Thus the convictions were sustained, and therefore the additional charges under s. 444 Cr. Code were withdrawn. The validity of the foreign exchange enactments has been definitely established, and it has been ruled that conspiracy proceedings arising from a breach of such enactments are in order.

R. v. Fortin

Excise Act—Charging Previous Conviction—Accused Should Be Notified He Is Liable To Increased Penalty

Thirty gallons of mash were seized from Xavier Fortin of Trois Saumons on Apr. 30, 1941, by members of Quebec Detachment. Fortin did not make much money with which to support his wife and fifteen children, so he made and sold illicit alcohol to help out. He had been convicted of a similar offence at Montmagny on Mar. 14, 1935, and consequently he was charged with a second offence; the information and complaint mentioned the previous conviction.

The trial took place at Montmagny on July 10; Mtre Rene Pare acted for the department, and Paul Desy and Rene Dostaler for the defence. Judge Alex. Michaud found the accused guilty and sentenced him to six months in jail and $500 and costs or an additional six months. Fortin immediately appealed this decision.

The appeal was heard by Judge Wilfrid Laliberte, King's Bench Court, Montmagny, on Apr. 20, 1942. The defence based their appeal on the case *R. v. Golub,* reported in 9 R.C.M.P. Q. 363. The appeal was dismissed by the judge who refused to follow Judge Lazure's dictum in the Golub case.

Translated extracts from Judge Laliberte's judgment follow:

> "In support of this contention (that charging a second offence in the information was illegal) defence counsel referred to the judgment of Judge Lazure (1942) 48 E. de J.101, *Le Roi v Golub,* dated Mar. 6, 1942, and to two cases mentioned in this judgment: *Rex v Mah Chee,* 71 C.C.C. 63, and *Rex v Lahman,* 76 C.C.C. 206.
>
> The last mentioned judgment was governed by a special provision in the Ontario Liquor Act (R.S.O. 1937, c. 294, s. 151) which states that the procedure to be followed is in substance that prescribed in trials by jury (ss. 851 and 963, C.C.) The judgment was not concerned with the legality of the complaint but with the method of proof . . . .
>
> Thus it is necessary to choose between two schools. I have come to the conclusion that the accused before having to plead guilty or not guilty, save as laid down with respect to jury trials for which the procedure is provided in s. 963, C.C., should be advised at least by the complaint of the nature of the accusation to which he has to plead that he is liable to receive the penalty provided for a second offence. Not to know this at the outset is sufficient to prejudice him much more than the allegation in the complaint that the accused is a second offender. It has been contended that the accused himself knows whether he has committed a similar offence previously. That is true, but this does not imply that he is actually aware of the charge for a second offence. The first might be one of long standing, having been committed some time ago and forgotten. The accused cannot foresee with certainty that he will be sentenced for a second offence if the complaint does not mention it. Thus, before pleading guilty or not guilty, has he not the right to know this?"

Accordingly, Judge Laliberte upheld the sentence given in the lower court.

This judgment is of importance in the Province of Quebec, as it nullifies to a large extent the application of *R. v. Golub.* There is every indication that outside the Montreal district Judge Laliberte's dictum is being followed. Thus complaints laid in localities outside Montreal may now allege a previous offence when the penalty for a second offence is applicable.