HIS MAJESTY THE KING.....APPELLANT;

1940
* Oct. 29.
* Dec. 20.

AND

WILLIAM SINGER.....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Criminal law—War Measures—Regulation made by Governor in Council—No sanction provided—Application of section 164 of the Criminal Code—Regulation to "have the force of law"—Whether deemed to be an Act of Parliament—War Measures Act, R.S.C., 1927, c. 206, ss. 3 (2) and 4—Criminal Code, ss. 2 (1) and 164.

An order or regulation made by the Governor in Council under the *War Measures Act*, although it is thereby enacted that such order or regulation "shall have the force of law," is not an enactment passed by Parliament, i.e., an Act of Parliament, but is merely an enactment passed by the Government.

When an accused is charged of having disobeyed such an order or regulation, for the violation of which no penalty or other mode of punishment has been expressly provided, the disobedience so complained of is not punishable under section 164 of the Criminal Code, which relates only to violations of Acts of Parliament or of provincial legislatures.

Davis and Hudson JJ. dissenting.

APPEAL by the Attorney-General for Quebec from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), which (Barclay and Francoeur JJ. dissenting) dismissed the Attorney-General's appeal against the acquittal of the accused by Guérin C.E., Judge of Sessions of the Peace (2) on an information for violation of a regulation, restricting the sale of codeine, made by the Governor in Council under section 3 of the *War Measures Act*, R.S.C., 1927, c. 206, such violation allegedly constituting wilful disobedience of an Act of the Parliament, contrary to section 164 of the Criminal Code.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

O. Legrand K.C. for the appellant.

L. Gendron K.C. for the respondent.

* PRESENT:—Rinfret, Crocket, Davis, Hudson and Taschereau JJ.

(1) (1940) Q.R. 69 K.B. 121; 74 Can. Cr. Cas. 290.
(2) (1940) Q.R. 78 S.C. 126.

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The judgment of Rinfret and Crocket JJ. was delivered by

RINFRET J.—The *War Measures Act* was enacted in 1914. With certain modifications, it has remained in the statutes and is now found in chapter 206 of the Revised Statutes of Canada, 1927.

Its object is to confer special powers to the Governor in Council, which he may, by reason of the existence of real or apprehended war, invasion or insurrection, deem necessary or advisable for the security, defence, peace, order and welfare of Canada.

The Act reads (subs. 2 of s. 3) as follows:

> All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation.

The Governor in Council is by sec. 4 of the Act empowered to

> prescribe the penalties that may be imposed for violations of orders and regulations made under this Act, and
>
> (to)
>
> also prescribe whether such penalties shall be imposed upon summary conviction or upon indictment, but no such penalty shall exceed a fine of five thousand dollars or imprisonment for any term not exceeding five years, or both fine and imprisonment.

On the 11th day of September, 1939, purporting to act under the provisions of the *War Measures Act* and upon a report of the Minister of Pensions and National Health, the Governor in Council made an order to the following effect, amongst others:

> 2. No retail druggist shall sell or supply straight Codeine, whether in powder, tablet or liquid form, or preparations containing any quantity of any of the narcotic drugs mentioned in Parts I and II of the Schedule to the *Opium and Narcotic Drug Act,* mixed with medicinal or other ingredients, except upon the written order or prescription therefor signed and dated by a physician, veterinary surgeon or dentist whose signature is known to the said druggist, or, if unknown, duly verified before such order or prescription is filled. No such order or prescription shall be filled upon more than one occasion, and it shall be filed by such retail druggist and be available for subsequent inspection.
>
> 3. Any person found in possession of Codeine or preparation containing narcotic drugs mentioned in Parts I and II of the Schedule to the *Opium and Narcotic Drug Act,* mixed with other medicinal ingredients, save and except under the authority of a licence from the Minister

of Pensions and National Health first had and obtained, or other lawful authority, shall be liable to the penalties provided upon summary conviction under the provisions of Section 4 of the *Opium and Narcotic Drug Act*.

The *Opium and Narcotic Drug Act* referred to in the above quoted paragraphs of the Order is a Dominion statute (R.S.C., 1927, c. 144) which, as stated, contains a schedule wherein certain narcotic drugs are enumerated and which, up to the date of the Order, did not include Codeine.

Under the provisions of that Order, on November 6th, 1939, a charge was laid against the respondent, a retail druggist of the city of Montreal, for that

he did, without lawful excuse, disobey an Act of the Parliament of Canada for which no penalty or other mode of punishment is expressly provided, to wit: Paragraph two of regulations dated 11th day of September, 1939, of the *War Measures Act*, Chapter 206 of Revised Statutes of Canada, 1927, by wilfully selling Codeine, a narcotic drug mentioned in Part Two of the Schedule to the *Opium and Narcotic Drug Act* without first having had and obtained a written order or prescription therefor signed and dated by a physician, the whole contrary to Sec. 164 Criminal Code of Canada.

As must have been noted, the charge stated that "no penalty or other mode of punishment is expressly provided"; and it is a fact that the order or regulation under which the charge was laid does not contain any provision for a "penalty or other mode of punishment."

On this charge, the trial judge (C. E. Guérin, Judge of Sessions of the Peace) liberated the accused and dismissed the complaint on the ground that the order or regulation, as a consequence of which the charge was laid, was not an "Act of the Parliament of Canada or of any legislature of Canada," and that, therefore, section 164 of the Criminal Code did not apply.

Upon appeal, this judgment was affirmed (Tellier, C.J., St. Germain and Bond, JJ., forming the majority; Barclay and Francœur, JJ., dissenting). The formal judgment specifies as follows the ground in law on which the dissent is based:

Sur le motif qu'en loi le règlement en question doit être considéré comme faisant partie de la *Loi des Mesures de Guerre*, et que partant il y a lieu à l'application de l'article 164 C. Cr.

The Attorney-General is now before this Court under section 1023 of the Criminal Code on the question of law over which there has been dissent in the court of appeal.

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Section 164 of the Criminal Code enacts specifically that the offence must consist in wilfully doing any act which is forbidden, or omitting to do any act which is required to be done by an "Act of the Parliament of Canada."

It is an Act of the Parliament of Canada which the guilty person must have disobeyed without lawful excuse. And under those circumstances, if some penalty or other mode of punishment has not been otherwise expressly provided by law, the person found guilty is declared to be "liable to one year's imprisonment." In the present case, although the respondent was charged of having disobeyed an Act of Parliament for which no penalty or other mode of punishment was expressly provided, it is stated in the information and complaint that the disobedience complained of was in reality a disobedience to paragraph 2 of the regulation already referred to in this judgment.

The information is, therefore, for having disobeyed not an Act of Parliament, but a regulation made under an Act of the Parliament of Canada.

I agree with the trial judge and with the majority of the court of appeal that, in the premises, section 164 of the Criminal Code has no application.

Of course, the *War Measures Act* enacts that the orders and regulations made under it "shall have the force of law." It cannot be otherwise. They are made to be obeyed and, as a consequence, they must have the force of law. But that is quite a different thing from saying that they will be deemed to be an Act of Parliament.

An Act of Parliament is defined in the Criminal Code (sec. 2-1). It is there declared to include

> an Act passed or to be passed by the Parliament of Canada, or any Act passed by the legislature of the late province of Canada, or passed or to be passed by the legislature of any province of Canada, or passed by the legislature of any province now a part of Canada, before it was included therein.

In terms, therefore, the words: "Act of the Parliament of Canada" do not include regulations made under the provisions of such Act. It is clearly indicated in section 2 (1)—which is the Interpretation clause of the Criminal Code—that, in order to come under the appellation of an Act, the enactment must have been "passed by the Parliament of Canada" or "by the legislature of any province of Canada," etc.

A regulation made under an Act, and in particular a regulation under the *War Measures Act,* is not an enactment passed by Parliament; it is an enactment made by the Government.

An Act of Parliament, in order to become law and to form part of the statutes of Canada, must be adopted by the House of Commons, the Senate and receive the Royal Assent. It is debated publicly, to the knowledge of the public, and it comes into force on the day of its sanction by Royal Assent, which is given publicly.

The regulation takes the form of an Order in Council, debated secretly by the Privy Council and, generally speaking, will come into force as soon as it is signed by the Governor General, without there being any essential requirement for its publication.

These circumstances show the great difference between the Act of Parliament and the Order in Council, in so far as the people is concerned; and the difference takes even more importance when it is applied to section 164 of the Criminal Code, which requires for the guilt of an accused that he should have been doing or omitting any act "wilfully" and "without lawful excuse."

An additional point in respect of the difference between an Act of Parliament or a statute and an Order in Council may be found in the Act respecting the Publication of the Statutes (ch. 2 of the Revised Statutes of Canada, 1927) and in the *Canada Evidence Act,* with regard to evidence and to judicial knowledge.

It should be further noted that the delegation of powers to the Governor in Council, as expressed in the *War Measures Act* with regard to orders and regulations, merely enacts that these orders and regulations

> shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe,

with further power given to the Governor in Council to "prescribe the penalties that may be imposed for violation" etc. These provisions in the Act are far from being as strong, for the purpose of the appellant's argument, as the similar provision contained, for example, in the *Bankruptcy Act* (c. 11, R.S.C., 1927): "Such rules shall be judicially noticed and shall have effect as if enacted

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by this Act" (s. 161, par. 3), or in the *Explosives Act* (c. 62, R.S.C., 1927):

> All regulations made under this Act * * * shall have the same force as if they formed part of this Act (s. 5, par. 2),

or in the *Fisheries Act* (c. 73 of R.S.C., 1927):

> Every offence against any regulation made under this Act may be stated as in violation of this Act (s. 46).

or in the *Meat and Canned Foods Act* (c. 77, R.S.C., 1927):

> Such orders and regulations shall have the same force and effect as if embodied in this Act (s. 4, par. 2).

In the statute now under consideration, provisions equivalent to those just quoted are nowhere to be found; and, on the contrary, the clear distinction between the Act itself and the regulations made under the Act is recognized.

One would think that if Parliament intended the regulations under the *War Measures Act* to be considered by the courts as forming part of the Act and, therefore, to be susceptible of the application of section 164 of the Criminal Code, Parliament would have said so at least in similar language to that employed in the several Acts just above referred to.

Far from it, in paragraph 3 of the regulation made on the 11th day of September, 1939, the Governor in Council provides for penalties, and it is said therein that these penalties will be imposed "under the provisions of section 4 of the *Opium and Narcotics Act,*" thus relieving any offence against paragraph 3 of the regulation from the application of section 164 of the Criminal Code.

That indeed would lend colour to the respondent's argument that the regulations now under discussion, although in terms passed in virtue of the powers given to the Governor in Council by the *War Measures Act,* were, in fact, meant to affect the schedule of the *Opium and Narcotic Drug Act,* to which both the preamble of the Order in Council and paragraphs 2 and 3 thereof specifically refer. And it is interesting to note that, under that Act, the Governor in Council may make such orders and regulations as are deemed necessary or expedient for the carrying out of the intention of the Act, or may from time to time add to the schedule of the Act; but every Order

in Council in that behalf must be published in the *Canada Gazette* and shall take effect only at the expiration of thirty days from the date of such publication (ss. 21 & 22).

The question is not whether the consent of Parliament may be expressed by delegated authority and that consequently it is not necessary that an Act should be complete when it emerges from the debates in Parliament or at the time it leaves the hands of the legislative body; but the only question we have to decide in this case is whether the Orders in Council made by force of the delegated authority are to be deemed equivalent to an Act of Parliament within the meaning of section 164 of the Criminal Code. It is not to the purpose to call them "subordinate legislation" or the "complement of the legislation," for there is no denying the fact that the regulations provided for in the *War Measures Act* are not declared by Parliament to form part and parcel of the Act itself; and whether they are as effectual for the purpose of obedience and disobedience of the subject, they are not assimilable to the Act itself; and so far as concerns the application of section 164 of the Code, they may not be treated as if they had been enacted and were incorporated in the *War Measures Act.*

This view, it seems to me, is further strengthened by the fact that, by force of the Act itself, Parliament put it in the hands of the Governor in Council to prescribe the penalties that may be imposed for violation of the regulations, thus indicating further its intention that the matter should not be left to the general provisions contained in section 164 of the Code.

We have not here a statute such as was under consideration by the House of Lords in the case of *Chartered Institute of Patent Agents* v. *Lockwood* (1), where the words of the Act were that the rules "shall be of the same effect as if they were contained in this Act and shall be judicially noticed." The distinction between that Act and the *War Measures Act* is abundantly clear.

So, in the case before the House of Lords in *Minister of Health* v. *The King* (*on the prosecution of Yaffe*) (2), where the language was:

> The order of the Minister, when made, shall have effect as if enacted in this Act.

(1) (1894) 71 L.T.R. 205.

(2) [1931] A.C. 494.

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It was held there that this enactment did not preclude the Court from calling in question the order of the Minister, where the scheme presented to him for confirmation is inconsistent with the provisions of the Act, although in the particular case the scheme, whatever its defects, was found to be an improvement scheme within the meaning of the Act. However, it is evident that the wording of the statute discussed in that case was far different from the wording of the *War Measures Act,* in so far as it concerns the point now submitted to this Court.

We have been referred also to a number of other decisions rendered in English cases. I have very serious doubt whether, in any event, these decisions could be allowed to prevail against our Criminal Code and the plain language of section 164. But, moreover, in those cases, the English courts were called upon to interpret statutes differing in language and in aim from the Acts now before this Court (see Lord Davey in *Commissioners of Taxation* v. *Kirk* (1); and there is a clear distinction to be made between the present case and those in which the decisions referred to were rendered. In the latter, the offences against the regulations were common law misdemeanours before the statutes or the regulations prohibited them; in the matter now before us, the sale of Codeine never was in itself a misdemeanour; it was not even prohibited by the *Opium and Narcotic Drug Act* before the regulation of the 11th of September, 1939, came into force under the provisions of the *War Measures Act,* and for purposes which are there stated as being due to the existence of war. As I read the decisions, where an act, heretofore a misdemeanour at common law, is subsequently made an offence under the Criminal Code or under a statute or by virtue of the regulations made thereunder, if the code or the statute provides for no penalty as a consequence of the doing of the act which it prohibits, or of omitting the act which it requires to be done, the law steps in and establishes the mode of punishment; but if the act is made an offence merely as a result of the regulations and, I repeat, was not, up to the coming into force of the regulation, a common law misdemeanour, then the penalty must be found either in the regulation itself or must have been provided for by the Act of Parlia-

(1) [1900] A.C. 588, at 593.

ment or the statute under which the regulation is made, or otherwise the regulation is inoperative for want of any sanction.

For all these reasons, I am of the opinion that section 164 of the Criminal Code does not apply to a charge such as that brought against the respondent and that, under the circumstances, the information and charge was rightly dismissed by the trial judge and by the Court of King's Bench.

The appeal to this Court should, therefore, be disallowed.

The judgment of Davis and Hudson JJ. (dissenting) was delivered by

HUDSON J.—The question for decision in this case is whether or not the breach of a duty validly created by an Order in Council passed under the *War Measures Act* is a breach of that statute itself, within the meaning of article 164 of the Criminal Code.

The power of Parliament to pass the *War Measures Act* is not now open to question; nor is there any doubt about the power of the Governor in Council under the provisions of this Act to pass the particular order under consideration: see *In Re Gray* (1); *Rex* v. *Halliday* (2).

There is, however, in the Order in Council in question no provision for punishment in case of violation of its orders or regulations, although by the statute the Governor in Council were given express powers to impose penalties within prescribed limits.

In view of the absence of such a provision, the prosecution in this case was based on article 164 of the Criminal Code, which reads as follows:

> Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada, by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law.

The matter was heard in the first instance before Judge Guérin, Judge of the Sessions of the Peace at Montreal, who gave a considered judgment, in which he came to the conclusion that article 164 did not apply on the ground

(1) (1918) 57 Can. S.C.R. 150. (2) [1917] A.C. 260.

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that the offence charged was a violation of an Order in Council and not of a statute. On appeal to the Court of King's Bench, this was affirmed by a majority of the court, Mr. Justice Barclay and Mr. Justice Francœur dissenting.

At common law it was well settled that either a breach of a statute which concerns the public or any part of the public even where no penalty was prescribed, or a breach of an order or regulation passed under the authority of such a statute, was indictable: see Hawkins' Pleas of the Crown, 1824 edition, page 65, and *The King* v. *Harris* (1). The general rule as stated in Stephen's Digest of the Criminal Law, article 166, is as follows:

> Every one commits a misdemeanour who wilfully disobeys any statute of the realm by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, unless it appears from the statute that it was the intention of the Legislature to provide some other penalty for such disobedience.

and in support of this article the learned author refers to the common law authorities above referred to, as well as others. The article as drawn by him in this Digest appeared in substantially the same form in the draft Bill attached to the Report of the English Royal Commission on Criminal Law, 1880.

A similar statement is made by the late Mr. Justice Burbidge in his Digest of Criminal Law of Canada, 1890, at page 115, in the following language:

> Every one commits a misdemeanour who wilfully disobeys any statute by doing any act which it forbids or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, unless it appears from the statute that it was the intention of the Legislature to provide some other penalty for such disobedience.

The Canadian Criminal Code, as will be seen, follows very closely the language of this article. Beyond this and the statutes referred to by Judge Guérin and the *Interpretation Act,* there seems to be nothing bearing on the history of the present article 164 of the Code.

Section 2 of the *War Measures Act* provides that "all orders and regulations made under this section shall have the force of law."

Parliament has said to residents of Canada: "You must obey what is prescribed by the Governor General in Council within the limits of the authority we here give

(1) (1791) 4 Term 202.

them." If a person fails to observe the requirements of an Order in Council legally passed under this Act, he, in my opinion, disobeys the requirements of the statute itself, and in support of this, reference might be made to the case of *Willingale* v. *Norris* (1). The head-note is:

Where a statute gives power to an authority to make regulations, a breach of the regulations so made is an offence against the provisions of the statute.

A breach of regulations made under s. 4 of the *Hackney Carriages Act,* 1850, for enforcing order at standings for hackney carriages, is subject to the penalty of 40s. provided by s. 19 of the *Hackney Carriage Act,* 1853, for offences against that Act; inasmuch as the effect of s. 21 of the Act of 1853, which provides that the Acts of 1850 and 1853 are to be construed as one Act, is that s. 4 of the Act of 1850 has the same operation as if it were in fact contained in the Act of 1853, and therefore an offence against regulations made under s. 4 of the Act of 1850 is an offence against the Act of 1853.

Lord Alverstone, C.J. said at page 64:

I am of opinion that the effect of the provision contained in s. 21 of the Act of 1853 was to make one code or statute for the regulation of hackney carriages, and that therefore a general penal clause for breach of the provisions of the Act of 1853 would apply to any provision contained in the three Acts of 1843, 1850, and 1853. That is the natural effect of this legislation where there are amending Acts intended to be read as one statute. If it be said that a regulation is not a provision of an Act, I am of opinion that *R.* v. *Walker* (2) is an authority against that proposition. I should certainly have been prepared to hold apart from authority that, where a statute enables an authority to make regulations, a regulation made under the Act becomes for the purpose of obedience or disobedience a provision of the Act. The regulation is only the machinery by which Parliament has determined whether certain things shall or shall not be done.

and Mr. Justice Bigham at page 66:

In my opinion, to break the regulations made under the authority of a statute is to break the statute itself.

and Mr. Justice Walton at page 67:

Upon the second question, again not without some difficulty, I have come to the conclusion that in the present case there was charged against the respondent an "offence against the provisions of this Act" within the meaning of s. 19 of the Act of 1853. It seems clear that the Act of 1850 must be read as one—construed as one—with the Act of 1853, and therefore s. 4 of the Act of 1850 has now exactly the same effect as if it were in fact a section contained in the Act of 1853, and I have come to the conclusion that, if the facts should be proved hereafter, there was a breach of the provisions of s. 4 of the Act of 1850. That section gives power to make regulations, and I think there is involved in this that regulations so made must be obeyed, and if so it follows that a breach of such regulations is a breach of the law contained in that sec-

(1) [1909] 1 K.B. 57. (2) (1875) L.R. 10 Q.B. 355.

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tion. Section 4 of the Act of 1850 is made a provision of the Act of 1853, and therefore I think that the alleged offence was one "against the provisions of this Act" within the meaning of s. 19 of the Act of 1853. My difficulty has been—and I had considerable doubt about it at first—as to whether the words "provisions of this Act" can be read as meaning or including "regulations made under this Act," assuming that the regulations were made under this Act, i.e., under the Act of 1853; whether there is not a distinction between provisions of the Act and regulations made under the Act; and whether one can read s. 19 of the Act of 1853 as if the words were "for every offence against the provisions of this Act, or regulations made under this Act." The doubt largely arises from the fact that in the Act of 1853 there is a series of provisions, e.g., in ss. 14, 15 and 16, which are express provisions of the Act, and to which directly, and naturally, the words of s. 19 apply. My doubt is whether s. 19 was intended to apply to anything beyond offences against express provisions contained in the Act of 1853. However, on the whole I have come to the conclusion that it applies to any breach of what must be construed as being a provision of the Act of 1853. In my judgment an offence against s. 4 of the Act of 1850 is an offence within the meaning of s. 19 of the Act of 1853.

This case was followed in the case of *Hart* v. *Hudson* (1), and is accepted by all of the text books as stating the law.

Another argument was also put forward, which is best stated in the language of Mr. Justice St. Germain as follows:

Le Parlement a donc délégué tous ses pouvoirs au gouverneur en conseil pour la mise en exécution des arrêtés ministériels passés en vertu de la dite loi, sauf la restriction ci-dessus quant à la peine, et il appartenait par conséquent au gouverneur en conseil de mentionner dans le décret en vertu duquel l'intimé a été mis en accusation que quiconque contreviendrait à ce décret serait sujet à telle peine fixée par le dit décret; bien plus, il appartenait aussi au gouverneur en conseil de déclarer que les peines qui seraient imposées pour infractions aux arrêtés et règlements établis sous la dite loi seraient ainsi imposées, soit après déclaration sommaire de culpabilité "upon summary conviction", ou soit par voie de mise en accusation "upon indictment."

It seems to me, however, that article 164 of the Criminal Code was passed for the very purpose of providing for cases where penalties were not otherwise imposed by the law, and applies to violation of the provisions of such orders as form part of the law authorized by a statute, as in this case.

With all respect to those who take a different view, I agree with the views of Mr. Justice Barclay and Mr. Justice Francœur in the court below, and would allow the appeal.

(1) (1928) 2 K.B. at p. 635.

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TASCHEREAU J.—The respondent, a druggist, was acquitted by Mr. Justice Guérin, of Montreal, of the charge of having without lawful excuse disobeyed an Act of Parliament for which no penalty is expressly provided, to wit, paragraph (2) of Regulations, dated the 11th day of September, 1939, of the *War Measures Act,* by wilfully selling codeine, a narcotic drug, without first having obtained a written order or prescription signed and dated by a physician, thus, committing an offence against section 164 of the Criminal Code.

The Court of King's Bench of the province of Quebec (Barclay and Francœur JJ. dissenting) affirmed the judgment of the trial judge and the Crown has appealed to this Court.

The reason given by the trial judge, and the Court of King's Bench, is that there is an offence under section 164 of the Criminal Code, only when the Act complained of is forbidden by an Act of the Parliament of Canada, or of any legislature of Canada, and that a regulation passed under the *War Measures Act,* is not an Act of Parliament. Section 164 of the Code reads as follows:

> 164. Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada, by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law.

Section (3) of the *War Measures Act* confers special powers to the Governor General in Council and amongst other things says:—

> The Governor in Council may do and authorize such Acts and things and make from time to time such orders and regulations as he may, by reason of real or apprehended war, invasion or insurrection, deem necessary or advisable for the security, defence, order and welfare of Canada.

The same section has also the following provisions:—

> All orders and regulations made under this section shall have the force of law and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation.

Section 4 of the same Act empowers the Governor in Council to

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prescribe the penalties that may be imposed for violations of orders and regulations made under this Act, and (to) also prescribe whether such penalties shall be imposed upon summary conviction or upon indictment, but no such penalty shall exceed a fine of five thousand dollars or imprisonment for any term not exceeding five years, or both fine and imprisonment.

Pursuant to these powers given by Parliament, the Governor General in Council passed regulations forbidding the sale of codeine without a written prescription signed by a physician, but these regulations do not contain any provisions for a penalty.

It is beyond all dispute that Parliament has power to authorize the making of such regulations. The only question is whether the Order in Council can be interpreted as meaning an Act of Parliament. There is no doubt that all orders and regulations made under section 3 of the *War Measures Act* have the force of law, and may be enforced as the Governor General may prescribe, but, can it be said that a disobedience to the Order in Council is a disobedience to the statute itself?

It has been submitted by the Crown that an Order in Council issued in virtue of the *War Measures Act* becomes an integral part of the Act and that a violation of the Order in Council is a violation of the *War Measures Act* itself, and, therefore, of an Act of Parliament.

The *War Measures Act* does not, like other Acts enacted by the Parliament of Canada, provide that the regulations passed by the Governor General in Council shall form part of the Act nor does it say that every offence against such regulations shall be considered as a violation of the Act. Such provisions may be found in the *Bankruptcy Act,* the *Explosives Act,* the *Fisheries Act,* etc., but nothing of the kind is incorporated in the *War Measures Act,* and we find no provisions analogous to those which are in the Acts above mentioned.

I cannot come to the conclusion that in the present instance the violation of the Order in Council is tantamount to the violation of the *War Measures Act.* An Order in Council is passed by the Executive Council, and an Act of Parliament is enacted by the House of Commons and by the Senate of Canada. Both are entirely different, and unless there is a provision in the law stating that the Orders in Council shall be considered as forming part of the law itself, or that any offence against the regulations

shall be a violation of the Act, it cannot be said that the violation of an Order in Council is a violation of an Act of Parliament within the meaning of section 164 of the Criminal Code.

Furthermore, the word " Act " is defined in the Criminal Code as follows:—

Section 2, paragraph (1):

" any Act," or " any other Act," includes any Act passed or to be passed by the Parliament of Canada, or any Act passed by the legislature of the late Province of Canada, or passed or to be passed by the legislature of any province of Canada, or passed by the legislature of any province now a part of Canada before it was included therein.

It is to my judgment impossible to stretch the meaning of the word " Act " to such an extent so as to include an Order in Council.

I would, therefore, dismiss this appeal.

Appeal dismissed.

Solicitor for the appellant: *Omer Legrand.*

Solicitors for the respondent: *Gendron, Monette & Gauthier.*