

THE DAILY EXAMINER.

AUGUST 22, 1894.

THE CLUB CASE.

The decision of the Stipendiary Magistrate—published in THE EXAMINER to-day—will be read with great interest. Though somewhat long it is quite clear. Many persons will regret that members of the Charlotetown Club are privileged under the law in respect to the traffic in liquor. On the other hand it is gratifying to learn that clubs cannot be established through out the city for the evasion of the law. The matter as presented by the Stipendiary Magistrate is one of bona fide. The Charlotetown Club is bona fide a social club, its traffic in liquor being merely incidental; consequently it may take advantage of the law that where there is a joint ownership there cannot be shown to be of the owners. But let it be shown that there is ground for concluding that a club has been formed and is maintained for the purpose of supplying liquor to its members in evasion of the law,—in that case the privilege will not exist, and the members of such a club will sell and buy liquor at their peril. The establishment of additional "clubs" under existing circumstances, and the connection with such clubs of liquor sellers and liquor drinkers, would lead inevitably to the conclusion that they are for the evasion of the law, and as such its members would be liable to all the penalties of the law. It follows, too, that joint ownership of the liquor sold in such clubs for the evasion of the law, would render each and every member of them liable to the fines and imprisonment imposed upon violators of the Canada Temperance Act. From the liquor drinker's point of view, it is certainly unfair that the gentlemen of the Charlotetown Club may, under the law, buy and drink and get drunk, while all who cannot gain admission within the sacred precincts of the club room must remain sober and thirsty or be parties to the violation of the Scott Act. We trust that members of the Charlotetown Club—those at least who voted for the Scott Act petition,—will have the consistency and decency to refrain from taking advantage of the privilege which they possess of selling and drinking liquor. Clearly, they can not bring into operation a prohibition law for others which they themselves are not morally bound by.

SUGAR REFINING AND THE TARIFF.

All sugars up to and including No. 16 Dutch standard are absolutely free in the Canadian tariff. Under this clause of the tariff most of the bright sugars used very extensively in every part of Canada, and good enough for the finest table in the land, are absolutely free from any impost whatever. The fine grades of sugar have an impost duty of sixty-four one hundredths of a cent on each pound. The raw sugar is absolutely free, but to refine it costs, according to the most reliable statistics, about sixty-one hundredths of a cent per pound. The refined, therefore, has as a protection against foreign-made fine grade sugars of only four one hundredths of a cent per pound, or just one twenty-fifth of a cent or twenty-five cents on a hundred pounds of the refined article. Mr. Arnauld in his evidence stated "that the principal object of the Club was to foster general sociability among the gentlemen of Charlotetown, to have a place where they could read, play billiards, get refreshments, &c., a place to enable gentlemen to meet together." Mr. Dawson said its purpose was sociability. Mr. McDonald stated that amongst others, one of its objects was to have a place to take strangers to. Other evidence of a like nature was given by other witnesses. Evidence was also given that some members of the club were total abstainers. A copy of the by-laws or constitution of the club was put in evidence, by which it appears that the members were to be elected by ballot. That an admission fee of twenty dollars is payable by each member, and an annual subscription thereafter of twenty dollars. And amongst other things, they provide "that the officers of the club shall consist of a President, Vice-President and Secretary-Treasurer, to be elected by ballot at each annual meeting; that there shall be a committee of six members, two of whom shall be the duty of said committee to purchase all supplies for the club and to fix the prices at which the same shall be sold; that any member shall be allowed to introduce a stranger, but no person residing within Charlotetown or Royalty shall be eligible to be introduced as a stranger or guest of a member. Evidence was given that the club premises consist of a well supplied reading room and writing-room, wherein a large number of the leading periodicals and newspapers were taken, a billiard room, card room, and a supply of liquors and moderate beverages, that the premises were leased for a term of years and that the furnishings of the institution were of a somewhat extensive nature, costing about fifteen hundred dollars. It also appeared that the furnishings, billiard table and other out-fittings, including liquors and all other supplies, were paid for out of the general funds of the club, which were made up of the admission and annual subscriptions paid by members, and daily receipts; also that the monies taken by the steward Flynn, and his assistants, were paid over to the Secretary daily and went into the general fund in which the whole of the members had a common interest. It was also proved that the officers of the club had been duly elected and that in all particulars the by-laws and constitution had been carefully carried out and regarded; that Flynn and Murphy were both employes of the club and were such servants of the club and had no interest whatever in the articles sold. Upon a full and complete consideration of all the facts as they appear in evidence before me regarding the establishment of the Club (at a time before the Canada Temperance Act was in force), also its objects, constitution and equipments, I have come to the conclusion that the institution is a bona fide one, and that it would have been no more the purpose of evading the provisions of the Canada Temperance Act.

NOTES AND COMMENTS.

Mr. Laurier is now visiting the Province of Manitoba and the Territories. That being the case he will have an opportunity of explaining why, in 1889, he objected to the increased duty on beef, pork, lard and flour, "because it was in the interest of the farmers of Ontario, Manitoba and the Northwest," as he declared at Abbotsford, in the Province of Quebec, during that year. Mr. Laurier has been declaring that it is the duty of Parliament to promote no agricultural industry. How about the agricultural industry? Parliament has spent large sums of money in the establishment of experimental farms for the purpose of teaching the newer methods of agriculture. It is the only industry that the Government has taken such a step in regard to. Does Mr. Laurier say that the Government has done wrong in this or will he reverse his declaration. For Boston.—The Florida fleet for Boston last evening about eight o'clock with a general cargo and the following passengers: Mrs. H. J. Williams, Miss White, David H. Williams, Mrs. C. S. Leidy, Miss Richardson, Mrs. Richardson, J. Clark, Mrs. Clark, Mrs. Newbery, Mrs. Crosswell, Mrs. Malcolm, Miss Spears, Mrs. A. A. Wright, Mrs. Henry Jamieson, W. H. Purdy, Mrs. Purdy, Rev. Thos. P. Smith, W. E. Lepton, Miss Finlayson, F. C. Knox, C. A. Holt, Miss Cummings, Mrs. McLeod, E. Chappelle, John Askin, Eddie Archibald, G. O. Burnham, H. E. Clapp, Mrs. J. W. Dawson, Mrs. Chisholm, Louisa McAlister, Emma Macomber, M. McCloskey, S. Brennan, Mrs. Pursonow, Fred Spillane, Mrs. McInnis, Miss McDonald, Miss Cheverie, Miss Thornton, Mrs. McWilliams, Mrs. M. Martin, Mrs. J. Nicholson, J. S. Lucas and wife, M. I. Rossier, Dr. J. W. Proctor, Mr. Williamson, Mr. Horan, Mr. Clark, W. H. Smith, T. E. Cole, G. H. Wright, J. F. Arnett, Miss Morrison, Mrs. Monton, Mrs. Olsen, M. J. Forbes, E. W. Clapp, Mrs. J. B. Jeddons, F. Bain and Miss Cairns.

THE CLUB CASE.

The Stipendiary Magistrate's Decision.

The Stipendiary Magistrate delivered judgment this forenoon as follows: John Vance vs. Thomas Flynn.—This is a prosecution under the second part of the Canada Temperance Act, for the sale of intoxicating liquor contrary to the provisions thereof. Section 99 of the second part of the said Act reads as follows, viz: "Any person who sells or exposes for sale by retail any intoxicating liquor which he is not licensed to sell by retail or selling or exposing for sale any intoxicating liquor where he is not authorized by his license to sell the same shall be subject to the following penalties, &c."

From this conviction the defendant appealed. On the hearing it appeared that the appellant was the manager of an institution carried on bona fide as a Club, under rules by which members paid an entrance fee and subscription; trustees were appointed in whom all the Club property was vested, and a committee of management (for whom the applicant acted) to conduct the general business; the Club was not licensed for the sale of intoxicating liquors, but these were supplied to members of the Club for consumption on and off the premises, the money produced going to the general funds of the Club. The defendant having, in the course of his employment, been elected to supply the Club with intoxicating liquors to a member who paid for them for consumption off the premises; it was held that he did not sell by retail intoxicating liquors within the meaning of Section 99 of the Act, and that he was therefore not liable to conviction for an offence within that section.

Field J. in delivering judgment said: "The question here is did the defendant supply the liquors to Foster for sale by retail? I think not. I think Foster was an owner of the property together with all other members of the Club." "A sale involves the element of a bargain. There was no bargain here, nor any contract with the defendant with respect to the goods; Foster was acting on his rights as a member of the club, not by reason of any contract, but under his old contract of association, by which he subscribed a sum to the funds of the club and became entitled to have the ale and whiskey supplied to him as a member at a certain price. I cannot conceive that the defendant could have sold him for the price as the price of goods sold and delivered. There was no contract between two persons, because Foster was vendor as well as buyer. Taking the transaction to be a purchase by Foster of all the other members' shares in the goods—Foster was as much a co-owner as the vendor—I think it was a transfer of a special property in the goods to Foster, which was not a sale within the meaning of the section. I am of opinion the conviction should be reversed."

Huddlestone J. says: "I am of the same opinion. I cannot conceive that the defendant could have sold him for the price as the price of goods sold and delivered. There was no contract between two persons, because Foster was vendor as well as buyer. Taking the transaction to be a purchase by Foster of all the other members' shares in the goods—Foster was as much a co-owner as the vendor—I think it was a transfer of a special property in the goods to Foster, which was not a sale within the meaning of the section. I am of opinion the conviction should be reversed."

Other cases in support of this conclusion were adverted to, but I deem it unnecessary to refer to them here. As in the case above cited the members of the Charlotetown Club were vendors as well as buyers. Flynn had no property in the goods sold, and in my opinion could not sue for the price, and there being no contract there could be no sale. Upon the hearing of this case, it was urged by Mr. Palmer, counsel for the prosecution, that the case cited could not be relied upon as an authority in this present instance, as the Canadian constitution differs from the English Act of 1872 in this particular, that the former was a prohibitory act, and the latter was a liquor regulation or high license act. I do not regret, however, why the two acts should be construed differently as to the objects to be attained; they are both prohibitory in their nature, the one provides that there shall be no sale of intoxicating liquor and the other that there shall be no sale of intoxicating liquors without license; consequently a sale under the latter without license is just as much a contravention of the English Act as a sale under the Canada Temperance Act. I therefore am of opinion that there was no sale of intoxicating liquor contrary to the provisions of the Canada Temperance Act and accordingly dismiss the prosecution.

THE THORNE CASE.

The Master of the Rolls, at noon today, delivered judgment in the application of Richard Thorne for certiorari to quash the Stipendiary Magistrate's conviction against him for an alleged infringement of the Scott Act. As the case is of such importance, we publish below Judge Hodgson's decision in full, which holds that Thorne was wrongfully convicted.

THE JUDGE'S REASONS.

A certified copy of the evidence has been laid before me, by which it appears that Richard Thorne, a labourer, purchased a flask of liquor for Arthur Thorne, on the 29th of July—from whom it does not appear. If there is any evidence whatever from which a magistrate may infer the commission of an offence, certiorari does not lie. I may be of a different opinion from the Magistrate; I may think that he has erred in judgment, and that the defendant is not to be convicted; but I have no power to interfere. The defendant must appeal, and if there be no appeal, then there is no remedy, and he must bear his punishment as best he can. But if he does appeal, and the Magistrate's decision is not an offence either at Common Law or by Statute, then he has usurped a jurisdiction which does not belong to him, and a certiorari shall issue. I am of opinion that the Magistrate has done so in the present case. It is not an offence to purchase liquor. Morally, perhaps, it is so; but there is no law making it an offence, and a Stipendiary Magistrate, like all other courts, can only administer the law as it is,—not as he thinks it ought to be. It has been decided by every court, nearly all the courts in every province of Canada that purchasing liquor is not an offence against the Canada Temperance Act. It was so decided by the Supreme Court of this Province by Chief Justice Palmer, and Justice Peters, in Hensley, upholding a decision to that effect of Mr. Justice Fitzgerald when Stipendiary Magistrate, in the matter of the application of Connolly for a mandamus against R. R. Fitzgerald Esq., at Hilary Term, 1893. It was so held in Easter Term, 1893, by the Chief Justice, Mr. Justice Hensley and myself, in Myers vs. Matthews. If there existed the slightest suspicion that Thorne was interested in the sale of the liquor, that in fact his act was only an attempt to evade the provisions of the statute, the case would be otherwise and he would have been very properly convicted. But there is not in the evidence the slightest foundation for such a contention. It is not even suggested from the proceedings before me. Newsom gave him some money to purchase whiskey and he bought it, adding some money in the way of sweetened water. Sold by all druggists.

Cramps in the stomach are instantly relieved by taking twenty or thirty drops of Dr. Manning's remedy in warm sweetened water. Sold by all druggists. Use Pond's Extract for every pain or soreness; it stops bleeding from the lungs, nose, mouth, stomach, etc. Avoid cheap and worthless substitutes.

The person from whom Thorne bought it has been guilty of an offence and may even now be convicted, but not the person to whom it was sold. The two penalties cannot be enforced against two different persons for the same offence, the relation of principal and agent not existing between them. A writ of certiorari is not of right, it will not always be issued even when the magistrate has exceeded his jurisdiction. A judge when applied to should be quite satisfied that its issue is consistent with a sound judicial discretion. For myself, I always hesitate in applications for certiorari under the Canada Temperance Act, for in the majority of cases the application is entirely destitute of merit, but when I am satisfied that the Magistrate has usurped a power of convicting one of the Queen's subjects of that which is not an offence at all, then that party aggrieved can claim as of right to have the proceedings removed into the Supreme Court.

In this case I perceive that the defendant has been charged in execution, and is now in prison, and as the certiorari will not be returnable until Michaelmas Term, his two months' term of imprisonment will have expired before his case can be examined by the Supreme Court. But I can well believe that I have no power in these proceedings to release him, and he must remain where he is. It may seem a small satisfaction to the defendant to have his sentence set aside after he has served it, but I would judge that anyone requiring a writ to issue, would be satisfied to have the proceedings removed into the Supreme Court.

The splendid exhibition of the goods in "Big Bros" windows would seem to indicate that a full-fledged winter is about to arrive. Whilst we seriously object to having our thoughts drawn waterward, yet we cannot refrain from giving this firm great credit for such an unusually fine display. Every article, from grizzly brown down through the grades to the perfumed muskrat, seems represented in either sash, cape, muff, collar, gauntlet, mitts or other comfortable garment. We would judge that anyone requiring warm goods could be readily suited from such a stock as "Big Bros" carry, and their prices are said to be very low.

WORTH A GUINEA A BOX. BEECHAM'S PILLS (Tasteless—Effective.) For Sick-Headache, Impaired Digestion, Liver Disorders and Female Ailments. Renowned all over the World. Solely prepared by Dr. J. C. Beecham, 11, South Colindale Avenue, London, N.W. Wholesale Agents, Messrs. J. & S. B. Allen & Co., Ltd., 15, Abchurch Lane, London, E.C. 4.

PURE-MILD-SWEET If MASTIFF PLUG CUT was not all that is claimed for it, how else could so great a business and sale have developed in so short a time? A pure, mild, sweet smoke—no wonder it does. All live stores keep it.

J. B. Pace Tobacco Co., Richmond Virginia, and Montreal, Canada.

LOCAL NOTICES. Advertisements under this heading charged for at the rate of one cent per line.

Go! Brothers solid leather boots for the fall. Cheap boots for fall at Goff Bros. Goff Bros. solid leather boots every time, cheap and best. Ladies desirous of sending their children to Mr. Earle's music school next term will greatly oblige by making application to him at once, as he will have only a few vacancies outside of his regular pupils. The fall term will commence Monday, Sept. 10th. Rooms over Miller Bros., Queen Street, where orders may be left. Piano, organ, voice culture, singing taught. Beginners a specialty. Clean singing and harmony free. Ad cod if.

Campbell's Quinine wine at Doid's Medical Hall, only 75c per bottle. Bartsley 20c.

Read Geo. Carter & Co.'s list of school books. To Cleanse the System. Effectually yet gently, when gastric or bilious, or when the blood is impure or sluggish, to permanently cure habitual constipation, to awaken the kidneys and liver to a healthy action, without irritating or weakening them, to dispel headaches, colds or fevers, use Syrup of Figs.

During the hot weather impurities in the blood may seriously annoy you. Expel them by taking Hood's Sarsaparilla, the great blood purifier.

Plain Living and High Thinking. The two go together. But high living cannot be associated with high thinking. It utterly deranges the system and makes mental labor of any kind an effort. It leads to dyspepsia, indigestion, and, if not completely cured, as it has been in hundreds of cases, by a systematic course of Hawker's nerve and stomach tonic and Hawker's liver pills. They are sold by all druggists.

THE PAST guarantees the future. It is not what we say, but what Hood's Sarsaparilla does, that tells the story. Remember HOOD'S CURES.

Lightning Accidents

are covered by the Insurance Policies issued by E. R. BROW.

BROWN'S BLOCK, CH'TOWN. Insurance Agent.

TELEGRAPHIC.

SPECIAL DESPATCHES TO THE EXAMINER.

The Kow Shing Affair.

WASHINGTON, August 22. The Japanese Legation has received a telegram stating that it has been reported in Tokio that the finding of the British Naval Court of Enquiry, at Shanghai, in re the sinking of the Kow Shing, is favorable to Japan.

Five Men Drowned.

HALIFAX, Aug. 22. News of a terrible drowning accident at Magdalen Islands has reached here. Five men were drowned from three boats, while fishing, viz: Valentine Petipas and his son, Chas. Yigneur, Simon Cyr and Nelson Cumming.

Record Breaking Again.

CHICAGO, Aug. 22. Alix trotted in 2:05 in an attempt to beat the record for the course, 2:06, made by Nancy Hanks. The first quarter was trotted in :31, and the half in 1:03. He is expected to do 2:03 or better this season.

Hard Fought Contest.

NEW ORLEANS, Aug. 25. In the 25-round glove contest between Stanton Abbott, of England, and Jack Everhardt, of this city, Abbott was knocked out in the 25th round.

Came Back to Canada.

QUEBEC, August 22. Over 8,300 French-Canadian families returned from the States last year—a total of 42,000 souls.

The Britannia Again.

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SCHOOL BOOKS.

- 10 Gross Gage's Readers, 3 " Arithmetics, 1 " Fasnelle's French, 1 " Chambers' Geometry, 1 " Brief History of England, 1 " French and English Primers, 10 " Gage's Copy Books.

Scott's Marmon (Selections) and other Classics for College and School, Campbell's and Galkin's Geographies, Tanner's Agriculture, Wentworth's Algebra, Carrie and Meiklejohn's Grammars, Greek and Latin Text Books, etc.

Wholesale and Retail. Orders by mail promptly filled. Lowest prices guaranteed.

GEO. CARTER & CO., BOOKSELLERS, 187 Queen Square. aug22—ly & wy

Four Shares Strm. Jacques Cartier.

By Auction, on FRIDAY NEXT, 24th inst., on Steam Navigation Company's Wharf, at 12 o'clock, noon: Four Shares in the Inland Steam Navigation Company's Steamer "Jacques Cartier."

Parties wishing to invest can examine the Steamer at Steam Navigation Company's Wharf from 10 a. m. till noon on day of sale. Terms as usual. A. MCNEILL, Auctioneer. aug22—2i

Black Diamond Line.

The S.S. CORAN, due here from Montreal on Monday morning, August 27th, will sail for St. John's, Nfld., via Sydney, carrying horses, cattle and sheep on deck, and produce under deck at lowest possible rates. For further particulars apply to PEAKE BROS. & CO., Agents. aug22

ST. DUNSTON'S COLLEGE, (Annexed to Laval University), WILL RE-OPEN ON Tuesday, September 4th.

A thorough Scientific, Literary and Commercial education is given in this College. The various Classes are arranged so to meet the requirements of those who may desire to pursue a special course. For further information send for Prospectus or apply to the undersigned. JAMES MORRISON, PH. D., D. D., Rector. Charlottetown, Aug. 21, 1894—dy 2i

Indisputable. If you send \$1 for a bottle of medicine for a 30 cent pain in one box of Beecham's pill, costing only 25 cents, will cure you in a known disease? This is because our tip-top is the cause of nearly all ailments: a valuable book of knowledge mailed free, on request, by B. F. Allen & Co., 365 Canal St. New York.

Use Pond's Extract for every pain or soreness; it stops bleeding from the lungs, nose, mouth, stomach, etc. Avoid cheap and worthless substitutes.

The New Brunswick Royal Art Union, Limited, OF THE PROVINCE OF NEW BRUNSWICK. CAPITAL STOCK, \$150,000. Incorporated to Promote Art. This Company will distribute among its subscribers, on the 15th Day of September 1894, 3432 Works of Art, aggregating in value \$65,116. Every subscriber has an equal chance.

WANTED!

A whole army of School Boys to buy their SCHOOL SUITS from us:

What we call School Suits are such that will stand a rough campaign and look nice all the time.

We have hundreds of Suits to select from.

BOYS!—You will get a Special Discount on your School Suits if you buy from

JAS. PATON & CO., 168 Victoria Row.

70 Hds. Bright Barbadoes Sugar, 30 " Trinidad, 300 Pans. Very Choice Molasses. Will be sold when landing. Ask for prices. CARVELL BROS. aug22—2w th mon. pat to fri. guar s s

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