INDUSTRIAL ACCEPTANCE CORPORATION LIMITED (*Suppliant*) } APPELLANT;

AND

HER MAJESTY THE QUEEN (*Respondent*) ..... } RESPONDENT.

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*April 30
*May 1
*Oct. 6

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Constitutional Law—Criminal Law—Conditional Sale—Evidence—Property of innocent 3rd party forfeited under s. 21, The Opium and Narcotic Drug Act, 1929, c. 49—Whether section valid legislation—British North America Act, 1867, ss. 91(27), 92(13)—Whether conviction proved— Cr. Code ss. 827(5), 982—Canada Evidence Act, R.S.C. 1927, c. 59, ss. 12, 23, 24, 25.

The original owner of a motor car sold it subject to a conditional sales contract which provided title should remain in the vendor until the purchase price was paid in full. The owner assigned his title to the appellant, a finance company. An unpaid balance was outstanding when one R., a stranger to the transaction by which the appellant acquired title, was arrested when in possession of the car and on a summary trial before a county court judge, pleaded guilty to a charge of unlawfully selling a narcotic drug contrary to s. 4(1)(*f*) of *The Opium and Narcotic Drug Act, 1929* (Can.) c. 49. Following sentence by the judge, to secure forfeiture of the car under s. 21 of the Act, which provides that when a person is convicted of an offence against the Act, any motor car proved to have been used in connection with the offence shall be forfeited to Her Majesty, counsel for the Crown filed a certificate under the seal of the court, signed by the deputy court clerk certifying that R. had pleaded guilty as charged and had been sentenced. The appellant objected to admission of the certificate as proof of conviction but was overruled and the car declared forfeited. A Petition of Right praying a declaration that the suppliant was the owner of the car as against the respondent, judgment for possession of the car or in the alternative the sum of $1,800, was dismissed by the Exchequer Court. On appeal to this court appellant argued that the trial judge erred:

(i) In adjudging that s. 21, insofar as it operated to forfeit the appellant's motor car, was intra vires Parliament since such forfeiture was not necessarily incidental to the effective exercise of the legislative authority of Parliament over the criminal law.

(ii) In adjudging that the accused had been convicted as charged, in that such conviction was not proved by admissible evidence, and that the document which purported to establish a plea of guilty, did not do so.

Held: (1)—That the forfeiture of property used in the commission of a criminal offence is an integral part of the criminal law, a subject matter of legislation by s. 91 of the British North America Act, 1867, committed to the Parliament of Canada and s. 21 of *The Opium and Drug Act, 1929* is therefore intra vires Parliament.

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*PRESENT: Kerwin, Taschereau, Rand, Kellock, Estey, Locke and Cartwright JJ.

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Per: Kerwin, Taschereau, Estey, and Cartwright JJ. In the circumstances of the case the conviction was sufficiently proved by the certificate which fulfilled all the requirements of s. 982 of the *Criminal Code* and of s. 12(2) of the *Canada Evidence Act*. Had the objection been that it did not strictly comply with s. 23 of the latter Act, it might have been excluded, but since an adjournment could have been granted to permit the obtaining of a copy of the record, certified as contemplated by s. 23, effect should not be given to the objection raised.

Kellock J. agreed with the appellant's contention that neither s. 982 of the Code nor s. 12 of the Canada Evidence Act were relevant but held that the certificate was within s. 23. of the latter.

Held: (2)—(Locke J. dissenting). That the conviction of R. was sufficiently proved by the certificate tendered in evidence.

Per: Locke J. (dissenting). Section 982 of the Code has no application in civil proceedings. The provisions of s. 12 of the *Canada Evidence Act* were irrevelant and the certificate did not comply with s. 23 of that Act. The document tendered in evidence was inadmissible as proof of any fact. Even if its acceptance had not been objected to by the appellant, the Court itself should have disregarded it. (*Jacker* v. *International Cable Co.* 5 T.L.R. 13). The record did not support the contention that counsel for the appellant had consented to the fact of the conviction being proved by the document.

APPEAL from the judgment of the Exchequer Court of Canada, (1), Cameron J., dismissing the appellant's Petition of Right whereby it sought a declaration that it was the owner of a motor car forfeited under s. 21 of *The Opium and Drug Act, 1929* as against the respondent, judgment for possession of the car, or in the alternative damages.

H. F. Parkinson, Q.C. and *W. J. Anderson* for the appellant.

F. P. Varcoe, Q.C. and *J. T. Gray* for the respondent.

The judgment of Kerwin and Taschereau, JJ. was delivered by:

KERWIN J.:—A Plymouth sedan was seized and forfeited to His Majesty in His right of Canada under the provisions of section 21 of *The Opium and Narcotic Drug Act, 1929*, c. 49:—

21. When any person is convicted of an offence against this Act, the opium pipe or other article or the drug in respect of which the offence was committed and all receptacles of any kind whatsoever found containing the same, and any vehicle, motor car, automobile, boat, canoe, aeroplane or conveyance of any description, proved to have contained such opium pipe or other article or drug or to have been used in any manner in connection with the offence for which such person has been so convicted, and any moneys used for the purchase of such drug, shall be forfeited to His Majesty, and shall be delivered to the Minister for disposition.

(1) [1952] Ex. C.R. 530.

The original owner of the sedan has sold it, in the Province of Ontario, under a conditional sale contract to one Ciampi, and later the original owner assigned to the appellant the contract under which a considerable sum remains owing and unpaid. In June, 1951, the sedan was seized at Windsor, Ontario, while in the possession of a stranger to the transaction by which the appellant had acquired its title. That stranger, under the name of Patrick Charles Riley, pleaded guilty to a charge of having illegally sold a narcotic drug contrary to s. 4(1)(*f*) of the Act and was thereupon sentenced in a County Court Judges' Criminal Court. The judge of that Court found, and so certified, that the sedan had been used in the commission of the offence. The forfeiture followed and the appellant by petition of right claims a declaration that it is the owner of the sedan and judgment for possession, or in the alternative, $1,800. For the reasons given by my brother Cartwright I agree that there is no substance in the contention of the appellant that the conviction was not properly proved and that the offender was not shewn to be the same person as Patrick Charles Riley mentioned in the respondent's defence.

On the other question, s. 21 of the Act is, in my opinion, within the competence of Parliament as it is part and parcel of "The Criminal Law . . . including the Proceedings in Criminal Matters" which, by head 27 of s. 91 of the British North America Act, 1867, is within the exclusive jurisdiction of Parliament: *A.G. for Ontario* v. *Hamilton Street Ry.* (1); *Proprietary Articles Trade Association* v. *A.G. for Canada* (2). The mere fact that s. 21 of the Opium and Narcotic Drug Act affects property and civil rights is of no concern since in pith and substance it does not attempt to invade the provincial legislative field. It provides for the forfeiture of property used in the commission of a criminal offence and is, therefore, legislation in relation to criminal law. As early as 1896 this Court in *O'Neil* v. *A.G. of Canada* (3), brushed aside an argument that certain legislation of the Parliament of Canada was invalid as being "so destitute of any reasonable foundation that it calls for no observation." Chief Justice Strong pointed out the peculiar nature of the proceedings but made

(1) [1903] A.C. 524. (2) [1931] A.C. 310.
(3) 26 Can. S.C.R. 122.

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the remark quoted with reference to the contention that the confiscation of certain moneys under s. 575 of the 1892 *Criminal Code* was illegal as being an interference with property and civil rights in the Province. That section provided that a magistrate might authorize a constable who had reported in writing that there were good grounds for belief that a house, place, etc., was kept and used as a common gaming house, to enter therein and seize money; and the section also provided that "any money or securities seized under this section shall be forfeited to the Crown for the public uses of Canada."

I do not deal with those sections of the *Criminal Code* providing for forfeiture or dealing with what might be argued are civil rights because they are not in question upon this appeal. Nor do I find it necessary to consider the provisions for forfeiture under the Acts respecting customs and excise since those topics fall within s. 122 of the British North America Act: *A.G. for British Columbia* v. *McDonald Murphy Lumber Co.* (1), referred to in *A.G. for British Columbia* v. *Kingcombe Navigation Co.* (2). The constitutional validity of a provision of the Excise Act was not in issue in *The King* v. *Krakowec* (3), and I mention the decision only because this Court had no difficulty in determining that the relevant enactment governed the vehicle although its legal owner had no knowledge of the illegal use which was being made of it.

The appeal should be dismissed with costs.

RAND J.:—Several questions were raised on the argument of this appeal, but the only one of substance is that which challenges the validity of s. 21 of the Opium and Narcotics Drug Act, c. 24 of the Statutes 1929. The section reads:— (The section is set out at p. 274).

The Industrial Company is the owner under a conditional sale of an automobile which was shown to have been used in connection with an offence committed against the Act by a man named Riley and was seized as forfeited under the section quoted. Riley was not the original purchaser

(1) [1930] A.C. 357 at 364. (2) [1934] A.C. 45 at 57.
(3) [1932] S.C.R. 134.

of the car and no connection between him and the purchaser was shown. No contention is made that the language of the section does not extend to every interest or title in the car, and the case for the appellant is that the section so interpreted is ultra vires of Parliament.

The forfeiture of property used in violation of revenue laws has for several centuries been one of the characteristic features of their enforcement and the considerations which early led to its adoption as necessary are not far to seek. Smuggling, illegal manufacture of liquors, illegal sale of narcotics and like activities, because of their high profits and the demand, in certain sections of society, for them, take on the character of organized action against the forces of law; and with the techniques and devices, varying with the times, that have been open to these enemies of social order, the necessity to strike against not only the persons but everything that has enabled them to carry out their purposes has been universally recognized.

In Canada this view has been followed from the earliest times. By c. 5, statutes of Upper Canada 1801, dealing with goods imported from the United States, s. 11 provided:—

> . . . And where the value, according to the highest market price of the same, shall amount to twenty pounds, the vessel, boat, raft, or carriage, with the tackle, apparel, furniture, cattle, harness, and horse or horses thereto respectively belonging, shall also become forfeited, and shall and may be seized by the said Collector or deputy, subject nevertheless to condemnation by due course of law.

C. 11 of the statutes of 1824, repealing the foregoing Act, provided in s. 9 that

> If any master or person having the charge or command of any vessel, boat, raft, or carriage, shall make a false report, such vessel, boat, raft or carriage, and the tackle, apparel, furniture, cattle, horse or horses, and harness thereunto respectively belonging, shall be forfeited and liable to seizure by the Collector.

and by s. 10:—

> That all the goods, wares or merchandise which shall be imported into this province from the United States of America, and which shall not be entered according to the provisions of this Act shall be forfeited, together with the vessel, boat, raft, or carriage, in or upon which the same shall be found or shall have been imported, and the tackle, apparel, furniture, cattle, horse or horses, and harness thereunto respectively belonging.

These provisions, in varying language and more detailed application, have been continued to the present day.

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The laws dealing with smuggling and excise violations in Great Britain were consolidated by c. 53 of 7-8 George IV, s. 32 of which contains similar language attaching forfeiture to property used in connection with the offences mentioned.

From this uniform legislative judgment, it is at once apparent that forfeiture has from the beginning been treated as one of the necessary conditions for compelling substantial obedience to revenue laws. It was conceded that so far as it applied to the property of the offender, no question of validity arose; but long experience has shown that the seizure of such property cannot be made the starting point for civil contests over ownership. The absolute forfeiture is an inseparable accompaniment of punitive action, and the administration of the law would be seriously impeded were any obstacles to prompt and conclusive action placed in the way of its enforcement.

These considerations apply *a fortiori* to the suppression of such an evil as the narcotics traffic. Here, not the revenue, but the health as well as the moral and social condition of the community are endangered by a most insidious and destructive exploitation of human weakness. The difficulties attending its detection are multiplied many fold and the necessity for these strict and unqualified measures correspondingly greater.

The forfeiture of property used in the commission of such offences is then an integral part of criminal law, a subject matter of legislation by s. 91 committed to the Dominion Parliament and the contention against its validity must be rejected with costs.

KELLOCK J.:—For the reasons given by my brother Rand, I think that s. 21 of *The Opium and Narcotic Drug Act, 1929,* is intra vires the Parliament of Canada. The only other point in the appeal with which I desire to deal is the submission on behalf of the appellant that there is no proof of the conviction of the appellant.

It is provided by s. 4(1) of the statute that

> Every person who . . . sells . . . shall be guilty of an offence, and shall be liable (i) upon indictment, to imprisonment . . . or (ii) upon summary conviction . . . to imprisonment . . .

In paragraph (ii) above, "upon indictment" means unquestionably, "upon conviction upon indictment".

The word "conviction" by itself is ambiguous. It may be used to include both verdict and judgment thereupon, or as meaning verdict only. In my view, it is quite plain that in s. 21 the word is used in the sense of verdict only. The judgment thereupon is quite immaterial for the purposes of the section.

In *The Queen* v. *Blaby* (1), the prisoner was tried for feloniously uttering counterfeit coin upon an indictment under 24 & 25 Vict. c. 99, s. 12, which, after charging her with the misdemeanour of unlawfully uttering a counterfeit coin in 1894, proceeded to charge her with a previous conviction in 1888 for a similar offence. It concluded in the usual form, that the prisoner had feloniously uttered the counterfeit coin on the second occasion. S. 9 of the statute provided that a person who utters counterfeit coin is guilty of a misdemeanour and "being convicted thereof" is liable to imprisonment. By s. 12, a person who has been convicted of a misdemeanour under s. 9 and afterwards commits a misdemeanour mentioned in that section, is guilty of felony, "and being convicted thereof" is liable to penal servitude.

The prisoner was given in charge upon the first part of the indictment only, which charged the unlawful uttering in 1894; to this charge she pleaded guilty. She was then given in charge upon the second part of the indictment, which charged the previous conviction, to which she pleaded not guilty. The certificate as to the earlier conviction showed that she had been released upon finding a recognizance to come up for judgment when called upon.

The prisoner's counsel submitted that in order to constitute a conviction, there must be both verdict and judgment; that the certificate showed that no judgment had been pronounced against the prisoner but only an order made empowering her to be released upon finding a recognizance to come up for judgment, and there was, therefore, no case to go to the jury. It was, however, held by the Court of Crown Cases Reserved that the word "convicted" in ss. 9 and 12 meant "found guilty" and that the sentence was to follow on the conviction. It was also held that a plea of guilty would equally be a conviction. In my view, the statute in question in the case at bar is to be similarly

(1) [1894] 2 Q.B. 170.

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construed. "Convicted" in s. 21 means "found guilty" and a plea of guilty is equally a conviction. The judgment pronounced upon that plea being quite irrelevant, the only question, therefore, is as to proof of the plea.

I agree with the contention of the appellant that neither s. 982 of the *Criminal Code* nor s. 12 of *The Canada Evidence Act* are relevant but that the relevant provision is to be found in s. 23 of the latter statute, which provides that:

> Evidence of any proceeding or record whatsoever of, in or before any court in . . . any province of Canada . . . may be made in any action or proceeding by an exemplification or certified copy thereof, purporting to be under the seal of such court . . .

In my view, "proceeding" as first used in the section is used in the sense of "step", and the section has been so construed; *Rex* v. *Kobold* (1); *U.S.A.* v. *Watson* (2).

Coming to Exhibit "B", there can be no doubt that the fifth count there set out is a copy of the actual charge. In my opinion, in going on to certify as to Riley that

> On being arraigned on CHARGE NUMBER FIVE (HEREINBEFORE SET OUT) before His Honour Judge Legris on the twenty-first day of February, in the year 1952, he PLEADED GUILTY THEREOF AS CHARGED,

the exhibit is within the section. Its effect is to certify that the plea entered to the charge was "guilty as charged".

I would dismiss the appeal with costs.

LOCKE, J. (dissenting in part):—It is conceded on behalf of the appellant that *The Opium and Narcotic Drug Act, 1929* is in pith and substance criminal law, within the meaning of that expression in s-s. 27 of s. 91 of the British North America Act, but it is contended that the provision of s. 21 authorizing the forfeiture of a motor car used in any manner in connection with the commission of an offence against s. 4 is not "necessarily incidental to make such legislation effective", to adopt the language of the appellant's factum. Thus, while the jurisdiction of Parliament to declare that the sale of narcotic drugs is a crime is not disputed, we are asked to say that one of the penalties provided for the commission of such an offence is not really necessary for the effective prevention and punishment of the crime.

(1) (1927) 37 Man. R. 37. (2) (1924) 63 Que. S.C. 19.

The admission as to the true nature of the statute is, in my opinion, fatal to this contention. It is for Parliament and not for the courts to decide the nature of the punishment which may be imposed for a breach of the prohibitions contained in s-s. 1 of s. 4. While, in my opinion, it is really aside from the point, the provision for the forfeiture is an added punishment to the offender, whether the vehicle be owned by him or by some other person who, as in the present case, is entirely free of any complicity in the matter.

In the latter case, it can scarcely be suggested that it would be an answer to a demand by the owner upon the offender for the return of his motor car that it had been taken from his possession by the Crown and became forfeited under the provisions of s. 21. I am quite unable to understand how, in these circumstances, it can be said that the Court has any jurisdiction whatever in the matter. The fact that the present appellant, the owner of the car in question, knew nothing of the use to which its property was being put by Riley is the basis for the claim that the forfeiture of its property is an interference with its property and civil rights and thus trenches upon the jurisdiction of the Province. On this aspect of the matter, it appears to me to be sufficient to refer to the language of Lord Atkin, in delivering the judgment of the Judicial Committee in *Proprietary Articles Trade Association* v. *A.G. for Canada* (1):—

> If then the legislation in question is authorized under one or other of the heads specifically enumerated in s. 91, it is not to the purpose to say that it affects property and civil rights in the Provinces. Most of the specific subjects in s. 91 do affect property and civil rights but so far as the legislation of Parliament in pith and substance is operating within the enumerated powers there is constitutional authority to interfere with property and civil rights.

These proceedings were initiated by a petition of right and the case advanced by the appellant is that it was the owner of the motor vehicle as the assignee of the conditional sale contract signed by one Ciampi as purchaser, that the Crown claimed that the motor vehicle had been forfeited under s. 21 of *The Opium and Narcotic Drug Act, 1929* and retained possession of it. The prayer for relief asked a declaration that the suppliant is the owner of the vehicle, or alternatively damages. The respondent by the amended statement of defence justifies the retention of the vehicle

(1) [1931] A.C. 310 at 326.

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on the ground that it had been used in connection with the sale of a narcotic drug by one Patrick Charles Riley, contrary to the provisions of the Act, and alleged that Riley had been convicted of that offence at Windsor on February 21, 1952. These allegations were put in issue by the reply.

At the trial the suppliant proved its ownership of the motor vehicle. The record is silent as to how it came to be in the possession of Riley at the time the offence was committed. At the conclusion of the suppliant's case, the respondent gave evidence as to the circumstances under which the vehicle had been seized. It appears that Constable La Brash of the Royal Canadian Mounted Police had purchased heroin from Riley at a time when the latter was driving the car in question, which was thus, on his conviction, forfeited to the Crown under the provisions of s. 21 of the Act. It was an essential part of the Crown's case to prove that Riley had been convicted of an offence against the Act. As proof of this fact, counsel for the Crown tendered a document purporting to be signed by Margaret L. Whelan, beneath whose signature there appeared the words "Deputy Clerk C.C.C.E." and to which the seal of the County Court of the County of Essex was affixed. By this document the Deputy Clerk certified, *inter alia,* that Patrick Charles Riley had been committed to gaol for trial and was on bail awaiting trial on the charge, *inter alia,* of having on the 16th day of June 1951, at the City of Windsor in the County of Essex, unlawfully sold a drug, to wit, diacetylmorphine, to one Charles J. K. La Brash, without first obtaining a licence from the Minister or without other lawful authority, contrary to s. 4(1)(*f*) of *The Opium and Narcotic Drug Act, 1929* and amendments thereto, that he had appeared before His Honour Judge Legris, a judge of the County Court of the County of Essex on November 15, 1951, and elected for trial by a judge without the intervention of a jury, and that thereafter, on being arraigned on this charge before the said judge, he pleaded guilty and was thereupon sentenced by His Honour Judge Legris on the said charge to:—

> six months, plus a fine of $200.00, or in default of payment of said fine an additional three months: the same to run concurrently with any other sentence imposed on the said date by His Honour Judge Legris.

On the reverse side of the second page of this document there appeared a notation signed by the County Court Judge finding that the automobile in question in the proceedings was used in the commission of the offence above mentioned.

Before considering the effect of what took place when this document was tendered as proof of the fact of the conviction, the admissibility of the document as proof of its contents is to be considered. S. 982 of the *Criminal Code,* which permits the use of a certificate signed by the Clerk of the Court or other officer having the custody of the records, containing the substance and effect only of any previous indictment and conviction for any indictable offence or a copy of any summary conviction as proof of such prior conviction, provides a means whereby in criminal proceedings such as those of the nature referred to in ss. 963 and 964 of the Code a previous conviction may be proven. The section, however, has no application in civil proceedings. S. 12 of the *Canada Evidence Act* provides a manner by which a conviction may be proved in cases where a witness has been questioned as to whether he has been convicted of any offence and either denies the fact or refuses to answer, but this can have no application to the present matter. S. 23 of the *Canada Evidence Act* permits evidence of any proceeding or record in any court in Canada being made by "an exemplification or certified copy thereof" purporting to be under the seal of such court. But this equally is without application. The word "exemplification" has a well defined legal meaning, being an attested copy or transcript of a record. The document tendered, however, on its face did not purport to be an exemplification or copy of any record but merely stated a series of facts. Presumably when the prisoner pleaded guilty, a record was prepared by the prosecuting officer, as required by s-s. 5 of s. 827 of the Code, and a record in Form 60 signed by the Judge. An exemplification of that document would clearly have been admissible and would have proved the conviction. The document tendered and received in evidence was, however, in my opinion, inadmissible as proof of any fact.

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Constable La Brash gave evidence that he was present when Riley pleaded guilty and was sentenced by His Honour Judge Legris but this evidence was clearly inadmissible as proof of the conviction (*R.* v. *Smith* (1); *Reg.* v. *Bourdon* (2); *Hartley* v. *Hindmarsh* (3) (a civil action); *Mash* v. *Darley* (4)).

There remains the question as to the effect of what took place before the learned trial Judge when the so-called certificate was tendered. Counsel appearing for the suppliant at the trial, having first objected to the oral evidence as proof of the conviction, was asked by the learned trial Judge if he was objecting to proof by admission of a certified copy of the conviction. It is, however, to be noted that this is not what the document purported to be. In reply, counsel said:—

> I am not objecting to my friend putting in the certificate for what it is worth; I am not admitting that it constitutes proof of the conviction.

The document was then marked as an exhibit, whereupon counsel again said that he wanted to make it clear to counsel for the Crown that he was not "admitting his introduction of the certificate as proof of the conviction" and did not want it to be said that he had misled him into believing that he had done so, and that:—

> I do not want my friend to place any reliance on the certificate which he is putting in, based on any apparent compliance on my part.

to which counsel for the Crown is reported to have said:—

> I am not placing the utmost reliance on it as proof of the conviction. In the meantime I submit it.

Following this, the learned trial Judge said to counsel for the suppliant that he understood that he was not objecting to the certificate going in but that he was not admitting that the admission of the certificate proved the conviction of the person, to which counsel replied:—

> I am saying, my lord, that under s. 24 of the Evidence Act, since this document purports to be certified by the clerk of the court that it is admissible for what it is worth. I do not go any further than that.

The reason for the reference to s. 24 of the Evidence Act is not clear since the document tendered did not purport, as I have said, to be a copy of any record.

(1) (1828) 8 B. & C. 341.
(2) (1847) 2 C. & K. 366.
(3) (1866) L.R. 1 C.P. 553.
(4) [1914] 3 K.B. 1226.

Counsel for the respondent has contended before us that the admissibility of the document was not objected to and that, accordingly, it should be received as proof of its contents. I am unable to accept this contention. The passages above quoted make it abundantly clear that counsel for the suppliant objected to the document being accepted as proof of the conviction. If the matter were, however, to be considered on the footing that document had been admitted without objection, since it was, in my opinion, clearly inadmissible as proof of any fact, we should in this Court disregard it. In *Jacker* v. *International Cable Company* (1), on an appeal from Hawkins, J., it appeared that a document admitted in evidence at the trial was wrongly admitted and that no objection had been taken to its admission. The Court consisting of Lord Esher, M.R., Fry, L.J. and Lopes, L.J., were unanimously of the opinion that the evidence should be disregarded. In delivering judgment, the Master of the Rolls said in part that if counsel did not object to the admission of the document at the trial it was the duty of the Judge to reject it when he came to give his judgment and that the Court of Appeal would do so or, if it were objected to and admitted the Court was bound to reject it, their duty being to arrive at a decision upon legal evidence. Lopes, L.J. said that in cases where evidence was improperly admitted before a Judge without a jury it was the duty of the Court of Appeal to disregard it, though it had been received without objection. This case, it may be noted, is cited as authority for the proposition stated in the 9th Edition of Phipson on Evidence at p. 711 and in Taylor on Evidence, 12th Edition, p. 1161.

I am unable, with respect for contrary opinion, to see anything in the record in this case to support a contention that counsel for the suppliant consented, as of course he might, to the fact of the conviction being proved in this manner. I find nothing in the record to support any such contention, indeed the statements made by counsel for the suppliant were to the direct contrary.

I would allow this appeal and set aside the judgment at the trial and direct that judgment be entered declaring that the suppliant was entitled to the possession of the motor

(1) (1888) 5 T.L.R. 13.

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vehicle in question, as against the Crown, at the time of the commencement of the proceedings and that, if such vehicle is not in the possession of the Crown, there be a reference to the Registrar of the Exchequer Court to determine its value at the time of seizure, the appellant to have judgment for the amount so found, together with the costs of the trial, the reference and of this appeal.

The judgment of Estey and Cartwright, JJ. was delivered by:—

CARTWRIGHT J.:—For the reasons given by my brother Rand I agree with his conclusion that s. 21 of *The Opium and Narcotic Drug Act* is *intra vires* of Parliament as being an integral part of the Criminal Law. It is therefore unnecessary to consider the authorities dealing with the circumstances in which Parliament may deal with matters which, though otherwise within the legislative competence of the provincial legislatures, are necessarily incidental to effective legislation by Parliament upon a subject of legislation expressly enumerated in s. 91 of the *British North America Act*.

It remains to consider the appellants' argument that the facts necessary to justify a forfeiture under s. 21 were not proved at the trial. The appeal was argued, and I think rightly so, on the assumption that, on the state of the pleadings, the appellant having proved its ownership of the automobile and that the respondent had taken possession of it and refused to give it up, the onus rested upon the respondent to prove (i) that a person had been convicted of an offence against *The Opium and Narcotic Drug Act*, and (ii) that the automobile had contained the drug in respect of which such offence was committed or had been used in some manner in connection with such offence.

The case for the respondent as pleaded was that one Patrick Charles Reilly of the City of Windsor, was on the 21st day of February, 1952, at Windsor, Ontario, convicted of having illegally sold a narcotic drug contrary to s. 4(1)(*f*) of the Act, and that the automobile in question was proved to have contained the narcotic drug or to have been used, and did in fact contain the narcotic drug and was in fact used, in connection with the said offence for which the said

Patrick Charles Reilly was so convicted, whereby the said automobile became forfeited to Her Majesty under the provisions of Section 21 of the Act.

The evidence at the trial related to an offence committed by Patrick Charles *Riley* but it is clear that he was one and the same person as that intended to be described by the words in the Statement of Defence "Patrick Charles Reilly", and if necessary leave to amend the Statement of Defence by striking out the word "Reilly" wherever it occurs and substituting the word "Riley" should now be given.

The more serious and difficult question is whether the evidence of the conviction was legally admissible and sufficient.

To prove the conviction counsel for the respondent at the trial filed as Exhibit "B" a certificate which so far as relevant reads as follows:—

(Crest)

In the County Court Judges' Criminal Court
of the County of Essex

The King against Patrick Charles Riley. This is to certify that Patrick Charles Riley, who was committed to Gaol for trial and who was on bail awaiting trial,

1 . . .
2 . . .
3 . . .
4 . . .

And 5: FURTHER FOR THAT HE, on or about the 16th day of June, 1951, at the city of Windsor, in the county of Essex, did unlawfully sell a drug, to wit, Diacetylmorphine, to one Charles J. K. Labrash, without first obtaining a license from the Minister, or without other lawful authority, contrary to Section 4(1)(*f*) of the Opium and Narcotic Drug Act, 1929, and amendments thereto,

6 . . .

appeared before His Honour Joseph A. Legris, Esquire, a Judge of the County Court of the County of Essex, on the fifteenth day of November, in the year 1951, and elected trial by a Judge without the intervention of a Jury.

On being ararigned on CHARGE NUMBER FIVE (HEREINBEFORE SET OUT) before His Honour Judge Legris on the twenty-first day of February, in the year 1952, he PLEADED GUILTY THEREOF AS CHARGED.

He was thereupon on the said twenty-first day of February, in the year 1952, sentenced by His Honour Judge Legris on the said charge to SIX MONTHS PLUS A FINE OF $200, OR IN DEFAULT OF PAYMENT OF SAID FINE, AN ADDITIONAL THREE MONTHS: THE SAME TO RUN CONCURRENTLY WITH ANY OTHER SENTENCE IMPOSED ON THE SAID DATE BY HIS HONOUR JUDGE LEGRIS.

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IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this said Court at the City of Windsor, in the County of Essex, this 21st day of February, 1952.

MARGARET L. WHALEN,
(This is a written signature),
Deputy Clerk, C.C.C.E.

[SEAL]

Presiding Judge
J. A. LEGRIS,
(This is typewritten).

On the back of the Certificate appears the following:—

I FIND THAT AUTOMOBILE BEARING 1951 ONTARIO LICENSE NUMBER 855R4 WAS USED IN THE COMMISSION OF THE WITHIN OFFENSE COUNT NUMBER FIVE (5).

JOSEPH A. LEGRIS,
(This is a written signature),
Judge, County Court,
County of Essex.

Having produced this certificate and read it, Mr. Bagwell, who was counsel for the respondent at the trial, asked the witness who was then in the box, Constable Labrash, who was the Charles J. K. Labrash mentioned in charge number 5 set out above, whether he was in Court when Riley pleaded guilty. The witness replied in the affirmative and the following discussion ensued:—

MR. ANDERSON (counsel for the appellant at the trial): My lord, may I at this juncture say, with respect, that as to proof of the conviction I take the position it cannot be proved by the evidence of anyone who was present, or upon the evidence as to anything they may have heard at the trial. I object to any question directed to that end.

HIS LORDSHIP: You are not objecting to proof by admission of a certified copy of the conviction?

MR. ANDERSON: I am not objecting to my friend putting in the certificate for what it is worth; I am not admitting that it constitutes proof of the conviction.

MR. BAGWELL: I put the certificate in as proof of the conviction. I think it is well established.

HIS LORDSHIP: The certificate of conviction will be Exhibit No. B.

EXHIBIT NO. B.: Certificate of conviction of Patrick Charles Riley on 21st February 1952, on charge under S. 4(1)(*f*) of the Opium and Narcotic Drug Act. Filed by respondent.

MR. BAGWELL: And now, having proved the conviction, I intend to ask the constable to further substantiate it if he can; after having had the conviction read to him, and from sitting in court on the day when the conviction was made, can he identify Mr. Riley as the man convicted?

MR. ANDERSON: Again, my lord, I do not want to interrupt unnecessarily but this is a crucial part of the Crown's case, and I want to make it clear to my friend that I am certainly not admitting his introduction of the certificate as proof of the conviction. And I do not want

it subsequently to be said that I misled him into believing I did so. This is a judicial (sic) statute that is being enforced against us, and the strictest proof of the conviction is called for. I do not want my friend to place any reliance on the certificate which he is putting in, based on any apparent compliance on my part.

MR. BAGWELL: I am not placing the utmost reliance on it as proof of the conviction. In the meantime, I submit it.

HIS LORDSHIP: I understand that you are not objecting to the certificate going in but you are not admitting that the admission of the certificate establishes the conviction of the person for that offence.

MR. ANDERSON: I am saying, my lord, that under sec. 24 of the Evidence Act, since this document purports to be certified by the clerk of the court that it is admissible for what it is worth. I do not go any further than that.

HIS LORDSHIP: I will hear your argument later on.

MR. BAGWELL: With your lordship's permission, I intend to ask the constable further if he was in court when the conviction was made.

HIS LORDSHIP: I see no objection to him stating the fact he was there and heard the conviction.

MR. BAGWELL: Q. Were you in court when the conviction was made?—A. Yes, sir, I was.

MR. ANDERSON: Again, my lord, is my objection clear, that this evidence cannot be directed to the conviction; I submit that it cannot be proved in that way.

HIS LORDSHIP: It probably is not proof under the Evidence Act; he is merely stating that he was present at the time the conviction was rendered.

There is no doubt that the evidence of Labrash, and of other members of the R.C.M.P. who were also called, proved conclusively that the individual Riley who sold the drug to Labrash at Windsor on June 16 1951 in the automobile in question and the individual Riley who, on February 21 1952, was arraigned before His Honour Judge Legris on charge number 5, above set out, pleaded guilty thereto and was sentenced, were one and the same person. The admissibility of this evidence to prove this identity could not be questioned. The case for the appellant is that, under the authorities, neither the evidence of these witnesses nor the certificate Exhibit "B" was legal proof of the conviction.

The statements in *Phipson on Evidence*, 9th Edition, at pages 582 and 583, that the conviction of any person charged with an indictable offence must, at common law, have been proved by production of the record or an examined copy thereof and cannot, where the record is in existence, be proved by the oral evidence of a witness who merely heard it pronounced, are supported by the authorities to which the learned author refers. I think, therefore,

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that the appellant's point is well taken that while the evidence of the witnesses Labrash, Bearesdorfer, McIver and Ramsay was admissible to prove identity it would not serve, if objected to, as evidence of the conviction. To hold otherwise, in the words of Lord Tenterden C.J. in *The King* v. *Smith* (1), "would be to break through the established rules of evidence, which is always a dangerous course." I am, however, of opinion that in the particular circumstances of this case the conviction was sufficiently proved by the certificate, Exhibit "B", referred to above. This certificate appears to have been drawn up pursuant to the provisions of s. 982 of the *Criminal Code* or s. 12(2) of *The Canada Evidence Act* and would have been admissible as proof of the conviction in any proceedings to which either of those sections was applicable. I incline however to agree with Mr. Parkinson's submission that neither of such sections applied and that the proper method of proof was by the production of an exemplification or certified copy of the record of conviction pursuant to s. 23 of *The Canada Evidence Act*. Strictly speaking, Exhibit "B" is neither an exemplification nor a certified copy of such record. The record of conviction was presumably drawn up in accordance with Form 60 as required by s. 827(5) of the Code. Exhibit "B" appears to me to contain all the essential matter which would be set out in a record of conviction such as is prescribed in Form 60. It commences by setting out that Patrick Charles Riley was committed to jail. It sets out the very words of all the offences with which he was charged. It sets out that he appeared before the judge and elected trial by a judge without the intervention of a jury, that he pleaded guilty, and that he was sentenced. The sentence is set out in full. It is certified under the hand of the Deputy Clerk and under the seal of the Court, which is a court of record. On the back of the sheet of the certificate to which the seal of the court is affixed is the signature of the judge. There is no doubt as to the authenticity of the document and, as already observed, it fulfills all the requirements of s. 982 of the *Criminal Code* and of s. 12(2) of *The Canada Evidence Act* and would be proof of the conviction in proceedings of a character even more serious than those in the case at bar.

(1) (1828) 8 B. & C. 341 at 343.

In civil cases the rules of evidence may always be relaxed by the consent of parties. As appears from the extract from the proceedings at the trial, set out above, counsel then appearing for the appellant (while making clear his position that the certificate did not prove the conviction) did not contest its admissibility. Had he done so, on the ground now urged that it did not strictly comply with s. 23 of *The Canada Evidence Act*, the learned trial judge might well have excluded it but in that case he would doubtless have allowed an adjournment to permit the obtaining of a copy of the record certified as is contemplated by s. 23. In my opinion effect should not be given to this objection.

One further point remains for consideration. It is submitted for the appellant that a person who has pleaded guilty to a charge of an offence under the Act and has been sentenced following such plea has not been "convicted of an offence" within the meaning of those words as used in s. 21. In my opinion this argument must be rejected. The cases of *The Queen* v. *Blaby* (1) and *The King* v. *Meehan* (2), appear to me to be conclusive against it.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Parkinson, Gardiner, Willis and Roberts.*

Solicitor for the respondent: *W. R. Jackett.*

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(1) (1894) 2 Q.B. 170.

(2) (1905) 2 I.R. 577.