

HER MAJESTY THE QUEEN ..... APPELLANT;

1968

AND

\*May 10  
May 10

URGEL R. BRUNET ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR  
SASKATCHEWAN

*Criminal law—Care and control of motor vehicle while intoxicated or under influence of narcotic drug—Whether two offences—Whether charge bad for duplicity—Criminal Code, 1953-54 (Can.), c. 51, ss. 222, 492, 703, 704, 727.*

The respondent was convicted on a charge of having had the care and control of a motor vehicle while intoxicated or under the influence of a narcotic drug, contrary to s. 222 of the *Criminal Code*. His appeal by trial *de novo* was dismissed. He then appealed to the Court of Appeal where his submission that the information charged two offences was accepted. The Court of Appeal held that the information was bad for duplicity and that ss. 704(1) and 727(4) of the Code were not applicable. The Crown was granted leave to appeal to this Court.

*Held:* The appeal should be allowed and the conviction restored.

Section 222 of the *Criminal Code* does not create one offence of driving while intoxicated and another offence of driving while under the influence of a narcotic drug. The essence of the offence is driving while in a certain condition, there being two different ways in which the prohibited condition may be brought about. Consequently, there was no duplicity in the information.

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*Droit criminel—Conduire un véhicule à moteur ou en avoir la garde, étant en état d'ivresse ou sous l'influence d'un narcotique—S'agit-il de deux infractions—L'acte d'accusation est-il défectueux parce qu'il est double—Code criminel, 1953-54 (Can.), c. 51, arts. 222, 492, 703, 704, 727.*

L'intimé a été trouvé coupable sur un acte d'accusation l'accusant d'avoir conduit un véhicule à moteur ou d'en avoir eu la garde alors qu'il était en état d'ivresse ou sous l'influence d'un narcotique, contrairement à l'art. 222 du *Code criminel*. Son appel au moyen d'un procès *de novo* a été rejeté. Il en a alors appelé à la Cour d'Appel où on a accepté sa prétention que l'acte d'accusation imputait deux infractions. La Cour d'Appel a statué que l'acte d'accusation était défectueux parce qu'il était double et que les dispositions des arts. 704(1) et 727(4) du Code ne s'appliquaient pas. La Couronne a obtenu la permission d'en appeler à cette Cour.

*Arrêt:* L'appel doit être accueilli et la déclaration de culpabilité rétablie.

L'article 222 du *Code criminel* ne crée pas une infraction de conduire, étant en état d'ivresse et une autre infraction de conduire, étant sous l'influence d'un narcotique. L'essence de l'infraction est de con-

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\*PRESENT: Cartwright C.J. and Fauteux, Judson, Ritchie and Hall JJ.

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duire alors que la personne est dans un certain état. Il y a deux différentes manières de provoquer cet état prohibé. Conséquemment, l'acte d'accusation n'était pas double.

APPEL par la Couronne d'un jugement de la Cour d'Appel de Saskatchewan mettant de côté une déclaration de culpabilité. Appel accueilli.

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APPEAL by the Crown from a judgment of the Court of Appeal for Saskatchewan setting aside the respondent's conviction. Appeal allowed.

*Serge Kujawa*, for the appellant.

*Leslie R. Meiklejohn*, for the respondent.

The judgment of the Court was delivered by

JUDSON J.:—Urgel R. Brunet was convicted by a magistrate on the charge that he

on the 15th day of October, A.D. 1965, at Prince Albert, in the said Province, while intoxicated or under the influence of a narcotic drug, did unlawfully have the care and control of a motor vehicle, to wit, a 1960 station wagon, on 6th Avenue East, Prince Albert, Saskatchewan, contrary to the provisions of section 222 of the *Criminal Code of Canada*.

His appeal by trial *de novo* was dismissed and he appealed to the Court of Appeal for Saskatchewan where the only point raised was that the conviction could not stand because the information charged two offences.

The Court of Appeal for Saskatchewan accepted this submission and held that the information was bad for duplicity, and that ss. 704(1) and 727(4) of the *Criminal Code* were not applicable. The appeal was accordingly allowed.

This Court granted leave to appeal on the following grounds:

- (a) That the Court of Appeal for Saskatchewan erred in law in holding that duplicity is not a defect as contemplated by s. 727(4) and s. 704(1) of the *Criminal Code*;
- (b) That the Court of Appeal for Saskatchewan erred in law in quashing the conviction herein on the basis that the information is bad in law there being no such concept in criminal law;

- (c) That the said Court of Appeal for Saskatchewan erred in law in holding that there was in fact duplicity in the information herein.

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Judson J.

The only question that arises on this appeal is whether there was, in fact, duplicity in this information. In my opinion there was not. This information follows the wording in s. 222 of the *Criminal Code*. That section does not create one offence of driving while intoxicated and another offence of driving while under the influence of a narcotic drug. The essence of the offence is driving while in a certain condition, there being two different ways in which the prohibited condition may be brought about. The relevant provisions of the *Criminal Code* are:

492. (1) Each count in an indictment shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the accused committed an indictable offence therein specified.

(2) The statement referred to in subsection (1) may be

(b) in the words of the enactment that describes the offence or declares the matters charged to be an indictable offence, or...

703. No information, summons, conviction, order or process shall be deemed to charge two offences or to be uncertain by reason only that it states that the alleged offence was committed

(a) in different modes, or

(b) in respect of one or other of several articles, either conjunctively or disjunctively.

Recent illustrations of the application of this principle are *R. v. Schultz*<sup>1</sup>; *Cox and Paton v. The Queen*<sup>2</sup>; and *Kipp v. Attorney General for Ontario*<sup>3</sup>. The case is distinct from *Rex v. Archer*<sup>4</sup>.

I would allow the appeal and restore the conviction. There is provision for the respondent's costs in the order granting leave to appeal.

*Appeal allowed.*

*Solicitor for the appellant: The Attorney General for Saskatchewan, Regina.*

*Socilitor for the respondent: Koch, Meiklejohn & Scrivens, Regina.*

<sup>1</sup> (1962), 133 C.C.C. 174 at 182, 38 C.R. 76.

<sup>2</sup> [1963] S.C.R. 500, 40 C.R. 52, 2 C.C.C. 148.

<sup>3</sup> [1965] S.C.R. 57, 45 C.R. 1, 2 C.C.C. 133.

<sup>4</sup> [1955] S.C.R. 33, 20 C.R. 181, 110 C.C.C. 321, 2 D.L.R. 621.