

# Chatham Magistrate Rules In Historic Racial Case

In a written judgment handed down this morning, Magistrate Ivan B. Craig, QC, found two Dresden people, Morley McKay and Mrs. Anne Emerson, guilty of violating the Fair Accommodations Practices Act, by practising racial discrimination.

McKay and Mrs. Emerson were each fined \$50 and costs, in default 30 days in jail. McKay's total fine amounted to \$135.40, Mrs. Emerson's to \$74.18.

Charges against both Dresden people alleged that they refused restaurant service to colored people, only because they were colored.

The written judgment is of historic importance, since the current prosecutions are the first under the Ontario Fair Accommodations Practices Act, and may be regarded as a test case. The magistrate upheld the legality of the newly-enacted legislation, which had been challenged by the counsel for the defence.

Charge against McKay was preferred by Bromley Armstrong, a Toronto Negro, who alleged that on October 29 he was refused service in Kay's restaurant, of which the accused is proprietor. Mrs. Bernard Carter, of Dresden laid a complaint that on November 7, Mrs. Emerson refused to serve her in the restaurant of which Matthew Emerson, accused's husband is owner.

In his judgment, Magistrate Craig stated that in all cases except those related to the Liquor Control Act, the onus was on the prosecution to prove intent by direct or circumstantial evidence. In the two cases on hand, the Crown must prove that the complainants were refused service "because they were colored and members

## NO DOUBTS

After a review of the circumstances in which each complaint was laid, Magistrate Craig concluded that there was "no doubt in his mind that the complainants had been refused service only because of their color. "There could be no other reason for Anne Emerson (and in the second judgment, Morley McKay) refusing to serve them other than that the said parties were colored and members of the Negro race.

Magistrate Craig dealt in his judgment with the contention of W. A. Donahue, counsel for the defence, that the provincial legislature had exceeded its authority in enacting the Fair Accommodations Practices Act. As criminal legislation, the act was one that could be passed only by the Dominion government, Mr. Donahue claimed.

Magistrate Craig, however, found that the act was concerned with property and civil rights within the province, "and as such, intra vires (within the powers) of the provincial legisla-

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