

R. v. Lepofsky et al*Black Market—Wartime Prices and Trade Board Regulations—Selling and Obtaining Rationed Commodity without Receiving and Supplying the Required Coupons*

Early in February, 1946, indications were that the Patisserie Francaise, a Toronto, Ont., bakery and fancy-pastry shop, was buying from the Streetsville Creamery, Streetsville, Ont., large quantities of butter without surrendering the requisite ration coupons. The bakery is under the joint proprietorship of two cousins, Ernest Emile Meunier and Eugene Aime Combaluzier, and the creamery is owned and operated by Fred Lepofsky.

For two weeks R.C.M.P. investigators and a member of the Wartime Prices and Trade Board kept the premises of the Public Cold Storage and Warehouse Company and of the Patisserie Francaise under observation. Then, on February 14, they witnessed the delivery by a Streetsville Creamery truck to the Patisserie Francaise of 26 50-lb. boxes of butter. After the shipment had been carried into the shop, the investigators entered and arrested the partners and Lepofsky the owner of the truck, and seized the butter and some 12,000 butter coupons gummed on sheets that were found in the truck.

Inventory revealed that the boxes contained 1,300 lbs. of butter. The owners of the bakery admitted that they had purchased three previous shipments of butter from Lepofsky, which with that under seizure totalled 5,200 lbs. They had paid 47½c per lb., or 9½c above the prevailing ceiling price, and had surrendered no butter coupons for any of it.

Lepofsky denied that he had received any money from Meunier or Combaluzier, and claimed that he always got payment and the coupons to cover the sale from a third party. He refused, however, to name this mysterious buyer. Meunier, on the other hand, insisted that the bakery paid the money each time.

The books of both firms were audited and a serious shortage of butter coupons at the creamery was disclosed, but Lepofsky maintained that the missing coupons had been stolen when his premises were robbed shortly after the beginning of the year.

On March 25, Meunier and Combaluzier appeared before Magistrate F. C. Gullen at Toronto and pleaded not guilty to having Purchased Butter Without Ration Documents, contrary to Orders 464 and 465 W.P.T.B. Regs., also to having Purchased Butter at a Price Higher Than the Maximum Ceiling. J. D. Arnup conducted the prosecution and J. H. Amys represented the defence.

Defence counsel argued that the regulations involved in the first charge were *ultra vires*, that no state of national emergency existed and that therefore there was no reason for the National Emergency Transitional Powers Act, 1945, to be on the statute books. Respecting this argument the Court handed down the following written judgment:

"First I shall deal with the facts of the case.

"The evidence adduced by the Crown proved that on Feb. 14, 1946, the accused received delivery of 26 boxes of butter from a supplier. Section 5 of Order 464 provides the time when the valid ration documents must be surrendered: 'not earlier than at the time of ordering and not later than at the time of delivery'.

"The question to be determined is, did the accused surrender the requisite number of appropriate coupons or valid rationed documents for this butter within the proper period.

"The accused are 'industrial users', and according to the evidence of Mr. John F. Brydges, Senior Rationing Officer, the quota for the accused was 42,860 coupons per year, or 3,571 coupons per month. Each coupon represents one-half pound of butter.