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Oct. 8, 9.  
Oct. 23.

HIS MAJESTY THE KING.....PLAINTIFF;

AND

THE VANCOUVER BREWERIES, }  
LIMITED ET AL ..... } DEFENDANTS.

*Revenue—Excise Act—Bond for exportation—Liability thereunder—  
Power of to extend conditions*

Defendants furnished bonds under the Excise Act, the conditions of which read 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 San Jose, 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 ninety 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 Vancouver Breweries shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, this division, then this obligation to be void, otherwise to be and remain in full force and virtue." On an agreement of facts filed it was admitted that the goods in question were not re-landed in Canada.

*Held*, that such admission cannot be construed as of greater consequence than if that fact had been established by oral evidence at trial, and that it cannot be inferred from such admission that the conditions of the bond had been complied with.

- 2. That the period of 90 days mentioned in the bond, is not only the time within which the exporter must furnish proof of exportation and entry of the goods for consumption at the nominated destination, but applies equally to the accounting for the said goods to the satisfaction of the said Collector of Inland Revenue, which accounting must also be within the said 90 days.
- 3. The bonds themselves fixing the time within which their conditions must be performed, the court has no power to extend said period, and whether or not there was a belated compliance with the spirit of the statute, the regulations, and the bond, is not material to this action.

ACTION to recover upon bonds executed in favour of plaintiff under the provisions of the Excise Act.

The action was tried before the Hon. Mr. Justice Maclean, President of the Court, at Ottawa.

*Hon. N. W. Rowell, K.C., and Mr. Lindsay* for plaintiff.  
*W. L. Scott, K.C., and Cuthbert Scott,* for defendant.

THE PRESIDENT (this 23rd of October, 1928), delivered judgment.

This is an action upon three separate bonds executed by the defendants for payment to His Majesty the King, under the provisions of The Excise Act, Chap. 51, R.S.C., 1906, for the sums stated respectively therein. The cause was heard upon an agreed statement of facts.

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On the 14th day of May, 1924, the defendant company, The Vancouver Breweries Limited, made an entry for exportation from an excise bonding warehouse in the city of Vancouver, B.C., of 7,500 sacks of bottled beer, and on the 15th day of May, 1924, it made a similar entry for 325 sacks of bottled beer, in each case the goods were to be exported to J. Hamilton, San Jose, Guatemala, the beer being goods subject to duties of excise, and having been deposited in an excise bonding warehouse by the defendant company without payment of the excise duties imposed thereon by the Excise Act.

On the 14th day of May, 1924, the defendants executed and delivered to the Collector of Customs and Excise at Vancouver, their bond, in the prescribed form, for \$4,050, being double the excise duty on the goods referred to in the first mentioned export entry, and similarly their bond for \$175.50 in connection with the second mentioned export entry. Later, there was a third export entry made by the defendant company for which a similar bond was executed and delivered by the defendants to the same customs official, in the amount of \$1,512. I shall not further refer to this exportation as it is in the same position as the others. The goods referred to in the first two export entries were laden on board the motor ship *Principio*, and formed part of her cargo when she reported outwards from Vancouver for San Jose, Guatemala, on the 23rd day of May, 1924, while the goods mentioned in the third export entry left the Port of Vancouver at a later date on the same ship.

In each case the bond states the name of the person making the entry, the place of destination, the name of the vessel and master, the quantity of the shipment of beer, and to whom to be shipped. The condition of the bond is 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 San Jose, Guatemala, aforesaid and if proof of such exportation and entry shall, in accord-

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ance with the requirements of the Warehousing Regulations in that behalf, be adduced within ninety 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 Vancouver Breweries shall account for the said Goods to the satisfaction of the said Collector of Inland Revenue for the said Inland Revenue Division of Vancouver, this division, then this obligation to be void, otherwise to be and remain in full force and virtue.

On May 30, 1924, the defendant company by letter advised the Collector of Customs and Excise at Vancouver, that the cargo was being diverted to and landed at Ensenada, Mexico. The goods were not however diverted to this place, as will later transpire.

On July 11, 1924, the defendant company delivered to the Collector of Customs and Excise at Vancouver, two written certificates each purporting to be signed on May 31, 1924, at Ensenada, Mexico, by a person purporting to be of Mexican Customs, and each purporting to be vised by a British Vice-Consul at the same place, the certificates being to the effect that the goods mentioned in the first two export entries had been there landed and delivered over to the Customs authorities. The *Principio* reported inwards at Vancouver on August 21, 1924, "in ships stores and ballast," and presented to the proper officer of that port, a bill of health and foreign clearance purporting to have been issued at Ensenada, Mexico.

It is now agreed that none of the goods in question were exported to the places mentioned in the several export entries, nor were they delivered over to Customs at any of the said places, but they were taken out of the port of Vancouver, and out of territorial waters of the Dominion of Canada, and discharged from the *Principio* at sea, into a small boat or small boats off the coast of the United States of America, and were not lost or destroyed or brought back to Canada.

Goods warehoused under the Excise Act may be exported without payment of duty, under such restrictions and regulations as the Governor in Council deems necessary. The regulations provide that 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. The regulations comprise the following in respect of export bonds:—

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.

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Regulation 17 states the conditions under which export bonds, such as those in question here, may be cancelled. It states:—

In all cases where the exportation out of Canada is by a bonded railway, or by a vessel clearing for 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.

Thus we have this somewhat confusing situation: (1) The bond which is conditioned for the due delivery of the goods at the place designated in the entry within a specified time, provides that if within the period of ninety days, proof is furnished that the goods were actually exported to the port named in the entry, the bond may be cancelled; (2) failing this, the bond states that if an accounting for the goods is made to the satisfaction of the Collector of Inland Revenue at Vancouver within ninety days, the bond may be cancelled; the regulation states that the bond may be cancelled if the Commissioner of Customs and Excise is furnished with satisfactory evidence within three months that the goods were not re-landed in Canada; and (3) there is the agreed statement of fact that the goods were not re-landed in Canada, but this agreed statement of facts was reached after the period of ninety days mentioned in

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the bond, and there is no stipulation that this admission was to be regarded as an accounting for the goods, made to Excise within ninety days from the date of the bond.

The defendants now say, it being agreed between the parties that the goods were not re-landed in Canada, that there has been a compliance with the spirit of the statute and the regulations, and an accounting for the goods under the terms of the bond, all of which should void the bond. Had it been a matter of agreement reached by the parties herein within ninety days of the date of the bond, that the goods had not been re-landed in Canada, the bonds in question might have been cancelled by the Collector of Inland Revenue at Vancouver or by the Commissioner of Customs and Excise, upon the ground that there had been a compliance with the regulations and the conditions of the several bonds. But that did not happen, and it is pleaded by the plaintiff that cancellation of the bonds in question was refused, upon the ground, that the condition of the several bonds had not been performed. The proof of exportation of the goods, the accounting made otherwise for the goods, the evidence that the goods were not re-landed in Canada, was not it is said deemed satisfactory by the officers of the Excise Department nor was the same furnished within ninety days. It is I think indisputable, that no *bona fide* evidence was furnished of actual exportation of the goods to the place mentioned in the outward entry, nor was any *bona fide* accounting of any nature made by the defendant company within ninety days from the date of the bond. Had the particular agreement of fact to which I have referred been entered into within the period of ninety days, it is possible I would be dealing with an entirely different case.

The admission that the goods were not re-landed in Canada cannot I think be construed as of greater consequence than if that fact had been established by oral evidence at the trial. At that, the question would remain for decision, whether the defendants were still liable upon their bonds, for failure of full performance of the express conditions of the bonds, and within the stipulated period. The Crown asserts that it accepted the admission by the defendants that the goods were not re-landed in Canada, as one fact only, but not to mean that it was an admission or agree-

ment that the conditions of the bonds had been complied with. I think this is the proper view of the matter.

There is another point in connection with the bond itself that perhaps should be briefly referred to, although I do not recall that it was mentioned at the trial. Evidence of the exportation to and entry for consumption at San Jose, Guatemala, was required to be furnished within ninety days, but failing evidence of that fact, the exporter, under the terms of the bond might otherwise account for the goods, but the time within which such accounting was required to be made under the terms of the bond might be said to be in doubt. I think, however, that the period of ninety days mentioned in the bond, has reference to both matters, that is to say, proof of the exportation and entry of the goods for consumption at the nominated destination, must be made within ninety days; failing that, a satisfactory accounting for the goods to Canadian Excise, must be made within ninety days. I think that is the proper construction of the condition of the bond. Besides, the regulation prescribes that in such a case, evidence must be furnished within three months that the goods were not re-landed in Canada, and that I assume is essentially of the same effect as the accounting required by the bond, that is to say, an accounting why the goods were not landed at the place designated in the entry; and an accounting showing that they were not re-landed in Canada, but elsewhere, but if in Canada, that they were properly entered at Customs and the proper duties paid thereon.

The bond is a promise, to pay a debt or penalty, or to perform the obligation of the bond. It seems to me that there was not here a performance of the obligations of the bonds and within the period there mentioned. At the end of that period there had not been furnished to Excise satisfactory proof of the exportation of the goods to the place mentioned in the outward entry and the bond or elsewhere, and there was not within that period any other satisfactory accounting made for the goods. The conditions upon which the obligations of the bonds were to become void were not performed. Whether or not there has been a belated compliance with the spirit of the statute, the regulations, and the bond is not I think of importance in this action. The bonds themselves fix the time within which their conditions

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must be performed, and the Court has no power to extend this period. There was not a performance of the conditions of the bonds within the period stipulated, that being so, the bonds are in my opinion still in full force and effect and the plaintiff must have judgment for the amounts sued upon, and for his costs of action.

*Judgment accordingly.*