

**Sugar Control Case.**

**COURT DIRECTS THAT MANDAMUS SHALL ISSUE.**

**L. E. Hickman Co., Ltd. vs. Hon. H. J. Brownrigg, Minister of Finance and Customs. Judgment for Plaintiff.**

The above case opened before the Chief Justice in the Supreme Court in chambers yesterday at 11 o'clock. Mr. Carter, who appeared for the defendant, offered two preliminary objections both of which were not upheld after Mr. Morine, K.C., had answered Mr. Carter's argument. The argument on the main issue was then proceeded with by Council for defendant who contended that the board of Food Control had the power to issue regulations and stop the importation of sugar under the Food Control Act and if not under that act then under the War Measures Act which provided that the war is not officially over until a proclamation to that effect is issued by the Governor in Council. Mr. Morine contended that the F.C.B. had no such power under either Act cited, and delivered a very able and exhaustive argument which lasted until nearly 1 o'clock. Mr. Carter then replied to Mr. Morine after which adjournment was taken till 3 o'clock in the afternoon. On resuming, judgment was delivered by the Chief Justice ordering that a peremptory mandamus do issue directed to the Minister of Customs to perform the duty imposed upon him by the Customs Act, with costs of application. The full judgment of the Chief Justice follows:

**THE JUDGMENT.**

In the matter of an application of L. E. Hickman & Co., Ltd. for a writ of Mandamus to issue directed to the Minister of Customs to grant a warrant for the unloading of goods belonging to the applicant.

The applicant asks for an order for a peremptory mandamus to issue to the Minister as Collector of Customs for the unloading further into this colony of two hundred barrels of sugar brought to the port of St. John's by the s.s. Rosalind on the 12th day of September inst., and now in a customs warehouse at the said port.

It is unquestionably the duty of the court to grant this writ to an applicant whenever he is without other remedy and he can establish a right to the writ by showing a statutory duty to the exercise of which he is entitled. The affidavit in support of

the application made by Mr. Pratt, a director of the company, sets forth that the requirements of the Customs Act have been fully complied with and that the company is entitled to a warrant to unload as provided by the Act.

An affidavit filed by the Minister of Customs shows that his objection to issuing the warrant is based upon the fact that this sugar was imported without a permit from the Food Control Board in contravention of the regulations, approved by the Governor in Council, published in the Royal Gazette on the 27th of July, 1920. That publication declares that "Upon the recommendations of the Food Control Board, and under the provisions of the Food Control Act, 1917, and the War Measures Act, 1914-1916, His Excellency the Governor in Council has been pleased to approve the following regulations regarding the sale of sugar."

Section 9 of these regulations, the only section referred to at bar, is as follows: "No sugar shall be imported into Newfoundland unless a permit to do so shall have been obtained beforehand from the Food Control Board."

In order to determine the validity of the regulation, it is necessary to consider first the provisions of the Food Control Act, 1917. The evils which the Legislature aimed to prevent when it enacted that statute were "secrecy, monopolization, hoarding or injurious speculation" in food stuffs and the means which it adopted for the accomplishment of this end was the creation of a Food Control Board. It empowers this Board to make such regulations as it may find necessary or desirable for effecting the purposes set forth in Section-2 of the Act. The powers and duties of the Board are prescribed in that section. They are (A) to make enquiry and investigation, (B) to ascertain the requirements of the people of Newfoundland (C) to render assistance in securing the production in or importation into the colony of necessaries—to assist in or assume control of their equitable distribution within the colony and to prevent causes interfering with such supply, distribution and transportation. There is also a power to cooperate for any of these purposes with departments or officers of Canada or of Great Britain or of allied countries vested with like power. It is obvious that any regulations which are made under that Act must come within the terms of this Section in order to be valid or effective. They must have as their object the production in or importation into the colony of necessaries, or the equitable distribution here of these products or imports, or the prevention of interference with supply and distribution.

Only in so far as regulations aim to effect these objects or subserve these purposes can they have force and validity. Nothing is to be found in the statute, either express or implied, to authorize a regulation that no sugar is to be imported into Newfoundland unless a permit to do so shall have been obtained beforehand from the Food Control Board. The Act provided for a Food Control Board which would assist in securing imports of necessary food stuffs. It did not constitute or authorize the constitution of a Board with power to refuse to permit such imports. This regulation is therefore clearly ultra vires, the Food Control Act.

It is argued that the fact that the Governor in Council in approving the regulations recommended by the Food Control Board declared that these regulations were approved under the provisions of the Food Control Act and the War Measures Act 1914-1916 clothes the Board with powers additional to those derivable from the Food Control Act. It is not, however, apparent that the War Measures Act has any relation to this subject. Subsequent to the enactment of the War Measures Act and its amendment the Legislature specially dealt with the question of Food Control. The regulations in question purport to be recommendations of the Board created by and for the purposes of the Food Control Act, 1917, and are primarily intended for carrying out the provisions of that Act. The former statute which granted extraordinary powers to the Governor in Council for War purposes in 1916 became operative or applicable by reason of War or by reason of the shortage of stocks or increase of price which (to quote the words of the 1917 Act) "had resulted from the fact of the continuation of the War from the fact that a state of War has existed or does now exist" or "by reason of any other cause which may be attributed directly or indirectly to the fact of the past and present existence of War and the possible continuation thereof." As it is admitted that the applicant has done everything required by the Customs Act to entitle it to a permit for the unloading of sugar now held in the Customs' Warehouse, and as the Minister has failed to establish that the regulations upon which his refusal to grant a permit is based, is authorized by statute, I have to order that a peremptory mandamus be issued to the applicant to issue directed to the Minister for the performance of the duty imposed upon him by the Customs Act.

**W. H. JOHNSON, of Portland, Ore., who says no one could have done him any greater kindness than the friend who advised him to try Tanlac—Gains fifteen pounds.**



"Not in a long time have I enjoyed such good health or felt so well generally as I do since taking Tanlac," said W. H. Johnson, 319 East 43rd St., Portland, Ore., who holds a responsible position with the Northwest Transfer Company.

"About a year ago I began suffering from lack of appetite and stomach trouble and since that time—that is, until Tanlac set me right—I have felt so poorly that I could hardly do my work. My food seemed to do me little good, if any, as my digestion was bad, and I lost both weight and strength continually.

"After every meal there was a dull, nagging pain in the pit of my stomach that kept me feeling miserable for hours.

"The gas from my sour, undigested food would bloat me up terribly and my nerves were so upset that I would be awake half the night unable to sleep. I was constantly having blinding dizzy spells and could not bend over and straighten up quickly but what everything seemed as dark as night to me.

"I was telling a friend one day how bad I felt and he advised me to try Tanlac, and I just want to say he couldn't have done me a greater kindness."

"I have picked up all of fifteen pounds in weight, my appetite is fine, and although I am eating just anything I want my stomach never gives me a particle of trouble. My sleep is sound and restful and my strength and energy have been so renewed that my work is no longer a burden to me."

Tanlac is sold in St. John's by M. Connors; by Reg. Sullivan, Pouch Cove; Sound Island Store, Sound Island; Dennis Flynn, Avondale; J. J. O'Brien, Cape St. Mary's; W. Smith, Baine Harbor; W. A. Burdock, Belleoram; John Morey, Permeuse; Mrs. Jos. Quinn, Renewals—adv't.

**Cashier is Suspected.**

**OF KILLING DRIVER OF MOTOR CAR AND ROBBING HIM OF £1,300.**

Belfast, September 7.—The sensational killing of William McDowell on September 3, when he was driving a motor car which, according to current accounts, was held up by armed raiders who robbed the car of £1,300, comprising a factory payroll, had a surprising sequel to-day in the arrest of William McConville, cashier of a linen thread corporation's factory, who was a passenger with McDowell at the time of the latter's death.

McConville had vividly described the killing of McDowell and his own maltreatment by two armed men, who, he said, had stolen the money intended for the company's workmen.

**MR. H. W. STIRLING will resume lessons in Organ, Piano, Singing and Theory on Tuesday, Sept. 14th. Pupils of all grades received. Further particulars on application: Studio: 29 Victoria St.—89.11.13.14.16**



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**Young Ladies for Noble Work.**

Sister M. Catherine O'Deady of St. John's and Sister M. Gabriel Walsh of St. Mary's, who were here on a vacation left by Sunday's express for their home, Little Rock, Arkansas, accompanied by the following young ladies, Catherine Duffy, Annie Ryan, Annie Devine, Mary Sullivan, Madonna Carey, Mary St. Croix and Mary Parsley, who will enter the novitiate at Little Rock where there are already several of our Newfoundland girls doing excellent work in training the children of that place. All these young ladies are graduates of our schools and are taking up the noble work of teaching. Sister M. Catherine O'Deady visited here last week and twelve postulants with her who are all doing well in the land of their adoption.

**Men Who Died Laughing.**

Like Charles II, many men have died with a jest on their lips, but there are not many cases in history of people actually dying from laughing too heartily at a joke.

This, however, was the sad fate of Marton of Arragon, who reigned from 1394 to 1410. He had a favourite jester called Borra, who, it is said, had immense influence with the King.

One day the King was suffering from indigestion, brought on by too greedily devouring a goose. As he lay groaning in bed, Borra came skipping into the royal apartment, and the King inquired of him whence he came.

"Out of the next vineyard," answered the jester, "where I saw a young deer hanging by his tail from a tree, as if someone had so punished him for stealing figs." Whereupon the King laughed so heartily that he died from the combined onslaught of goose and jest. It seems a poor end—to succumb to a jest like that, and it is obvious that what raised a laugh in Spain in the fifteenth century would not produce even a glimmer of a smile here in the twentieth.

A better joke was made by another fool named Jean, who made merry in the court of Charles the Simple, King of France. This fellow was exceedingly trying to Charles's nerves, and gave his master a great shock by rushing into his room one morning, exclaiming: "Oh, sire, such news! four thousand men have risen in the city."

"What!" exclaimed the startled ruler, "with what purpose have they risen?"

"Well," said Jean, "probably with the intention of lying down again."

Jean's influence was so great that the King once remarked that he thought they had better change places. Jean looked very angry at this proposal, and Charles thereupon asked him if he were not content with the idea.

"Oh, content enough," said he, "but I should be exceedingly ashamed of having such a fool."

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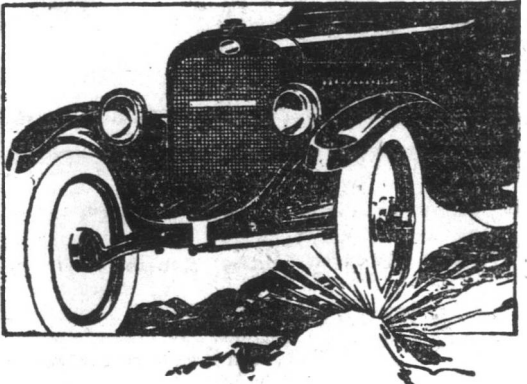
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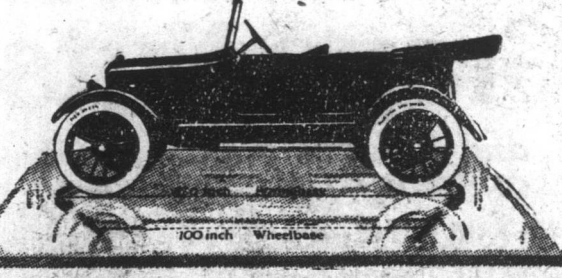
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