

selling drugs and medicines and other works of necessity, and works of charity, only excepted)."

Held, 1. Hotel keepers and restaurant keepers exercising their legitimate calling are not merchants and tradesmen within the above enactment. See also *Palmer v. Snow* (1900), 1 Q.B. 725, where it was held that a barber was not within the Act. Whilst a hotel keeper and a restaurant keeper may and do purchase and sell goods, the services they render to their guests are in the nature of work and labour rather than in the sale of goods; and so long as they confine their business to its legitimate limits, they are not within the Act. If they go beyond these limits they may become merchants or traders and so bring themselves within the Act.

2. Whilst carrying on such business they may sell cigars as an incident to a meal presumably for consumption on the premises. They would become merchants or traders if they sell cigars, candy, etc., as merchandise.

3. The proprietor of a news stand in a hotel who sells cigars as part of his ordinary calling is a merchant or tradesman, and is within the statute.

4. A druggist who sells cigars to all comers is within the Act. A cigar is not a drug in the sense of its being a medicine nor is it a necessity.

5. Works of necessity and charity as used in the statute contemplate the necessity of the person who works and not him who compels the work. A merchant may, as an act of mercy towards someone in need, do that which would bring him within the statute, but the necessity of purchaser might justify the conduct of the merchant as an act of mercy.

E. Bayly, K.C., and *R. U. McPherson*, for the Crown. *Haver-son*, K.C., *Robinette*, K.C., and *H. C. Macdonald*, for the various defendants.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

FORNICA v. JONES.

[June 13.

Deed of settlement—Improvidence—Trust—Revocation—Independent advice—Rule against perpetuities.

Appeal from judgment of MATHERS, C.J., noted vol. 46, p. 386, dismissed with costs, but right reserved to widow to bring new action.