	26,295.12	
	Manufactured Goods.....	137,607.55	
		<hr/>	\$234,757.81
	Treasury Stock—Preference Shares.....		273,700.00
SUNDRY ASSETS :			
	Brewing Expense and Supplies.....	\$ 442.08	
30	Insurance Unexpired.....	874.57	
	L. H. P. W. and Ref.....	1,534.41	
	Motor Car Supplies.....	137.30	
	Machinery Supplies.....	560.00	
	Office Supplies.....	350.00	

EXHIBIT No. 72.—Continued.

In the
Exchequer
Court of
Canada.
—
Exhibits
No. 72.
Defendant's
Financial
Statement.
Oct. 31, 1926.
—Continued

Postage and Excise.....	29.40	
Advertising.....	700.00	
Municipal Taxes.....	1,003.58	
Crates.....	3,835.60	
Collector of Customs.....	4,164.00	
Bottling Expense.....	603.48	
Investment Account.....	97.39	
F. Savard, Advances.....	29,984.50	
	<u> </u>	\$ 44,316.31 10
PROFIT AND LOSS ACCOUNT :		
Balance as at Oct. 31st, 1925.....	\$41,034.29	
Profit for year ending Oct. 31/26 as per Profit and Loss Statement.....	12,543.19	
	<u> </u>	\$ 28,491.10
Carried Forward.....		<u> </u>
		\$1,743,512.67

LIABILITIES.

Bank Bills Payable.....	\$ 50,000.00	
Bank Overdraft and Outstanding Cheques.....	146,639.09	
	<u> </u>	\$196,639.09 20
Trade Accounts Payable.....		22,834.59
Trade Bills Payable.....		16,494.05
CHARGES ACCRUED :		
Salaries.....	364.00	
Travelling Expenses.....	150.00	
General Wages.....	294.20	
Brewing Wages.....	270.90	
Bottling Wages.....	238.57	
Labor Wages.....	231.38	
Trucking Wages.....	22.60	
	<u> </u>	1,571.65 30
Special Loan Account.....		223,061.85
RESERVES :		
Depreciation.....	\$187,830.54	
Taxes in dispute.....	80,248.63	
Bad Debts.....	14,832.27	
	<u> </u>	282,911.44
CAPITAL STOCK :		
Preferred.....	\$500,000.00	
Common.....	500,000.00	
	<u> </u>	\$1,000,000.00 40
		<u> </u>
		\$1,743,512.67

EXHIBIT No. 72.—Continued.

In the
Exchequer
Court of
Canada.

TRADING ACCOUNT.
Oct. 31st. 1926

Exhibits

No. 72.
Defendant's
Financial
Statement.
Oct. 31, 1926.

—Continued

	Cost of Goods Made.....		\$1,134,674.42	
	Inventory Raw Material, Nov.1/25.....	\$24,353.29		
	Purchases for Period.....	296,499.05		
		<u>320,852.34</u>		
	Less Inventory , Oct. 31/26.....	18,541.60		
10			\$302,310.74	
	Inventory Cont. Bottles, Nov. 1/15.....	\$ 31,590.18		
	Purchases for period.....	695,501.54		
		<u>\$727,091.72</u>		
	Less Inventory October 31st,/26.....	53,313.54		
			674,778.18	
	Inventory Cont. Bbls., Nov. 1/25.....	\$11,036.98		
	Purchases for period.....	60,036.84		
		<u>\$71,072.82</u>		
20	Less Inventory October 31st/26.....	26,295.12		
			44,777.70	
	Municipal Taxes.....		7,038.90	
	L. H. P. W. and Ref.....		22,926.24	
	Brewing Wages.....		23,529.85	
	Bottling Wages.....		29,653.54	
	Brewing Expense.....		8,118.89	
	Bottling Expense.....		1,448.88	
	General Wages.....		20,091.50	
			<u>\$1,134,674.42</u>	<u>\$1,134,467.42</u>

30

PROFIT AND LOSS STATEMENT.

Sales 4.4% Liquid.....	\$	40,398.24
Sales 4.4% Packages.....		35,761.15
Sales 9% Liquid.....		697,460.71
Sales 9% Packages.....		497,597.63
Sales, Sundry.....		7,989.17
Cost of Goods made.....	\$1,134,674.42	
Inventory of Mfgd. Goods, Nov. 1/25....	65,562.71	
	<u>\$1,200,237.13</u>	

EXHIBIT No. 72.—Continued.

In the
Exchequer
Court of
Canada.

Exhibits	Less Inventory Oct. 31st, 1926.....	137,607.55		
			\$1,062,629.58	
No. 72.	Gross Profit for Period.....		216,577.32	
Defendant's				
Financial			\$1,279,206.90	\$1,279,206.90
Statement.				
Oct. 31, 1926.				
—Continued	Gross Profit.....			\$216,577.32
	Rent Received.....			815.00
	Cash Discount on Purchases.....			2,531.13
	Freight on 9% Goods.....			138,965.66
	Advertising.....	\$ 13,567.75		10
	Auditor's Fees.....	549.80		
	Bad Accounts.....	1,490.20		
	Brewers' Association.....	516.16		
	Commission Account.....	1,566.34		
	Customs Tax on Rice Beer.....	60,971.85		
	Export Expense.....	5,500.00		
	Export Insurance.....	5,735.06		
	Freight and Cartage.....	93,549.93		
	General Expense.....	11,415.87		
	Interest and Exchange.....	6,857.52		20
	Insurance Used.....	3,000.00		
	Labor Wages.....	16,487.51		
	Motor Car Expense.....	5,299.59		
	Machinery Expense.....	9,963.50		
	Office Expense.....	1,369.81		
	Postage and Excise.....	935.19		
	Rent Paid.....	2,784.50		
	Salaries.....	25,326.00		
	Solicitors' and Collectors' Fees.....	554.54		
	Travellers' Wages.....	1,859.67		30
	Travellers' Expenses.....	10,580.03		
	Trucking Wages.....	2,288.05		
	Telephone and Telegrams.....	1,507.86		
	Net Fire Loss on Buildings.....	183.65		
	Reserve for Depreciation.....	62,485.54		
	Net Profit for the year.....	12,543.19		
			\$358,889.11	\$358,889.11

EXHIBIT No. A.
(Defendant's)
Monthly Returns Sales Tax.

*In the
Exchequer
Court of
Canada.*

This exhibit consists of the monthly returns made by the Defendant to the Collector of Customs and Excise in respect of sales and gallonage tax for the period in question in this action. The returns printed hereunder are illustrations of the returns in respect of sales tax and gallonage tax respectively.

Exhibits
No. A.
Monthly
Returns
Tax.
June 5, 1924.

10 **EXCISE TAX** **1924-25**

OUTPORT OF.....
ENTRY No.....
ENTRY No..... 618.....
FOR PERIOD COMMENCING..... April 1..... 192..... To April 30..... 1924, both dates included.
..... London May 22..... 1924..... Port of..... London, Ont.....
LICENSE No..... 48..... Sales..... Tax
Sales or Manufacturer's Taxes*

20

Name of Merchant or Firm	Place of business, street and number	Values or gallons		Amount of tax collected	
Carling Export Brewing & Malting Co., Ltd.					
Brewers	Talbot St., London, Ont.				
Total Taxable Sales from April 1st to April 10th		2945	80		
Tax thereon at 6%				176	75
Total Taxable Sales from April 11 to April 30th		38350	00		
Tax thereon at 5%				1917	50
		41295	80	2094	25

*If Manufacturer's Tax, indicate class of article on body of entry.

Sworn to before me at..... City of.....) I,..... Chas. Burns.....
..... London, Ont.....) do solemnly swear that the above amount
30 on this 4 day of June 1924) correctly represents all the Tax accruing on
..... sales of merchandise sold as imposed by law.
..... Chas. Burns.....

H. Noble.....
.....
(Officer of Customs and Excise
J.P., or Commissioner of Oaths.)

STAMP

Customs—Excise—Canada Duty Paid June 5 1924 F..... Cashier London, Ont.

In the
Exchequer
Court of
Canada.

EXHIBIT No. A.—Continued.
(Defendant's)
Monthly Return Sales Tax.

Exhibits

EXCISE TAX

1924-25

No. A.
Monthly
Return
Gallonage
Tax.
June 5, 1924.
1924.

OUTPORT OF.....

ENTRY NO.....

ENTRY No.....619.....

—Continued FOR PERIOD COMMENCING April 1, 1924 To April 30, 1924 Both dates included.

.....London, Ont. May 22.....1924 Port of.....London, Ont.....

LICENSE No.....48..... Mfrs.....Tax 10
Sales or Manufacturer's Tax*

Name of merchant or firm	Place of business, street and number	Values or gallons		Amount of tax collected	
Carling Export Brewing & Malting Co., Ltd.					
Brewers					
	Talbot St. London, Ont.				
Total number gallons sold	{ 15017 c/s 2 doz. pts. }	27031	gals.		
	Tax thereon at 12½c. gal.			3378	87
		27031	gals.	3378	87

If Manufacturer's Tax, indicate class of article on body of entry.

20

Sworn to before me at.....City of.....
.....London, Ont.....
on this.....4.....day of.....June.....1924

I,.....Chas. Burns.....
do solemnly swear that the above amount
correctly represents all the Tax accruing
upon sales of merchandise sold as imposed
by law.

.....Chas. Burns.....

.....H. Noble.....

.....W.....
(Officer of Customs and Excise
J.P., or Commissioner of Oaths)

STAMP

Customs—Excise—Canada Duty Paid June 5 1924 .....F.....Cashier London, Ont.

30

EXHIBIT No. A.—Continued.

FORM B. 93.

1,000,000—4—23

1924—25

In the
Exchequer
Court of
Canada.

EXCISE TAX

OUTPORT OF.....

ENTRY No. 2112

ENTRY No.....

FOR PERIOD COMMENCING Sept. 1, 1924 TO Sept. 30, 1924 both dates included
10 October 31 1924 PORT OF London

LICENSE No. 48 Mfg. Tax
Sales or Manufacturer's Tax

Exhibits
No. A.
Monthly
Return
Gallonage
Tax.
Nov. 12,
1924.

Name of Merchant or Firm	Place of Business, Street and Number	Value or Gallons	Amount of Tax Collected
Carling E. B. & M. Co. Ltd.			
Cor. Ann	& Talbot Sts.		
	London, Ont., Brewers		
Total No. of Gallons 2640	1 c/s pts. at 1.80	47521 80	
	839 9 c/s qts. at 1.70	14278 30	
20 2407	1/4 bbls. at 6 1/2	15645 50	
	791 1/2 bbls. at 13	10283 00	
		87728 60	
	Tax thereon at 12 1/2 c. per gal.		10966 08
If Manufacturer's Tax, indicate class of article on body of entry.			

STAMP

Customs—Excise—Canada
Duty Paid
Nov. 12, 1924
Cashier
London, Ont.

30 Sworn to before me at London
.....
on this 12 day of Nov. 1924
F. H. Farnworth

I, Chas. Burns
do solemnly swear that the above amount
correctly represents all the Tax accruing upon
sales of merchandise sold as imposed by law.

Chas. Burns

(Officer of Customs and Excise
J.P., or Commissioner of Oaths.)

EXHIBIT No. A.—Continued.

In the
Exchequer
Court of
Canada.

EXCISE TAX

1924-25

Exhibits

No. A.
Monthly
Returns
Sales Tax.
Nov. 13, 1924

OUTPORT OF.....
ENTRY NO.....

ENTRY No.....2113.....

—Continued

FOR PERIOD COMMENCING...Sept 1.....1924 To Sept. 30, 1924...Both dates included
.....Oct. 31.....1924 PORT OF.....London.....
LICENSE NO.....48..... Sales.....Tax
Sales or Manufacturer's Tax*

Name of merchant or firm	Place of business, street and number	values or gallons		Amount of tax collected	
Carling E. B. & M. London, Ont.	Co. Ltd., cor. Ann & Talbot Sts. Brewers.				
Credit allowed on sale	made during July on which tax was	paid			
Total taxable Sales	(September)	784	32		
		294	75		
Tax on September Sales	cancelled by credit.	\$489	57		
				Nil	

10

*If Manufacturer's Tax, indicate class of article on body of entry.

Sworn to before me at..... London..... } I,.....Chas. Burns.....
..... } do solemnly swear that the above amount
..... } correctly represents all the Tax accruing
on this..... 12..... day of..... Nov..... 1924 } upon sales of merchandise sold as imposed 20
..... } by law.

.....Chas. Burns.....

.....F. H. Farnworth.....
.....
(Officer of Customs and Excise)

STAMP

Customs—Excise—Canada Duty Paid Nov. 13 1924 .....F.....Cashier London, Ont.
--

EXHIBIT No. 104.

(Plaintiff's)

Letter Defendant to R. R. Farrow.

*In the
Exchequer
Court of
Canada.*

ESTABLISHED 1840

THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED.

Exhibits

LONDON, CANADA, November 6, 1924.

No. 104.

744232

Letter

R. R. FARROW,
Deputy Minister,
Dept. Customs & Excise,
Ottawa, Ont.

Nov. 8, 1924
Customs & Excise
File No. 122289

Defendant

to R. R.

Farrow.

Nov. 6, 1924.

10

Reference to File No. 122289.

Dear Sir :—

Referring to your letter of October 31st we beg to write you again with the intention of giving you all the information we received personally from Sarnia.

As we wrote you in our letter of November 3rd, our Mr. Harry Low, General Manager, left at once to make a full investigation regarding the situation existing at Sarnia.

We beg to draw your attention to the very important fact that since
20 commencing operations we never had any barge or scow on the river shore at the foot of George St., Sarnia or any other place around Sarnia, nor have we had any person representing us in Sarnia. All our transactions were carried out conforming with the Custom Act by shipping the goods from the Brewery, London, to our purchaser, A. Grandi, Detroit, Mich., via C.P.R. to Sarnia and via boat "Francis" accompanied with the proper Export Papers made out on form B.13.

Referring to paragraph two of your letter re "Open Bar", Mr. Low found a house-boat at the foot of George St., Sarnia, which contained Carling's Beer, Doves Ale of Montreal, considerable quantity of Corby Whiskies and
30 Gin, also a large quantity of Gooderham & Worts Whiskies, just exactly as stated in your letter as "a wide open bar". This appears to have been going on for some time, and the proprietor of the place has been fined under the Ontario Temperance Act several times.

This state of affairs we did not and could not have any control over as this open bar handles many brands of beer and whiskies, and the proprietor of the place is not connected directly or indirectly with our firm.

Regarding our firm, Mr. Low took up the matter with Provincial License Inspector of Sarnia, Mr. Elliott; Chief of Police, Mr. Lennin; and Police Magistrate of Sarnia, and they have all stated that they never had any reason to lay any charge or complaints against The Carling Export, Brewing & Malting Co. Ltd., and we are sure that by direct correspondence with any of these gentlemen above mentioned you will find that our stated declarations are absolutely correct.

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 104.
Letter Def-
ender to
R. R. Farrow
Nov. 6, 1924.

—Continued

Our desire being to comply with your regulations and to avoid completely any further contraventions by the proprietor of the barge or any other party, we took the matter up with Mr. A. Grandi of Detroit, the purchaser of our beer, and arranged with him to have all future shipments of our beer taken from some other port where we have a representative.

Re paragraph three of your letter in which you mention duty paid liquors being sold and taken ashore and not exported we beg to say firmly and without contradiction that we are not interested directly or indirectly in any transactions of liquors.

Hoping that the information above mentioned will be convincing and¹⁰ satisfactory evidence that we have complied with the regulations of customs in the smallest details and as far as we are concerned we can assure you that we will do our best to conform at all times to the regulations set forth by the Customs and Excise Dept., we remain,

Yours very truly,

THE CARLING E. B. & M. CO. LTD.

M.F.

per HARRY LOW.

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 44.

(Plaintiff's)

20

List of Seizures

Exhibits

**STATEMENT OF CARLINGS BEER RECEIVED AT ONT. GOVERNMENT
DISPENSARIES.**

No. 44.

List of
Seizures.
Apr. 8, 1925.
Etc.

April 8th, 1925.	Inspector Elliott, Sarnia.	Car No. 323344.	815 Cartons Beer.	
	6 Doz. Carling Ale	13 oz.		
	20 Doz. " Lager	13 oz.	Report No. 795-818.	
	Balance of car other brands.			
Feb. 20th, 1925.	Inspector Mousseau, Windsor.	Car No. 26530.	525 Cartons Beer.	
	54 Doz. Carling Ale	13 oz.	134 Cases Liquor.	
	28 Doz. Lager	13 oz.	Report No. 685.	30
Oct. 16th, 1924.	Inspector Miller, Niagara Falls.	Car. No. 86554.	From Hamilton.	
	831-9/12 Doz. Carlings Ale.	26 oz.	Balance claimed for.	836 Cartons.
Sept. 17th, 1924.	Inspector Lougheed, Windsor.	Car No. 17260, 23424.	1,850 Cartons	
	2470 Doz. Carlings Ale.	13 oz.		
	600 Doz. " "	26 oz.		
	30 Doz. " Lager	13 oz.		
July 31st, 1924.	Inspector Bolton, London.	Car No. 105514, 205594, 208622.		
	4800 Doz. Carlings Ale.	13 oz.	1590 Cartons.	40
	1199 Doz. " "	26 oz.	810 "	
			1199 "	
Nov. 25th, 1925.	Inspector Pellow, Huron County.		207 Cartons.	
	414 Doz. Carlings Beer.	13 oz.		

EXHIBIT No. U.
(Defendant's)

Four Bank Deposit Slips.

*In the
Exchequer
Court of
Canada*

FORM 209, 1500M-5-23

FORM 209, 1500M-5-23

Exhibits

No. U.
4 Bank
Deposit
Slips.
Apr.-July,
1925.

THE DOMINION BANK

THE DOMINION BANK

CREDIT.....Carling E. B. & M. Co.....

CREDIT.....Carling E. B. & M. Co.....

Deposited by.....M. F.....

Deposited by.....M. F.....

.....30.....of.....April.....1925

.....2.....of.....June.....1925

	14 ×	1 =	14	00
10	3 ×	2 =	6	00
	×	4 =		
	1 ×	5 =	5	00
	3 ×	10 =	30	00
	×	=		
	×	50 =		
	×	100 =		
		\$	55	00
	CHEQUES			
	<i>C. Burns</i>		10000	00
20			10,055	00

	×	1 =		
	×	2 =		
	×	4 =		
	×	5 =		
	×	10 =		
	×	20 =		
	×	50 =		
	×	100 =		
		\$		
	CHEQUES			
	<i>C. Burns</i>		35,494	10

K

EXHIBIT No. U.—Continued.

In the
Exchequer
Court of
Canada.

Exhibits

FORM 209, 1275M, 5-25

FORM 209, 1320M-4-24

No. U.
4 Bank
Deposit
Slips,
Apr.-July,
1925.

THE DOMINION BANK

THE DOMINION BANK

—Continued

CREDIT.....*Carling E. B. & M. Co. Ltd.*

CREDIT.....*Carling E. B. & M. Co.*

Deposited by.....*A. D. E.*.....

Deposited by.....

11th of July.....1925

.....of.....July 12, 1925.....19.....

×	1 =		
×	2 =		
×	4 =		
×	5 =		
×	10 =		
×	20 =		
×	50 =		
×	100 =		
	\$		
	CHEQUES		
	<i>W. Singular</i>	32	25
	<i>St Kitts Bottling Works</i>	1200	00
	<i>C. Burns</i>	20316	25
		21548	50

×	1 =		
×	2 =		
×	4 =		
×	5 =		10
×	10 =		
×	20 =		
×	50 =		
×	100 =		
	\$		
	CHEQUES	10,000	00
	S		
	<i>Burns cheque</i>		20

EXHIBIT No. B-3.
(Defendant's)
Export Entry Number 2596

*In the
Exchequer
Court of
Canada.*

Form B 13—(Amended 1916).
500,000—1-24

CUSTOMS, CANADA

25794 Exhibits
Export Entry

S.D.

.....*Walkerville, Ont.*.....
(Place of Lading)

Report No.....*557*.....

Entry No.....*2596*.....

No. B3.
Export
Entry
Number
2596.
July 15,
1925.

10 Entry and List of Articles of domestic production and Foreign Articles, which are not sub-
ject to Export, Customs, or Excise Duties, delivered by *Carling's E.B. & M. Co. Ltd, London
Ont.*
(Address of Owner or Agent)

—Continued

to.....*Gas Launch Anna H*.....for exportation to.....*U.S.A.*.....
(Name of Railway or Vessel, &c.) (Country of final or ultimate destination)

via (1).....Direct.....consigned as below :

N.B.—(1) State if shipped *via* United States Port, or direct from Canadian Port.

20

ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES — Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY — State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT	
				Domestic pro- ducts, including imported goods re-manu- factured in Canada	Foreign or imported pro- ducts in same condition as imported
<i>C. B. Grandi</i>					
<i>Detroit, Mich.</i>					
	200	<i>Ctns. Beer</i>	400 Gal.	800.00	

30

STAMP OF PORT OF EXIT
**Customs-Excise-
Canada**
July 15 1925
Exported at
Walkerville, Ont.

G. B. Lodge

I,.....*E. Mason, atty for the Shippers*.....
(owner, shipper or consignor), hereby certify that the above is a
full and true statement of the kinds, quantities, values and desti-
nation of all the articles delivered by me for exportation as afore-
said.

Signed by.....*E. Mason*.....

Residence.....*Ford, Ont.*.....

Date.....*July 15th, 1925*.....

SEE REGULATIONS ON THE OTHER SIDE

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 127.
(Plaintiff's)
Letter Defendant to H. C. Grout.

Established 1840

Exhibits

No. 127.
Letter
Defendant to
H. C. Grout.
July 30,
1925.

THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED
WINDSOR, ONT., July 30th, 1925.

MR. H. C. GROUT,
General Superintendent,
Canadian Pacific Railway,
Toronto, Ontario.

[Rubber Stamp]
General Superintendent's
Office

Aug. 1, 1925

Toronto, Ont.

10

Dear Sir :—

On my return to the City my attention has been directed to an unfortunate set of circumstances, affecting one of the employees of your Company and also an employee in our concern. I have reference to your Mr. F. Hawker, General Yardmaster at Windsor, who I understand has been released from your service through certain negotiations entered into with one of our men.

From the outset Mr. Grout I want it made plain that I am not writing to appeal for sympathy on Hawker's behalf, neither am I presuming to advise you as to how you should conduct the affairs of your road, but as a shipper over your lines I feel it within my province to lay before you certain facts affecting this case. 20

We have in our employ, here in Windsor, a young salesman by the name of S. J. Low, a brother of the writer. I understand that Low had Hawker give him an introduction to McGowan, M.C.R. Yardmaster. Young Low undoubtedly allowed his zeal to sell goods to run amuck with his judgment. I am satisfied after grilling our man that he made no improper proposals to Hawker and that in my estimation Hawker committed no offence other than a breach of Railway etiquette in introducing a shipper on your line to an official of another road. I am sure that the man in our employ did not for an instant realize that his actions would prove so disastrous to your man Hawker. 30

It is difficult for the writer to comprehend the severity of railway discipline, in that a man who had served his Company faithfully for years should be cast aside for having listened to the prattlings of a half inebriated salesman, who made all sorts of flattering offers to the Yardmaster of another road, providing he could show a means whereby cars of liquor could be placed in New York City and procure for him the necessary railway seals, forms, etc.

Young Low's proposition was preposterous and any offers that he might have made could never have been fulfilled. He could not secure a few cases of beer from the Company let alone a carload without our knowledge. 40

I realize perfectly well Mr. Grout that our man should not have talked as he did and that credence has been given to his proposition is beyond me, as you can rest assured that if it were such a simple matter to place a carload of beer into a city the size of New York and escape the vigilance of Customs

Officials and other authorities the writer would have availed himself of the opportunity long ago.

I can assure you Mr. Grout that the dismissal of Hawker through one of my men has distressed me greatly.

The feeling that has always existed between The Carling E. B. & M. Co. Ltd. and subsidiary Companies with which I am connected and your Railway will never be the same if this dismissal is allowed to stand. I feel a personal responsibility in this matter, in view that one of my employees and my own brother at that should have been the cause for Hawker's dismissal. Hawker means nothing to me, I only met the man but once in my life, but I do not consider that the offense committed warranted the punishment given.

I can truthfully state and back it up with figures that myself and associates have given the Canadian Pacific Railway over \$500,000 worth of liquor business in the past three years. A perusal of your files will show the volume of incoming and outgoing freight from our Brewery at London, over your road, of the shipments made by our partner Mr. Marco Leon of Montreal, via C.P.R. and of the shipments both to and from the Consolidated Exporters Corporation Limited, Vancouver, also C.P.R. Our combined Canadian Pacific Telegraph bill runs well over \$500 per month. I mention these figures on account of their tangibility as evidence to show that our relationship as carrier and shipper have always been of the highest order.

We have received courteous treatment and splendid service from your Officials. Our business relationship has certainly been of the finest type and I am sure Mr. Grout that you will give the facts, that I have been able to place before you consideration and I feel that after you have analyzed them thoroughly you will see that no great crime had been committed or contemplated. It might appear on the surface that I am taking an undue interest on Hawker's behalf, but really sir I honestly feel that the man has been dealt with rather harshly. It grieves me to feel that his present plight is due to the foolishness of one of our employees.

Yours very truly,

THE CARLING E. B. & M. COMPANY, LIMITED.

HARRY LOW,

Vice-President & General Manager.

HL/IH.

Copy to :—

F. M. Rutter, Superintendent, C.P.R., London Division.

Chas. Burns, President, Carling E. B. & M. Company, Ltd., London, Ont.

C. Morgan, General Manager, Consolidated Exporters Corporation,
Vancouver, (B.C.)

40

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 127
Letter
Defendant
to H. C.
Grant
July 30, 1926

—Continued

EXHIBIT No. 126.

(Plaintiff's)

Letter J. A. Kennedy to M. Goodman.

ESTABLISHED 1840

THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED.

728 Sandwich St. West,

WINDSOR, ONT., Sept. 7, 1925.

M. GOODMAN, Esq.,
1135 Bleury St.

10 Montreal, Que.

Dear Mr. Goodman :—

I have not forgotten my promise to report to you, but in view of the fact that there was little to report until I took off August statements, and that I have been exceedingly busy, the fulfilment was deferred.

20 I have taken off and balanced my Beer Accounts Receivable, but am held up waiting for the statements from London of beer shipments etc. I am having Mr. Low phone for these to-night, and in the meantime I am going ahead with my Whisky Trial Balance. As you know, previous to June there were practically no records here of whisky operations and as I wanted state-
ment of Consolidated account I had them send it on, but when I received it I had nothing to check it against and was delayed three weeks until Mr. Leon had an opportunity of going over it with me. However everything is now in nice shape, and I will have all August statements out early in the week.

We are extremely busy with whisky, but beer has not been very active. Is it your wish that I send you copies of all statements or will you see them at London? I have experienced no difficulty so far and do not anticipate any, as I am familiar with the procedure.

30 With kind personal regards and the *sincere* wish that we may again be favored with a visit from you, I am,

Yours truly,

J. A. KENNEDY

EXHIBIT No. Z-3.

(Defendant's)

Letter H. C. Martin to F. G. Watson, et al.F. G. WATSON, Esq.,
W. G. MANDERS, Esq.,

You may now accept liquor, beers and spirits under the following conditions,—

A shipping order and bill of lading must consign goods to a person at a port or outport on the Canadian border from

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 126.
Letter to
J. A. Ken-
nedy to
M. Good-
man.
Sept. 7, 1925.No. Z-3.
Letter H. C.
Martin to
F. G.
Watson,
et al.
March 15,
1926.

*In the
Exchequer
Court of
Canada.*

which it is physically possible for exportation to be made via water, as for example Windsor or Walkerville, and must bear notation "For export from Canada. Deliver only under supervision of collector of customs".

Exhibits

No. Z-3.
Letter H. C.
Martin to
F. G.
Watson,
et al.
March 15,
1926.

—Continued

This notation to be transferred to the waybill. Nothing must be shown on the bill of lading or waybill as to country of ultimate destination, but this must be shown on the export entry Canada customs form B.13 which must be supplied us at shipping point and accompany the waybill to port of exportation as provided in my circular No. 5. Customs Department will not give clearance from Canada to any vessel which obviously cannot carry its cargo to destination specified in application for clearance, nor will they accept substitution of export entries showing United States as ultimate destination for entries originally issued showing other countries as ultimate destination. see my letter February 20th. Shipments must be prepaid and in the case of shipments made by others than established licensed distillers or brewers a guaranty bond should be obtained from the shippers that they will pay full charges on the goods to Customs Department or order shipment returned.

H. C. MARTIN.

EXHIBIT No. 125.

(Plaintiff's)

Agreement Consolidated Exporters Corporation Ltd. with Harry Low.

20

THIS INDENTURE made the 3rd day of April, A.D. 1926,

BETWEEN :

CONSOLIDATED EXPORTERS CORPORATION LIMITED, a company duly incorporated under the laws of the Province of British Columbia and having its registered office situate at 1050 Hamilton Street, in the City of Vancouver, in the Province aforesaid, hereinafter called "the Company",

of the one part, 30

—AND—

HARRY LOW of 100 Sandwich Street, in the City of Windsor, in the Province of Ontario, **MARCO LEON** of 375 Querbis Avenue, in the City of Montreal, in the Province of Quebec, and **CHARLES BURNS** of 739 Richmond Street, in the City of London, in the Province of Ontario, hereinafter called "the Agents", which expression where the context so admits shall include their and each of their heirs, executors, administrators and assigns,

of the Other Part. 40

No. 125.
Agreement
Consolidated
Exporters
Corpn. Ltd.
with
Harry Low.
Apr. 3, 1926.

WITNESSETH that the Company covenants with the Agents and the Agents jointly and severally covenant with the Company as follows :—

1. The Agents will henceforth act as the sole agents of the Company in the Province of Ontario and will act for no other person, firm or corporation.
2. The Company will appoint no other agent in the Province of Ontario and no liquor shall be despatched to the Province of Ontario from any of the branches of the Company in the Province of British Columbia except to or through the Agents.
- 10 3. The Agents will not by themselves or any one or more of them, nor by any agent or servant of them or any one or more of them, nor as members or directors or officers of any corporation or company or firm, either directly or indirectly or otherwise howsoever in the Province of Ontario buy, sell, acquire, obtain, deal in or dispose of any liquor, otherwise than as agents of the Company.
4. No liquor shall henceforth be bought, sold, acquired, obtained, dealt in or disposed of by Frank Savard of the City of Windsor in the Province of Ontario except through the Agents.
- 20 5. The Agents will, during the continuance of this contract, sell for export from the Province of Ontario, not less than one hundred (100) cases of liquor in each calendar week beginning with the week commencing on the 4th day of April, 1926.
6. An account in writing shall be prepared by the Agents and delivered to the Company on the 30th days of June and December in each year, showing the quantity of liquor so sold for export by the Agents during the period (in the case of the first account) from the 3rd day of April, 1926, and (in the case of all subsequent accounts) during the preceding six calendar months.
- 30 7. If any such account should show that less than an average of one hundred (100) cases of liquor shall have been sold for export by the Agents in each calendar week of the period, the Agents will pay to the Company the sum of Five dollars (\$5.00) a case for so many cases as represent the amount of the deficiency averaged over the said period.
8. The prices at which liquor is to be invoiced to the Agents by the Company shall be those set out in the schedule to the contract dated the 31st of March 1926 and specified in paragraph 14 hereof.
9. No liquor shall be despatched by the Company unless and until the Company shall have received payment in full of the prices aforesaid and of the freight and carrying charges.
- 40 10. All liability of the Company for any liquor or its transport shall cease immediately upon the acceptance of such liquor by the carrying or transportation company.
11. The Company shall be entitled at any time and from time to time by its duly authorized representative to inspect and take copies of all books,

*In the
Exchequer
Court of
Canada.*

—
Exhibits
No. 125.
Agreement
Consoli-
dated
Exporters
Corp'n. Ltd.
with
Harry Low.
Apr. 3, 1926.

—Continued

*In the
Exchequer
Court of
Canada.*
—
Exhibits
No. 125.
Agreement
Consoli-
dated
Exporters
Corpn. Ltd.
with
Harry Low.
Apr. 3, 1926.
—Continued

documents, papers and writings of the Agents relating to the business of the Agents.

12. The agreed damages for each and every branch of the covenants and obligations of these presents shall be Ten thousand dollars (\$10,000.00) which shall from time to time be paid by the party in fault to the other party forthwith upon the commission of any such breach and shall be deemed liquidated damages and not a penalty.

13. The word 'liquor', wherever used in these presents, shall bear the meaning defined in the Government Liquor Act.

14. This agreement shall be contingent on the due execution by all parties of a contract in writing dated the 31st of March, 1926, and made between Consolidated Exporters Corporation Limited, of the first part, the Northern Liquor Company Limited, of the second part, Joseph Kennedy Limited of the third part, and Olier Besner of the fourth part which has already been prepared and is awaiting execution but immediately upon the execution of the said contract and not before this agreement shall be deemed to have come into effect as on the day of the date hereof and to have superseded all other contracts between the parties hereto. It within one (1) month from the date hereof the said contract of the 31st of March, 1926, shall not have been duly executed by all the parties thereto this agreement shall be void.

15. This agreement shall be binding upon the parties hereto up to and until the 3rd day of April 1927 A.D. and hereafter until and unless cancelled by the Consolidated Exporters giving notice in writing of its intention to cancel this agreement addressed to Marco Leon at 375 Querbes Avenue, Montreal, Quebec. Whereby any of the parties of the second part giving similar notice addressed to Consolidated Exporters Corporation Limited, at 1050 Hamilton Street, in the city of Vancouver, British Columbia. This agreement shall be deemed to be cancelled upon the expiration of four months from the posting by registered post any such notice.

IN WITNESS WHEREOF the Company has hereunto caused its common seal to be affixed attested by the hands of its proper officers in that behalf and the Agents have hereunto set their hands and seals the day and year first above written.

The Common Seal of CONSOLIDATED EXPORTERS CORPORATION LIMITED was hereunto affixed in the presence of :

SIGNED SEALED AND DELIVERED in the presence of :
J. W. McMURRETH.

[SEAL]

W. J. LEVIN, Sec.
GEORGES ROYSIS. , Vice-Pres.

HARRY LOW. [SEAL]

CHAS. BURNS. [SEAL]

MARCO LEON. [SEAL]

40

EXHIBIT No. Q.—Continued.

The back of this exhibit contains Forms 1 and 2 and Form 4 in printing similar to that on the back of Exhibit H, which is printed.

Form No. 1 is filled in and signed by Daniel Piche (in the same manner as Form 1 on back of Exhibit H is filled in). It is purported to be sworn before "J. Wilson, for Collector," but attestation clause except for signature is not filled out. It also bears stamp in margin :—

Forms 2 and 4 are not filled in.

STAMP

Customs—Excise—Canada Apr. 19, 1929 Sandwich, Ont.
--

EXHIBIT No. 6-C.

(Plaintiff's)

Export Entry Number 8552.

CUSTOMS, CANADA

Exhibits
No. 6C.
Export
Entry
Number
8552.
June 10,
1926.

Form B 13—(Amended 1916)
50,000—5-26

Out Port of Point Edward.
Report No. 197
Entry No. 257

Export Entry

.....*London, Ont.*.....
(Place of lading)

Report No.....

Entry No.*8552*..... 10

Entry and List of Articles of domestic production and Foreign Articles, which are not subject to Export, Customs, or Excise Duties, delivered by.....*The Carling E.B. & M. Co. Ltd.*...
(Address of Owner or Agent)

to.....*C.N. R. to Point Edward*..... to Boat..... for exportation to.....*U.S.A.*.....
(Name of Railway or Vessel, &c.) (Country of final or ultimate destination)

via (1)..... Direct..... consigned as below :
C.P. 127806

N.B.—(1) State if shipped via United States Port, or direct from Canadian Port.

ADDRESS OF CONSIGNEE AND MARKS ON PACKAGES	NUMBER OF PACKAGES	ARTICLES — Describe the articles fully, as, canned pork, printed cotton cloth, printing presses, apples, oats, wheat, &c. General terms such as meats, dry goods, machinery, prints, &c., will not be accepted	QUANTITY — State number of pounds, tons, gallons, yards, &c.	VALUE AT TIME AND PLACE OF SHIPMENT		
				Domestic products, including imported goods re-manufactured in Canada	Foreign or imported products in same condition as imported	
<i>F. Savard</i>	<i>100</i>	<i>Cartons Pts. Beer</i>	<i>Gals. 180</i>	<i>225.00</i>		<i>20</i>
<i>Detroit</i>		<i>Cartons Qts. Beer</i>				<i>30</i>
<i>Mich.</i>		<i>½ Bbls. Beer</i>				
		<i>¼ Bbls. Beer</i>				
	Sworn	<i>A. V. Hall, Atty. Carling's E. B. & M. Co. to before me at</i>	<i>M. Co.</i>	STAMP Customs-Excise-Canada June 5, 1926 Point Edward, Ont.		

STAMP OF PORT OF EXIT

**Customs—Excise
—Canada
Jun 10 1926**

**Exported at
Point Edward
Ont.**

D. D. Grimwood

I, J. N. Hennessy, Atty. for Carling E. B. & M. Co. Ltd.,.....
Shipper, make oath and say that the above is a full and true statement of the kinds, quantities, values and destination of all the articles delivered by me for exportation as aforesaid. 40

Signed by.....*J. N. Hennessy*.....

Residence.....*London, Ont.*.....

Date.....*June 2, 1926*.....

SEE REGULATIONS ON THE OTHER SIDE.

EXHIBIT No. 47.
(Plaintiff's)

*In the
Exchequer
Court of
Canada.*

Cheque Hoffman and Dunford to Harry Low.

Cheque No. 10.

KINGSVILLE, ONT., July 4th, 1926.

THE ROYAL BANK OF CANADA.

KINGSVILLE BRANCH.

Exhibits
No. 47.
Cheque
Hoffman &
Dunford to
Harry Lowe.
July 4, 1926.

Pay Harry Lowe..... Or Order
Seven hundred.....00/100 Dollars

10\$700/100

PAID

1.75

L. C. HOFFMAN.
W. C. DUNFORD

Rubber Stamps appearing on face :—

Not over Seven Hundred \$700 \$

Certified

Jul 6, 1926

The Royal Bank of Canada

Kingsville, Ont.

The Dominion Bank.

B. S. 264

20

Windsor, Ont.

The Royal Bank of Canada

Paid

Jul 14, 1926

Kingsville, Ont.

Endorsements and Stamps appearing on back :—

Deposit to the Credit of
Carling E. B. & M. Co. Ltd.

Harry Low

Dominion Bank Jul 8, 1926

30

2nd Teller, Windsor, Ont.

Pay to any Bank or Banker
for THE DOMINION BANK

Windsor, Ont.

A. M. Cowie, Manager.

Bank of Montreal

Kingsville, Ont.

July 13, 1926.

EXHIBIT No. H.
(Defendant's)

Entry for Home Consumption.

CUSTOMS, CANADA—ENTRY FOR HOME CONSUMPTION

B. 1—Amended }
1922 }
3,000,000—2-24 }

Port of *Sandwich, Ont., July 20th, 1926* 19..... Imported by *Bermuda Export Co*.....
Arriving per *Boat as shown below*.....
Goods Exported to Canada Direct from *Detroit, Mich*..... Via *Direct*.....
(Country through which carried in transit if any)

Report No.....
Entry No. *370*

In the
Exchequer
Court of
Canada.

Exhibits
No. H.
Entry for
Home Con-
sumption.
July 20,
1926.

10	Marks and Numbers	Number of Packages	Description of Goods	Quantity	Invoice Value in Currency of Invoice	Value for Duty in Dollars.	Rate of Duty or Freec.	Total Customs Duty.		Duty Paid Value.		Sales Tax.		Rate of Excise Tax.	Excise Tax.		Tariff Applied.								
								\$	c.	\$	c.	\$	c.		\$	c.									
	Boat	Elk.	Empty bbls. returned, Carlings one half size.	273	682.50	683	25%	\$ 170	75	\$ 853	75	\$ 42	69		\$	c.									
			do. do. Carlings, 1/4 size.	19	38.00	38	25%	9	50	47	50	2	38												
		Lucy	do. do. Carlings, 1/2 size.	383	957.50	958	25%	239	50	1,197	50	59	88												
			do. do. Carlings, 1/4 size.	9	18.00	18	25%	4	50	22	50	1	13												
		It	do. do. Walkerville, 1/2 size.	441	1,102.00	1,103	25%	275	75	1,378	75	68	93												
			do. do. Walkerville 1/4 size.	194	388.00	388	25%	97	00	485	00	24	25												
		Mabel	do. do. Hamilton 1/2 size.	135	312.50	313	25%	78	25	391	25	19	56												
			do. do. Hamilton 1/4 size.	4	8.00	8	25%	2	00	10	00		50												
20		Omar	do. do. Foreign Exp. 1/2 size.	156	390.00	390	25%	97	50	487	50	24	38												
			do. do. Foreign Exp. 1/4 size.	174	346.00	348	25%	87	00	435	00	21	75												
								1,061	75			265	45												
								Duty paid under protest																	
								<table border="1"> <tr> <td>Duty</td> <td>1061.75</td> </tr> <tr> <td>Sales Tax</td> <td>265.45</td> </tr> <tr> <td>Excise Tax</td> <td></td> </tr> <tr> <td>Total</td> <td>1327.20</td> </tr> </table>										Duty	1061.75	Sales Tax	265.45	Excise Tax		Total	1327.20
Duty	1061.75																								
Sales Tax	265.45																								
Excise Tax																									
Total	1327.20																								

EXHIBIT No. H.—Continued.

FORM 1

In the
Exchequer
Court of
Canada.

OATH OR AFFIRMATION of the owner or his agent or attorney in Canada prescribed to be made in cases where the goods have been actually purchased for importation into Canada.

Exhibits

No. H.
Entry for
Home Con-
sumption.
July 20,
1926.

(a) Name of
owner, agent
or attorney.

(b) Swear or
affirm.

(c) The duly
authorized
agent or attor-
ney of or a
member of
the firm of.

(d) Is or are.

I, (a) *J. R. Piche*, do solemnly and truly (b) *swear*
as follows :—(1) at I am (c) *Atty*, for the owner of
the goods mentioned in the invoice(s) now produced by me and here-
to annexed and signed by me; (2) that the said invoice(s) include(s)
10 all of the goods mentioned in this Bill of Entry and (d) is the true
and only invoice(s) of all the goods imported as within stated; (3)
That the said goods are properly described in the said invoice(s) and
in this Bill of Entry; (4) That to the best of my knowledge and
belief the said invoice(s) and every certificate and declaration there-
on were made by the person or persons by whom the same purport to
have been made; (5) That the said invoice(s) exhibit(s) the actual
price or prices at which the said goods were actually purchased by
the owner in the country whence exported to Canada and that there
is included therein the true value of all cartons, cases, crates, boxes
20 and coverings of any kind and all charges and expenses incident to
placing the said goods in condition, packed ready for shipment to
Canada; (6) That the value for duty of the said goods as stated in
this Bill of Entry exhibits the fair market value of the said goods at
the time and place of their direct exportation to Canada and as when
sold at the same time and place in like quantity and condition for
home consumption in the principal markets of the country whence
exported directly to Canada, without any discount or deductions
for cash, or on account of any drawback or bounty, or on account
of any royalty actually payable thereon or payable thereon when
30 sold for home consumption but not payable when exported, or on
account of the exportation thereof, or for any special consideration
whatever; (7) That if the value for duty of the said goods as stated
in this Bill of Entry is other than the value thereof as above specified
such value for duty has, to the best of my knowledge and belief, been
fixed and determined under the authority of the Customs Act at the
value stated in said Bill of Entry; (8) That to the best of my know-
ledge and belief any and all goods entered on this Bill of Entry as
being free of duty are lawfully entitled to free entry under the existing
law, and any and all goods entered thereon at preferential tariff rates
40 are lawfully entitled to be so entered; (9) That any and all goods

—Continued

In the
Exchequer
Court of
Canada.

Exhibits

No. H.
Entry for
Home Con-
sumption.
July 20,
1926.
—Continued

Customs
Excise
Canada
July 21, 1926
Sandwich.
Ont.

mentioned in this Bill of Entry as imported for a specific purpose and therefore entered free or at a lower rate of duty than would otherwise be chargeable thereon are intended to be and will be used for such specific purpose only in the manner provided by law; (10) That nothing has been on my part, nor to my knowledge on the part of any other person, done, concealed or suppressed whereby His Majesty the King may be defrauded of any part of the duty lawfully due on the said goods; (11) That if at any time hereafter I discover any error in the said invoice or invoices, or any of them, or in this Bill of Entry, or if I receive at any time any other or different invoice of the said goods, or any part thereof, I will immediately make the same known to the Collector of this Port and (12) That no arrangement or understanding affecting the purchase price of the said goods has been or will be made or entered into between the said importer and the exporter, or by any one on behalf of either of them other than as shown in the said invoices, either by way of discount rebate, salary, compensation, or in any other manner whatsoever. 10

Sworn (b) at this day
(Signature).....J. R. Piche.....
of 19 , before me 20
.....J. U. Piche.....
Collector.

OATH OR AFFIRMATION of the Consignee in Canada, or his agent or attorney, prescribed to be made in cases where the goods have been exported to Canada on consignment without sale by the Exporter prior to shipment.

I, (a) do solemnly and truly (b)
as follows.—(1) That I am (c) the consignee
of the goods mentioned in the invoice or invoices now produced
by me and hereto annexed and signed by me; (2) that the said 30
invoice(s) include(s) all of the goods mentioned in this Bill of Entry and
(d) the true and only invoice(s) of all the goods imported as within
stated; (3) That the said goods are properly described in the said
invoice or invoices and in this Bill of Entry; (4) That to the best of
my knowledge and belief the said invoice or invoices and every
certificate and declaration thereon, or filed therewith or attached
thereto were made by the person or persons by whom the same
purport to have been made; (5) That there is included in said invoice
or invoices the true value of all cartons, cases, crates, boxes and
coverings of any kind and all charges and expenses incident to placing 40

(a) Name of
consignee.
agent or attor-
ney.
(b) Swear or
affirm.
(c) The duly
authorized
agent or attor-
ney of or a
member of
the firm of.
(d) Is or are.

In the
Exchequer
Court of
Canada.

FORM 4

OATH OR AFFIRMATION of importer or agent prescribed to be made
and subscribed before a Collector of Customs or a Notary Public
or a Commissioner for taking affidavits, on entry of goods at a
lower rate of duty or free for manufacturing purposes.

Exhibits

No. H.
Entry for
Home Con-
sumption.
July 20,
1926.

—Continued

- (1) Name of importer.
- (2) Name of the goods or articles.
- (3) Swear or affirm.
- (4) Names of the goods or article.
- (5) Names of the goods to be manufactured.
- (6) Name of the place, county and province.
- (7) Or affirmed.

1, (1) the undersigned importer of the (2)

mentioned in this entry, do solemnly (3) that such (4) 10

are imported by me for the manufacture of (5) in my own factory situated

at (6) and that no portion of the same will be used for any other

purpose or disposed of until so manufactured.

Sworn (7) before me this

(Signature)..... 20

day of 19

Collector or Title of Official authorized to Administer Oaths

EXHIBIT No. V-2.
(Defendant's)

No. 2418

*In the
Exchequer
Court of
Canada.*

Report Outwards Boat Dan.

Exhibits **A. 7**
100,000—7-25
No. V2.
Report
Outwards
Boat Dan.
Oct. 20, 1926.

REPORT OUTWARDS

Port of *Sandwich, Ont.*
Contents in the (1) *Boat Dan* Registered Tonnage **5**
Registered in the Port of (2) *Detroit Mich* with **2** me_n **01**
. *J. Dodge* Master for this present voyage for (3) *Detroit, Mich*
Cargo Tons Weight Tons Measurement
. Agent

Marks and Numbers	Shippers	Quantity and Description of Goods	Value \$	Consignees
<i>Carling E.</i>	<i>B. & M. Co.</i>	<i>200 cases beer</i>	<i>350.00</i>	<i>F. Savard, Detroit</i>

I, *J. Dodge* Master of the vessel above named, do declare that the Contents above written, now tendered and subscribed by me, is a just and true account of all the Goods laden ou board my vessel for the present voyage, and of the names of the respective Shippers and Consignees of the said Goods; and of the marks and numbers of the Packages containing the same. 20

Signed and declared before me at the Custom House, Port of }
the day of 19 } *J. Dodge*
Master or Purser

. *J. Wilson* Collector.

(UNDER A PENALTY OF \$400)

<p><i>Customs-Excise-Canada</i> <i>Oct. 20, 1926</i> <i>Sandwich, Ont.</i></p>
--

(1) Insert here "Ship," Steamship, Schooner, or as the case may be, and name of vessel.
(2) Port and Country where registered. (3) Port and Country for which cleared.

EXHIBIT No. V-3.
(Defendant's)

In the
Exchequer
Court of
Canada.

Clearance for Boat Dan.

C. 8.
100,000—4-24
SANDWICH, ONT.

CUSTOMS—CANADA

No. 2418

Exhibits
No. V3.
Clearance
for Boat
Dan.
Oct. 20, 1926.

PORT OF Sandwich, Ont.

Clearance of the Boat Dan Gas Launch Grey of Detroit, Mich.

10 5 tons burthen, Official No. No number with 2 men

..... J. Dodge 15 Henry River Rouge Master, from this Port to the Port

of Detroit, Mich. with the undermentioned Cargo, viz.:

.....

.....

200 cases beer

.....

.....

.....

.....

20

and the necessary Sea Stores for the voyage.

STAMP

GIVEN under my hand, at the Custom House,

this day of 192.....

Customs—Excise—Canada
Oct. 20, 1926
Sandwich, Ont.

..... J. Wilson
for Collector

NOTE.—Collector will issue no Clearance except the same has been numbered in its consecutive order.

In the
Exchequer
Court of
Canada.

EXHIBIT No. 105.
(Plaintiff's)
Memorandum of Credit and Receiving Record.

MEMORANDUM OF CREDIT.

No. 421

Exhibits

No. 105.
Memoran-
dum of
Credit and
Receiving
Record.
Nov. 16,
1926.

THE CARLING EXPORT BREWING & MALTING COMPANY LIMITED

LONDON, ONT.....November 16th, 1926

CREDIT.....*Mr. F. Savard, Detroit, Michigan*.....

ADDRESS.....*c/o C.P.R. Dock, Windsor, Ontario*.....
Early Transport

RE INVOICE
BINDER NO.
LEDGER NO.

Ck..	Hhds.	Bbbs.	1/2s	1/4s	1/8s	Doz. Qts.	Doz. Pts.	Doz. Pts. C.S.	CasesGals,		
		101	M.	T.	1/2	Bbbs.		\$6.00			\$606.00
		2	M.	T.	1/4	Kegs.		3.00			6.00
											\$612.00

Via Early Transport.

The above charge is made up as follows :
Returnable Packages \$612.00
Transportation \$.....
Liquid

RECEIVING RECORD

20

Received from.....*Agent*.....*Nov. 16, 1926*
Order No.....*Via*.....*Address*.....*La Salle*
Delivered to.....*Early*.....*Charges*
.....*Dept*.....

Quan.	Description		
101	M. T. 1/2 Bbbs.	\$6.00	\$606.00
2	M.T. 1/4 Kegs	3.00	6.00
			\$612.00
<i>Goods Received and Checked by</i>			<i>F.W.</i>

EXHIBIT No. 102.
(Plaintiff's)
Bill of Lading to Verdi Bros.

*In the
Exchequer
Court of
Canada.*

ORIGINAL

Exhibits
No. 102.
Bill of
Verdi Bros.
Lading to
Mar. 22,
1927.

"B" Form of Straight Bill of Lading approved by the Board of Railway
Commissioners for Canada by Order No. 7562 of 15th July, 1909.

Can, Pac.

RAILWAY COMPANY

Straight Bill of Lading—Original
Not negotiable

Shipper' No.

Agent's No.

10 RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, at

LONDON, ONT. *Mar. 22* 1927

From **The Carling Brewing & Malting Co., of London, Limited**

the goods described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said goods, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said goods, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from _____ *to* _____ *is in Cents per 100 Lbs.*

20	If...Times	1st	If...Class	If Special Per.....										
----	------------	-----	------------	------------	------------	------------	------------	------------	------------	------------	------------	------------	------------	---------------------

(Mail Address—Not for purposes of Delivery.)

Consigned to *Verdi Bros., 68 Hudson St., Hoboken*

Destination *Guttenburg* (Province or *N.J.* County of _____
State of _____)

Route *C.P.* *T.H.B.* *N.Y.C.* Car Initial *C.N.* Car No. *501626*

No. Packages	Description of Articles and Special Marks	Weight (Subject to Correction)	Class or Rate	Check Column	
30	Punch, Ale & Porter				If charges are to be prepaid write or stamp here, "To be Prepaid." <i>Collect</i>
	Butts, Ale & Porter				
	Hhds. Ale & Porter				
	Bbbs. Ale & Porter				
	Halves, Ale & Porter				
	Quarters, Ale & Porter				
	Bbbs. Bottled				Received \$ _____ to apply in prepayment of the charges on the property described hereon.
	Cases, Quarts				
40	" Pints				Agent or Cashier Per _____ (The signature here acknowledges only the amount prepaid)
300	Halves, Lager <i>Bbl. Empty</i>	19500			
	Quarters "				
	Eighths "				
	Boxes				Charges Advanced \$ _____
	<i>Returned In Bond</i>	<i>S.W.C.</i>			

The Carling Brewing & Malting Co., of London, Limited, Shippers

04909

W. M. Whittaker Agent

01723

Per *J. N. Hennessey*

Per *A.J.H.*

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 43.
(Plaintiff's)

Consular Invoice.

Exhibits
No. 43.
Consular
Invoice.
Mar. 25,
1927.

(Form No. 129-Consular)
(Corrected March, 1914)

**INVOICE OF RETURNED AMERICAN GOODS AND DECLARATION
OF FOREIGN EXPORTER
AMERICAN CONSULAR SERVICE.**

LONDON, March 25, 1927.

We, Carling Export Brewing and Malting Co., do solemnly and truly declare 10
that the several articles of merchandise herein specified are, to the best of my
knowledge and belief, truly and bona fide of the growth (or production or
manufacture) of the United States; that they were exported from the United
States, from the port of Niagara Falls, N.Y. on or about March 11, 1927;
that they are returned without having been advanced in value or improved in
condition by any process of manufacture or other means.

CARLING EXPORT BREWING & MALTING CO.
(Signature) J. G. Morrison, Accountant.

MARKS	NUMBERS	QUANTITY	DESCRIPTION	VALUE U.S. COIN
Messrs. Verdi Bros, 66 Hudson Street, Hoboken, N.J.		300	Empty Kegs Weight 19500 Reason Returned : Not according to order.	\$1,320.00

Declared to before me this.....day March 25, 1927.....and fee
\$1.00 United States gold, equal to....., paid by affixing stamps
to the duplicate copy of this document.

[Stamp of

American Consulate, London, Ont.]

NOTE : To be issued in triplicate and
disposed of as a certified invoice.

C. E. B. PAYNE,
Of the United States of America
Vice Consul.

FEE : ONE DOLLAR.

1075

CUSTOMHOUSE INDORSEMENT
No.

[Back]

Form No. 129—Consular
INVOICE OF RETURNED AMERICAN
Goods

*In the
Exchequer
Court of
Canada.*

Importer :

No. 640

Exhibits

Vessel :

March 25, 1927.

No. 43.
Consular
Invoice.
Mar. 25,
1927.

From

AMERICAN CONSULAR SERVICE
at

10

Arrived :

London, Ontario

Shipper : Carling Brewery Co.

—Continued

Of : London, Ontario.

Consignee : Verdi Brothers,

At : Hoboken, N.J.

Port of Shipment : London, Ont.

Port of arrival : Niagara Falls, N.Y.

Port of entry : Niagara Falls, N.Y.

Contents : 300 Empty Kegs.

Kind of Entry :

Marks, Quantity, and Contents :

Goods Transported by

Canadian Pacific Railway

20 Consular officers will leave all of
above indorsement blank. It is to
be filled in only at the customhouse
at the port of entry.

EXHIBIT No. 102 (Part).

(Plaintiff's)

Letter Defendant to Verdi Bros.

No. 102
(part).
Letter
Defendant
to Verdi
Bros.
Apr. 8, 1927.

April 8th, 1927.

Messrs. Verdi Bros.,
68 Hudson Street
Hoboken, N.J.

Gentlemen :

30 We enclose you herewith Bill of Lading covering car C.N. 501626, for
300 MT Half Barrels returned to Guttenberg. This paper was overlooked
when making shipment.

Trusting this has not inconvenienced you, we are

Yours very truly,

THE CARLING E. B. & M. Co. Ltd.

JGM:ML
Encl.

Per J. G. MORRISON, Acct.

1077

EXHIBIT No. 103 (Part)

(Plaintiff's)

Letter Defendant to Verdi Bros.

April 21st, 1927.

Messrs. Verdi Bros.
68 Hudson Street,
Hoboken, N.J.
Gentlemen :

We enclose you herewith Bill of Lading covering car C.P. 209346, containing 400 empty $\frac{1}{2}$ Barrels returned to New York.

We remain,

Yours very truly,

THE CARLING E. B. & M. CO. LTD.

Per J. G. MORRISON, Acct.

JGM/ME

*In the
Exchequer
Court of
Canada.*

Exhibits

No. 103
(part).
Letter
Defendant
to Verdi
Bros.
April 21,
1927.

EXHIBIT No. G-1.

(Defendant's)

Telegram Commissioner of Excise to Defendant.

CANADIAN NATIONAL TELEGRAPHS.

No. G1.
Telegram
Commissioner
of Excise to
Defendant.
Aug. 11,
1927.

DEPARTMENT NATIONAL REVENUE,

OTTAWA, August 11, 1927.

20

CARLING EXPORT BREWING & MALTING CO. LTD.

London, Ontario.

Failing payment forthwith will issue Writ immediately for recovery sales and gallonage taxes due by you April first nineteen twenty-four to April thirtieth nineteen twenty-seven amounting to four hundred twenty-one thousand three hundred eighty-four dollars thirty-two cents with penalties and costs Stop Detailed statement follows.

Commissioner of Excise.

[STAMP]

Dept. National Revenue

Received

Aug. 12 1927

Chief Inspectors Office

Excise Division

Ottawa, Canada

30HHE:PDG

Chge Nat Revenue

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. G-2.

(Defendant's)

Telegram Commissioner of Excise to Defendant.

Exhibits

No. G2.
Telegram
Commissioner of
Excise to
Defendant.
Aug. 19,
1927.

CANADIAN NATIONAL TELEGRAPH.

DEPARTMENT NATIONAL REVENUE,
OTTAWA, August 19, 1927

CARLING EXPORT BREWING & MALTING CO. LTD.
London, Ontario

Further my telegram eleventh instant am to inform you amount therein stated made up as follows Sales tax on domestic sales two thousand six hundred fifty dollars fifty-six cents gallonage tax ditto two thousand and twenty-three dollars ninety cents sales tax on export sales one hundred forty-six thousand five hundred five dollars forty-five cents gallonage tax ditto two hundred sixty-nine thousand six hundred twelve dollars fifty-three cents gallonage tax on two point five per cent beer five hundred ninety-one dollars eighty-eight cents total four hundred twenty-one thousand three hundred eighty-four dollars thirty-two cents Stop Above figures exclusive of any claim for interest. Stop Wire decision

HHE:PDG
Chge Nat Revenue

Commissioner of Excise

20

No. G3.
Telegram
Defendant
to G. W.
Taylor.
Aug. 20,
1927.

EXHIBIT G-3.

(Defendant's)

Telegram Defendant to G. W. Taylor.**CANADIAN PACIFIC R'Y. CO.'S TELEGRAPH**

RNA86 17

STANDARD TIME

LONDON, ONT. AUG 20-27 1105A

G. W. TAYLOR

Commissioner of Excise Ottawa Ont

Your telegram of eleventh and nineteenth have been passed to our Attorney who will communicate with you.

30

CARLINGS BREWERIES LTD.

EXHIBIT No. G-4.

(Defendant's)

Letter Osler, Hoskin & Harcourt to W. S. Edwards.

*In the
Exchequer
Court of
Canada.*

—
Exhibits

COPY/SG

OSLER, HOSKIN & HARCOURT

**THE DOMINION BANK BLDG.,
68 Yonge Street,
Toronto, 2.
September 16th, 1927.**

No. G4.
Letter Osler,
Hoskin &
Harcourt to
W. S.
Edwards.
Sept. 16,
1927.

W. STUART EDWARDS, Esq.,
10 Deputy Minister of Justice,
Department of Justice,
Ottawa, Canada.

Dear Sir : **CARLING BREWERIES LIMITED**
OUR FILE 5245.

We now enclose herewith cheque payable to the Collector of Customs for \$4,674.46, in payment of the amount claimed by the Department of National Revenue as due in respect of sales tax and gallonage tax on domestic sales. This payment is being made by us on behalf of the Company under protest and without admitting that the Company is liable for the amount so claimed
20 in respect of said taxes, and subject to the Company's right to repayment on any judicial decision determining the exact amount of the said taxes payable by the Company if such amount be less than the amount of the cheque now enclosed.

Yours very truly,
OSLER HOSKIN & HARCOURT.

Encl.

In the
Exchequer
Court of
Canada.

EXHIBIT Z-2.
(Defendant's)

Excise Tax Returns

Exhibits Form B. 93, Revised 1927
1,000,000—5-27

EXCISE TAX RETURN

No. Z2.
Excise Tax
Return
No. 367.
May 4, 1928.

Output of.....*London*.....

Return No.....*367*.....

Output Return No.....

Month of.....*Dec. 1925 to Feb. 28*.....1927

Port of.....*London*..... 10

Date.....*May 4*.....1928

License No.....*2*.....

Mfg. Tax on Export Sales..... Tax
to *Mr. Smith, Detroit, Mich.*

Name of Merchant or Firm	Address	Values, Gallons or Quantities		Tax Due	
				\$	c.
<i>Carling E. B. &</i>	<i>M. Co. Ltd, London, Ont.</i>				
<i>No. of Gallons sold</i>		<i>10584</i>	<i>05</i>		
	<i>Tax thereon @ 12½ per gallon</i>			<i>1323</i>	<i>00</i>

- A. This return is for record purposes only; payments made must be accompanied by Form B. 93 A. 20
- B. This return must be filed not later than the last day of the month following that in which the tax accrued. Penalty for non-compliance, 5 per cent of the amount of the tax, but not exceeding \$25.
- C. Separate return must be made for each month's transactions.

STAMPED:

*Customs—Excise—Canada
May 4th, 1928; London, Ont.*

I, *H. F. Rasmussen, Atty. for Carling E. B. & M. Co. Ltd.*, do solemnly swear that the above amount truly represents all the tax accruing upon sales as imposed by law.

30

Sworn to before me at.....
on this.....day of...192..

.....*H. F. Rasmussen*.....

(Officer of National Revenue, J.P., or
Commissioner or Oaths)

EXHIBIT Z-2.—Continued.

Form B. 93, Revised 1927
1,000,000—5-27

EXCISE TAX RETURN

*In the
Exchequer
Court of
Canada.*

Outport of.....*London*.....
Outport Return No.....
Month of...*Dec. 1925 to Feb. 28*.....1927
Date.....*May 4*.....1928
License No.....*48*.....

Return No.....*368*.....

Port of.....*London*.....

Exhibits
No. Z2.
Excise Tax
Return
No. 368.
May 4, 1928.

—Continued

10

5% Sales Tax on Export.....Tax
Sales to Mr. Smith, Detroit, Mich.

Name of Merchant or Firm	Address	Values, Gallons or Quantities		Tax Due	
				\$	c.
<i>Carling E. B. &</i>	<i>M. Co. Ltd, London</i>				
<i>Net Sales for period</i>		<i>8613</i>	<i>62</i>		
<i>5% Sales Tax thereon</i>				<i>430</i>	<i>68</i>

A. This return is for record purposes only; payments made must be accompanied by Form B. 93 A.

20 B. This return must be filed not later than the last day of the month following that in which the tax accrued. Penalty for non-compliance, 5 per cent of the amount of the tax, but not exceeding \$25.

C. Separate return must be made for each month's transactions.

STAMP

Customs—Excise—Canada May 4, 1928 London, Ont.
--

I, H. F. Rasmussen, Atty. for Carling E. B. & M. Co. Ltd., do solemnly swear that the above amount truly represents all the tax accruing upon sales as imposed by law.

30 Sworn to before me at.....
on this.....day of...192.....

H. F. Rasmussen.....

(Officer of National Revenue, J.P., or
Commissioner or Oaths)

EXHIBIT No. Z-2.—Continued.

*In the
Exchequer
Court of
Canada.*

FORM B-93-A
1,000,000—5-27

EXCISE TAX PAYMENT

Exhibits
No. Z2.
Excise Tax
Payment
Receipt.
May 5, 1928.

Outport of..... *London*..... Entry No.....
 Outport Entry No..... Port of.....
 Registered License No..... *2*..... Date..... *192*.....
 Herewith find remittance in the amount of \$..... *1494.99*..... in respect of Excise Taxes
 as follows :—

—Continued

Fill in carefully the following	Amount		Taxpayer must leave this column blank		
	\$	c.	\$	c.	
<i>5%</i> Penalty for delayed return.....	66	15	66	15	
<i>8%</i> " interest on arrears <i>per annum</i>	105	84	105	84	
" other.....					
Sales Tax.....					
Manufacturers Tax :—					
Automobiles, 5 per cent.....					
" 10 per cent.....					
Ale and Beer, <i>12½</i> cents per gallon, 10584.05 gals.....	1323	00	1323	00	
Wine, <i>7½</i> cents per gallon.....					20
" \$1.50 per gallon.....					
Matches.....					
Playing Cards.....					
Cigars at \$ 0.50 per M.....					
" 3.00 per M.....					
" 7.00 per M.....					
" 10.00 per M.....					
" 16.00 per M.....					
.....					
..... <i>Customs—Excise—Canada</i>					30
Revenue Stamps..... <i>Duty Paid</i>					
Transportation :— <i>May 5 1928</i>					
Steamship Tickets..... <i>L</i>					
Railway Tickets..... <i>Cashier</i>					
Seats and Berths..... <i>London, Ont</i>					
Telegrams or Cables.....					
Embossed cheques.....					
" " Deposit.....			<i>F</i>		
Totals.....	1494	99	1494	99	40

Name of Taxpayer..... *Carling E. B. & M. Co. Ltd.*.....
 Address..... *London*.....

—Reference Return No..... *367*.....

INSTRUCTIONS TO PORT OFFICERS

The Officer in charge of Sales Tax Ledger must allocate in Column No. 2 any penalties to be collected and enter in the same column the balance of the payment as being applied on the particular tax to which it relates.

EXHIBIT No. Z-2.—Continued.

FORM B-93-A
1,000,000—5-27

EXCISE TAX PAYMENT

In the
Exchequer
Court of
Canada.

Outport of *London* Entry No. _____
 Outport Entry No. _____ Port of *London*
 Registered License No. *48* Date *May 4* 1928
 Herewith find remittance in the amount of \$ *486.67* in respect of Excise Taxes
 as follows :—

Exhibits
No. Z2.
Excise Tax
Payment
Receipt.
May 5, 1928.

10	Fill in carefully the following	Amount		Taxpayer must leave this column blank	
		\$	c.	\$	c.
	5% Penalty for delayed return.....	21	54	21	54
	8% " interest on arrears per annum.....	34	45	34	45
	" other.....				
	Sales Tax 5% on \$8613.62.....	430	68	430	68
	Manufacturers Tax :—				
	Automobiles, 5 per cent.....				
	" 10 per cent.....				
	Ale and Beer, 12½ cents per gallon,.....				
20	Wine, 7½ cents per gallon.....				
	" \$1.50 per gallon.....				
	Matches.....				
	Playing Cards.....				
	Cigars at \$ 0.50 per M.....				
	" 3.00 per M.....				
	" 7.00 per M.....				
	" 10.00 per M.....				
	" 16.00 per M.....				
30	.....			
	Revenue Stamps..... <i>Customs-Excise-Canada</i>				
	<i>Duty Paid</i>				
	Transportation :— <i>May 5 1928</i>				
	Steamship Tickets..... <i>L</i>				
	Railway Tickets..... <i>Cashier</i>				
	Seats and Berths..... <i>London, Ont.</i>				
	Telegrams or Cables.....				
	Embossed cheques.....				
	" " Deposit.....			<i>F</i>	
	Totals.....	486	67	486	67

—Continued

40 Name of Taxpayer..... *Carling E. B. & M. Co. Ltd.*
 Address..... *London*
 —Reference Return No..... *368*

INSTRUCTIONS TO PORT OFFICERS

The Officer in charge of Sales Tax Ledger must allocate in Column No. 2 any penalties to be collected and enter in the same column the balance of the payment as being applied on the particular tax to which it relates.

*In the
Exchequer
Court of
Canada.*

EXHIBIT No. 124.—Continued.

Affidavit of G. W. Fish.

Exhibits

No. 124.
Affidavit of
G. W. Fish.
Apr. 19,
1929.

—Continued

IN THE EXCHEQUER COURT OF CANADA.

BETWEEN :

**HIS MAJESTY THE KING, on the information
of the Attorney-General of Canada,**

Plaintiff,

AND

**THE CARLING EXPORT BREWING AND
MALTING COMPANY, LIMITED,**

Defendant.

10

I, George William Fish, of the Town of Walkerville, in the County of Essex, Sergeant of Royal Canadian Mounted Police, make oath and say :—

1. THAT I did on Saturday, the 28th day of April, 1928, personally serve John Kennedy and Samuel J. Low in the hereto annexed subpoena named, each with a true copy of the same by delivering to and leaving with each of the said John Kennedy (commonly known as John A. Kennedy) and Samuel J. Low, such copy and that I did at the time of such service exhibit to each of the said John Kennedy and Samuel J. Low this annexed original subpoena. 20

2. THAT I did serve both of the parties mentioned above at the City of Windsor, in the County of Essex.

3. THAT to effect such service I actually and necessarily travelled a distance of about three miles.

4. THAT at the time of such service I did pay to each of the said parties the sum of \$22.00 as conduct money, being sufficient conduct money as required by law to insure the attendance of each of the said parties.

SWORN before me at the City of Toronto, }
in the County of York, this 19th day of }
April, A.D 1929.

G. W. FISH

A. F. McMICHAEL,
A Commissioner, etc.

30

EXHIBIT No. 124.
(Plaintiff's)

Original Subpoena.

IN THE EXCHEQUER COURT OF CANADA

GEORGE THE FIFTH, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

- | | |
|---|---------------------------|
| <p>1. To HARRY LOW
102. SAMUEL J. LOW
3. W. C. DUNFORD,
4. BASIL BANNON
5. CECIL F. CLAPP
6. JOHN KENNEDY, c/o Carling Export dock, C.P.R.
7. A. M. COWIE, c/o Dominion Bank, Windsor, Ont.</p> | <p>8. H. O. E. PALMER</p> |
|---|---------------------------|

This is the original subpoena referred to in the affidavit of George William Fish sworn before me this 19th day of April, 1929.
A. F. McMichael, A. Comm'r &c.

GREETING :

WE COMMAND YOU that, all excuses ceasing, you and each of you do personally be and appear before the Sittings of this Court to be held at the City Hall, Toronto, Ont., on the Seventh day of May, 1928, at ten-thirty 20 o'clock in the forenoon and so on from day to day until this cause is tried, to testify the truth according to your knowledge in a certain cause depending in Our Exchequer Court of Canada, wherein His Majesty the King is Plaintiff and The Carling Export Brewing and Malting Co. Ltd. is Defendant, on the part of Plaintiff, and that you bring with you and then and there produce all books of account, invoices, vouchers, sales slips, bills of lading, warehouse receipts, bank books and statements, cheques, promissory notes, and in general all documents relating to dealings of the defendant, the Bermuda Export Co., F. Savard, B. Syringe, yourself, or any of them in connection with sale of the defendants products, and show all and singular those things which you know, 30 or which the said paper writing doth import of, in or concerning the present cause now depending in Our said Court, and hereof fail not at your peril.

WITNESS the Honourable the President of Our Exchequer Court of Canada, at Ottawa, the 23rd day of April, in the year of Our Lord one thousand nine hundred and twenty-eight and in the eighteenth year of Our reign.

[SEAL]
[LAW STAMP, \$1.00]

ARNOLD W. DUCLOS,
Dep. Registrar.

*In the
Exchequer
Court of
Canada.*

Exhibits
No. 124.
Original
Subpoena.
Apr. 23,
1928.

*In the
Exchequer
Court of
Canada.*

—
Exhibits
Nos. I-P
Cartons,
Bags,
Tags, etc.

EXHIBIT No. I.

(Defendant's)

Carton for black label beer with letters BL printed on each end of the carton.

EXHIBIT No. J.

(Defendant's)

Bag with the following letters stamped thereon : FD—BL—DM.

EXHIBIT No. K.

(Defendant's)

Bag with the following letters stamped thereon : FS—AA—DM.

EXHIBIT No. L.

(Defendant's)

Samples of three rubber stamps as follows :

1. F. Savard Detroit Michigan.
2. F.S.
D.M.
3. B.S.
D.M.

10

EXHIBIT No. M.

(Defendant's)

Tin tag with the following printed thereon : "The Carling E. B. and 20 M. Co. Ltd. London, Ont."

EXHIBIT No. N.

(Defendant's)

Two bungs.

EXHIBIT No. O.

(Defendant's)

(1) Bottle having two labels, one with the wording "Carling Black Label Lager Beer finest rice and malt beer"; the other label having the words 'Export Carling'.

(2) Stopper with the words "Carlings London rice beer".

30

EXHIBIT No. P.

(Defendant's)

(1) Bottle with label with wording "Carling London Canada Club Lager."

(2) Stopper for Canada Club Lager bottle.

EXHIBIT No. T.

(Defendant's)

Book containing samples of labels used by Defendant Company.

No. T
Book of
Samples

BETWEEN

THAT

10

I, GEORGE A.
compared the same
with the originals and
such originals.

Date

Certificate

20 **IN THE EXCHEQUER**

BETWEEN :

**HIS MAJESTY THE KING, O.
THE ATTORNEY-GENERAL C.**

AND

**THE CARLING EXPORT BREWING &
COMPANY LIMITED,**

I, the undersigned Registrar of the Exchequer C.
30 hereby certify that the foregoing printed document from p.
inclusive, is the Case stated by the parties, pursuant to S.
Supreme Court Act, and the rules of the Supreme Court of
appeal to the Supreme Court of Canada, in a certain Case pe.
said Exchequer Court of Canada wherein His Majesty the K.
information of the Attorney-General of Canada was Plaintiff and th.
Export Brewing and Malting Company Limited was Defendant.

In testimony whereof, I have hereunder subscribed my name and a.
the seal of the said Exchequer Court of Canada this day of Septem.
1929.

40

Registrar, Exchequer Court of Canada.

1087

No. 48

Certificate of Comparison

IN THE SUPREME COURT OF CANADA

BETWEEN :

**HIS MAJESTY THE KING, ON THE INFORMATION OF
THE ATTORNEY-GENERAL OF CANADA,**

(Plaintiff) APPELLANT :

AND

10 **THE CARLING EXPORT BREWING AND MALTING
COMPANY LIMITED,**

(Defendant) RESPONDENT.

I, GEORGE ALEXANDER URQUHART, hereby certify that I have personally compared the annexed print of the case in appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals.

Dated this 5th day of September 1929.

a solicitor for the Appellant.

*In the
Exchequer
Court of
Canada.*

No. 48
Certificate
of Com-
parison.
August 31,
1929.

No. 49

Certificate of Registrar

IN THE EXCHEQUER COURT OF CANADA

20

BETWEEN :

**HIS MAJESTY THE KING, ON THE INFORMATION OF
THE ATTORNEY-GENERAL OF CANADA,**

Plaintiff:

AND

**THE CARLING EXPORT BREWING AND MALTING
COMPANY LIMITED,**

Defendant.

30 I, the undersigned Registrar of the Exchequer Court of Canada do hereby certify that the foregoing printed document from page 1 to page 1086 inclusive, is the Case stated by the parties, pursuant to Section 68 of the Supreme Court Act, and the rules of the Supreme Court of Canada, in an appeal to the Supreme Court of Canada, in a certain Case pending in the said Exchequer Court of Canada wherein His Majesty the King, on the information of the Attorney-General of Canada was Plaintiff and the Carling Export Brewing and Malting Company Limited was Defendant.

In testimony whereof, I have hereunder subscribed my name and affixed the seal of the said Exchequer Court of Canada this day of September, 1929.

Registrar, Exchequer Court of Canada.

*In the
Exchequer
Court of
Canada.*

No. 49
Certificate
of Registrar.
Sept., 1929

40

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA
(ONTARIO).

BETWEEN :

HIS MAJESTY THE KING on the Information of the
Attorney-General of Canada,

(Plaintiff) APPELLANT,

—AND—

THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED,

(Defendant) RESPONDENT.

APPELLANT'S FACTUM

W. STUART EDWARDS, K.C.,

Solicitor for the Appellant.

McTAGUE, CLARK & RACINE,

Solicitors for the Respondent.

S. RUPERT BROADFOOT,

Ottawa Agents for the Respondent.

TORONTO

THE HUNTER-ROSE COMPANY, LIMITED

1929

IN THE SUPREME COURT OF CANADA

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA
(ONTARIO)

BETWEEN :

HIS MAJESTY THE KING on the Information of the
Attorney-General of Canada,
(Plaintiff) APPELLANT,

—AND—

10 THE CARLING EXPORT BREWING AND MALTING COMPANY,
LIMITED,
(Defendant) RESPONDENT.

APPELLANT'S FACTUM

PART I

STATEMENT OF FACTS

1. This is an appeal from the judgment of the Honourable Mr. Justice Audette, Puisne Judge of the Exchequer Court of Canada, dated the 29th day of April, 1929, (Case, p. 673) in so far as by the said judgment, the learned Judge refused to allow the Appellant's claim in this action.

2. The action was brought by the Appellant, against the Respondent, 20 for the sum of \$163,828.07, sales tax, payable under the provisions of the Special War Revenue Act, 1915, and amendments thereto, in respect of beer sold by the Respondent between the 1st day of April, 1924, and the 1st day of May, 1927 ; and for the sum of \$260,662.21, gallonage tax payable under the said Act and Amendments thereto in respect of beer manufactured

and sold by the Respondent between the same dates ; and for interest on said taxes at the rate of five per centum per annum from the respective dates when the said taxes became due up to the 1st day of June, 1927 and thereafter at the rate of two-thirds of one per centum per month until paid. (Case, p. 1).

3. The Respondent disputed liability for the Appellant's claim on the ground that the beer in respect of which the said taxes were claimed was manufactured for export and exported and alleged that under the provisions of the Special War Revenue Act and Amendments thereto the Respondent was not liable to pay the said taxes. (Case, p. 3).

10 4. At the trial the learned trial Judge held that the Appellant was entitled to payment from the Respondent of Sales Tax on certain cash sales of strong beer sold in London and the vicinity ; and of sales and gallonage taxes on certain sales of strong beer to one Bannon in Windsor. As to the balance of the Appellant's claim, the learned trial Judge held that the Respondent was liable to pay gallonage and sales taxes on all sales in respect of which export entries were not produced but that the production of the Export Entries was sufficient proof of export and that the Respondent was not liable for sales or gallonage tax in respect of those sales on which tax had not been paid and which were covered by Export Entries produced.
20 (Case, p. 671). According to the evidence, the Export Entries produced covered about eighty-three per centum of the total sales. (Case, p. 669, l. 36—p. 670, l. 8). The learned trial Judge also held that the Appellant was entitled to interest at five per centum per annum until paid in respect of transactions prior to April 14th, 1927, and to penalties at the rate of two-thirds of one per centum per month until paid in respect of transactions subsequent to April 14th, 1927, but was not entitled to the said penalty on transactions prior to said date. (Case, p. 674, ll. 23-30).

5. The amount claimed by the Appellant, in respect of gallonage tax, is payable under Section 19B. 1. (b) of The Special War Revenue Act, 1915,
30 which, as amended by 12-13 George V, Chap. 47, Sec. 14, provided as follows :

19B. 1. (b) "There shall be imposed, levied and collected upon all
"goods enumerated in Schedule II to this Part, when such
"goods are imported into Canada or taken out of warehouse
"or when any such goods are manufactured or produced in
"Canada and sold on and after the twenty-fourth day of
"May, one thousand nine hundred and twenty-two, in
"addition to any duty or tax that may be payable under
"this Act, or any other statute or law, the rate of excise
"tax set opposite to each item in said Schedule II."

40 (c) "Where the goods are imported such excise tax shall be
"paid by the importer and where the goods are manu-

“factured or produced and sold in Canada such excise tax shall be paid by the manufacturer or producer ; provided that if an automobile is, on the twenty-fourth day of May, one thousand nine hundred and twenty-two in the hands of a dealer and not sold to a bona fide user the tax shall be paid by such dealer when such automobile is sold.”

- 10 (d) “The Minister may require every manufacturer or producer to take out an annual license for the purposes aforesaid, and may prescribe a fee therefore, not exceeding two dollars, and the penalty for neglect or refusal shall be a sum not exceeding one thousand dollars. Provided that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise.”

Schedule II. “Ale, beer, porter and stout, per gallon,
“twelve and one-half cents.”

6. The amount claimed by the Appellant, in respect of sales tax, is payable under Section 19BBB. 1. of The Special War Revenue Act, 1915, which, as amended by 14-15 George V, Chap. 68, Sec. 1 (1), provided as follows :—

- 19BBB. 1. “In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of five per cent. on the sale price of all goods produced or manufactured in Canada, including the amount of excise duties when the goods are sold in bond, which tax shall be payable by the producer or manufacturer at the time of the sale thereof by him ; and in the case of imported goods the like tax upon the duty paid value of the goods imported payable by the importer or transferee who takes the goods out of bond for consumption at the time when the goods are imported or taken out of warehouse for consumption. For the purpose of calculating the amount of the consumption or sales tax, ‘sale price’ shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto.
- 30

“Provided that the consumption or sales tax specified in this section shall not be payable on goods exported. . .”

By the amendment of 1927, 16-17 George V, Chap. 36, Sec. 3, the rate of tax was changed from five per cent. to four per cent. as from the 18th day of February, 1927.

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7. By an amendment to the said statute, 17 George V, Chap. 69, Sec. 4, it is provided :—

19CC (3) “In default of payment of the tax or any portion thereof
 “within the time prescribed by this Act or by regulations
 “established thereunder, there shall be paid in addition
 “to the amount in default a penalty of two-thirds of one
 “per centum of the amount in default in respect of each
 “month or fraction thereof during which such default
 “continues after the coming into force of this section.”

10The said amendment came into force on the 14th day of April, 1927.

8. The Respondent was licensed as a Brewer under the Excise Act R.S.C. 1906, Chap. 34, and manufactured beer at the City of London, in Ontario. The owners of all the capital stock in the Respondent Company, other than qualifying shares held by Mrs. Low and Mrs. Leon, were Charles Burns, the President, Harry Low, the Vice-President, and Marco Leon, the Secretary-Treasurer of the Respondent. (Case, p. 253, ll. 13-18; and p. 566, ll. 19-27). From the 1st day of April, 1924, to the 1st day of August, 1925, the Respondent (subject only to certain errors in calculation) paid
 20gallonage tax on all beer manufactured and sold by it (Case, p. 547, ll. 13-14 and Exhibit 2, Case, p. 799) but only paid sales tax on certain of its sales and disputed liability in respect of the remaining sales claiming that the goods were exported. From the 1st day of August, 1925, to the 1st day of May, 1927, the Respondent paid sales and gallonage tax on only certain of its sales and disputed liability in respect of the remaining sales claiming that the goods were manufactured for export and were exported.

9. The general method of handling the beer, on the sale of which the Respondent did not pay tax, was as follows :—With few exceptions the beer was entered in the Respondent's books as being sold to one purchaser. From April 1st, 1924, to September, 1925, the name of the purchaser so entered
 30was C. B. Grandi, Detroit, Michigan. From September, 1925, until January, 1927, the name was F. Savard, Detroit, Michigan, and from January, 1927, on the name was B. Syringe, Detroit, Michigan. (Case, p. 308, l. 31 to p. 309, l. 12; p. 316, l. 1 to p. 317, l. 4 and p. 317, ll. 25-30). The Respondent officers admitted at the trial that F. Savard and B. Syringe were the same person, (Case, p. 572, ll. 14-16), but claimed that Grandi was a different person, although in the books of the Respondent the debit balance in Grandi's account is carried to the debit of Savard's account and the Grandi account is thus closed. (Case, p. 259, l. 28). Where the sales were entered in the Respondent's books in the names of other persons, they were dealt with
 40substantially the same way.

The beer was shipped from London to a border point in Ontario, consigned to the purchaser in care of a resident of Ontario, who took delivery for the

purchaser in Ontario and stored the beer in warehouses or on docks at the border until it was resold, either to American or Canadian purchasers, who subject to a few exceptions, where credit was allowed, paid the purchaser the money and took delivery at the docks in Ontario. (Morrison, Case, p. 256, ll. 17-21 and ll. 29-37 ; p. 259, ll. 6-17 p. 262, ll. 10-15 and ll. 26-31 ; Low, p. 607, l. 17 ; p. 621, ll. 10-40 ; p. 651, ll. 16-23 ; Koven, p. 458, ll. 34-39 ; p. 459, ll. 11-18 ; p. 460, ll. 20-22 ; p. 462, ll. 11-17 ; p. 463, ll. 3 and 4 ; Diesborg, p. 474, ll. 17-20 and l. 40 to p. 475, l. 15 ; p. 475, ll. 32-35 ; Paquette, p. 480, l. 1, 481, l. 14 ; Bannon, p. 222, l. 29—
 10p. 223, l. 12 ; p. 224, l. 5-l. 23). None of the beer was shipped from London on a through Bill of Lading to a purchaser in a foreign country. (Case, p. 667, ll. 10-17). The Respondent did not apply for or obtain from the United States Consular Officers consular certification on any of the invoices of the beer so shipped as is required by the United States law. (Case, p. 420, ll. 37-38 and p. 179, ll. 18-31).

10. From April 1st, 1924, until March, 13th 1926, one Custom's Export Entry form (a form prescribed by regulations of the Governor in Council under the Customs Act, commonly known as a B.13, (Exhibits 19 and 20, Case, pp. 690, 687)) was made out by the Respondent in London to cover
 20each shipment from London. (Case, p. 371, l. 26--p. 372, l. 8). One copy was handed to the Railway and accompanied the goods to the border point. Additional copies together with the Bill of Lading and invoice were sent to the person in whose care the goods were shipped. (Case, p. 372, l. 15-l. 31 ; p. 692, ll. 12-20). The B. 13 so made out at London was not completed by presentation to the Customs Officer at the border but new B. 13's were made out there in the name of the Respondent, by the purchaser's agent or representative for such amounts as were required from time to time to cover the resales of beer from the warehouse or dock. (Case, p. 476, ll. 12-35). During this period there is nothing on the B. 13's made out at the border
 30identify any of them with any particular shipment from London. (Case, p. 542, ll. 12-24).

11. From March 13th, 1926, until May 1st, 1927, under instructions from the Department of Customs, (Exhibit 21B., Case, p. 723) the above practice was discontinued and when a shipment was made from London, a number of B. 13's were made out at the Brewery in various denominations from five to one hundred cases each. Copies of these B. 13's were forwarded to the agent or representative of the purchaser at the Border. (Case, p. 372, ll. 9-31). The date on these B. 13's indicates the date on which the beer was shipped from London. The goods usually reached the border the day
 40after shipment from London. The date of the Customs Stamp on the B. 13 indicates the date on which the B. 13 was presented to a Customs Officer at the Border as an export entry, being the date on which it claimed the goods were exported. The period which elapsed betwe is
 en

these two dates varied from a few days to several weeks, and, in some cases, several months. (Exhibit 120, Case, pp. 818-843 ; Exhibit 94, Case, p. 903). During this period, the general practice was to insert in the B. 13's made out at London the number of the railway car in which the shipment was made from London, and it is therefore possible (in most cases) to identify the B. 13's with particular shipments. (Case, p. 542, ll. 12-24).

12. When the B. 13's were presented to the Customs Officer at the Border he retained two copies in the case of a main port and three copies in the case of an out port. If the port was a main port, the officer placed his stamp in the lower left hand corner, gave it an export entry number and forwarded one copy to the Statistics Branch of the Department of Customs in Ottawa and retained the other at the port. If the port was an out port, the B. 13 was stamped and numbered with the out port number and two copies so stamped and numbered were sent to the main port where the entry was given a main port number and one copy so numbered sent to the Statistics Branch aforesaid, the other copy being retained at the main port. It was at the Statistics Branch of the Department of Customs in Ottawa that a record was made of all the export entries from all the Customs Ports in Canada. (Exhibit 19, Case, pp. 690-692 ; Exhibit 20A, Case, p. 694).

20 13. In so far as there is evidence of the loading or shipment of the beer after it was resold, it was laden on board small motor boats, speed boats, large open boats,—all being undecked vessels. At Kingsville, according to the evidence, larger boats were used to meet conditions on the lake. (Case, p. 354, l. 37—p. 355, l. 4 ; p. 232, ll. 20-22).

Period from April 1st, 1924, to September 1st, 1925, during which the name "Grandi" was entered in the Respondent's books as purchaser.

14. On the 15th day of May, 1924, the Respondent and other Ontario Breweries entered into an agreement with one, A. S. Fitzgerald as trustee, 30 (Exhibit 74, Case, p. 725) whereby they bound themselves under heavy penalties to sell all beer covered by the agreement at the prices fixed by the agreement to be paid before delivery of the beer. Fitzgerald stationed cashiers at the docks to collect \$4.00 for each case of two dozen pints and other prices specified in the agreement, before authorizing the dockmen to deliver the beer to the purchasers. (Case, p. 341, l. 4—p. 342, l. 21 and p. 345, ll. 1-42). The prices so collected by Fitzgerald were substantially in excess of the invoice prices in the Respondent's books. (Exhibit 112, Case, p. 811). The money collected by Fitzgerald was remitted by him to the Respondent. Low, the Respondent's Vice-President, stated in evidence 40 that the Respondent did not intend to carry out and did not in fact carry out the Fitzgerald agreement but on the contrary continued to sell to Grandi at the price entered in the books, and that Low paid to Grandi the difference

between the price collected by Fitzgerald and the price at which the goods were invoiced to Grandi, but there is no record of such payments in the books of the Respondent. (Case, p. 593, l. 24—p. 594, l. 27 and p. 595, ll. 19-33). By reason of violations of the agreement, Fitzgerald resigned as trustee on September 20th, 1924, and the agreement came to an end. (Case, p. 348, l. 1—p. 349, l. 16).

15. According to the evidence, all money collected at the docks from 1st. April, 1924, to 1st September, 1925, represented the price at which Grandi had resold the beer. (Case, p. 621, l. 10—p. 622, l. 6). No record
10 was produced of these sales at the border but the books of the Respondent at London record the receipt of money, the proceeds of the sale of beer in accounts other than the sales accounts. The balance to the credit of these accounts was carried into the profits of the Respondent. According to the evidence, the amounts credited to these accounts represented amounts received by the Company from customers in excess of the amount charged in the books and were paid to the Respondent's bookkeeper by the President, Mr. Burns, who directed them to be so entered. (Case, p. 278, ll. 8-29 and p. 89, l. 32—p. 90, l. 33 and p. 544, ll. 17-32).

20 Period September 1st, 1925, to May 1st, 1927, during which the name entered in the Respondent's books as purchaser was either Savard or Syringe.

16. Low's evidence is that in the fall of 1925, an arrangement was made with one F. Savard by which Savard was to take all the Respondent's beer for export to the United States at \$1.75 per case, and that the proceeds of the resale of the beer, less expenses, were to be divided equally between Low and Savard and that subsequently he agreed to divide his share with Burns and Leon his associates, each taking one-third. (Case, p. 570, l. 27—p. 571, l. 15 and p. 572, ll. 12-26).

30 No agreement in writing between Savard and the Respondent, or between Savard and Low, or between Savard and Low, Leon and Burns was produced, and the evidence is that none was in existence. (Case, p. 620, ll. 9-12). During the period covered by these transactions with Savard, Low, Leon and Burns were carrying on a liquor business at the border and an agreement dated the 3rd day of April, 1926, (Exhibit 125, Case, p. 1054) between Consolidated Exporters Corporation Limited of Vancouver and Low, Leon and Burns, relating to such liquor business, was produced. Low's evidence was that the liquor business was carried on in the same way as the beer business, Savard being the consignee of both beer and liquor, and the profits being divided in the same way in both cases. (Case, p. 599, l. 19—p. 602, l. 9).

40 17. During this period the Respondent and other Breweries in Ontario formed a Company under a Bermuda charter called the Bermuda Export Company Limited to handle all beer at border points in Ontario and entered

into an agreement with one G. U. Stiff, as trustee, whereby they bound themselves under heavy penalties to export or sell for export only to or through the Bermuda Export Company Limited, and at prices fixed in the agreement which were at the rate of \$3.25 per carton of two dozen pints, (Exhibit 22, Case, p. 743). By a further agreement between the Respondent and the Bermuda Export Company Limited, dated June 15th, 1926, (Exhibit 27, p. 749) the Respondent bound itself under heavy penalties that none of its malt products should be "shipped by it from any of the places aforesaid for export or by it sold for export from any of the said places to any person,
 10 firm, association or corporation" other than the Bermuda Export Company Limited. The Bermuda Export Company Limited agreed to remit periodically to the Respondent \$2.50 per carton and to forward to G. U. Stiff the residue of the proceeds after deducting expenses and other amounts provided for by the agreement. Other Ontario breweries entered into similar agreements. It was further provided in the Stiff agreement that at the end of each month, Mr. Stiff should divide 25c. per carton equally among the several breweries party to the agreement and, commencing at the end of the fourth month, that he should divide the residuary receipts for the first month, after deducting his expenses, among the several breweries party to the agreement
 20 in proportion to the business done by each in that month and so from month to month from then on. Commencing July 15th, 1926, the beer was handled at the docks by the Bermuda Export Company Limited which took over the docks, collected the selling price of the beer before delivery thereof and paid to the Respondent, weekly, \$2.50 per carton in respect of its beer sold. The balance of 75c. per carton, less the Company's cost of operation, depreciation, etc., was remitted to G. U. Stiff who in turn distributed this amount in accordance with the terms of the agreement amongst the several breweries who were parties to it. These agreements continued in force throughout the period and were in force on the 1st day of May, 1927. (Case, p. 116,
 30 l. 34—p. 117, l. 3 ; p. 118, l. 21—p. 119, l. 26 ; p. 124, ll. 10-13 and l. 30—p. 125, l. 6).

18. The monies collected at the docks, and the greater part of the monies paid by the Bermuda Export Company Limited were deposited in the Dominion Bank at Windsor in an account in the name of the Respondent. Sums representing \$1.75 per case, being the price charged in the Respondent's books to Savard, were from time to time transferred from this account to London and entered in the Respondent's books to the credit of Savard but the balance of the money in the Respondent's Windsor bank account was not so transferred. This balance was withdrawn by Low and, according
 40 to his evidence, was divided between Savard and Low after deducting expenses of resale and handling at the Border and Low's share divided between Low, Leon and Burns. The amounts so withdrawn by Low amounted to a sum in excess of \$640,000.00. No books or records were produced with reference to the amounts collected at the docks or with reference to the amounts with-

drawn from such bank account other than the records in the Respondent's books at London of the amounts from time to time transferred there. Low swore that the Respondent kept no records of the transactions at the Border but that Savard kept books in Windsor which were in charge of one John A. Kennedy. These records were not produced and Kennedy, who was subpoenaed by the Appellant for the trial, met his death before the trial. (Case, p. 582, ll. 15-37 ; p. 584, l. 27—p. 586, l. 8 ; p. 599, ll. 19-37 ; p. 142, ll. 26-31 ; Exhibit 124, Case, p. 1084-1085).

19. Stiff, the trustee under the Bermuda Export Company agreement, 10 disbursed the Respondent's share of the monies received by him by seven cheques payable to the Respondent. Two of these cheques were deposited in the Respondent's Windsor bank account ; one was deposited in the bank account of Low, Leon and Burns, and three were carried into the Respondent's books at London but were not credited to sales. They were credited in an account under the name of "F. Savard Expenses re Windsor Dock Account". (Case, p. 109, l. 25—p. 111, l. 30 ; p. 173, l. 28—p. 174, l. 4 ; p. 542, l. 38—p. 543, l. 4 ; p. 599, l. 38—p. 600, l. 24 ; Exhibit 25, Case, pp. 765, 766, 767, 768, 773, 774 and 776).

20. Low was one of the active, executive officers of The Bermuda Export Company Limited (Case, p.596, ll. 11-17 and p. 194, ll. 15-19) but, notwithstanding the agreement between the Respondent and the Bermuda Export Company (Exhibit 27, Case, p. 749), the Respondent, according to Low's evidence, sold all its products to Savard at \$1.75 per case. Low stated that Savard was the real purchaser at the prices entered in the Respondent's books, that the sales made and the prices collected by the Bermuda Export Company Limited were in reality sales for Savard and the prices at which Savard resold the goods and that Savard was entitled to the entire proceeds of the resale subject to payment of the invoice price to the Respondent and to a division of the net profits on the resale with Low. All the monies 30 collected at the docks from September 1st, 1925, to May 1st, 1927, represented the price at which Savard resold the beer. (Case, p. 597, ll. 15-17 ; p. 607, l. 30—p. 608, l. 10 ; p. 599, ll. 19-23 ; p. 575, ll. 1-12 ; p. 584, ll. 19-26).

21. Morrison, the Respondent's accountant, stated that where sales were charged in the Respondent's books to accounts in the names of other than Savard or Syringe such names were the names of Savard's customers ; and that amounts credited to such accounts in excess of \$1.75 per carton represented the difference between \$1.75 and Savard's resale price. This surplus was transferred to an account known as the "F. Savard Commission Account". (Case, p. 308, ll. 14-26 ; p. 299, l. 34--p. 300, l. 12.)

40 22. There were a limited number of sales on which tax was not paid, which were not handled in the general way outlined above, namely :

(a) Cash sales of strong beer sold at the brewery in London, delivery

of which was made by the Respondent's trucks in and around London. The Respondent paid sales tax on such cash sales as included 2.5% beer but did not pay sales tax on strong beer cash sales and in its books the strong beer cash sales were carried into the ledger in the same account as the so called export sales. (Case, p. 376, l. 7—p. 377, l. 13 ; p. 435, l. 28—p. 436, l. 3 ; p. 539, ll. 29-40 and p. 540, l. 37—p. 541, l. 8). The judgment appealed from allows the Appellant sales tax on these sales. (Case, p. 673, l. 31).

(b) Sales and shipments by rail from London where the car containing the beer was either before or after leaving London billed as a car of some commodity other than beer. According to the evidence, three of such cars were seized by the Ontario Provincial Police in London, in July, 1924, billed for shipment as cars of "canned milk". (Case, p. 210, l. 26—p. 211, l. 26). Two other cars were seized in Windsor, in September, 1924, billed to merchants in Windsor as "oil". (Case, p. 215, l. 38—p. 217, l. 15). The Appellant has no means of knowing how many cars were so shipped. Low stated that the false billing was not done by the Respondent and that the Respondent had no control over the beer after it was loaded on cars at the brewery. (Case, p. 625, l. 10—p. 626, l. 6 and p. 627, l. 40—p. 628, l. 7).

(c) Certain sales charged in the books to one "Smith, Detroit" which, according to the evidence, represented beer delivered to purchasers at the brewery. Tax on these sales was paid by the Respondent while the trial of the action was pending. (Case, p. 300, l. 22—p. 302, l. 9 and p. 174, ll. 12-34).

(d) Certain sales of beer from the docks or warehouses at Windsor to Basil Bannon of Windsor, delivery being made to Bannon's trucks of the beer and of B. 13's which he carried for protection against seizure by the Provincial Police. From the beer so purchased, Bannon made local sales in Ontario. (Case, p. 222, l. 29—p. 224, l. 27). The Appellant has no means of ascertaining how many similar transactions were entered into.

23. The Respondent, from time to time, filed sworn returns of gallonage and sales tax on which the affidavit was in the following form :

"I.....do solemnly swear
"that the above amount correctly represents all the tax accruing
"upon sales of merchandise sold as imposed by law." (Exhibit
A, Case, p. 1044).

The Respondent omitted from the sworn returns of sales tax and from the sworn returns of gallonage tax, filed after July 1925, not only the goods claimed to have been exported but also all the sales referred to in paragraph twenty-two hereof. No explanation was given by the Respondent at the trial of these false sales tax returns. Mr. Burns, the President of the Respondent, who was in charge at the brewery and made many of the returns, was not called as a witness.

24. During the whole period of this action, there were in force in the Province of Ontario, the following statutes :

1. The Ontario Temperance Act, 6 George V, Chap. 50, and amendments thereto, which prohibited under heavy penalties the sale of liquor in Ontario, but excepted from this prohibition, sales by a brewer to a person in another province, or in a foreign country. (Section 45) (Appendix, p. 34).

2. The Liquor Transportation Act, 10-11, George V, Chap. 80, and The Carriage of Liquor Act, 12-13, George V, Chap. 87, which prohibited in Ontario, under heavy penalties, all transportation or carriage of liquor other than liquor for export from Ontario, liquor in transit through Ontario, and certain transactions authorized by statute and not material to the decision of the questions involved in this action. (Appendix, p. 35).

25. By the 18th Amendment to the Constitution of the United States of America, which came into force on the 17th day of January, 1920, and is still in force, the importation of intoxicating liquors into the United States for beverage purposes was prohibited. The National Prohibition Act, enacted by the United States Congress, to give force and effect to the provisions of the 18th Amendment likewise prohibits, under heavy penalties, the importation of intoxicating liquors for beverage purposes. (Case, p. 175, 20l. 5—p. 176, l. 34). This law is one of the Criminal Laws of the United States. (Case, p. 483, ll. 22-37 ; p. 485, l. 38—p. 486, l. 23). Section 37 of the Criminal Code of the United States provides as follows :

“That if two or more persons conspire either to commit any offence against the United States or to defraud the United States in any manner or for any other purpose and one or more of such parties do not act to effect the object of the conspiracy, each of the parties to such conspiracy will be subject to a fine of not more than \$10,000.00 or to imprisonment for not more than two years or both.” (Case, p. 178, ll. 16-36).

26. Under the United States Tariff Act, no merchandise valued at over \$100.00 was permitted entry into the United States without the production of an invoice therefor certified by the Consular Officer of the United States for the Consular district in which the merchandise was manufactured or delivered for shipment. (Case, p. 179, ll. 18-31). The Respondent did not apply for or obtain consular certification in respect of any of the invoices for the shipment of beer, (Case, p. 420, ll. 37 and 38) but did apply for and obtain such certification in respect of invoices on goods other than beer shipped by it to the United States. (Case, p. 203, l. 7—p. 204, l. 28).

28. On the 6th day of June, 1924, a treaty was entered into between Canada and the United States for the suppression of smuggling operations along the boundary between Canada and the United States as set out in exhibit 45A, (Case, p. 790). The treaty went into effect in 1925.

PART II

The Appellant submits that the judgment appealed from, in so far as the Appellant's claim was disallowed, is erroneous in the following respects :—

(1) Where a tax is imposed by statute and an exception or exemption is granted by way of proviso, as in this case, the defendant must set up such exception or exemption and prove it as a defence and the learned trial judge should have so held.

(2) There can be no exemption from gallonage tax in respect of goods manufactured for export or exported unless regulations have been prescribed 10 by the Minister of Customs and Excise as provided in the Special War Revenue Act, Section 19.B. No regulations were prescribed by the Minister and there can be therefore no exemption and the learned trial Judge should have so held.

(3) There can be no exemption from sales tax unless the goods were actually exported by the Respondent. The Respondent did not export any of the goods in question and the learned trial Judge should have so held.

(4) The meaning to be given to the words "export" and "exported", as used in the provisoes, is actual transportation from Canada to a foreign country and the Respondent did not prove that the beer in question was so 20 transported.

(5) The words "export" and "exported", as used in the said provisoes, mean lawful export; transactions entered into in Canada, having as their object the performance in a foreign and friendly country of acts in violation of the fundamental and criminal laws of that country, are unlawful in Canada and do not entitle the Respondent to exemption.

(6) The Respondent's defence is based on the proof of transactions which involve the violation of the fundamental and criminal laws of a foreign and friendly country and as such are illegal by the law of this country and the courts of Canada should not entertain such a defence.

30 (7) The learned trial Judge erred in holding that the penalties provided by Section 19CC (3) as enacted by 17 George V, Chap. 69, s. 4, are applicable only to transactions subsequent to the date on which it came into force.

The Respondent has given notice that it intends upon the hearing of this appeal to contend that the judgment appealed from should be varied in the following amongst other respects :

(1) The action should be dismissed with costs.

(2) The Plaintiff should not be awarded interest or penalties.

(3) In determining the amount, if any, payable by the defendant, credit should be given for all payments made by the defendant to 40 the Crown for gallonage or sales taxes on good exported.

(4) Any sales taxes for which the defendant is liable should be calculated on the price of the goods as shown in the invoices and not at any so called advanced price.

- (5) In determining the amount, if any, payable by the defendant, account should be taken of any further B. 13's produced which were not produced and put in as exhibits at the trial. (Case, p. 684).

The Appellant submits that the judgment of the learned trial Judge is correct and should be affirmed in respect of the matters complained of by the Respondent.

PART III ARGUMENT

1. Where a tax is imposed by statute and an exception or exemption is granted by way of proviso, as in this case, the defendant must set up such exception or exemption and prove it as a defence and the learned trial Judge should have so held.

The taxes payable under Section 19B. 1. (b) and 19BBB. 1. are imposed, levied and to be collected on all beer manufactured and sold. The respective clauses enacting the imposition of the tax are complete in themselves ; they contain no words limiting their scope and the time at which the taxes imposed become payable is definitely prescribed in each section as being the time of sale.

The conditions entitling to exemption are set out in the provisos to the respective sections, and it is submitted that the Respondent must allege and prove strict compliance with the conditions so set out.

It is submitted that where a penalty is prescribed by statute and an exception is stated by way of proviso in a subsequent part of the Act, the Defendant must set up such exception and prove it as a defence. (*Rex v Jarvis* (1754) 1 East 643 ; *Steel v Smith*, 1 B. & Ald. 94 ; *Jone v Axton*, 1 Lord Raym 119 ; *Thibault v Gibson* (1843) 12 M. & W. 88 ; *Apothecaries Company v Bentley*, 1 Car. & P. 539 ; *Chitty on Pleading*, 7th Edition 246, 247) ; and that this principle also applies where the proviso containing an exception follows in the same section which creates the offence and gives the penalty, and where the proviso is not incorporated with the enacting clause by any words of reference. In *Rex v James* (1902) 1. K.B. 540, Lord Alverstone, C. J., in giving judgment of the court, after referring to the above cases and others, said—

“We think the substance of the authorities is this : that it is
 “not necessary for the prosecution to negative a proviso, even
 “though the proviso be contained in the same section of the
 “Act of Parliament creating the offence, unless the proviso is
 “in the nature of an exception which is incorporated directly
 “or by reference with the enacting clause, so that the enacting
 “clause cannot be read without the qualification introduced by
 “the exception.”

The same rule is laid down in (and in *Steel v Smith*, 1. B. & Ald. 1. K.B. 540 has been followed and (1907) 1. K.B. 383 ; *Bell v Grant* Rex v Irwin 16 O.L.R. 454.

The principles above referred to in cases. *Rex v James* (1902) 1. K.J. 1928 A.C. 290, 293).

The above principles are directed 10 of The Special War Revenue Act have arisen thereunder. *Rex v* was an action brought for tax paid which sales tax is claimed in the present cases, *Grant, J.A.* at page 223 see

20 "In my opinion, the
"construction laid down
"of goods "exported"
"incumbent upon the
"which they must show
"obtain the benefit of

Dominion Press, Limited v C.L.R. 583, 1928 A.C. 340, also L.C. in delivering the judgment referring to the proviso to Section

"The proviso is an
"its protection the tax
"guage."

2. There can be no exemption of goods manufactured for export 30 been prescribed by the Minister in the Special War Revenue Act prescribed by the Minister and the learned trial Judge said

The wording of the proviso
"Provided that such
"goods are manufactured
"by the Minister of

An examination of the proviso that where "export" is the condition 40 statute and no regulations are

port" is the test it is also clearly stated and regulations are required. Exemption is provided in the case of goods "exported" in the following cases :—*Playing Cards*, in Section 19BB. 1.(b) ; *Wines*, in Section 19BB. 1. (e) ; and *Sales Tax*, in Section 19BBB. 1. In none of these cases are regulations required.

The exemption is provided where goods are "manufactured for export" in the proviso to Section 19B above quoted and in the proviso to Section 16A relating to the stamp tax on matches and in both cases regulations are required.

The exemption is not in favour of goods manufactured for export but of goods manufactured for export under regulations prescribed by the Minister of Customs and Excise.

It is submitted that Parliament in providing that the Minister should prescribe regulations had in view the practical difficulty in the absence of regulations, of determining whether or not the goods were "manufactured for export" and intended that by means of such regulations to be prescribed adequate machinery would be provided for determining this question. In the absence of such regulations there can be no exemption.

In the case of *Dominion Press, Limited, v Minister of Customs and Excise*, 1928 A.C. 340, the question was as to exemption from sales tax under a proviso which was as follows :—

20 "Provided that the Excise taxes specified in this section shall
"not be payable on sales of goods made to the
"order of each individual customer by a business which sells exclu-
"sively by retail, under regulations by the Minister of Customs
"and Excise who shall be sole Judge as to the classification of a
"business."

The defendants in that case made the same contention as the Respondent in this case. Lord Hailsham, L.C., in delivering the judgment of the Privy Council, stated :—

30 "With regard to the earlier period, a further argument was
"adduced before the Board that the second proviso exempted
"the appellants from liability. It was said that these sales,
"if they were sales, were sales of goods made to the order of
"each individual customer by a business which sells exclusively
"by retail, and it was contended that, if that was the case, it
"necessarily followed that the transactions were exempt and that
"the succeeding words in the proviso, "under regulations by the
"Minister of Customs and Excise, who shall be sole judge as to
"the classification of the business," could not avail to limit the
"exemption or to render liable to taxation that which would
40 "otherwise be outside its scope."
"In their Lordships' views this is a misconstruction of the language
"of the proviso. The proviso is an exempting proviso, and, in

“order to obtain its protection, the taxpayer must bring himself “within its language. It was not suggested that the regulations of the Minister of Customs and Excise at any relevant period would exempt the appellant.”

3. There can be no exemption from sales tax unless the goods were actually exported by the Respondent. The Respondent did not export any of the goods in question and the learned trial Judge should have so held.

Under Section 19BBB the sales tax is imposed on the manufacturer and is payable at the time of the sale of the goods by him. The liability to sales tax attaches immediately the sale is made. The exemption is enacted in his favour and he only is entitled to the benefit of it. The facts which give rise to the exemption must be in existence at the time of sale and the exportation which brings the exemption into effect must be by the manufacturer and be an integral part of the sale itself. The tax being payable at the time of sale by the manufacturer (the Respondent) the Act could not be carried out, if the Respondent, having sold its goods in Canada, were to be entitled to exemption from sales tax, because the goods were ultimately exported. (*Rex v Gooderham & Worts Ltd.* 62 O.L.R. 218).

20 If proof of export would entitle the Respondent to exemption from gallonage tax (which the Appellant does not admit) it is submitted that it must be export by the Respondent. The effect of Section 19B. 1. (b) and 19B. 1. (c) is, that while the gallonage tax is imposed on the goods manufactured and sold, it is payable by the manufacturer at the time of sale. The exemption is enacted in favour of the manufacturer and he only is entitled to it.

In taxing statutes, taxation is the rule and exemption is the exception. The exempting provisions should be strictly construed. (*Dame Mary Wylie v City of Montreal*, 12 S.C.R. 384, 386). It is submitted that on a proper
30 construction of the provisions in question export means export by the manufacturer, as an integral part of the sale.

The Appellant further submits that none of the beer in respect of which gallonage or sales tax is claimed, was exported by the Respondent. The evidence establishes the following :—

(a) With a few exceptions the beer was entered in the Respondent's books as being sold to one purchaser. From April 1st, 1924, to September, 1925, the name of the purchaser so entered was C. B. Grandi, Detroit, Michigan. From September, 1925 until January, 1927, the name was F. Savard, Detroit, Michigan, and from January, 1927, on the name was B. Syringe,
40 Detroit, Michigan, (Case, p. 308, l. 31—p. 309, l. 12 ; p. 316, l. 1—p. 317, l. 4 and p. 317, ll. 25-30). The Respondent's officers admitted at the trial that F. Savard and B. Syringe were the same person, (Case, p. 572, ll. 14-16),

but claimed that Grandi was a different person, although in the books of the Respondent the debit balance in Grandi's account is carried to the debit of Savard's account and the Grandi account is thus closed. (Case, p. 259, l. 28). So far as the books are concerned, it is a continuous account, the only change being in the name.

(b) The beer in question was shipped from London to a border point in Ontario, consigned to the purchaser in care of a resident of Ontario, who took delivery for the purchaser in Ontario and stored the beer in warehouses or on docks at the border until it was resold, either to American or Canadian purchasers, who paid the purchase money and took delivery at the docks in Ontario. (Low, in chief, Case, p. 569, ll. 4-17 ; p. 570, l. 27—p. 571, l. 30 ; p. 572, l. 12-16 ; p. 572, ll. 25 and 26 ; (Morrison, in chief, Case, p. 256, ll. 17-21 and ll. 29-37 ; p. 259, ll. 6-17 ; p. 262, ll. 10-15 and ll. 26-31 ; p. 302, ll. 21-23) ; (Koven, in chief, Case, p. 458, ll. 34-39 ; p. 459, ll. 11-18 ; p. 460, ll. 20-22 ; p. 462, ll. 11-17 ; p. 463, ll. 3 and 4) ; (Deisborg, in chief, Case, p. 474, ll. 17-20 ; p. 474, l. 40—p. 475, l. 15 ; p. 475, ll. 32-35) ; (Paquette, in chief, Case, p. 480, l. 1—p. 481, l. 14) ; (Bannon, in chief, Case, p. 222, l. 29—p. 223, l. 12) ; (Low, in chief, Case, p. 575, ll. 4-12) ; (Low, cross examination, Case, p. 607, l. 17 ; p. 607, l. 30—p. 608, l. 10 ; p. 611, ll. 30-33 ; p. 621, l. 2—p. 622, l. 6 ; p. 629, l. 38—p. 630, l. 26 ; p. 640, ll. 10-18 ; p. 640, ll. 22-27 ; p. 651, ll. 16-23).

Two possible views may be taken of these transactions :

(1) That Grandi and Savard (Syringe being the same person) were the real purchasers and took delivery, stored, resold and made delivery of the beer in Ontario to sub-purchasers.

(2) That Grandi and Savard were simply names entered in the Respondent's books to designate sales by the Respondent to Low or to Low, Leon and Burns, or other Canadian purchasers or to Low, Leon and Burns in partnership with Grandi or Savard, the beer being delivered, stored and resold in Ontario to sub-purchasers who took delivery in Ontario.

If the first view is correct, the Company carried on the business at a small loss and during the greater part of the time there was no compensating advantage to Low, Leon and Burns who owned the stock of the Company.

If the second view, that Low, Leon and Burns were interested as purchasers is taken, while the Company carried on business at a small loss, Low, Leon and Burns profited by the resale, and the taxes payable by the Respondent Company to the Government were reduced by (1) the sales tax because of the lower selling price upon which the tax was computed and (2) the income tax because the Company showed no taxable income.

40 If the Respondent's books had disclosed transactions with Low, Leon and Burns, they would have been liable to prosecution under the Ontario Temperance Act and liable to have the movement of the goods to the Borders

stopped under the Liquor Transportation Act and the Carriage of Liquor Act, but by using the names of Grandi, Savard and Syringe their records showed sales which were lawful within the Ontario Temperance Act and shipments which were lawful within the statutes above referred to.

Whichever view is taken, it is clear that if the goods were in fact exported the export was not by the Respondent. This is well illustrated by the following Exhibits filed at the trial, relating to the B. 13's, showing increased selling prices at the border, long lapse of time between the shipments from London and the presentation of B. 13's to customs officers at border points, alterations
 10 of the B. 13's at the Border and the manner in which the B. 13's were used : Exhibits 54, (Case, p. 887) ; 99, (Case, p. 881) ; 112, (Case, p. 811) ; 6, (Case, p. 830, 1059 and 1060) ; 7, (Case, p. 837) ; 94, (Case, p. 903) ; 113, (Case, p. 870) ; 81, (Case, p. 907) and 83, (Case, p. 908).

4. The meaning to be given to the words "export" and "exported", as used in the provisoes, is actual transportation from Canada to a foreign country and the Respondent did not prove that the beer in question was so transported.

The words "export" and "exported" in the provisoes mean more than entry for export. The whole purpose of the exemption from the taxes imposed
 20 under these sections of the statute is to assist the Canadian Manufacturer or producer to compete in a foreign market with foreign manufacturers by reducing the taxation upon him. The word "exported" as used in this connection means the transportation of goods from Canada to a foreign country. (See *The Attorney-General v Pougett*, 2 Price 381 ; *The King v Gooderham & Worts*, 62 O.L.R. 218 and *Swan v Finch* 190 U.S.R. 143.)

As was stated by Mr. Justice Brewer, in delivering the judgment of the Supreme Court of the United States in *Swan v Finch*, 190 U.S.R. 143 :

30 "Whatever primary meaning may be indicated by its derivation, "the word "export" as used in the Constitution and laws of the "United States, generally means the transportation of goods "from this to a foreign country. 'As the legal notion of emi- "grating is a going abroad with an intention of not returning, "so that of exportation is a severance of goods from the mass "of things belonging to this country with an intention of uniting "them to the mass of things belonging to some foreign country "or other.' 17 Op. Attys. Gen., 583."

It is submitted that the Respondent failed to prove export and the learned trial Judge is in error when he holds, (Case, p. 671, ll. 20-22) :

40 "The fact that these goods were exported to the United States "is amply proved by the B. 13's which are the manner and form "provided by law to show that the goods were duly exported "according to the usual practice."

The form B. 13 is not referred to in the Special War Revenue Act, nor is it by the said Act made evidence of export. The only place that it is mentioned as pointing to proof of export is in the regulations under The Special War Revenue Act, (Exhibit C, Case, p. 720, l. 27) where it is stated that :

“Claims for refund of the tax paid on domestic goods exported shall be accompanied by a certified copy of Customs Export Entry and proof of payment of the tax. Claims shall not be allowed on goods sold and used for domestic consumption and subsequently exported.”

10 The evidence (Case, p. 366, l. 21—p. 367, l. 14) is that no refunds of excise taxes paid on beer or other intoxicating liquors have ever been granted on production of a B. 13 but that a landing certificate has always been required. The practice is now embodied in the regulation of April 16th, 1928 (Exhibit 80, Case, p. 724).

Nor is the B. 13 proof of export under The Customs Act or the regulations made thereunder. While the Customs Act does not define the meaning of “exported” it does make clear when exportation is deemed to have commenced.

Section 116 of the Customs Act, R.S.C. 1906, Chap. 48, provides as follows :—

20 116. “For the purpose of the levying of any duty or for any other purpose of this Act or any other law relating to the Customs,—
 “ (b) the exportation of any goods from Canada shall be deemed to have been commenced from the time of the legal shipment of such goods for exportation after due entry outwards in any decked vessel, or, if the exportation is by land or in any undecked vessel, from the time the goods were carried beyond the limits of Canada.”

The evidence is that the boats coming for beer to the ports of Amerstburg to Sarnia, during the period of the action, were small motor boats, speed 30boats, large open boats and not decked vessels, (Case, p. 354, l. 37—p. 355, l. 4 ; p. 232, ll. 20-22). At Kingsville the boats used were larger boats to meet the conditions on the Lake. It is submitted therefore that the B. 13 when stamped is not even evidence that exportation has commenced because it is stamped before the boat leaves the docks.

The making of an export entry is required and the form and content of it is regulated by Sections 99, 100, 104 (1) and 298 of the Customs Act, R.S.C. 1906, Chap. 48, (Appendix) p. 33, and by Order in Council of November 15th, 1897 (Exhibit 20, Case, p. 687). The manner in which the B. 13 is to be dealt with, both by the shipper and the customs officer, is prescribed 40by the Order in Council of May 26th, 1900, (Exhibit 19, Case, p. 690) by which regulations were made “respecting customs entries and statistical returns of goods exported from Canada.” This regulation requires (1) that

all goods shall be reported and entered outwards on the form B. 13 at the port of exit from Canada, (2) that goods laden at an inland port shall be accompanied by an export entry form which shall be delivered by the carrier to the collector at the port of exit and (3) that the collector shall number such entries and forward one copy by mail, promptly, to Ottawa for compilation. The regulations are repeated on the back of each export entry form and their purpose is clearly indicated as being a means of compiling statistical records in the Statistical Branch of the Department of Customs at Ottawa, (Exhibit 94, Case, p. 904).

10 Neither under the statute or the regulations is the customs officer required to stamp the entry with the word "exported" although it has been the practice for many years in the Department to do so and it is submitted that the whole effect of so stamping the entry is simply to indicate that it has been received in due course by the customs officer at the port or outport. That the practice was not considered as affording any evidence of export is clearly shown by Exhibits 79 and 79A, (Case, pp. 706 and 707).

Prior to March, 1926, the export entry presented to customs was prepared at the Border and purports to relate to goods which were then in a dock or warehouse at the Border, and there is no way of identifying the entry with
20 any particular sale or shipment from London, (Case, p. 542, ll. 12-24). After March, 1926, the goods were still taken into warehouses and there lost their identity and the entries presented to customs from time to time have no necessary relation to the goods which they accompanied from London, (Case, p. 641, ll. 22-41).

It is submitted therefore that the learned trial Judge erred in finding that proof of the exportation of these goods to the United States had been established by the B. 13's.

Nor is the fact that the goods were "placed on board vessels for foreign destination after due clearance from Customs" as found by the learned trial
30 Judge (Case, p. 671, l. 24) proof of exportation of the goods. Section 116 of the Customs Act, as quoted above, expressly provides that in the case of undecked vessels exportation does not commence until the goods are carried beyond the limits of Canada. It is submitted that according to the evidence any vessels on which any of the beer in question was placed were undecked vessels, and it is submitted therefore that proof of the placing of the beer on board vessels and of the granting of clearances to such vessels is no proof of export of the goods.

The Appellant further submits that the learned trial Judge erred in holding (Case, p. 671, ll. 28-34).

40 "corroborating this exportation to the United States, we have the
"evidence establishing that rice beer or lager, which constituted
"the largest proportion of the exportation is very little used
"in Canada and that it is a preferred beverage of the United States"

The fact is that some rice beer was sold in the Canadian market, and the fact that the American market preferred rice beer is no proof that the beer in question was exported. According to the evidence, the Respondent did not remove any rice beer from its brewery prior to January, 1926, (Case, p. 422, ll. 30-31) and even after that date the rice beer only comprised 31.9% of the total manufactured, (Case, p. 505, ll. 28-33).

The evidence as to the return through customs of Carlings special bottles and kegs, mentioned by the learned trial Judge (Case, p. 671, l. 31) as corroborating "export" is very inconclusive. As to the special bottles, the Respondent used special bottles only for its rice beer (Case, p. 399, ll. 14-16) which it produced only after January 8th, 1926. There is no evidence as to when they started using these bottles nor as to how many were entered at customs nor is there any evidence that similar bottles were not manufactured in the United States.

As to returned kegs, there is evidence by the Respondent's employees that entries for second-hand kegs were made at customs at Windsor in the name of the Respondent ; and that seventy-five per cent. of the kegs received at London from Windsor were identified by the shippers as being kegs formerly used by the Respondent (Case, p. 399, ll. 1-3). The summary of the so-called export sales of the Respondent as shown on Exhibit 111 (Case, p. 809) shows that the proportion of sales by kegs to the total sales was small.

5. The words "export" and "exported", as used in the said provisoes, mean lawful export ; transactions entered into in Canada, having as their object the performance in a foreign and friendly country of acts in violation of the fundamental and criminal laws of that country, are unlawful in Canada and do not entitle the Respondent to exemption.

By the 18th Amendment to the Constitution of the United States of America, which came into force on the 17th day of January, 1920, and is still in force, the importation of intoxicating liquors into the United States for beverage purposes was prohibited. The National Prohibition Act, enacted by the United States Congress, to give force and effect to the provisions of the 18th Amendment likewise prohibits the importation of intoxicating liquors for beverage purposes and imposes heavy penalties for their violation, (Case, p. 175, l. 5—p. 176, l. 34). The offences so created are criminal offences according to the laws of the United States, (Case, p. 483, ll. 22-37 p. 485, l. 38—p. 486, l. 23).

The combining together of the Respondent or its officers and the purchaser or his agent to violate the National Prohibition Act is a violation of Section 37 of the United States Criminal Code, (Case, p. 178, ll. 16-36 ; Case, p. 483, ll. 22-37 and p. 485, l. 38—p. 486, l. 23). It is submitted that the evidence in this case establishes that the transactions set up by the Respondent as bringing it within the exemptions are transactions which

violate both the fundamental and the criminal laws of the United States.

By the law of Canada any transaction which involves the violation of the fundamental or criminal laws of a friendly nation is illegal. "Its recognition by our Courts would furnish a just cause for complaint by the United States Government against our Government" . . . "and would be contrary to our obligations of international comity as now understood and recognized, and therefore would offend against our notions of public morality" (Lawrence L.J. in *Foster v Driscoll* (1929) 1. K.B. 470, 510).

The Treaty between Canada and the United States "for the suppression
10 of smuggling operations along the International Boundary between the Dominion of Canada and the United States" provides for reciprocal assistance in preventing what both countries appear to agree in regarding as illegal acts.

It is not to be presumed that Parliament in providing this exemption intended to bonus a Canadian citizen or Corporation by exemption from taxation for entering into an illegal transaction. It is submitted that if the defendant is the exporter as alleged by it the transactions in question are illegal and are not exempt from taxation.

**6. The Respondent's defence is based on the proof of transactions which involve the violation of the fundamental and criminal
20 laws of a foreign and friendly country and as such are illegal by the law of this country and the courts of Canada should not entertain such a defence.**

It is submitted that the Court will not lend its aid to a party who founds his claim on an illegal or immoral act, nor will the Court give effect to a defence which is based upon proof of an illegal or immoral transaction.

In this case, the Respondent must allege and prove facts which bring it within the provisoes (see argument under paragraph 1 above). As the facts relied on by the Respondent involve the proof of illegal acts, it is submitted that the Court should not give effect to its defence (*Holman v Johnson*
30 (1775) Cowp. 341. *Pollock on Contracts*, 8th. Ed. 397).

7. The learned trial Judge erred in holding that the penalties provided by Section 19CC (3) as enacted by 17 George V, Chap. 69, s. 4, are applicable only to transactions subsequent to the date on which it came into force.

It is submitted that the learned trial Judge erred in holding that Section 19CC (3) of the Special War Revenue Act imposing a penalty of two-thirds of one per centum per month on arrears of taxes does not apply to gallonage and sales taxes payable, in respect of transactions which occurred prior to April 14th, 1927.

The amendment referred to is that "there shall be paid in addition to the amount in default a penalty of two-thirds of one per centum of the amount in default in respect of each month or fraction thereof during which such default continues after the coming into force of this section". (17 George V, Chap. 69, Section 4).

The amendment clearly contemplates and expressly covers an existing default and imposes the penalty where the default continues.

It is therefore submitted that the interest or penalty at the rate of two-thirds of one per centum per month is payable in respect of all transactions occurring prior to as well as after April 14th, 1927.

For the reasons above set forth, the Appellant submits that the judgment appealed from is erroneous in so far as by it the Appellant's claim was disallowed and that judgment should be entered for the Appellant for the amount of his claim and interest and penalties.

9. As to the Respondent's objections to the judgment, the Appellant submits as follows :—

(a) **As to the interest and penalties allowed by the judgment—**
Section 20 of the Special War Revenue Act expressly provides that all taxes payable under the Act shall be recoverable as a debt due to his Majesty in the Exchequer Court. It is submitted that as the gallonage and sales taxes claimed by the Appellant are to be recovered as a debt due and payable at a specified time, that interest, at the legal rate of five per centum per annum, is properly payable thereon from the dates when they from time to time became due. No express statutory provision awarding interest is necessary. *Billings vs United States*, 232 U.S. Rep. 261, 284 ; *Rex vs. Gooderham & Worts Ltd.*, 62 O.L.R. 218 ; *Toronto Railway Co. vs Toronto* (1906) A.C. 117.

By Section 19CCC (1) "All taxes, interest and penalties payable under Part IV of this Act as amended, may, notwithstanding any other provisions contained in this Act and without restriction of the application thereof, be recovered in the Exchequer Court of Canada"

There is no express provision in the statute awarding interest to which the above section could apply and it is submitted that it is a recognition by statute of the Appellant's right to interest as claimed.

As to the Appellant's claim for penalties at the rate of two-thirds of one per centum per month—it is submitted that the statute expressly provides for payment of these penalties ;

(b) **As to the Respondent's claim for credit for payments made :**
(1) All taxes paid by the Respondent were properly due and payable by the Respondent ; (2) The taxes which were paid by the Respondent were

paid in respect of particular sales and were not paid under any mistake either of law or of fact and cannot be recovered ; (3) The Respondent can not counter claim against the Crown for the recovery of such taxes and cannot therefore claim to set off such taxes as against debts due to the Crown. The Queen vs The Montreal Woolen Mills Co., 4 Ex. C.R. 348 ; (4) The Defendant did not raise this issue in the action, and no evidence was directed to the right of the Respondent to set off such taxes paid by it against the Crown's claim but, on the contrary, counsel for the Respondent stated at the trial that there was no question of refund in this case, (Case, p. 363, l. 26). If the Respondent claims that it is entitled to be repaid any taxes which it has paid, its procedure is to make application for a refund thereof under the regulations established by the Minister pursuant to the statute.

(c) **As to the price on which sales taxes should be paid**—The sales tax should be based on the real selling price and if the invoices do not disclose the real selling price the tax should be on such price as is shown to have been the real selling price.

(d) **As to the production of further B. 13's.**—The Respondent had full opportunity at the trial to prove its case and to produce all the export entries which it claims relate to the sales in respect of which tax is claimed. The action first came on for trial in May, 1928, and was adjourned and later continued in April, 1929, and it is submitted that there is no just ground for permitting the Respondent to introduce further evidence on a reference.

For the reasons aforesaid, it is submitted that the Respondent's objections to the judgment appealed from should be disallowed.

All of which is respectfully submitted.

N. W. ROWELL, K.C.,
G. A. URQUHART, K.C.,
GORDON LINDSAY,

of Counsel for the Appellant.

APPENDIX OF STATUTES

1. Extracts from The Special War Revenue Act, 1915, including amendments made by 14-15 Geo. V, Chap. 68 and preceding amendments.

5 GEORGE V,
Chap. 8.

AN ACT TO SUPPLEMENT THE REVENUE REQUIRED TO
MEET WAR EXPENDITURES.

(Assented to 8th April, 1915.)

- 10 HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. This Act may be cited as The Special War Revenue Act, 1915.

STAMP DUTIES ON MATCHES

16A. 1. Every manufacturer and every importer of matches shall affix to every package of matches manufactured by him or imported into Canada after the thirtieth day of April, one thousand nine hundred and eighteen, an adhesive or other stamp of the value of one cent for each one hundred matches or fraction of one hundred matches contained in such package, and no manufacturer or importer shall sell or import matches unless
20 they are in packages. 8-9 Geo. V, c. 46, s. 3.

Provided that when matches are put up in packages containing not more than sixty and not less than thirty matches each, the tax shall be payable at the rate of one-half of one cent for each package, and when matches are put up in packages containing less than thirty matches each, the tax shall be payable at the rate of one-fourth of one cent per package. 12-13 Geo. V, c. 47, s. 11.

3. When matches are imported into Canada the adhesive or other stamps shall be affixed to the packages while they are in the custody of the proper Customs officers. 8-9 Geo. V, c. 46, s. 3.

30 4. Every wholesale and retail dealer shall affix on each unstamped package of matches an adhesive or other stamp of the value of one cent for each one hundred matches or fraction of one hundred matches contained in such package, held by him for sale on the first day of July, one thousand nine hundred and eighteen. 8-9 Geo. V, c. 46, s. 3.

5. Provided, however, that it shall not be necessary to affix adhesive or other stamps to packages of matches manufactured in Canada for export out of Canada when they are manufactured and exported under regulations made under the provisions of the following subsection. 8-9 Geo. V, c. 46, s. 3.

6. The Minister charged by the Governor in Council with the administration of the law contained in this section may make such regulations as he deems necessary or advisable for carrying out the provisions of this section. 8-9 Geo. V, c. 46, s. 3.

19A. In this Part, unless the context otherwise requires, "Minister" means the Minister of Customs and Excise. 13-14 Geo. V, c. 70, s. 4.

19B. 1. (a) There shall be imposed, levied and collected upon goods enumerated in Schedule I to this Part, when such goods are imported into Canada or taken out of warehouse on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two, on the duty paid value in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule I ; and there shall also be imposed, levied and collected when any such goods are manufactured or produced in Canada and sold on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two, in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule I on the price for which the same is sold. 12-13 Geo. V, c. 47, s. 14.

(b) There shall be imposed, levied and collected upon all goods enumerated in Schedule II to this Part, when such goods are imported into Canada or taken out of warehouse or when any such goods are manufactured or produced in Canada and sold on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two, in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule II. 12-13 Geo. V, c. 47, s. 14.

(c) Where the goods are imported such excise tax shall be paid by the importer and where the goods are manufactured or produced and sold in Canada such excise tax shall be paid by the manufacturer or producer ; provided that if an automobile is, on the twenty-fourth day of May, one thousand nine hundred and twenty-two, in the hands of a dealer and not sold to a bona fide user the tax shall be paid by such dealer when such automobile is sold. 12-13 Geo. V, c. 47, s. 14.

(d) The Minister may require every manufacturer or producer to take out an annual license for the purposes aforesaid, and may pre-

scribe a fee therefor, not exceeding two dollars, and the penalty for neglect or refusal shall be a sum not exceeding one thousand dollars. 12-13 Geo. V, c. 47, s. 14.

Provided that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise.

19BB. 1. The following excise taxes shall be imposed, levied and collected on the articles hereinafter specified namely :—

10 (a) A tax on playing cards for every fifty-four cards or fraction of fifty-four in each package,—when selling at twenty-four dollars or less per gross packages, eight cents per pack ; when selling in excess of twenty-four dollars per gross packages, fifteen cents per pack. 11-12 Geo. V, c. 50, s. 1.

20 (b) The excise taxes as imposed by the preceding paragraph (a) shall be payable at the time of importation or when taken out of warehouse for consumption in addition to the present duties of customs or at the time of sale by the Canadian manufacturer, but shall not apply on playing cards when exported, and shall be accounted for to His Majesty in accordance with such regulations as may be prescribed by the Minister of Customs and Excise. 11-12 Geo. V, c. 50, s. 1.

(c) A tax of seven and one-half cents per gallon on wines of all kinds, except sparkling wines, containing not more than forty per cent. of proof spirit. 13-14 Geo. V, c. 70, s. 5 (1).

(d) A tax of one dollar and fifty cents per gallon on champagne and all other sparkling wines. 13-14 Geo. V, c. 70, s. 5 (1).

30 (e) The excise taxes as imposed by the preceding paragraphs (c) and (d) shall be payable at the time of sale by the Canadian manufacturer, but shall not apply to such wines when exported, and shall be accounted for to His Majesty in accordance with such regulations as shall be prescribed by the Minister of Customs and Excise. 11-12 Geo. V, c. 50, s. 1.

19BBB. 1. In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of five per cent. on the sale price of all goods produced or manufactured in Canada, including the amount of excise duties when the goods are sold in bond, which tax shall be payable by the producer or manufacturer at the time of the sale thereof by him ; and in the case of imported goods the like tax upon the duty paid value of the goods imported payable by the importer or transferee who takes the

goods out of bond for consumption at the time when the goods are imported or taken out of warehouse for consumption. 14-15 Geo. V, c. 68, s. 1 (1).

For the purpose of calculating the amount of the consumption or sales tax, "sale price" shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto.

Provided that the consumption or sales tax specified in this section shall not be payable on goods exported ; or on goods sold by a licensed manufacturer or producer to another licensed manufacturer or producer if the goods are to be used in, wrought into, or attached to articles to be manufactured or produced for sale and which are articles subject to the consumption or sales tax ; or on goods imported by a licensed manufacturer or producer if the goods are to be used in, wrought into, or attached to articles to be manufactured or produced for sale and which are articles subject to the consumption or sales tax ; or on goods imported by a licensed wholesaler or jobber whose sales are to be accounted for under the provisions of subsection seven ; or on goods sold by a licensed manufacturer or producer to a licensed wholesaler or jobber whose sales are to be accounted for under the provisions of subsection seven of this section. 13-14 Geo. V, c. 70, s. 6 (1).

In the case of importations of matches or playing cards, the taxes specified in this section shall be based upon the duty-paid value of the goods imported, plus the excise taxes imposed by Section 16A, Part Three, and Section 19BB, Part Four, of this Act, respectively. 14-15 Geo. V, c. 68, s. 1 (2).

2. A like tax shall be imposed, levied and collected on goods manufactured or produced in Canada sold by a licensed wholesaler or jobber to other than a licensed manufacturer or producer computed on the price for which the same are sold by the licensed manufacturer or producer to the said wholesaler or jobber, which price shall include the amount of the excise duties on goods sold in bond. 13-14 Geo. V, c. 70, s. 6 (1).

3. Notwithstanding anything contained in this section, if at any time it appears to the Minister of Customs and Excise that payment of the consumption or sales tax is being evaded by a licensed manufacturer or producer or licensed wholesaler or jobber the Minister may require that the consumption or sales tax shall be imposed, levied and collected on any material specified by the Minister sold to any licensed manufacturer or producer or licensed wholesaler or jobber or to any class of licensed manufacturers or producers or licensed wholesalers or jobbers specified by the Minister, at the time of sale of such material when produced or manufactured in Canada, or at the time of entry for consumption by such licensed manufacturer or producer or licensed wholesaler or jobber when such material is imported, subject to deduction thereafter on submission by the licensed manufacturer or producer or licensed wholesaler or jobber of proof that such material has been used in the manufacture of an article which is subject to the consumption

or sales tax and on which the said tax has been paid. 14-15 Geo. V, c. 68, s. 2.

6. Every manufacturer or producer shall take out an annual license for the purpose aforesaid, and the Minister may prescribe a fee therefor, not exceeding two dollars, and the penalty for neglect shall be a sum not exceeding one thousand dollars. Provided that the Minister may direct that any class of small manufacturer or producer selling his product exclusively by retail shall be exempt from payment of consumption or sales tax on goods manufactured or produced by him and persons so exempted shall not be given a license. Such exemption may be withdrawn by the Minister. 14-15 Geo 10V, c. 68, s 5.

10. A refund of the consumption or sales tax may be granted on imported goods on which customs duties have been refunded on exportation ; and a refund of the said tax may be granted on domestic goods exported, under regulations prescribed by the Minister of Customs and Excise. 13-14 Geo. V, c. 70, s. 6 (4).

A refund of the consumption or sales tax may also be granted on imported goods which are free of customs duty and which are found not to be according to order, provided such goods are exported under customs supervision within three months from the date of the customs entry. 14-15 20Geo. V, c. 68, s. 7.

19C. The Minister may make such regulations as he deems necessary or advisable for carrying out the provisions of this Part. 8-9 Geo. V, c. 46, s. 5.

20. All taxes or sums payable under this Act shall be recoverable at any time after the same ought to have been accounted for and paid, and all such taxes and sums shall be recoverable, and all rights of His Majesty hereunder enforced, with full costs of suit, as a debt due to or as a right enforceable by His Majesty, in the Exchequer Court or in any other court of competent jurisdiction.

SCHEDULE I

Automobiles adapted or adaptable for passenger use:—

- (a) valued at not more than twelve hundred dollars each five per cent.
 - (b) valued at more than twelve hundred dollars each, on the value of twelve hundred dollars. five per cent.
on the value in excess of twelve hundred dollars ten per cent.
- Not to include automobiles entered as settlers' effects.
12-13 Geo. V, c. 47, s. 14.

SCHEDULE II

	Ale, beer, porter and stout, per gallon.....	twelve and one-half cents
	Cigars :—	
	(a) valued at not more than forty dollars per thousand,—per thousand.....	fifty cents.
	(b) valued at more than forty dollars per thousand and not more than one hundred and ten dollars per thousand,—per thousand.....	three dollars
10	(c) valued at more than one hundred and ten dollars per thousand and not more than one hundred and fifty dollars per thousand,—per thousand.....	seven dollars
	(d) valued at more than one hundred and fifty dollars per thousand and not more than two hundred dollars per thousand,—per thousand.....	ten dollars
	(e) valued at more than two hundred dollars per thousand,—per thousand.....	sixteen dollars
2012-13	Geo. V, c. 47, s. 14.	
	Carbonic acid gas, per pound.....	one cent.

Provided that carbonic acid gas manufactured or produced in Canada and used in the manufacture of other products shall be deemed to be carbonic acid gas manufactured or produced in Canada and sold. 13-14 Geo. V, c. 70, s. 12.

17 GEORGE V.

CHAP. 69.

AN ACT TO AMEND THE SPECIAL WAR REVENUE ACT, 1915.
(Assented to 14th April, 1927).

30 HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

4. The said Act is amended by inserting the following section immediately after section 19C thereof :—

“19CC. (1) Every person liable for taxes under Part IV of this Act who neglects to file each month a true return of his taxable sales for the next preceding month in accordance with the regulations made by the Minister, shall in addition to any other penalties provided by Part IV of this Act pay

a penalty of five per cent. of the taxes payable ; Provided, however, that such penalty shall not exceed twenty-five dollars in respect of each such return.”

(2) The tax shall be paid not later than the last day of the first succeeding month to that in which the sales were made.

(3) In default of payment of the tax or any portion thereof within the time prescribed by this Act or by regulations established thereunder, there shall be paid in addition to the amount in default a penalty of two-thirds of one per centum of the amount in default in respect of each month or fraction thereof during which such default continues after the coming into force of this section.”

5. The said Act is amended by inserting the following section immediately after section 19CC thereof :—

“19CCC. (1) All taxes, interest and penalties payable under Part IV of this Act as amended may, notwithstanding any other provision contained in this Act and without restriction of the application thereof, be recovered in the Exchequer Court of Canada and any such amount payable remaining unpaid, whether in whole or in part after one month from the date of sending by registered mail of a notice of arrears addressed to the taxpayer, may be certified by the Deputy Minister and on the production to the said Court or Judge or such Officer as the Court or Judge thereof may direct, the certificate shall be registered in the said Court and shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the said Court for the recovery of a debt of the amount specified in the certificate, including penalties to date of payment as provided for in Part IV of this Act as amended and entered upon the date of such registration, and all reasonable costs and charges attendant upon the registration of such certificate shall be recoverable in like manner as if they were part of such judgment.

30 “(2) The penalties provided for in Part IV of this Act as amended shall remain in full force and effect as well after judgment as before, and in realizing upon any judgment shall be recovered as part of the Judgment in a like manner and to the same extent that the amount provided for in the judgment itself may be recovered.”

2. EXTRACTS FROM THE CUSTOMS ACT, R.S.C. 1906, CHAP. 48.

AN ACT RESPECTING THE CUSTOMS.

As Amended by 6-7 Edward VII., Chap. 10 ; 7-8 Edward VII., Chap. 19 ;
4-5 George V., Chap. 25, and by 7-8 George V., Chap. 15.

1: 1. This Act may be cited as the Customs Act. R.S., c. 32, s. 1.

99: Before a clearance is granted to any vessel bound to a port or place out of Canada, the owners or shippers or consignors of the cargo on board such vessel shall deliver to the collector or other proper officer of Customs entries of such parts of the cargo as are shipped by them respectively, and shall verify the same by oath.

2. Such entries shall specify the kinds and quantities of the articles shipped by them respectively, and the value of the total quantity of each kind of article, and whether the said goods are of Canadian or of foreign production or manufacture.

10 3. Such oath shall state that such entry contains a full, just and true account of all articles laden on board of such vessel by such owners, shippers or consignors respectively ; and that the values of such articles are truly stated according to their actual cost, or the value which they truly bear at the port and time of exportation.

4. In case the goods so shipped or any part thereof are or is liable by law to any export duty, the amount of such duty shall be stated in such entry ; and no such entry shall be valid, and no clearance shall be granted to such vessel until such duty is paid to the collector or other proper officer of Customs. R.S., c. 32, s. 101.

20 **100:** All goods or merchandise exported by sea, by land or by inland navigation shall be reported and entered outwards at the nearest Custom-house, and a certified copy of the export entry shall be attached to and accompany the waybill of goods or, if exported from any place where no Custom-house is established, they shall be reported either in like manner at such nearest Custom-house or at the port of exit from Canada, according to such regulations as are established by the Governor in Council from time to time. 51 V., c. 14, s. 22.

104: The owners, shippers or consignors of any goods consigned to a port or place out of Canada, to be transported by railway or other land
30 conveyance, shall enter the same for exportation at the Custom-house of the port of exit from Canada ; and such entry shall specify the kinds and quantities of the articles laden by them respectively, and the proper name and description of the railway over which such goods are to be transported or of any other conveyance to be used for the same purpose ; and they shall verify the entry by oath, and such oath shall be of the same form and tenor as that required from owners, shippers or consignors of goods to be transported by sea.

2. If any of such goods are liable by law to any export duty, such duty shall be clearly stated upon such entry, and no railway car or other vehicle
40 upon which such goods are laden shall be permitted to leave the limits of the

port at which such entry should have been made until such duty is paid to the collector or other proper officer. R.S., c. 32, s. 106.

298: The Governor in Council may, by regulations from time to time, require such further information with regard to the description, quantity, quality and value of goods exported from Canada, or removed from one port to another in Canada or in transit through Canada, to be given to the proper officer of the Customs, in the report and entry of such goods outwards or otherwise, as he deems requisite for statistical or other purposes, whether such goods are exported, or removed or transported by sea, land or inland navigation. 52 V., c. 14, s. 10.

3. EXTRACT THE ONTARIO TEMPERANCE ACT, 6 GEO. V, CHAP. 50.

(Assented to 27th April, 1916.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1: This Act may be cited as The Ontario Temperance Act, 1916, c. 50, s. 1.

40: Notwithstanding anything in this or any other Act contained, no person shall by himself, his clerk, servant or agent, and no such clerk, servant, or agent shall expose or keep for sale or directly or indirectly or upon any pretense or upon any device sell or barter, or in consideration of the purchase or transfer of any property or thing or at the time of the transfer of any property or thing give to any other person any liquor without having first obtained a license or permit under this Act authorizing him so to do and then only as authorized by such license or permit and as prescribed by this Act and by the rules or regulations made thereunder. 1916, c. 50, s. 40 ; 1925, c. 67, s. 3.

45. Nothing herein contained shall prevent any brewer, distiller or other person duly licensed by the Government of Canada, for the manufacture of spirituous, fermented or other liquors, from keeping or having liquor manufactured by him in any building wherein such manufacture is carried on, provided such building does not contravene the provisions of Section 39 hereof, or from selling liquor therefrom to a person in another province or in a foreign country or to a licensee under this Act, or to the keeper of an export liquor warehouse within the meaning of Section 46. 1916, c. 50, s. 45 ; 1917, c. 50, s. 15 ; 1919, c. 60, s. 14 ; 1925, c. 67, s. 4.

4. EXTRACT FROM THE LIQUOR TRANSPORTATION ACT,
(ONTARIO), 10-11 Geo. V, Chap. 80.

AN ACT RESPECTING THE TRANSPORTATION OF INTOXICATING
LIQUORS.

(Assented to June 4th, 1920).

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as The Liquor Transportation Act, 1920.

4. (1) Every person within the Province of Ontario who, by himself,
10his servant or agent,

(a) Transports or carries liquor within Ontario for sale or consumption within the Province ; or

(b) Transports or carries liquor from any brewery, distillery, warehouse, storehouse, dock, railway station or other place or premises within Ontario to any other place or premises or to any person in Ontario : for sale or consumption within the Province ; or

(c) Delivers liquor to any person in Ontario for sale or consumption within the Province ; or

(d) Receives or takes delivery of liquor in Ontario for sale or consumption
20 within the Province,

shall be guilty of an offence and such liquor, wherever the same may be found, may be seized and dealt with in the manner provided by Section 70 of The Ontario Temperance Act and every person guilty of such offence shall be subject to the penalties provided by Section 58 of the said Act.

(2) In any prosecution under subsection 1 the burden of proof that liquor transported, carried, delivered or received in or within Ontario was not so transported, carried, delivered or received for sale or consumption in or within Ontario shall be upon the defendant.

6. Nothing in this Act contained shall prevent or apply to,

30 (a) The sale, carriage, transportation or delivery of liquor for export from Ontario ;

(b) The carriage or transportation of liquor through Ontario from any place out of Ontario to any other place out of Ontario ;

(c) The sale, carriage, transportation or delivery of liquor by or under the order of the Board ;

(d) The carriage, transportation, receiving or taking delivery of liquor which may be lawfully sold, carried, transported or delivered under Section 43 or Section 154 of The Ontario Temperance Act.

5. EXTRACT FROM THE CARRIAGE OF LIQUOR ACT, (ONTARIO).
12-13 Geo. V, Chap. 87.

AN ACT RESPECTING THE CARRIAGE OF LIQUOR ON HIGHWAYS.
(Assented to 13th June, 1922.)

10 HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. This Act may be cited as The Carriage of Liquor Act, 1922.

3 : (1) Except as hereinafter provided, every person who by himself, his servant, agent or employee, and every person who as such servant, agent or employee transports or carries liquor in any vehicle, or in any other manner, over, along or upon a highway, street, road, bridge, lane or other public place owned or controlled by or vested in the Crown or any commission or in a municipal corporation or other public body in Ontario, shall be guilty of an offence, and such liquor, wherever the same may be found,
20 may be seized and dealt with in the manner provided in section 70 of *The Ontario Temperance Act*, and every person guilty of such offence shall incur a penalty of not less than \$200 and not more than \$2,000, and in addition thereto may in the discretion of the convicting magistrate be imprisoned for a period not exceeding three months, and in default of immediate payment of such penalty, shall be imprisoned for a period of not less than three nor more than six months, and for a second or any subsequent offence shall incur the like pecuniary penalty as in the case of a first offence and shall be imprisoned for a period of not less than three nor more than six months.

(2) In any prosecution under this Act, the burden of proof that the
30 liquor transported or carried was not so transported or carried contrary to the provisions of this Act, shall be upon the defendant.

(3) The provisions of *The Ontario Temperance Act* respecting the recovery of penalties, and the procedure upon prosecutions and appeals, shall so far as the same are applicable, apply *mutatis mutandis* to prosecutions under this Act.

4. The Board may make regulations and give directions permitting the transportation and carriage of liquor over any such highway, street, road,

bridge, lane or other public place under such terms and conditions as the Board may impose, from any place where liquor may be lawfully manufactured or stored to a railway station, freight shed, dock or other place from which the same is to be shipped for any lawful purpose.

5. Nothing in this Act contained shall prevent or apply to :—

- (a) the sale, carriage, transportation or delivery of liquor under the order or direction, or with the permission of the Board.

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA
(ONTARIO)

BETWEEN:

HIS MAJESTY THE KING on the Information of the Attorney-General
of Canada
(Plaintiff) *Appellant*,

—AND—

THE CARLING EXPORT BREWING AND MALTING COMPANY
LIMITED
(Defendant) *Respondent*

RESPONDENT'S FACTUM

ON MAIN APPEAL AND
CROSS-APPEAL

W. STUART EDWARDS, K. C.
Solicitor for Appellant

McTAGUE, CLARK & RACINE
Solicitors for Respondent

S. RUPERT BROADFOOT, K. C.
Ottawa Agent for Respondent

TORONTO
THE HUNTER-ROSE COMPANY, LIMITED

1929

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA
(ONTARIO)

BETWEEN:

HIS MAJESTY THE KING on the Information of the Attorney-General
of Canada,
(Plaintiff) *Appellant*,

—AND—

THE CARLING EXPORT BREWING AND MALTING COMPANY
LIMITED

(Defendant) *Respondent*.

RESPONDENT'S FACTUM ON MAIN APPEAL AND CROSS-APPEAL

This is an appeal by the plaintiff from a judgment of Hon. Mr. Justice Audette pronounced on the 29th day of April 1929 wherein he held that the plaintiff was entitled to recover from the defendant sales tax and gallonage tax on all sales of strong beer upon which such taxes had not been paid and in respect of which Customs export entry forms commonly known as B13's were not filed as exhibits at the trial, B13's for approximately 83% of such sales having been so filed (p. 669 l.36). The judgment also awarded to the plaintiff \$1590 representing sales tax on certain cash sales, and directed payment of sales tax and gallonage tax on beer sold to one Bannon to the extent that it was re-sold by him in Canada. The plaintiff was also held entitled to interest at 5% per annum upon such taxes in respect of all transactions prior to 14th April 1927 from the due date until paid and interest at the rate of 2-3 of 1% per month upon such taxes in respect of all transactions subsequent to 14th April 1927 from the due date until paid (p. 673).

The gallonage tax and sales tax were imposed by the Special War Revenue Act 1915, 5 George V chapter 8 and amending Acts. The Act as it stood during the period in question in this action, is set out in a pamphlet filed as Exhibit C (p. 710).

The provision as to gallonage tax was as follows (p. 711 l. 30):

“19B. 1. (b) There shall be imposed, levied and collected upon all goods enumerated in Schedule II to this Part, when such goods are imported into Canada or taken out of warehouse or when any such goods are manufactured or produced in Canada and sold on and after the twenty-fourth day of May, one thousand nine hundred and twenty-two in addition to any duty or tax that may be payable under this Act, or any other statute or law, the rate of excise tax set opposite to each item in said Schedule II. 12-13 Geo. V, c. 47, s. 14.

10

.....
Provided that such excise tax shall not be payable when such goods are manufactured for export, under regulations prescribed by the Minister of Customs and Excise.

.....
Schedule II.

Ale, beer, porter and stout, per gallon.....twelve and one-half cents.

.....” (p. 717).

The provision as to sales tax was as follows (p. 713 l. 14):

“19BBB. 1. In addition to any duty or tax that may be payable under this Part, or any other statute or law, there shall be imposed, levied and collected a consumption or sales tax of five per cent on the sale price of all goods produced or manufactured in Canada, including the amount of excise duties when the goods are sold in bond, which tax shall be payable by the producer or manufacturer at the time of the sale thereof by him; and in the case of imported goods the like tax upon the duty paid value of the goods imported payable by the importer or transferee who takes the goods out of bond for consumption at the time when the goods are imported or taken out of warehouse for consumption. 14-15 Geo, V, c. 68, s. 1 (1).

20

30

For the purpose of calculating the amount of the consumption or sales tax, “sale price” shall mean the price before any amount payable in respect of the consumption or sales tax is added thereto.

Provided that the consumption or sales tax specified in this section shall not be payable on goods exported.....”

Section 19 C(p. 716 l.4) conferred authority on the Minister of Customs and Excise to make regulations under Part 4 of the Act in which part the above sections appear. The sections referred to were operative and effective whether regulations were or were not made under them but regulations were in fact made both as to gallonage tax imposed by section 19B and sales tax imposed by Section 19BBB (p. 717 l.34; p. 718 l.25).

40

The issue raised in this action is as to the liability of the respondent for sales and gallonage taxes on beer claimed to be exported to the United States. The amount claimed is \$417,810.82 made up of \$258,638.31 for gallonage tax and \$159,172.51 for sales tax and covers sales during the period from April 1924 to April 1927 inclusive, (Ex. 2 page 799).

In October 1923 Mr. Charles Burns, Mr. Harry Low and Mr. Marco Leon by a purchase of shares in the respondent company acquired control of the respondent's brewery at London, Ontario, which had not been in operation for some 5 or 6 years (p. 566 l.12). After some months spent in
 10 renovating the plant the respondent commenced to manufacture and sell beer in April 1924 (p. 566 l.36; p. 568 l.27). Mr. Burns, the president, looked after the manufacturing in London and Mr. Harry Low, the vice president and sales manager took charge of the export business at Windsor (p. 568 l.25). Mr. Low arranged with one C.B. Grandi of Detroit, Michigan that he (Grandi) would take the respondent's entire output of beer for export at the prevailing market price (p. 569 ll.6-16). This arrangement terminated in the autumn of 1925 when Mr. Low made an agreement with one Savard, also of Detroit, Michigan, whereby Savard was to take all the respondent's beer for export to
 20 the United States and was to obtain for the respondent as extensive a market as possible throughout the United States (p. 570 l.27). Savard was to pay the respondent \$1.75 per case for the beer, and was to divide equally with Low the difference between that price and the price at which the beer was sold to sub-purchasers in the United States after deducting expenses on the Canadian and American sides. The share of the difference so obtained by Low was then to be divided into 3 equal shares among Burns, Leon and Low (p.570 l.40). In 1926 Savard's name had become so well known in the United States that he was afterwards referred to as Syringe. About that time the price to Savard or Syringe was raised from \$1.75 to \$2.00 per case for "black label" beer and \$1.90 for ale (p. 572 l.14).

30 Grandi and Savard wanted to get for the United States market all the beer the respondent could manufacture and as quickly as possible (p. 632 l.31; p. 633 l.20; p. 635 l.32). Low received at Windsor from Grandi or Savard in Detroit, instructions regarding orders, deliveries, sub-purchasers etc. and telephoned such information to Burns in London (p. 630 l.32—p. 631 l.17). Burns or someone in the London office gave instructions for the shipments to the re pondent's shipper who saw that the invoices, bills of lading and the B13 export entry forms were completed and the beer loaded upon the railway cars (p. 370 l.33; p. 371 l.20). Prior to 13th March 1926 one B13 was made out for
 40 each carload and on the beer reaching one of the ports of exit at or near Windsor, an agent of the respondent made out a new B13 for the quantity of beer to be shipped by a particular boat and signed a certificate as to the correctness of the entry (p. 476 l.21). By memorandum dated 13th March 1926 instructions were issued by the Deputy Minister of Customs and Excise that thereafter separate export entries should be furnished at the interior point of lading

for each quantity to be carried forward from the port of exit in a single shipment, and that instead of the certificate the export entry should be verified by oath of the shipper sworn before the Collector or some official authorized to take oaths. (Ex. 21B p. 723).

On the arrival of the railway car at Windsor, its seal was broken under the supervision of a customs officer, and upon being released by him the goods were transferred to one of the numerous export docks on the river front (p. 187 ll.5-30). The boats used to transport the beer to the United States, were speed launches and other small undecked vessels propelled by gasoline
 10 (p. 189 l.5). Upon the arrival of the boat at the dock in Canada the captain made to the Customs Officer at the dock a "Report Inwards" (Ex. V-1 p. 1069). The captain very often brought the money in payment of the shipment (p. 572 l.3; p. 605 l.21; p. 621 l.10). When the boat was loaded the captain made out and declared before the Customs officer a "Report Outwards", which among other things, gave the name of the shipper, the quantity and description of the goods, the value, and the name of the consignee (Ex. V-2 p. 1070). The customs officer examined the cargo on the boat, and if satisfied that it was properly entered for export on the B13's stamped 4 copies of each of the
 20 B13's that made up the shipment with a Customs and Excise rubber stamp (p. 187 l.31; p. 234 l.27—p. 235 l.4; p. 577 l.4—p. 578 l.41). The Customs officer then signed and gave to the captain a clearance (Ex. V-3 p. 1071; p. 470 l.26; p. 478 l.7; p. 482 l.3). One copy of the B13 was retained by the customs officer at the outport, one copy was returned to the shipper, and two copies were sent to the main port, one of which was kept there, and the other was forwarded to the Department of National Revenue at Ottawa (p. 187 l.30).

In May 1924 several brewery companies, including the respondent, entered into an agreement whereby A. S. Fitzgerald, a chartered accountant of Riddell, Stead and Co., was appointed trustee to collect and account for monies received at the docks, (Ex. 74 p. 725). This arrangement was in effect
 30 from May 15th to September 20th 1924, when it was terminated (p. 341 ll. 9-17).

In June 1926 a number of breweries including the respondent, caused to be formed the Bermuda Export Company Limited which took charge of the export of the beer from the docks on the river front and collected the purchase price from the American purchasers or their agents, and accounted therefor to the respective breweries (Ex. 22, p. 743; Ex. 27, p. 749).

Throughout the whole period covered by the claim in this action, the respondent made monthly returns to the Collector of Customs and Excise in respect of sales and gallonage taxes as required by regulations issued under
 40 the Special War Revenue Act and duly paid to the Collector the amount of taxes in accordance with such returns (Ex. A. page 1041; p. 15 l.23—p. 16 l.23).

On 22nd October 1927 the appellant brought this action against the respondent to recover sales tax and gallonage tax on all sales of beer by the respondent except the sales for which the taxes had been paid. The action was tried at Toronto during May 1928 and April 1929 before Mr. Justice Audette who delivered judgment at the conclusion of the trial on 29th April 1929 (p. 671). Mr. Justice Audette was of opinion that the whole question resolved itself into determining whether or not the goods in question had been duly exported, and whether or not they had been exported in the manner provided by the Canadian laws. He found that the greater portion of the beer had
10 been lawfully and *de facto* duly exported to a foreign purchaser and did not return to Canada and that with respect to such beer the respondent was exempt from sales and gallonage taxes. That the beer was exported to the United States was amply proved, he thought, by the B13's which were the usual documents provided by law for showing that goods were exported. He also found that the evidence clearly disclosed that the beer was actually placed on board vessels for foreign destination after due clearance from the Customs obtained after the goods on board had been duly verified by the Customs officer. He was also of the view that exportation was corroborated by evidence establishing that rice beer or lager, which constituted a very large portion of the exported
20 beer, was little used in Canada but was the preferred beverage in the United States: and also by evidence that a large quantity of Carling's special bottles and kegs were returned empty to Canada through the Customs, and duty was duly paid thereon. He also referred to evidence that the boats had been seen clearing from the Canadian shore and unloaded on the American shore and that Carling beer had been seen in roadhouses in American towns.

Mr. Justice Audette held however that the respondent was liable for taxes on (1) sales not covered by B13's, (2) certain cash sales and (3) certain re-sales in Canada by one Bannon. He was also of opinion that the true sale price was higher than the selling price as shown on invoices, and he ordered
30 that the tax should be calculated on the higher price. A reference was directed to the Registrar to determine the amount payable by the Respondent under the judgment. The Appellant was awarded costs of the action.

The Appellant has now appealed and the Respondent has cross-appealed from said judgment to the Supreme Court of Canada.

PART II

The point in issue in the main appeal is whether or not the respondent is liable for sales and gallonage taxes in respect of sales covered by B13's produced and filed as exhibits at the trial herein. The respondent submits that the judgment in respondent's favour in respect of these taxes was right
40 and should be affirmed.

On the cross-appeal the respondent submits that the judgment was erroneous in the following amongst other respects:—

- (1) The action should be dismissed.

(2) In determining the amount, if any, payable by the Respondent, credit should be given for all monies of the Respondent in the possession of the Crown to which the Crown is not entitled for sales or gallonage taxes.

(3) If the Respondent is exempt from taxes on sales covered by B13's, account should be taken of any further B13's produced, even though not filed as exhibits at the trial.

10 (4) Any sales taxes for which the Respondent is liable should be calculated on the price of the goods as shown on the invoices and not at any so-called advanced price.

(5) The Appellant should not be awarded interest or penalties.

(6) The Appellant should pay the costs of the trial.

PART III

ARGUMENT ON MAIN APPEAL.

The B13's produced at the trial furnished ample proof, as the learned trial judge found, that the beer covered by such B13's was duly exported to the United States. The documentary evidence furnished from the Department of National Revenue consists of various order-in-council and regulations which establish clearly that the B13's are recognized by the Crown as official
20 evidence that goods have been exported. The important documents are:

Memorandum No. 953B, 1st December, 1897 (Ex. 20, p. 687).

Memorandum No. 1098B and order-in-council 26th May 1900, (Ex. 19, p. 690).

Memorandum No. 1168B, 15th November, 1901 (Ex. 19B, p. 693).

Memorandum No. 2020B, 30th June, 1916 (Ex. 20A, p. 694).

Regulations issued by Minister under Special War Revenue Act (Ex. C. p. 720 l. 27.)

Circular 13th February, 1926 (Ex. 21A, p. 722).

30 Circular 13th March, 1926 (Ex. 21B, p. 723).

B13's are not only the official evidence of export but they are the documents upon which the Crown acts in granting refunds (Ex. C, p. 720 l. 27). An unsuccessful attempt was made to discredit these documents by evidence of the Examiner of Refund Claims, who said that the Department had never

granted a refund in connection with beer or whisky without production of a foreign landing certificate, (p. 366 ll.35-40). He admitted however on cross-examination that since the tax had come into effect there had only been two applications for refund in respect of liquors—one being for beer and the other for whisky and that although the B13 was required as an essential part of the proof of export, a foreign landing certificate was also demanded but only because of a mere verbal instruction received from another officer in the Department (p. 368 ll. 24, 25; p. 370 l. 8). He also admitted that in the case of goods other than liquor the refund is granted in accordance with the Regulations under the Act—that is upon production of the B13 and proof of payment of the tax (p. 369 l. 25—p. 370 l. 7; Ex. C, p. 720 l. 27).

Government officers supervised the loading of boats and investigated conditions before stamping the B13's (p. 187 l. 23; p. 234 l. 18—p. 235 l.4; p. 468 ll. 34-40; p. 470 ll. 26-39; p. 472 ll. 12-27; p. 478 ll. 7-12; p. 482 ll.3-5; p. 577 l. 4—p. 578 l. 41).

In September 1923 certain instructions are said to have been given to Customs Inspectors (Ex. 79A, p. 707) but even if they were given, they were not "regulations" and as to the Respondent were without any force or effect. An attempt made in 1928 (Ex. 80, p. 724) to give them the force of regulations was also without legal effect. These documents were admitted in evidence subject to the Respondent's objections (p. 360 l. 1).

Not only was the method of splitting up shipments under B13's altered to meet the Government's requirements but the form of the shipping documents was made the subject of a conference at Ottawa in March 1926 between the Minister of Customs and representatives of the Railways (p. 663 l.7). As a result of that conference the Canadian National Railway gave instructions to its freight officials reading in part as follows:—

30 "You may now accept liquor, beers and spirits under the following conditions: a shipping order and bill of lading must consign goods to a person at a port or outport on the Canadian border from which it is physically possible for exportation to be made via water, as for example Windsor or Walkerville and must bear notation 'for export from Canada, deliver only under supervision of Collector of Customs'. This notation to be transferred to the waybill. Nothing must be shown on the bill of lading or waybill as to country of ultimate destination, but this must be shown on the export entry Canada Customs form B-13, which must be supplied us at shipping point, and accompany the waybill to port of exportation as provided in my circular No. 5. Customs Department will not give clearance from Canada to any vessel which obviously cannot carry its cargo to destination specified in application for clearance, nor will they accept substitution of

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export entries showing United States as ultimate destination for entries originally issued showing other countries as ultimate destination” (p. 664 l. 38—p.665 l. 34).

Mr. J. P. Pratt, Regional Counsel of the Canadian National Railways, who was present at the conference, said that the instructions in the above form were given in accordance with the understanding with the Minister reached at the conference (p. 666 l. 7).

There was abundant evidence at the trial to corroborate the evidence of export afforded by the B13's, but as such evidence is more relevant to the Respondent's cross-appeal, it will be referred to in that part of the argument, in order to avoid duplication of references, but the Respondent asks that such evidence be given its proper weight on the main appeal as well as on the cross-appeal.

ARGUMENT ON CROSS-APPEAL

(1) *As to dismissal of action.*

The evidence adduced at the trial corroborates the learned judge's finding as to transactions covered by B13's and indeed establishes that his finding should have been that all the beer claimed to have been exported was in fact exported. The Respondent relies on such evidence to establish that its cross-appeal should be allowed. The main features of such evidence may be shortly summarized as follows :

When Mr. Low and his associates acquired the Carling Brewery in 1923, it was an ale plant, but they re-modelled it by adding equipment for the manufacture of lager beer with the result that 80% of their equipment was for manufacturing lager beer and 20% for ale (p. 567, l. 29). Mr. Low says that there is quite a different process in the manufacture of lager to that of ale and that there is a noticeable difference in taste (p. 567, l. 15). Canada was the market for ale, and United States the market for lager (p. 567 l. 5.) In the first two years the Respondent manufactured lager beer made from malt, but having found that some of its competitors were producing a better malt beer, the Respondent in 1926 changed to a lager beer made from rice and known as rice beer (p. 568, l. 3). This beer was more expensive to manufacture and was subject to an excise tax of 15c. per gallon (p. 568, ll. 10-15). When the Liquor Control Act came into effect in Ontario (in 1927) the Respondent had to increase its capacity for the manufacture of ale, because it could not sell the lager beer in Ontario. (p. 568, ll. 17-24). Rice beer was sold throughout the United States but very little was sold in Canada (p. 567, ll. 36-41). An analysis of the beer brewed by the Respondent during the period in question shows that of the total quantity after deducting "4.4" beer and the quantities sold to Quebec and New Brunswick 22% was ale

and 78% lager. (Ex. W. p. 816). The Respondent distinguished its export beer by distinctive cartons, (Exs. I, J and K); tin tags (Ex. M); bottles (Ex. O); stoppers (Ex. 02) and labels (Ex. T)—(p. 387, l. 1—p. 394, l. 15; p. 445, l. 38—p. 446, l. 19; p. 1086).

The Respondent imported from the United States its own second-hand bottles and kegs in carloads and paid the Canadian duties. (p. 197, l. 15—p. 199, l. 7; p. 392, ll. 6-20; p. 427, l. 39; p. 430, l. 1; p. 432, l. 19). Ex. 108 consists of a bundle of Customs forms upon which were entered 86 carloads of second-hand empty bottles imported by the Respondent from the United States (p. 949).

Mr. Palmer, one of the chartered accountants engaged by the Government on the Customs Investigation, was careful to examine how the beer was handled from the time it arrived on the cars and he also says that he saw several boats with cargoes of liquor, cleared by the Canadian Customs officers, and depart for the United States (p. 183, l. 22—p. 184, l. 12; p. 186, ll. 23-40). On one occasion he saw 25 boats loading at one dock (p. 188, l. 22).

Mr. Koven, who looked after the shipments of beer at various times from docks at Kingsville, Leamington and Amherstburg on behalf of the Respondent, says that he never knew of any beer shipped from these docks during his time getting back into Ontario, and that the shipments were all made openly and under the supervision of the Canadian Customs officials (p. 472, ll. 17-27).

Arthur Diesbourg, who attended to the shipment of the Respondent's beer from a dock at Belle River throughout the period in question says that all the Carling beer that came to this dock was exported, and that none of it remained in Canada nor returned to Canada (p. 478, ll. 21-30).

Mr. Paquette, who was in charge of an export dock at Ford City, says that all Carling beer that came to that dock was exported. He has even seen these boats landing their cargoes on the American side, it being only half a mile across the river (p. 482, ll. 1-26).

Beer exported from the Kingsville dock, went principally to Cleveland, Toledo, Vermilion, Sandusky, Port Clinton—all in the United States (p. 232, ll. 10-13). The payments sent to this dock by the United States purchasers were in American currency or American drafts (p. 233, l. 16). Mr. Dunford, who attended to the export of beer from the Government dock at Kingsville has seen the Carling "black label" beer (*i. e.* rice beer) unloaded on the United States side many times. The largest portion of beer sold in the roadhouses that he visited on the American side, was Carling's "black label" (p. 235, l. 17—p. 236, l. 30).

Mr. Cowie, manager of the Dominion Bank at Windsor, where the Respondent deposited the moneys received from United States purchasers, says that 80% of all deposits in the Carling account were in American funds and 20% was made up of Canadian funds. When Canadian money was at a discount, some Americans would purchase Canadian funds in Detroit or Windsor and pay their bills in Canadian money (p. 83, ll. 13-34).

Mr. Low, the Respondent's vice-president, who was in charge of the export sales, says that he never sold or delivered any beer for consumption in Canada ; that all the sales for export during the time of Grandi, Savard and Syringe, were bona fide export sales and that the beer was exported, and that he made it his business to see that none of that beer came back into Canada (p. 569, l. 18—p. 570, l. 22; p. 573, ll. 9-22).

The evidence of Mr. Low and the other witnesses would go to confirm the evidence afforded by the Respondent's sales tax and gallonage tax returns which themselves were *prima facie* evidence of export or at any rate evidence that no tax was payable in respect of the sales treated as export. Each return constituted the evidence called for by the Government to show the total amount of taxable sales in the month (Ex. C, p. 719 l. 23). Such evidence having been demanded and furnished and taxes in accordance therewith having been paid and accepted, the onus passed to the Crown to establish that the returns were incorrect and the extent to which they were incorrect.

The Respondent was not required by law to keep the B13's that were returned, and the result was that the Respondent preserved comparatively few of them, because they accumulate quickly and are bulky. Consequently the Respondent found itself in the position of having to rely upon such of its B13's as could be found in the possession of the Government at Ottawa. It was plainly demonstrated at the trial that the practice with regard to recording the B13's at the ports and forwarding copies to Ottawa was not conducted with sufficient care and accuracy to insure that all B13's found their way to Ottawa (Quirk, pp. 556, 557). It was also difficult to be certain that all the B13's filed at Ottawa were in fact produced at the trial because B13's were turning up from Ottawa from time to time as the trial proceeded. (Shannon, p. 558 l. 5—p. 563 l. 7). In these circumstances the respondent should not be held liable to taxation merely because a comparatively small proportion (17% at most) of sales were not represented by B13's. In the light of the other evidence adduced the action should be dismissed with costs.

This being an action of debt the Appellant must prove the debt claimed. Mere evidence of sales and non-payment of the tax is not sufficient to establish the debt. The Appellant must go further, it is submitted, and show that the goods were not exported. Export sales are given statutory protection against taxation. To establish liability, it is incumbent upon the Appellant

to prove that the transaction is outside the class of transactions thus protected, and this can only be done, it is submitted, by proof of non-export.

The onus is upon the Crown to show that the sales for which taxes are claimed fall clearly within the operation of the statute.

- Taylor v. Humphries (1864) 17 C.B.N.S. 539 at 549.
 Davies v. Scrace (1868) L.R. 4 C.P. 172 at 175.
 Copley v. Burton (1869) L.R. 5 C.P. 489 at 494.
 Partington v. Attorney-General (1869) 4 E. & I. Appeals,
 100 at 122.
 10 Cox v. Rabbits (1878) 3 A.C. 473 at 478.
 James v. Nicholas (1886) 50 J.P. 292.
 Attorney-General v. Selborne (1902) 1 K.B. 388 at 396.
 The King v. Boomer (1907) 13 C.C.C. 98.
 Whitely v. Burns (1908) 1 K.B. 705 at 709.

The Appellant has contended that the transactions in question were sales within Ontario, and that the taxes were payable thereon even though the goods were subsequently exported. The transactions as shown in full detail by the invoices, bills of lading, B13's, the company's books and the evidence of Mr. Low, Mr. Morrison and Mr. Hennessey are, it is submitted, sales to purchasers in the United States.

The Appellant's position would not however be advanced by establishing that the sales were in Ontario because they would then be in breach of the Ontario Temperance Act and therefore illegal and void. That being so, there was no sale to which the tax could be properly be applied.

The material provisions of the Ontario Temperance Act above referred to, were as follows :—

- 30 “40. Notwithstanding anything in this or any other Act contained, no person shall by himself, his clerk, servant or agent, and no such clerk, servant or agent shall expose or keep for sale or directly or indirectly or upon any pretense or upon any devise sell or barter, or in consideration of the purchase or transfer of any property or thing or at the time of the transfer of any property or thing give to any other person any liquor without having first obtained a license or permit under this Act authorizing him so to do and then only as authorized by such license or permit and as prescribed by this Act and by the rules or regulations made thereunder. 1916, c. 50, s. 40 ; 1925, c.67, s.3.”

“57. Any payment or compensation for liquor furnished in contravention of this Act or otherwise, in violation of law,

whether made in money or securities for money, or in labour or property of any kind, shall be held to have been received without any consideration, and against justice and good conscience, and the amount or value thereof may be recovered from the receiver by the party who made the same ; and every sale, transfer, conveyance, lien and security in whole or part, made, granted, or given, for or on account of liquor so furnished in contravention of this Act, or otherwise in violation of law shall be wholly null and void, save only as regards subsequent purchasers or assignees for value, without notice ; and no action of any kind shall be maintained, either in whole or in part, for or on account of any liquor so furnished in contravention of this Act or otherwise in violation of law. 1916, c.50, s. 57.”

“58. (2) Every person guilty of a contravention of any of the provisions of sections 40 or 123a, clause b of subsection 1 of section 128, clause a of subsection 1 of section 151, 159 or 160, shall for a first offence incur a penalty of not less than \$200, and not more than \$2,000, and in default of immediate payment shall be imprisoned for a period of not less than three nor more than six months unless the penalty and costs are sooner paid and in addition thereto, shall, in every case, be imprisoned for a period of not less than one month and not more than three months, and for a second or subsequent offence, shall incur a like penalty as for a first offence, and in addition thereto shall in every case be imprisoned for a period of not less than three nor more than six months.”

“139. While this Act is intended to prohibit and shall prohibit transactions in liquor which take place wholly within the Province of Ontario, except under license or as otherwise specially provided by this Act, and to restrict the consumption of liquor within the limits of the Province of Ontario, it shall not affect and is not intended to affect bona fide transactions in liquor between a person in the Province of Ontario and a person in another Province or in a foreign country, and the provisions of this Act shall be construed accordingly. 1919, c. 50, s. 139.”

The Appellant argues that even if the sale is illegal and void, it is taxable, in view of the decision of the Privy Council in *Minister of Finance v Smith* 1927 A.C. 193. That case, however, is clearly distinguishable. There the tax was imposed on “income” and it was held that the tax was payable on income resulting from a particular business even though some of the transactions involved in that business were illegal. In the present case the tax is levied on a “sale”, which means a legal and not an illegal or void sale.

That would dispose of the tax on the so-called "cash sales" and the sales to Bannon of beer resold by him in Ontario referred to in paragraphs 1 and 2 of the formal judgment (p. 673 l. 31—p. 674 l. 4). The Respondent submits that on the evidence, all the sales were tax exempt, but if not exempt under the Act, they were not taxable because they were illegal. The beer in question herein was only a small part of the beer shipped within the period in question from Canada to the United States. The Crown's accountant produced a statement made up from the Government's records showing that in 1926 beer valued at \$5,156,103.00 was exported from Canada, of which amount
10 beer to the value of \$3,523,504.00 was exported from the port of Windsor and its outports. (Ex. E, p. 863).

(2) *As to proper basis of accounting.*

The Respondent further submits that if any accounting is to be taken between the Appellant and Respondent it should be a complete accounting and credit should be given to the Respondent for all moneys in the hands of the Crown paid by this Respondent to which the Crown is not entitled.

The evidence shows that during certain periods the Respondent paid large sums of upwards of \$100,000 for sales and gallonage taxes in respect of goods that were actually exported (Ex. 2, p. 801 ll. 15, 31, 46 ; p. 802 ll. 7,
20 12, 17), and even if the Respondent is held liable for sales and gallonage taxes in respect of part of the goods in question the Crown has ample monies of the Respondent in its hands to satisfy such claims.

(3) *Additional B13's.*

If the respondent is exempt from sales and gallonage taxes on sales covered by B13's, it should not be limited to B13's filed as exhibits at the trial, particularly in view of the fact that B13's were being produced by the Crown from time to time as the trial proceeded. Account should be taken of any additional B13's which may be filed on the reference.

(4) *Sale price of beer.*

30 Neither in his reasons for judgment nor in the formal judgment does the learned trial judge indicate what is to be taken as the true price or how the true price is to be ascertained.

Any sales taxes for which the defendant is liable should be calculated on the price of the goods as shown in the invoices and not at any so-called advanced price.

The Appellant's accountants in calculating the price upon which the sales tax should be computed added to the amount of sales shown by the

Respondent's books and invoices the sum of \$869,093.85, made up of the following items which they regarded as being part of the proceeds of sales :

1. Bermuda Export Account.....	\$ 5,838.90
2. F. Savard Commission Account.....	67,496.01
3. "Export Funds" Account.....	80,209.94
4. Export Insurance Account.....	58,560.32
5. Special Loan Account Export Funds.....	12,405.00
6. Withdrawals from Windsor Bank Account.....	644,593.68

\$869,093.85

(Ex. 32, p. 808).

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These items were explained by the Respondent's Accountant, Mr. Morrison. He says the first two amounts (*i.e.*, \$5,838.90 and \$67,496.01) were taken from two accounts in which the Respondent had no interest whatever. They represented funds held in trust for the Bermuda Export Company, Limited and F. Savard (p. 453 ll. 7-16). The item of \$58,560.32, from Export Insurance Account, represented advances made by purchasers in the United States to cover expenses in exporting (p. 447 l. 3).

The Special Loan Account and the Export Insurance Account were really one account, the latter being a continuation of the former with a change in name (p. 448 l. 8). "Export Funds Account \$80,209.94" is made up from certain items taken from the Export Funds Account which was no part of the sale price received by the Respondent (p. 451 l. 21—p. 453 l. 5). Mr. Low explained that "Withdrawals from Windsor Bank Account \$644,593.68," was made up of monies withdrawn by him from the Respondent's Windsor Bank Account after the Respondent had transferred to its London bank funds representing its sale price of \$1.75 (p. 587 ll. 1-10). The entire amounts collected from Savard's sub-purchasers in the United States, were deposited to the credit of the Respondent's Windsor Bank Account and the withdrawals were made up of Savard's profits, Low's share, expenses, etc. (p. 607 301. 33—p. 608 l. 17). The Respondent did not receive and had no right to any part of the funds thus withdrawn. In the light of the explanations given by Mr. Morrison and Mr. Low the learned judge erred, it is submitted, in directing that the sales tax should be calculated on any price other than on the price at which the goods were invoiced and payment made to the Respondent.

(5) *Interest and Penalties.*

The learned trial judge held that the Respondent was liable to pay to the Appellant interest at the rate of 5% per annum upon gallonage and sales taxes in respect of all transactions prior to 14th April, 1927, from the due

date thereof until paid and interest at the rate of 2-3 of 1% per month (*i.e.*, 8% per annum) upon gallonage and sales tax in respect of all transactions subsequent to 14th April, 1927.

By 17 George V, Chapter 69, Section 4 (assented to 14th April, 1927) the Special War Revenue Act was amended by inserting the following section:

10 “19CC. (1) Every person liable for taxes under Part IV of this Act who neglects to file each month a true return of his taxable sales for the next preceding month in accordance with the regulations made by the Minister, shall in addition to any other penalties provided by Part IV of this Act pay a penalty of five per cent of the taxes payable ; Provided, however, that such penalty shall not exceed twenty-five dollars in respect of each such return.”

(2) The tax shall be paid not later than the last day of the first succeeding month to that in which the sales were made.”

20 (3) In default of payment of the tax or any portion thereof within the time prescribed by this Act or by regulations established thereunder, there shall be paid in addition to the amount in default a penalty of two-thirds of one percentum of the amount in default in respect of each month or fraction thereof during which such default continues after the coming into force of this section.”

There was not prior to this amendment any provision in the statute or regulations making interest or penalties payable and there is no authority for awarding interest at 5% on transactions that took place prior to the amendment. Nor is the judgment right in directing payment of 2-3 of 1% per month on transactions subsequent to 14th April, 1927, down to date of payment. Such penalty if any is payable should be recovered down to the date of judgment only.

(6) *Costs.*

30 The Respondent submits that the action should have been dismissed with costs but even if the Crown succeeds as to a small part of its claim it should pay costs as the substantial question was whether an export business was being carried on by the Respondent and on that issue the plaintiff wholly failed.

The Respondent submits, for the reasons stated that the appeal should be dismissed and the cross-appeal allowed.

W. N. TILLEY,
J. H. CLARK,
C. F. H. CARSON,
of Counsel for the Respondent.