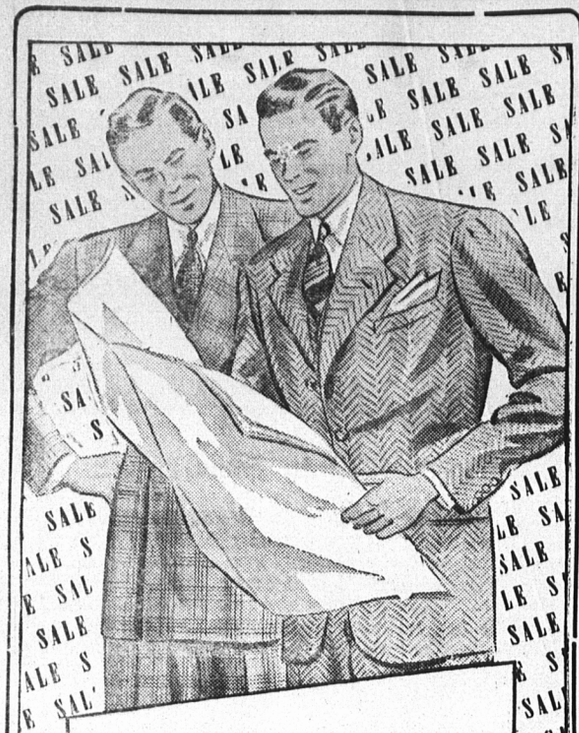

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SUPREME COURT JUDGMENT IN MOTOR LICENSE CASE GIVEN RECENTLY AT OTTAWA

In the Supreme Court of Canada Judgment was recently given in the case of the Provincial Secretary of the Province of Prince Edward Island (appellant) and Michael Egan (respondent) and the Attorney General of Prince Edward Island (intervenant) in connection with the cancellation of a motor vehicle license. Judgment was given reversing the decision of the P.E.I. Supreme Court en banc and setting aside the judgment of the Judge of the County Court of Queen's County. Following is the text of the judgment given at Ottawa by Mr. Justice Rinfret, which was concurred in by the Chief Justice and Justices Hodson and Taschereau:

Rinfret, J.,

On November 20th, 1939, the respondent was convicted by the Stipendiary Magistrate for Queen's County, in the Province of Prince Edward Island, for that he "unlawfully did operate a motor vehicle on the public highway whilst intoxicated, contrary to section 285, subsection 4, paragraph (b) of the Criminal Code of Canada".

As a result of that conviction, in virtue of section 84 (1) of The Highway Traffic Act of Prince Edward Island, 1936, the respondent's lawfully did operate a motor vehicle otherwise valid until February 28th, 1940, was automatically cancelled for a period of twelve months

The relevant part of section 84 reads as follows:

"84 (1). The license of a person who is convicted of driving a motor vehicle while under the influence of intoxicating liquor, or drugs, shall forthwith upon and automatically with such conviction be suspended for a period

(a) of twelve months for the first offence; (c) The Provincial Secretary shall not issue a license to any person during the period for which his license has been cancelled, or suspended under this section."

On May 28th, 1940, the respondent applied for an operator's license. The application was in the statutory form and contained the following questions and answers, amongst others:—

"Has your license ever been cancelled for any cause; and if so in what year?

A. On November 20th, 1939.

Q. And for what cause?

A. For conviction under Criminal Code for driving motor vehicle while intoxicated."

The Acting Deputy Provincial Secretary, in notifying the respondent that his application was refused, wrote to him: "the Provincial Secretary has no alternative but to refuse the same, pursuant to paragraph (c) of sub-section 84 (1) of the said Highway Traffic Act, owing to the fact that on the 20th day of November, A.D. 1939, you were convicted before George J. Tweedy, Esq., K. C., Stipendiary Magistrate for Queen's County, on a charge of operating a motor vehicle on the 19th day of November, 1939, while intoxicated, and the period of cancellation fixed by the said Section has not yet expired."

From this refusal, the respondent appealed to the Judge of the County Court of Queens County.

His appeal professed to be asserted under Sec. 8 (7) of the Highway Traffic Act, which reads as follows:

"8 (7). If any person is aggrieved by the refusal of the Department to grant a license or by the revocation of a license under this Section, he may, after giving to the Department notice of his intention to do so, appeal to the County Court Judge of the County Court of the County in which any offices, where the business of the Department with respect to the granting of licenses is carried on, is situate and, on such appeal, the Judge may make such order as he thinks fit and any order so made shall be binding on the Department for the year in which it was made."

The Judge of the County Court of Queen's County after having heard council on behalf of the present respondent, as well as for the Provincial Secretary—and counsel for the Provincial Secretary "having admitted the competency of the (respondent) to operate and drive motor vehicles"- - - allowed the appeal and ordered "that the Department of the Provincial Secretary shall, upon his (the respondent's) application in the ordinary way and upon payment of the usual fee and without any certificate of competency, issue to the (said) Michael Egan a license to operate motor vehicles in the province of Prince Edward Island."

From this order, the appleant appealed to the Supreme Court of Prince Edward Island (sitting en banc), which dismissed such appeal, but which afterwards granted leave to appeal from such dismissal to the Supreme Court of Canada. Leave to intervene was granted the Attorney General of Prince Edward Island.

The reasons for judgment of the Supreme Court of Prince Edward Island were delivered by Mr Justice Arsenault. He stated that, under the provisions of the Criminal Code, "the Stipendiary Magistrate could have made a further order prohibiting the accused from driving a motor vehicle for a period not exceeding three years". He pointed, however, to the fact that the Magistrate had not done so, but that he certified to the Provincial Secretary that the present respondent had been convicted; that the conviction was made on November 20, 1939, and that, had the license not been cancelled in pursuance of Section 84 of The Highway Traffic Act of 1936, the respondent's operator's license would have expired on February 28, 1940; that the respondent took no further step to have his license restored but that six months afterwards, to wit, on 28th May 1940, he made application on the regular form for an operator's license. The learned Judge then mentioned what I have already stated: that the Provincial Secretary refused to issue the license on account of the conviction, that upon appeal to the Judge of the County Court of Queen's County, the Department of the Provincial Secretary had been ordered to issue a license to the respondent as aforesaid, and that the Provincial Secretary now appealed to the Supreme Court (en banc) chiefly on the following grounds:

1st. That the County Court Judge had no jurisdiction to make the order;

2nd. That nothwithstanding the provisions of Sec. 285, subs. 7 of of the Code, the Provincial Secretary had a right to refuse to issue the said license.

The respondent, the judgement appealed from proceeds to say, contended that as the Criminal Code, by Section 285, subs. 7, "has now made due provisions for the punishments of such an offence and has empowered the convicting magistrate to impose a further penalty by suspension of the offending party's license, Section 84 (1) of the Highway Traffic Act, 1936, has **ipso facto** become **ultra vires.**"

Dealing first with the question of the jurisdiction of the Judge of the County Court to make the order complained of, the judgment states the appellant's contention that Section 8 (7) of the Highway Act, under which the Judge of the County Court purported to act, did not give him jurisdiction to make the order. The judgement notes "that the appeal to the Judge of the County Court was not from the order of the Provincial Secretary cancelling the Respondent's license but from the refusal of the Provincial Secretary to issue an operator's license after the old license had expired by effluxion of time."

The decision is that the appeal was properly taken under Section 8 and subsections of the Highway Traffic Act and that the Judge of the County Court had jurisdiction to make the order. It adds that:

"There are no provisions in the Act for any appeal from the County Court Judge's decision. He is persona designata under the Act and as such his order is final and not appealable. Sec. 8 (7) seems (so it is stated) to make this clear when it says—'The Judge may make such order as he thinks fit and any order so made shall be binding in the Department for the year in which it was made'."

It was accordingly adjudged that the appeal should be dismissed with costs.

But although, in view of the above decision, it was not necessary, to consider "the question of the ultra vires of Sec. 84 (1) of the Highway Traffic Act", it was thought advisable to deal with it and to say "that since the Criminal Code has invaded the field by enacting Sec. 285, s. sec. 7 amended by 3 George VI (1939) Cap. 30, Sec. 6, it follows that the provisions of the Highway Traffic Act as to cancellation of a license on a conviction for driving a motor vehicle whilst intoxicated, has become ultra vires." And R. vs. Gallant, 51 C.C.C. p. 179, is referred to.

It is from the above judgment that the Provincial Secretary of the Province of Prince Edward Island now appeals, with the intervention of the Attorney General of the same province, by leave of the Supreme Court (en banc.) The Attorney General of Canada and the Attorney General for Ontario were granted leave to appear before this Court and to argue for or against the judgment appealed from, on the point of the constitutionality of the relevant sections of the Criminal Code and of the Highway Traffic Act of Prince Edward Island.

(To be continued.)

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CENTRAL GUARDIAN

This column is reserved for news of local interest, but advertising of a newsy natu e may be inserted at 5 cents a word, strictly payable in advance.

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CONFEDERATION LIFE INSURANCE. L-9789

DR. J. P. MILLAR will be away from his office from August 6th to August 20th. L-139-8-6-31.

A CONGRGEATIONAL MEETING will be held in St. John's Presbyterian Church, Belfast, on Monday, August 11th at 8 P. M. L-185-8-8-11.

TRYON BAPTIST CIRCUIT. — The Rev. Emerson Huestis will preach at Westmoreland 11 A. M. Tryon 3 P. M. Albany 7.30 P. M. L-188-8-8-11

SUMMER SPECIALS.—A lot of summer dresses and coats clearing at one third per cent discount. Kennedy's, 154 Great George Street. L-137-8-6-31.

HOLMANS, Charlottetown have some excellent bargains in used ranges from $15.00 up. Terms if desired. L-1032-7-25-8-1-8

HAMPTON UNITED CHARGE.—Services on Sunday, August 10th as follows: Hampton 11 A. M. Appin Road 3 P. M. Victoria 7.30 P. M. There will also be a service at Bonshaw at 11 A. M. and at DeSable at 7.30. L-176-8-8-11.

WINSLOE PASTORAL CHARGE.—Services Sunday, August 10th are as follows: Winsloe North 11 A. M. S. School 10 A. M Winsloe South 3 P. M. S. School 2 P. M. Princetown Road 7.30 P. M. S. School 6.30 P. M. Rev. J. R. Skinner, Minister. L-193-8-8-11

CAVENDISH CHARGE. — Worship on Sunday, August 10th in North Rustico at 11 A. M. Rev. W. A Patterson will preach at a Masonic service in Stanley Bridge at 7.30 P. M. Geo. Tilley, Minister. L-184-8-8-11.

THE ENGAGEMENT is announced of Verne Bea daughter of Mrs MacNeill and the late R. J. MacNeill of Tyne Valley to Anthony Albert, son of the late Mr. and Mrs. A. C. Williams of Bideford. Marriage to take place August 19th. L-187-8-8-11.

CORNWALL PASTORAL CHARGE. — Services on Sunday, August 10th. Kingston: S. S. 10.15 A. M. New Dominion: S. S. 11 A. M. Cornwall: S. S. 11 A. M. Service: 7.30 P. M. Speaker, Rev E. M. Aitken, B. A., B. D., of Calgary, Alta. Rev. E. R. Woodside, Minister. L-183-8-8-11.

NORTH RIVER BAPTIST CHURCHES, Sunday August 10th. Services: Long Creek. Sunday School 10 A. M. Church Service 11 A. M. Clyde River Sunday School 2 P. M. Service 3 P. M. Kingston. Service 7.30 P. M. Fairview, Sunday School 11 A. M. A cordial welcome to all visitors and friends to worship with us. A. E. Todd, Minister. L-175-8-8-11.

PRINCTOWN UNITED CHURCH, MALPEQUE, Sunday, August 10th. Rev. C. J. Crowdis, Minister. Mrs. Chester Simpson, organist and choir leader. 11 A. M. Rev. J. M Laird of Knox Presbyterian Church, St. Thomas. Rev. Mr. Laird assisted by his brother Mr. James Laird of Montreal will unveil a tablet to the memory of their father the late Rev. Robert Laird minister of the Princetown Presbyterian Church from 1860 to 1879. A double male quartette from Charlottetown will assist in praise. 7 P. M. Rev. C. J. Crowdis, Subject, The Heart of a People is their Hope 'They explore the depths as they sing.' The above singers will assist the male choir and render special numbers. L-162-8-8-21.

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INVESTIGATING PEAT MOSS HERE—The possibilities of peat moss, recently discovered at East Bideford, are being investigated at present and the D. J. Cannell Co., mining brokers of Montreal, have lately taken over certain options in that area. It is reported that there is quite a growth of it in that section and in places the bed goes to a depth of 28 feet. The moss is largely used for poultry litter and in various phases of horticulture. The majority of it was imported from Sweden, Norway and Germany before the war. Now that this is halted, United States is looking for a substitute.

WORK ON HIGHWAY CONTINUES—The work of applying a seal coat to the Charlottetown-Summerside paved highway, which was commenced several weeks ago, is nearing completion. Already about 15 miles have been finished although bad weather somewhat retarded the project. The protective coat is supposed to be applied to the highway every five years. Other highways in the province will also receive this seal coat and it is planned to apply about 40 miles of it altogther this season.

Use Minard's for sprains.

INVASION! BRITISH WARM UP ATTACKING FORCE AS NAZIS MEET TROUBLE IN NORWAY

RUSSIA calls on Britain to invade the European continent and draw off some of the force of the German drive against the Soviet. Britain's censorship passes reports stating that she has troops all set for the invasion. Coincident with the reports, these pictures arrive in America, lending credence to the belief a blow will soon fall, probably in rebellious Norway.

British light infantry troops (ABOVE) storm seacoast rocks to capture an "enemy" position and (BELOW) advance on a beach after first blasting enemy defenders. While these exercises were on in North Ireland another picture (LEFT made in Scotland showed Norwegian King Haakon, left and Crown Prince Olav, center, with a Norse machine gun company commander.