

WSP
pass

14584.3

REPORT on the evidence taken pursuant to
Commission dated May 30th, 1928 issued to
Gordon C. Lindsay.

The Inquiry into and concerning the allegations
set forth in the ORDER IN COUNCIL P.C. 908 was held
in the Court House in Vancouver B.C. on the 10th, 11th,
12th, 13th, 14th, 16th and 17th days of July 1928.

Mr. A.B. Macdonald, K.C. of Vancouver appeared
on behalf of the Dominion Government. B.C. Distillery
Co. Ltd. was represented by Col. H.S. Tobin; Jos. Kennedy
Co. Ltd. by W.M. Griffin, Esq.; W.H. Scovil by E.K.
Debeck, Esq.; Geo. Reifel and H.F. Reifel by W.F. Brougham,
Esq. and Samuel Levy by E.R. Sugarman, Esq. Excise
Officer Deeley appeared in person on the opening day
but was thereafter represented by counsel in the person
of Mr. Grimmet and by Mr. Killam and was himself present
throughout the Inquiry.

The proceedings in the Inquiry may be summarized
as follows; on Tuesday the 10th of July the Inquiry
was opened and counsel for the several parties except

Page 2.

Officer Deeley took objections which are quoted in full in the evidence. They included objection that the charge made was not sufficiently definite, that they were entitled under the Statute to further particulars of the charges made and to written notice of such particulars, and that under Part I of the Act the right of Inquiry was limited to a tribunal of more than one person. Adjournment was taken until the following day without evidence being called.

On the following day Mr, George A. Allen, Collector of National Revenue ^{Vancouver} was called and gave evidence of a general nature dealing with the procedure and the regulations applicable to the removal and release of alcohol from bond.

On Thursday, July 12th, Mr. James Ball, formerly President of The Sunset Vinegar Company, the Informant, gave evidence touching the matters which were to be inquired into (p.43 to p.88). Following Mr. Ball were called the witnesses who gave evidence corroborating the statements made by him, Joseph Matthews, former Secretary of the Vinegar Co. (p.130); William Simmons (p.141 and p.198); W.S. McCarter (p.206) and James E. Hughes (p.228). There was also taken the evidence of Mr. Allen and of Officer Thorburn as to the different

grades of alcohol (p.147 and p. 153); the evidence relating to the purchase of Acetic Acid by the Vinegar Company (D.M. McKay p.171 and D. Hockin p.222); the evidence of the carters and the Storage Company Officials (Elmer Johnston p.178, C.S. Ellis p.186, H.E. Workman p.192) and the evidence of F.W. Chilver, Excise Officer at the Distillery (p.236). The evidence of Major Nash of the firm of Clarkson, Gordon, Dilworth, Guilfoyle and Nash and of Mr. G.R.F. Troop, his associate, were then taken (p. 260,279 and 320). Following this the officers of the B.C. Distillery Co. (G.W. Twitney p.312, Chas. Wills p.349, Geo. E. Reifel p.380 and Robert Sutherland p.516), W.H. Scovil (p.522), S. Levy (p.553), Frederick Deeley (p.564) and H.F. Reifel of the Jos. Kennedy Co. Ltd. (p.591) were called and examined. During the hearing thirty-eight (38) exhibits were filed and later the auditors filed, with the Commissioner, their report on the result of their examination of the bank accounts of Mr. Deeley and of Mr. Scovil. The evidence and the several exhibits accompany this report.

The evidence of James Ball was; that he was Director and President of Sunset Vinegar Company from June or July 1923 until the name of the Company was

changed to B.C. Vinegar Company in 1925 (p.43 to 45); that he was then President of the latter company until late in 1927 when he severed his connections with the Company; that the stock in Sunset Vinegar Company was held in the proportion of 25% each by Ball, Walter Scovil, Samuel Levy and one Thom (p.122); that Scovill sold out several months after they started and later Thom also sold out (p.124); that Scovil was then away for a few months but returned as vinegar maker (p.125); that Ball took practically no active part in the factory (p.45 and p.110); that he bought alcohol for the Company from B.C. Distillery Co. Ltd., six barrels only being purchased from any other source (p.46); that the alcohol purchased at .48 $\frac{1}{2}$ and at .40 $\frac{1}{2}$ per proof gallon was used in the manufacture of Vinegar (p.48); that five barrels, and at the most seven barrels of the better grade alcohol invoiced at .63 $\frac{1}{2}$ per proof gallon were used for the manufacture of vinegar (p.49 and p.57) and that it was purchased because it could be resold at a higher price than the Vinegar Company was paying for it; that in addition to the .63 $\frac{1}{2}$ per proof gallon shown in the invoices, the Distillery was paid "Side Money" in respect of the purchase of better grade alcohol, bringing the total up to \$2.50 per standard gallon (p.51); that the first arrangement

of this kind may have been made by Levy or by himself (p.120) and that it was made some time after 1923 and before 1925 (p.121); that the "Side Money" was paid to George Reifel, Manager of the B.C. Distillery Co. in cash (p. 52 and p. 103) there being one instance in which a cheque was given for \$35.00 which is hereinafter referred to; that the "Side Money" was as a rule paid at the time when the order was given (p.53 and p. 104); that Grain Spirits such as those purchased in this way could not be bought for less than \$2.00 per gallon (p.104); that he personally saw George Reifel about these shipments and paid him the money "Not once, but a dozen times" (p.104); that the rent of the Vinegar Plant premises was paid by the Vinegar Company to the Distillery (p.112); that in the latter period some of the better grade alcohol was invoiced at the lower price of .48¢ and .40¢ (p.57); that the release from bond of the alcohol which was shown on the invoices as having been purchased at the higher price of .63¢ per gallon was obtained through an arrangement which he (Ball) had with Scovil, under which Ball paid Scovil from \$40.00 to \$75.00 per Barrel released, which amount he understood Scovil divided with Excise Officer Deeley; that Deeley would work only with Scovil and not with Ball and that he (Ball) had never had any dealings with Deeley directly nor had he

Page 6.

paid him any money (p.63); that he identified two cheques for \$80.00 each as being cheques given by him to Scovil for releases of Alcohol (Exhibit 7); that during the early part of 1926 he saw Scovill and Deeley on one or two occasions roll barrels from the Bond to the Shipping room without the contents going into the Mix Tub (p.58, p.115 and p.126); that the Distillery sold to Ball and that Jos. Kennedy Co. bought the alcohol from Ball but that he was at liberty to sell some alcohol elsewhere, which he did and got a better price (p.107); that Ball's dealings with the Kennedy Company were with Harry Reifel who handed Ball the cheques in payment for the alcohol at from \$7.00 to \$7.50 per gallon (p.105); that alcohol was carted from the Vinegar Factory by The Johnston Storage Company (p.63) and that some was delivered by them direct to Jos. Kennedy Limited (p.64); that ^{six} of the cheques paid by Jos. Kennedy Limited to Ball, totalling \$10,753.00, five at least were for alcohol sold by him to the Company (Exhibits 10 to 16); that some of the alcohol so released was sold to others than the Kennedy Co. at from \$7.00 to \$10.00 per standard gallon (p.74 and p.109); that the vinegar supply was kept up during the period of these improper releases by Acetic Acid (Exhibit 17); that some of the alcohol removed to the Vinegar Factory was first

syphoned into tin cans which were placed in boxes, this being done in the Shipping Room by Scovil (p.83); that some of the alcohol removed by him from the Vinegar plant to the Johnston Storage Company premises was there mixed by Ball with Malt and then bottled and cased (p.85); that he was assisted in the blending by one Hughes (p.89) that during the same period Samuel Levy was engaged in selling liquor on the prairies for Jos. Kennedy Co. Ltd. on a commission basis and that one of the cheques from the Kennedy Co. to Ball represented commissions earned by Levy and divided between Levy and Ball.

Dealing with Ball's evidence the Inquiry brought out the following evidence relative to these statements namely,

1. As to the relative connection of Ball, Scovill and Levy with the Vinegar Companies; Scovill (p.522) says that he was President of the Sunset Vinegar Company for a few months in 1923, was then from time to time employed by the ~~Sunset and~~ B.C. Vinegar Co. during 1924 and 1925 until May 31st, 1926; that during the time he was associated with these Companies he was at the factory from 7.30 in the morning until 2.30 or 3 in the afternoon and that at present he is associated with the Premier Vinegar Co. on the same premises. There is also the evidence of Levy (p.555) that Ball, Levy, Scovil

Page 8.

and Thom formed the Sunset Vinegar Company and succeeded the Dyson Company.

2. As to purchases of alcohol from the B.O. Distillery Co. Limited, it is clear on the evidence (Exhibit 33) that commencing in June 1923 the Vinegar Companies purchased alcohol which was shown on the books of the Distillery and of the Vinegar Companies and invoices from the Distillery as having been sold at the following prices.

	1923	1924	1925	1926	1927
.63¢ per proof gallon					
.48¢ " " "					See report attached hereto.
.40¢ " " "					

3. Dealing next with Ball's statement that which alcohol was purchased by the Vinegar Company from the B.C. Distillery Company was diverted without being put into the mix, there is evidence of the following,

(a) Difference between production and sales. A statement prepared by Major Nash and filed as Exhibit 32 shows a recorded production of 269043.82 proof gallons, against recorded sales of only 128042.92 proof gallons for the period from the 1st of June 1923 to the 31st of August

1927. It is to be noted that there was a great shortage in 1923, an even greater shortage in 1924 and 1925 and a slight shortage in 1926; that these shortages would be substantially increased if the inventory of goods on hand at the commencement had been included, if the cash sales later referred to were included and if allowances were made for vinegar produced by the use of Acetic Acid. The quantity of alcohol purchased and invoiced by the Distillery at .63 per proof gallon is shown by Exhibit 33 to have been 29895.46 proof gallons during the same period, all of which Ball claims was diverted, with the exception of about seven barrels. Scovil states that during the time he was at the factory there was no check made of the actual production and that the production figures inserted in the Excise Daily Record (Exhibit 2.) were computed on the basis of five gallons of vinegar to one of alcohol (p.528). No real explanation was given by Scovil or by Deeley nor was any real explanation attempted of the shortage.

(b) The use of Acetic Acid. The evidence shows that between the 15th of March 1924 and the 8th of September 1926 there were delivered to the Vinegar Factory 145 forty gallon barrels and two containers of Acetic Acid (Exhibit 29 and Exhibit 30). That the Acetic Acid delivered by the National Drug and

Chemical Company was invoiced to the Vinegar Company as Malt Flavoring. Ball says this Acetic Acid was used to bolster up the vinegar (p.75). Scovil admits that Acetic Acid was used from 1923 to 1926 to bring the vinegar up to strength and that he saw it at the factory (p.529 to 532 and 540). Excise Officer Deeley denies ever having seen any Acetic Acid there and denies any knowledge of it having been there (p.569).

(c) The purchase by the Vinegar Company from the Distillery of high grade alcohol invoiced .63 per proof gallon but actually purchased and paid for at \$2.50 per standard gallon, the so called "Side Money" being concealed in the books of both the Vinegar Company and the Distillery. This will be dealt with later in this report but the fact of it having been done on some occasions was admitted by the manager of the Distillery who also stated that the alcohol⁸⁰ sold to the Vinegar Company was selected by Ball as being a better grade and as having been determined by the odor or absence of odor (G.C. Reifel p.402 and 403). Coupled with this is the evidence of the Port Officers that it is not customary to use high grade spirits for the manufacture of vinegar and the evidence that the price at which non-potable spirits were sold by the same Distillery to other bonded factories where the grade of the spirits was shown on the invoice was as follows,

The Regina Vinegar Co. - Cologne Spirits (Ethyl #2)
.48 per proof gallon.

Chas. Bentz & Sons. (Vinegar Factory) Vinegar grade
alcohol .48 per proof gallon.

W.J. Rowley Co. Ltd. (Chemical Still) #2 Alcohol
.53 per proof gallon.

G.F. & J. Galt (Extracts) #1 Alcohol, .60 per proof
gallon.

J.A. Tepoorten Limited (Druggists) Pure Grain Spirits
\$2.50 per standard gallon.

(d) The purchase of tin containers or cans by the Sunset Vinegar Company (Exhibit 21 shows the purchase of 76 five gallon cans between February 28th 1924 and October 7th 1924). Scovill (p.536) admits that on one occasion he went to the American Can Company with Mr. Ball and picked up some twenty cans but denies knowing what they were used for.

(e) Removals of Barrels from the Vinegar Factory to the Johnston Storage Company. Matthews (p.135) says that he saw barrels which he believed to contain alcohol loaded onto trucks at the factory. Scovil (p.533 to 535) says he saw on three or four occasions barrels taken from the factory, the contents of which he did not know but which Ball told him were vinegar. The Johnston Storage Company hauled full wooden forty gallon barrels with white painted ends from the factory to the Company's warehouse (Johnston P.179 and 180, Ellis p.189 and 190). Ball rented space in the Storage

Page 12.

Company's warehouse during 1925 (Exhibit 9). The suspicions of the employees of the Storage Company were aroused by the nature of the barrels (Workman p.194 and 195). Johnston says that in 1925 he went to the Vinegar Company's plant and that it did not look like a working plant but looked as though it was stagnant and Ball was not there (p.181 to 184) also Ball was going very frequently to his rented space in their warehouse. Owing to these suspicions Ball was asked to vacate (p. 181). None of the witnesses from the Storage Company could remember whether or not any deliveries were made from the Vinegar Factory to Jos. Kennedy Co. but would not deny that such deliveries had been made and for some reason which was not given they destroyed every record in their books relating to their transactions with Ball and the Vinegar Company. James E. Hughes (p.229) says that he did blending of alcohol with Ball at Balls place in the Johnston Warehouse; that the alcohol used was neutral spirits, grain spirits thoroughly cleaned and rectified with no odor and contained with white ends in barrels as above described. He also says he saw there cans containing alcohol (p.232). Hughes also states that in 1924 he went to the basement of the Vinegar Factory one evening with Ball and made a test of a few gallons of certain low grade, apparently denatured alcohol (p.232 to p.235), this being a lower grade than what he had

blended at the warehouse. W.S. McCarter (p.206) says that on certain occasions he went with Ball to Ball's place in the Johnston Warehouse to get alcohol, saw alcohol there in barrels, purchased alcohol from Ball at the Vinegar Factory at \$10.00 per gallon (p.209) the alcohol having no smell and being represented to him as grain spirits (p.209) and being sold in forty gallon barrels (p.220); that his total purchases amounted to between 10 and 12 barrels during 1924, 1925 and 1926 (p.211); that he purchased no Liquors (p.209) he used the alcohol for blending (p.214); that he knew of several other persons buying alcohol from Ball (p.217) and that some of the alcohol was very poor stuff (p.215). He also stated that when Ball first took over the Vinegar Factory Ball made him a proposition to sell him alcohol (p.215).

(f) As to Ball's statements with reference to sales to Jos. Kennedy Co. Limited there are the several cheques (Exhibits 10 to 16) all from Jos. Kennedy Co. Ltd. as follows, 31st March 1925- \$1470. to Jas. Ball; 2nd May 1925 - \$2219. to cash endorsed by Jas. Ball; 20th July 1925 - \$1777. to cash endorsed by Jas. Ball; 30th July 1925 - \$1620. to cash endorsed by Jas. Ball; 10th August 1925 - \$ 780. to cash endorsed by Jas. Ball "Deposit to the credit of B.C. Vinegar Co. Ltd. only" and 9th September 1925-\$2887. to cash endorsed by Jas. Ball. Ball says

Page 14.

one of these may have been for commissions earned by Levy but all the rest were for alcohol. H.F. Reifel who signed each of these cheques and who was President and Secretary of the Kennedy Company denied knowing what they were given for (p.594), ^{and} when asked what he had to say to Ball's statement that these cheques were given to Ball in payment for alcohol sold to the Kennedy Company at \$7.00 per gallon, his reply was, "I don't know" (p.601) Secondly there is the evidence of the way in which the cheque for \$780. was dealt with in the Vinegar Company's books. The Cash Book (Exhibit 24, page 1) shows the receipt of the 11th of August 1925 of \$780.00 as proceeds from Cash Sales. The Sales Slips purporting to show cash sales to this amount (Exhibit 25) are admitted by Matthews, who made the entries as bookkeeper for the Vinegar Company, as being fictitious (p.131). Matthews also admits that the \$780.00 cheque then deposited referred to these fictitious sales (p.132). Immediately following this entry is an entry of payment by cheque of the Vinegar Company to the Distillery of \$750.00 (Exhibit 24). The manner in which this was dealt with in the Distillery books is referred to later but the fact that this cheque from the Kennedy Co. to Ball went through the Vinegar Company's books at all certainly corroborates Ball's statement, (to some extent)

that this cheque from the Kennedy Company represents the proceeds of sales to the Kennedy Company. It is also significant that whereas this receipt of \$780.00 (from Ball) has been put through the Cash Book as being proceeds of sales admittedly fictitious, the Cash Book does show in several instances receipts from Ball personally shown openly as being money received from him. This suggests that there must have been some reason in Ball's mind at that time for wishing to conceal the nature of the transaction represented by the cheque for \$780. There is also the fact that there is a notation on the back of the cheque for \$2219. (Exhibit 11) as follows,

\$1000. - Sunset V.
\$1219. - J. Ball.

and Ball's pass book (Exhibit 12) shows a deposit to Ball's account on May 4th of \$1219. The Cash Book sheets of the Vinegar Company were not available prior to August 1st, 1925 and accordingly no check could be made as to the entry of any portion of this in the Vinegar Company's books. A further significance to be attached to the above cheques from the Kennedy Company is that from the evidence of Major Nash it appears that when the stubs of these cheques were examined by his firm preliminary to the Customs Inquiry investigation in the Fall of 1926, the following information was noted,

Page 16.

On the stub of the cheque of 9th September 1925 for \$2887. there were the figures,

10 - 406 - 7 -	\$2842.
10 - 4.50	<u>45.</u>
	\$2887.

The Kennedy Company was asked to produce these stubs but their counsel stated that they were not in their possession and H.F. Reifel in his evidence stated that he did not have them. Taking Ball's statement that alcohol was sold to the Kennedy Co. at \$7.00 per gallon, these figures suggest a calculation of ten barrels containing 406 gallons at \$7.00 per gallon totalling \$2842 plus a charge of \$4.50 for each of the barrels as containers, making a total of the exact amount of the cheque. On the stub of the cheque of July 20th, 1925 for \$1777. Major Nash's evidence showed that there was the following notation,

6 - 250 - 7
6 - 4.50

A calculation made on the same basis as in the case of the former cheque would show as a result the exact amount of the cheque \$1777. worked out on the basis of six barrels containing 250 gallons at \$7.00 per gallon and six containers at \$4.50. The same evidence showed

that on the stub of the cheque of August 10th, 1925 for \$780., which is the cheque traced into the cash book of the Vinegar Company,

3 - 115½
6 off
3 - 4.50

This worked out on the basis of three barrels of alcohol containing 115½ gallons, less 6 gallons would show 109½ gallons at \$7.00 totalling \$766.50 which with three containers at \$4.50 each makes up the total amount of the cheque. The price of \$4.50 charged for containers is the price that the Distillery Company charged the Vinegar Company according to their invoices (Exhibit 4). H.F. Reifel the President of the Kennedy Company who signed each of these cheques was unable to give any explanation of these figures appearing on the stubs, according to the evidence (p.598). This evidence in my opinion corroborates Ball's statement as to the sale of alcohol to the Kennedy Company.

(g) Dealing next with Ball's statement as to the payment of "Side money" to the Distillery on the purchase of alcohol. The statement rendered to the Vinegar Company by the Distillery on August 6, 1924 (Exhibit 18b) shows, in addition to an old balance,

an amount of \$891.17 in respect of merchandise invoiced on July 7th, 1924. The invoice of July 7th, 1924 (Exhibit 4) shows the sale of fourteen barrels non-potable spirits, 575.1 standard gallons, 952.37 proof gallons at .63¢ per proof gallon. Attached to the statement of August 6th (Exhibit 18) was a slip of paper which Mr. George Twitty (at that time accountant at the Distillery) admits to be in his handwriting. On this slip of paper is worked out a calculation of 575.1 gallons at \$2.50 per gallon, a calculation of 952.37 gallons at .63¢ per gallon and the latter amount is deducted from the former, leaving a balance which in the light of Ball's evidence represents "Side money" payable on the particular invoice of July 7, 1924. Mr. Twitty denied any knowledge of what the calculations referred to and the auditors were not able to trace into the Distillery books any payment corresponding with the "Side money" on this particular invoice. Evidence shows that adopting this method of calculation as being the one by which "Side money" was computed, the auditors were able to trace payment of "Side money" into the Distillery books in the case of two sales in 1925. The invoice of 30th June 1925 showed the sale of 615.78 proof gallons at .63¢ totalling \$387.94. The invoice shows that this represented 373.2 standard gallons which at \$2.50 would amount to \$933.00. The difference or

"Side money" would be \$545.06 (p.284). The Synoptic Journal of the Distillery (Exhibit 34) shows the receipt on July 22, 1925 of \$545.06 which is credited to the Ledger account of "J. Wilson". Wills (p.353) refers to this as an account representing export sales of duty paid liquor, the same explanation was given to the Customs Commission . The other sale which was traced into the Distillery books was covered by an invoices of July 22nd, 1925 (p.286 Exhibit 4). This shows the sale of 565.79 proof gallons at .63¢ totalling \$356.45. The invoice shows that this represented 342.9 standard gallons, which at \$2.50 would amount to \$857.25, the difference or "Side money" would be \$500.80. The Synoptic Journal of the Distillery (Exhibit 34) shows the receipt on 12th August 1925 of \$500.80 which is credited to the same Ledger account of J. Wilson. On the next line is entered the receipt from the Sunset Vinegar Company of \$849.20, the two amounts, or \$1350. being represented on the Deposit Slip (Exhibit 34) by \$600.00 in cash and a cheque for \$750. This is the cheque which was given to the Distillery by the Vinegar Company on the 11th of August 1925, the same day as the Vinegar Company received \$780. represented by a cheque for that amount from the Kennedy Company, endorsed by J. Ball. The sale of a certain amount of alcohol to the Vinegar Company at \$2.50 per standard gallon is admitted by George Reifel

(p.380 et seq.) Manager of the Distillery and by Col. Tobin (p.285), thus Ball's statement as to the payment of "Side money" is definitely substantiated.

(h) As to the number of such transactions between Ball and the B.C. Distillery Company there is the following; Ball in his information refers to 394 barrels. George Reifel (p.404) says 30 or 40 barrels. Ball and George Reifel both agree that the arrangement was made in 1924 (p.398 and p.121). An examination of the invoices (Exhibit 4) shows that although alcohol had been invoiced at .63¢ per gallon during 1923, the invoice of February 11th, 1924 covered 12 barrels at .63¢ and 18 barrels at .40¢ and in this case only is the alcohol at .63¢ described as being "From grain" and also as "New Grain Spirits". The slip of paper attached to Exhibit 18 refers to the sale of July 7, 1924, the two items traced into the J. Wilson account relate to sales in June and July 1925. George Reifel (p.429) says that whatever was sold in 1925 and 1926 went into the J. Wilson account. The J. Wilson account was not opened until April 4, 1925 when it was opened with a credit of \$12091.50 and continued until the end of 1926. George Reifel (p.432a) says that prior to the opening of the J. Wilson account they had another "Dump" account, the Tucker Account. The evidence of George Reifel, Twitty and Wills shows that the Wilson

account, Tucker account and Export Sales account in the Distillery Ledger were what they called Dump accounts in which uninvoiced sales were entered. George Reifel (p.403) says there were three or four of such transactions but later (p.410) says there may have been five, six, or seven such transactions. George Reifel described the matter in which the arrangement was carried out as follows; he says that in 1924 either Ball or Levy told him that they wanted to get a better grade of alcohol (p.399) that they picked out a grade better than their non-potable cologne spirits (p.407) that he didnt ask any questions and didn't inquire and was not interested in what they did with it (p.400 - 402) although he says that he thinks they told him in the first instance that their generators were run down, that the grade selected was determined by the odor of the alcohol, that they agreed on the price of \$2.50 per standard gallon and that at Ball's request only .63¢ per proof gallon was shown in the Vinegar Company's account on the Distillery books (p.403 and 409); that once the grade had been picked out all that Reifel had to do when they later ~~wanter some more of the same grade was to telephone to~~ the plant and have the same quality duplicated (p.407), that some times he telephoned the plant and that some-times he was at the plant and tole the man in charge

Page 22.

personally what to give Ball (p.410), that no other vinegar factories purchased a similar grade but that the Tepoorton Co. (Wholesale Druggists) bought the same grade of Spirits (p.407 and 408), that he, George Reifel, would tell Ball the numbers which those barrels containing the good spirits bore. It is also significant that in each of the two cases which were traced by the auditors, all of the spirits shown on the respective invoices as being invoiced at .63¢ were accounted for by the payment of "Side money" and that it was not a case of only certain particular barrels in the shipments of .63¢ alcohol being treated this way. In my opinion the arrangement as described by George Reifel was not one that was made to be carried out on a small scale involving as it did an intricate complication of the prices and false entries in the Distillery books of the prices at which the goods had been sold. There is also the fact that George Reifel says that he kept a memorandum on which he recorded the amounts from time to time due by Ball for "Side money", which memorandum he had since destroyed and that according to this memorandum at the time that Ball left the Vinegar Company there was a balance of between \$500. and \$900. owing by him for this "Side money" (p.456). This would represent "Side money" on approximately 15 barrels. Also he says that payment on account of "side money" were generally

Page 23.

made in round amounts (p.460) and those that were traced by the auditors were payments of exact amounts on particular shipments. As to the exact amount of alcohol in respect of which the Distillery was paid "Side money" in the manner above describer, my opinion on the evidence is that commencing with the invoice of February 11, 1924, all of the alcohol invoiced at .63¢ with the exception of seven barrels was of the grade selected by Ball or Levy when they first made the arrangement and was paid for at the price of \$2.50 per Standard gallon. Ball's statements have been corroborated in so many other respects, there is no doubt that he did divert large quantities of alcohol during 1924, 1925 and 1926; that the alcohol he diverted was of a grade that he sold for beverage purposes. The transactions of February 11th, 1924, July 7, 1924, July 30, 1925 and July 22^m 1925 and the balance of from \$500. to \$900. owing at the end of 1926 are so far apart as to make it extremely improbable that the transactions which could be traced were the only ones involving the payment of "Side money"; the size of the Wilson account and the period that it covered; the fact that George Reifel could not produce any record of the exact number of transactions showing the amount involved although he claimed to have had one; leaving aside the quantities shown on the stubs of the Kennedy Co. and the quantities

which McCarter says that he bought and the 12 barrels shown on the invoice of February 11, 1924, there is almost definite evidence of the payment of "side money" on 14 barrels in July 1924, 18 barrels in June and July 1925 and 15 barrels represented by the balance which Reifel says is still owing, making a total of more than George Reifel admits in his evidence. The quantity of alcohol sold by the Distillery and invoiced at .63. from and including the shipment of 11th February 1924 comprises ³³²~~347~~ barrels amounting to 22,725.21 proof gallons. The fact that there was a large shortage of recorded sales as compared with recorded production in 1923 indicates that Ball was diverting alcohol during that period but there is no evidence of any agreement between Ball or Levy and George Reifel as to the payment of "Side Money" before 1924 and no evidence which suggests that prior to 1924 any officers of the Distillery had any reason to know that the alcohol being sold to the Vinegar Company was not used for bona fide vinegar purposes. George Reifel, manager of the Distillery who made this deal with Ball for the sale of a higher grade of alcohol than was sold to any except wholesale druggists was in 1925 and 1926 President of Jos. Kennedy Limited which company, according to the evidence, was during that time purchasing alcohol from Ball. In my opinion George Reifel knew that the better grade alcohol sold by the

Distillery, on which "Side money" was paid, was being diverted and that some of it was being purchased by the Kennedy Company.

4. As to Ball's statement that Scovil had an arrangement with Officer Deeley and divided with him the money that Ball paid Scovil, Scovil says that he was employed by the Sunset and B.C. Vinegar Companies during the years 1924, 1925 and until the 31st May 1926. During the time of his employment he was at the factory from 7.30 in the morning until 2.30 or 3 in the afternoon (p.523). He states that he could never get proper production at the factory (p.533) that on several occasions he helped to load barrels onto trucks to be taken to the Johnston Storage Company, Ball claiming that these barrels contained vinegar that was to be shipped in pool cars to the Prairies (p.535), that he got suspicious of Ball some time in 1925 (p.535), that his suspicions were aroused a great many times, that he know of cans being brought to the factory, that he know of Acetic Acid being used to bring the vinegar up to strength during the whole period under inquiry (p.530) and that he suspected that Ball was using some contrivance to get alcohol that was supposed to go into the mix (p.551). He denies any knowledge of improper releases from Bond and denies having been paid any money to obtain such releases. He claims that any

money paid to him by Ball other than his salary were payments on the purchase price of his interests in Sunset Vinegar Company. His relations with Ball were apparently not friendly towards the latter period of his employment and in this connection there is to be noted the evidence of Wm. Simmons. Simmons says that in 1926 Ball asked him to conceal himself behind one of the vats and to watch what was done that morning; that he saw Scovil and another man, whom he thought was the Excise Officer, take two barrels out of Bond, that he saw one poured into the mix but that he did not see the other barrel poured in and that it was rolled away towards the shipping room. He gave his evidence quite frankly (p.142 and p.198) and I believe it. In company with counsel I visited the Vinegar Factory and saw the location of the different parts of the building. While Simmons evidence does not establish that the second barrel did not finally go into the mix, it is difficult to understand Ball's purpose in having Simmons watch Scovil unless it was that he wanted to have evidence that he could use against Scovil or that he suspected Scovil of doing something against Ball's instructions. The evidence of Mr. Deeley is that it was Scovil who indicated the barrels that were to be taken out of Bond (p.566) and that it was Scovil who was around the factory on most occasions. The fact is that Ball did get large quantities of alcohol,

that Scovil was in constant daily attendance at the Factory while he was employed there, that he knew of the removal of full barrels to the Storage Warehouse, of the use of Acetic Acid and of the delivery of cans to the Factory and it is to be noted that the barrels which were taken to the Johnston Warehouse by Ellis the carter were said by him to be 40 gallon wooden barrels with white painted ends. The significance being that on a barrel of alcohol being released from Bond the numbers and markings appearing on the end of the barrel were immediately obliterated by the use of a quick drying white paint. My opinion is that Scovil not only suspected Ball of obtaining alcohol from the Factory but that he must have known how it was being done. There is no evidence however that he paid any money to the Excise Officer to obtain improper releases and the auditors examination of his bank account did not indicate any such payments (Exhibit 39)

5. As to the conduct of the Excise Officer Deeley, the evidence shows that Frederick Deeley was the Officer in charge of the bond of the Sunset and B.C. Vinegar Companies during the whole period of their operation, there is no evidence of any payment of money to Deeley, Ball denies any dealings connecting with Deeley and denies that he even asked Deeley to assist him. His

Page 27.

statement is that he gave money to Scovil in respect of each barrel released and that he understood that this money was being divided with Deeley. Scovil denies that any money was given to him for this purpose and that he paid any money to Deeley. Deeley denies having received any money from Ball or Scovil for any improper purpose. At the same time there is undoubted evidence that alcohol which should have gone into the mix did not go into the mix at a time when Deeley was in charge of the Bond. The auditors have examined Mr. Deeley's bank account for the purpose in question (Exhibit 39) and there are some cash and other deposits in his account from time to time concerning which Mr. Deeley could give no definite information and which might be looked upon as money received by him in the manner suggested by Ball but there is no evidence that they were so received. The auditors made an analysis of the releases from the Vinegar Company Bond and indicated in pencil opposite the number of each barrel released, as shown in the Stock Book No. 1, which barrels were invoiced at .63¢ and which barrels were invoiced at the lower price, showing the former with a pencil circle and the latter with a pencil dot on the pages of the Stock Book (Exhibit 3). The analysis brings out the following facts;

(1) That on the occasion of the inspection by J.N. Harper on August 2nd, 1924, all of the .63¢ alcohol on hand had been released within a few days prior to his visit, that only lower priced alcohol was on hand and released during the time he was there, and that immediately following this inspection a shipment of alcohol invoiced at .63¢ was received and several barrels were immediately released. The same procedure shows on the occasion of the inspection by Mr. Thorburn and Mr. Westman, on July 7th, 1925.

(2) That on the occasion of Deeley's holidays in 1925 (August 1925) nothing but the cheaper grades were released during his absence, all the alcohol invoiced at .63¢ having been released just prior to his departure and that immediately on his return a shipment of alcohol invoiced at .63¢ was received and steadily released from that time on. He took no holiday in 1924.

(3) That after August 1926 when a second officer was assigned to assist Deeley on account of persistent rumors, making the officers at Vancouver suspicious of Ball, there was none of the .63¢ alcohol brought into or released from Bond of the Vinegar Company. Mr. Deeley's only explanation when this was pointed out to him was that it was a remarkable coincidence. After hearing the evidence Mr. Deeley stated frankly

that he felt sure that alcohol was in some manner being diverted but his only explanation of how this could occur was that there must have been some kind of a catch to catch the spirits under the joist above the tank. During 1926 there were several special investigations made by officers of the Department following rumors in connection with Ball's activities but the evidence shows that nothing was found that suggested the use of any catch or contraption.

The duties of an Officer in charge of a Vinegar Factory were outlined by Collector Allen of Vancouver. After the vinegar in the mix tank has been tested and measured the officer releases from Bond one or more barrels according to the size of the mix. He then weighs and tests the alcohol that is to go into the mix and it is his duty to see that the alcohol is dumped into the mix tank in his presence and that the whole mix is thoroughly plunged. Collector Allen also stated that he never knew of other than #2 Alcohol being used for vinegar, the same evidence was given by Officer Thorburn who stated that it was unusual and not customary to use high grade alcohol in the manufacture of vinegar and that an Excise Officer should be able to detect the difference between cologne spirits and #2 alcohol by the odor. It is clear from the evidence of George Reifel

Page 30.

that Spirits of a grade better than cologne spirits were sold to the Vinegar Factory. Officer Deeley agrees that the difference between high and low grade spirits can be noted by the odor and says that he knew that alcohol of different grades went into the mix. The evidence of the Excise Officer in charge at the Distillery shows that he was not at all clear as to the grades of alcohol required in a Vinegar Factory and Ball apparently had no difficulty in arranging for the delivery to the Factory of high grade spirits and arranging to have them released from Bond. My opinion is that Deeley was either a party to the improper releases or that he was so negligent in the performance of his duties that it was possible for Ball and his associates to improperly obtain the possession and illegally remove large quantities of alcohol which should have gone into the mix and did not go in.

6. The result of the Inquiry may be summarized as follows;

(a) That alcohol shipped in Bond from the British Columbia Distillery Co. Limited to the British Columbia Vinegar Co. Limited both before and after the name was changed was illegally removed from the bonded factory. During 1923 owing to the fact that all of the alcohol was invoiced at .63¢ there is nothing to indicate the amount so illegally removed except the comparison of recorded sales of 17943.32 gallons with the recorded production of 34415. gallons. From January 1, 1924 until 5th April 1927 there were 332 barrels, or 22725.21 proof gallons invoiced at .62¢ per proof gallon. Ball's evidence is that all of this excepting possible seven barrels were illegally removed. There is no contradiction of this and the evidence tends to corroborate him. The fact that during this period there were altogether, including the purchase from the Consolidated Distilleries Limited, 18,608.34 proof gallons of alcohol purchased at the price of alcohol ordinarily used for manufacturing vinegar in addition to the alcohol invoiced at .63¢ per gallon; that this would ordinarily produce 93042. gallons of vinegar; that during this period there were 147 barrels of Acetic Acid used, which on the evidence of Scovil would produce about 52000 gallons of vinegar; that the wastage of vinegar due to leaky pipes during this period, according

to Scovil (p.526), might amount to 20000 gallons and that the recorded sales during this period are 110,099.6 gallons of vinegar all tends to corroborate Ball's statement that the .63~~4~~ alcohol was not used in the production of vinegar. In my opinion there were therefore 325 barrels or approximately 22290 proof gallons of alcohol illegally removed from the bonded warehouse during the period subsequent to January 1924~~4~~ =

(b) That the British Columbia Distillery Co. Limited pursuant to an arrangement made in 1924 by George Reifel, managing director of the Distillery with Ball and possibly Levy of the Sunset Vinegar Company sold in bond to the Vinegar Company alcohol of a better grade than it was usual and customary to supply for the purpose of manufacturing vinegar at a price much in excess of that recorded on the invoices and in the books of the Distillery and in the books of the Vinegar Company, the additional amounts paid under this arrangement being concealed in the Distillery books. Ball says that all of the alcohol invoiced at .63~~4~~ after the arrangement was made, being 22725.21 proof gallons^{was} of the better grade and purchased pursuant to this arrangement. The "Side money" paid pursuant to this arrangement was concealed in the books of the Distillery and George Reifel stated that he destroyed the only record of the amounts payable

as side money. It was however possible in the investigation to definitely trace the arrangement for the payment of "Side money" on approximately 47 barrels. There were so many other facts brought out in the evidence relating to this as more particularly set out above that in my opinion Ball's statement should be accepted and the conclusion to be taken from the evidence on the whole should be that the arrangement dated back to the shipment of February 11th, 1924 and that there were 22725.21 proof gallons of the better grade spirits sold pursuant to this arrangement.

(c) That Jos. Kennedy Limited which was formed in 1925 did purchase from the Vinegar Company certain quantities of the better grade alcohol which was illegally removed from the bonded factory. The investigation did establish definitely in my opinion the purchase of 19 barrels at \$7.00 per gallon covered by the three cheques the stubs of which bore notations of the manner in which the amount was made up. There was no evidence given of any definite arrangement between the Distillery, the Vinegar Company and Jos. Kennedy Limited for the sale to Jos. Kennedy Limited of the alcohol that was supplied by the Distillery and illegally removed from the bonded factory but it was proved that George Reifel the managing director of the Distillery who made the arrangement with the officers of the Vinegar Company was the President of Jos. Kennedy Limited and that Jos. Kennedy Limited was managed by

Harry F. Reifel who was also a Director of the Distillery.

(d) The evidence does not establish the connivance of Frederick Deeley the Excise Officer in the carrying out of the illegal removals from the Bonded Factory but it does establish illegal removals to such an amount and over such a period and under such circumstances that if the Excise Officer did not connive at such removals he must have been grossly negligent in the performance of his duties as Excise Officer in charge of the Bond. I cannot conclude on the evidence that Mr. Deeley did connive at the removals particularly having in mind that ^{it was quite possible that} Ball and Scovil became so familiar with Deeley's method of performing the duties that he was called upon to perform on each occasion when they required alcohol released from the Bond that they were able to devise some method of diverting the better grade alcohol without his knowledge, particularly in view of the fact that he was the Officer constantly in charge of this Bond from the time of the inception of Ball's association with the Company.

(e) The evidence does not establish that Excise Officer Frederick Deeley received from Ball or from W.F. Scovil any amount of money in reference to the alcohol so unlawfully released.

Ernest Hinden

Analysis of sales of alcohol to
 Sunset Vinegar Company and
 British Columbia Vinegar Company
 by British Columbia Distillery Co.

Proof Gallons

Year	<u>.63¢</u>	<u>.48¢</u>	<u>.40¢</u>
1923	7170.25	-	-
1924	12833.72	3127.63	2621.09
1925	8333.67	8823.17	-
1926	1557.82	3141.32	-
1927	-	346.17	-
	-----	-----	-----
	29895.46	15438.29	2621.09

Analysis by Barrels

	<u>.63¢</u>	<u>.48¢</u>	<u>.40¢</u>
1923	105	-	-
1924	186	46	41
1925	122	129	-
1926	24	47	-
1927	-	5	-
	-----	-----	-----
	437	227	41