

acts of his fellow, even though he were "manager," which he swore he was not, and was not contradicted.

Lamb was a barber, who purchased a bottle of perfumery from a Montreal firm, and kept it in his shop; he did not come within any of the clauses of sec. 15 by reason of his having used a portion of the contents on Dager's face after shaving him. Lamb was the "consumer," and the "person selling" to him was the Montreal firm. There was some evidence that he was an agent of the Montreal firm; but there was nothing to shew a sale of any part of the contents of the bottle to any one but himself. If he was the agent of the Montreal firm in selling the bottle to himself, that firm was liable for not having attached a stamp. Lamb was not liable as an "importer" or "manufacturer" or "producer."

Reference was made to printed "instructions" given by the Department of Inland Revenue to preventive officers, under which it was said a barber was to be liable in such circumstances as were here disclosed. These "instructions" had not the force of an order in council; and, if they went so far as was contended, they were not in accordance with the Act. But, upon a reasonable reading of the "instructions," they applied only to cases where the barber was making a sale of part of the contents of a large bottle.

The magistrates, in deciding that Dager was not a "consumer," evidently followed *Patenaude v. Paquet Co.* (1916), 26 Can. Crim. Cas. 204; but the learned Judge who decided that case must have overlooked the last words of sec. 14 (i) of the Act. The sale to Dager was a sale by retail, and thus a sale to a "consumer," as was decided by Cross, J., in *Ethier v. Minister of Inland Revenue*, *supra*, disapproving of the *Paquet* case.

The purchases made by Dager in each of the cases came within the Act.

In the Thornton and Jones cases, the appeals should be allowed; in the Lewis and Lamb cases, the appeals should be dismissed.

[See *Re Minister of Inland Revenue and Nairn* (1917), 11 O.W.N. 422.]

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#### CORRECTION.

IN *AUGUSTINE AUTOMATIC ROTARY ENGINE CO. v. SATURDAY NIGHT LIMITED*, 11 O.W.N. 425, there is a mistake on p. 426, third line from the bottom: "KELLY, J.," should read "FERGUSON, J.A."