

SEVENTH DIVISION COURT OF THE COUNTY OF ESSEX

SMITH, JUN.CO. C.J.

JANUARY 31ST, 1917.

RE MINISTER OF INLAND REVENUE AND NAIRN.

Revenue—Special War Revenue Act, 1915, 5 Geo. V. ch. 8, secs. 14, 15 (D.)—Sale of Proprietary or Patent Medicine—Failure to Affix Revenue Stamp—"Selling to a Consumer"—Inland Revenue Inspector—Conviction—Act of Clerk or Servant.

An appeal by the Minister from the decision of the Police Magistrate for the City of Windsor, pronounced on the 25th November, 1916, dismissing the charge of the appellant against the respondent of a violation of sec. 15 of the Special War Revenue Act, 1915, 5 Geo. V. ch. 8 (D.)

Section 15 provides: "Every person selling to a consumer any bottle or package containing (a) a proprietary or patent medicine . . . shall, at or before the time of sale, affix to every such bottle or package an adhesive stamp of the requisite value as mentioned in the schedule to this Part."

The appeal was heard by SMITH, Jun. Co. C.J., Essex.

Gerald McHugh, for the appellant.

T. Mercer Morton, for George Nairn, the respondent.

SMITH, Jun. Co. C.J., in a written judgment, said that the respondent carried on business as a grocer in the city of Windsor, and on the 13th October, 1916, Herman J. Dager, an inspector employed by the Department of Inland Revenue, purchased from a clerk in the employ of the respondent a package of health salts, being a package containing a proprietary or patent medicine within the meaning of the Special War Revenue Act, 1915. The clerk making the sale to the inspector did not, either before or at the time of the sale, affix a stamp, as required by sec. 15.

The learned magistrate dismissed the charge against the respondent on the ground that the inspector who made the purchase of the article in question was not a "consumer" within the meaning of sec. 14 of the Act.

Section 14 provides: "In this section and in the remaining sections of this Part, unless the context otherwise requires (i) 'consumer' means a person who uses (a) a proprietary or patent