

MORSON, JUN. CO. C.J.

MAY 14TH, 1907.

10TH DIVISION COURT, YORK.

REX v. DEVINS.

*Sunday—Lord's Day Act—Restaurant-keeper — Supplying Food—Candies and Oranges not Eaten on Premises—Conviction—Appeal.*

Appeal by John Devins from a conviction made by one of the police magistrates for the city of Toronto under the old Lord's Day Act, C. S. U. C. 1859 ch. 104, sec. 1, but which, so far as the point involved in this appeal is concerned, differs in no material way from the new Lord's Day Act, 6 Edw. VII. ch. 27, which came into force on 1st March, 1907. Section 1 enacts as follows: "It is not lawful for any merchant, tradesman, artificer, mechanic, workman, labourer, or any other person whatsoever, on the Lord's day, to sell or publicly shew forth or expose or offer for sale, or to purchase, any goods, chattels, or other personal property or any real estate whatsoever, or to do or exercise any worldly labour, business, or work of his ordinary calling (conveying travellers or His Majesty's mails by land or by water, selling drugs and medicines, and other works of necessity and works of charity only excepted.)"

The appeal was taken under sec. 1 of ch. 10 of 4 & 5 Edw. VII., which amended the Criminal Code, 1892, by directing that the appeal, in cases where a fine and not imprisonment was imposed, should be to the Division Court of the division of the county in which the cause of the information or complaint arose, instead of to the Court of General Sessions of the Peace, as formerly.

J. Haverson, K.C., for the defendant.

W. Johnston, for the informant.

MORSON, JUN. CO. C.J.:—The information was laid by Inspector Archibald, of the city morality department, against the appellant as a shop-keeper, and not as a restaurant-keeper, but, at the request of the inspector and on the consent of the appellant, the conviction was made against him as a restaurant-keeper. This was for the purpose of a test case to determine whether the selling of candies and oranges by a