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In the Supreme Court of Canada

IN APPEAL FROM TWO JUDGMENTS OF THE COURT OF QUEEN'S BENCH FOR THE PROVINCE OF QUEBEC

(Appeal side)

BETWEEN:

FRANK RONCARELLI

APPELLANT

AND

THE HONOURABLE MAURICE DUPLESSIS

RESPONDENT

APPELLANT'S FACTUM

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DU. 8-1477 *Factum Enr'g.* 9055 FOUCHER ST.

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IN THE SUPREME COURT OF CANADA

IN APPEAL FROM TWO JUDGMENTS OF THE COURT OF QUEEN'S BENCH (APPEAL SIDE) OF THE PROVINCE OF QUEBEC

Nos. 4402 C.Q.B.
4426 C.Q.B.

BETWEEN

FRANK RONCARELLI, Restaurateur, of the City and District of Montreal, Province of Quebec, residing at No. 320 Sherbrooke St. West,

(Plaintiff in the Superior Court
Appellant in the C.Q.B. (No. 4426)
Respondent in the C.Q.B. (No. 4402)

APPELLANT

and

THE HONOURABLE MR. MAURICE DUPLESSIS, Advocate and Queen's Counsel, residing and domiciled in the City of Three Rivers, District of Three Rivers, Province of Quebec,

(Defendant in the Superior Court
Respondent in the C.Q.B. (No. 4426)
Appellant in the C.Q.B. (No. 4402)

RESPONDENT

APPELLANT'S FACTUM

I N D E X

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APPELLANT'S FACTUM

This is an appeal from a judgment of the Court of Queen's Bench, Appeal Side, for the Province of Quebec, District of Montreal, rendered April 12th, 1956 (Rinfret, J. dissenting), overruling the judgment of the Superior Court rendered on May 2nd, 1951, maintaining Plaintiff's action and condemning Defendant to the payment of $8,123.53 with interest from date of judgment and costs.

Joined with it, is a cross-appeal by the Appellant from the same judgment of the Court of Appeal in respect of the quantum of damages awarded by the Superior Court. This aspect of the present appeal will be dealt with separately under the issue of damages as Section II of this factum.

x x
x

SECTION I - LIABILITY

Part I

THE RELEVANT FACTS

1. THE APPELLANT, ON THE IMPORTANT DATE OF 4TH DECEMBER 1946, WAS THE OWNER OF AN IMMOVEABLE PROPERTY, RESTAURANT AND CAFE SITUATED AT 1429 CRESCENT STREET IN THE CITY AND DISTRICT OF MONTREAL, AND WAS THE HOLDER OF LIQUOR PERMIT NO. 68 GRANTED TO HIM ON THE FIRST OF MAY, 1946, FOR THE SALE OF ALCOHOLIC LIQUORS IN HIS SAID RESTAURANT AND CAFE.

Appellant's evidence (Case, Vol. I, page 28, lines 1-25) and exhibit No. P-1 (Case, Vol. IV, page 645) corroborated by the evidence of Frank Boara, an employee of the Appellant and his family in their business for approximately 23 years (Case, Vol. I, page 83, lines 19-35) establish these facts without contradiction in the record.

2. APPELLANT'S FATHER HAD FOUNDED THE BUSINESS IN 1912 AND IT HAD BEEN LICENSED UNINTERRUPTEDLY FROM THAT TIME UNTIL 1946.

Appellant's evidence (Case, Vol. I, page 28) corroborated by Frank Boara (Case, Vol. I, page 83) and the Montreal City By-Laws (Exhibit P-12, Case, Vol. II, at page 229, par. 5 (e)) establish these facts without contradiction.

3. PRIOR TO THE DATE DECEMBER 4, 1946, APPELLANT HAD COMPLIED WITH ALL THE REQUIREMENTS OF THE ALCOHOLIC LIQUOR ACT AND HAD CONDUCTED A HIGH CLASS RESTAURANT BUSINESS IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF QUEBEC.

Plaintiff's evidence (Case, Vol. I, page 28, line 26 to page 29, line 28) corroborated by the evidence of Frank Boara (Case, Vol. I, pages 83 et s.) clearly establish these facts in the record without contradiction. The learned trial judge found accordingly in his judgment (Case, Vol. IV, page 865, lines 17-36, and at page 866). The following extract from the judgment (Case, Vol. IV, page 865, lines 31 to 37) summarizes the proof made with respect to Appellant's personal reputation and conduct of his business:

" It has been established that Plaintiff had an excellent education, a fine upbringing, and generally enjoyed a good reputation as a businessman and citizen in the community of the City of Montreal where he and his family have lived for approximately 30 years. Never up to the 4th of December 1946, had he experienced any trouble with the authorities in the operation of his restaurant. "

4. APPELLANT'S TESTIMONY SHOWS THAT HE WAS A SIMPLE ADHERENT OF THE WITNESSES OF JEHOVAH AND WAS NEITHER A LEADER NOR CHIEF OF THAT SECT.

Sec.I - Liability — Relevant Facts

Appellant explains his adherence and position with respect to the religious group known as the Witnesses of Jehovah (Case, Vol. I, page 29, lines 30-47; at page 65, lines 22-28; at page 68, lines 12-39; at page 73, lines 43-47). His evidence to this effect is fully corroborated by the testimony of Raymond Browning (Case, Vol. I, at page 178, lines 20-23; at page 179, lines 12-15; at page 180, lines 4-9); by the testimony of Laurier Saumur (Case, Vol. I, at page 180, lines 46-48; at page 182, lines 12-14) and the testimony of Mrs. F. Léger Weaner (Case, Vol. I, at page 174, lines 1-10; and at page 176, lines 38-41). There is no contradictory testimony, and the trial judge found accordingly in his judgment (at pages 865, line 38 to page 866, line 17). This finding was confirmed in the Court of Appeal by Rinfret J. (page 962, lines 10-15); by Martineau J. (page 997, lines 11-15); and in substantial part by Casey J. (Vol. V, page 926, lines 1-25). Whilst Respondent produced several books and pamphlets allegedly seized in the hands of other persons claimed to be Witnesses of Jehovah, nevertheless, Appellant was neither the author nor editor of any of the books or pamphlets produced, and none of these were found in his possession nor in his premises. Nor does it appear that Appellant ever took p: t in the distribution of the books or pamphlets of the Witnesses of Jehovah. Moreover, the witnesses, Browning and Saumur, testified that the books or pamphlets produced were not part of any organized campaign, but the private property of individual members, and that some of these were out of print and were no longer used for the bible study work of the Witnesses of Jehovah (Case, Vol. I, page 179, lines 20-35); at (Case, Vol. I, page 180, line 49 to page 181, line 10).

5. FROM SOME TIME IN 1944 TO 12TH NOVEMBER 1946, THE APPELLANT GAVE SECURITY FOR HIS CO-RELIGIONISTS PROSECUTED UNDER BY-LAWS OF THE CITY OF MONTREAL NOS. 270 AND 1643 FOR MINOR OFFENCES OF

DISTRIBUTING, PEDDLING, CANVASSING, ETC. WITHOUT A LICENSE, THE MAXIMUM PENALTY FOR WHICH WAS $40.00 AND COSTS OR IMPRISONMENT FOR SIXTY DAYS. THE TOTAL NUMBER OF BONDS GIVEN OVER THESE YEARS WAS 390.

Appellant's testimony (Case, Vol. I, page 30, line 20 to page 31, line 7) explains how he happened to supply bail for the accused in these by-law cases. It is clearly established that there was no system or organization of any kind operated by the Appellant, but on the contrary, these were voluntary acts on his part, without remuneration, as a service to the accused, and "knowing that they would turn up and would not skip bail, but would turn up, and answer any time they were called to do so..." and, "as the case was, when they were in serious straits and could not find any other bondsman..." (Case, Vol. I, page 30, lines 36-40).

As to the class of cases, we respectfully refer to the testimony of Antonio Lamer (witness for Respondent) (Case, Vol. I, at page 161) Wilfred Levac (Case, Vol. I, page 90, lines 32-40) and to the Exhibit D-6 (Case, Vol. III, pages 557 et s.). The learned trial judge found accordingly in his judgment (Case, Vol. IV, page 868, lines 18-26) from which the following extract clearly summarizes the facts established:

> " The cases in which the Plaintiff acted as bondsman were in connection with the violation of municipal by-laws, principally the failure to obtain the license of a peddler or distributor of circulars and could be classified as misdemeanors. The Recorder's Court or the attorney of the court could always refuse to accept Plaintiff as a bondsman for the surety of the accused, and after the 17th of November 1946, no further bonds by the Plaintiff were accepted by the Recorder's Court. "

We would respectfully point out that the last date on which Appellant gave bail is clearly established as November 12th, 1946, by the exhibit D-6 (Case, Vol. III at page 581).

6. THESE VARIOUS SECURITY BONDS WERE GIVEN BY APPELLANT AND ACCEPTED BY THE CITY ATTORNEY AND THE RECORDER OF THE CITY OF MONTREAL WITHOUT REMUNERATION OF ANY KIND TO APPELLANT. NOT ONE OF THE ACCUSED WHO WAS THUS BONDED EVER DEFAULTED AND LATER APPELLANT WAS RELEASED FROM THESE BONDS AT HIS OWN REQUEST AND NEW SECURITY WAS FOUND.

In support of the foregoing, we refer to the testimony of Wilfred Levac (Case, Vol. I, page 86, lines 26-30, and lines 43-47; page 90, lines 1-3 and lines 22-25); to the testimony of Mr. Oscar Gagnon (Case, Vol. I, page 124, lines 3-11); to the testimony of Mtre. Antonio Lamer (Case, Vol. I, page 164, lines 1-12).

7. DUE TO A CHANGE OF PROCEDURE IN THE RECORDER'S COURT IN MONTREAL DECIDED UPON BY THE ATTORNEY-IN-CHIEF OF THE SAID COURT, THE APPELLANT WAS NOT ACCEPTED AS BONDSMAN IN ANY CASES BEFORE THAT COURT AFTER NOVEMBER 12th, 1946.

Appellant ceased giving bail in these cases as appears from the testimony of Wilfred Levac (Case, Vol. I, page 88, lines 39-45); from the testimony of Mtre. Rodolphe Godin (Respondent's witness) (Case, Vol. I, page 166, lines 14-25); and, under cross-examination of Mtre R. Godin (Case, Vol. I, page 166, lines 15-25); also Defendant's Exhibit D-13 (Case, Vol. IV, page 708); this letter, dated November 4, 1946, sent by the Chief Attorney of the Recorder's Court to the Recorder-in-Chief Thouin is most illuminating as to the uncertainty in the minds of the prosecuting attorneys about their legal position in multiplying the arrests, and we cite the following extract from page 709, line 24 to page 710, line 10:

" La Cour a déjà rendu jugement condamnant les disciples de Jéhovah.

" Ces derniers, comme c'est leur droit, ont porté ce jugement en appel.

Au lieu d'attendre paisiblement les décisions d'un tribunal supérieur, ils continuent la distribution de leur littérature. Les causes sont toujours remises et leur nombre va en augmentant de plus en plus en attendant le jugement sur l'appel.

" Ce zèle entêté des disciples de Jéhovah n'est pas sans embarrasser la Cour. D'un côté il y a un genre de provocation, d'un autre côté la Cour a des raisons sérieuses d'hésiter avant de sévir trop rigoureusement, car si les disciples gagnaient leur cause en appel, l'application actuelle des procédures trop rigoureuses s'avérait alors prématurée pour ne pas dire plus.

" C'est pourquoi comme procureurs de la Couronne, nous sommes également embarrassés dans la ligne de conduite à suivre à l'égard des disciples de Jéhovah.

" Nous sommes d'avis cependant que des dépôts en argent seulement devraient être fixés à l'avenir dans ces causes, comme c'est la coutume pour tous les dossiers de ce genre, pour la libération de l'accusé en attendant son procès.

" Comme la peine maximum imposable dans chacune de ces causes est de $40.00 et les frais, ce dépôt pourrait être fixé jusqu'à concurrence de la somme de $100.00.

" Nous ne suggérons pas ce montant. Nous laissons à chacun des recorders de fixer le prix, mais nous insistons pour un dépôt en argent.

" Nous croyons que c'est dans les circonstances là seule façon de sévir contre ces accusés, qui prêtent si peu d'attention aux décisions de notre tribunal. "

8. THE APPELLANT DID NOT GIVE ANY SECURITY IN ANY CRIMINAL CASES INVOLVING A CHARGE OF SEDITION, AND HAD STOPPED BEING A BONDSMAN BEFORE THE PAMPHLET "QUEBEC'S BURNING HATE" BEGAN TO BE DISTRIBUTED.

This appears from evidence already referred to above under paragraphs 5, 6 and 7, but is also corroborated by the testimony of the witness for the Respondent, Mr. Justice O. Gagnon (Case, Vol. I, page 119, lines 24-30). This witness also testified that the date of distribution of this pamphlet was approximately November 24th or 25th (Case, Vol. I, page 116, lines 1-17).

9. AT ALL TIMES UNTIL NOVEMBER 12TH OR LATEST NOVEMBER 17TH, 1946, THE APPELLANT'S BONDS WERE READILY ACCEPTED, IN A TOTAL OF 390 CASES. THEY WERE NOT CASH BONDS, BUT WERE BASED ON THE VALUE OF HIS IMMOVEABLE PROPERTY CONTAINING THE RESTAURANT.

Appellant's testimony in this respect remains uncontradicted in the record (Case, Vol. I, page 30, lines 20-24). It was also corroborated in part by the contents of the letter written by Mtre. R. Godin to the Recorder-in-Chief of the Recorder's Court of Montreal (Exhibit D-13, Case, Vol. IV, page 709, lines 1-23).

10. THE USE OF THE APPELLANT BY THE RECORDER'S COURT WAS SO ACCEPTABLE TO THE OFFICIALS OF THAT COURT THAT THEY IN SEVERAL INSTANCES ACCEPTED

BLANK BONDS FROM HIM TO PROVIDE FOR CASES THAT MIGHT ARISE WHILE APPELLANT WAS AWAY FROM MONTREAL.

The foregoing appears from the testimony of the Appellant (Case, Vol. I, page 31, lines 26-40, and again at page 73, lines 10-18).

11. SOME TIME ABOUT THE 24TH OR 25TH OF NOVEMBER 1946, THE PAMPHLET "QUEBEC'S BURNING HATE" BEGAN TO BE DISTRIBUTED. AT THIS POINT THE CHIEF CROWN PROSECUTOR IN MONTREAL, THEN MTRE. OSCAR GAGNON, K.C., DECIDED THAT THE DISTRIBUTION OF THIS PAMPHLET SHOULD BE PREVENTED.

The testimony of this witness referred to above (Case, Vol. I, at page 116, line 1 to page 117, line 9; and page 127, lines 13 to 23) clearly establishes this.

12. THE APPELLANT WAS NOT A DISTRIBUTOR OF THE PAMPHLET, AND IN NO WAY WAS HIS RESTAURANT IN MONTREAL USED FOR THE DISTRIBUTION OR STORAGE OF THESE PAMPHLETS BY HIMSELF OR BY ANYONE ELSE.

The evidence of the Appellant is clearly to this effect (Vol. I, page 29, lines 38 to 41) and is supported by the testimony of the witness Oscar Gagnon (Case, Vol. I, page 122, lines 1-6, and at page 126, lines 46-50; also Browning, page 180, lines 4-5; and Saumure, page 182, lines 12-14). The testimony of the Respondent's witness, Hilaire Beauregard, Associate Director of the Provincial Police, shows also that the only connection between the Appellant and the Witnesses of Jehovah cases under his surveillance was on one occasion in September 1945, when he made a visit to his office for the purpose of obtaining protection at a meeting. This was more than one year before the distribution of the abovementioned pamphlet (Case, Vol. I, page 143, lines 30-37). The learned trial judge found accordingly in his judgment (Case, Vol. IV, page 866, lines 24-26) and

states:

" It does not appear that he ever took part in the distribution of the books and pamphlets of the group. "

This is confirmed in the Court of Appeal by Pratte J. (Vol. V, page 914, lines 7-26); by Casey J. (page 928, line 46 to page 929, line 22); by Rinfret J. (page 964, lines 15 to 24); by Martineau J. (page 997, lines 23 to 27).

13. PAMPHLETS WERE SEIZED ON NOVEMBER 25TH, 1946 IN A BUILDING IN THE CITY OF SHERBROOKE LEASED FROM THE APPELLANT AS A PLACE OF WORSHIP FOR THE WITNESSES OF JEHOVAH UNDER THE CONTROL OF THE LOCAL MINISTER, MR. RAYMOND BROWNING. APPELLANT HIMSELF WAS IN NO WAY RESPONSIBLE FOR THE ACTIVITIES OF THIS "KINGDOM HALL" OR CONGREGATION, AND DID NOT KNOW THAT THE PAMPHLET "QUEBEC'S BURNING HATE" WAS IN THE SAID PREMISES.

The testimony of Raymond Browning (Case, Vol. I, pages 178 and 179 and 180 - lines 4 to 5) shows that Appellant's only connection with the Kingdom Hall or meeting place in Sherbrooke was as proprietor and lessor of the said premises to Browning for the purposes of his congregation there and for which lease Appellant received a rental. See also testimony of Appellant (Vol. I, page 71, lines 46 to end).

This evidence remains uncontradicted in the record, and the learned trial judge found accordingly (Case, Vol. IV, page 865, lines 38 to 46). This is confirmed in the Court of Appeal by Casey J. (Vol. V, page 962, lines 30-35); and by Martineau J. (page 997, lines 40-45).

14. IN THE COURSE OF ENQUIRIES ABOUT THE DISTRIBUTION OF THE PAMPHLET "QUEBEC'S BURNING HATE", CROWN PROSECUTOR GAGNON, LEARNING THAT APPELLANT HAD

BEEN GIVING BAIL IN MANY CASES IN THE RECORDER'S COURT, AND WAS ALSO THE HOLDER OF A LIQUOR LICENSE FOR HIS RESTAURANT, BROUGHT THESE FACTS TO THE ATTENTION OF EDOUARD ARCHAMBAULT, THEN CHAIRMAN OF THE QUEBEC LIQUOR COMMISSION.

Judge Gagnon's testimony clearly establishes these facts (Case, Vol. I, page 116, lines 27-50; page 117, lines 15-28).

15. EDOUARD ARCHAMBAULT THEN TELEPHONED THE RESPONDENT IN QUEBEC CITY ADVISING HIM OF THESE FACTS AND ASKED WHAT STEPS SHOULD BE TAKEN. RESPONDENT AFTER HAVING RECEIVED CONFIRMATION THAT THE APPELLANT WAS BOTH THE INDIVIDUAL WHO HAD GIVEN BAIL IN THE RECORDER'S COURT, AND WAS THE HOLDER OF THE LIQUOR LICENSE FOR HIS RESTAURANT, ORDERED OR RECOMMENDED THE CANCELLATION OF THE LICENSE. THIS ORDER OR RECOMMENDATION WAS CARRIED OUT BY EDOUARD ARCHAMBAULT ON DECEMBER 4TH, 1946, AND APPELLANT'S PREMISES WERE RAIDED BETWEEN 12:45 TO 2:00 P.M.

These facts are borne out by the testimony of the Respondent himself; by his statements given to the press for publication at press conferences specially convened by him for this purpose; by the extracts from the newspapers produced as exhibits reporting these statements; by the testimony of Mr. Edouard Archambault, then manager of the Quebec Liquor Commission; the whole as follows:

Respondent's testimony (Case, Vol. I, page 14, lines 5-50; page 15, lines 1-14; page 16, lines 20-25; page 17, lines 1-5; page 18, lines 1-22; page 19, lines 8-9; lines 20-32; page 20, lines 20-30). The testimony of Mr. Edouard Archambault (Case, Vol. I, page 103, lines 13-35); extract of newspapers Exhibits Nos. P-17, P-18, P-20, P-21, P-22, P-23, P-24, P-25, P-26 (Case, Vol. IV, pages 730, 751, 741, 731, 735, 745, 748, 750 and 753). The testimony of Abel Vineberg, Gazette Staff Correspondent at Quebec City (Case, Vol. I, page

36, lines 5 to page 38, line 10); testimony of Paul Goudreau, Canadian Press Correspondent at Quebec City (Case, Vol. I, page 81, lines 1-17; and again at page 82, lines 11-44).

16. RESPONDENT'S STATEMENTS, VOLUNTARILY GIVEN AT PRESS CONFERENCES SPECIALLY CONVENED BY HIMSELF FOR THE PURPOSE OF PUBLICATION, CONSTITUTE INCONTROVERTIBLE PROOF (EXTRAJUDICIAL ADMISSIONS) OF THE ORDER GIVEN BY RESPONDENT AND THE REASON THEREFOR.

The following extracts from numerous leading newspapers reporting the press conference above-mentioned establish the responsibility of the Respondent for the cancellation of Appellant's liquor license, to wit:

(a) EXTRACT FROM EXHIBIT P-17 (Case, Vol. IV, page 730), BEING AN ARTICLE PUBLISHED IN THE HERALD NEWSPAPER IN THE CITY OF MONTREAL ON DECEMBER 5th, 1946 (AT LINE 23) (Underlining our own):

" On instructions passed down the line from Premier and Attorney-General Maurice Duplessis, Roncarelli was handed a copy of the cancellation permit yesterday, and a Quebec Liquor Commission truck removed an estimated $5,000.00 worth of liquors and beer destined for the upstairs restaurant and downstairs Quaff Club. "

(b) EXTRACT FROM EXHIBIT P-21 (Case, Vol. IV, page 732) BEING AN ARTICLE PUBLISHED IN THE MONTREAL DAILY STAR ON DECEMBER 5th, 1946 (at lines 19 to 26) (Underlining our own):

" Regarding Roncarelli, the Premier said that he had been supplying the bail for hundreds of Witnesses of Jehovah.

" The Sympathy which this man has shown for the Witnesses in such an evident, repeated and audacious manner, is a provocation of justice and is definitely contrary to the aims of justice.

" As a result, he continued, he had ordered the Quebec Liquor Commission to cancel his permit. "

(c) EXTRACT FROM EXHIBIT P-22 (Case, Vol. IV, page 736 at line 20 to page 737, line 8) BEING AN ARTICLE PUBLISHED IN THE MONTREAL GAZETTE ENTITLED "DUPLESSIS VOIDS LIQUOR LICENCE HELD BY JEHOVAH WITNESS LEADER" ON DECEMBER 5th, 1946 (Underlining our own):

In a statement to the press yesterday, the permier recalled that "two weeks ago, I pointed out that the provincial government had the firm intention to take the most rigorous and efficient measures possible to get rid of those, who under the name of Witnesses of Jehovah, distribute circulars, which in my opinion, are not only injurious for Quebec and its population, but which are of a very libellous and seditious character.

"The propaganda of the Witnesses of Jehovah cannot be tolerated and there are more than 400 of them now before the Courts in Montreal, Quebec, Three Rivers and other centres," the Premier continued, stating that he ordered that charges of conspiracy and libel be lodged against any sect member found distributing Quebec's Burning Hate.

Turning to Roncarelli's case, Mr. Duplessis stated that: "A certain Mr. Roncarelli has supplied bail for hundreds of Witnesses of Jehovah. The sympathy which this man has shown for the Witnesses, in

"such an evident, repeated and audacious manner is a provocation to public order, to the administration of justice and is definitely contrary to the aims of justice.

"He does not act, in this case, as a person posting bail for another person, but as the mass supplier of bails, whose great number by itself is most reprehensible," he continued.

The premier then recalled that in 1939, when he was Premier and Attorney General, he had cancelled the liquor license of the Harmonia Club where a Nazi propaganda film has been shown in the presence of the German consul. The film was seized by provincial police and the sponsors heavily fined.

"Today, Roncarelli is identifying himself with the odious propaganda of the Witnesses of Jehovah and as a result, I have ordered the Liquor Commission to cancel his permit for the restaurant he operates at 1429 Crescent Street.

"The Communists, the Nazis as well as those who are the propagandists for the Witnesses of Jehovah, have been treated and will continue to be treated by the Union Nationale government as they deserve for trying to infiltrate themselves and their seditious ideas in the Province of Quebec", he concluded.

(d) EXTRACT FROM EXHIBIT P-20 (Case, Vol. IV, page 742, lines 5-36 inclusive and again at page 743, lines 10-14 inclusive) BEING AN ARTICLE PUBLISHED IN THE MONTREAL GAZETTE ENTITLED "PROVINCE HAD TO CANCEL PERMIT OR ABET SEDITION, DUPLESSIS HOLDS" (underlining our own):

"the fact that a man goes bail for a friend or two is quite in order, but when a man creates an organization for freeing a mass of people who are jointly engaged in law-breaking, it becomes a different matter, pointed out the premier. When in addition to launching upon an undertaking, and creating an organization in connection therewith, to arrange for mass bail for people engaged deliberately in commission of certain illegal acts, the funds available for that purpose are taken from the proceeds which flow to him because he has been given a privilege - not a right - by the province, then it becomes a matter of making the province, which thereby enabled the funds to exist, a party to the proceeding.

The premier referred to the fact that the liquor law of the province provides for the immediate cancellation of a liquor permit. This was not a law of his making, but one which had existed since the inception of the act. The provision in question was put there for a reason. The presumption has always been that the special privilege of selling alcoholic liquor was to go to men of good character; law-abiding citizens in the full sense of the word.

"In the case of the cancellation of the Roncarelli permit, action had not been taken hastily, said the premier. The matter had been studied in its various angles, and the conclusion reached that because of his actions in helping to spread sedition, in helping in breaking municipal bylaws, Roncarelli was not a person who should enjoy the privilege which had been given him.

"To allow him to continue to have that privilege, and, because of that privilege, secure the means of encouraging acts leading to public disorder would have been, in effect to make the attorney general an accomplice..."

(at page 743, line 10)

"As attorney-general, I would be derelict in my duty if I did not take means to check what is going on," said Mr. Duplessis. "This action was not directed against Roncarelli because it was Roncarelli so it was against the leader of an illegal movement that we struck."

(e) EXTRACT FROM EXHIBIT P-23 (Case, Vol. IV, page 745, lines 25-40, and again at page 746, lines 20 to 21 inclusive) BEING AN ARTICLE PUBLISHED IN THE MONTREAL DAILY STAR ENTITLED "DUPLESSIS SAYS HE IS FIGHTING ILLEGAL MOVE" ON DECEMBER 6th, 1946 (Underlining our own):

"Quebec, Dec. 7 - (Star Special). - The public reaction which met Premier Maurice Duplessis' order cancelling Frank Roncarelli's liquor permit in Montreal, has prompted the premier to state that "this action was not directed against Roncarelli because it was Roncarelli, but it was against the leader of an illegal movement that we struck."

"In a public statement made yesterday in which he explained the reasons for Wednesday's move against the well-known Montreal restaurateur and admitted supporter of the Witnesses of Jehovah, Mr. Duplessis said that if he allowed Mr. Roncarelli to continue to use funds derived from a privilege granted him by the province "to conduct a campaign inciting to sedition, public disorder and

disregard of municipal by-laws, he, the Attorney-General of the Province, would have been placed in the position of an accomplice."

(at page 746, line 20)

"As Attorney General, I would be derelict in my duty if I did not take means to check what is going on", he said."

(f) EXTRACT FROM EXHIBIT P-25 (Case, Vol. IV, page 750, and page 751, lines 20-26 inclusive) BEING AN ARTICLE PUBLISHED IN THE MONTREAL HERALD ENTITLED "TWO RALLIES BACK UP RONCARELLI" (Underlining our own):

(at page 751, lines 20-26)

"Mr. Roncarelli has admitted acting as bondsman for the arrested Witnesses, the Premier said, and he was "the man who is responsible for the defiance of municipal by-laws... Under these circumstances I could not conscientiously contribute to providing (him) with revenue to be used for mass bail or continue him as licensee of the government's."

(g) EXTRACT FROM EXHIBIT P-18 (Case, Vol. IV, page 751) BEING AN ARTICLE PUBLISHED IN THE MONTREAL GAZETTE ENTITLED "DUPLESSIS SAYS HE HAS DONE DUTY IN DEALING WITH "WITNESSES' CASE" AND SIGNED BY ABEL VINEBERG, PUBLISHED ON THE 14th OF DECEMBER, 1946 (At page 752, lines 22-25 inclusive) (Underlining our own):

"What he had done he would continue to do, he said, and what he had done he had done openly, striking openly and frankly, and at a leader, not at wretched dupes."

The foregoing extracts contain statements made by the Respondent on days which followed immediately after the cancellation of Appellant's license. Subsequently on or about the month of February, 1947, the Respondent again convened a press conference at which he reported his decision as Attorney General to refuse the Appellant permission to sue the Quebec Liquor Commission for cancellation of Appellant's license. In so doing, Respondent at the same time again repeated his previous statements concerning the ordering and cancellation of Respondent's liquor license. We refer to the following extracts:

(h) EXTRACT FROM EXHIBIT P-28a, BEING AN ARTICLE PUBLISHED IN LA PRESSE, ENTITLED "RONCARELLI SUBIT UN SECOND REFUS", published on February 8th, 1947 (Case, Vol. IV, page 762, at lines 37-41, and again at page 763, at lines 22-25, and lines 30-39 inclusive). IT IS TO BE NOTED THAT THE SAME INTERVIEW IS REPORTED ALMOST VERBATIM IN EVERY ONE OF THE NEWSPAPERS BOTH FRENCH-AND ENGLISH-SPEAKING AS FOLLOWS (underlining our own):

> Le permis de la commission des liqueurs que détenait le restaurateur montréalais Frank Roncarelli a été annulé non pas temporairement, mais définitivement et pour toujours", a déclaré hier après-midi, le premier ministre et procureur général de la province, l'hon. Maurice Duplessis..."
>
> "Les tactiques adoptées par les Témoins de Jéhovah dont Roncarelli est un des principaux chefs constituent un danger pour la paix publique, une menace pour l'ordre public."
>
> "Le premier ministre dit encore: "Roncarelli est indigne et bénéficier d'une privilège accordé par la province qu'il contribue à vilipender et à calomnier de

la façon la plus intolérable et la plus misérable. C'est moi-même, à titre de procureur général et de responsable de l'ordre dans cette province qui a donné l'ordre à la commission des liqueurs d'annuler son permis. Nous n'avons fait qu'exercer en ce faisant un droit formel et incontestable; nous avons rempli un impérieux devoir. Le permis de Roncarelli a été annulé, non pas temporairement, mais bien pour toujours."

(i) EXTRACT FROM EXHIBIT P-28-b, BEING AN ARTICLE PUBLISHED IN THE MONTREAL STAR, ENTITLED "RONCARELLI'S PETITION TO SUE REFUSED" PUBLISHED ON THE 8TH OF FEBRUARY, 1947, (Case, VOL. IV, at page 764, lines 9-14, and lines 25 to 31, and again at lines 35-40 inclusive) (underlining our own):

"Premier Duplessis at a press conference today announced, in his capacity of Attorney-General of the province, that the petition by Frank Roncarelli, Montreal restaurateur, for permission to sue the Quebec Liquor Commission for loss of his liquor vending licence will not be granted."

"At his press conference today, Premier Duplessis said that the petition to the Attorney General "was studied with care by lawyers of the department of the Attorney-General and myself, and we have arrived at the conclusion that it was our right and our duty to refuse it."

"It was I, as Attorney-General of the Province charged with the protection of good order, who gave the order to annul Frank Roncarelli's permit. Mr. Duplessis said: "By so doing, not only have we exercised a right but we have fulfilled an imperious duty. The permit was cancelled not temporarily but definitely and for always."

(j) EXTRACT FROM EXHIBIT P-28c BEING AN ARTICLE PUBLISHED IN LA PATRIE, ENTITLED "M. DUPLESSIS: RONCARELLI INDIGNE DES BIENFAITS D'UNE PROVINCE QU'IL CONTRIBUE A VILIPENDER", PUBLISHED ON THE 8TH OF FEBRUARY, 1947 (Case, Vol. IV, at page 765, lines 12 to 29 at lines 41 to 46 inclusive):

> "PERMIS ANNULE DEFINITIVEMENT ET POUR TOUJOURS" - Quebec, 7. - "Le procureur général de la province, l'hon. Maurice Duplessis, a rejeté l'instance de Frank Roncarelli demandant permission de poursuivre la Commission des Liqueurs de Québec pour indemnité à la suite de l'annulation par la dite commission de son permis de vente de liqueurs alcooliques.
>
> "Voici la déclaration de M. Duplessis à ce sujet: "La pétition de Roncarelli a été soigneusement étudiée par les officiers en loi du Bureau du procureur général, et nous avons refusé carrément comme c'était notre droit et notre devoir. L'article 35 de la loi des liqueurs déclare formellement que la Commission des Liqueurs de Québec peut, à sa discrétion, annuler un permis en tout temps. Cet article est dans les statuts depuis plus de 20 ans. Ce permis n'est pas un droit, c'est un privilège, c'est-à-dire une faveur accordée.
>
> "Roncarelli est indigne des bienfaits d'une province qu'il contribue à vilipender de la façon la plus méprisable. Et c'est lui-même, à titre de procureur général, qui a donné à la Commission des Liqueurs l'ordre d'annuler son permis, ceci non pas temporairement, mais définitivement et pour toujours."

(k) EXTRACT FROM EXHIBIT P-28d BEING AN ARTICLE PUBLISHED IN THE Montreal Gazette, ENTITLED "SUIT NOT GRANTED FRANK RONCARELLI", PUBLISHED ON FEBRUARY 8, 1947 (Case, Vol. IV, at page 766, lines 32 to 37 inclusive)(underlining our own):

"It was I, as attorney-general of the province charged with the protection of good order, who gave the order to annul Frank Roncarelli's permit", Mr. Duplessis said: "By so doing, not only have we exercised a right but we have fulfilled an imperious duty. The permit was cancelled not temporarily but definitely and for always."

(l) EXTRACT FROM EXHIBIT P-28e BEING AN ARTICLE PUBLISHED IN LE CANADA ENTITLED "DUPLESSIS NIE A RONCARELLI LE DROIT DE POURSUIVRE LA REGIE" PUBLISHED ON FEBRUARY 8, 1947 (Case, Vol. IV, at page 768, lines 4 to 11 inclusive) (underlining our own):

"M. Duplessis prit ensuite toute la responsabilité de l'affaire: "C'est moi-même", dit le premier ministre, "qui ai donné à la Commission des liqueurs l'ordre d'annuler le permis de Roncarelli, car je suis chargé, comme procureur général, de la protection de l'ordre public. En ce faisant, le procureur général et la Commission ont non seulement exercé un droit formel, clair, incontestable, mais ont rempli un impérieux devoir".

(m) EXTRACT FROM EXHIBIT P-28f BEING AN ARTICLE PUBLISHED IN THE HERALD ENTITLED "RONCARELLI ORDER HIS DUPLESSIS" PUBLISHED ON FEBRUARY 8, 1947 (Case, Vol. IV, at page 769, lines 11 to 16 inclusive):

"It was I, as attorney-general of the province charged with the protection of good order, who gave the order to annul Frank Roncarelli's permit," Mr. Duplessis said. "By so doing, not only have we exercised a right but we have fulfilled an imperious duty. The permit was cancelled not temporarily but definitely and for always."

(n) EXTRACT FROM EXHIBIT P-28g BEING AN ARTICLE PUBLISHED IN LE DEVOIR ENTITLED "PERMISSION REFUSEE A RONCARELLI" PUBLISHED ON FEBRUARY 8, 1947 (Case, Vol. IV, at page 770, lines 38 to 48 inclusive):

> "Roncarelli est indigne de bénéficier d'un privilège accordé par la province, qu'il contribue à vilipender de la façon la plus méprisable et la plus intolérable. C'est moi-même, à titre de procureur général chargé d'assurer le respect de l'ordre et la protection des citoyens paisibles qui ai donné à la Commission des Liqueurs l'ordre d'annuler le permis. En ce faisant le procureur général et la Commission des Liqueurs ont exercé un droit formel, clair et incontestable. Ils ont aussi accompli un impérieux devoir. Le permis a été cancellé et annulé non pas temporairement, mais définitivement et pour toujours."

It is significant at this point to read the testimony of the Respondent at Case, Vol. I, page 18, lines 1-33. At this point in the examination of the Respondent he was confronted with the Exhibit P-28a, and when asked whether he had made these statements, declared as follows:

(at line 17 - 23):

> " LE TEMOIN:- Si j'ai dit cela?
>
> L'AVOCAT:- Oui.
>
> R.- Oui. Le permis de Roncarelli a été annulé pour ce temps-là et pour toujours. Je l'ai dit et je considérais que c'était mon devoir et en mon âme et conscience j'aurais manqué à mon devoir si je ne l'avais pas fait."

To the foregoing judicial admission must also be added the one which follows at page 20, Case, Vol. I, lines 21-30:

> "...et c'est cela que j'ai dit aux journalistes, comme Premier Ministre et comme Procureur Général, je prends la responsabilité. Si j'avais dit au Juge Archambault: "Vous ne le ferez pas", il ne l'aurait probablement pas fait. Comme il me suggérait de le faire et qu'après réflexion et vérification je trouvais que c'était correct, que c'était conforme à mon devoir, j'ai approuvé et c'est toujours un ordre que l'on donne. Quand l'officier supérieur parle, c'est un ordre que l'on donne, même s'il accepte la suggestion de l'officier dans son département, c'est un ordre qu'il donne indirectement. Je ne me rappelle pas des expressions exactes, mais ce sont les faits." (underlining our own)

17. THAT THE FOREGOING EXTRACTS ARE EXACT COPIES OF THE STATEMENTS MADE BY THE RESPONDENT AT THE PRESS CONFERENCES MENTIONED ABOVE IS ESTABLISHED BY THE TESTIMONY OF THE WITNESSES ABEL VINEBERG, GAZETTE STAFF CORRESPONDENT IN QUEBEC CITY (Case, Vol. I, page 36, line 5 to page 38, line 10; PAUL GOUDREAU, CANADIAN PRESS CORRESPONDENT, QUEBEC CITY (Case, Vol. I, page 81, lines 1-17, and again at page 82, lines 11-44).

18. RESPONDENT ORDERED THE CANCELLATION AND MR. EDOUARD ARCHAMBAULT CARRIED IT OUT WITHOUT ANY PRIOR COMMUNICATION TO APPELLANT OR NOTICE TO HIM THAT HIS BUSINESS WAS IN JEOPARDY: AND WITHOUT GIVING HIM ANY OPPORTUNITY TO DEFEND HIMSELF OR TO ANSWER CHARGES AGAINST HIM. THE ONLY INVESTIGATION MADE WAS BY MEANS OF A POLICE SPY WHOSE NAME WAS NOT DISCLOSED IN EVIDENCE AND WHOSE REPORT CONTAINED NUMEROUS FALSE AND UNFOUNDED STATEMENTS.

To the suggestion that he should have given Appellant some opportunity to defend himself against the alleged charges made, Respondent replied with the words "C'est ridicule".

We cite the following extract from his testimony at Case, Vol. I, page 21, lines 37 to 41:

" LA COUR:

D. On vous demande si vous avez fait cela?

R. C'est ridicule de demander de faire cela. J'ai pris des précautions qu'un homme honnête doit prendre. J'ai la conviction d'avoir fait mon devoir..."

For proof that Edouard Archambault gave no notice see his admission (Case, Vol. I, page 104, lines 11-14).

19. APPELLANT CARRIED ON HIS RESTAURANT BUSINESS WITHOUT THE LIQUOR LICENSE FOR APPROXIMATELY SIX MONTHS UNTIL FORCED TO CLOSE THROUGH LACK OF CUSTOMERS.

The foregoing facts are established by the testimony of the Appellant (at Case, Vol. I, page 46, lines 13-44) corroborated by the testimony of the witness Frank Boara (Case, Vol. I, page 85, lines 17-33).

20. APPELLANT ATTEMPTED TO SUE THE MANAGER OF THE LIQUOR COMMISSION, EDOUARD ARCHAMBAULT, BUT PERMISSION TO SUE, AS REQUIRED BY SECTION 12 OF THE ALCOHOLIC LIQUOR ACT (R.S.Q. 1941 Ch. 255) WAS REFUSED BY THE CHIEF JUSTICE OF THE COURT OF THE QUEEN'S BENCH OF THE PROVINCE OF QUEBEC (see 1947 K.B. 105 and Appendix A to Factum).

21. APPELLANT THEN ATTEMPTED TO SUE THE QUEBEC

LIQUOR COMMISSION AND PETITIONED THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC FOR LEAVE TO SUE. RESPONDENT ANNOUNCED THE REFUSAL TO GRANT THIS PERMISSION AT A PRESS CONFERENCE ON FEBRUARY 7, 1947, INSTEAD OF BY LEGAL COMMUNICATION AS ATTORNEY GENERAL DIRECTLY TO APPELLANT'S ATTORNEY.

In support of the foregoing facts, we refer to the testimony of the Appellant (at Case, Vol. I, page 44, lines 10-17 inclusive).

Also to the detailed report of the statement made by the Respondent, himself, at the press conference, February 8th, 1947, as reported in all the newspapers under Exhibits P-28 (a) to P-28(g) inclusive cited above at pages 17 to 21 of this factum (Case, Vol. IV, pages 762 to 769 inclusive).

22. AFTER LEARNING THROUGH THE PRESS AS AFORESAID THAT THE RESPONDENT IN HIS CAPACITY AS ATTORNEY GENERAL, WOULD NOT GRANT THIS PERMISSION, APPELLANT FOR A SECOND TIME, REQUESTED THE CHIEF JUSTICE OF THE COURT OF QUEEN'S BENCH OF THIS PROVINCE, TO GRANT PERMISSION TO SUE THE SAID EDOUARD ARCHAMBAULT, AND WAS AGAIN REFUSED, THE WHOLE AS APPEARS FROM THE RECORDS OF THE COURT OF QUEEN'S BENCH, COPIES OF WHICH RECORDS ARE ATTACHED HERETO AS APPENDIX A.

23. HAVING BEEN DENIED THE RIGHT TO SUE THE MANAGER OF THE QUEBEC LIQUOR COMMISSION (BY THE LATE CHIEF JUSTICE OF THE COURT OF QUEEN'S BENCH) AND THE QUEBEC LIQUOR COMMISSION ITSELF, (BY THE PRESENT RESPONDENT IN HIS CAPACITY AS ATTORNEY-GENERAL OF THE PROVINCE OF QUEBEC), APPELLANT THEN INSTITUTED THE PRESENT ACTION AGAINST THE RESPONDENT PERSONALLY.

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Part II

OTHER FACTS AND EXHIBITS NOT CONSIDERED AS RELEVANT TO ISSUES

Under this heading Appellant submits respectfully that evidence concerning the following facts and exhibits, most of which was ordered under reserve of Appellant's objections, are totally irrelevant to the issues in the present cause. This may be summarized as follows:

1. FACTS CONCERNING THE MEETINGS AT THE TOWN OF CHATEAUGUAY AND THE DISTURBANCES WHICH OCCURRED THERE IN SEPTEMBER.

The testimony of the Appellant (Case, Vol. I, page 70, lines 20-40) corroborated fully by that of Mrs. Weaner (Case, Vol. I, page 173 - page174, line 10) indicates clearly that the Appellant had nothing to do with the arranging or conduct of the two meetings of Chateauguay. His sole connection there was an interested spectator and listener to the addresses proposed to be given at the private residence of Mrs. Weaner. On one instance, that is prior to the second meeting, and in view of his unpleasant experience on the first occasion, Appellant appealed to the Provincial Police Director for adequate protection to be given to persons who might be present at this second meeting. In all other respects, the conduct, organization and arrangements for the meetings in Chateauguay had nothing to do with the Appellant nor with the issues in the present cause.

2. FACTS CONCERNING DISTRIBUTION OF THE "QUEBEC'S BURNING HATE" PAMPHLET.

It is clearly established from the testimony of Appellant, corroborated by witnesses Saumur,

Browning and Weaner, as well as by the witnesses Gagnon and Beauregard for the Respondent, that the Appellant had nothing to do with the distribution of the Quebec Burning Hate pamphlet, nor was his restaurant or business premises used in any way for purpose of such distribution. This has been shown in the analysis of facts under Section 13 above.

3. THE EXHIBIT D-1 BEING A CIRCULAR CONCERNING A MEETING AT THE RIALTO HALL DATED MARCH 2, 1947.

(It is to be noted that this exhibit is erroneously dated as March 2nd, 1946 in the Joint Case at Vol. IV, page 641. The correct date should be March 2nd, 1947, as appears from the testimony of the Appellant at Vol. I, page 69 and again at Vol. I, page 146).

As the meeting in question occurred on March 2nd, 1947, several months after the cancellation of Appellant's license, it is totally irrelevant to the issues in the present cause.

4. THE PRODUCTION AND CHARACTER OF THE "QUEBEC'S BURNING HATE" PAMPHLET (EXHIBITS D-7 and D-11)

As indicated above, Appellant did not participate in the distribution of this pamphlet. Nor was his restaurant ever used for this purpose. Nor was he the author of the pamphlet. Nor did he ever offer any security by way of bail or otherwise for persons arrested for the distribution of this pamphlet under the charge of seditious libel. In any event, since the Supreme Court of Canada has held (Boucher vs Rex, 1951 S.C.R. p. 265) that this pamphlet was not in itself expressive of a seditious intent or seditious libel, it becomes totally irrelevant to the issues in the present cause.

Sec. I - Liability — Other Facts not relevant

5. THE SEVERAL BROCHURES, BOOKS AND PAMPHLETS PRODUCED AS LITERATURE OF THE WITNESSES OF JEHOVAH (EXHIBITS D-8, D-9, D-10, and D-16 to 30 INCLUSIVE).

It was clearly established by the evidence that the Appellant was not in any way responsible as author or publisher of any of the books or brochures or pamphlets produced by the Respondent as Exhibits D-8, D-9, D-10, and D-16 to 30 inclusive. In addition, not one of these pamphlets, books or brochures was found in his possession. The witnesses Saumur and Browning indicated that many of these pamphlets and booklets had been out of circulation for several years and were no longer used as text books or expressive of the doctrines or beliefs of the Witnesses of Jehovah. In any event, whether they are or are not expressive of such doctrines or beliefs, they are totally irrelevant to the issues in the present cause.

6. NOTICE OF APPELLANT'S INTENTION TO SUE RESPONDENT PERSONALLY.

Appellant attempted to establish that notice of his intention to sue the Respondent personally was given by him in writing on or about June 2nd, 1947. The production of a copy of this notice together with the bailiff's service was objected to by Respondent's Attorneys and the objection was maintained by the Court. Whilst it is Appellant's contention that such notice was entirely unnecessary and irrelevant, nevertheless in view of the allegations contained in Defendant's Plea, par. 29 (Vol. I, Case, page 6, lines 48 and following), and the denial thereof, in Appellant's Answer to Plea (Case, Vol. I, page 8, par. 17, lines 34 and following), it is Appellant's respectful contention that this proof should have been admitted. This notice was given as "a Notice without prejudice" in view of Appellant's contention that this notice was

not required and is irrelevant to the issues in the present cause, and was offered as Exhibit No. P-29 (testimony of Frank Roncarelli, Vol. I, Case, page 62, lines 14 to 21 inclusive). The ruling of the court on this point was respectfully excepted to by Attorneys for the Appellant.

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Part III

DEFINITION OF ISSUES

The chief points at issue between the parties to this Appeal may be defined as follows:

The Appellant charges the Respondent with the following acts, all of which are delicts within the meaning of the Quebec Civil Code, Art. 1053:

1. Ordering the cancellation of Appellant's liquor permit, without legal justification, and as a reprisal for his having acted as bondsman in a lawful manner, thus forcing Appellant to sell his business at great loss, and depriving him of anticipated profits (Declaration, Paragraphs 6, 7, 12, 13).

2. Failing to give Appellant any opportunity to defend himself or to answer the charges against him (Declaration, paragraphs 6 and 9).

3. By his order to cancel, by the raid and seizure which followed, and by his subsequent acts of vindictive persecution, all of which were widely reported in the press, causing serious damage to Appellant's personal reputation and to the reputation of his business (Declaration, Paragraphs 10, 11, 12, 13(d) and (f).

These delicts, Appellant contends, give rise to a personal action in damages against Respondent (Declaration, Paragraph 11), who, being entirely outside his functions as Prime Minister and Attorney-General in so acting, is liable to suit like any private individual.

Respondent, on the other hand, contends:

1. That the Appellant was for many years one of the chiefs of the Witnesses of Jehovah in the Province of Quebec, and as such, in defiance of the laws of this country and province, was the organizer of a propaganda campaign to distribute seditious writings therein (Defense, Paragraphs 3, 17).

2. That this propaganda campaign was endangering the public security of the Province (Defense, paragraphs 18 - 19).

3. That the Appellant, by giving bail in numerous cases involving the Witnesses of Jehovah, became an "accomplice" in their "seditious acts" in the Province and rendered himself unworthy of being the holder of a liquor permit (Defense, Paragraphs 20 - 23).

4. That the Respondent considered it his duty to intervene in this matter, and that his acts and his order to cancel were done and given in his qualities as Prime Minister and Attorney-General of the Province, and, therefore, that he could not become liable personally for the damages caused to the Appellant (Defense, paragraphs 16, 23, 24, 27).

5. Subsidiarily to these issues, the Respondent also raises the defense that he was not given the notice due to him for damages caused by acts done in his official capacity as provided by Article 88, C.P.C. (Defense, Paragraph 29).

This is denied by the Appellant, and in

addition, the Appellant contends that the Respondent did not act within the exercise of his functions and, therefore, in any event was not entitled to the notice referred to (Answer to Plea, paragraph 17).

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Part IV

FINDINGS OF FACT BY TRIAL JUDGE

In the statement of facts which gave rise to this action, reference has already been made to certain findings of fact in the Court below. Among these various findings, the following, it is submitted, are of particular importance because they settle in favour of Appellant the chief points of difference in the Definition of the Issues just outlined.

1. Appellant claims that Respondent ordered the cancellation of the license. This is found as a fact by the trial judge (Case, Vol. IV, pp. 871-872) who says, after reviewing the evidence:

> " In the light of the foregoing the Court can reach no other conclusion than that Defendant gave an order to Mr. Archambault to cancel plaintiff's license and it was his order that was the determining factor. "

Thus it has been found as a fact that the determining factor of the cancellation was Respondent's order. It is submitted that on the evidence presented and the facts as proven this is correct and that this finding should not be disturbed. The learned trial judge also found that Archambault,

because of his appointment by Respondent to the office of Manager of the Quebec Liquor Commission, and because he was subject to dismissal at any time, was obliged to act as the Respondent directed (Case, Vol. IV, page 872, lines 9-17).

2. Further, the learned trial judge found as a fact that the cancellation was not ordered as a means of enforcing the Alcoholic Liquor Act, but as a punishment of Appellant for having given bonds in the Recorder's Court of Montreal for Witnesses of Jehovah. He says (Case, Vol. IV, page 874, lines 30 to 39):

> " It is apparent that the real reason for the cancellation of plaintiff's license was that he had been furnishing multiple bonds in the Recorder's Court for the followers of the Witnesses of Jehovah doctrines who had been arrested for misdemeanours on charges laid under by-laws of the City of Montreal and that he was a member of that sect. If the plaintiff had been guilty of some misconduct in the management of his business or had been guilty of acts which would bring his restaurant into disrepute or had permitted its use by undesirable characters then the Commission might have acted. "

Thus Respondent's contention is sustained that the purpose of Respondent's interference in the administration of the Quebec Liquor Commission was to punish Appellant for having acted as surety. As the trial judge also said (at page 863, lines 13-14):

> " It was indirectly an effort to discipline the Witnesses as a group. "

He omitted to state, as will be argued below, that this constituted an abuse or usurpation of power, but it is clear that he so considered it.

Sec. I - Liability — Findings of Fact by Trial Judge

3. The judgment appealed from makes no direct reference to Respondent's failure to give Appellant an opportunity of being heard and defending himself before action was taken against him, but this was an element in the case of Leroux v. City of Lachine relied on by the trial judge and quoted by him at page 874. Respondent himself admitted that he did not communicate with Appellant before ordering his license cancelled, and added his opinion of the suggestion in these words (page 21):

> " C'est ridicule de demander de faire cela. "

It is submitted that this omission on the part of a public officer to respect the elementary principle of natural justice that no man should be condemned unheard, constitutes a fault under Quebec law. The point will be argued below.

4. The learned trial judge also found as a fact that there was damage to Appellant's reputation and to the reputation of his business because of adverse publicity caused by Respondent (Case, pages 882-4). The question of the adequacy of the damage awarded will be argued in the cross-appeal. Here it should be noted that defamation has been found as a fact. This constitutes a further delict under Art. 1053 C.C. The relevant passage in the judgment reads:

> " On the 7th of December, 1946, Defendant gave an interview to the Reporters and which was published in the press and certainly gave Plaintiff some adverse notoriety. Defendant stated that to have permitted plaintiff to continue to use funds he derived from a privilege in the Province of Quebec to conduct a campaign inciting to sedition, public disorder and disregard of municipal by-law would have been to have placed the Attorney-General of the

" Province in the position of an accomplice.

The natural inference would be that plaintiff was participating in a campaign of sedition inciting the public to disorder. The evidence is that no cash bail was being given by plaintiff and he was not using any of his funds for that purpose. Further on in the same interview defendant made the following statement:

When in addition to launching upon an undertaking and creating an organization in connection therewith, to arrange for mass bail for people engaged deliberately in commission of certain illegal acts, the funds available for that purpose are taken from the proceeds which flow to him because he has been given a privilege - not a right, by the province, then it becomes a matter of making the province, which thereby enabled the funds to exist, a party to the proceedings. "

And yet again further on:

" The presumption has always been that the special privilege of selling alcoholic liquor was to go to men of good character; law-abiding citizens in the full sense of the word. In the case of the cancellation of the Roncarelli permit, action had not been taken hastily, said the premier. The matter had been studied in its various angles, and the conclusion reached that because of his actions in helping to spread sedition, in helping in breaking municipal by-laws, Roncarelli was not a person who should enjoy the privilege which had been given to him.

" To allow him to continue to have that privilege, and, because of that privilege, secure the means of encouraging acts leading to public disorder, would have been, in effect, to make the Attorney General an accomplice.

While Plaintiff has been unable to establish any actual pecuniary loss from adverse notoriety and publicity arising from the seizure he is entitled to compensation for the moral damage to his reputation. "

The amount of $1,000.00 was allowed for moral damage to Plaintiff's reputation (Case, Vol. IV, page 883, lines 29 to 31) although this same item is listed in the recapitulation as "damages to goodwill and reputation of his business" (page 884, line 25).

Thus the essential facts alleged by Appellant have been established and accepted as proven by the Trial Court. It is respectfully submitted that they should not be disturbed in appeal, since far from being unsupported by the evidence, they are entirely consonant with it.

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Part V

THE JUDGMENT APPEALED FROM

1. It is respectfully submitted that the judgment below is erroneous in holding that Appellant had not established the causal connection between the acts of the Respondent and the revocation

of his permit, and that the dissenting judgment of Rinfret, J. upholding that of Mackinnon J. in the Superior Court, correctly interprets the evidence on this point.

2. The notes of the four judges forming the majority of the Court below all find as a fact that whatever acts may be attributed to Respondent, they did not constitute the cause of the cancellation; this is indeed the chief considerant of the very brief formal judgment (See Judgment, Case, Vol. V, page 893, line 46 to page 894, line 5; also Bissonnette J., ibid, page 900, lines 35-40; Pratte J., page 921, lines 28-31; Martineau J., page 995, line 44 to page 996, line 9; Casey J., page 923, line 35 to page 924, line 7.).

THIS HOLDING OVERRULES THE TRIAL COURT ON A QUESTION OF FACT WITHOUT ESTABLISHING ANY MANIFEST ERROR IN JUSTIFICATION THEREOF.

3. It is a well established rule in Quebec jurisprudence that a Court of Appeal will not overrule on facts unless manifest error is shown or the findings are clearly unsupported by the evidence. This is particularly the case where such findings resolve themselves into questions of credibility. One of the main reasons for this rule is that an Appeal Court has not heard or seen the witnesses while the Trial Judge has, and is able to appreciate their demeanor as well as their testimony.

Rivard, in his Manuel de la Cour d'Appel, wrote at page 45:

" Elle, (the Quebec Court of Appeal) observe en principe et dans ses lignes générales, la règle suivante, posée en Cour Suprême:"

"A Court of Appeal should not reverse the findings upon matters of fact of the Judge who tried the cause and had

" the opportunity of observing the demeanor of the witnesses, unless the evidence be of such a character as to convey to the minds of the Judges sitting in appelate tribunal the irresistable conviction that the findings are erroneous." per

Gwynne, J. in Ryan v. Ryan (1882) 5 S.C.R. at page 406. See also

Ruthman v. La Cité de Québec (1913) 22 K.B. 147;

In the present case the Trial Judge found the crucial fact that an order had been given by Respondent to cancel the license. In making this finding he had to weigh the testimony of both Respondent and Edouard Archambault, which at several points contained equivocations and contradictions raising the question of credibility.

As was said by Duff, J. in Merchants Bank of Canada v. Wilson (1925) 4 D.L.R. 200 at page 201:

" These appeals involve questions of fact which ultimately resolve themselves into questions of credibility. I think they should be allowed and the judgment of the trial Judge in each of the cases restored, for the reason that I can see no adequate ground for declining to accept the findings of the trial Judge. He had the advantage of seeing the witnesses, and the probabilities in my opinion support the conclusion at which he arrived. "

See also McMillan v. Murray (1935) S.C.R. 572 where Duff, C.J. said at page 574:

" In this view, the finding of the trial Judge, who had the opportunity of observing the appellant under cross examination, ought not, I think, to be disturbed. "

1. Moreover, the learned justices do not agree at all as to the nature of the "order" to cancel given by Respondent. Bissonnette, J. just holds that the evidence of Respondent indicates only an approval of Archambault's decision to cancel (Case, Vol. V, page 899, lines 20 to 30). Yet he finds himself compelled to discuss the legal consequences of Respondent having given an order which he (Respondent) believed he had the authority to give to Archambault (ibid lines 31 to 47). Pratte, J. says that the trial judge could not be held to have erred in finding that an order to cancel was given and to this extent concurs in the finding of fact of the Court of first instance. But in his view, this order was not the cause of cancellation since Edouard Archambault had already decided to revoke the permit (Case, Vol. V, page 919, lines 10-32). Martineau, J. in his analysis of facts, denies there was an order but admits there was an "approbation énergique" amounting to a ratification (Case, Vol. V, page 994, lines 18-37), and yet he admits that Respondent told the press that he gave an order (page 995, lines 1-2). Casey, J. says Respondent "told the Chairman to cancel the permit" but distinguishes this from an order given to a subordinate (page 923, lines 34 to end). Only Rinfret, J., it is submitted, correctly analyses the true position and concludes in agreement with the trial judge as follows (Case, Vol. V, page 944, line 40 to page 946, line 1):

> " De ces longues citations, il se dégage, je crois, plusieurs constatations: si tant est que le juge Archambault avait déjà pris une décision, il n'en a pas fait part au premier ministre, il ne lui a fait qu'une suggestion; le premier ministre se qualifie d'administrateur, de tête de département et traite le gérant de la Commission comme un officier supérieur de son département; dans l'esprit du premier ministre, l'officier a le droit, même le devoir de faire des suggestions, mais il revient au chef du

" département, dans l'espèce, lui-même, de les accepter ou de les refuser; le premier ministre considère qu'il était de son devoir à lui en ses qualités de procureur général et de premier ministre, d'autoriser la cancellation du permis; ce n'est qu'après qu'il eut, lui, été renseigné de la façon indiquée, que la décision a été prise; la décision a été prise et l'indignité prononcée sur des questions qui sont du ressort exclusif du procureur général. "

.....
.....
.....

" En regard de cette preuve, je ne puis pas conclure que le juge de première instance a commis une erreur manifeste en tenant pour avéré que la décision avait été prise par le défendeur et qu'ordre avait été donné par lui au gérant de la Commission d'annuler le permis. "

5. It is stated by three of the justices in the Court below that Appellant's behaviour gave reasonable cause for the cancellation because it raised a well-founded suspicion that he was aiding a campaign of sedition throughout the Province: see Bissonnette, J. (Case, Vol. V, page 906, line 30 to page 907, line 18); Casey, J. (Case, Vol. V, page 928, lines 34-44 and page 929, line 29 to page 932); Martineau, J. (Case, Vol. V, page 999, line 7 to page 1000, line 9, and page 1007, lines 1 to 26). It is respectfully submitted that this contention is untenable in face of the evidence, and is based on an ex post facto argument derived from the Boucher case (Boucher v. TheKing, 1951, S.C.R. 265) - a case which had not been started until after Appellant's license was cancelled.

6. This attempt to associate Appellant with a campaign of sedition is all the more inexplicable since, as has been shown above (pp. 3 9), the following facts were found by various justices in the Court below, confirming the trial court:

a) Appellant did not give bail in any case of sedition;

b) Appellant had stopped giving bail even for those charged with infringing Montreal City by-laws about two weeks before the pamphlet "Quebec's Burning Hate" appeared: see Martineau, J. page 984, lines 13-26; Rinfret, J., page 962, line 45 to page 963, line 2;

c) Appellant himself never distributed any pamphlets and none were found on his premises in Montreal: see Pratte, J., page 914, lines 7-26; Casey, J., page 928, line 46 to page 929, line 22; Rinfret, J., page 964, lines 15-24; Martineau, J., page 997, lines 23-27;

d) Appellant was not a chief or leader but a simple adherent of the Witnesses of Jehovah: see Rinfret, J., page 962, lines 10-15; Martineau, J., page 997, lines 11-15. Casey J. admits Appellant did not have anything to do with the policy or doctrine of the sect or with the administration of its affairs, but says he was an active - perhaps militant - participant in its activities: page 926, lines 1-25;

e) Appellant did not control the operations of the Kingdom Hall he leased in Sherbrooke, and was ignorant of the fact that copies of "Quebec's Burning Hate" were on the premises; see his testimony, Vol. I, page 71, line 40 to page 72, line 12; Browning, page 180, line 5; also Casey, J., Vol. V, page 962, lines 30-35; Martineau, J., page 997, line 40.

7. If Respondent had a duty to stop a campaign of sedition it could only be by laying

charges of sedition against specific individuals in the criminal courts, as was done in the case of Boucher and others. He could not by-pass the Criminal Code and the protections it affords the accused, or, to use the words of Rinfret, J. (Vol. V, page 960, lines 12-13):

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> " ... emprunte à une autre des moyens de répression que la loi lui refuse. "

To hold otherwise is to contend that under Quebec Law it is lawful to punish an individual without trial because of his association with other individuals suspected of illegal activities, but also not tried. It is submitted that this is a plain error of law, as well as a gross injustice to Appellant.

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8. In particular, the notes of Martineau, J. in the Court below enunciate a theory of "provocation" which, it is respectfully submitted, has no foundation in fact or in law. He says (Vol. V, page 1000, lines 28 and ff.):

> " Mais cette indignation quasi-générale, que partageait l'appelant, ne démontre-
30 t-elle pas que l'intimé fut bien mal avisé, même très imprudent en s'associant à cette propagande, même s'il ne l'a fait qu'indirectement, lui qui détenait un privilège précieux de la Commission des Liqueurs, donc de la Province de Québec qui était si cruellement prise à partie dans le livre "La Haine ardente du Québec"? N'aurait-il pas dû, dans les circonstances, non pas renier
40 sa foi, non pas la cacher mais agir de façon que son nom ne fût en aucune façon associé à des actes qui devaient nécessairement blesser les susceptibilités légitimes et les croyances respectables de la majorité des citoyens de la Province? Je le crois, et il me semble que sa conduite, bien qu'elle n'avait

" rien d'illégale, était dans les circonstances, une provocation qui aurait enlevé tout élément de faute à l'ordre de révoquer le permis de l'intimé, si l'appelant avait donné de telles instructions à M. Archambault. "

No authority is given for the alleged rule that a member of a religious body must disassociate himself from the activities of his co-religionists, and to admit such a rule would destroy that freedom of religion which is guaranteed in Quebec by the Freedom of Worship Act (R.S.Q. 1941 c. 307). It must be remembered that in everyone of the 390 cases in which Appellant gave bail (with the full approval of the Recorder's Court in Montreal) the accused was either acquitted or the complaint against him was withdrawn. Moreover, the right to give bail is a fundamental right possessed by every citizen and obviously is not confined to cases in which the accused is subsequently found to be innocent.

9. The judgment below is in error in rejecting that part of Appellant's claim which is based on damage to personal reputation and to the reputation and goodwill of his business.

Pratte, J. says (Vol. V, page 921, line 38 to page 922, line 9):

" Mais l'intimé prétend, dans son mémoire, que le montant qu'il réclame ne représente pas seulement les dommages résultant de la révocation de son permis, mais qu'il comprend ceux que l'appelant lui aurait causés par certains propos diffamatoires tenus au cours de conférences de presse. Cette prétention n'est pas fondée. En effet, les conférences de presse en question n'ont pas été alléguées; et il n'y a absolument

" rien dans la déclaration qui permette de considérer la diffamation comme cause d'action. Il est vrai que la somme réclamée par le demandeur comprend un montant qui représenterait le dommage causé à sa réputation. Mais le contexte fait bien voir qu'il s'agit là d'un préjudice résultant de la révocation du permis. "

Martineau, J. says (page 1009, lines 14 to 32):

" L'action de l'intimé n'est pas fondée uniquement sur les dommages que lui aurait causés la révocation de son permis mais aussi sur ceux dont aurait souffert sa réputation personnelle du fait de la dite révocation, de la saisie des boissons alcooliques qu'il y avait alors dans son restaurant et de la publicité hostile qui s'en suivit.

Il est à noter cependant que l'intimé n'allègue pas que les déclarations publiques faites par l'appelant aient porté atteinte à sa réputation mais seulement que les rapports malveillants publiés dans les journaux, à l'occasion de la révocation de son permis et de la saisie, ont nui à la bonne réputation dont il jouissait alors. Cette position prise par l'intimé rend donc inutile, comme l'a décidé le juge de première instance, l'étude des déclarations publiques faites par l'appelant à la suite de la révocation du permis de l'intimé. "

It is submitted that these statements are manifestly erroneous. The injury to reputation, or defamation, for which the amount of $1000.00 was awarded in the Superior Court, is not only that arising from the press reports of the raid, but also

that arising from the publicity given to all the acts and deeds of Respondent, including the persecution that followed the raid. This is clear from Appellant's declaration and will be dealt with more fully in the argument below.

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x

Part VI

THE LAW APPLICABLE

1. BY THE PUBLIC LAW OF QUEBEC, WHICH DERIVES FROM ENGLISH LAW, PUBLIC OFFICERS INCLUDING THE RESPONDENT ARE PERSONALLY LIABLE FOR THEIR DELICTUAL ACTS, WHETHER COMMITTED IN THE EXERCISE OF THEIR PUBLIC FUNCTIONS OR OUTSIDE THEM.

A public officer or other person fulfilling any public function or duty can be sued for damages. This proposition is implicit in Art. 88 of the Code of Civil Procedure, which states:

> " No public officer or other person fulfilling any public function or duty can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any verdict or judgment be rendered against him, unless notice of such action has been given him at least one month before the issue of the writ of summons. "

Other articles establishing the same right of action against public officers will be found in C.C.P. 97 and 429. A similar rule is found in the Magistrates Privilege Act, R.S.Q. 1941, chap. 18 sec. 2.

Even where the delictual act is committed in the exercise of his function, if personal liability of a public officer is barred, it must be by express provision of the statute; as, for example, in the case of the Municipal Commission Act, R.S.Q. 1941, ch. 207, section 18 (no personal liability for members of the Commission).

2. IN APPLYING THE RULE IN QUEBEC, THE MEASURE OF FAULT AND OF DAMAGES IS TO BE DETERMINED BY ART. 1053 C.C. TO WHICH ALL PUBLIC OFFICERS, INCLUDING RESPONDENT, MUST CONFORM.

The cases in Quebec applying Art. 1053 C.C. to public officers are very numerous. Mignault, Vol. V, pages 367-8, cites early decisions; Beullac, La Responsabilité Civile, devotes Chapter X to the subject. See also Ferland, "Le Préavis à l'officier public", 1945 R. du B. 476. Beullac states:

" Sont des officiers publics au sens des arts. 88, 97 et 429 C.P., ceux qui exercent des fonctions publiques, c'est-à-dire, tous ceux à qui l'autorité compétente aura délégué une portion quelconque du pouvoir souverain du gouvernement, soit exécutif, législatif, judiciaire ou ministériel. Toutes les fonctions publiques doivent trouver leur source dans un texte de loi. "

3. THE OFFICIAL WHO ORDERS AN ILLEGAL ACT IS EQUALLY LIABLE WITH THE PERSON WHO CARRIES IT OUT. HE IS A CO-AUTEUR OF THE FAULT, OR JOINT TORTFEASOR.

In the leading English case of Raleigh v. Goschen (1898, 1 Chancery 73) where Plaintiff sued the Lords of the Admiralty for damages for trespass on his land, Romer J. stated this principle as follows (at page 77):

" If the trespass had been committed by some subordinate officer of a Government Department or of the Crown, by the order of a superior official, that superior official - even if he were the head of the Government Department in which the subordinate official were employed, or whatever his official position - could be sued. "

And again at p. 79 he says (underlining is our own):

" On the other hand, the Plaintiffs could sue any persons actually committing or threatening the trespass, even though those persons only acted on behalf or by the authority of the Government, or of the Defendants as representing the Admiralty. Moreover, I do not think the rights of the plaintiffs would of necessity be confined to an action against those actually committing the trespass, who might be some very humble persons. <u>If a trespass was committed by those persons by the order or direction of some higher officials, so as in substance to have been the act of those higher officials, then the latter could be sued</u>. For example, suppose the captain of a ship to have unlawfully ordered some of his sailors to take possession of a house and they obeyed his order, he could be sued for the trespass even though he himself remained on board his ship and did not personally go into the house. So, if any of the defendants had themselves ordered or directed the alleged trespass now complained of by the plaintiffs, and it was in consequence of such order or direction that the alleged trespass took place, or if any of the defendants

" threatened to order or direct further trespass, then they could be sued. But in this case they could be sued not because, but in despite of the fact that they occupied official positions or acted as officials. "

Raleigh v. Goschen was cited with approval in Smith v. Christie (55 D.L.R. 68). This was an action taken against the Dominion Minister of Agriculture and others, and Stuart J., with whom Harvey, C.J. and Ives, J. concurred, said (at page 75):

" The case (Raleigh v. Goschen) perhaps throws only a side-light upon the matter really before us here but it seems clear from the judgment that the head of a Government Department even though a Minister of the Crown may be sued in his individual capacity for a trespass <u>if in substance it is his individual act though done through an agent or subordinate, and this not because of, but in spite of the fact, that he is an officer of state</u>. "

Citing the case of <u>Raleigh vs Goschen</u>, Halsbury in Vol. XXVI, page 271 (2nd Edition), sets out this principle with approval.

See also <u>James v. Cowan</u>, 1932 A.C. 542, where the Minister of Agriculture of South Australia was sued personally for an illegal seizure of plaintiff's goods and heavy damages (£ 12,145-4s.-10d.) were awarded against him. Lord Atkin said at page 555:

" It is beyond dispute, unless the seizures can be justified under the Act, they were legal wrongs for which plaintiff had a remedy..."

Bickford Smith, the Crown Proceedings Act, 1947, says at page 21:

> " ...the Minister at the head of such a Department may be legally liable for personal torts committed by him,..."

In the present case, as the evidence shows and Respondent admits, Respondent directly ordered the cancellation thus making it his own act; moreover he intended it to damage Appellant. Hence he is personally liable. This is a tort in English law and equally a fault under C.C. 1053.

Mignault, Vol. V, page 334, says:

> " La faute est un délit lorsque l'agent du dommage l'a causé avec intention. "

Here the giving of the illegal order was forbidden since Respondent did not possess the authority and omitted all the precautions which should attend the exercise of the authority.

Mazeaud (Vol. I, par. 409) states:

> " On commet une faute délictuelle, de même qu'on commettait un dolus en droit romain, chaque fois qu'on agit dans l'intention de causer un dommage."

Savatier says (Vol. I, page 207) ("Responsabilité Civile", 2nd Edition):

> " Tout homme en possession de ses facultés est censé connaître ses devoirs légaux et moraux. S'il viole l'un d'eux, il ne peut donc se prétendre exempt de faute, en alléguant qu'il en ignorait le principe. "

4. EVEN WHERE THE ACT OF THE PUBLIC AUTHORITY IS AUTHORIZED, THE NEGLIGENT EXERCISE OF THE POWER IS STILL A DELICT OR QUASI-DELICT ENTAILING LIABILITY.

This rule is stated in Halsbury, 2nd Edition, Vol. XXVI, page 261, in a passage cited with approval in the trial judgment appealed from (Case, Vol. IV, page 875). Halsbury says:

" 574. In all cases, those exercising statutory powers or duties must use all reasonable diligence to prevent their operations from causing damage to others. Their liability in this respect must be determined upon a true interpretation of the statute in question, but, in the absence of something to show a contrary intention, they have the same duties and their funds are rendered subject to the same liabilities as the general law would impose upon a private person doing the same things, including liability for the acts of their servants. The diligence to be exercised must be reasonable according to all the circumstances, regard being had not only to the interest of those exercising the powers but also to that of those suffering, or threatened with injury. "

5. IT IS A DELICT OR A QUASI-DELICT FOR A PUBLIC OFFICER TO USURP A POWER THAT DOES NOT BELONG TO HIM AND TO ACT IN A MANNER NOT AUTHORIZED BY SOME POSITIVE TEXT OF LAW.

This is a fundamental principle of the English and Canadian Constitutions. It is the foundation of the supremacy of the law over the state and over every state official. With us, all officials possess a limited jurisdiction only, which some statute or text of law defines.

Halsbury (2nd Edition), Vol. VI, para. 425, says.

" 425. From the all-pervading presence of law, as the sole source of governmental powers and duties, there follow these consequences:

(1) The existence or non-existence of a power or duty is a matter of law and not of fact, and so must be determined by reference to some enactment or reported case. "

The same principle is restated by Halsbury (2nd Edition) Vol. VI, Para. 435, and cited with approval by the learned trial judge (Case, Vol. IV, page 875, lines 19-25) as follows:

" 435. The so-called liberties of the subject are really implications drawn from the two principles that the subject may say or do what he pleases, provided he does not transgress the substantive law, or infringe the legal rights of others, whereas public authorities (including the Crown) may do nothing but what they are authorized to do by some rule of common law or statute. "

This is the established law of the Province of Quebec.

Beullac, La Responsabilité Civile, page 514, says:

" Toutes les fonctions publiques doivent trouver leur source dans un texte de loi. "

In the leading English case of Entick v. Carrington, 19 St. Tr. 1030, Lord Camden said:

" By the laws of England, every invasion of private property, be it ever so

" minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the Defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to shew by way of justification, that some positive law has empowered or excused him. The justification is submitted to the judges, who are to look into the books; and see if such a justification can be maintained by the text of the statute law, or by the principles of common law. If no such excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment. "

Respondent was entirely outside his functions and had no legal authorisation to commit the damage.

As stated by the trial judge (Case, Vol.IV, page 877, lines 48 to 50):

" If acting outside the statutory defined functions of his office defendant has committed a faulty and unauthorized act causing damage, he should be held personally liable. "

6. NO STATUTORY OR OTHER TEXT OF LAW RELATING TO THE OFFICES HELD BY RESPONDENT JUSTIFIED THE SEVERAL ACTS AND OMISSIONS WHICH CAUSED DAMAGE TO APPELLANT.

Respondent held ıly two offices to which any public rights and duties relating to this case might attach: the offices of Prime Minister and of Attorney General.

(A) There are no special functions or powers attached to the office of Prime Minister at common law. It is a purely political position conferring per se no legal powers or immunities. The only statutory reference to the office in Quebec is found in the Executive Power Act, R.S.Q. 1941, ch. 7, secs. 5, 6 and 8, as amended by the Statutes of Quebec 1946, ch. 11, sec. 6. Nowhere is the Prime Minister given any right of interference in the administration of the Liquor laws of the province, a right to defame citizens or to punish them for giving bail, or to commit any of the other acts which damaged Plaintiff. See the citation from Halsbury (2nd Edition, Vol. VI, page 621) in the judgment below, and the trial judge's analysis of the statutes of Quebec (Case, Vol. IV, pages 875, line 48 to 876, line 30).

(B) The rights and powers attaching to the office of Attorney General are set out and analyzed in sufficient detail in the trial judgment below (page 876, line 30 to page 877). There is a total absence of any grant of power to order the cancellation of licenses or to act as Respondent acted toward Appellant. Hence it is submitted that the trial judge was correct in stating (Case, Vol. IV, page 877 last para. line 44 to page 878), e.g.:

> " Nowhere can be found any authority granted the Prime Minister or the Attorney General to interfere in the administration of the Alcoholic Liquor Act or to order the cancellation of a license. If acting outside the statutory defined functions of his office defendant has committed a faulty and unauthorized act causing damage he should be held personally liable.
>
> As to his acting in an official capacity the court considers that defendant has failed to show any

" provision in the law giving him the authority to interfere with the administration of the Quebec Liquor Commission and to order it to cancel a license. "

This view is also supported by Bissonnette, J. (Vol. V, page 897, line 12 to page 898, line 28) and by Rinfret, J. (Vol. V, page 958, line 31 to end of page).

To these comments we would add the remarks of Prof. E.C.S. Wade of Cambridge University in his note on the trial judgment in Canadian Bar Review, Vol. XXIX, at page 669:

" A discretion is given by law to the person who is empowered to exercise it; it is not, apart from express provision, competent for another to order him how to exercise it, no matter what the motive be for interfering. Thus the Home Secretary in England not infrequently has to affirm that he cannot give instructions to benches of lay magistrates to increase the severity of sentences which it lies within their discretion to impose. If a general direction as to how discretion should be exercised which has been given to all officers occupying a like position cannot be upheld, the more so a private instruction given to a specially designated officer or tribunal as to how functions should be performed must be had. The object of establishing an independent tribunal is to remove the power of decision from the executive and this is clearly defeated if the tribunal acts to order. "

7. APPELLANT BY HIS ACTION SEEKS TO HOLD RESPONDENT LIABLE FOR SEVERAL ACTS WHICH ARE RESPONDENT'S PERSONAL DELICTS. THE FIRST OF THESE IS HIS ORDER TO CANCEL APPELLANT'S LICENSE, AN INTERVENTION AND USURPATION OF POWER, WHOLLY UN-

AUTHORIZED BY ANY TEXT OR RULE OF LAW.

It has been found as a fact by the trial judge that it was the Respondent's order to cancel which was "the determining factor" causing the damage (Vol. IV, page 872, lines 1-4). This analysis is supported by Rinfret, J. (Vol. V, page 940, line 21 to page 945).

Respondent's plea alleges that it was he who recommended to the Manager of the Quebec Liquor Commission the cancellation of the license: see Plea, Vol. I, page 6, par. 24, reading as follows (underlining our own):

" 24. - Le défendeur, en sa qualité de Procureur Général de la province, fut mis au courant de la conduite indigne du demandeur et informé que celui-ci était détenteur d'un permis qui lui avait été accordé par la Commission des Liqueurs de Québec pour la vente des liqueurs alcooliques et, dans le cours du mois de décembre, il décida, après mûre réflexion, qu'il était contraire à l'ordre public de laisser le demandeur bénéficier des privilèges dont il se rendait indigne et, en conséquence, le défendeur recommanda au Gérant de la Commission des Liqueurs de Québec d'annuler ledit permis. "

Appellant has prayed acte of this judicial admission in paragraph 14 of his Reply (Case, Vol. I, page 8, line 25) and consequently Respondent is bound by this admission which excludes the conflicting and contradictory contention that it was not his instruction but Archambault's decision which caused the cancellation.

Moreover an analysis of the testimony of Respondent and of Edouard Archambault regarding their conversations prior to the cancellation clearly reveals the following facts:

a) No final decision to cancel on his own responsibility was made by Edouard Archambault before he called Respondent by phone, since he was instructed to make further investigations and after doing so called Respondent a second time. Obviously he was waiting to be told what to do, by his political superior. His own part in the process of decision was that of a man who collects facts and makes a suggestion. To cite his own words (Vol. I, page 103, lines 21-35):

" D.- Maintenant, ce jour-là où vous avez reçu une lettre, le 30 novembre 1946, avez-vous décidé, ce jour-là, d'enlever la licence?

R.- Certainement, ce jour-là, j'avais appelé le Premier Ministre, en l'occurrence le procureur général, lui faisant part des constatations, c'est-à-dire des renseignements que je possédais, et de mon intention d'annuler le privilège, et le Premier Ministre m'a répondu de prendre mes précautions, de bien vérifier s'il s'agissait bien de la même personne, qu'il pouvait y avoir plusieurs Roncarelli, et coetera. Alors, quand j'ai eu la confirmation de Y3 à l'effet que c'était la même personne, j'ai rappelé le Premier Ministre pour l'assurer qu'il s'agissait bien de Frank Roncarelli, détenteur d'un permis de la Commission des Liqueurs; et, là, le Premier Ministre m'a autorisé, il m'a donné son consentement, son approbation, sa permission, et son ordre de procéder. "

(underlining our own)

To this testimony must be added that of Respondent, who after some equivocation, says flatly (Vol. I, page 20, lines 20-31):

" Mais la vérité vraie c'est ce que j'ai dit tout à l'heure, et c'est cela que j'ai dit aux journalistes, comme Premier Ministre et comme Procureur Général, je prends la responsabilité. Si j'avais dit au Juge Archambault: Vous ne le ferez pas, il ne l'aurait probablement pas fait. Comme il me suggérait de le faire et qu'après réflexion et vérification je trouvais que c'était correct, que c'était conforme à mon devoir, j'ai approuvé et c'est toujours un ordre que l'on donne. Quand l'officier supérieur parle, c'est un ordre que l'on donne, même s'il accepte la suggestion de l'officier dans son département, c'est un ordre qu'il donne indirectement. Je ne me rappelle pas des expressions exactes, mais ce sont les faits. "

(underlining our own)

b) Respondent's part in the making of the fatal decision was thus that of a man who assumes he is finally determining the issue. This is what he says in his plea, this is what he says in his testimony, and this is what he told the press and the public on numerous occasions. He was therefore the determining cause of the damage, whether or not Edouard Archambault also contributed.

c) Respondent was head of the government which appointed Edouard Archambault to his post in Sept. 1944 (Vol. I, page 98, lines 39-47). Under the Alcoholic Liquor Act the Manager of the Commission has no security of tenure; his appointment and salary are determined by the Lieutenant-Governor in Council (See R.S.Q. 1941, c. 255, sec. 5). It was also a government headed by Respondent which reduced the former five-man Commission to a one-man Commission by the Act 1, Ed. VIII (2) c. 14 s. 1, thus rendering the Commission more susceptible to his influence.

HENCE THE FINDING OF FACT BY THE TRIAL JUDGE THAT RESPONDENT'S ORDER WAS A DETERMINING FACTOR IN CAUSING THE DAMAGE IS WELL FOUNDED. IT IS A DISTORTION OF THESE FACTS TO HOLD THAT A WHOLLY INDEPENDENT DECISION HAD BEEN TAKEN BY EDOUARD ARCHAMBAULT AND TO ARGUE FROM THIS THAT RESPONDENT'S ACTIONS WERE NOT A DETERMINING FACTOR.

The majority of the justices in the Court below thus commit a double error: (a) They are wrong in their analysis of the facts and (b) they are wrong in overruling the trial judge on a question of fact without showing where he was manifestly in error. It is submitted that Rinfret, J. correctly stated the law when he said (Vol. V, page 945, last paragraph):

> " En regard de cette preuve, je ne puis pas conclure que le juge de première instance a commis une erreur manifeste en tenant pour avéré que la décision avait été prise par le défendeur et qu'ordre avait été donné par lui au gérant de la Commission d'annuler le permis. "

The case of Leroux v. City of Lachine (1942) S.C. page 352 is very similar to the present case. There MacDougall J. gave damages against the City on behalf of the owner of a dance hall whose license had been cancelled by the provincial authorities at the request of the City Council. The judgment reads in part:-

> " Considering that by such precipitate, and unwarranted and negligent action the Defendant has caused damage to the plaintiff, has brought about a diminution in the profits he received from his business and has, moreover, injured and humiliated him in the esteem and regard of his fellow citizens;
>
> Considering that while it is the right

" of the defendant Council to supervise peace and good order within the confines of the City, the abuse of such right must be visited, as in other cases, with a condemnation in damages for the loss sustained by such abusive action on its part (Connolly v. Bernier). "

8. THE QUESTION WHETHER THE MANAGER OF THE LIQUOR COMMISSION, EDOUARD ARCHAMBAULT, HAD LEGAL AUTHORITY TO CANCEL THE PERMIT IS QUITE IRRELEVANT TO RESPONDENT'S LIABILITY AND CANNOT BE USED BY HIM AS A DEFENSE. WHEN DAMAGE IS CAUSED BY THE FAULT OF ONE PERSON AND THE ACT OF ANOTHER, THE PERSON AT FAULT IS RESPONSIBLE WHETHER OR NOT THE ACT OF THE OTHER WAS WRONGFUL.

This is an elementary principle of the civil law of delict. Once the damage is imputable to the fault of Defendant, it does not matter whether someone else is also liable. If a third party is also at fault, there is joint and several liability of the co-auteurs; if the third party is not at fault, defendant alone is liable.

Mazeaud, 4th ed. Vol. II, page 526, para. 1629, says:

" Quand la faute du défendeur a provoqué le fait du tiers d'où est résulté le dommage, cette faute est la cause véritable du préjudice; le fait du tiers n'est pas 'étranger' au défendeur. "

And again he says in paragraph 1632, page 529:

" Au contraire, si le fait du tiers et la faute du défendeur ont concouru à la réalisation du dommage, le défendeur ne peut se prévaloir du fait du tiers que si ce fait est fautif. "

And at page 531:

" Si le fait du tiers n'est pas fautif, on sait que ce fait n'a certainement aucune incidence sur la responsabilité du défendeur. "

Savatier says in his Traité de la Responsabilité (2nd Edition, Vol. II, page 20):

" Si, dans la trame de la causalité, on ne découvre qu'une faute, c'est sur l'auteur de celle-ci que retombera tout le préjudice. "

Even if the act of Edouard Archambault in cancelling the license was blameless, which is denied, it nevertheless did not break the chain of causality between Respondent's illegal order to cancel and the resulting damage to Appellant.

" Le fait extérieur, fut-il celui d'une force de la nature, ne diminue en rien la valeur du lien de causalité unissant, d'une manière prévisible et évitable, la faute au dommage; ni, par conséquent l'obligation de réparer la faute. "

(Savatier op. cit. Vol. II, p. 21)

See also the following cases:-

Connelly vs Bernier (36 K.B. 57 at p. 58)

Nicol vs Collette (1950 S.C. p. 117)

Leroux vs City of Lachine (1942) S.C. p. 352)

In the present case Respondent did more than recommend the cancellation of Appellant's license he ordered it. But for the order, no damage would have been done. It is therefore irrelevant to ask whether some one else might have been justified in cancelling the license.

9. IN ANY EVENT, IT IS CLEAR FROM THE PROVEN FACTS AND FROM THE LAW APPLICABLE THAT EDOUARD ARCHAMBAULT ALSO COMMITTED A FAULT IN CARRYING OUT THE ORDER TO CANCEL, FOR THE FOLLOWING REASONS:

a) A statutory discretion of this kind is subject to legal restraint and is not absolute.

As stated by Lord Halsbury in Sharpe v. Wakefield (1891 A.C. 173) cited in the judgment (Case, Vol. IV, page 873, lines 11-20):

> " An extensive power is confided to the justices in their capacity as justices to be exercised judicially; and 'discretion' means when it is said that something is to be done according to the rules of reason and justice, not according to private opinion; Rooke's case: according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself. "

This passage from Sharpe & Wakefield was quoted with approval by Lord Greene, M.R., in Minister of National Revenue and Wrights Canadian Ropes, 1947 A.C., 109, at page 122.

Another statement of the principle was made by Viscount Cave, L.C. in Campbell v. Pollock, 1927 A.C. 732, at pages 811-12, where, speaking of the judicial discretion regarding costs, he said:

> " This discretion like any other discretion must, of course, be exercised judicially, and the judge ought not to exercise it against the successful party except for some reason connected

" with the case. Thus, if... a judge were to refuse to give a party his costs on the ground of some misconduct wholly unconnected with the cause of action or of some prejudice due to his race or religion or (to quote a familiar 'illustration') to the colour of his hair, then a Court of Appeal might well feel itself compelled to intervene. "

b) The discretion in the Alcoholic Liquor Act was granted for the sole purpose of securing the good administration of the liquor laws. It was an abus de droit to use it for another purpose, namely, the punishing of Appellant for acts totally unconnected with the observance of these laws.

It is a firm principle of administrative law that a discretionary power must be used for the purposes for which it was given and for no others. As Duff, C.J., said in Lower Mainland Dairy Products Board v. Turner's Dairy Ltd., (1941 S.C.R. 573 and at p. 577):

" Such an administrative body as the Board in exercising its statutory powers - powers affecting the rights and interests of private individuals - is under an obligation not only to observe the limits of its powers and to act conformably to the procedure laid down; it is under a strict duty to use its powers in good faith for the purposes for which they are given. "

See also the remarks of Davis, J. with whom Duff, C.J., concurred, in Pioneer Laundry & Dry Cleaners Ltd. v. Minister of National Revenue (1939 S.C.R. 1 at page 8) and of Lord Thankerton in the same case (1940 A.C. 127, at p. 136) cited in the judgment below (pages 873-4). To use the cancelling power as a form of punishment for acts

unrelated to the observance of the liquor laws is an abuse of administrative powers, entailing personal liability under C.C. 1053 in the same manner as the abuse of any other right. Public officials like private citizens, are responsible for any malicious or abusive use of their powers. The rule is derived from English public law, but the doctrine appears identical with the civil law notion of abus des droits, which is now settled in Quebec.

As Nadeau says (Traité de Droit Civil de Québec, Vol. VIII, page 198):

" On y a jugé que pour qu'il y ait abus de droit, il n'est pas indispensable qu'on rencontre chez l'auteur du préjudice causé à autrui l'intention de nuire, mais qu'il suffit qu'on relève, dans sa conduite, l'absence des précautions que la prudence d'un homme attentif et diligent lui aurait inspirées. "

A fortiori there is an abuse in the present case, since the cancellation, the "raid" and the denunciations of Appellant were deliberately intended to cause him the damage which resulted. The "intention de nuire", the dolus and bad faith, make the abusive use of the discretionary power all the more clear. This is a delict, intentional injury, not mere quasi-delict or negligence.

c) The rules of natural justice must at all times be observed. Here they are disregarded, since no notice was given to Appellant and he was not given an opportunity to defend himself.

Edouard Archambault admitted that he had not given notice to Appellant before cancelling his permit, nor given him an opportunity of defending himself (Case, Vol. I, page 104, lines 11-18). He therefore did not exercise his discretion in

the manner required by law, as a prudent administrator, and consequently committed a fault.

10. IT IS THEREFORE SUBMITTED THAT SINCE EDOUARD ARCHAMBAULT WAS ALSO AT FAULT, THE RESPONDENT IS JOINTLY AND SEVERALLY LIABLE WITH HIM FOR THE RESULTING DAMAGES, AND THIS ACTION IS PROPERLY TAKEN AGAINST RESPONDENT PERSONALLY.

C.C. 1106 -

" The obligation arising from the common offence or quasi-offence of two or more persons is joint and several. "

Savatier (2nd Edition, 1954, page 34) (Op. cit. supra):

" 479.- Cas où l'une des fautes provoque l'autre.-
Une première faute n'a souvent été la condition du dommage que parce qu'elle a dû entraîner la seconde faute, qui a immédiatement causé celui-ci. L'auteur de la faute initiale partage alors certainement la responsabilité du dommage avec l'auteur de la faute provoquée par lui.

Tel est d'abord le cas s'il l'a volontairement provoquée, comme il arrive pour l'instigateur d'un délit. "

This is exactly the situation here, where the order of Respondent voluntarily provoked the delict committed by the Manager of the Liquor Commission, rendering both liable.

See also Savatier, ibid, p. 36, para. 482.

Nadeau (op. cit.) para. 612, p. 527.

The two faults in this case were not separate and independent, but related as cause and effect, making each the cause of the whole damage.

11. APPELLANT BY HIS ACTION CLAIMS DAMAGES FROM RESPONDENT FOR HIS REPEATED DEFAMATORY STATEMENTS ABOUT HIM. THESE ARE SEPARATE AND DISTINCT DELICTS OF RESPONDENT LIKEWISE ENTAILING PERSONAL RESPONSIBILITY

It has been pointed out above (p. 41 par. 9) that Pratte and Martineau, JJ., erred in stating that there was nothing in Appellant's Declaration which allows the Court to consider defamation as a cause of action. The trial judge awarded $1000.00 for this item: Vol. IV, p. 884. Plaintiff's Declaration in summary alleges that Defendant issued instructions to and entered into an arrangement with Edouard Archambault to cancel the license (par. 6); that this was done to penalise Plaintiff for acts lawfully performed by him (par. 7); that Edouard Archambault in accordance with these instructions and this arrangement did cancel the license and raid the Plaintiff's premises (pars. 8-9); that the said raid, seizure, etc. were executed in such a manner as to cause the greatest notoriety, and that the said acts and deeds of Defendant and Edouard Archambault were widely reported in the press, causing Plaintiff serious damage to his personal reputation and to the reputation and good will of his business (par. 10).

The Declaration thus makes it clear that the adverse publicity or defamation arose not only from the raid being reported in the press, but also from the whole complex of "acts and deeds" of Defendant as well as Edouard Archambault being so reported; i.e. the instructions to cancel, the arrangement, the intention to penalise for acts lawfully performed, the cancellation, and the raid.

Respondent's own press interviews and admissions in Court are the best proof of the truth of the facts alleged. Their damaging effect upon Appellant's personal reputation, as well as that of his business will be dealt with below in the section dealing with damages.

Further, the Declaration in par. 12 alleges a vindictive persecution of Appellant by Respondent which drove the former to sell his business at a loss. The press reports which continued into February 1947 are part of that persecution, notably the statement, admitted in Court, that Appellant's license was cancelled "pour toujours" (see Vol. I, page 18 and press reports filed as P.28a. to P.28g, Vol. IV, pages 762-770).

Finally, par. 13 of the Declaration states that by reason of "the said delicts" (i.e. the instructions to cancel, the raid and cancellation, the reporting in the press, etc.) Plaintiff has a right to claim certain items of damage, among which are enumerated:

(d) Damages to goodwill and reputation of Plaintiff's business and depreciation in the value of his property and business $50,000

(f) Damages to personal reputation as a result of illegal, unwarranted acts of the Defendant and the said Edouard Archambault, the "raid" and subsequent notoriety and adverse publicity resulting therefrom . . $15,000

Thus loss of reputation, due to Respondent's acts as one of the several grounds of action in this case, is specifically spelled out and itemized. To contend that defamation is not pleaded is playing upon words. Appellant alleged that the acts and deeds of Respondent were widely reported in a large number of newspapers, causing damage to his personal reputation and that of his business, and that Respondent is responsible; this is the essence of defamation, whatever terms are used. Had Respondent wished for particulars of the damaging reports in the press or of his vindictive persecution he could have asked for them.

12. FURTHERMORE APPELLANT ALSO ALLEGES AND CLAIMS DAMAGES FROM RESPONDENT FOR THE LATTER'S FAILURE TO GIVE ANY NOTICE OF CANCELLATION OR ANY OPPORTUNITY OF DEFENDING HIMSELF AGAINST THE FALSE CHARGES MADE AGAINST HIM (audi alteram partem). THIS FAILURE BY RESPONDENT TO OBSERVE THE STANDARD OF CARE REQUIRED OF PUBLIC OFFICIALS BY ART. 1053 C.C. IS ANOTHER FAULT INVOLVING PERSONAL RESPONSIBILITY.

Neither Edouard Archambault nor Respondent ever made any attempt to communicate directly with Appellant to verify the false suspicions which were being accumulated around him, though the former did not hesitate to use a police "spy" known as Y-3 who allegedly investigated the restaurant premises. Respondent branded as "ridiculous" the idea that he, the Prime Minister of a province, should provide the Appellant with an opportunity of defending himself against the charges prior to the cancellation of his license (see his testimony, Vol. I, page 21, lines 28-40). Archambault's failure to give notice is admitted on page 104, line 18. For the report of Y-3, see P-6, Vol. IV, page 723 and testimony of Archambault, Vol. I, page 100, line 8 - page 102.

The obligation to respect the rule audi alteram partem was recently re-affirmed by this Honourable Court in the case of Alliance des Professeurs Catholiques v. Labour Relations Board, 1953 2 S.C.R. 140. See also Leroux v. City of Lachine, 1942 S.C. 352; Lapointe v. L'Association de Bienfaisance de Montréal, 1906 A.C. 535. Maxwell says (9th ed., p. 368), in a passage cited with approval by Hyde J. in Association de Taxis LaSalle v. Gilles, 1950 K.B. 622 at page 629:

" In giving judicial powers to affect prejudicially the rights of person or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be

" exercised in accordance with the fundamental rules of judicial procedure, such, for instance, as that which requires that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself. "

In England the Courts have long treated the granting of new or renewal of old licenses as a quasi-judicial process: see per Parker J. in R. v. Manchester Legal Aid Committee, 1952 1 All E.R. 480 at 487; also Griffith & Street, Principles of Administrative Law, p. 144, and cases there cited.

13. APPELLANT ALSO CLAIMS FROM RESPONDENT THE DAMAGES CAUSED BY THE DELICTUAL MANNER IN WHICH HIS ORDER TO CANCEL WAS CARRIED OUT BY ARCHAMBAULT, THAT IS, BY A "RAID" IN THE MIDDLE OF THE DAY DURING THE BUSY LUNCH PERIOD, WHEN THE MAXIMUM DISTURBANCE WOULD BE CAUSED TO APPELLANT'S CLIENTELE.

Despite the sworn testimony of Edouard Archambault that he ordered the seizure to take place after lunch (Vol. I, page 104, lines 30-41) the hour of cancellation is noted on the license (see P-1, Vol. IV, p. 645) as "vers 2:00 P.M.", and the trial judge found that the restaurant was raided "in broad daylight while customers were still finishing their lunch" (Judgment, Vol. IV, p. 882, line 35). This choice of time for the raid increased the damage to the reputation of Appellant and of his business which would in any event have followed from the cancellation.

This is the liability of a principal for the damages caused by an agent: C.C. 1731, or of a municipality for its police who use excessive violence, in making an arrest: see e.g. Prime v. Keiller, 1943 R.L. p. 65.

14. APPELLANT ALSO CLAIMS FROM RESPONDENT THE DAMAGES WHICH HE SUFFERED AS A RESULT OF THE ACT OF HIS PREPOSE IN REFUSING TO CONSIDER APPELLANT'S NORMAL APPLICATION FOR RENEWAL OF HIS LICENSE, THUS DEPRIVING HIM OF THE PROFITS HE HAD DERIVED FROM IT IN HIS BUSINESS.

The license was cancelled 4 December, 1946, and two days later Appellant's application for annual renewal, which had already been lodged with the Liquor Commission, was returned: see letter filed as P-27 (b) reading as follows:

"(Lettre adressée à M. Frank Roncarelli et signée par L. Mouillard du Département des Permis de la Commission des Liqueurs de Québec, 6 décembre 1946.)

"MR. FRANK RONCARELLI,
'Roncarelli Cafe'
1429 Crescent Street,
Montreal.

Dear Sir:

I am directed to return you your cheque for $25. to the order of the Quebec Liquor Commission intended as renewal fees for your licence. I am aware that an application on your part for a cafe permit will not be considered, for the time being, hence the reason of the returning of the enclosed cheque.

Yours truly,

L. Mouillard,
Permit Department "

(underlining our own)

This refusal to renew a license which had been annually granted for over 30 years was, like the cancellation itself, part of the arrangement

between Respondent and Archambault to injure Appellant, and in returning the application Respondent's decision to cancel "pour toujours" was being carried out: see his testimony, Vol. I, page 18, lines 19-22. Appellant had a right to have his application considered in due course, and through the refusal was thus deprived of the profits that would have been made by his business during the license year 1947-1948.

x x
x

Part VII

ANALYSIS OF RESPONDENT'S DEFENCES

Respondent's defences to the grounds of action set out above rest on the following principal contentions:

(1) His first defence, set out in paragraphs 16, 24, and 27 of his plea, is based on the assumption that the Prime Minister and Attorney General of Quebec cannot be sued personally when acting in his official capacity. These paragraphs read as follows (underlining our own):

> " 16. A la connaissance du demandeur et de ses procureurs, il est, depuis le 30 août 1944, Premier ministre et Procureur Général de la province.
>
> 24. Le défendeur, en sa qualité de Procureur Général de la province, fut mis au courant de la conduite indigne du demandeur et fut informé que celui-ci était détenteur d'un permis qui lui avait été accordé par la Commission des Liqueurs de Québec pour la vente de

" liqueurs alcooliques et, dans le cours du mois de décembre, il décida, apres mûre réflexion, qu'il était contraire à l'ordre public de laisser le demandeur bénéficier des privilèges dont il se rendait indigne et, en conséquence, le défendeur recommanda au Gérant de la Commission des Liqueurs de Québec d'annuler ledit permis.

27. En cette affaire, à la connaissance du demandeur et de ses procureurs, le défendeur a agi en sa qualité de Premier Ministre et de Procureur Général de la province de Québec; il avait le droit et le devoir, en cette double qualité, d'agir comme il l'a fait et il n'a encouru et n'a pu encourir aucune responsabilité personnelle.

This claim on the part of a Minister of the Crown or Prime Minister to immunity from suit for personal delict is supported by no authority whatsoever and is refuted by leading cases and authors throughout the British Commonwealth. By the public law of Quebec, as in the rest of Canada, it is no defence to a delictual action to contend that the act complained of was a Governmental Act or Act of State (See authorities cited above under Part VI, sections 1 to 5).

This principle is fundamental to our democratic form of constitution, which does not admit of the plea of Act of State, or raison d'état, as against the citizen. HALSBURY (3rd edition, Vol. VII, para. 417 (sec. 4), says that apart from the force of public opinion, the liberties of the subject owe their main protection:

" (4) to the fact that, except in the case of the Sovereign, who can do no wrong in the eyes of the law, and whose person is inviolable, and,

" excepting too the protection afforded to the judiciary whilst acting in their official capacity, and the limited protection afforded to magistrates and justices of the peace, all persons are equally subject to the jurisdiction of the Courts, and may be made liable for any infringement of the rights and liberties of others; "

(underlining our own)

And further in the same volume, at pp. 253-4, he says:

" They may, however, be sued and made personally liable for tortious or criminal acts committed by them in their official capacity, without showing malice or want of probable cause, unless that is of the essence of the tort or crime. State necessity or the orders of the Crown or of a superior officer cannot be pleaded in defence, except as an act of state in an action by a non-resident alien. In these respects they are in exactly the same position as any servant of any master, as is also exemplified by the rule that they cannot be made liable for the wrongful acts of their subordinates, unless the acts can be proved to have been previously authorized or subsequently ratified by them, so that they are their own acts for they and their subordinates are not in the position of master and servant but of fellow-servants of the Crown. "

Not one of the judges in the courts below sustained this plea of immunity. It is expressly denied by the trial judge (Vol. I, page 875), and by Pratte, Martineau and Rinfret JJ. in the Court of Appeal (Vol. V, page 910, lines 27 and ff; page 986, lines 22 and ff.).

THE ONLY DEFENCE TO A CLAIM FOR DELICTUAL DAMAGE CAUSED BY A PUBLIC OFFICER IN THE EXERCISE OF HIS FUNCTIONS WOULD BE THAT THE ACT CAUSING DAMAGE WAS AUTHORIZED BY SOME POSITIVE RULE OF LAW, STATUTORY OR OTHERWISE. NO SUCH RULE OF LAW EXISTS IN THE PRESENT CASE.

(2) Respondent, in paragraphs 17-19 of his defence, alleges that Appellant was participating in an illegal and subversive campaign of propaganda which necessitated Respondent's intervention to preserve law and order.

This defence, it is respectfully submitted, has no basis in fact or in law.

As to the facts, Appellant, as has been shown above, was not a chief of the Witnesses of Jehovah, nor a distributor of their literature, nor in any way actually engaged in the so-called campaign, and he had in fact ceased giving any bail three weeks before his licence was cancelled.

This defence is also unfounded in law, since even if the facts had been such as the Respondent assumed them to be (erroneously), then his only and proper recourse was to institute criminal action against the Appellant in the appropriate court. The Respondent could not, as he in fact did, punish the Appellant by cancellation of his licence for an alleged criminal offence, before that offence was properly established by due process of law.

Subsidiarily, and arising from this defence, a theory of provocation was elaborated by Martineau J. in the Court below (See Vol. V, page 997, lines 24-31; page 1008 to page 1011). This theory is equally unfounded in law since the provocation complained of, to be valid as a defence in a delictual action, must be a provocation committed by the very person taking the action and not merely a provocation emanating from third persons, in this

case, allegedly his co-religionists. Here the acts complained of were not committed by the Appellant at all.

RESPONDENT IS THEREFORE BEING PUNISHED FOR SOMEONE ELSE'S ALLEGED CRIMES. THIS NOTION OF GUILT BY ASSOCIATION IS COMPLETELY FOREIGN TO OUR SYSTEM OF LAW AND SUBVERSIVE OF THE RIGHTS OF THE INDIVIDUAL IN A FREE SOCIETY.

(3) Specifically, Respondent pleads in paragraphs 20-22 that Appellant by giving bail in the Recorder's Court in Montreal in numerous cases directed against his co-religionists had maliciously abused his rights and made himself an accomplice in illegal and seditious acts.

Far from constituting a valid defence this admission by Respondent not only contradicts the other contention, that his intervention was not the determining cause of the cancellation, but in itself constitutes a violation of a fundamental right of every Canadian citizen, which renders Respondent guilty of a delict under C.C. 1053.

The right to give bail, like the right to vote, derives from the public law of England. Under Common Law the refusal to permit bail to any person bailable is an offence against the liberty of the subject. (See R. v. Badger (1843) 4 Q.B. 468; Archibald's Pleading and Practice, 32nd ed., page 71; 4 BL. COM. 297). Similarly, any interference with the right to give bail would constitute an offence.

As Lord Watson said in Allen v. Flood (1898 A.C. at p. 92):

> " Any invasion of the civil rights of another person is in itself a legal wrong carrying with it liability to repair its necessary or natural consequences, insofar as these are injurious to the person whose right is

" infringed, whether the motive which prompted it be good, bad, or indifferent. "

Mignault (Vol. V, p. 363) had this to say regarding interference with the analogous public right of voting.

" XI. Privation du droit de vote. - Le fait de priver illégalement une personne de son droit d'électeur donne lieu à un recours en dommages-intérêts; juge Angers, Bénatchez v. Hamond, 7 Q.L.R., p. 24; juge Doherty, Martin v. City of Montreal, 6 L.N., p. 23; juge Pagnuelo, Lapierre v. La Municipalité du village de St. Louis du Mile-End, R.J.Q., 12 C.S. p. 129. "

(4) Respondent also contends (paragraph 24) that in view of the illegal conduct of the Appellant it was contrary to public order to allow him to continue to benefit from the privilege of a liquor licence and that he accordingly recommended its cancellation.

This admission that Respondent was responsible for the cancellation has already been dealt with in the argument above. However the contention that a person suspected of illegal conduct should, immediately and peremptorily be deprived of a privilege or right which he lawfully holds, before his guilt is established, is a proposition which is subversive of public order rather than in defence thereof.

(5) Respondent contends (par. 29 of defence) that he received no notice of action as provided under Art. 88 C.C.P.

Since each of the delictual acts committed by Respondent was outside his functions they were

"on the occasion of" but not "in the exercise of" his functions: COLORE OFFICII but not VIRTUTE OFFICII. In consequence Respondent was not entitled to the notice of action required by C.C.P. 88. This was a finding of the trial judge (judgment, page 878, Vol. IV, lines 35-48). Clearly no provision of law gives the Prime Minister and Attorney General of Quebec the functions of uttering defamatory statements about Respondent. Defamation is one of the grounds of action in the present case. Similarly it has been established that no provision of law exists which gives either the Prime Minister or Attorney General the function of ordering the cancellation of liquor licenses as a punishment for the giving of bail or for the lawful practice of Appellant's religion. The express placing of the discretion to cancel in the Quebec Liquor Commission and its Manager (Alcoholic Liquor Act, R.S.Q. 1941, cap. 255, sec. 35; 1 Geo. VIII Second Session, Ch. 14) excludes Respondent from this function.

Art. 88 C.C.P., which requires notice before a suit for damages, contains the limiting phrase, "by reason of any act done by him in the exercise of his functions". This is strict law, since it is a derogation from the common law.

> " CONSIDERANT...que les prescriptions de l'article 88 C. proc. sont de droit strict, et que tout doute à ce sujet doit être interprété en faveur du demandeur auquel on oppose une exception au droit commun. "

(Surveyer, J., in Beaumont v. Lemay, 47 P.R. 188 at p. 96, holding a police constable had no right to notice of action where he had used violence on Plaintiff and had not taken the proper oath of office).

See also Ampleman v. Dame Paradis, 56 K.B. at p. 366, where St. Jacques J. says:

> " A mon avis, le défendeur n'a pas fait la preuve nécessaire pour permettre

" aux tribunaux de déclarer qu'en faisant la dénonciation, qui a été la cause de l'arrestation de Mme. Paradis, il accomplissait un acte en sa qualité de constable, d'après les termes de l'article 79. "

In Trudeau v. Kennedy, 42 P.R. 258, Létourneau, J. refused leave to appeal from a judgment dismissing Defendant's exception to the form based on lack of notice. Defendant was an alderman and pro-mayor of Coaticook, and had secured the internment of Plaintiff in an asylum without valid reasons; on being sued for damages, his plea of lack of notice was rejected on the ground that his actions were not within his functions, and as the learned judge said (at p. 260):

" Que les dispositions de l'article 88 C.P., et celles du Chapitre 146 des S.R.Q. 1925 sont de droit strict et qu'elles ne doivent être invoquées que s'il apparait au dossier de façon certaine que c'est bien à raison d'actes d'un officier public dans l'exercice de ses fonctions que l'action a été prise: qu'en tout cas, un doute sur ce point devrait être interprété en faveur du demandeur, vu qu'on lui oppose une exception au droit commun et que sa demande se fonde sur la malice et la mauvaise foi du défendeur. "

So strictly has this article been interpreted, that the Court of Appeal unanimously confirmed a judgment of the Superior Court in Normandin v. Berthiaume (15 R.L. 1) holding that a public officer has a right to notice only when he commits an act in the exercise of his functions, and not when he fails to perform an act which the law imposes on him.

" Un défendeur ne saurait prétendre à l'avis prévu par l'art. 88 C.P.

" lorsqu'il est établi qu'il n'était pas dans l'exercice légal des fonctions invoquées. "

Beullac: Responsabilité Civile, p. 520.

The burden of establishing the right to notice is on him who invokes it: Pratte J. in Montréal et Béland vs Bresque (1952 Q.B. at p. 593). Respondent has not discharged this onus in the present case.

The interpretation of the words "in the exercise of his functions" in Art. 88 should be even more strict than that of the similar words in Art. 1054 C.C. since the former are lex privata; Surveyer J. in Beaumont v. Lemay, supra, at p. 195.

The acts of Respondent which injured Plaintiff, both the order to cancel the license and the subsequent defamatory statements, were done à l'occasion des fonctions but not dans l'exercice des fonctions.

" La distinction est essentielle entre l'acte commis dans l'exercice même des fonctions et l'acte posé à l'occasion des fonctions ou des devoirs publics. "

Ferland, Le Préavis à l'officier public (5 Revue du Barreau at p. 484).

This author continues, at page 485:

" Ainsi, pour illustrer ces principes et cette condition à l'aide des arrêts que citent nos répertoires, n'est pas dans l'exercice de ses fonctions, le notaire non instrumentant; l'employé de la Commission des liqueurs qui injurie et assaille les gens: Houde v. Côté (28 R.P. 27); celui qui martèle le demandeur sur la tête à l'aide de

" son bâton de police: Pednault v. Buckingham (5 R.J. 40, 1 R.P. 279); celui qui blesse un ouvrier qui se prépare à quitter l'usine, sous le prétexte que ce dernier est en possession d'un allumeur automatique qui lui a été confisqué pendant ses heures de travail et qui lui a été remis: Beaumont v. Lemay (47 R.P. 188); le commissaire d'écoles qui profère des injures: Chauret v. Claude (22 R.L. 350); l'huissier qui abuse de ses fonctions (abuse of the process of court); Lachance v. Casault (12 B.R. 179); le préposé aux douanes qui outrepasse les limites de son devoir et agit au delà des attributions de sa charge en ce qu'il ne se conforme pas à la loi qui le régit: Chagnon v. Quesnel (2 R.P. 509); l'inspecteur des chemins qui ouvre un chemin sans autorisation: Esinhart v. McQuillan (6 L.C.R. 456). "

The distinction between acts performed "in the exercise of", and those "on the occasion of", public duties, is similar to the distinction between acts done colore officii and those virtute officii. It has been held that a constable acting colore officii but not virtute officii was not protected by the statute 24 Geo. II c. 44 (Imp.) the parent statute of the present Art. 88 C.C.P.

In Kelly v. Barton (26 O.R. 608; affirmed 22 A.R. 522) Boyd J., applying a similar Ontario statute which required notice before suit against a public officer "for anything done in the execution of his office", said (at p. 622):

" I have not found anywhere a more lucid exposition of the law of notice as regards constables than is given by Lord Kenyon in Alcock v. Andrews, 2 Esp. 542, note. He said the defendant who

" justified as constable was acting colore officii and not virtute officii; it had often been held that a constable acting colore officii was not protected by the statute (24 Geo. II, ch. 44, sec. 8) where the act committed is of such a nature that the office gives him no authority to do it; in the doing of that act he is not to be considered as an officer; but where a man doing an act within the limits of his official authority, exercises that authority improperly, or abuses the discretion placed in him, to such case the statute extends. The distinction is between the extent and the abuse of the authority. "

The same distinction was made in Monriarty v. Harris (10 O.L.R. 610: Court of Appeal) where Garrow J., contrasts acts which the general character of the public office authorises a man to do, and which entitle him to notice when done negligently, and acts which could not reasonably be considered to be within his official powers, for which no notice is required (pp. 613-614).

Subsidiarily, Respondent cannot claim any of the privileges provided in the Magistrate's Privileges Act (R.S.Q. 1941 c. 18) because he was not in good faith. Sec. 7 makes good faith as well as performance of duty an essential pre-requisite for the protections afforded by the Act. Respondent here was not in good faith within the meaning of the Act because:

1. He acted with the intention de nuire. He was punishing Appellant for his allegedly illegal acts, and intended the injuries to follow which did follow the cancellation. This is dolus, the essence of delict as distinct from quasi-delict.

2. He acted without any colour of right against the

express provisions of the Alcoholic Liquor Act which placed the discretion to cancel licenses in another person than himself. An act so clearly contrary to law cannot be in good faith.

> " The contrast is with an act of such a nature that it is wholly wide of any statutory or public duty, i.e. wholly unauthorised and where there exists no colour for supposing that it could have been an authorized one. In such case, there can be no question of good faith or honest motive." Per Rand and Kellock, J.J. in Chaput v. Romain, 1955 S.C.R. 834 at p. 856.

3. He deprived Appellant of his right to be heard before being condemned. He described the duty to follow the rule audi alteram partem as "ridiculous" (Vol. I, page 21, lines 28-40). Such an attitude, on the part of a man who as Attorney-General is obliged to uphold the law, is not consonant with good faith.

4. Defamatory words, when uttered, carry with them a presumption of malice. The Respondent has not rebutted this presumption.

Houde v. Benoit, 1943 K.B. 713

Adam v. Ward, 1917 A.C. 309 per Lord Finlay at page 318, cited with approval by Denis J. in Desrochers v. Collège des Médecins, 69 S.C. 82.

x x
x

Part VIII

SPECIAL CONSIDERATIONS

(1) THIS CASE RAISES GRAVE QUESTIONS OF FUNDAMENTAL FREEDOMS AND HUMAN RIGHTS NAMELY, FREEDOM OF RELIGION AND THE RIGHT TO GIVE BAIL. WHEN SUCH ISSUES ARISE, ALL RELEVANT STATUTES SHOULD BE STRICTLY INTERPRETED SO AS TO PROTECT SUCH RIGHTS.

Interpretation of Statutes, 3rd ed., p. 289 & ff. Beale, 9th ed., p. 443 & ff. Maxwell.

(2) SIMILARLY, IF THERE IS ANY DOUBT AS TO THE WEIGHT OF EVIDENCE, THAT DOUBT SHOULD BE RESOLVED IN FAVOUR OF PERSONAL LIBERTY.

As put by Boyd, C., in Toothe v. Frederick, 14 P.R. 287 (Ont. C.A.):

> If an appellate Court has doubt as to the proper result of all the evidence, that doubt should lean in favour of personal liberty.

(3) THIS DUTY IS OF PARTICULAR IMPORTANCE IN CANADA SINCE OUR CONSTITUTION DOES NOT CONTAIN A FORMAL BILL OF RIGHTS. THE JUDGES ARE GUARDIANS OF THE LIBERTIES OF THE SUBJECT.

The judge, says Dawson (The Government of Canada, 2nd ed., p. 453):

> " stands as guardian to see that the rule of law is maintained: to ensure that no one will be punished except for a breach of the law, and to nullify the acts of any government or government official which are not legally authorized. The citizen therefore looks to

" the courts for the protection of his rights not only against his fellow-citizen, but also against his government and its agents..."

(4) REDUCED TO ITS ESSENCE, THIS CASE ESTABLISHES THAT RESPONDENT'S ACTS WERE PURELY A REPRISAL AGAINST A LAW-ABIDING FELLOW-CITIZEN WHO HAD IN FACT DONE NO MORE THAN ACT WITHIN HIS CIVIL RIGHTS IN SUPPORTING HIS CO-RELIGIONISTS BY PROVIDING THEM WITH BAIL.

Appellant has therefore suffered a grievous invasion of his religious and civil liberties. In Chaput v. Romain et al (1955 S.C.R. p. 834), the same principle was maintained and damages were awarded for invasion of a citizen's domicile where he was lawfully exercising his religion. In that case, Taschereau J. stated the law as follows:

" Dans notre pays, il n'existe pas de religion d'État. Personne n'est tenu d'adhérer à une croyance quelconque. Toutes les religions sont sur un pied d'égalité, et tous les catholiques comme d'ailleurs tous les protestants, les juifs, ou les autres adhérents des diverses dénominations religieuses, ont la plus entière liberté de penser comme ils le désirent. La conscience de chacun est une affaire personnelle, et l'affaire de nul autre. Il serait désolant de penser qu'une majorité puisse imposer ses vues religieuses à une minorité. Ce serait une erreur fâcheuse de croire qu'on sert son pays ou sa religion, en refusant dans une province, à une minorité, les mêmes droits que l'on revendique soi-même avec raison, dans une autre province. "

x x
x

CONCLUSION ON ISSUE OF LIABILITY

For all these reasons Appellant respectfully concludes that his appeal on the issue of liability should be maintained.

SECTION II - DAMAGES

Part I

THE CROSS APPEAL

This is an appeal from a final judgment of the Court of Queen's Bench, Appeal Side, sitting in Montreal, for the District of Montreal, rendered on the 12th of April, 1956, dismissing the cross-appeal of the Appellant from the judgment of the Court of first-instance, awarding the Appellant damages in the amount of $8,123.00 with interest from the date of judgment and costs. In the Court below, only Rinfret J. dealt with the question of damages, as the other four learned judges dismissed Appellant's action, and maintained Respondent's appeal below, on grounds of liability alone.

The Appellant accepts the award in damages granted by the trial court with respect to the following four items of Appellant's claim set out in paragraph 13 of Plaintiff's declaration, sub-paragraphs a, b, c, and f, viz:

Sec. II - Damages — The Cross Appeal

	Amount Claimed as per declaration	Amount Awarded
a) Cost of alcoholic liquor seized	$2,800.00	$1,123.53
After deduction of $1,036.47 received from Quebec Liquor Commission (or a total of $2,160.00) (Case, Vol. IV, p. 879, lines 20 to 25)		
b) Loss of profit on the above-mentioned alcoholic liquor	$2,800.00	(see next item)
c) Loss of profit in Plaintiff's restaurant and Quaff Café section during period December 4, 1946 to May 1st, 1947 (holiday season) based upon same period of operation in 1945 and 1946	$8,141.00	$6,000.00
The above amount awarded for both items (b) and (c) (Case, Vol. IV, pp. 879 and 880)		
f) Damages to personal reputation as a result of illegal, unwarranted acts of the Defendant, and the said Edouard Archambault, the "raid" and subsequent notoriety and adverse publicity resulting therefrom	$15,000.00	$1,000.00

The present appeal is with respect to three other items of damages amounting to the sum of $90,000.00, which the learned trial judge dismissed without compensation to Appellant.

These three items of Appellant's claim appear as follows in paragraph 13 of the declaration (Case, Vol. I, page 3):

"a)----------

"b)----------

"c)----------

"d) Damages to goodwill and reputation of Plaintiff's business and depreciation in the value of his property and business $50,000.00

"e) Loss of property rights in Liquor Permit No. 68 15,000.00

"f) ----------

"g) Loss of profits for a period of at least one year, i.e., until May 1st, 1948 of Operations of Plaintiff's restaurant and Quaff Café section with liquor permit as previously granted, reserving Plaintiff's rights to future damages after this date 25,000.00 "

The foregoing items total to the sum of $90,000.00

x x
x

Part II

ASSIGNMENT OF ERRORS IN THE JUDGMENTS APPEALED FROM

In substance Mr. Justice Rinfret agreed with the reasons given by the Court of first instance on the quantum of damages awarded and confirmed the judgment of the trial judge. Both judgments, therefore, will be discussed together.

Sec. II - Damages — Errors in judgments Appealed from

(a) THE TRIAL JUDGE AND MR. JUSTICE RINFRET IN THE COURT BELOW ERRONEOUSLY CONCLUDED THAT APPELLANT HAD FAILED TO PROVE ANY DEPRECIATION IN THE VALUE OF HIS PROPERTY BY REASON OF RESPONDENT'S DELICTUAL ACTS.

It is apparent from the context that when the learned trial judge said (Case, Vol. IV, page 881, lines 6 to 8 inc.)

> " The court considers that plaintiff had failed to prove any depreciation in the value of his property by reason of the cancellation of his license"

that he was thinking in terms of direct damage to the "building, furniture and fixtures" in which Appellant conducted his business.

Similarly, Rinfret J. (Case, Vol. V, at page 977, lines 14 to 35):

> " Le juge de première instance analyse le caractère aléatoire de la valeur commerciale d'un permis de la Commission, il le qualifie de "temporary asset", ce qui est bien exact.
>
> L'on peut admettre que l'immeuble du demandeur, y compris un restaurant en pleine opération, muni d'un permis de la Commission et placé dans la situation privilégiée dans la localité, pouvait avoir un achalandage, une valeur commerciale très élevée (je doute toutefois qu'elle puisse atteindre le chiffre de $120,000 qu'y a attaché le demandeur); mais dépourvu de ces attraits particuliers, strictement au point de vue valeur physique, tenant compte du caractère aléatoire du permis et aux yeux d'un acheteur qui n'est pas restaurateur et qui n'entend pas le devenir, l'immeuble avait-il au 4 décembre 1946 comme au 9 octobre 1947, une

" valeur réelle plus considérable que le prix de $58,000 que le Dr. J. Roméo Groulx en a payé?

Je ne puis me résoudre à l'admettre. "

Appellant's claim is for damages "to goodwill and reputation of Plaintiff's business and depreciation in the value of his property and business". The term "property" is not used in the restricted sense only of immoveable property or building and fixtures, but in the wider sense of total business assets and property, that is, incorporeal including goodwill and "going concern value", as well as corporeal.

In the present appeal, no claim is made for damage to the physical assets of Appellant's business, but only for the damage or loss caused to the same business by the total destruction of the goodwill attached to it as a going concern.

As will be shown more fully below, it is submitted the Appellant has proved the depreciation in the value of the goodwill of his business resulting from Respondent's delictual acts.

(b) THE TRIAL JUDGE AND THE LEARNED JUDGE IN THE COURT BELOW ERRED IN CONCLUDING THAT APPELLANT WAS NOT ENTITLED TO DAMAGES WITH RESPECT TO THE GOODWILL OR REPUTATION OF HIS BUSINESS FOR THE REASON THAT HE DID NOT HAVE A "PROPRIETARY" RIGHT OR "AN INHERENT RIGHT" IN THE LIQUOR LICENSE "IN THAT HE COULD HAVE DEPENDED ON HAVING IT RENEWED FROM YEAR TO YEAR", AND THAT APPELLANT'S LICENSE WAS ONLY A "TEMPORARY ASSET".

This is the most serious error in the question of quantum appealed from.

The damage to the goodwill of the business as a "going concern"was immediate and direct on December 4th, 1946 when the license was cancelled

and the "raid" took place. It was aggravated by the defamatory statements about Appellant which followed on numerous occasions thereafter. This damage was not a future one nor entirely dependent on the renewal of the liquor license.

The learned trial judge made a two-fold error here. He appears to treat the goodwill of the Appellant's business as though it comprised only one element, that is the liquor license. In fact the goodwill of the business was composed of many elements of which the right to the liquor permit - though in some degree precarious - was only one part. Secondly, the judge erred when he assumed that Appellant's license - being short of a "proprietary right" and only "a temporary asset" - had no commercial value. He therefore concluded that its loss could not damage the goodwill of Appellant's business (Case, Vol. IV, page 881, line 19), when he stated:

> " ...but as his license was only a temporary asset there does not appear to have been any damage to the goodwill and reputation of his business for which he can claim. "

Similarly, Rinfret J. (at p. 977 to 978, line 5, Case, Vol. V):

> " Il me semble bien évident que même s'il peut être question d'un droit quelconque attaché à la possession d'un permis, il ne peut pas être qualifié de "property rights", c'est un droit strictement temporaire et aléatoire qui ne peut pas être transporté même par la Commission, hors le cas de décès du permissionnaire, en vertu de l'art. 37, de la Loi des liqueurs. "

It is the Appellant's respectful submission that it was not necessary for him to have a "proprietary" or "inherent" right in the liquor

license in the sense of full ownership, in order to suffer damage by its illegal cancellation. The fact that Appellant had a reasonable expectation of the renewal of his license, amounting almost to a certainty, after more than thirty years, was a right which even though not that of full ownership, nevertheless, had an important commercial and real value. This reasonable expectation of renewal of license on an annual basis was a commercial asset with which the goodwill and reputation of Appellant's business were inseparably connected. In consequence, therefore, the cancellation of the license and the resultant loss thereof in the future caused a direct damage to the goodwill and reputation of Appellant's business.

(c) THE TRIAL JUDGE AND THE LEARNED JUDGE IN THE COURT BELOW, ERRED IN CONCLUDING THAT APPELLANT'S CLAIM FOR $15,000.00 WAS UNFOUNDED BECAUSE HE HAD NO "PROPRIETARY RIGHT" IN HIS LIQUOR PERMIT.

The same reasoning applies with respect to the above as in paragraph (b) above. The learned trial judge misdirected himself when he concluded that it was necessary for the Appellant to have a "proprietary right" in his liquor license before he could claim damages as a result of its loss.

Similarly, Rinfret, J. (Case, Vol. V, at page 977, lines 37 to 42):

> " Le deuxième chef est celui de $15,000 'loss of property rights in liquor permit No. 68'
>
> En étudiant l'item précédent, j'ai touché à l'essence de celui-ci. "

(d) THE TRIAL JUDGE, AND THE LEARNED JUDGE IN THE COURT BELOW, ERRED ON THE ISSUE OF DAMAGES (IN THE AMOUNT OF $25,000.00 FOR LOSS OF PROFIT FOR

ONE YEAR TO MAY 1, 1948) WHEN THEY CONCLUDED THAT APPELLANT'S APPLICATION FOR A LICENSE FOR THE YEAR STARTING MAY 1, 1947 WAS REFUSED AND THE COMMISSION'S RIGHT TO REFUSE COULD NOT BE QUESTIONED. THIS WAS NOT A CASE OF A SIMPLE REFUSAL TO RENEW A LICENSE.

The same reasoning is followed by Rinfret J. (at p. 978, lines 9 to 15, Vol. V, Case):

> " Quant à l'item de $25,000 pour perte de profits pour l'année mai 1947 à 1948, il présuppose que le permis aurait été renouvelé; je suis d'accord avec le juge de première instance que le demandeur n'avait "no inherent right" au renouvellement de son permis. "

The Exhibit P-27 (b) (Case, Vol. IV, page 741) fyled in this record clearly shows that Appellant's application for a license for the year commencing May 1st, 1947, was never considered. It was rejected for the reason that Appellant's license had been cancelled in the previous year. This is clearly implicit from the contents of the said letter Exhibit No. P-27 (b) as follows (underlining ours):

> " Lettre addressée à M. Frank Roncarelli et signée par L. Mouillard du Département des Permis de la Commission des Liqueurs de Québec, 6 Décembre 1946.
>
> MR. FRANK RONCARELLI,
> 'Roncarelli Café'
> 1429 Crescent Street,
> Montreal.
>
> Dear Sir:
>
> I am directed to return you your cheque for $25. to the order of the Quebec Liquor Commission intended as renewal fees for your licence.
>
> I am aware that an application on

" your part for a cafe permit will not be considered for the time being, hence the reason of the returning of the enclosed cheque.

Yours truly,

L. Mouillard
Permit Department. "

If the original cancellation was arbitrary and illegal, it follows that the rejection of Appellant's application was equally arbitrary and illegal, since one was the consequence of the other. In the instant case, the license was not refused, the application was not considered on its merits, and Appellant had a right to such consideration in a fair and impartial manner. Based upon the experience of the uninterrupted possession of a license from the Commission for over thirty years, Appellant had more than a chance of "expectancy of renewal" and had sound business reasons for relying on the renewal of his liquor permit on the usual terms.

Again, the trial judge (and Mr. Justice Rinfret) erred in their conclusion that Appellant's claim for $25,000.00 for loss of profits for one year, i.e. to May 1st, 1948 was unfounded because he had no "inherent right" to such a license. The same reasoning applies as above. As already stated, Appellant's damages were not dependent on any "proprietary" or "inherent" rights to the license.

x x
x

Part III

ANALYSIS OF EVIDENCE RELEVANT TO ITEMS OF DAMAGE CLAIMED IN CROSS-APPEAL

The items of Appellant's damages, dealt with in the present cross-appeal, may be classified under these headings:

A. Damages to goodwill and reputation of business;

B. Loss of property rights in liquor permit;

C. Loss of profits for a period of one year, May 1st, 1947 to May 1st, 1948.

These are the items of damages claimed in sub-paragraphs d, e, and g of paragraph 13 of the declaration (Case, Vol. I, page 3).

A. DAMAGES TO GOODWILL AND REPUTATION OF APPELLANT'S BUSINESS

It is submitted that the learned trial judge did not treat the damages to the goodwill and reputation of Appellant's business as an item of claim, separate and apart from the damages to the physical assets of the Appellant's business comprising building, fixtures, etc.

It is relevant therefore to analyze the proof made with respect to the value of the goodwill and reputation of Appellant's business and then to determine the damage which was caused to and the consequent loss suffered by the Appellant.

(i) PROOF ESTABLISHING VALUE OF GOODWILL OF APPELLANT'S BUSINESS

In the first place it was fully extablished (and it is undisputed) that prior to December 4th,

1946, the business in question had been operated continuously for thirty-four years as a restaurant where liquor with meals was always available. The Appellant, himself, conducted the business in his own name since 1939 and prior thereto (from 1928), jointly with his mother. Appellant's mother and Appellant acquired the business upon the decease of his late father in 1928. Prior to this date, 1928, Appellant's late father had conducted the business under the same name since 1911 or 1912 (Case, Vol I, pages 24, 25 and 26).

The business was carried on during this period of thirty-four years, in two locations only, namely, on Osborne Street, and since 1933, at the address, 1429 Crescent Street. It is common knowledge, and the learned trial judge found this as a fact, that the business was situated in a "favourable" location in the west end of the City of Montreal (Case, Vol. IV, page 880, line 4, lines 13 to 25).

Appellant also established the exclusive character of his business in this section of the city. As a matter of fact, in 1933, a special by-law (No. 1242) of the City of Montreal had been obtained by the joint efforts of the Appellant and his mother which gave the said business an exclusive position to operate a restaurant in that district north of St. Catherine Street, West, and South of Sherbrooke St. W. (Exhibit P-12, dated June 12th, 1933, Case, Vol. II, at page 229).

With respect to the restaurant's clientele, the evidence establishes without contradiction, that it was "an upper and middle class clientele - a very good clientele - comparable to that of the finest restaurants in Montreal such as Café Martin, Chez Ernest, the 400 Club and Drury's". The learned trial judge likewise found this as a fact (Case, Vol. IV, page 865, lines 22, 23).

In addition it was also established that the equipment of the restaurant was of the finest in

Montreal and comparable with any one of the four or five leading restaurants in the city.

All these elements form part of the total goodwill and reputation of the business - part of its property and a valuable asset.

One further factor - the "past profits" of the business must also be taken into consideration.

For the foregoing purposes, Appellant has produced and fyled in the record, copies of his Income Tax Reports for the fiscal years 1943, 1944, 1945, 1946 and 1947, up to June 30th, 1947. These appear as Exhibits P-29 (Case, Vol. III, page 523), P-30 (Case, Vol. III, page 596), P-31 (Case, Vol. IV, page 628), P-32 (Case, Vol. IV, page 754), P-33 (Case, Vol. IV, page 772).

	Net Profit	Gross Sales	Gross Profits
Ex.P.29 (for year 1943, Case Vol.III, at p. 532)	$7,128.62	$96,929.54	$47,607.57
Ex.P.30 (for year ending Dec.31,1944 (Case, Vol.III, at p.609)	6,566.45	122,526.63	55,077.96
Ex.P.31 (for year ending Dec.31,1945 Case, Vol.IV, at page 639)	9,883.81	144,862.26	61,478.79
Ex.P.32 (for year ending Dec.31,1946, (Case, Vol.IV, p.761)	NET LOSS -4,280.91	141,049.07	52,928.49
Ex.P.33 (for the 6 month period ending June 30,1947 (Case, Vol.IV, at pp.778 and 779)	NET LOSS -12,845.77	20,579.57	4,226.38

The following comments are necessary in order to appreciate fully the abovementioned exhibits and the conclusions to be derived therefrom.

Firstly, it is to be noted that the Income Tax Returns for the years 1943, 1944 and 1945 are the only ones which constitute complete or normal operational years (Exhibits P-29, P-30 and P-31). The subsequent period, that is, for the year ending December 31st, 1946, is the one during which (on December 4, 1946) the illegal cancellation of license and "raid" occurred. In addition it is to be noted that it was shortly prior to this date that substantial alterations and installations were made in the restaurant which necessarily diminished its operation and reduced its gross and net profit.

Examination of the Exhibit P-32 (Case, Vol. IV, pages 754-761, at page 761) for the year 1946, discloses the following interesting item. There is included as an item of operation expense (Case, Vol. IV, page 760, lines 41 and 42) disbursements made for maintenance and repairs to building in the amount of $8,861.13, and again, maintenance and repairs to furniture and equipment in the amount of $3,668.42. These two items total in all to the sum of $12,529.55, which if added back as a capital rather than an operational expenditure would have changed the declared loss of $4,280.91 to a profit of $8,248.64 for this year. It is also to be recalled that because of the cancellation of his license, during this period (1946) Appellant lost the benefit of the most profitable season of his business, namely, the pre-holiday season. Consequently we may assume that had the Appellant's business operated normally for the entire fiscal period of 1946, he would have shown a very substantial profit in excess of the profits earned by his business during the previous year 1945.

A further examination of the statements for the years ending December 31st, 1944 (Exhibit P-30, Case, Vol. III, at page 609) and for the year ending December 31st, 1945 (Exhibit P-31, Case, Vol. IV, at p. 639) establishes the following additional facts.

With respect to the fiscal period ending December 31st,1944, it is to be noted that (Case, Vol. III, at page 609, line 48) there has been deducted, firstly, an item of repair and maintenance in the amount of $5,865.66 and (at page 610) a subsequent item of "expenses of Crescent Street property per schedule 1" in the amount of $1,008.46.

These items total to the amount of $6,874.06 which has been deducted from the gross profit as overhead expense before arriving at the net profit of the operation of the business. In addition, a further amount of $1,784.83 is deducted as depreciation of furniture and fixtures. Notwithstanding these deductions of approximately $8,500.00, the business still showed a profit for this year (net of $6,556.45).

With respect to the year ending December 31st, 1945 (Exhibit P-31, Case, Vol. IV, at page 639, at line 18) there appears again an item marked "Repair and Maintenance" in the sum of $6,091.55 and a second item marked "Depreciation Furniture and Fixtures" in an amount of $2,024.06 which items total to the sum of $8,015.61.

Despite the deduction of these two items as overhead expense, the net profit of the year for this period is shown at the sum of $9,883.81 (Case, Vol. IV, page 691, line 30).

We are not here concerned with establishing whether or not the abovementioned deductions were properly made as overhead expense in accordance with good accountancy practice. What is relevant to the issues in the present cause is that even if these deductions were properly made as good accountancy practice, nevertheless, these amounts should be added back in order to appreciate fully the profit-making potential or "past profits" earned by the Appellant's business. Adding these figures back it becomes apparent that the real profit as distinguished from net profit established by accounting practice or by Appellant's accountant,

should be recognized as $13,440.51 for the year ending December 31st, 1944, and $17,999.42 for the year ending December 31st, 1945. Similarly for the year 1943 (Exhibit P-29, Case, Vol. III, at page 532) if we add back the item of "Reserve for Depreciation of Furniture and Fixtures" in the amount of $1,717.78 the net profit for that year may be calculated as $8,846.40 instead of the figure $7,128.62 shown on the exhibit.

It has already been noted that the years 1943, 1944 and 1945 are the only three years during which a full period of operation under normal circumstances was maintained. The average profit for these three years on the basis established above amounts to the sum of $13,428.77 (that is, the total of the foregoing sums amounting to $40,286.33, divided by 3 years).

The foregoing exhibits also establish a progressive and continual rise in sales and gross profits for each of the periods 1943, 1944, 1945 and 1946.

Upon examination of these exhibits, we find,

i. That the sales of the business for the years 1943, 1944 and 1945 progressively increased from $96,929.64 to $122,526.63 to $144,862.26 (1943, 1944 and 1945).

ii. Similarly, the gross profits appeared to be progressively increasing during the same period, that is, from $47,607.57 (1943) to $55,077.96 (1944) to $61,478.79 (1945).

The year 1946 was an incomplete year having been interrupted by the cancellation of the license on December 4th, 1946, just prior to the busiest season for sales of alcoholic beverages. In addition, it was shown that during this same period (1946 up to December 4th) the Appellant had expended $12,300.00 for improvements and $5,705.65 for additions to his business (Case, page 779, Vol. IV). Notwithstanding this substantial expenditure and the

interruption of business which must have occurred during the period of installation of same, the sales of the business during the same period (up to December 4th, 1946) amounted to $141,049.11 (Case, Vol. IV, page 760).

We may estimate that if the abovementioned capital expenditures (totalling in excess of $18,000.00) had not been made during this period, the Appellant would have realized a profit substantially in excess of $15,000.00 during the 1946 period as well.

Having resumed the foregoing facts established by the proof in this case, it is respectfully suggested that the learned trial judge should have concluded as follows:

a) That the value of the goodwill and reputation of the Appellant's business on the basis of past profits alone was established at the figure of at least $40,000.00 if calculated on a basis of three years past profits or, in excess of $67,000.00, if calculated on a basis of five years past profits due to the permanence of the business. This evaluation does not take into consideration other elements or factors which might also appreciate the value of the same goodwill such as clientele, exclusive right to operate restaurant in district, favourable location, good general reputation, and uninterrupted license to sell liquors together with meals for a period in excess of 30 years.

b) Taking these additional factors into consideration the goodwill and reputation of Appellant's business should be evaluated at a sum of between $75,000.00 to $100,000.00.

(ii) PROOF OF DAMAGE TO GOODWILL

There remains now to demonstrate what damage to the said goodwill was suffered by Appellant as a result of Respondent's delictual acts.

Firstly, it was shown (and it is uncontradicted in the record) that during the six month period immediately following the cancellation of Appellant's license, the sales of the business dropped from an average of approximately $75,000.00 (for six months) to $20,579.57 (Exhibit P-33, Case, Vol. IV, at page 778, line 31). Also that from an average profit in excess of $13,000.00 per annum Appellant's business dropped to a net loss of $12,845.77 for the six month period. Even if we add back the items of maintenance and repairs in the amount of $2,019.14 and depreciation on furniture and fixtures, etc. in the amount of $1,818.64 (or a total of $3,837.78) in order to make the comparison for 1947 on the same basis as in the previous years, this still would leave a loss of $9.007.99 for the six month period in 1947.

This fact alone clearly demonstrates the smashing damage caused to the goodwill of Appellant's business as a result of Respondent's delictual acts.

It is not difficult to find in the record, the cause of this damage. Firstly, there was the cancellation of Appellant's liquor license, accompanied by a raid on the premises, both of which were widely reported in the newspapers. This cancellation of license, of necessity changed the character of the Appellant's business, reducing it to a restaurant for meals only instead of one where liquor and wines could be consumed.

Secondly, and as an aggravation of the damage already caused to the goodwill, one has but to read the reports of the statements made by the Respondent as set out in the press clippings fyled as Exhibits in this record (Exhibits Nos. P-28, a, b,

c, d, e, f, and g; Case, Vol. IV, at pages 762, 764, 765, 766, 767 and 768). The responsibility for these statements deliberately given to the press by the Respondent, is clearly admitted by him (Case, Vol. I, page 18, line 19). Not only did the Respondent make these statements immediately following the actual "raid" and cancellation of license, that is, on or about December 5th, 1946 and following, but a further barrage of defamatory and derogatory statements was publicized by the Respondent on or about February 7th, 1947. These latter press releases gave notice to all prospective customers and the public in general that Roncarelli's license "had not been cancelled temporarily, but definitely and for always." As may be seen from the Exhibit P-28 (c) (at page 765, Case, Vol. IV), the headline of the press report on this occasion in one of the leading French Canadian newspapers in Montreal was entitled as follows: "Permis Annulé Définitivement et Pour Toujours". The damaging effect of such statements made public in all the leading newspapers in French and in English in Montreal by a personage in such high office as the Respondent, himself, can hardly be over-estimated.

It is not surprising therefore that the Appellant concludes in his testimony that when he sold his business and property it was at a greatly reduced price (Case, Vol. I, page 47, line 35) representing 50 cents on the dollar of the value of the physical assets only (Case, Vol. I, page 57, lines 7 and 8, "I believe I got fifty cents on the dollar").

Taking the foregoing evidence into consideration, it is respectfully submitted that the Appellant suffered a loss of at least $50,000.00 as damage to the goodwill of his business alone since he received nothing for this valuable asset, and only fifty cents on the dollar of its physical assets.

B. DAMAGE RESULTING FROM LOSS OF LIQUOR LICENSE ITSELF, AMOUNT $15,000.00

Reference to the assignment of errors (sub-paragraph b, sub-section 2), and to the extract of the judgment appealed from (Case, Vol. IV, page 857) indicates that the learned trial judge misdirected himself on this item of damage because he concluded that the liquor license was "a temporary asset", and could not have any "commercial" value. We are dealing here, of course, with the value of the liquor license, itself, and not with its contribution as a factor in making up the goodwill of the Appellant's business.

No evidence or argument is needed to establish that a restaurant operated with a liquor permit is a more valuable commercial asset than a restaurant without one. If any proof on this point was required, it was fully established by the evidence showing that immediately after the cancellation of Appellant's liquor permit on December 4, 1946, that the volume of his business dropped from an average for a six month period of approximately $75,000.00 to $20,579.57.

There is, however, some difficulty involved in establishing the current or market value of such a license as it existed in December 1946. Nevertheless, certain elements which contribute to the creation of this value, can be ascertained.

Obviously, liquor permits are not granted to every applicant automatically, and despite the fact that many persons, equally qualified, might apply for them, only a few from amongst these applicants are successful. In consequence, the mere possession of such a license gives its possessor a commercial asset of value.

It is also obvious that there is some expense entailed in obtaining such a permit. Such items as the cost of preparation of the application, the deposit of $25.00 which accompanies each

application, the expense in obtaining advice and other guidance as to the manner of applying for such a permit, all contribute to the current or market value of a liquor license.

Again, in the case of Appellant, consideration must be given to the fact that his liquor license had been renewed consecutively for thirty years. As a consequence, its commercial value was far greater than the same kind of liquor permit held by another licensee of much shorter tenure. In addition, Appellant's license had a greater value as compared to other license holders because of the favourable locality of the restaurant in the west end of the city and its high class clientele. On all these points, therefore, Appellant's liquor permit would normally have a greater or higher commercial value than the liquor permits held by others in less favourable sections of the city and with a much shorter tenure.

Finally, and in any event, a most important yardstick is the value of the license to the Appellant, himself. We have his testimony, entirely uncontradicted, establishing the value of his liquor permit as between $15,000.00 to $20,000.00 (Case, Vol. I, page 57, line 28):

> " Q What value do you place on the liquor permit as you held it on December 1st, 1946, before it was cancelled?
>
> A The tenor of the business which was carried on, it was geared up and designed to be carried on for serving of fine wines and liquors and beers with food and, well, without a liquor permit the business could not exist. Conservatively I value it at fifteen or twenty thousand dollars. "

No attempt was made by the Respondent to contradict this evidence.

From a practical business point of view, it can readily be seen that the possession of a liquor permit in connection with Appellant's business, constituted the possession of an additional asset in the same sense that Appellant had the use of his furniture and fixtures, equipment, building, etc. All these assets had individual intrinsic value, and all contributed to the totality of a successful going concern which produced a profit for the Appellant. The deprivation of one of these assets constituted a loss to the Appellant. In the instant case, the cancelling of Appellant's liquor permit meant, in effect, wiping out or depriving him of a valuable asset which contributed to the profit-making potential of his entire business.

It is almost labouring the point therefore to argue that the cancellation of this permit constituted the loss of an asset of real commercial value. It is submitted, therefore, with respect, that Appellant's claim for $15,000.00 on this item of damage was by no means exaggerated and that he was entitled to compensation for the loss of this asset.

C. LOSS OF PROFIT FOR A PERIOD OF AT LEAST ONE YEAR, THAT IS, UNTIL MAY 1st, 1948, IN THE AMOUNT OF $25,000.00.

We have already analyzed above under the sub-heading (d) of assignment of errors in judgment appealed from the manner in which the learned trial judge misdirected himself on this issue of damage.

No compensation was given to the Appellant for this important item of damage and it is submitted, with respect, that adequate proof was made as to the quantum of damage suffered for the period May 1st, 1947 to April 30th, 1948. Reference again must be made to the Income Tax Returns of the Appellant fyled as Exhibits P-29 to P-33 inc. The

figures therein contained establish that for the years 1943, 1944 and 1945, Appellant's profit realized from the operation of his business amounted to $7,128.62, $6,566.45 and $9,883.81. A more detailed analysis of these figures made above shows that they are far from exaggerated for the obvious reason that the Appellant would be inclined to show this profit at a legal minimum for the purpose of Income Tax.

The foregoing figures establish a trend that indicates that the year May 1st, 1947 to April 30th, 1948 would have been at least as profitable as the previous years 1945 and 1946 proved to be.

In view of the steadily increasing prosperity in the country at that time in which Appellant's business would certainly have shared, it is reasonable to assume that Appellant would have earned a profit in excess of $15,000.00 during the period May 1st, 1947 to April 30th, 1948.

The trial judge recognized the profit-making potential of the Appellant's business in allowing to the Appellant the sum of $6,000.00 for the loss of profit suffered by his business during the period December 4, 1946 to April 30th, 1947, i.e. approximately five months' operation. This is further evidence that the figure of $25,000.00 as damage for loss of operation during the year 1947 to 1948 is not exaggerated.

x x
x

Part IV

ARGUMENT

PRINCIPLES APPLICABLE TO THE ISSUE OF DAMAGES

1. THE DAMAGES CAUSED TO APPELLANT WERE THE DIRECT CONSEQUENCE OF THE RESPONDENT'S ACTS AND WERE DESIGNED TO INJURE APPELLANT IN HIS BUSINESS AND PROPERTY.

The learned trial judge found as a fact that

the Respondent's acts were the cause of Appellant's damages. He declared as follows (Case Vol. IV, page 878, lines 41 to 44):

> " Plaintiff's right to claim damages from the Defendant by reason of the cancellation of his license is well founded. He has established that it was through Defendant's acts and orders that Plaintiff's license was cancelled..."

It therefore follows that Respondent was liable for the whole of the damages whether or not any other person might have been at fault as well.

2. THIS BEING A CASE OF DELICTUAL, NOT CONTRACTUAL RESPONSIBILITY, RESPONDENT IS LIABLE FOR ALL THE DAMAGES WHICH ARE A DIRECT CONSEQUENCE OF THE DELICTUAL ACTS COMPLAINED OF. APPELLANT IS NOT RESTRICTED TO THOSE DAMAGES ONLY WHICH WERE FORESEEABLE AS IN THE CASE OF CONTRACTUAL DAMAGE.

This is the principle laid down in Articles 1073 and 1075 C.C. Baudoin in his treatise "Le Droit Civil de la Province de Québec", states it as follows (page 846):

> " L'évaluation des dommages issus d'un délit ou quasi-délit n'échappe pas au principe général posé en matière contractuelle. Il faut rétablir l'équilibre rompu par l'acte illicite, il faut que la victime soit replacée dans la situation dans laquelle elle se trouvait avant que l'acte dommageable se soit produit.
>
> Mais, si en matière contractuelle la rupture d'équilibre ne commande pas toujours un rétablissement complet, en matière délictuelle il ne saurait en être de même. La réparation doit être intégrale, et la prévisibilité possible

" en matière contractuelle, ne peut jouer en principe sur le plan délictuel. "

Regent Taxi vs. Frères Maristes (1929 S.C.R. p. 650);

Nicholl's "Offences and Quasi-Offences", p. 109.

As to what constitutes "all the damage", we cite MAZEAUD, Traité de Responsabilité Civile, No. 1673 (Vol. II, 4th Edition, p. 558):

" ...l'auteur de la faute initiale ne répond dans la chaine des préjudices que de ceux qui sont la conséquence certaine, nécessaire de son acte. L'expression de "dommage nécessaire", ou de "suite nécessaire", qu'employait déjà Pothier, est préférable à celle de "dommage direct" ou "de suite immédiate"; elle marque plus exactement la nature du lien de causalité qui est exigé et le point où s'arrête la responsabilité du défendeur. Elle ne laisse pas en effet supposer que seul le premier préjudice doit être réparé; le deuxième, le troisième, le quatrième, etc. sont la responsabilité de l'auteur de la faute initiale; il en est ainsi chaque fois qu'ils ont un lien certain de causalité avec cette faute; mais, plus ils s'éloignent dans la chaine des conséquences, plus la certitude diminue. "

and further in No. 1677, at page 563, MAZEAUD says:

" Dès que cette relation existe, le préjudice doit être réparé si lointain soit-il; et cela montre assez que les expressions "dommage direct" et "suite immédiate" exprimaient fort mal l'idée générale qu'elles recouvrent.

" Il n'est pas question de proximité dans le temps ou dans l'espace, mais seulement de l'existence d'un lien de causalité. "

3. THE ESTIMATE OF THE VALUE OF THE PROPERTY FOR WHICH APPELLANT IS TO BE COMPENSATED SHOULD BE DETERMINED BY THE VALUE TO HIM AT THE TIME OF THE DAMAGE AND NOT MERELY ON ITS VALUE TO A SUBSEQUENT PURCHASER.

It is obvious that Appellant was obliged to sell his property under most unfavourable selling conditions. At the time of sale, the business carried on in the premises had ceased to operate and its clientele had been dispersed. Thus, the price he received from the purchaser was clearly very much lower than the value of the property to Appellant at the time of the damage. It has been held in the case of an expropriation that the owner is entitled to receive the money equivalent estimated on the value to him and not on the value to the purchaser. Value must be determined on the basis of the most advantageous uses of the property whether present or prospective, but, of course, only the present value (as of date of expropriation) of prospective advantages is to be determined (The Queen ex Rel. Attorney-General of Canada v. Supertest Petroleum Corp. Ltd., 1954, 3 D.L.R., p. 245).

It was also held in Tremblay v. Hudon Hébert & Co. Ltd. 47 K.B. 214 (1928):

" Where an accident occurs following which a motor car is wrecked beyond repair, the owner is entitled to recover from the responsible party the real or actual value to him as distinguished from its sale value before the mishap.

The method of calculating the value of a car by deducting from its original

" price an amount for depreciation based upon a purely arbitrary scale is neither a legal nor a just method of valuation and a theoretical market value calculated in that way cannot be accepted.

10 See also Mtl. Tramways Co. v. Rosenbloom, 54 K.B. 75 (1932), Hall J. at p. 77. "

4. GOODWILL (ACHALANDAGE) IS WELL ESTABLISHED AS A FORM OF PROPERTY IN THE CIVIL AS WELL AS THE COMMON LAW.

20 Dalloz et Varge recognize this principle when they state in Code de Commerce (1877), Vol. V, p.946:

" 13. De même, l'achalandage ou la clientèle peuvent être séparés du fonds de commerce et avoir un prix distinct. "

The same authors continue:

" 24. En quoi consiste l'achalandage.
30 L'achalandage est, pour les établissements commerciaux ou industriels, ce que la clientèle est pour les professions libérales. Il se compose des relations établies entre un établissement et les consommateurs, relations qui attachent ces derniers à l'établissement, et ont une valeur commerciale quelquefois très grande. Ces relations, qui forment l'élément incorporel d'un
40 fonds de commerce, dont les utensiles, marchandises, enseigne, constituent les éléments matériels, font, comme ces derniers, l'objet d'une propriété industrielle, et se transmettent avec les autres éléments à l'acquéreur.

30. Protection de la propriété de l'achalandage - l'art. 1382 civ.

" protège la propriété de l'achalandage, qu'elle ait été acquise ou transmise, aussi bien que celle des autres objets de la propriété industrielle. Il la protège notamment contre les manoeuvres frauduleuses qui auraient pour objet de la détourner, de l'usurper, autres toutefois que les usurpations d'enseignes ou d'étiquettes. "

Escarra in his Manuel de Droit Commercial (1947), Vol. I, no. 237, at page 151 in discussing l'achalandage says:

" on est généralement porté à voir là de véritables droits réels. "

He describes it as

" une qualité virtuelle, potentielle, du fonds de commerce, permettant d'accroitre son volume d'affaires, et qui est lié plutôt à la situation du fonds, à ses facteurs objectifs, qu'au facteur personnel que représente le propriétaire. Un fonds bien placé attirera des "chalands", c'est-à-dire des personnes qui ne sont pas normalement des "clients", mais qui entreront dans ce magasin, dans ce restaurant, se serviront auprès de ce garagiste, parce qu'ils se trouvent par exemple, dans une rue particulièrement "passante" ou près d'une gare, ou à un carrefour de routes. "

Although l'achalandage is something incorporeal, Escarra points out at No. 231, p. 148, that it is one of the factors which harmoniously blend together in any business to give it a superior economic value to the value of the individual elements.

The definition of goodwill in Corpus Juris

Secundum (Vol. 38, p. 948) is as follows:

> " It has been said that it is difficult to state a concise and at the same time comprehensive definition of goodwill. Nevertheless, numerous decisions have accepted or cited with approval Justice Story's definition of good will as the advantage or benefit which is acquired by an establishment, beyond the mere value of the capital stock, funds, or property employed therein in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position or common celebrity or reputation for skill, affluence, punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices. Good will is also frequently defined as that element of value which inheres in the fixed and favourable consideration of customers, arising from an established and well-known and well-conducted business.
>
> In its broadest sense good will may be said to be reputation; but generally the definitions given by the courts include as a leading element the probability that the customers of the old establishment will continue their patronage. Many other definitions used by the courts are similar in tenor to those heretofore stated and vary merely in the form of phraseology. "

In determining the valuation of goodwill,

> " No rigid and unvarying rule has been laid down by the court, and each case must be determined on its own facts and circumstances. "

In one of the leading American cases (also cited in Corpus Juris, Vol. 28, p. 735, notes 48 and 49) Moore v. Rawson, 185, Mass. 264, the following were deemed to be proper elements of value of goodwill:

a) "the length of time the firm has been in existence;

b) "the nature and character of its business;

c) "the fact whether it has been successful or unsuccessful;

d) "the average amount of net profits;

e) "the probability of continuance of the business under the same name..."

The author, Charles L. Cole, also adds on the same subject (Corpus Juris Secundum, Vol. 38, Verbo Goodwill, p. 954):

> " In determining the value, the profits are necessarily taken into account, and the value is usually estimated at so many years' purchase upon the amount of such profits...
> A principle applied in some cases is that the valuation of goodwill may be fairly arrived at by multiplying the average net profits for a period of years by a number of years, such number being suitable and proper, having reference to the nature and character of the particular business under consideration. "

These latter principles were cited with approval in re BALL, 161, App. Div. 79, 146 NYS 499, 13 MILLS SURR. 69; In re SILKMAN 121 App. Div. 202, 105 N.Y.S. 872, affirmed 190 N.Y. 560.

As seen from a long list of cases cited in Corpus Juris (Vol. 28, at p. 736 (note 53)) the period taken into consideration varied between 2 to

5 years. However, the longer the period of time during which the business has been in operation, the greater should be the number of years used as the multiplier to determine the value of the goodwill. As held in the leading case of In re: DEMAREST 157 N.Y.S. 653 at p. 655:

> " The number by which the average annual profits...should be multiplied in order to determine the value of goodwill is dependent upon the nature of the business, the length of time during which it has been conducted under the particular name, the extent to which it has become known to public through advertising or otherwise, how much of its success may be attributed to the personality of the decedent, and other considerations of like character. "

As to the probative value of the testimony of the owners as witnesses on the question of goodwill, it was held in the case Manning v. Kessner 209 Ill. at p. 475 that

> " The owners and operators of a business are competent witnesses as to the value of its goodwill. "

This case is cited with approval by the same author abovementioned.

In dealing generally with the question of evidence as to goodwill, the following rules are also added:

> " the basis of the estimate is past profits" (28 C.J. p. 737) (and authorities cited under Note 58)

> " Balance sheets of subsequent years are admissable for purpose of comparison in determining value of the goodwill "

as held in the following cases, namely Von Au v.

Magenheimer, 126 App. Div. p. 257, 110 N.Y.S. 629 affirmed 196 N.Y., 510, mem. 99 N.E. 1114 mem.

See also Sutherland Construction Company v. Shier (1940, 69 K.B. p. 575).

5. IT IS IRRELEVANT WHETHER THE RIGHT TO THE LICENSE WAS ONE OF FULL OWNERSHIP OR WAS PRECARIOUS. APPELLANT'S RIGHT OF "REASONABLE EXPECTANCY OF RENEWAL OR LICENSE" IN THE FUTURE WAS FULLY ESTABLISHED AND IS SUFFICIENT TO MAINTAIN HIS CLAIM FOR DAMAGES. THE DESTRUCTION OF THIS ASSET WAS A DAMAGE MEASURABLE IN MONEY.

Appellant's business, though requiring an annual license both for liquor and as a restaurant, was subject to no greater risks than those which attend many other types of business. An element of risk is inevitable in all private business. A market may be lost or closed by unforeseeable events; tariffs may be changed; currency controls may be introduced or removed; in some industries style factors may change and thereby affect the volume of sales, or inventory. The existence of these risks in various forms does not mean that such a business cannot have a value, measurable in money, and that such value cannot be damaged.

Under the civil law even the "perte d'une chance" is recoverable as damages in a delictual action. In support of this proposition we cite MAZEAUD, Vol. I, 4th Edition, "Traité de Responsabilité Civile", pp. 239 to 242, as follows:

> " 219. Difficultées à apprécier le caractère de certitude du préjudice; Perte d'une chance. - Si les arrêts n'hésitent pas à ordonner réparation de tout préjudice certain, qu'il soit actuel ou futur, et à refuser tous dommages-intérêts pour un préjudice éventuel, ils se trouvent parfois en face d'espèce dans lesquelles il est

" fort délicat de préciser le caractère de certitude du dommage.

C'est ce qui se passe notamment lorsque le demandeur a, par sa faute, privé le défendeur d'une chance de réaliser un gain ou d'éviter une perte. La difficulté vient de ce que, cette fois, il n'est plus possible d'attendre pour savoir si le préjudice existera ou n'existera pas; la réalisation du préjudice ne dépend plus d'événements futurs et incertains. La situation est définitive; plus rien ne la modifiera; par sa faute, le défendeur a arrêté le développement d'une série de faits qui pouvaient être source de gains ou de pertes. C'est ce que la Cour de Cassation exprime en disant "que le fait duquel dépend le préjudice éventuel est consommé. "

As an example of this type of "perte d'une chance", MAZEAUD makes reference to a case where the plaintiff obtained damages against the defendant who failed to deliver his race-horse at the racetrack in time to allow the entry of the horse in the race, thereby depriving the plaintiff of his "chance of victory".

The learned author continues (p. 242), after citing many similar examples, as follows:

" Faut-il alors prétendre que, dans toutes ces hypothèses, le dommage dont il est demandé réparation est purement hypothétique et que, par suite, le tribunal ne peut en tenir compte?

Ce serait mal raisonner. Les chances qui ont été perdues ne sont pas toujours les "châteaux en Espagne" de Pierrette et son pot au lait. Elles sont parfois réelles. Certes, la victime se targuerait

" d'un préjudice hypothétique si elle réclamait par exemple le prix que n'a pu gagner son cheval; quelles que soient les qualités d'un cheval, il n'y a aucune certitude qu'il arrivera premier. Mais comme le fait tres exactement remarquer M. Lalou il n'en existe pas moins un préjudice certain; le cheval avait une chance d'arriver; c'est cette chance qu'il a perdue. "

Again, at page 299, this author underlines the principle in the following terms:

" Dire, dans tous ces cas, qu'il y a incertitude, dommage hypothétique et que, partant, le demandeur ne peut jamais rien obtenir serait excessif, on l'a démontré. Il suffit que la possibilité perdue soit sérieuse pour que les juges doivent s'y arrêter, car il existe un préjudice certain subi par le demandeur; celui d'avoir perdu une chance sérieuse, et il appartient aux juges d'évaluer cette chance. "

" Il suffit ici d'appliquer ces principes. "

In the instant case, Appellant's "right" to the renewal of his license was infinitely greater than a mere "chance". The course of action of the Quebec Liquor Commission over a period of more than thirty years justifies the contention that the renewal of the said license was almost a certainty, had not the Respondent interfered by the order cancelling the license. For the period 1947 to 1948 Appellant's application for renewal of license would normally have been accepted. In the words of the Appellant, "it was regular routine" (Case, Vol. I, page 27, lines 1, 2 and 17). As it was, and due to Respondent's order, Appellant's application was not even considered.

(See Exhibit P-27-b, Case, Vol. IV, p. 741).

As a further analogy, we respectfully point out that our courts have recognized for many years the right to damages for what is termed "loss of expectancy of life" and "loss of expectation of future benefits". Here, again, we are dealing with something which is short of certainty, yet damages are repeatedly awarded in substantial amount for this deprivation on the assumption that in the normal course, the individual injured could expect to continue in life or to receive the benefits for a reasonable period in the future. These damages are granted to Plaintiff without his being obliged to establish the certainty of such extension of life or benefits into the future for any given period.

Similarly then, in our case, Appellant is not required to establish the certainty of the renewal of his license in the future. It is sufficient that there is a reasonable expectation of such renewal based upon the fact that during the past many years, such license had been repeatedly renewed for Appellant's restaurant by the Quebec Liquor Commission. In fact, Appellant was entitled to claim for a much longer period of operation than the one year from May 1st 1947 to April 30th, 1948. Such a claim therefore cannot be considered as exaggerated in the circumstances of the present case.

On this point, reference may also be made to Common Law authorities -

MAYNE on Damages - 11th Edition, p. 142 says:

" PROBABLE FUTURE LOSS

Probable future loss may be taken into consideration. Thus, where the agreement was that the Defendant should appoint the Plaintiff to the command of one of his ships, which was chartered by the East India Company for two voyages, it appeared that it would be discretionary with the Company to allow him to command on the second voyage;

" but they generally permitted such appointments to be renewed. It was held that the jury might give damages for the loss of both voyages, though the time for the second had not yet arrived (b) "

In footnote (b) at page 143 of the same volume, we are referred to the following cases:

" (b) Richardson v. Mellish (1824) 2, Bing. 229 See Chaplin v. Hicks (1911) 2 K.B. 786 (where it was held that the existence of a contingency depending on the will of a third person does not necessarily make it impossible to assess damages for a breach of contract).

The same author, at p. 77, states:

" A chance of a prize may be such, however, that wrongfully to deprive the plaintiff of it will entitle the plaintiff to substantial damages(a). It may be that damage is dependent on so many contingencies that damages should not be awarded (b), but if the Court is satisfied that damage has been suffered allowance will be made for contingencies to an extent reasonable in all the circumstances. "

In footnote (a) at p. 77, we are referred to the following:

" (a) Chaplin v. Hicks (1911) 2 K.B. 786: ante p. 6. It will be observed that in this case the Plaintiff had a contractual right against the defendant who made the offer of a prize, and she was one of a limited number from whom the twelve winners were to be selected. "The rule against the recovery of uncertain damages is directed against uncertainty as to

" cause rather than as to the extent or measure"; per Master J., in Kranz v. McCutcheon (1920), 18 O.W.N. 395. The mere fact that the benefit of a contract depends on a contingency does not necessarily render the damages arising from the breach incapable of assessment: Watt v. Duggan and Connell (1913) Q.W.N. 48. "

Also in the case of McGillivray v. Kimber (52 S.C.R. p. 146) it was held per Duff J. at pp. 170 and 171 -

" On these assumptions the appellant's licence held by him in June, 1912, did not expire until August, 1913, and the position taken by the respondents in their statement of defence and sustained by the full court that the appellant ceased in law to be a licensed pilot after June, 1912, necessarily fails.

Assuming that the proper course is to treat the appellant's licence as a licence limited as to duration under section 454, and that the discretion to renew, conferred upon the Pilotage Authority by sub-section (b) of that section, is an absolute and not a judicial discretion, it would still, I think, be wrong to deal with the question of damages on the footing of the consequences of the proceedings in 1912 having ceased to operate with the expiry of the licence in August 1913. The proceedings in evidence in August, October and November of 1913, shew that the majority of the Board insisted at that time on treating the appellant as compulsorily retired from the service and disqualified from holding a licence. This loss of status and the prejudice thereby occasioned him in his character of applicant for a licence in August,

" 1913, is one of the consequences natural and intended of the respondents' conduct in respect of which the appellant is entitled to reparation. "

x x
x

CONCLUSION

Resuming the foregoing, Appellant respectfully submits that he has fully and adequately established the following items of damage for which no compensation has been received.

a)	Damages to goodwill and reputation of Plaintiff's business and depreciation of value of his property and business	$50,000.00
b)	Loss of property rights in liquor Permit No. 68	15,000.00
c)	Loss of profits for a period of at least one year, that is, from May 1, 1947 until May 1st, 1948 of operation of Plaintiff's restaurant and Quaff Café section with liquor permit as previously granted, reserving Plaintiff's right to future damages after this date	25,000.00
		$90,000.00

It is respectfully urged that this Honourable Court should compensate the Appellant for the foregoing items of damages in addition to the amount of $8,123.00 with interest awarded by the Trial Judge; the whole with interest from the date of Judgment

on May 2nd, 1951, and costs.

MONTREAL, September 10th, 1957.

F.R. SCOTT and A.L. STEIN

of Counsel for Appellant.

A P P E N D I X "A"

Appendix to Appellant's Factum

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. 167M

Under the Provisions of the Alcoholic Liquor Act of the Province of Quebec, R.S.Q. 1941, Ch. 255

COURT OF KING'S BENCH
(Appeal Side)

FRANK RONCARELLI, Restaurateur, of the City and District of Montreal, residing at 1320 Sherbrooke Street West, Montreal,

Claimant - Petitioner

vs

THE HONOURABLE MR. JUSTICE EDOUARD ARCHAMBAULT, Manager of the Quebec Liquor Commission, Place des Patriotes, Montreal,

Defendant

PETITION FOR AUTHORIZATION TO SUE

TO THE HONOURABLE CHIEF JUSTICE SEVERIN LETOURNEAU OF THE COURT OF KING'S BENCH (APPEAL SIDE), SITTING IN AND FOR THE DISTRICT OF MONTREAL, COURT HOUSE, MONTREAL, P.Q.

The petition of the abovenamed Claimant-Petitioner respectfully represents:

1. That your Petitioner is aggrieved of the illegal, unwarranted, discriminatory and arbitrary acts and deeds of the abovenamed Defendant as manager of the Quebec Liquor Commission, the whole as hereinafter summarily set forth;

2. That, on or about the 4th of December,

1946, the abovenamed Defendant as manager of the Quebec Liquor Commission did unlawfully and arbitrarily cancel the Liquor Permit No. 68, the property of the Claimant-Petitioner, granted to him on the 1st of May, 1946, for the sale of alcoholic liquors in his restaurant and café situated at 1429 Crescent Street, in the City and District of Montreal, Province of Quebec, which Liquor Permit had been previously granted to the Claimant-Petitioner for many years past, as well as to his father and mother, from whom he inherited and acquired his aforesaid restaurant business.

3. That, moreover, on or about the 4th of December, 1946, the property of the Claimant-Petitioner, to wit, approximately $2800.00 of alcoholic liquors were seized and confiscated arbitrarily and illegally on the premises of Claimant-Petitioner's restaurant and cafe situated at the abovementioned address, on the order of the Defendant as manager of the Quebec Liquor Commission without notice or due process of law.

4. That as a result of the aforesaid, illegal, unwarranted, discriminatory and arbitrary acts and deeds of the Defendant-Manager, and since the said acts and deeds were widely reported in all papers, periodicals, magazines in the United States and in Canada - as well as on the radio - your Claimant-Petitioner has suffered a most serious loss and damage in his well-established restaurant business and will continue to suffer further and greater losses and damages in the future; as well as damages to his personal reputation; and to the reputation and goodwill of his said business.

5. That, moreover, as a result of the aforesaid illegal, unwarranted, discriminatory and arbitrary acts and deeds of the Defendant as manager of the Quebec Liquor Commission, your Claimant-Petitioner has suffered damages totalling in all to the sum of $253,741.00, the details of which he estimates to be as follows:

Appendix to Appellant's Factum

Item No. 1 -	Cost of alcoholic liquor seized	$2,800.00
Item No. 2 -	Loss of profit on the abovementioned alcoholic liquors	2,800.00
Item No. 3 -	Loss of profit in Claimant's restaurant and Quaff Café section during period December 4th, 1946, to May 1st, 1947 (holiday season), based upon same period of operation in 1945 and 1946	8,141.00
Item No. 4 -	Damages to goodwill and reputation of Claimant-Petitioner's business . .	50,000.00
Item No. 5 -	Loss of property rights in Liquor Permit No. 68 . . .	15,000.00
Item No. 6 -	Damages to personal reputation as a result of illegal, unwarranted acts of the Quebec Liquor Commission and publicity, derogatory statements and other pronouncements made by officials of the Quebec Liquor Commission in connection therewith	15,000.00
Item No. 7 -	Loss of profits for a period of at least 15 years of operations of Claimant-Petitioner's restaurant and Quaff Café section with liquor permit as previously granted during many years, estimated conservatively at the sum of $235,981.00, which Claimant-Petitioner reduces for the purposes of the present claim to a capital amount of	160,000.00

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This item of claim shall be subject to reduction proportionately for each year or period thereof during which the license previously owned by Claimant-Petitioner is reinstated and/or granted by the Quebec Liquor Commission.	
TOTAL . .	$253,741.00

6. That, in the premises, your Claimant-Petitioner is entitled to institute legal proceedings against the Defendant personally, as the manager of the Quebec Liquor Commission, for compensation of the aforesaid damages and for such other remedies which may be available to Claimant-Petitioner against the said Defendant.

7. That your Claimant-Petitioner requires the permission of the Honourable Mr. Chief Justice Sévérin Letourneau of the Court of King's Bench (Appeal Side), sitting in and for the District of Montreal, Province of Quebec, before instituting legal proceedings against the abovenamed Defendant, and does hereby make application for such permission.

WHEREFORE your Claimant-Petitioner prays that by judgment of the Honourable Chief Justice of the Court of King's Bench (Appeal Side) to intervene herein, that he be granted permission and authorization to institute legal proceedings against the abovementioned Defendant, the Honourable Mr. Justice Edouard Archambault, for the damages hereinabove claimed, and for such other remedies as may appertain to your Claimant-Petitioner against the said Defendant in the circumstances hereinabove more fully set forth; the whole with costs to follow suit.

Montreal, January 31st, 1947.

Appendix to Appellant's Factum

(signed) STEIN & STEIN

Attorneys for Claimant-Petitioner

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A F F I D A V I T

I, FRANK RONCARELLI, Restaurateur, of the City and District of Montreal, residing at 1320 Sherbrooke Street West, being duly sworn do hereby depose and say:

1. THAT I am the Claimant-Petitioner in the present petition;

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2. THAT the facts alleged in the foregoing petition are true and correct.

AND I HAVE SIGNED

(signed) FRANK RONCARELLI

Sworn to before me this
31st day of January, 1947.

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(signed) (illegible)

Commissioner of the Superior
Court for the District of Montreal.

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PROVINCE DE QUEBEC
DISTRICT DE MONTREAL
No: 167M

COUR DU BANC DU ROI
(en appel)

Montréal, le 5ième jour de février 1947.

PRESENT: EN CHAMBRE:

L'HONORABLE JUGE LETOURNEAU, J.C.

FRANK RONCARELLI, Restaurateur,

Requérant - APPELANT

et

L'HONORABLE JUGE EDOUARD ARCHAMBAULT,
Gérant de la Commission des Liqueurs
de Québec,

INTIME

Sur Requête au Juge en chef de la Cour du Banc du Roi (Division d'Appel) pour autorisation à poursuivre monsieur le Juge EDOUARD ARCHAMBAULT, gérant de la Commission des Liqueurs de Québec.

ATTENDU que le Requérant invoque qu'il était porteur d'un permis de La Commission des Liqueurs de Québec, "granted to him on the 1st of May, 1946, for the sale of alcoholic liquors in his restaurant and café situated at 1429 Crescent Street, in the City and District of Montreal, Province of Quebec, which Liquor Permit had been previously granted to the Claimant-Petitioner for many years past, as well as to his father and mother, from whom he inherited and acquired his aforesaid restaurant business", et que ce permis No 68 lui aurait été, le 4 décembre 1946, illégalement et arbitrairement retiré par le Juge Edouard Archambault en sa qualité de gérant de la dite Commission des Liqueurs de Québec;

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ATTENDU que le dit Requérant demande à poursuivre personnellement en dommages-intérêts le Juge EDOUARD ARCHAMBAULT, savoir pour une somme totale de $253,741.00, laquelle somme représente selon lui la perte subie soit à raison d'une confiscation des liqueurs, soit à raison de la perte de ses profits, soit en tout cas comme résultat de la susdite annulation de son permis, qu'il qualifie d'illégale, arbitraire et discriminatoire.

ATTENDU que le Requérant fait reposer cette demande d'autorisation à poursuivre sur l'Article 12 de la Loi des Liqueurs Alcooliques, lequel énonce:-

" 12. La personne nommée, en vertu de la présente loi, comme gérant de la Commission des Liqueurs de Québec, ne peut être poursuivie, pour les actes par elle accomplis ou omis dans l'exercice de ses devoirs que lui prescrit la présente loi sauf par le gouvernement de la province, ou avec l'autorisation du juge en chef de la province ou, s'il est empêché, par le doyen des juges de la Cour d'appel.

La commission elle-même ne peut être poursuivie qu'avec le consentement du procureur général. "

CONSIDERANT que c'est "personnellement" que le Requérant demande à poursuivre ainsi le Gérant de la Commission des Liqueurs (to institute legal proceedings against the Defendant personally... énonce l'allégation 6 de la requête); les actes auxquels il est pour cela référé ayant toutefois et d'après l'ensemble des allégations de la Requête été accomplis par le Juge Archambault en sa capacité de gérant de la Commission ("as manager of the Quebec Liquor Commission", selon qu'il est dit à l'allégation No. 1; "as manager of the Quebec Liquor Commission did unlawfully and arbitrarily cancel the Liquor Permit No. 68", selon qu'il est dit à l'allégation No. 2; "on the order of the Defendant

as manager of the Quebec Liquor Commission without notice or due process of law", selon qu'il est dit à l'allégation No. 3; "as a result of the aforesaid, illegal, unwarranted, discriminatory and arbitrary acts and deeds of the Defendant-Manager", selon qu'il est dit à l'allégation No. 4; "acts and deeds of the Defendant as manager of the Quebec Liquor Commission", selon qu'il est dit à l'allégation No. 5);

CONSIDERANT que l'Article 12 précité de la Loi des Liqueurs est pour le cas où, abusant de ses fonctions, le gérant de la Commission des Liqueurs aurait de mauvaise foi, par motifs pervers ou autrement, encouru personnellement la responsabilité civile prévue aux articles 1053 ou 1054 du Code Civil;

CONSIDERANT que sous réserve d'un recours à l'action de in rem verso auquel la requête ne réfère nullement, il ne saurait y avoir de responsabilité personnelle d'un gérant de la Commission agissant dans les limites de ses attributions, à moins que le Requérant n'ait démontré, par les allégations de sa requête, que cette responsabilité résulte soit de la loi, soit de son contrat ou quasi-contrat, soit de son délit ou quasi-délit;

CONSIDERANT que la demande du Requérant ne fait rien voir à ce sujet;

CONSIDERANT qu'à la face même de la Requête, rien n'apparait qui pût impliquer responsabilité personnelle du Juge Edouard Archambault, et que ceci étant condition essentielle de l'exercice du pouvoir discrétionnaire que reconnait au Juge en chef l'Article 12 précité de la loi, toute telle autorisation à poursuivre serait, dans les circonstances, sans aucune base juridique;

CONSIDERANT que la Requête, telle que rédigée et telles que les allégations en sont articulées, ne se rapporte qu'à des actes qu'aurait accomplis le dit gérant dans l'exercice de ses

fonctions, mais nullement à des actes susceptibles d'engager ou d'en déduire sa responsabilité personnelle;

CONSIDERANT que la Requête dont il s'agit doit par suite être purement et simplement rejetée.

PAR CES MOTIFS, nous soussigné, Juge en Chef de la Province de Québec, selon l'autorité à nous conférée aux termes de l'Article 12 de la Loi des Liqueurs Alcooliques,

REJETONS avec dépens la Requête dont il s'agit.

(signé) SEVERIN LETOURNEAU

J.C.P.Q.

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CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. 176M

Under the Provisions of the Alcoholic Liquor Act of the Province of Quebec, R.S.Q. 1941, Ch. 255

COURT OF KING'S BENCH
(Appeal Side)

FRANK RONCARELLI, Restaurateur, of the City and District of Montreal, residing at 1320 Sherbrooke Street West, Montreal,

CLAIMANT-PETITIONER

vs

THE HONOURABLE MR. JUSTICE EDOUARD ARCHAMBAULT, of the City of Outremont, District of Montreal, residing at 755 Dunlop Avenue,

DEFENDANT

PETITION FOR AUTHORIZATION TO SUE

TO THE HONOURABLE CHIEF JUSTICE OF THE PROVINCE OF QUEBEC SITTING IN AND FOR THE DISTRICT OF MONTREAL, COURT HOUSE, MONTREAL, P.Q.

The petition of the abovenamed Claimant-Petitioner respectfully represents:

1. That Petitioner is the owner of a restaurant and café situated at 1429 Crescent Street, in the City and District of Montreal, and was the holder of Liquor Permit No. 68, granted to him on the 1st of May, 1946, for the sale of alcoholic liquor in his said restaurant and café. The said liquor permit had been granted previously to the Petitioner for many years past, as well as to his father and mother from whom he had inherited and

acquired his aforesaid restaurant business;

2. That Petitioner has complied with all the requirements of the Alcoholic Liquor Act and has conducted his business in accordance with the laws of this province.

3. That on or about the 4th of December, 1946, the Defendant, who is the Manager of the Quebec Liquor Commission, cancelled in bad faith the said Liquor Permit No. 68 for the reasons and under the circumstances hereinafter related.

4. On or about the 3rd of December, 1946, the Honourable Mr. Maurice Duplessis, leader of a political party called "Union Nationale", announced that he had instructed the Defendant to cancel said Liquor Permit No. 68 because the Claimant-Petitioner had acted as surety or bondsman for a number of persons summoned before the Recorder's Court of the City of Montreal on charges of having violated a by-law of the City of Montreal prohibiting people from peddling without a License or Permit.

5. The said Honourable Mr. Maurice Duplessis further stated that the Claimant-Petitioner was using the revenues received by him in his restaurant through the sale of alcoholic liquor by reason of his holding a Permit from the Quebec Liquor Commission as a surety or bondsman, and that this use of his revenues by the Claimant-Petitioner would not be permitted.

6. The said declaration by the Honourable Mr. Maurice Duplessis did not reveal that any illegal, immoral or dishonourable act had been committed by the Claimant-Petitioner and the said declaration was made solely for political purposes.

7. No provision of the Alcoholic Liquor Act or of any other statute or law would authorize or justify the cancellation of the Permit of the Claimant-Petitioner for the reasons mentioned in the declaration of the Honourable Mr. Maurice Duplessis.

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8. The Defendant, who is a member of the "Union Nationale" and a supporter of the Honourable Mr. Maurice Duplessis, cancelled Claimant-Petitioner's Permit to carry out the personal wishes of the leader of the political party to which he belongs and for no other reason.

9. The Defendant as a sworn officer of the Quebec Liquor Commission is bound to administer the said law according to its tenor and spirit, faithfully and justly, and independently of his political and personal opinions, feelings and relations.

10. In cancelling the said Permit for the reasons and in the circumstances aforesaid the Defendant committed a delict which caused to Claimant-Petitioner the damages hereinafter mentioned and for which he is responsible.

11. That on or about the 4th of December, 1946, for the same reasons as hereinabove more fully detailed, the said Defendant did order a "raid" upon Petitioner's premises and the seizure and confiscation of his property, to wit, approximately $2800.00 of alcoholic liquors on the said premises at 1429 Crescent Street, in the City of Montreal, and did arbitrarily and illegally confiscate and remove the said property from the premises of the Claimant-Petitioner to a place or places unknown, the whole without due process of law or notice to the Petitioner and without any compensation or payment therefor being made to the Petitioner.

12. That, as a result of the aforesaid personal fault, discrimination and arbitrary action of the Defendant, and since the said acts and deeds were done in such a manner as to cause notoriety and disturbance and were widely reported in a large number of papers, periodicals, magazines in Canada and in the United States, as well as on the radio, your Claimant-Petitioner has suffered a most serious loss and damage in his well-established restaurant business and will continue to suffer further and

greater losses and damages in the future as well as damages to his personal reputation and to the reputation and goodwill of his said business; which damages the Petitioner is entitled to claim from the Defendant personally.

13. That since the cancellation of the aforesaid license, the Defendant as a further means of illegal reprisal and persecution has continued to abuse his power and authority contrary to the purposes of the Alcoholic Liquor Act by repeatedly stating that no liquor license in the future would be granted in connection with the said premises of Defendant, thus depreciating the value of Petitioner's business and property and preventing him from selling same to bona fide purchasers.

14. The Claimant-Petitioner has the right to claim from Defendant personally the damages caused by reason of the said delict and the damages caused to Claimant-Petitioner by the servants and workmen of the Quebec Liquor Commission acting under the instructions of the Defendant, the details of which he estimates to be as follows:

(a)	Cost of alcoholic liquor seized . .	$ 2,800.00
(b)	Loss of profit on the abovementioned alcoholic liquor	2,800.00
(c)	Loss of profit in Claimant's restaurant and Quaff Café section during period December 4th, 1946, to May 1st, 1947, (holiday season) based upon same period of operation in 1945 and 1946	8,141.00
(d)	Damages to goodwill and reputation of Claimant-Petitioner's business .	50,000.00
(e)	Loss of property rights in Liquor Permit No. 68	15,000.00
(f)	Damages to personal reputation as a result of illegal, unwarranted acts	

of the Defendant and adverse publicity resulting from the raid on Plaintiff's premises and disturbance of his lawful business $15,000.00

(g) Loss of profits for a period of at least one year, i.e., until May 1st, 1948, of operations of Claimant-Petitioner's restaurant and Quaff Café section with liquor permit as previously granted, reserving Petitioner's rights to future damages after this date . . . 25,000.00

TOTAL $ 118,741.00

15. That in the premises your Claimant-Petitioner is entitled to institute legal proceedings against the Defendant personally for compensation of the aforesaid damages and for such other remedies which may be available to Claimant-Petitioner against the said Defendant.

16. That your Claimant-Petitioner requires the authorization of the Honourable Chief Justice of the Province of Quebec before instituting legal proceedings against the abovenamed Defendant, and does hereby make application for such authorization in accordance with the provisions of Article 12 of the said Alcoholic Liquor Act.

WHEREFORE your Claimant-Petitioner, under reserve of his rights as abovementioned, prays that by judgment of the Honourable Chief Justice of the Province of Quebec to intervene herein, that he be granted authorization to institute legal proceedings against the abovementioned Defendant, the Honourable Mr. Justice Edouard Archambault, for the damages hereinabove claimed, and for such other remedies as may appertain to your Claimant-Petitioner against the said Defendant in the circumstances hereinabove more fully set forth; the whole with costs to follow suit.

Appendix to Appellant's Factum

Montreal, April 16th, 1947.

(signed) STEIN & STEIN
Attorneys for Petitioner

" J. AHERN
J. Ahern, K.C.

" F.R. SCOTT
Counsel for Petitioner

AFFIDAVIT

I, FRANK RONCARELLI, Restauranteur, of the City and District of Montreal, residing at 1320 Sherbrooke St. West, being duly sworn do hereby depose and say:

1. THAT I am the Claimant-Petitioner in the present petition;

2. THAT the facts alleged in the foregoing petition are true and correct.

AND I HAVE SIGNED.

(signed) FRANK RONCARELLI

Sworn to before me this
15th day of April, 1947

(signed) L. DAVID SMALL

Commissioner of the Superior Court
for the District of Montreal.

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PROVINCE DE QUEBEC
DISTRICT DE MONTREAL
NO. 176M.

COUR DU BANC DU ROI
(en appel)

Montréal, le 30ième jour d'avril 1947.

PRESENT: EN CHAMBRE:

L'HONORABLE JUGE LETOURNEAU, J.C.

FRANK RONCARELLI, Restaurateur, of the City and District of Montreal, residing at 1320 Sherbrooke Street West, Montreal,

Claimant-PETITIONER

vs

THE HONOURABLE MR. JUSTICE EDOUARD ARCHAMBAULT, of the City of Outremont, District of Montreal, residing at 755 Dunlop Avenue,

DEFENDANT

REQUETE pour autorisation à poursuivre en dommages-intérêts le Gérant de la Commission des Liqueurs de Québec ($118,741.00).

Sur Requête de FRANK RONCARELLI, Restaurateur de la Cité et du District de Montréal, demandant au Juge en Chef de la Province une autorisation spéciale, celle du premier alinéa de l'article 12 de la Loi des Liqueurs Alcooliques, de poursuivre personnellement le Gérant de cette Commission des Liqueurs, monsieur EDOUARD ARCHAMBAULT, en recouvrement d'une somme de $118,741.00, à titre de dommages-intérêts.

ATTENDU que cette Requête est la seconde

du genre, la première présentée le 3 février dernier (1947) et pour un montant de $253,441.09, ayant été refusée par jugement du 5 du même mois (1947 - B.C. p. 105)-;

ATTENDU que cette seconde Requête reproduit substantiellement la première, sauf la différence susmentionnée quant au montant des dommages, et sauf aussi qu'on y a ajouté les allégations 4 à 9 inclusivement et 13 qui s'y trouvent, soit:

" 4. On or about the 3rd of December, 1946, the Honourable Mr. Maurice Duplessis, leader of a political party called "Union Nationale", announced that he had instructed the Defendant to cancel said Liquor Permit No. 68 because the Claimant-Petitioner had acted as surety or bondsman for a number of persons summoned before the Recorder's Court of the City of Montreal on charges of having violated a by-law of the City of Montreal prohibiting people from peddling without a Licence or Permit.

5. The said Honourable Mr. Maurice Duplessis further stated that the Claimant-Petitioner was using the revenues received by him in his restaurant through the sale of alcoholic liquor by reason of his holding a Permit from the Quebec Liquor Commission as a surety or bondsman, and that this use of his revenues by the Claimant-Petitioner would not be permitted.

6. The said declaration by the Honourable Mr. Maurice Duplessis did not reveal that any illegal, immoral or dishonourable act had been committed by the Claimant-Petitioner and the said declaration was made solely for political purposes.

7. No provision of the Alcoholic Liquor Act or of any other statute or law would authorize or justify the cancellation of

" the Permit of the Claimant-Petitioner for the reasons mentioned in the declaration of the Honourable Mr. Maurice Duplessis.

8. The Defendant, who is a member of the "Union Nationale" and a supporter of the Honourable Mr. Maurice Duplessis, cancelled Claimant-Petitioner's Permit to carry out the personal wishes of the leader of the political party to which he belongs and for no other reason.

9. The Defendant as a sworn officer of the Quebec Liquor Commission is bound to administer the said law according to its tenor and spirit, faithfully and justly, and independently of his political and personal opinions, feelings and relations.
.....

13. That since the cancellation of the aforesaid license, the Defendant as a further means of illegal reprisal and persecution has continued to abuse his power and authority contrary to the purposes of the Alcoholic Liquor Act by repeatedly stating that no liquor license in the future would be granted in connection with the said premises of Defendant, thus depreciating the value of Petitioner's business and property and preventing him from selling same to bona fide purchasers. "

ATTENDU que les six premières des allégations nouvelles précitées ont surtout trait à des déclarations du Premier Ministre de la Province, alors que la dernière, la treizième de la présente requête, se rapporte à de supposées déclarations de l'Intimé, à l'effet "that no liquor license in the future would be granted in connection with the said premises of Defendant";

CONSIDERANT que si l'économie de notre

procédure civile devait s'appliquer, il y aurait lieu, semble-t-il, de se retrancher derrière les règles qu'elle pose et de dire que le Requérant n'est pas dans les conditions voulues pour renouveler une demande qui lui a déjà été refusée;

CONSIDERANT toutefois que sous réserve de cette sérieuse objection de chose jugée, il parait au soussigné plus convenable et plus juste pour les parties d'en venir au mérite même de cette seconde demande;

CONSIDERANT que ces autres moyens susmentionnés de la nouvelle Requête, ne comportent pas plus que les premiers qu'il y ait lieu de permettre une poursuite contre le gérant personnellement;

CONSIDERANT que cette référence à des déclarations du Premier Ministre de la Province, tend tout au plus à prétendre que l'Intimé en aurait été influencé, que ce serait sur l'avis du Premier Ministre ou tout au moins de concert avec lui, qu'il aurait ainsi décrété une annulation du "Liquor Permit No. 68" que détenait le Requérant;

CONSIDERANT qu'il appartenait au Gérant-Intimé, avec ou sans suggestion ou approbation du Premier Ministre, du Procureur Général, ou de qui que ce fût, de décréter pour et au nom de la Commission des Liqueurs Alcooliques, toute telle annulation de permis, que ce fût à l'égard du Requérant ou de tout autre, s'il croyait à propos de le faire à raison des circonstances établies;

CONSIDERANT que les pouvoirs que le Gérant-Intimé de la Commission des Liqueurs tient de la Loi des Liqueurs Alcooliques, sont plutôt d'ordre administratif que d'ordre judiciaire;

CONSIDERANT que ce gérant de la Commission des Liqueurs bénéficie en conséquence de l'immunité relative qui s'attache à toutes décisions prises dans les limites de ses attributions, de bonne foi

et par motifs d'ordre public;

CONSIDERANT qu'il y a en conséquence lieu d'écarter comme ne s'appliquant pas au présent cas, le dictum de LORD HALLSBURY dans SHARP vs WICKFIELD & AL (1891 A.C. p. 173), que cite avec approbation la Cour Suprême du Canada dans WRIGHT CANADIAN ROPES LIMITED vs MINISTER OF NATIONAL REVENUE (1946 C.L.R. p. 139), non toutefois sans avoir bien spécifié qu'il s'agissait là d'une décision d'ordre quasi judiciaire (voir pp. 165 - 166 du Rapport);

CONSIDERANT que les griefs de mauvaise foi, de partisanerie politique et de haine ou représailles que mentionne la Requête, ne reposent sur aucun fait ou aucune circonstance nettement établis et pouvant rendre plausibles ces griefs;

CONSIDERANT que le dernier des griefs précités, celui de l'allégation 13 de la Requête, ne fait point voir que ces déclarations du Gérant-Intimé, aient été faites sans à propos et avec imprudence;

CONSIDERANT qu'il y a lieu de tenir pour fait et accompli par la Commission, ce que la Requête attribue à son Gérant, le présent Intimé;

CONSIDERANT que le Gérant-Intimé est à ce sujet demeuré dans l'exercice de ses fonctions;

CONSIDERANT que sans en aucune façon reconnaître qu'il y ait à ce sujet lieu à poursuite contre la Commission, il est manifeste que c'est bien plutôt à elle que revient la responsabilité de tout ce que la Requête impute à son gérant, le présent Intimé;

CONSIDERANT que le Gérant de la Commission des Liqueurs n'est en principe — comme c'est d'ailleurs le cas de tout gérant —, que le mandataire de cette Commission, et que selon que l'édicte l'article 1715 du Code Civil:

Appendix to Appellant's Factum

" 1715. - Le mandataire agissant au nom du mandant et dans les limites de son mandat n'est pas responsable personnellement envers les tiers avec qui il contracte, excepté dans le cas du facteur ci-après spécifié en l'article 1738, et dans le cas de contrats faits par le maître pour l'usage de son bâtiment. "

l'article 1054 du même Code Civil voulant qu'en cas de délit ou quasi-délit le maître ou commettant soit responsable du dommage causé par tout employé ou représentant dans l'exercice des fonctions auxquelles il est employé;

CONSIDERANT que si nonobstant cette règle, il est des cas où un gérant, employé, mandataire ou représentant puisse être personnellement recherché en dommages-intérêts, la Requête soumise ne fait rien voir de suffisamment précis et certain pour qu'il puisse être conclu, dans le présent cas, à une responsabilité personnelle du Gérant-Intimé;

CONSIDERANT que de simples et vagues allégations d'intentions ou de motifs, même supportées d'un affidavit du Requérant, ne sauraient suffire à déterminer l'autorisation recherchée;

CONSIDERANT que cette autorisation particulière à poursuivre le Gérant de la Commission des Liqueurs Alcooliques, n'en est pas une purement de forme ou de procédure, l'intention manifeste du législateur ayant été, d'une part la sauvegarde de tout droit certain mis en péril, et d'autre part prévenir le danger de poursuites vexatoires et auxquelles cet officier spécial qu'est le Gérant de la Commission des Liqueurs, pourrait et devrait être exposé;

CONSIDERANT que la demande d'autorisation à poursuivre personnellement le Gérant de cette Commission et que comporte la Requête soumise, n'est pas justifiée, et qu'il y a lieu en conséquence de la

refuser.

PAR CES MOTIFS:

Nous soussigné, Juge en chef de la Province de Québec, selon l'autorité à nous conférée aux termes de l'Article 12 de la Loi des Liqueurs Alcooliques, rejetons avec dépens la Requête dont il s'agit.

(signé) SEVERIN LETOURNEAU

J.C.P.Q.

A P P E N D I X "B"

Appendix to Appellant's Factum

ALCOHOLIC LIQUOR ACT, R.S.Q. 1941, Ch. 255

(Subsequent amendments, if any, are irrelevant to this cause)

10

AN ACT RESPECTING ALCOHOLIC LIQUOR

1. This act may be cited under the name of the Alcoholic Liquor Act. R.S. 1925, c. 37, s. 1.

DIVISION I

20

DECLARATORY AND INTERPRETATIVE PROVISIONS

2. This act shall apply to the whole Province, but its application shall be suspended in every municipality where the Canada Temperance Act is in force.

Nothing in this act must be interpreted as forbidding or regulating any transaction which
30 is not subject to the legislative authority of the Province. R.S. 1925, c. 37, s. 2.

3. For the interpretation of this act, unless the context indicates a different meaning, -

1. The word "alcohol" means the product of distillation of any fermented liquid, rectified either once or oftener, whatever may be the origin thereof, and includes synthetic ethyl alcohol and
40 alcohol which is considered non-potable under custom laws;

2. The word "spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, and includes, among other things, brandy, rum, whiskey and gin;

3. The word "wine" means any alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits (grapes, apples, etc.) or other agricultural product containing sugar (honey, milk, etc.);

4. The word "beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley malt and hops in drinkable water;

5. The words "alcoholic liquor" include the four varieties of liquor above defined (alcohol, spirits, wine and beer), and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties above defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the order in which they are above defined;

6. The word "meal" means a meal, the price whereof is forty cents or more, exclusive of the amount charged for any alcoholic liquor served with the food;

7. The word "club" means a corporation created by competent authority - other than that mentioned in the Amusement Clubs Act (Chap. 304), the Fish and Game Clubs Act (Chap. 155) or the National Benefit Societies Act (Chap. 305), - which is the owner, lessee or occupant of an establishment operated solely for objects of a national, social, patriotic, political, or athletic nature, or the like, but not for pecuniary gain wherein only members and persons invited at the expense of members are admitted, and the property as well as the advantages of which belong to all the members; it also means the establishment so operated;

8. A "member of a club" is a person who, whether as a charter member or admitted in accordance with the by-laws of the club, has become a

member thereof, - who maintains his membership by the payment of his annual dues in the manner established by such rules and by-laws, and whose name and address is entered on the list of members supplied to the Commission at the time of the application for a permit under this act, or, if admitted thereafter, within thirty days after his admission;

9. The word "tavern" means an establishment situated in a city or town and specially adapted for the sale by the glass of beer to be consumed on the premises;

10. The word "Commission" means the commission created by this act under the name of "The Quebec Liquor Commission" or "Commission des liqueurs de Québec";

11. Whenever they refer to anything forbidden under this act, and relating to alcoholic liquor, the words "to sell" include: to solicit or receive an order for; to keep or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; to keep or transport in contravention of section 45 of this act; to traffic in; for any onerous consideration, promised or obtained, directly or indirectly, or under any pretext or by any means whatsoever, to procure or allow to be procured for any other person;- and the word "sale" includes every act of selling as above defined;

12. The word "person" includes partnership, corporation and club;

13. The word "whosoever" when used in reference to any offender under this act, includes every person who acts for himself or for any other person, and includes also such other person;

14. The word "residence" means the premises where a person resides, permanently or temporarily, and includes the aggregation of the rooms inhabited by him, as well as the cellar;

15. The words "to peddle" when used in reference to alcohol, spirits, wine or beer, mean to carry on one's person or to transport with one, or with the aid of another person, with intent to sell the same outside any establishment where the sale thereof is allowed; - and the word "peddling" means the act of doing as aforesaid;

16. The word "establishment" means any place where alcoholic liquor of one or more varieties is sold or used under the authority of this act, or manufactured by virtue of any act of the Parliament of Canada;

17. The word "traveler" means a person who, in consideration of a given price per day, or fraction of a day, on the American or European plan, or per meal, à table d'hôte, or à la carte, is furnished by another person with food or lodging, or both;

18. The word "café" means an establishment, situated in a city or town of over twenty thousand souls and provided with special accommodation where, in consideration of payment, food is habitually furnished to travellers and alcoholic liquor is served with meals;

19. The word "restaurant" means an establishment, situated in a city or town of over twenty thousand souls and provided with special accommodation where, in consideration of payment, food is habitually furnished to travellers and beer and wine are served with meals;

20. The word "hotel" means an establishment in regular operation, provided with special accommodation where, in consideration of payment, food and lodging are habitually furnished to travellers, and having at least fifty bedrooms if situated in the cities of Quebec and Montreal, at least twenty-five bedrooms if situated in any other city or town, and at least twenty bedrooms in other cases;

21. The word "inn" means an establishment in

regular operation, provided with special accommodation where, in consideration of payment, food and lodging are habitually furnished to travellers, and having at least thirty bedrooms if situated in the cities of Quebec and Montreal, at least twenty bedrooms if situated in another city or town, at least six bedrooms if situated elsewhere in region A, and at least ten bedrooms in other cases;

22. The word "vehicle" means any means of transportation by land, by water or by air, and includes everything made use of in any way whatsoever for such transportation;

23. The words "disorderly house" have the meaning given them by Part V of the Criminal Code;

24. The word "population", means the number of inhabitants in a municipality as determined by the last federal census;

25. The word "bedroom" means a room in a hotel or inn fitted up as a sleeping apartment for travellers or for the staff and provided with suitable furniture for that purpose. It does not include tourist cabins or camps, even if they form part of an establishment operated as a hotel or inn. Every bedroom must have a door opening into a passage and be provided with at least one exterior window;

26. The expression "region A" means the Island of Montreal and the electoral districts of Argenteuil, Bagot, Beauharnois, Berthier, Brome, Chambly, Chateauguay-Laprairie, Two Mountains (Deux-Montagnes), Gatineau, Hull, Huntingdon, Iberville, Jacques-Cartier, Joliette, Labelle, L'Assomption, Laval, Maskinongé, Missisquoi, Montcalm, Papineau, Pontiac, Richelieu-Verchères, Rouville, Shefford, St. Hyacinthe, St.John's-Napierville, Terrebonne, Three Rivers and Vaudreuil-Soulanges;

27. The expression "region B" means the territory of the Province not included in region A. R.S. 1925,

c. 37, s. 3; 3 Geo. VI, c. 22, s. 1; 5 Geo. VI, c.24, s.1.

4. Every delivery of alcoholic liquor in a disorderly house shall be a delivery for value, and shall constitute a sale.

Every other delivery of alcoholic liquor made otherwise than by purely gratuitous title, shall constitute a sale.

In any proceeding instituted under this act, the burden of proof that such delivery was by purely gratuitous title shall be upon the defendant. R.S. 1925, c. 37, s. 4.

DIVISION II

THE QUEBEC LIQUOR COMMISSION

5. A Commission is by this act created under the name of "The Quebec Liquor Commission", or "Commission des liqueurs de Québec", and shall constitute a corporation, vested with all the rights and powers belonging generally to corporations.

The exercise of the functions, duties and powers of the Quebec Liquor Commission shall be vested in one person alone, named by the Lieutenant-Governor in Council, with the title of manager. The remuneration of such person shall be determined by the Lieutenant-Governor in Council and be paid out of the revenues of the Liquor Commission. R.S. 1925, c. 37, s. 5; 1 Ed. VIII (2), c. 14, ss. 1 and 5; 1 Geo. VI, c. 22, ss. 1 and 5.

6. The officers, inspectors, clerks and other employees of the Quebec Liquor Commission shall be appointed by the manager who shall fix their salary or remuneration, assign to them their official functions and titles and define their respective duties and powers. Their salary or remuneration shall be paid out of the revenues of the Liquor Com-

mission; such salary or remuneration shall, however, be subject to the approval of the Lieutenant-Governor in Council whenever he may so enact.

The Lieutenant-Governor in Council may, however, upon the recommendation of the manater, appoint an assistant-manager, who must reside in the district of Quebec and who shall have the functions and duties attributed to him by the manager. The remuneration of the assistant-manager shall be fixed by the Lieutenant-Governor in Council and be paid out of the revenues of the Quebec Liquor Commission. R.S. 1925, c. 37, s. 6; 1 Ed. VIII (2), c. 14, s. 2; 1 Geo. VI, c. 22, s. 2.

7. No vacancy in the office of manager of the Commission shall have the effect of dissolving it, and the Lieutenant-Governor in Council may fill every such vacancy. R.S. 1925, c. 37, s. 7; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

8. The head office of the Commission shall be in the city of Montreal. R.S. 1925, c. 37, s. 8; 1 Ed. VIII (2), c.14, ss. 1 and 5.

9. The functions, duties and powers of the Commission shall be the following:

a. To buy, have in its possession and sell, in its own name, alcoholic liquor in the manner set forth in this act;

b. To lease or occupy any building or land required for its operations;

c. In accordance with the regulations made under section 15, to borrow sums of money, guarantee the payment thereof and of the interest thereon, by the transfer or pledge of goods or in any other manner required or permitted by law and particularly by the Bank act; - to issue, sign, indorse and accept cheques, promissory notes, bills of exchange and other negotiable instruments;

d. To control the possession, sale and

delivery of alcoholic liquor in accordance with the provisions of this act;

e. To grant, refuse, or cancel permits for the sale of alcoholic liquor or other permits in regard thereto, and to transfer the permit of any person deceased;

f. To inform the Attorney-General of the infractions of this act, of which it has knowledge;

g. To act, for the purposes of this act, as the competent provincial authority in connection with customs and excise matters;

h. To appoint every officer, clerk, or other employee required for its operations, dismiss them, fix their salaries or remuneration, assign them their official positions and titles, define their respective duties and powers, and engage the services of experts and of persons engaged in the practice of a profession. R.S. 1925, c. 37, s. 9; 24 Geo. V, c. 17, s. 2; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

10. The Manager of the Commission and every person appointed to any position by the Commission must, on entering upon his duties, take an oath in conformity with section 11 of the Provincial Revenue Act (Chap. 73). R.S. 1925, c. 37, s. 10; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

11. The manager and every person appointed to any employment for the Quebec Liquor Commission shall, if, on his entry into office, required thereto by the Lieutenant-Governor in Council, give security, in conformity with sections 12 to 40 of the Public Officers Act (Chap. 10), by a guarantee policy for the amount fixed by the Lieutenant-Governor in Council. R.S. 1925, c. 37, s. 11; 1 Ed. VIII (2), c. 14, s. 3.

12. No one appointed under this act as manager of the Quebec Liquor Commission may be sued,

for acts done or omitted to be done by him in the exercise of the duties vested in him under this act, except by the Government of this Province, or with the authorization of the Chief Justice of the Province or, if he be prevented from granting such authorization, by the senior judge of the Court of Appeal.

The Commission itself may be sued only with the consent of the Attorney-General. R.S. 1925, c. 37, s. 12; 1 Ed. VIII (2), c. 14, s. 4.

13. Every employee of the Commission shall be a public officer, and the one month's notice required in the case of any action for damages against any such officer, must be served upon the Commission as well as upon the defendant. R.S. 1925, c. 37, s. 13.

14. Neither the manager nor any employee of the Commission may, directly or indirectly, individually or as member of a partnership or corporation or as shareholder of a company, have any interest whatsoever in dealing in or in the manufacture of alcohol, spirits, wine or beer, or in any enterprise or industry in which such alcoholic liquor is required, nor receive any commission or profit whatsoever from nor have interest whatsoever in the purchases or sales made by the Commission or by the persons authorized by virtue of this act to purchase or sell alcoholic liquor.

No provision of this section shall prevent the manager or any employee from purchasing and keeping in his possession, for the personal use of himself or members of his family, any alcoholic liquor which may be purchased or kept by any person by virtue of this act. R.S. 1925, c.37, s.14; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

15. The Lieutenant-Governor in Council may make any regulation he may deem necessary for the carrying out of this act, and may amend or repeal any such regulation, respecting:

a. Loans made by the Commission;

b. The keeping of its books and the rendering and auditing of its accounts;

c. The condition and inventory of the goods it has on hand. R.S. 1925, c. 37, s. 15.

16. The Commission may make any regulation it may deem necessary for the carrying out of this act respecting its internal economy and the conduct of its business, and may amend or repeal any such regulation. It must, whenever required, transmit a copy of every such regulation to the Lieutenant-Governor in Council.

If any regulation of the Commission be approved by the Lieutenant-Governor in Council and published in the Quebec Official Gazette, every contravention of any provision of such regulation shall be an offence under this act, and shall entail the penalty provided therefor by section 56.

No regulation made by the Commission and approved and published as above mentioned, may be repealed or amended save by another regulation of the Commission, approved and published in the same way. R.S. 1925, c. 37, s. 16.

17. Every order given by the Commission for alcoholic liquor must bear the signature of the manager. A duplicate of every order shall be kept at the head office of the Commission. R.S. 1925, c. 37, s. 17; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

18. Loans by the Commission must be made only at such bank or banks as the Provincial Treasurer, in his discretion, shall indicate.

Every sum of money collected by the Commission must be deposited in the name of the Commission in such bank or banks as the Provincial Treasurer, in his discretion, shall indicate. R.S. 1925, c. 37, s. 18.

19. All property possessed by the Commission and all profits earned by it are the property of the Province.

Every sum of money collected by the Commission, which the Provincial Treasurer considers available, shall, on demand, be handed over to him, and every such sum of money, after it is so handed over, shall form part of the consolidated revenue fund of the Province. R.S. 1925, c. 37, s. 19.

20. The Commission shall render an account to the Provincial Treasurer, in the manner and at the times indicated by the latter, of its receipts and disbursements, as well as its assets and liabilities.

Its operations shall be subject to examination and audit by persons appointed therefor by the Lieutenant-Governor in Council. R.S. 1925, c. 37, s. 20.

21. The Commission may have the following stores and warehouses:

1. Its principal store and warehouse in the city of Montreal, in any place indicated by the Lieutenant-Governor in Council;

2. Branches of such principal store and warehouse in such cities and towns as the Commission may choose, and to the number that it decides.

Nevertheless, there must not be established any branch:

a. In any city or town where a prohibition law is in force, applying specially to such municipality or to the county of which it forms part;

b. In any city or town whose population exceeds five thousand inhabitants, and whose council has, by by-law, enacted that no such branch may be established therein;

c. In any city or town whose population does not exceed five thousand inhabitants, unless the establishment of such branch be requested by a by-law of the council, approved by the majority in number of the municipal electors who have voted, and fyled in the office of the Commission. A by-law requesting the establishment of a branch of the Commission cannot be revoked during the two years next following. The provisions of the Quebec Temperance Act (Chap. 257) which are not incompatible with the provisions of this paragraph c, shall apply, mutatis mutandis, to the approval and revocation of such by-law. R.S. 1925, c. 37, s.21.

DIVISION III

SALE AND DELIVERY OF ALCOHOLIC LIQUOR

1. Conditions of sale and delivery

22. It is forbidden to sell or deliver in this Province any alcohol, potable or non-potable, or any spirits, wine or other alcoholic liquor, with the exception of beer, for which provision is made in section 25.

However, it may be sold or delivered to or by the Commission, or by any person authorized by it, or in any case provided for by this act. R.S. 1925, c. 37, s. 22.

23. 1. Whenever the alcohol or spirits sold by the Commission is in a bottle, the latter must be wrapped up or corked so as to prevent fraud, and the bottle or its wrapper must bear the label of the Commission and show the sale price.

2. Every sale by the Commission shall be for cash.

3. Subsection 1 of this section shall not

apply when the Commission sells alcoholic liquor in virtue of a permit issued by it or under the authority of section 49 or to the government of a territory other than this Province, or to a commission, to a bureau or to an officer representing that government for the sale of such liquor in such territory. R.S. 1925, c. 37, s. 23; 17 Geo. V, c. 21, s. 1; 5 Geo. VI, c. 24, s. 2.

24. If any alcoholic liquor sold by the Commission is to be delivered in any city or town where the Commission has a store or warehouse, the delivery shall be made in the manner determined by the Commission. If it is to be delivered elsewhere, the delivery shall be made by the Commission by parcel post, common carrier or express company. R.S. 1925, c. 37, s. 24.

25. The sale or delivery of beer is forbidden in the Province, unless such sale or delivery be made by the Commission or by a brewer or other person authorized by the Commission under this act, and in the manner hereinafter set forth. R.S. 1925, c. 37, s. 25.

26. No brewer may sell beer or ship it, either into or within the Province or from the Province, -

1. Unless a permit therefor be granted to him by the Commission, upon payment of the duties prescribed;

2. Unless such sale or delivery within the Province be to a person authorized by the Commission to sell beer, or beer and wine, as the case may be. R.S. 1925, c. 37, s. 26; 5 Geo. VI, c. 24, s. 3.

27. 1. Every brewer must make to the Commission, every month, in the form that it shall determine, an exact return of all his sales of beer shipped into or within the Province or from the Province, during the preceding calendar month, showing the gross amount of such sales.

2. Any brewer who fails to make such return to

the Commission within the fifteen days following the expiration of any calendar month for which it should be made, shall be guilty of an offence, and liable to a fine of fifty dollars per day, for each day's delay, counting from the expiration of such fifteen days. R.S. 1925, c. 37, s. 27.

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28. 1. The Commission may have an examination made of the brewer's books, or may otherwise check the accuracy of any such return.

2. Any brewer who refuses to allow such examination or who fails to make an accurate return according to the instructions of the Commission, shall be guilty of an offence, and shall be liable, in addition to the costs, to a fine of one thousand
20 dollars. R.S. 1925, c. 37, s. 28.

29. The Commission may appoint an inspector and authorize him to remain at the premises of any brewer to verify there the quantity of beer sold.

The brewer, his officers and other employees shall be bound to furnish the inspector with such information as he may require and to allow and faciliate for him the visiting of the premises and
30 the examination of any correspondence, book, bill of lading, order, invoice, document or paper whatsoever whereof he desires to take cognizance in order to verify the quantities of beer sold or shipped by the brewer.

Every person infringing the provisions of the preceding paragraph commits an offence and shall be liable, in addition to the costs, to a fine of five hundred dollars for each day such offence con-
40 tinues.

Whenever the offender is an officer or an employee of a brewer, the latter, as well as the actual offender, shall be personally liable for the fines imposed for an offence against this section and may be prosecuted for the recovery of such fines as if he had himself committed the offence. R.S. 1925, c. 37, s. 28a; 3 Geo. VI, c. 22, s. 2.

Appendix to Appellant's Factum

30. 1. The following persons may also, in the cases and under the conditions hereinafter set forth, sell certain alcoholic liquor in the manner hereinafter indicated, to wit:

1. Any person in charge of a hospital recognized by the Commission as such, shall have the right to administer alcoholic liquor to its patients, and to charge them the value thereof;

2. Every person having any trading post or industrial or mining establishment in New Quebec or other territory in the northern parts of the Province, designated from time to time by the Lieutenant-Governor in Council, may sell alcoholic liquor at such post or establishment to its employees and to the people living in such territory, - provided that a permit therefor be granted him by the Commission, upon payment of the prescribed duties. Such permit may be subject to such conditions and restrictions as the latter may establish or impose;

3. a. Any person in charge of a hotel or a café may, during a meal taken by a traveller, sell to him alcoholic liquor (except draft beer), which he and his guests must consume on the premises during the meal, provided that the Commission has granted a permit for such purpose to the said person, upon payment of the duties prescribed;

b. Any person in charge of a hotel, steamboat, dining-car or club may sell to any traveller or member of the club, as the case may be, alcoholic liquor (except draft beer) which must be consumed on the premises, provided that the Commission has granted a permit for such purpose to the said person, upon payment of the duties prescribed.

No such permit shall be granted for

a hotel situated outside of cities and towns and of region A. If, however, it be established to the Commission's satisfaction that such a hotel is needed for tourist-travel, the Commission may grant such permit in region B, outside of cities and towns.

The permit for a steamboat or a dining-car may be granted only for a steamboat or dining-car operating a regular service between two points in this Province situated at a distance of at least fifty miles from each other, and shall authorize the sale while in transit only and not during trips outside of its regular service;

c. Any person in charge of an inn or restaurant may, during a meal taken by a traveller, sell to him wine and beer (except draft beer) which he and his guests must consume on the premises during the meal, provided that the Commission has granted a permit for such purpose to the said person, upon payment of the duties prescribed;

d. Any person in charge of an inn in region A may sell to any traveller wine and beer (except draft beer), which must be consumed on the premises, provided that the Commission has granted a permit for such purpose to the said person, upon payment of the duties prescribed;

4. Any person in charge of a grocery, may sell beer at such store, upon order given at his store or by telephone, on condition: that no quantity of less than one bottle be sold; that such beer be not consumed in such store or any dependency thereof; that it be delivered either at such store, at some other place in the municipality in which such store is situated, or at some place in an adjoining municipality not under a prohibitory law,

or that it be delivered outside such municipalities in the manner indicated in section 46; that a permit therefor be granted him by the Commission, upon payment of the duties prescribed, and that such permit be in force. In a village or rural municipality, a permit under this paragraph 4 shall not be granted save to a person in charge of a hotel or inn licensed under the Quebec License Act (Chap. 76), and who is, at the same time, the holder of a permit under paragraph 3 of this section. For the purposes of this paragraph, the island of Montreal shall be deemed to be one municipality;

5. Any person in charge of a tavern may sell therein beer by the glass, provided that it be consumed on the premises, and that a permit to that effect has been granted to him by the Commission, upon payment of the duties prescribed;

6. Any person in charge of a banquet may sell thereat wine and beer (except draft beer), provided that it be consumed on the premises and that a permit therefor has been granted to him by the Commission, upon payment of the duties prescribed.

2. In every such case, the alcohol, spirits or wine must have been bought directly from the Commission by the hospital or the holder of the permit, and the beer must have been bought directly by the holder of the permit from a brewer who is also the holder of a permit or from a store keeper who is also the holder of a permit.

3. The application for the permit and the permit itself must contain sufficient information to identify the place where such permit may be used.

4. A brewer may have, at such places and in such a manner as the Commission may determine, warehouses for the distribution of the beer which he

has made. Any person in charge of such a warehouse may sell or deliver the said beer, on condition that he himself be designated as storekeeper in the permit granted by the Commission for such warehouse; that the sale or the delivery in this Province be made to a person holder of a permit for the sale of beer, and that such beer be not consumed in such warehouse or in any dependency thereof. R.S. 1925, c. 37, s. 30; 3 Geo. VI, c. 22, s. 3; 4 Geo. VI, c.20, s.1; 5 Geo. VI, c. 24, s.5.

31. The Commission must pay into a special fund set apart for the reimbursement, in capital and interest, of the loans made or which may be made for aiding the unemployed, for each bottle sold, the following amounts:

a. Five cents if the capacity of the bottle is thirteen ounces or less; or

b. Ten cents if the capacity of the bottle is over thirteen ounces but not over twenty-seven ounces; or

c. Fifteen cents if the capacity of the bottle is over twenty-seven ounces.

Such tax to be known as "Unemployment Tax" shall be payable by the purchaser of alcohol or spirits to the Commission which in such case acts as an agent of Provincial Revenue. R.S. 1925, c. 37, s. 43a; 22 Geo. V, c. 32, s. 1; 3 Geo. VI, c. 22, s. 5.

2. - Permits to sell

32. No permit shall be granted other than to an individual, and in his personal name.

The application for a permit may be made only by a British subject, must be signed by the applicant before witnesses, and must give his surname, Christian names, age, occupation, nationality

and domicile, the kind of permit required and the place where it will be used, and must be accompanied by the amount of the duties payable upon the application for the permit. The applicant must furnish all additional information which the Commission may deem expedient to ask for.

If the permit is to be used for the benefit of a partnership or corporation, the application therefor must likewise be accompanied by a declaration to that effect, and duly signed by such partnership or corporation. In such case, the partnership or corporation shall be responsible for any fine and costs, to which the holder of the permit may be condemned; and the amount thereof may be recovered before any court having jurisdiction, without prejudice to imprisonment, if any.

All applications for permits must be addressed to the Commission before the 10th of January in each year, to take effect on the 1st of May in the same year. R.S. 1925, c. 37, s. 32; 5 Geo. VI, c. 24, s. 7.

33. 1. The Commission may determine the manner in which a tavern, dining-room and other room must be fitted up, furnished and equipped in order to allow the exercise therein of the rights conferred by the permit.

2. No room in which alcoholic liquor is sold under a permit contemplated in this act shall be equipped with compartments, divisions, partitions or other obstructions which prevent a full and complete view, in the interior, of the whole room by every person present. (Footnote: "Under section 30 of the Act 5 Geo. VI, c. 24, this provision shall not apply, before the 1st of May, 1942, to establishments where a permit for a restaurant was in force on the 30th of April, 1941, except to such extent as the Commission may require.")

3. No alcoholic liquor may be sold or served in a hotel, inn, café, restaurant or steamboat,

except in the rooms indicated by the Commission.

4. The sale or delivery of alcoholic liquor in the bedrooms of a hotel or inn is forbidden in all cases.

5. Any tavern situated in a hotel or inn must be operated solely in a room indicated by the Commission and separated from the other rooms for which another permit may be granted under this act.

6. No permit shall be granted to any person to sell alcoholic liquor in a hotel, inn, café, restaurant or grocery store unless such person, - or the partnership or corporation for whose profit the permit is applied for --, is owner of the premises or lessee under a written lease for a period of at least one year.

7. Every holder of a permit to sell certain alcoholic liquor in a café, restaurant or grocery store must affix to the main window of his establishment, or on the door of the main entrance, his name and the following inscription: "Holder of Liquor Commission Permit No....", in uniform letters of not less than three-quarters of an inch in height.

8. Every holder of a permit to sell certain alcoholic liquor in a hotel, inn, café, restaurant or grocery store must at all times keep in his establishment a set of books and documents respecting his purchases of liquor, stating the quantity, price and date of each purchase and the name of the supplier. Such books and documents must at all times be kept at the disposal of the Commission for examination.

9. The Commission may require that every holder of a permit for the sale of certain alcoholic liquor, under section 30, shall make a return of his purchases and sales, in such manner and at such times as may be determined by the Commission.

10. No permit to sell beer in a grocery store

shall be granted, unless such establishment is situated on the ground floor and is provided with a quantity of other merchandise deemed by the Commission sufficient for it to be considered as an actual grocery store, and unless the kind of business carried on is of such nature that no business may be carried on therein on Sunday.

11. No holder of a permit to sell certain alcoholic liquor in a hotel, inn, café or restaurant shall give any performances or shows or allow dancing, even under municipal authorization, without the Commission's consent. R.S. 1925, c. 37, ss. 31, 33-33i; 5 Geo. VI, c. 24, ss. 6-7.

34. 1. The Commission may refuse to grant any permit.

2. The Commission must refuse to grant any permit for the sale of alcoholic liquor in any municipality where a prohibition by-law is in force.

A prohibition by-law may, at any time, notwithstanding any law to the contrary, be revoked as to wine and beer, or as to beer only, and in such case, such revocation shall not only amend the prohibition by-law but shall constitute a request to the Commission, in conformity with subsection 4 of this section. Such revoking by-law must be passed by the council and be submitted to the electors in accordance with the prohibition act or law under which the prohibition by-law has been passed, and must establish that the Commission may grant all permits or may restrict such grants as to the number and kind of permits.

3. The Commission must, in addition, refuse to grant any permit for the sale of alcoholic liquor, or any certain permit, as the case may be, in any city or town whose population exceeds five thousand inhabitants and where a prohibition by-law is not in force, whenever the municipal council has, by by-law, requested the Commission to refuse to grant any permit or certain permits, provided, however,

that such by-law be fyled in the office of the Commission and be in force. If the fyling of such by-law takes place after the Commission has granted a permit in such city or town, the Commission shall be unable to give effect to the request before the first of May next after the date of fyling.

4. The Commission must in addition refuse to grant any permit in a city or town municipality whose population does not exceed five thousand inhabitants, or in a village or rural municipality, unless such municipality requests it, by a by-law of its council, approved by the majority in number of its municipal electors who have voted, and fyled in the office of the Commission. Such request may be restricted as to the number and kind of permits. A by-law requesting the granting of permits cannot be revoked during the two years next following. The provisions of the Quebec Temperance Act (Chap. 257) which are not incompatible with the provisions of this subsection shall apply, mutatis mutandis, to the approval and revocation of such by-law.

5. The Commission must, in addition, refuse to grant any permit to sell alcoholic liquor upon the grounds occupied by an agricultural or industrial exhibition or for any race-meeting.

6. Nevertheless, notwithstanding the provisions of subsections 2 and 4 of this section, the Commission may grant to any person having charge of a hotel, containing at least twenty-five bedrooms to receive travellers, situated in a summer resort, a permit to sell to travelers only, by the glass or by the bottle, wine and beer which they, themselves and their guests, must consume on the premises during their meals in such hotel. Such permit shall be granted for five months only and upon payment of such duties and on such conditions as the Commission may think proper to impose. R.S. 1925, c.37, s.34; 16 Geo. V, c. 21, s. 1; 5 Geo. VI, c. 24, s. 8.

35. 1. Whatever be the date of issue of any permit granted by the Commission, such permit shall expire

on the 30th of April following, unless it be cancelled by the Commission before such date, or unless the date at which it must expire be prior to the 30th of April following.

The Commission may cancell any permit at its discretion.

2. Saving the provisions of subsection 4 of this section, the cancellation of a permit shall entail the loss of the privilege conferred by such permit, and of the duties paid to obtain it, and the seizure and confiscation by the Commission of the alcoholic liquor found in the possession of the holder thereof, and the receptacles containing it, without any judicial proceedings being required for such confiscation.

The cancellation of a permit shall be served by a bailiff leaving a duplicate of such order of cancellation, signed by three members of the Commission, with the holder of such permit or with any other reasonable person at his domicile or place of business.

The cancellation shall take effect as soon as the order is served.

3. The cancellation of a permit shall not prevent the Attorney-General from instituting any prosecution or action for any offence under any provision of this act by the person who was the holder of such permit while the same was in force, nor from applying for the confiscation of any alcoholic liquor seized before such cancellation.

No conviction obtained for any offence under one or more of the provisions of sections 55 or 56 of this act shall prevent the cancelling of the permit of any offender nor making at the same time a seizure and confiscation of the alcoholic liquor.

4. If the cancellation of the permit be not

proceeded or followed by a conviction for any offence under this act committed by the holder of such permit while it was in force, the Commission shall remit to such holder, -

a. Such part of the duties which such person has paid upon the granting of such permit, proportionate to the number of full calendar months still to run up to the 1st of May following:

b. The proceeds of every sale by the Commission, after the seizure and confiscation thereof, of beer having an alcoholic content of not more than four per cent, in weight, less ten per cent of such proceeds;

c. The value, as determined by the Commission, of the other alcoholic liquor seized and confiscated, less ten per cent of such value.

5. Save in the case where a permit is granted to an individual on behalf of a partnership or corporation, in accordance with section 32, the Commission must cancel every permit made use of on behalf of any person other than the holder. R.S. 1925, c.37, s.35; 24 Geo. V, c. 17, s. 3.

36. The Commission must cancel a permit:

1. Upon the production of a final condemnation, rendered against the permit-holder, his agent or employee, for selling, in the establishment, alcoholic liquor manufactured illegally or purchased in violation of this act;

2. Upon the production of three final condemnations rendered against the permit-holder for violation of this act;

3. If it appears that the permit-holder has, without the Commission's authorization, transferred, sold, pledged, or otherwise alienated the rights conferred by the permit. R.S. 1925, c. 37, s. 35a; 5 Geo. VI, c. 24, s. 9.

37. 1. The rights conferred by a permit may not be transferred by the Commission, except in case of the death of the person to whom the Commission granted such permit and in the other cases which the Commission may determine and may allow upon payment of the duties imposed and subject to such conditions as it may deem fit to require.

2. The Commission may allow any holder of a permit to move from one premises to another.

3. In case of seizure of alcoholic liquor, under any judgment rendered against the holder of a permit, or in case of the insolvency or abandonment of property of such person, the sheriff or bailiff entrusted with the writ of execution, or, as the case may be, the trustee or curator or the assignee for the benefit of the creditors, must, instead of selling it, deliver to the Commission all alcoholic liquor found in the possession of the said person, and the receptacles containing it. The Commission must, within one month after the date of such delivery, hand over to the officer who has made such delivery, -

a. The proceeds of the sale made, by the Commission, of beer and the receptacles so delivered, and the alcoholic content of which is not more than four per cent, in weight, less ten per cent of such proceeds;

b. The value, as established by the Commission, of the other alcoholic liquor and the receptacles so delivered, less ten per cent of such value. R.S. 1925, c. 37, s. 36; 16 Geo. V, c. 21, s. 2.

3.- <u>Duties payable upon Granting of Permits</u>

38. The duties payable upon the application for a permit contemplated by this act, the granting of such permit and the transfer of the rights conferred

by such permit shall be fixed by the Lieutenant-Governor in Council.

When any permit is granted, the duties paid upon the application therefor shall be applied to the payment of the duties exigible upon the issuing of such permit. R.S. 1925, c. 37, ss. 37-38; 16 Geo. V, c. 21, s. 3; 17 Geo. V, c. 21, s. 2; 19 Geo. V, c. 22, S. 1; 1 Geo. VI, c. 23, s. 1; 5 Geo. VI, c. 24, ss. 10 and 12.

39. In case any person commences after the 1st of May to carry on any business for which a permit is required, the Commission may accept an amount of duty proportionate to the number of months of the year still to run, from the first day of the month in which he begins to carry on such business, to the first day of May following. R.S. 1925, c. 37, s. 39.

40. In case any permit ceases to be used, by reason of the death of the person who was the holder thereof, and the refusal on the part of the Commission to transfer the rights granted by such permit to any other person for the benefit of the legal representatives of such deceased person, the Commission shall hand back to such legal representatives a share of the duties received, proportionate to the number of full calendar months still to run, up to the 1st of May following. R.S. 1925, c. 37, s. 40.

4. - Special Provisions

41. Bottled alcoholic liquor procured by the holder of a permit for the sale thereof, for the purpose of delivering the same to his customer or guests, must, while in the place where he carries on his commerce in liquor, be kept in the bottles in which it was delivered to him. So long as any such bottle bears the mark or label which it bore when delivered, he is forbidden to put therein any other liquor, substance or liquid; and no holder of a permit, nor any one on his behalf, after the liquor bottled in one of the said bottles has been poured

out, may refill such bottle, either wholly or in part, with intent to supply liquor or any other substance or liquid to any customer or guest.

No holder of a permit must use or allow the use of any mark or label on a bottle in which liquor is kept for sale in his place which does not precisely and clearly indicate the nature of the contents of such bottle, or which might in any way deceive any customer or guest as to the nature, composition or quality of such contents.

No such holder of a permit, nor any other person, must for any reason mix or permit the mixing of or cause to be mixed, any alcoholic liquor which he is not authorized to sell with any alcoholic liquor the sale of which is authorized by his permit. R.S. 1925, c. 37, s. 41; 5 Geo. VI, c. 24, s. 13.

42. 1. The Commission shall not sell or deliver on any holiday as hereinafter determined, nor before nine o'clock in the morning nor after six o'clock in the evening of any other day.

Furthermore, the Commission may sell and deliver in such of its stores as it may fix by regulation, until such hour in the afternoon, but not after eleven o'clock, as it may also fix by regulations.

2. It is forbidden for any brewer to sell or deliver on any holiday as hereinafter determined, or before seven o'clock in the morning or after six o'clock in the evening of any other day.

3. It is forbidden for any holder of a permit for the sale of beer in a store, to sell or deliver the same on any holiday as hereinafter determined, or on any other day before eight o'clock in the morning or after eleven o'clock in the evening.

4. It is forbidden for any holder of a permit for the sale of beer in a tavern, to sell or deliver the same on any holiday as hereinafter determined, or

on any other day before eight o'clock in the morning or after eleven o'clock in the evening. Except on the days and at the hours when the sale is permitted therein, taverns must be closed.

5. It is forbidden for any holder of a permit for the sale of alcoholic liquor in a hotel, inn, café, restaurant, club, steamboat or dining-car, to sell or deliver any such liquor, in the city of Montreal, between two o'clock and eight o'clock in the morning; in the city of Quebec, between one o'clock and eight o'clock in the morning, and, elsewhere, between midnight and eight o'clock in the morning.

On holidays, from the beginning of the day at midnight until eight o'clock in the morning of the following day, the holder of any such permit may only sell beer and wine to travellers (or members, as the case may be), during meals and then only between one o'clock in the afternoon and nine o'clock in the evening.

The Commission may, however, by a regulation which must be approved by the Lieutenant-Governor in Council, retard or advance the hour for closing, for all licensed establishments or for one or more classes of licensed establishments, and such hours may vary according to the locality, but must not, however, be extended beyond midnight.

6. For the purposes of this section, the following shall be considered as holidays:

a. Sundays;

b. New Year's Day;

c. Epiphany, Ash Wednesday, Good Friday, Ascension Day, All Saints Day, Conception Day, Christmas Day; and

d. For any territory where any municipal election or election of a member of the Canadian House

of Commons or of the Legislative Assembly is held, the day upon which the polling for such election takes place.

7. In any municipality where daylight-saving time is enacted, such daylight-saving time shall apply to the hours mentioned in this section, for the period during which such daylight-saving time exists. R.S. 1925, c. 37, s. 42; 16 Geo. V, c. 21, s. 4; 17 Geo. V, c. 21, s. 3; 19 Geo. V, c. 22, s. 2; 20 Geo. V, c. 32, s. 1; 23 Geo. V, c. 19, s. 1; 24 Geo. V, c.18, s. 1; 25-26 Geo. V, c. 20, s. 1; 3 Geo. VI, c. 22, s. 4; 5 Geo. VI, c. 24, s. 14.

43. It is forbidden to sell any alcoholic liquor, -

1. To any person who has not reached the age of twenty years;

2. To any interdicted person;

3. To any keeper or inmate of a disorderly house;

4. To any person already convicted of drunkenness or of any offence caused by drunkenness;

5. To any person who habitually drinks alcoholic liquor to excess, and to whom the Commission has, after investigation, decided to prohibit the sale of such liquor upon application to the Commission by the husband, wife, father, mother, brother, sister, curator, employer or other person depending upon or in charge of such person, or by the curé, pastor or mayor of the place. The interdiction in such case shall last until removed by the Commission;

6. To any person obviously under the influence of alcoholic liquor.

No sale made to any of the persons mentioned in paragraphs 2, 3, 4 and 5 above, shall constitute an offence by the vendor unless the Commission have informed him, by registered letter, that it is forbidden to sell to such person.

Appendix to Appellant's Factum

The delivery of alcoholic liquor to any one of the persons mentioned in this section shall be equivalent to a sale. Nevertheless, if such delivery be made to any one of the persons, mentioned in paragraphs 1 and 2 above, by his relation or by any other person having charge of him, and if it be made gratuitously, it shall not constitute an offence. R.S. 1925, c. 37, s. 43; 5 Geo. VI, c. 24, s. 15.

44. The Commission may, at its discretion, refuse to make any sale of alcoholic liquor, except for religious purposes.

The Commission must procure and keep constantly on hand for ministers of religion, such wine as is approved by the religious authorities and required for divine service or religious purposes. R.S. 1925, c. 37, s. 44.

45. 1. No alcoholic liquor may be kept in the province, except, -

a. In stores and warehouses of the Commission or in some other place under its control;

b. In an establishment where it is expressly permitted by the Commission to sell such variety of liquor;

c. In an establishment where it is expressly permitted by the Commission to keep such variety of liquor;

d. In an establishment where, by exception, it is permitted by law to keep the same;

e. In the residence of any person, provided such liquor be not kept with intent to sell the same (and one sale shall suffice to establish such intent);

f. In the baggage of a traveler who is transporting such liquor for his personal use; or

g. As to wine, in a church, chapel or

dependency.

2. The keeping of alcoholic liquor elsewhere than in the places mentioned in this section shall constitute an offence under this act. R.S. 1925, c. 37, s. 45; 5 Geo. VI, c. 24, s. 16.

46. No beer may be transported in the Province, except, -

1. Directly from the establishment of the brewer or of the store-keeper, to the establishment, in this Province, of a store-keeper who is the holder of a permit to sell such beer, or of any holder of a permit to sell the same, or to a place outside the Province; or

2. Directly from the store of a holder of a permit to sell the same in a store, to the residence in this Province of any person who has bought the same for his personal use.

Nevertheless, in such latter case, if the beer is to be shipped to a point within the Province, the transportation thereof outside of the municipality in which the store of the person authorized to sell the same is situated, or outside of an adjoining municipality, must be made only by railway, steamboat, or by the purchaser himself, on condition that he transports it in his own vehicle or in a vehicle hired by him, directly to his residence or, if he be the holder of a permit to sell, to his establishment; but such transportation must not be by the vendor nor by any employee, agent or representative of such vendor, nor by any other person interested in the sale.

Moreover, if the transportation of the beer be effected by railway or steamboat, the person transporting such beer shall have in his possession and produce upon request a way-bill containing the name and address of the shipper and the name and address of the consignee. R.S. 1925, c. 37, s. 46; 15 Geo. V, c. 21, s. 5; 4 Geo. VI, c. 20, s. 2.

47. Any alcoholic liquor kept or transported in contravention of section 45 or 46 may be seized without warrant by any officer or inspector authorized in accordance with the provisions of section 71, and confiscated. R.S. 1925, c. 37, s. 47; 24 Geo. V, c. 17, s. 4.

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5.- Alcohol used for certain Medicinal Purposes, and Liquor manufactured in the Province

48. 1. No provision of this act shall prevent any person practising medicine, surgery or obstetrics in the Province, registered as such under the Quebec Medical Act, (Chap. 264) or licensed as such by the
20 Montreal Homoeopathic Association, or any person licensed as a dental surgeon, and registered as such in the Province, or any person practising the professinn of veterinary surgeon, and registered as such under the Veterinary Surgeons Act (Chap. 269) - from purchasing alcohol and using the same for purposes of solution or sterilization in his own practice, or in any preparation for external application administered by himself, or from purchasing brandy, such as defined in the British
30 Pharmacopeia, or rum, - for use in compounding his medicines; - provided, however, that no such person may sell any such alcohol or spirits except when used by him for the purposes above mentioned.

2. No provision of this act shall prevent any person entered as a licentiate in pharmacy in accordance with the Quebec Pharmacy Act (Chap. 267) and keeping a drug store, -

40 a. From purchasing alcoholic liquor, for use in medicinal, officinal or pharmaceutical preparations, - provided, however, that no such person may sell such alcoholic liquor except when used by him for such purposes; or

b. From purchasing ethyl alcohol at ninety-four per cent (65 O.P.), and selling the same for

obstetrical or antiseptic purposes only, in quantities not exceeding two ounces, upon prescription of a physician authorized to practise medicine in this Province, or upon the mere certificate of the latter if the sale be made to him personally; - provided, however, that such sale shall take place only at such hours and upon such days during which the Commission may not sell.

3. Every such person must purchase such alcoholic liquor directly from the Commission. The latter may, at its discretion, refuse to sell the quantity applied for. R.S. 1925, c. 37, s. 48; 5 Geo. VI, c. 24, s. 17.

49. No provision of this act shall prevent any distiller duly licensed by the Government of Canada for the manufacture of alcohol or spirits in the Province, or any wine manufacturer in the Province, from having or keeping for sale in his establishment in the Province, alcoholic liquor so manufactured by him, or from selling or delivering the same.

However, if such alcoholic liquor is to be shipped to a place in the Province, such distiller or manufacturer may sell it only to the Commission; and such distiller or manufacturer must, in every case, comply with every otherprovision of this act which may be applicable.

The Commission may likewise, upon the conditions it determines, grant to any distiller, duly licensed by the Government of Canada for the manufacture of alcohol and spirits in the Province, a special permit authorizing such distiller to purchase and import, from such persons as are entitled to sell the same, wines or spirits to be used for the sole purpose of blending with and flavoring such products. R.S. 1925, c. 37, s. 49; 5 Geo. VI, c. 24, s. 18.

50. 1. No provision of this act shall prevent the Commission from agreeing to the sale and delivery of potable or non-potable alcohol from a

distiller direct to a manufacturer of articles requiring such alcohol, provided that each quantity of alcohol so sold and delivered be not less than one barrel, and provided that such sale and delivery be made subject to such conditions and for such consideration as the Commission may establish.

2. Every manufacturer of articles, for the manufacture or the conservation of which alcohol, spirits or wine is necessary, must, on the first of May of every year, make a return to the Commission of the quantity of each variety of such liquor at that time in his possession, of the places where it is kept, of the quantities of each variety of such liquor which has entered into the manufacture of the products which he is authorized to manufacture, of the names and addresses of the persons to whom such products have been delivered and, at the same time, advise the Commission of the approximate quantity of each variety that he may require within the twelve months next after such date. R.S. 1925, c. 37, s. 50; 5 Geo. VI, c. 24, s. 19.

51. No provision of this act shall, by reason only that such product contains any alcoholic liquor, prevent, -

1. The sale of any perfume, lotion, tincture, varnish, dressing, fluid extract or essence, or vinegar;

2. The sale of any officinal, medicinal or pharmaceutical preparation, or of any patent or proprietary medicine intended solely for medicinal purposes, - provided that such product does not contain alcohol in any greater quantity than the amount required as a solvent or preservative, or provided that it be so compounded as to render it unsuitable for use as a beverage. R.S. 1925, c. 37, s. 51.

52. However, if the Commission be of opinion that one of the products enumerated in paragraph 1 of section 51 contains alcoholic liquor and is used for beverage purposes, it may notify the manufacturer

or the vendor to that effect, and from and after the date of such notice this act shall apply to such product, and the manufacturer or the vendor so notified shall commit an offence under this act if he sells such product after such notice, and shall be liable to the penalties mentioned in section 55 of this act. R.S. 1925, c. 37, s. 52.

53. In order to determine whether any particular preparation, proprietary or patented, contains alcohol in excess of the amount required as a solvent or preservative, or whether it is so compounded as to render it unsuitable for use as a beverage, the Commission may have a sample of such preparation, purchased from any person whomsoever, analysed by such person as it may select.

If it appear from the analysis of such sample that such preparation contains alcohol in excess of the amount required as a solvent or preservative, or that it is not so compounded as to render it unsuitable for use as a beverage, the Commission may notify the manufacturer, or the agent in this Province of the manufacturer, of such liquid or solid, or the person who has acquired such liquid or solid to resell, that the same is not a medicine within the meaning of section 51, but is an alcoholic liquor to which this act applies, and from the service of such notice this act shall apply to such liquid or solid, and the manufacturer, the agent in this Province of the manufacturer, or the person who has acquired the same to resell, so notified, shall commit an offence against this act if he sell such liquid or solid after the date of the service upon him of such notice.

Such notice shall consist of a copy, certified by the secretary of the Commission or by its manager, of a resolution passed by the Commission, published in the Quebec Official Gazette, and stating that the liquid or solid specified in the resolution is not a medicine in the sense of section 51, but is an alcoholic liquor to which this act applies; and such notice shall be served by sending such copy by

registered letter to the manufacturer, to the agent in this Province of the manufacturer, or to the person who has acquired the same to resell.

This section shall apply to every preparation indicated in section 51 other than that which is only prepared by the pharmacist at the time of the prescription of the physician and in accordance with its tenor, or which is prepared by the physician for the use only of a patient actually under his care. R.S. 1925, c. 37, s. 53; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

DIVISION IV

OFFENCES AND PENALTIES

54. Whosoever, -

1. Peddles any alcoholic liquor; or

2. Keeps alcoholic liquor in a disorderly house; or

3. Being an employee of the Commission, infringes any of the provisions of this act, otherwise than by purchasing any alcoholic liquor in the manner mentioned in section 66 of this act, or

4. Not being the holder of a permit to that effect, still in force, or not being authorized thereto by this act, sells any alcoholic liquor in the Province, -

Shall be guilty of an offence against this act, and may be arrested without warrant, provided that, without delay, he be brought before a magistrate having jurisdiction, and shall be liable, in addition to the costs: for the first offence, to a fine of not less than fifty dollars nor more than two hundred dollars, and, for any subsequent offence, to imprisonment for a term of three months, which the court may reduce to one month. R.S. 1925, c. 37, s. 54; 5 Geo. VI, c. 24, s. 20.

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55. Whosoever, -

1. Being the holder of a permit, sells any alcoholic liquor of a kind other than that of which his permit or this act authorizes the sale; or

2. Being the holder of a permit, sells the alcoholic liquor which his permit or this act authorizes him to sell, but to any person other than those to whom his permit or this act authorizes him to sell; or

3. Being the holder of a permit to sell beer in a tavern or in a store, receives, directly or indirectly, by exchange or otherwise, anything other than money for such beer; or

4. Being the holder of a permit, keeps or allows the keeping, other than in his residence and for his personal use, of any alcoholic liquor other than that which he is authorized to sell in virtue of his permit; or

5. Being the manufacturer or the agent in this Province for the manufacturer of any liquid or solid containing alcoholic liquor, sells such liquid or solid as a medicine or preparation after the Commission has notified him in accordance with section 53, of this act; or

6. Keeps or allows the keeping of any alcoholic liquor in his residence, either for himself or for other persons, on deposit or otherwise, with intent to sell the same; or

7. Being the holder of a permit to sell certain alcoholic liquor in a hotel, inn, café, restaurant or tavern, consents to or permits the cashing in his establishment of cheques or other evidences of indebtedness issued in payment of wages; or

8. Has in his possession or fraudulently sells wrappers, labels, corks, caps, or stamps, imitating those used by the Commission, or sells or deals in

any manner whatsoever with those manufactured for the Commission and for its use, -

Shall be guilty of an offence under this act, and shall be liable, in addition to the payment of the costs, for the first offence, to a fine of not less than five hundred dollars nor more than one thousand dollars, and, on failure to pay such fine and costs, to imprisonment in the common gaol for a term of three months, which the court may reduce to one month; and, for any subsequent offence, to a fine of not less than one thousand dollars nor more than two thousand dollars, and, on failure to pay such fine and costs, to imprisonment in the common gaol for three months. R.S.1925, c. 37, s. 55; 20 Geo. V, c. 32, s. 2; 5 Geo. VI, c. 24, s. 21.

56. Whosoever, -

1. Being the holder of a permit for the sale of beer, or of beer and wine, as the case may be, sells any beer which has an alcoholic content of over four per cent, in weight; or

2. Being the holder of a permit, sells beer to which wine, spirits or alcohol, or more than one of any such liquors, has been added, or sells wine to which spirits or alcohol, or both, have been added, otherwise than to render possible the importation thereof; or

3. Being the holder of a permit, sells any alcoholic liquor that his permit or this act authorizes him to sell, but in any place, or in any manner, or in any quantity other than his permit authorizes him to sell; or

4. Being the holder of a permit to sell beer in a tavern, or beer and wine in a dining-room, has not such tavern or dining-room furnished, fitted up or equipped in the manner or to the extent indicated by the Commission; or

5. Being the holder of a permit to sell beer,

or beer and wine, as the case may be, does not comply with the requirements of section 41 of this act, or any provision of said section; or

6. Being the holder of a permit, sells any alcoholic liquor which he is authorized by his permit to sell, at any time forbidden by section 42 of this act, or, if his permit be to sell in a tavern, does not close such tavern as required by the said section 42; or

7. Being the holder of a permit, sells, to any person who is in a drunken condition or to any person who has not reached the age of twenty years, alcoholic liquor for the sale of which he is authorized by his permit, or sells or delivers, to any person of the age of twenty years or more, any alcoholic liquor for the sale or delivery of which he is authorized by his permit, knowing that such liquor is so bought for a person obviously under the influence of alcoholic liquor or whose age is less than twenty years and is to be drunk by the latter; or

8. Being the holder of a permit, knowingly sells to any of the persons mentioned in paragraph 2,3,4 or 5 of section 43 of this act, after notice sent to him by the Commission in compliance with the said section, any alcoholic liquor for the sale of which he is authorized by his permit; or

9. Being the holder of a permit to sell beer in a tavern, employs therein any woman who is not his wife, or allows gambling therein; or

10. Being the holder of a permit to sell beer in a grocery store, allows any beer sold therein to be drunk in such grocery store or its dependencies, either by the purchaser or by any other person not residing with the vendor nor in his employ, or delivers the same contrary to the provisions of sub-paragraph 4 of subsection 1 of section 30 of this act; or

11. Being the holder of a permit for the

sale of alcoholic liquor in a tavern, hotel, inn, café, restaurant, club, steamboat or dining-car, does not keep such permit constantly posted up in view of the public in the premises wherein such sale is authorized; or

12. Being the holder of a permit, keeps any alcoholic liquor or transports any beer in contravention of section 45 or 46 of this act; or

13. Having acquired for the purpose of resale any liquid or solid containing alcoholic liquor, sells it as a medicine or preparation after having been notified by the Commission in accordance with section 53 of this act; or

14. Being one of the persons mentioned in subsection 2 of section 50 of this act, does not comply with the requirements of such paragraph; or

15. Not being the holder of a permit, leads the public or travelers to believe, by means of signs, inscriptions, advertisements or circulars, that he is authorized to sell alcoholic liquor; or

16. Being of an age of less than twenty years, is found in any tavern in which any beer is sold, and gives no satisfactory reason for his presence, or who buys any beer for his own use, or performs the duty of clerk in any tavern; or

17. Buys or receives, by onerous title, any alcohol or spirits from any person not authorized to sell such variety of liquor; or

18. Obtains, even gratuitously during the time when the sale thereof is forbidden, any beer from any holder of a permit for the sale thereof in a tavern; or

19. Causes any disturbance in a tavern or brings thereinto or drinks therein any alcoholic liquor other than beer; or

20. Buys, for any remuneration whatsoever,

any alcoholic liquor for another person; or

21. Being in charge of the transportation by railway or steamboat, transports beer without having with him and showing when asked a way-bill giving the name and address of the shipper and the name and address of the consignee, or having a way-bill giving a false name or a false address; or

22. Contravenes any provision of this act otherwise than as mentioned in sections 54 and 55 and the foregoing paragraphs of this section, -

Shall be guilty of an offence under this act, and shall be liable, in addition to the payment of the costs, for the first offence to a fine of not more than one hundred dollars, and, on failure to pay such fine and costs, to imprisonment in the common gaol for one month; and, for any subsequent offence, to imprisonment in the common gaol for one month. R.S. 1925, c. 37, s. 56; 16 Geo. V, c. 21, s. 6; 18 Geo. V, c. 25, s. 1; 19 Geo. V, c. 22, s. 3; 1 Ed. VIII (2), c. 15, s. 1; 3 Geo. VI, c. 22, s. 6; 5 Geo. VI, c. 24, s. 22.

57. Any person who, without lawful excuse, is found in an establishment where alcoholic liquor is sold without a permit shall be guilty of an offence against this act and shall be liable, in addition to the payment of the costs, to a fine of not less than ten dollars nor more than one hundred dollars, and, on failure to pay the fine and costs, to imprisonment for one month.

Any Judge of the Sessions, District Magistrate, Police Magistrate and any other officer having the powers of two justices of the peace who, following a complaint made under oath, is convinced that there are reasonable grounds to believe that alcoholic liquor is sold without a permit in any establishment, may authorize, by a written order, any constable or other peace officer to enter and search such establishment with as many constables or other peace officers as he may deem necessary to

use, and such constable or constables or peace officer or peace officers may thereupon enter and search any part of such establishment and, if necessary, use force to enter therein, and may arrest and take into custody any person found therein without lawful excuse. R.S. 1925, c. 37, s. 56a; 3 Geo. VI, c. 22, s. 7.

58. Whosoever interferes with or hinders any officer or inspector duly authorized to investigate any infringement of this act, or to make any search, examination or seizure, in the performance of his duties to that end, shall be guilty of an offence under this act, and shall be liable, in addition to any penalty which may be imposed upon him under section 54, 55 or 56, and in addition to the payment of the costs, to a fine of one hundred dollars, for each offence, and, on failure to pay such fine and costs, to imprisonment in the common gaol for one month. R.S. 1925, c. 37, s. 58; 24 Geo. V, c. 17, s. 6.

59. Whosoever, being the holder of a permit for the sale of beer under section 30, neglects or refuses to make a return to the Commission, within ten days immediately following the date indicated by the Commission, of his purchases and sales of beer, up to such date, shall be guilty of an offence under this act, and shall be liable to a fine of ten dollars per day for each day's delay, to run from the expiration of such ten days. R.S. 1925, c. 37, s. 59.

60. In any case of conviction for any offence under paragraph 3 of section 55, the court may, in addition to the penalty, issue its warrant for the restitution of the things he has received and the payment of the costs, and ordering that, on failure to make such restitution or payment, an amount sufficient to cover the value of such things, and the costs, shall be levied by the sale of the moveable property of the accused. R.S. 1925, c. 37, s. 60.

61. In any trial for the offence mentioned in

paragraph 7 of section 56, the burden shall be upon the defendant to prove that the person to whom or for whom the alcoholic liquor was sold is of the age of more than twenty years. R.S. 1925, c. 37, s. 61; 5 Geo. VI, c. 24, s. 23.

62. Notwithstanding the penalties imposed by section 56, every person who, being the holder of a permit for the sale of beer in a tavern or in a grocery store, sells knowingly after having been notified by the Commission, in accordance with section 43 of this act, to any person to whom it is forbidden under such section to sell, because he habitually drinks alcoholic liquor to excess, - may be condemned, in an action taken by the person who has made the application mentioned in paragraph 5 of section 43, to pay to the latter a sum of not more than five hundred dollars by way of exemplary damages, and shall, moreover, be responsible jointly and severally with the person to whom he was forbidden to sell, for any act of violence committed, or damage to property caused, by such person intoxicated by the alcoholic liquor so delivered to him. R.S. 1925, c. 37, s. 62; 5 Geo. VI, c. 24, s. 24.

63. Notwithstanding the penalties imposed by this act, any holder of a permit for the sale of beer in a tavern, and every person employed by him, shall be jointly and severally liable in damages, towards the representatives of any person who becomes intoxicated in such tavern, by reason of the drinking of alcoholic liquor delivered to him by such holder, or such employee, and who, by reason of such drunkenness, commits suicide or is killed by some accident caused by such drunkenness.

The right of action must be exercised within three months after the death; the representatives of the person who has so died may recover a sum of not less than one hundred dollars nor more than one thousand dollars.

The provision of this section shall likewise apply to anyone who, not being the holder of a

permit, sells any alcoholic liquor causing drunkenness which brings about the consequences therein mentioned. R.S. 1925, c. 37, ss. 63-64.

64. Any married women may, notwithstanding article 176 of the Civil Code, institute, in her own name, without the authorization of her husband, any action in damages mentioned in section 62 or 63 of this act. R.S. 1925, c. 37, s. 65.

65. No action to recover the price of any alcoholic liquor sold in contravention of this act may be maintained.

Nor may any action be maintained to recover the price of any beer sold by the holder of a permit for the sale of beer in a tavern. R.S. 1925, c. 37, s. 70.

66. No officer, inspector or other person employed by the Attorney-General for the enforcement of this act, when acting in his official capacity, nor any person acting under the instructions of any such officer, inspector or other employee, shall incur any of the penalties enacted by this act for the punishment of those who obtain alcoholic liquor, either from a holder of a permit granted under this act or from a person who is not the holder of a permit. R.S. 1925, c. 37, s. 66; 24 Geo. V, c. 17, s. 7.

67. Whenever the penalty for an offence committed consists of imprisonment only and the accused is a joint-stock company, such penalty shall be replaced by a fine of two thousand dollars, in addition to the costs. R.S. 1925, c. 37, s. 57.

68. If, within twelve months following the date at which an offence has been committed, the offender be guilty of a new offence, after the prosecution for the previous offence has been served upon him, or after a seizure has been taken against him by reason of such previous offence, such new offence shall constitute a subsequent offence within

the meaning of this act, and the court which is seized thereof must punish it as such, provided there was a conviction for the previous offence.

In order to be subsequent, an offence need not be a violation of the same provision of this act as that which was violated by the previous offence.

The court before which any proceeding is instituted for any offence under this act must ascertain if the offence be a first offence or a subsequent offence, and, if it be found that the complaint is not according to the facts in that respect, it must order that such complaint be amended accordingly, and render judgment on the complaint as amended. R.S. 1925, c. 37, ss. 67-68.

69. No action or prosecution instituted for an offence against section 54 of this act may be amended afterwards but must be heard and adjudged as instituted. R.S. 1925, c. 37, s. 69; 4 Geo. VI, c. 20, s. 3; 5 Geo. VI, c. 24, s. 25.

DIVISION V

ARRESTS WITHOUT WARRANT

70. In cases in which this act authorizes arrest without warrant, the arrest may be made by any officer or inspector authorized in accordance with the provisions of section 71. R.S. 1925, c. 37, s. 70a; 24 Geo. V, c. 17, s. 8.

DIVISION VI

SEIZURE AND CONFISCATION OF LIQUOR

71. The Attorney-General may, by a document signed by him, authorize, generally or specially, any officer or inspector, whom he designates, to make searches, examinations and seizures in connection with alcoholic liquor, in every case where such

search, examination or seizure is authorized by law; and such document shall be prima facie proof before any court. R.S. 1925, c. 37, s. 71; 24 Geo. V, c. 17, s. 9.

72. 1. Whenever any alcoholic liquor is transported in this Province in receptacles of any kind, whether or not they be labeled or marked as containing alcoholic liquor or other wares, -

a. If such alcoholic liquor be in sufficient quantity to give rise to suspicion that it is being transported for the purpose of selling the same; or

b. If it be addressed to a person not the holder, under this act, of a permit for the sale of alcoholic liquor of such variety, and if there be reason to believe that such person has already been convicted for any offence under this act; or

c. If the said liquor be transported under circumstances justifying the presumption that it is being so transported to be sold without a permit, -

Any officer or inspector, authorized in accordance with the provisions of section 71, may open any such receptacle wherever it may be, with all the necessary aid and even by force in case of resistance, and may examine the contents thereof; and, if such receptacle contain alcoholic liquor, he shall, without a warrant being required, seize the same, as well as the receptacle containing it, and hand them over to the Commission, which shall keep them in its custody until the court has disposed of them by a judgment.

2. The same powers may be exercised in a case of peddling of alcoholic liquor. R.S. 1925, c. 37, s. 72; 24 Geo. V, c. 17, s. 10.

73. Any officer or inspector authorized in accordance with the provisions of section 71, may, even by force if entrance be refused him, go on board any boat or vehicle, and enter any place, lot,

or building in which he has reason to suspect that any alcoholic liquor is kept or sold in contravention of this act, make every search, and open, with all the necessary aid and even by force in case of refusal to do so, any cupboard or receptacle in which he thinks such liquor is contained; and, if he discover any alcoholic liquor, he must, without a warrant being required, seize it, as well as every receptacle containing it, and hand them over to the Commission, which shall keep them in its custody until the court has disposed of them by a judgment. R.S. 1925, c. 37, s. 73; 24 Geo. V, c. 17, s. 11.

74. Any officer or inspector authorized in accordance with the provisions of section 71, may seize, without a warrant, any alcoholic liquor, as well as any receptacle containing it, shipped into a municipality in which a prohibitory by-law is in force or whose council has decided, in the manner set forth in this act, that any permit or any certain kind of permit shall not be granted, unless each parcel containing such liquor be clearly and visibly addressed to the bona fide purchaser. The fact that such parcel is so addressed shall not however prevent the seizure of the liquor and of the receptacles containing it if such liquor be shipped or sold contrary to any provision of this act.

The liquor seized as well as the receptacles containing it shall be handed over to the Commission, which shall keep it in its custody until the court has disposed of the same by a judgment. R.S. 1925, c. 37, s. 74; 24 Geo. V, c. 17, s. 12.

75. Any officer or inspector authorized in accordance with the provisions of section 71, may, without a warrant, seize alcoholic liquor found in a disorderly house, as well as any receptacle containing the same, and hand them over to the Commission, which shall keep them in its custody until the court has disposed of them by a judgment. R.S. 1925, c. 37, s. 75; 24 Geo. V, c. 17, s. 13.

Appendix to Appellant's Factum

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76. Any officer or inspector authorized in accordance with the provisions of section 71, may, without a warrant, seize any alcoholic liquor which is, in any way other than above indicated, kept, transported or sold in contravention of this act, as well as any receptacles containing it, and hand them over to the Commission, which shall keep them in its custody until the court has otherwise disposed of them by a judgment. R.S. 1925, c. 37, s. 76; 24 Geo. V, c. 17, s. 14.

77. When any alcoholic liquor is seized in a vehicle, and such vehicle is of such a nature that it can be confiscated by the court if such liquor was being transported in contravention of this act, the officer or inspector effecting the seizure may detain such vehicle and use it, without charge, for transporting the alcoholic liquor so seized, as well as the receptacles containing it, to the custody of the Commission; further, the officer or inspector may seize such vehicle and must place in in the custody of the chief of the Provincial police of the Quebec or Montreal division, according as the seizure took place in the appellate division of Quebec or of Montreal, until the court, by its judgment, declares it confiscated for the benefit of the Crown. R.S. 1925, c. 37, s. 77; 24 Geo. V, c. 17, s. 15.

78. Whenever any alcoholic liquor is seized under this act, it must be declared by the court to be confiscated, upon proof of any contravention of the law, save in cases otherwise provided for.

Saving the cases otherwise provided for by this act, the Attorney-General in the name of the Commission must, within the delays fixed by section 144, apply to the court for the confiscation of anything of such a nature that it can be confiscated under this act.

Every judgment inflicting a penalty under this act must order the confiscation of the liquor, vessels, vehicles or other things which have been

seized. Nevertheless the confiscation may be ordered without the infliction of a penalty; if the judge be of the opinion that the person prosecuted is not guilty of the offence which he is accused of, but that the alcoholic liquor seized was kept or transported in violation of this act.

The confiscation of the liquor shall carry with it the confiscation of the vessels, vehicles or other things which, at the time of seizure, contained such liquor or were used to transport the same, unless the court orders otherwise.

If the name or the address in this Province of the person at whose residence or in whose possession such liquor, vessels, vehicles or other things have been seized, be unknown to the Attorney-General, such liquor, vessels, vehicles or other things shall be deemed confiscated at the expiry of two months from the date of seizure.

When the confiscation has been ordered by any court, or has taken place as a result of the expiration of the two months' delay aforesaid, the Commission shall sell any beer seized, the alcoholic content of which is not more than four per cent, in weight, with the receptacles containing the same, to a brewer or other person holding a permit for the sale in this Province of beer, or of beer and wine, as the case may be, and shall take possession, as owner, of all other alcoholic liquor seized, with the receptacles containing the same, and shall dispose by onerous title of the other things seized except the vehicles which shall be disposed of in accordance with the following paragraph.

The chief of the Provincial police in whose custody a confiscated vehicle has been placed under this section shall dispose by onerous title of such vehicle or retain it for the use of a public service of the Government of the Province, according to the instructions of the Attorney-General.

The Lieutenant-Governor in Council may, if the good faith of the owner of a confiscated

vehicle be established to his satisfaction, order the remittance of the vehicle to such owner. R.S. 1925, c. 37, s. 78; 24 Geo. V, c. 17, s. 16.

DIVISION VII

PROSECUTIONS

1. - PROCEDURE BEFORE JUDGMENT

79. Every action or prosecution for any offence under this act shall be instituted in the name of the Commission or in the name of the corporation of the local municipality where the offence has been committed. R.S. 1925, c. 37, s. 79.

80. Notwithstanding the provisions of the second and third paragraphs of section 82, a prosecution may be taken in the name of the Commission, whenever there is reason to believe that any infringement of this act has been committed and that such prosecution will be held to be well founded. R.S. 1925, c. 37, s. 80; 24 Geo. V, c. 17, s. 18.

81. Whenever any person has demanded the taking of any prosecution, the Attorney-General may, in his discretion, either before or during the suit, exact, from such person, the deposit of a sum of money sufficient to cover the costs due in case the prosecution is dismissed. R.S. 1925, c. 37, s. 81; 24 Geo. V, c. 17, s. 19.

82. The Attorney-General must prosecute every offender under this act, whenever he is called upon to do so by a municipal corporation, and when such corporation has assumed responsibility for the costs to be incurred.

In any municipality where a prohibitory law is in force, or whose municipal council has decided, in the manner set forth in this act, that permits or certain kinds of permits shall not be granted, the council of the municipality must prosecute

every contravention of this act, in which case the municipality shall be responsible for costs and shall receive the fines collected.

If the council refuse or neglect to prosecute any infringement after having been notified thereof, the Attorney-General may prosecute the offender, in the name of the Commission and at the expense of the municipality. R.S. 1925, c. 37, s. 82; 24 Geo. V, c. 17, s. 20.

83. Fines and penalties enacted by this act or by the regulations made under its authority, and costs, duties and fees declared by it to be exigible, shall be recovered in the manner and before the courts hereinafter indicated. R.S. 1925, c. 37, s. 83.

84. Every prosecution shall be instituted in the judicial district where the offence was committed, or in that in which the offender resides.

If the offence be committed upon or near the boundary of two adjoining districts, where it is difficult to determine in which of such districts the offence was committed, the prosecution may be instituted in either one or the other.

If the offence be committed on or in a vehicle, the prosecution may be instituted in any judicial district through which such vehicle has passed in the course of the journey or voyage during which the offence was committed. R.S. 1925, c. 37, s. 84.

85. For every judicial proceeding instituted under this act, the county of Verchères shall form part of the district of Montreal. R.S. 1925, c. 37, s. 85.

86. Any action or prosecution may, at the choice of the party prosecuting, be instituted before the Circuit Court or the Magistrate's Court, or before two justices of the peace, the police magistrate, the

district magistrate or any other officer having the powers of two justices of the peace, saving the provisions of section 5 of the Quebec Summary Convictions Act (Chap. 29).

For the purposes of this section, whatever is necessary for the execution of any provision of this act respecting any proceeding against any offender, including the signing of summonses and warrants of arrest, and the adjournments granted, may be done by a single justice of the peace. Nevertheless the hearing and the judgment shall be governed by the provisions of sections 117 to 123, inclusive. R.S. 1925, c. 37, s. 86.

87. The delays upon summonses and all other procedure in actions and proceedings brought before the Circuit Court or the Magistrate's Court shall be governed by the provisions of the Code of Civil Procedure respecting actions between lessor and lessee. R.S. 1925, c. 37, s. 87.

88. Except in proceedings instituted before the Circuit Court or the Magistrate's Court the service of the summons shall be made by any bailiff or constable appointed for the judicial district where the action or prosecution is instituted. A copy certified by the magistrate, judge or official who signed the original, or by the plaintiff's attorney, must be left with the defendant personally, or with a responsible person of his family or of his staff, at his domicile or at his place of business, as the case may be.

Nevertheless, in case the defendant evades the service of the summons, or in the case of a person occupying any premises situated on the frontier between this Province and the United States of America, or between this Province and another Province, the judge, magistrate or justice of the peace may, on a return to that effect, prescribe whatever mode of service he deems proper, or order the summary arrest of the defendant. R.S. 1925, c. 37, s. 88.

89. The service, when made by a bailiff, shall be proven by a return under his oath of office, and, when made by a constable, shall be proven by his return duly sworn to before the court or before a justice of the peace of the judicial district in which the proceeding is instituted.

Before the Circuit Court or the Magistrate's Court, the service of proceedings and convictions shall be made in the same manner as that of the summons. R.S. 1925, c. 37, s. 89.

90. Before the Circuit Court or the Magistrate's Court, the procedure relating to any suit taken according to this act shall be that provided for by articles 1150 to 1162 of the Code of Civil Procedure for actions between lessor and lessee. R.S. 1925, c. 37, s. 90.

91. Except in any case otherwise provided for by this act, in every prosecution other than those instituted before the Circuit Court or the Magistrate's Court, the provisions of the Quebec Summary Convictions Act (Chap. 29) shall apply. Nevertheless the words in subsection 1 of section 42 of the said Summary Convictions Act: "but no such adjournment shall be for more than fifteen days, except with the consent of the parties", shall not apply to prosecutions instituted under this act. However, no such adjournment, during any such prosecution, shall be for more than thirty days. R.S. 1925, c. 37, s. 91.

92. The provisions of articles 237 to 250 of the Code of Civil Procedure shall also apply, mutatis mutandis, to any prosecution instituted under this act before any district or police magistrate. R.S. 1925, c. 37, s. 92.

93. Any law to the contrary notwithstanding, no sworn declaration, information or complaint shall be required to obtain the issuing of a warrant or of a summons; the one or the other may be issued upon the mere production of the declaration, information or complaint signed in accordance with section 94 of this

act, without the declarant, informer or complainant appearing before the magistrate. R.S. 1925, c. 37, s. 93.

94. No resolution of the Commission shall be required for a suit or prosecution for an offence against this act to be taken in its name.

In every such suit or prosecution the complaint must be signed and the suit or prosecution taken in the name of the Commission:

1. By any person authorized generally by the Attorney-General to take such suits or prosecutions and to sign such complaints; or;

2. By the collector of provincial revenue appointed for the revenue district where the offence was committed and whom the Attorney-General has authorized generally to take such suits or prosecutions and to sign such complaints.

A complaint deposited shall make proof of the signature of such person or of such collector and of the authorization conferred upon him by the Attorney-General under this section, unless the contrary be established. R.S. 1925, c. 37, s. 94; 24 Geo. V, c. 17, s. 21; 1 Geo. VI, c. 23, s. 2.

95. Every proceeding instituted by a municipal corporation, and the judgment rendered on the same, shall become null and of no effect if another prosecution be instituted by the Attorney-General in order to prevent collusion between the parties. Such proceeding or judgment cannot be opposed against such second prosecution unless the amount claimed by the corporation has been paid according to law or the defendant has been imprisoned for the term for which he has been sentenced in default of payment. R.S. 1925, c. 37, s. 95; 24 Geo. V, c. 17, s. 22.

96. In every proceeding under this act, whenever

a document bears the signature of a person known as being the manager of the Commission, such document shall be sufficient proof, saving proof to the contrary, of his appointment and of his having entered upon his duties prior to the date of such document. R.S. 1925, c. 37, s. 96; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

97. In any prosecution instituted under this act, it shall not be necessary to allege in the declaration, information, complaint or summons, any negative fact, nor any fact the burden of proof of which is upon the defendant. R.S. 1925, c. 37, s. 97.

98. In any prosecution under this act the real offender as well as the owner, lessee or occupant of the premises where the offence was committed, and in the case of a disorderly house any inmate thereof, shall be personally responsible for the fines and penalties which may be imposed for any offence under this act, even if such offence have been committed by another person against whom it cannot be proved that he has so acted under or according to the directions of such owner, lessee or occupant. The proof that such offence has been committed by any person in the employ of such owner, lessee or occupant or present on sufferance in the establishment of such owner, lessee or occupant, shall be conclusive proof that such offence was committed with the authorization and under the direction of the said owner, lessee or occupant. At the option of the party prosecuting, the real offender and such owner, lessee or occupant, may be prosecuted jointly or separately; but both may not be convicted for the same offence, and the conviction of one shall suffice to prevent the conviction of the other for the same offence.

Whenever any person has been convicted, under this act, of an offence committed in a certain place, and when, within the twelve months following the commission of such offence, the lessee, the purchaser or any other person who, in virtue of a lease,

a deed of sale or any other contract, verbal or written, replaces the person convicted, commits, in the same place, any offence under this act, such new offence shall be held to be a subsequent offence, notwithstanding the provisions of section 68.

Whenever any person has been convicted of selling alcoholic liquor without a permit, in any premises, the provisions of the Disorderly House Act (Chap. 50) shall apply. R.S. 1925, c. 37, s. 98.

99. In order to prove a sale or consumption of intoxicating liquor in contravention of this act, it shall not be necessary to prove that there has been any actual handing over of money, nor actual consumption of such liquor, if the magistrate or the court hearing the case be convinced that a transaction in the nature of a sale or of any other mode of alienation has actually taken place, or that the consumption of liquor was about to take place. Whenever it is established that, in any premises for which a permit is required under this act, any person, other than the occupant of the said premises, has consumed or was about to consume any alcoholic liquor, it shall, by reason thereof, be presumed, against the holder of the permit, or the occupant of the said premises, that such alcoholic liquorhas been sold to the person who has consumed or was about to consume the same, or who took it away or was about to take it away. R.S. 1925, c. 37, s. 99.

100. In any prosecution instituted under this act against any person not the holder of a permit, such prosecution may be instituted either for the sale of alcoholic liquor without a permit, or for the special offence which he has committed and for which he would be liable to be prosecuted, even if he had been the holder of a permit. R.S. 1925, c. 37, s. 100; 24 Geo. V, c. 17, s. 23.

101. Whenever any person is prosecuted and found guilty of any offence under this act, the amount of the fine, and the length of the term of

imprisonment, to which such person would be, otherwise liable, shall be doubled, if, at the trial, it be proved that the alcoholic liquor sold by such person was of bad quality, was unfit for consumption, had been made fraudulently, was adulterated or misrepresented as to its character. R.S. 1925, c. 37, s. 101.

102. The prosecution of one person for several offences and for the recovery of several fines or penalties for which he is responsible may be included in one declaration, complaint, information or summons, provided the said declaration, complaint, information or summons contain a specific statement of the time and place of the commission of each offence; but the fees allowed the advocates shall be the same as if there had been only one offence. R.S. 1925, c. 37, s. 102; 3 Geo. VI, c. 22, s. 8.

103. Except before the Circuit Court or the Magistrate's Court, where the ordinary rules of procedure concerning amendments shall be applied, any declaration, complaint or summons laid before a court may, on petition of the party prosecuting, be amended, either as to substance or form, without costs.

If the amendment be allowed, the defendant may obtain further delay for the preparation of his defence and of his evidence. R.S. 1925, c. 37, s. 103.

104. In any prosecution instituted under this act, if a suspension of proceedings or an adjournment of the inquiry or the hearing be requested by the defence, such suspension or adjournment shall not be granted unless the costs of the day be previously paid by the defence, which costs shall include a fee of five dollars to the lawyer of the prosecution. R.S. 1925, c. 37, s. 104.

105. Any married man living and residing with his wife at the time of any contravention of this act committed by his said wife, whether she be a public trader or not, may be prosecuted and convicted in the

same manner as if he had committed the offence himself. R.S. 1925, c. 37, s. 105.

106. Except before the Circuit Court or the Magistrate's Court, where the rules of procedure between lessor and lessee shall be followed, the court may, in any proceeding taken under this act, summon to appear before it any person who is shown to be an important witness in the case. If such person refuse or neglect to appear in obedience to the said summons, and if, by reason of any affidavit fyled, or owing to the circumstances of the case, the court be of opinion that the witness is refusing or neglecting to appear in order to defeat the ends of justice, the court may issue a warrant for the arrest of such witness. The witness, if arrested, must be brought before the court; and, if he refuse to be sworn, or to answer any question relating to the case, he may be imprisoned in the common gaol and be therein imprisoned until he consents to be sworn and to give his evidence. R.S. 1925, c. 37, s. 106.

107. If any person summoned to appear to give evidence before a court in connection with any matter arising under this act, neglect or refuse to appear at the time and place set for the purpose without cause deemed reasonable by the court before whom such proceeding is taken, or if such person at the time of his appearance refuse to be sworn or to give evidence, such person shall be liable, for each refusal or omission, to a fine of not less than five dollars nor more than forty dollars, and, on failure to pay such fine, to imprisonment for not less than ten nor more than thirty days, the whole at the discretion of the court. Such penalty must be imposed even in the event of the case being decided without such person having appeared or having been heard as a witness. R.S. 1925, c. 37, s. 107.

108. The depositions of the witnesses shall be taken down in writing or shorthand. R.S. 1925, c. 37, s. 108.

109. 1. Subject to the provisions of subsections 2 and 3 of this section, any person other than the defendant, examined as a witness in any action or proceeding brought under this act, shall be obliged to answer all questions put to him and judged pertinent to the issue, even if such answers may reveal facts tending to make him liable to any penalty imposed under the provisions of this act. However such evidence cannot be adduced against him in any prosecution.

2. No witness examined in any proceeding under this act may be compelled to state that he is the informer in such proceeding. Nor shall any question be put to him with the object of showing whether the action was taken on a complaint by an informer, or of revealing the name of the informer.

3. No witness called in any proceeding under this act may be asked whether the deposit mentioned in section 81 has been required or made. R.S. 1925, c. 37, s. 109.

110. In any prosecution for the sale of alcoholic liquor it shall not be necessary to prove the exact variety, nor to mention the quantity of alcoholic liquor sold, except in the case where the variety or quantity are essential to establish the offence. As regards quantity, it shall be sufficient to allege the sale of a quantity the sale of which quantity is not allowed. R.S. 1925, c. 37, s. 110.

111. In order to obtain a conviction, it shall not be necessary that the precise time mentioned in the complaint as the time of the commission of the offence be exactly proved. It shall be sufficient to prove that the delay granted by the law for the prosecution of such offence has not expired. R.S. 1925, c. 37, s. 111.

112. The provisions of section 111 shall apply to all proceedings, including proceedings instituted for the sale of alcoholic liquor on days and in hours during which such sale is forbidden. R.S. 1925, c. 37, s. 112.

113. In any proceeding instituted against a person who is not the holder of a permit under the provisions of this act, proof of the correct name of the defendant shall not be necessary to justify a conviction; it shall suffice that the identity of the defendant be established by the sworn testimony of one of the officials, officers, inspectors or employees contemplated by paragraph 1 of the second paragraph of section 94, or of the collector of provincial revenue mentioned in paragraph 2 of the said second paragraph of section 94.

No error in the name of the defendant shall invalidate the conviction or the warrant of imprisonment. R.S. 1925, c. 37, s. 113; 24 Geo. V, c. 17, s. 24.

114. If, in any proceeding under this act, evidence be required respecting a permit, a certificate signed by the manager of the Commission, or by a person authorized thereto by it, or by the collector of provincial revenue contemplated by paragraph 2 of the second paragraph of section 94; shall be sufficient evidence of the existence of such permit and of the identity of the person to whom it was issued. Such certificate shall be sufficient evidence of the contents thereof and of the authority of the Commission. R.S. 1925, c. 37, s. 114; 24 Geo. V, c. 17, s. 25; 1 Ed. VIII (2), c. 14, ss. 1 and 5.

115. The production of a permit or of a copy thereof delivered by the Commission, shall be sufficient evidence of the payment of the duty payable thereon, unless the prosecuting party prove that the duty has not been paid, in which case the permit obtained without such payment shall be held to be null. R.S. 1925, c. 37, s. 115.

116. Whenever the court deems it necessary for the purposes of this act that any liquor suspected of being alcoholic be analysed, the costs of such analysis shall be included in the taxed costs of the case.

In any proceeding instituted under this act, the certificate relating to the analysis of any liquor, and signed by the analyst of the Commission, shall be accepted as proof, prima facie, of the facts set forth therein and of the authority of the person giving or issuing such certificate, without further evidence of his appointment or of his signature. The cost of such latter analysis shall also be included in the taxed costs of the case. R.S. 1925, c. 37, s. 116; 24 Geo. V, c. 17, s. 26; 1 Ed. VIII (2), c. 16, s. 1.

2. - JUDGMENTS

117. The judgment rendered in any proceeding instituted in virtue of this act, and tried before two justices of the peace, may be delivered by one of them in the absence of the other, provided that such judgment be drawn up in writing and that it be signed by the two justices of the peace. R.S. 1925, c. 37, s. 117.

118. Whenever any proceeding has been heard by two justices of the peace, and they do not agree as to the judgment to be rendered, either of such justices may sign a certificate to that effect, and transmit the same to the Attorney-General. The latter, on receipt thereof, may institute a new proceeding, in the name of the Commission, for the same offence. Prescription shall not run between the service of the first proceeding and the date at which the certificate is transmitted to the Attorney-General. R.S. 1925, c. 37, s. 118; 24 Geo. V, c. 17, s. 27.

119. If he does not pay the costs, the fine imposed or the sum he has been condemned to pay, by virtue of this act, the offender shall be imprisoned and held during a term of three months in the common gaol, unless some other term of imprisonment has been provided for in this act. R.S. 1925, c. 37, s. 119.

120. Unless otherwise provided for, the penalty for any subsequent offence, for any person already convicted of two offences under this act, shall be imprisonment for six months if the new offence be of a similar nature and kind as that of which he was previously convicted. R.S. 1925, c. 37, s. 120.

121. In the cases mentioned in sections 119 and 120 and in other cases where a similar provision of law exists, the judgment or sentence shall contain a provision condemning the defendant to the said imprisonment. R.S. 1925, c. 37, s. 121.

122. Whenever a judge, magistrate or justice of the peace who has heard a case is unable, on account of sickness, absence or any other reason, to himself deliver judgment, he may transmit his judgment in writing, duly certified by him, to the clerk of the court, of the magistrate, or of the justice or justices of the peace, to whom the matter appertains, with instructions to register the judgment, and, on request, to deliver or communicate it to the parties or their attorneys on the day fixed by him for the purpose.

The clerk on receipt of such written judgment, and the instructions which accompany it, must comply with such instructions. The judgment thus registered shall have the same effect as if it were delivered by the judge, the magistrate, or the justice of the peace at the trial. R.S. 1925, c. 37, s. 122.

123. Every conviction under this act shall, in the fifteen days which follow the date of the judgment, be brought, under penalty of a fine of twenty dollars, to the knowledge of the Attorney-General by the clerk of the court before whom the action was taken, or, failing a clerk, by the justice of the peace or magistrate before whom such conviction was had. R.S. 1925, c. 37, s. 123; 24 Geo. V, c. 17, s. 28.

124. The judgment rendered in any proceeding

instituted under this act, shall apply only to the offences alleged in the complaint, and to no other offence which might have been committed before the date of such judgment. R.S. 1925, c. 37, s. 124.

10 3.- COSTS

125. The Lieutenant-Governor in Council may make, amend, replace or repeal the tariff of fees which may be granted to any clerk, bailiff, peace officer, constable, advocate, witness, inspector or officer charged with the enforcement of this act, in any suit or action instituted under this act. R.S. 1925, c. 37, s. 125; 24 Geo. V, c. 17, s. 29.

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126. In any action or proceeding instituted under this act, the Commission may not be condemned to pay costs. Nevertheless, upon the recommendation of the court, the Commission, if judgment have been rendered against it, may, in its discretion, pay, to the person in whose favour judgment has been given, such costs or such indemnity as it may deem just to pay him. R.S. 1925, c. 37, s. 126.

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127. In every proceeding under this act, or under the Quebec Temperance Act (Chap. 257) if the collector of provincial revenue contemplated by paragraph 2 of the second paragraph of section 94, be present at the sittings of the court, as a witness, and in order to attend the sittings of such court travel a distance of over three miles from his domicile, the magistrate, justice or justices of the peace seized with the trial of the
40 case may then tax against the defendant, if he be found guilty, as costs in the case, the following amounts, to wit, -

1. If he travel by railway or stage, the sum that such collector has had to pay;

2. If he travel in a hired vehicle, the sum

actually charged for such horse and vehicle, and the tolls;

3. If he travel in his own conveyance, twenty cents a mile for a trip one way only;

4. To cover all other expenses, an additional sum of two dollars per day.

In the event of the trial being adjourned upon application of the defendant, the latter may be condemned to the payment of like additional costs when such collector is actually present at the sitting of the court.

Travelling and other expenses shall be attested under oath by such collector. R.S. 1925, c. 37, s. 127; 24 Geo. V, c. 17, s. 30; 2 Geo VI, c. 76, s. 31.

128. In every proceeding instituted under this act or under the Quebec Temperance Act (Chap. 257) the cost of evidence taken in writing, stenography or otherwise shall be included in the taxed costs of the action. R.S. 1925, c. 37, s. 128.

4. - EXECUTION OF JUDGMENTS

129. In default of the immediate payment of the fine and costs, the prosecuting party may, at the time of the rendering of the judgment or of the conviction, or at any time during the delay, if any be granted to the defendant, make option for the imprisonment of the defendant during the time mentioned in the judgment or the conviction, or for the immediate issue of a seizure against his property.

In the latter case the amount of the fine and costs shall be levied by a warrant of seizure and sale of the furniture and effects of the defendant. Failing any furniture and effects, or in case the amount realized by the sale be insufficient to cover the sums due, the defendant shall be

imprisoned. However, in either case he may free himself from such imprisonment by paying in full the fine, the costs incurred up to the conviction, and the subsequent costs. R.S. 1925, c. 37, s. 129.

130. Save in the case of payment in full as above mentioned, no defendant imprisoned under any provision of this act shall be set free by reason of any defect of form in the warrant of imprisonment, nor without a notice of the application being duly served upon the Attorney-General if the suit or prosecution has been taken in the name of the Commission or upon the municipal corporation which instituted the suit or prosecution. No partial payment shall affect or modify the terms of the judgment pronounced against him in so far as the imprisonment is concerned. R.S. 1925, c. 37, s. 130; 24 Geo. V, c. 17, s. 31.

131. Whosoever, knowing or having reason to believe that a warrant of imprisonment has been issued against any person under this act, hinders the arrest of the defendant, or procures the means of or facilitates, by advice, action or in any other manner, the avoiding of arrest by the defendant, shall be guilty of an offence under this act, and liable to a fine of forty dollars. R.S. 1925, c. 37, s. 131.

132. The execution of a judgment upon any prosecution or action instituted under this act may take place forthwith. If the judgment condemn the offender to imprisonment only, it must be executed immediately. R.S. 1925, c. 37, s. 132.

133. When coercive imprisonment lies to enforce a judgment of the Circuit Court or the Magistrate's Court, it shall be granted by one of the judges of the Superior Court or of the Circuit Court or by the District Magistrate, or by the clerk of the Circuit Court or the Magistrate's Court, on summary petition, alleging that the defendant has not paid in full the fine or the sum claimed and the costs of the prosecution.

It shall not be necessary to give notice to the defendant of such petition. R.S. 1925, c. 37, s. 133.

134. Every term of imprisonment under this act shall run from the date of incarceration after sentence. R.S. 1925, c. 37, s. 134; 25-26 Geo. V, c. 20, s. 2.

135. If the conviction be for having sold or allowed the sale of alcoholic liquor on board a boat or a railway car, without a permit, the fine and costs may likewise be levied by the seizure and sale of the fittings and furniture of the boat or car on board which such liquor was sold. R.S. 1925, c. 37, s. 135.

136. In the case of a first offence committed by the holder of a permit under this act, the court may, in its discretion, if the fine and costs be not paid forthwith, fix a later date for such payment. It may also order that the defendant be arrested, unless he binds himself to appear on the day set, by giving security, to the satisfaction of the court, for the payment of a sum equal to the amount of the fine and costs. The court is hereby authorized to receive the security, in the form of a bond or otherwise, in its discretion. If, on the day so fixed, such fine and costs be not paid, the complainant may exercise his right of option, as provided in section 129, and the defendant shall be dealt with according to the terms of such section. R.S. 1925, c. 37, s. 136.

137. When a married woman, living habitually with her husband, has been convicted in any proceeding instituted under this act, the complainant may cause the seizure of the goods of such married woman, or of her husband. In case the goods of one should be found insufficient, he may exercise his recourse against the goods of the other. R.S. 1925, c. 37, s. 137.

138. Upon conviction of a member of any partnership under this act, the Attorney-General if the suit

or prosecution has been instituted in the name of the Commission, or the municipal corporation which instituted the suit or prosecution, may, in case the goods and effects of the defendant are found insufficient, cause the seizure and sale of the goods and effects of the partnership which are found in the place where the offence was committed. R.S. 1925, c. 37, s. 138; 24 Geo. V, c. 17, s. 32.

DIVISION VIII

APPEALS AND OTHER REMEDIES

139. 1. No writ of quo warranto may be granted with respect to the office held or any power exercised by the Commission or by the manager thereof.

2. No writ of mandamus may be issued to order the Commission or the manager thereof to discharge any duty or to do any act.

3. No writ of injunction may be granted to prevent, either temporarily or permanently, the Commission or the manager thereof from doing anything or carrying out any operation, or continuing to do anything or to carry out any operation.

4. No writ of certiorari may be granted to evoke any action or proceeding instituted under this act.

5. No writ of prohibition may be issued with respect to anything done or proposed to be done under this act.

6. There shall be no appeal from any judgment rendered in any prosecution or action instituted under this act, except;

a. In any case wherein the court which rendered the judgment has exceeded its jurisdiction;

b. In any case wherein the offence in respect

of which the prosecution or the action was instituted, renders the offender liable to imprisonment only;

c. In any case wherein alcoholic liquor has been seized under this act, and where, under the provisions thereof, the court must order confiscation.

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In each such case the appeal must be taken, by petition, before one of the judges of the Court of King's Bench at the place where appeals in the district are brought. It must be taken within eight days from the date of the judgment and be tried before a division of five judges of the Court of King's Bench at its next term, with priority over all other cases, when it relates to a judgment entailing imprisonment.

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The appeal may be taken by either party to the prosecution or action. If it be taken by the defendant, he must at the same time make a deposit of three hundred dollars in the hands of the clerk of appeals. If the appeal be dismissed such deposit shall be confiscated and forfeited to the Crown, and the defendant shall be liable, in addition, to the penalties and costs to which he has been condemned.

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When the defendant is represented by attorney in the court of first instance, the service of the notice of appeal upon such attorney shall be sufficient notification, and when the defendant is not represented by attorney in the court of first instance notice of appeal shall be given by serving a copy of the petition for appeal upon the defendant personally or at his last known address.

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Such appeal shall be final.

7. The original record in the case, as well as the depositions of the witnesses taken in writing in accordance with section 108 of this act, shall be submitted to the Court of King's Bench, which must decide the question on the merits, without taking into account any defect, either as to form or matter,

provided that it appears by the judgment that conviction has been had for an offence against any provision of this act before the Circuit Court, the Magistrate's Court, two justices of the peace, a police magistrate, district magistrate, or other officer having the powers of two justices of the peace, acting within their jurisdiction, and that it appears moreover by such judgment that the penalty or punishment applicable to that offence has been applied. If it appears that the case has been decided on the merits and that the conviction is valid, under this act, such conviction shall not be set aside.

The original record of the case shall be sent back to the court below, after the rendering of the judgment in appeal. R.S. 1925, c. 37, s. 139; 18 Geo. V, c. 93, s. 7; 19 Geo. V, c. 22, s. 4; 1 Ed. VIII (2), c. 14, ss. 1 and 5; 1 Geo. VI, c. 23, s. 3.

DIVISION IX

FINES AND COSTS

140. Whenever any proceeding is taken in the name of the Commission, the fine shall belong to the Crown. R.S. 1925, c. 37, s. 140; 24 Geo. V, c. 17, s. 33.

141. Whenever, in accordance with the provisions of the second paragraph of section 82, the prosecution is taken by a municipal corporation, the fine recovered shall be employed in the following manner:

1. If the fine and costs have been recovered in full, one half shall belong to the Crown and the other half to the municipality;

2. If the fine and costs have not been recovered in full, the amount recovered shall first be applied to the payment of the costs, and the balance divided in the manner and in the proportion

indicated in sub-paragraph 1 of this section. R.S. 1925, c. 37, s. 141; 24 Geo. V, c. 17, s. 34.

142. The provisions of the Fines Payment Act (Chap. 30) shall apply to the fines and costs contemplated by sections 140 and 141. R.S. 1925, c. 37, s. 142; 24 Geo. V, c. 17, s. 35.

143. No remission shall be granted of any fine imposed under this act, nor any suspension, before or after judgment, of the proceedings instituted under it, saving any delay the court may see fit to grant in the interests of the parties.

The power to remit certain fines, conferred upon the Lieutenant-Governor in Council by section 44 of the Provincial Revenue Act (Chap. 73), shall not apply to any fine imposed under this act. R.S. 1925, c. 37, s. 143.

DIVISION X

PRESCRIPTION

144. Unless otherwise provided, every proceeding taken under this act shall begun: within two months of the commission of the offence if it took place in either of the cities of Quebec or Montreal; within twelve months, if it occurred in the revenue district of Saguenay; and within four months of the commission of the offence if it occurred in any other part of the Province. The issue of a warrant shall constitute a beginning of proceedings.

Nevertheless, the above limitation of time shall not apply to the confiscation of the alcoholic liquor seized before judgment; the judgment of the court confiscating such liquor may be applied for and rendered at any time. R.S. 1925, c. 37, s. 144; 19 Geo. V, c. 22, s. 5.

Appendix to Appellant's Factum

DIVISION XI

ADVERTISING OF ALCOHOLIC LIQUOR

145. It is forbidden to represent by means of any advertisement that an alcoholic liquor is beneficial to health or that it possesses nutritive or curative value. R.S. 1925, c. 37, s. 144a; 5 Geo. VI, c. 24, s. 26.

146. It is forbidden to advertise an alcoholic liquor by means of signs or posters, unless they are placed within a building so as not to be visible from the outside. R.S. 1925, c. 37, s. 144b; 5 Geo. VI, c. 24, s. 26. (Footnote: Under section 31 of the Act 5 George VI, chapter 24, this prohibition does not apply before May 1st, 1942, to signs or posters put up before April 30, 1941, nor before May 1st, 1944, to illuminated signs contemplated in section 2 of the act 21 George V, chapter 31 (repealed) erected outside of cities and towns before April 29th, 1941.)

147. The court which pronounces a condemnation upon a prosecution instituted for an infraction of the preceding section shall order that the sign or poster which was the subject of the condemnation be removed or destroyed within a delay of eight days from the date of the conviction, at the offender's cost. R.S. 1925, c. 37, s. 144c; 5 Geo. VI, c. 24, s. 26.

DIVISION XII

INVESTIGATION AND PROSECUTION OF OFFENCES

148. The Attorney-General shall be charged with:

1. Assuring the observance of this act and of the Alcoholic Liquor Possession and Transportation Act (Chap. 256), and investigating, preventing and suppressing the infringements of such acts, in every

way authorized thereby;

2. Conducting the suits or prosecutions for infringements of this act or of the said Alcoholic Liquor Possession and Transportation Act. R.S. 1925, c. 37, s. 78a; 24 Geo. V, c. 17, s. 17.

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DIVISION XIII

APPLE CIDER

149. Notwithstanding any provision to the contrary of the present act or of any other general law or special act, the Lieutenant-Governor in Council, within the limits of the powers conferred upon
20 the Legislature by the Constitution of Canada, may make regulations for the manufacture and sale of cider in this Province, fix the duties on this manufacture and sale and enact penalties for infringements of the regulations adopted under the authority of this division. 2 Geo. VI, c. 56, s. 1.

DIVISION XIV

30 ## GENERAL PROVISIONS

150. Any special act to the contrary notwithstanding, no municipality may, by by-law, resolution or otherwise, levy, in the same year, from any holder of a permit under this act, any license, tax, impost, or duty of more than two hundred dollars in cities and towns, or fifty dollars in other municipalities, for the purpose for which the said person holds such permit. Any municipality which levies or
40 receives directly or indirectly any amount greater than as allowed by this section for the above purposes, may at any time be compelled to reimburse the overcharge to the holder of such permit or to his legal representatives. R.S. 1925, c. 37, s. 145.

151. 1. Since the 21st of March, 1922, the date of the coming into force of the act 12 George V, chapter 31, every vendor authorized to sell intoxicating

liquors under the Canada Temperance Act, in the year preceding its repeal in any municipality where it was in force, must, within the thirty days following such repeal, make known to the Commission all the alcoholic liquor belonging to him or in his possession or control, by whatsoever title, and place it under the control and in the possession of the Commission in the manner indicated by it.

2. Upon the failure of any such authorized vendor to comply with the above provision, the Commission may, by virtue of a written order, signed by three of its members, direct the seizure, by any person entrusted with such order, and the confiscation, of such alcoholic liquor not entered in such statement nor put under the control or in the possession of the Commission, with all the vessels containing the same. No proceedings at law shall be required for such confiscation.

3. The Commission shall not be responsible for any loss of, or damage to, any alcoholic liquor of which it has taken possession under subsection 1 of this section. It may, in its discretion, sell or otherwise dispose of any of such alcoholic liquor for such price and upon such terms and conditions as it may deem advisable, and may compensate the owner therefor, less any such costs and charges as it may decide upon. It may also, in its discretion, destroy any such alcoholic liquor or any part thereof, or recover the alcohol therefrom. R.S. 1925, c. 37, s. 146.

152. In every special act passed before the 25th of February, 1921, the words "Quebec License Law", when they refer to the first division of the said Quebec License Law, enacted by articles 903 to 1315 of the Revised Statutes, 1909, and by the acts amending the same, shall mean the "Alcoholic Liquor Act", and the words "intoxicating liquor" shall mean "alcoholic liquor". R.S. 1925, c.37, s. 147.

153. Every provision in any general or special act which is incompatible with this act is declared not to apply thereto. R.S. 1925, c. 37, s. 148.

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MUNICIPAL COMMISSION ACT, R.S.Q. 1941, Ch. 207, Section 18.

" 18. Neither the Commission, nor any member thereof, nor the secretary of the Commission, nor any of its officers or employees, shall be personally liable for anything done or omitted by it or by him in the exercise of its or his functions. R.S. 1925, c. 111A, s. 18; 22 Geo. V, c. 56, s. 1. "

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(Subsequent amendments, if any, are irrelevant to this cause)

Appendix to Appellant's Factum

EXECUTIVE POWER ACT, R.S.Q. 1941, Ch. 7, Sections 5, 6 and 8, as amended by 1946 Ch. 11, section 16.

(Subsequent amendments, if any, are irrelevant to this cause)

" 5. The Lieutenant-Governor may appoint, under the Great Seal, from among the members of the Executive Council, the following officials, who shall remain in office during pleasure:

1. A Prime Minister who shall, ex-officio, be president of the Council;

2. A minister charged with the administration of justice, called the Attorney-General;

3. A Minister with the attributions mentioned in the Provincial Secreta 's Department Act (Chap. 57), called t Provincial Secretary;

4. A Minister to preside over the Treasury Department, called the Provincial Treasurer;

5. A Minister of Lands and Forests;
6. A Minister of Colonizatinn;
7. A Minister of Agriculture;
8. A Minister of Roads;
9. A Minister of Public Works;
10. A Minister of Labour;
11. A Minister of Health and Social Welfare;
12. A Minister of Mines and Maritime Fisheries;
13. A Mini ter of Municipal Affairs, Trade and Commerce;
14. A Minister of Fish and Game. R.S. 1925, c. 6, s. 5; 20 Geo. V, c. 19, s. 1;

" 21 Geo. V, c. 19, s. 2; 25-26 Geo. V, c.11, s.2; 25-26 Geo. V, c. 45, s. 2; 1 Ed. VIII (2), c. 20, s. 2; 5 Geo. VI, c. 22, s. 2.

6. The member of the Executive Council holding the recognized position of Prime Minister shall be ex officio President of the Executive Council.

...

8. 1. The powers, duties and functions of the members of the Executive Council, as well as those of the Prime Minister, may, by order-in-council, be, wholly or in part, temporarily conferred upon any member of the Council appointed in virtue of section 4; provided such member of the Executive Council be or become a member of either House.

2. But every such member appointed under this section shall exercise his functions gratuitously. R.S. 1925, c.6, s.8. "

Appendix to Appellant's Factum

THE PUBLIC DEPARTMENT ACT, R.S.Q. 1941, ch. 43

(Subsequent amendments, if any, are irrelevant to this cause)

" 1. This act may be cited as the Public Department Act. R.S. 1925, c. 13, s. 1.

2. The following departments are constituted for the administration of the affairs of the Province:

1. The Department of the Executive Council, presided over by the Prime Minister;

2. The Department of the Attorney-General, presided over by him;

3. The Department of the Provincial Secretary, presided over by him;

4. The Treasury Department, presided over by the Provincial Treasurer;

5. The Department of Lands and Forests, presided over by the Minister of Lands and Forests;

6. The Department of Colonization, presided over by the Minister of Colonization;

7. The Department of Agriculture, presided over by the Minister of Agriculture;

8. The Roads Department, presided over by the Minister of Roads;

9. The Department of Public Works, presided over by the Minister of Public Works;

" 10. The Department of Labour, presided over by the Minister of Labour;

11. The Department of Health and Social Welfare, presided over by the Minister of Health and Social Welfare;

12. The Department of Mines and Maritime Fisheries, presided over by the Minister of Mines and Maritime Fisheries;

13. The Department of Municipal Affairs, Trade and Commerce, presided over by the Minister of Municipal Affairs, Trade and Commerce;

14. The Department of Fish and Game, presided over by the Minister of Fish and Game;

15. The Department of Education, which is under the Provincial Secretary, but the administrative direction of which is confined to the Superintendent of Education. R.S. 1925, c. 13, s. 2; 20 Geo. V, c. 19, s. 3; 21 Geo. V, c. 19, s. 3; 25-26 Geo. V, c. 11, s. 3; 25-26 Geo. V, c. 45, s. 4; 1 Ed. VIII (2), c. 20, s. 5; 1 Ed. VIII (2), c. 29, s. 3; 5 Geo. VI, c. 22, s. 6. "

Appendix to Appellant's Factum

THE ATTORNEY GENERAL'S DEPARTMENT ACT,
R.S.Q. 1941, Ch. 46.

(Subsequent amendments, if any, are irrelevant to this cause)

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1. This act may be cited as the "Attorney-General's Department Act." R.S. 1925, c. 16, s. 1.

2. The law officer of the Crown is the Attorney-General. R.S. 1925, c. 16, s. 2.

3. The Attorney-General is the official legal adviser of the Lieutenant-Governor, and the
20 legal member of the Executive Council of the Province of Quebec. R.S. 1925, c. 16, s. 3.

4. The duties of the Attorney-General are the following:

1. To see that the administration of public affairs is in accordance with the law;

2. To exercise a general superintendence
30 over all matters connected with the administration of justice in the Province. R.S. 1925, c. 16, s. 4.

5. The functions and powers of the Attorney-General are the following:

1. He has the functions and powers which belong to the office of Attorney-General of England, respectively, by law or usage, insofar as the same are applicable to this Province, and also the func-
40 tions and powers, which, up to the Union, belonged to such offices in the late Province of Canada, and which, under the provisions of the British North America Act, 1867, are within the powers of the Government of this Province;

2. He advises the heads of the several departments of the Government of the Province upon

all matters of law concerning such departments, or arising in the administration thereof;

3. He is charged with the settlement and approval of all instrument issued under the Great Seal;

4. Notwithstanding the provisions to the contrary of any other general law or special act, he alone has the conduct, under the designation of "The Attorney-General of the Province of Quebec, representing His Majesty in the rights of the Province", of all litigation for against the Crown or any public department;

5. He has the control and management of the judicial organization and of registry offices, as well as the control and direction of the inspection of the offices of the courts and of registry offices and of prisons;

6. He also has the superintendence over judicial officers and registers, who are all under his department;

7. He is charged with superintending the administration or the execution, as the case may be, of the laws respecting police. R.S. 1925, c. 16, s. 5; 3 Geo. VI, c. 15, s. 1.

6. The Lieutenant-Governor in Council shall appoint by commission a special officer called the Deputy Attorney-General whose salary he shall fix at a sum not exceeding nine thousand dollars per annum. R.S. 1925, c. 16, s. 6; 2 Geo. VI, c. 25, s. 1.

7. The Deputy Attorney-General shall ex officio have the power to represent the Attorney-General before the courts.

He shall receive no additional remuneration from the Crown for his services in the exercise of such mandate.

Notwithstanding the provisions of article

553 of the Code of Civil Procedure, the costs taxable against the opposite party in cases wherein the Deputy Attorney-General represented the Attorney-General shall belong to the Crown and, when recovered, shall be paid into the consolidated revenue fund. R.S. 1925, c. 16, s. 7; 2 Geo. VI, c. 25, s. 2.

8. The professional services of the Deputy Attorney-General shall be reserved exclusively for the Crown and he must devote all his time to the performance of the duties of his office. R.S. 1925, c. 16, s. 8; 2 Geo. VI, c. 25, s. 2.

Appendix to Appellant's Factum

THE MAGISTRATES' PRIVILEGE ACT, R.S.Q. 1941, Ch.18

(Subsequent amendments, if any, are irrelevant to this cause)

1. This act may be cited as the "Magistrate's Privilege Act. R.S. 1925, c. 146, s. 1.

2. Any justice of the peace, officer or other person fulfilling any public duty, and sued in damages by reason of any act committed by him in the execution thereof, may, at any time within one month after the service of the notice mentioned in article 88 of the Code of Civil Procedure, offer to pay a compensation to the party complaining or his advocate, by actual tender thereof; and, if the same be not accepted, may plead such offer in bar to the action brought against him, with any other plea, and deposit the amount offered.

If the court or jury find the amount tendered to have been sufficient, they shall find for the defendant.

If the court or jury find the amount insufficient, or that no offer of compensation was made, and also find the other issues against the defendant, or if they find against the defendant, where no offer of compensation is made or pleaded, then they shall give a judgment or verdict for the plaintiff with such damages as they think proper, and the plaintiff shall have his costs of suit. R.S. 1925, c. 146, s. 2.

3. The defendant may plead thereto the general issue only, or that he is not guilty, and prove all special matters of justification or excuse, or that he received no notice of action thereunder, as fully and amply as if the same were specially pleaded. R.S. 1925, c. 146, s. 3.

4. If, in any such action, judgment is rendered in favor of the defendant, or the plaintiff

the judge or court may order the plaintiff to produce an additional deposit whereof he shall fix the amount. The suit is then suspended until the additional deposit ordered by the judge or court is effected. R.S. 1925, c. 146, s. 8; 18 Geo. V, c. 58, s. 1.

9. No costs shall be adjudicated against any justice of the peace in any suit on a writ of certiorari or prohibition unless, on proof of the bad faith of the justice of the peace, the court otherwise orders. R.S. 1925, c. 146, s. 9; 18 Geo. V, c. 58, s. 1.

10. Sections 8 and 9 of this act shall not apply to recorders nor to persons having the powers of two justices of the peace. 18 Geo. V, c. 58, s.2.