

(4) That the premises are open at any time to the inspection of Customs or police officers; and

(5) That the concession is not to be regarded as approval of the premises as depots under section 46 (2) of the Finance Act, 1917. The Commissioner of Police had been consulted and he had no objection to these arrangements (see letter of 12th October, 1925, File C. 31/71/2).

675. In 1926 the following stores were approved:—

- (1) The premises of New Zealand Breweries at Luke's Lane, Wellington.
- (2) The premises of W. E. Anderson at Auckland;
- (3) The premises of F. G. Smith and Co., Ltd., Port Ahuriri;
- (4) The premises of S. Wright and Co., Ltd., at Wanganui;
- (5) The premises of Hooker Bros. at New Plymouth;
- (6) The premises of Nancarrow and Co. at Greymouth;
- (7) The premises of Mockett and Sons at Westport; and
- (8) The premises of W. Longdin at Christchurch.

676. In 1928 the premises of Gosling and Co. at Blenheim were approved. In February, 1940, these same premises, on the transfer of the business of Gosling and Co. to the Marlborough Transport Co., Ltd., were again approved.

In 1928, also, New Zealand Breweries ceased to store beer at Luke's Lane, Wellington, and began to store it in the Thorndon Brewery. The Department permitted this on the ground that a brewery company, licensed to carry on more than one brewery, may store the beer made at one of its breweries in the premises of another of its breweries. On this ground the Customs Department rejected a protest by the New Zealand Free Trade Brewers' Association.

677. In December, 1935, the Department approved the premises of Grant Bros. at Nelson as a store.

678. At Wanganui the premises are now owned by the New Zealand Express Co., but New Zealand Breweries occupy a store and "the agent" is an employee of New Zealand Breweries. New Zealand Breweries also hold a wholesale license in respect of the store.

679. Except for the wholesale license which New Zealand Breweries now has at Wanganui, none of the proprietors of these stores holds a wholesale or other liquor license in respect of the store, and none of the stores is a place from which a brewer may sell his beer under his brewer's license.

The beer in these stores may still be the property of the company, either because the property is not transferred until the cash is paid, or because the beer has not yet been sold. Every sale made from the stock in these stores, which is the property of the company at the time the sale is made, is illegal.

680. The arrangement with regard to these stores has been made possible because the Customs Department has, apparently, the sole power of prosecution in this matter (see para. 62, *supra*). The legal position appears to be that section 46 (2) of the Finance Act, 1917, may be regarded as an amendment of the provisions of section 43 of Part III of the Finance Act, 1915. Section 72 of Part III of the Act of 1915 provides that penalties imposed by Part III may be recovered in like manner as penalties imposed by the Customs Act, 1913, may be recovered, and the provisions of Part XV of that Act shall apply to all such penalties and to all offences against Part III. Section 240 of the Customs Act, 1913, provides that every information under the Justices of the Peace Act, 1908, for an offence against this Act shall be laid by a Collector.

These provisions presumably have the effect of excluding the right of the police or of any private informer to take action for any breach of the provisions of section 46 (2) of the Finance Act, 1917. If so, then the Customs Department may assume the power to sanction an arrangement which seems reasonable to the Department and to ensure its continuance contrary to law because no one else may prosecute.