

He said there were tables of different capacities for guests, at which meals, such as ham and eggs, meat, etc., were served, if called for, but admitted that the front part of the store was used for trade in candies, and that such was the main business carried on; though he kept plates, saucers and knives on hand, and sold oysters when they were in season. He swore that he confined his dealings on Sundays to ice-cream and eatables. He did not put table cloths, nor knives and forks on the tables, but said they were available. Witnesses stated that they had often looked in at the place, when passing, but never saw anything but candies and ice-cream or ice-cream soda there. One declared that he was not able, on request, to get a meal at one time.

The ice-cream soda was made up of cream, sugar, flavor, and soda, carbonated.

The offence was not committed by the appellant personally, but he confessed to having girls employed in the store to wait upon customers.

Held, 1. On the authority of *Sieman v. Commonwealth*, 21 Am. Law Reg. 245, which refers to *Reg. v. Bleasdale*, 2 C. & K. 764, that appellant was liable for the wrong of his servant acting in the course of his employment.

2. The business of the appellant not being exclusively that of a victualler, the sale of the article in question was illegal.

Robinette. K.C., for the appellant. *W. C. Chisholm*, for the respondent.

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

REN v. BURKE.

[Jan. 13.

Canada Temperance Act—Informations for similar offences pending at same time—Conviction quashed.

Defendant was summoned to appear before the stipendiary magistrate of Sydney, C.B., to answer to two informations for selling intoxicating liquor in violation of the second part of the Canada Temperance Act. Evidence was heard in both cases and both cases were then adjourned until a subsequent day when judgment was given convicting defendant under one information and dismissing the other.

Held, that the conviction must be quashed, the magistrate having heard evidence in both cases and had them pending before him when he