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CRIMINAL INSE C. 130/01

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN

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NOEL BETSINA

---Before CHIEF JUDGE J.R. SLAVEN at Yellowknife, Northwest Territories, on July 3rd, 1981.

## APPEARANCES:

M. ZIGAYER

Counsel for the Crown.

D. MARRIOTT

Counsel for the Accused.

(ORAL JUDGMENT)

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MR. MARRIOTT: I appear as agent on behalf of Mr. Betsina. Mr Betsina is not here today.

THE COURT: Thank you, Mr. Marriott.

The matter of The Queen v. Noel Betsina, my Information Number 518, re the failure to appear without lawful excuse, contrary to Section 133(4) of the Criminal Code. A transcript has been typed and filed of what was said in court on the 2nd day of April of this year, and the admitted facts contained in the transcript are sufficient for me to convict the accused if I do not accept Mr. Marriott's argument that the summons is deficient.

I think I should comment on the admitted facts. On page 3 of the transcript, Mr. Marriott states:

"We are further prepared to admit that the original of the summons is a true copy of the summons Mr. Betsina received, that is the ticket."

The ticket or the original copy of the summons is on file with the court and is, in fact, an Information. I took it upon myself to check the copy of the summons that was served on the accused in this case, and the front of it is the same as the original, but the back of it is quite different and rather than the Affidavit of Service and provisions for the disposition of the matter on the back, the accused's copy backing has on it instructions to the accused as to how he should proceed, and I satisfied myself that nowhere on the back or the front of the accused's copy is the text of Sections 133(4) and



455.6 contained. I have looked at the warning, if I may refer to it so, that is contained in the usual form of summons where it starts off:

"You are warned that failure without lawful excuse to attend court in accordance with this summons", and then goes on to recite the text of Section 133(4) of the Code and Section 455.6 of the Code.

Also on file are the written arguments submitted by Mr. Marriott and Mr. Fournier, the solicitor for the Government of the Northwest Territories, and I am not going to review all the arguments or make any comments re ordinances overiding federal enactments, as it would be obiter, and, in any event, my decision is not binding on anyone. In short, I accept Mr. Marriott's argument that the Summary Offence Ticket Information is deficient as a summons for the purposes of a charge under Section 133(4) in that it does not contain the text of Section 133(4) and Section 455.6 of the Criminal Code. I also accept, what is really obiter but is very persuasive on me because of the judge involved, the comment of Superior Court Judge Hugessen in R. v. Pontbrian in (1978) 1 C.R. (3rd) 97, Quebec, which states at page 100:

"In my opinion, failure to comply with the requirement of s. 455.5(4) can have no effect other than to render impossible the bringing of a charge under s. 133(4)."

Accordingly, I cannot convict on the charge under Section 133(3) of the Code but I am satisfied that the



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Section 62 of the Liquor Ordinance is a good Information. It would seem to me a simple matter for the Territorial Government to print the text of Section 133(4) and Section 455.6 on the back of the copy that is served on the accused. I do not know how many million sets of these forms they have but, in any event, that would cure that deficiency.

Accordingly, I find Mr. Betsina not guilty on the charge under Section 133(4) of the Criminal Code.

On the other one, that is the charge under the Liquor Ordinance, I do not believe any plea has been entered; is that correct?

MR. MARRIOTT: My instructions from my client are to enter a plea of guilty.

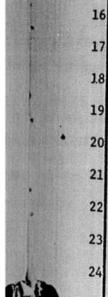
THE COURT: Very well. Are both the Crown and the Defence satisfied that I can sentence on that matter now without Mr. Betsina being present?

MR. ZIGAYER: Yes, your honour.

MR. MARRIOTT: I am satisfied, your honour.

THE COURT: I guess I should hear some facts on it before I convict.

MR. ZIGAYER: Your honour, on the 4th day of July, 1980, the accused was located behind the Explorer Hotel with two other persons, one male and one female, and they were noted to be drinking. Seized were two part-full bottles of Labatt's beer, one empty Labatt's beer bottle, and nine full sealed bottles of Labatt's beer. Mr. Betsina





admitted ownership, and was, accordingly, issued a summons under Section 62 of the Liquor Ordinance. Payment of a fine of Twenty-five dollars was requested of the defendant in August, 1980, and not done.

THE COURT: Do you agree with those facts?

MR. MARRIOTT: The facts as alleged by my friend are admitted

THE COURT: I do convict Mr. Betsina as charged. Although he is not here today, he has come to court several times on these matters, and when a person does not pay the voluntary amount I usually go higher, but I think in all the circumstances I am inclined to simply impose the regular voluntary amount of Twenty-five dollars. Would you have any objection, Mr. Zigayer?

MR. ZIGAYER: No, your honour.

THE COURT: Very well, I direct him to pay a fine of Twenty-five dollars, and in default four days' imprisonment.

You cannot advise him by mail, Mr. Marriott.

MR. MARRIOTT: Indeed, I cannot.

THE COURT: Is there a telex office in Detah?

MR. MARRIOTT: The information I have, although I have not been able to get in touch with Mr. Betsina the last couple of weeks, the information he gave me just prior to that time was that he would be involved in a commercial fishing operation for much of the summer.

THE COURT: I am not concerned about giving him time to find the money but getting in touch with him.

MR. MARRIOTT: Perhaps what I might suggest, I shall phone





his office and see -

THE COURT: I will give him three months to pay, anyway,

in view of the difficulty in communicating with him. I am going to file the written arguments as exhibits in the Section 133(4) case, together with the transcript which is already part of the record.

Certified correct

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(G. Mitchell - Court Reporter)