

## Judgment of Mr. Justice Kent.

(Continued from 9th page.)  
article of commerce and is not bought or sold nor is it generally referred to as a spirituous liquor. Spirits are used largely in its manufacture, but they are also used in the composition of medicinal, toilet and other preparations and many other articles which no one would speak of as spirituous liquors and which are not ordinarily used as intoxicating beverages. In my opinion the phrase "Spirituous Liquor" in the definition of "intoxicating liquor" in the Act of 1917, signifies those articles which are ordinarily spoken of as spirituous liquors and which in commerce are usually comprehended by that term. When, therefore, the appellant, a wholesale grocer, sold to Byrne, a retail grocer, a quantity of Shirr's Vanilla as part of an order consisting of the usual grocer's supplies, he sold him "an article of commerce not or-

dinarily passing under the name spirituous liquors," but an article which is everywhere bought and sold as an essence, and forms part of the usual stock in trade in the grocery business. It was not the purpose of the Act to prohibit the importation, manufacture or sale of alcoholic liquors except as used for beverages. This object is made clear by the form in which the question was submitted to the Electorate at the plebiscite held under the Act of 1915 which affords a key to the general object and intention of the Legislature, and may be resorted to to fix the meaning of ambiguous words or phrases. The question to which the answer of the electors was given at the plebiscite was: "Are you in favor of prohibiting the importation, manufacture and sale of spirits, wine, ale, beer, cider and all other alcoholic liquors for use as beverages?" The object was to prevent the importation, manufacture and sale of intoxicating drinks. Such articles as ales, wines and spirituous liquors, commonly so

retailed, are primarily intoxicating drinks, but medicinal, toilet and other preparations are not, but are capable of being diverted from their primary use and of being made into and used as beverages. The Legislature recognizes this distinction and prohibits the first class of articles, but leaves it to the Governor in Council to prohibit the others should it become necessary to do so. It is presumed that a sale of the ordinary intoxicating liquors is for use as a beverage, but there is no such presumption in relation to the other articles. The evidence shows that Shirr's Vanilla, the subject of this appeal, and other essences have been, since the sale of intoxicating liquors has been prohibited by law, used as a beverage by many people as a substitute for the ordinary intoxicating liquors, but the fact that they have been and are so used does not in itself make their sale unlawful in the absence of any direction to that effect by the Governor in Council. The Governor in Council has not exercised his power to direct that pro-

paration should be an intoxicating liquor under the Act. It is unnecessary for the purposes of this appeal to decide whether a sale of this article knowingly and wilfully for use as a beverage constitutes a violation of the Act. I don't think the sale to Byrne, which is the subject of this prosecution, was of that character. It is true the appellant knew that, since the Prohibition Act became law, Shirr's Essence of Vanilla and other essences were being used as beverages, but there is nothing in the evidence to show that he knew that Byrne intended to drink what he sold him, or that he would use it otherwise than for the legitimate purposes of his grocery business. The appellant is a wholesale grocer, and such essences as vanilla is a legitimate and usual part of the stock of a wholesale grocer. His business is to sell the usual grocery supplies to retail grocers. Byrne was a retail grocer and a customer of the appellant. There is nothing in this case to show that the appellant knew that Byrne would put the vanilla purchased by him to an improper use. In fact because of his knowledge that these essences were being used as beverages, he asked for and obtained from Byrne at the time of the sale a promise that it would only be sold by him in his business for proper household purposes. The general knowledge that the article was in fact being improperly used by some as a beverage, though it should make a dealer cautious about those to whom he sold it, does not make its sale by him unlawful. If a wholesale grocer in the ordinary course of his business sells these preparations not commonly sold as intoxicating beverages, in a proper and legitimate way, that sale must be judged on its own merit and not by the use to which the purchaser afterwards puts them. If he puts them to an improper and illegal use, the act of the seller, which ex-hypothesi was legal, does not thereby become illegal. The sale by Soper to Byrne, as I view it under the evidence, was for the purpose of his grocery trade and not as a beverage, and therefore a legal act. If Byrne chose to drink it or sell it to others to drink, the act is Byrne's and not Soper's. I have therefore come to the conclusion in the absence of any direction to that effect by the Governor in Council, that Shirr's Imperial Quintessence of Vanilla is not a spirituous liquor within the meaning of these Acts and that whether an intentional and wilful sale for use as a beverage of the preparations which the Governor may publish by proclamation, is or is not prohibited, that the sale by the appellant was not a violation of the provisions of section 4 of the Act. I express my opinion as to whether or not Shirr's Vanilla is one of those articles which the Governor in Council may prohibit by proclamation or as to the character of a sale made wilfully and intentionally as a beverage. Other considerations than those, which, in my view decide the present case, may influence a decision, in other circumstances and in another set of facts under the confused wording of these badly drawn Statutes. I regret to have to differ from the learned Magistrate, but on a very careful consideration of the Acts, I am of opinion that the conviction must be set aside and judgment entered for the appellant with costs.

Mr. L. E. Emerson for the appellant; Mr. H. A. Winter for the respondent.

### Dangerous Toys.

During the last few days complaints have been made to the police of boys using toy revolvers in the streets. Although the gun is loaded with a 22 short blank cartridge, in the hands of children it is capable of doing mischief. Yesterday afternoon a lad named Whealan discharged one of these cartridges a few feet from a companion named Hurley, with the result that the latter had his cheek, near the left eye, considerably injured. A doctor being called, he informed the parents that he had narrowly escaped losing the sight of the eye.

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## FISH MEAL FOR STOCK FEED.

We have for sale a limited quantity of Codfish Meal, manufactured on our own premises by up-to-date machinery. This Meal contains 65 per cent. protein (flesh and milk forming matter). The percentage is much higher than any imported feed. A little of this Meal mixed daily with the feed gives wonderful results, and does not impart any taste to meat or milk. This article is highly recommended by

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D. J. DAVIES, ESQ., B.Sc., F.C.S., Government Analyst.

E. S. ARCHIBALD, Dom. Animal Husbandman, Canada.

F. S. ASHBROOK, U. S. Dept. of Agriculture, and many others.

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A grocer whom we asked to buy Del Monte Baked Beans said: "I have a lot of beans in stock which I can't sell and I won't buy any more until I get rid of what I have." Don't you think this grocer is unwise? He proposed to send his customer to his competitor for Del Monte Beans. He admits that his customers won't buy the beans he has, he admits that they would buy Del Monte Beans if he had them in stock, and consequently when his customers want Del Monte Beans they will go elsewhere to get them. What will happen to this grocer if his customers buy ALL their groceries elsewhere?

## Colin Campbell, Ltd.

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In Stock:

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## Corkwood,

Thick, Medium  
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## We Thank Our Many Customers

For their patronage during our 25th year of manufacturing, which has enabled us to BEAT ALL PREVIOUS SALES RECORDS, and assure those that have been disappointed as regards deliveries that this was unavoidable owing to the GREAT DEMAND FOR OUR PRODUCTS. We will make every effort to deliver on time during 1920, but would advise the placing of orders early in order to have them handled promptly.

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One-Half their Regular Price.

### Silks, Serges, Georgettes and Crepe de Chene.

This promises to be the biggest value giving sale staged this year, in which 500 of the most Stylish Dresses will be sold far below their regular value.

To be able to pick from the finest variety of smart, stylish dresses, portraying the beautiful straight line figure so much desired by the well-dressed woman, will be a source of unbounded delight to you. And the prices—you will not believe—they are so low you will simply have to buy. Your economic sense will assert itself and you will buy one, two, three, as much as your purse will allow.

500 Dresses to pick from and the prices a mere nothing, this is indeed a chance, a chance that comes once in a lifetime, so avail yourself of this opportunity, and buy while the buying is good.

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