

794. On the 11th June, 1941, the Comptroller wrote a long report for the Minister of Customs. He said that the Crown Law Office considered that an information against the company as well as the brewers would succeed. He stated that the directors explained that they were in no manner consenting parties to or cognizant of the offences committed by the brewers. He said that the manager of the company had stated that he was entirely unaware of the frauds and had not, prior to being made cognizant of them, taken out figures to show the actual losses for wastage at the breweries, nor was he aware of the difference between the quantities brewed and sold at the breweries. The Comptroller's comment on this explanation was: "This statement may be difficult at first to believe, but in the absence of proof otherwise it should, in my opinion, be accepted." The Comptroller then went on to explain the position by saying that he thought that gross mismanagement had prevailed in the company and that he felt that neither the directors nor the management had been a party to the frauds. He said, however, that the frauds had been spread over a long period and that publicity should be given to them as a deterrent to others who would design to defraud the Customs. He pointed out that the company was liable to a fine of three times the value of the goods, and said that the value of the beer in the brews in respect of which the offences were committed on the 25th March, 1941, was approximately £350, and the maximum penalty, therefore, £1,050. The Comptroller said these offences of the 25th March were the only offences with respect to which a conviction was sure.

795. The Comptroller then went into the reasons for and against a prosecution, and said that in Court there was only evidence to support the two instances in which the brewers were caught red-handed and with respect to which extra duty, amounting to some £30, was involved, though he pointed out that the Customs could allege that it had lost £9,500 in duty and put the onus on the company to disprove it. (This was a reference to the provisions in the Customs Act which place the onus on the accused and also presume fraudulent intent unless the contrary is proved.) The Comptroller also said that, as the directors were the trusted agents of the shareholders, and assured him that they were not cognizant of the fraud, it would seem unreasonable to penalize unduly the shareholders for the acts of which the company had no knowledge. The Comptroller finally proposed that the Minister should deal with the company and the brewers under section 244, claim £9,500 for duty short-paid, impose a penalty of £1,000 on the company, a penalty of £50 on George Murtha, and a penalty of £25 on Charles Murtha. He proposed that the company's brewer's license should not be renewed for the year 1942 if the two brothers were in the employ of the company when application was made for renewal, and also that a notice should be published in the *Gazette* of the settlements made. The Comptroller concluded his report by saying that the Minister might wish to refer the whole matter to the Solicitor-General for his opinion respecting the Comptroller's recommendation.

796. The Minister sent the Comptroller's report to the Solicitor-General. On the 19th June, 1941, the Solicitor-General informed the Minister that he had considered the report and recommendation of the Comptroller of Customs and supported the recommendation that the Minister exercise his discretion under section 244. The Solicitor-General added that, although section 244 did not deal with the recovery of duty, he saw no reason why the recovery of duty short-paid should not be dealt with at the same time as the fixing of the penalties or fines. On the 20th June, 1941, the Minister approved the settlement under section 244 proposed by the Comptroller.

797. We realize the difficulty of making comment upon this decision to settle the matter under section 244, subject to the publication of the penalties in the *Gazette*, instead of prosecuting the company and the brewers in Court. We have not had the experience in dealing with these matters which the officers of the Department have had. We are not aware of the extent to which they have been accustomed to be satisfied that there is evidence of deliberate fraud before they decide against recommending settlement under section 244. We realize, too, that the decision was made during the war when