

Judgment Given In Supreme Court

Theodore Georges Wins Appeal Case Against The City Re Restaurant By-Law, Which Is Found To Be Ultra Vires.

The following judgment in the case of Theodore Georges (Appellant) vs. The City of Charlottetown (Respondent) was delivered in the Supreme Court on Monday by Mr. Justice Saunders. The judgment allows the appeal and declares the by-law under which appellant was convicted to be ultra vires.

The appellant was convicted by the Stipendiary Magistrate of the defendant city for that he on the 1st day of November 1931 at Charlottetown did unlawfully keep open a restaurant for business between the hours of 10 o'clock a. m. and 12 o'clock noon contrary to the City by-law.

The appellant as manager of the Venetian Gardens Restaurant admits having kept the same open for business on Sunday the 1st of November 1931 between the hours mentioned, but contends that he had a right to do so, claiming the by-law in question to be ultra vires.

An Act of Necessity

In support of his contention his counsel among other things contended that the preparation and serving of meals on Sunday is an act of necessity and comes within the provisions of the Federal Lord's Day Act; that the Act incorporating the defendant city could not repeal or interfere with the provisions of the Federal Lord's Day Act and does not repeal the provisions of the provincial Lord's Day Act and therefore could not confer powers on the defendant city inconsistent with the provisions of either of the said Lord's Day Act.

Incorporation Act

The defendant city's incorporation Act is 21-22, George V, Cap. 31, and Sec. 112 is as follows:

"112. It shall be lawful for the said Council of the said City at a meeting or meetings as aforesaid to make such by-laws as to them shall seem meet for the good rule, peace, welfare and government of the said city—but not so as to restrict the generality of the foregoing terms of this section—are declared to be for the purposes following:

"(9). To regulate and license the carrying on or conducting in the said city of all restaurants, cigar stands, fruit stands, rooms or places wherein soft drinks of any kind are dispensed in the said City; and also to provide for the hours in which said places shall do business and to provide for the closing or otherwise regulating of such on Sundays."

Under the provisions of Sec. 112 the defendant City enacted the following by-law:

"7. No restaurant shall be open for business or do any business except at the following hours, namely—(a) on Sundays, and then for meals only, between 8.30 a. m. and 10.00 a. m.; between 12 noon and 2.00 p. m.; and between 5.30 and 7.00 p. m. Provided however that during the months of June, July, August, September and October restaurants may be open for meals on Sundays from 8.30 a. m. to 12.00 p. m."

The foregoing is the by-law which the appellant was convicted of violating. His counsel contends that under the provisions of Sec. 11 Cap. 31 (R. S. C., 1927), being "an Act respecting the Lord's Day", and under the provincial Act 20 Geo. III Cap. 3, being "An Act for the due observance of the Lord's Day," the appellant had a right to keep his restaurant open for the purpose of preparing and serving meals notwithstanding the by-law of the said defendant City. In short, he says the by-law is in contravention of

the said mentioned Acts and is ultra vires.

Sec. 11 of Cap. 123 (R. S. C., 1927) reads as follows:

"Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or mercy, and for greater certainty but not so as to restrict the ordinary meaning of the expression 'work of necessity or mercy' it is hereby declared that it shall be deemed to include the following classes of work:

Then follows very many classes of work which are called by the Act 'works of necessity or mercy,' and among others the following:—

"(c). Receiving, transmitting or delivering telegraph or telephone messages."

"(g). The conveying of travellers and work incidental thereto."

"(o). The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act."

20 Geo. II, Cap. 3, subsection 2 reads:

"And be it further enacted by the authority aforesaid, that no truckman, driver of carts, labourer, or other person whatsoever, shall hereafter do or perform any labour, work or business appertaining to his or their respective ordinary callings or profession or other worldly labour or suffer the same to be done by his, her or their child or children, servant or servants, either by land or water (works of necessity and charity only excepted)."

Hiring and driving a horse on a Sunday under subsection (o) of Section 11 of Cap. 123 (R. S. C., 1927) comes within the express provisions of the Lord's Day Act. If one is permitted to hire and drive a horse and carriage all day Sunday, it necessarily follows he would be permitted to feed his horse at a livery stable on a Sunday at any time he deemed it necessary to do so. The Act itself does not expressly state he may feed his horse at any time on Sunday but it would be unthinkable to hire and drive a horse all day on Sunday without feeding him. To feed the horse would be an act of necessity as well as an act of mercy—would it not be an anomaly to say to the driver you may feed your horse at any time during Sunday, but you yourself can only eat at certain specified hours.

Counsel for the defendant City says or contends that the question of necessity or mercy does not arise in the present case as the hours specified in the by-law meet all general requirements.

Federal Lord's Day Act

It may very well be that the necessity for man or beast to eat might, only arise at hours on Sunday apart from those permitted by the by-law. It seems to me that the preparation and service of meals on Sunday during the hours not permitted by the by-law might under certain circumstances be as important as selling or supplying medicine or drugs for the relief of sickness, which is expressly permitted by the Federal Lord's Day Act and stated by the said Act to be an act of necessity and mercy.

There are many other things in the Federal Lord's Day Act permitted to be done on a Sunday which seem to me to be much less acts of necessity and mercy than the preparation and service of meals.

I am of opinion that the preparation and service of meals at any time on a Sunday is an act of necessity and under certain circumstances an act of mercy and comes within the provision of both Federal and Provincial Lord's Day Acts.

I am therefore of opinion that the by-law in question is ultra vires.



The Bakers point out with pride that Hamilton's are the ORIGINAL Dainty Cream Sodas. A full pound of delicious wafers in each yellow-and-red package. So light—57 in one pound; so tender—they just melt away! OVEN SEALED—they bring you the table the flavor of a freshly baked biscuit.

Judgment of Arsenault, J.

14th March 1932.

The said Theodore Georges, the appellant, was convicted before the Stipendiary Magistrate of the City of Charlottetown under the provisions of the by-law of the City of Charlottetown for that he on the 1st day of November 1931 in the City of Charlottetown did unlawfully keep open a restaurant for business from between the hour of 10 o'clock a. m. to 12 o'clock noon contrary to the provisions of said by-laws.

This is an appeal from the said conviction.

The Act 21-22 Geo. V, Cap. 31, being an Act to consolidate and amend the several Acts incorporating the City of Charlottetown, provides:

"Sec. 112—It shall be lawful for the said Council of the said City, at a meeting or meetings thereof as aforesaid, to make such by-laws as to them shall seem meet for the good rule, peace, welfare and government of the said City—and from time to time with and subject to the same limitations with respect to penalties, to make, ordain, enact, revise, amend, administer and enforce such by-laws as they may deem proper, which for greater certainty, but not so as to restrict the generality of the foregoing terms of this section—are declared to be for the purposes following:

"(9) To regulate and license the carrying on or conducting in the said City of all restaurants, cigar stands, rooms or places wherein soft drinks of any kind are dispensed in the said City; and also to provide for the hours in which said places shall do business and to provide for the closing or otherwise regulating of such on Sundays."

Under the provisions of the said Section 112 and sub-section (9) the City Council of the said City of Charlottetown enacted the following by-law among others:—

"7. No restaurant shall be open for business or do any business except at the following hours, namely:—(a) on Sundays, and then for meals only, between 8.30 a. m. and 10.00 a. m.; between 12 noon and 2.00 p. m.; and between 5.30 p. m. and 7.00 p. m. Provided however that during the months of June, July, August, September and October restaurants may be open for meals on Sunday from 8.30 a. m. to 12.00 p. m."

It is to be noted that under the provisions of this by-law it was illegal on the 1st day of November to keep a restaurant open on Sunday except between the hours of 8.30 a. m. to 10.00 a. m. and between 12 noon and 2.00 p. m. and between 5.30 p. m. to 7.00 p. m. It is now claimed that such by-law is ultra vires.

Section 11 of Cap. 123 (R. S. C., 1927), being "An Act respecting the Lord's Day," reads as follows:

"Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or mercy; and for greater certainty but not so as to restrict the ordinary meaning of the expression 'work of necessity or mercy' it is hereby declared that it shall be deemed to include the following classes of works:—

Then follows a list of about twenty-four classes of work that may be called works of necessity or mercy, and among them the following:—

"(c) Receiving, transmitting or delivering telegraph or telephone messages."

"(g) Conveying travellers and work incidental thereto."

"(o) The hiring of horses or carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act."

and that the conviction made herein should be quashed.

As the defendant City doubtless acted in good faith and believed they were acting within the law, it seems to me in the interests of Justice there should be no costs to either party. There will therefore be no costs.

"(r) The delivery of milk for domestic use and the work of domestic servants and watchmen." The Prince Edward Island Statute relating to the observance of the Lord's Day is 20 Geo. III and is "An Act for the due observance of the Lord's Day." The preamble of this act indicates its object. "Whereas the observance of the Lord's Day in this Island has been hitherto much neglected any many abuses of this same have been committed to the manifest prejudice and dishonour of religion and the shameful violation of public decorum and good order."

Section 11 is in part as follows:—"No truckman, driver of carts, labourer or other persons whatsoever shall hereafter do or perform any labour, work or business appertaining to his or their respective ordinary callings or profession or other worldly labour or suffer the same to be done by his, her or their child or children, servant or servants, either by land or by water (works of necessity and charity only excepted)."

In neither of these Acts is the service of meals mentioned or the work done in the preparation or serving thereof, neither is the preparation or service of meals mentioned as a work of necessity. It has been universally recognized however that the preparation and service of meals on Sunday is a work of necessity and so it has not been attempted to interfere with such preparation and service either in the home or in public places such as hotels and restaurants.

It seems to me that this matter narrows itself down to the question as to whether the preparation and service of meals comes within the definition of "work of necessity or mercy" within the meaning of the Lord's Day Act. On this point I have no hesitation in saying that it does as otherwise not only hotels and boarding houses but private homes as well would be precluded either by the owners, their children or servants from engaging in such an occupation on Sunday and, as I have said before, such preparation and service of meals has been universally recognized as a work of necessity.

The further questions remain—did the Legislature by enacting subsection (9) of Section 112 (22 Geo. V, Cap. 31) intend to repeal or limit the provisions of The Lord's Day Act by empowering the city to pass by-laws providing for the hours in which said places (restaurants, cigar stands, fruit stands, rooms or places wherein soft drinks of any kind are dispensed in the City) shall do business and to provide for the closing or otherwise regulating of such on Sundays.

In the absence of more specific legislation I cannot think that the Legislature had any such intention or that the words used can be considered as repealing the provisions of the Lord's Day Act and in fact I consider it doubtful that the Provincial Legislature would now have such power. The Provincial Legislature has power to relax or modify the provisions of the Lord's Day Act (Cap. 13 R. S. C. 1927) but, except as to any Act passed by the Province previous to the enactment by the Dominion of the above Act, the Province cannot legislate to make the provisions of the said Act more stringent.

Persons must eat on Sunday as well as on any other day and there is no valid law that compels them to eat in any particular place or at any particular time. I consider that restaurants in the preparation and service of meals stand in the same position towards their clients and the public as do hotels and the City of Charlottetown has no power to pass a by-law which conflicts with the provisions of both the provincial and Dominion Lord's Day Acts and that by-law No. 7 in so far as it attempts to close the restaurants in the City of Charlottetown open for the purpose of serving meals during certain hours on Sunday, is ultra vires.

The conviction made herein is

The Public Forum

(Continued from Page 4)

person of Jesus of the conflict between irreconcilable enemies.

Will powers were evident in the clash at Gethsemane. The cross was the ending, an achieved victory, but Gethsemane was a battleground unique in all backgrounds of the world's history. "Not My will (a five sensed self-pleas'g will) but Thine be done."

Previous to His crucifixion He said: "He that seeketh me, seeketh the father. I and my Father are one." Afterwards on the cross He exclaimed: "My God, My God, why hast thou forsaken me?"

When He had arisen on the first day of the week, speaking to Mary, he said, "Go, tell my disciples I ascend to my God and your God, to My Father and your Father," showing Himself to be now a person distinct from the Father. "Thou art My Son, this day have I begotten thee. All power is given unto Me."

A word as to eternal or everlasting life.

A radio receiving set is linked up to a station many miles distant, yet is there no idea of time in the arrangement, nor shall we say, of space. As a matter of fact we hear an appreciable instant, before an audience hears it immediately adjacent to the delivery. A radio may serve therefore to find some faint illustration between finite and infinite states of being. Both space and time are negligible.

There is a proper understanding of the sacrifice of Jesus to be attained. Upon it is contingent our Salvation. "When Christ, who is our Life shall appear, then shall we also appear with Him, in Glory." That same Life shall be possessed. "The Gift of God is Eternal Life," only given to the worthy overcomers of Blood-Life.

I am sir, etc.
C. H. T. COSIER

IS TITHING BINDING?

Sir:—We must all admit that we are passing through a season of great depression, and that every branch of activity is hit hard. Perhaps the church is hit as hard, if not harder than any other organization. From the Moderator down to the local preacher, the Sunday School Superintendent and teacher, all are making every effort to get people to do more to support the Budget. And still there is a great shortage in the needed funds, in order to keep all the activities of the United Church in motion. The Moderator appeals to the churches of Eastern Canada for support to help the West. He evidently made a ruling in which he suggests to all ministers to tith their stipend for three months, six months and some for twelve months. I was just thinking in my own mind, where did the Moderator find a warrant for his semi-mandate in God's Holy Word? Why tith one third, or one half, or three quarters of one's salary and keep the balance without tithing at all? Personally I believe that God expects ministers and laymen alike to tith all their incomes. Should Ministers be let clear by tithing a third or less of their salary, what a poor example they will be to their own supporters. When God first established a church on this Earth, he gave all the members of this Church very strict rules to govern them. Among these rules is found the moral law,

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or the Ten Commandments. In order that this Church would be self supporting and in no financial difficulties, the people had to tith all their incomes. So long as they kept those rules, particularly tithing, the Church prospered, and the whole nation also prospered. This Church had no foreign mission fields to support, no hospitals, and with their staff of doctor's and nurses depending upon their funds No Bible Society spending thousands of dollars each year, translating and printing the scripture in hundreds of languages, like our christian churches today are doing. Notwithstanding this, God made it very clear to them that they were to give a tenth of all their income to the support of the church. I have read the Bible through from cover to cover, a good many times, and so far I have failed to find where God gave the christian church any encouragement to discontinue tithing.

Every time the Jewish church failed to keep the Commandments of God they were chastized severely, and that in various ways, failure of crops by drought, cat-pillars locusts etc., also by inroads made into their country by other warlike nations, burning their towns and carrying away their people as captives.

The Old Testament closes with a definite challenge, accusing them to their face of no less a crime than robbing God. They were told plainly that this robbery consisted in withholding the tenth or tithe from God.

God never threatens a people but he will leave a way of escape open. This time he plainly asks: "Bring people to prove Him, saying: 'Bring ye all the tithes into the storehouse that there may be meat in mine house, and prove Me herewith, saith the Lord of Hosts, if I will not open you the windows of Heaven, and pour you out a blessing that there shall not be room enough to receive it.' This was a definite promise given by God who cannot lie, and I am firmly convinced that it holds good today as well and as sure as in the days of Malachi.

The needs of God's House is as great today if not much greater, than at the time those solemn words were uttered. Tithing was demanded all through the Old Testament up to the last chapters. Neither Christ or any of his apostles condemned it.

Why then not preach and practice tithing, which without a doubt is the only scriptural method of sup-

porting God's cause on the earth today.

Can any minister or layman point out a better way than God's way?

Personally I can testify from my own experience, having been a tith-er ever since I was a boy, that God did bless me, and I have increased in wealth far above my most sanguine expectations, and find now when I am old and grey headed that giving is to me a great pleasure.

When God makes a promise He is sure to fulfill it. Therefore don't be doubtful as to the blessing coming to you. A great many of our young men today, yes, and old men too, are far more interested in burning incense to the Baal of Tobacco than in offering God what He demands of them, to bring all the tithes to the storehouse, and receive the great reward promised. Is it not very singular that they were to give a tenth of all their income to the support of the church. I have read the Bible through from cover to cover, a good many times, and so far I have failed to find where God gave the christian church any encouragement to discontinue tithing.

Every time the Jewish church failed to keep the Commandments of God they were chastized severely, and that in various ways, failure of crops by drought, cat-pillars locusts etc., also by inroads made into their country by other warlike nations, burning their towns and carrying away their people as captives.

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ly good faithful workers who have by force of circumstances been prevented from laying up treasures on earth. The City work is looked forward to by them as a means of obtaining their daily bread for them and their dependants.

Perhaps this quotation from the "Bard of the People," Bobby Burns, which has been slightly changed, will be apropos:

See yonder poor o'er-laboured man,
So wretched, ill and wan,
Who begs a brother of the earth
To give him leave to toil.

And see his lordly fellow worm
The poor petition spurns,
Unmindful though a weeping wife
And helpless children mourn.

I am, Sir, etc.
LOVER OF FELLOW MAN.

Wise and experienced mothers know when their children are troubled with worms and lose no time in applying Miller's Worm Powders, the most effective vermifuge that can be used. It is absolute in clearing the system of worms and restoring those healthy conditions without which there can be no comfort for the child, or hope or robust growth. It is the most trustworthy of worm exterminators.

N. B. Government Discuss Absorption Of R. C. M. Police

FREDERICTON, N. B., Mar. 15.—(By The Canadian Press)—Although no announcement would be given out this morning by Premier C. D. Richards at the conclusion of a meeting, which began last evening, of the Provincial government, it is understood the two matters taking up the greater part of the cabinet ministers' discussion were the proposed absorption by the Royal Canadian Mounted Police of the New Brunswick provincial police and the proposed establishment in the department of Hon. A. J. Leger, provincial secretary-treasurer, of an insurance branch.

Her Heart Was So Bad Couldn't Do Housework

Mrs. S. Draganman, R.R. 2, Midland, Ont., writes:—"I had been troubled with heart trouble for many years. My heart would beat so fast I could hardly breathe, and I had headaches, and dizzy and fainting spells. I couldn't get my housework done I was so weak. I took three boxes of Milburn's Heart and Nerve Pills and felt much better, and now I would not be without them in the house."



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