WILLIAM E. STEPHENS ....APPELLANT;

AND

HER MAJESTY THE QUEEN ....RESPONDENT.

1960
*May 16, 17
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ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Constitutional law—Provincial legislation respecting duties of drivers involved in accidents—Whether matter so related to substance of s. 221(2) of the Criminal Code as to be brought within scope of the criminal law—Whether ultra vires—The Highway Traffic Act, R.S.M. 1954, c. 112, s. 147(1)—Criminal Code, 1953-54 (Can.), c. 51, s. 221(2).

Criminal law—Power to grant leave to appeal to the Supreme Court of Canada.

The accused was convicted in magistrate's court for having failed to remain at or return to the scene of an accident for certain defined purposes, contrary to s. 147(1) of *The Highway Traffic Act* of Manitoba, and he then appealed to the County Court, which held that s. 147(1) of the Act was *ultra vires* the Provincial Legislature. On appeal it was decided, by a majority, that the section was *intra vires*. The Court of Appeal granted the accused leave to appeal to this Court, where it was determined that the Court of Appeal lacked jurisdiction so to do. A constitutional question being involved, leave to appeal was granted by this Court.

Held (Locke and Cartwright JJ. *dissenting*): The appeal should be dismissed.

Per Kerwin C.J. and Taschereau, Fauteux, Abbott, Martland, Judson and Ritchie JJ.: The two pieces of legislation (s. 147(1) of the Act and s. 221(2) of the Code) differ in legislative purpose and in legal and practical effect. The section in the Act was enacted for provincial purposes by creating a duty to stop, render assistance and give information, whereas the section of the Code creates an offence to omit certain acts if done with a specified intent. *Regina v. Dodd,* [1957] O.R. 5, overruled; *Regina v. Yolles,* [1959] O.R. 206, approved; *O'Grady v. Sparling,* [1960] S.C.R. 804; *Rex v. Corry,* 26 Alta. L.R. 390; *Regina v. Mankov,* 28 W.W.R. 433, referred to.

*PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

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Per Locke and Cartwright JJ., *dissenting*: Where Parliament has, in the valid exercise of its exclusive power under head 27 of s. 91 of the *British North America Act* to make laws in relation to the criminal law, enacted that a certain course of conduct shall be punishable as an offence against the state provided it is accompanied by a specified intent, it is not within the power of the Legislature to enact that the very same course of conduct shall be punishable as an offence whether or not that specified intent exists.

The whole subject-matter of the charge against the appellant has been drawn by Parliament within the ambit of the criminal law with the effect of suspending the provincial legislative authority in relation to that subject-matter.

Provincial Secretary of P.E.I. v. Egan, [1941] S.C.R. 396: *Regina v. Dodd, supra,* referred to.

APPEAL from the judgment of the Court of Appeal for Manitoba[1], reversing the judgment of Philp Sr. Co. Ct. J. Appeal dismissed, Locke and Cartwright JJ. dissenting.

No oral argument was presented, as this case was to be decided at the same time and in the same way as the case of O'Grady v. Sparling, [1960] S.C.R. 804.

The judgment of Kerwin C.J. and of Taschereau, Fauteux, Abbott, Martland, Judson and Ritchie JJ. was delivered by

THE CHIEF JUSTICE:—The appellant, William E. Stephens, was convicted in magistrate's court in the City of Winnipeg, in the Province of Manitoba, on the 4th day of September 1958, for that he at the City of Winnipeg, on the 7th day of August, A.D., 1958,

> did unlawfully operate a motor vehicle on Furby St., and being involved in an accident fail to remain at the scene of the accident, fail to render all reasonable assistance and fail to give in writing to the parties sustaining loss or injury his name and address and the number of his driver's licence contrary to the provisions of the Highway Traffic Act 147-1 in such case made and provided.

He appealed to the County Court of Winnipeg and His Honour Judge Philp without hearing any evidence decided on a motion by counsel for Stephens that s. 147(1) was *ultra vires* the Provincial Legislature and set aside the conviction. On an appeal against this order to the Court of Appeal[1] for Manitoba, Tritschler J.A., with whom Schultz J.A. agreed, decided (Chief Justice Adamson dissenting) that the section was *intra vires*. The order of the Court was

[1] (1959-60), 30 W.W.R. 145, 32 C.R. 72.

that the appeal should be allowed and the matter remitted to the Senior County Court Judge for the County Court of Winnipeg to hear the evidence and dispose of the charge.

The Court of Appeal granted Stephens leave to appeal to this Court. After notice to the parties we determined that that Court had no jurisdiction so to do. Stephens was prosecuted in accordance with *The Summary Convictions Act,* R.S.M. 1954, c. 254, s. 7 of which provides for the application of certain named sections of the *Criminal Code* of Canada. The 1954 Revised Statutes of Manitoba and the new *Criminal Code* of Canada came into force on the same day but whether one refers to the sections of the old Code or of the new Code the result is the same. No power is given to a provincial Court of Appeal to grant leave to appeal to the Supreme Court of Canada from its judgment setting aside a conviction of a non-indictable offence. That power is conferred upon this Court and then only in respect of a question of law or jurisdiction. A constitutional question is involved in the present case and although, as will appear later, the point is now determined by what the majority of this Court holds in *O'Grady v. Sparling*[1], we granted leave so that the matter might be disposed of at the same time as the last mentioned case and *Smith v. The Queen*[2].

Section 147(1) of the Manitoba *Highway Traffic Act,* under which the charge against Stephens was laid, reads:

147. (1) Where an accident occurs on a highway, the driver, owner, or other person in charge of a vehicle, street car or trolley bus that is in any manner, directly or indirectly, involved in the accident shall

(*a*) remain at or immediately return to the scene of the accident; and
(*b*) render all reasonable assistance; and
(*c*) give in writing to any one sustaining loss or injury or to any peace officer or to a witness his name and address, and also the name and address of the registered owner of the vehicle and the number of the driver's licence, and the registration number of the motor vehicle or such of the information as is requested.

We were advised that this provision originated in an amendment to the Act in 1930 by s. 61(1) of c. 19 of the Statutes of that year. Subsection (2) of s. 221 of the new *Criminal Code* requires consideration:

221. ....

(2) Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, vehicle or cattle in charge

[1] [1960] S.C.R. 804. [2] [1960] S.C.R. 776.

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of a person, with intent to escape civil or criminal liability fails to stop his vehicle, give his name and address and, where any person has been injured, offer assistance, is guilty of

(*a*) an indictable offence and is liable to imprisonment for two years, or

(*b*) an offence punishable on summary conviction.

This subsection originated in an amendment to the *Criminal Code* by s. 2 of c. 13 of the Statutes of 1910.

Judge Philp, with whom Chief Justice Adamson agreed, considered that s. 147(1) of the Manitoba *Highway Traffic Act* and s. 221(2) of the new *Criminal Code* were in *pari materia* and that, therefore, the former could not stand. As indicated earlier the point is really determined by the judgment of this Court in *O'Grady v. Sparling*[1], as the reasons of Judson J., which are those of the majority, referred to *Regina v. Dodd*[2], a decision of the Court of Appeal for Ontario relied upon by the County Court Judge in this case. It is pointed out in *O'Grady v. Sparling* that the problem there in question was the same "as that raised by the side-by-side existence of provincial legislation dealing with the duty to remain at or return to the scene of an accident for certain defined purposes, and s. 221(2) of the *Criminal Code* dealing with failure to stop at the scene of an accident 'with intent to escape civil or criminal liability' ". Judson J. continues by considering the *Dodd* case, *Rex v. Corry*[3], *Regina v. Mankow*[4], a decision of the Alberta Court of Appeal, and the decision of the Court of Appeal for Manitoba in the present case. It suffices to reiterate that the two pieces of legislation differ in legislative purpose and in legal and practical effect. The County Judge in this case considered that (a), (b), (c) of s. 147(1) of the Manitoba *Highway Traffic Act* referred to something that had happened after an accident and that all infractions against the rules of driving, for negligence, and other provisions for prevention of accidents and injuries to persons and property, were over and completed prior to the time of the alleged offences as charged. He states further that there was no degree of care such as in *Regina v. Yolles*[5], a decision of the Court of Appeal for Ontario. While we had refused leave to appeal

[1] [1960] S.C.R. 804.
[2] [1957] O.R. 5, 7 D.L.R. (2d) 436.
[3] [1932] 1 W.W.R. 414, affirmed 26 Alta. L.R. 390.
[4] (1959), 28 W.W.R. 433, 30 C.R. 403.
[5] [1959] O.R. 206, 19 D.L.R. (2d) 19.

to this Court because Yolles had been found not guilty on another ground, his counsel took part in the argument of the present appeal.

Here the County Judge considered that what was in question in s. 147(1) of the Manitoba *Highway Traffic Act* was one act (a) "remain at . . . the scene of the accident"; (b) "render . . . assistance"; (c) "give in writing . . . information". However, I agree with Tritschler J.A. that the section of the Manitoba Act was enacted for provincial purposes by creating a duty to stop, render assistance and give information, while the section of the Code creates an offence to omit certain acts if done with a specified intent. The result is that the decision of the Ontario Court of Appeal in *Regina v. Dodd*[1] is overruled and that of the same Court in *Regina v. Yolles*[2] approved.

The appeal should be dismissed.

The judgment of Locke and Cartwright JJ. was delivered by

CARTWRIGHT J. (*dissenting*):—The charge against the appellant and the proceedings in the courts below are set out in the reasons of the Chief Justice.

The question to be decided is stated in the written argument of the Attorney-General for the Province of Manitoba as follows:

> The issue on this appeal is whether or not the matter of Section 147(1) of The Highway Traffic Act R.S.M. 1954 Cap. 112 is so related to the substance of Section 221(2) of the Criminal Code as to be brought within the scope of the criminal law and so rendered *ultra vires* or inoperative.

I think it clear that s. 147(1) would be *intra vires* of the legislature if there were no legislation of Parliament dealing with similar subject matter and I do not understand the appellant to argue the contrary. The question before us is that stated by Duff C.J. in *Provincial Secretary of P.E.I. v. Egan*[3]:

> We have to consider the effect of legislation by the Dominion creating a crime and imposing punishment for it in effecting the suspension of provincial legislative authority in relation to matters *prima facie* within the provincial jurisdiction.

[1] [1957] O.R. 5, 7 D.L.R. (2d) 436.
[2] [1959] O.R. 206, 19 D.L.R. (2d) 19.
[3] [1941] S.C.R. 396 at 401, 3 D.L.R. 305.

The inquiry in the case at bar is directed to the specific charge brought against the appellant. It will be observed that to substantiate the charge the prosecution would have to prove (i) that the appellant was operating a motor vehicle that was involved in an accident on Furby Street causing loss or injury, (ii) that he failed to remain at the scene of the accident, (iii) that he failed to render all reasonable assistance, and (iv) that he failed to give in writing to the parties sustaining loss or injury his name, address and driver's licence number.

If the charge against the appellant had been laid under s. 221(2) of the *Criminal Code* instead of under s. 147(1) of *The Highway Traffic Act,* it would have been necessary for the prosecution to prove not only the matters set out above but also that the failure of the accused was accompanied by the intent to escape civil or criminal liability. This is a substantial difference which is somewhat lessened in practice by the terms of subsection (3) of section 221 of the *Code* making proof of the objective fact of the failures mentioned *prima facie* evidence of the existence of the guilty intent.

It is not, and could not successfully be, argued that the enactment of s. 221(2) and (3) is not a valid exercise of the exclusive power conferred on Parliament by head 27 of s. 91 of the *British North America Act.* The question before us may therefore be stated in the following terms. Where Parliament has, in the valid exercise of its exclusive power under head 27 of section 91 to make laws in relation to the criminal law, enacted that a certain course of conduct shall be punishable as an offence against the state provided it is accompanied by a specified intent, is it within the power of the Legislature to enact that the very same course of conduct shall be punishable as an offence whether or not that specified intent exists? With the greatest respect for all those who have, in this and other cases, expressed a different view I am of opinion that so long as section 221(2) of the *Code* continues in force, the Legislature has no such

power, and I am in agreement with the conclusion reached in the case at bar by the learned Chief Justice of Manitoba and by the learned County Court Judge and also with the conclusion reached by Laidlaw J.A. in delivering the unanimous judgment of the Court of Appeal for Ontario in *Regina v. Dodd*[1].

The whole subject-matter of the charge against the appellant has, in my opinion, been drawn by Parliament within the ambit of the criminal law with the effect of suspending the provincial legislative authority in relation to that subject-matter.

I would allow the appeal, set aside the order of the Court of Appeal and restore the order of the learned County Court Judge setting aside the conviction and directing the return of the fine, costs and security paid by the appellant.

RITCHIE J.:—I agree with the Chief Justice that s. 147(1) of the Manitoba *Highway Traffic Act* is valid legislation enacted for provincial purposes and that the subject-matter with which it deals is substantially different from the offence defined in s. 221 of the *Criminal Code* in that the specific intent required under the latter section forms no part of the offence created by the provincial statute.

I would accordingly dismiss this appeal.

Appeal dismissed without costs, LOCKE *and* CARTWRIGHT JJ. *dissenting.*

Solicitors for the appellant: Yanofsky & Pollock, Winnipeg.

Solicitor for the respondent: Gordon E. Pilkey, Winnipeg.

[1] [1957] O.R. 5, 7 D.L.R. (2d) 436.