
1928
 May 7 to 11. HIS MAJESTY THE KING..... PLAINTIFF;
 1929
 Apr. 16 to 29. CARLING EXPORT BREWING AND }
 MALTING COMPANY LIMITED... } DEFENDANT.

Sales Tax—Exportation—Special War Revenue Act, 1915—Proof of Exportation

The Dominion Government sought by information filed by the Attorney-General to recover from the defendant certain moneys alleged to be due to the Crown for the sales tax and gallonage tax on beer manufactured and sold in Canada. The defendant pleaded that the beer in question was sold for export to a purchaser in the United States and was in fact actually exported to the United States in conformity with such sales.

Held, that the exportation of goods from Canada under the proviso to section 19 B.B.B. of the Special War Revenue Act, 1915, (now para-

graph "A" of subsection 2 of section 86 of the R.S.C., 1927, chap. 179), is a question of fact to be determined on the evidence.

2. That where it is established that goods were sold to a person residing in the United States, and invoiced to him there via train to an outport in Canada, and there loaded on a vessel under the supervision of the Customs officer, who then stamps the B. 13, and clears the vessel for some United States port, such goods are duly exported within the meaning of the statute and regulations made thereunder.

1929
 THE KING
 v.
 CARLING
 EXPORT
 BREWING
 AND
 MALTING
 Co., LTD.

INFORMATION by the Attorney-General of Canada to recover from the defendant certain sales and gallonage taxes on the manufacture and sale of beer in Canada.

The action was tried before the Honourable Mr. Justice Audette at Toronto.

N. W. Rowell, K.C., D. Urquhart, K.C., and Gordon Lindsay for the plaintiff.

W. N. Tilley, K.C., and J. H. Clark for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J., now (April 29, 1929), delivered judgment.

The hearing of this case has been somewhat long, but after all, the controversy resumes itself into a question of fact, controlled by the laws of this country. And because the case deals with liquor, it is no reason why it should not be approached with an open mind free from any bias one way or the other.

The action is for the recovery of sales tax and gallonage tax upon Carling beer manufactured by the defendant. The facts of the case are all, at this stage, present in our minds and it becomes unnecessary to review or relate them again in detail, and the questions of law arising therefrom have been extensively discussed from all angles in the course of the argument of the respective counsel, the court expressing its view on most points.

The whole question resumes itself in determining as to whether or not the goods in question have been duly exported and whether they have been exported in the manner provided by our Canadian laws.

To that question I am of opinion that there can be but one answer and that is the greater portion of these goods and merchandises have been lawfully and *de facto* duly exported to a foreign purchaser, and did not return to Can-

1929
 THE KING
 v.
 CARLING
 EXPORT
 BREWING
 AND
 MALTING
 Co., LTD.
 Audette J.

ada, and that with respect to the same the defendants are exempted from paying any such taxes or duty.

The fact that these goods were exported to the United States is amply proved by the B.13's, which are the manner and the forms provided by law in that behalf to show that the goods were duly exported according to the usual practice. There is more, the evidence clearly discloses that these goods were actually placed on board vessels for foreign destination, after due clearance from the Customs. The boats came in, reported inward to the Canadian Customs, reported outward, and they obtained their clearance after the goods on board had been duly verified by the Customs officer.

Corroborating this exportation to the United States we have the evidence establishing that Rice Beer or Lager—which constituted the largest proportion of the exportation—is very little used in Canada and that it is the preferred beverage in the United States. Moreover, also by way of corroboration a large quantity of Carling's special bottles and kegs were returned empty to Canada through the Customs, and upon which a duty was duly paid. The identification of the kegs is ascertained by the special bungs marked with specific cut figures for that purpose.

One witness stated that after seeing some boats clear from the Canadian shore with the goods, he saw them being unloaded on the American shore. Another witness testified he saw the Carling beer in the road-houses in the American towns.

Coming now to the other branch of the case with respect to the sales without B.13, I find that the defendants are liable for the sales tax and gallonage tax upon such sales of strong beer,—as the real and only lawful evidence or acknowledgment of exportation is established by such B.13. The defendants are also liable for these taxes upon the sales mentioned in the evidence of witness Bannon, as having been sold to him and resold in Canada. Moreover, they are liable for such taxes upon the cash sales in Canada of the strong beverage.

The invoices from London did not show the true selling prices and the goods were sold at an advanced price. Therefore I find that the tax, when payable, must be calculated on such advanced prices—with such deduction, if any, as is customary for the Crown to allow.

I take it that these amounts can be easily ascertained between the parties (as so many accountants have already been working upon the books of the defendants). If, however, the parties fail to come to any agreement upon these amounts, leave is hereby reserved to either party to apply, upon notice, to the court for further direction in respect of the same.

THE KING
v.
CARLING
EXPORT
BREWING
AND
MALTING
CO., LTD.
—
Audette J.
—

There will be judgment accordingly, with costs in favour of the plaintiff.

Judgment accordingly.