

eaten off them, it changes the restaurant into a shop and is an offence, seems to me an unsound contention. The offence against the Act is surely in the sale, and not in the eating. It is the restaurant-keeper who offends in selling contrary to the Act, and not the customer in eating.

I can therefore come to no other conclusion, under all the circumstances, than that candies and oranges may be sold on the Lord's day by a bona fide restaurant-keeper as part of his ordinary business or calling, without any penalty, under either the old or new Lord's Day Act, and that the appellant in this case did not commit any offence. In so concluding, I have not lost sight, I trust, of the necessity for the due and proper observance of the Lord's day, and I do not think my conclusion will in any way interfere with it. I agree with what the late Lord Kenyon, C.J., said in *Rex v. Younger*, 5 T. R. 449: "I am for the observation of the Sabbath but not for a pharisaical observation of it."

The conviction will therefore be quashed, but, this being a test case, without costs.

CARTWRIGHT, MASTER.

MAY 15TH, 1907.

CHAMBERS.

KINGSWELL v. McKNIGHT.

*Judgment Debtor—Examination of—Second Examination—
Application for—Rule 900.*

Motion under Rule 900 by plaintiff (judgment creditor) for a second examination of defendant as a judgment debtor.

Britton Osler, for plaintiff.

W. J. Elliott, for defendant.

THE MASTER:—The application is supported only by an affidavit of plaintiff's solicitor that he has been informed by his client and verily believes that "an agreement exists whereby the said defendant is entitled to an interest in a claim known as the 'Nugget Claim.'" The defendant was examined as to this on 11th March last on plaintiff's motion for a receiver. After judgment in the action he was ex-