

CONSOLIDATED EXPORTERS FINED \$2,500 TODAY FOR ILLEGAL SALE OF LIQUOR.

(continued from page 1)

that the sale to Audahl had not been made in good faith and, therefore, he found the accused guilty.

L. W. Patmore, prosecution counsel, asked to be heard on the matter of a penalty. He read the act providing for a minimum fine of \$1,000 and a maximum of \$3,000 in the case of a first offence as this was being treated.

Notorious Company

"I ask that you submit the extreme penalty of \$3,000," submitted Mr. Patmore. "You have the right to inquire into the record of this company and ascertain its record just as a judge would do in sentencing a criminal. It must be known to Your Worship that this corporation has been notorious in the way it has carried on the smuggling of liquor into the United States. It has been continually before the courts in the United States, its ships have been seized, its officers indicted and even Mr. Besner has not the right to enter the United States. The activities of the company have made the fair name of Canada stench in the ears of the decent people of the United States. In fact, the situation became so bad that a treaty was entered into between the United States and Canada in order to suppress smuggling and put down the selling of liquor in such a manner to the citizens of the United States. Under the circumstances, it is my contention that you would not be doing your duty if you did not impose the extreme penalty."

Defense Plea

In meeting Mr. Patmore's contention as to penalty, Milton Gonzales, counsel for the defence, pointed out that this was the first offence recorded against the company and there was no evidence of any other criminal offence in Canada. There was no law, as far as Canada was concerned, to prevent the shipping of liquor into the United States. It made no difference what the United States might or might not have done as far as this company was concerned. It was up to the United States and not to Canada to administer the laws of the United States.

Speaking of the treaty referred to by Mr. Patmore, Mr. Gonzales declared that the federal government did not attempt to say that liquor could not be sold in the United States. All the federal government had done was to give the United States access to the records. There was no evidence before the court of a bad record as far as the Consolidated Exporters Corporation was concerned. The only evidence was what might have been seen in the newspapers. There was no evidence but that this was the first violation and, therefore, there was no reason but for the imposition of a minimum fine.

Not Influenced

Passing the penalty, Magistrate McClymont stated that what the corporation might or might not have done in other places had nothing to do with the one case that was before the court.

"What might have been done in other countries has nothing to do with me and I would like to make it clear to all that no outside reports have had anything to do with the decision now made. It is not my habit to impose the full penalties in the case of first offences. Neither do I propose to impose the minimum in this case. I fine the accused \$2,500." Court then adjourned until 2:30 this afternoon, after counsel had agreed to proceed with the second selling charge which is to be tried separately and in which evidence of a similar nature to that in the first case will be offered anew by the crown. Mr. Gonzales offered to accept the evidence of the first case for the second but Mr. Patmore felt it would be advisable to proceed separately.

Yesterday's Evidence

The first witness at the afternoon session yesterday was F. G. Pyle who was recalled by Mr. Patmore. He said that it had not been usual for him to fill orders as the fishermen generally came in late in the afternoon after he had left the place. If they came in the morning, however, he sometimes assisted the warehouseman. Answering a question by Mr. Gonzales, Mr. Pyle said he had turned over to the Liquor Board officers all the books of the company relating to imports and exports of liquor.

Besner on Stand

Oliver Besner, manager of the Consolidated Export Corporation Ltd., was then called to the stand. He confirmed Mr. Pyle's evidence as to the system of handling liquor at the establishment. Different government inspectors had been aware of the custom of lumping orders under one invoice which had been followed for three or four years. The records had always been placed on the table for the inspectors. Witness said that he was present at the time of the particular sale to Audahl. It was customary for his firm to ascertain that the customers were really Americans and to warn them that the liquor was not to be consumed within the province. The sale had been made in good faith. It was known that Audahl was an American and would be leaving on the Resolute, an American boat. It was the custom for the company to send the orders to the boats as a precaution and to facilitate the deliveries.

Mr. Besner said he always believed that it was permissible to conduct the business in that way. Mr. Patmore, when he was his lawyer, had told him so.

"That is imagination, I think," Mr. Patmore interjected. "I was never asked for my opinion on that question in my life and it is no use coming into court and saying such stuff as that now." The defence placed in evidence a letter from George Miller, chief Liquor Board inspector, dated December 24, 1925, pointing out that in future more than one consignment should not be included in a single invoice but



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Cross Examination

Under cross examination, Mr. Besner was asked by Mr. Patmore how long it was since he (Besner) had received legal advice from him (Patmore). Mr. Besner replied four or five years ago. Mr. Besner stated that he did not know that the present regulations had only been framed two years ago.

"Since Mr. Manson has been attorney general have I ever advised you on any subject?" asked Mr. Patmore.

"No," answered Mr. Besner.

Mr. Patmore asked Mr. Besner if he believed an American tourist could come off a boat here and buy liquor from him. Mr. Besner replied that he believed he could provided the boat was pulling out for an American port.

It was brought out in evidence that Mr. Besner had bailed Audahl out of jail after he had been arrested.

Mr. Besner agreed that the bunching in the invoices and returns to the government was a mistake although it did not necessarily follow that the intention was thereby to deceive the government.

Selling in Town

"When you make a sale to some one living in town, how would you cover it up in the records?" asked Mr. Patmore. There was some objection to this question both by Mr. Besner and his counsel but it was finally answered by Mr. Besner stating that he no longer sold liquor to people in the city, having discontinued that practice some two years ago.

His warehousemen were instructed not to sell liquor to people in the city and he could swear that he knew of no such sale in the last year. Mr. Besner admitted, however, that it would be easy to cover up illegal sales by bunching the individual transactions in the reports.

Answering another question by Mr. Gonzales, Mr. Besner said he would not permit sales, knowing that the liquor was not destined for outside the province.

Both Constables Grant and Harrison were recalled in rebuttal and it developed that they had actually accompanied one shipment from the warehouse to the schooner Kanaga. This shipment had tallied with the invoice and government return but a curious point was drawn out in that the shipment had been sent to the boat C.O.D. after one Ness had already paid for it at the warehouse in the presence of the detectives. Mr. Pyle, again called in this connection, said that an error had been made in sending it to the boat C.O.D. This completed the evidence.

Argument of Counsel

Mr. Gonzales submitted that decision in the case could depend on only one point—whether or not the defendant in making the sale to Audahl had acted in good faith in selling for export. It was decided that Mr. Pyle had been deliberately attempting to deceive then "I am licked before I start," Mr. Gonzales conceded. If it was decided that Mr. Pyle had acted in good faith then there remained nothing but the point of law. Mr. Gonzales, therefore, asked the magistrate for a finding on fact. Because Americans went to the warehouse and were able to get a bottle, the impression had gone abroad that there was protection. "As far as we are concerned," said Mr. Gonzales, "this is a test case." He asked that the issue be not beclouded with Mr. Patmore's charges of irregularities. The defence might have to admit blunders in that connection but, if returns had been made care-

Ridicules Evidence

After pointing out that it was unusual to first ask for a finding of fact in a police court case, Mr. Patmore paid his respects to the evidence of Mr. Walsh, the inspector, who had "outpiled Pyle" and had gone so far as to say that he had told Mr. Pyle that he could even bunch shipments to various boats in the government returns. Could one believe the evidence of an ex-inspector who had so flouted the law? Would not such a check as Mr. Walsh had accepted offer "a beautiful way to carry on blind-pigging?" Mr. Patmore submitted that the magistrate would be justified in disbelieving every thing Mr. Walsh said.

The records went to show, Mr. Patmore argued, that a certain routine had been followed in connection with the making of sales and deliveries. Shipments had usually been given to the Hyde Transfer for delivery but not so in this case. Mr. Patmore suggested that the taxi driver had been paid \$1 the next day in this transaction so as to make it

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