

In a special case referred to the Court of Appeal regarding the constitutionality of the Ontario Lord's Day Act, certain questions of interpretation were also addressed to the Court and amongst these it was asked three questions as to the meaning of the words "work of necessity," the object being to establish some judicial land marks which would define more exactly the general character of the words. The late Chief Justice Armour gave some answer to these questions, but the Court of Appeal declined to do so, upon the grounds that they related to matters which ought to be left for decision when raised in actual litigation in the application and construction of legislative enactments with reference to an existing state of facts. Mr. Justice Osler remarked that "when they are represented as they here are represented in scena and not in foro—argued and decided academically and not judicially—the answers are likely to embarrass and perplex judges and parties who may afterwards have to deal with such questions or similar questions arising under varying facts and circumstances as they may be presented in actual litigation." The same questions came later before the Judicial Committee of the Privy Council and they also declined to answer them for the same general reasons.

This result was perhaps inevitable. The Dominion Lord's Day Act has enumerated certain specific exceptions as illustrative of the principle of necessity, but it carefully avoids exhausting the "works of necessity," and thus it is that each judge who tries a case affecting Sunday rest must to a large extent introduce into his judgment his own personal views as to what works or acts are necessary on Sunday, such being the result of his own education or environment or sympathy or antipathy—and we would add prejudice if we were referring to ordinary citizens. It is not, however, to be presumed that judges ever have prejudices. As Ovid puts it—"Judicis officium est, ut res, ita tempora rerum,"—"It is the duty of a judge to consider not only the facts but the circumstances of the case." Ovid was not technically a lawyer, but from this quotation it