LORD'S DAY ACT.

Decision of the Supreme Court In Re Greene,

Sustaining the Conviction for Selling Cigars in St. John on a Sunday — A Test Case.

The Text of the Judgment of the Chief Justice, in Which the Other Judges Unanimously Concurred.

In re Greene—The appellant Greene was convicted before the police magistrate of Saint John for selling cigars on a Sunday and fined $20. The conviction was made under the provisions of sec. 1 of 62 Vic., cap. 11, passed in April, 1899, by the provincial legislature, and the sole question involved in this application is whether that act, or at all events that section of it, is ultra vires of the local legislature. The act in question is entitled "An Act to Prevent the Profanation of the Lord's Day." Another section under which Greene was convicted is as follows: "No person shall on the Lord's Day, commonly called Sunday, sell, or publicly shew forth, or expose, or offer for sale, or shall purchase any goods, chattels or other personal property or any real estate whatsoever or do or exercise any worldly labor, business or work of his ordinary calling (conveying travellers, or her majesty's mails by land or water, selling drugs or medicines and other works of necessity and charity excepted)." The act contains several other provisions to which it is unnecessary now to refer. The scope and object of the act are (1) to prohibit personal, or real estate, from being sold or publicly offered, or exposed for sale on Sunday; (2) to prohibit such worldly labor, business or work from being done on Sunday as is not specially excepted from the operation of the act, and (3) to prohibit certain kinds of amusement or recreation on Sundays. The main ground upon which the validity of this conviction is questioned is that, not only the section in question, but the whole act, is ultra vires, because it relates and deals with the criminal law in the sense in which that term is used in section 91, No. 27, of the British North American Act, and which gives the exclusive right of legislation in reference to it to the federal parliament. For many years prior to confederation and up to the enactment of the statutes relating to the criminal law by the dominion parliament there was, as a part of the so-called criminal law in force in this province, cap. 144 of the Revised Statutes, intituled "Offences Against Religion," consisting of two sections. The first provided for a penalty of 40s. for the disturbance of any meeting of persons assembled for religious worship or of any persons officiating at such meeting, and the second provided for a similar penalty of five days' imprisonment for openly desecrating the Lord's Day by shooting, gaming, sporting, playing, hunting, drinking or frequenting tippling houses or by servile labor, works of necessity or mercy excepted. The first of these sections has been superseded by dominion legislation; (R. S. C., chap. 156, Cr. Code secs. 171, 172 and 173) and by the law as it now stands, the unlawful obstruction of a clergyman in celebrating divine service, and violence to him while officiating in such service are indictable offences and punishable by two years' imprisonment, while the disturbance of public worship is an offence punishable in summary conviction by a penalty not exceeding $50 (fifty dollars). Sec. 2 of chap. 144 of the R. S. of N. B. has never been repealed, neither is there any legislation by the dominion in the matter covered by that section, nor, as I believe, by the wider area covered by the act under which the present conviction took place. The act as originally passed in this province in 1786 (2nd Geo. III., cap. 5) is entitled "An act against the profanation of the Lord's Day, commonly called Sunday, and for the suppression of immorality." Some changes were made in it in 1831 by 1. Wm. IV., cap. 38, and by the act 12 Vic., cap. 29, passed in 1849, which consolidated the criminal law of that day. These two sections were included, one under the heading "of disturbing religious assemblies," and the other under the heading "of profaning the Lord's Day." Chap. 144 of the Revised Statutes of N. B. (1854) is simply a re-enactment of these two sections in a somewhat abbreviated form, and so they stood at the time of confederation.

The principal argument addressed to us against the constitutionality of the provisions under which the conviction was made is based on the fact that Sunday profanation was at the time of confederation recognized as a criminal matter, and dealt with as a part of the criminal law of this province and made punishable under chap. 144 R. S. And it was said to be a legitimate result from that that Sunday profanation is included as a part of the "Criminal Law" within the meaning of that term as it is used in sec. 91, No. 27, of the B. N. A. Act, and therefore one of the subjects with which a provincial legislature cannot deal. And Mr. Pugsley ought to deduce a similar conclusion from the fact that the dominion parliament had, by virtue of its right to legislate as to the criminal law, in fact legislated in the way I have already mentioned as to interference with public worship and with clergymen in the discharge of their official duties as offences against religion, and thereby occupied a part of the ground covered by chap. 144 R. S.; and he claimed that it must be taken as conclusive of the right of the federal parliament to occupy the remainder of the field, to the exclusion of the provincial authority—not that provincial legislation on the subject was good until it should be superseded by that of the dominion, but that the provincial legislation would be invalid as relating to a subject altogether outside of the area covered by the local authority. I am unable to agree with either of these views. It would, I think, be very unsafe to conclude that because for the sake of convenience or ready reference, or any other reason, the revisors of our statutes in 1854 had gathered into one group the existing Acts relating to offences and called it the Criminal Law, it therefore followed that the dominion legislature had the exclusive right of legislation as to all matters therein dealt with. If this argument could prevail it would confer upon the federal parliament the exclusive right of legislating upon the subject of drunkenness as a part of the criminal law, because chap. 145 of the Criminal Law of New Brunswick, as it stood at the time of confederation, made drunkenness an offence punishable with about the same severity as Sunday profanation was. In addition to this, to the extent that the criminal laws of the various provinces differed—and it is well known that they did differ—the argument would not apply uniformly to each province. Obviously there is a large class of cases in reference to which the provincial legislators have ample power to legislate, and which do not become a part of the criminal law simply because a breach of the law is punishable by fine, penalty or imprisonment. And the question here is whether the present case comes within that class. I do not think that any weight should be attached to the other branch of Mr. Pugsley's argument on this point. If I were driven to draw any inference from the fact that all legislation as to Sunday profanation had been omitted from the Criminal Code, I should think it a much more reasonable inference that in legislating the whole Criminal Law of Canada into a code, parliament had dealt with all criminal matters in regard to which it had an exclusive right of legislation. Historically it is known (Burbidge's C. Law, No. 160, note) that the omission was by design. There are wide differences in character between the offence of disturbing religious assemblies for worship or interfering with clergymen in the discharge of their official duties and the offence of buying a cigar, or going to a picnic on a Sunday. Every person has an undoubted right to engage in the public worship of God according to his own particular method, without being disturbed or hindered. That is a right common to all and in all places. But what may be done on a Sunday without profaning it is a matter of opinion and largely of sentiment—dependent upon a variety of circumstances and conditions—and one upon which well-disposed people hold widely different views. And I am disposed to think that the dominion parliament, in designedly refraining from legislating on this subject, did so because it was one which did not concern the general public or affect them all to the same extent or apply to them all in the same degree, but was rather to be regarded and dealt with as a police regulation, local in its character and in its application, and which required to be moulded so as to suit the requirements and meet the conditions of different localities and different classes of population, and in that way secure a reasonable cessation from labor and worldly business on Sunday and confine its recreations within reasonable limits. Such, at all events in my opinion, is the nature of legislation such as this, and I think the provision under which this conviction took place was enacted by a competent legislative authority.

In the first place, as the provincial legislature has passed the act, presumably the power has been constitutionally exercised. It was said that selling cigars on a Sunday was an indictable offence at common law. This proposition does not seem to be supported by authority. In Smith v. Sparrow, 4 Bing. 84, Park J. says: "The common law indeed is founded on our holy religion, and no law can be good which is not. But at common law the observance of the Sabbath is a duty of imperfect obligation, as we find by Rex. v. Brotherton, 1 Strange 702, where it was held that selling meat on a Sunday was no offence at common law." In the Atty. Gen. v. Radcliffe, 10 Ex. 96, Martin B. says: "There are many crimes properly so called which are liable to be punished on summary conviction. But there are a vast number of acts which in no sense are crimes which are also so punishable, such for instance as keeping open public houses after certain hours and a variety of breaches of police regulations which will readily occur to the mind of any one." (See also Rex. v. Boardman, 30 U. C. Q. B. 553). Acts like this one in question, intended to prevent what is ordinarily spoken of as Sunday profanation, have always been regarded as police, or municipal regulations designed to promote morality and good health by the rest from labor and business which they enforced. And all writers give prominence to the value of Sunday as a mere civil institution for the reason that it is a day of rest. Blackstone speaks of the admirable service to the state it is to keep one day in seven as a time of relaxation and refreshment, as well as for public worship, and says that it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness. In King v. Crowley, 113 U. S. 703, Mr. Justice Field says: "Laws setting aside Sunday as a day of rest are upheld, not from any right of the government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted labor." And in Stone v. State of Mississippi, 101 U. S. 814, Chief Justice Wait says: "Many attempts have been made in this court and elsewhere to define the police power, but never with entire success. It is always easier to determine whether a particular case comes within the general scope of the power than to give an abstract definition of the power itself, which will be in all respects accurate. No one denies, however, that it extends to all matters affecting the public health or the public morals." In this province at the date of confederation municipalities were authorized to make by-laws among other things "to prevent the profanation of the Sabbath," 1 R. S., chap. 45, as amended by 18 Vic. 22, acts of 1855, p. 90. And by chap. 99 of the Con. Stat. at present in force the different municipalities in the province, which include the whole province, have power to make by-laws "for preventing vice, immorality and indecency in the streets, highways and other public places and for preventing the profanation of the Sabbath." It is clear, therefore, whether it adds weight to the argument or not, that the legislature of this province, both before confederation and since, has repeatedly recognized Sunday profanation as a matter to be dealt with and controlled by the several municipalities—each in the way which seemed most suitable to its conditions and requirements—and that by-laws made for the purpose were regarded in no other light than mere police or municipal regulations.

It is true that the act in question relates alike to the whole province, but it is not to my mind less local in its character than by-laws embodying similar provisions would be when enacted by the several municipalities in the province, and in that way including the whole province. This, however, is not a case of a by-law, and is therefore free from many of the questions involved in the case of the City of Toronto v. Virgo (1896) Appeal Cases, 22 S. C. R., 447. In that case the by-law in question prohibited hawkers from carrying on their trade in certain streets in the city of Toronto. It was enacted in pursuance of a provision of the municipal act of Ontario (cap. 184 R. S. of O., 1887), which authorized the city council to pass by-laws "for licensing, regulating and governing hawkers," etc. And it was finally determined that upon a fair construction of the statute such a power did not authorize a by-law prohibitive in its character such as the one in question. The argument was used in all the courts that the by-law was ultra vires, as being in restraint of trade and an interference with trade and commerce. The general power to regulate the trade was not disputed, and various other sections in the statute expressly authorizing prohibitive by-laws were not claimed to be outside of the legislative authority of the province. Lord Davey says: "No doubt the regulation and governance of a trade may involve the imposition of restrictions in its exercise both as to time and to a certain extent as to place when such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order." And in Slattery v. Naylor, 13 app. 446, Lord Hobhouse says: "It is difficult to see how the council can make efficient by-laws for such objects as preventing fires, preventing and regulating places of amusement, regulating the killing of cattle and sale of butcher's meat, preventing bathing, providing for the general health, not to mention others, unless they have substantial powers of restraining people, both in their freedom of action and in their enjoyment of property."

In Hodge v. The Queen, 9 App. Cod. 117, where the validity of a local regulation prohibiting the playing of billiards in taverns on Sunday, made under a provincial license act, which, like the one now in force in this province, prohibited the sale of liquors on Sunday, Sir Barnes Peacock says: "These seem to be all matters of a merely local nature in the province, and to be similar to, though not identical in all respects with, the powers then belonging to municipal institutions under the previously existing laws passed by the local parliaments. Their lordships consider that the powers intended to be conferred by the Act in question, when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, etc., licensed for the sale of liquor by retail, and such as are calculated to preserve in the municipality peace and public decency and repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce, which belongs to the dominion parliament." Speaking of this case, the present chief justice of Canada, in Huson v. The Township of South Norwich, 24 S. C. R., at page 147 says: "That these words, 'municipal institutions,' do confer a police power to the extent of licensing and regulating was decided by the privy council in the case of Hodge v. The Queen." Hence the various license acts in force in this and other provinces and passed by the provincial legislatures contain special provisions prohibiting the sale of liquor on Sundays and some other special days, because such suppression is deemed expedient or necessary for the preservation of good order and government.

Appellant would contend that if parliament has not enacted such a law, the provincial legislature cannot authorize the municipalties to prohibit the sale of such articles within their limits. Such a contention cannot prevail. There is a large number of subjects which are generally accepted as falling under the denomination of police regulations over which the provincial legislatures have control within their territorial limits, which may yet be legislated upon by the federal parliament for the dominion at large. Take, for instance, the closing of stores and cessation of trade on Sundays. Parliament, I take it for granted, has the power to legislate on the subject for the dominion, but until it does so the provinces have, each for itself, the same power.

I am unable to distinguish this case in principle from those I have cited. Many of them relate to the sale of spirituous liquors, but that fact has no special significance. Spirtuous liquor is not one of the class of subjects enumerated in sec. 91 of the B. N. A. Act, in reference to which the dominion parliament has alone the right to legislate. It stands, so far as that is concerned, on the same footing as any other trade or business. If by an act of the provincial legislature, either operating directly or through the medium of a municipality, the sale of liquor, or the playing of billiards in public, can be prohibited on Sundays as a police regulation, why may not the sale of cigars or the playing of other games be prohibited on the same ground? The evil caused by the one may be greater than that caused by the other—the one may lead to more disorderly conduct than the other—that is merely a question of degree. The object of the legislation in both cases is the same, the reason for it is the same, and in my opinion the power to enact it is the same.

I desire to confine what I have said to the particular case before us. There may be other features of the Act (I do not mean to suggest that there are) to which some of my remarks might not apply. These are not involved here and have not been discussed.

I think the conviction should be sustained.

In this judgment of the chief justice the other judges unanimously concurred.

WAR PLANS FOR CANADA.

Imperial Government Fixing Schemes of Attack and Defence — Canal Route for Sending Warships Into the Great Lakes.

(New York Sun Cable.)

LONDON, Aug. 12.—By an order of the cabinet issued on the recommendation of the junta, known as the cabinet committee on national defence, the intelligence department of the war office has been engaged for several months investigating the preparedness for war of Canada and the Australasian colonies. The investigation is understood to have been completed so far as the latter are concerned, and a scheme of defence is being prepared which will form the basis upon which the government of the federated colonies will work. The dominant idea of this scheme is the constitution from various military odds and ends in the present colonies of one homogeneous colonial army, recruited voluntarily, but with power reserved of enforcing a modified form of conscription known as the militia ballot. Concurrently Australia will be raised to the rank of a second-class naval station.

The Canadian scheme is not as far forward as the Australasian, for the reason that it is much more complex, and because Canada not only has to be prepared against outside attack, but must be placed in a position to attack. Anxious consideration has been given the question how best to defend the long land frontier and furnish adequate protection to the ports. In this matter the war office intelligence department has been co-operating with a small committee of naval experts appointed by the lords of the admiralty. The integral part of the Canadian scheme is the obtaining of safe and easy access for ships of war to the great lakes. Some such route is said to have been found, and the house of commons will be asked at the next session to vote money toward the cost of the works. Their magnitude is so great that Canada could not well be asked to undertake them from her own resources, particularly as the ultimate object is part of the general scheme of Imperial defence and offence.

The Canadian scheme further provides for an increase in the garrisons at Halifax and Esquimalt, the raising of a considerable force of Canadian regular troops if the dominion government's consent can be obtained, of which there is said to be some doubt, and the raising of the North American naval station to first rank, with an effort to tap for the royal navy an unlimited supply of recruits afforded by the fishing population of the dominion and Newfoundland.

BLOOMFIELD STATION.

The painters have been at work on the station and freight house this week, making a great improvement in their appearance.

The work of prospecting for coal at Central Norton in the ravine back of Henry Baxter's place, which was begun about two years ago and discontinued, has been resumed this summer with favorable indications. An excavation about 25 feet deep has been made in the rock, but so far has yielded nothing but a shiny black laminated shale, some specimens approaching lignite. As the true coal, if found, is likely to be at a considerable depth, application has been made for the government drill.

Warren Bettle, a young man of Passekeag, who was taken very ill last week, underwent an operation on Tuesday for appendicitis with but little hopes, however, of his recovery. Drs. Burnett and Wetmore are attending him.

N. B. UNIVERSITY.

Subscriptions to the building fund:

Already acknowledged..	$5,974
His honor the lieutenant governor..	200
R. B. Philips, B. A.	10
Francis Baird, B. A.	25
H. C. Henderson, M. A.	20
W. Harrison, M. A. I.	25
H. H. Hagerman, M. A.	10
Ladies' society U. N. B.	5
J. Z. Currie, Ph. D.	25
W. B. Coulthard..	50
F. C. Green, B. A.	25
Percy H. Smith.	5
J. E. Edwards.	20
F. St. J. Bliss, B. A.	25
Patrick Farrell, 2nd sub.	5
John Harvey....	10
	$6,434

THE CENTRAL RAILWAY ACCIDENT.

The Sun's Cole's Island, Queens Co., correspondent writes:

Jas. McErierity, who was injured in the railway accident on the Central railway, is rapidly recovering.

Mrs. I. Van B. Hetherington and child, who were also in the wreck, are much better.

Frank Campbell, brakesman on the train, has been able to be removed to his home at Norton. All of the other injured are reported to be doing well.

MEMRAMCOOK

Educational Institutions Connected With St. Joseph's University.

The Convent of Our Lady of the Sacred Heart — A Staff of Nine Members of the Sacred Heart Sisterhood

MONCTON, Aug. 16.—The traveller along the I. C. R. cannot fail to be favorably impressed with the Memramcook valley, one of the most fertile districts in the province. A great improvement is noticeable from year to year in the character of the buildings in this valley, and progress is undoubtedly being made, but the people have as yet merely entered upon the vast possibilities before them. As a dairying district, Memramcook from its fertile marshes and excellent pasturage should rank among the first in the country, but this industry is as yet in its infancy. The McLaughlan butter and cheese factory, established some years ago, has of late confined its output entirely to butter, for which a ready market is found in Halifax. The manager, Mr. Michaud, says the output is increasing, being larger this year than last. In July he sold butter to the value of upwards of $1,000. Another important industry is conducted by S. L. Gaudet, who has a saw mill, sash and door factory, shingle mill and carding and grist mill, employing altogether about 25 men. If such enterprises were backed by the whole people this valley would speedily become one of the richest, as it is now one of the most fertile in all Canada.

Memramcook is, however, best known for its educational institutions, which, established in a small way, have grown to large dimensions and are doing an immense amount of good. The chief of these is of course St. Joseph's college, with its 200 students drawn from all parts of Canada, with not a few from the United States. The main college building is of stone, four storeys high. A few years ago, in order to accommodate the growing classes, a large wooden ell was erected. This, beside to a certain extent marring the beauty of the building, has been found to be insufficient for the ever-increasing list of students, and when the classes were dismissed in June work was at once commenced replacing the wooden ell with a stone wing of larger size. The walls of this wing, which is four storeys in height, the same as the rest of the college, are already up and roofed in, and the interior is well advanced. The front of this wing extends out from the rest of the building several feet, the ambition of the college authorities being to erect a similar wing at the other end when it is required, which it is thought will be before many years, a balcony to extend along the front of the old building from wing to wing, thus adding to its architectural appearance, which is already quite imposing even as it may be viewed in the distance from a railway car window. The new wing will give additional class and sleeping rooms, besides affording much more room for the faculty and enlarged dining room. The new wing will be heated by hot water, a separate furnace being supplied by the Robb Engineering company of Amherst for this purpose. New hardwood floors are being laid in the dining room and elsewhere throughout the building, and when the college classes resume in September it will be with much better facilities than ever for carrying on their work. The college infirmary is being enlarged by the addition of fifteen rooms, and the whole building is being covered with a slate roof. In connection with the college there is a natural park through which roads have been laid out in all directions and an artificial lake about half a mile in length and supplied with a number of boats for the use of students and faculty.

A few hundred yards from the college, occupying a pleasing location at the foot of the western slope of the Memramcook Valley, is the Convent of Our Lady of the Sacred Heart. This institution is of more recent origin and, like the college, commenced in a small way, in an ordinary dwelling house. It has been enlarged from time to time and is now quite a commanding structure, and the entire staff consists of nine members of the Sacred Heart Sisterhood. Last year the attendance at the convent was very satisfactory and an enlargement seemed to be absolutely necessary. This was avoided, however, by the erection of a district school house, which relieved the convent of the day school and gives more room for its regular work. Last year about 40 boarders were in attendance; now there will be room for 60 or more. The convent is under the management of Sister Mary Ann, a woman of great kindness of heart, but withal firm to control and of marked business tact and untiring energy. Since her election in August, 1893, to the important post which she now holds, the institution has made marked progress and its friends look forward to still greater achievements in the future. Previously, for a number of years, she had taught the first French class, and still continues to do so in addition to her other duties, the beautiful language of Racine, Fenelon and Bossnet having no difficulties for her. Her principal assistants have been Sister Eduard, teacher of 2nd French class; Sister Leo, who has a splendid voice in addition to being skilful in instrumental music, and Sister Eulalia, painting and fancy work, whose work in statuary, etc., is the admiration of all visitors. This year the staff will be increased by another first class teacher. Sister Redemptor of St. John, latterly of Fredericton, but for six years principal of St. Peter's school in St. John. Sister Redemptor will have the assistance of Sister Bernadine in English literature, in which she excels, and this department of the work is expected to receive a great impetus, typewriting and shorthand being added to the special studies. The convent buildings have been brightened on the exterior by a new coat of paint, while hardwood floors have been laid in many of the interior rooms and other improvements effected, including the repainting and renovating throughout, while the arrangements in the grounds for comfort and recreation are being materially increased.

THE BAPTIST SCHOOLS AT WOLFVILLE.

The Baptist educational institutions at Wolfville are making preparations for the work of the next session, concerning which announcement is given in another part of this paper.

Acadia College has been steadily enlarging and strengthening its staff, and the number of students last year was the largest in the history of the university. President Trotter's vigorous and aggressive spirit has in no wise caused a departure from the traditions of sound culture and scholarship which prevailed under his predecessor.

Acadia College for Young Ladies gives a preparatory course for college, and offers for those who require it excellent courses of study in music, elocution and the fine arts. For those of a business turn instruction is given in stenography and typewriting. Principal MacDonald has given great attention to the equipment of this school and nature has done everything for the surroundings.

Horton Collegiate Academy does for boys what the seminary does for girls, except that it makes larger provision for those who are entering business or professional life, or preparing for study in applied science. It offers a business course, and is in advance of any other school in eastern Canada in having a well equipped manual training hall.

All these schools have the advantage of location in a spot of great beauty, and of undying historical and poetic interest.