

The Paper That
Covers Prince Edward
Island
Like The Dew

THE CHARLOTTETOWN GUARDIAN

The People's Paper Read by Everybody

All The News
Worth While Printing
All The Ads.
Worth Reading

CHARLOTTETOWN, CANADA WEDNESDAY, JANUARY 11, 1922

Annual Subscription, delivered \$5.00
By Mail, Canada, \$5.00. U. S. A. \$4.50.

Supreme Court Opened For Hilary Term

Five Bills Found in Three Criminal Cases. Report of Grand Jury on Jail and Asylum.

The Hilary term of the Supreme Court in Charlottetown yesterday morning, his Lordship the Chief Justice and his associates on the bench. The docket for the term comprises four criminal cases, several civil and non-jury cases, one non-jury debenture appeal case and four applications for writs of certiorari.

The following Grand Jury members were sworn in: Frank R. Hearty, Charlottetown; (Foreman); Watson, Emerald; Samuel L. Boswell, St. John's; Garfield Warren, St. John's; Isaac Carter, Charlottetown; William Clark, Emerald; Black, Charlottetown; D. L. Simon, Charlottetown; Arthur J. Charlottetown; Basil McLeod, Tracadie Cross; Thomas Pell, Charlottetown; Albert, French Fort; Charles E. Manzie, North Westshore; Norman McDonald, Grand Tracadie; P. Nicholson, Hazel Grove; J. Rodgers, New Haven; Anson Henry, St. John's; Robert A. McAulay, Tracadie Cross.

For the Grand Jury retired Lordship rendered judgment on a matter of the application of bond Flood for a writ of certiorari. The report of the Grand Jury on the Jail and Asylum appears elsewhere in this day's Guardian.

The matter of an application for a writ of certiorari to quash a conviction made by the M. Page and others, Justices of Peace for Prince County, was made absolute to quash conviction. J. D. Stewart, K.C., applicant; Mr. Gaudet, K.C., respondent.

Frank McPhee, a student in the office of Mr. J. D. Stewart, K.C., was admitted as an attorney-at-law. Mr. McPhee has the distinction of being the only one in legal profession in this Province to have active services over his name. He was complimented by the Chief Justice when called to the bar upon his record both in defence of his country and as a student.

McPhee, who is a son of Capt. J. McPhee, of Georgetown, in the present to practice in St. John's.

Arguments were given for the writs in a number of non-jury cases, which were not contested. A morning one contested non-jury case will come up, namely, *Hard Creamer vs. the Roman*.

The Catholic Episcopal Corporation of the Diocese of Charlottetown.

Shortly after 6 p.m. the Grand Jury brought in true bills in the criminal indictment cases for shop breaking and larceny against E. Essary, Geo. Purze and K. W. McKinnon. No bill was found in the assault case of the King vs. Geo. Moore.

The Grand Jury then reported as follows:

To the Honorable John Alexander Mathieson, Chief Justice; the Hon. Francis Longworth, Hazard and the Honorable Aubin E. Arsenault, Associate Judges of the Supreme Court of Jurisdiction of the Province of Prince Edward Island:

My Lords, we the Grand Jury have leave to submit our report.

We visited the County Jail at Queen's County and found conditions there satisfactory as far as food, cleanliness and sanitary matters are concerned, but we feel that some radical change is essential if the health of the prisoners who may inhabit this institution from time to time, is to be maintained. There appears to be no provision for exercise or any other healthful activity. Grand Jurors have from time to time advocated a change, but apparently this suggestion has not met with the approval of the Government, doubtless owing to the great cost such a work would entail with the present high prices of labor and materials.

We have another suggestion to offer. We understand that there are several acres of land in the vicinity of this institution which could be easily brought into a state of cultivation, and we feel that it would be in the best interests of all concerned if this land could be worked by the more trustworthy prisoners during the winter season. It might even be advisable to pay these a small gratuity for their work to be in the best interest when their period of detention has expired. The returns from these farming operations should be made in full to the prisoners, and the cost of the outdoor exercise would be deducted to the benefit of the prisoners. In the winter, and especially in the winter, it is a matter of life and death for the prisoners, and this might be put to rest and the weather was not so cold and so used in the institution.

We next visited the Hospital for the insane, the Infirmary and the Subsidary Institutions at Falconwood and found conditions there to be excellent. We carefully examined the food, bedding, sleeping quarters, sanitary arrangements, ventilation, all of which were clean and wholesome, and we were particularly noticeable in the male wards. The patients all seemed contented and happy. All which reflects great credit, not only on the Government, and the Medical Superintendent, but also on the heads of the different departments in these Institutions. We could, however, suggest that as it has been nearly arrived when we visited the infirmary, which was overcrowded, it would be wise to make provision for a greater number of inmates. This can easily be arranged by using the present firmament for the overflow from the hospital for the insane, and erecting a more suitable outbuilding, either at Falconwood or elsewhere, to be used in caring for the pauper patients of this Province. We understand that at times it has even been necessary to use part of the Infirmary for the insane, and if this state of affairs is allowed to continue, doubtless the time will come when deserving paupers who apply cannot be taken into the Infirmary owing to the crowded condition of the building.

His Lordship the Chief Justice in his remarks to the Grand Jury spoke of the necessity of a Home for delinquent boys, and we have discussed this important question at some length and have come to the conclusion that such an Institution is one of the crying and indispensable needs of this Province. It is a great shame to see small boys who have made, perhaps, only a small offence against the law, herded with other and more hardened prisoners, many of them being of the criminal type, in our jails and penitentiaries, and they themselves becoming criminals owing to this association with these older culprits. It is, therefore, very properly taken care of at the beginning of their career, their criminal instincts might be turned in the opposite direction. We can only suggest that a proper Institution, which would be quite adequate for this purpose, would be a great benefit to the Province.

(Continued on Page 6.)

IMPORTANT JUDGMENT RENDERED BY SUPREME COURT ON IMPORT SECTION OF THE PROHIBITION LAW

The Chief Justice in a Judgment of the Supreme Court Handed Down Yesterday Declared Section 52 of the Prohibition Act ultra vires as it Affected Inter-Provincial Trade Without Adopting the Necessary Precautionary Measures for Dealing with Import and Export Business.

CANADA,
PROVINCE OF PRINCE EDWARD ISLAND,
IN THE SUPREME COURT.

In the Matter of the Application of Raymond Flood for a Writ of Certiorari.

Judgment of the Court Delivered by the Chief Justice, 10th January, 1922.

It is the duty of the Court to determine upon the sufficiency of the evidence. It does not appear that there was any material irregularity in the proceedings. Upon this ground, therefore, no sufficient cause is shown for granting the writ.

The substantial question in this case is upon the second ground, challenging the validity of Section 52 of "The Prohibition Act" which is as follows:

"52. No person shall keep or have in his possession any liquor unless such liquor has been purchased from a Vendor in accordance with the provisions of this Act. Any liquor in possession of any partnership or company shall be deemed to be in the possession of each member or shareholder thereof. All liquor purchased from a vendor shall, until actually used, be kept in the bottle or container on which the label has been attached with the provisions of Section 49."

On the 7th day of February, 1921, the applicant was convicted before the Magistrate for an offence against the provisions of "The Prohibition Act" and was adjudged to forfeit and pay the sum of \$200 and costs and in default of payment to be imprisoned in the common jail of Queen's County for the space of three months.

An Order Nisi for a Writ of Certiorari was granted and served upon the Prosecutor, the convicting Magistrate and the Attorney General. On the hearing, Mr. Bentley, K.C., appeared for the Prosecutor, and Mr. Inman, K.C., for the Applicant. The Crown was not represented.

The offence charged in the indictment was that "the said Raymond Flood, between the first day of December, A.D. 1920, and the twelfth day of January, A.D. 1921, unlawfully had in his possession intoxicating liquor which had not been purchased from a vendor in accordance with the Prohibition Act."

The grounds set forth in the indictment were that the Magistrate had no jurisdiction in the premises because—

1st. There was no evidence; and
2nd. That Section 52 of "The Prohibition Act" under which the conviction was made, is ultra vires of the Legislature of this Province.

On the first ground, the jurisdiction of the Court is limited by Section 159 of "The Prohibition Act" which is:

"That no conviction, judgment or order in respect of any offence against this Act shall be removed by certiorari or otherwise into any of His Majesty's Courts of Record."

It is settled Law that, notwithstanding such a clause, the Supreme Court has inherent power to quash the judgments of inferior tribunals where there is a vital defect in their jurisdiction or proceedings. But where the tribunal has jurisdiction over the person accused and over the subject matter of the complaint and the procedure has been regular, the only question being upon the facts, this Court has no right to disturb the finding of the trial court.

In *Re Dougherty* decided by the full Court here in November, 1902, it was held that the Magistrate's finding on the evidence could not be reviewed even though he erroneously found a fact essential to the validity of his conviction; that the legislature, having entrusted the jurisdiction on the merits to the Magistrate, whatever his decision thereon might be, it could not be disturbed on Certiorari even if he erred on the facts. This case was followed in the subsequent decisions of this Court and particularly in the latter referred to with approval in *Re Arthur McKinnon*, 1916.

The Application in the present case discloses: An Information for an offence against the form of the personal consumption, but the motion for a Court properly constituted to try the charge; the hearing in the Province it will be of evidence relating to the charge, and a conviction made the possessor's intention was whether to sell it, or to consume it in the Province or to export it—presiding Magistrate or to export it—the condemnation

of the evidence. It does not appear that there was any material irregularity in the proceedings. Upon this ground, therefore, no sufficient cause is shown for granting the writ.

The substantial question in this case is upon the second ground, challenging the validity of Section 52 of "The Prohibition Act" which is as follows:

"52. No person shall keep or have in his possession any liquor unless such liquor has been purchased from a Vendor in accordance with the provisions of this Act. Any liquor in possession of any partnership or company shall be deemed to be in the possession of each member or shareholder thereof. All liquor purchased from a vendor shall, until actually used, be kept in the bottle or container on which the label has been attached with the provisions of Section 49."

On the 7th day of February, 1921, the applicant was convicted before the Magistrate for an offence against the provisions of "The Prohibition Act" and was adjudged to forfeit and pay the sum of \$200 and costs and in default of payment to be imprisoned in the common jail of Queen's County for the space of three months.

An Order Nisi for a Writ of Certiorari was granted and served upon the Prosecutor, the convicting Magistrate and the Attorney General. On the hearing, Mr. Bentley, K.C., appeared for the Prosecutor, and Mr. Inman, K.C., for the Applicant. The Crown was not represented.

The offence charged in the indictment was that "the said Raymond Flood, between the first day of December, A.D. 1920, and the twelfth day of January, A.D. 1921, unlawfully had in his possession intoxicating liquor which had not been purchased from a vendor in accordance with the Prohibition Act."

The grounds set forth in the indictment were that the Magistrate had no jurisdiction in the premises because—

1st. There was no evidence; and
2nd. That Section 52 of "The Prohibition Act" under which the conviction was made, is ultra vires of the Legislature of this Province.

On the first ground, the jurisdiction of the Court is limited by Section 159 of "The Prohibition Act" which is:

"That no conviction, judgment or order in respect of any offence against this Act shall be removed by certiorari or otherwise into any of His Majesty's Courts of Record."

It is settled Law that, notwithstanding such a clause, the Supreme Court has inherent power to quash the judgments of inferior tribunals where there is a vital defect in their jurisdiction or proceedings. But where the tribunal has jurisdiction over the person accused and over the subject matter of the complaint and the procedure has been regular, the only question being upon the facts, this Court has no right to disturb the finding of the trial court.

In *Re Dougherty* decided by the full Court here in November, 1902, it was held that the Magistrate's finding on the evidence could not be reviewed even though he erroneously found a fact essential to the validity of his conviction; that the legislature, having entrusted the jurisdiction on the merits to the Magistrate, whatever his decision thereon might be, it could not be disturbed on Certiorari even if he erred on the facts. This case was followed in the subsequent decisions of this Court and particularly in the latter referred to with approval in *Re Arthur McKinnon*, 1916.

The Application in the present case discloses: An Information for an offence against the form of the personal consumption, but the motion for a Court properly constituted to try the charge; the hearing in the Province it will be of evidence relating to the charge, and a conviction made the possessor's intention was whether to sell it, or to consume it in the Province or to export it—presiding Magistrate or to export it—the condemnation

British Troops To Be Withdrawn From Ireland

With the Exception of Ulster the Movement Includes 50,000 Men. Griffith Elected President of Dail De Valera and Cabinet Walked Out. New Cabinet Formed.

LONDON, Jan. 10.—The Times today was elected president of the Dail Eireann, the former foreign minister under Eamon De Valera, will head a provisional government to arrange for the establishment of the Irish Free State.

Arthur Griffith, the former minister under Eamon De Valera, was elected president of the Dail Eireann, the former foreign minister under Eamon De Valera, will head a provisional government to arrange for the establishment of the Irish Free State.

Arthur Griffith, the former minister under Eamon De Valera, was elected president of the Dail Eireann, the former foreign minister under Eamon De Valera, will head a provisional government to arrange for the establishment of the Irish Free State.

Lenine Will Represent Russia at Geneva

LONDON, Jan. 10.—It is officialy announced that Lenine will be Soviet Russia's delegate to the Geneva Conference if conditions in Russia permit says a despatch from Cannes.

Japanese Are Pushing Into South America

RIO DE JANEIRO, Jan. 10.—Japanese, after having secured content with the West Coast of South America for colonization for some years are now coming eastward and colonizing as effectively, if not on such a large scale, as in Chile and Peru on the Pacific.

Many Japanese are settling in the Brazilian state of Sao Paulo, where they find the soil and climate suitable for the cultivation of rice and other crops not strange to their native lands. To assist the immigrant the Government of Sao Paulo has enacted special immigration measures by which allotments are allowed foreigners who are willing to live upon and improve the land.

Japanese have obtained allotments of large areas. The Japanese colonies are directed by a cooperative executive commission elected by the landholders, which works in co-operation with state government and the Japanese Emigration Company.

The roads and highways in the area held by the Japanese settlers are among the best of the State. The Executive Commission directs the work of road construction and improvement and each landholder has his share or road to keep up.

In the schools both the Brazilian and Japanese languages are taught, nearly every student being able to speak either.

Japanese also have their own flour mills, sugar refineries and rice mills which are conducted on a cooperative basis.

Ex-Premier Meighen Nominated Today

Will be Returned by Acclamation and Will Be Able to Take His Seat at Opening of Parlia- ment, probably Early in March.

TORONTO, Jan. 10.—Former Premier Meighen is being nominated today by the Conservatives at the opening of the new Parliament. He is expected to be returned by acclamation and will be able to take his seat at the opening of Parliament, probably early in March.

Y.M.C.A. Report Shows Successful Year

The annual meeting of the directors of the Y.M.C.A. was held in the association's rooms last night. Mr. R. H. Jenkins, president in the absence of vice-president J. A. Clark, A. A. Pamerson, W. A. Stewart, P. W. Turner, A. C. Buchanan, Geo. D. DeBois, J. T. McKenzie, J. A. McMillan and David Bethune.

Six directors were appointed at last night's meeting as follows: Mr. H. E. Miller to replace the late Mr. W. S. Leonard; Messrs R. H. Jenkins (re-appointed); Dr. Ayres (re-appointed); J. D. Jenkins, Dr. Dewar and Isaac Carter.

The present board of directors consists of the following, in addition to the above mentioned: Messrs J. A. Clark, A. A. Pamerson, W. A. Stewart, P. W. Turner, A. C. Buchanan, Geo. D. DeBois, J. T. McKenzie, J. A. McMillan and David Bethune.

It shall be so constructed and equipped as not to facilitate any violation of this Act, and not connected by any internal way or communication with any other building or building wherein no other commodity or goods than liquor for export from the Province are kept or sold to such wholesale licensee and wherein no other business than keeping or selling liquor for export from the Province is carried on.

Recent Oil Fields Are Being Developed

BUENOS AIRES, Jan. 10.—In the oil fields of the Argentine Republic, the Standard Oil group has been investing in the new field in the territory of Neuquen, where drilling is now going on. The Standard Oil group recently obtained control of a huge amount of acreage held by the Braden interests.

The Argentine oil future is so bright that it is expected to be followed by a series of important cabinet meetings.

ROBBED JEWELLER'S WINDOW

VANCOUVER, Jan. 9.—A Jeweller's window was broken into by a thief who entered the field in the face of legal objections. The thief acquired such large interests that Americans practically were forced to take definite action. The American purchase in Argentina was the ground for the development of the "Compania Petrolera" in Neuquen, which has been directed by Argentine.

The Weather

TORONTO, Jan. 11, North-east gale winds. Fair and cold.

Noozie the Sunshine Kid



CONDENSED SPECIALS:

YES.—10c per line per day. 5c per line per day for 3 days or over. 2c per line per day for 5 days or over. Address forms part of amount to be paid for Special Advertisements. For one week. Situated, for seven words, 50c per line.

ANKLYN STOVE for sale, Apply 174 Kent St.

WORKING RANGE FOR SALE, Apply 89 Rochford St.

Lady's wrist watch in Arc last night. Leave this office.

SALE—MILK KCOV. NEW—freshened, four years old, Jersey and Guernsey grade. Apply to MacInnes, Victoria Park.

YOUR FURS REMODELLED in time, by us, as our season opens for this class of work the 1st of March. We do the best class of work. Also dress all kinds of furs. Open evenings. The Montreal Fur Remodelling Co., Queen Street.

MENTS GET IN A PROFITABLE business for your own. Ever ready to take care of your business. owner needs some of our fine, hundred varieties of hardy Redwood trees and plants. No capital needed. Complete equipment and instruction free. Write Dominion, Montreal.

EXPRESS, MAIL OR BRING YOUR FURS TO W. CHESTER S. McLURE