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ATTORNEY GENERAL OF BRITISH COLUMBIA ... APPELLANT;

AND

DAVID LORNE SMITH ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Constitutional law—Juvenile Delinquents Act—Whether criminal law—Whether invading field reserved to provinces—Juvenile Delinquents Act, R.S.C. 1952, c. 160—Motor Vehicle Act, R.S.B.C. 1960, c. 253—Summary Convictions Act, R.S.B.C. 1960, c. 373.

Pursuant to the *Summary Convictions Act*, R.S.B.C. 1960, c. 373, the respondent, a juvenile, was tried in ordinary Court for an offence under the *Motor Vehicle Act*, R.S.B.C. 1960, c. 253. He was found

*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Martland, Ritchie, Hall and Spence JJ.

guilty and was sentenced to pay a fine of $400 and in default to be imprisoned for a term of 60 days. He applied to the Supreme Court of British Columbia for an order of *certiorari* to quash the conviction on the ground that the magistrate acted without jurisdiction or exceeded its jurisdiction in dealing with the case in that manner rather than pursuant to the provisions of the *Juvenile Delinquents Act*, R.S.C. 1952, c. 160. The writ was issued and the conviction quashed. This decision was affirmed by a majority judgment in the Court of Appeal. The Attorney General for British Columbia was granted leave to appeal to this Court. Leave to intervene was granted to the Attorney General for Canada, who supports the validity of the *Juvenile Delinquents Act*, and to the Attorneys General for Ontario and Quebec, who challenge it.

One of the questions in issue in this appeal was as to whether the *Juvenile Delinquents Act* was *intra vires* as criminal legislation or *ultra vires* as legislation in relation to the welfare of children and as infringing, by ss. 2(1)(*h*), 3(1) and 4, the right of the provinces to punish breaches of provincial laws; the other question was as to whether s. 4 of the Act, assuming its validity, operates to prevent a juvenile from being prosecuted under the *Summary Convictions Act* for an offence under the *Motor Vehicle Act* or any other offences validly created in the province.

Held: The appeal should be dismissed.

The *Juvenile Delinquents Act* was *intra vires* the Parliament of Canada and the respondent should have been tried under the provisions of that Act. In its true nature and character, the *Juvenile Delinquents Act*, far from being legislation adopted under the guise of criminal law to encroach on subjects reserved to the provinces, is genuine legislation in relation to criminal law in its comprehensive sense.

It matters not that there be a lack of uniformity in the application or operation of the *Juvenile Delinquents Act* either (i) *ratione loci*, or (ii) *ratione materiae*, or (iii) *ratione personae*. Furthermore, the contention that, in pith and substance, the *Juvenile Delinquents Act* is legislation in relation to the welfare and protection of children within the purview of the *Adoption Act* case, [1938] S.C.R. 398, could not be accepted.

Section 39 of the *Juvenile Delinquents Act* has no application in this case because the *Motor Vehicle Act* is not a statute of the class of statutes to which s. 39 is directed, namely, statutes intended for the protection or benefit of children. The *Juvenile Delinquents Act* and the *Motor Vehicle Act* cannot operate side by side, for their provisions clash at the level of law enforcement and to this extent, the latter statute is inoperative according to the rule that a legislation of Parliament which strictly relates to subjects of legislation expressly enumerated in s. 91 of the *B.N.A. Act* is of paramount authority, even though it trenches upon matters assigned to the provincial legislature by s. 92 of the *B.N.A. Act*.

Droit constitutionnel—Loi sur les jeunes délinquants—Est-ce une législation criminelle—Est-ce que la loi empiète sur le domaine réservé aux provinces—Loi sur les jeunes délinquants, S.R.C. 1952, c. 160—Motor Vehicle Act, R.S.B.C. 1960, c. 253—Summary Convictions Act, R.S.B.C. 1960, c. 373.

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Conformément aux dispositions du *Summary Convictions Act,* S.R.B.C. 1960, c. 373, l'intimé, un enfant, a été poursuivi devant les Cours ordinaires pour une offense sous le *Motor Vehicle Act,* S.R.B.C. 1960, c. 253. Il a été trouvé coupable et condamné à payer une amende de $400 et à défaut d'être emprisonné pour un terme de 60 jours. Il a présenté une requête à la Cour suprême de la Colombie-Britannique pour obtenir un bref de *certiorari* pour faire annuler le verdict de culpabilité, pour le motif que le magistrat avait agi sans juridiction ou avait excédé sa juridiction en prenant connaissance de cette cause de cette manière plutôt que selon les dispositions de la *Loi sur les jeunes délinquants,* S.R.C. 1952, c. 160. Le bref a été émis et le verdict a été annulé. Ce jugement a été confirmé par un jugement majoritaire de la Cour d'Appel. Le procureur général de la Colombie-Britannique a obtenu permission d'en appeler devant cette Cour. La permission d'intervenir a été accordée au procureur général du Canada, qui soutient la validité de la *Loi sur les jeunes délinquants,* et aux procureurs généraux de l'Ontario et du Québec, qui la disputent.

Une des questions dans cet appel était de savoir si la *Loi sur les jeunes délinquants* était *intra vires* comme étant une législation criminelle ou *ultra vires* comme étant une législation se rapportant au bien-être des enfants et aussi comme empiétant, par le jeu des arts. 2(1)(*h*), 3(1) et 4, sur les droits des provinces de punir les infractions aux lois provinciales; la deuxième question était de savoir si l'art. 4 de la Loi, en assumant sa validité, a pour effet d'empêcher de poursuivre un enfant sous le *Summary Convictions Act* pour une offense commise sous le *Motor Vehicle Act* ou pour toute autre offense validement créée par la province.

Arrêt: L'appel doit être rejeté.

La *Loi sur les jeunes délinquants* est *intra vires* du Parlement du Canada et l'intimé aurait dû être poursuivi sous les dispositions de cette loi. Loin d'être une législation adoptée sous les apparences du droit criminel pour empiéter sur les matières réservées aux provinces, la *Loi sur les jeunes délinquants,* de par sa nature et son caractère, est une législation authentique se rapportant au droit criminel au sens très large.

Peu importe qu'il existe un manque d'uniformité dans l'application de la *Loi sur les jeunes délinquants* soit (i) *ratione loci,* ou (ii) *ratione materiae,* ou (iii) *ratione personae.* De plus, la prétention que la *Loi sur les jeunes délinquants,* dans son essence et sa substance, est une législation se rapportant au bien-être et à la protection des enfants selon les vues exprimées dans la cause *Adoption Act,* [1938] R.C.S. 398 ne peut pas être acceptée.

L'article 39 de la *Loi sur les jeunes délinquants* n'a pas d'application dans cette cause parce que le *Motor Vehicle Act* n'est pas un statut de la classe des statuts auxquels l'art. 39 s'adresse, à savoir, les statuts pour la protection ou le bénéfice des enfants. La *Loi sur les jeunes délinquants* et le *Motor Vehicle Act* ne peuvent pas fonctionner côte à côte, parce que leurs dispositions viennent en conflit au niveau de leur application et dans cette mesure, ce dernier statut est inopérant en vertu de la règle qu'une législation du Parlement qui se rapporte strictement à des sujets de législation expressément énumérés à l'art. 91 de l'*Acte de l'Amérique du Nord britannique* a primauté, même si ce statut empiète sur les matières attribuées à la législature provinciale par l'art. 92.

APPEL d'un jugement majoritaire de la Cour d'Appel de la Colombie-Britannique[1], confirmant l'annulation d'un verdict de culpabilité. Appel rejeté.

APPEAL from a majority judgment of the Court of Appeal for British Columbia[1], affirming the quashing of the appellant's conviction. Appeal dismissed.

W. G. Burke-Robertson, Q.C., and *M. H. Smith*, for the appellant.

F. S. Perry, for the respondent.

D. H. Christie, Q.C., and *C. D. MacKinnon*, for the Attorney General for Canada.

F. W. Callaghan, Q.C., and *Collin McNairn*, for the Attorney General for Ontario.

Laurent E. Bélanger, Q.C., for the Attorney General for Quebec.

The judgment of the Court was delivered by

FAUTEUX J.:—While a child, within the meaning of the *Juvenile Delinquents Act*, R.S.C. 1952, c. 160, respondent was, in July 1964, at the city of Prince George, B.C., tried, as though he were an adult, by magistrate G. O. Stewart, in the ordinary courts and pursuant to the *Summary Convictions Act*, R.S.B.C. 1960, c. 373, for an offence under the *Motor-Vehicle Act*, R.S.B.C. 1960, c. 253, to wit, driving a motor vehicle at a speed exceeding the prescribed limits. In fact, before proceeding with the case, the magistrate was fully aware that respondent was a *child*; considering, however, the latter's prior convictions for similar offences, he deemed it to be in his best interest to deal with the case in the ordinary way rather than under the provisions of the *Juvenile Delinquents Act* and considered that such an alternative course was authorized under s. 39 thereof. Having then found respondent guilty, he disposed of the case, again as if the accused were an adult, by sentencing him to pay a fine of $400 and in default to be imprisoned for a term of 60 days.

[1] (1965), 53 W.W.R. 129, 53 D.L.R. (2d) 713, [1966] 2 C.C.C. 311.

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Respondent then applied to the Supreme Court of British Columbia for an order of *certiorari* to quash the conviction on the ground that the magistrate acted without jurisdiction or exceeded his jurisdiction in dealing with the case in the manner aforesaid rather than pursuant to the provisions of the *Juvenile Delinquents Act*. The application was heard by Brown J. who ordered the writ to issue and quashed the conviction. His decision was subsequently affirmed by a majority judgment of the Court of Appeal of British Columbia[1], then constituted of Davey, Norris, Lord, Sullivan and Bull JJ.A. The latter three members of the Court, forming the majority, rejected the contention of the Attorney General of the province that the *Juvenile Delinquents Act* was *ultra vires* in whole or in part and that even if *intra vires,* the Act could not operate to prevent a child from being prosecuted in the ordinary courts, pursuant to the *Summary Convictions Act, supra,* for an offence against the *Motor-Vehicle Act, supra.* Dissenting, and accepting as well-founded the submissions of the Attorney General, Davey and Norris JJ.A. would have allowed the appeal and restored the conviction.

Leave to appeal to this Court was then sought and obtained by the Attorney General of the province and leave to intervene was granted to the Attorney General of Canada, who supports the validity of the Act, and to the Attorneys General of Ontario and Quebec, who challenge it.

The constitutional problem arising in this case stems from the provisions of ss. 2(1)(*h*), 3(1) and 4 of the *Juvenile Delinquents Act:*

2.(1)(*h*). 'juvenile delinquent' means any child who violates any provision of the Criminal Code or of any Dominion or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute;

3(1). The commission by a child of any of the acts enumerated in paragraph (*h*) of subsection (1) of section 2, constitutes an offence to be known as a delinquency, and shall be dealt with as hereinafter provided.

(2) ...

4. Save as provided in section 9, the Juvenile Court has exclusive jurisdiction in cases of delinquency including cases where, after the committing of the delinquency, the child has passed the age limit mentioned in paragraph (*a*) of subsection (1) of section 2. 1929, c. 46, s. 4.

[1] (1965), 53 W.W.R. 129, 53 D.L.R. (2d) 713, [1966] 2 C.C.C. 311.

Section 9, referred to in s. 4, provides for an exceptional procedure when the act complained of is an indictable offence and, as will appear hereafter, has here no relevancy.

Collectively, ss. 2(1)(*h*), 3(1) and 4 operate to prescribe, *inter alia,* that a juvenile who violates any provision, not only of a Dominion statute, but also of a provincial statute or of any by-law or ordinance of a municipality, be, if and when his act is complained of, dealt with in accordance with the *Juvenile Delinquents Act.*

The questions in issue, in this appeal, may then be concisely and fairly stated as follows:

(i) Whether the *Juvenile Delinquents Act* is *intra vires* of Parliament, as being legislation under head 27 of s. 91, *B.N.A. Act,* to wit, legislation in relation to *The Criminal Law...including the Procedure in Criminal Matters* or *ultra vires,* either on the ground that it is legislation related to the *Welfare of children* within the purview of the *Adoption Act* case (1938) S.C.R. 398, or on the ground that collectively sections 2(1)(*h*), 3(1) and 4 infringe the right of a provincial legislature, under head 15, s. 92, *B.N.A. Act* to impose punishment for enforcing any law made in the province in relation to any matter within the scope of its legislative competency;

(ii) Whether or not, even if the Act is *intra vires* in its entirety as being legislation under head 27, s. 91, *B.N.A. Act,* s. 4 of the *Juvenile Delinquents Act* operates to prevent a juvenile from being prosecuted under the provisions of the *Summary Convictions Act* (supra) for an offence under the *Motor-Vehicle Act* (supra) or any other offences validly created in the province.

Dealing with the first question:—The principles governing as to the extent and limitation of the power of Parliament to legislate in relation to *The Criminal Law...including Procedure in Criminal Matters* have been stated at length in the various reasons for judgment, in the court of appeal, and need not be repeated here. Sufficient it is to point out concisely the following which, in my view, have a particular relevancy in this case, namely:—that, properly interpreted, the words *criminal law* in head 27 of s. 91, *B.N.A. Act,* mean criminal law in its widest sense: *A.-G. of Ontario v. Hamilton Street Railway*[1]; that the power assigned to Parliament in the matter includes the power to make new crimes: *Proprietary Articles Trade Association v. A.-G. of Canada*[2], as well as the power to enact legislation designed for the prevention of crime: *Goodyear Tire*

[1] [1903] A.C. 524 at 528-9, 2 O.W.R. 672, 7 C.C.C. 326.
[2] [1931] A.C. 310 at 334, 1 W.W.R. 552, 55 C.C.C. 241, 2 D.L.R. 1.

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& Rubber Co. of Canada et al. v. The Queen[1]; that it is the function of Parliament and not of the courts to decide what legislation is necessary for the efficient exercise of this plenary jurisdiction over the criminal law: *Regina v. Goodyear Tire & Rubber Co. of Canada et al.*[2]; and that, though such legislation may incidentally affect the provincial legislative jurisdiction, it is not *ultra vires* of Parliament if its subject matter, purpose or object is, in its true nature and character, legislation genuinely enacted in relation to criminal law and not legislation adopted under the guise of criminal law and which, in truth and in substance, encroaches on any of the classes of subjects enumerated in s. 92: *A.-G. for British Columbia v. A.-G. for Canada et al.*[3].

The primary legal effect of the *Juvenile Delinquents Act*,—hereafter also referred to as the Act,—is the effective substitution, in the case of juveniles, of the provisions of the Act to the enforcement provisions of the *Criminal Code* or of any other Dominion statute, or of a provincial statute validly adopted, under head 15 of s. 92, by a legislature for the enforcement of any law made in the exercise of its regulatory power with respect to any matters within its legislative competency which, in this case, is the control of highway traffic in the province. However, as it has often been held to be the case in the consideration of the validity of other Acts, the true nature and character of an Act cannot always be conclusively determined by the mere consideration of its primary legal effect. Indeed, a reference to the preamble, appended to the Act when originally adopted in 1908, 7-8 Edward VII, c. 40, as well as to the interpretation section and the main operative provisions of the Act, will show that this substitution of the provisions of the Act to the enforcement provisions of other laws, federally or provincially enacted, is a means adopted by Parliament, in the proper exercise of its plenary power in criminal matters, for the attainment of an end, a purpose or object which, in its true nature and character, identifies this Act as being genuine legislation in relation to criminal law.

The preamble:

> WHEREAS it is inexpedient that youthful offenders should be classed or dealt with as ordinary criminals, the welfare of the community

[1] [1956] S.C.R. 303 at 308, 114 C.C.C. 380, 26 C.P.R. 1, 2 D.L.R. (2d) 11.

[2] (1954), 18 C.R. 245 at 250, [1954] O.R. 377, 108 C.C.C. 321, 4 D.L.R. 61.

[3] [1937] A.C. 368 at 375-6, 1 W.W.R. 317, 67 C.C.C. 193, 1 D.L.R. 688.

demanding that they should on the contrary be guarded against association with crime and criminals, and should be subjected to such wise care, treatment and control as will tend to check their evil tendencies and to strengthen their better instincts: Therefore His Majesty...

The interpretation section:

38. This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.

The main operative provisions:

In addition to those quoted above, others provide for: the strict and complete separation of juvenile from adults, at any stage of the enforcement process; the prohibition, particularly, to confine any child, pending the hearing of his case, at any county or other gaols in which adults are or may be imprisoned; the conduct of the trials, without publicity, privately and, if possible, in the private office of the judge or in a private room; the abstention from formalities, in any proceedings under the Act, including the trial and the disposition of the case, as circumstances may permit consistently with the due administration of justice; the manner in which a child adjudged to have committed a delinquency shall be dealt with, namely: not as an offender but as one in a condition of delinquency and therefore requiring help, guidance and proper supervision; a variety of exceptional courses of action,—primarily meant to assist, help, encourage, supervise and reform the delinquent rather than to punish him,—which, upon the child being adjudged to be a juvenile delinquent, may be taken by the judge in the light of the opinion he forms as to both the child's own good and the community's best interest; the prohibition, unless special leave is granted by the court, of publication of a report disclosing or likely to disclose the identity of a juvenile concerned under the Act; the protection of juveniles against persons contributing to their delinquency; the promotion of reformation of juveniles by the establishment, *inter alia,* of Juvenile Court Committees, the appointment of probation officers and definition of the latter's duties, namely: to assist the court, represent the interest

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of the child when the case is heard and, as the court may direct or require, make investigations, furnish assistance to the child and take charge of him before and after trial.

Consistent with the declared purpose of the Act and obviously designed for its attainment, these operative provisions are still more illustrative of the true nature and character of this legislation. They are directed to juveniles who violate the law or indulge in sexual immorality or any other similar form of vice or who, by reason of any other act, are liable to be committed to an industrial school or a juvenile reformatory. They are meant,—in the words of Parliament itself,—*to check their evil tendencies and to strengthen their better instincts.* They are primarily prospective in nature. And in essence, they are intended to prevent these juveniles to become prospective criminals and to assist them to be law-abiding citizens. Such objectives are clearly within the judicially defined field of criminal law. For the effective pursuit of these objectives, Parliament found it expedient to protect these juveniles from the ill-effects of publicity, from the dangerous influences that promiscuity with criminals or association with crime engender, and deemed it necessary to create the offence of *delinquency*, an offence embracing, *inter alia*, all punishable breaches of the public law, whether defined by Parliament or the Legislatures, and to adopt, for the prosecution of this offence, an enforcement process specially adapted to the age and impressibility of juveniles and fundamentally different, in pattern and purpose, from the one governing in the case of adults. Beyond the point of law enforcement, the Act does not affect the legislation which may be enacted by Parliament or Provincial Legislatures in the exercise of their regulatory power. Briefly, and in scope, the Act deals with *juvenile delinquency* in its relation to crime and crime prevention, a human, social and living problem of public interest, in the constituent elements, alleviation and solution of which jurisdictional distinctions of constitutional order are obviously and genuinely deemed by Parliament, to be of no moment.

It matters not, in my respectful view, contrary to what was contended, on behalf of the Provincial Attorneys General, that there be a lack of uniformity in the application or operation of the Act, either:— (i) *ratione loci*, in that

ss. 42 and 43 substantially provide that the Act may be put into force, by proclamation, only in these territorial jurisdictions where the facilities for the due carrying out of its provisions are provided for, or (ii) *ratione materiae,* in that the proscribed conduct,—the holding of which constitutes, under the Act, the offence of delinquency,—may vary, throughout Canada, consequential to the lack of uniformity in provincial laws, by-laws and municipal ordinances, or (iii) *ratione personae,* in that the definition of a *child,* under s. 2(1)(*a*) may, as provided for by s. 2(2), be altered, from time to time, in any province, by proclamation of the Governor in Council. Desirable as uniformity may be in criminal law, it is not, *per se,* a dependable test of constitutionality as, indeed, is shown in the case of the *Lord's Day Act,* R.S.C. 1927, c. 123, cf. ss. 3, 7 and 15, the *Canada Temperance Act,* R.S.C. 1927, c. 196, cf. Part I, both judicially held *intra vires,* notwithstanding lack of uniformity. Lack of uniformity also appears in the *Criminal Code of Canada,* with respect to substantive law as well as to procedural matters, e.g., ss. 6, 7, 534, 541 and 552. In *City of Fredericton v. The Queen*[1], where the constitutionality of the *Canada Temperance Act* (1868) was in issue, Ritchie C.J., had this to say on the point, at p. 530:

> It has likewise been urged that this Act affects only particular districts, that it is not general legislation, and therefore is *ultra vires.* I am entirely unable to appreciate this objection. If the subject matter dealt with comes within the classes of subjects assigned to the Parliament of Canada, I can find in the Act no restriction which prevents the Dominion Parliament from passing a law affecting one part of the Dominion and not another, if Parliament, in its wisdom, thinks the legislation applicable to and desirable in one part and not in the other. But this is a general law applicable to the whole Dominion, though it may not be brought into active operation throughout the whole Dominion.

In *Gold Seal Limited and Dominion Express Company and A.-G. for the Province of Alberta*[2], again, it was held, *inter alia,* that the Dominion Parliament can enact laws which may become operative only in certain provinces and also laws which may aid provincial legislation. Finally, in any respect in which it may be said that the Act lacks uniformity, I can find no indication suggesting that the above view, as to the true nature and character of the Act, should be varied.

[1] (1880), 3 S.C.R. 505.

[2] (1921), 62 S.C.R. 424, 3 W.W.R. 710, 62 D.L.R. 62.

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Nor am I able to accept, as being well-founded, the contention that, in pith and substance, the Act is legislation in relation to *welfare and protection of children* within the purview of the *Adoption Act* case *supra*. The true objects and purposes of the statutes considered in the latter case are quite different from the true object and purpose of the *Juvenile Delinquents Act*. They are, as pointed out by Bull J.A., directed to the control or alleviation of social conditions, the proper education and training of children, and the care and protection of people in distress including neglected children. Obviously, one can say that the Act gives a special kind of protection to misguided children and that it should incidentally operate to ultimately enhance their welfare. A similar view may also be taken of the following provisions of s. 157 of the *Criminal Code of Canada*; yet, no one has ever questioned that they were enactments in relation to criminal law.

> 157. (1) Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence and is liable to imprisonment for two years.
>
> (2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence was committed.
>
> (3) For the purpose of this section, *child* means a person who is or appears to be under the age of eighteen years.
>
> (4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General, unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court.

A very wide discretion is given to the judge, under the Act, and it is significant that, in the exercise of such discretion, the interest of the child is not the sole question to consider. On the contrary, the matters which, in principle, must receive the attention of the judge and which he must try to conciliate are the child's interest or own good, the community's best interest and the proper administration of justice. This, I think, qualifies the nature of the protection which the Act is meant to give to juveniles alleged or found to be delinquents and supports the proposition that the Act is not legislation in relation to protection and welfare of children within the meaning envisaged in the *Adoption Act* case, *supra*.

With deference to those who entertain a contrary view, I am clearly of opinion that, in its true nature and character, the Act, far from being legislation adopted under the guise of criminal law to encroach on subjects reserved to the provinces, is genuine legislation in relation to criminal law in its comprehensive sense.

Dealing with the second question:—It was submitted that assuming the Act to be valid legislation *in toto*, it does not affect the right to proceed under the *Summary Convictions Act, supra,* against a *child* for a violation of the *Motor-Vehicle Act, supra.* Section 39 of the Act, it is said, shows that Parliament intended that the Act and the *Motor-Vehicle Act* should operate side by side and that the best interests of the child be the decisive factor as to the course to be elected in any particular case. Section 39 reads as follows:

> 39. Nothing in this Act shall be construed as having the effect of repealing or over-riding any provision of any *provincial statute intended for the protection or benefit of children*; and when a juvenile delinquent who has not been guilty of an act which is, under the provisions of the Criminal Code an indictable offence, comes within the provisions of a *provincial statute*, it may be dealt with either under *such Act* or under this Act as may be deemed to be in the best interests of such child.

The French version of the section is in the following terms:

> 39. Rien dans la présente loi ne doit être interprété comme ayant l'effet d'abroger ou d'annuler quelque disposition d'*un statut provincial en vue de la protection ou du bien des enfants*; et lorsqu'un délinquant, qui ne s'est pas rendu coupable d'une infraction constituant un acte criminel aux termes des dispositions du *Code criminel,* tombe sous les dispositions d'un *statut provincial,* il peut être traité, soit en vertu de *ce statut,* soit en vertu de la présente loi, selon que le meilleur intérêt de cet enfant l'exige.

The key words in the single sentence of this section have been italicized.

In my view, this section has no application in this case, for the *Motor-Vehicle Act, supra,* is not a statute of the class of statutes to which s. 39 is directed, namely: statutes intended for the protection or benefit of children. It was not seriously contended that the *Motor-Vehicle Act, supra,* is a provincial statute of that class; such a contention is palpably untenable. What was urged is that, as a matter of construction, the words *provincial statute* and *such Act* or *statut provincial* and *de ce statut,* appearing in the latter part of the sentence, are not referable to the

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words *provincial statute intended...*or *statut provincial en vue de...*, appearing in the first part thereof, but to any provincial statute. In my opinion, the wording of the sentence does not permit this interpretation but just the opposite one and as such, shows that the will of Parliament is (i) to leave untouched the provisions of any provincial statute intended for the protection or benefit of children,—such as, e.g., *The Protection of Children Act*, R.S.B.C. 1948, c. 47,—and (ii) to authorize that a child, coming within the provisions thereof, be dealt with either under the latter or under the *Juvenile Delinquents Act*, as his best interests may be deemed to be in any particular case. Construed as suggested on behalf of appellant, s. 39 would be in conflict with the provisions of the Act which give exclusive jurisdiction to the Juvenile Court in matters of delinquency and would completely defeat the whole purpose of the Act and render it futile.

The Act and the *Motor-Vehicle Act, supra,* cannot operate side by side, for their provisions clash at the level of law enforcement and to this extent, the latter statute is inoperative according to the rule that a legislation of Parliament which strictly relates to subjects of legislation expressly enumerated in s. 91,—as the *Juvenile Delinquents Act* is assumed to be for the purpose of the second question,—is of paramount authority, even though it trenches upon matters assigned to the provincial legislatures by s. 92: *A.-G. for Canada v. A.-G. for British Columbia.*[1]

With deference to those who entertain a different view, I must conclude that the majority of the Court of Appeal rightly decided that the *Juvenile Delinquents Act* is *intra vires* of Parliament and that the case of respondent Smith should have been dealt with under the provisions of this Act.

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

Appeal dismissed; no order as to costs.

Solicitors for the appellant: Cumming, Bird & Richards, Vancouver.

Solicitor for the respondent: F. S. Perry, Prince George.

[1] [1930] A.C. 111 at 118, [1929] 3 W.W.R. 449, [1930] 1 D.L.R. 194.