

34, 1933

In the Privy Council.

No. 80 of 1932.

**ON APPEAL**  
**FROM THE SUPREME COURT OF CANADA.**

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BETWEEN

CONSOLIDATED DISTILLERIES LIMITED AND W. J.  
HUME - - - - - (Defendants) *Appellants*

AND

HIS MAJESTY THE KING - - - (Plaintiff) *Respondent*  
(Action No. 9370)

AND

BETWEEN

CONSOLIDATED DISTILLERIES LIMITED AND F. L.  
SMITH - - - - - (Defendants) *Appellants*

AND

HIS MAJESTY THE KING - - - (Plaintiff) *Respondent*  
(Action No. 9371)

AND

BETWEEN

CONSOLIDATED DISTILLERIES LIMITED AND W. J.  
HUME - - - - - (Defendants) *Appellants*

AND

HIS MAJESTY THE KING - - - (Plaintiff) *Respondent.*  
(Action No. 10314)

CONSOLIDATED APPEALS.

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**CASE FOR THE RESPONDENT.**

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1. This is a consolidated appeal, by special leave from the judgments of the Supreme Court of Canada dated the 15th day of March 1932 dismissing the appeals in three several actions by the Appellants from the judgments of the Honourable Mr. Justice MacLean, President of the Exchequer Court of Canada dated respectively the 13th, 17th, and 16th of March 1931.

RECORD.  
pp. 73, 155,  
221.  
pp. 66, 147,  
211.

RECORD.  
pp. 83-90,  
158: 238-  
251.

2. Each of the actions was brought by the Respondent against the respective Appellants on bonds given by them to His Majesty the King, pursuant to the provisions of the Inland Revenue Act Revised Statutes of Canada 1906 Chapter 51, and the regulations made thereunder, in respect of the export in bond of spirits on which excise duties had not been paid, and for interest at 5 per cent. per annum from the dates of the respective bonds. The claim for interest, however, does not arise in the present appeal.

3. The spirits covered by the respective bonds had been deposited by the Appellant company in an excise bonding warehouse, as provided by Section 61 of the Inland Revenue Act, without payment of the duties imposed by the Act. Section 61 provides as follows: 10

“ 61. Spirits, malt, tobacco, cigars and other articles subject to duty under this Act may, subject to the following provisions and to such regulations as the Governor in Council makes, be deposited in any suitable excise bonding warehouse, licensed for the purpose, without payment of the duty hereby imposed.”

4. The relevant provisions of the Inland Revenue Act respecting the removal from excise bonding warehouses of goods which have been deposited therein without payment of duties are sections 58, 68, 140 and 142, which are as follows: 20

“ 58. No goods, subject to a duty of excise under this Act, shall be removed from any distillery, malt-house, brewery, tobacco manufactory, cigar manufactory, bonded manufactory or other premises subject to excise, licensed as herein provided, or from any warehouse in which they have been bonded or stored, until the duty on such goods has been paid or secured by bond in the manner by law required.”

“ 68. Goods warehoused under this Act may be transferred in bond, and may be exported or removed from one warehouse to another, without payment of duty, under such restrictions and regulations as the Governor in Council deems necessary.” 30

“ 140. The Governor in Council may make such regulations for the warehousing and for the ex-warehousing, either for consumption, for removal, for exportation, or otherwise, of goods subject to a duty of excise, and for giving effect to any of the provisions of this Act and declaring the true intent thereof in any case of doubt as to him seems meet.”

“ 142. All regulations made under this Act, whether made by the Governor in Council or departmental, shall have the force of law, and any violation of any such regulation shall subject the holder of a licence under this Act, or any other person in the said regulations mentioned, to such penalty or forfeiture as is, by the said regulations, imposed for such violation, and the same shall be enforced in like manner as other penalties and forfeitures imposed by this Act.” 40

5. Regulations for the warehousing and for the ex-warehousing of goods subject to a duty of excise, were duly made by the Governor in Council. Clauses 15 and 16 of the Regulations provide :—

pp. 113-  
120, 166-  
173, 270-  
277.

“ 15. Entry of goods ex-warehouse for exportation must be made on the forms sanctioned by the Department, and must contain an exact specification of the goods intended for exportation. (See Section 10.) With every such entry, an export bond shall be taken in the prescribed form.”

p. 116, l. 4.

10 “ 16. Export bonds shall be conditioned for the due delivery of the goods bonded at the place designated in the entry within a specified time, which time in any case shall not exceed the time usually necessary for the performance of the voyage or journey by the conveyance adopted (allowing a reasonable time for detention within the discretion of the Collector) and for returning the vouchers by the next mail; and in no case shall the period allowed for the cancellation of the export bond exceed six months unless special authority has been granted by the Department.”

p. 116, l. 10.

By Clause 17 of these Regulations, it is provided that save in the case of goods exported under conditions which are not applicable to the facts in these actions, “ the bond shall not be cancelled, unless

p. 116, l. 20.

“ (1) Within the period named in said bond, there be produced to the proper Collector or officer of Customs and Excise, the duly authenticated certificate of some principal officer of Customs at the place to which the goods were exported, stating that goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or

p. 117, l. 8.

30 “ (2) Within the period of three months from the date of exportation of the goods, evidence satisfactory to the Commissioner of Customs and Excise shall be furnished to him that the goods so undertaken to be exported shall not have been re-landed in Canada, or if re-landed in Canada, that the proper entry has been made at Customs and the proper duties paid thereon.”

6. Each of the bonds sued on in these actions was on a printed departmental form.

pp. 83-90,  
158, 238-  
251.

7. The bonds sued on in each action relate to shipments of spirits sold by the Appellant Company to purchasers in Vancouver B.C., who in each case instructed the Appellant Company to ship the goods in bond without payment of Excise duties to consignees named by the Purchaser. In the first and third action the consignee so named was “ John Douglas and Company,” and the addresses given for the consignee were respectively Corinto, Nicaragua and La Libertad, San Salvador. In the second action the consignee so named was “ W. O. Watson, Champerico, Guatemala.” The evidence is that the names given as consignees were names used by the American customers of the Vancouver purchasers.

p. 67, l. 22;  
p. 148, l. 40;  
p. 212, l. 40.  
p. 67, l. 26;  
p. 212, l. 44.

p. 149, l. 3.  
p. 63, l. 37;  
p. 146, l. 28;  
p. 209, l. 37.

## RECORD

- pp. 91-95. 8. The Appellant company entered the spirits for exportation in bond, the destination in the entries covered by the first action being Corinto, Nicaragua, in the second action Champerico, Guatemala, and in the third action La Libertad, San Salvador; and delivered to the Collectors the bonds on which the actions were brought. The bonds referred to in the first and third actions were delivered to the Collector of Inland Revenue at Belleville, Ontario and the spirits covered thereby were shipped in bond by rail from Belleville to Vancouver, where they were laden on board a vessel engaged in the carriage of liquor cargoes only, and not plying on a published route or schedule. The vessel which carried the spirits covered by the bonds in the first action reported outwards from Vancouver for Corinto on the 23rd February 1924, and the vessel which carried the spirits covered by the bonds in the third action reported outwards from Vancouver for La Libertad on the 15th November 1924. The bond referred to in the second action was delivered to the Collector at Vancouver, and the spirits were laden directly at Vancouver on board a similar vessel which reported outwards from Vancouver for Champerico on the 22nd May 1924. 10
- p. 159, Exhibit 5.  
p. 229, Exhibit 4A2.
- p. 31, ll. 10-22;  
p. 201, ll. 8-20.  
p. 96, Exhibit 23.
- p. 252, Exhibit 22.
- p. 139, ll. 21-36;  
p. 161, Exhibit 10.
- p. 111, Exhibit 21. 9. Shortly after the shipment of the spirits covered by the bonds in the first action the Appellant company notified the Collector at Belleville that the destination of the shipment had been changed from Corinto to Buenaventura, Colombia. Similarly, shortly after the shipment of the spirits covered by the bonds in the second action, the Appellant company notified the Collector at Vancouver that the destination of that shipment had been changed from Champerico to Buenaventura. There is no provision in the Statute or Regulations for the giving of such notice. Buenaventura is distant 3,365 nautical miles south from San Francisco. 20
- p. 132, l. 5.
- p. 53, l. 22.
- p. 32, l. 46-  
p. 33, l. 7; p. 35, ll. 22-26;  
p. 140, l. 39;  
p. 141, l. 25;  
p. 201, ll. 43-47;  
p. 202, l. 14.  
p. 34, l. 44-  
p. 35, l. 43;  
p. 140, l. 46-  
p. 141, l. 42;  
p. 203, ll. 15-37.
10. The spirits covered by the said bonds, together with the remainder of the cargo of the vessel in each case, were discharged from the vessels at various places on the high seas off the Pacific coast between San Francisco and a point not more than about 50 miles south of the boundary between the United States and Mexico into small boats. Deliveries to these small boats were, in each case, made in accordance with orders given to the Master of the vessel before he left Vancouver. 30
- p. 36, l. 10;  
p. 131, l. 25;  
p. 186, l. 25.
- pp. 106-110; p. 165.
- pp. 266-7.  
p. 203, ll. 5-14.
11. The vessels which carried the said goods returned to Canada and reported inwards on the 15th May 1924 the 16th August 1924 and the 19th August 1925 respectively. Each Master on the return of the vessel to Canada presented to the port officers documents in the form of a foreign clearance and a foreign bill of health. In the case of the shipments covered by the first and second actions these documents purported to be executed at Buenaventura, Colombia, and certified that the vessels had been at Buenaventura on the 5th April 1924 and the 17th June 1924 respectively. In the case of the shipment covered by the third action, the documents so produced purported to be executed at La Libertad, and certified that the vessel had been at La Libertad on the 31st December 1924. In no case 40

had the vessel in fact at any time on the respective voyages been at the place named in the documents so produced, or at the place named in the entry, but each vessel had been on the high seas, and had not been further south than the points at which its cargo was discharged as aforesaid. The documents so produced to the Canadian port officers were unquestionably false. RECORD.

12. The Appellant Company on April 24th 1924, produced to the Collector at Belleville documents purporting to be certificates signed by the British Consular Agent at Buenaventura, that the spirits covered  
 10 by the bonds referred to in the first action had been landed at the port of Buenaventura in Colombia, on the 21st day of March 1924 and had been duly delivered over to the Customs. In respect of the spirits covered by the bond in the second action, the Appellant Company on the 12th July 1924, produced to the Collector at Vancouver a similar document purporting to be signed by a British Consular Agent at Buenaventura, that the spirits covered by the said bonds had been landed at Buenaventura on the 17th June 1924 and duly delivered over to the Customs. In respect of the spirits covered by the bonds in the third action the Appellant company  
 20 on the 21st January 1925 produced to the Collector at Belleville documents purporting to be certificates signed by a British Vice Consul at La Libertad, that the spirits covered by the said bond had been landed at the port of La Libertad in San Salvador on the 23rd December 1924 and had been duly delivered over to the customs. These documents were false and fraudulent and both the Exchequer Court and Supreme Court of Canada have so found. The signature, date, seal and stamp appearing on the landing certificates so presented to the Collectors are in each case the same as those appearing on the false bill of health presented to the port officers on the return voyage of the respective vessels which carried the shipments from Vancouver.
- 30 13. On the 28th January 1925 the Collector at Belleville wrote a letter to the Appellant company acknowledging the receipt of the landing certificates in respect of the spirits covered by the bonds in the third action, and stated that the bonds had been cancelled. On the 6th June 1925 the Collector demanded from the Appellant Company payment of duty under the said bonds on the ground that the Department was informed that the vessel which carried the said spirits from Vancouver had not called at any San Salvadorean port at any time extending back to the beginning of the year 1924. After such demand and notice the Appellants did not furnish any further evidence to the Collector.
- 40 14. It appears from the evidence of Russell Whitelaw an officer of Consolidated Exporters Corporation Limited of Vancouver which was the purchaser from the Appellant Company of the spirits covered by the bonds in the first and third actions, that the said Corporation purchased or procured the landing certificates, foreign clearance papers and bills of health by the payment or the allowance to their customers of so much per case.

p. 112, Exhibit 20;  
pp. 98-105.

p. 131, l. 38.  
pp. 163-4.

p. 186, l. 39;  
pp. 254-265.

p. 68, l. 13;  
p. 76, l. 30;  
p. 149, l. 21;  
p. 213, l. 21.

p. 269, Exhibit 19.

p. 269, Exhibit 20.

p. 62, l. 36-  
p. 63, l. 22;  
p. 208, l. 35-  
p. 209, l. 22

RECORD. Consolidated Exporters Corporation Limited forwarded the landing certificates in respect of the bonds in the first and third actions to the Appellant Company, and the Appellant Company delivered them to the Collector. pp. 112, 268.  
 p. 132, l. 15; Western Freighters Limited of Vancouver who were the purchasers of the spirits covered by the bond in the second action forwarded the landing certificate in respect of this shipment to the Appellant Company and the Appellant Company delivered them to the Collector. p. 131, l. 38.

pp. 5-8; 123-6; 178-181. 15. The Appellants in each action denied liability under the bonds sued on, and, by amended statements in defence, pleaded that in any event the Exchequer Court of Canada had no jurisdiction to decide the matters at issue in the actions, and that the Exchequer Court Act, Revised Statutes of Canada, 1927, Chapter 34, in so far as it purports to give the Exchequer Court jurisdiction to decide the matter at issue between the parties to these actions, is beyond the power of the Parliament of Canada to enact. 10

16. The Respondent respectfully contends :

(1) That the Exchequer Court of Canada had jurisdiction to try these actions.

(2) That the conditions of the bonds have not been complied with, and the Respondent is entitled to recover from the Appellants the full amount of the bonds. 20

(3) That the alleged cancellations of the bonds by the Collectors were wholly unauthorised and ineffective and void; and that the Respondent's right to recover is not affected thereby.

For convenience these contentions and the opinions expressed on them in the Courts below are separately dealt with.

#### JURISDICTION OF THE EXCHEQUER COURT.

17. The Exchequer Court of Canada was established under Section 101 of the British North America Act 1867 which provides :—

“ 101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance, and Organisation of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.” 30

18. Sections 30 (a) and 30 (d) of the Exchequer Court Act, Revised Statutes of Canada, 1927, Chapter 36, provide :

“ 30. The Exchequer Court shall have and possess concurrent original jurisdiction in Canada.

“ (a) in all cases relating to the revenue in which it is sought to enforce any law of Canada, including actions, suits, and proceedings by way of information to enforce penalties and proceedings by way of information *in rem* and as well *in qui tam* suits for penalties or forfeiture as where the suit is on behalf of the Crown alone.” 40

“(d) in all other actions and suits of a civil nature at Common RECORD.  
 “law or equity in which the Crown is plaintiff or  
 “petitioner.”

19. The Respondent respectfully contends :

(1) That “Laws of Canada,” as used in Section 101, includes any laws in force in Canada whether Imperial, Dominion or Provincial.

10 (2) That the provisions of the Inland Revenue Act, and of the regulations made thereunder are Laws of Canada, within the meaning of section 101 of the British North America Act.

(3) That the law governing the obligations of the Appellants under the said bonds, and the rights and privileges of the Crown in respect thereof, is part of the Laws of Canada, within the meaning of the said section.

(4) That the powers conferred on the Parliament of Canada by section 101 of the British North America Act are paramount to any powers of legislation assigned to the Provinces.

20 (5) That the Exchequer Court, as constituted by the Exchequer Court Act, is an additional Court for the better administration of the Laws of Canada.

(6) That the Parliament of Canada in the exercise of its powers under Section 101 of the British North America Act having validly constituted a Court of Exchequer, it was within the competence of the Crown with the consent of Parliament to make provision for the trial in the Exchequer Court of all actions in which the Crown in the right of the Dominion is Plaintiff or Petitioner.

30 (7) That bonds given under the Inland Revenue Act are “property” within the meaning of sub-section 1 of Section 91 of the British North America Act and Parliament has the right to legislate in respect thereto. Such right to legislate includes the right to set aside or declare void any cancellation of such bonds, and to authorize and empower any Court so to do.

(8) That the Exchequer Court has jurisdiction under section 30 (a) of the Exchequer Court Act to entertain these actions. The bonds were given pursuant to the provisions of the Inland Revenue Act and the Regulations made thereunder. The actions brought on such bonds are cases relating to the revenue, within the meaning of section 30 (a).

40 (9) That the Exchequer Court had jurisdiction under section 30 (d) of the Exchequer Court Act to entertain these actions.

20. The learned trial judge held, in each case, that the Exchequer Court had jurisdiction to try the actions. The actions directly arose from valid Dominion legislation in respect of excise.

p. 69, l. 14-  
 p. 70, l. 21;  
 p. 150, l. 20;  
 p. 214, l. 16-  
 p. 215, l. 40.

21. The Supreme Court unanimously affirmed the judgment of the trial judge on the question of jurisdiction. The Right Honourable the p.75, ll.9-23.

RECORD. Chief Justice of Canada held that the Dominion Parliament was competent under section 101 of the British North America Act to confer on a court created by it authority to hear and determine such claims and had conferred such authority on the Exchequer Court by Section 30 (a) and (d) of the Exchequer Court Act. The Right Honourable Mr. Justice Duff, in whose reasons for judgment Mr. Justice Rinfret and Mr. Justice Lamont concurred, held that the Parliament of Canada was capable of endowing the Exchequer Court with authority to entertain such actions and had done so by Section 30 (d) of the Exchequer Court Act.

p. 76, ll. 11-26.

LIABILITY OF THE APPELLANTS FOR THE FULL AMOUNT OF THE BONDS. 10

22. The Respondent respectfully contends :

(1) That the conditions of the bonds not having been complied with, the Respondent is entitled to recover the full amount of the bonds.

(2) That as the Exchequer Court and Supreme Court have both found that the goods referred to in the several bonds sued on were not exported to or entered for consumption or for warehouse at the respective destinations named therein, the first condition of the bonds has not been complied with, and the bonds remain in full force and virtue. 20

(3) That, as the Exchequer Court and Supreme Court have both found that proof of such exportation and entry was not adduced in accordance with the requirements of the warehousing regulations in that behalf, to the satisfaction of the Collector within the time limited by the bond, or at any time, the second condition of the bonds has not been complied with, and the bonds remain in full force and virtue.

(4) That the Appellants did not account for the said goods to the Collector other than by producing to him the false and fraudulent landing certificates. 30

(5) That the object of the bonds is to prevent frauds on the revenue and it is no defence to these actions to say that the goods left Canada, or that there is no evidence that the goods were brought back into Canada, or that the Crown has not sustained damage, and

p. 116, l. 10.

(a) As the regulations passed pursuant to the Statute, having the force of law under the Statute, expressly require that the bonds shall be conditioned on the due delivery of the goods exported at the place designated in the entry, the Appellants cannot escape liability by proof of delivery of the goods on the high seas. 40

(b) The liability of the Appellants does not depend on whether or not the Crown has sustained damage, but depends on non-compliance with the conditions of the bonds. The

conditions of the bonds are expressly provided for by Clause 16 of the Regulations. The Appellants did not comply with the conditions of the bonds and the bonds remain in full force and virtue;

RECORD.

(c) That while the liability of the Appellants does not depend on whether or not the Respondent has sustained damage, the fact is that the Respondent has sustained damage in that it has lost the duty and sales tax which the Appellant company must have paid had it taken the spirits out of bond without giving the bonds.

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(6) That the contention of the Appellants that the Respondent's actions are prescribed under the provisions of section 279 of the Customs Act, Revised Statutes of Canada, Chapter 48, is not well founded. The said section is not applicable to proceedings under bonds required by the Inland Revenue Act.

23. The learned trial judge held in each case that the goods were not exported to or entered for consumption or for warehouse at the destinations named in the several bonds, but were in fact discharged at sea in small boats off the coast of California at points far removed from the destinations so named; that the landing certificates produced to the Collector were false and fraudulent documents, and that the Respondent was entitled to recover the full amount of the bonds.

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p. 68, l. 1;  
p. 149, l. 12;  
p. 213, l. 12.  
p. 68, l. 32;  
p. 149, l. 12;  
p. 213, l. 12.  
p. 68, l. 13;  
p. 149, l. 21;  
p. 213, l. 21.

24. The Supreme Court affirmed the decision of the trial judge. The Right Honourable the Chief Justice of Canada held that a breach of the condition of each bond has been clearly established and that the whole amount named in each bond must be paid by the Appellants. The Right Honourable Mr. Justice Duff with whom Mr. Justice Rinfret and Mr. Justice Lamont concurred held that neither alternative condition of the bonds was satisfied and that, as the purpose of each bond was to prevent frauds on the revenue, on English and American authority the sum named was recoverable in full.

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p. 75, l. 25.  
p. 76, l. 9.  
p. 76, l. 29-  
p. 77, l. 25.

#### THE EFFECT OF THE ALLEGED CANCELLATIONS.

25. The only authority for cancellation of the bonds is contained in Clause 17 of the regulations, which provides that where the exportation out of Canada is by a bonded railway or by a vessel clearing for a port outside of Canada and plying on a published route and schedule with first port of call a port outside of Canada, the notification from the Collector at the port of exit to the Collector at the port of entry ex-warehouse that the goods have been so exported, "shall operate as a cancellation of the bond, notwithstanding the actual terms of the obligation of the bond." The Appellants did not ship the spirits in question in the manner covered by this provision, and it is admitted this provision does not apply.

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p. 116, l. 20.  
p. 116, l. 46.

RECORD. 26. Clause 17 further provides that in all other cases the bond shall  
p. 117, l. 6. not be cancelled unless :—

(1) There be produced to the Collector 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 and left at some place (naming it) out of Canada,  
“ as provided by the said bond,” or

(2) Evidence satisfactory to the Commissioner of Customs and  
Excise is furnished to him within three months as to the matter  
set out in paragraph 2 of the said clause. 10

These provisions were not complied with.

27. The certificates produced to the Collector (*a*) were not the  
certificates of a principal officer of Customs at the place to which the  
goods were exported, (*b*) did not, in the case of the first two actions,  
certify to the landing of the goods at the place named in the bond, and  
(*c*) were not genuine, but were false and fraudulent documents; and  
the Appellants did not furnish any evidence to the Commissioner of  
Customs and Excise under the terms of the second provision of the said  
regulation. The cancellation or professed cancellation of the bond, under  
these circumstances, by the Collector was expressly forbidden by the 20  
regulations, and was inoperative, as the judgments appealed from have  
found.

28. The Respondent respectfully contends—

(1) That the Collector had no authority to cancel the bonds  
and his act in purporting to cancel them was wholly unauthorized  
and inoperative and not binding on the Respondent.

(2) Even if all the facts disclosed in the evidence had been  
furnished to the Commissioner, the Appellants would not have been  
entitled to have the bonds cancelled. To construe the regulations  
as permitting cancellation of the bonds by proof to the Commissioner 30  
that the goods had been discharged at sea into small boats would be  
repugnant to both the character and spirit of the legislation and  
the regulations. Paragraph 2 of Clause 17 of the regulations was  
obviously intended to provide for such cases as (*a*) a genuine landing  
certificate from some port other than that named in the entry  
to which the shipment had been diverted or (*b*) proof that the goods  
had been lost or destroyed at sea; or (*c*) proof that the goods had  
been relanded in Canada and proper entry made and duties paid  
thereon.

(3) Even if the act of the Collector amounted to a cancellation 40  
of the bonds, such cancellation was procured by misrepresentation  
to the Collector and the Respondent is entitled to recover in an  
action on the bonds. The Appellants in presenting the landing  
certificates to the Collector represented to the Collector that the

spirits covered by the bonds had been landed and left at the destinations mentioned in such certificates. Such representation was false. The Respondent, on discovering the true facts was entitled to rescind the cancellations by the Collector and did in fact rescind such cancellations, and is entitled to recover on the bonds.

(4) Rule 93 of the Exchequer Court provides—

10           “ Each party in any pleading, not being an information,  
           “ petition of right or statement of claim, must allege all such  
           “ facts not appearing in the previous pleadings as he means  
           “ to rely on, and must raise all such grounds of defence or  
           “ reply, as the case may be, which if not raised on the  
           “ pleadings would be likely to take the opposite party by  
           “ surprise or would raise new issues of fact arising out of the  
           “ pleadings.”

20           The Appellants did not plead that the Respondent had cancelled the bonds, and it is not now open to the Appellants to maintain that the Respondent's actions on the bonds fail because no proceedings had been taken to set aside the cancellations. As appears by the record no objection was taken at the trial to the form of the action, or that it was necessary to have the cancellations set aside before the Respondent could recover.

30           (5) The Exchequer Court had jurisdiction under section 30 (*d*) of the Exchequer Court Act to set aside the cancellations. Even if the Respondent, by his pleadings, should have asked that the cancellation be set aside, all the facts are now before the Court and any necessary amendments to the pleadings should be allowed. The Respondent in his Factum before the Supreme Court of Canada submitted that if the act of the Collector amounted to a cancellation of the bonds, such cancellation was of no effect and should be set aside and contended on the argument before the Supreme Court of Canada that if any amendment of the pleadings were necessary, such amendments should be allowed. The Supreme Court of Canada did not consider such an amendment necessary.

40           (6) The Appellants are not discharged from their obligations on the bonds even though they were not parties to the fraud in obtaining the false landing certificates. The Appellants made the representations to the Collector on the strength of which he acted, and these representations were in fact false and fraudulent. The obligation is on the Appellants to comply with the conditions of the bonds. This they did not do. They notified the Collector that they intended to export the goods to the destinations named in the bonds, and left it to their purchaser to discharge that duty for them, and to obtain landing certificates, and in respect of at least one of the shipments took an indemnity agreement from their purchaser, as appears from their defence. The responsibility for the truth of the evidence adduced by them to the Collector was on the Appellants, p. 179, l. 27.

RECORD. and they cannot escape liability on the ground that they were not parties to the fraud.

p. 68, l. 41-  
p. 69, l. 7;  
p. 149, l. 45-  
p. 150, l. 11;  
p. 213, l. 42-  
p. 214, l. 8.

29. The learned trial judge held that the acts of the Collector did not discharge the Appellants from their obligations under the bonds, and that the Appellants undertook the obligation of assuring that the goods would be entered for consumption or for warehouse at the ports mentioned in the bonds, and failed to carry out their obligation.

p. 76, ll. 28-  
43.

30. In the Supreme Court of Canada the Right Honourable Mr. Justice Duff held that the professed cancellation was inoperative in law, proceeding, as the learned trial judge properly found, on concocted documents without the conditions under which cancellation is permitted ever coming into effect. 10

p. 76, l. 9.

Mr. Justice Rinfret and Mr. Justice Lamont concurred in the judgment of Mr. Justice Duff, and the Right Honourable the Chief Justice of Canada agreed that the appeals should be dismissed.

p. 75, l. 31.

31. The Respondent humbly submits that the appeal from the judgments of the Supreme Court of Canada should be dismissed for the following, among other

### REASONS

1. Because the Parliament of Canada under Section 101 of the British North America Act 1867 validly constituted the Exchequer Court of Canada with jurisdiction to entertain these actions. 20
2. Because it was within the competence of the Crown, with the consent of Parliament, to make provision for the trial in the Exchequer Court of all actions in which the Crown is plaintiff or petitioner.
3. Because the Parliament of Canada had power under Section 91 (1) of The British North America Act to legislate in respect of bonds given to the Crown in the right of the Dominion, and to make provision for the trial in the Exchequer Court of actions relating to such bonds. 30
4. Because the conditions of the bonds were not complied with and the Respondent, by reason of such non-compliance, is entitled to recover from the Appellants the full amount of the bonds.
5. Because the Collector had no authority to cancel the bonds and his act in purporting to cancel them was wholly unauthorized and inoperative, and the bonds remain in full force and virtue.

6. Because the Appellants are not entitled to rely on the purported cancellation of the bonds which under the practice and procedure of the Courts below was properly treated as rescinded and inoperative.
7. Because the judgments below are right for the reasons therein stated.

N. W. ROWELL.

FRANK GAHAN.

In the Privy Council.

No. 80 of 1932.

ON APPEAL  
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BETWEEN  
CONSOLIDATED DISTILLERIES LIMITED  
AND W. J. HUME (*Defendants*) *Appellants*

AND  
HIS MAJESTY THE KING  
(*Plaintiff*) *Respondent*  
(Action No. 9370)

AND BETWEEN  
CONSOLIDATED DISTILLERIES LIMITED  
AND F. L. SMITH (*Defendants*) *Appellants*

AND  
HIS MAJESTY THE KING  
(*Plaintiff*) *Respondent*  
(Action No. 9371)

AND BETWEEN  
CONSOLIDATED DISTILLERIES LIMITED  
AND W. J. HUME (*Defendants*) *Appellants*

AND  
HIS MAJESTY THE KING  
(*Plaintiff*) *Respondent.*  
(Action No. 10314.)

CONSOLIDATED APPEALS.

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CASE FOR THE RESPONDENT.

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CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
Strand, W.C. 2.

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EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C. 4.