

Supreme Court

THE KING VS. ALEXANDER ROONEY.

When the hearing in the above matter was resumed yesterday morning, Mr. Fox called Wm. L. Donnelly, deputy Auditor General, sworn and examined the witness told of the times he audited Mr. Rooney's books, and the relation they had to the accounts kept by the accused. Witness checked up the moneys that came into Mr. Rooney's office through Mr. Rooney. He discovered in November, 1923, that money received in October and part of November, had not been passed to Mr. Rooney. Witness with accused and Mr. Berteau attended an audit in December when Mr. Rooney stated to the auditor general that his cash was short about \$1,900.00. After a brief cross-examination by Mr. Dunfield, Auditor General Berteau was called and examined by Mr. Fox. Witness made a personal audit of Rooney's books. An audit of his books was always made at the close of the financial year. Sometime in September witness asked accused to have his books ready for audit. This request was repeated several times, and then he had to appeal to the Minister. The audit took place at the end of October, and it was found that the books did not balance by between \$1,900.00 and \$2,000.00 in cash. Witness then asked the accused to make his books up to date so that the audit could be completed. Subsequently the audit was completed and witness found that up to June 30th, 1924, there was a shortage of about \$10,000.00. Questioned about the documents from which he made the audit witness was asked would it be proper for the accused to destroy them. This question was objected to by Counsel for accused. Objection was also raised to the putting in evidence the witnesses summary of the audit. The objection was upheld by the Chief Justice.

Cross-examined by Mr. Dunfield witness said Mr. Rooney never definitely refused to give him the books. The audit from June, 1923, was entirely in the hands of Mr. Howley. Witness knew that there was an outstanding balance of over \$7,000 against certain parties. Asked to name the parties witness named the St. John's West Liberal Association owing \$6,023.66 and the late Prime Minister's Department as owing \$2,170.00. These debts, however, were not included in the amounts which made up the total shortage alleged against Mr. Rooney. Witness said he reported shortages to the head of the Department concerned, but it was not his duty to collect unpaid balances. Destruction of documents after an audit might not affect matters unless it were necessary to go back over the audit. Witness knew of no destruction of vouchers ever taking place without the consent of the Government. This consent was always necessary before documents are destroyed. Witness thought that Mr. Rooney's work could be done in Mr. Rooney's office. Witness had no fault with Mr. Rooney's books previous to the fiscal year 1922-23.

James Howley, Auditor for the Postal Telegraphs Department, examined by Mr. Fox said he was instructed in April, 1924, to audit portions of Mr. Rooney's accounts. He found a cash shortage of \$1,385, and that pay-

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ments for monthly accounts charged in the cash book amounting to \$84.00 were not paid over to the cashier. There were 27 or 28 days from September 14th, 1923 up to December in which no moneys were paid into the cashier by Mr. Rooney. Other cash payments made the total up to \$2,317.44. In reference to accounts of Grenfell Institution and William Noseworthy and Balne Johnstone & Company, witness could not find entries in accused's books covering certain payments made. Witness he could get nearly all the information he desired from the press, copy books, but he did not get them until a considerable time after the investigation started. Witness did not think that the I.O.U.s. of \$149.00 given to Wylie were included in the general shortage. The same applied to the Grenfell, Balne Johnstone & Co. and Noseworthy accounts. Witness said that at no time he gave Mr. Wylie instructions to take charge of the office or cash, and there was no record of the days when Mr. Rooney was present or absent from his office.

After the cross-examination Mr. Fox announced that all the witnesses for the Crown had been called. By permission of the Court Mr. Wylie was recalled and questioned by Mr. McNelly about Mr. Rooney being at the office during certain days in September, 1923. Witness said that it was possible that he might have gone shooting. He always went shooting with Mr. LeMessurier, Inspector General Hatching and Mr. Pratt, but he could not say if he did or not during September, 1923.

CASE FOR DEFENCE.

Mr. Robert Walsh, sworn and examined by Mr. Dunfield, said he knew Mr. Wylie. Witness was at one time caretaker at the Post Office, and occasionally since dropped in to see Mr. Rooney. In July or August, 1923, he went to see Mr. Rooney, the door was closed and he opened it. There was no one there and the witness sat in his chair to wait till he came back. Witness remained twenty minutes and whilst there drew out a drawer to get a pencil. He saw in the drawer a lot of paper money. Witness then shut the drawer and went outside the door where he met Mr. Wylie to whom he said that if he were dishonest he could take all the money in the drawer.

Cross-examined by Mr. Fox witness said he met Wylie outside the door and when he brought him into the office and showed him the money he appeared to be frightened. Witness did not know if the money belonged to the Post Office or the accused. At noon Mr. McNelly asked for an adjournment for the purpose of examining the exhibits. Adjournment was taken until 2.30.

AFTERNOON PROCEEDINGS.

James Pratt, sworn, examined by Mr. Dunfield—On Tuesday, September 18th, 1923, he was shooting and returned on Saturday 29th. Mr. Rooney was with him all that time. Mr. Rooney's family was then in Topsail and witness took the accused out to Topsail on that Saturday, where he remained until Monday.

This closed the evidence, and at 2.45 Mr. McNelly began his address to the jury. He was not, he said, possessed of any powers of eloquence, he would not appeal to their passions or prejudices, but would try to reason the case as a reasonable man should. Two things the jury must remember first, that they must judge the case only according to the evidence as submitted to them, and not on anything they may have heard on the street or anywhere else. And, secondly that it is the duty of the Crown to prove beyond the shadow of a reasonable doubt that the accused is guilty. It is not for the prisoner to prove his innocence. Counsel then reviewed in detail the charges under which the accused was charged. The accused might well have objected to being tried on so many counts at the same time. If application had been made to the court, it might have been ruled that certain charges were to be tried now and others at a later date, but to do this would be to involve the accused in a continuation of the suspense which he has suffered since last year. The fact of so many charges being made at the same time is also an advantage to the accused, as it shows the weakness of the Crown case. If they were satisfied that the accused had stolen the \$12,366.91, why was there so much trouble taken with the smaller amounts. The accused is charged with larceny and embezzlement, but he cannot be found guilty of both. To explain the difference he would cite a case. If a salesman in a store makes a five dollar sale, and

hands the cash for this over to the cash boy, and then when the boy's back is turned takes out the five-dollar bill and puts it in his pocket, that is larceny. But if he, after making the sale, fails to hand over the money to the cash boy, but puts it in his pocket right off, that is embezzlement. In the present case Rooney is only a carrier of money, he had to pass over his receipts to Mr. Wylie, so that the worst that can be proven against him is embezzlement. The evidence of the auditors shows that there was a shortage of \$12,366.91, but this fact of itself does not prove that the accused stole it, and without further evidence is not sufficient to find a man guilty. The evidence of the auditors has shown that neither of the three has taken up the whole of the accounts, each of them had done a portion and took it for granted that what the other fellow had done was correct, without endeavoring to find out for themselves if such was the case. Even if there was a shortage as stated, it could not be said that Rooney alone took it. There was evidence of Rooney's drunkenness, of his being away shooting and for other causes, all of which had to be borne in mind, and Mr. McNelly would dare to say that the actual recipient of the money was Mr. Wylie. Mr. Wylie had stated that he always kept his cash locked up, but the evidence of Mr. Robert Walsh on this point was sufficient, and the jury could decide for themselves which they would believe. The only shred of evidence against the accused was Wylie's going to the Controller's Department, and where it was stated that Rooney had spent between \$120 and \$180 a week on liquor. On this point the jury had to decide for themselves as to whether this was true, but Counsel would say it was an absolute lie that Wylie should swear such a thing especially now after he had a raise in his salary. Even if it were true, the total amount would not come near the alleged shortage. Were the jury to assume that if all this drinking was going on that Rooney had to stand all the expense, The very openness of the way he did these things was proof against any intention of wrong doing. The jury had to carefully consider what motive Wylie had in putting over all the blame on Mr. Rooney. The evidence of Mr. Berteau was that Rooney was alright up to June, and if this was the case, either the figures are wrong or Mr. Berteau is wrong. If Rooney put the whole of this amount in his pocket, taking it in five dollar bills, his whole time would be taken marching back and forth to the desk where the money was. The smaller the amount taken the more entries would have to be made to cover up the guilt, and it would be only reasonable to suppose that if wrong doing was contemplated that two or three large amounts would be taken thus making it easier to cover up. Mr. McNelly went on taking each charge separately, and submitting that there was no foundation given in the evidence. Referring to the letter he said that the only evidence this could produce was that Wylie was the thief and that Rooney was an accessory. This letter also proved that the executive had believed Mr. Rooney innocent, that Mr. Hawco was to instruct the accused to return to work, and that even the Inspector General was confident of his innocence. Concluding Counsel asked for the prisoner the same justice as would be given to a man of the highest or lowest rank in the community and in meeting out this justice he asked them could they, on the evidence before them, find the accused guilty of the charges against him.

Mr. C. J. Fox, Counsel for the Crown, who followed, congratulated Mr. McNelly on the address he had made on behalf of the accused, and with certain things that had been said he was in entire agreement. It was the duty of the jury to judge the case only according to the evidence as submitted and no other influences had to be brought to bear on it. He also agreed that it was the duty of the Crown to prove the case, and the jury in all its details, and having done so it was their duty to determine if it had been proved beyond a reasonable doubt, if there was evidence enough to sustain the charges made. But it

must only be proved beyond the shadow of a reasonable doubt. It was not necessary that there should be no doubt left in the minds of the jury. He regretted the instructions made by the learned Counsel for the defence that there had been desperate efforts made to convict the accused. There is no foundation in fact for any such insinuations against the Crown. Mr. McNelly knows, or should know, that it is the duty of the Crown to bring all the facts before the jury, and having done so to rest the case in their hands. In this case nothing more than the movement of Mr. Fox called attention to the impartial report of the auditors, on Rooney's books, which shows that there was a shortage. The evidence shows that in the fall of 1923, when an audit had been taken, there was discovered that twenty-nine days had not been accounted for and that subsequently there were 58 days unaccounted for in connection with the records that were not available. Mr. Rooney was not going to sign any sheets which he did not receive. The jury had been asked to believe that Mr. Wylie was a liar, and Mr. Fox asked the jury if Mr. Wylie struck them as the type of man who would be an intriguer. Wylie was merely a subordinate clerk, and when he received a direction he had to carry it out to the best of his knowledge and belief. Perhaps the evidence of the liquor transactions was astounding, but that does not say that it is not true. Merely that the amount is so large does not justify throwing it out as being a lie. The amount of money was proved to be spent and something had to happen to make it disappear. Cut it down to any amount desired and it still stands there was misappropriation of funds, Rooney had no right to borrow money, if what he had done was called borrowing, and when he received the money he must have known it was not coming out of Wylie's pocket. Referring to the Walsh incident, Mr. Fox stated that many a man has sworn to a thing believing it to be fact, when it was not the case, but this does not prove that the man who swore was a liar or a perjurer. There was no evidence to show that the money seen in that drawer was the property of the Department, and Wylie had said that when he kept the money it was in a cash box locked up in a cupboard on the right hand side of the desk. Some vouchers were not available and Mr. Rooney had no right to destroy them. Never has it been known that records of any sort were destroyed except by order of the Department on the authority of the Executive Government. Regarding the falsification charges, the Crown alleges that failure to enter amounts that were received is proof of guilt of intent to defraud. It is for the jury to agree or disagree with this contention. Mr. Fox went on to review the evidence, and concluded by asking the jury for an important consideration of the facts.

Beginning his charge to the jury at 4.40 p.m., the Chief Justice said that the case had been put so clearly by Counsel that it was not necessary for him to review the evidence at any length. It was the duty of the court to assist the jury in sifting the evidence and in the performance of his duties he had the right to express his opinions. It was the jury's province to sift the evidence but they were not to discard the whole of the evidence of a witness because he is contradicted in any one point by other evidence. The indictment consisted of a number of counts, and each had to be considered separately. The first count of stealing was followed by a second one of embezzlement for the same sum. The third count then there follows charges of larceny of particular sums. After which there is a charge of falsification of accounts and destruction of documents. Dealing with the first main charge, his Lordship pointed out that it was an alternative count to that of embezzlement. Explaining the difference between embezzlement and stealing he said that the law regarded it as larceny when a person takes or borrows money without the consent of the owner. Embezzlement

is intercepting money belonging to another. If in considering the charge the jury found that the particular money was in possession of the Government then the charge would be larceny. There was no doubt as to the amount of money which came into the accused and what sums were passed on to the cashier. The difference amounted to \$12,370. Being an employee of the Government and the responsible office, the fact that the accused had a subordinate who held the keys of his desk is not of itself an answer to the charge. In their deliberations they should weigh whether the drawer was a place of deposit for Government monies. On the question of evidence which sustains the crown charges, the Chief Justice reviewed the evidence of the Auditors, Messrs. Donnelly and Berteau. He the evidence of Mr. Wylie there was corroboration in part through the submission of the letter from Rooney asking for a loan. If they regarded the letter as a corroboration of Wylie's story of the borrowings then the charge would be larceny. The Chief Justice spoke strongly on the practice of borrowing with the consent of the owner. It would be found by investigation that half the people convicted of embezzlement had the intention of paying back the money which they borrowed. With regard to the burning of the vouchers, the jury had to consider if their destruction had an element of fraud, the

same consideration they should give to the charge of omitting to make entries in the books of amounts received. If they found that the omission were wilful they could infer and would be justified in finding that they were fraudulently done. Concluding, the Chief Justice pointed out that each count in the indictment was an indictment in itself and should be so considered.

At 5.30 the jury retired to consider the evidence but returned to court at 6.20 to ask if in the 55 days the accused was charged with not sending in returns was included the days when he was out shooting. They were told that this was so. To the question as to what amount had been passed over to the general cashier on the day Mr. Rooney returned from the shooting trip, the books would show this, they were told. They also asked if the accused could be held responsible if money was taken from the drawer by another person. The Chief Justice told them that in this case they had to be guided by the evidence, and decide if there was evidence to show that it had been taken by another person, but there was no charge that money had been taken by another person.

At 9.25 the jury returned to Court and through their foreman, Mr. W. Thompson, reported that they found "gross negligence and conduct on the part of the accused who was entirely



NINETY-THIRD ANNUAL REPORT OF

The Bank of Nova Scotia

CAPITAL PAID-UP - \$10,000,000
RESERVE FUND - \$19,500,000

PROFIT AND LOSS

Balance Dec. 31st, 1923.....	\$ 252,695 82
Net profits for year, losses by bad debts estimated and provided for.....	2,110,028 14
	\$ 2,362,723 96
Dividends for year at 16%.....	\$ 1,600,000 00
War Tax on circulation to December 31st, 1924.....	100,000 00
Contribution to Officers' Pension Fund.....	75,000 00
Written off Bank Premises Account.....	250,000 00
Balance carried forward December 31st, 1924.....	337,723 96
	\$ 2,362,723 96

GENERAL STATEMENT AS AT DECEMBER 31st, 1924

LIABILITIES	
Capital Stock paid in.....	\$10,000,000 00
Reserve Fund.....	19,500,000 00
Balance of Profits, as per Profit and Loss Account.....	337,723 96
Dividends declared and unpaid.....	402,472 00
	\$30,240,195 96
Notes of the Bank in circulation.....	14,143,160 16
Deposits not bearing interest.....	\$ 33,130,564 21
Deposits bearing interest, including interest accrued to date.....	146,812,897 51
	179,943,461 72
Balances due to other Banks in Canada.....	194,086,621 88
Balances due to Banks and Banking Correspondents in the United Kingdom and foreign countries.....	3,322,000 39
Bills Payable.....	2,200,392 13
	401,415 84
Letters of Credit outstanding.....	200,010,430 24
	4,509,977 60
	\$234,760,603 80

ASSETS	
Current Coin.....	\$ 9,467,089 31
Dominion Notes.....	21,416,576 25
Notes of other Banks.....	1,087,165 88
United States and other foreign currencies.....	2,312,324 58
Cheques on other Banks.....	13,397,691 28
Balances due by Banks and Banking Correspondents elsewhere than in Canada.....	2,213,549 00
Deposit in the Central Gold Reserves.....	49,894,396 30
Dominion and Provincial Government securities, not exceeding market value.....	6,250,000 00
Canadian municipal securities and British, Foreign and Colonial public securities other than Canadian, not exceeding market value.....	27,267,804 46
Railway and other bonds, debentures and stocks, not exceeding market value.....	10,832,815 53
Call and short (not exceeding thirty days) loans in Canada on stocks, debentures and bonds and other securities of a sufficient marketable value to cover.....	11,196,002 24
Call and short (not exceeding thirty days) loans elsewhere than in Canada on stocks, debentures and bonds and other securities of a sufficient marketable value to cover.....	13,309,795 92
Other current loans and discounts in Canada (less rebate of interest) after making full provision for all bad and doubtful debts.....	10,376,294 46
Other current loans and discounts elsewhere than in Canada (less rebate of interest) after making full provision for all bad and doubtful debts.....	129,127,108 91
Liabilities of customers under Letters of Credit, as per contra.....	77,338,034 39
Non-current loans, estimated loss provided for.....	14,508,428 83
Bank Premises as at not more than cost, less amounts written off.....	608,134 71
Real Estate other than Bank Premises.....	7,823,089 34
Deposit with the Minister of Finance for the purposes of the circulation fund.....	90,521 71
Other assets not included in the foregoing.....	489,529 57
	265,778 74
	\$234,760,603 80

G. S. CAMPBELL, President.

J. A. McLEOD, General Manager.

Auditors' Report to the Shareholders.

We have examined the above General Statement of Liabilities and Assets as at December 31st, 1924, and compared it with the books at the Chief Office and with the certified returns from the Branches. The Bank's investments and cash on hand at the Chief Office and at the Toronto and Montreal Branches were verified by us at the close of business on December 31st, 1924. We have obtained all the information and explanations that we have required, and in our opinion the transactions of the Bank which have come under our notice have been within the powers of the Bank.

We certify that in our opinion the above statement discloses the true condition of the Bank and is as shown by the books of the Bank.

D. MCK. McLELLAND, F.C.A.,
A. B. SHEPHERD, C.A.
of Peat, Marwick, Mitchell & Co., Auditors

Toronto, Canada, 20th January, 1925.

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"ROSALIND TEA"

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'Lily of the Valley' Spinach—2½'s Tins.
'Lily of the Valley' Spinach—5 Glass.
'Del Monte' Peeled Green Chillies—10c. Can.
Heinz Baked Beans, plain, Tomato Sauce or Vegetarian.

C.P. Eagan

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DECORATED CHINA STOVES—Finished with every particular care at sides, covers, decorations. Each.....20

Larger Size.....30

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The Royal Crocker

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