

Province of Ontario

FIRST DIVISION COURT, COUNTY OF ELGIN.

HOPKINS V. CARNATION MILK PRODUCE COMPANY.

Lord's Day Act—Labour of ordinary calling—Works of necessity—Business or process of a continuous nature—Perishable articles—Domestic requirements.

Held 1. That collecting and transporting milk from farms to factory and there heating and condensing same on Sunday to preserve it till Monday was a "work of necessity" within Sec. 12 of the Lord's Day Act.

2. That such work fell within the exceptions mentioned in sub-secs. (d) and (m) but not sub-sec. (r) of sec. 12.

[Ermatinger Co. J.—St. Thomas. Dec. 12, 1919.]

The charge against the defendants was that the aforesaid company "on the first day of June, 1919, at the town of Aylmer, County of Elgin, did unlawfully carry on its ordinary calling as manufacturers of Carnation sterilized milk and in connection with the said ordinary calling for gain employ, then and there, among other people, John C. Koyle and others in contravention of the Lord's Day Act, ch. 153, sec. 5, of the Revised Statutes of Canada."

On the 18th of August the charge was dismissed by the Police Magistrate. The complainant appealed to the Division Court.

McCrimmon, County Attorney, for complainant.

Hobson, K.C., and *W. H. Barnum*, for defendants.

ERMATINGER, Co. J.:—The Lord's Day Act prohibits on the Lord's Day all work, business or labour of one's ordinary calling or for gain, except works of necessity or mercy, which latter are to include (though not restrictively as to the meaning of those words) among a considerable list of exceptions:—

(d) Starting or maintaining fires, making repairs to furnaces and repairs in cases of emergency and doing *any other work* when such fires, repairs or work are essential to any industry or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry or its product or to the plant or property used in such process.

(m) The caring for milk, cheese and live animals and the unloading of and caring for perishable products and live animals arriving at any point during the Lord's Day.

(r) The delivery of milk for domestic use and the work of domestic servants and watchmen.

It is admitted that work was done on the Lord's Day in question at the defendant company's factory, but such work, it is claimed by the defence, was "work of necessity" under the general exemption of sec. 12 as well as under the above specified sub-sections.