In re HENRY VANCINI.

1904

*April 27.
*May 4.

ON APPEAL FROM MR. JUSTICE KILLAM, IN CHAMBERS.

Criminal law—Jurisdiction of magistrate—Criminal Code sec. 785—Constitutional law—Constitution of criminal courts.

By sec. 785 of the Criminal Code any person charged before a police magistrate in Ontario with an offence which might be tried at the general sessions of the peace, may, with his own consent, be tried by the magistrate and sentenced, if convicted, to the same punishment as if tried at the general sessions. By an amendment in 1900 (63 Vict. ch. 46) the provisions of said section were extended to police and stipendiary magistrates of cities and towns in other parts of Canada.

Held, that though there are no courts of general sessions except in Ontario, the amending Act is not, therefore, inoperative but gives to a magistrate in any other province the jurisdiction created for Ontario by sec. 785.

Though the organization of courts of criminal jurisdiction is within the exclusive powers of the provincial legislatures, the Parliament of Canada may impose upon existing courts or individuals the duty of administering the criminal law and its action to that end need not be supplemented by provincial legislation.

APPEAL from a decision of Mr. Justice Killam in Chambers refusing a writ of habeas corpus.

The appellant Vancini was charged with the crime of theft before the Police Magistrate at Fredericton, N.B., and having elected to be tried summarily he pleaded guilty and was sentenced to imprisonment in the penitentiary. Application was made to a judge of the Supreme Court of New Brunswick for a writ of habeas corpus on the two main grounds: 1. That as by sec. 785 of the Criminal Code, as amended by 63 Vict. ch. 46 a summary trial can only be had for an offence triable at a court of general sessions of the peace

*PRESENT :—Sir Elzéar Taschereau C.J., and Sedgewick, Girouard, Davies and Nesbitt JJ.

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such section is inoperative, there being no such court in New Brunswick. 2. That the Dominion Parliament cannot give jurisdiction to a provincial court to try criminal offences the power to constitute a court of criminal jurisdiction being given only to the legislature.

The application for the writ was referred to the full Court in New Brunswick by which it was refused (1). A similar application was then made to Mr. Justice Killam of the Supreme Court of Canada, in chambers, who also refused the writ, and this appeal was taken from his decision.

On March 21st, *Crockett*, for the appellant, applied to have a day fixed for the hearing, but the Supreme Court of Canada ordered the case to stand until notice of hearing was served on the Attorney-General for New Brunswick and the Attorney-General for Canada. Notices having been served as ordered, the hearing took place on the 27th of April, 1904.

Crockett for the appellant, referred to the facts of the case as stated above and in the judgment now reported and relied upon the provisions of the British North America Act, 1867, sec. 91 par. 27; sec. 92 par. 14; sec. 101; secs. 539, 540 of the "Criminal Code" and the decisions in *Ex parte Wright* (2); *Ex parte Flanagan* (3); *Peirce* v. *Hopper* (4); *James* v. *The Southwestern Railway Co.* (5); and *In re County Courts of British Columbia* (6).

Newcombe K.C. Deputy Minister of Justice, for the Attorney-General for Canada. The question at issue in the case of *The County Courts of British Columbia* (6) affected merely the powers of the provincial legis-

(1) 36 N. B. Rep. 436.
(2) 34. N. B. Rep. 127.
(3) 34 N. B. Rep. 577.
(4) 1 Strange 248 at p. 260.
(5) L. R. 7 Ex. 287 at p. 296.
(6) 21 Can. S. C. R. 446.

latures respecting the constitution, maintenance and organization of provincial courts and for defining their territorial jurisdiction. In that case it was decided that the "Speedy Trials Act" was not a statute conferring jurisdiction but an exercise of the power of Parliament regarding criminal procedure. See remarks by Strong J. at page 454 of the report. The Criminal Code Amendment Act, 1900, consequently, is not inoperative but gives to magistrates in cities and towns in all the other provinces of Canada the same jurisdiction as that created for Ontario by sec. 785, imposing a duty for the administration of the criminal law without any need of supplementary provincial legislation. We also refer to *Reg* v. *Toland* (1) at page 509; *Valin* v. *Langlois* (2); Lefroy's Legislative Power in Canada, p. 510; and *In re Liquor License Act*, 1883 (3).

The judgment of the court was delivered by

SEDGEWICK J.—This is an appeal to the court from an order of Mr. Justice Killam refusing an application for an order nisi for a writ of habeas corpus.

The prisoner was charged before the Police Magistrate of the City of Fredericton, on the 18th January, last, with the theft of two binocular glasses, of the value of $50.00; one revolver value $15.00, toget her with several articles of jewelry, the property of one Captain Kemmis-Betty, an officer of the Royal Regiment of Canadian Infantry, stationed at Fredericton. He consented to be tried by the Police Magistrate, pleaded guilty and was sentenced to three years imprisonment in Dorchester Penitentiary, with hard labour. He was placed in custody in the said penitentiary on the 21st January and is now detained there under his

(1) 22 O. R. 505. (2) 5 App. Cas. 115.
(3) Cout. Dig. 797, 1587.

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sentence. An application was made before Mr. Justice Landry, of the Supreme Court of New Brunswick, for his discharge under the Habeas Corpus Act. That learned judge referred the question to the Supreme Court of New Brunswick which court dismissed the application. Subsequently application was made to Mr. Justice Killam of this court, as above stated.

Two contentions were made before us by counsel for the prisoner to shew that he was illegally sentenced. 1. Because the prisoner was not charged before the magistrate with an offence for which he might be tried by a Court of General Sessions of the Peace, which was a condition precedent to the exercise of the jurisdiction purporting to be conferred by section 785 of the Criminal Code of Canada, under which the said, magistrate acted. 2. Because section 785 of the Code, as amended by the Act of 1900, chpater 46 is *ultra vires* of the Parliament of Canada, and there was no good or sufficient legislation of the Province of New Brunswick to make its provisions operative or effective in that province.

We are of opinion that neither of these contentions can be sustained. As to the first ground, by section 782 the expression "magistrate" in the Province of New Brunswick, means and includes any police magistrate acting within the local limits of his jurisdiction. Then, section 785 provides that if any person is charged in the Province of Ontario before a police magistrate with having committed any offence for which he might be tried at a Court of General Sessions of the Peace, such person may, with his own consent, be tried before such magistrate, and may, if found guilty, be sentenced by the magistrate to the same punishment that he would have been liable to if he had been tried before the Court of General Sessions of the Peace. Section 783 provides that whenever any

person is charged before a magistrate with having committed theft, the magistrate may hear and determine, subject to the further provisions of the Act, the charge in a summary way.

By the amending Act of 1900, a sub-section was added to section 785 as follows:

2. This section shall apply also to police and stipendiary magistrates of cities and incorporated towns in every other part of Canada and to recorders where they exercise judicial functions.

We are of opinion that that gives the magistrate in provinces and territories, other than in the Province of Ontario, the same jurisdiction to try the crime of theft as a Court of General Sessions in Ontario has to try the offence in that province.

The contention that inasmuch as there is no Court of General Sessions of the Peace in New Brunswick the amending Act is inoperative and that it can only relate to a province where such a court exists would entirely frustrate the object of Parliament. I do not know anywhere in Canada, outside of Ontario, where there is a Court of General Sessions of the Peace or any similar court, except in the cities of Montreal and Quebec, in the Province of Quebec, and if it had been the intention to limit the operation of the amendment to the places mentioned, the only amendment necessary would be to have changed the first line of section 785 by substituting for the words "in the Province of Ontario" the words "in the Provinces of Ontario and Quebec."

In addition to this, it does not appear whether the prisoner was convicted under section 785 or section 789, which section applies to the whole of Canada, and which, as much as section 785, gives ample authority to the magistrate to make the conviction complained of. As to the second point in our view

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the Dominion Parliament can, in matters within its sphere, impose duties upon any subjects of the Dominion, whether they be officials of provincial courts, other officials, or private citizens; and there is nothing in the British North America Act to raise a doubt about the power of the Dominion Parliament to impose new duties upon the existing provincial courts, or to give them new powers, as to matters which do not come within the subjects assigned exclusively to the legislatures of the provinces, or to deprive them of jurisdiction over such matters. (Lefroy on the Legislatative Powers in Canada, page 510.)

This statement of the law is mainly founded upon the celebrated decision of this court in *Valin* v. *Langlois* (1) where it was held that the Dominion Controverted Elections Act (1874) was not *ultra vires* of the Dominion Parliament, and whether or not the Act established a Dominion court, the Dominion Parliament had a perfect right to give to the courts of the respective provinces and the judges thereof the power thereby created, and did not, in utilizing judicial officers and establishing courts to discharge the duties assigned to them by that Act, in any particular invade the rights of the local legislatures; and the majority of the court, Ritchie C.J. and Taschereau and Gwynne JJ, held that that Act established a Dominion court as authorized by section 101 of the British North America Act.

The question is most fully treated by Mr. Justice Taschereau, now Chief Justice of this court, and it is unnecessary now to do more than refer to that opinion. The judgment of this court, in that case, was affirmed by the Judicial Committee of the Privy Council upon the grounds stated (2).

This court again affirmed the same principle in *Attorney-General* v. *Flint* (3), which, however, related to a jurisdiction imposed by the Parliament of Canada

(1) 3 Can. S. C. R. 1. (2) 5 App. Cas. 115.
(3) 16 Can. S. C. R. 707.

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upon the imperially created Court of Vice-Admiralty, in Nova Scotia.

Where once the Parliament of Canada has given jurisdiction to a provincial court whether superior or inferior, or to a judicial officer, to perform judicial functions in the adjudicating of matters over which the Parliament of Canada has exclusive jurisdiction, no provincial legislation, in our opinion, is necessary in order to enable effect to be given to such parliamentary enactments.

On these grounds, we think the application for a writ of habeas corpus in the present case should be refused.

Appeal dismissed.