

CONSOLIDATED DISTILLERIES LIM- }
 ITED AND ANOTHER (DEFENDANTS) . . . } APPELLANTS;

1930
 *May 1.
 *May 5.

AND

HIS MAJESTY THE KING (PLAINTIFF) . . RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Bond—Shipping—Exportation—Proof—Burden—Inland Revenue Act,
 R.S.C., 1906, c. 51*

The respondent's action was upon a bond executed by the appellants in favour of the respondent, under the provisions of the *Inland Revenue Act* and its Regulations, wherein the appellants bound themselves to the respondent in the sum of \$15,048.50. The condition of the obligation was such, that if certain packages of alcohol entered for export, ex-warehouse, by the appellant corporation at Belleville, Ontario, for St. John's, Newfoundland, should be duly shipped and exported and entered for consumption or warehouse at St. John's, and if proof of such exportation and entry was made in accordance with the requirements of the Warehousing Regulations in that behalf within ninety days from the date of the bond, to the satisfaction of the Collector of Inland Revenue for the division of Belleville, Ontario, or if the Consolidated Distilleries Limited, one of the appellants, should account for the said goods to the satisfaction of the said Collector then the obligation was to be void, otherwise to be and remain in full force and effect.

Held that the burden of proving the fulfilment of the entire condition of the bond was upon the appellants.

APPEAL from the judgment of the President of the Exchequer Court of Canada, maintaining the respondent's action with costs.

The facts of the case, as they appear in the judgment of the President of the Exchequer Court, are as follows: On October 18, 1924, at the customs port of Belleville, Ont., the appellant corporation made an entry for the export, ex-warehouse, of twelve metal drums or packages of alcohol, to St. John's, Newfoundland, on a through bill of lading. The alcohol went forward by the Canadian National Railway on the 18th day of October, 1924; the car containing the same reached Montreal on the afternoon of October 20, following, and in this car was merchandise other than the twelve drums of alcohol. Before leaving Belleville, the car was sealed by both the railway and customs authorities; but when the car reached Montreal, these seals had been

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont and Smith J.J.

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removed. The goods were placed in a shed at the Bonaventure station of the Canadian National Railway, Montreal, and there remained presumably under the usual guard and protection until 11 a.m., on October 22, when they were removed by a cartage company—which company does all the carting for the Canadian National Railway from its railway premises at Montreal to the harbour front for furtherance by water—to the Canadian Merchant Marine steamship *Canadian Sapper* bound for St. John's, Newfoundland. This steamer did not sail until October 28, the goods in question meanwhile being stored on the deck of the steamer. She arrived at St. John's on November 5, but according to the evidence, the goods were not landed from the steamer until November 14, when they were entered into a customs warehouse on the following day, November 15. Early in January, 1925, it was discovered by the Customs authorities at St. John's, that the drums contained water only; this discovery was made owing to the fact that the contents had become frozen, causing the drums or packages to bulge. The respondent's action was brought in October, 1927, for \$17,111.66, being \$15,048.50, the amount of the bond and \$2,069.16, interest on same from 18th of January, 1925.

A. R. Holden K.C. for the appellant.

J. D. Kearney for the respondent.

The judgment of the court was delivered by

ANGLIN C.J.C.—The facts of this case sufficiently appear in the judgment of the learned President of the Exchequer Court. The condition of the bond sued upon is that if the goods in question

shall be duly shipped, and shall be exported and entered for consumption or for warehouse at St. John's, Nfld., 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 90 days from the date hereof to the satisfaction of the said Collector of Inland Revenue for the Division of Belleville, or if the said 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, Ont., then this obligation to be void, otherwise to be and remain in full force and virtue.

The burden of showing the fulfilment of this entire condition was, in our opinion, upon the defendants. (R.S.C., 1906, c. 51.)

The learned trial judge found that the goods in question had not been "exported and entered for consumption or for warehouse at St. John's, Nfld.," but, on the contrary, that there had been, at the port of Montreal, a substitution of water for the alcohol shipped. While, upon the evidence, we would not be prepared, without further consideration, to maintain the finding of substitution at Montreal, the defendants certainly did not prove delivery at St. John's, Nfld., of the alcohol shipped.

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Moreover, it is abundantly clear that the remaining condition of the bond was not complied with, viz., that proof was not adduced

of such exportation and entry * * * within 90 days from the date * * * (of the bond) to the satisfaction of the said Collector of Inland Revenue for the Division of Belleville;

nor were the goods accounted for to his satisfaction.

The burden of proving the fulfilment of this alternative condition was clearly upon the appellants. They employed one Duncan to obtain the necessary landing certificate and it was duly given to him and was not by him returned to the appellants as they had expected. It was handed, some time in the middle of January (probably, according to the evidence, during the week of the 18th), to the Assistant Deputy Minister of Excise, not to prove delivery of the alcohol at St. John's, but because the fraud practised had then been discovered and Duncan appears to have been anxious to ingratiate himself with the Department. The appellants themselves subsequently obtained a duplicate of this certificate, which they appear to have delivered to the Excise officer at Belleville, about the 11th of February, 1925, well beyond the 90 days, which had expired on the 16th of January, 1925.

For these reasons, we would uphold the judgment imposing liability under the bond upon the appellants. The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Meredith, Holden, Heward & Holden.*

Solicitor for the respondent: *John D. Kearney.*