

Dr. Leo Frank Makes an Appeal For the Right of Appeal in Cases Tried Under the Motor Vehicles Act

He Asks That the Law Be Amended to That End. He Contends That He Was Unjustly Convicted For Speeding His Car in Summerside Last Dominion Day. That Dangerous Powers Are Given Magistrates, and That Their Decisions in "Speeding" Cases Should be Open to Appeal. The Doctor Offers to Place His Case in the Hands of a Committee of Citizens and to Donate \$500 to Any Charitable Institution if the Decision is Given Against Him.

To the people of Prince Edward Island: Ladies and Gentlemen: The greatest power in the world today is public opinion...

The circumstances which have led to my appeal to the public in the interests of British fair play and justice are as follows:— On July 21st I was convicted by the Stipendiary magistrate of Summerside, Mr. J. E. Wyatt, on a charge of driving my automobile through the streets of that town at a greater rate of speed than 7 1/2 miles an hour...

On the other hand if the case is decided in my favor I will not ask for any reimbursement of costs but will consider my vindication sufficient reward for my efforts. Readers of this paper are requested to communicate with the editor giving their opinion as to the advisability of having the law changed so that a man may be permitted to have his say in court. What are the facts of my case? They were all brought out in the evidence submitted at the trial. A synopsis is published herewith.

Having been sentenced to pay the fine of \$20 and costs or an alternative of thirty days in jail I applied for an appeal, but this application was not granted, until I had first given bonds for \$1,000 (an unusually large amount for such a small offence) to appear at the session of the Supreme Court in November.

The case came up before Mr. Justice Hazard at Summerside and you know the result. He reserved judgment which was given at the recent sitting of the Supreme Court in Charlottetown. In that judgment which has been published in full in the press his Lordship stated that under the Motor Vehicle Act there is no appeal given, either by express words or implication.

What does this mean? No matter how unjust the decision of a Stipendiary Magistrate in a motor vehicle case may be, that decision must stand. It is not for me to cast any reflection on the Magistrate who tried the case. Mr. Wyatt's reputation as a lawyer is well known, but it is possible for a Magistrate to make an error in judgment. He may not have been in possession of all the facts, and there are many ways in which he may have been led to give a wrong decision. If he erred there should be an opportunity given where by the error may be rectified.

There is no opportunity given in the case in which I am concerned. Moreover, in the event of any Magistrate being prejudiced, or in any way not qualified to give a fair decision, the result is the same. The innocent must suffer, and suffer without redress. A magistrate, in my opinion, is given very dangerous powers in trying cases under the Motor Vehicle Act. It is high time in this democratic age that a change be made in the law so that the people's rights may not be jeopardized.

When the people fully realize the situation, and I hope to make this clear to them they will demand that the legislators, who represent them in Parliament, will amend this law so that the right of appeal will be given. The amount of my fine and costs was \$25. In seeking to have that fine remitted I have already spent a much larger sum still, in order that I may be vindicated. I realize that if I win or lose it will be an expensive business, but for the sake of

all motorists, and for the purpose of protecting this fair province from ridicule in the eyes of visitors I am prepared to make the necessary expenditure. If I succeed, and the right of appeal is given in future cases, for offences against the Motor Vehicle Act, I will consider that any expense I have incurred will be money well spent.

I would like to know why the services of a lawyer were secured to represent the town of Summerside in this case? Why was a technical objection raised? Why was not my case allowed to be decided on its merits? I feel sure that the good people of Summerside were willing to let this be done. The Supreme Court I have no doubt would have decided the case on its merits had not this technical objection been raised.

In order to show my good faith I am now prepared to submit the sworn evidence in my case before a committee of twelve citizens, six from Summerside and six from Charlottetown, and if they decide against me to donate \$500 to any charitable institution named by the citizens of Summerside.

On the other hand if the case is decided in my favor I will not ask for any reimbursement of costs but will consider my vindication sufficient reward for my efforts.

Readers of this paper are requested to communicate with the editor giving their opinion as to the advisability of having the law changed so that a man may be permitted to have his say in court. What are the facts of my case? They were all brought out in the evidence submitted at the trial. A synopsis is published herewith.

Readers, read it over carefully, substitute yourselves a jury, give me a fair and impartial hearing, and I am satisfied that your opinion would be that if I had the right of appeal, the Magistrate's decision would have been reversed, and that my innocence would have been established.

THE EVIDENCE.

Policeman Albert Oakes, chief witness for the prosecution, in his direct examination, examined by Mr. Martin testified that on July the first, he was at the east end of the town, as far as Hall & Co's office. It was about one hundred and twenty-five, to one hundred yards east of the railway crossing. He was on his way towards the police station, when he heard a car coming. By the noise he judged it was coming at a high rate of speed. The witness was then asked what was in the car.

A—I did not know anyone by sight. I will not swear positively that I saw Doctor Frank. I know the chauffeur by sight. I do not know his name.

Q—Do you know his name? A—I cannot pronounce it.

Q—Is he in court, that pleasant looking man standing over there by the radiator? A—That is he.

Q—What about Doctor Frank? A—I believe he was in the car at the time I cannot swear positively.

Q—I am not asking you to think from what you know now, but from the time the thing occurred.

A—That is the time I was speaking from.

Q—What further did you do? A—Not knowing the chauffeur's name, I opened the hood, and found car 1087.

Q—Whose car is 1087? A—Leo Frank's car. To make sure, I turned up the book, and took the number down, and it was his car, 1087.

Witness further testified, that the book was the "Registered Motor Vehicles" for Prince Edward Island, revised to June 1st, 1920. He carried the book to know the numbers, and it was on the back of that, that he put down the number. In his estimation, the car was going twenty miles an hour. There were two men with the witness, Martin Heckbert and Joseph Clow. Heckbert is a flagman on the railway. He discussed with him about the speeding of the car. He also discussed it with Clow, immediately after the car passed. Witness then continued as follows:— I went to the police station, and stayed there for some time. I saw J. J. McNally coming down Summer Street towards the station, and I went out to meet him and talked with him for quite a while. I don't know how long. We came down Water Street, and talked there a while. I went to the west end as far as Fred McGee's, near the railway. I came back down Water Street, and was standing in front of Holman's oil tank, on the street when this same car went by, at a high rate of speed, the second time, going west. It was the same car, the same driver, the same number. I did not notice whether the Doctor was in the car or not. It was going from eighteen to twenty miles an hour. The driver had dark clothes and a uniform cap. At the time I saw the car, the second time, I had a talk with J. J. McNally on the spot, just as the car went past.

Q—How far did he carry that speed, the second time you saw him at Holman's tank? A—I don't know. He was going to the west end, I did not follow him.

Q—Two hundred or one hundred yards? A—I cannot say, I do not remember.

Cross examined by W. E. Bentley, witness testified that he had given evidence before the magistrate against Doctor Frank with regard to operating his car. At that time he mentioned both places where the car was running to.

Q—Where did you say the car was running? A—I thought perhaps it was Holman's oil tank. That was on Main Street.

Q—Any particular place, any particular spot on Main Street? It was past Holman's tank, east end? A—I guess so.

The witness further testified that he had seen no evidence since, nor heard it read. He did not read a copy, he was not told what was said. He said he thought Doctor Frank was in the car. He did not say that he knew.

Q—Did you tell the Magistrate that you did not know he was in the car? A—I meant in general, there were two in the car.

Q—Did you tell the Magistrate: "I cannot tell who was in the car." A—I do not know their names.

Q—Answer the question, you are intelligent enough I take it. Did you tell the Magistrate, I cannot tell who was in the car? A—I cannot remember.

Q—Do you deny it? A—I do not deny it.

Q—If I read this to you 'cannot tell who was in the car,' from the Magistrate's evidence. Do you deny that? A—No.

Q—Was it correct? A—Yes.

Q—Was it correct what you told was a lady in the car, to the Magistrate? A—Yes, I told the truth.

Q—If it is correct you could not tell before the Magistrate who was in the car? A—It was not what I meant.

Q—Was it correct he was in the car? A—No.

Q—Although you swore to it, it was not correct. A—I cannot tell what the Magistrate put down.

Q—Did you say to the Magistrate, 'I cannot tell who was in the car.' A—No, not meaning it. I do not know what he put down.

Q—Did you state before the defendant that Dr. Frank was in the car? A—Yes.

Q—Did you state before the defendant, 'I recognize the chauffeur?' A—I cannot tell in general, there were three or four men in the car.

Q—Are you swearing to that now? A—Yes.

Q—Did you swear to that before the Magistrate? A—What? Q—That there were 3 or 4 men in the car? Did you know that there were 3 or 4 men in the car?

A—Yes. Q—Were you asked whether there were any ladies in the car before the Magistrate? A—Yes.

Q—What was your answer? A—I did not see any.

Q—Did you state before the Magistrate that there were 3 or 4 men in the car? A—I do not remember.

Q—You could not tell who was in the car, if Dr. Frank the defendant was in the car? The only one you recognized was the chauffeur. Now you state there were 3 or 4 men.

A—Yes. Q—You have been getting some new information? A—No.

Witness further continued:— Before the Magistrate I could not tell whether it was around twelve o'clock noon or six o'clock in the afternoon, when I saw this car (Dr. Frank's car).

The question was then asked him. It was a week afterwards, July the 1st, when you were giving evidence, and you could not tell the hour, anywhere from twelve o'clock noon, and six o'clock in the afternoon.

A—No. Q—Do you know now? A—No.

The witness further gave evidence about noting the number on the back of his book. He said he had made a mark, so he would know what car it was. It was his intention to prosecute. He said it never has been important to tell the time a car is seen. That has not been the practice in the Police Court in Summerside.

Q—Do you think it was entirely unimportant as to the hour you made the claim that Doctor Frank ran along within a certain time, and it was not important to know the time? A—That is what I said, in the afternoon.

Witness was then questioned closely as to the time, but all he could say was that it was somewhere in the afternoon. He was then questioned as follows:

Q—Was there a number on the front of the car? A—I don't know.

Q—When you saw the car first, it was speeding, did you look at the front? A—No.

Q—You said you were standing at Holman's tank when the car passed? A—Yes.

Q—Near Holman's Store? A—Yes.

Q—You gave evidence of that before the Magistrate? A—Yes.

Q—Did you bring McNally along to corroborate that? A—I did not bring him, until I sent for him.

The witness then in reply to a question said that he made a test of speeding in Edward Manson's car. They went in front of Joseph Gaudet's, stopped the car still started her from a dead stop until they got in front of Holman's. Witness would him to open her out. He got eighteen miles an hour. Witness said to him, that is enough.

Q—You got up to eighteen miles at Holman's, and not at Gallant's? A—I swear to that.

Q—That was the test as to whether you were correct in the speed of twenty miles? A—No. I was testing his own (Manson's) car.

Q—What distance is it from the Cafe to the tank? A—In the neighborhood of seventy yards, I stepped it.

he had a book. He testified that he did not remember having 1087 and 1545 on the book. On being asked if the hood on car 1087 was up or down witness replied that his memory is that the hood was down.

Witness was then closely questioned as to how he determined the speed of the car, but said his common sense told him that it was exceeding the speed limit.

Mr. John J. MacNally examined by Mr. Martin, testified that on the first of July last, he was on Front Street with Police Officer Oakes when a car was passing. They walked down Water Street to the Town Building steps together. He could not tell exactly what time. He started out for a walk a few minutes after three in the afternoon, and met Oakes at the steps of the town building. They talked a few minutes. Witness walked down to Water Street to his meat shop. Oakes went west. The meat shop is opposite Holman's store, about 10 or 12 feet west of the grocery door. The next he saw of Oakes was when he was across the street on Holman's sidewalk opposite the meat store. He looked across, saw witness, started to laugh and came across the street to where witness was. There was a car passing by, going at a high rate of speed, higher than the ordinary. It attracted the attention of the witness. Witness did not see the chauffeur or recognize anybody in the car. Witness had a talk with Oakes about two minutes afterwards. He came across the street. He was standing a few feet to the east of the oil tank when he first saw him. The car was going faster than 7 1/2 miles an hour and for that reason witness thought the driver would be caught.

Cross examined by Mr. Bentley, Mr. MacNally was asked: Did you see any ladies in the car? A—I could not swear positively. I thought there was a lady in the hind seat. That was my impression.

Martin Heckbert, railway crossing flag man for the town of Summerside testified that he was on duty on July 1st at the railway crossing, in the afternoon. Saw officer Oakes there. A car was coming from the east and going over the crossing at a high rate of speed. He did not recognize anyone in the car, and did not know the number.

Cross examined by Mr. Bentley he said that he could not swear that this was Dr. Frank's car.

Joseph Clow testified that he was with Heckbert on the afternoon of July 1st at the railway crossing when he saw a car coming up the road. It was travelling at a pretty good rate of speed, somewhere from 18 to 20 miles an hour. It was between 3 and 3:30 p. m. He saw the driver of the car. "That is him sitting there in court," pointing to Mr. Hartinger. He saw him again on July 26th in Summerside. He thought there were two or three persons in the car. He did not know who they were.

Cross-examined by Mr. Bentley: "I never saw this young man (Hartinger) before July 1st. Did you notice the number of the car. I think there were three men in it besides the driver. I think the top was up. I thought there were two in the back seat and two in the front. I did not see any ladies. Would not swear that there were no ladies in the car. Questioned as to the time, witness said he did not look at his watch. He had no watch, but Heckbert said it was between 3 and 3:30. He went down and sat on the bench shortly after dinner, about 12:30, and was there until the car came along. (A long session), almost all the time until the car came. He was there for two hours or more.

Q—You said there were two people in the front seat and two in the back seat? A—Yes.

Q—Which side of the car was the young man on? (meaning the chauffeur.) A—On the south side.

Q—Who was the man alongside of him? Do you recognize him here? A—No. I do not know who he is.

Q—Would you know him if you saw him? A—No.

Q—The driver had a cap that took your attention, do you remember the cap? A—I did not know the face, I saw the cap.

A—I could tell if I saw him again. Q—Sure you can remember? A—Pretty well.

Witness was then questioned as to how he came to the opinion that the car was going 18 or 20 miles an hour. He said that it was simply a matter of judgment.

Dr. Leo Frank was the next witness. He testified as to the number of the car, the make, etc., and that he gave instructions to the chauffeur not at any time to exceed the speed limits as regulated by the towns that he might pass through in Prince Edward Island, and in the country not to exceed 15 miles an hour. On Dominion Day they left Charlottetown at 12:15,

and with the Doctor in his car were the chauffeur, Eddie Hartinger, Mr. Thompson, acting American Consul, and Dr. J. A. Allen. The chauffeur was in the front seat alone and the other three in the rear. They continued that way until they came to Summerside. They arrived at Bunn's Cafe about twenty-five minutes to four. As they entered the town limits the Doctor gave instructions not to exceed 7 1/2 miles an hour. At the entrance to Summerside they slowed down and drove slowly until they reached the Cafe on Water Street. On the road from the turn east to the railway track they did not exceed the speed limit of 7 1/2 miles anywhere from the outskirts of the town limits to the town, nor after they were in town. He did not see Officer Oakes. He did not notice two men seated on a bench at Joseph Read's place. They went slow at the crossing because the crossing is bad and the car is heavy. The roads were bad and muddy as it had been raining. They had to go very slow not to endanger the car, which was a new one. They stopped on the south side of Bunn's Cafe about twenty-five minutes to four, and remained there for three-quarters of an hour and had a meal. They went out about a quarter past four and drove to the Queen Hotel. The car was parked outside. It was driven up to Holman's gasoline tank at a rate not exceeding five miles an hour. From the tank on they did not exceed 7 1/2 miles an hour.

The Doctor then told of meeting Mr. Fred E. J. Wright, who accompanied them to the residence of Mr. Sinclair, American Consul. They did not exceed 7 1/2 miles going to Mr. Sinclair's. They drove back to the Queen Hotel remaining until 7 when they left for Charlottetown. At no time in Summerside did they exceed the speed limit.

Q—Is there another car like this, the Doctor was asked? A—It is the same make, Oldsmobile, 1920 Model, owned by Mrs. Henry Benoit and it was in Summerside that day. She was driving the car. The number was 1545. Witness saw the car on that day. Mrs. Benoit was operating it.

On the occasion of the first trial in Summerside Officer Oakes produced a book showing the number of the witness's car and the number of Mrs. Benoit's car on the back of said book. The numbers were 1545 and 1087.

(Book produced.) Q—Is 1087 there? A—Yes.

Q—Is 1545 there? A—No, not on that produced to-day. It was on the book in evidence before Judge Wyatt.

Q—Was Mrs. Benoit in Summerside that day? A—That day I spoke to Mrs. Benoit. She was driving a car around town.

Q—What about the hood of your car? A—It was up, it had been raining, and the roads were muddy. It was positive that there was only one person in the front seat when coming over the railway tank.

Cross-examined by Mr. K. J. Martin, Dr. Frank explained the circumstances with regard to Oakes' book. "On July 8th," said the witness, "I conducted the trial of this case as the defendant, in person. At that time Oakes produced this registration book and turned to a page looking for my number. I objected to this officer testifying to looking at the book, unless to refresh his memory. Officer Oakes stated to the court at the time of my speeding he looked at the book, only the page, and that was my only proof he had that it was my car, 1087. I asked Oakes to show me the book. I wanted to see Mrs. Benoit's number. On the back of the book were written 1087 and 1545.

Q—While the court was in session, I recalled Oakes to the stand and cross-examined him and asked him why he testified in the morning that he had made no memo at the time of the alleged speeding but had to refresh his memory by looking at the book containing the printed number, when as a matter of fact he had the memo on the back of the book. Oakes said he could not remember. It was a mistake. In order to test my case I saw Officer Oakes on the street. I wanted to know if he had the little book in his pocket. I said, 'You made a mistake at the trial. I won't call it perjury. Mrs. Benoit's number is 1547, mine is 1087. That is where you are mistaken. He said, Mrs. Benoit's number is not 1547 it is 1545. He looked at the book and there was only one number on it—1087.

Q—Did you tell me on your oath that the book was produced before the Magistrate, and while before the Magistrate, had in it 1545? A—I don't know about this book, the book he produced had 1545, 1087, and this memo also. I was under the impression that was the time he timed me but it was not.

J. J. McNally, recalled. Q—Where were you when you saw the car referred to? A—I was a little to the east of Holman's tank.

Q—Was it just starting out? A—It was coming freely, that was what caught my eye, the engine was working freely and buzzing along. He was under the impression that there was a lady in the car.

Edward Hartinger, Dr. Frank's chauffeur then gave evidence to the effect that he drove the car slowly and kept within the speed limit when in Summerside. He has made over fifty trips to Summerside and knows the regulations. He corroborated the Doctor with regard to taking luncheon at Gaudet's, and his visit to Mr. Sinclair's.

Mr. F. E. J. Wright testified to accompanying Dr. Frank in his car to Mr. Sinclair's. The car was driven very carefully. He would not say it

was any faster than five or seven miles an hour. Dr. Joseph D. Allen, who made the trip with Dr. Frank from Charlottetown stated that when the car was coming into the town it was at a very moderate rate of speed. It was going at a speed that would not attract attention.

Q—Did you see Mrs. Benoit's car that day? A—Yes.

Q—You have seen her operating a car? A—Yes.

Q—What about the rate of speed? A—I would rather not answer that. Q—Why about the appearance of the two cars? A—Identically the same except the number.

Joseph Gaudet, proprietor of the restaurant testified concerning the arrival of Dr. Frank and his party and their departure. He also testified that Mrs. Benoit's car was in Summerside that day and that she had lunch at his place.

THE EVIDENCE ANALYZED: Such is the evidence. Let me analyze it. The witnesses for the prosecution were Oakes, MacNally, Heckbert and Clow. It will be noted that Oakes was unable to tell the time of day at which the alleged speeding took place, but contented himself with stating that it was between twelve and six o'clock. He did not notice whether the car had a license number in front or not, did not see any ladies in the car, but did recognize Dr. Frank, although I was sitting in the back with the hood up. Yet he could not state whether it was up or down. In this case the hood was up and he could not have seen me in the car for I was sitting in the back. Oakes who testified that he saw the car crossing the first time at the Railway crossing, the second time at Holman's gasoline tank. As the car continued on its course, it simply means that either the car was going so slowly that Mr. Oakes either by walking fast or running could overtake the car and catch it speeding the second time at Holman's tank, or he was mistaken. At the trial before the Magistrate no mention was made of any alleged speeding near the Railway crossing. The only other witness produced before Judge Wyatt, July 8th was Mr. J. J. MacNally, put on the stand by Officer Oakes. He testified that he did not recognize any one in the car, that his impression was that there was a lady in the car and that the car was going in a westerly direction. It was coming freely, the engine buzzing. I contend that the engine could not be working freely if I claim, the car had only been started at Burns' Cafe, 60 yards to the tank. It was certainly not my car that McNally saw.

Officer Oakes was not quite certain as to the speed of the car. He therefore engaged Mr. Edward Manson to try out his car. The following is Mr. Oakes testimony.

"We were in front of Joseph Gaudet's. He stopped his car still. He started her from a dead stop until he got in front of Holman's. I told him to open her out. He got 18 miles an hour. I said to him 'that is enough.' Was it at Gallant's drug store? No I will swear positively that it was at Holman's oil tank—I told him to stop. There were too many people on the street."

Mr. Manson did not testify in Court. Any one of the readers of the paper can ask Mr. Manson what happened and he will tell them that Mr. Oakes was mistaken that the best speed they got, from Gaudet's up to Holman's tank was only 10 miles an hour, that the car continued to Gallant's drug and that the best speed from the Cafe to a further distance of 70 yards to Gallant's drug store (not Holman's Tank) was 18 miles. This proves that he had to go 70 yards further in order to develop a speed of 18 miles.

Heckbert, the prosecutor's witness testified that he saw a car on July 1st speeding, that he did not recognize the occupants, did not know whose car it was, did not see the number. Evidently Oakes gave him the impression that it was my car.

The last witness, Clow testified that he sat on one bench for 2 1/2 hours until the car came along. He saw two people in the front seat. He recognized the chauffeur, although he had seen him the first time in a uniform cap. He did not recognize any one else in the car. Did not see the number.

All the other witnesses' testimony which was not contradicted prove that Mr. Clow must be mistaken, and that there was no one sitting beside the chauffeur.

On the above testimony I was convicted of speeding while the men who were with me, respectable citizens, men of high standing, such as Dr. J. A. Allen, Dominion Government Pathologist, swore that there was no ladies in the car, that it was going very slowly, that on that date another car of the same make was in Summerside; that there was no one sitting beside the chauffeur.

I will let my own testimony speak for itself. My chauffeur corroborated my evidence. He has never been charged before with speeding.

Ex-Sheriff F. J. E. Wright testified he was in the car on July 1st directing Mr. Thompson, acting American Consul to Mr. Sinclair's home, that the car was going very slowly and not exceeding the speed limit. Mr. J. J. McNally, a prominent citizen of Summerside, though a witness for the prosecution testified that he did not recognize any of the occupants of the car although he is acquainted with myself. He was under the impression that there was a lady in the car, and that the latter was travelling freely which bears out my contention that it could not have been my car.

Readers! would you convict me on the above testimony? Would you not give me at least the benefit of the doubt, waive every technicality of my case be tried on its merits.

LEO FRANK, Charlottetown.

February 7th, 1921.