

CHRISTMAS AND THE LAW

Memories Of A Time When Plum-Puddings And Carols Were Banned

CHRISTMAS sheds an aura of goodwill even around the legal profession. So hallowed and so gracious is the time (as Shakespeare has it), that the Courts and the lawyers declare it a holiday period.

We all know that it is the litigants who always want to fight, and the lawyers who always want to make peace and settle out of Court. Consequently, the legal profession guards litigants against this propensity at the season of peace and goodwill by closing their offices from Christmas Eve to the second week in January. To make this assurance doubly sure, the Judges prolong their only annual holiday until the end of January.

The lawyers' Christmas vacation is of ancient origin. It arose out of a truce against all strife at the mellowing season of peace on earth to men of goodwill. This was in the Middle Ages, when England really was "Merrie England." In those days, the lawyers held high revel in places, like the Temple in London, where they congregated. The Lord of Misrule was installed, and even fox-hunts took place through the halls and passages of the Inns of Court at Christmas time. The Master of the Revels was in the ascendant; and, with dancing, music, carollings, and much feasting, the lawyers' Christmas week passed merrily by.

Killjoys of the 17th Century

Such is the spirit in which all of us should approach the Christmas season in normal times. To fail to do so, is to line ourselves up with the kill-joys, who, in 1644, placed any observance of Christmas under the ban of the law in England and in Scotland. Macaulay tells us that although "Christmas had been, from time immemorial, the season of joy and domestic affection, when families assembled, when children came home from school, when quarrels were made up, and carols were heard in every street," the Long Parliament gave orders in 1644 that:

"the twenty-fifth of December should be strictly observed as a fast, and that all men should pass it humbly bemoaning the national sin, which they and their fathers had so often committed on that day by romping under the mistletoe, eating boar's head, and drinking ale flavoured with roasted apples. No public Act of the time seems to have irritated the common people more."

Shops Kept Open

In pursuance of this statute, the public crier paraded the streets before December 25, ringing his warning bell, and calling out, "No Christmas!" "No Christmas!" Tradesmen were compelled to keep their shops open on Christmas Day; markets were

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held under legal penalty for refusal; decorations (as with holly and mistletoe) were strictly forbidden; the holding of religious services on that day was punishable by fine or imprisonment; and all feasting was penalised. Thus, the once Merrie England became for many years the only country in the



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world where the making of a plum-pudding or the eating of a mince-pie was a crime against the law.

Christmas Riots

The lovers of the "old style" Christmas were exhorted to possess their souls in patience. But, in this case, patience was a nasty medicine; it was one thing to prescribe it, but quite another thing to take it. And, under Cromwell's iron rule, there were many sturdy English and Scots folk who dashed the mixture to the ground. One "miscreant" (for so the authorities called him) was found guilty of decorating his home with holly and ivy. Ipswich and Oxford particularly distinguished themselves in defence of Christmas and Christmas pudding. Riots were frequent, and evil-doers who had been gaoled there for "Christmassing" were released. In a riot at Canterbury in December, 1647, for three whole days plum pudding was eaten openly, carols were sung, and the churches were thronged.

The *Flying Eagle Gazette*, of London, on December 24, 1659, tells us how Parliament spent its Christmas:

The House spent much Time this Day about the business of the Navie, for settling the Affairs at Sea, and before they rose were presented with a terrible Remonstrance against Christmas Day. . . In Consequence of which, Parliament spent some time in Consultation about the Abolition of Christmas, pass'd Orders to that Effect, and resolved to sit on the following Day, which was commonly called Christmas-day.

So, you see, Government interference with business is no new thing; and Parliament long ago was ness is no new thing; and Parliament long ago was the liberty of the subject.

The Gloom Lifted

It was twelve years before the Opposition got on to the Government benches to bring Christmas again to the people. In 1661, the Restoration came to pass. (The word "restoration" has a familiar sound: it persists in our New Zealand licensing legislation down to the present time, and it follows any temporary period of enforced gloom).

Over a hundred years after the Restoration, Christmas merriment was not yet fully restored. Charles Lamb wrote:

Old Christmas is a-coming in, to the confusion of the unwassailing crew. He cometh not with his wonted gait: he is shrunken nine inches in girth, but he is yet a lusty fellow.

It took Charles Dickens, and the popularity of his works, to make the restoration complete.

Billiards Unlawful in New Zealand

When we turn to the Acts of Parliament on the New Zealand statute-book, we find that the Licensing Act could not have been passed in the spirit in which our forefathers made wassail. For merrymaking in an approved Christmas fashion is prohibited by Section 189 in all hotels on Christmas Day; because licensed premises are bound by law to be kept shut on that day. If the festival falls on a Sunday, they must be closed on the Monday, unless the risk of a prosecution for buying or selling at unauthorised times is considered a Yuletide diversion. Section 190 of the same statute also lays it down that no one may, on Christmas Day, disport himself in licensed premises "at billiards, or bagatelle, or at any other game." That certainly seems to be an echo of the idea of the old Long Parliament.

Bad Day for Bill-Collectors

If, however, we pass over to the Bills of Exchange Act, we find an unexpectedly happier Christmas atmosphere. For that statute declares Christmas Day a blank day, a day which does not count, for the presentation of promissory notes or other bills for payment; and, in their regard, it provides that Christmas joy shall be unconfined. That is much cheerier fare than a decision of the Courts in the United States which declared that, although Christmas Day might be a legal holiday, there was nothing to prevent a bailiff seizing goods and chattels on that day. Of course, there are possibilities in regard to Christmas presents that are called up by this decision: in the case of some Christmas boxes, a bailiff might even be a welcome visitor. In this country, I hasten to assure you, a Christmas dinner and its various extras are quite safe from a bailiff on Christmas Day. And, if we know anything of that much-maligned gentleman, on Boxing Day as well.

Dickens, in *Bleak House*, with the keen vision that never failed him, gives us a vivid picture of the manner in which English lawyers really spend their Christmas vacation. If on your own holiday journeyings, you find some of their New Zealand brethren off duty on their annual respite from toil and enjoying themselves on the highest scale as from a distance, you will realise — perhaps for the first time — that lawyers are really human beings like the rest of mankind.