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LOUIS PATRICK McIVERAPPELLANT;

AND

HER MAJESTY THE QUEENRESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Constitutional law—Criminal law—Provincial offence of careless driving—
Collision with parked vehicle—Whether conflict with offence of
dangerous driving defined by Criminal Code—Highway Traffic Act,
R.S.O. 1960, c. 172, s. 60—Criminal Code, 1953-54 (Can.), c. 51,
s. 221(4).*

* PRESENT: Cartwright, Fauteux, Abbott, Martland, Judson, Ritchie
and Spence JJ.

The appellant was convicted on a charge of careless driving, contrary to s. 60 of the *Highway Traffic Act*, R.S.O. 1960, c. 172. The evidence established that he drove his motor vehicle into the rear portion of a vehicle parked on the shoulder of the highway off the pavement. On appeal by way of a stated case, his conviction was affirmed and a further appeal to the Court of Appeal was dismissed. He was granted leave to appeal to this Court on the following grounds: (1) Did the Court of Appeal err in holding that there was a *prima facie* case of careless driving; and (2) Did the Court of Appeal err in finding that s. 60 of the *Highway Traffic Act* was not in conflict with s. 221(4) of the *Criminal Code*? The first ground of appeal was rejected by this Court without written reasons at the conclusion of the argument of counsel for the appellant on that ground, and judgment was reserved on the second ground of appeal.

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Held: The appeal should be dismissed.

The second ground of appeal was the same as that dealt with by this Court in *Mann v. The Queen* (ante p. 238) and should be rejected for the reasons given therein.

Droit constitutionnel—Droit criminel—Offense provinciale de conduite négligente d'automobile—Collision avec un véhicule stationnaire—Y a-t-il conflit avec l'offense de conduite dangereuse telle que définie par le Code criminel—Highway Traffic Act, S.R.O. 1960, c. 172, art. 60—Code criminel, 1953-54 (Can.), c. 51, art. 221(4).

L'appelant a été trouvé coupable sous un chef d'accusation d'avoir conduit une automobile de façon négligente, contrairement à l'art. 60 du *Highway Traffic Act*, S.R.O. 1960, c. 172. La preuve a démontré que son automobile avait frappé l'arrière d'une voiture stationnée sur l'accotement de la route hors de la portion pavée. Sur appel en vertu d'un dossier soumis, le verdict de culpabilité fut confirmé et un appel subséquent à la Cour d'Appel fut rejeté. Il a obtenu permission d'appeler devant cette Cour sur les motifs suivants: (1) La Cour d'Appel a-t-elle erré en adjugeant qu'il s'agissait d'un cas *prima facie* de conduite négligente; et (2) La Cour d'Appel a-t-elle erré en adjugeant que l'art. 60 du *Highway Traffic Act* n'était pas en conflit avec l'art. 221(4) du *Code Criminel*? A la fin de la plaidoirie de l'avocat de l'appelant sur le premier motif d'appel, ce motif fut rejeté par la Cour sans notes écrites, et le jugement sur le second motif d'appel fut pris en délibéré.

Arrêt: L'appel doit être rejeté.

Le second motif d'appel était semblable à celui qui a été traité par cette Cour dans la cause de *Mann v. The Queen* (voir p. 238) et doit être rejeté pour les motifs qui ont été donnés dans cette dernière cause.

APPEL d'un jugement de la Cour d'Appel de l'Ontario¹, confirmant un verdict de culpabilité. Appel rejeté.

APPEAL from a judgment of the Court of Appeal for Ontario¹, affirming the appellant's conviction. Appeal dismissed.

¹ [1965] 2 O.R. 475, 45 C.R. 401.

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John O'Driscoll, for the appellant.
T. D. MacDonald, Q.C., and *Jon van der Woerd*, for the
Attorney General of Canada.

R. A. Cormack, Q.C., and *C. M. Powell*, for the
respondent.

The judgment of Cartwright and Spence JJ. was
delivered by

CARTWRIGHT J.:—The appellant was convicted by a
magistrate on February 19, 1964, on the charge of driving a
motor vehicle on a highway carelessly contrary to s. 60 of
the *Highway Traffic Act* of Ontario.

On appeal by way of a stated case his conviction was
affirmed by McRuer C.J.H.C. and an appeal from the order
of McRuer C.J.H.C. was dismissed by the Court of Appeal
for Ontario¹.

Pursuant to leave granted by this Court the appellant
appeals from the judgment of the Court of Appeal on the
following grounds:

(1) The Court of Appeal for Ontario erred in holding that there was a
prima facie case of careless driving made out by the Crown at the trial in
the first instance before the Magistrate;

(2) The Court of Appeal for Ontario erred in finding that Section 60
of the *Highway Traffic Act* of Ontario, R.S.O. 1960, Chapter 172, was not
in conflict with Section 221(4) of the *Criminal Code* of Canada.

It will be observed that the second of these grounds is
the same as that dealt with in the case of *Mann v. The
Queen*, ante p. 238, in which judgment is being delivered at
the same time as the judgment in the case at bar. On this
ground all counsel relied on the arguments addressed to us
in the *Mann* appeal and did not repeat them.

At the conclusion of the argument of counsel for the
appellant dealing with the first ground of appeal the Court
were unanimously of opinion that that ground must be
rejected and counsel for the respondent were not called
upon in regard to it. Judgment was reserved to enable the
Court to consider the second ground.

For the reasons which I have given in the case of *Mann
v. The Queen*, I am of opinion that the second ground of
appeal must be rejected.

¹ [1965] 2 O.R. 475, 45 C.R. 401.

I would dismiss the appeal but would make no order as to costs.

Abbott and Judson JJ. concurred with the judgment delivered by

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FAUTEUX J.:—The only issue remaining for consideration at the close of the hearing of this appeal being identical to the one raised in the case of *Mann v. The Queen*, I would, for the reasons I gave in that case, dismiss the appeal but make no order as to costs.

Martland and Judson JJ. concurred with the judgment delivered by

RITCHIE J.:—For the reasons which I have given in the case of *Mann v. The Queen* I would dispose of this appeal in the manner proposed by my brother Cartwright.

Appeal dismissed, no order as to costs.

Solicitors for the appellant: O'Driscoll, Kelly & McRae, Toronto.

Solicitor for the Attorney General of Canada: E. A. Driedger, Ottawa.

Solicitor for the respondent: W. C. Bowman, Toronto.
