

Industrial Relations

Court of Canada in the case of Henry Birks & Sons (Montreal) Limited and other plaintiffs vs. the city of Montreal and the attorney general of the province of Quebec. The judgment was handed down in 1955 and dealt with by-law 2048 of the city of Montreal concerning the closing of stores and business establishments on the following holidays: New Year's day, Epiphany, Ascension, All Saints' day, the Immaculate Conception and Christmas. Of those various holidays New Year's day and Christmas are already recognized as statutory holidays; the others are mainly religious holidays especially observed in the province of Quebec.

I do not want to labour the point but I think it is my duty to emphasize, since the opportunity is provided, the regrettable fact that storekeepers operating in a province with a French and Catholic majority, have decided to appeal from a municipal bylaw and tried to have it declared *ultra vires*, or in other words to have it quashed.

I hope we will eventually be able to come back to that question and that it will then be possible to make those religious holidays, which are still observed in many villages and cities in the province of Quebec, indeed in the great majority of our communities, as obligatory not only in the fine province of Quebec, but also throughout the country.

I could deal at greater length with this question because I am aware that those holidays which are considered as being religious holidays only in the province of Quebec have already been considered for a long time as statutory holidays in England because a law was passed there to that effect.

In closing, Mr. Speaker, may I be allowed to place on record an editorial which appeared in the December 1955 issue of the magazine *Relations* on this matter, following a judgment from the Supreme Court of Canada. I quote:

In its ruling in the case of the Montreal departments stores, the Supreme Court upheld the appeal filed by the stores against the ruling of the second circuit court; the latter ruling had reversed that of the first circuit court, which had ruled that the provincial act of 1949 and by-law 2048, passed by the city of Montreal on November 2 1951, were both *ultra vires*. The provincial act of 1949 amended section 2 of the "Early closing act" by adding section 2a which reads as follows:

The city council may, through a by-law, order that such stores remain closed all day on the first day of the year, on the day of the Epiphany, on

[Mr. Martel.]

Ascension day, on All Saints day, on the day of the Immaculate Conception, and on Christmas day.

By-law 2048, patterned after this section, also added section 2a to by-law 695 established under the early closing act:

In the city of Montreal, stores shall be closed all day on the following holidays: New Year's day, Epiphany, Ascension, All Saints' day, Immaculate Conception and Christmas.

The Supreme Court agrees with the judge of first instance that the legislation regarding religious holidays, like Lord's day act, comes under the Criminal Code and therefore is not subjected to the Legislature. The Supreme Court judgment makes considerations that are not easily brushed aside. It would not be serious to say that the Court has been hostile to the province of Quebec. But an admission of the consistency of the legal argument is, by no means, a recognition that the problem is definitely settled. Legality does not always coincide with moral and psychological reality. That is precisely what happens in the matter of store closing on religious holidays.

While we leave to jurists the responsibility of deciding whether an indisputable legal basis can be found, we do say that, even if none is found, the desired goal may be achieved.

(Text):

Mr. Martin (Timmins): Mr. Speaker, with due respect to the hon. member, I do not believe the matter he is discussing now has anything to do with the bill. He is referring to other holidays and that sort of thing.

The Acting Speaker (Mr. Rea): I would ask the hon. member to stick to the principle of the bill we are discussing, namely Bill C-7.

Mr. Martel: Mr. Speaker, I would like to conclude my remarks and give a full account of what I was referring to because I feel that the holidays referred to may eventually become statutory holidays, and as a result can be discussed here. I have only a few more sentences to read.

The Acting Speaker (Mr. Rea): The principle of this bill is whether or not there should be eight statutory holidays each year with pay, and if employees work on those days they should get double pay. The holidays are all named in the bill and that is all we can refer to. On second reading we cannot refer to anything else because it is not in the bill.

Mr. Ricard (St. Hyacinthe-Bagot): On a point of order, Mr. Speaker, I think the hon. member is within the subject because some of the holidays mentioned in what he is reading are also in the hon. member's bill. I think he is quite correct in what he is doing.