34, 1933

IN THE PRIVY COUNCIL

No. of 1932.

On Appeal from the Supreme Court of Canada

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

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

EXHIBITS

ACTION No. 9370

EXHIBITS — *Continued*

EXHIBITS — *Continued*

EXHIBITS

ACTION No. 9371

EXHIBITS

ACTION No. 10314

EXHIBITS — *Continued*

EXHIBIT No.	DESCRIPTION	DATE	PAGE
	ACTION No. 10314—*Continued*		
3B to 3G	Requisitions for permits covering the six other shipments in question omitted by consent of the parties		
4A-2	Entry for export ex-warehouse No. 3029	Oct. 15, 1924	229
4A-3	Landing certificate	Dec. 23, 1924	254
4B-2	Entry for export ex-warehouse No. 3023	Oct. 15, 1924	230
4B-3	Landing certificate	Dec. 23, 1924	256
4C-2	Extry for Export ex-warehouse No. 3024	Oct. 15, 1924	231
4C-3	Landing certificate	Dec. 23, 1924	257
4D-2	Entry for export ex-warehouse No. 3025	Oct. 15, 1924	232
4D-3	Landing certificate	Dec. 23, 1924	259
4E-2	Entry for export ex-warehouse No. 3026	Oct. 15, 1924	234
4E-3	Landing certificate	Dec. 23, 1924	261
4F-2	Entry for export ex-warehouse No. 3027	Oct. 15, 1924	235
4F-3	Landing certificate	Dec. 23, 1924	262
4G-2	Entry for export ex-warehouse No. 3028	Oct. 15, 1924	236
4G-3	Landing certificate	Dec. 23, 1924	264
5	Bill of Lading omitted by consent of the parties	Oct. 15, 1924	
6	No Exhibit.		
7	Copy of letter from Consolidated Distilleries Limited, Corbyville, to E. A. Geen, Esq., Collector of Customs and Excise	Jan. 21, 1925	268
8	Letter from the Canadian Mexican Shipping Co. Ltd. to Consolidated Distilleries Limited, Vancouver	Jan. 14, 1925	268
9	Letter from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries Limited, Montreal	May 1, 1924	223
10	Copy of telegram from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries Limited, Montreal	undated	224
11	Copy of letter from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries, Limited, Montreal	Aug. 11, 1924	224
12	Letter from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries Limited, Montreal	Aug. 28, 1924	225
13	Copy of letter from Consolidated Distilleries Limited, Vancouver to Consolidated Distilleries Limited, Corbyville	Sept. 9, 1924	226
14	Telegram from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries Limited, Montreal	Sept. 23, 1924	227
15	No Exhibit.		
16	Copy of telegram from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries Limited, Montreal	Oct. 3, 1924	227

EXHIBITS — *Continued*

34, 1933

IN THE PRIVY COUNCIL

No. of 1932.

On Appeal from the Supreme Court of Canada

BETWEEN:

CONSOLIDATED DISTILLERIES LIMITED, and W. J. HUME,

(Defendants) APPELLANTS,

— AND —

HIS MAJESTY, THE KING,

(Plaintiff) RESPONDENT.

(Action No. 9370)

RECORD OF PROCEEDINGS

No. 1

In the Exchequer Court of Canada

No. 1 Information of Plaintiff, 10th March, 1928.

INFORMATION OF PLAINTIFF

Filed the 12th day of March, A.D. 1928.

To the Honourable the President of the Exchequer Court of Canada.

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

1. On the 8th day of February, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $34,094.00. The condition of the bond was to the effect that if certain goods, namely, 1,000 cases of whiskey, concerning which notice of

intention to export to Corinto, Nicaragua, was given by the defendant, Consolidated Distilleries, Limited, by the A.S. *Malahat*, should be exported and entered for consumption or warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry should, in accordance with the requirements of the Warehousing Regulations, be adduced within sixty days of the date of the said bond to the satisfaction of the Collector of Inland Revenue at Belleville, Ont., or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

2. On the 8th day of February, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $39,994.00. The condition of the bond was to the effect that if certain goods, namely, 1,250 cases of whiskey, concerning which notice of intention to export to Corinto, Nicaragua, was given by the defendant, Consolidated Distilleries, Limited, by the A.S. *Malahat*, should be exported and entered for consumption or warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry should, in accordance with the requirements of the Warehousing Regulations, be adduced within sixty days of the date of the said bond to the satisfaction of the Collector of Inland Revenue at Belleville, Ontario, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

3. On the 12th day of February, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $27,909.00. The condition of the bond was to the effect that if certain goods, namely, 1,000 cases of whiskey, concerning which notice of intention to export to Corinto, Nicaragua, was given by the defendant, Consolidated Distilleries, Limited, by the A.S. *Malahat*, should be exported and entered for consumption or warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry should, in accordance with the requirements of the Warehousing Regulations, be adduced within sixty days of the date of the said bond to the satisfaction of the Collector of Inland Revenue at Belleville, Ontario, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

4. On the 12th day of February, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of

$27,515.00. The condition of the bond was to the effect that if certain goods, namely, 1,000 cases of whiskey, concerning which notice of intention to export to Corinto, Nicaragua, was given by the defendant, Consolidated Distilleries, Limited, by the A.S. *Malahat*, should be exported and entered for consumption or warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry should, in accordance with the requirements of the Warehousing Regulations, be adduced within sixty days of the date of the said bond to the satisfaction of the Collector of Inland Revenue at Belleville, Ontario, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

5. The said goods were not exported or entered for consumption or warehouse at Corinto, Nicaragua, and proof of such exportation and entry, in accordance with the Warehousing Regulations in that behalf, was not adduced within the period of sixty days aforesaid to the satisfaction of the Collector of Inland Revenue, nor did the defendant, Consolidated Distilleries, Limited, account for the said goods to the satisfaction of the said Collector.

6. The Warehousing Regulations to which the Attorney-General craves leave to refer provide *inter alia* as follows:

> " 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."
>
> " 17. . . . . .

In all other cases the bond shall not be cancelled unless:

(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 the goods were actually landed, and left at some place (naming it), out of Canada, as provided by the said bond; or,

(2) Within the period of three months from the date of the 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."

Wherefore the Attorney-General claims on behalf of His Majesty the following sums:

$74,088.00 with interest at 5 per cent from the 8th day of February, A.D. 1924, to the date of payment;

$55,424.00 with interest at 5 per cent from the 12th day of February, A.D. 1924, to the date of payment.

Dated at Ottawa this 10th day of March, A.D. 1928.

ERNEST LAPOINTE,
Attorney-General of Canada.

This Information is filed by

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

No. 2

In the Exchequer Court of Canada

No. 2
Amended Statement in Defence, 29th January, 1931.

AMENDED STATEMENT IN DEFENCE

Filed the twenty-ninth day of January, A.D. 1931.

The defendants in answer to the plaintiff's Information say as follows:

1. The bonds referred to in the first, second, third and fourth paragraphs of the plaintiff's Information speak for themselves.

2. The fifth paragraph of the said Information is denied.

3. The warehousing regulations referred to in the sixth paragraph of the said Information speak for themselves.

4. The defendants are not indebted to the plaintiff in the amount claimed in the conclusions of the said Information nor in any amount whatever.

5. The bonds referred to in the first, second, third and fourth paragraphs of the said Information are void.

6. The landing certificates mentioned in the warehousing regulations referred to in the said Information were produced to the proper collector of Customs and Excise, and are in the hands of the plaintiff or of the plaintiff's representatives.

7. The goods in question were actually exported at and from the port of Vancouver in the Province of British Columbia.

8. The goods in question left Canada.

9. The goods in question have never been re-landed in Canada.

10. In any event if the said goods did not reach the destination indicated by the said landing certificates (which is not admitted) the said goods were, after leaving Canada, lost and destroyed.

11. Even if the goods in question did not reach their destination (which is not admitted) the facts herein alleged do account for the said goods to the satisfaction of the collector of Inland Revenue for the Inland Revenue Division of Belleville, Ontario.

12. There has not been hitherto any reason for the defendants or either of them to account in writing to the said collector in this connection. In view, however, of this action now instituted by the plaintiff, the defendants, without waiver of or prejudice to the above

In the Exchequer Court of Canada

No. 2
Amended Statement in Defence, 29th January, 1931.

contentions of this, their statement in defence, have caused to be served upon the Collector of Inland Revenue for the Inland Revenue Division of Belleville, Ontario, a copy of this statement in defence as a satisfactory accounting for the said goods in any event.

13. The plaintiff's action is prescribed under the provisions of Section 279 of the Canadian Customs Act, Chapter 48 of the Revised Statutes of Canada, 1906.

14. In any event the bonds that were given and the law and regulations in this connection were given and enacted for the purpose of protecting the revenue of His Majesty's Government of Canada, as is indicated by the second paragraph of Section 2 of the Canadian Customs Act which enacts that all the expressions and provisions of that Act, or of any law relating to the customs, shall receive such fair and liberal construction and interpretation as will best ensure the protection of the revenue and the attainment of the purpose for which that Act or such law was made, according to its true intent, meaning and spirit.

15. Even if the requirements of the said bonds or of the said law were not fully complied with (which is not admitted) the revenue of His Majesty's Government of Canada has not been affected thereby.

16. The plaintiff's present action must fail, therefore, in any event.

17. The defendants, therefore, claim that the plaintiff's action should be dismissed with costs.

18. Without waiver of the foregoing the defendants specially allege that in any event the Exchequer Court of Canada has no jurisdiction to decide the matter at issue herein for the following reasons:

(a) The Exchequer Court of Canada is constituted under and in virtue of the Exchequer Court Act, being Revised Statutes of Canada, 1927, Chapter 34.

(b) The Exchequer Court Act was enacted under and in virtue of Section 101 of the British North America Act, 1867, which Section reads as follows:

" The Parliament of Canada, may, notwithstanding anything in this Act from Time to Time, provide for the Constitution, Maintenance and Organization of a General Court of Appeal for Canada and for the Establishment of any addi-

tional Courts for the better Administration of the Laws of Canada."

(c) That the words " Laws of Canada " in the said Section 101 means laws enacted by the Dominion Parliament and within its competence.

(d) That the Parliament of Canada has under and in virtue of the said Section 101 power only to establish additional courts for the better administration of the laws of Canada.

(e) That the matter at issue herein is simply a contract issue and the laws relating to and governing that contract issue are not the laws of Canada, but are laws of the Provinces of Canada.

(f) That under and in virtue of sub-section 13 of the said Section 92 of the British North America Act, 1867, " Property and Civil Rights in the Provinces " are matters assigned exclusively to the legislature in each province for the purpose of making laws relating thereto, and the contract issue between the parties herein is a matter relating to " Property and Civil Rights in the Provinces " and is governed solely by the laws of the province and not by the laws of Canada.

(g) That under and in virtue of sub-section 14 of the said Section 92 " The Administration of Justice in the Province, including the Constitution, Maintenance and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction and including Procedure in Civil Matters in those Courts," are matters assigned exclusively to the Legislature in each Province.

(h) That under the British North America Act, 1867, the Provinces of Canada exclusively have power to establish Courts to administer the laws relating to property and civil rights in the provinces, and more particularly to administer the laws relating to the contract issue between the parties herein and the Parliament of Canada has no power whatsoever to give to the Exchequer Court of Canada jurisdiction to administer the laws relating to property and civil rights in the province, and more particularly the laws relating to and governing the contract issue between the parties herein.

19. That the Exchequer Court Act, being Revised Statutes of Canada, 1927, Chapter 34, and every section thereof, is unconstitu-

In the Exchequer Court of Canada

No. 2
Amended Statement in Defence, 29th January, 1931.

tional and beyond the powers of the Parliament of Canada in so far as it purports to give to the Exchequer Court of Canada jurisdiction to decide matters not governed by the laws enacted by the Parliament of Canada and within its competence, and more particularly the defendants specially plead that the said Exchequer Court Act is unconstitutional in so far as it purports to give jurisdiction to the Exchequer Court of Canada to decide the matter at issue between the parties herein.

20. That the action of the plaintiff should therefore also be dismissed on the grounds set forth in paragraphs 18 and 19, saving in this regard, however, such recourse as the plaintiff may have in the Provinces.

Dated at Montreal this 29th day of January, 1931.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for Defendants.

No. 3

In the Exchequer Court of Canada

No. 3
Amended Reply,
4th July, 1928.

AMENDED REPLY

1. The Plaintiff joins issue on the Defendant's Statement in Defence.

2. In reply to paragraphs six and eleven of the Defendant's Statement in Defence the Plaintiff alleges as the fact is that the landing certificates produced to the Collector of Customs and Excise at Belleville in Ontario were false, and were forged or otherwise fraudulently procured and presented to the said Collector in order to deceive the Plaintiff and the said Collector and to procure the discharge of the said bonds without compliance with the conditions thereof, and the production of the false certificates was not a compliance with the warehousing regulations referred to in the Information, nor with the terms of the bonds, nor was such production an accounting for the said goods to the satisfaction of the said Collector and the said bonds remain in full force and virtue.

3. In reply to paragraphs five to ten inclusive and paragraphs fourteen and fifteen of the Defendant's Statement in Defence the Plaintiff alleges as the Defendant well knew:

(1) That the said goods could not be sold for consumption in Canada without the payment to the Plaintiff of the duty and sales tax thereon, nor could they be exported in bond to the United States because of the law in force in the United States prohibiting the importation of intoxicating liquors, and that if the said goods has been entered for exportation in bond to the United States the shippers could not obtain such proof or certificate of export as was required by the Canadian Customs Law and Regulations.

(2) That the entry of the said goods for exportation in bond to Corinto, Nicaragua, was part of a fraudulent scheme devised by the Defendant Company to obtain the removal of the liquors from customs bond without payment to the Plaintiff of the duties and sales tax payable thereon, and to obtain the cancellation of the bonds given to the Plaintiff in respect of such removals, by the production of landing certificates that were false and were either forged or otherwise fraudulently procured, purporting to certify to the landing of such goods in some country other than Canada or the United States.

(3) That the objects of the aforesaid fraudulent scheme were, (a) to enable the Defendant Company to deliver the liquor

In the Exchequer Court of Canada

No. 3
Amended Reply, 4th July, 1928.

into small boats at sea to be smuggled into Canada or the United States and (b) to defraud the Plaintiff of the duties and sales tax payable thereon.

(4) That the individual Defendant was aware of the fraudulent scheme so devised by the Defendant Company and knew that there was no bona fide intention on the part of the Company to export the said goods to Corinto, Nicaragua, and that any certificate to be produced by the Company purporting to show that the said goods had been so exported must be false.

(5) That any cancellation of the said bonds based on the production of such false certificates was wholly unauthorized and ineffective, and

(6) That the Plaintiff has lost the duty and sales tax payable on the said goods and has incurred substantial costs and expenses in connection therewith.

Dated at Ottawa this 4th day of July, A.D. 1928.

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

No. 4

In the Exchequer Court of Canada

No. 4
Reply to Amended Defence, 29th January, 1931.

REPLY TO AMENDED DEFENCE

1. The Plaintiff joins issue on paragraph 18 of the amended Statement of Defence, and submits that this Court has jurisdiction to decide the matters at issue herein. As to sub-paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of said paragraph 18, the Plaintiff joins issue on such of said sub-paragraphs as relate to matters of law, and denies such of said sub-paragraphs as relate to matters of fact.

2. The Plaintiff joins issue on the allegations contained in paragraph 19 of the amended Statement of Defence, and submits that the Exchequer Court Act is validly enacted, and that thereunder this Court has jurisdiction to decide the matters at issue between the parties herein.

3. The Plaintiff further submits in reply to the whole of paragraphs 18 and 19 of the amended Statement of Defence:

(a) That the Defendants have consented, submitted and attorned to the jurisdiction of this Court in this action.

(b) That if the Exchequer Court of Canada has not ample jurisdiction to decide the matters at issue in this action (which is not admitted but denied) the Defendants have waived their right to object thereto, and are estopped from questioning the jurisdiction of this Court.

Dated at Ottawa, Ont., this 29th day of January, A.D. 1931.

W. STUART EDWARDS,
Solicitor for the Plaintiff.

In the Exchequer Court of Canada

No. 5
Defendants' Answer to Plaintiff's Amended Reply, 27th September, 1928.

No. 5

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED REPLY

(1) The defendants join issue on the plaintiff's amended reply.

(2) The defendants, without waiver of their denial of the allegations contained in the plaintiff's amended reply, further allege that in any event:

(a) The defendants and each of them acted in good faith and acted reasonably throughout.

(b) The allegations contained in the plaintiff's amended reply with regard to the laws of the United States are irrelevant and can have no effect upon the issues herein.

(c) Even if the said goods or any part of them had been brought into the United States as alleged by the plaintiff (which is not admitted) that fact would not give rise to any right on the part of the plaintiff against the defendants or either of them.

(3) The defendants therefore persist in their prayer that the plaintiff's action should be dismissed with costs.

Dated at Montreal this 27th day of September, 1928.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for Defendants.

No. 17

In the Exchequer Court of Canada

No. 17
Notice of Appeal to the Supreme Court of Canada, 7th April, 1931.

NOTICE OF APPEAL

TAKE NOTICE that the Defendants above named being dissatisfied with the judgment herein given by the Honourable the President of this Court the 13th day of March, A.D. 1931, have set down an appeal against the said judgment to the Supreme Court of Canada.

Tuesday, the seventh day of April, A.D. 1931.

(Sgd.) E. F. NEWCOMBE,
Ottawa Agent for Defendants' Solicitors.

To the Attorney-General of Canada.

No. 19

In the Supreme Court of Canada

No. 19
Order dispensing with printing of certain exhibits, 15th July, 1931.

ORDER DISPENSING WITH PRINTING OF CERTAIN EXHIBITS

Upon the application of the Appellants and upon hearing what was alleged by Counsel on their behalf and upon hearing read the consent of Respondent filed herein and the affidavit of F. T. Collins, Solicitor for Appellants,

1. IT IS ORDERED that the printing of the following Exhibits be dispensed with:

Exhibit 12. Face of requisition number 4553 only to be printed.
Exhibit 13. Face only to be printed.
Exhibit 14. Formal part at foot of document to be omitted.
Exhibit 15 (c).
Exhibit 16 (c).
Exhibit 17 (c).
Exhibit 18 (a).
Exhibit 19.
Exhibit 23. Duplication of the formal parts to be omitted.
Exhibit 26. Excepting paragraphs 1-30, inclusive, which are to be printed.

2. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

Dated at Ottawa this 15th day of July, A.D. 1931.

(Sgd.) J. F. SMELLIE,
Registrar.

In the Supreme Court of Canada

No. 18
Agreement as to contents of Appeal Book, 27th June, 1931.

No. 18

AGREEMENT AS TO CONTENTS OF APPEAL CASE

The parties hereto hereby agree that the appeal case on the appeal herein to the Supreme Court of Canada shall consist of the following documents:

1. Index of Reference.

PART 1

2. Information.
3. Amended Statement in Defence.
4. Amended Reply as filed.
5. Defendants' answer to Amended Reply.
6. Notice of Appeal.
7. Order dispensing with the printing of certain Exhibits.
8. Agreement as to contents of appeal case.

PART 2

9. Evidence of proceedings at the trial.
10. Formal admission filed at the trial.

PART 3

All Exhibits except the following:

Exhibit 12. Face of requisition Number 4553 only to be printed.
Exhibit 13. Face only to be printed.
Exhibit 14. Formal part at foot of document to be omitted.
Exhibit 15 (c).
Exhibit 16 (c).
Exhibit 17 (c).
Exhibit 18 (a).
Exhibit 19.
Exhibit 23. Duplication of the formal parts to be omitted.
Exhibit 26. Excepting paragraphs 1-30 inclusive, which are to be printed.

PART 4

11. Formal Judgment.
12. Reasons for Judgment.
13. Certificate of Solicitor.

Dated this 27th day of June, A.D. 1931.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitor for the Appellant.

W. STUART EDWARDS,
Solicitor for the Respondent.

No. 6

EXAMINATION ON DISCOVERY of J. G. LAWRENCE, an officer of the defendant company, on behalf of the Plaintiff, before Arnold W. Duclos, K.C., Registrar of the Exchequer Court of Canada, at Montreal, on the 15th day of January, 1931.

Counsel: G. C. Lindsay, Esq., for the Plaintiff; F. T. Collins, Esq., for the Defendants.

J. G. LAWRENCE, sworn.

Examined by Mr. Lindsay:

1. Q.—What is your present position in the defendant company, Mr. Lawrence?
A.—Secretary.
2. Q.—How long have you been with the company?
A.—Since 1922.
3. Q.—What position did you hold in the company in February, 1924?
A.—I was appointed Secretary of the company on 22nd February, 1924.
4. Q.—And prior to the 22nd February, 1924, what was your position?
A.—Part of the time Chief Accountant and part of the time Assistant Secretary.
5. Q.—Who was in charge of the sales of spirits through Vancouver in February, 1924?
A.—Mr. Rayner would be in charge of all the sales.
6. Q.—Where was his office?
A.—In Montreal.
7. Q.—And is he still with the defendant company?
A.—No, sir.
8. Q.—When did he leave the employ of the company, by the way?
A.—He left in December, 1926.
9. Q.—Then who, besides Mr. Rayner, in the Montreal office, would have anything to do with sales through Vancouver at that time in February, 1924?
A.—The President of the company at that time.
10. Q.—Who was he?
A.—Mr. J. R. Douglas.

11. Q.—Is he with the company now?

A.—No, sir, he is not.

12. Q.—Then aside from Mr. Rayner and Mr. Douglas, who else would be familiar with sales made through Vancouver in February, 1924?

A.—Just the sales department.

13. Q.—Do you mean by that just clerks?

A.—Yes, clerks and assistants to the sales manager.

14. Q.—Are there any of them who would be familiar with the arrangements in reference to sales other than what would appear on the documents themselves, which you produce?

A.—Not with the company now.

15. Q.—Then in Vancouver, did the company have a representative in Vancouver in February, 1924?

A.—Yes.

16. Q.—Who was that?

A.—Mr. F. L. Smith.

17. Q.—What was his position at that time?

A.—Distillery Manager in Vancouver.

18. Q.—And had he to do also with sales of spirits shipped to Vancouver from Belleville?

A.—Yes, he would have.

19. Q.—Is he still with the company?

A.—Yes.

20. Q.—Then the defendant company had a distillery in Belleville in 1924?

A.—At Corbyville, near Belleville.

21. Q.—Was it from Corbyville that the spirits that were covered by the bonds sued on in this action were shipped?

A.—Yes.

22. Q.—Who was in charge of the distillery at Belleville?

A.—Mr. Hume.

23. Q.—Is he still with the defendant company?

A.—No.

24. Q.—Now, referring first to the particular transaction covered by the bonds in this action, Mr. Lawrence, I show you four bonds, which are the bonds referred to in the information, the first being bond No. 4553, dated 8th February, 1924, for $39,994.00, which purports to be executed by the defendant company and Mr. Hume, and I ask you if you identify the signatures on that bond as being the signatures on behalf of the distillery and Mr. Hume's signature?

A.—Yes.

25. Q.—And can you similarly, looking at bond No. 4554, also

dated 8th February, 1924, for $34,094.00, identify that as being executed by the defendant company and Mr. Hume?

A.—Yes.

26. Q.—I show you bond No. 4582, for $27,909.00, dated 12th February, 1924, do you identify that as being executed by the defendant company and Mr. Hume?

A.—Yes.

27. Q.—And bond No. 4583, for $27,515.00, dated February 12th, 1924, do you identify that as being executed by the defendant company and Mr. Hume?

A.—Yes.

The Registrar: Are you putting the bonds in now, Mr. Lindsay?

Mr. Lindsay: Yes.

The Registrar: They will be Exhibits Nos. 1, 2, 3 and 4.

Bond No. 4553, dated 8th February, 1924, for $39,994.00, will be Exhibit No. 1.

Bond No. 4554, dated 8th February, 1924, for $34,094.00, will be Exhibit No. 2.

Bond No. 4582 dated 12th February, 1924, for $27,090.00, will be Exhibit No. 3, and

Bond No. 4583, dated February 12th, 1924, for $27,515.00, will be Exhibit No. 4.

28. Q.—Now, Mr. Lawrence, how did the shipment and sale referred to in these bonds, Exhibits numbers 1 to 4, originate?

A.—I am afraid I will have to look through the file to answer that question.

29. Q.—Look through the file and tell me, please?

A.—They originated by telegraph order from Vancouver.

30. Q.—You produce that order, dated February 4, 1924?

A.—Yes.

Mr. Lindsay: I will put it in.

The Registrar: It will be Exhibit No. 5.

31. Q.—This is a telegram signed Consolidated Distilleries Limited, Vancouver, who would that be sent by, Mr. Lawrence?

A.—Presumably by Mr. Smith.

32. Q.—Mr. Smith was in charge of your branch and office in Vancouver?

A.—Yes.

33. Q.—He was the one who was in touch with Consolidated Exporters Corporation in Vancouver—in reference to the sale of these goods?

A.—I presume so.

34. Q.—Don't you know that he was looking after that business out there?

A.—Not at that time, no.

35. Q.—Don't you know now that he was at that time looking after it.

Mr. Collins: You are asking him for his recollection at that time and not his recollection since the institution of the action. It is what he knew at the time.

The Registrar: An officer of the company is bound to find out what information he can get.

Mr. Lindsay: I would be entitled to ask him if Mr. Smith looked after that business.

The Registrar: If he knows from the official documents of the company.

Mr. Collins: Mr. Lawrence is in Montreal and this man is in Vancouver, it is seven years ago, 1924, and the question is perhaps asking a bit too much of Mr. Lawrence.

The Registrar: If he cannot answer it, it is up to him.

Mr. Lindsay: My view is Mr. Lawrence is an officer of the company and made himself familiar with certain facts in reference to the proceedings in this action or I would ask that he make himself familiar with it, and when I ask if Smith was in charge in Vancouver for the defendant company when these transactions took place with the Consolidated Exporters Corporation, if he does know now the answer to that question he should give it.

Mr. Collins: I am simply pointing out the difficulties.

The Registrar: If he does not know himself or from the documents that is another question.

Mr. Lindsay: You know Mr. Smith was the man in charge in Vancouver?

Mr. Collins: Mr. Smith gave his evidence and was questioned fully on it.

Mr. Lindsay: You know Mr. Smith, who sent this telegram, was in charge in Vancouver for your company, of the transactions with Consolidated Exporters Corporation?

The Witness: I would think so, yes.

36. Q.—You would think so from the information you have gained since?

A.—Yes, but don't know he was at that particular time. He was Manager in Vancouver and Consolidated Exporters were in Vancouver.

37. Q.—You know he was Manager there in 1924?

A.—Yes.

38. Q.—Then, just to make quicker headway, Mr. Lawrence, I show you production No. 2, which is a telegram from your Montreal office to your Vancouver office. I would ask you if that is an answer to Exhibit No. 5; it is of the same date?

A.—Yes, it is.

Mr. Lindsay: I will have that marked.

The Registrar: It will be Exhibit No. 6.

39. Q.—Then just to show the practice in reference to these sales, Mr. Lawrence, following your wire to Vancouver—Exhibit No. 6—your file shows apparently that from Montreal the defendant notified your distillery in Corbyville of the transaction or gave instructions for the shipment, is that right?

A.—Yes.

40. Q.—Then I see from your file, Mr. Lawrence, that on February 5, 1924, your Vancouver office telegraphed your Montreal office with an order for a further 2,000 cases?

A.—Yes.

Mr. Lindsay: I will file both these documents.

The Registrar: The one from the defendant company in Montreal to the Corbyville office will be Exhibit No. 7 and the one

from Vancouver office to the Montreal office, ordering a further 2,000 cases, dated February 5, 1924, will be Exhibit No. 8.

41. Q.—And that was followed on the same date by another telegram from your Vancouver office to Montreal, with a request that 250 cases of " Old Crow " American pints be included in the order. Is that right?

A.—Yes.

Mr. Lindsay: Then I will file that telegram.

The Registrar: It will be Exhibit No. 9.

42. Q.—Now, I take it that " Special Selected " is a brand of whiskey made by the defendant company?

A.—Yes.

43. Q.—Is that true also of " Old Crow "?

A.—Yes.

44. Q.—What is the reference to American pints?

A.—It is the size of the package.

45. Q.—Is that a larger or smaller pint than the Canadian pint?

A.—I cannot give you the exact ounces but it has a different volume to our pints.

46. Q.—When reference is made in Exhibit 9 to " Old Crow " American pints, that meams that particular brand put up in what is known as American pint bottles. Is that a sized bottle that is commonly used?

A.—Yes.

47. Q.—In what market?

A.—I think that is too technical for me to answer.

48. Q.—Does the name " American Pints " mean it is the size used in the United States?

A.—I would not say that, no.

49. Q.—Do you know where it does get its name, " American Pints "?

A.—No.

50. Q.—Then, following these telegrams, you produce a letter of confirmation of the several telegrams, dated February 5, 1924, from your Vancouver office to your Montreal office, apparently initialed " F.L.S."; would that be Mr. Smith's letter to the Montreal office?

A.—Yes.

Mr. Lindsay: I will file that letter.

The Registrar: It will be Exhibit No. 10.

51. Q.—Then completing the transaction you produce a telegram sent from the Montreal office to the Vancouver office on February 5th, the same date, acknowledging receipt of the several orders totalling 4,250 cases?

A.—Yes.

Mr. Lindsay: I will file that telegram.

The Registrar: It will be Exhibit No. 11.

52. Q.—So that these several telegrams and letters relate to the sale and shipment referred to in the bonds numbers (Exhibits) 1 to 4, and that was covering 4,250 cases?

A.—Yes.

53. Q.—This whiskey, then, Mr. Lawrence, was, at the time of the orders and before it was shipped, in your distillery at Corbyville, where it is manufactured in bond under the Excise Regulations?

A.—Yes.

54. Q.—I would ask you to identify requisitions for permits that were made on behalf of the defendant company at Corbyville or Thurlow; is that the same place?

A.—The Township of Thurlow.

55. Q.—They are dated the 8th and 12th of February and signed in the name of George Hutson. What was his office in the distillery?

A.—He is the chief clerk; what he was at that time I do not know.

56. Q.—You recognize Mr. Hutson's signature on those requisitions?

A.—Yes.

Mr. Lindsay: I will file those four requisitions for permits.

The Registrar: They will be Exhibit No. 12.

57. Q.—Exhibit No. 12 then (requisitions) is in the form of requests for permission to remove these spirits from warehouse No. 4, Thurlow, to Corinto, Nicaragua, via C.N.R. to Vancouver and ship "Malahat", there to be delivered into the possession of J. Douglas & Company, Corinto, Nicaragua, the duty on the said spirits having been secured by bond; so that these whiskies were taken out of the warehouse in bond to be shipped in accordance with

the telegrams you have produced as being the orders for the particular transaction. That is, the duties were not paid on these spirits?

A.—No, sir.

58. Q.—And they were shipped under these bonds (Exhibits 1 to 4) by your company to Vancouver?

A.—Yes.

59. Q.—Just to show the form, I would ask you to produce the form of your shipping instructions?

A.—Yes.

60. Q.—You produce a form which you know as Shipping Instructions, made out at Montreal and sent to your distillery at Corbyville?

A.—Yes.

61. Q.—A form similar to that would be used for each of these transactions, I take it. It is not necessary for me to refer to each one. Is that right?

A.—Yes, the shipping instructions covered the entire shipment.

Mr. Lindsay: I will have the form marked.

The Registrar: It will be Exhibit No. 13.

62. Q.—Then, when the goods are shipped from Corbyville, what is the practice as regards a notification from Corbyville to Montreal of the shipment?

A.—Shipping notice is made out and sent forward to Montreal.

63. Q.—Will you produce the form that is used for that?

A.—Yes, I produce it.

Mr. Lindsay: I will have it marked.

The Registrar: It will be Exhibit No. 14.

64. Q.—You produce a shipping notice, dated February 8, 1924, which in this case covers 2,250 cases, part of this particular shipment, and this shipping notice was sent from Belleville to Montreal at the time the goods were shipped from Belleville to Vancouver?

A.—Yes.

65. Q.—Then these goods being in bond at Belleville, the defendant company made an entry ex-warehouse in reference to them, and I show you entries 4553, 4554, 4582 and 4583 (4), each of these being in quadruplicate, and I ask you if you can identify them as being entries made on behalf of the defendant company of spirits covered by these bonds?

A.—I can identify the signature of Mr. Hume in three of the four in each set and the fourth one being simply a typewritten copy.

Mr. Lindsay: I will put them in.

The Registrar: Entry No. 4553 will be Exhibit 15-A, entry No. 4554 will be Exhibit 15-B, entry No. 4582 will be Exhibit 15-C, and entry No. 4583 will be Exhibit 15-D.

66. Q.—I understand, Mr. Lawrence, and perhaps you can tell me: these documents, the entries, bonds and different documents, presented to the Customs Officer in Belleville, are made out at the distillery and presented to the Customs Officer?

A.—Yes.

67. Q.—Now the goods having been taken out of the bonded warehouse at Corbyville, after you made these entries and had given the bonds, were then shipped to Vancouver?

A.—Yes.

68. Q.—By your distillery?

A.—Yes.

69. Q.—In bond?

A.—Yes.

70. Q.—I ask you to produce as a sample one of the forms of Bill of Lading under which these goods were shipped—February 9, 1924?

A.—I produce it. This is a sample.

71. Q.—The other bills of lading would be in similar form?

A.—Yes, sir.

Mr. Lindsay: I will file that form of Bill of Lading.

The Registrar: It will be Exhibit No. 16.

72. Q.—To whom were these whiskies charged by your company?

A.—To the Consolidated Exporters Corporation Limited, Vancouver, B.C.

73. Q.—How was the payment for them to be made?

A.—Sight draft against documents.

80. Q.—Just so that we have this transaction correct, I understand, and you can tell me if I am wrong, that on this particular shipment there was a shortage of two cases when it arrived at Vancouver?

A.—Apparently that is so from the notation on this entry.

81. Q.—Copy of entry 4583?

A.—Yes.

82. Q.—Would you, with Mr. Collins, just look at your file and see if I am correct; it was short two cases. Please see if I am right in that?

A.—Yes.

83. Q.—Would you just tell me what your file shows in reference to that shortage of two cases on arrival of the goods at Vancouver?

A.—There were two cases short when the car arrived at Vancouver and we made a claim against the carrier company for the shortage and paid duty to the Government.

84. Q.—Paid duty on the two cases short?

A.—Yes.

85. Q.—That was how much?

A.—$18.00.

86. Q.—That would be duty on two cases of spirits?

A.—Yes.

87. Q.—Then you made a claim on the carrier for the amount of duty that you paid and according to your file that claim was settled with you by the carrier company by payment of that amount. According to the condition of the bonds sued on, Mr. Lawrence, it is provided that if proof of exportation and entry ex-warehouse shall, in accordance with the requirements in that behalf, be adduced within sixty days of the date of the bond, and certain other things specified occur, the obligation shall be void, otherwise to remain in full force and virtue. What steps were taken by the company in reference to the bond after these goods were shipped?

A.—The company forwarded to the Collector of Customs and Excise at Belleville, on the 24th April, 1924, landing certificates covering this shipment.

88. Q.—You produce copy of your letter of the 24th April, 1924?

A.—Yes.

Mr. Lindsay: I will have that copy of letter marked.

The Registrar: It will be Exhibit No. 18.

89. Q.—I show you the form of landing certificates endorsed on one of each of the entries and which you identify as having been made by the defendant company and signed by Mr. Hutson, Exhibits 15-A, 15-B, 15-C and 15-D and ask if those are the documents you refer to as the landing certificates presented?

A.—Yes, they are.

90. Q.—Now, did you have anything to do with this transaction yourself, Mr. Lawrence?

A.—No, sir.

91. Q.—Is there anything you can say with reference to the transaction other than what appears on the documents themselves?

A.—No, sir, nothing, no.

92. Q.—Is there any one in the employ of the defendant company now, other than Mr. Smith, who would be able to give us any information as to the carrying out of this transaction, other than appears on the documents?

A.—Not in the Montreal office.

93. Q.—Is there any one at the Corbyville plant who could do so?

A.—Mr. Hutson might. He is still in the employ of the company.

94. Q.—What was his position at that time?

A.—I cannot answer that defiinitely. He might be the chief clerk.

95. Q.—What would be his duties as chief clerk in reference to this transaction?

A.—I do not know. I could not tell exactly what his duties would be.

96. Q.—But they would be confined to operations inside the distillery?

A.—In the distillery office, clerical.

97. Q.—That is at Corbyville?

A.—Yes.

98. Q.—What about Vancouver—outside of Mr. Smith?

A.—What is your question?

99. Q.—Who there is besides Mr. Smith, now in the employ of the defendant company, who could give us any information in reference to the transaction, that is, other than appears on the face of the documents?

A.—Mr. Peacock might have some knowledge of it.

100. Q.—What does he do?

A.—He is the accountant in the Vancouver office under Mr. Smith.

101. Q.—This is one of several similar transactions, is it not, where the goods were sold to the Consolidated Exporters Corporation and shipped in bond from Corbyville to Vancouver, there to be forwarded by ship to some other destination?

A.—Yes.

102. Q.—And from your knowledge you tell me that several transactions were carried out in approximately the same way in

regard to the placing of the orders, the forwarding of the goods and the securing of the duty by bond and the payment by draft attached to documents?

A.—Yes, that would all be practically in the same way.

103. Q.—In addition to sales of spirits in bond you also had sales of spirits where you paid the duty?

Mr. Collins: I object to that.

Mr. Lindsay: But the defendant company has been shipping whiskey destined for places in the United States. The company has paid the duty on the whiskey and removed the goods from the warehouse before shipment.

Mr. Collins: I register the same objection.

Mr. Lindsay: I think I am entitled to ask it. In the pleadings in answer to the defendants' defence the plaintiff filed a reply and I submit the question is not objectionable.

The Registrar: The objection of Mr. Collins has been noted. The answer of Mr. Lawrence is " That relates to Vancouver ".

104. Q.—I am speaking both for Vancouver and say Windsor?

A.—Yes.

105. Q.—And the difference in the case of the shipment in question in this action was that the duty was not paid and the goods removed from warehouse in bond?

A.—Yes.

Mr. Collins: But the destination was not the United States in the case of this shipment and there was no necessity of paying duty.

106. Q.—Can you tell me why there was a difference in the procedure in the case of shipments destined for the United States and these shipments?

A.—The shipments in question are destined for Corinto, Nicaragua.

107. Q.—Why could you not ship them the same way to Detroit, Michigan?

A.—Because you could not get a landing certificate.

Question 107 now objected to by Mr. Collins.

108. Q.—Did I ask you, Mr. Lawrence, where you got those

landing certificates from that the defendant company produced to the Collector?

A.—No, not at this present session.

109. Q.—Can you tell me where you received them from?

A.—From the Consolidated Exporters Corporation Limited.

110. Q.—In Vancouver?

A.—Yes, in Vancouver.

10 111. Q.—You refer to a letter from them dated April 15, 1924, signed G. W. Norgan as an officer of the company?

A.—Yes.

112. Q.—I understand you gave a notice to the Collector of the diversion of this shipment from the original destination of Corinto to Buenaventura?

A.—Yes.

113. Q.—You produce a copy of a letter written by the defendant company to the Collector, dated April 7, 1924?

A.—Yes.

20 Mr. Lindsay: I put that in.

The Registrar: It is Exhibit No. 19.

114. Q.—Will you produce the letter that is quoted from in Exhibit No. 19?

A.—Yes.

115. Q.—You produce a copy of a letter written by and received from the Canadian Mexican Shipping Company addressed to the defendant, dated March 29, 1924?

A.—Yes.

116. Q.—Who were the Canadian Mexican Shipping Com-

30 pany?

A.—I do not know. I can only presume that they are the owners of the " Malahat " boat, but I do not know for certain whether they are or not.

The Registrar: Are you putting in that letter?

Mr. Lindsay: Yes.

The Registrar: It will be Exhibit No. 20.

40

117. Q.—There is no question about the " Malahat " being the boat, is there, Mr. Lawrence? Please look at Exhibits 17-A and 17-B, the invoices forwarded to the Consolidated Exporters Limited for these goods. They were routed to go forward by the " Malahat ", were they not?

A.—Yes, they were.

118. Q.—Then as in the other case—you have already put in

as Exhibit 16, one of the Bills of Lading as a specimen. Look at the other Bills of Lading under which these goods went forward and tell me whether it is not the case as the two car lots went forward on the 9th February and as to the other two car lots on February 12, 1924?

A.—Apparently that is the date of the Bills of Lading; the dates of the Bills of Lading on which they went forward. Presumably they went forward around those dates.

(Examination concluded.)

No. 7

The evidence of GEORGE EDWARD MURRAY, Master Mariner, taken before J. F. Mather, Registrar of the Supreme Court of British Columbia, at the Court House, in the City of Vancouver, in British Columbia, on the 29th day of October, A.D. 1930, pursuant to a Commission issued herein to J. F. Mather aforesaid, by this Court, and dated the 6th day of June, 1930.

G. C. Lindsay, Esq., appears for the Plaintiff.

F. T. Collins, Esq., appears for the Defendants.

(Before the execution of the Commission the Commissioner took the oath in the form prescribed in the Commission, and the clerk, Donald Frank Saunders, took the form of oath prescribed in the Commission.)

GEORGE EDWARD MURRAY, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Lindsay:

1. Q.—What is your full name, Mr. Murray?
A.—George Edward.
2. Q.—Where do you now live?
A.—Victoria.
3. Q.—And you have lived there continuously for how long?
A.—On and off since I would say thirty years, somewheres around there, a little longer, I think.
4. Q.—What is your present occupation? Retired?
A.—No, I don't think I am retired. I guess I belong to the big multitude of unemployed.
5. Q.—What was your occupation during the years 1923, 1924, 1925 and 1926?
A.—Master mariner.
6. Q.—What vessel were you on during those years?
A.—Can I look at this paper a minute?

Mr. Collins: Now, before you——

The Witness: This is the subpœna; I presume you are asking upon that, are you not? I want to make sure of this, because you are going back a long ways.

Mr. Lindsay: 7. Q.—Let me put it this way: I do not want

you to misconstrue my question. Were you engaged during those years as master in charge of a vessel operating out of Vancouver?

A.—Yes, I was.

8. Q.—And in the fall of 1923, October, 1923, what vessel were you in charge of?

A.—The " Malahat ".

9. Q.—Previous to that you had been in charge of other boats operating out of Vancouver?

A.—Yes.

10. Q.—Did you make many voyages on the " Malahat " from Vancouver?

A.—Five, I think, or six; five.

11. Q.—Five or six?

A.—Five or six.

12. Q.—What size vessel was the " Malahat "?

A.—She was about a thousand ton register, I guess, about 1,000 ton register.

13. Q.—What length approximately? We are not maritime men. We do not know much about size and tonnage?

A.—I should say 300 odd feet. I would not like to say exactly.

14. Q.—Was it a sailing vessel or a powered vessel?

A.—Auxiliary.

15. Q.—It had an auxiliary engine as well as sails?

A.—As well as sails.

16. Q.—What was its normal cruising speed?

A.—Well, with the auxiliary, you have to depend upon the weather, because in very fine weather we might make about seven knots.

17. Q.—Without the auxiliary?

A.—That is with the auxiliary. Of course, with the sails, she would do anything, twelve, or twelve and a half or thirteen.

18. Q.—Who were you employed by?

A.—The Canadian Mexican Shipping Company.

19. Q.—Where was their office, in Vancouver?

A.—In Vancouver.

20. Q.—Who was the active officer in the Canadian Mexican Shipping Company?

A.—Captain McLennan, I think.

21. Q.—Were you employed by the Canadian Mexican Shipping Company continuously while you were operating the " Malahat "?

A.—Yes.

22. Q.—Do you know whether they own the " Malahat "?

A.—As far as I know.

23. Q.—Who was it that instructed you as to your voyages and destinations?

A.—The owners.

24. Q.—Your owners?

A.—Yes.

25. Q.—And Captain McLennan?

A.—Through Captain McLennan.

26. Q.—Yes, through Captain McLennan; now, what cargoes did the " Malahat " carry during that period?

A.—Well, supposed to be liquor.

27. Q.—Well, it is what is commonly known as a liquor boat?

A.—Yes.

28. Q.—You did not carry other goods, I mean other commodities except liquor?

A.—No.

29. Q.—And did you ply on any regular schedule?

A.—No.

30. Q.—Did they operate on any published route?

A.—Not that I know of.

31. Q.—How many of a crew did they have on the " Malahat " ordinarily?

A.—About twenty all told, I think it was twenty or twenty-one, something like that.

32. Q.—And was it pretty much the same crew all the time, or did they change with different voyages?

A.—They changed with different voyages.

33. Q.—You had a mate and a second mate?

A.—And a second mate.

34. Q.—I show you the outward report of the Auxiliary Schooner " Malahat " from the Port of Vancouver dated the 23rd day of February, 1924. I ask you if you recognize your signature upon that document?

A.—That is it.

35. Q.—I beg pardon?

A.—That is it.

36. Q.—That is your signature?

A.—Yes.

37. Q.—This report consists of two sheets. Do you recognize——

A.—I recognize my signature all right.

Mr. Lindsay: Mark that Exhibit " A " to this examination.

(Document marked Exhibit " A ".)

38. Q.—And in this outward report you reported outwards for the port of Corinto, Nicaragua.

Mr. Collins: May I interrupt a second time before you go on. I want to make a verification.

Mr. Lindsay: 39. Q.—After reporting outwards, Captain, on that date, February 23rd, 1924, did the " Malahat " leave Vancouver with its cargo?

A.—Yes, sir.

40. Q.—I show you certain forms of entry for export ex-warehouse made by Consolidated Distilleries Limited at Belleville, bearing date as to numbers 4553 and 4554 of February 8th, 1924, at Belleville, and as to numbers 4582 and 4583 dated February 12th, 1924, at Belleville. I ask you if you recognize your signature to a clause on the back of each of these entries?

A.—Yes.

41. Q.—That is the clause, " Received the aforementioned goods on board the S.S. ' Malahat ' for exportation to John Douglas & Co., Corinto, Nicaragua ".

A.—Correct.

(Documents referred to marked Exhibits " B ", " C ", " D " and " E " respectively.)

42. Q.—Were those signed after the cargo was placed on the boat, the " Malahat "?

A.—Yes, signed at the dock after they were loaded.

43. Q.—The date of the outward report being the 23rd of February, 1924, about how long after that would it be before you left Vancouver?

A.—Well, if that was at night, we would sail in the morning.

44. Q.—Where did the " Malahat " go to after leaving Vancouver?

A.—Went right down the coast.

45. Q.—Went right down the coast and where did you return to on that voyage?

A.—Returned to Vancouver.

46. Q.—Did you bring back any cargo with you in the " Malahat "?

A.—No, sir.

47. Q.—You came back in ballast?

A.—In ballast.

48. Q.—And where was the cargo discharged?

A.—On the high seas.

49. Q.—Where on the high seas?

A.—Down off the California Coast or the Mexican.

50. Q.—How was it discharged?

A.—Into boats.

51. Q.—When you came back to Vancouver did you produce certain papers to the Collector?

A.—Yes, sir.

52. Q.—What would those documents be that you produced to the Collector?

A.—A bill of health and clearance.

53. Q.—A bill of health and foreign clearance?

A.—Yes.

54. Q.—Where did you get the bill of health and foreign clearance that you produced to the Collector on your return from the voyage?

A.—On the high seas.

55. Q.—Well?

A.—A boat brought it out.

56. Q.—A boat brought it out to you to where you were on the high seas?

A.—Yes.

57. Q.—Can you recognize the document which I show you as being the document which you brought back on that voyage?

A.—Yes, I think these——

Mr. Collins: May I see these before you answer? Are there two of these or are these just copies?

Mr. Lindsay: There is another original there.

58. Q.—I think the question I asked you was whether you recognize them?

A.—This is familiar all right.

59. Q.—You recognize these as being the documents you brought back?

A.—Well, I would say they were them all right.

60. Q.—You would say they were them all right. I see that the bill of health refers to the British Auxiliary Schooner " Malahat " owned by the Canadian Mexico Shipping Company, Vancouver, whose master is G. E. Murray and which was last at the Port of Vancouver and is about to sail from the Port of Buenaventura on this 5th day of April, 1924, and you say that is the document which you got on the high seas brought out to you by a boat?

A.—It looks like them.

61. Q.—What?

A.—It looks like them.

62. Q.—Was the " Malahat " at the Port of Buenaventura on the 5th of April, 1924?

A.—No, sir.

63. Q.—Was it at the Port of Buenaventura at any time between the time you left Vancouver about February 23rd, 1924, and the time when you returned?

A.—No, sir.

64. Q.—Was the " Malahat " at Corinto?

A.—No, sir.

65. Q.—At any time between the time you left Vancouver on February 23rd, 1924, and your return to Vancouver?

A.—No, sir.

66. Q.—Was any of the cargo of the " Malahat " discharged at either Buenaventura or at Corinto?

A.—I could not say that.

67. Q.—From your boat?

A.—No, sir, not from my boat.

68. Q.—On the voyage from Vancouver of February 23rd, 1924?

A.—Not from my ship it was not.

69. Q.—I notice the stamp of the Customs at Vancouver on these foreign documents is May 15th, 1924. Do you know whether that is about the date you returned from this voyage?

A.—I could not tell you the date, sir.

70. Q.—How long were you away from Vancouver on that voyage leaving in February, 1924?

A.—It is hard to say; sometimes two or three months, sometimes nine months.

71. Q.—You don't recall particularly how long you were away?

A.—No.

72. Q.—How long after you left Vancouver did you first discharge any of the cargo, about how long?

A.—Between a week and ten days. That applies to all of them.

73. Q.—What was the nature of the boats into which you discharged the cargo?

A.—Speed boats, fish boats, trawlers.

74. Q.—In approximately what lots was the cargo discharged?

A.—It would depend upon the orders produced. They all drawed orders for different sizes.

75. Q.—What were those orders you referred to—first, where did you receive the orders?

A.—The boats brought them off with them.

76. Q.—The boats brought them off with them?

A.—Yes.

77. Q.—That is while you were at sea?

A.—On the high sea.

78. Q.—How did you recognize them as orders for this cargo?

A.—They corresponded with stubs I held.

79. Q.—You had the corresponding stub with you on the boat?

A.—Yes.

80. Q.—Where did you receive those stubs?

A.—From the owners in Vancouver.

81. Q.—From the owners in Vancouver before leaving Vancouver and how did you come to discharge the cargo in this way?

A.—I don't quite understand your question.

82. Q.—Well, I might put it this way. You say you were on the high sea. What place on the high seas were you when you were discharging the cargo?

A.—Around different spots up and down the coast from Frisco down.

83. Q.—How far south did you go?

A.—I could not say exactly on each trip how far we went.

84. Q.—About how far south were you of the border between the United States and Mexico?

A.—Oh, about ten or twelve miles south of the American line.

85. Q.—And you were at different points up and down the coast?

A.—Yes.

86. Q.—How did you come to go to those different points?

A.—I had orders.

87. Q.—Orders to you?

A.—To me.

88. Q.—From whom?

A.—From the owners.

89. Q.—Given when?

A.—As a rule the first one was given before I left Vancouver.

90. Q.—What do you mean as a rule the first one given?

A.—Yes, then the orders would be sent off at different times.

91. Q.—The other orders you would receive sent off to you from the coast?

A.—Yes.

Mr. Lindsay: That is all, Mr. Collins.

GEORGE E. MURRAY (witness for respondent), Cross-examination.

Cross-Examination by Mr. Collins:

92. Q.—You say, Captain, that you left Vancouver about the 24th of February, 1924, on this voyage?

A.—I could not say exactly the date, a day after the clearance.

93. Q.—It is dated the 23rd of February, 1924?

A.—Yes.

94. Q.—According to the report inwards of the steamship " Malahat ", the ship returned to Vancouver on the 15th of May; that is your signature upon this inward report?

A.—That is my signature.

95. Q.—Well, that would be the date that the ship returned to Vancouver?

A.—Yes.

96. Q.—So that you were on the high seas approximately three months between the 24th of February and the 15th of May?

A.—Yes.

97. Q.—Do you remember those particular shipments that counsel for the plaintiff referred to in your examination-in-chief?

A.—I could not.

98. Q.—You do not remember seeing those particular cases?

A.—Well, I didn't see what the names were.

Mr. Lindsay: It is on the report right in front of you.

A.—The last one, did you say; that is not very enlightening.

(Looking at document.) I could not say what they were.

Mr. Collins: 99. Q.—You don't remember this particular shipment?

A.—Not particularly. That is my signature on there at the time, but what it was, I cannot say now.

Mr. Lindsay: You mean the particular shipment from the Consolidated Distilleries?

Mr. Collins: 100. Q.—Yes, the particular shipment in this action No. 9370?

A.—Yes.

101. Q.—You don't remember where those particular cases referred to in action 9370 were discharged?

A.—They were discharged on the high seas.

102. Q.—You don't remember where or when?

A.—No.

103. Q.—Except that they were discharged off the coast of California and the coast of Mexico?

A.—Yes.

104. Q.—Somewhere in the period between the 24th of February and the 15th of May?

A.—Correct, sir.

105. Q.—How far were you off the coast of Mexico and California at the time you discharged?

A.—It is pretty hard to cover that, 20 to 50 miles, between 20 and 50.

106. Q.—You say you discharged into fish boats, trawlers and speed boats?

A.—Yes.

107. Q.—What was the size of those various boats, what tonnage?

A.—Oh, the smallest boat about six tons up to twenty-four, perhaps a little bigger.

108. Q.—Various tonnages?

A.—Various tonnages. It is only approximate. I cannot say exact.

109. Q.—Where was this bill of health and foreign clearance handed to you?

A.—At sea.

110. Q.—At sea off the coast of California or Mexico?

A.—Yes.

111. Q.—Did you ever receive any other documents, landing certificates?

A.—No, sir.

112. Q.—Nothing at all except the bill of health and foreign clearance?

A.—That is the only two I had.

113. Q.—You said in your examination in chief that these cases were not discharged at Buenaventura; that is they were not discharged from your ship?

A.—I think that is what I said.

114. Q.—I think you corrected it, at least, I think that was your answer, but I just wanted to make certain of it?

A.—That is right.

115. Q.—You discharged only into various boats on the high seas?

A.—That is all.

116. Q.—And you don't know where those boats went to after they left you?

A.—No, sir.

GEORGE E. MURRAY (witness for respondent), Re-examination.

Mr. Collins: That is all, Mr. Lindsay.

Mr. Lindsay: 117. Q.—Would those boats into which you discharged the cargo hold as much as a thousand or 1,500 cases at a time, or smaller boats?

A.—Some would hold more than that and some less.

118. Q.—Did you give to the Collector at Vancouver on your return anything other than the foreign clearance and bill of health, any other documents?

A.—No, sir.

Mr. Collins: 119. Q.—Those boats into which you would discharge, they were substantial boats?

A.—Yes.

120. Q.—Good seagoing boats?

A.—Good seagoing boats. They would want to be out there.

121. Q.—They had to navigate the high seas?

A.—I would not like to say about the man's capability of navigating.

122. Q.—I think you misunderstand the question?

A.—Oh, they had to navigate the high seas. Yes, they had to navigate the high seas.

Mr. Collins: Will you repeat the whole question and answer?

(Questions 120 to 122 read by stenographer.)

The Witness: I thought you said they could navigate the high seas.

123. Q.—In referring to " they " I meant the boats had to navigate the high seas?

A.—Yes.

Mr. Collins: That is all——

124. Q.—When did you receive the foreign bill of health and the foreign clearance?

A.—After we were unloaded.

(Witness aside.)

No. 8

Before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa, Ontario, January 29th and 30th, 1931.

Counsel: Hon. N. W. Rowell, K.C., and Gordon C. Lindsay, Esq., for Plaintiff; A. R. Holden, K.C., and F. T. Collins, Esq., for Defendants.

Mr. Holden: My Lord, before my learned friend commences I would like to state that we obtained permission to amend the plea in one of the actions and if I understood it aright at the time your Lordship heard us on that, it was agreed that a similar amendment be made in the other actions. We have prepared amendments in all the thirteen actions, of which three are set down for trial today, all on legal questions, and we have those thirteen amended pleas. I would ask my friend if we may put them in by consent or if he prefers that we take a summons and go through the formalities.

Mr. Rowell: It is not necessary to go through the formalities. If your Lordship will make the same orders as in the other case that will be satisfactory. If your Lordship directs that the amendments be made in the other cases that will be sufficient.

His Lordship: Permission is given the defendants to so amend their several defences in the remaining twelve actions.

Mr. Rowell: With the same right to amend our reply.

His Lordship: Yes, certainly.

The Registrar: What delay?

Mr. Holden: We will do it at once.

Mr. Rowell: Action No. 9370, my Lord, is brought against the defendants by the Crown. The action is by the Crown against Consolidated Distilleries Limited and W. J. Hume, who, at this time, was an officer of the defendant company, to recover the amount of four certain bonds. These bonds were given by the defendants in respect of certain shipments of spirituous liquors made by the defendant company to Corinto, Nicaragua, on the steamship " Malahat ". Two of the bonds are dated the 8th day of February, 1924, the first one being for $34,094.00, covering 1,000 cases of whiskey, the second one being for $39,994.00, covering 1,250 cases of whiskey, the third and the fourth bonds being dated February 12th, 1924, covering

1,000 cases of whiskey, and being for (3rd bond) $27,909.00, and the fourth one being for $27,515.00, and covering 1,000 cases of whiskey.

(1)	8th Feb., 1924, 1,000 cases	$34,094.00	
(2)	8th Feb., 1924, 1,250 cases	39,994.00	
(3)	12th Feb., 1924, 1,000 cases	27,909.00	
(4)	12th Feb., 1924, 1,000 cases	27,515.00	$129,512.00

The defendants defend on the ground that they have complied with the conditions of the bonds and that the bonds are therefore void and that in any case the Crown has not suffered any loss or damage, that the goods were taken out of Canada and not returned, and by leave granted they set up the question of jurisdiction of the Court.

His Lordship: I presume this case is practically the same as the others which were decided here. I hope it will not be necessary to go through all the evidence, if the facts are the same as disclosed in the other cases. I hope that by way of admissions the trial of these cases can be shortened. I mean to say that everybody knows what was happening in these export cases. They did not always go to the destination declared at the time of the entry outwards and unless, Mr. Holden, you are prepared to prove that the goods did go to that place I think it is just as well to admit it and stand on your legal rights, whatever they may be.

Mr. Holden: The situation as conceived is that the Crown has to prove the facts.

His Lordship: If you know that the Crown will be able to prove the facts it is not worth while going to all that trouble.

Mr. Holden: Our hope at least is that the Crown cannot prove these facts and I say " hope " because of the fact that the present defendant is an innocent third party as far as any offence goes. May I say at the outset that we respectfully take exception to the jurisdiction of the Court as shown by our amendment.

His Lordship: I did not refer to that point.

Mr. Holden: I should repeat that apart from that my friend suggested to us certain admissions, but in view of our contention that they cannot prove as much as they must prove in order to succeed, apart from the question of jurisdiction, we have not been able

to meet them on certain admissions which they suggested and apart from that our contentions are as raised by the issues, that these defendants should not have to pay anyway as the intention and evident purpose of the bond was to protect the revenue of Canada and this has not suffered, and, in any event, our explanation as given to the proper officials of the issues here should be and are sufficient under the bond and the regulations themselves.

His Lordship: After going over one case did they change the others?

Mr. Rowell: My friend at first did say that they took the matter up with a view to shortening, but they made no admissions and stated that the Crown should be put to strict proof.

Mr. Rowell: Mr. Lindsay will put in portions of the Examination for Discovery of Mr. Lawrence, the Secretary of the Defendant Company.

Mr. Lindsay: If your Lordship pleases, in reference to the Examination of J. G. Lawrence I will put in the caption and commencing at the first question down to question No. 27 which covers the identification of the bonds. I will put in the bonds Exhibits 1, 2, 3 and 4 on the Examination.

The Registrar: And Exhibits 1, 2, 3 and 4 on trial.

Bond No. 4553 will be Exhibit No. 1; Bond No. 4554 will be Exhibit No. 2; Bond No. 4582 will be Exhibit No. 3; and Bond No. 4583 will be Exhibit No. 4.

The above four bonds are filed by Mr. Lindsay on January 15, 1931, on Examination for Discovery, and on January 29th, 1931, on trial.

Mr. Lindsay: Then question No. 28. Then I put in the telegram of February 4, 1924, Exhibit No. 5 on Examination, and referred to at question 30 of Examination.

The Registrar: That will be Exhibit No. 5 on trial.

Mr. Lindsay: It is from Consolidated Distilleries, Limited, Vancouver, to the same company in Montreal.

His Lordship: Consolidated Exporters, did you say?

Mr. Lindsay: Yes, it refers to them. It reads bill of lading attached to draft on Consolidated Exporters.

Mr. Holden: They were the customers.

Mr. Lindsay: A corporation in Vancouver.

His Lordship: The agent of the defendants.

Mr. Holden: No, they are the exporting customers. The telegram is from our agent referring to a sale made to Consolidated Exporters Corporation Limited, who were the purchasers for export.

His Lordship: A Canadian corporation, I assume.

Mr. Holden: Yes, my Lord.

Mr. Lindsay: Then question No. 31. I will now pass on to the middle of the next page, page 5:

> " You know Mr. Smith, who sent this telegram, was in charge in Vancouver for your company, of the transactions with Consolidated Exporters Corporation?
>
> " The Witness: I would think so, yes."

Mr. Holden: May I look at the telegram?

Mr. Lindsay: Certainly.

Mr. Holden: There were submissions made as to the character of the questions.

Mr. Lindsay: Then I will read it through.

Mr. Holden: I think you should put it all in. Objections are made later on.

Mr. Lindsay: I have no objection to putting this in, although there may be parts I do not care to put in.

Mr. Rowell: The ruling of the Court, as I understand it, is: If we read a part or put in a part, then the other side may put in another part.

His Lordship: That is true, but if you suggest something at the moment.

Mr. Collins: You were asking him for his recollection at that time and not his recollection since the institution of the action. It is what he knew at that time. I made these same remarks at the time of examination.

Mr. Lindsay: Then I will put in questions 31 to 38 and put in telegram referred to therein, which was Exhibit No. 6 on Examination. It bears the same date as Exhibit No. 5.

The Registrar: That telegram will be Exhibit No. 6 on trial.

Mr. Lindsay: Then questions 39 and 40 and I will file the documents therein referred to I will file as Exhibits on trial.

(1) Shipping instructions from Montreal to Corbyville office, dated February 5, 1924, Exhibit No. 7 on trial.

(2) Telegram from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries Limited, Montreal, dated February 5, 1924, Exhibit No. 8 on trial.

Mr. Lindsay: Then question No. 41, and I will file that telegram from Consolidated Distilleries Limited, Vancouver, to the same company, Montreal, with the request that 250 cases of " Old Crow " American pints be included in the order.

The Registrar: That will be Exhibit No. 9.

Mr. Lindsay: Then questions 42 to 49. Then question 50, and I will file the letter from Consolidated Distilleries Limited, Vancouver, to Consolidated Distilleries Limited, Montreal, dated February 5, 1924, and confirming the orders as covered by the previous telegrams.

The Registrar: The letter referred to will be Exhibit No. 10.

Mr. Lindsay: Then question 51, and I will file the telegram dated February 5, 1924, from Consolidated Distilleries, Montreal, to Consolidated Distilleries, Limited, Vancouver, acknowledging receipt of the orders, as Exhibit No. 11.

Then question No. 52, and I will file the four requisitions for permits as Exhibit No. 12.

His Lordship: How far is Corbyville from Belleville?

Mr. Lindsay: About four miles, my Lord.

Mr. Rowell: What is the date of the merits?

Mr. Lindsay: Two of them are dated 8th February, 1924, and the other two of them are dated 12th February, 1924.

His Lordship: These are permits to take liquor out of the distillery and ship it to Vancouver, a bond having been given?

Mr. Rowell: Yes, my Lord.

Mr. Lindsay: Then question 52 goes in, the next is question 57.

His Lordship: Thurlow is a township only?

Mr. Rowell: I think it is the Township of Thurlow in which Corbyville is situated.

His Lordship: But the warehouse is in Corbyville?

Mr. Rowell: It is in Corbyville, in the Township of Thurlow, and is referred to in the permits that way.

Mr. Lindsay: Then Exhibit No. 13 will be shipping instructions, and it is in the form of instructions to the Distillery to ship to Consolidated Exporters Corporation, Vancouver, for exportation to John Douglas and Company, Corinto, Nicaragua, 2,000 cases specially selected flasks. Then questions 62 and 63 and shipping notice, dated February 8, 1924, from Corbyville to Montreal, of the shipment will be Exhibit No. 14.

Then questions 64 and 65 and I will file the original of each set of entries as follows:

Entry No. 4553 will be Exhibit 15A, 4554 will be Exhibit 15B, 4582 will be Exhibit 15C and 4583 will be Exhibit 15D.

The Registrar: They will be 4553 A, B and C — 15; 4554 A, B and C — (3) 16 (3); 4582 A, B and C — 17; 4583 A, B and C — 18

They are entries ex-warehouse for exportation of liquors to Corinto, Nicaragua.

Mr. Lindsay: Yes, they are known as ex-warehouse entries and on these documents is a declaration by Mr. Thompson and form of landing certificate for completion by the officer at destination. Then I will file the Bill of Lading, covering 1,000 cases shipped to the order of Consolidated Distilleries Limited, Vancouver.

The Registrar: It will be filed as Exhibit No. 19. The Bill of Lading is referred to on page 10 of Examination for Discovery of Mr. Lawrence.

Mr. Lindsay: I will put in question 72, page 10, and the answer thereto: Q.—To whom were these whiskies charged by your company? A.—To the Consolidated Exporters Corporation, Limited, Vancouver, B.C.

Then question No. 73, page 10, and the answer thereto: Q.—How was the payment for them to be made? A.—Sight Draft against documents.

I do not think there is anything material now down to question No. 88. I will now put in question 88 and the answer thereto: Question No. 88: Q.—You produce copy of your letter of the 24th April, 1924? A.—Yes.

That copy of letter was filed as Exhibit No. 18 on Mr. Lawrence's Examination and will now be filed as Exhibit No. 20. It is a letter from the Consolidated Distilleries Limited to Mr. Geen, the Collector of Customs and Excise at Belleville, is dated April 24, 1924, and it encloses landing certificates covering shipments as follows: The four shipments shown in the bonds. Then question No. 89 and I will refer to the documents mentioned. They are in as 15-A, 15-B, 15-C and 15-D, the landing certificates being endorsed on one copy of 15, 16, 17 and 18.

His Lordship: Does that make another exhibit?

Mr. Lindsay: No, my Lord, I just refer to the particular ones they are on.

His Lordship: Is Buenaventura in Mexico?

Mr. Lindsay: No, my Lord, it is in Colombia. In referring to

these documents, my Lord, you will see they purport to bear the stamp of the British Consular Agency, but as to whether it is there is nothing to show. Then I put in questions 90, 91 and 92.

Mr. Holden: My learned friend says the documents purport to bear the stamp. I think it is proper to mention now that the bonds were cancelled on these landing certificates. They were accepted and now they allege they were false, but the certificate itself was accepted and the bond cancelled on the certificate.

Mr. Rowell: At that time it was believed to be genuine and was acted upon at that time.

Mr. Lindsay: Then I put in questions 92 to 103 inclusive. To Q. 103: In addition to sales of spirits in bond you also had sales of spirits where you paid the duty?

Mr. Collins: I object to that.

His Lordship: What is the purpose?

Mr. Lindsay: To show the difference in method in which goods were shipped when destined for shipment to the United States and in the case of these shipments which we claim did not go to the destination named in the entries.

Mr. Rowell: Our submission is that the parties knew this was a system adopted for the purpose of avoiding payment of duty when shipping out on the coast, when shipping direct they had to pay duty as they could not get landing certificates.

Mr. Holden: Our submission is that the Crown has sued on a contract in regard to a particular shipment and that the objection is well founded.

His Lordship: It is noted.

Mr. Lindsay: Then questions 108, 109, 110, 111, 112, 113.

His Lordship: The Collector referred to in question 113, what Collector would that be?

Mr. Lindsay: The Collector at Belleville. The letter was produced on examination, it is dated April 7, 1924, it is signed Consoli-

dated Distilleries Limited, per W. J. Hume, and I will now file it as Exhibit No. 21.

I then asked Mr. Lawrence to produce the original letter which was quoted in that copy. Reference was made in question 111 to a letter signed G. W. Norgan, dated April 15, 1924. It is a letter from the Consolidated Exporters Corporation Limited to Consolidated Distilleries Limited, Corbyville, enclosing four documents duly executed at the port of entry, Buenaventura, and he asks that they be forwarded to the Customs in order to have the bonds released. It is signed Consolidated Exporters Corporation Limited, G. W. Norgan, and I will file it as Exhibit No. 22. Questions 114 to 117 then go in. I then pass over the other questions. That is the examination of Mr. Lawrence. I will now call Mr. Walter Vernon T. Green.

No. 9

WALTER VERNON GREEN, a witness called on behalf of the Plaintiff, sworn.

Examined by Mr. Lindsay:

Q.—What is your occupation, Mr. Green?

A.—Senior Excise-Customs Clerk at the Port of Vancouver.

Q.—What is your particular position in the Port of Vancouver?

A.—I have charge of the Ships' Clearances and the Record Room in the Port of Vancouver.

Q.—How long have you held that position?

A.—Since July, 1914.

Q.—Can you produce the outward report of the steamship " Malahat " from Vancouver of February 13th, 1924?

A.—Yes.

Q.—I notice this outward report is purported to be signed before W. T. Green, is that your signature on it?

A.—Yes. My name is Walter Vernon T. Green.

Mr. Lindsay: I will file that outward report.

The Registrar: It will be Exhibit No. 23.

Q.—This is a report outward from the Port of Vancouver of the Auxiliary Schooner " Malahat ", with 22 men, Captain G. E. Murray, Master, for this present voyage, for Corinto, Nicaragua; that is the destination for which the " Malahat " cleared?

A.—Yes.

Q.—I see in the upper right hand corner report No. 1797, what does that relate to?

A.—The consecutive number on the manifest by which it is identified and the entries recorded.

Q.—When you speak of the manifest, that is the report outwards?

A.—Yes.

Q.—I see the shipper's name in the second column, with the exception of one item, is shown as Consolidated Exporters Corporation Limited?

A.—Yes.

Q.—And that under the column headed marks and numbers the mark in every case is J. D. and Company, Corinto, Nicaragua?

A.—Yes.

Q.—John Douglas and Company, Corinto, Nicaragua?

A.—Yes.

Q.—On the manifest it refers to many different goods; they are all liquors, are they not?

A.—Yes.

Q.—And in the right hand column of the page there are a number of numbers set in black ink opposite groups of these articles as listed; what do those numbers refer to?

A.—Either the export or the in transitu entries covering the shipment.

Q.—What export entry would it relate to?

A.—The goods set opposite on the manifest.

Q.—On the second page of Exhibit No. 23 there are two items, one—2,250 cases of whiskey and opposite are the numbers 18622-3, what would those numbers refer to?

A.—The export entry numbers under which we have them filed away, under which we file the exports covering those goods.

Q.—And similarly with reference to the next item of 1,998 cases of whiskey—opposite 1864-5? Does that mean the same thing?

A.—Yes.

Q.—Do you know Captain G. E. Murray?

A.—Yes.

Q.—That is his signature appearing on the outward report?

A.—Yes.

His Lordship: That relates to four entries outwards and the quantities?

Mr. Rowell: Yes, my Lord, less the two cases short and on which they paid the duty.

Q.—I will show you certain entries already filed as Exhibits, beginning with No. 15-A. This is the ex-warehouse entry made at Belleville by Consolidated Distilleries Limited in respect of 1,250 cases for export to Corinto, Nicaragua, and I see endorsed on the face of the copy " Out Malahat R. 1797 February 23, 1924, export entry 18622 W.V.T. Green "; is that your signature appearing on that entry?

A.—Yes.

Q.—And the notation which you put on that entry?

A.—Yes.

Q.—What does this mean, " Out Malahat R. 1797 "?

A.—That those goods were reported out on the " Malahat " under that report number on that date.

Q.—By that report number you mean R. 1797?

A.—Yes.

Q.—Is that the report which you filed as Exhibit No. 23?

A.—Yes.

Q.—February 23, 1924, is that the date of it?

A.—That is the date of the vessel's sailing.

Q.—And export entry No. 18622, to what does that relate?

A.—The number given to the export entry covering the shipment on that date.

Q.—So that on looking at Exhibit No. 23, can you say that the goods covered on Exhibit No. 23, by export entry No. 18622, are the goods referred to in Excise ex-warehouse entry 15-A No. 4553?

A.—No, this just covers 1250, but the two together make up that amount.

Mr. Rowell: 18622-23 cover 2250 cases shown on manifest Exhibit No. 23; is that what you say?

A.—Yes.

Mr. Lindsay continues:

Q.—And you say Exhibit 15-A is 1250 of the 2250 cases referred to?

A.—Yes.

Mr. Holden: If my learned friend asks him the same question in regard to them all, with the exception of the two missing cases, we have no objection.

Mr. Lindsay: Mr. Green, then look at 16-A, 17-B and 18-B, and say whether you can identify all your notations on those entries as the goods covered by these Excise ex-warehouse entries 15, 16, 17 and 18; identify them with the goods referred to in Exhibit No. 23 (Outward Report), 2250 and 1958 cases of whiskey under 18622-3-4 and 5?

A.—I do.

Q.—So that these goods referred to in Exhibits 15, 16, 17 and 18 were shipped on the "Malahat" on that date, February 15, 1924?

A.—Yes.

Q.—Tell me in regard to Exhibits 15, 16, 17 and 18, on which you endorsed your memo, how they come to you?

A.—They are sent by mail from Belleville.

Q.—And what do you do with them after you have endorsed that certificate on them?

A.—I file one copy with the export entry on my own file and the other copy is endorsed and returned to the Collector at Belleville.

Q.—At what time do you endorse the memo that appears on the face of it?

A.—After the vessel sails.

Q.—Do you have also to do with the receiving of incoming vessels?

A.—Yes.

Q.—I will ask you to produce foreign clearance papers produced to you by the " Malahat " on its inward report of May 15, 1924.

His Lordship: The inward report of the " Malahat "?

Mr. Lindsay: The foreign clearance papers from the foreign port.

His Lordship: Delivered on her return trip?

Mr. Lindsay: Yes, my Lord.

Mr. Holden: I would like to see it, please.

Mr. Rowell: It was in Spanish and we have had to have it translated.

Mr. Holden: Thank you, I understand it now. Thank you, my Lord.

Mr. Lindsay continues:

Q.—You produce two documents in Spanish, each headed Buenaventura, Colombia, dated April 5, 1924, and bearing the stamp of the record room, Vancouver, of May 15, 1924, what is that stamp?

A.—My office stamp.

Q.—Is that the date on which you received these documents?

A.—Yes.

Q.—On the return of the " Malahat "?

A.—Yes.

Mr. Lindsay: I will file those two documents and the translations.

The Registrar: They will be Exhibit No. 24.

(No cross-examination of witness.)

Mr. Lindsay: I will now put in the evidence of George Edward Murray, taken under commission at the City of Vancouver, pursuant to an Order of the Court, on the 29th day of October, A.D. 1930. I will put in the caption. I will put in questions 1 to 22, 23 to 37:

In the Exchequer Court of Canada
No. 9

Q. 37—This report consists of two sheets. Do you recognize——
A.—I recognize my signature all right.

Mr. Lindsay: The outward report which was produced is now filed. Then questions 38 to 40. Those entries are now Exhibits 15, 16, 17 and 18. Then questions 41 to 43 inclusive.

His Lordship: So far that evidence is much the same as where there was an agreement.

Mr. Rowell: Yes, my Lord, the evidence as to the discharge of the cargo has been about the same.

His Lordship: You might see the stipulations in that case and show them to Mr. Holden.

Mr. Holden: Were they goods in the same ship?

Mr. Rowell: That was the first case tried. I will have a talk with my learned friend at lunch time.

Mr. Lindsay: I will put in the rest of the examination and the cross-examination by Mr. Collins beginning at question 92, page 10.

Mr. Holden: This is not Discovery but an order made for the examination of the witness on commission.

The Registrar: It forms part of the evidence in any case; it is taken *de bene esse.*

Mr. Lindsay: I will now call Mr. Fred Inkster.

FRED P. INKSTER (witness for respondent), Examination-in-chief.

No. 10

FRED P. INKSTER, a witness called on behalf of the Plaintiff, sworn.

Examined by Mr. Lindsay:

Q.—What is your occupation?

A.—Geographer in the Department of the Interior.

Q.—Where do you live?

A.—In Ottawa.

Q.—You are in the office of the Chief Geographer of the Department of the Interior?

A.—Yes.

Q.—And you have the Departmental records and maps showing the distance between various places on the Pacific Coast?

A.—Yes.

Q.—Have you made an examination and can you tell me the distance from San Francisco, California, to Buenaventura, Colombia?

A.—Approximately correct.

Q.—What do you make that distance to be?

A.—Part of it is on these sheets. From San Francisco to Buenaventura the distance is 3,365 nautical miles.

Q.—You have shown Buenaventura on this map, have you?

A.—Yes.

Q.—And you have shown by a blue line the approximate distance from San Francisco, California, to Buenaventura, Colombia, of 3,365 nautical miles?

A.—Yes.

His Lordship: What is the purpose of this evidence, Mr. Lindsay? You cannot contradict the Captain's evidence. What difference does it make as to miles?

Mr. Rowell: It is to rebut anything in Mr. Collins' examination that the goods were discharged in boats and to show that the approximate distance was greater than across the Atlantic.

His Lordship: There would be no contradiction of that. Do not put any maps in unless it is absolutely necessary. It makes the record cumbersome and awkward.

Mr. Holden: We are not in a position to contradict Mr. Inkster's evidence in his deposition.

Mr. Lindsay: That is all, Mr. Inkster.

(No cross-examination of witness by Defendant's Counsel.)

No. 11

DR. CHESTER P. BROWN, a witness called on behalf of the Plaintiff, sworn.

Examined by Mr. Lindsay:

Q.—What is your position in the Government Service, Doctor?

A.—Medical Superintendent at Williamhead Quarantine Station.

Q.—Where is the Williamhead Quarantine Station?

A.—It is situated approximately nine miles southwest of the City of Victoria, British Columbia.

Q.—Is it the Quarantine Station at which boats entering Vancouver and Victoria have to report?

A.—Yes.

Q.—At Williamhead?

A.—Yes.

Q.—So that all vessels coming into these ports call at Williamhead?

A.—Yes, all traffic approaching British Columbia through the Straits of San Juan de Fuca.

Q.—What do they present to you?

A.—Bills of Health from Ports of Departure and Intermediate Ports.

Q.—From foreign destinations?

A.—Yes.

Q.—Can you produce the Bill of Health that was presented to you by the S.S. " Malahat " on her inward voyage on May 15th, 1924, and can you recognize that document as being the Bill of Health presented to you by the " Malahat " on its inward voyage of May 15th, 1924?

A.—Yes, I can recognize that.

Q.—What is this document you are looking at to identify it by?

A.—That is our weekly report which we send to the Department of all vessels inspected during the week.

Q.—And from that you can identify the document as being Bill of Health presented by the " Malahat " on what date?

A.—Yes, on May 14th, 1924.

Mr. Lindsay: I will file that Bill of Health. It is signed G. W. Yates, and purports to be given at the British Consulate at Buenaventura.

The Registrar: It will be Exhibit No. 25.

(No cross-examination of witness.)

No. 12

ERNEST A. GEEN, a witness called on behalf of the Plaintiff, sworn.

Examined by Mr. Lindsay:

Q.—What is your position, Mr. Geen?

A.—I am Collector of National Revenue at Belleville.

Q.—How long have you held that position?

A.—Since November, 1928. No, 1918.

Q.—I show you bonds that have been filed in this case as Exhibits 1 to 4, and I ask if you identify those as bonds filed with you at your port?

A.—Yes, I believe so.

Q.—Do you know the signatures of the persons appearing on the bonds?

A.—Yes.

Q.—The second signature on the bond, what is that?

A.—W. J. Hume.

Q.—You know Mr. Hume's signature?

A.—Yes.

Q.—And the same on 1, 2, 3 and 4?

A.—Yes.

Q.—Who is Mr. Hume?

A.—Mr. Hume at that time was Manager of the Consolidated Distilleries and Canadian Industrial Alcohol Company at Belleville.

Q.—In charge of the distillery?

A.—Yes.

Q.—And without going through these in detail, will you glance at Exhibits 15 to 18 and say if you recognize those as entries made at your Port in reference to 1 to 4?

A.—Yes.

Q.—Were these goods that were covered by these entries in bond at your port at the time of making the entries?

A.—They were in bond at the distillery.

Q.—In Excise Bond?

A.—Yes, Excise Bond.

His Lordship: In the distillery or the warehouse?

A.—In the warehouse at the distillery.

Mr. Lindsay continues:

Q.—Mr. Geen has referred to one copy in each of these entries

which has endorsed on it a memo signed by him. Is that a copy of the entry which you got back from Vancouver?

A.—Yes.

Q.—What did the defendants do in reference to their obligation under the bonds, Exhibits 1, 2, 3 and 4? What did they do towards complying with the conditions of their bonds? I show you the landing certificates.

A.—They supplied landing certificates showing the goods went to Buenaventura, Colombia.

Q.—And you identify the landing certificates forming part of 15 to 18 as the documents produced to you?

A.—I believe them to be so.

Q.—They are on your port papers?

A.—Yes.

Q.—The entries having been made for Corinto—but these landing certificates are for Buenaventura. Had you received a notice of diversion from the distillery?

A.—I believe the distillery company notified me by letter that they were diverted to Buenaventura, Colombia.

Q.—Did you believe those landing certificates to be genuine at the time they were presented to you?

A.—Yes.

Q.—Any reason to doubt that they were not genuine?

A.—No, sir.

His Lordship: At any rate you acted upon them and cancelled the bonds?

A.—Yes, my Lord.

Mr. Lindsay continues:

Q.—And you believed the goods had gone to Buenaventura?

A.—Yes.

His Lordship: How was the bond cancelled, just by a stamp?

A.—Just by writing in the date in a record book.

Mr. Holden: The date of the cancellation?

A.—Yes.

Mr. Lindsay continues:

Q.—But you believed the goods had gone to Buenaventura?

A.—Yes.

ERNEST A. GEEN (witness for respondent), Cross-examination.

His Lordship: They keep a book for the purpose of registering the cancellation. What did you do with the bond, did you deliver it to the Consolidated Distilleries or did you file it away?

A.—It is filed at the office when the goods are being shipped.

His Lordship: When you cancel a bond what do you do with it?

A.—Leave it on the file. It is cancelled in the record book. We do not surrender it. That is our practice.

Cross-Examined by Mr. Collins:

Q.—Do you remember receiving a copy of the Statement of Defence in May, 1928—the Defence of the Consolidated Distilleries Limited and W. J. Hume?

A.—I cannot state the date.

Q.—I show you an affidavit of R. D. Ponton saying he served a true copy on E. A. Geen, the Collector of Inland Revenue, by delivering the same to and leaving it at his office in the Post Office Building in the City of Belleville, in the Province of Ontario. Do you recognize this Statement of Defence as being a copy of the Statement of Defence served on you by Mr. Ponton?

A.—Yes.

Q.—And it was served on or about May 5, 1928?

A.—I believe so.

Mr. Holden: There is a similar service in the other action.

His Lordship: What is the point about serving him?

Mr. Collins: We plead under paragraph 12 that it is a satisfactory accounting of the goods under the bond.

Mr. Collins continues:

Q.—I understand in connection with these goods that two cases were short in Vancouver?

A.—Yes.

Q.—And that the Consolidated Distilleries Limited had to pay duty of $9.00 per gallon on the two cases?

A.—They paid it on the two cases short.

Q.—You simply exacted the amount of the duty?

A.—Yes.

ERNEST A. GEEN (witness for respondent), Re-examination.

Q.—So that is the usual practice in the case of deficiencies?
A.—Yes.

Re-Examined by Mr. Lindsay:

Q.—You recognize this as being the Regulations governing the ex-warehousing of goods referred to in the bonds?
A.—Yes.

Mr. Lindsay: I will file that as Exhibit No. 26.

Q.—They were the regulations in force at the time of this bond?
A.—Yes.
Q.—At what time, Mr. Geen, did you make this notation you refer to in your bond register book, approximately, with reference to the receipt of the landing certificates?
A.—The date entered in the book for that particular shipment on the steamer " Malahat " was February 24th, which is the date of certificate of export at the port of exit.
Q.—Can you tell me approximately when that was noted in your book?
A.—I could not do so.

Mr. Holden: That is under the heading " Date of cancellation "?

The Witness: Yes, I believe it is the date the certificate of export was given at Vancouver.

Mr. Lindsay continues:

Q.—But the date you made the notation in your book would be the time you got the landing certificates from the distillery?

His Lordship: Ask him when he made the notation there.

The Witness: I did not make the notation. It was made by one of the clerks in charge of the excise books in the office.

His Lordship: Before or after receiving the landing certificates?

The Witness: It would appear that the notation of February

24th was put in there when the certificate came back from the port of exit.

Mr. Holden: I thought 24 was not the day of the month but the year. Where is it endorsed or entered here?

The Witness: It is February 24th. It is February 23, 1924.

His Lordship: Mr. Geen, the practice is to note the cancellation of the bond in that book when you get the landing certificate, is that it?

A.—Yes, my Lord.

His Lordship: In this particular case the date does not appear?

A.—The date appears here for the cancellation of the bond as February 23, 1924.

His Lordship: That could not happen in this case. They did not get back until May. There must be some mistake.

Mr. Lindsay:

Q.—I show you Exhibit 20, copy of letter from the defendant company to you, dated April 24, 1924, enclosing the landing certificates. Would that be the time you received the landing certificates?

A.—Yes.

Q.—And that is the date on which you cancelled them?

A.—Yes, the date the bond would be cancelled. The letter " L "—landing certificate opposite each item. That shows that we got it.

No. 13

RUSSELL WHITELAW, a witness called on behalf of the Plaintiff, sworn.

Examined by Hon. Mr. Rowell, K.C.:

Q.—Mr. Whitelaw, you live in the City of Vancouver?
A.—Yes.
Q.—And you have been for some years associated with Consolidated Exporters Corporation Limited?
A.—Yes, since 1922.
Q.—And still are?
A.—Yes.
Q.—In 1924 what was your position?
A.—I was one of the Executive of the Consolidated.
Q.—And had a good deal to do with the management and operation of the company?
A.—Yes, I had something to do with the management and operation.
Q.—Do you remember giving evidence for the Customs Commission in which you outlined your part in the matter?
A.—Yes.
Q.—Your company purchased certain whiskies from the Consolidated Distilleries Limited?
A.—Yes.
Q.—And evidence has been given in this case that the cargo in this case was purchased by your company from the Consolidated Distilleries Limited?
A.—Yes.
Q.—Then I believe you agreed to procure landing certificates. Did you agree to get landing certificates? Did you agree with the Consolidated Distilleries Limited that you would get landing certificates?

Mr. Holden: I submit, my Lord, my learned friend is leading the witness.

His Lordship: I do not think it is leading.

Mr. Holden: The witness should answer and Counsel should not tell of any agreement or anything else.

Mr. Rowell proceeds:

Q.—What had you to do with the question of landing certificates?

A.—I, personally?

Mr. Rowell: Yes.

The Witness: When the landing certificates were obtained they were mailed directly to me and I sent them to the Consolidated Distilleries Limited.

Q.—You got the landing certificates in Vancouver by mail and sent them to the Consolidated Distilleries Limited?

A.—After they were executed?

Mr. Rowell: Yes.

The Witness: They were mailed to me by the agent.

Q.—You are referring to the shipments on the "Malahat". You received them by mail in Vancouver?

A.—Yes, they would be sent to me by one of the men that comprised the Douglas company.

Q.—I am asking you what you did with them. You got them by mail in Vancouver?

A.—Yes.

Q.—And sent them on to the Consolidated?

A.—No, they were usually handed to the Collector of Customs but in this case the Consolidated received them.

Q.—In the case we now have it is stated in a letter signed by Mr. Norgan and I think in the next case the letter is signed by you. I will put the letter before the witness. This is Exhibit No. 22?

A.—This letter is signed by G. Norgan.

Q.—Who was he?

A.—Director of the Consolidated.

Q.—One of your associates?

A.—Yes.

Q.—And associated with you in looking after these matters?

A.—Consolidated matters, yes.

His Lordship: What I understand the witness to say is that he was associated with the Consolidated Exporters Corporation Limited?

Mr. Rowell: Yes, my Lord.

Q.—Then the Captain has told us that the outward clearance from Buenaventura and the Bill of Health were received by him at

sea, off the coast of California or about there; on the high seas off the coast of California or Mexico. The evidence is he never got more than ten miles below the boundary between California and Mexico. How did these documents get to him?

A.—I had nothing to do with the ship's papers, only with the landing certificates.

Q.—You cannot say how these documents got out to the Captain, do you know, of your own knowledge, how they got out?

A.—No, sir.

Q.—Then the only thing you dealt with yourself were the landing certificates?

A.—Yes.

Q.—Now, did your company pay any money to get these documents?

A.—No, sir.

Mr. Holden: This is not a right examination.

His Lordship: I do not see how you can object.

Mr. Rowell proceeds:

Q.—Did you have to pay any money in connection with the getting of these documents?

Mr. Holden: I repeat my objection.

His Lordship: I understand the plaintiff's case is that these landing certificates were fraudulent and not genuine and that being their plea they are entitled to give evidence upon it.

Mr. Rowell proceeds:

Q.—Did you make any payment in connection with getting any papers in connection with these shipments?

A.—We made an allowance on the goods to our customers, I think it was $1.00 or $2.00 per case, and they have to supply the documents.

Q.—I just want you to go back. We have your evidence here before the Commission, Mr. Whitelaw?

A.—I think I know what you are referring to, Mr. Rowell, but think I explained at that time that during our first operations we had an agent by the name of Gonzales in Mexico and we paid him the export duty and a fee for looking after our business there. I think that was around $2.00 or $3.00 per case. Later on J. Douglas

& Company, who were the purchasers of the cargo, were to look after all these charges and we deducted them from the cost price or the selling price of the liquors.

Q.—Then they were to get for you—what papers?

A.—They were to get landing certificates.

Q.—Who was to get the outward clearance?

A.—That would be the Canadian Mexican Shipping Company, and the purchaser of the goods.

Q.—Who would have to get the bill of lading?

A.—That is the shipping papers, the purchasers of the goods.

Q.—Then the purchasers of the goods had to get three documents, the landing certificate they had to get, the outward clearance and the Bill of Health?

A.—Yes.

Q.—All of these were necessary. At least the outward clearance and the Bill of Health were necessary in order that the boat return?

A.—Yes.

Q.—And the landing certificate was necessary in order to get a discharge of the bond?

A.—Yes.

Mr. Holden: My objection applies to the whole of this evidence.

Mr. Rowell proceeds:

Q.—Then you said that during the first period you did make payment to Gonzales and paid him so much per case and he provided these documents for you?

His Lordship: That relates to other transactions.

Mr. Rowell: Then I will not trouble about that.

Q.—Was there any such company at Lalibertad or Buenaventura as J. Douglas & Company?

A.—I understood it was just a name they traded under.

Q.—Who were your customers?

A.—I do not think I should be called upon to answer that question as these men were under indictment in the United States.

His Lordship: That is not fair; leave it at that.

Mr. Rowell proceeds:

Q.—They live in the United States, do they?

A.—In San Francisco.

Q.—You say that they are under indictment there and that you do not care to give evidence?

A.—I gave you that on a slip of paper at the Royal Commission.

His Lordship: It is not important anyway.

Mr. Holden: No cross-examination.

No. 14

In the Exchequer Court of Canada

No. 14
Formal Admission filed at the Trial, 30th January, 1931.

FORMAL ADMISSION FILED AT THE TRIAL

It is hereby agreed that the word Vancouver as appearing in the eleventh line of the condition of the bond in Exhibits 1, 2, 3 and 4 is a clerical error and that it should read and be taken as reading for the purpose of this action Belleville.

Dated at Ottawa, Ontario, this 30th day of January, A.D. 1931.

G. C. LINDSAY,
of Counsel for Plaintiff.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
of Counsel for Defendants.

In the Exchequer Court of Canada

No. 15
Formal Judgment, 13th March, 1931.

No. 15

FORMAL JUDGMENT

Friday the 13th day of March, A.D. 1931.

This action having come on for trial in the City of Ottawa, County of Carleton, Province of Ontario, on the 29th and 30th days of January, A.D. 1931, before this Court, in the presence of Counsel for the Plaintiff and for the Defendants; upon hearing read the pleadings herein, and upon hearing the evidence adduced, and what was alleged by Counsel aforesaid, this Court was pleased to direct that this action should stand over for judgment and the same coming on this day for judgment,

THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff do recover from the Defendants the sum of $129,512, without interest.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendants do pay to the Plaintiff his costs in this action after taxation thereof.

By the Court,

(Sgd.) " ARNOLD DUCLOS,"
Deputy Registrar.

In the Exchequer Court of Canada

No. 16
Reasons for Judgment of MacLean, J.

No. 16

REASONS FOR JUDGMENT

MACLEAN, J.

Judgment rendered March 13th, 1931.

This is an action, No. 9370, upon four bonds executed by the defendants in favour of the plaintiff.

On the 8th day of February, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $34,094.00. The condition of the bond was to the effect that if certain goods, namely, 1,000 cases of whiskey, concerning which notice of intention to export to Corinto, Nicaragua, was given by the defendant, Consolidated Distilleries, Limited, in the ship Malahat from Vancouver, should be exported and entered for consumption or for warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry should, in accordance with the requirements of the Warehous-

ing Regulations, be adduced within sixty days of the date of the said bond to the satisfaction of the Collector of Inland Revenue at Belleville, Ontario, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

The other three bonds were of the same tenor, and were entered into for the same purpose, as the one I have just mentioned. The date and amount of each bond, and the quantity of liquors proposed to be exported by the defendant company, will be found in the Information of the plaintiff. In all three cases, the liquors were to be exported to and entered for consumption or warehouse at Corinto, Nicaragua, in the ship Malahat; and proof of the exportation of such goods, or an accounting of the same to the satisfaction of the Collector of Inland Revenue at Belleville, Ont., was to be made within sixty days. I think nothing further need be said concerning these three bonds. I perhaps should say that all the liquors mentioned in the four bonds were shipped on board the ship Malahat in the one outward voyage from Vancouver.

The liquors referred to in the bonds in suit were sold by the defendant company to Consolidated Exporters Corporation, Vancouver, and the latter corporation instructed the defendant company to ship the liquors by rail to Vancouver, consigned to John Douglas & Co., Corinto, Nicaragua. The bonds in question were then executed by the defendants in favour of the plaintiff, pursuant to the requirements of the Excise Act and regulations made thereunder, in order to procure the release of the liquors from a Bonded Warehouse for exportation in bond to Corinto, without payment of duty. Accordingly the goods were shipped by the defendant company from Belleville, near where was the distillery of the defendant company to Vancouver by rail, and at Vancouver the goods were placed on board the ship Malahat, on the 23rd day of February, 1924, for export to Corinto.

Before the departure of the Malahat from Vancouver, the liquors had been sold by Consolidated Exporters Corporation, according to the evidence, to residents in southern California, and the master of the ship before departing from Vancouver had instructions to discharge the liquors at sea, off the coast of California, into small boats, in fulfilment of delivery orders details of which were given the master before sailing. The Malahat was not plying on a published route, I might point out. On the 7th of April, 1924, the Collector of Customs at Belleville was notified by the defendant company that the shipment had been diverted to Buenaventura, Colombia, S.A.

The evidence establishes beyond doubt that the goods were never landed or entered at Corinto, nor at Buenaventura, but were discharged at sea off the coast of southern California some thousands of miles from Corinto or Buenaventura. And it is shown that there was no such firm as John Douglas & Co. at Corinto. In due course, landing certificates, purporting to be signed by one Yates of the British Consular Agency at Buenaventura and to the effect that the goods had been landed and delivered over to the Customs there, were forwarded to the Collector of Inland Revenue at Belleville. An outward clearance, together with a Bill of Health, purporting to show that the Malahat had arrived at and cleared from Buenaventura, were delivered to the master of the Malahat at sea, for presentation to Port authorities at Vancouver on the return voyage. The landing certificates, the outward clearance, and the Bill of Health were indubitably all false and fraudulent documents. Upon the receipt of the alleged landing certificates, the Collector of Inland Revenue at Belleville cancelled the four bonds in question, in the belief that the same were genuine and true. There can be no doubt but that the cancellation of the bonds in question, by the Collector of Customs at Belleville, was induced by the presentation by the defendants of the fraudulent landing certificates which were procured and paid for by the Consolidated Exporters Corporation, by it forwarded to the defendant company, and by it in turn presented to the Collector of Inland Revenue at Belleville. Why the Collector of Inland Revenue at Belleville was advised that the shipment was being diverted to Buenaventura hardly calls for discussion. The ship never proceeded to this port, nor to the port of destination named in the bonds. It may be safely assumed that it turned out to be more convenient to obtain the alleged landing certificates and other documents as emanating from Buenaventura rather than from the port of destination named in the bonds. That the liquors were never intended to be shipped to Corinto or Buenaventura, and that they were landed off the coast of California in small boats in accordance with prearranged plans, is so overwhelmingly supported by the evidence that it is idle to suggest anything to the contrary. In fact no evidence was presented by the defendants suggesting that the goods went to the port designated in the bonds, or to Buenaventura, and in fact it would not be possible to procure evidence in support of such a suggestion. The burden, however, of showing this was, in my opinion, upon the defendants.

In this state of facts are the defendants liable upon the bonds? The condition of the several bonds not having been performed, it is my opinion that the defendants are liable. No proof of the exportation and entry of the goods within the period stipulated was adduced to the satisfaction of the Collector of Inland Revenue at Belleville, nor was there an accounting of the goods made to the satisfaction of

such Collector. The fact that the bonds were cancelled does not discharge the defendants from their obligations under the several bonds, because such cancellations were procured by fraud; neither does the fact that the goods were purchased and disposed of by Consolidated Exporters Corporation. The defendants undertook the obligation of assuring that the goods would be entered for consumption or warehouse at the port mentioned in the bonds, and this was not done. In The King v. Vancouver Breweries Ltd.,[1] The King v. Fidelity Insurance Co. of Canada,[2] The King v. Canadian Surety Co.,[3] and The King v. Walker & Sons Ltd. (No. 9373), unreported, I dealt with a similar set of facts as in this case, and there is nothing I can usefully add to what I there said.

The defendants question the jurisdiction of the Court in this action, and they rely upon the decision of the Supreme Court of Canada in The King v. Consolidated Distilleries Ltd.[4] I am unable to appreciate the argument which was addressed to me by counsel for the defendants upon this point. In the case just mentioned, the defendant company, the same defendant company as in this case, sought on motion, in the Exchequer Court, to bring in as a third party the Consolidated Exporters Co., Ltd., upon the ground that this corporation by agreement had contracted to indemnify the Consolidated Distilleries Ltd. against any loss, damages or expenses which it might suffer by reason of certain bonds which it had executed unto His Majesty, under the Excise Act, just as in this case. Audette, J., set aside the third party notice upon the ground that the issue raised by the third party notice was separate and distinct from the issue raised between the plaintiff and the defendant in the action, and he held that if there was a separate cause of action flowing from the agreement of indemnity it must be tried in the provincial courts having jurisdiction in such matters, and that the Exchequer Court was without jurisdiction. There was an appeal from this decision to the Supreme Court of Canada, and the decision of Audette, J., was upheld. That is all the Supreme Court of Canada dealt with. This is not a case which involves an agreement of indemnity given by a third party to the defendant company. There can be no doubt but that the Parliament of Canada had jurisdiction to legislate in respect of Customs and Excise, and the subject matter of this action directly arises from legislation enacted by the Parliament of Canada in respect of excise.

The Chief Justice in delivering the judgment of the Court said:

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(1) 1929, EX.C.R., p. 14.
(2) 1929, EX.C.R., p. 1.
(3) 1929, EX.C.R., p. 216.
(4) 1930, S.C.R., p. 531.

" While there can be no doubt that the powers of Parliament under section 101 are of an overriding character, when the matter dealt with is within the legislative jurisdiction of the Parliament of Canada, it seems equally clear that they do not enable it to set up a court competent to deal with matters purely of civil right as between subject and subject."

That makes very plain the scope of the judgment of the Court. The Court held that the matter of a contract of indemnity between a defendant, in an action taken upon a bond by the Crown under the Excise Act, and a third party, was a matter of civil right as between subject and subject, and was one purely of provincial jurisdiction. The contract of indemnity had not its origin in a law of Canada as distinguished from a law of a Province. There can be no question as to the competency of the Parliament of Canada to legislate in respect of the subject of Excise, and I do not think there is any doubt as to the jurisdiction of this Court in any proceedings arising under the Excise Act. In this particular matter the bonds sued upon were required by a law enacted by the Parliament of Canada in respect of a matter in which it had undoubted jurisdiction. In my opinion, the judgment of the Supreme Court of Canada is, without qualification whatever, against the contention of the defendants.

The plaintiff claims interest at the rate of five per cent upon the total amount stated in the four bonds in question. The defendants contend that in law no interest is payable on such bonds, and I think this contention must be upheld. In similar actions it is true that I did allow interest, but in such cases the claim for interest was not contested. It is admitted that in England the amount recoverable on a bond forfeited by breach of the condition is in all cases limited, both at law and in equity, to the amount of the penalty fixed by the obligatory part. The condition of the bonds in question was for the performance of an act, and in such cases a recovery is limited to the amount of the penalty, and interest only runs from the date of judgment. That, I think, is also the law in the United States. Counsel for the plaintiff referred to the Ontario Judicature Act, but we are not here concerned with a matter of procedure, but one of substantive law. The Ontario Judicature Act, and the case of Toronto Railway Company v. City of Toronto, 1906, Appeal Cases, p. 117, which was cited do not seem to me to have any relevancy here. The Judicature Act of Ontario is invoked in this court in matters of procedure only; the obligation to pay interest is a matter of substantive law and not procedure. In reason, the claim for interest in respect of a bond of this character would appear to have no foundation. I therefore disallow the claim for interest.

There will be judgment for the amounts sued upon herein as appearing in the plaintiff's Information, but exclusive of interest, and costs will follow the event.

In the Supreme Court of Canada

No. 20
Respondent's Notice of Cross-Appeal, 29th July, 1931.

No. 20

RESPONDENT'S NOTICE OF CROSS-APPEAL

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

No. 9370

BETWEEN:

CONSOLIDATED DISTILLERIES LIMITED and W. J. HUME,
(Defendants) Appellants,

—AND—

HIS MAJESTY THE KING, represented by the Attorney-General of Canada,
(Plaintiff) Respondent.

TAKE NOTICE that upon the hearing of this appeal the Respondent intends to contend that the decision of the Exchequer Court of Canada is erroneous in not allowing to the Respondent interest on the amount of the several bonds sued on herein, and that the said judgment should be varied by adding thereto an order that the Appellants should pay to the Respondent interest at the legal rate of five per cent per annum on the amount of the bonds sued on herein, from the date on which the conditions of the said bonds should have been performed until the date of judgment.

DATED at Ottawa this 29th day of July, A.D. 1931.

W. STUART EDWARDS,
Solicitor for the Respondent.

To:
THE APPELLANTS AND TO THEIR SOLICITORS.

In the Supreme Court of Canada

No. 21
Certificate of Appellants' Solicitor, 15th August, 1931.

No. 21

CERTIFICATE OF SOLICITOR

I, FREDERICK T. COLLINS, Advocate, of the firm of Meredith, Holden, Heward & Holden, Solicitors for the Appellants, Consolidated Distilleries Limited and W. J. Hume, hereby certify that I have personally compared the foregoing print of the Case in Appeal to the Supreme Court of Canada with the originals, and that it is a true and correct reproduction of such originals.

Montreal, August 15th, 1931.

FREDERICK T. COLLINS,
A Solicitor for the Appellants.

In the Supreme Court of Canada

No. 22
Appellants' Factum (Separate document).

No. 22

APPELLANTS' FACTUM

(separate document)

In the Supreme Court of Canada

No. 23
Respondent's Factum (Separate document).

No. 23

RESPONDENT'S FACTUM

(separate document)

No. 24

In the Supreme Court of Canada

No. 24
Formal Judgment, 15th March, 1932.

FORMAL JUDGMENT

No. 9370

IN THE SUPREME COURT OF CANADA

Tuesday, the 15th day of March, A.D. 1932

Present:

The Right Honourable Mr. Justice Anglin, P.C.,
Chief Justice,
The Right Honourable Mr. Justice Duff, P.C.,
The Honourable Mr. Justice Rinfret,
The Honourable Mr. Justice Lamont.

BETWEEN:

CONSOLIDATED DISTILLERIES LIMITED, and
W. J. HUME,
(Defendants) Appellants,

—AND—

HIS MAJESTY THE KING,
represented by the Attorney General of Canada,
(Plaintiff) Respondent.

The appeal of the above-named appellants, 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 13th day of March, A.D. 1931, having come on to be heard before this Court, constituted as above with the addition of the Honourable Mr. Justice Newcombe, since deceased, on the twenty-eighth and twenty-ninth days of October, A.D. 1931, in the presence of counsel as well for the appellants as the respondent, 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 date for judgment;

THIS COURT DID ORDER AND ADJUDGE that the said appeal be, and the same was, dismissed, and that the said cross-appeal be, and the same was also dismissed.

In the Supreme Court of Canada

No. 24
Formal Judgment, 15th March, 1932.

THIS COURT DID FURTHER ORDER AND ADJUDGE that the said appellants should and do pay to the said respondent his costs of the appeal, and that the said respondent should and do pay to the said appellants their costs of the cross-appeal.

(Sgd.) J. F. SMELLIE,
Registrar.

No. 25

In the Supreme Court of Canada

No. 25
Reasons for Judgment (A) Anglin, C.J.C.

REASONS FOR JUDGMENT IN THE THREE ACTIONS

Nos. 9370, 9371 and 10314

(A) ANGLIN, C., J.C.:

I never entertained any doubt whatever as to the jurisdiction of the Exchequer Court in these cases to hear these appeals.

If authority to hear and determine such claims as these is not something which it is competent for the Dominion, under s. 101 of the British North America Act, to confer upon a court created by it for " the better administration of the laws of Canada," I would find it very difficult to conceive what that clause in the B.N.A. Act was intended to convey.

That the Dominion Parliament intended to confer such jurisdiction on the Exchequer Court, in my opinion, is clear beyond argument, the case probably falling within clause (a) ; but, if not, it certainly is clearly within clause (d) of s. 30 of the Exchequer Court Act.

On the question of the construction of the bonds raised at bar, to my mind, a breach of the condition of each bond properly constituted has been equally clearly established. As to the amount recoverable, I agree with the contention of the Crown that the whole amount named in the bond must be paid by the defendants.

I was quite prepared to dismiss these appeals at the conclusion of the argument but, in deference to the wishes of some of my colleagues, judgment was reserved. That being so, I think it better to put in writing, as I have done very briefly above, my reasons for concurring in their dismissal.

I also agree in the view, which, I understand to be that of the other members of the court, that the matter of interest is clearly a matter of substance and in no sense a matter of procedure. Interest should, in my opinion, be allowed the respondent from the date of default by the defendants in each case. From that date the claim of the Crown was for a liquidated amount and was a just debt, payment of which was improperly withheld. *Toronto Ry. Co.* v. *City of Toronto* (1906) A.C. 117, at 120, 121. As pointed out by my brother Duff, those who take the view that section 34 of the Ontario Judicature Act should be regarded as dealing merely with a matter of procedure are clearly wrong. Section 34 of that statute, like a number of

In the Supreme Court of Canada

No. 25
Reasons for Judgment (a) Anglin, C.J.C.

other sections thereof, deals with important matters of substantive law.

I would dismiss the appeals and allow the cross-appeals, all with costs.

(B) Duff, J. (concurred in by Rinfret and Lamont, JJ.)

(B) DUFF, J. (concurred in by Rinfret and Lamont, JJ.)

I find no difficulty in holding that the Parliament of Canada is capable, in virtue of the powers vested in it by section 101 of the British North America Act, of endowing the Exchequer Court with authority to entertain such actions as these. I do not doubt that " the better administration of the laws of Canada, embraces, upon a fair construction of the words, such a matter as the enforcement of an obligation contracted pursuant to the provisions of a statute of that Parliament or of a regulation having the force of statute. I do not think the point is susceptible of elaborate argument, and I leave it there.

As to the jurisdiction of the Exchequer Court, in so far as that depends upon the construction of the Exchequer Court Act, something might be said for the view that these cases are not within the class of cases contemplated by sub-section A of section 30; but that is immaterial because they are plainly within sub-section D.

The professed cancellation of the bonds was inoperative in point of law. The learned trial judge properly found that the documents, upon which the cancellation proceeded, were concocted documents, and that the conditions, under which alone cancellation is permitted by the regulations, never came into effect. Nor can I agree with Mr. Tilley's contention that the alternative condition has been performed. That condition is in these words:

> " Or if the above Bounden Consolidated Distilleries, Limited, shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue, then this obligation is to be void."

There is not the slightest ground for finding that the appellants did account for the goods to the satisfaction of the Collector.

As to the amount recoverable, I think the reasoning of Garrow, B., in *The King* v. *Dickson,* 11 Price 203, is conclusive. That experienced lawyer had no doubt that where the breach of the condition

occurs in such circumstances as to expose the parties concerned to a serious temptation to violate in a substantial manner the revenue laws and to provide an opportunity for doing so, the breach must be regarded as substantial, and the full amount nominated in the bond is recoverable. Here the bond is required by the regulations. It is to be in the " prescribed form " which, since there is apparently no form prescribed either in the statute or the regulations, I take to mean that it is to follow the form authorized by the departmental instructions. The purpose of the bond is to prevent frauds on the revenue. Where such is the purpose of the bond, generally speaking, the sum named is recoverable in full. The application of this principle is illustrated in two American cases cited by the Crown, in addition to the judgment already mentioned in *The King* v. *Dickson.* These cases are: *United States* against *Oterry,* 67 Federal Reporter, 146 and 152; and *Clark* v. *Barnard,* 108 U.S. 436. Such bonds are to be distinguished from those in which the purpose of the bond is merely or mainly to secure the full payment of duties on imported goods, in other words to secure the payment of money.

I have, indeed, some difficulty in affirming that the penalties named in these bonds were not in each case " a genuine pre-estimate of the creditor's probable or possible interest in the due performance of the principal obligation." *Clydebank Engineering and Shipbuilding Co., Ltd.* v. *Yzquierdo Y. Castaneda* (1905) A.C. 6.

As to interest, I think we must be guided by the decision of the Judicial Committee in *Toronto Railway* v. *Toronto Corporation,* reported in 1906 A.C. 117, at pp. 120 and 121. I am unable to agree with the learned President that the subject-matter of section 34 of the Ontario Judicature Act is matter of procedure. A number of titles of substantive law are dealt with in that Act, and I have no doubt that section 34 falls within that category. On the other hand, I cannot accept the view advanced on behalf of the Crown that the latest date for performance of the alternative condition of the bonds was that suggested, namely, three months subsequent to the date of the exportation of goods from out of Canada. I do not think the provisions of the regulation in regard to cancellation control the period within which the appellants were entitled to perform this condition of the obligation, and I am unable to conclude that at any date prior to judgment the penalty became payable as a " just debt ", within the meaning of Lord Macnaghten's judgment in the *Toronto case.* Effect must, therefore, be given to the general rule.

The appeals and cross-appeals should be dismissed with costs.

Exhibit No. 5 Telegram: Consolidated Distilleries, Vancouver, to Consolidated Distilleries Ltd., Montreal, 4th February, 1924.

EXHIBITS

RESPONDENT'S EXHIBIT NO. 5
(Copy of Telegram)

Vancouver BC Feb 4th

66RABR 66 collect

Consd. Distilleries Ltd., Montreal

Ship at once C.N.R. two thousand cases eight ounce flasks special selected in bond bill of lading to John Douglas and Company Corinto Nicarage marked J.D. and Company via Vancouver steamer Malahat bill of lading attached to draft on Consolidated Exporters Corporation Limited stop bond will be secured as before stop how soon can you ship two thousand cases Old Crow fifths.

CONSD. DISTILLERIES LTD.

359PM. Copied V.O.R.

Exhibit No. 6 Telegram: Consolidated Distilleries Ltd., Montreal, to Consolidated Distilleries Ltd., Vancouver, 4th February, 1924.

RESPONDENT'S EXHIBIT NO. 6
(Telegram)

124 RA O 20

Q Montreal Q Feb 4-24

Consolidated Distilleries Ltd
543 Granville St Vancouver BC.

Answering telegram will ship two thousand cases flasks promptly can also make immediate shipment two thousand cases Old Crow fifths.

CONSOLIDATED DISTILLERIES LTD.

536K 5

Exhibit No. 7 Telegram: Consolidated Distilleries Ltd., Montreal, to Consolidated Distilleries, Corbyville, Ont., 5th February, 1924.

RESPONDENT'S EXHIBIT NO. 7
(Copy of Telegram)

Montreal Que February 5th/24

Consolidated Distilleries Limited
Corbyville Ont.

Forwarding instructions tonight two thousand cases Old Crow fifths and two hundred fifty cases Old Crow American pints for Consolidated Exporters Vancouver in addition to special selected flasks stop St Hyacinthe have expressed fifty thousand flask capsules.

CONSOLIDATED DISTILLERIES LIMITED

Prepay & Charge: C.D.Ld.

RESPONDENT'S EXHIBIT NO. 8
(Copy of Telegram)

Exhibit No. 8 Telegram: Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 5th February, 1924.

Vancouver BC Feb 5

Cons. Distilleries Ltd., Montreal

Ship at once in bond two thousand cases Old Crow fifths Consolidated Exporters same billing and marks as flasks.

CONSOLIDATED DISTILLERIES LTD.

259PM

Copied: C.D.

RESPONDENT'S EXHIBIT NO. 9
(Copy of Telegram)

Exhibit No. 9 Telegram: Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 5th February, 1924.

60RABR 17 Collect

Vancouver BC Feb 5th

Consd. Distilleries Ltd., Montreal

Include two hundred and fifty cases Old Crow American pints in yesterdays order stop Smith home.

CONSD. DISTILLERIES LTD.

344PM
L.P.

RESPONDENT'S EXHIBIT NO. 10
(Copy of Letter)

Exhibit No. 10 Letter: Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries, Ltd., Montreal, 5th February, 1924.

Vancouver

Montreal
Feb. 5th, 1924.

Consolidated Distilleries, Ltd.,
Montreal, Que.

Dear Sirs:—

We beg to confirm message of the 4th as follows:—

" Ship at once C.N.R. two thousand cases eight ounce flasks Special Selected In Bond Bill of Lading to John Douglas & Company Corinto Nicarago marked J. D. & Company via Vancouver steamer Malahat Bill of Lading attached to draft on Consolidated Exporters Corporation Limited stop Bond will be secured as before stop How soon can you ship two thousand cases Old Crow fifths."

Also messages of today's date as follows:—

Exhibit No. 10 Letter: Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 5th February, 1924.

(1) " Ship at once in bond two thousand cases Old Crow fifths Consolidated Exporters same billing and marks as flasks."

(2) " Include two hundred and fifty cases Old Crow American pints in yesterdays order stop Smith home."

Yours very truly,

CONSOLIDATED DISTILLERIES, LTD.

Per .....

FLS/EA.

Exhibit No. 11 Telegram: Consolidated Distilleries Ltd., Montreal, to Consolidated Distilleries Ltd., Vancouver, 5th February, 1924.

RESPONDENT'S EXHIBIT NO. 11
(Copy of Telegram)

Montreal Que February 5th/24

Consolidated Distilleries Limited
543 Granville Street
Vancouver B.C.

We acknowledge orders two thousand cases Special Selected flasks also two thousand cases Old Crow fifths and two hundred fifty cases Old Crow American pints will wire car numbers later.

CONSOLIDATED DISTILLERIES LIMITED

Prepay & Charge: C.D.Dd.

Exhibit No. 13 Shipping Instructions, 5th February, 1924.

RESPONDENT'S EXHIBIT NO. 13

CONSOLIDATED DISTILLERIES LIMITED

SHIPPING INSTRUCTIONS

No. 255 Montreal, February 5th, 1924.

Order of:—Consolidated Distilleries Ltd.
Ship to:—Notify Consolidated Exporters Corporation Ld., Vancouver.
Place:—For exportation to John Douglas & Co., Corinto, Nicaragua, on S.S. " Malahat " sailing from Vancouver.
When wanted:—At once.
Routing:—C.N.R. to Vancouver and S.S. " Malahat ".
How ship:—Freight collect.

Exhibit No. 13 Shipping Instructions, 5th February, 1924.

In Bond or Duty Paid:—In Bond.
Charge to:—Consolidated Exporters Corp. Ld.
Terms:—s/d vs. Documents.

Packages	DESCRIPTION
2000 cases	Special Selected 8-1/3 oz. flasks

Marks:—J. D. & Co., Corinto.
Nos. 1 and up.

CONSOLIDATED DISTILLERIES LIMITED
By C.D.

(Rubber Stamp:—Received Feb. 6, 1924)

RESPONDENT'S EXHIBIT NO. 14

Exhibit No. 14 Shipping Notice, 8th February, 1924.

CONSOLIDATED DISTILLERIES LIMITED

SHIPPING NOTICE

Date shipped:—Febry. 8th, 1924

Shipped from:—Corbyville.
Shipped to:—Order Consolidated Disty. Ltd. Notify Consolidated Exporters, Vancouver.
Place:—Exportation to John Douglas & Co., Corinto, Nicaragua.
Routing:—C.N.R. to Vancouver and S.S. Malahat.
How shipped:—Freight collect.
Duty Paid or in Bond:—In Bond.
Charge to:—Cons'd Exporters Corp. Ltd.
Terms:—S/D vs. Docs.

ANALYSIS		Shipping	Shipping
Proof Gallons	Duty	Instructions No.	Notice No.
2216 95	19996 89	257	394
1330 17	11998 13		
559 73	5048 76		

PACKAGES Cases	DESCRIPTION	Bond No.	Standard Gallons
1250	Old Crow 5s 28 oz	922	2525.00
	Car GT 107172		
	Seals CB 29633 and 34		
750	Old Crow 5s 28 oz	922	1515.00
250	Old Crow 24s 16 oz	924	637.50
1000	Car GT 12739		
2250	Seals CB 29631 and 32		

Printed cases wired 2 wires
Packing list attached
Marked J. D. & C., Corinto
Nos. 2001/4250

Exhibit No. 12
Requisition
for a permit
No. 4553,
8th February,
1924.

RESPONDENT'S EXHIBIT NO. 12

No. 4553

REQUISITION FOR A PERMIT

I, Consolidated Distilleries Limited, of Thurlow, owners of the undermentioned Spirits, require permission to remove the same between the date hereof and the 8th day of Apr. from whse 4 at Thurlow to Corinto, Nicaragua, by the C.N.R. to Vancouver and S.S. Malahat, there to be delivered into the possession of John Douglas & Co. of Corinto, Nicaragua, the duty on the said spirits having been secured in bond.

Number and Marks	Gallons	Strength		
922/2.24.2.24	1250 cases @ 2.02—2525.00 galls.	12.2.....	2216.95	19996.89

Rate of duty $9.02
Export
John Douglas & Co., Corinto, Nicaragua

Requisition made at Thurlow this 8th day of February, 1924.

GEO. HUTSON.

[Requisitions for permits covering the three other shipments in question omitted by consent of the parties.]

RESPONDENT'S EXHIBIT NO. 1

Exhibit No. 1 Excise Bond for $39,994.00 signed by Appellants in favour of Respondent, 8th February, 1924.

A. 16
Inland Revenue
25,000-2-19

4553

EXCISE

Rev. Stat. 1906
Chap. 51

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

19996.89
2
39993.78

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Thirty-nine thousand nine hundred and ninety-four dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this eighth day of February in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) Corinto, Nicaragua, in the(5) S.S. Malahat, whereof .... is Master(6).

922/2.24-2.24 1250 cases at 2.02—2525.00 Galls. at 12.2 U.P..... 2216.95 19,996.89

Rate of duty $9.02 per Gallon
EXPORT
(Stamp)
CUSTOMS-EXCISE-CANADA
Long Room
February 11, 1924
Belleville, Ont.

and which goods are now deposited in Bonded Warehouse No. four at Thurlow in the Port of Belleville under the provisions and regulations of the " Inland Revenue Act."

Exhibit No. 1 Excise Bond for $39,994.00 signed by Appellants in favour of Respondent, 8th February, 1924.

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within sixty days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of ..... or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, B.C., then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED
Per GEO. HUTSON (Attorney) [L.S.]
W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of:
M. SPRAGUE

RESPONDENT'S EXHIBIT NO. 2

Exhibit No. 2 Excise Bond for $34,094.00 signed by Appellants in favour of Respondent, 8th February, 1924.

A. 16
Inland Revenue
25,000-2-19

4554

EXCISE

Rev. Stat. 1906
Chap. 51

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Thirty-four thousand and ninety-four dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this eighth day of February in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

17046.89
2
34093.78

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) Corinto, Nicaragua, in the(5) S.S. Malahat, whereof..... .....is Master(6).

922/2.24-2.24	750 cases at 2.02—1515.00 Galls. at 12.2 U.P.....	1330.17	11998.13
924/2.24-2.24	250 cases at 2.55— 637.50 Galls. at 12.2 U.P.....	559.73	5048.76
	1000 cases	1889.90	17046.89

Rate of duty $9.02 per Gallon
EXPORT
(Stamp)
CUSTOMS-EXCISE-CANADA
Long Room
February 11, 1924
Belleville, Ont.

and which goods are now deposited in Bonded Warehouse No. four at Thurlow in the Port of Belleville under the provisions and regulations of the " Inland Revenue Act."

Exhibit No. 2 Excise Bond for $34,094.00 signed by Appellants in favour of Respondent, 8th February, 1924.

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within sixty days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the Division of Belleville or if the above bounden Consolidated Distilleries Ltd. shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, B.C., then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED
Per GEO. HUTSON (Attorney) [L.S.]
W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of:
M. SPRAGUE

RESPONDENT'S EXHIBIT NO. 3

Exhibit No. 3 Excise Bond for $27,909.00 signed by Appellants in favour of Respondent, 12th February, 1924.

A. 16
Inland Revenue
25,000-2-19

4582

EXCISE

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

Rev. Stat. 1906
Chap. 51

CANADA

KNOW ALL MEN BY THESE PRESENTS, that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Twenty-seven thousand nine hundred and nine dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 12th day of February in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

13954.14
2
27908.28

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) Corinto, Nicaragua, in the(5) S.S. Malahat, whereof ..... is Master(6).

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

Bal. 891/1.24-1.24	461 cases at 1.99— 917.39 Galls. at 20.8 U.P.....	726.57	6539.13
Bal. 895/1.24-1.24	351 cases at 1.93— 677.43 Galls. at 20.8 U.P.....	536.52	4828.68
923/2.24-2.24	188 cases at 1.93— 362.84 Galls. at 20.8 U.P.....	287.37	2586.33
	1000 cases	1550.46	13954.14

Rate of Duty $9.00
EXPORT
(Stamp)
CUSTOMS-EXCISE-CANADA
Long Room
February 13, 1924
Belleville, Ont.

Exhibit No. 3 Excise Bond for $27,909.00 signed by Appellants in favour of Respondent, 12th February, 1924.

and which goods are now deposited in Bonded Warehouse No. four at Thurlow in the Port of Belleville under the provisions and regulations of the " Inland Revenue Act."

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within sixty days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the Division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, B.C., then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED
Per GEO. HUTSON (Attorney) [L.S.]
W. J. HUME [L.S.]

RESPONDENT'S EXHIBIT NO. 4

Exhibit No. 4 Excise Bond for $27,515.00 signed by Appellants in favour of Respondent, 12th February, 1924.

A. 16
Inland Revenue
25,000-2-19

4583

EXCISE

Rev. Stat. 1906
Chap. 51

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

13757.04
2
27514.08

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Twenty-seven thousand five hundred and fifteen dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 12th day of February in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) Corinto, Nicaragua, in the(5) S.S. Malahat, whereof ..... is Master(6).

923/2.24-2.24 1000 cases at 1.93—1930.00 Galls. at 20.8 U.P..... 1528.56 13757.04

Rate of Duty $9.00
EXPORT
(Stamp)
CUSTOMS-EXCISE-CANADA
Long Room
February 13, 1924
Belleville, Ont.

and which goods are now deposited in Bonded Warehouse No. four at Thurlow in the Port of Belleville under the provisions and regulations of the " Inland Revenue Act."

Exhibit No. 4 Excise Bond for $27,515.00 signed by Appellants in favour of Respondent, 12th February, 1924.

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at Corinto, Nicaragua, aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within sixty days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the Division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, B.C., then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED
Per GEO. HUTSON (Attorney) [L.S.]
W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of:

M. SPRAGUE

Exhibit No. 15A
Entry for export ex-warehouse No. 4553, 8th February, 1924.

RESPONDENT'S EXHIBIT NO. 15A

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4553

Port of Belleville, February 8th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
922/2.24-2.24	1250 cases @ 2.02—2525.00 Galls. @ 12.2 U.P.....		2216.95	9.02	19996.89

EXPORT

Checked and sealed in car No. 107172 G.T.
Date 9/2/24.

F. H. McLENAGHAN,
Customs Excise Examiner.

(Two rubber stamps—Customs-Excise-Canada, Record Room, Feb. 25, 1924, Vancouver, B.C.; Customs-Excise-Canada, Long Room, Feb. 11, 1924, Belleville, Ont.)

(Written in ink across stamp—Out Malahat R1797, Feb. 23/24, ExpE 18622, W. R. S. Green.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

. . . . . .

(Signature of Owner or Agent)

Sworn to before me this 8th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. Malahat for exportation to John Douglas & Co., Corinto, Nicaragua, C.A.

GEO. E. MURRAY,
Master.

Exhibit No. 16A
Entry for export ex-warehouse No. 4554, 8th February, 1924.

RESPONDENT'S EXHIBIT NO. 16A

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4554

Port of Belleville, February 8th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
922/2.24-2.24	750 cases @ 2.02	—1515.00 Galls. @ 12.2 U.P.....	1330.17	9.02	11998.13
924/2.24-2.24	250 cases @ 2.55	— 637.50 Galls. @ 12.2 U.P.....	559.73	9.02	5048.76
	1000 cases		1889.90		17046.89

EXPORT

Checked and sealed in car number 12739 G.T.
Date 9/2/24.

F. H. McLENAGHAN,
Customs & Excise Examiner.

(Two rubber stamps—Customs-Excise-Canada, Record Room, Feb. 25, 1924, Vancouver, B.C.; Customs-Excise-Canada, Long Room, Feb. 11, 1924, Belleville, Ont.)

(Written in ink across stamp—Out Malahat R1797, Feb. 23/24, Exp.E 18623, W. R. S. Green.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

.....
(Signature of Owner or Agent)

Sworn to before me this 8th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. "Malahat" for exportation to John Douglas & Co., Corinto, Nicaragua.

GEO. E. MURRAY,
Master.

Exhibit No. 17B
Entry for export ex-warehouse No. 4582, 12th February, 1924.

RESPONDENT'S EXHIBIT NO. 17B

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4582

Port of Belleville, February 12th, 1924.

Manufactured by Canadian Industrial Alcohol Co., Ltd., of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal. 891/1.24-1.24	461 cases @ 1.99—	917.39 Galls. @ 20.8.....	726.57	9.00	6539.13
Bal. 895/1.24-1.24	351 cases @ 1.93—	677.43 Galls. @ 20.8.....	536.52	9.00	4828.68
923/2.24-2.24	188 cases @ 1.93—	362.84 Galls. @ 20.8.....	287.37	9.00	2586.33
	1000 cases		1550.46		13954.14

EXPORT

Checked and sealed in car No. 211623 N.Y.C.
Date 12/2/24.

F. H. McLENAGHAN,
Customs & Excise Examiner.

I, M. SPRAGUE, do hereby declare that I have examined indiscriminately the goods referred to in this entry and find them as represented.

M. SPRAGUE,
Excise Officer.

(Two rubber stamps—Customs-Excise-Canada, Record Room, Feb. 25, 1924, Vancouver, B.C.; Customs-Excise-Canada, Long Room, Feb. 13, 1924, Belleville, Ont.)

(Written in ink across stamp—Out Malahat R1797, Feb. 23/24, Exp.E 18625, W. R. S. Green.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the

Exhibit No. 17B Entry for export ex-warehouse No. 4582, 12th February, 1924.

said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

. . . . . .

(Signature of Owner or Agent)

Sworn to before me this 12th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. " Malahat " for exportation to John Douglas & Co., Corinto, Nicaragua.

GEO. E. MURRAY,
Master.

EXHIBIT NO. 17C

Exhibit No. 17C

Entry for export ex-warehouse omitted by consent of the parties.

Exhibit No. 18B
Entry for export ex-warehouse No. 4583 12th February, 1924.

RESPONDENT'S EXHIBIT NO. 18B

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4583

Port of Belleville, February 12th, 1924.

Manufactured by Canadian Industrial Alcohol Co., Ltd., of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
923/2.24-2.24	1000 cases @ 1.93—1930.00	Galls. @ 20.8 U.P.....	1528.56	9.00	13757.04

EXPORT

Checked and sealed in car No. 111760 C.P.
Date 12/2/24.

F. H. McLENAGHAN,
Customs & Excise Examiner.

(Two rubber stamps—Customs-Excise-Canada, Record Room, Feb. 25, 1924, Vancouver, B.C.; Customs-Excise-Canada, Long Room, Feb. 13, 1924, Belleville, Ont.)

(Written in ink across stamp—998 cases out Malahat R1797, Feb. 23/24, Exp.E 18624, W. R. S. Green.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

.....
(Signature of Owner or Agent)

Sworn to before me this 12th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. "Malahat" for exportation to John Douglas & Co., Corinto, Nicaragua.

.....
Master, Mate or Agent.

Exhibit No. 23
Report outwards of Steamship "Malahat", 23rd February, 1924.

RESPONDENT'S EXHIBIT NO. 23

Report No. 1797

REPORT OUTWARDS—PORT OF VANCOUVER, B.C.

In the S.S.(1) Aux. Sch. "Malahat," registered tonnage 1199. Registered in Port of(2) Vancouver, B.C., with 22 men, Capt. G. E. Murray, Master for this present voyage, for(3) Corinto, Nicaragua, 514 tons weight.

Marks and Numbers	SHIPPERS	Quantity and Description of Goods	Weight or Measurement	Manifest Rec. Port No. or Export Entry No.
John Douglas & Co., Corinto, Nicaragua	Con. Exporters Corp. Ltd.	250 cs Stenhouse whisky	11,000	
		500 " Trains Grey whisky	22,000	
		500 " Sandy McN. whisky	22,000	4447
		200 " Plus Four whisky	8,800	*R9895*
		400 " Sandersons whisky	17,600	
		999 " Cattos Gold whisky	44,000	
		400 " Sandersons whisky	17,600	
		1 " Adv. Matter	25	
		400 " Vat 69 whisky	17,600	
		1500 " Sandy Mac 10 whisky	66,000	
		400 " Wh. & McKay whisky	17,600	*R12793*
		2000 " McCallums whisky	88,000	4448
		500 " Ushers Green whisky	22,000	
		1000 " B. Lade whisky	44,000	
		1000 " Old Parr whisky	44,000	
		1000 " J. Walker whisky	44,000	
		500 " Granny Taylor whisky	22,000	
		25 " Salignac Brandy	1,325	
		50 " M. & R. Vermouth	2,300	
		300 " Queen Anne whisky	13,200	
		150 " N. P. Vermouth	6,900	
		10 " Peach Brandy	550	
		15 " Creme de Menthe	775	
		100 " Trains Vet. whisky	4,400	
		50 " Old Mull whisky	2,200	
		175 " Holts whisky	7,700	
		25 " Yellow Chartreause	1,325	
		300 " Buch. F.O.L. whisky	13,200	18619
		300 " P. Dawsons whisky	13,200	
		300 " Bells whisky	13,200	
		40 " Hennessy brandy	2,120	
		300 " Bl. & White whisky	13,200	
		10 " Benedictine Qts.	550	
		10 " Benedictine Pts.	550	
		300 " Grants S.F. whisky	13,200	
		500 " Burkes Dry Gin	22,000	
		304 " Bacardi Rum	13,680	
		500 " Doctors whisky	22,000	
		1000 " Ushers Green whisky	44,000	18620
		700 " Alcohol	56,000	18621
			1250	*R13510*
			1000	*R13511* 18622/3
		2250 " whisky	99,000	
			998	*R13561*
			1000	*R13562* 18624/5
		1998 " whisky	88,000	
Rainer Brewing Co. Ltd.		210 Bbls Beer	49,560	18626
		100 Bbls Beer	15,000	18627

Written in red ink on this Exhibit:
Exwarehouse Entry 49450A to 49461A.
Exwarehouse Entry 49457A, 49458A, 49460A.
Exwarehouse Entry 49462A to 49469A.
Exwarehouse Entry 49906A.

Exhibit No. 23
Report outwards of Steamship "Malahat", 23rd February, 1924.

I, G. E. MURRAY, 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 on board the above stated Vessel for this present voyage, and of the names of the respective Shippers and description of the Goods and the Marks and Numbers of the Packages containing the same.

GEO. E. MURRAY,
Master.

Signed and Declared before me at the Custom House, Port of Vancouver, B.C., this 23rd day of February, 1924.

WALTER R. S. GREEN, Collector.

(Rubber stamp—Customs-Excise-Canada, Record Room, Feb. 23, 1924, Vancouver, B.C.)

Exhibit No. 15B Landing Certificate, 21st March, 1924.

RESPONDENT'S EXHIBIT NO. 15B CONTAINING LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4553

Port of Belleville, February 8th, 1924.

Manufactured by Canadian Industrial Alcohol Co., of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
922/2.24-2.24	1250 cases @ 2.02—2525.00	Galls. @ 12.2 U.P....	2216.95	9.02	19996.89

EXPORT

Checked and sealed in car No. 107172 G.T.
Date 9/2/24.

F. H. McLENAGHAN,
Customs & Excise Examiner.

(Rubber stamp—Customs-Excise-Canada, Long Room, Feb. 11, 1924, Belleville, Ont.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

.....
(Signature of Owner or Agent)

Sworn to before me this 8th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. Malahat for exportation to John Douglas & Co., Corinto, Nicaragua, C.A.

Exhibit No. 15B Landing Certificate, 21st March, 1924.

. . . . . .

Master, Mate or Agent.

I, G. W. Yates, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of Buenaventura in Colombia and have been duly delivered over to the Customs.

Witness my hand and seal of office, this 21 day of Marzo, 1924.

G. W. YATES.

(Stamp of British Consular Agency, Buenaventura)
(Two tax stamps of British Consular Agency of Buenaventura dated Mar. 21/24 pasted across footnote)

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

Exhibit No. 16B Landing Certificate, 21st March, 1924.

RESPONDENT'S EXHIBIT NO. 16B CONTAINING LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4554

Port of Belleville, February 8th, 1924.

Manufactured by Canadian Industrial Alcohol Co., of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
922/2.24-2.24	750 cases @ 2.02—	1515.00 Galls. @ 12.2 U.P.....	1330.17	9.02	11998.13
924/2.24-2.24	250 cases @ 2.55—	637.50 Galls. @ 12.2 U.P.....	559.73	9.02	5048.76
	1000 cases		1889.90		17046.89

EXPORT

Checked and sealed in car number 12739 G.T.
Date 9/2/24.

F. H. McLENAGHAN,
Customs Excise Examiner.

(Rubber stamp—Customs-Excise-Canada, Long Room, Feb. 11, 1924, Belleville, Ont.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

.....
(Signature of Owner or Agent)

Sworn to before me this 8th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. " Malahat " for exportation to John Douglas & Co., Corinto, Nicaragua.

Exhibit No. 16B Landing Certificate, 21st March, 1924.

. . . . . .

Master, Mate or Agent.

I, G. W. Yates, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of Buenaventura in . . . . . and have been duly delivered over to the Customs.

Witness my hand and seal of office, this 21 day of Marzo, 1924.

G. W. YATES.

(Stamp of British Consular Agency, Buenaventura)
(Two tax stamps of British Consular Agency of Buenaventura dated Mar. 21/24 pasted across footnote)

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

Exhibit No. 17A Landing Certificate, 21st March, 1924.

RESPONDENT'S EXHIBIT NO. 17A CONTAINING LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4582

Port of Belleville, February 12th, 1924.

Manufactured by Canadian Industrial Alcohol Co., Ltd., of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal. 891/1.24-1.24	461 cases @ 1.99—	917.39 Galls. @ 20.8.....	726.57	9.00	6539.13
Bal. 895/1.24-1.24	351 cases @ 1.93—	677.43 Galls. @ 20.8.....	536.52	9.00	4828.68
923/2.24-2.24	188 cases @ 1.93—	362.84 Galls. @ 20.8.....	287.37	9.00	2586.33
	1000 cases		1550.46		13954.14

EXPORT

Checked and sealed in car No. 211623 N.Y.C.
Date 12/2/24.

F. H. McLENAGHAN,
Customs & Excise Examiner.

(Written in ink—Out Malahat R1797 Feb. 23/24, C. of E. 18625, W. R. Gillum.)

(Rubber stamp—Customs-Excise-Canada, Long Room, Feb. 13, 1924, Belleville, Ont.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

. . . . . .
(Signature of Owner or Agent)

Sworn to before me this 12th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. " Malahat " for exportation to John Douglas & Co., Corinto, Nicaragua.

Exhibit No. 17A Landing Certificate, 21st March, 1924.

. . . . . .

Master, Mate or Agent.

I, G. W. Yates, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of Buenaventura in Colombia and have been duly delivered over to the Customs.

Witness my hand and seal of office, this 21 day of Marzo, 1924.

G. W. YATES.

(Stamp of British Consular Agency, Buenaventura)
(Two tax stamps of British Consular Agency of Buenaventura dated Mar. 21/24 pasted across footnote)

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

Exhibit No. 18C Landing Certificate, 21st March, 1924.

RESPONDENT'S EXHIBIT NO. 18C CONTAINING LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 4583

Port of Belleville, February 12th, 1924.

Manufactured by Canadian Industrial Alcohol Co., Ltd., of Thurlow.

Warehoused by Consolidated Distilleries Limited, of Thurlow, and now entered for exportation to Corinto, Nicaragua.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
923/2.24-2.24	998 cases @ 1.93—1930.00	Galls. @ 20.8.....	1528.56	9.00	13757.04

EXPORT

Checked and sealed in car No. 111760 C.P.

Date 12/2/24.

F. H. McLENAGHAN,
Customs & Excise Examiner.

I, M. Sprague, do hereby declare that I have examined indiscriminately the goods referred to in this entry and find them as represented.

M. SPRAGUE,
Excise Officer.

(Written in ink—998 cs out R1797 Feb. 23/24 Malahat; 2 cs short. Book folio 18.)

(Written in red ink—Def on 2 cases paid by entry 4828 Mar. 6/24.)

(Rubber stamp—Customs-Excise-Canada, Long Room, Feb. 13, 1924, Belleville, Ont.)

I, Geo. Hutson, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Corinto in Nicaragua without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage

Exhibit No. 18C Landing Certificate, 21st March, 1924.

excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.

. . . . . .

(Signature of Owner or Agent)

Sworn to before me this 12th day of February, 1924.

M. SPRAGUE, Collector.

Received the aforementioned goods on board the S.S. " Malahat " for exportation to John Douglas & Co., Corinto, Nicaragua.

. . . . . .

Master, Mate or Agent.

I, G. W. Yates, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of Buenaventura in . . . . . and have been duly delivered over to the Customs.

Witness my hand and seal of office, this 21 day of Marzo, 1924.

G. W. YATES.

(Stamp of British Consular Agency, Buenaventura)
(Two tax stamps of British Consular Agency of Buenaventura dated Mar. 21/24 pasted across footnote)

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

Exhibit No. 24A Permission in Spanish to Steamship "Malahat" to weigh anchor; and translation thereof, 5th April, 1924.

RESPONDENT'S EXHIBIT NO. 24A

Stamp containing the following: 2063
Republica de Colombia
Papel Sellado
20 20
Timbre Nacional
Veinte Centavos

Buenaventura, Colombia
Abril 5, 1924

Senor
Comandante del Puerto
Presente.

Por los certificados que adjuntamosporra ud. comprobar que el vapor " Malahat " actualmente fondeado en esta bahia, se encuentra a paz y salvo con el Tesoro Nacional y que ni su Capitan ni individuo alguno de su tripulacion han contravenido las Leyes vigentes ni los reglamentos del Puerto.

Por lo tanto, rogamos a usted se sirva concedernos permiso para que el mencionado vapor pueda zarpar hoy con destino a Vancouver directo, yendo en lastre.

Somos del Sr. Comandante Attos. SS. SS.

SALAZAR P.
Agte.

Stamp
5 Abril, 1924
CONCEDESE
p. El Capitan,
P. Hernandez

(Stamp—Colombia, Admol de la Aduana de Buenaventura)
(Stamp—Customs-Excise-Canada, Record Room, May 15, 1924, Vancouver, B.C.)

TRANSLATION OF RESPONDENT'S EXHIBIT NO. 24A

Exhibit No. 24A
Permission in Spanish to Steamship "Malahat" to weigh anchor; and translation thereof, 5th April, 1924.

Stamp
Republic of Colombia
Sealed Paper
National Stamp
Twenty Cents

2063

Buenaventura, April 5th, 1924

Mr. Commander of the Port
Present

By the certificates hereto attached you will be able to assure yourself that the Boat Malahat actually moored in this pier, is in good standing with the National Treasury, and that neither her Captain or any member of her crew have broken any of the laws in force, nor any of the regulations of the Port.

Consequently we pray you, to grant permission for the aforementioned Boat to weigh anchor today to the destination of Vancouver direct, going in Ballast.

We are, Mr. Commander, your most humble servants.

Sgd. SALAZAR P.
Agte.

Stamp
5th of April, 1924
CONCEDED
Per the Captain
P. Hernandez

Exhibit No. 24B Certificate of Administrator of Customs of Buenaventura; and translation thereof, 5th April, 1924.

RESPONDENT'S EXHIBIT NO. 24B

Stamp containing the following: 2063
Republica de Colombia
Papel Sellado
20 20
Timbre Nacional
Veinte Centavos

Buenaventura, Colombia
Abril 5, 1924

Senor
Administrador Tesorero de la Aduana
Presente.

Atentemente solicitamos de usted se sirva certificar a continuacion si es verdad que el vapor " Malahat " acualmente fondeado en esta bahia, se encuentra a paz y salvo con el Tesoro Nacional, y que ni su Capitan ni individuo alguno de su tripulacion han contravenido las leyes vigentes ni los reglamentos del Puerto, pudiendo en consecuencia zarpar hoy con destino a Vancouver directo.

Somos del Sr. Administrador Attos SS. SS.

SALAZAR P.
Agte.

Stamp
El Administrador de la Aduana de Buenaventura
certifica
Que el S.S. Malahat su capitan y
Demas tripulacion estan a paz y salvo con
las rentas Nacionales
Dado en Buenaventura 5 Abril, 1924

C. MENIOZ O

(Stamp—Colombia, Admol de la Aduana de Buenaventura)
(Stamp—Customs-Excise-Canada, Record Room, May 15, 1924, Vancouver, B.C.)

TRANSLATION OF RESPONDENT'S EXHIBIT NO. 24B

Exhibit No. 24B Certificate of Administrator of Customs of Buenaventura; and translation thereof, 5th April, 1924.

2063

Stamp
Republic of Colombia
Sealed Paper
National Stamp
Twenty cents

Buenaventura, Colombia
April 5th, 1924

Mr. Administrator and Treasurer of Customs
Present.

Humbly beseech you to certify to the following: if it is true that the Boat Malahat, which is actually moored at this pier, is in good standing with the National Treasury, and that neither her Captain or any member of her crew have broken any of the laws in force, nor violated any of the regulations of this Port, and in consequence being able to weigh anchor today and proceed to the destination of Vancouver direct.

We are, Mr. Administrator, your very humble servants.

Sgd. SALAZAR P.
Agte.

Stamp
The Administrator of Customs of Buenaventura
certify that:
That The S.S. Malahat, her Captain and crew are in good standing with the National Revenues.
Given at Buenaventura 5th of April, 1924.

Sgd. C. MENIOZ

Stamp
Adm. of Customs of
Buenaventura
Colombia

Exhibit No. 25
Bill of health,
5th April, 1924.

RESPONDENT'S EXHIBIT NO. 25

(Coat of Arms)

BILL OF HEALTH

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, George William Yates, British Consul at Buenaventura, send greeting:

WHEREAS the British Ship Aux. Schooner " Malahat," official number J34655, owned by Canadian Mexican Shipping Co., of Vancouver, B.C., whose Master is G. E. Murray, and which was last at the Port of Vancouver, B.C., is about to sail from the Port of Buenaventura on this fifth day of April, in the Year of our Lord One thousand nine hundred and twenty-four and from thence for Vancouver, B.C., and other places beyond the Seas, with Twenty-three Persons on Board including the said Master and Ballast.

Now, Know ye that I, the said Consul, do hereby make it known to all Men, that at the time of granting these presents no Plague, Epidemic Cholera, or Yellow Fever, nor any dangerous or contagious disorder in epidemic form exists in the above Port or neighbourhood.

In testimony whereof I have hereunto set my Name and Seal of Office, on the Day and Year aforesaid.

G. W. YATES.

Given in the British Consulate at Buenaventura on the fifth day of April, in the Year of Our Lord 1924.

(Four tax stamps of British Consular Agency, Buenaventura, dated 5th Apr., 1924, of Consular Service)

(Stamp of British Consular Agency, Buenaventura)

(On back)

Stamp—Department of Health, Canada—Quarantine Service—William Head Station.

Written in ink above—Stamp, " 1923-1924."

Written in ink below—Stamp, " H94—May 14, 1924."

RESPONDENT'S EXHIBIT NO. 21, LETTER

Exhibit No. 21
Letter:
Consolidated
Distilleries Ltd.
to E. A. Geen,
Collector of
Customs and
Excise,
Belleville,
Ontario,
7th April, 1924.

Copy to be sent to Head Office

April 7, 1924

E. A. Geen, Esq.,
Collector of Customs and Excise,
Belleville, Ontario.

Dear Sir:—

We are in receipt of a letter from the Canadian Mexican Shipping Company Limited, 513 Winch Building, Vancouver, under date of March 29th, as follows:—

" We have received instructions from the shippers, the Consolidated Exporters Corporation Limited, and also the consignees, John Douglas & Company, to discharge the cargo at Buenaventura, Colombia, in place of Corinto, Nicaragua, as per manifest of the S.S. Malahat. Please advise the Collector of Customs at the port where your goods were shipped from, of the change of destination of the shipment."

Yours faithfully,

CANADIAN MEXICAN SHIPPING COMPANY LIMITED

Per (Sgd.) A. MacGillies.

Will you kindly make notation on your records in accordance with the above, and oblige,

Yours very truly,

CONSOLIDATED DISTILLERIES LIMITED

W. J. Hume,
Distillery Manager.

WJH:MC

Exhibit No. 22
Letter:
Consolidated
Exporters
Corporation
Ltd. to
Consolidated
Distilleries
Ltd.,
15th April, 1924.

RESPONDENT'S EXHIBIT NO. 22, LETTER

Vancouver, B.C.
April 15th, 1924.

Messrs. Consolidated Distilleries Ltd.,
Corbyville, Ont.

Dear Sirs:—

We herewith enclose four copies Entry for Export, Ex. Warehouse, which documents have been duly executed at the port of entry, Buenaventura, Colombia, and will kindly ask you to have these forwarded to the Customs so we may have our bonds released at an early date.

Trusting you will give this your immediate attention, we are,

Yours truly,

CONSOLIDATED EXPORTERS CORP. LTD.
GEORGE W. NORGAN,
Director.

G.N./W.
Enc.

Exhibit No. 20
Letter:
Consolidated
Distilleries Ltd.
to E. A. Geen,
Collector of
Customs and
Excise,
Belleville,
Ontario,
24th April, 1924.

RESPONDENT'S EXHIBIT NO. 20, COPY OF LETTER

April 24, 1924

Mr. E. A. Geen,
Collector of Customs & Excise,
Belleville, Ont.

Dear Sir,—

We enclose herewith Landing Certificates covering shipments as follows:

Feb. 8, 1000 cases to John Douglas & Co., Corinto, Nicaragua.
Feb. 8, 1250 cases to John Douglas & Co., Corinto, Nicaragua.
Feb. 12, 998 cases to John Douglas & Co., Corinto, Nicaragua.
Feb. 12, 1000 cases to John Douglas & Co., Corinto, Nicaragua.

Yours very truly,

CONSOLIDATED DISTILLERIES LIMITED
W. J. H.,
Distillery Manager.

Encls.
GH:MB

RESPONDENT'S EXHIBIT NO. 26

Exhibit No. 26 Circular of Department of Customs and Excise, Canada, containing general warehousing regulations, 10th April, 1922.

No. 177C

CIRCULAR

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA

Ottawa, April 10, 1922.

To Collectors of Customs and Excise:

WAREHOUSING GOODS LIABLE TO DUTY OF EXCISE

GENERAL WAREHOUSING REGULATIONS

The following Regulations have been approved by Orders in Council of the 9th January, 1889, 23rd January, 1895, and 24th December, 1921.

R. R. FARROW,
Commissioner of Customs and Excise.

REGULATIONS

1. All applications for the establishment of a warehouse for Excise purposes must be made in writing by the party requiring it, on such form as the Department may prescribe, and every such application must fully and minutely describe the premises, with their exact locality.

2. On receipt of such an application the Collector of Customs and Excise will survey the premises, and if satisfied that they are suitable for the purpose, and that they afford the requisite protection to the Revenue, and on their being supplied with suitable locks, he will report the facts to the Inspector of the District who will recommend the issue of the license and forward the application to the Department for authorization.

3. The door of every such warehouse shall be provided with two locks, one of which will be supplied to the Collector by the Department upon requisition being made therefor, and the key of which shall be kept by the Collector, and the other provided by the owner of the goods who shall retain the key thereof; and should there be more doors than one, all other doors and all windows and other means of ingress, shall be fastened on the inside in a secure manner and to the satisfaction of the surveying officer.

4. When any warehouse has been surveyed and accepted as an Excise bonding warehouse and licensed as such, it shall be designated

Exhibit No. 26 Circular of Department of Customs and Excise, Canada, containing general warehousing regulations, 10th April, 1922.

by a letter of the alphabet; bonding warehouses in connection with a licensed manufactory shall be designated by a number.

5. Over the principal entrance to every warehouse approved for Excise purposes there shall be placed the following designation:

EXCISE

G. R.

BONDING WAREHOUSE

With its designating letter or number, the whole being in legible characters, painted in oil colours and not less than three inches in height.

6. Every package entered for warehouse must (in addition to all other marks and numbers) be distinctly marked to the satisfaction of the Collector, with the number of the entry and the date when originally warehoused, except that in the case of cigars the entry number may be omitted. In the case of spirits the above marks shall be written or stencilled on the package in oil paint. The date will be sufficiently indicated by the number of the month and the last two numerals of the year in which the entry was made:—Thus. goods entered on the 20th January, 1883, may be dated 1-83, showing that the entry was made in the first month of the solar year, 1883, or if 20th November, 1883, dated 11-83. All goods in any warehouse, except in the case of cigars, must also be so stowed or arranged that casks, boxes or packages, contained or described in one entry are placed consecutively and together in separate lots as provided by law. Cigars shall be stowed or arranged in warehouse in lots according to the denomination of the packages. The packages must also be stowed or arranged that ample space will be left so that each package and the marks and numbers thereon can be examined. Officers of Customs and Excise may refuse subsequent entries for warehouse when these regulations as to arranging and stowing packages are not complied with.

7. (1) All entries are to be numbered consecutively;

(2) As license bonds are now made to cover the duty on goods remaining in warehouse from time to time during the currency of that license, the taking of warehouse bonds with each warehousing is dispensed with.

8. No entry shall be passed for warehouse, or ex-warehouse, upon any authorized holiday, nor before the hour of nine o'clock in the morning, nor after five o'clock in the afternoon.

9. All entry papers, bonds, notices and other documents herein required shall be made out and signed by the owner of the goods to which they relate, or in his name by his duly authorized attorney, and all packages shall be marked and numbered as herein required by the owner or his agent.

10. Entry of goods for warehouse must in all cases be made on the forms sanctioned by the Department, and every such entry shall contain a full and complete specification of the goods so entered, stating:

(*a*) The number and description of packages.

(*b*) Marks and numbers.

(*c*) Contents of each in pounds, gallons or number; and in the case of spirits, the contents are also to be stated in gallons of the strength of proof.

(*d*) The duty on the goods so entered for warehouse.

Every cask, barrel or package containing goods shall be whole and entire at the time it is warehoused.

11. Every warehouse entry shall be in duplicate.

ENTRY OF GOODS EX-WAREHOUSE FOR EXPORTATION

12. Goods subject to duties of Excise shall only be exported in bond from a port where there is an officer of Customs, and only to British or foreign ports of entry where there are Collectors or other officers of the Government having similar functions and when ex-warehoused for exportation may be such quantity as exporter or manufacturer respectively may require, within the discretion of the Collector but nothing less than the contents of one whole package.

13. Goods can only be entered for exportation in bond ex-warehoused from a warehouse within the limits of the port at which they are actually laden on the ship, car or other vehicle in which they are handed over to the Customs by warrant for shipment.

14. All casks, boxes, bales or other packages of goods entered for exportation shall, before leaving the warehouse, be conspicuously branded by the person entering the same ex-warehouse, and under the personal supervision of the officer in charge, with the letters

Exhibit No. 26 Circular of Department of Customs and Excise, Canada, containing general warehousing regulations, 10th April, 1922.

EXPN, and any further information that may be required in any specific case or cases.

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.

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.

" 17. Where the Port at which the goods are entered for exportation ex-warehouse is not also the Port of exportation, the Collector shall cause one copy of the entry for exportation ex-warehouse (B 54) to be promptly mailed to the Collector at the Port of Exit where such goods are shipped for exportation out of Canada; and in all cases, upon exportation of the goods, the Collector at the Port of Exit aforesaid shall record on the face of the entry for exportation ex-warehouse (B 54).

(1) The date when said goods were exported.

(2) The name of railway or vessel exported upon, and, if by railway, the initials and number of the car exported in.

(3) The quantity and description of goods (including the serial numbers of the packages) so exported.

(4) The number of Customs export entry (B-13) upon which such goods were exported out of Canada.

One copy of export entry (B-13) shall then, where the Port of Exit is not also the Port of entry ex-warehouse, be dated, signed and promptly mailed addressed to the Collector at the Port of entry ex-warehouse.

In all cases 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, such evidence of exportation of the goods as is above herein provided for, shall operate as a cancellation of the bond, notwithstanding the actual terms of the obligation of the bond.

In all other cases the bond shall not be cancelled, unless:

(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 the goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or,

(2) Within the period of three months from the date of the 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.

Where a shortage occurs in goods so forwarded, ex-warehouse for exportation, and same are not accounted for by exportation from out of Canada to the Department of Customs and Excise on Export Entry No. B-13, it is the duty of the Collector of Customs and Excise at the Frontier Port where such goods were short received for exportation, to notify the Collector of Customs and Excise of the Port from which such goods were shipped for exportation, when the Collector of Customs and Excise for said Port shall require the consignor to pass Entry, and pay the lawful duty payable upon the goods short delivered at the Frontier Port, in accordance with the regulations contained in Departmental Circular No. G. 797."

INSTRUCTIONS

Additional to the instructions contained in Section 17 as above established, the Collector at the Port of exportation from Canada shall when forwarding copy of export entry (B 13) to the Collector at the Port of entry ex-warehouse, attach thereto the copy of the entry for exportation ex-warehouse (B 54) received by him, after recording thereon the items (1), (2), (3) and (4) as set out.

18. The entry ex-warehouse for exportation shall in all cases be made in triplicate with the Collector of Customs and Excise who shall also take the export bond, and the copy forwarded to the Department shall bear on its face the certificate of an officer of Customs

Exhibit No. 26 Circular of Department of Customs and Excise, Canada, containing general warehousing regulations, 10th April, 1922.

and Excise, that he has examined the goods, such certificate being made in the form given in Schedule A to these Regulations.

19. Two copies of the entry together with a warrant to ship (C 52) shall be sent to the Collector of Customs and Excise at the port where the goods were laden in the vessel, car or other vehicle in which they are to leave the Port, who, on receipt thereof, shall grant a warrant for the lading of the goods described in the entry on the railway or vessel mentioned therein.

20. So soon as the goods have been duly laden, the Collector of Customs and Excise shall certify the fact on the entry paper, one copy whereof shall be filed at the Custom House, and the other returned to the Collector of the Port whence the goods were shipped.

21. The Collector of Customs and Excise at the Port will in each case be charged with the responsibility of seeing them placed on board ship, car or other vehicle in which they are to be exported, and must satisfy himself that they correspond with the description contained in the entry, and especially with reference to spirits, that they are of the strength specified.

ENTRY OF GOODS FOR REMOVAL EX-WAREHOUSE IN BOND

22. Entries for goods for removal ex-warehouse are to be made in triplicate, with detailed specifications, as in export entries, two copies of which are to be forwarded to the Collector of the Port to which the goods are consigned.

23. The least quantity of such goods that can be ex-warehoused for removal or transfer in bond shall be that quantity which can at the receiving point be legally warehoused as prescribed by law; in case of a licensed Bonded Factory no less quantity of spirits can be removed in Bond than thirty proof gallons, or the contents of one barrel.

24. Goods can only be entered for removal ex-warehouse to another licensed warehouse within the limits of a warehousing port of entry, or to an Excise bonding warehouse previously licensed in another Port, and when shipped to the order of the Collector of Customs and Excise, the bond of the manufacturer or merchant for the removal of goods to warehouses in other Ports upon the prescribed form will now be used in lieu of those required when not so shipped, upon the following conditions, viz:—

(*a*) Goods so removed to be consigned to the order of the Collector of the Port to which they are to be removed, and in case in which permits are by law required for the removal of such goods, the permits shall in all cases state that the goods to which they refer are to be so consigned.

(*b*) The receipt given by the Agent of the Railway Company (or other public carrier), usually known as the " Bill of Lading," is to be made out correspondingly, and is to be placed in the hands of the Collector of the Port whence the goods are to be shipped, and by him transmitted to the Collector of the Port to which they are to be removed.

(*c*) The Collector upon being advised of their arrival, shall immediately notify the party for whom intended, and after they have been examined by the proper officer and found to be in accordance with the removal papers, and after the duties to which such goods are liable have been paid or the warehouse entry passed therefor, the Collector of Customs and Excise will write across the face of the Bill of Lading:

" *Deliver to C. D. upon payment of freight and charges.*

" E———— F————,
Collector."

(*d*) Collectors are particularly notified that all orders for the delivery of goods must be made expressly and in writing, " *subject to the payment of freight and charges,*" or they may, by the omission to specify such conditions, render themselves personally liable to the Company for such payment in the event of default.

(*e*) The requisitions for a permit to remove spirits under § (*a*) shall, in every such case, state that the goods are to be " *delivered into the possession of the Collector of the Customs and Excise Port,*" to which they are to be removed; and across the face of such requisition is to be written the name of the party to whom (subject to the order of the Collector) the consignor desires the goods to be delivered.

25. When Spirits are received in a Port in Bond consigned to the order of the Collector of Customs and Excise Provisional Warehouse Entries should be obtained from the person for whom intended before the Bill of Lading is countersigned as required by section 24.

Exhibit No. 26 Circular of Department of Customs and Excise, Canada, containing general warehousing regulations, 10th April, 1922.

This provisional entry need not be sworn to until after the quantity of Spirits has been determined by the proper officer.

26. When goods removed in bond are conveyed from the place of shipment by a foreign steamer, vessel or railway—for example, by Ward's Line of Steamers from Windsor to Port Arthur, thence by Canadian Pacific Railway to Winnipeg, or when goods so removed are not consigned to the order of the Collector of Inland Revenue, a removal bond must be given, with sureties acceptable to the Collector of Customs and Excise.

27. Collectors of Customs and Excise will, on the arrival of the goods, examine them and ascertain whether they correspond with the removal entry, and as soon as the goods are placed in warehouse, will certify to the fact on the removal entry, and return it to the Collector of the Port from which the goods were shipped.

28. Removal bonds can only be cancelled upon the receipt of the removal entry, bearing the certificate of the Collector, of the Port to which the goods were consigned, that they have been received and re-warehoused.

ENTRY OF GOODS EX-WAREHOUSE FOR CONSUMPTION

29. Entry of goods ex-warehouse for consumption will be made in duplicate on the prescribed forms; and every such entry must contain a full specification of the goods, as in an export or removal entry.

30. On receipt of the duty accruing on the goods so entered, the Collector of Customs and Excise will sign the warrant for the delivery of the goods, and the locker in charge of the warehouse must identify every package with the description contained in the warrant, before delivering it.

CONSOLIDATED DISTILLERIES LIMITED, and F. L. SMITH,
(Defendants) APPELLANTS,

— AND —

HIS MAJESTY, THE KING,
(Plaintiff) RESPONDENT

10 **(Action No. 9371)**

No. 26

In the Exchequer Court of Canada

No. 26
Information, 10th March, 1928.

INFORMATION OF PLAINTIFF

Filed the 12th day of March, A.D. 1928.

20 To the Honourable the President of the Exchequer Court of Canada.

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

1. On the 22nd day of May, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $12,795.00. The condition of the bond was to the effect that if certain goods, namely, 401 cases of whiskey, concerning which notice of intention 30 to export to Chiperinco, Guatemala, was given by the defendant, Consolidated Distilleries, Limited, by the S.S. *Prince Albert,* should be exported and entered for consumption or warehouse at Chiperinco, Guatemala, aforesaid, and if proof of such exportation and entry, should, in accordance with the requirements of the Warehousing Regulations, be adduced within sixty days of the date of the said bond to the satisfaction of the Collector of Inland Revenue at Vancouver, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of 40 Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

2. The said goods were not exported or entered for consumption or warehouse at Chiperinco, Guatemala, and proof of such exportation and entry, in accordance with the Warehousing Regulations in that behalf, was not adduced within the period of sixty days aforesaid to the satisfaction of the Collector of Inland Revenue, nor

In the Exchequer Court of Canada

No. 26
Information,
10th March,
1928.

did the defendant, Consolidated Distilleries, Limited, account for the said goods to the satisfaction of the said Collector.

3. The Warehousing Regulations to which the Attorney-General craves leave to refer provide *inter alia* as follows:

" 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.

" 17. . . . . .

In all other cases the bond shall not be cancelled unless:

(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 the goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or,

(2) Within the period of three months from the date of the 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."

Wherefore the Attorney-General claims on behalf of His Majesty the sum of $12,795.00 with interest at 5 per cent from the 22nd day of May, A.D. 1924, to the date of payment.

Dated at Ottawa this 10th day of March, A.D. 1928.

ERNEST LAPOINTE,
Attorney-General of Canada.

This Information is filed by

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

No. 27

AMENDED STATEMENT IN DEFENCE

Filed this 29th day of January, A.D. 1931.

The defendants in answer to the plaintiff's Information say as follows:

1. The bond referred to in the first paragraph of the plaintiff's Information speaks for itself.

2. The second paragraph of the said Information is denied.

3. The warehousing regulations referred to in the third paragraph of the said Information speak for themselves.

4. The defendant is not indebted to the plaintiff in the amount claimed in the conclusions of the said Information nor in any amount whatever.

5. The bond referred to in the first paragraph of the said Information is void.

6. The landing certificate mentioned in the warehousing regulations referred to in the said Information was produced to the proper collector of Customs and Excise, and is in the hands of the plaintiff or of the plaintiff's representatives.

7. The goods in question were actually exported at and from the port of Vancouver in the Province of British Columbia.

8. The goods in question left Canada.

9. The goods in question have never been re-landed in Canada.

10. In any event if the said goods did not reach the destination indicated by the said landing certificate (which is not admitted) the said goods were, after leaving Canada, lost and destroyed.

11. Even if the goods in question did not reach their destination (which is not admitted) the facts herein alleged do account for the said goods to the satisfaction of the collector of Inland Revenue for the Inland Revenue Division of Vancouver, British Columbia.

12. There has not been hitherto any reason for the defendants or either of them to account in writing to the said collector in this

In the Exchequer Court of Canada

No. 27
Amended Statement in Defence, 29th January, 1931.

connection. In view, however, of this action now instituted by the plaintiff, the defendants, without waiver of or prejudice to the above contentions of this, their statement in defence, have caused to be served upon the Collector of Inland Revenue for the Inland Revenue Division of Vancouver, British Columbia, a copy of this statement in defence as a satisfactory accounting for the said goods in any event.

13. The plaintiff's action is prescribed under the provisions of Section 279 of the Canadian Customs Act, Chapter 48 of the Revised Statutes of Canada, 1906.

14. In any event the bond that was given and the law and regulations in this connection were given and enacted for the purpose of protecting the revenue of His Majesty's Government of Canada, as is indicated by the second paragraph of Section 2 of the Canadian Customs Act which enacts that all the expressions and provisions of that Act, or of any law relating to the customs shall receive such fair and liberal construction and interpretation as will best ensure the protection of the revenue and the attainment of the purpose for which that Act or such law was made, according to its true intent, meaning and spirit.

15. Even if the requirements of the said bond or of the said law were not fully complied with (which is not admitted) the revenue of His Majesty's Government of Canada has not been affected thereby.

16. The plaintiff's present action must fail, therefore, in any event.

17. The defendants, therefore, claim that the plaintiff's action should be dismissed with costs.

18. Without waiver of the foregoing the defendants specially allege that in any event the Exchequer Court of Canada has no jurisdiction to decide the matter at issue herein for the following reasons:

(a) The Exchequer Court of Canada is constituted under and in virtue of the Exchequer Court Act, being Revised Statutes of Canada 1927, Chapter 34.

(b) The Exchequer Court Act was enacted under and in virtue of Section 101 of the British North America Act, 1867, which Section reads as follows:

" The Parliament of Canada may, notwithstanding anything in this Act from Time to Time, provide for the Constitution, Maintenance and Organization 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."

(c) That the words " Laws of Canada " in the said Section 101 means laws enacted by the Dominion Parliament and within its competence.

(d) That the Parliament of Canada has under and in virtue of the said Section 101 power only to establish additional courts for the better administration of the laws of Canada.

(e) That the matter at issue herein is simply a contract issue and the laws relating to and governing that contract issue are not the laws of Canada, but are laws of the Provinces of Canada.

(f) That under and in virtue of sub-section 13 of the said Section 92 of the British North America Act, 1867, " Property and Civil Rights in the Provinces " are matters assigned exclusively to the legislature in each province for the purpose of making laws relating thereto, and the contract issue between the parties herein is a matter relating to " Property and Civil Rights in the Provinces " and is governed solely by the laws of the province and not by the laws of Canada.

(g) That under and in virtue of sub-section 14 of the said Section 92 " The Administration of Justice in the Province, including the Constitution, Maintenance and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction and including Procedure in Civil Matters in those Courts," are matters assigned exclusively to the Legislature in each Province.

(h) That under the British North America Act, 1867, the Provinces of Canada exclusively have power to establish Courts to administer the laws relating to property and civil rights in the provinces, and more particularly to administer the laws relating to the contract issue between the parties herein and the Parliament of Canada has no power whatsoever to give to the Exchequer Court of Canada jurisdiction to administer the laws relating to property and civil rights in the Province, and more particularly the laws relating to and governing the contract issue between the parties herein.

In the Exchequer Court of Canada

No. 27
Amended Statement in Defence, 29th January, 1931.

19. That the Exchequer Court Act, being Revised Statutes of Canada, 1927, Chapter 34, and every section thereof, is unconstitutional and beyond the powers of the Parliament of Canada insofar as it purports to give to the Exchequer Court of Canada jurisdiction to decide matters not governed by the laws enacted by the Parliament of Canada and within its competence, and more particularly the defendants specially plead that the said Exchequer Court Act is unconstitutional in so far as it purports to give jurisdiction to the Exchequer Court of Canada to decide the matter at issue between the parties herein.

20. That the action of the plaintiff should therefore also be dismissed on the grounds set forth in paragraphs 18 and 19, saving in this regard, however, such recourse as the plaintiff may have in the Provinces.

Dated at Montreal, Quebec, this 29th January, A.D. 1931.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for Defendants.

No. 28

In the Exchequer Court of Canada

No. 28
Amended
Reply,
4th July, 1928.

AMENDED REPLY

1. The Plaintiff joins issue on the Defendants' Statement in Defence.

2. In reply to paragraphs six and eleven of the Defendants' Statement in Defence the Plaintiff alleges as the fact is that the landing certificates produced to the Collector of Customs and Excise at Belleville in Ontario were false, and were forged or otherwise fraudulently procured and presented to the said Collector in order to deceive the Plaintiff and the said Collector and to procure the discharge of the said bonds without compliance with the conditions thereof, and the production of the false certificates was not a compliance with the warehousing regulations referred to in the Information, nor with the terms of the bonds, nor was such production an accounting for the said goods to the satisfaction of the said Collector, and the said bonds remain in full force and virtue.

3. In reply to paragraphs five to ten inclusive and paragraphs fourteen and fifteen of the Defendant's Statement in Defence the Plaintiff alleges as the Defendant well knew:

(1) That the said goods could not be sold for consumption in Canada without the payment to the Plaintiff of the duty and sales tax thereon, nor could they be exported in bond to the United States because of the law in force in the United States prohibiting the importation of intoxicating liquors, and that if the said goods had been entered for exportation in bond to the United States the shippers could not obtain such proof or certificate of export as was required by the Canadian Customs Law and Regulations.

(2) That the entry of the said goods for exportation in bond to Champerico, Guatemala, was part of a fraudulent scheme devised by the Defendant Company to obtain the removal of the liquors from customs bond without payment to the Plaintiff of the duties and sales tax payable thereon, and to obtain the cancellation of the bonds given to the Plaintiff in respect of such removals, by the production of landing certificates that were false and were either forged or otherwise fraudulently procured, purporting to certify to the landing of such goods in some country other than Canada or the United States.

(3) That the objects of the aforesaid fraudulent scheme

In the Exchequer Court of Canada

No. 28
Amended Reply,
4th July, 1928.

were, (a) to enable the Defendant Company to deliver the liquor into small boats at sea to be smuggled into Canada or the United States and (b) to defraud the Plaintiff of the duties and sales tax payable thereon.

(4) That the individual Defendant was aware of the fraudulent scheme so devised by the Defendant Company and knew that there was no bona fide intention on the part of the Company to export the said goods to Champerico, Guatemala, and that any certificate to be produced by the Company purporting to show that the said goods had been so exported must be false.

(5) That any cancellation of the said bonds based on the production of such false certificates was wholly unauthorized and ineffective, and

(6) That the Plaintiff has lost the duty and sales tax payable on the said goods and has incurred substantial costs and expenses in connection therewith.

Dated at Ottawa this 4th day of July, A.D. 1928.

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

No. 29

REPLY TO AMENDED DEFENCE

1. The Plaintiff joins issue on paragraph 18 of the amended Statement of Defence, and submits that this Court has jurisdiction to decide the matters at issue herein. As to sub-paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of said paragraph 18, the Plaintiff joins issue on such of said sub-paragraphs as relate to matters of law, and denies such of said sub-paragraphs as relate to matters of fact.

2. The Plaintiff joins issue on the allegations contained in paragraph 19 of the amended Statement of Defence, and submits that the Exchequer Court Act is validly enacted, and that thereunder this Court has jurisdiction to decide the matters at issue between the parties herein.

3. The Plaintiff further submits in reply to the whole of paragraphs 18 and 19 of the amended Statement of Defence:

(a) That the Defendants have consented, submitted and attorned to the jurisdiction of this Court in this action.

(b) That if the Exchequer Court of Canada has not ample jurisdiction to decide the matters at issue in this action (which is not admitted but denied) the Defendants have waived their right to object thereto, and are estopped from questioning the jurisdiction of this Court.

Dated at Ottawa, Ont., this 29th day of January, A.D. 1931.

W. STUART EDWARDS,
Solicitor for the Plaintiff.

In the Exchequer Court of Canada

No. 30
Defendants' Answer to Plaintiff's Amended Reply, 27th September, 1928.

No. 30

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED REPLY

(1) The defendants join issue on the plaintiff's amended reply.

(2) The defendants, without waiver of their denial of the allegations contained in the plaintiff's amended reply, further allege that in any event:

(a) The defendants and each of them acted in good faith and acted reasonably throughout.

(b) The allegations contained in the plaintiff's amended reply with regard to the laws of the United States are irrelevant and can have no effect upon the issues herein.

(c) Even if the said goods or any part of them had been brought into the United States as alleged by the plaintiff (which is not admitted) that fact would not give rise to any right on the part of the plaintiff against the defendants or either of them.

(3) The defendants therefore persist in their prayer that the plaintiff's action should be dismissed with costs.

Dated at Montreal, this 27th day of September, 1928.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for Defendants.

No. 31

ADMISSION AND STATEMENTS OF FACTS

The parties hereby consent:

1. That the evidence of J. G. Lawrence taken on Discovery in this case on January 15, 1931, together with all the exhibits therein produced, shall form part of the evidence for the plaintiff in this case.

2. That the evidence of J. F. Nicholles taken on commission at Vancouver, B.C., on October 29, 1930, together with the exhibits therein referred to, shall form part of the evidence for the plaintiff in the case.

3. That all the goods covered by the bond sued on in this action formed part of the cargo of the steamship Prince Albert on its outward voyage from the port of Vancouver, B.C., and are part of the goods referred to in the outward report of the steamship Prince Albert, marked as Exhibit "A" to the evidence of J. F. Nicholles herein and the said S.S. Prince Albert left Vancouver on the 22nd of May, 1924, or shortly thereafter.

4. That the bill of health marked as Exhibit 8 is the bill of health referred to in the evidence of J. F. Nicholles herein and was delivered to the Quarantine Officer at Williams Head, B.C., by or on behalf of the Master of the S.S. Prince Albert on or about August 16, 1924, on the return of the steamship Prince Albert.

5. That the distance from San Francisco, Califonia, in the United States of America, to Buenaventura, Colombia, is 3,365 nautical miles.

6. That the bond in question herein was signed by the defendants.

7. That the landing certificate marked as Exhibit 6 was produced to the Collector of Customs and Excise for the Port of Vancouver, B.C., on July 12, 1924, and the said Collector thereupon wrote "CANCELLED" on the said bond, and the parties admit that the said Collector would testify, if he were called, that he cancelled the said bond in accordance with his usual custom and further that he would also testify that he believed that the said landing certificate was genuine and true and that he cancelled the said bond upon this belief, and this admission is to have the same effect as if the witness had testified at the trial.

In the Exchequer Court of Canada

No. 31
Admissions and Statements of Facts, 30th January, 1931.

8. That a copy of the statement in Defence of the Defendants was duly served upon the Collector of Customs and Excise at Vancouver, B.C., on May 9th, 1928.

9. That subsequent to the execution of the said bond, and prior to the production of the said landing certificate, the Collector of customs and Excise at Vancouver, B.C., received notice from and on behalf of the defendants that the destination of the S.S. Prince Albert and of the goods had been changed from Chiperinco, Guatemala, to Buenaventura, Colombia.

10. That the Regulations marked as Exhibit 9 are the warehousing regulations referred to in the said bond.

11. That the landing certificate was received by the Consolidated Distilleries Limited from one Morrison who was employed by a company named Western Freighters Limited, the owners of the steamship Prince Albert.

Dated at Ottawa, Ontario, this 30th day of January, A.D. 1931.

(Sgd.) G. C. LINDSAY,
Counsel for Plaintiff.

(Sgd.) MEREDITH, HOLDEN, HEWARD & HOLDEN,
Counsel for Defendants.

No. 32

EVIDENCE OF J. G. LAWRENCE

EXAMINATION ON DISCOVERY OF J. G. LAWRENCE, an officer of the defendant company, on behalf of the plaintiff, before ARNOLD W. DUCLOS, K.C., Deputy Registrar of the Exchequer Court of Canada, at Monteral, January 15, 1931.

Counsel: Gordon Lindsay, Esq., for the plaintiff; F. T. Collins, Esq., for the defendants.

J. G. LAWRENCE, sworn.

Examined by Mr. Lindsay:

1. Q.—You are the Secretary of the defendant company?
A.—Yes.
2. Q.—And you have been Secretary since?
A.—February, 1924.
3. Q.—You were the Secretary of the defendant company on May 19, 1924?
A.—Yes.
4. Q.—The defendant company, in May, 1924, had its head office in Montreal. Did you have an office in Vancouver?
A.—Yes.
5. Q.—What is the organization that you had in Vancouver?
A.—Mr. F. L. Smith, Manager, Mr. Peacock, Accountant, and a stenographer.
6. Q.—Did you also have a distillery in Vancouver?
A.—Yes.
7. Q.—And a bonded warehouse?
A.—I should think so, yes.
8. Q.—Then you produce a telegram, Mr. Lawrence, from J. R. Douglas to Consolidated Distilleries Limited, Vancouver, dated May 19, 1924. Who was Mr. J. R. Douglas?
A.—Mr. J. R. Douglas, at that time, was President of the defendant company.
9. Q.—Mr. F. L. Smith, who is co-defendant in this case, is the F. L. Smith you referred to as manager of the Vancouver office?
A.—Yes.

Mr. Lindsay: I will put in that telegram from J. R. Douglas to the Vancouver office, dated May 19, 1924.

The Registrar: It will be Exhibit No. 1.

10. Q.—Then I show you the bond sued on in this case, Mr. Lawrence. It is dated 22nd May, 1924, and is for $12,795.00. I ask if you identify that as being a bond executed on behalf of the company and Mr. Smith?

A.—Yes.

Mr. Lindsay: I put that bond in.

The Registrar: It will be Exhibit No. 2.

11. Q.—Can you tell me where the goods covered by this bond were shipped from?

A.—Shipped from Vancouver.

12. Q.—That would be from your warehouse in Vancouver?

A.—Yes.

13. Q.—Without payment of duty?

A.—Yes, shipped in bond.

14. Q.—And how were they consigned?

A.—Consigned per S.S. " Prince Albert " to Chiperinco, Guatemala.

15. Q.—Consigned to whom?

A.—W. O. Watson.

16. Q.—Do you know who W. O. Watson was?

A.—No idea.

17. Q.—That would be a matter dealt with by Mr. Smith?

A.—Yes.

18. Q.—You produce a shipping notice, which is the form you fill out and which you filled out in your Vancouver office at the time of shipment of these goods covered by bond, Exhibit No. 2. The shipping notice is dated May 23, 1924?

A.—Yes.

Mr. Lindsay: I will put it in.

The Registrar: It will be Exhibit No. 3.

19. Q.—Then those goods, you say, are routed to go forward on the S.S. " Prince Albert "?

A.—Yes.

20. Q.—I ask you if you can identify requisition for permit as being a request made on behalf of the company to the Collector at Vancouver?

A.—Yes.

Mr. Lindsay: I put the requisition in. It is dated May 22, 1924.

The Registrar: That will be Exhibit No. 4.

21. Q.—And can you likewise identify the entry for export ex-warehouse which was made on behalf of the defendant company at the Port of Vancouver—in respect of those goods?
A.—That is just the one entry. I identify that entry.

Mr. Lindsay: I will put that entry in.

The Registrar: It will be Exhibit No. 5.

22. Q.—What is the other document which you have there?
A.—That is the landing certificate.
23. Q.—The landing certificate would be produced to the Collector at Vancouver under the terms of the bond, Exhibit No. 2?
A.—Yes.

Mr. Lindsay: I will put in the landing certificate.

The Registrar: It will be Exhibit No. 6.

24. Q.—Can you tell me to whom these goods were charged on the sale?
A.—They were sold to W. O. Watson.
25. Q.—How was payment made?
A.—By cash.
26. Q.—As shown on the invoice which you produce now?
A.—Yes.

Mr. Lindsay: I will put in that invoice.

The Registrar: It will be Exhibit No. 7.

27. Q.—Now, these goods were shipped in bond without payment of duty?
A.—Yes.
28. Q.—And the price shown on Exhibit No. 7, the invoice, would be the price not including any amount for duty?
A.—No, that is the In Bond price.
29. Q.—Now, these goods were shipped as per destination in Guatemala?
A.—Yes.
30. Q.—The defendant company did make sales of goods destined for places in the United States?

Mr. Collins: The same objection. I object to any evidence relating to sales other than sales in connection with the shipment.

The Registrar: The objection is overruled, reserving to Mr. Collins all his rights.

Witness' answer to question No. 30:—A.—We made sales to border ports for transmission to the United States.

31. Q.—And in the case of those sales did you ship the goods in bond or pay the duty?

A.—Paid the duty.

32. Q.—Why? Why in the case of the sales so destined to places in the United States were the goods not shipped in bond as were these which were destined to Guatemala?

A.—Because in cases of shipment to the Windsor border we were reasonably sure these goods were going to the States and could not get a landing certificate, but in this case the goods were destined for Guatemala where we could get a landing certificate.

33. Q.—Did the company have any shipments to Guatemala other than goods sold to the Consolidated Exporters?

A.—Outside of this particular case I do not know of any others.

34. Q.—Is there any one in the defendant company, other than Mr. Smith, who could give us any other information in connection with this sale, other than you have given us from the documents?

A.—I do not think so, no.

35. Q.—Did the defendant company make any other sales to Mr. Watson?

A.—I could not answer that without making a search of the records.

36. Q.—You do not know of any others?

A.—No, sir.

37. Q.—Do you know who the head was or who represented him in the transaction?

A.—No idea. I don't know him.

38. Q.—Where did this take place?

A.—From the documents, I imagine, it took place in Vancouver.

39. Q.—In Vancouver?

A.—Yes.

40. Q.—And the goods were released from the Vancouver bond and shipped on the " Prince Albert " and later on landing certificates were presented to the Collector at Vancouver?

A.—Yes.

41. Q.—When the entry in the bond refers to 401 cases, these would be cases of spirits out of your Vancouver bond, would they?

A.—Yes.

42. Q.—Did you have anything to do with this transaction yourself?

A.—Nothing whatever, no, sir.

Mr. Lindsay: That is all.

Mr. Collins: No questions.

(Examination concluded.)

No. 33

EVIDENCE OF J. F. NICOLLES

The evidence of J. F. NICHOLLES, Master Mariner, taken before J. F. Mather, Registrar of the Supreme Court of British Columbia, at the Court House, in the City of Vancouver, in British Columbia, on the 29th day of October, A.D. 1930, pursuant to a commission issued herein to J. F. Mather aforesaid, by this Court, and dated the 6th day of June, 1930.

G. C. Lindsay, Esq., appears for the plaintiff.
F. T. Collins, Esq., appears for the defendants.

CAPTAIN JACK FINLATER NICHOLLES, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Lindsay:

1. Q.—Captain, where do you live?
A.—3522 3rd Avenue West.
2. Q.—Vancouver?
A.—Yes.
3. Q.—What is your occupation now, Captain?
A.—The Empire Stevedoring Company.
Mr. Collins: 4. Q.—What?
A.—I am with the Empire Stevedoring Company.
Mr. Lindsay: 5. Q.—The Empire Stevedoring Company?
A.—Yes.
6. Q.—How long have you been at that occupation?
A.—Two years.
7. Q.—What was your occupation in May, 1924?
A.—Master of the steamer " Prince Albert."
8. Q.—And had you been master of the " Prince Albert " long?
A.—Yes, about eight months then.
9. Q.—What was the size of the " Prince Albert "?
A.—1,000 tons register.
10. Q.—What power; was it powered by sails only?
A.—Steam.
11. Q.—It was a steam vessel?
A.—Yes.
12. Q.—It had sails as well?
A.—No.
13. Q.—Just a steam vessel; what was its ordinary cruising speed?
A.—Oh, thirteen knots.

14. Q.—And do you know who owned the " Prince Albert " in May, 1924?

A.—The Western Freighters Limited.

15. Q.—Who was the active officer of Western Freighters Limited?

A. 1924, it was Roy Olmstead was the active manager.

16. Q.—Where was the office of Western Freighters?

A.—The Birks Building, Vancouver.

17. Q.—Where was Roy Olmstead's office?

A.—As far as the Western Freighters were concerned, it would be in Vancouver.

18. Q.—And was he the one who took the active part in the business?

A.—Yes, he was the one I took my orders from.

19. Q.—You took your orders from him?

A.—Yes.

20. Q.—Where did he live?

A.—In Seattle.

21. Q.—What business was the " Prince Albert " engaged in?

A.—Engaged in carrying liquor.

22. Q.—Liquor cargoes?

A.—Liquor cargoes down south.

23. Q.—You did not carry cargoes of other commodities than liquor?

A.—No.

24. Q.—Was it plying on any regular schedule?

A.—From Vancouver down south.

25. Q.—But any regular sailing time?

A.—No.

26. Q.—Regular schedule?

A.—No.

27. Q.—Any published route?

A.—No.

28. Q.—Now, were you employed by the Western Freighters?

A.—Yes.

29. Q.—You were working for them? Who employed you? It was some time before this, was it?

A.—Yes.

30. Q.—I show you the outward report of the " Prince Albert " from Vancouver dated May 22nd, 1924. Were you master of the " Prince Albert " at that time?

A.—Yes.

31. Q.—Did you ever see that document before?

A.—Yes.

32. Q.—Who was Mr. Andrew?

A.—Mr. Andrew, I don't know.

33. Q.—What is this name here? Is he the broker or what?

A.—Oh, yes, that is the broker, yes, Andrew. Yes, that is the broker, the Customs broker.

34. Q.—The Customs broker for whom?

A.—Well, he was for Western Freighters.

35. Q.—For the Western Freighters, and how long after the date of that outward report did the " Prince Albert " go out?

A.—She left the morning of the 24th of——

36. Q.—Of May?

A.—Yes.

37. Q.—Where did the " Prince Albert " go?

A.—Went down south off the California coast.

38. Q.—What port did the " Prince Albert " next call at? Or did it call at any port, let me ask you this?

A.—I was thinking whether we went into Victoria or not. I think we went into Victoria on our way down.

39. Q.—You went into Victoria on your way down?

A.—To take on oil.

40. Q.—To take on oil?

A.—Yes.

41. Q.—Did you take off any cargo in Victoria?

A.—No.

42. Q.—Then after leaving Victoria, did the " Prince Albert " call at any port?

A.—No.

43. Q.—Before returning to Vancouver?

A.—Returning to Victoria.

44. Q.—You returned to Victoria?

A.—Yes.

45. Q.—Did it bring any cargo back with it?

A.—No.

46. Q.—It came back in ballast?

A.—Yes.

47. Q.—Where was the cargo discharged?

A.—Off the Californian coast.

48. Q.—Off the Californian coast; roughly, where off the Californian coast? How far off?

A.—From thirty-five to seventy-five miles off.

49. Q.—And all in one place?

A.—No, several places.

50. Q.—How were the places at which you discharged the cargo fixed. Who fixed them?

A.—Well, in the first place it was fixed, given me in sealed orders before I left Vancouver.

51. Q.—Before you left Vancouver?

A.—And any change was sent to me down south.

52. Q.—Who gave you the sealed orders?

A.—Olmstead.

53. Q.—Roy Olmstead?

A.—Yes.

54. Q.—The acting manager of Western Freighters?

A.—Yes.

55. Q.—And he gave you sealed orders as to the position to stop at?

A.—Yes.

56. Q.—Do you recall where you made your first stop?

A.—The first off the—I am not quite sure of the trip now; it is so long ago; off the Farallone Islands. It would be either the first or second stop. I don't know which on this trip.

57. Q.—It would be either the first or second stop off the Farallone Islands?

A.—Yes.

58. Q.—That is off San Francisco?

A.—Yes.

59. Q.—Did you go any further south than the border between the United States and Mexico on this trip?

A.—No.

60. Q.—How was the cargo discharged?

A.—Discharged into smaller boats.

61. Q.—How was the quantity that was put into the different boats fixed, arrived at?

A.—It would be according to the order the boat had. A boat came out with an order for so many cases; that is what they got.

62. Q.—How did you identify the orders?

A.—They were in code.

63. Q.—They were in code, and did you have the code?

A.—Yes.

64. Q.—And where did you get the code?

A.—From the Vancouver office.

65. Q.—Before leaving in May?

A.—Yes.

66. Q.—What kind of boats were those that you discharged the cargo into?

A.—They were various sizes, from small gas boats to small schooners.

67. Q.—Do you know how long you were in discharging this cargo?

A.—I am not sure now. I would have to look up my inward manifest. It would be able to tell me.

68. Q.—Tell me this, how long after?

A.—I think it was about forty days on this trip. I am not sure.

69. Q.—Were you discharging cargo up until you left for Vancouver again?

A.—Yes, up until the time I left.

70. Q.—Up until the time you left. Do you remember this Consolidated Distilleries shipment of 401 cases?

A.—No, I don't remember that.

71. Q.—You don't remember that?

A.—I don't remember any individual shipments.

72. Q.—You don't remember any particular shipments. Well, then, when you came back to Victoria, you say you reported in. Did you bring back papers to the collector?

A.—Yes.

73. Q.—What would they be?

A.—A bill of health and manifest.

74. Q.—Do you recognize that as being the document you referred to as the foreign bill of health? Read it over, please. It recites whereas the British ship—it is pretty well water soaked—" Prince Albert," number so and so, which was last at the port of Vancouver, is about to sail from Buenaventura, Colombia, the 17th Junio, 1924, for Vancouver in ballast. Do you recognize that as being the document you brought back?

A.—It is the same as that.

75. Q.—It was the same as that?

A.—Exactly the same as that.

76. Q.—This document purports to be signed by G. W. Yates and dated at Buenaventura, the 17th of June, 1924. Was the " Prince Albert " at Buenaventura on the 17th day of June, 1924?

A.—No, she was not.

77. Q.—Then you say that all the cargo referred to in this exhibit, Exhibit "A"—was all the cargo referred to in the outward report, Exhibit " A," discharged in the manner you say into small boats?

A.—Yes.

78. Q.—The boats you referred to?

A.—Yes.

79. Q.—And I notice that the report outward gives as its destination Champerico in Guatemala. Did the " Prince Albert " go to Champerico on that voyage?

A.—No.

80. Q.—Nor to Buenaventura?

A.—No.

81. Q.—In fact it did not go to any port until it returned to Victoria?

A.—From Victoria to Victoria.

(Outward report marked Exhibit " A.")

82. Q.—Now, who was it that gave you instructions as to where you were to go with the " Prince Albert "?

A.—In Vancouver it was Olmstead.

83. Q.—And where did you get the instructions for moving after that?

A.—From White.

84. Q.—Some man named White?

A.—Yes.

85. Q.—Where did you receive them?

A.—I received them off the California coast.

86. Q.—Off the California coast by wireless or boat?

A.—By boat.

87. Q.—Where did you receive the foreign clearance and foreign bill of health you brought back to the collector at Victoria?

A.—I received that off the California coast.

88. Q.—How?

A.—By boat.

89. Q.—Brought out to you by boat?

A.—Yes.

90. While you were at sea?

A.—Yes.

91. Q.—Did you give any other papers to the collector at Victoria or at Vancouver except the foreign clearance and foreign bill of health?

A.—No, just the two papers, the bill of health and the clearance.

92. Q.—You say you don't remember the particular shipment of 401 cases?

A.—No, I don't remember. There were about 30 different brands.

93. Q.—Now, this whole shipment apparently, according to the report outward, Exhibit " A," is shipped by Western Freighters Limited. They were the people you were working for?

A.—Yes.

94. Q.—To W. O. Watson, Champerico. Who was W. O. Watson?

J. F. NICHOLLES (for respondent), Cross-examination.

A.—Supposed to be southern representative of the Western Freighters.

95. Q.—Supposed to be southern representative for the Western Freighters, and where did he live?

A.—I never went down there to see.

96. Q.—You never went down there to see?

A.—No.

97. Q.—Did you ever see him?

A.—No, I never saw W. O. Watson.

98. Q.—Did you know if there was such a person?

A.—Not that I know of.

Mr. Collins: 99. Q.—Is that answer not that I know of or I don't know?

A.—I said not that I know of.

Mr. Lindsay: 100. Q.—Who else was there took part in Western Freighters besides Olmstead at that time?

A.—Well, Mr. Burke.

Mr. Collins: 101. Q.—Well, is that relevant, Mr. Lindsay?

Mr. Lindsay: That is all.

Cross-Examination by Mr. Collins:

102. Q.—You left Vancouver on that voyage on the 24th of May, 1924?

A.—Yes.

103. Q.—I see according to the inward report, the report inward of the steamship " Prince Albert,", that that steamship returned to Victoria on the 16th of August, 1924. Is that correct?

A.—Well, all I have to go by is my clearance. There is my signature upon it. I guess it is correct, all right.

104. Q.—That is your signature appearing upon the report inward?

A.—Yes, I made that out.

105. Q.—Which would indicate that the ship returned on the 16th of August, 1924?

A.—Yes.

106. Q.—So that you were on the high seas between the 24th of May and the 16th of August, 1924, approximately three months?

A.—Yes.

107. Q.—You stated in your examination in chief you did not remember these particular 401 cases referred to in this action?

A.—No, I don't remember any particular shipment.

108. Q.—And I suppose you don't know where those cases were discharged?

A.—All I know that all the cargo was discharged altogether.

10 109. Q.—On the high seas?

A.—On the high seas.

110. Q.—But you cannot tell us the date or the particular place on the high seas where those particular 401 cases were discharged?

A.—No, I could not tell you the particular date, no.

111. Q.—Well, you say you were off the coast of California?

A.—Yes.

112. Q.—How far off the coast were you?

A.—From thirty-five to seventy-five miles.

113. Q.—How far down the coast did you go?

20 A.—Went down abreast of Monterey.

114. Q.—Monterey is in California or Mexico?

A.—In California.

115. Q.—How close to the Mexican border?

A.—150, nearly 200 miles.

116. Q.—Well, you were close to the Mexican border on the high seas?

A.—I would not say close, within 200 miles of it.

117. Q.—What kind of boats did you discharge the cargo into?

30 A.—Well, the boats ranged from a capacity of 200 case lots up to 3,000 case lots.

118. Q.—What tonnage were those boats?

A.—From five tons up to 75 tons and 80 tons.

119. Q.—What kind of boats were they?

A.—Gasoline boats.

120. Q.—Any schooners?

A.—Yes, a couple of schooners.

121. Q.—What size schooners?

A.—One about 70, one was 70 and one 90, two schooners.

40 122. Q.—Was that gasoline——

A.—Both gasoline schooners.

123. Q.—Any fishing smacks?

A.—Yes, small fishing boats.

124. Q.—Trawlers?

A.—Six-ton boats, small boats.

125. Q.—Any trawlers?

A.—No.

126. Q.—Various kinds of boats?
A.—Yes, speed boats.
127. Q.—Averaging from five to eighty tons?
A.—Up to eighty and ninety tons, yes.
128. Q.—They were seagoing boats?
A.—Some of them were and some of them were not.
129. Q.—When did you receive this bill of health and this landing certificate that you referred to?
A.—I could not tell you the date of that. It was before the time for leaving to come back to Victoria. That is all I know.
130. Q.—Just before you came back to Victoria?
A.—It may have been a week before I left, something like that.
131. Q.—In any event before you left——
A.—Before I left.
132. Q.—You got a bill of health and landing certificate?
A.—Yes.
133. Q.—And after you got it you left for Victoria?
A.—Yes.
134. Q.—Did you receive any landing certificate covering the goods in question which you discharged into those various boats?
A.—No.
135. Q.—Do you know where those boats went to into which you discharged the cargo?
A.—No, I don't know where any of them went to.
136. Q.—Do you know this man W. O. Watson?
A.—No.
137. Q.—You don't know anything about him?
A.—All I know is he was supposed to be the southern representative for the Western Freighters.
138. Q.—You never met him?
A.—No.

Mr. Collins: That is all.

Mr. Lindsay: That is all.

(Witness aside.)

No. 34

In the Exchequer Court of Canada

No. 34 Formal Judgment, 17th March, 1931.

FORMAL JUDGMENT

Tuesday the 17th day of March, A.D. 1931.

This action having come on for trial in the City of Ottawa, County of Carleton, Province of Ontario, on the 29th and 30th days of January, A.D. 1931, before this Court, in the presence of Counsel for the Plaintiff and for the Defendants; upon hearing read the pleadings herein, and upon hearing the evidence adduced, and what was alleged by Counsel aforesaid, this Court was pleased to direct that this action should stand over for judgment and the same coming on this day for judgment.

THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff do recover from the Defendants the sum of $12,795 without interest.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendants do pay to the Plaintiff his costs in this action after taxation thereof.

By the Court,

" ARNOLD DUCLOS ,"
Deputy Registrar.

No. 35

In the Exchequer Court of Canada

No. 35 Reasons for Judgment of MacLean, J., 17th March, 1931.

REASONS FOR JUDGMENT

MACLEAN, J.

Judgment rendered 17th March, 1931.

This is an action brought against the defendants, upon a bond executed by them in favour of the plaintiff. The cause was heard on admissions made in writing by and between the parties.

On the 22nd day of May, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $12,795.00. The condition of the bond was to the effect that if certain goods, namely, 401 cases of whiskey, concerning which notice of intention to export by the S.S. Prince Albert to Chiperinco, Guatemala, was given by the defendant Consolidated Distilleries, Limited, of Vancouver, B.C., should be exported and entered for consumption or warehouse at Chiperinco, Guatemala, and if proof of such exportation and entry should, in accordance with the requirements of the Warehousing Regulations, be adduced within sixty days of the date of the bond to

the satisfaction of the Collector of Inland Revenue at Vancouver, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

The Warehousing Regulations provide, *inter alia*, as follows:

" 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.

" 17. . . . . .

" In all other cases the bond shall not be cancelled unless:

"(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 the goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or,

"(2) Within the period of three months from the date of the 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."

The liquor in question was purchased of the defendant Company, located at Vancouver, B.C., by Western Freighters Limited, also of Vancouver, managed by one Olmstead who resided in Seattle, Washington, U.S.A. Prior to the release of these liquors from the bonding warehouse at Vancouver, the bond in question was executed by the defendants in favour of the plaintiff, pursuant to the Excise Act and Regulations thereunder, to procure the release of the goods from the bonding warehouse and their exportation in bond to Chi-

perinco, Guatemala. The liquors were shipped from Vancouver on board the S.S. Prince Albert, on the 22nd day of May, 1924, consigned to W. C. Watson at Chiperinco. The master of the Prince Albert, upon sailing from Vancouver, had instructions from Olmstead to discharge the liquors in question at sea off the coast of California into small boats, in fulfilment of orders, details of which were given the master before sailing. After the liquors had been shipped, the defendant company notified the Collector of Customs and Excise at Vancouver that the shipment was being diverted to Buenaventura, Colombia. The S.S. Prince Albert was not plying on a published route and schedule. It is clear from the evidence that the liquors in question were not exported to or entered for consumption or warehouse at Chiperinco or Buenaventura, but were discharged at sea in small boats off the coast of California, at a point far removed from the port mentioned in the bond, or Buenaventura. It is quite clear from the evidence that it was never intended that the liquors should be shipped to either Chiperinco or Buenaventura, but that they should be discharged, in accordance with a pre-arranged plan, at sea off the coast of California, where they were in fact discharged. A landing certificate bearing date the 17th day of June, 1924, purporting to be signed by one G. W. Yates of the British Consular Agency at Buenaventura, and purporting to show that the goods in question were landed at Buenaventura was procured by the shipper, but this document was false and fraudulent and was doubtless procured in order to induce the Collector of Inland Revenue at Vancouver, B.C., to cancel the bond in suit. A Bill of Health was also procured purporting to be signed by the Customs authorities at Buenaventura, and this was presented to the Port authorities at Vancouver by the master of the Prince Albert on the return voyage, August 16th, 1924; this document was also false and fraudulent. No outward clearance was put in evidence and I understand that document was in some way lost. In due course the alleged landing certificate, which was obtained by Western Freighters Limited and sent by it to the defendant company, was by the defendant company presented to the Collector of Customs and Excise at Vancouver. The Collector, believing the certificates to be genuine and true, and relying thereon, purported to cancel the bond in question. There can be no doubt that the Collector at Vancouver was induced to cancel the bond in question by reason of the presentation to him by the defendant company of the fraudulent landing certificate. No evidence was produced by the defendants suggesting that the goods went to the port designated in the bond.

In the state of facts which I have disclosed the question for decision is whether the defendants are liable upon the bond here in suit. The condition of the bond not having been performed, I am of

the opinion that the defendants are liable. No proof of the exportation and entry of the goods within the period stipulated in the bond was adduced to the satisfaction of the Collector of Inland Revenue at Belleville, nor was there any true accounting of the goods made to the satisfaction of such Collector at any time. The fact that the bond was cancelled does not in my opinion discharge the defendants from their obligations under the bond, because such cancellation was procured by fraud. The defendants undertook the obligation of assuring that the goods would be entered for consumption or warehouse at the port mentioned in the bond, and this of course was never done. In The King v. Vancouver Breweries Ltd.,[1] The King v. Fidelity Insurance Company of Canada,[2] The King v. Canadian Surety Company,[3] and The King v. Walker & Sons Ltd. (No. 9373), unreported, I dealt with a similar set of facts as is found in this case, and there is nothing I can usefully add to what I there stated. It is therefore my opinion that the defendants are liable upon the bond here sued upon.

The defendants contended at the trial that this Court was without jurisdiction in this cause, and also that the claim for interest as set forth in the Information should be disallowed. I am of the opinion that the Court possesses jurisdiction in this cause, and also that the claim for interest should be disallowed. I discussed briefly these two points in an opinion recently rendered in an action (No. 9370) between the same parties, and in respect of a similar subject matter, and there is nothing that I care to add to what I there said. I would refer to the opinion which I expressed in that cause upon these two points.

There will be judgment for the amount sued upon here, as appears in the plaintiff's Information, but exclusive of interest, and costs will follow the event.

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(1) 1929, Ex. C.R., p. 14.
(2) 1929, Ex. C.R., p. 1.
(3) Ex. C.R., p. 216.

No. 36

In the Exchequer Court of Canada

No. 36
Notice of Appeal, 7th April, 1931.

NOTICE OF APPEAL

TAKE NOTICE that the Defendants above named being dissatisfied with the judgment herein given by the Honourable the President of this Court the 17th day of March, A.D. 1931, have set down an appeal against the said judgment to the Supreme Court of Canada.

Tuesday, the seventh day of April, A.D. 1931.

E. F. NEWCOMBE,
Ottawa Agent for Defendants' Solicitors.

To the Attorney-General of Canada.

No. 38

In the Supreme Court of Canada

No. 38
Order dispensing with printing of certain exhibits, 15th July, 1931.

ORDER DISPENSING WITH PRINTING OF CERTAIN EXHIBITS

Upon the application of the Appellants and upon hearing what was alleged by Counsel on their behalf and upon hearing read the consent of Respondent filed herein and the affidavit of F. T. Collins, Solicitor for Appellants,

1. IT IS ORDERED that the printing of the following Exhibits be dispensed with:

Exhibit 3—Formal parts at foot of document only to be omitted.

Exhibit 4—Face only to be printed.

Exhibit 7.

Exhibit 9—Except paragraphs 1-30, inclusive, which are to be printed.

2. AND IT IS FURTHER ORDERED that the costs of this Application be costs in the Cause.

Dated at Ottawa this 15th day of July, A.D. 1931.

(Sgd.) J. F. SMELLIE,
Registrar.

In the Supreme Court of Canada

No. 37
Agreement as to contents of Appeal Book, 27th June, 1931.

No. 37

AGREEMENT AS TO CONTENTS OF APPEAL CASE

The parties hereto agree that the appeal case on the appeal herein to the Supreme Court of Canada shall consist of the following documents:

1. Index of Reference.

PART 1

2. Information.
3. Amended Statement in Defence.
4. Amended Reply as filed.
5. Defendants' answer to Amended Reply.
6. Notice of Appeal.
7. Order dispensing with the printing of certain Exhibits.
8. Agreement as to contents of appeal case.

PART 2

9. Admissions and Statements of Facts.
10. Evidence of J. G. Lawrence taken on discovery.
11. Evidence of J. F. Nicholles taken on commission.

PART 3

All Exhibits except the following:
Exhibit 3. Formal parts at foot of document only to be omitted.
Exhibit 4. Face only to be printed.
Exhibit 7.
Exhibit 9. Except paragraphs 1-30, inclusive, which are to be printed.

PART 4

12. Formal Judgment.
13. Reasons for Judgment.
14. Certificate of Solicitor.

Dated this 27th day of June, A.D. 1931.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for the Appellants.

W. STUART EDWARDS,
Solicitor for the Respondent.

No. 39

In the Supreme Court of Canada

No. 39
Respondent's Notice of Cross-Appeal, 29th July, 1931.

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

No. 9371

BETWEEN:

CONSOLIDATED DISTILLERIES LIMITED and F. L. SMITH,
(Defendants) Appellants,

—AND—

HIS MAJESTY THE KING, represented by the Attorney-General of Canada,
(Plaintiff) Respondent.

TAKE NOTICE that upon the hearing of this appeal the Respondent intends to contend that the decision of the Exchequer Court of Canada is erroneous in not allowing to the Respondent interest on the amount of the bond sued on herein, and that the said judgment should be varied by adding thereto an order that the Appellants should pay to the Respondent interest at the legal rate of five per cent per annum on the amount of the said bond sued on herein, from the date on which the conditions of the said bond should have been performed until the date of judgment.

DATED at Ottawa this 29th day of July, A.D. 1931.

W. STUART EDWARDS,
Solicitor for the Respondent.

To:

THE APPELLANTS AND TO THEIR SOLICITORS.

In the Supreme Court of Canada

No. 40
Certificate of Appellants' Solicitor, 15th August, 1931.

No. 40

CERTIFICATE OF SOLICITOR

I, FREDERICK T. COLLINS, Advocate, of the firm of Meredith, Holden, Heward & Holden, Solicitors for the Appellants, Consolidated Distilleries Limited and F. L. Smith, hereby certify that I have personally compared the foregoing print of the Case in Appeal to the Supreme Court of Canada with the originals, and that it is a true and correct reproduction of such originals.

Montreal, August 15th, 1931.

FREDERICK T. COLLINS,
A Solicitor for the Appellants.

In the Supreme Court of Canada

No. 41
Appellants' Factum (separate document).

No. 41

APPELLANTS' FACTUM

(separate document)

In the Supreme Court of Canada

No. 42
Respondent's Factum (separate document).

No. 42

RESPONDENT'S FACTUM

(separate document)

No. 43

In the Supreme Court of Canada

No. 43
Formal Judgment, 15th March, 1932.

FORMAL JUDGMENT

No. 9371

IN THE SUPREME COURT OF CANADA

Tuesday, the 15th day of March, A.D. 1932

Present:

The Right Honourable Mr. Justice Anglin, P.C., Chief Justice,
The Right Honourable Mr. Justice Duff, P.C.,
The Honourable Mr. Justice Rinfret,
The Honourable Mr. Justice Lamont.

BETWEEN:

CONSOLIDATED DISTILLERIES LIMITED
and F. L. SMITH,
(Defendants) Appellants,

—AND—

HIS MAJESTY THE KING,
represented by the Attorney-General of Canada,
(Plaintiff) Respondent.

The appeal of the above-named appellants, 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 17th day of March, A.D. 1931, having come on to be heard before this Court, constituted as above with the addition of the Honourable Mr. Justice Newcombe, since deceased, on the twenty-eighth and twenty-ninth days of October, A.D. 1931, in the presence of counsel as well for the appellants as the respondent, 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 date for judgment;

THIS COURT DID ORDER AND ADJUDGE that the said appeal be, and the same was, dismissed, and that the said cross-appeal be, and the same was also dismissed.

In the Supreme Court of Canada

No. 43
Formal Judgment, 15th March, 1932.

THIS COURT DID FURTHER ORDER AND ADJUDGE that the said appellants should and do pay to the said respondent his costs of the appeal, and that the said respondent should and do pay to the said appellants their costs of the cross-appeal.

(Sgd.) J. F. SMELLIE,
Registrar.

No. 44
Reasons for Judgment.

No. 44

REASONS FOR JUDGMENT

(Same as document No. 25—printed at page 75)

EXHIBITS

Exhibit No. 1
Telegram to Consolidated Distilleries Ltd., Vancouver, from J. R. Douglas, 19th May, 1924.

RESPONDENT'S EXHIBIT NO. 1, TELEGRAM

217RA C 37
Q Montreal Que May 19th 1924
Consolidated Distilleries Ltd

543 Granville St Vancouver BC
Answering telegram satisfactory deliver six hundred to Western Freighters in this particular instance without guarantee bond on condition they give you written undertaking to surrender landing certificate stop do not take this as precedent in future case.

J. R. DOUGLAS.

1323K

(Written in pencil on telegram—Rec'd cash guarantee of 4,000 on my own authority.—F. L. Smith.)

Exhibit No. 4
Requisition for a permit, 22nd May, 1924.

RESPONDENT'S EXHIBIT NO. 4

REQUISITION FOR A PERMIT

I, Consolidated Dist. Ltd., of Vancouver, B.C., owner of the undermentioned Spirits, require permission to remove the same between the date hereof and the 22nd day of July, 1924, from Warehouse No. 4 at Vancouver, B.C., to Chiperinco, Guatemala, by the S.S. Prince Albert, there to be delivered into the possession of W. O. Watson of Chiperinco, Guatemala, the duty on the said spirits having been secured in bond.

Number and Marks	Gallons	Strength			
1011/ 1.22-5.24	400 cases @ 2.02—808.00 Std. Gals.	12.2	709.42	9.00	6384.78
911/12.21-1.24	1 case @ 1.88— 1.88 Std. Gals.	24.7	1.42	9.00	12.78
	401 cases		710.84		6397.56

CONSOLIDATED DISTILLERIES, LTD.

W. E. PEACOCK

Requisition made at Vancouver, B.C., this 22nd day of May, 1924.

Exhibit No. 2 Excise Bond for $12,795.00 signed by Appellants in favour of Respondent, 22nd May, 1924.

RESPONDENT'S EXHIBIT NO. 2

A. 16
Inland Revenue
25,000-2-19

Rev. Stat. 1906
Chap. 51

EXCISE

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

6397.56
2
12795.12

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited and F. L. Smith, Vancouver, B.C., are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors, in the sum of(2) Twelve Thousand Seven Hundred and Ninety-Five Dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 22nd day of May in the Fifteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden(3) Consolidated Distilleries Limited and F. L. Smith hath given notice of intention to export to(4) Chiperinco, Guatemala, in the(5) S.S. Prince Albert, whereof ..... is Master(6)

1011/ 1.22-5.24	400 cases @ 2.02—808.00 Std. Gals. 12.2	709.42	9.00	6384.78
911/12.21-1.24	1 case @ 1.88— 1.88 Std. Gals. 24.7	1.42	9.00	12.78
	401 cases	710.84		6397.56

Cancelled July 12/24—G. A. Allen

and which goods are now deposited in Bonded Warehouse No. 4 at Vancouver in the Port of Vancouver under the provisions and regulations of the " Inland Revenue Act."

Exhibit No. 2 Excise Bond for $12,795.00 signed by Appellants in favour of Respondent, 22nd May, 1924.

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at Chiperinco, Guatemala, aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within sixty days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of Vancouver, B.C., or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, B.C., then this obligation to be void, otherwise to be and remain in full force and virtue.

F. L. SMITH [L.S.]

CONSOLIDATED DISTILLERIES LTD.

W. E. PEACOCK (att'y) [L.S.]

Signed, sealed and delivered in the presence of:

E. J. MORGAN

Exhibit No. 5 Entry for export ex-warehouse, Entry No. 395, 23rd May, 1924.

RESPONDENT'S EXHIBIT NO. 5

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO.

Entry No. 395
Ledger Folio 177.293
Wh. Entry No. 374,2117

Port of Vancouver, B.C., May 23, 1924.
Warehoused May 20th, 1924.
Manufactured by Canadian Industrial Alcohol Company, of Thurlow, Ont.
Warehoused by Consolidated Distilleries Limited of Vancouver, B.C., and now entered for exportation to Champerinco, Guatemala, by S.S. " Prince Albert."

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
1011/ 1.22-5.24	400 cases @ 2.02—808.00	Std. Gals. 12.2	709.42	9.00	6384.78
911/12.21-1.24	1 case @ 1.88— 1.88	Std. Gals. 24.7	1.42	9.00	12.78
	401 cases		710.84		6397.56

Exhibit No. 5
Entry for export ex-warehouse, Entry No. 395, 23rd May, 1924.

I, E. J. MORGAN, do hereby certify that I have examined indiscriminately the goods referred to in this entry and that I find the contents as herewith represented.

(Signed) E. J. MORGAN,
Excise Officer.

I, W. E. PEACOCK, for Consolidated Distilleries Ltd., do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Champerico, in Guatemala, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

W. E. PEACOCK.

Sworn to before me this 22nd day of May, 1924.

E. J. MORGAN,
for Collector.

RESPONDENT'S EXHIBIT NO. 10

Exhibit No. 10
Report
outwards of S.S.
Prince Albert,
22nd May, 1924.

REPORT OUTWARDS—PORT OF VANCOUVER, B.C.

Report No. 306

In the S.S. " Prince Albert ", registered tonnage 587, registered in Port of Prince Rupert, B.C., J. R. Nicholls, Master for this present voyage for Champerico, Guatemala, cargo 336 tons weight.

SHIPPERS	Point of original Shipment in Canada	Quantity and Description of Goods	Consignee	Manifest Rec. Port No. or Export Entry No.
Western Freighters, Ltd.	Vancouver, B.C.	15 bbls beer	W. O. Watson	3293
—do—	—do—	401 cs whiskey	—do—	395 Excise
—do—	—do—	100 " Gilbey's Spey Royal whiskey	—do—	3155
—do—	—do—	100 " Gilbey's Spey Royal whiskey	—do—	688
—do—	—do—	200 " Seagers Gin	—do—	*R15010*
—do—	—do—	200 " Royal Vat whiskey	—do—	*R14067*
—do—	—do—	100 " French Vermouth	—do—	689
—do—	—do—	50 " Golden Guinea Muscatel	—do—	*R14067*
—do—	—do—	250 " Stag Scotch whiskey	—do—	*R15443*
		250 " Gilmour Thomson's Liqueur		690
—do—	—do—	whiskey	—do—	*R15443*
—do—	—do—	500 " Grannie Taylor whiskey	—do—	*R14683*
—do—	—do—	500 " Imperial Liqueur	—do—	
—do—	—do—	500 " Sandy MacNab whiskey	—do—	
—do—	—do—	1141 " Bulloch Lade whiskey	—do—	691
—do—	—do—	1200 " Peter Dawson whiskey	—do—	
—do—	—do—	1000 " Royal Liqueur whiskey	—do—	
—do—	—do—	500 " Father Time whiskey	—do—	
—do—	—do—	859 " Bulloch Lade whiskey	—do—	
—do—	—do—	1000 " Doctor's Special whiskey	—do—	*R14683*
—do—	—do—	500 " H&S Special whiskey	—do—	*975 R75*
—do—	—do—	500 " H&S Special whiskey	—do—	*1070 R76*
—do—	—do—	500 " H&S Special whiskey	—do—	*1000 R77*
—do—	—do—	500 " H&S Special whiskey	—do—	*1005 R78*
—do—	—do—	500 " Imperial Liqueur whiskey	—do—	*1000 R79*
		500 " Aberlour Glenlivet Liqueur		692
—do—	—do—	whiskey	—do—	
		500 " Aberlour Glenlivet Liqueur		
—do—	—do—	whiskey	—do—	
—do—	—do—	500 " Imperial Gold Crest whiskey	—do—	
—do—	—do—	500 " Imperial Liqueur whiskey	—do—	
—do—	—do—	200 " Rye whiskey	—do—	
—do—	—do—	350 " Peter Dawson whiskey	—do—	
—do—	—do—	500 " Grannie Taylor whiskey	—do—	*R74*
—do—	—do—	500 " Grannie Taylor whiskey	—do—	
—do—	—do—	10 bbls. empty sacks	—do—	3156
—do—	—do—	30 bbls. straw	—do—	

I, TRESHAM A. ANDREW, Master, Purser or Agent 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 on board the above stated Vessel for this present voyage,

Exhibit No. 10 Report outwards of S.S. Prince Albert, 22nd May, 1924.

and of the names of the respective Shippers and description of the Goods and the Marks and Numbers of the Packages containing the same.

T. A. ANDREW,
Agent.

Signed and Declared before me at the Customs House, Port of Vancouver, B.C., this 22nd day of May, 1924.

C. SIMARD,
Collector.

(Rubber stamp—Customs-Excise-Canada, Record Room, May 23, 1924, Vancouver, B.C.)

Exhibit No. 3 Shipping Notice of Consolidated Distilleries, Ltd., 23rd May, 1924.

RESPONDENT'S EXHIBIT NO. 3

CONSOLIDATED DISTILLERIES LIMITED

SHIPPING NOTICE

Date shipped, May 23rd, 1924.

Shipped from: Vancouver, B.C.
Shipped to: W. O. Watson.
Place: Chiperinco, Guatemala.
Routing: S.S. Prince Albert.
Duty Paid or in Bond: In Bond.
Charge to Consolidated Distilleries, Vancouver.
Terms: Net Cash.

Date Invoiced May 30/24
Invoice No. 405
Shipping Notice No. 13

ANALYSIS

Proof Gallons	Duty
709.42	6384.78
1.42	12.78
710.84	6397.56

Cases	DESCRIPTION	Bond No.	Standard Gallons	Price	Total
400	Old Kentucky 5's.	1011	808.00	8.00	3200.00
1	Special Sel. 12's.	911	1.88	6.00	6.00
401					3206.00

Copy of Invoice, 26th May, 1924.

EXHIBIT NO. 7

Copy of Invoice, omitted by consent of parties.

RESPONDENT'S EXHIBIT NO. 6, LANDING CERTIFICATE

Exhibit No. 6
Landing Certificate, 17th June, 19

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 395
Ledger Folio 177.293
Wh. Entry No. 374.2117

Warehoused May 20th, 1924.

Port of Vancouver, B.C., 23rd May, 1924.

Manufactured by Canadian Industrial Alcohol Company, of Thurlow, Ont.

Warehoused by Consolidated Distilleries, Ltd., of Vancouver, B.C., and now entered for exportation to Champerico, Guatemala, by S.S. " Prince Albert."

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
1011/ 1.22-5.24	400 cases @ 2.02—	808.00 Std. Gals. 12.2	709.42	9.00	6384.78
911/12.21-1.24	1 case @ 1.88—	1.88 Std. Gals. 24.7	1.42	9.00	12.78
	401 cases		710.84		6397.56

I, E. J. MORGAN, do hereby certify that I have examined indiscriminately the goods referred to in this entry and that I find the contents as herewith represented.

(Signed) E. J. MORGAN,
Excise Officer.

(Written in red pencil on face of document—" Rep. No. 306 S.S. Pr. Albert May 23/24 Ex. 3155 ".)

(Rubber stamp—Customs-Excise-Canada, Record Room, May 23, 1924, Vancouver, B.C.)

I, W. E. PEACOCK, for Consolidated Distilleries Co., Ltd., do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of Champerinco, in Guatemala, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at

Exhibit No. 6 Landing Certificate, 17th June, 1924.

the time warehoused, and that any deficiency therein has been accounted for according to law.

(Signed) W. E. PEACOCK.

Sworn to before me this 22nd day of May, 1924.

(Signed) E. J. MORGAN,
for Collector.

I, G. W. Yates, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of ..... in ..... and have been duly delivered over to the Customs

Witness my hand and seal of office, this 17th day of Junio, 1924.

G. W. YATES.

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

(Rubber stamp—British Consular Agency, Buenaventura.)

(Two Consular Service tax stamps of British Consular Agency, Buenaventura, dated 17 June 24, across footnote.)

(Rubber stamp—Customs 22, 1926, Enquiry.)

RESPONDENT'S EXHIBIT NO. 8

Exhibit No. 8
Bill of Health,
17th June, 1924.

(Coat of Arms)

Three Consular Service Tax
Stamps of British Consular
Agency, Buenaventura,
dated 17 Jun. 24

10

BILL OF HEALTH

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, G. W. YATES, British Consul at Buenaventura, send greeting:

WHEREAS the British Ship Prince Albert, official number 9958, owned by ..... of ..... whose Master is ....., and which was last at the port of Vancouver, B.C., is about to sail from the port of
20 Buenaventura, Colombia, on this 17th day of Junio, in the Year of Our Lord One thousand nine hundred and twenty-four, and from thence to Vancouver, B.C., and other places beyond the Seas with Twenty Persons on Board, including the said Master, in ballast.

Now, Know ye that I, the said Consul, do hereby make it known to all Men, that at the time of granting these presents no Plague, Epidemic Cholera or Yellow Fever, nor any dangerous or contagious disorder in epidemic form exists in the above Port or neighbourhood.

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In testimony whereof I have hereunto set my Name and Seal of Office, on the Day and Year aforesaid.

G. W. YATES.

Given in the British Consulate at
Buenaventura on the 17th day of
Junio in the Year of Our Lord
1924.

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(Rubber stamp of British Consular.)

(Written in ink on face of document—" Aug. 16, 1924 ".)

Exhibit No. 9 Circular of Department of Customs and Excise, Canada, containing the general warehousing regulations, 15th April, 1924.

RESPONDENT'S EXHIBIT NO. 9

No. 327C

CIRCULAR

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA

Ottawa, April 15, 1924.

To Collectors of Customs and Excise:

WAREHOUSING GOODS LIABLE TO DUTY OF EXCISE

GENERAL WAREHOUSING REGULATIONS

The following Regulations have been approved by Orders in Council of the 9th January, 1889, 23rd January, 1895, and 24th December, 1921.

R. R. FARROW,
Commissioner of Customs and Excise.

REGULATIONS

1. All applications for the establishment of a warehouse for Excise purposes must be made in writing by the party requiring it, on such form as the Department may prescribe, and every such application must fully and minutely describe the premises, with their exact locality.

2. On receipt of such an application the Collector of Customs and Excise will survey the premises, and if satisfied that they are suitable for the purpose, and that they afford the requisite protection to the Revenue, and on their being supplied with suitable locks, he will report the facts to the Inspector of the District who will recommend the issue of the license and forward the application to the Department for authorization.

3. The door of every such warehouse shall be provided with two locks, one of which will be supplied to the Collector by the Department upon requisition being made therefor, and the key of which shall be kept by the Collector, and the other provided by the owner of the goods who shall retain the key thereof, and should there be more doors than one, all other doors and all windows and other means of ingress shall be fastened on the inside in a secure manner and to the satisfaction of the surveying officer.

Exhibit No. 9
Circular of Department of Customs and Excise, Canada, containing the general warehousing regulations, 15th April, 1924.

4. When any warehouse has been surveyed and accepted as an Excise bonding warehouse and licensed as such, it shall be designated by a letter of the alphabet; bonding warehouses in connection with a licensed manufactory shall be designated by a number.

5. Over the principal entrance to every warehouse approved for Excise purposes there shall be placed the following designation:

EXCISE
G. R.
BONDING WAREHOUSE

With its designating letter or number, the whole being in legible characters, painted in oil colours and not less than three inches in height.

6. Every package entered for warehouse must (in addition to all other marks and numbers) be distinctly marked to the satisfaction of the Collector, with the number of the entry and the date when originally warehoused, except that in the case of cigars the entry number may be omitted. In the case of spirits the above marks shall be written or stencilled on the package in oil paint. The date will be sufficiently indicated by the number of the month and the last two numerals of the year in which the entry was made:— Thus, goods entered on the 20th January, 1883, may be dated 1-83, showing that the entry was made in the first month of the solar year 1883, or if 20th November, 1883, dated 11-83. All goods in any warehouse, except in the case of cigars, must also be so stowed or arranged that casks, boxes or packages contained or described in one entry are placed consecutively and together in separate lots as provided by law. Cigars shall be stowed or arranged in warehouse in lots according to the denomination of the packages. The packages must also be stowed or arranged that ample space will be left so that each package and the marks and numbers thereon can be examined. Officers of Customs and Excise may refuse subsequent entries for warehouse when these regulations as to arranging and stowing packages are not complied with.

7. (1) All entries are to be numbered consecutively;

(2) As license bonds are now made to cover the duty on goods remaining in warehouse from time to time during the currency of that license, the taking of warehouse bonds with each warehousing is dispensed with.

8. No entry shall be passed for warehouse, or ex-warehouse,

Exhibit No. 9 Circular of Department of Customs and Excise, Canada, containing the general warehousing regulations, 15th April, 1924.

upon any authorized holiday, nor before the hour of nine o'clock in the morning, nor after five o'clock in the afternoon.

9. All entry papers, bonds, notices and other documents herein required shall be made out and signed by the owner of the goods to which they relate, or in his name by his duly authorized attorney, and all packages shall be marked and numbered as herein required by the owner or his agent.

10. Entry of goods for warehouse must in all cases be made on the forms sanctioned by the Department, and every such entry shall contain a full and complete specification of the goods so entered, stating:

(*a*) The number and description of packages.

(*b*) Marks and numbers.

(*c*) Contents of each in pounds, gallons or number; and in the case of spirits, the contents are also to be stated in gallons of the strength of proof.

(*d*) The duty on the goods so entered for warehouse.

Every cask, barrel or package containing goods shall be whole and entire at the time it is warehoused.

11. Every warehouse entry shall be in duplicate.

ENTRY OF GOODS EX-WAREHOUSE FOR EXPORTATION

12. Goods subject to duties of Excise shall only be exported in bond from a port where there is an officer of Customs, and only to British or foreign ports of entry where there are Collectors or other officers of the Government having similar functions and when ex-warehoused for exportation may be such quantity as exporter or manufacturer respectively may require, within the discretion of the Collector, but nothing less than the contents of one whole package.

13. Goods can only be entered for exportation in bond ex-warehoused from a warehouse within the limits of the port at which they are actually laden on the ship, car or other vehicle in which they are handed over to the Customs by warrant for shipment.

14. All casks, boxes, bales or other packages of goods entered for exportation shall, before leaving the warehouse, be conspicu-

ously branded by the person entering the same ex-warehouse, and under the personal supervision of the officer in charge, with the letters EXPN, and any further information that may be required in any specific case or cases.

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.

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.

" 17. Where the Port at which the goods are entered for exportation ex-warehouse is not also the Port of exportation, the Collector shall cause one copy of the entry for exportation ex-warehouse (B 54) to be promptly mailed to the Collector at the Port of Exit where such goods are shipped for exportation out of Canada; and in all cases, upon exportation of the goods, the Collector at the Port of Exit aforesaid shall record on the face of the entry for exportation ex-warehouse (B 54):

(1) The date when said goods were exported.

(2) The name of railway or vessel exported upon, and, if by railway, the initials and number of the car exported in.

(3) The quantity and description of goods (including the serial numbers of the packages) so exported.

(4) The number of Customs export entry (B-13) upon which such goods were exported out of Canada.

One copy of export entry (B-13) shall then, where the Port of Exit is not also the Port of entry ex-warehouse, be dated, signed and promptly mailed addressed to the Collector at the Port of entry ex-warehouse.

Exhibit No. 9 Circular of Department of Customs and Excise, Canada, containing the general warehousing regulations, 15th April, 1924.

In all cases 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, such evidence of exportation of the goods as is above herein provided for, shall operate as a cancellation of the bond, notwithstanding the actual terms of the obligation of the bond.

In all other cases the bond shall not be cancelled, unless

(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 the goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or,

(2) Within the period of three months from the date of the 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.

Where a shortage occurs in goods so forwarded, ex-warehouse for exportation, and same are not accounted for by exportation from out of Canada to the Department of Customs and Excise on Export Entry No. B-13, it is the duty of the Collector of Customs and Excise at the Frontier Port where such goods were short received for exportation, to notify the Collector of Customs and Excise of the Port from which such goods were shipped for exportation, when the Collector of Customs and Excise for said Port shall require the consignor to pass Entry, and pay the lawful duty payable upon the goods short delivered at the Frontier Port, in accordance with the regulations contained in Departmental Circular No. G. 797."

INSTRUCTIONS

Additional to the instructions contained in Section 17 as above established, the Collector at the Port of exportation from Canada shall when forwarding copy of export entry (B-13) to the Collector at the Port of entry ex-warehouse, attach thereto the copy of the entry for exportation ex-warehouse (B 54) received by him, after recording thereon the items (1), (2), (3) and (4) as set out.

18. The entry ex-warehouse for exportation shall in all cases

be made in triplicate with the Collector of Customs and Excise who shall also take the export bond, and the copy forwarded to the Department shall bear on its face the certificate of an officer of Customs and Excise, that he has examined the goods, such certificate being made in the form given in Schedule A to these Regulations.

19. Two copies of the entry together with a warrant to ship (C 52) shall be sent to the Collector of Customs and Excise at the port where the goods were laden in the vessel, car or other vehicle in which they are to leave the Port, who, on receipt thereof, shall grant a warrant for the lading of the goods described in the entry on the railway or vessel mentioned therein.

20. So soon as the goods have been duly laden, the Collector of Customs and Excise shall certify the fact on the entry paper, one copy whereof shall be filed at the Custom House, and the other returned to the Collector of the Port whence the goods were shipped.

21. The Collector of Customs and Excise at the Port will in each case be charged with the responsibility of seeing them placed on board ship, car or other vehicle in which they are to be exported, and must satisfy himself that they correspond with the description contained in the entry, and especially with reference to spirits, that they are of the strength specified.

ENTRY OF GOODS FOR REMOVAL EX-WAREHOUSE IN BOND

22. Entries for goods for removal ex-warehouse are to be made in triplicate, with detailed specifications, as in export entries, two copies of which are to be forwarded to the Collector of the Port to which the goods are consigned.

23. The least quantity of such goods that can be ex-warehoused for removal or transfer in bond shall be that quantity which can at the receiving point, be legally warehoused as prescribed by law; in case of a licensed Bonded Factory no less quantity of spirits can be removed in Bond than thirty proof gallons, or the contents of one barrel.

24. Goods can only be entered for removal ex-warehouse to another licensed warehouse within the limits of a warehousing port of entry, or to an Excise bonding warehouse previously licensed in another Port, and when shipped to the order of the Collector of Customs and Excise, the bond of the manufacturer or merchant for the removal of goods to warehouses in other Ports upon the pre-

Exhibit No. 9 Circular of Department of Customs and Excise, Canada, containing the general warehousing regulations, 15th April, 1924.

scribed form will not be used in lieu of those required when not so shipped, upon the following conditions, viz:—

(*a*) Goods so removed to be consigned to the order of the Collector of the Port to which they are to be removed, and in case in which permits are by law required for the removal of such goods, the permits shall in all cases state that the goods to which they refer are to be so consigned.

(*b*) The receipt given by the Agent of the Railway Company (or other public carrier), usually known as the " Bill of Lading," is to be made out correspondingly, and is to be placed in the hands of the Collector of the Port whence the goods are to be shipped, and by him transmitted to the Collector of the Port to which they are to be removed.

(*c*) The Collector upon being advised of their arrival, shall immediately notify the party for whom intended, and after they have been examined by the proper officer and found to be in accordance with the removal papers, and after the duties to which such goods are liable have been paid or the warehouse entry passed therefor, the Collector of Customs and Excise will write across the face of the Bill of Lading:

" *Delivered to C. D. upon payment of freight and charges.*

" E———— F————,
Collector."

(*d*) Collectors are particularly notified that all orders for the delivery of goods must be made expressly and in writing, " *subject to the payment of freight and charges,*" or they may, by the omission to specify such conditions, render themselves personally liable to the Company for such payment in the event of default.

(*e*) The requisitions for a permit to remove spirits under § (a) shall, in every such case, state that the goods are to be " *delivered into the possession of the Collector of the Customs and Excise Port,*" to which they are to be removed; and across the face of such requisition is to be written the name of the party to whom (subject to the order of the Collector) the consignor desires the goods to be delivered.

25. When Spirits are received in a Port in Bond consigned to the order of the Collector of Customs and Excise Provisional Ware-

house Entries should be obtained from the person for whom intended before the Bill of Lading is countersigned as required by section 24. This provisional entry need not be sworn to until after the quantity of Spirits has been determined by the proper officer.

26. When goods removed in bond are conveyed from the place of shipment by a foreign steamer, vessel or railway—for example, by Ward's Line of Steamers from Windsor to Port Arthur, thence by Canadian Pacific Railway to Winnipeg, or when goods so removed are not consigned to the order of the Collector of Inland Revenue, a removal bond must be given, with sureties acceptable to the Collector of Customs and Excise.

27. Collectors of Customs and Excise will, on the arrival of the goods, examine them and ascertain whether they correspond with the removal entry, and as soon as the goods are placed in warehouse, will certify to the fact on the removal entry, and return it to the Collector of the Port from which the goods were shipped.

28. Removal bonds can only be cancelled upon the receipt of the removal entry, bearing the certificate of the Collector, of the Port to which the goods were consigned, that they have been received and re-warehoused.

ENTRY OF GOODS EX-WAREHOUSE FOR CONSUMPTION

29. Entry of goods ex-warehouse for consumption will be made in duplicate on the prescribed forms; and every such entry must contain a full specification of the goods, as in an export or removal entry.

30. On receipt of the duty accruing on the goods so entered, the Collector of Customs and Excise will sign the warrant for the delivery of the goods, and the locker in charge of the warehouse must identify every package with the description contained in the warrant, before delivering it.

CONSOLIDATED DISTILLERIES LIMITED, and W. J. HUME,

(Defendants), APPELLANTS,

— AND —

HIS MAJESTY, THE KING

(Plaintiff), RESPONDENT.

(Action No. 10314)

In the Exchequer Court of Canada

No. 45
Information,
24th December,
1928.

No. 45

INFORMATION

Filed the 26th day of December, A.D. 1928.

To the Honourable the President of the Exchequer Court of Canada.

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

1. On the 15th day of October, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $104,544.00. The condition of the bond was to the effect that if certain goods, namely, 352 kegs of alcohol, concerning which notice of intention to export to La Libertad, San Salvador, was given by the defendant, Consolidated Distilleries, Limited, should be exported and entered for consumption or warehouse at La Libertad, San Salvador, aforesaid, and if proof of such exportation and entry were, in accordance with the requirements of the Warehousing Regulations in that behalf, adduced to the satisfaction of the Collector of Inland Revenue at Belleville, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

2. On the 15th day of October, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $96,228.00. The condition of the bond was to the effect that if certain goods, namely, 324 kegs of alcohol, concerning which notice of intention to export to La Libertad, San Salvador, was given by

the defendant, Consolidated Distilleries, Limited, should be exported and entered for consumption or warehouse at La Libertad, San Salvador, aforesaid, and if proof of such exportation and entry were, in accordance with the requirements of the Warehousing Regulations in that behalf adduced to the satisfaction of the Collector of Inland Revenue at Belleville, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

3. On the 15th day of October, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $96,228.00. The condition of the bond was to the effect that if certain goods, namely, 324 kegs of alcohol, concerning which notice of intention to export to La Libertad, San Salvador, was given by the defendant, Consolidated Distilleries, Limited, should be exported and entered for consumption or warehouse at La Libertad, San Salvador, aforesaid, and if proof of such exportation and entry were, in accordance with the requirements of the Warehousing Regulations in that behalf, adduced to the satisfaction of the Collector of Inland Revenue at Belleville, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

4. On the 15th day of October, A.D. 1924, the defendant executed a bond for the payment to His Majesty of the sum of $39,435.00. The condition of the bond was to the effect that if certain goods, namely, 1,150 cases of whiskey, concerning which notice of intention to export to La Libertad, San Salvador, was given by the defendant, Consolidated Distilleries, Limited, should be exported and entered for consumption or warehouse at La Libertad, San Salvador, aforesaid, and if proof of such exportation and entry were, in accordance with the requirements of the Warehousing Regulations in that behalf, adduced within one hundred and twenty days of the date of the said bond to the satisfaction of the Collector of Inland Revenue at Belleville, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

5. On the 15th day of October, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $39,994.00. The condition of the bond was to the effect that if certain goods, namely, 1,250 cases of whiskey, concerning which notice of intention to export to La Libertad, San Salvador, was given by the defendant, Consolidated Distilleries, Limited, should be ex-

ported and entered for consumption or warehouse at La Libertad, San Salvador, aforesaid, and if proof of such exportation and entry were, in accordance with the requirements of the Warehousing Regulations in that behalf, adduced to the satisfaction of the Collector of Inland Revenue at Belleville, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

6. On the 15th day of October, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $35,089.00. The condition of the bond was to the effect that if certain goods, namely, 1,250 cases of whiskey, concerning which notice of intention to export to La Libertad, San Salvador, was given by the defendant, Consolidated Distilleries, Limited, should be exported and entered for consumption or warehouse at La Libertad, San Salvador, aforesaid, and if proof of such exportation and entry were, in accordance with the requirements of the Warehousing Regulations in that behalf, adduced to the satisfaction of the Collector of Inland Revenue at Belleville, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

7. On the 15th day of October, A.D. 1924, the defendants executed a bond for the payment to His Majesty of the sum of $33,576.00. The condition of the bond was to the effect that if certain goods, namely, 1,250 cases of whiskey, concerning which notice of intention to export to La Libertad, San Salvador, was given by the defendant, Consolidated Distilleries, Limited, should be exported and entered for consumption or warehouse at La Libertad, San Salvador, aforesaid, and if proof of such exportation and entry were, in accordance with the requirements of the Warehousing Regulations in that behalf, adduced to the satisfaction of the Collector of Inland Revenue at Belleville, or if the defendant, Consolidated Distilleries, Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

8. The said goods were not exported or entered for consumption or warehouse at La Libertad, San Salvador, and proof of such exportation and entry was not in accordance with the requirements of the Warehousing Regulations in that behalf, adduced to the satisfaction of the Collector of Inland Revenue, nor did the defendant, Consolidated Distilleries, Limited, account for the said goods to the satisfaction of the said Collector.

9. The Warehousing Regulations to which the Attorney General craves leave to refer provide *inter alia* as follows:

" 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."

" 17. . . . . .
In all other cases the bond shall not be cancelled unless:

(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 the goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or,

(2) Within the period of three months from the date of the 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."

Wherefore the Attorney General claims on behalf of His Majesty the sum of $445,093.00, with interest at 5 per cent from the 15th day of October, A.D. 1924, to the date of payment.

Dated at Ottawa, this 24th day of December, A.D. 1928.

(Sgd.) ERNEST LAPOINTE,
Attorney General of Canada.

This Information is filed by
W. STUART EDWARDS, K.C.,
Solicitor for the Attorney General of Canada.

In the Exchequer Court of Canada

No. 46
Amended Statement in Defence, 29th January, 1931.

No. 46

AMENDED STATEMENT IN DEFENCE

Filed this 29th day of January, A.D. 1931.

The defendants in answer to the plaintiff's Information say as follows:

1. The bonds referred to in the first, second, third, fourth, fifth, sixth and seventh paragraphs of the plaintiff's Information speak for themselves.

2. The eighth paragraph of the said Information is denied.

3. The warehousing regulations referred to in the ninth paragraph of the said Information speak for themselves.

4. The defendants are not indebted to the plaintiff in the amount claimed in the conclusions of the said Information, nor in any amount whatever.

5. The bonds referred to in the first, second, third, fourth, fifth, sixth and seventh paragraphs of the said Information are void.

6. The landing certificates mentioned in the warehousing regulations referred to in the said Information were produced to the proper Collector of Customs and Excise and are in the hands of the plaintiff or of the plaintiff's representatives.

7. The goods in question were actually exported at and from the port of Vancouver in the Province of British Columbia.

8. The goods in question left Canada.

9. The goods in question have never been relanded in Canada.

10. Even if the goods in question did not reach their destination (which is not admitted) the facts herein alleged do account for the said goods to the satisfaction of the Collector of Inland Revenue for the Inland Revenue Division of Belleville, Ontario.

11. There has not been hitherto any reason for the defendants, or either of them, to account in writing to the said Collector in this connection. In view, however, of this action now instituted by the plaintiff, the defendants, without waiver of or prejudice to the above contentions of this, their statement in defence, have caused to be served upon the Collector of Inland Revenue for the Inland Revenue

Division of Belleville, Ontario, a copy of this statement in defence as a satisfactory accounting for the said goods in any event.

12. In any event the bonds that were given and the law and regulations in this connection were given and enacted for the purpose of protecting the revenue of His Majesty's Government of Canada, as is indicated by the second paragraph of Section 2 of the Canadian Customs Act which enacts that all the expressions and provisions of that Act, or of any law relating to the customs shall receive such fair and liberal construction and interpretation as will best ensure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to its true intent, meaning and spirit.

13. Even if the requirements of the said bonds or of the said law were not fully complied with (which is not admitted) the revenue of His Majesty's Government of Canada has not been affected thereby.

14. The plaintiff's action is prescribed under the provisions of Section 279 of the Canadian Customs Act, chapter 48 of the Revised Statutes of Canada, 1906.

15. The plaintiff's present action must fail, therefore, in any event.

16. The defendant, Consolidated Distilleries Limited, claims to be entitled in any event to indemnity from Consolidated Exporters Corporation Limited, a corporation with its head office in Vancouver, in the Province of British Columbia, by reason of an agreement of indemnity passed between Consolidated Distilleries Limited and Consolidated Exporters Corporation Limited, and the said defendant has issued a notice to the said Consolidated Exporters Corporation Limited as a third party in the present action.

17. The said third party notice duly stamped with the Seal of this Court has been filed with the Registrar of this Court and a copy thereof, together with a copy of the Information herein, have been served upon the said Consolidated Exporters Corporation Limited as a third party herein.

18. The defendants therefore claim that the plaintiff's action should be dismissed with costs.

19. Without waiver of the foregoing the defendants specially allege that in any event the Exchequer Court of Canada has no jurisdiction to decide the matter at issue herein for the following reasons:

In the Exchequer Court of Canada

No. 46
Amended Statement in Defence, 29th January, 1931.

(a) The Exchequer Court of Canada is constituted under and in virtue of the Exchequer Court Act, being Revised Statutes of Canada 1927, Chapter 34.

(b) The Exchequer Court Act was enacted under and in virtue of Section 101 of the British North America Act, 1867, which Section reads as follows:

> " The Parliament of Canada may, notwithstanding anything in this Act from Time to Time, provide for the Constitution, Maintenance and Organization 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."

(c) That the words " Laws of Canada " in the said section 101 means laws enacted by the Dominion Parliament and within its competence.

(d) That the Parliament of Canada has under and in virtue of the said section 101 power only to establish additional courts for the better administration of the laws of Canada.

(e) That the matter at issue herein is simply a contract issue and the laws relating to and governing that contract issue are not the laws of Canada, but are laws of the Provinces of Canada.

(f) That under and in virtue of sub-section 13 of the said section 92 of the British North America Act, 1867, " Property and Civil Rights in the Provinces " are matters assigned exclusively to the legislature in each province for the purpose of making laws relating thereto, and the contract issue between the parties herein is a matter relating to " Property and Civil Rights in the Provinces " and is governed solely by the laws of the province and not by the laws of Canada.

(g) That under and in virtue of sub-section 14 of the said section 92 " The Administration of Justice in the Province, including the Constitution, Maintenance and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction and including Procedure in Civil Matters in those Courts ", are matters assigned exclusively to the Legislature in each Province.

(h) That under the British North America Act, 1867, the Provinces of Canada exclusively have power to establish Courts

to administer the laws relating to property and civil rights in the provinces, and more particularly to administer the laws relating to the contract issue between the parties herein and the Parliament of Canada has no power whatsoever to give to the Exchequer Court of Canada jurisdiction to administer the laws relating to property and civil rights in the province, and more particularly the laws relating to and governing the contract issue between the parties herein.

10 20. That the Exchequer Court Act, being Revised Statutes of Canada, 1927, Chapter 34, and every section thereof, is unconstitutional and beyond the powers of the Parliament of Canada insofar as it purports to give to the Exchequer Court of Canada jurisdiction to decide matters not governed by the laws enacted by the Parliament of Canada and within its competence, and more particularly the defendants specially plead that the said Exchequer Court Act is unconstitutional in so far as it purports to give jurisdiction to the Exchequer Court of Canada to decide the matter at issue between the parties herein.

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21. That the action of the plaintiff should therefore also be dismissed on the grounds set forth in paragraphs 19 and 20, saving in this regard, however, such recourse as the plaintiff may have in the Provinces.

Dated at Montreal, Quebec, this 29th January, A.D. 1931.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for Defendants.

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In the Exchequer Court of Canada

No. 47
Amended Reply, 29th January, 1931.

No. 47

AMENDED REPLY

1. The Plaintiff joins issue on the Defendant's Statement in Defence.

2. In reply to paragraph six of the Defendant's Statement in Defence the Plaintiff alleges as the fact is that the landing certificates produced to the Collector of Customs and Excise at Belleville in Ontario were false, and were forged or otherwise fraudulently procured and presented to the said Collector in order to deceive the Plaintiff and the said Collector and to procure the discharge of the said bonds without compliance with the conditions thereof, and the production of the false certificates was not a compliance with the warehousing regulations referred to in the Information, nor with the terms of the bonds, nor was such production an accounting for the said goods to the satisfaction of the said Collector, and the said bonds remain in full force and virtue.

3. In reply to paragraphs five to nine inclusive and paragraphs twelve and thirteen of the Defendant's Statement in Defence the Plaintiff alleges as the Defendants well knew:

(1) That the said goods could not be sold for consumption in Canada without the payment to the Plaintiff of the duty and sales tax thereon, nor could they be exported in bond to the United States because of the law in force in the United States prohibiting the importation of intoxicating liquors, and that if the said goods had been entered for exportation in bond to the United States, the shippers could not obtain such proof or certificate of export as was required by the Canadian Customs law and regulations.

(2) That the entry of the said goods for exportation in bond to Corinto, Nicaragua, was part of a fraudulent scheme devised by the Defendant Company to obtain the removal of the liquors from customs bond without payment to the Plaintiff of the duties and sales tax payable thereon, and to obtain the cancellation of the bonds given to the Plaintiff in respect of such removals, by the production of landing certificates that were false and were either forged or otherwise fraudulently procured, purporting to certify to the landing of such goods in some country other than Canada or the United States.

(3) That the objects of the aforesaid fraudulent scheme were, (a) to enable the Defendant Company to deliver the liquor into small boats at sea to be smuggled into Canada or the

United States, and (b) to defraud the Plaintiff of the duties and sales tax payable thereon.

(4) That the individual Defendant was aware of the fraudulent scheme so devised by the Defendant Company, and knew that there was no bona fide intention on the part of the Company to export the said goods to Corinto, Nicaragua, and that any certificate to be produced by the Company purporting to show that the said goods had been so exported must be false.

10

(5) That any cancellation of the said bonds based on the production of such false certificates was wholly unauthorized and ineffective, and

(6) That the Plaintiff has lost the duty and sales tax payable on the said goods and has incurred substantial costs and expenses in connection therewith.

Dated at Ottawa this 29th day of January, A.D. 1931.

20

" W. STUART EDWARDS ",
For the Attorney-General of Canada.

30

40

In the Exchequer Court of Canada

No. 48
Reply to Amended Defence, 29th January, 1931.

No. 48

REPLY TO AMENDED DEFENCE

1. The Plaintiff joins issue on paragraph 18 of the amended Statement of Defence, and submits that this Court has jurisdiction to decide the matters at issue herein. As to sub-paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of said paragraph 18, the Plaintiff joins issue on such of said sub-paragraphs as relate to matters of law, and denies such of said sub-paragraphs as relate to matters of fact.

2. The Plaintiff joins issue on the allegations contained in paragraph 19 of the amended Statement of Defence, and submits that the Exchequer Court Act is validly enacted, and that thereunder this Court has jurisdiction to decide the matters at issue between the parties herein.

3. The Plaintiff further submits in reply to the whole of paragraphs 18 and 19 of the amended Statement of Defence:

(a) That the Defendants have consented, submitted and attorned to the jurisdiction of this Court in this action.

(b) That if the Exchequer Court of Canada has not ample jurisdiction to decide the matters at issue in this action (which is not admitted but denied) the Defendants have waived their right to object thereto, and are estopped from questioning the jurisdiction of this Court.

Dated at Ottawa, Ont., this 29th day of January, A.D. 1931.

W. STUART EDWARDS,
Solicitor for the Plaintiff.

No. 49

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED REPLY

(1) The defendants join issue on the plaintiff's amended reply.

(2) The defendants, without waiver of their denial of the allegations contained in the plaintiff's amended reply, further allege that in any event:

(a) The defendants and each of them acted in good faith and acted reasonably throughout.

(b) The allegations contained in the plaintiff's amended reply with regard to the laws of the United States are irrelevant and can have no effect upon the issues herein.

(c) Even if the said goods or any part of them had been brought into the United States as alleged by the plaintiff (which is not admitted) that fact would not give rise to any right on the part of the plaintiff against the defendants or either of them.

(3) The defendants therefore persist in their prayer that the plaintiff's action should be dismissed with costs.

Dated at Montreal this 9th day of February, 1931.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for Defendants.

In the Exchequer Court of Canada

No. 50
Admissions,
30th January,
1931.

No. 50

ADMISSIONS

The parties hereby consent:

1. That the evidence of J. G. Lawrence taken on Discovery in this case on January 15, 1931, together with all the exhibits therein produced, shall form part of the evidence for the plaintiff in this case, excepting questions 43 and 44 and 82 and Exhibits Nos. 6 and 15.

2. That the evidence of George Edward Murray taken on commission at Vancouver, B.C., on October 29, 1930, together with the exhibits therein referred to, shall form part of the evidence for the plaintiff in this case.

3. That all the goods covered by the bonds sued on in this action formed part of the cargo of the S.S. Malahat on its outward voyage from the port of Vancouver, B.C., and are part of the goods referred to in the outward report of the S.S. Malahat marked as Exhibit " A " to the evidence of George Edward Murray herein and the said S.S. Malahat left Vancouver on November 15th, 1924, or shortly thereafter.

4. That the foreign clearance and Bill of Health marked as Exhibits 17 and 18 respectively are the foreign clearance and the bill of health referred to in the evidence of George Edward Murray herein and were delivered to the Collector of Customs at Vancouver, B.C., and to the Quarantine Officer at Williams Head, B.C., respectively by or on behalf of the Master of the S.S. Malahat on or about August 19, 1925, on the return of the S.S. Malahat.

5. That the distance from San Francisco, California, in the United States of America, to Lalibertad, San Salvador, is 2,480 nautical miles.

6. That the bonds in question herein were signed by the defendants.

7. That the landing certificates marked as Exhibits 4 (a) 3, 4 (b) 3, 4 (c) 3, 4 (d) 3, 4 (e) 3, 4 (f) 3 and 4 (g) 3 respectively were produced to the Collector of Inland Revenue for the Division of Belleville, Ontario, on January 21, 1925, and the said collector thereupon wrote the letter to the defendant company, dated January 28, 1925, and marked Exhibit No. 19, and the parties admit that the said collector would testify, if called, that he cancelled the said bonds in accordance with his usual custom and further that he would also testify that he believed that the said landing certificates

were genuine and true and that he cancelled the said bonds upon this belief and this admission is to have the same effect as if the witness had testified at the trial.

8. That on June 6, 1925, the collector wrote the defendant company the letter marked Exhibit 20 hereto.

9. That a copy of the Statement in Defence of the Defendants was duly served upon the said Collector of Inland Revenue for the Division of Belleville at Belleville, Ontario, on February 9, 1929.

10. That the last paragraph of each bond in this action, being the condition thereof, should read and be taken as reading for the purposes of this action as follows:

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH THAT IF THE SAID GOODS AND EVERY PART THEREOF SHALL BE DULY SHIPPED, AND SHALL BE EXPORTED AND ENTERED FOR CONSUMPTION OR FOR WAREHOUSE AT LALIBERTAD, SAN SALVADOR, AFORESAID, AND IF PROOF OF SUCH EXPORTATION AND ENTRY SHALL, IN ACCORDANCE WITH THE REQUIREMENTS OF THE WAREHOUSING REGULATIONS IN THAT BEHALF BE ADDUCED WITHIN 120 DAYS FROM THE DATE HEREOF, TO THE SATISFACTION OF THE SAID COLLECTOR OF INLAND REVENUE FOR THE DIVISION OF BELLEVILLE, OR IF THE ABOVE BOUNDEN CONSOLIDATED DISTILLERIES LIMITED SHALL ACCOUNT FOR THE SAID GOODS TO THE SATISFACTION OF THE SAID COLLECTOR OF INLAND REVENUE FOR THE SAID INLAND REVENUE DIVISION OF BELLEVILLE, ONTARIO, THEN THIS OBLIGATION TO BE VOID, OTHERWISE TO BE AND REMAIN IN FULL FORCE AND VIRTUE.

11. That the regulations marked as Exhibit No. 21 are the warehousing regulations referred to in said bonds.

12. That Russell Whitelaw, if called in this action, would give the same evidence with regard to the shipment and documents in question in this action as he gave in action No. 9370 between the same parties and the evidence given in action No. 9370 shall form part of the record in this action with the necessary changes.

Dated at Ottawa, Ontario, this 30th day of January, A.D. 1931.

(Sgd.) G. C. LINDSAY,
of Counsel for Plaintiff.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Counsel for Defendants.

No. 51

EVIDENCE OF J. G. LAWRENCE

EXAMINATION ON DISCOVERY of J. G. LAWRENCE, an officer of the defendant company, on behalf of the plaintiff, before Arnold W. Duclos, K.C., Deputy Registrar of the Exchequer Court of Canada, at Montreal, January 15, 1931.

Counsel: Gordon Lindsay, Esq., for the Plaintiff; F. T. Collins, Esq., for the Defendants.

J. G. LAWRENCE, sworn.

Examined by Mr. Lindsay:

1. Q.—Your present position with the Company, Mr. Lawrence?
A.—Secretary.
2. Q.—And you held that position since when?
A.—February, 1924.
3. Q.—Since February 22nd, 1924?
A.—Yes.
4. Q.—And prior to that you were?
A.—Chief Accountant and Assistant Secretary.
5. Q.—Then who at the Montreal office of the defendant company was, in February, 1924, in charge of the sales of spirits to Vancouver?
A.—Mr. W. S. Rayner.
6. Q.—What was his position?
A.—Sales Manager.
7. Q.—Is he still with the defendant company?
A.—No.
8. Q.—Who, other than Mr. Rayner, in the Montreal office, had to do with such sales?
A.—Mr. J. R. Douglas.
9. Q.—What was his position?
A.—President.
10. Q.—Is he still with the company?
A.—No.
11. Q.—Then, did the defendant company have an officer in Vancouver?
A.—Yes.
12. Q.—Who was in charge of that office?
A.—F. L. Smith.
13. Q.—He is still in charge of it?

A.—Yes.

14. Q.—Where was the defendant company's distillery?

A.—They have a distillery at Corbyville, Ontario.

15. Q.—That is the only distillery where they make potable spirits?

A.—We had at that time others.

16. Q.—Where, at that time?

10 A.—At Prescott, Ontario.

17. Q.—Any other place?

A.—St. Hyacinthe, Quebec.

18. Q.—But the spirits covered by the bonds sued on in this action were shipped from which distillery?

A.—Corbyville.

19. Q.—Who was in charge of that distillery?

A.—Mr. W. J. Hume.

20. Q.—Is he still with the company?

A.—No, sir.

20 21. Q.—Would he be the man familiar with the shipment covered by the bonds in this action?

A.—Yes.

22. Q.—Did you have anything to do with the sale or transaction covered by the bonds in this action?

A.—Nothing whatever.

23. Q.—In November, 1924?

A.—No.

24. Q.—I would ask you to let me know how the transaction covered by the bonds in this action originated?

30 A.—It originated by a telegram from the Vancouver office to our Montreal office, dated October 6, 1924. It is a copy of telegram here.

25. Q.—Mr. Lawrence, you produce copy of this telegram, which I will file.

A.—Yes.

The Registrar: It will be filed as Exhibit No. 1.

26. Q.—Exhibit No. 1 refers to 1,000 kegs of alcohol?

40 A.—Yes.

27. Q.—I show you seven bonds, each dated October 15, 1924, for the following amounts:

$104,544.00
33,576.00
39,435.00
35,089.00

39,994.00
96,228.00
96,228.00

and I would ask if you identify those bonds as being executed by the defendant company and by Mr. Hume?

A.—Yes.

Mr. Lindsay: I put those in.

The Registrar: They will be Exhibits 2-A, 2-B, 2-C, 2-D, 2-E, 2-F and 2-G.

28. Q.—Now, the spirits which were covered by the bonds sued on in this action and ordered from you by your Vancouver office for shipment to Vancouver were in bond in your distillery at Corbyville?

A.—Yes.

29. Q.—For the purpose of shipment, in compliance with the order which you got, they were shipped under the bonds Exhibits 2-A to 2-G inclusive, and removed from the distillery without payment of duty?

A.—Yes.

30. Q.—I show you seven requisitions, each also dated 15th October, 1924, and purporting to be made on behalf of the defendant company, and I ask if you identify those as having been signed on behalf of the company?

A.—Yes.

Mr. Lindsay: I will have those marked.

The Registrar: They will be Exhibits 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 3-G.

31. Q.—By referring to these in amount, I see that they correspond both in the number as given to them by the Excise Officer and the quantity mentioned in them with the numbers and quantities appearing on the bonds and they therefore apparently relate to the same transaction as the bonds do and they bear the same date?

A.—Yes, they are the same.

32. Q.—So that on October 15, 1924, the defendant company filed these requisitions with the Collector of Customs at Belleville for permission to remove these spirits in bond from the warehouse to San Salvador via C.N.R. to Vancouver, thence steamship, there to be delivered into the possession of J. Douglas & Company of Lali-

bertad, San Salvador, the duty on the spirits being secured by bond. Do you know where San Salvador is, Mr. Lawrence?

A.—I understand it is in Central America.

33. Q.—How far is that from Vancouver?

A.—I have no idea.

34. Q.—It is near the Isthmus of Panama, is it not?

A.—I do not know the geographical position of it.

10 35. Q.—Did you have anything to do with this particular transaction, Mr. Lawrence?

A.—No, nothing.

36. Q.—This release from bond would be for the purpose of carrying out the orders, whatever they might be, from Vancouver?

A.—Yes.

37. Q.—Now, for the purpose of completing this with the Excise Officer, the defendant company made certain entries ex-warehouse in respect of the spirits. I show you entries 2998, 3023, 3024, 3025, 3026, 3027 and 3028 (7), each in triplicate, and I would 20 ask you if you identify these as being entries made by the defendant company with the Collector at Belleville on October 15, 1924?

A.—Yes.

Mr. Lindsay: I will put those entries in.

The Registrar: They will be Exhibits 4-A, 4-B, 4-C, 4-D, 4-E, 4-F and 4-G.

30 38. Q.—Do you know that the practice was to have the office type out the forms, that is, the forms were typed out in the distillery and presented to the Collector?

A.—That is what I understand.

39. Q.—Now, how were these goods sent from Corbyville to Vancouver?

A.—They were shipped by C.N. Railway.

40. Q.—You produce one of the forms of Bill of Lading under which they were so sent?

A.—Yes.

40 41. Q.—The others take substantially the same form?

A.—Yes.

Mr. Lindsay: I will put in that form. It is dated October 15, 1924.

The Registrar: It will be Exhibit No. 5.

42. Q.—Who were these goods charged to by the defendant company?

A.—They were charged to the Consolidated Exporters Corporation Limited.

45. Q.—Now, how was payment for these goods provided for, Mr. Lawrence?

A.—Sight Draft against documents.

46. Q.—Just explain what you mean by that?

A.—Draft would be drawn on the Consolidated Exporters and to which would be attached the relevant documents and they would not get possession of the Bill of Lading and other documents until they paid the draft.

47. Q.—In this particular case you apparently had some little delay in the taking up of the draft at Vancouver?

A.—Yes.

48. Q.—Your file would indicate that you sent a telegram to Vancouver on November 4th, but it would appear from your file that later on the transaction was carried out and paid for by the Consolidated Exporters?

A.—Yes.

49. Q.—That appears from your letter of 11th November, 1924?

A.—Yes.

50. Q.—What did the defendant company do towards complying with the conditions of the bonds, Exhibits 2-A to 2-G inclusive?

A.—They forwarded to the Collector of Customs and Excise, Belleville, landing certificates covering the shipment.

51. Q.—On what date?

A.—21st January, 1925.

52. Q.—You produce copy of your letter to the Collector of that date?

A.—Yes.

Mr. Lindsay: I will put that in.

The Registrar: It will be Exhibit No. 7.

52A. Q.—I would ask you to look at the documents filed as Exhibits 4-A to 4-G inclusive, being sets of three each of the said different entries, and tell me whether the form of landing certificate appearing on one each of these sets is the landing certificates which you produced to the Collector?

A.—Yes.

53. Q.—Can you tell me where you got these landing certificates from?

A.—From the Canadian Mexican Shipping Company, Limited.

54. Q.—Where?

A.—Vancouver.

55. Q.—You produce a letter from the Canadian Mexican Shipping Company Limited, dated 14th January, 1925, to the defendant's office in Vancouver?

A.—Yes.

Mr. Lindsay: I will put that letter in.

The Registrar: It will be Exhibit No. 8.

56. Q.—In the case of the goods covered by these bonds, Mr. Lawrence, the goods were entered for export to Lalibertad, San Salvador?

A.—Yes.

57. Q.—And they were shipped from the distillery without payment of duty on furnishing the bonds put in as Exhibit No. 2?

A.—Yes.

58. Q.—Did the defendant company make sales of spirits during this period, such spirits being consigned to places in the United States such as Detroit?

Mr. Collins: I object to evidence of other sales made by Consolidated Distilleries. It is not relevant to this action.

The Registrar: Answer subject to the objection of Mr. Collins.

Answer of Witness to Question No. 58: A.—I think it was not until a later date that we made sales to United States.

59. Q.—After the date that you did make sales so consigned to the United States, I ask you in reference to these sales whether the goods were shipped in bond without payment of duty or after payment of duty?

A.—After payment of duty.

(12.30 P. M., examination adjourned for lunch; examination to be resumed at 2.00 P.M.)

(2.00 P.M., examination resumed.)

his rights thereunder will be reserved for adjudication by the trial Judge.

Mr. Collins: I respectfully except to the ruling of the Registrar.

Witness' Answer to Question No. 74: A.—I produce the letter.

75. Q.—Did this letter come to your attention at the time it came into the office?
A.—It would be received by me and turned over to Mr. Rayner.
76. Q.—Acted on by you in any way?
A.—No, sir.

Mr. Lindsay: I will put that letter in.

The Registrar: That will be Exhibit No. 9.

77. Q.—Then I ask you to produce a telegram from your Vancouver office to your Montreal office, undated, but apparently sent about August 11, 1924?
A.—I do.

Mr. Lindsay: I will put that letter in. It is a telegram.

The Registrar: That will be Exhibit No. 10.

Mr. Collins: It is understood my same objection applies. It is also understood that the same ruling applies to this and all evidence relating to shipments other than the shipments concerned in this action.

78. Q.—Then I ask you to produce a copy of your letter from your Vancouver office to your Montreal office dated August 11, 1924?
A.—Yes, I produce it.

Mr. Lindsay: I will put that letter in.

The Registrar: That will be Exhibit No. 11.

79. Q.—Then a letter from your Vancouver office to your Montreal office, dated 28th August, 1924?
A.—I produce it.

53. Q.—Can you tell me where you got these landing certificates from?

A.—From the Canadian Mexican Shipping Company, Limited.

54. Q.—Where?

A.—Vancouver.

55. Q.—You produce a letter from the Canadian Mexican Shipping Company Limited, dated 14th January, 1925, to the defendant's office in Vancouver?

A.—Yes.

Mr. Lindsay: I will put that letter in.

The Registrar: It will be Exhibit No. 8.

56. Q.—In the case of the goods covered by these bonds, Mr. Lawrence, the goods were entered for export to Lalibertad, San Salvador?

A.—Yes.

57. Q.—And they were shipped from the distillery without payment of duty on furnishing the bonds put in as Exhibit No. 2?

A.—Yes.

58. Q.—Did the defendant company make sales of spirits during this period, such spirits being consigned to places in the United States such as Detroit?

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The Registrar: Answer subject to the objection of Mr. Collins.

Answer of Witness to Question No. 58: A.—I think it was not until a later date that we made sales to United States.

59. Q.—After the date that you did make sales so consigned to the United States, I ask you in reference to these sales whether the goods were shipped in bond without payment of duty or after payment of duty?

A.—After payment of duty.

(12.30 P. M., examination adjourned for lunch; examination to be resumed at 2.00 P.M.)

(2.00 P.M., examination resumed.)

Mr. Collins: It is understood my objection applies to all sales made by Consolidated Distilleries Limited other than sales covered by the bonds.

Mr. Lindsay continues Examination of the Witness:

60. Q.—And as to these last-mentioned goods, sold and consigned to places in the United States, can you tell me, Mr. Lawrence, why they were not shipped in bond as were the shipments consigned to San Salvador? Why were these goods on which the duty was paid not shipped in bond like the goods shipped to San Salvador?

A.—In the case of those duty-paid shipments we were not satisfied that the customer would supply us with a landing certificate and therefore to avoid the Government coming after us under the bond we paid the duty and charged the customer with the duty. In the case of this shipment we are discussing—to Lalibertad—we were satisfied these goods were going to Lalibertad and that we would get landing certificates from there.

61. Q.—And you told us you got the landing certificate in this case from the Consolidated Exporters?

A.—Yes, that is from the shipping company, the Canadian Mexican Shipping Company.

62. Q.—Who were the Canadian Mexican Shipping Company, Mr. Lawrence?

A.—I presume the shipping company that owned the " Malahat ".

63. Q.—They say: " We enclose export Customs entries of shipments by S.S. " Malahat "; that is the boat that carried the goods in this case?

A.—Yes.

64. Q.—I refer you to the invoice, which is already marked Exhibit 6, and I point out to you that the invoices are marked " Shipment via C.N.R. to Vancouver and S.S. ' Malahat '. That confirms your statement as to the vessel?

A.—Yes.

65. Q.—One other question, Mr. Lawrence, as to the dates of the forwarding of the goods from Corbyville to Vancouver, you already produced one of the bills of lading, Exhibit 5, will you look at the several bills of lading on your file and say whether October 15, 1924, is the date each of the bills of lading bear?

A.—Yes, they do.

66. Q.—So that all the goods went forward about the 15th of October, that is, the goods covered by these bonds?

A.—Yes.

67. Q.—Now then will you just refer to Exhibit No. 1, which is the telegram from your Vancouver office to your Montreal office and on which the shipment in question originated. You will notice in that telegram (the sender of it I suppose being Mr. Smith or Mr. Smith's office) it is stated " Ship to account of Consolidated Exporters " and it gives the particulars of the shipment. It says, " They were very pleased with the condition of the kegs last shipment. See that the kegs are in good condition to avoid colouring of alcohol." So that apparently there were other similar shipments made to Vancouver on orders of the Consolidated Exporters?

A.—Apparently, from that telegram.

68. Q.—That is, this particular transaction is not an isolated transaction. Other shipments were made similarly in bond from Belleville to Vancouver to go forward on boats to their destinations?

A.—Yes.

Mr. Collins: My objection to evidence of other shipments applies to this question also.

69. Q.—Mr. Smith, who was in charge of your Vancouver office, was the man who looked after the transactions in Vancouver?

A.—I would think so.

70. Q.—Mr. Smith was paid a commission on particular sales as well as his regular salary, I believe?

A.—Yes.

71. Q.—That is, for getting this particular business?

A.—Yes.

72. Q.—I think you told me that you yourself had nothing to do with this particular transaction?

A.—Nothing whatever.

73. Q.—You do not know anything more about it than what you have told us?

A.—Nothing, no.

74. Q.—Now, I ask you to produce certain correspondence which you had with Mr. Smith with reference to the business that was carried on through Vancouver. The first is a letter from Mr. Smith to your Montreal office, dated May 1, 1924.

Mr. Collins: I object to the production of the letter as it does not relate to the shipment in question.

The Registrar: The objection is overruled. It would seem this letter would be material and relevant on the issues raised by the defence in reply. The objection of Mr. Collins will be noted and all

his rights thereunder will be reserved for adjudication by the trial Judge.

Mr. Collins: I respectfully except to the ruling of the Registrar.

Witness' Answer to Question No. 74: A.—I produce the letter.

75. Q.—Did this letter come to your attention at the time it came into the office?
A.—It would be received by me and turned over to Mr. Rayner.
76. Q.—Acted on by you in any way?
A.—No, sir.

Mr. Lindsay: I will put that letter in.

The Registrar: That will be Exhibit No. 9.

77. Q.—Then I ask you to produce a telegram from your Vancouver office to your Montreal office, undated, but apparently sent about August 11, 1924?
A.—I do.

Mr. Lindsay: I will put that letter in. It is a telegram.

The Registrar: That will be Exhibit No. 10.

Mr. Collins: It is understood my same objection applies. It is also understood that the same ruling applies to this and all evidence relating to shipments other than the shipments concerned in this action.

78. Q.—Then I ask you to produce a copy of your letter from your Vancouver office to your Montreal office dated August 11, 1924?
A.—Yes, I produce it.

Mr. Lindsay: I will put that letter in.

The Registrar: That will be Exhibit No. 11.

79. Q.—Then a letter from your Vancouver office to your Montreal office, dated 28th August, 1924?
A.—I produce it.

Mr. Lindsay: I will put that letter in.

The Registrar: That will be Exhibit No. 12.

80. Q.—Then I ask you to produce copy of a letter from your Vancouver office to your Corbyville office, dated 9th September, 1924?

A.—I produce it.

Mr. Lindsay: I will put that letter in.

The Registrar: That will be Exhibit No. 13.

81. Q.—I ask you to produce a telegram from your Vancouver office to your Montreal office, dated 23rd September, 1924?

A.—Yes.

Mr. Lindsay: I will put that telegram in.

The Registrar: That will be Exhibit No. 14.

83. Q.—Who is there, outside of Mr. Smith, still in the company's employ, who had anything to do, outside of a clerical way, with these particular sales?

A.—I do not think there is any one in the company's employ.

84. Q.—Or associated with it in an executive capacity?

A.—No, sir.

85. Q.—And these goods went consigned to J. Douglas & Company. Did the Consolidated Distilleries have anything to do directly with J. Douglas & Company in the dealings?

A.—No, sir.

86. Q.—Only through the Consolidated Exporters?

A.—Yes.

87. Q.—Did they make any shipments to John Douglas & Company, San Salvador, other than through Consolidated Exporters?

A.—Not that I know of.

88. Q.—Mr. Collins has now shown me a telegram from your Vancouver office to your Montreal office, dated October 3, 1924. Will you look at the telegram and tell me if that constitutes part of the order covered by these bonds?

A.—Yes, that is right.

Mr. Lindsay: I will put that in.

The Registrar: It will be Exhibit No. 16.

89. Q.—Did I ask you, Mr. Lawrence, as to where these entries and bonds were typed out completed?
A.—So far as I know, at the Corbyville plant.
90. Q.—And then presented to the Collector at Belleville?
A.—Yes.

Mr. Lindsay: Subject to Mr. Collins producing for my inspection tomorrow the Sales Journal referred to in Defendant's affidavit as to documents, this will conclude my examination.

Mr. Collins: No questions.

(Examination concluded.)

No. 52

EVIDENCE OF GEORGE EDWARD MURRAY

The evidence of GEORGE EDWARD MURRAY, Master Mariner, taken before J. F. Mather, Registrar of the Supreme Court of British Columbia, at the Court House, in the City of Vancouver, in British Columbia, on the 29th day of October, A.D. 1930, pursuant to a Commission issued herein to J. F. Mather aforesaid, by this Court, and dated the 6th day of June, 1930.

G. C. Lindsay, Esq., appears for the Plaintiff.

F. T. Collins, Esq., appears for the Defendants.

GEORGE EDWARD MURRAY, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Lindsay:

1. Q.—What is your full name, Mr. Murray?
A.—George Edward.
2. Q.—Where do you now live?
A.—Victoria.
3. Q.—And you have lived there continuously for how long?
A.—On and off since I would say thirty years, somewheres around there, a little longer, I think.
4. Q.—What is your present occupation? Retired?
A.—No, I don't think I am retired. I guess I belong to the big multitude of unemployed.
5. Q.—What was your occupation during the years 1923, 1924, 1925 and 1926?
A.—Master mariner.
6. Q.—What vessel were you on during those years?
A.—Can I look at this paper a minute?

Mr. Collins: Now, before you——

The Witness: This is the subpœna; I presume you are asking upon that, are you not? I want to make sure of this, because you are going back a long ways.

Mr. Lindsay: 7. Q.—Let me put it this way: I do not want you to misconstrue my question. Were you engaged during those years as master in charge of a vessel operating out of Vancouver?

A.—Yes, I was.

8. Q.—And in the fall of 1923, October, 1923, what vessel were you in charge of?

A.—The " Malahat ".

9. Q.—Previous to that you had been in charge of other boats operating out of Vancouver?

A.—Yes.

10. Q.—Did you make many voyages on the " Malahat " from Vancouver?

A.—Five, I think, or six, five.

11. Q.—Five or six?

A.—Five or six.

12. Q.—What size vessel was the " Malahat "?

A.—She was about a thousand ton register, I guess, about 1,000 ton register.

13. Q.—What length approximately? We are not maritime men. We do not know much about size and tonnage.

A.—I should say 300 odd feet. I would not like to say exactly.

14. Q.—Was it a sailing vessel or a powered vessel?

A.—Auxiliary.

15. Q.—It had an auxiliary engine as well as sails?

A.—As well as sails.

16. Q.—What was its normal cruising speed?

A.—Well, with the auxiliary, you have to depend upon the weather, because in very fine weather we might make about seven knots.

17. Q.—Without the auxiliary?

A.—That is with the auxiliary. Of course, with the sails, she would do anything, twelve, or twelve and a half or thirteen.

18. Q.—Who were you employed by?

A.—The Canadian Mexican Shipping Company.

19. Q.—Where was their office, in Vancouver?

A.—In Vancouver.

20. Q.—Who was the active officer in the Canadian Mexican Shipping Company?

A.—Captain McLennan, I think.

21. Q.—Were you employed by the Canadian Mexican Shipping Company continuously while you were operating the " Malahat "?

A.—Yes.

22. Q.—Do you know whether they own the " Malahat "?

A.—As far as I know.

23. Q.—Who was it that instructed you as to your voyages and destinations?

A.—The owners.

24. Q.—Your owners?

A.—Yes.

25. Q.—And Captain McLennan?

A.—Through Captain McLennan.

26. Q.—Yes, through Captain McLennan; now, what cargoes did the " Malahat " carry during that period?

A.—Well, supposed to be liquor.

27. Q.—Well, it is what is commonly known as a liquor boat?

A.—Yes.

28. Q.—You did not carry other goods, I mean other commodities except liquor?

A.—No.

29. Q.—And did you ply on any regular schedule?

A.—No.

30. Q.—Did they operate on any published route?

A.—Not that I know of.

31. Q.—How many of a crew did they have on the " Malahat " ordinarily?

A.—About twenty all told. I think it was twenty or twenty-one, something like that.

32. Q.—And was it pretty much the same crew all the time, or did they change with different voyages?

A.—They changed with different voyages.

33. Q.—You had a mate and a second mate?

A.—And a second mate.

34. Q.—Captain, I show you the outward report of the " Malahat " from Vancouver dated the 15th of November, 1924. It is the same report as was referred to in action 9378. I ask you if you identify your signature on this report consisting of three sheets?

A.—Yes, that is mine.

35. Q.—And about how long after November 15, 1924, did the " Malahat " leave Vancouver?

A.—Within twenty-four hours.

35. Q.—And where did the " Malahat " go?

A.—Down the coast.

37. Q.—Down the coast of where?

A.—Of California.

38. Q.—How far down the coast?

A.—Well, we were off Frisco for a while and then we went down to Mexican waters from there.

39. Q.—How far south of the boundary between the United States and Mexico?

A.—I think on that trip we were down about fifty miles.

40. Q.—About fifty miles?
A.—On this trip.
41. Q.—What was the next port at which you called after leaving Vancouver?
A.—Vancouver.
42. Q.—That is, you returned to Vancouver?
A.—Yes.
43. Q.—Did you bring a cargo back with you?
A.—No.
44. Q.—You came back in ballast?
A.—In ballast.
45. Q.—Where was the cargo discharged?
A.—On the high seas.
46. Q.—How was it discharged?
A.—Into small boats.
47. Q.—What kind of boats?
A.—Speed boats and fish boats and trawlers and small schooners.
48. Q.—And where was it discharged, how far off the coast?
A.—Between twenty and fifty miles off.
49. Q.—Between twenty and fifty miles off the coast?
A.—Yes.
50. Q.—How was the place at which you discharged—first, was it all discharged at one place?
A.—No, sir.
51. Q.—At different places?
A.—At different places.
52. Q.—How long after you left Vancouver before you started discharging cargo?
A.—This was quite a while. I think about, I would say about a month that time.
53. Q.—About a month after. How long were you away on this voyage?
A.—About nine months.
54. Q.—Were you discharging cargo off and on during that period?
A.—Yes.
55. Q.—And when you came back to Vancouver did you bring certain papers to the Collector?
A.—Yes.
56. Q.—What papers?
A.—A bill of health and a foreign clearance.
57. Q.—A bill of health and a foreign clearance purporting to come from some destination?

A.—La Libertad, I think.

58. Q.—Were they the only papers you brought to the Collector?

A.—Yes.

59. Q.—And was the vessel, the "Malahat", at Libertad between the time you left in November, 1924, and when you returned in August, 1925? What is your answer?

10 A.—No.

60. Q.—Was the "Malahat" at any port during the time between when she left Vancouver in November, 1924, and her return in August, 1925?

A.—No, sir.

61. Q.—How were the places at which you discharged the cargo fixed?

A.—Well, a boat brought off orders.

62. Q.—A boat brought off orders to you as to where you should go?

20 A.—Yes.

63. Q.—What boat; I don't want the name, but some boat?

A.—One of the boats coming out.

64. Q.—How were the quantities that you discharged into each boat fixed?

A.—According to the amount in the order they brought out.

65. Q.—How did you identify the orders that they brought out?

A.—If it corresponded with my stub that I held.

30 66. Q.—It corresponded with the stub you had and where did you receive those stubs?

A.—In Vancouver.

67. Q.—When?

A.—Just previous to sailing.

68. Q.—Just previous to sailing, and did you receive any instructions as to where you were to go when you left Vancouver?

A.—The first.

69. Q.—The first orders when you left Vancouver?

A.—Yes.

40 70. Q.—And was all the cargo that you took out from Vancouver on this occasion discharged in the way you have said?

A.—Yes.

71. Q.—At sea?

A.—At sea.

72. Q.—Into boats?

A.—Into boats.

73. Q.—That came to you with orders?

A.—Yes.

74. Q.—None of it was discharged at any port?

A.—No, not at all.

(Outward report marked Exhibit " A ".)

Cross-Examination by Mr. Collins:

75. Q.—You left Vancouver with this boat about the 15th of November, 1924?

A.—Yes.

76. Q.—According to the inward report of the Steamship " Malahat ", that steamship returned to Vancouver on the 19th of August, 1925?

A.—Yes.

77. Q.—So on that particular voyage you were on the high seas from the 15th of November, 1924, to the 19th of August, 1925, approximately nine months?

A.—Yes.

78. Q.—And in that time you discharged the various cases that you had on board?

A.—Yes.

79. Q.—Do you remember particularly any of the 352 cases of alcohol, 324 cases of alcohol, 324 cases of alcohol, 1,150 cases of whiskey, 1,250 cases of whiskey, 1,250 cases of whiskey and 1,250 cases of whiskey referred to in this particular action?

A.—I could not specify any particular one.

80. Q.—You don't remember the cases; you don't know where they were discharged?

A.—I remember there was some alcohol there, but that is all. I don't know what has become of them, for I could not say.

81. Q.—As I understand your evidence, Captain, these cases, all the cases on your ship on that particular voyage were discharged off the coast of California or Mexico?

A.—Yes.

82. Q.—Some time between the 15th of November, 1924, and the 19th of August, 1925?

A.—Yes.

83. Q.—Now, those trawlers, small schooners, fish boats and speed boats into which these cases were discharged, were they substantial seagoing boats?

A.—Yes.

84. Q.—Approximately what tonnage were they?

A.—Between six and twenty-four tons, I would say.

85. Q.—How far were you off the coast of Mexico and California at the time you discharged?

A.—Between twenty and fifty miles.

86. Q.—You don't know where those particular boats into which you discharged went to after they left your boat?

A.—No.

87. Q.—Where did you receive this foreign bill of health and clearance that you referred to in your evidence-in-chief?

A.—I got it down off the coast.

10 88. Q.—Of California or Mexico?

A.—Mexico, I think it was, with that one.

89. Q.—When did you receive it?

A.—After the cargo was discharged.

90. Q.—Did you leave the "Malahat" any time during the nine months?

A.—Did I leave it, no, sir.

91. Q.—You were on board the boat all the time?

A.—All the time.

Mr. Lindsay: 92. Q.—You say you got the foreign bill of 20 health and clearance after the cargo was discharged. About how long before you got back in Vancouver would that be?

A.—I could not say.

93. Q.—A month? Did you come straight back after you discharged the cargo?

A.—No, that trip I was disabled and it took a little while longer to get back. It took quite a while.

94. Q.—When you say that those boats into which you discharged the cargo were substantial——

A.—Yes.

30 95. Q.—Do you mean anything more than that they were of this tonnage from six to twenty-four tons and substantially built?

A.—Substantially built, yes.

96. Q.—They were speed boats, small schooners?

A.—Yes.

97. Q.—Trawlers and fishing boats?

A.—And fishing boats, yes.

Mr. Lindsay: That is all.

Mr. Collins: 98. Q.—They were seagoing boats?

A.—Yes, they were seagoing boats.

40 99. Q.—Did you receive any landing certificates?

A.—None whatever.

100. Q.—Not for any?

A.—No, sir.

Mr. Collins: That is all.

(Witness aside.)

No. 53

EVIDENCE OF RUSSELL WHITELAW

RUSSELL WHITELAW, a witness called on behalf of the Plaintiff, sworn.

Examined by Hon. Mr. Rowell, K.C.:

Q.—Mr. Whitelaw, you live in the City of Vancouver?
A.—Yes.
Q.—And you have been for some years associated with Consolidated Exporters Corporation Limited?
A.—Yes, since 1922.
Q.—And still are?
A.—Yes.
Q.—In 1924 what was your position?
A.—I was one of the Executive of the Consolidated.
Q.—And had a good deal to do with the management and operation of the company?
A.—Yes, I had something to do with the management and operation.
Q.—Do you remember giving evidence for the Customs Commission in which you outlined your part in the matter?
A.—Yes.
Q.—Your company purchased certain whiskies from the Consolidated Distilleries Limited?
A.—Yes.
Q.—And evidence has been given in this case that the cargo in this case was purchased by your company from the Consolidated Distilleries Limited?
A.—Yes.
Q.—Then I believe you agreed to procure landing certificates. Did you agree to get landing certificates? Did you agree with the Consolidated Distilleries Limited that you would get landing certificates?

Mr. Holden: I submit, my Lord, my learned friend is leading the witness.

His Lordship: I do not think it is leading.

Mr. Holden: The witness should answer and Counsel should not tell of any agreement or anything else.
Mr. Rowell proceeds:

Q.—What had you to do with the question of landing certificates?
A.—I, personally?

Mr. Rowell: Yes.

The Witness: When the landing certificates were obtained they were mailed directly to me and I sent them to the Consolidated Distilleries Limited.

Q.—You got the landing certificates in Vancouver by mail and sent them to the Consolidated Distilleries Limited?

A.—After they were executed?

Mr. Rowell: Yes.

The Witness: They were mailed to me by the agent.

Q.—You are referring to the shipments on the "Malahat"? You received them by mail in Vancouver?

A.—Yes, they would be sent to me by one of the men that comprised the Douglas company.

Q.—I am asking you what you did with them. You got them by mail in Vancouver?

A.—Yes.

Q.—And sent them on to the Consolidated?

A.—No, they were usually handed to the Collector of Customs but in this case the Consolidated received them.

Q.—In the case we now have it is stated in a letter signed by Mr. Norgan and I think in the next case the letter is signed by you. I will put the letter before the witness. This is Exhibit No. 22?

A.—This letter is signed by G. Norgan.

Q.—Who was he?

A.—Director of the Consolidated.

Q.—One of your associates?

A.—Yes.

Q.—And associated with you in looking after these matters?

A.—Consolidated matters, yes.

His Lordship: What I understand the witness to say is that he was associated with the Consolidated Exporters Corporation Limited?

Mr. Rowell: Yes, my Lord.

Q.—Then the Captain has told us that the outward clearance from Buenaventura and the Bill of Health were received by him at sea, off the coast of California or about there; on the high seas off

the coast of California or Mexico. The evidence is he never got more than ten miles below the boundary between California and Mexico. How did these documents get to him?

A.—I had nothing to do with the ship's papers, only with the landing certificates.

Q.—You cannot say how these documents got out to the Captain; do you know, of your own knowledge, how they got out?

A.—No, sir.

Q.—Then the only thing you dealt with yourself were the landing certificates?

A.—Yes.

Q.—Now, did your company pay any money to get these documents?

A.—No, sir.

Mr. Holden: This is not a right examination.

His Lordship: I do not see how you can object.

Mr. Rowell proceeds:

Q.—Did you have to pay any money in connection with the getting of these documents?

Mr. Holden: I repeat my objection.

His Lordship: I understand the Plaintiff's case is that these landing certificates were fraudulent and not genuine and that being their plea they are entitled to give evidence upon it.

Mr. Rowell proceeds:

Q.—Did you make any payment in connection with getting any papers in connection with these shipments?

A.—We made an allowance on the goods to our customers, I think it was $1.00 or $2.00 per case, and they have to supply the documents.

Q.—I just want you to go back. We have your evidence here before the Commission, Mr. Whitelaw?

A.—I think I know what you are referring to, Mr. Rowell, but think I explained at that time that during our first operations we had an agent by the name of Gonzales in Mexico and we paid him the export duty and a fee for looking after our business there. I think that was around $2.00 or $3.00 per case. Later on J. Douglas & Company, who were the purchasers of the cargo, were to look after

all these charges and we deducted them from the cost price or the selling price of the liquors.

Q.—Then they were to get for you—what papers?

A.—They were to get landing certificates.

Q.—Who was to get the outward clearance?

A.—That would be the Canadian Mexican Shipping Company, and the purchaser of the goods.

Q.—Who would have to get the bill of lading?

A.—That is the shipping papers, the purchasers of the goods.

Q.—Then the purchasers of the goods had to get three documents, the landing certificate they had to get, the outward clearance and the Bill of Health?

A.—Yes.

Q.—All of these were necessary? At least the outward clearance and the Bill of Health were necessary in order that the boat return?

A.—Yes.

Q.—And the landing certificate was necessary in order to get a discharge of the bond?

A.—Yes.

Mr. Holden: My objection applies to the whole of this evidence.

Mr. Rowell proceeds:

Q.—Then you said that during the first period you did make payment to Gonzales and paid him so much per case and he provided these documents for you?

His Lordship: That relates to other transactions.

Mr. Rowell: Then I will not trouble about that.

Q.—Was there any such company at Lalibertad or Buenaventura as J. Douglas & Company?

A.—I understood it was just a name they traded under.

Q.—Who were your customers?

A.—I do not think I should be called upon to answer that question as these men were under indictment in the United States.

His Lordship: That is not fair; leave it at that.

Mr. Rowell proceeds:

Q.—They live in the United States, do they?

RUSSELL WHITELAW (witness for respondent), Examination-in-chief.

A.—In San Francisco.

Q.—You say that they are under indictment there and that you do not care to give evidence?

A.—I gave you that on a slip of paper at the Royal Commission.

His Lordship: It is not important anyway.

Mr. Holden: No Cross-Examination.

In the Exchequer Court of Canada

No. 54
Formal Judgment, 16th March, 1931.

No. 54

FORMAL JUDGMENT

JUDGMENT OF THE EXCHEQUER COURT

Monday, the 16th day of March, A.D. 1931.

This action having come on for trial in the City of Ottawa, County of Carleton, Province of Ontario, on the 29th and 30th days of January, A.D. 1931, before this Court, in the presence of Counsel for the Plaintiff and for the Defendants; upon hearing read the pleadings herein, and upon hearing the evidence adduced, and what was alleged by Counsel aforesaid, this Court was pleased to direct that this action should stand over for judgment and the same coming on this day for judgment,

THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff do recover from the Defendants the sum of $445,093. without interest.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendants do pay to the Plaintiff his costs in this action after taxation thereof.

By the Court,

" ARNOLD DUCLOS ",
Deputy Registrar.

In the Exchequer Court of Canada

No. 55
Reasons for Judgment of MacLean, J., 16th March, 1931.

No. 55

REASONS FOR JUDGMENT

MACLEAN, J.

Judgment rendered March 16, 1931.

This is an action brought against the defendants, upon seven bonds executed by them in favour of the plaintiff. The cause was heard upon admissions made in writing by and between the parties.

The bonds in question are each dated the 15th day of October, 1924, in varying sums, and altogether aggregating $445,093.00. The condition of each bond was that if certain quantities of alcohol or whiskey, as mentioned in each bond for which the defendant company gave notice of its intention to export to La Libertad, San Salvador, should be exported to La Libertad, and there entered for consumption or warehouse, and if proof of such exportation and entry were, in accordance with the requirements of the Warehouse

Regulations in that behalf, adduced to the satisfaction of the Collector of Inland Revenue at Belleville, Ontario, or if the defendant company, Consolidated Distilleries Limited, should account for the said goods to the satisfaction of the said Collector of Inland Revenue, then the bond should be void, but otherwise to remain in full force and virtue.

The Warehousing Regulations provide, *inter alia,* as follows:

" 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."

" 17. . . . . .

In all other cases the bond shall not be cancelled unless:

(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 the goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or,

(2) Within the period of three months from the date of the 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 relanded in Canada, or if relanded in Canada, that the proper entry has been made at Customs and the proper duties paid thereon."

The alcohol and whiskey in question was purchased of the defendant company, by Consolidated Exporters Corporation, of Vancouver, and the shipping directions were to forward the same by rail from Belleville, Ontario, to Vancouver, B.C., billed to John Douglas & Co., La Libertad, San Salvador. Prior to the release of these goods from the bonding warehouse at Belleville, the bonds in question were executed by the defendants in favour of the plaintiff, pursuant to the Excise Act and regulations thereunder, to procure the release of the

goods from the bonding warehouse and their exportation in bond to La Libertad; in due course the goods were shipped by the defendant company from Belleville to Vancouver, and they were shipped from Vancouver on board the ship Malahat on the 15th day of November, 1924, for export to La Libertad. The evidence reveals that before leaving Vancouver, the goods had been sold by Consolidated Exporters Corporation to purchasers resident in San Francisco, California, and the master of the Malahat, when he sailed from Vancouver, had instructions to discharge the liquors at sea off the coast of California into small boats, in fulfilment of delivery orders, details of which were given him before sailing. The Malahat, I might say, was not plying on a published route and schedule. It is clear from the evidence that the liquors in question were not exported to or entered for consumption or for warehouse at La Libertad, but were discharged at sea in small boats off the coast of California, some twenty-four hundred miles from La Libertad. In fact, it is quite clear that it was never intended that the liquors should be shipped to the port designated in the bonds, but that they should be discharged, in accordance with a pre-arranged plan, at sea off the coast of California, as they were. The consignee, John Douglas & Co., was not in existence at all. Landing certificates purporting to be signed by the British Vice Consul at La Libertad, a Bill of Health purporting to be signed by the same British Vice Consul, and an outward clearance purporting to be signed by some officer of Customs at La Libertad, were procured, but these documents were all false and fraudulent and were procured in order to deceive the Port authorities in British Columbia, and the plaintiff, in order to procure the cancellation of the bonds in suit. The alleged landing certificates were procured and paid for by Consolidated Exporters Corporation. In due course the alleged landing certificates were forwarded by Consolidated Exporters Corporation to the defendant company and by it presented to the Collector of Inland Revenue at Belleville, and the Collector believing the certificates to be genuine and true, and relying thereon, purported to cancel the bonds in question. There can be no doubt that the Collector at Belleville was induced to cancel the bonds in question, by reason of the presentation to him by the defendant company of the several fraudulent landing certificates. No evidence was produced by the defendants suggesting that the goods went to the port designated in the bonds, and in fact, this was not possible.

In the set of facts which I have disclosed the question for decision is whether the defendants are liable upon the several bonds here in suit. The condition of the several bonds not having been performed, I am of the opinion that the defendants are liable. No proof of the exportation and entry of the goods within the period stipulated in the bonds was adduced, to the satisfaction of the Collector

of Inland Revenue at Belleville, nor was there any accounting of the goods made to the satisfaction of such Collector. The fact that the bonds were cancelled does not in my opinion discharge the defendants from their obligations under the several bonds, because such cancellations were procured by fraud. The defendant undertook the obligation of assuring that the goods would be entered for consumption or warehouse at the port mentioned in the bonds, and this of course was never done. In The King v. Vancouver Breweries Ltd.,[1] The King v. Fidelity Insurance Company of Canada,[2] The King v. Canadian Surety Company,[3] and The King v. Walker & Sons Ltd., No. 9373, unreported, I dealt with a similar set of facts as is found in this case, and there is nothing I can usefully add to what I there said. It is therefore my opinion that the defendants are liable upon the bonds here issued.

The defendants contended at the trial that this Court was without jurisdiction in this case, and also that the claim for interest as set forth in the Information should be disallowed. I discussed these two points in a judgment rendered in an action (No. 9370) between the same parties, and in respect of the same subject matter, and there is nothing that I care to add to what I there said. As that cause has not been reported it might be convenient, in the event of an appeal, to recite the opinion I expressed upon these two points. That is as follows:

> " The defendants question the jurisdiction of the Court in this action, and they rely upon the decision of the Supreme Court of Canada in The King v. Consolidated Distilleries Ltd.[1] I am unable to appreciate the argument which was addressed to me by counsel for the defendants upon this point. In the case just mentioned, the defendant company, the same defendant company, as in this case, sought on motion, in the Exchequer Court, to bring in as a third party the Consolidated Exporters Co. Ltd., upon the ground that this corporation by agreement had contracted to indemnify the Consolidated Distilleries Ltd., against any loss, damages or expenses which it might suffer by reason of certain bonds which it had executed unto His Majesty, under the Excise Act, just as in this case. Audette, J., set aside the third party notice upon the ground that the issue raised by the third party notice, was separate and distinct from the issue raised between the plaintiff and the defendant in the action, and he held that if there was a separate cause of action flowing from

(1) 1929, Ex. C.R., p. 144.
(2) 1929, Ex. C.R., p. 1.
(3) 1929, Ex. C.R., p. 216.
(1) 1930, S.C.R., p. 531.

the agreement of indemnity it must be tried in the provincial courts having jurisdiction in such matters, and that the Exchequer Court was without jurisdiction. There was an appeal from this decision to the Supreme Court of Canada, and the decision of Audette, J., was upheld. That is all the Supreme Court of Canada dealt with. This is not a case which involves an agreement of indemnity given by a third party to the defendant company. There can be no doubt but that the Parliament of Canada had jurisdiction to legislate in respect of Customs and Excise, and the subject matter of this action directly arises from legislation enacted by the Parliament of Canada in respect of Excise.

" The Chief Justice in delivering the judgment of the Court said:—

> " ' While there can be no doubt that the powers of Parliament under section 101 are of an overriding character, when the matter dealt with is within the legislative jurisdiction of the Parliament of Canada, it seems equally clear that they do not enable it to set up a Court competent to deal with matters purely of civil right, as between subject and subject.'

" That makes very plain the scope of the judgment of the Court. The Court held that the matter of a contract of indemnity between a defendant, in an action taken upon a bond by the Crown under the Excise Act, and a third party, was a matter of civil right as between subject and subject, and was one purely of provincial jurisdiction. The contract of indemnity had not its origin in a law of Canada as distinguished from a law of a Province. There can be no question as to the competency of the Parliament of Canada to legislate in respect of the subject of Excise, and I do not think there is any doubt as to the jurisdiction of this Court in any proceedings arising under the Excise Act. In this particular matter the bonds sued upon were required by a law enacted by the Parliament of Canada in respect of a matter in which it had undoubted jurisdiction. In my opinion, the judgment of the Supreme Court of Canada is, without qualification whatever, against the contention of the defendants.

" The plaintiff claims interest at the rate of five per cent upon the total amount stated in the four bonds in question. The defendants contend that in law no interest is payable on such bonds, and I think this contention must be upheld. In similar actions it is true I did allow interest, but in such cases the claim for interest was not contested. It is admitted that in England

the amount recoverable on a bond forfeited by breach of the condition is in all cases limited, both at law and in equity, to the amount of the penalty fixed by the obligatory part. The condition of the bonds in question was for the performance of an act, and in such cases a recovery is limited to the amount of the penalty, and interest only runs from the date of judgment. That, I think, is also the law in the United States. Counsel for the plaintiff referred to the Ontario Judicature Act, but we are not here concerned with a matter of procedure, but one of substantive law. The Ontario Judicature Act, and the case of Toronto Railway Company v. City of Toronto, 1906, Appeal Cases, p. 117, which was cited do not seem to me to have any relevancy here. The Judicature Act of Ontario is invoked in this Court in matters of procedure only; the obligation to pay interest is a matter of substantive law and not procedure. In reason, the claim for interest in respect of a bond of this character would appear to have no foundation. I therefore disallow the claim for interest."

There will be judgment for the amounts sued upon herein as appearing in the plaintiff's Information, but exclusive of interest, and costs will follow the event.

In the Exchequer Court of Canada

No. 56
Notice of Appeal to Supreme Court of Canada, 7th April, 1931.

No. 56

NOTICE OF APPEAL

TAKE NOTICE that the Defendants above named being dissatisfied with the judgment herein given by the Honourable the President of this Court the 16th day of March, A.D. 1931, have set down an appeal against the said judgment to the Supreme Court of Canada.

Tuesday, the seventh day of April, A.D. 1931.

E. F. NEWCOMBE,
Ottawa Agent for Defendants' Solicitors.

To the ATTORNEY GENERAL OF CANADA.

In the Supreme Court of Canada

No. 58
Order dispensing with printing of certain exhibits, 15th July, 1931.

No. 58

ORDER DISPENSING WITH PRINTING OF CERTAIN EXHIBITS

Upon the application of the Appellants and upon hearing what was alleged by Counsel on their behalf and upon hearing read the consent of Respondent filed herein and the affidavit of F. T. Collins, Solicitor for Appellants,

1. IT IS ORDERED that the printing of the following Exhibits be dispensed with:

Exhibit 3 B to 3 G, inclusive.
Exhibits 4 A-1, 4 B-1, 4 C-1, 4 D-1, 4 E-1, 4 F-1, 4 G-1.
Exhibit 5.
Exhibit 21, excluding paragraphs 1-30, inclusive, which are to be printed.

2. AND IT IS FURTHER ORDERED that the costs of this application be costs in the Cause.

Dated at Ottawa this 15th day of July, A.D. 1931.

J. F. SMELLIE,
Registrar.

In the Supreme Court of Canada

No. 57

No. 57
Agreement as to contents of Appeal Book, 27th June, 1931.

AGREEMENT AS TO CONTENTS OF APPEAL CASE

The parties hereto agree that the appeal case on the appeal herein to the Supreme Court of Canada shall consist of the following documents:

1. Index of Reference.

PART 1

2. Information.
3. Amended statement in Defence.
4. Amended Reply as filed.
5. Defendant's answer to Amended Reply.
6. Notice of Appeal to the Supreme Court of Canada.
7. Order dispensing with printing of certain Exhibits.
8. Agreement as to contents of Appeal Case.

PART 2

9. Admissions and statements of facts.
10. Evidence of J. G. Lawrence taken on discovery.
11. Evidence of George Edward Murray taken on commission.
12. Evidence of Russell Whitelaw.

PART 3

All Exhibits excepting the following:
Exhibits 3 B to 3 G, inclusive.
Exhibits 4 A-1, 4 B-1, 4 C-1, 4 D-1, 4 E-1, 4 F-1, 4 G-1.
Exhibit 5.
Exhibit 21, excluding paragraphs 1-30, inclusive, which are to be printed.

PART 4

13. Judgment of the Exchequer Court.
14. Reasons for Judgment of the Honourable Mr. Justice MacLean.
15. Certificate of Solicitor.

Dated this 27th day of June, A.D. 1931.

MEREDITH, HOLDEN, HEWARD & HOLDEN,
Solicitors for the Appellants.

W. STUART EDWARDS,
Solicitor for the Respondent.

In the Supreme Court of Canada

No. 59
Respondent's Notice of Cross-Appeal, 29th July, 1931.

No. 59

RESPONDENT'S NOTICE OF CROSS-APPEAL

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

No. 10314

10

BETWEEN:

CONSOLIDATED DISTILLERIES LIMITED and W. J. HUME,
(Defendants) Appellants,

—AND—

HIS MAJESTY THE KING, represented by the Attorney-General of Canada,
20 *(Plaintiff) Respondent.*

TAKE NOTICE that upon the hearing of this appeal the Respondent intends to contend that the decision of the Exchequer Court of Canada is erroneous in not allowing to the Respondent interest on the amount of the several bonds sued on herein, and that the said judgment should be varied by adding thereto an order that
30 the Appellants should pay to the Respondent interest at the legal rate of five per cent per annum on the amount of the bonds sued on herein, from the date on which the conditions of the said bonds should have been performed until the date of judgment.

DATED at Ottawa this 29th day of July, A.D. 1931.

W. STUART EDWARDS,
Solicitor for the Respondent.

To:
40 THE APPELLANTS AND TO THEIR SOLICITORS.

In the Supreme Court of Canada

No. 60
Certificate of Appellants' Solicitors, 15th August, 1931.

No. 60

CERTIFICATE OF SOLICITOR

I. FREDERICK T. COLLINS, Advocate, of the firm of Meredith, Holden, Heward & Holden, Solicitors for the Appellants, Consolidated Distilleries Limited and W. J. Hume, hereby certify that I have personally compared the foregoing print of the Case in Appeal to the Supreme Court of Canada with the originals, and that it is a true and correct reproduction of such originals.

Montreal, August 15th, 1931.

FREDERICK T. COLLINS,
A Solicitor for the Appellants.

In the Supreme Court of Canada

No. 61
Appellants' Factum (separate document).

No. 61

APPELLANTS' FACTUM

(separate document)

In the Supreme Court of Canada

No. 62
Respondent's Factum (separate document).

No. 62

RESPONDENT'S FACTUM

(separate document)

No. 63

In the Supreme Court of Canada

No. 63
Formal Judgment, 15th March, 1932.

FORMAL JUDGMENT

No. 10314

IN THE SUPREME COURT OF CANADA

Tuesday, the 15th day of March, A.D. 1932

Present:

The Right Honourable Mr. Justice Anglin, P.C.,
Chief Justice,
The Right Honourable Mr. Justice Duff, P.C.,
The Honourable Mr. Justice Rinfret,
The Honourable Mr. Justice Lamont.

BETWEEN:

CONSOLIDATED DISTILLERIES LIMITED
and W. J. HUME,
(Defendants) Appellants,

—AND—

HIS MAJESTY THE KING,
represented by the Attorney-General of Canada,
(Plaintiff) Respondent.

The appeal of the above-named appellants, 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 16th day of March, A.D. 1931, having come on to be heard before this Court, constituted as above with the addition of the Honourable Mr. Justice Newcombe, since deceased, on the twenty-eighth and twenty-ninth days of October, A.D. 1931, in the presence of counsel as well for the appellants as the respondent, 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 date for judgment;

THIS COURT DID ORDER AND ADJUDGE that the said appeal be, and the same was, dismissed, and that the said cross-appeal be, and the same was also dismissed.

In the Supreme Court of Canada

No. 63
Formal Judgment, 15th March, 1932.

THIS COURT DID FURTHER ORDER AND ADJUDGE that the said appellants should and do pay to the said respondent his costs of the appeal, and that the said respondent should and do pay to the said appellants their costs of the cross-appeal.

(Sgd.) J. F. SMELLIE,
Registrar.

No. 64
Reasons for Judgment.

No. 64

REASONS FOR JUDGMENT

(Same as document No. 25, printed at page 75)

EXHIBITS

Exhibit No. 9
Letter:
Consolidated
Distilleries Ltd
Vancouver, to
Consolidated
Distilleries Ltd
Montreal,
1st May, 1924.

RESPONDENT'S EXHIBIT NO. 9, LETTER

CONSOLIDATED DISTILLERIES LIMITED

From Vancouver Office to Montreal Office

Date May 1st, 1924

Consolidated Distilleries, Ltd.,
Montreal, Que.

Dear Sirs:—

Confirming our wire of today's date as follows:—

"Consolidated Exporters wish to change their order of April twenty-fourth cancelling Old Crow fifths altogether stop Ship fifteen hundred Corbys Special Selected Rye reputed quarts stop wire if you can change or if you have already shipped hope it has been shipped and if so will try and have them give order for one thousand Special Selected as well."

We are rather in hopes that the order of Bourbon has been shipped, as we do not understand their motif here. They claim over the phone that Mr. Norgan wired them from Frisco to change the order and we are of the opinion that they are trying to sell as little as possible of our goods, and finding Walker's Club down there, they have changed their order so as to compete with the Club. Without any boat of our own, we are simply at the mercy of others and we are inclined to believe that the Consolidated Exporters will give us as bad a deal as possible, owing to the fact that they are aware that by introducing and keeping our Bourbon in the front, which they started to do, is perhaps advertising for us, and that we might be in direct competition with them later on.

We offered another Export Company some Old Kentucky, and as we explained in our former letter today, we are giving them some out of bond here, they having promised us an order for their next boat on a through bill of lading. We have given the Old Crow label to the Consolidated, but as you will notice by their orders, they have been dropping off in quantity lately and we feel that if they can get us in a pocket, that they will keep us there. We are simply out of the running without any transportation of our own, and will explain matters to Mr. Douglas when he arrives.

Yours very truly,

CONSOLIDATED DISTILLERIES, LTD.
Per F. L. SMITH.

FLS/EA.

Exhibit No. 10
Telegram:
Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal
(undated)

RESPONDENT'S EXHIBIT NO. 10, COPY OF TELEGRAM

Consolidated Distilleries, Ltd., Montreal, Que.

Get in readiness five hundred Old Crow, five hundred Old Kentucky, seven hundred Pebblebrook, all fifths. Two thousand Special Selected reputed quarts. If you will reconsider they will take seven hundred cases Hills and Underwood. They claim to have advertised this brand and object changing. Mr. Douglas when here told Smith alright for his territory otherwise would not have started. Wire answer.

CONSOLIDATED DISTILLERIES, LTD.
Vancouver, B.C.

Prepaid and charge to
Consolidated Distilleries, Ltd.

Exhibit No. 11
Letter:
Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal,
11th August, 1924.

RESPONDENT'S EXHIBIT NO. 11, COPY OF LETTER

Vancouver — Montreal
Mr. Rainier — August 11th, 1924.

Consolidated Distilleries, Ltd.,
Montreal, Que.

Dear Sirs:—

Your wire of the 11th as follows received:—

" Wisers Pebble Brook is on the Market."

In reply we have today wired you as follows:—

" Prepare for export in bond for Consolidated Exporters six hundred cases Pebble Brook fifths stop five hundred cases Hills & Underwood Gin stop fifteen hundred cases Special Selected reputed quarts stop five hundred cases Special Selected American pints stop all to be packed in straws stop shipping instructions later stop ship to us six hundred cases Matured Hills & Underwood Gin straw packing as soon as ready."

The Consolidated Exporters Corp., Ltd., Vancouver, have given us order as stated in above wire, but at present are not certain of the date on which their boat will be in, but we will forward you definite shipping instructions as soon as we receive them. Regarding the

Exhibit No. 11
Letter:
Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 11th August, 1924.

Pebble Brook, we presume this will have to be shipped from Prescott. If 600 cases do not make a minimum car, the Consolidated Exporters are willing for you to add sufficient to make the required weight.

You will also note that they wish 500 cases Special Selected put up in American pints. They claim that the 8-1/3 bottle is a very poor seller on this coast. They also insist that all packages be packed with straw wrapping, as all their goods after leaving Vancouver are removed from the cases and packed in sacks.

We would be pleased if you will forward us your price to them on Pebble Brook and Special Selected American pints. You will note from our former letter that we have been getting a price of $4.50 per case from them for Hills & Underwood Gin. We presume you will charge them the same price. Will you also give us a selling price for bulk Special Selected.

Yours very truly,

CONSOLIDATED DISTILLERIES, LTD.

Per .....

WEP/EA.

RESPONDENT'S EXHIBIT NO. 12, LETTER

Exhibit No. 12
Letter:
Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 28th August, 1924.

CONSOLIDATED DISTILLERIES LIMITED

From Vancouver Office to Montreal Office

Attention of Mr. Rainier. Date August 28th, 1924.

Consolidated Distilleries, Ltd.,
Montreal, Que.

Dear Sirs:—

On August 11th we wired you to prepare for export in bond for Consolidated Exporters, 600 cases Pebble Brook fifths, 500 cases Hills & Underwood Gin, 1500 cases Special Selected Reputed Quarts, 500 cases Special Selected American Pints, also ship to us 600 cases Matured Hills & Underwood Gin.

On August 19th you wired us:—

" Expect to ship Exporters order Thursday or Friday will wire car numbers."

Exhibit No. 12
Letter:
Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal,
28th August, 1924.

Up until now the Railway Company only know of one car rolling and we wired Corbyville last night, August 27th, asking what had been shipped and to give us car numbers and it is now 5.20 your time and we are still unable to get an answer to give the Consolidated Exporters, who have held their boat here for days waiting for our goods. We are afraid they will not hold it any longer, as the Prince Albert has already gone South and they are naturally worrying about getting away with their boat to assort up their stocks in the South. We are sorry to have things turn out in this way, as we worked hard for this business and after losing their sale of a car of Gin on account of not being able to ship Hills & Underwood, it now looks as if there would be considerable Rye left from here for a couple of months before it reaches destination. Writer succeeded in getting things in pretty good shape in the South for the sale of Special Selected, which he feels sure he could sell if he could only get it here.

Hoping that we will yet receive word from the East that these cars have been rolling some days, we are

Yours very truly,

CONSOLIDATED DISTILLERIES, LTD.
Per F. L. SMITH.

FLS/EA.

RESPONDENT'S EXHIBIT NO. 13, COPY OF LETTER

Exhibit No. 13
Letter:
Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Corbyville,
9th September, 1924.

Vancouver — Corbyville,
Attention Mr. Hume. — Sept. 9, 1924.

Consolidated Distilleries, Ltd.,
Corbyville, Ont.

Dear Sirs:

The one car containing 500 cases special selected pints, and 500 cases reputed quarts, shipped to John Douglas & Co., La Livertad, San Salvador, are lying on the dock here awaiting next boat, owing to the fact that they were unable to get them loaded with the rest of the shipment, owing to lack of space on the boat.

Would ask you to arrange with your officer for a little longer time for return of landing certificate.

Yours very truly,

CONSOLIDATED DISTILLERIES, LTD.
Per

S/DC

RESPONDENT'S EXHIBIT NO. 14, TELEGRAM

Exhibit No. 14 Telegram: Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 23rd September, 1924.

P126 VR M 66 NL Vancouver BC Sept 23-24

Consolidated Distilleries Ltd
Montreal Que

Ship for Consolidated Exporters at once seven hundred cases Old Kentucky fifths to John Douglas and Company Laliberatad San Salvador hold the full order you have now on hand for further instruction the boat now going is only a small one and they cannot take any more this trip but will take a full order in a very short time this order is supposed to be extra.

CONSOLIDATED DISTILLERIES LTD.

545 AM
Copied Sept 24-24 9:08 AM—MC

RESPONDENT'S EXHIBIT NO. 16, COPY OF TELEGRAM

Exhibit No. 16 Telegram: Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 3rd October, 1924.

Vancouver, B.C.,
Oct. 3rd, 1924.

Consolidated Distilleries, Ltd.,
Montreal, Que.

Ship C.N. to arrive here not later than October twenty-seventh addressed to John Douglas Libertad San Salvador two thousand two hundred fifty Special Selected reputed quarts One thousand two hundred fifty Special Selected pints seven hundred cases Old Crow fifths seven hundred cases Old Kentucky fifths seven hundred cases Pebble Brook fifths stop Make draft Consolidated Exporters stop They are asking two percent discount wire if you will allow it stop No answer yet from you our two telegrams October first and second also advise if price can be made three dollars for ten gallon kegs containing Alcohol.

CONSOLIDATED DISTILLERIES, LTD.

Prepaid. Charge to our a/c.

Exhibit No. 1 Telegram: Consolidated Distilleries Ltd., Vancouver, to Consolidated Distilleries Ltd., Montreal, 6th October, 1924.

RESPONDENT'S EXHIBIT NO. 1, COPY OF TELEGRAM

Vancouver, B.C.,
Oct. 6th, 1924.

Consolidated Distilleries, Ltd.,
Montreal, Que.

Ship to account of Consolidated Exporters addressed to John Douglas & Company La Libertad San Salvador ten thousand gallons Grain Alcohol in ten gallon kegs. They were very much pleased with condition of kegs last shipments stop See that kegs are in good condition to avoid coloring of the Alcohol stop This order must be Vancouver not later than twenty-seventh October stop Corbys flasks on order to be sixteen ounce they will not take car Charles Dey this trip.

CONSOLIDATED DISTILLERIES, LTD.

Prepaid. Charge to our a/c.

Exhibit No. 3A Requisition for a permit, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 3 A

REQUISITION FOR A PERMIT

Entry No. 2998

1128 & 29
1132 & 1133

I, Consolidated Distilleries Limited, of Thurlow, owners of the undermentioned Spirits, require permission to remove the same between the date hereof and the 15 day of Feb., 1925, from whse No. 2 at Thurlow to San Salvador by the C.N.R. to Vancouver and S.S., there to be delivered into the possession of John Douglas & Co. of La Libertad, San Salvador, the duty on the said spirits having been secured by Bond.

Number and Marks	No. Gallons	Strength	
2/593-10-24 649/1000	352 pkgs. @ 10.0—3520.00 std. gals.	@ 65.....5808.00	52,272.00

Rate of Duty 9.00

Exhibit No. 3A
Requisition for a permit, 15th October, 1924.

EXPORT

John Douglas & Co.
La Libertad
San Salvador

Requisition made at Thurlow this 15 day of Oct., 1924.

GEO. HUTSON.

Exhibit No. 4A2
Entry for export ex-warehouse No. 3029, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 4 A 2

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 2
Entry No. 3029

Port of Belleville, Oct. 15th, 1924.
Manufactured by Canadian Industrial Alcohol Co. of Thurlow.
Warehoused by Consolidated Distilleries Ltd. of Thurlow, and now entered for exportation to La Libertad, San Salvador, by Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
2/593-10-24 649/1000	352 pkgs. @ 10.0	—3520.00 gals. @ 65	5808.00	9.00	52,272.00

EXPORT

Checked and sealed in car No. G.T.P. 301654.
Date October 15, 1924.

A. R. M. HALL,
Customs and Excise Examiner.

Certified a true copy of Export Entry articles cleared from Port of Exit on Nov. 15, 1924, B 13 No. 13619, S.S. Malahat, Report No. 1291, No. 352 Pkgs., No. 3520 Galls., 5808 Proof G., Vancouver, B.C. (Date) Nov. 18, 1924.

W. R. T. GREEN,
Collector of Customs and Excise.

BM

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 18 1924
Vancouver, B.C.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct 17 1924
Belleville, Ont.

Exhibit No. 4A2 Entry for export ex-warehouse No. 3029, 15th October, 1924.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad in San Salvador without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON. 10
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Exhibit No. 4B2 Entry for export ex-warehouse No. 3023, 15th October, 1924. 20

RESPONDENT'S EXHIBIT NO. 4 B 2

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 3023

Port of Belleville, Ont., Oct. 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow. 30

Warehoused by Consolidated Distilleries Ltd. of Thurlow, and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal 1195/ 8.24.8.24	25 cases @ 1.88—	47.00 gals. @ 20.8....	37.22	9.02	333.72
Bal 1252/ 8.24.9.24	27 cases @ 1.88—	50.76 gals. @ 20.8....	40.20	9.02	362.60
1247/ 9.24.9.24	1198 cases @ 1.88—	2252.24 gals. @ 20.8....	1783.77	9.02	16,089.61
	1250 cases		1861.19		16,787.93

40

EXPORT

Checked and sealed in car No. G.T. 25049.
Date October 15, 1924.

WM. IRWIN COLE,
Customs and Excise Examiner.

Exhibit No. 4B2 Entry for export ex-warehouse No. 3023, 15th October, 1924.

Certified a true copy of Export Entry articles cleared from Port of Exit on Nov. 15, 1924, B 13 No. 13615, S.S. Malahat, Report No. 1291, No. 1250 Pkgs. No. 1861.19 galls., Vancouver, B.C. (Date) Nov. 18, 1924.

W. R. T. GREEN,
Collector of Customs and Excise.

BM

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 18 1924
Vancouver, B.C.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct 17 1924
Belleville, Ont.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad in San Salvador without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

RESPONDENT'S EXHIBIT NO. 4 C 2

Exhibit No. 4C2 Entry for export ex-warehouse No. 3024, October 15th, 1924.

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 3024

Port of Belleville, Oct. 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. Ltd. of Thurlow.

Warehoused by Consolidated Distilleries Limited of Thurlow, and now entered for exportation to La Libertad, San Salvador, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
1307/10.24-10.24	1150 cases @ 2.40	—2760.00 gals. @ 20.8....	2185.92	9.02	19,717.00

Exhibit No. 4C2
Entry for export ex-warehouse No. 3024, October 15th, 1924.

EXPORT

Checked and sealed in car No. G.T. 107956.
Date October 15th, 1924.

WM. IRWIN COLE,
Customs and Excise Examiner.

Certified a true copy of Export Entry articles cleared from Port of Exit on Nov. 15, 1924, B 13 No. 13614, S.S. Malahat, Report No. 1291, No. 1150 Pkgs., No. 2185.92 Galls., Vancouver, B.C. (Date) Nov. 18, 1924.

W. R. T. GREEN,
Collector of Customs and Excise.

PPB.

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 18 1924
Vancouver, B.C.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct 17 1924
Belleville, Ont.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Exhibit No. 4D2
Entry for export ex-warehouse No. 3025, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 4 D 2

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4
Entry No. 3025

Port of Belleville, Oct. 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow, and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Exhibit No. 4D2
Entry for export ex-warehouse No. 3025, 15th October, 1924.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal					
1228/ 9.24. 9.24	13 cases @ 2.02—	26.26 gals. @ 12.2....	23.05	9.02	207.91
1304/10.24.10.24	137 cases @ 2.02—	276.74 gals. @ 12.2....	242.98	9.02	2191.68
Bal					
1247/ 9.24. 9.24	711 cases @ 1.88—	1336.68 gals. @ 2.08....	1058.65	9.02	9549.02
1308/10.24.10.24	289 cases @ 1.88—	543.32 gals. @ 2.08....	430.31	9.02	3881.40
1307/10.24.10.24	100 cases @ 2.40—	240.00 gals. @ 2.08....	190.08	9.02	1714.52
	1250 cases		1945.07		17,544.53

EXPORT

Checked and sealed in car No. C.N. 87694.
Date Oct. 15th, 1924.

WM. IRWIN COLE,
Customs and Excise Examiner.

Certified a true copy of Export Entry articles cleared from Port of Exit on Nov. 15, 1924, B 13 No. 13616, S.S. Malahat, Report No. 1291, No. 1250 Pkgs., No. 1945.07 Galls., Vancouver, B. C. (Date) Nov. 18, 1924.

W. R. T. GREEN,
Collector of Customs and Excise.

BM

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 18 1924
Vancouver, B.C.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct 17 1924
Belleville, Ont.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.
(Signature of Owner or Agent)

Sworn to before me this 15th
day of October, 1924.

M. SPRAGUE,
Collector.

Exhibit No. 4E2
Entry for export ex-warehouse No. 3026, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 4 E 2

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4
Entry No. 3026

Port of Belleville, Ont., October 15, 1924.
Manufactured by Canadian Industrial Alcohol Co. of Thurlow.
Warehoused by Consolidated Distilleries Ltd. of Thurlow, and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal					
1230/ 9.24. 9.24	535 cases	@ 2.02—1080.70 gals. @ 12.2....	948.85	9.02	8558.63
1300/10.24.10.24	165 cases	@ 2.02— 333.30 gals. @ 12.2....	292.64	9.02	2639.61
1228/ 9.24. 9.24	550 cases	@ 2.02—1111.00 gals. @ 12.2....	975.46	9.02	8798.65
	1250 cases		2216.95		19,996.89

EXPORT

Checked and sealed in car No. G.T.P. 303775.
Date October 15, 1924.

WM. IRWIN COLE,
Customs and Excise Examiner.

Certified a true copy of Export Entry articles cleared from Port of Exit on Nov. 15, 1924, B 13 No. 13613, S.S. Malahat, Report No. 1291, No. 1250 Pkgs., No. 2216.95 Galls., Vancouver, B. C. (Date) Nov. 18, 1924.

W. R. T. GREEN,
Collector of Customs and Excise.

BM

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 18 1924
Vancouver, B.C.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct 17 1924
Belleville, Ont.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowl-

Exhibit No. 4E2 Entry for export ex-warehouse No. 3026, 15th October, 1924.

edge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Exhibit No. 4F2 Entry for export ex-warehouse No. 3027, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 4 F 2

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 2

Entry No. 3027

Port of Belleville, October 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow, and now entered for exportation to La Libertad, San Salvador, by Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
2/593-10-24	324 pkgs.	@ 10.0—3240.00 gals. @ 65.....	5346.00	9.00	48,114.00
	1/324				

EXPORT

Checked and sealed in car No. C.N. 88586.
Date October 15, 1924.

A. R. M. HALL,
Customs and Excise Examiner.

Certified a true copy of Export Entry articles cleared from Port of Exit on Nov. 15, 1924, B 13 No. 13617, S.S. Malahat, Report No. 1291, No. 324 Pkgs., No. 3240 Galls., 5346 Proof G., Vancouver, B.C. (Date) Nov. 18, 1924.

W. R. T. GREEN,
Collector of Customs and Excise.

BM

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 18 1924
Vancouver, B.C.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct 17 1924
Belleville, Ont.

Exhibit No. 4F2
Entry for export ex-warehouse No. 3027, 15th October, 1924.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Exhibit No. 4G2
Entry for export ex-warehouse No. 3028, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 4 G 2

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 2

Entry No. 3028

Port of Belleville, October 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow, and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
2/593-10-24	324 pkgs. @	10.0—3240.00 gals. @ 65.....	5346.00	9.00	48,114.00
325/648					

EXPORT

Checked and sealed in car No. G.T.P. 303018.
Date October 15, 1924.

A. R. M. HALL,
Customs and Excise Examiner.

Certified a true copy of Export Entry articles cleared from Port of Exit on Nov. 15, 1924, B 13 No. 13618, S.S. Malahat, Report No.

Exhibit No. 4G2
Entry for export ex-warehouse No. 3028, 15th October, 1924.

1291, No. 324 Pkgs., No. 3240 Galls., 5346 Proof G., Vancouver, B.C.
(Date) Nov. 18, 1924.

W. R. T. GREEN,
Collector of Customs and Excise.

BM

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 18 1924
Vancouver, B.C.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct 17 1924
Belleville, Ont.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON.
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Exhibit No. 2A
Excise Bond
for $104,544.00
signed by
Appellants
in favour of
Respondent,
15th October,
1924.

RESPONDENT'S EXHIBIT NO. 2 A

2998

A. 16
Inland Revenue
25,000-2-19.

Rev. Stat. 1906.
Chap. 51.

EXCISE

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, of the same place, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) One hundred and four thousand five hundred and forty-four dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 15th day of October in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

52,272.00
2
104,544.00

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) La Libertad, San Salvador, in the(5) S.S. .....
whereof ..... is master(6)

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

2/593-10-24 352 pkgs. @ 10.0—3520.00 gals. @ 65..... 5808.00 52,272.00

649/1000

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 16 1924
Belleville, Ont.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 17 1924
Belleville, Ont.

Exhibit No. 2A
Excise Bond
for $104,544.00
signed by
Appellants
in favour of
Respondent,
15th October,
1924.

and which goods are now deposited in Bonded Warehouse No. ..... at Thurlow in the Port of Belleville under the provisions and regulations of the " Inland Revenue Act."

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at ..... aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within ..... days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the Division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of ..... then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED

Per GEO. HUTSON (Attorney) [L.S.]

W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of

M. SPRAGUE

Exhibit No. 2B Excise Bond for $33,576.00 signed by Appellants in favour of Respondent, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 2 B

A. 16
Inland Revenue
25,000-2-19.

3023

EXCISE

Rev. Stat. 1906.
Chap. 51.

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, of the same place, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Thirty-three thousand five hundred and seventy-six dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 15th day of October, in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

16,787.93
2
33,575.86

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) La Libertad, San Salvador, in the(5) S.S..... whereof.....is master(6)

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

Bal 1195/8.24.8.24	25 cases	@ 1.88—	47.00 gals.	@ 20.8.....	37.22	335.72	
Bal 1252/8.24.9.24	27 cases	@ 1.88—	50.76 gals.	@ 20.8.....	40.20	362.60	
1247/9.24.9.24	1198 cases	@ 1.88—	2252.24 gals.	@ 20.8.....	1783.77	16,089.61	
	1250 cases				1861.19	16,787.93	

Rate of duty $9.02

EXPORT

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 17 1924
Belleville, Ont.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 16 1924
Belleville, Ont.

Exhibit No. 2B Excise Bond for $33,576.00 signed by Appellants in favour of Respondent, 15th October, 1924.

and which goods are now deposited in Bonded Warehouse No..... at Thurlow, in the Port of Belleville, under the provisions and regulations of the " Inland Revenue Act."

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at.....aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within.....days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of.....then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED

Per GEO. HUTSON (Attorney) [L.S.]

W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of

M. SPRAGUE

Exhibit No. 2C Excise Bond for $39,435.00 signed by Appellants in favour of Respondent, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 2 C

3024

A. 16
Inland Revenue
25,000-2-19.

Rev. Stat. 1906.
Chap. 51.

EXCISE

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

19,717.00
2
39,434.00

KNOW ALL MEN BY THESE PRESENTS that We,[1] Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, of the same place, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of[2] Thirty-nine thousand four hundred and thirty-five dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 15th day of October, in the Fifteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden[3] Consolidated Distilleries Limited hath given notice of intention to export to[4] La Libertad, San Salvador, in the[5] Steamship..... whereof.....is master[6]

1307/10.24-10.24 1150 cq. es @ 2.40—2760.00 gals. @ 20.8..... 2185.92 19,717.00

Rate of Duty—$9.02

EXPORT

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 17 1924
Belleville, Ont.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 16 1924
Belleville, Ont.

Exhibit No. 2C
Excise Bond
for $39,435.00
signed by
Appellants
in favour of
Respondent,
15th October,
1924.

and which goods are now deposited in Bonded Warehouse No. four at Thurlow, in the Port of Belleville, under the provisions and regulations of the " Inland Revenue Act."

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at ..... aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within 120 days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, B.C., then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED

Per GEO. HUTSON (Attorney) [L.S.]

W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of

M. SPRAGUE

Exhibit No. 2D Excise Bond for $35,089.00 signed by Appellants in favour of Respondent, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 2 D

A. 16
Inland Revenue
25,000-2-19.

3025

EXCISE

Rev. Stat. 1906. Chap. 51.

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, of the same place, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Thirty-five thousand and eighty-nine dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 15th day of October, in the Fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

17,544.53
2
35,089.06

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) La Libertad, San Salvador, in the(5) S.S..... whereof.....is master(6)

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

Bal				
1228/ 9.24. 9.24	13 cases @ 2.02— 26.26 gals. @ 12.2.....	23.05	207.91	
1304/10.24.10.24	137 cases @ 2.02— 276.74 gals. @ 12.2.....	242.98	2191.68	
Bal				
1247/ 9.24. 9.24	711 cases @ 1.88—1336.68 gals. @ 2.08.....	1058.65	9549.02	
1308/10.24.10.24	289 cases @ 1.88— 543.32 gals. @ 2.08.....	430.31	3881.40	
1307/10.24.10.24	100 cases @ 2.40— 240.00 gals. @ 2.08.....	190.08	1714.52	
	1250 cases	1945.07	17,544.53	

Rate of Duty $9.02

EXPORT

Exhibit No. 2D Excise Bond for $35,089.00 signed by Appellants in favour of Respondent, 15th October, 1924.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 17 1924
Belleville, Ont.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 16 1924
Belleville, Ont.

and which goods are now deposited in Bonded Warehouse No..... at Thurlow, in the Port of Belleville, under the provisions and regulations of the " Inland Revenue Act."

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at.....aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within.....days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of Belleville, or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of.....then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED

Per GEO. HUTSON (Attorney) [L.S.]

W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of

M. SPRAGUE

Exhibit No. 2E Excise Bond for $39,994.00 signed by Appellants in favour of Respondent, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 2 E

3026

A. 16
Inland Revenue
25,000-2-19.

Rev. Stat. 1906.
Chap. 51.

EXCISE

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

19,996.89
2

39,993.78

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, of the same place, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Thirty-nine thousand nine hundred and ninety-four dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals. dated this 15th day of October, in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) La Libertad, San Salvador, in the(5) S.S. ..... whereof ..... is master(6)

Bal				
1230/ 9.24. 9.24	535 cases @ 2.02—1080.70 gals. @ 12.2.....	948.85		8558.63
1300/10.24.10.24	165 cases @ 2.02— 333.30 gals. @ 12.2.....	292.64		2639.61
1228/ 9.24. 9.24	550 cases @ 2.02—1111.00 gals. @ 12.2.....	975.46		8798.65
	1250 cases	2216.95		19,996.89

Rate of Duty $9.02

EXPORT

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 17 1924
Belleville, Ont.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 16 1924
Belleville, Ont.

Exhibit No. 2E
Excise Bond
for $39,994.00
signed by
Appellants
in favour of
Respondent,
15th October,
1924.

and which goods are now deposited in Bonded Warehouse No..... at Thurlow in the Port of Belleville under the provisions and regulations of the " Inland Revenue Act."

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at.....aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within.....days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of.....then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED

Per GEO. HUTSON (Attorney) [L.S.]

W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of

M. SPRAGUE

Exhibit No. 2F Excise Bond for $96,228.00 signed by Appellants in favour of Respondent, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 2 F

3027

A. 16
Inland Revenue
25,000-2-19.

Rev. Stat. 1906.
Chap. 51.

EXCISE

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

48,114.00
2
96,228.00

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, of the same place, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Ninety-six thousand two hundred and twenty-eight dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 15th day of October, in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) La Libertad, San Salvador, in the(5) S.S. ..... whereof ..... is master(6)

2/593-10-24 324 pkgs. @ 10.0—3240.00 gals. @ 65..... 5346.00 48,114.00

1/324

Rate of Duty $9.00

EXPORT

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 16 1924
Belleville, Ont.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 17 1924
Belleville, Ont.

and which goods are now deposited in Bonded Warehouse No..... at Thurlow, in the Port of Belleville, under the provisions and regulations of the " Inland Revenue Act."

Exhibit No. 2F Excise Bond for $96,228.00 signed by Appellants in favour of Respondent, 15th October, 1924.

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at .....aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within .....days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of .....then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED

Per GEO. HUTSON (Attorney) [L.S.]

W. J. HUME [L.S.]

Signed, sealed and delivered
in the presence of

M. SPRAGUE

Exhibit No. 2G Excise Bond for $96,228.00 signed by Appellants in favour of Respondent, 15th October, 1924.

RESPONDENT'S EXHIBIT NO. 2 G

3028

A. 16
Inland Revenue
25,000-2-19.

Rev. Stat. 1906.
Chap. 51.

EXCISE

Bond to be given by the EXPORTER of Spirits, Malt, Tobacco and other Goods subject to Excise.

CANADA

(1) The names of the persons entering the goods and one surety in full, their residence and occupation, or calling.

(2) Double the amount of duty due on the Goods to be set down in words and not in figures.

48,114.00
2

96,228.00

KNOW ALL MEN BY THESE PRESENTS that We,(1) Consolidated Distilleries Limited, Township of Thurlow, County of Hastings, Province of Ontario, and W. J. Hume, of the same place, are held and firmly bound unto Our Sovereign Lord the King, His Heirs and Successors in the sum of(2) Ninety-six thousand two hundred and twenty-eight dollars, currency money of Canada, to be paid to our said Lord the King, His Heirs and Successors, and for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, for and in the whole, Our Heirs, Executors and Administrators, and every of them, firmly by these Presents, sealed with our Seals, dated this 15th day of October, in the fourteenth year of His Majesty's Reign, and in the year of Our Lord one thousand nine hundred and twenty-four.

(3) Persons making the entry.

(4) Place of destination.

(5) Vessel and Master's name, or railroad.

(6) Here designate the marks, number and contents of packages.

WHEREAS, the above bounden(3) Consolidated Distilleries Limited hath given notice of intention to export to(4) La Libertad, San Salvador, in the(5) S.S. ..... whereof ..... is master(6)

2/593-10-24 324 pkgs. @ 10.0—3240.00 gals. @ 65..... 5346.00 48,114.00

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 17 1924
Belleville, Ont.

(Stamp)
CUSTOMS—EXCISE—CANADA
Long Room
Oct. 16 1924
Belleville, Ont.

and which goods are now deposited in Bonded Warehouse No..... at Thurlow, in the Port of Belleville, under the provisions and regulations of the " Inland Revenue Act."

Exhibit No. 2G Excise Bond for $96,228.00 signed by Appellants in favour of Respondent, 15th October, 1924.

NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS SUCH that if the said Goods and every part thereof, shall be duly shipped, and shall be exported and entered for consumption or for Warehouse at .....aforesaid, and if proof of such exportation and entry shall, in accordance with the requirements of the Warehousing Regulations in that behalf, be adduced within .....days from the date hereof, to the satisfaction of the said Collector of Inland Revenue for the division of Belleville or if the above bounden Consolidated Distilleries Limited shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of .....then this obligation to be void, otherwise to be and remain in full force and virtue.

CONSOLIDATED DISTILLERIES LIMITED

Per GEO. HUTSON (Attorney) [L.S.]

W. J. HUME [L.S.]

Signed, sealed and delivered in the presence of

M. SPRAGUE

EXHIBITS 3B TO 3G

Exhibits 3B to 3G Requisitions for permits covering the six other shipments in question omitted by consent of the parties.

Requisitions for permits covering the six other shipments in question omitted by consent of the parties.

Exhibit No. 22
Report outwards of Steamship "Malahat", 15th November, 1924.

RESPONDENT'S EXHIBIT NO. 22

REPORT OUTWARDS—Port of Vancouver, B.C.

Report No. 1291

In the S.S. " Malahat ", registered tonnage 1544, registered in Port of Vancouver, B.C., with 22 men, Capt. George Murray, Master for this present voyage for La Libertad, San Salvador, cargo 609 tons weight.

SHIPPERS	Quantity and Description of Goods	Weight or Measurement	Consignee	Manifest Rec. Port No. or Export Entry No.
Consolidated Exporters Corp. Ltd.	500 cs. Grants whisky	22,000	John Douglas & Co., La Libertad, San Salvador	2828
	500 " K. William whisky	22,000		*R3666*
	1250 " whisky	55,000	*R8965*	13613
	1150 " whisky	50,600	*R8967*	13614
	1250 " whisky	55,000	*R8966*	13615
	1250 " whisky	55,000	*R8964*	13616
	324 " spirits	22,680	*R8968*	13617
	324 " spirits	22,680	*R8969*	13618
	352 " spirits	22,680	*R8970*	13619
	700 " whisky	28,000	*R8679*	13620
	50 " wines	2,500		13526
	5 " Hhgds whisky	2,680	*Ex Ware House Entry 36677A to 36676A*	
	66 " Dewars whisky	2,904		
	234 " Dewars whisky	12,296		
	2 " Liqueurs	120		
	5 " Liqueurs	300		
	46 " Trains whisky	2,204		
	381 " Old Store whisky	21,164		
	224 " Old Priory whisky	9,856		
	17 " Old Priory whisky	748		
	37 " Stenhouse whisky	1,628		
	94 " Old Taylor whisky	4,136		13527
	143 " Trains whisky	6,292		
	48 " Stenhouse whisky	2,112		
	3 " Punch Rum	3,176		
	300 " McCallums whisky	13,200		
	199 " Walkers whisky	8,800		
	498 " Dewars whisky	21,982		
	467 " Grants SF whisky	20,548		
	398 " K. George whisky	17,560		
	295 " Sandy Mac whisky	12,980		
	200 " Wh. Horse whisky	8,800		
	500 " Grants BP whisky	22,000		
	109 " Brandy	4,520	*Ex Ware House Entry 36677A to 36676A*	
	11 " Liqueurs	660		
	1 " Liqueurs	60		
	12 " Vermouth	720		
	17 " Liqueurs	1,020		
	324 " BL Gold whisky	14,256		
	100 " Vermouth	6,000		
	31 " Wines	1,860		
	9 " Liqueurs	540		
	24 " Liqueurs	1,420		
	16 " Liqueurs	960		13528
	2 " Liqueurs	60		
	13 " Liqueurs	780		
	12 " Liqueurs	720		
	16 " Liqueurs	960		
	50 " Absinthe	3,000		
	12 " Liqueurs	720		
	15 " Wines	900		
	15 " Sherry	900		
	15 " Liqueurs	900		
	20 " Liqueurs	1,200		
	49 " Wines	2,940		

Exhibit No. 22
Report outwards of Steamship "Malahat", 15th November, 1924.

SHIPPERS	Quantity and Description of Goods	Weight or Measurement	Consignee	Manifest Rec. Port No. or Export Entry No.
Consolidated Exporters Corp. Ltd.	69 " Liqueurs	4,140	John Douglas & Co., La Libertad, San Salvador	
	496 " Dewars whisky	22,680		
	3 " Punch Rum	3,032		
	25 " McCallums whisky	1,100		
	491 " McCallums whisky	21,604		
	374 " McCallums whisky	17,996		13529
	496 " Cattos whisky	21,680		
	497 " Grants whisky	21,722		
	394 " Trains whisky	17,544		
	200 " Hilltop whisky	8,800		
	200 " Gordons Gin	8,800		
	3 bbls Port wine	1,016	*Ex W. House Entry 35577A to 35676A*	
	12 " Brandy	2,896		
	4 " Hhgds sherry	1,824		
	5 casks Port wine	2,160		13530
	200 cs. Teachers whisky	8,800		
	650 " Teachers whisky	28,600		
	200 " Satin Gin	8,800		
	35 " Wine	1,800		
	1948 " whisky	107,712	*Ex Ware House Entry 35577A to 35676A*	
	50 " Lawsons whisky	2,200		
	33 " Wine	1,980		
	85 " Spey Royal whisky	3,740		
	52 " Cattos whisky	2,288		
	84 " Liqueurs	5,040		
	22 " Lawsons whisky	968		
	29 " Grd. Marnier	1,740		
	58 " Liqueurs	3,480		
	10 " Wines	600		
	182 " Gilbeys whisky	8,008		
	68 " Brandy	2,992		13531
	239 " Wines	14,340		
	33 " Liqueurs	1,980		
	24 " Brandy	1,440		
	5 " Wines	300		
	200 " Champagne	14,000		
	117 " Gin	5,148		
	145 " Rum	6,380		
	100 " Champagne	7,000		
	65 " Bl. & White whisky	2,860		
	500 " Chinese wine	40,000		
	277 " Cattos whisky	12,188		
	348 " W. & McKay whisky	15,312		
	98 " Cattos whisky	4,312		
	600 " Champagne	36,000		
	298 " Benedictine	17,880		
	150 " Brandy	9,000		13532
	649 " W. & McKay whisky	28,556		
	298 " Champagne	17,880		
	400 " Vermouth	24,000		
	300 " Gin	13,200		
	10 " Liqueurs	600		
	15 " Wines	900		
Rainer Brewing Co. Ltd.	1000 bbls Beer	110,000		13517

I, GEORGE MURRAY, Master, Purser or Agent 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

Exhibit No. 22 Report outwards of Steamship "Malahat", 15th November, 1924.

laden on board the above stated Vessel for this present voyage, and of the names of the respective Shippers and description of the Goods and the Marks and Numbers of the Packages containing the same.

GEO. MURRAY,
Master.

Signed and Declared before me at the Custom House, Port of Vancouver, B.C., this 15th day of November, 1924.

A. G. JOHNSTONE,
Collector.

(Stamp)
CUSTOMS—EXCISE—CANADA
Record Room
Nov 15 1924
Vancouver, B.C.

Exhibit No. 4A3 Landing Certificate, 23rd December, 1924.

RESPONDENT'S EXHIBIT NO. 4 A 3

LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 2

Entry No. 2998

Port of Belleville, Oct. 15th, 1924.
Manufactured by Canadian Industrial Alcohol Co. of Thurlow.
Warehoused by Consolidated Distilleries Ltd. of Thurlow and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
2/593-10-24	352 pkgs. @ 10.0	—3520.00 gals. @ 65.....	5808.00	9.00	53,272.00

649/1000

EXPORT

Checked and sealed in car No. G.T.P. 301654.
Date October 15, 1924.

A. R. M. HALL,
Customs and Excise Examiner.

Exhibit No. 4A
Landing Certificate, 23rd December 1924.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON,
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Received the aforementioned goods on board the S.S. . . . . for exportation to John Douglas & Co., La Libertad, San Salvador.

. . . . . .
(Master, Mate or Agent)

I, WILLIAM GIBSON, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of La Libertad in the Republic of Salvador and have been duly delivered over to the Customs.

Witness my hand and seal of office, this twenty-third day of December, 1924.

WM. GIBSON,
British Vice-Consul.

(Stamp)
British Consulate
San Salvador

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

(Three Consular Service Stamps of British Consulate, San Salvador, dated 23rd December, 1924, attached to document.)

Exhibit No. 4B3 Landing Certificate, 23rd December, 1924.

RESPONDENT'S EXHIBIT NO. 4 B 3

LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 3023

Port of Belleville, Oct. 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal 1195/8.24.8.24	25 cases @ 1.88—	47.00 gals. @ 20.8....	37.22	9.02	335.72
Bal 1252/8.24.9.24	27 cases @ 1.88—	50.76 gals. @ 20.8....	40.20	9.02	362.60
1247/9.24.9.24	1198 cases @ 1.88—	2252.24 gals. @ 20.8....	1783.77	9.02	16,089.61
	1250 cases		1861.19		16,787.93

EXPORT

Checked and sealed in car No. G.T. 25049.

Date Oct. 15/1924.

WM. I. COLE,
Customs and Excise Examiner.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON,
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Received the aforementioned goods on board the Steamer .....for exportation to John Douglas & Co., La Libertad, San Salvador.

.....
(Master, Mate or Agent)

Exhibit No. 4B3 Landing Certificate, 23rd December, 1924.

I, WILLIAM GIBSON, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of La Libertad in the Republic of Salvador and have been duly delivered over to the Customs.

Witness my hand and seal of office, this twenty-third day of December, 1924.

WM. GIBSON,
British Vice-Consul.

(Stamp)
British Consulate
San Salvador

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

(Three Consular Service Stamps of British Consulate, San Salvador, dated 23rd December, 1924, attached to document.)

RESPONDENT'S EXHIBIT NO. 4 C 3

Exhibit No. 4C3 Landing Certificate, 23rd December, 1924.

LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4
Entry No. 3024

Port of Belleville, October 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. Ltd. of Thurlow.

Warehoused by Consolidated Distilleries Limited of Thurlow and now entered for exportation to La Libertad, San Salvador, via Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
1307/10.24-10.24	1150 cases @ 2.40—276.00 gals. @ 20.8.....		2185.92	9.02	19.717.00

Exhibit No. 4C3
Landing
Certificate,
23rd December,
1924.

EXPORT

Checked and sealed in car No. G.T. 107956.
Date October 15th, 1924.

WM. I. COLE,
Customs and Excise Examiner.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON,
(Signature of Owner or Agent)

Sworn to before me this 15th
day of October, 1924.

M. SPRAGUE,
Collector.

Received the aforementioned goods on board the Steamship .....for exportation to John Douglas & Co., La Libertad, San Salvador.

.....
(Master, Mate or Agent)

I, WILLIAM GIBSON, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of La Libertad in the Republic of Salvador and have been duly delivered over to the Customs.

Witness my hand and seal of office, this twenty-third day of December, 1924.

WM. GIBSON,
British Vice-Consul.

(Stamp)
British Consulate
San Salvador

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any

principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any Officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

Exhibit No. 4C3 Landing Certificate, 23rd December, 1924.

(Three Consular Service Stamps of British Consulate, San Salvador, dated 23rd December, 1924, attached to document.)

10

RESPONDENT'S EXHIBIT NO. 4 D 3

Exhibit No. 4D3 Landing Certificate, 23rd December, 1924.

LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4

Entry No. 3025

20

Port of Belleville, Oct. 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal					
1228/ 9.24. 9.24	13 cases @ 2.02—	26.26 gals. @ 12.2.....	23.05	9.02	207.91
30 1304/10.24.10.24	137 cases @ 2.02—	276.74 gals. @ 12.2.....	242.98	9.02	2191.68
Bal					
1247/ 9.24. 9.24	711 cases @ 1.88—	1336.68 gals. @ 2.08.....	1058.65	9.02	9549.02
1308/10.24.10.24	289 cases @ 1.88—	543.32 gals. @ 2.08.....	430.31	9.02	3881.40
1307/10.24.10.24	100 cases @ 2.40—	240.00 gals. @ 2.08.....	190.08	9.02	1714.52
	1250 cases		1945.07		17,544.53

EXPORT

Checked and sealed in car No. C.N. 87694.

Date Oct. 15, 1924.

WM. I. COLE,

40 Customs and Excise Examiner.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste

Exhibit No. 4D3 Landing Certificate, 23rd December, 1924.

and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON,
(Signature of Owner or Agent)

Sworn to before me this 15th
day of October, 1924.

M. SPRAGUE,
Collector.

Received the aforementioned goods on board the S.S.....
for exportation to John Douglas & Co., La Libertad, San Salvador.

.....
(Master, Mate or Agent)

I, WILLIAM GIBSON, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of La Libertad in the Republic of Salvador and have been duly delivered over to the Customs.

Witness my hand and seal of office, this twenty-third day of December, 1924.

WM. GIBSON,
British Vice-Consul.

(Stamp)
British Consulate
San Salvador

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

(Three Consular Service Stamps of British Consulate, San Salvador, dated 23rd December, 1924, attached to document.)

Exhibit No. 4E3 Landing Certificate, 23rd December, 1924.

RESPONDENT'S EXHIBIT NO. 4 E 3

LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 4
Entry No. 3026

Port of Belleville, Ont., Oct. 15, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
Bal					
1230/ 9.24. 9.24	535 cases	@ 2.02—1080.70 gals. @ 12.2.....	948.85	9.02	8558.63
1300/10.24.10.24	165 cases	@ 2.02— 333.30 gals. @ 12.2.....	292.64	9.02	2639.61
1228/ 9.24. 9.24	550 cases	@ 2.02—1111.00 gals. @ 12.2.....	975.46	9.02	8798.65
	1250 cases		2216.95		19,996.89

EXPORT

Checked and sealed in car No. G.T.P. 303775.
Date Oct. 15, 1924.

WM. I. COLE,
Customs and Excise Examiner.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON,
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Received the aforementioned goods on board the Steamer ..... for exportation to John Douglas & Co., La Libertad, San Salvador.

.....
(Master, Mate or Agent)

Exhibit No. 4E3 Landing Certificate, 23rd December, 1924.

I, WILLIAM GIBSON, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of La Libertad in the Republic of Salvador and have been duly delivered over to the Customs.

Witness my hand and seal of office, this twenty-third day of December, 1924.

WM. GIBSON,
British Vice-Consul.

(Stamp)
British Consulate
San Salvador

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

(Three Consular Service Stamps of British Consulate, San Salvador, attached to document.

Exhibit No. 4F3 Landing Certificate, 23rd December, 1924.

RESPONDENT'S EXHIBIT NO. 4 F 3

LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 2
Entry No. 3027

Port of Belleville, Oct. 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow and now entered for exportation to La Libertad, San Salvador, by Vancouver.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
2/593-10-24	324 pkgs.	@ 10.0—3240.00 gals. @ 65.....	5346.00	9.00	48,114.00

325/648

Exhibit No. 4F3
Landing Certificate, 23rd December, 1924.

EXPORT

Checked and sealed in car No. G.T.P. 303018.
Date Oct. 15, 1924.

A. R. M. HALL,
Customs and Excise Examiner.

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality, waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON,
(Signature of Owner or Agent)

Sworn to before me this 15th day of October, 1924.

M. SPRAGUE,
Collector.

Received the aforementioned goods on board the Steamer .....for exportation to John Douglas & Co., La Libertad, San Salvador.

.....
(Master, Mate or Agent)

I, WILLIAM GIBSON, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of La Libertad in the Republic of Salvador and have been duly delivered over to the Customs.

Witness my hand and seal of office, this twenty-third day of December, 1924.

WM. GIBSON,
British Vice-Consul.

(Stamp)
British Consulate
San Salvador

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any

Exhibit No. 4F3 Landing Certificate, 23rd December, 1924.

principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

(Three Consular Service Stamps of British Consulate, San Salvador, dated 23rd December, 1924, attached to document.)

10

Exhibit No. 4G3 Landing Certificate, 23rd December, 1924.

RESPONDENT'S EXHIBIT NO. 4 G 3

LANDING CERTIFICATE

CANADA—EXCISE

ENTRY FOR EXPORT EX-WAREHOUSE NO. 2

20

Entry No. 3028

Port of Belleville, October 15th, 1924.

Manufactured by Canadian Industrial Alcohol Co. of Thurlow.

Warehoused by Consolidated Distilleries Ltd. of Thurlow and now entered for exportation to La Libertad, San Salvador, by Vancouver, B.C.

Marks and Numbers	No. of Pkgs.	Description of Goods	Quantity	Rate of Duty	Amount of Duty
2/593-10-24	324 pkgs. @ 10.0	—3240.00 gals. @ 65.....	5346.00	9.00	48,114.00
1/324					

30

EXPORT

Checked and sealed in car No. C.N. 88586.
Date Oct. 15, 1924.

A. R. M. HALL,
Customs and Excise Examiner.

40

I, GEO. HUTSON, do solemnly and truly swear that the goods herein described are truly intended to be exported under Bond to the Port of La Libertad, in San Salvador, without the limits of the Dominion of Canada; and are not intended to be relanded within the limits of the said Dominion; and that to the best of my knowledge and belief the said goods are the same in quantity and quality,

Exhibit No. 4G3 Landing Certificate, 23rd December, 1924.

waste and damage excepted, as at the time warehoused, and that any deficiency therein has been accounted for according to law.

GEO. HUTSON,
(Signature of Owner or Agent)

Sworn to before me this 15th
day of October, 1924.

M. SPRAGUE,
Collector.

Received the aforementioned goods on board the Steamer .....for exportation to John Douglas & Co., La Libertad, San Salvador.

.....
(Master, Mate or Agent)

I, WILLIAM GIBSON, do hereby certify that the same identical goods described and contained in the within Export Entry have been landed at the port of La Libertad in the Republic of Salvador and have been duly delivered over to the Customs.

Witness my hand and seal of office, this twenty-third day of December, 1924.

WM. GIBSON,
British Vice-Consul.

(Stamp)
British Consulate
San Salvador

NOTE:—If the goods are exported to Great Britain or any British Colony or Possession, this Certificate may be signed by any principal Officer of Customs or of Colonial Revenue at the place to which the goods are exported, or if such goods are exported to any place in any foreign country, it may be signed by any officer of Customs therein, or any British or foreign Consul or Vice-Consul resident there.

(Three Consular Service Stamps of British Consulate, San Salvador, dated 23rd December, 1924, attached to document.)

Exhibit No. 18
Bill of Health,
23rd December,
1924.

RESPONDENT'S EXHIBIT NO. 18

(Coats of Arms)

(Stamp)
Department of Health
No. 306
Quarantine Service
Aug 18/1925
CANADA

(Five Consular Service Stamps of British Consulate, San Salvador, dated 23rd December, 1924)

BILL OF HEALTH

To all whom these Presents shall come,

I, WILLIAM GIBSON, British Vice-Consul at San Salvador, Central America, send greeting:

WHEREAS the British Vessel called the "Malahat". whose Master is George E. Murray, is about to sail from the Port of La Libertad, Salvador, on this 31st day of December, in the Year of our Lord One thousand nine hundred and twenty-four, and from thence for Vancouver, B.C., and other places beyond the Seas, with Twenty-two Persons on Board including the said Master and Passengers.

Now, Know ye that I, the said Vice-Consul, do hereby make it known to all Men, that at the time of granting these presents no Plague, Epidemic Cholera, Yellow Fever, nor any dangerous or contagious disorder exists in the above Port or neighbourhood. In testimony whereof I have hereunto set my Name and Seal of Office, on the Day and Year aforesaid.

WM. GIBSON,
British Vice-Consul.

Given in His Britannic Majesty's Consulate
at San Salvador on the 23rd day of December,
in the Year of Our Lord 1924.

(Stamp)
British Consulate
San Salvador

Exhibit No. 17
Permission in
Spanish to
S.S. Malahat
and translation
of same,
31st December,
1924.

RESPONDENT'S EXHIBIT NO. 17

6702

REPUBLICA DE EL SALVADOR

Senor Comandante de este puerto,
Presente.

Estando listo para continuar su viaje con destino a Vancouver,

Exhibit No. 17
Permission in Spanish to S.S. Malahat and translation of same, 31st December, 1924.

B.C., el vapor " Malahat ", su capitan George Murray, AU. ruego mandar extender el permiso de ley.

La Libertad, 31 de Diciembre, de 1924.

Por la Agencia Salvadorena

JUAN HERRERA
Solvente

(Stamped)
Comandancia y Capitania
Republica de el Salvador C.A.
Del Puerto de La Libertad

Informe el senor
Administrador de Aduana
Fecha ut supra
Zarpe
F. DIAZ

6702

(Stamp)
CUSTOMS-EXCISE-CANADA
Record Room
Aug 19 1925
Vancouver, B.C.

TRANSLATION OF RESPONDENT'S EXHIBIT NO. 17

6702

REPUBLIC OF SALVADOR

Mr. Commander of this Port,
Present.

Being ready to continue her voyage to the destination of Vancouver, B.C., the boat " Malahat ", with Captain George Murray, pray you to extend or grant the permission of the law.

La Libertad, 31st of December, 1924.

Per the Agency Salvador

Sgd. JUAN HERRERA.

(Stamped)
Commanded and Captained
from the Post of La Libertad,
Republic of Salvador, C.A.

Information of the Administrator
of Customs
Sgd. F. DIAZ

6702

Exhibit No.8 Letter: Canadian Mexican Shipping Co. Ltd. to Consolidated Distilleries Ltd., Vancouver, 14th January, 1925.

RESPONDENT'S EXHIBIT NO. 8, LETTER

THE CANADIAN MEXICAN SHIPPING CO. LTD.

Vancouver, B.C., January 14th, 1925.

Messrs. Consolidated Distillers Ltd.,
Granville Island,
Vancouver, B.C.

Dear Sirs:—

We enclose herewith Customs Export Entires, covering shipment via the S.S. " Malahat ".

You will note that these have been duly executed by the British Consul at La Libertad, Salvador.

Kindly acknowledge receipt and oblige.

Yours faithfully,

THE CANADIAN MEXICAN SHIPPING CO. LTD.

Per RUSSELL WHITELAW.

RW/FJ.

Exhibit No. 7 Letter: Consolidated Distilleries Ltd., Corbyville, to E. A. Geen, Collector of Customs and Excise, 21st January, 1925.

RESPONDENT'S EXHIBIT NO. 7, COPY OF LETTER

CONSOLIDATED DISTILLERIES LIMITED

Corbyville, Ontario, Canada,
January 21st, 1925.

E. A. Geen, Esq.,
Collector of Customs and Excise,
Belleville, Ontario.

Dear Sir:—

Herewith we enclose foreign Landing Certificate covering shipment of 4,900 cases and 1,000 packages, on October 15th last to John Douglas & Company, La Libertad, San Salvador.

Kindly notify us immediately on cancellation of the Bonds covering these shipments.

Yours very truly,

CONSOLIDATED DISTILLERIES LIMITED.

Sgd. GEO. HUTSON,
Order and Excise Section.

RESPONDENT'S EXHIBIT NO. 19, COPY OF LETTER

Exhibit No. 19
Letter:
E. A. Geen to
Consolidated
Distilleries Ltd.,
Corbyville,
28th January,
1925.

Belleville, Ontario,
January 28th, 1925.

The Manager of
Consolidated Distilleries, Ltd.,
Corbyville, Ontario.

Dear Sir,—

I beg to acknowledge the receipt of your communication of the 21st instant enclosing landing certificates, covering a shipment of 4900 cases and 1000 packages of spirits consigned to John Douglas & Co., La Libertad, San Salvador, on October 15th last.

The bonds covering the above shipments have been cancelled.

Yours very truly,

E. A. G.,
Collector of Customs and Excise.

EAG/Q.

RESPONDENT'S EXHIBIT NO. 20, COPY OF LETTER

Exhibit No. 20
Letter:
Collector of
Customs and
Excise,
Belleville, to
W. J. Hume,
Corbyville,
6th June, 1925.

Belleville, Ontario,
June 6th, 1925.

W. J. Hume, Esq.,
Distillery Manager,
Corbyville, Ont.

Dear Sir,—

I beg to advise you that I am in receipt of a communication from the Department instructing me to call upon your firm for the payment of duty under Export Bonds given in connection with entries detailed as follows:—

Sept. 9, 1924	Steamship "Quadra"	1000 cases
" "	" "	400 kegs
Oct. 25, 1924	" "Coal Harbour"	700 cases
" "	" "	1000 "
Nov. 15, 1924	" "Malahat"	1250 "
" "	" "	1150 "
" "	" "	1250 "
" "	" "	1250 "
" "	" "	324 kegs
" "	" "	324 "
" "	" "	352 "

Exhibit No. 20 Letter: Collector of Customs and Excise, Belleville, to W. J. Hume, Corbyville, 6th June, 1925.

The Department state that they are in receipt of information that none of the vessels mentioned above had called at any Salvadorean port during the period extending back to the beginning of the year 1924.

In referring to my letters of January 28th, 7th, /25 and November 21st, 1924, I note that you were informed that the bonds covering the shipments, in question, were cancelled but as the landing certificates are at the Department in Ottawa I am unable to state whether the certificates appear irregular.

Yours very truly,

Collector of Customs and Excise.

Exhibit No. 21 Circular of Department of Customs and Excise, containing the general warehousing regulations, 15th April, 1924.

RESPONDENT'S EXHIBIT NO. 21

No. 327C

CIRCULAR

DEPARTMENT OF CUSTOMS AND EXCISE, CANADA

Ottawa, April 15, 1924.

To Collectors of Customs and Excise:

WAREHOUSING GOODS LIABLE TO DUTY OF EXCISE

GENERAL WAREHOUSING REGULATIONS

The following Regulations have been approved by Orders in Council of the 9th January, 1889, 23rd January, 1895, and 24th December, 1921.

R. R. FARROW,
Commissioner of Customs and Excise.

REGULATIONS

1. All applications for the establishment of a warehouse for Excise purposes, must be made in writing by the party requiring it, on such form as the Department may prescribe, and every such application must fully and minutely describe the premises, with their exact locality.

Exhibit No. 21 Circular of Department of Customs and Excise, containing the general warehousing regulations, 15th April, 1924.

2. On receipt of such an application the Collector of Customs and Excise will survey the premises, and if satisfied that they are suitable for the purpose, and that they afford the requisite protection to the Revenue, and on their being supplied with suitable locks, he will report the facts to the Inspector of the District who will recommend the issue of the license and forward the application to the Department for authorization.

3. The door of every such warehouse shall be provided with two locks, one of which will be supplied to the Collector by the Department upon requisition being made therefor, and the key of which shall be kept by the Collector, and the other provided by the owner of the goods who shall retain the key thereof; and should there be more doors than one, all other doors and all windows and other means of ingress shall be fastened on the inside in a secure manner and to the satisfaction of the surveying officer.

4. When any warehouse has been surveyed and accepted as an Excise bonding warehouse and licensed as such, it shall be designated by a letter of the alphabet; bonding warehouses in connection with a licensed manufactory shall be designated by a number.

5. Over the principal entrance to every warehouse approved for Excise purposes there shall be placed the following designation:—

EXCISE
G. R.
BONDING WAREHOUSE

With its designating letter or number, the whole being in legible characters, painted in oil colours and not less than three inches in height.

6. Every package entered for warehouse must (in addition to all other marks and numbers) be distinctly marked to the satisfaction of the Collector, with the number of the entry and the date when originally warehoused, except that in the case of cigars the entry number may be omitted. In the case of spirits the above marks shall be written or stencilled on the package in oil paint. The date will be sufficiently indicated by the number of the month and the last two numerals of the year in which the entry was made:—Thus, goods entered on the 20th January, 1883, may be dated 1-83, showing that the entry was made in the first month of the solar year, 1883, or if 20th November, 1883, dated 11-83. All goods in any warehouse, except in the case of cigars, must also be so stowed or arranged that casks, boxes or packages, contained or described in one entry are placed consecutively and together in separate lots as provided by

Exhibit No. 21 Circular of Department of Customs and Excise, containing the general warehousing regulations, 15th April, 1924.

law. Cigars shall be stowed or arranged in warehouse in lots according to the denomination of the packages. The packages must also be stowed or arranged that ample space will be left so that each package and the marks and numbers thereon can be examined. Officers of Customs and Excise may refuse subsequent entries for warehouse when these regulations as to arranging and stowing packages are not complied with.

7. (1) All entries are to be numbered consecutively;

(2) As license bonds are now made to cover the duty on goods remaining in warehouse from time to time during the currency of that license, the taking of warehouse bonds with each warehousing is dispensed with.

8. No entry shall be passed for warehouse, or ex-warehouse, upon any authorized holiday, nor before the hour of nine o'clock in the morning, nor after five o'clock in the afternoon.

9. All entry papers, bonds, notices and other documents herein required shall be made out and signed by the owner of the goods to which they relate, or in his name by his duly authorized attorney, and all packages shall be marked and numbered as herein required by the owner or his agent.

10. Entry of goods for warehouse must in all cases be made on the forms sanctioned by the Department, and every such entry shall contain a full and complete specification of the goods so entered, stating:

(*a*) The number and description of packages.

(*b*) Marks and numbers.

(*c*) Contents of each in pounds, gallons or number; and in the case of spirits, the contents are also to be stated in gallons of the strength of proof.

(*d*) The duty on the goods so entered for warehouse.

Every cask, barrel or package containing goods shall be whole and entire at the time it is warehoused.

11. Every warehouse entry shall be in duplicate.

ENTRY OF GOODS EX-WAREHOUSE FOR EXPORTATION

12. Goods subject to duties of Excise shall only be exported in bond from a port where there is an officer of Customs, and only to

British or foreign ports of entry where there are Collectors or other officers of the Government having similar functions and when ex-warehoused for exportation may be such quantity as exporter or manufacturer respectively may require, within the discretion of the Collector but nothing less than the contents of one whole package.

13. Goods can only be entered for exportation in bond ex-warehoused from a warehouse within the limits of the port at which they are actually laden on the ship, car or other vehicle in which they are handed over to the Customs by warrant for shipment.

14. All casks, boxes, bales or other packages of goods entered for exportation shall, before leaving the warehouse, be conspicuously branded by the person entering the same ex-warehouse, and under the personal supervision of the officer in charge, with the letters EXPN, and any further information that may be required in any specific case or cases.

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.

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.

" 17. Where the Port at which the goods are entered for exportation ex-warehouse is not also the Port of exportation, the Collector shall cause one copy of the entry for exportation ex-warehouse (B 54) to be promptly mailed to the Collector at the Port of Exit where such goods are shipped for exportation out of Canada; and in all cases, upon exportation of the goods, the Collector at the Port of Exit aforesaid shall record on the face of the entry for exportation ex-warehouse (B 54).

(1) The date when said goods were exported.

(2) The name of railway or vessel exported upon, and, if by railway, the initials and number of the car exported in.

Exhibit No. 21 Circular of Department of Customs and Excise, containing the general warehousing regulations, 15th April, 1924.

(3) The quantity and description of goods (including the serial numbers of the packages) so exported.

(4) The number of Customs export entry (B-13) upon which such goods were exported out of Canada.

One copy of export entry (B-13) shall then, where the Port of Exit is not also the Port of entry ex-warehouse, be dated, signed and promptly mailed addressed to the Collector at the Port of entry ex-warehouse.

In all cases 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, such evidence of exportation of the goods as is above herein provided for, shall operate as a cancellation of the bond, notwithstanding the actual terms of the obligation of the bond.

In all other cases the bond shall not be cancelled, unless:

(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 the goods were actually landed and left at some place (naming it) out of Canada, as provided by the said bond; or,

(2) Within the period of three months from the date of the 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.

Where a shortage occurs in goods so forwarded, ex-warehouse for exportation, and same are not accounted for by exportation from out of Canada to the Department of Customs and Excise on Export Entry No. B-13, it is the duty of the Collector of Customs and Excise at the Frontier Port where such goods were short received for exportation, to notify the Collector of Customs and Excise of the Port from which such goods were shipped for exportation, when the Collector of Customs and Excise for said Port shall require the consignor to pass Entry, and pay the lawful duty payable upon the goods short delivered at the Frontier Port, in accordance with the regulations contained in Departmental Circular No. G. 797."

INSTRUCTIONS

Additional to the instructions contained in Section 17 as above established, the Collector at the Port of exportation from Canada shall when forwarding copy of export entry (B-13) to the Collector at the Port of entry ex-warehouse, attach thereto the copy of the entry for exportation ex-warehouse (B 54) received by him, after recording thereon the items (1), (2), (3) and (4) as set out.

18. The entry ex-warehouse for exportation shall in all cases be made in triplicate with the Collector of Customs and Excise who shall also take the export bond, and the copy forwarded to the Department shall bear on its face the certificate of an officer of Customs and Excise, that he has examined the goods, such certificate being made in the form given in Schedule A to these Regulations.

19. Two copies of the entry together with a warrant to ship (C 52) shall be sent to the Collector of Customs and Excise at the port where the goods were laden in the vessel, car or other vehicle in which they are to leave the Port, who, on receipt thereof, shall grant a warrant for the lading of the goods described in the entry on the railway or vessel mentioned therein.

20. So soon as the goods have been duly laden, the Collector of Customs and Excise shall certify the fact on the entry paper, one copy whereof shall be filed at the Custom House, and the other returned to the Collector of the Port whence the goods were shipped.

21. The Collector of Customs and Excise at the Port will in each case be charged with the responsibility of seeing them placed on board ship, car or other vehicle in which they are to be exported, and must satisfy himself that they correspond with the description contained in the entry, and especially with reference to spirits, that they are of the strength specified.

ENTRY OF GOODS FOR REMOVAL EX-WAREHOUSE IN BOND

22. Entries for goods for removal ex-warehouse are to be made in triplicate, with detailed specifications, as in export entries, two copies of which are to be forwarded to the Collector of the Port to which the goods are consigned.

23. The least quantity of such goods that can be ex-warehoused for removal or transfer in bond shall be that quantity which can at the receiving point, be legally warehoused as prescribed by law; in

Exhibit No. 21 Circular of Department of Customs and Excise, containing the general warehousing regulations, 15th April, 1924.

case of a licensed Bonded Factory no less quantity of spirits can be removed in Bond, than thirty proof gallons, or the contents of one barrel.

24. Goods can only be entered for removal ex-warehouse to another licensed warehouse within the limits of a warehousing port of entry, or to an Excise bonding warehouse previously licensed in another Port, and when shipped to the order of the Collector of Customs and Excise, the bond of the manufacturer or merchant for the removal of goods to warehouses in other Ports upon the prescribed form will now be used in lieu of those required when not so shipped, upon the following conditions, viz:—

(*a*) Goods so removed to be consigned to the order of the Collector of the Port to which they are to be removed, and in case in which permits are by law required for the removal of such goods, the permits shall in all cases state that the goods to which they refer are to be so consigned.

(*b*) The receipt given by the Agent of the Railway Company (or other public carrier), usually known as the " Bill of Lading," is to be made out correspondingly, and is to be placed in the hands of the Collector of the Port whence the goods are to be shipped, and by him transmitted to the Collector of the Port to which they are to be removed.

(*c*) The Collector upon being advised of their arrival, shall immediately notify the party for whom intended, and after they have been examined by the proper officer and found to be in accordance with the removal papers, and after the duties to which such goods are liable have been paid or the warehouse entry passed therefor, the Collector of Customs and Excise will write across the face of the Bill of Lading:

" *Deliver to C.D. upon payment of freight and charges.*

" E———— F————,
Collector."

(*d*) Collectors are particularly notified that all orders for the delivery of goods must be made expressly and in writing, " *subject to the payment of freight and charges,*" or they may, by the omission to specify such conditions, render themselves personally liable to the Company for such payment in the event of default.

(*e*) The requisitions for a permit to remove spirits under § (*a*) shall, in every such case, state that the goods are to be "*delivered into the possession of the Collector of the Customs and Excise Port,*" to which they are to be removed; and across the face of such requisition is to be written the name of the party to whom (subject to the order of the Collector) the consignor desires the goods to be delivered.

25. When Spirits are received in a Port in Bond consigned to the order of the Collector of Customs and Excise Provisional Warehouse Entries should be obtained from the person for whom intended before the Bill of Lading is countersigned as required by section 24. This provisional entry need not be sworn to until after the quantity of Spirits has been determined by the proper officer.

26. When goods removed in bond are conveyed from the place of shipment by a foreign steamer, vessel or railway—for example, by Ward's Line of Steamers from Windsor to Port Arthur, thence by Canadian Pacific Railway to Winnipeg, or when goods so removed are not consigned to the order of the Collector of Inland Revenue, a removal bond must be given, with sureties acceptable to the Collector of Customs and Excise.

27. Collectors of Customs and Excise will, on the arrival of the goods, examine them and ascertain whether they correspond with the removal entry, and as soon as the goods are placed in warehouse, will certify to the fact on the removal entry, and return it to the Collector of the Port from which the goods were shipped.

28. Removal bonds can only be cancelled upon the receipt of the removal entry, bearing the certificate of the Collector, of the Port to which the goods were consigned, that they have been received and re-warehoused.

ENTRY OF GOODS EX-WAREHOUSE FOR CONSUMPTION

29. Entry of goods ex-warehouse for consumption will be made in duplicate on the prescribed forms; and every such entry must contain a full specification of the goods, as in an export or removal entry.

30. On receipt of the duty accruing on the goods so entered, the Collector of Customs and Excise will sign the warrant for the delivery of the goods, and the locker in charge of the warehouse must identify every package with the description contained in the warrant, before delivering it.

In the Privy Council

No. 65

No. 65
Order in Council granting special leave to appeal to His Majesty in Council, 8th August, 1932.

ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE

The 8th day of August, 1932.

Present:

THE KING'S MOST EXCELLENT MAJESTY

EARL OF ATHLONE — SECRETARY SIR HERBERT SAMUEL

LORD SOUTHBOROUGH — SIR HOWARD KINGSLEY WOOD

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 21st day of July, 1932, in the words following, viz:

"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 Consolidated Distilleries Limited and W. J. Hume in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and Your Majesty Respondent (Action No. 9370) setting forth (amongst other matters) that the Petitioners desire to obtain special leave to appeal from a Judgment of the Supreme Court of the 15th March, 1932, affirming a Judgment of the Exchequer Court of Canada of the 13th March, 1931, condemning the Petitioners to pay to the Crown the sum of $129,512: that this is one of a series of similar Actions brought by the Respondent in the Exchequer Court to recover the amounts specified in certain bonds which had been given by the Petitioners and their officers in connection with the sale for exportation from Canada of excisable goods from bonded warehouses: that the sums for which the Respondent has obtained judgment in this and two other similar Actions in which the Petitioners are now desirous of obtaining special leave to appeal amount together to $587,400: that ten additional similar Actions in which the amounts claimed by the Respondent from the Petitioners and a subsidiary company exceed $846,000 are now pending in the Exchequer Court and depend on the result of the present cases: and reciting the facts out of which the Petition arises: that the questions which arise are: (1) Whether the Exchequer Court had jurisdiction to entertain the Action; (2) Whether the goods having been exported and the bonds having been cancelled an Action on the bonds can succeed; (3) Whether

In the Privy Council

No. 65
Order in Council granting special leave to appeal to His Majesty in Council, 8th August, 1932.

in any case the Respondent is entitled to recover the penal sums named in the bonds or only the amount of the duty or the loss or damages if any actually sustained: that these questions which are raised in the three Appeals also arise in the ten additional Actions now pending in the Exchequer Court of Canada and involving claims by the Crown for upwards of $846,000: And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Supreme Court dated the 15th March, 1932, and that this Appeal may be consolidated with two similar Appeals in Actions brought in the Exchequer Court involving similar questions and numbered respectively 9371 and 10314 and heard on one Printed Case or that Your Majesty may be pleased to make such further or other Order as to Your Majesty in Council may appear proper:

"AND WHEREAS by virtue of the aforesaid Order in Council there was also referred unto this Committee a humble Petition of the Consolidated Distilleries Limited and F. L. Smith in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and Your Majesty Respondent (Action No. 9371) setting out the facts as already recited (*mutatis mutandis*): And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Supreme Court dated the 15th March, 1932, and that this Appeal may be consolidated with two similar Appeals in Actions brought in the Exchequer Court involving similar questions and numbered respectively 9370 and 10314 and heard on one Printed Case or that Your Majesty may be pleased to make such further or other Order as to Your Majesty in Council may appear proper:

"AND WHEREAS by virtue of the aforesaid Order in Council there was also referred unto this Committee a humble Petition of the Consolidated Distilleries Limited and W. J. Hume in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and Your Majesty Respondent (Action No. 10314) setting forth the facts as already recited (*mutatis mutandis*): And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Supreme Court dated the 15th March, 1932, and that this Appeal may be consolidated with two similar Appeals in Actions brought in the Exchequer Court involving similar questions and numbered respectively 9370 and 9371 and heard on one Printed Case or that

In the Privy Council

No. 65
Order in Council granting special leave to appeal to His Majesty in Council, 8th August, 1932.

Your Majesty may be pleased to make such further or other Order as to Your Majesty in Council may appear proper:

" THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petitions into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioners to enter and prosecute their Appeals against the Judgment of the Supreme Court of Canada dated the 15th day of March, 1932, upon depositing in the Registry of the Privy Council the sum of £800 as security for costs, (2) that the Appeals ought to be consolidated and heard together upon one Printed Case on each side and (3) 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 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.

M. P. A. HANKEY.

IN THE PRIVY COUNCIL

No. 80 of 1932.

On Appeal from the Supreme Court of Canada

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

RECORD OF PROCEEDINGS

BLAKE & REDDEN,
17 Victoria Street, S.W.1.
for the Appellants.

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