

# County Court Judgment In Liquor Permit Cancellation

Following is the text of a judgment handed down yesterday by Judge C. St. Clair Trainor in the Queen's County Court on an appeal by Joseph Leonard Gallant, 30 Cedar Street, Summerside, from an Order of the P.E.I. Temperance Commission cancelling his permit. The judge ruled that the Temperance Commission had legal authority for the cancellation.

Although any appeal which is authorized by Section 21 (4) of the Temperance Act is to a County Court Judge, the jurisdiction thereby conferred, is exercised by virtue of section 21 of the County Act, defining the jurisdiction of the Court.

Joseph Leonard Gallant, hereinafter referred to as the Appellant, resides at 30 Cedar Street in the Town of Summerside in Prince County and, prior to the 21st of January, 1955, was the holder of an Individual Liquor Permit, No. 30920 issued to him under the provisions of the Temperance Act by the Temperance Commission, hereinafter referred to as the Commission, which by the said Act is vested with the power of issuing Liquor Permits and has an office in Charlottetown in Queens County where the business of issuing such Permits is carried on.

On the 21 of January, 1955, the following notice was sent to the appellant by the Commission: "To Joseph Leonard Gallant of 30 Cedar Street, Summerside, Prince County, Prince Edward Island. You are hereby notified that your permit Number 30920 for the purchase of liquor under the Prince Edward Island Temperance Act is hereby cancelled the following words being struck out: 'suspended for the period of ... month from the date of last conviction'."

"Dated at Charlottetown this 21st day of January A.D. 1955. (Sgd.) B. J. Haywood. Member of the Prince Edward Island Temperance Commission. Section 22 of the Temperance Act read as follows: 'Upon receipt of notice of the suspension of his permit, the holder of the permit shall forthwith deliver up the permit to the Commission. Please govern yourself accordingly.'"

**1954 AMENDMENT**

Against the above cancellation the appellant asserts the appeal under the provision of Section 21 (4) of the Temperance Act as enacted by 1954 chapter 35 section 3 which is as follows:

(4) If any person is aggrieved by the suspension or cancellation of a permit under this section, he may, after giving the Commission notice of his intention to do so, appeal to the County Court Judge of the County Court of the county in which any office where the business of the Commission with respect to the issuing of permits is carried on is situated, and on such appeal the Judge may make such order as he thinks fit and any order so made shall be binding on the Commission.

Section 21 as it existed before the above amendment is as follows:

21 (1) Where the holder of a permit issued under this Act violates this Act or the regulations, or is an intoxicated person, or is otherwise disqualified from holding a permit, the Commission may, upon proof to its satisfaction of the fact, or existence of the violation, interdiction or disqualification and in its discretion with or without any hearing, may, by writing under the hand of any member of the Commission, suspend the permit and all rights of the holder thereunder for such period as the Commission sees fit, or may cancel the permit.

Then follow sub-section 2 and 3 which are irrelevant to this hearing.

Counsel for the Commission urged that I am without jurisdiction to hear this appeal because the cancellation of the permit was not made under the provisions of section 21 but under the general powers of the Commission to cancel permits given under other provisions of the Act. **ONLY ONE WITNESS CALLED.**

Mr. B. J. Haywood, Chairman of the Commission, was the only

witness called. He stated that the Commission had cancelled the appellant's liquor permit under the Temperance Act generally and that there were several other sections including section 15 under which the Commission, in its discretion, could cancel liquor permits. He gave evidence of two convictions which had been made against the appellant for infractions of the Temperance Act, but that these were as far back as 1952 and should not be made the basis of a cancellation of a permit in 1955. He also stated, perhaps willingly because it suited his contention, that there were no factors in the case upon which a cancellation might properly be made under section 21. In fact, I am fully satisfied that the appellant's permit was cancelled because of his close association with his father who Mr. Haywood believes to be and has been in illicit liquor business, but against whom a prosecution had recently been taken and had been dismissed by the Magistrate.

Counsel for the appellant urged, among other things, that for the fact that in the notice sent to the appellant the words at the bottom thereof referring to section 22 of the Temperance Act had not been deleted there was some evidence of the cancellation having been made under section 21. In my opinion, although section 22 follows immediately after 21, its provisions have no more direct relation to the provisions of section 21 than to those of any other section of the act dealing with the same or like subject matter.

The right of appeal exists only by statute and jurisdiction on appeal can only be exercised when the appellant is clearly within the provisions of the statute conferring the right of appeal. In the face of Mr. Haywood's evidence it cannot be said that, in cancelling the appellant's permit, the Commission acted wholly under the provisions of section 21 and, therefore, I must examine the act as to the extent of the right of appeal provided. In dealing with a similar provision for appeal found in section 8 (7) of the Highway Traffic Act, 1956 Chapter 2, Rinfret, J., as he was then, said in the case of the provincial secretary of P. E. I. V. Egan (1941) 3 D.L.R. 305 at p. 314:

"That sub-section gives a right of appeal to the County Court Judge to 'any person aggrieved by the refusal of the Department to grant a license under this section.' To my mind the words 'under this section' qualify both the refusal of the Department to grant a license and the revocation of a license. It must have been a refusal or revocation 'under this section,' to wit, under S.S. of the Highway Traffic Act."

It follows, therefore, if there was no cancellation of the appellant's permit under section 21 there can be no appeal to the Judge of the County Court under section 21 (4).

Section 15 of the Temperance Act deals with the granting of the various kinds of liquor permits and the fees payable for each and it concludes with sub-section 4 as follows:

(4) Notwithstanding any other provisions of this Act, the Commission in its discretion, may cancel any subsisting permit or refuse or direct any official authorized to issue permits to refuse to issue a permit to any person and no official so directed shall issue any such permit. Counsel for the appellant urges that there is only one section in the Temperance Act by which Liquor Permits may be cancelled or suspended and this is section 21. He contends that the very general provisions found in sub-section 4 of section 15 are following the maximum generalia specialibus derogant, restricted by the words of section 21. If I understood his argument correctly his contention was that the words "notwithstanding any other provisions of this Act," found at the beginning of sub-section 4 of section 15 are intended to mean that, although the Commission or its agents may grant liquor permits, the Commission may, nevertheless cancel them in the manner and in the circumstances set out in section 21. I do not share that



## Mt. Mellick W.I. Anniversary Party

Left to right: Mrs. Everett Jenkins, Mrs. Malcolm MacRae, Mrs. W. J. Mutch, Mrs. J. E. MacEachern, Mrs. Laura Clapp, Mrs. Willard Jenkins, Mrs. W. J. MacEachern. —Photo by Margaret Mallett.

In my opinion, the words "any other provisions of this Act" cannot be held to have application to one set of relevant provisions in the Act and not to another. As far back as 1857, Lord Westleydale, in Grey Cs. Pearson, 10 E.R. 1216 at page 1234 said: "I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency, in which case the grammatical and ordinary sense of the word may be modified so as to avoid that absurdity and inconsistency but no further."

### INTERPRETATION OF WORD

It seems to me that when the Legislature made use of the word "notwithstanding" at the beginning of the sub-section its plain and ordinary meaning shows an intention to give to the Temperance Commission a general power and control over permits regardless of what might be found elsewhere in the Act.

In dealing further with counsel's contention that section 21 is the controlling section in the matter of suspending or cancelling licenses or permits, attention may be drawn to the fact that section 50 provides that when the Commission receives an order of interdiction against any permit holder, it shall cancel his permit, while under the provisions of section 21 the Commission may cancel the permit. I do not think that it can be held that the compulsory powers of section 50 are overridden or modified by the permissive powers of section 21 (1).

I, therefore, find myself obliged to hold that the appellate provisions of section 21 (4) are restricted to actions of the Commission made under that section, and that section 13 (4) contains powers of cancellation independent of it. And, since the evidence does not disclose that the appellant's permit was cancelled wholly under section 21 no appeal lies under section 21 (4) and the application must be dismissed.

While the privilege of granting or refusing a right of appeal is solely the prerogative of the Legislature, I am, with respect, calling attention to the situation, which now exists, if my decision be correct, namely, that while an appeal lies from an order of interdiction made by a justice after a judicial inquiry under section 49, and from an order of the Commission in the restricted circumstances set out in section 21, yet no such review is permitted under a cancellation is made under section 15 (4) whether the discretion be exercised on proper legal principles or not. From this it must be inferred that the discretion vested in the Commission can only be exercised on evidence fully sufficient to sustain a conviction in a court of law, but it is well settled that discretionary power given to a public officer must not be exercised capriciously or arbitrarily.

### Eastern Guardian

**"CHARLOTTETOWN OPTOMETRISTS** will remain open all day Wednesday and close Saturday afternoon beginning March first.

### Curling Schedule For Montague

Today's draw at the Montague Curling Club:— 6:30 p.m. Judge DesRoches vs. William MacLean; G. G. Gordon vs. L. H. Poole; 8:00 p.m. Ladies; At. MacDonal vs. A. A. Fraser. 9:30 p.m. J. A. MacLean vs. Homer Moore; D. McGowan vs. Sandy MacDonald.

### Georgetown

Mr. and Mrs. Chester Walker, Mrs. Maurice Donovan, Mr. and Mrs. Alec MacKinnon, Mrs. J. W. Lavers and Miss Corine Lavers, motored to Charlottetown last week.

Mr. John C. Hancock of Murray River and Mr. C. C. Hancock of Belle River were recent business visitors to Georgetown.

Miss Gertrude Fitzgerald of Notre Dame Academy was the week-end guest of her parents, Mr. and Mrs. W. J. Fitzgerald. She had as her guest, Miss Ethel McEwen of Rollo Bay, who is also a student at Notre Dame.

Miss Joan Murphy, student at Prince of Wales College was the guest of her mother, Mrs. Angus Murphy, during the past week-end.

Miss Helen Martell, student at Notre Dame Academy and Miss Verna Martell, student at Prince of Wales College were week-end guests of their parents, Mr. and Mrs. William S. Martell.

Dr. and Mrs. A. E. Ings and family of Montague, were visitors on Feb. 20, of Mrs. Ings' parents, Mr. and Mrs. George Blair.

Mr. Howard Walker, Mr. Chester Walker and Mr. Gordon Ross were business visitors to Charlottetown on Feb. 18.

Captain Helge Larsen is at present employed on the car ferry at Borden.

Mrs. Edward Bulpitt of Rosemeath is visiting her daughter, Mrs. H. Larsen. —AC.

### U. S. Pro Golfers Ass'n Schedule

CHICAGO (AP)—A \$629,000 summer schedule including four new tournaments was announced Saturday by the U. S. Professional Golfers Association. The new events including the British Columbia Open, a \$15,000 tournament, to be held in Vancouver June 29-July 2. Other tournaments being held in Canada are the Canadian Open Aug. 17-20 in Toronto, with \$20,000 in prize money, and the \$26,000 Open at Montreal Aug. 25-28. In addition to the B. C. Open,

## Answers Tabled In Legislature

The following questions and answers were tabled yesterday in the Legislature:

Question—Mr. Frank Myers: 1. What is meant by Farm Improvement Service which spent \$51,471.71. Please give a breakdown how it was spent.

Answer: (1) The Farm Improvement Service Division of the Department was established in the Spring of 1950 for the purpose of providing for rental to our farmers, at reasonable rates, necessary equipment for stumping, clearing, ditching, etc. The original equipment consisted of 2 Caterpillar D6 Tractors and Bulldozers. One additional machine was added each of the following two years making a total of 4 machines engaged in the work for the past two years.

Following is a breakdown of the expenditures: Director's Salary (9 mos.) \$1,800.00; wages \$17,450.12; travelling and Transportation \$5,933.57; parts, supplies and repairs \$15,771.63; miscellaneous \$2,796.66. Total \$51,741.71.

### PLANNING ROADS

Question—Mr. Frank Myers: 1. By whose orders was the Main Road from New London School to Stanley Bridge not to be plowed this winter?

2. On whose authority was the supervisor of First Queen's engaged to direct the snow plows in First Queen's?

3. Why were the piles which were landed for the construction of the new Bonshaw Bridge on the Trans-Canada Highway taken back and a different type of bridge built?

4. Is it the intention of the Government to widen and subgrade the road from Inkerman to Breadalbane, which is already graded, this coming summer?

5. What has become of the petition which was signed by all on the Bedeque Road from Kinkora to North River to have it widened, graded and paved? Has this received any consideration on the part of the Government? If it has what are the intentions of the Government?

Answer: 1. The road from New London School to Stanley Bridge is now open, and no orders have been issued by this Department against opening it. Confusion may have arisen from the fact that snow banks deeply on portions of this road and, at such times, the Shore Road is opened to allow traffic to by-pass the heavy banks which are opened later.

### KENSINGTON RIFLE RANGE

Question—Mr. J. W. D. Campbell: 1. Has the Government sold the property or portion thereof at the foot of Grafton Street, being portion of Kensington Range?

2. If so, to whom and at what price?

3. If sold, were tenders called?

4. If not sold, has an agreement been entered into to sell to Imperial Oil Co.?

5. Has the Home warehouse at the foot of Kent Street been sold?

6. If so, to whom and at what price?

7. If not sold, give names of tenders and prices offered.

Answer: 1. The following parcels of the Rifle Range property were sold: Imperial Oil, Limited \$21,000.00; Island Fertilizer Co. Ltd. \$15,000.00; Maritime Electric Co. Ltd. \$5,000.00; M. F. Schurman Ltd. \$2,000.00; Associated Shippers \$2,000.00. Total \$45,000.00.

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### Angeli and Damone Are Newlyweds

Latest Hollywood stars to hook-up in matrimony are actress Pier Angeli and singer Vic Damone. Both insist that they won't let the footlights dim their romance. In The Standard this week, a picture-story featuring the starry-newlyweds seems to prove that they are making a real effort to keep their word—and their efforts are worth looking at. See it in The Standard—on sale now, complete with Magazine, 12 page novel and 20 pages of comics. Only ten cents!

4. See (2) above.  
5. No.  
6. See (5) above.  
7. Tender price: Turner Farm Equipment, \$12,000.00; L. J. Rossiter, \$8,000.00; P. L. Morris \$12,125.00; The J. W. Windsor Co., Limited, \$6,110.00; E. Malone, \$100.00 (Bldg. location)

### ROAD MACHINERY

Question—Mr. Frank Myers: 1. What was the total cost of road machinery and parts purchased for the year 1954 to date?

2. Please give the names for whom the said parts and machinery were purchased.

Answer: 1. \$256,343.67.  
2. H. R. Adams, Karl Annand, Automotive Products Co. Ltd., Barker Equipment Co., W. G. Barbour, Canadian Tire & MacRae Ltd., Bennett Equipment & Supply Ltd., Bevan Bros., Thos. H. Bishop, Bowness Transport, Hudson Bowley Transport, Bryenton & MacKay Co., Burke Electric Ltd., Canadian Fairbanks-Morse Co. Ltd., Canadian Liquid Air Co. Ltd., Canadian Tire Corporation, Construction Equipment Company, Carson & Birt, Carter & Co., Casselman Co. Ltd., Charlottetown Auto Salvage, The Charlottetown Guardian, J. Clark & Son, Peter G. Clark, Coastal Asphalt Products Ltd., Corney Bros., Crown Assets Disposal Corp., Dictating Equipment Ltd., Willard MacDonald Ltd., McDonald & Rowe Woodworking Co. Ltd., Douglas Bros & Jones Ltd., Dowd Motors, Duke Equipment Co., Dunlop Tire & Rubber Co. Ltd., Elmsdale Garage, Emerson & Fisher, Firestone Tire & Rubber Co. Ltd., Frank Gallant, Joseph P. Gaudet, Gordons Garage, R. Green's Garage, Gutta Percha & Rubber Ltd., Hall & Staver Ltd., S. L. Kennedy & Co. Ltd., Donald MacKenzie, Mackenzie's Garage, LaHave Equipment Ltd., F. R. McLaine Ltd., Allison MacLeod, Lawlor's Auto Salvage, Lounsbury Co. Ltd., Mallett's Battery Service, Michael Bros. Ltd., Morrison & MacRae

(Continued on page 8)

Question—Mr. Frank Myers: 1. The road from New London School to Stanley Bridge is now open, and no orders have been issued by this Department against opening it. Confusion may have arisen from the fact that snow banks deeply on portions of this road and, at such times, the Shore Road is opened to allow traffic to by-pass the heavy banks which are opened later.

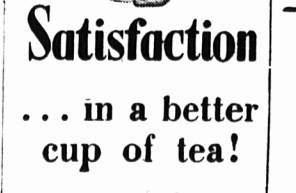
2. On the authority of the Minister of Public Works and Highways.

3. During excavation for the foundations of Bonshaw Bridge, it was found that conditions were such that sandstone was needed to prevent scour under the bridge. When the sandstone was placed, there was no further need for piles, and they were returned to stock.

4. Yes.

5. The Petition has been placed on file. It has been carefully considered. As regards the intention of the Government, this is a matter of Government Policy which will be announced in due course.

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