

THE SUNDAY STREET CARS

The Lord's Day Alliance Loses Its Lawsuit.

MR. JUSTICE ROSE'S DECISION.

He Holds the Company Has a Right to Run Its Cars on Sunday—The Law and the Evidence—Witnesses Differed as Their Views Differed—What is a "Traveller"?

The case of the "Lord's Day Alliance" against the Hamilton Street Car Company, to compel them to desist from running their electric cars on Sunday, is familiar to the Times readers. The case was argued in Toronto, and on Tuesday Mr. Justice Rose handed down the following judgment:

It was conceded that the defendant company had the right to run its cars on Sunday as well as on the other days of the week, unless doing so was a violation of the provisions of chap. 203, R. S. O., amending an Act to prevent the profanation of the Lord's Day, sometimes called the Lord's Day Act.

The following questions then arise: 1. Does the above statute apply to the defendant company? 2. If so, is it shown to have been done here within the exception as being a conveying of travellers?

3. If not within the exception, was it necessary to entitle the plaintiff to succeed for a mere substantial injury to the public? 4. If necessary, has such injury been shown?

5. And in any view, on this evidence is an order of injunction the proper remedy for any violation of the Act? The statute does not apply to the company unless it is one of the persons named in the first section of the Act or a person ejusdem generis with those named.

I assume that the fact that the defendant is a corporation does not prevent the Act applying to it. The persons named in the Act are "Merchant, tradesman, artificer, mechanic, workman, laborer or other person whatsoever." It is not open on the decisions in our own courts for the plaintiff to contend that the words "or other persons whatsoever" are not to be construed to refer to persons ejusdem generis. Therefore we have to see if a person running street cars is one named by the statute or ejusdem generis with such persons. This question also, it seems to me, practically concluded by authority.

In Sandiman vs. Breach, 7 B. & C. 36, it was held by the court, the judgment being delivered by Lord Tenterden, C. J., that the words "or other person or persons whatsoever" in the 29th Car. 2, c. 7, s. 1, were not used in a sense, to include the driver of a stage coach; that section provided that no tradesman, artificer, workman, laborer, or other person whatsoever shall do or exercise any worldly labor, business or work of their ordinary callings on the Lord's Day, etc.

In Reg. vs. Budway (supra), it was held by all courts (Q. B. D.) that a cab driver did not come within the words of chap. 203, and in Reg. vs. Somers (supra) the same court followed its decision in Reg. vs. Budway.

In the latter case, the fact stated was that "The defendant was a servant of one Charles Brown, a keeper of a livery stable in the city of Toronto, and on the day in question drove a cab belonging to Brown through the streets of the city for hire." Mr. Moss urged that the two latter decisions should be confined to the fact that the driver who is the servant of the owner that would apply in favor of the servant, indeed it might be contended that a servant who was not the owner of a horse, or a horse come within the description "workman or laborer" than would the owner who was also the driver, and in Sandiman vs. Breach, as has been seen, Lord Tenterden draws no such distinction, but uses the words "owner or driver."

Then if an owner or driver of a stage coach or a stage driver of a cab is not within the Act, is one who is an owner or driver of a street car, whether such car is by horse, steam, electricity or other motive power? It is not within the Act, is one who is an owner or driver of a street car, whether such car is by horse, steam, electricity or other motive power? It is not within the Act, is one who is an owner or driver of a street car, whether such car is by horse, steam, electricity or other motive power?

I think there is none; and, following the above decisions, which are binding upon me, I must hold that the defendant company is not within the Act, and so not prohibited from running its cars on Sunday.

But, assuming that the Act does apply, then has it been shown that the company was or was not "conveying travellers"? The exception is in the following words, "Conveying travellers or Her Majesty's mail by land by water, selling drugs or medicines and other works of necessity, and works of charity only excepted."

In Reg. vs. Daggett, 1 O. R. 537, the full court (Q. B. D.) composed of Hagarty, C. J., and Armour and Cameron, J. J., held that excursionists leaving Buffalo, in the State of New York, on a Sunday morning and proceeding by rail to Niagara, thence by defendant's steamboat to Toronto and back the same day, were travellers within the exception, and that there is no distinction in such a case between travellers for pleasure and for business. The decisions under the 29th Car. 2, c. 7, were collected and referred to and accepted as defining the term "travellers" as used in our statute.

There the learned Chief Justice said: "It matters nothing in my judgment whether they travel wholly for pleasure, fresh air, relaxation from work, or with or without luggage, or actually on important business. They are travellers within the meaning of the statute. To draw any distinction between persons according to the purpose which induced them to travel would, as it seems to me, be a vain attempt, leading to impossible and irritating inquiries and tending to bring a useful and salutary enactment into contempt."

No effect was given to the argument of counsel that "conveying travellers" is to be within the exception must be a work of necessity, the court evidently holding otherwise. Among the cases referred to decided in England under the 29th Car. 2, c. 7, was Kenlow vs. Richardson, L. R. 4, C. P. 168, where it was held that a man who walked two and a half miles from his residence to drink mineral water at Spa was a traveller, and in Taylor vs. Humphries, 10 C. B. N. S. 429, Erie, C. J.,

held that persons who had walked four miles on business or pleasure might be lawfully supplied with refreshments as travellers.

Mr. Moss endeavored to distinguish these cases on the ground that the persons had walked to a distance out of the town where they resided, but I find no such distinction suggested, and it seems to me to be fanciful and not entitled to precede the plain and manifest that the distance passed over does not determine whether one is a traveller or not.

In Reg. vs. Daggett; Reg. vs. Tinning, 11 U. C. R. 336, was referred to and not followed. It was declared to be not in accordance with the subsequent decisions.

In Reg. vs. Tinning the court held "that persons making it their ordinary business to ply within the harbors of a town not for any purpose of carrying travellers or the mail or intended to be restrained by the Act," adding, "We think it clear that the persons carried on a Sunday between the city (Toronto) and the peninsula cannot be called travellers within the meaning of the exception. They are persons notoriously seeking mere recreation."

I must follow Reg. vs. Daggett in preference to Reg. vs. Tinning, leaving an appellate tribunal to say that the latter decision is wrong, if it is so, for Reg. vs. Daggett is founded upon decisions subsequent to Reg. vs. Tinning, and has remained unquestioned since it was decided in 1882.

Both decisions are of the same court, differently constituted, and the latter decision is, as I think, a declaration that the former is not good law, and is a declaration of the law which binds me sitting as a judge of first instance.

It was pointed out that the Legislature by the 45 Vic. c. 44, ss. 1-7 (now c. 7, R. S. O., c. 203) had declared excursionists, not to be travellers; but it will be observed that such section applies only to persons going and returning on the same day by the same steamboat or railway or any other owned by the same person or company, such steamboat or railway having for the only or principal object the carriage of Sunday passengers for amusement for pleasure only, and does not apply to persons carried one way only or going and returning on the same day. So the construction put upon the word "travellers" by the court in Reg. vs. Daggett stands with the above exception.

It is instructive to note the care the Legislature exercised in declaring the limitations to such extension of the Act. I find as a fact that the defendant company has not been shown to have run its cars having for the principal or only object the carriage of Sunday passengers for amusement for pleasure only, and there is no evidence before me on which I could find that the company carried what might be called Sunday excursionists.

I find as a fact that the cars of the defendant company were shown to have been run on Sunday as an ordinary means of conveyance, to include the carrier of a driver of a stage coach; that section provided that no tradesman, artificer, workman, laborer, or other person whatsoever shall do or exercise any worldly labor, business or work of their ordinary callings on the Lord's Day, etc.

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General Harrison's Second Article ON "THIS COUNTRY OF OURS" Is in the JANUARY issue of THE LADIES' HOME JOURNAL Now Ready AND FOR SALE EVERYWHERE Ten Cents ON ANY NEWS-STAND The Curtis Publishing Company, Philadelphia

THE RIGHT HOUSE CORNER KING AND HUGHSON GREAT THANK-OFFERING SALE. We are pleased to be able to thank the good people of Hamilton for the liberal share of their business which we have received during the season, and in that gratitude will commence on Monday next a clearing sale of all the remains of our stock of this season's Mantles, and Millinery. The Jackets are all new, this season's purchases, latest styles, large buttons, full sleeves, loose fitting fronts. The Millinery is also this season's purchase. Latest shapes in hats, etc.

THE RIGHT HOUSE, Hamilton, Dec. 23, 1895. THOMAS C. WATKINS.

LYING ABOUT BRITAIN. Hostile Tories Would Fain See Her Adopt Protection AND EXCLUDE OUR PRODUCTS. The work of telling lies about the condition of affairs in Britain has broken out in a new direction, says the Toronto Sentinel. After the same time exposed the gross misstatements about wages, hours of labor and matters affecting the working classes, the writers who desire to see a continuance of Canada's tariff treatment of Britain in trade affairs have been faking up despatches, speeches, reports and such like to show that the farmers in the old land were all on the verge of bankruptcy and were clamoring for protection.

FIBRE CHAMOIS COSY WRAPS. Are comfortable and stylish when made with FIBRE CHAMOIS. It keeps the wind out completely, and holds the graceful, rippling curves just as they ought to be. Ask to see the label! PROTECTION FROM COLD

STROCK A REEP. The Cunard Steamer Cephalonia Beached Near Holyhead. PASSENGERS AND CREW SAVED. London, Jan. 1.—The Cunard line steamship Cephalonia, Captain Seacombe from Boston on December 21st for Liverpool, has been beached near Holyhead. The Cephalonia ran ashore on a reef near South Stack in a dense fog, but she subsequently floated and steamed here. When she was beached her after-part was full of water. When the steamer first grounded two lifeboats were sent to her assistance, but the rising tide floated her, and she proceeded under her own steam until the last moment. The forty passengers who were on board of her have arrived at Holyhead, and have taken trains for their respective destinations.

FATAL RESULT OF A QUARREL. Ingersoll, Ont., Jan. 1.—This evening about 5 o'clock Irwin Caldwell, a cabinet maker of this town, and William McLure, who keeps a restaurant here, met in the hallway of the McMurray House, both being somewhat under the influence of liquor. A scuffle took place between them, and it appears Caldwell fell upon McLure, and, either striking something or being injured in some way, Caldwell was taken up unconscious and laid on a sofa. Medical aid was at once obtained, but he expired almost immediately. McLure was afterwards arrested by Chief Skirring and taken to the lock-up. An inquest will be held to-morrow at 2 o'clock.

YOU CAN BELIEVE. The testimonials published in behalf of Hood's Sarsaparilla. They are written by honest people, who have actually found in their own experience that Hood's Sarsaparilla purifies the blood, creates an appetite, strengthens the system, and absolutely and permanently cures all diseases caused by impure and deficient blood.

LOOKING AT THE BRIGHT SIDE. "Wasn't it splendid," said the wife of the Turkish officer, "that the Sultan should raise your salary." "Yes," was the reply of the man who has cause to doubt. "I suppose it's nice in one way. You can afford to give me a more expensive funeral."

CAMPBELL & PENTECOST 43 and 45 MacNab st. north. We Will Begin the New Year With a Rush of Bargains. Dress Goods. Fifteen pieces of Colored Tweed Dress Goods, worth \$3.00 for 15c. Twenty pieces Double Fold Dress Goods, Colored Tweed effects, worth 50c., for 25c. Ten pieces Double Fold Fancy Tweed Dress Goods, former price \$1.00, our price 50c. Ladies' Black Quilted Skirts in Black Alpaca and Lustre, worth \$2.00, now \$1.35. All the new shades in Colored Cashmere and Henriettas, for evening wear, from 25c. yard up. Black Dress Goods in Meltons, Cashmere, Serges and Henriettas from 1/2c. yard up. All new, fresh goods. Come and see them. The prices will surprise you.

Staple Department. Fancy Apron Check Gingham, 5c., worth 8c. Heavy Unbleached Canton Flannel, 6c., worth 10c. Apron Check Gingham with border, 10c., worth 15c. Heavy Dundee Checked Shirtings, 8c., former price 10c. Wide Green Flannel, 10c. yard, regular 15c. line. Heavy Plain or Twill Grey Flannels, 15c., worth 20c. Strong Bee-Hive Bed Ticking, 10, 15 and 20c., warranted to hold feathers.

Men's Wool Undershirts. We are clearing out the remainder of our Men's Wool Undershirts at 40 and 50c. These goods were manufacturers' samples, and worth double the money.

Millinery Room. Artificial Violets at 5, 5, 10, 15 and 20c. bunch. Colored and Black Feathers at 25, 35, 50 and 75c. and \$1.00. All our Ladies' Felt Hats, 50c., for 25c. each. All our Ladies' Felt Hats, \$1.00, for 50c. each. Ladies' White Cotton Underwear, all selling at half cost price. Children's White Wool Boas at 25 and 35c. Infants' Wool Hoods and Caps at 25, 35 and 50c. Twelve only Ladies' Beaver Mantles, were \$6.00, now \$1.00 each.

CAMPBELL & PENTECOST'S 43 and 45 MacNab st. north. WHOLESALE. The past season has been a very successful one at this store, consequently we are in a position to clear out all Winter Goods in stock at wholesale prices. We will sell at wholesale prices the balance of our Winter Tweed Dress Goods, Winter Serges, Winter Wrapper Cloths, Winter Mantle Cloths, Winter Blankets and Furs.

WHOLESALE. During January we will also sell at wholesale prices the balance of our Table Linens, Fancy Linen Doilies, Table Napkins, Towels and Towelings, Sheetings, Pillow Cases, Apron Gingham, Ladies' Woolen Vests, Ladies' Woolen Hose, Men's and Boys' Shirts, Drawers and Hose, Ladies' Handkerchiefs, Umbrellas, Lace Curtains, etc. Also the balance of Ladies' and Children's Trimmed Hats, Toques, etc.

N. A. BUCKE, 199 King St. East. HORNING'S. 12 lbs. Rolled Oats for 25c. 10 lbs. White Beans for 25c. 8 lbs. Rolled Wheat for 25c. 5 lbs. Lima Beans for 25c. Canned Corn, Peas and Tomatoes at 7c per tin. J. H. HORNING & CO., 52 John street south, 242 York street, 140 Ferguson avenue north. Cor. Locke and Chatham sts. Telephone No. 30.

New Year's. Any Fancy Goods left over will be sold this week at reduced prices. WILSON BARR, Cor. King and Hughson streets, Hamilton.

and goods, \$1.50. due to them. flower from price 25c. value. n goat's, cheap are heap at .99. reduced. Astran Russian meet at of Boas, of Boas, for 25c. ce. S. O's. ins to-day. .50. .00. .50. 1.00. 1.25. 7.00. price. —you are not a. All we want do the rest. sole used. They s, suit. is ma. an and. We are now see the "Slater". R'S. Store. lege).