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GEORGES ROY APPELLANT;

* Oct. 18, 19.

* Dec. 1.

AND

HIS MAJESTY THE KING RESPONDENT.

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

*Criminal law—Offence of stealing a “post letter” from a “post office”—
Meaning—Construction—Provincial “parliamentary post office”—
Criminal Code, sections 6 and 324—Post Office Act, R.S.C., 1927,
c. 161, ss. 2 (h, j, l), 4, 7, 35, 39, 101—Criminal Code, section 364.*

The appellant was charged, under section 364 of the Criminal Code, with having stolen “une lettre dans le bureau de poste du Parlement” in the city of Quebec. He was found guilty and the conviction was affirmed by a majority of the appellate court. The appeal in this Court was as to the proper construction of section 364 of the Criminal Code.

Held, Duff C.J. and Davis J. dissenting, that the appeal should be allowed and the conviction quashed.

Per Cannon J.—The control and responsibility of the Dominion post office authorities over the stolen letter ceased from the moment that it was delivered in the main post office to the representative of the provincial authorities.—In law, the letter was abstracted *after* it had been delivered to the duly constituted agents of the provincial authorities and it had passed out of the control of the Dominion post office: the abstraction took place when it was no more a “post letter” or “lettre confiée à la poste.”

Per Crocket J.—The parliamentary post office (bureau de poste du Parlement) was not a “bureau de poste” within the meaning of section 364 of the Criminal Code; and, also, the stolen letter was not a “lettre confiée à la poste” at the time of the theft in the sense of that expression as given in section 2 of the *Post Office Act*. The letter at that time was neither in a “post office” nor “being carried through the post,” the Post Office Department's control and responsibility of and for it having ceased upon its delivery at the so-called “bureau de poste” which was officered and operated by appointees of the Provincial Government entirely at the latter's expense and over which neither the Quebec city post office nor the Post Office Department of Canada had any control.

Per Kerwin J.—The parliamentary post office was not a “post office” within the meaning of section 2 (l) of the *Post Office Act*. A “post office” means any building * * * where any letter which may be sent by post is received * * * ; and it cannot have been intended that any letter which may be sent by post is *in* a post office unless it is *in* a building * * * which is under the control of the Postmaster-General as part of the postal service of Canada. Upon the evidence, the quarters in the Legislative Assembly building in Quebec, set aside by the provincial authorities cannot be said to be part of the postal service of Canada, even though what was done was by the consent or authority of the Postmaster-General.

* PRESENT:—Duff C.J. and Cannon, Crocket, Davis and Kerwin JJ.

Per Duff C.J. and Davis J. (dissenting).—Upon the evidence and in view of the findings of the trial judge, the officials of the Parliamentary Post Office, in all their activities, in undertaking to receive, collect send or deliver letters and in receiving, collecting sending, delivering letters and having in possession letters for the purpose of so conveying and delivering them, were acting under the authority of the Postmaster-General. The Parliamentary Post Office was a post office established by the Postmaster-General in exercise of his powers (section 7) under the *Post Office Act*, and, therefore, a post office within the contemplation of section 364 of the Criminal Code. Accordingly, the letter in question in this case had not ceased to be a “post letter” within the meaning of that section when it was abstracted by the appellant.

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APPEAL by the accused from the judgment of the Court of King’s Bench, appeal side, province of Quebec, dismissing his appeal, by a majority of the Court, from his conviction by J. H. Fortier J. after a summary trial for having stolen a “post letter” from a “post office” contrary to the provisions of section 364 of the Criminal Code.

F. Choquette K.C. for the appellant.

A. Rivard K.C. for the respondent.

The judgment of Duff C.J. and Davis J. (dissenting) was delivered by

DUFF C.J.—This appeal raises a question as to the scope of section 364 of the Criminal Code under which it is an offence to steal a “post letter” from a “post office.” The definition of “post office” in the *Post Office Act* is a very broad one and comprises (*inter alia*) under that term all places where “mailable matter” is “received or distributed, sorted, put up in packets or despatched.”

The appellant was charged with having stolen a “post letter” from the post office, which is generally referred to in the record under the designation “the Parliamentary Post Office.” He was found guilty. An appeal was taken to the Court of King’s Bench on various grounds. Only two of them will require discussion; first, that, “on the evidence,” the Legislative Post Office is not a “post office” within the meaning of section 364 of the Criminal Code; and, second, that the letter stolen was not a “post letter” within the meaning of that section.

These questions, in my conception of the evidence and of the findings of the trial judge, are, I am disposed to think,

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questions of mixed fact and law rather than of law; and, moreover, I am disposed to think that in substance the grounds of dissent in the Court of King's Bench are matters of mixed law and fact rather than matters of law. Since, however, I am satisfied that the appeal should be dismissed on the merits, I shall not further discuss the point of jurisdiction.

By section 6 of the Criminal Code:

In every case in which the offence dealt with in this Act relates to the subject treated of in any other Act the words and expressions used herein in respect to such offence shall have the meaning assigned to them in such other Act.

and before proceeding to the facts, it is convenient first of all to quote the precise terms of the definition of "post office" contained in the *Post Office Act*. That definition is as follows:

2 (1) "post office" means any building, room, post office, railway car, street letter box, street stamp-vending box, receiving box or other receptacle or place where post letters or other mailable matter are received or delivered, sorted, made up or despatched.

By section 7 of the Act, the Postmaster-General has authority to,

"(a) establish and close post offices and post routes."

Since there is nothing in the context which "otherwise requires," it follows that "post office" here has the meaning ascribed to the phrase in section 2 (1); and, in consequence, the Postmaster-General has authority under section 7 to establish a post office for providing any one or more of the services mentioned in this definition.

By section 35,

Subject to the provisions and regulations aforesaid, and the exceptions hereinafter made, the Postmaster-General shall have the sole and exclusive privilege of conveying, receiving, collecting, sending and delivering letters within Canada.

Our attention has not been called to anything in the "provisions and regulations aforesaid" which qualifies the application of this section in its bearing on this appeal. There is another section which ought not to be overlooked. Section 101 is in these words:

Every person who without the authority of the Postmaster-General, the proof of which authority shall rest on such person, places or permits or causes to be placed or to remain on his house or premises, the words *Post Office*, or any other words or mark which imply or give reasonable cause to believe that such house or premises is a post office or a place for the receipt of letters, shall, on summary conviction, incur a penalty not exceeding ten dollars for each offence.

2. Any person who, otherwise than in conformity with this Act, collects, sends, conveys or delivers, or undertakes to collect, send, convey or deliver any letter within Canada, or receives or has in his possession within Canada any letter for the purpose of so conveying or delivering it, shall, for each and every letter so unlawfully collected, sent, conveyed or delivered, or undertaken so to be, or found in his possession, incur a penalty not exceeding twenty dollars.

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The learned trial judge had before him a letter addressed by the Deputy Postmaster-General to the Postmaster at Quebec, who appears to have filled the role of Post Office Inspector for the city of Quebec, dated the 12th of March, 1919. That letter was written in response to a request made by the Legislative Assembly of Quebec "for the installation of a House of Assembly Post Office" and authorized the inauguration of such a post office, which I shall refer to hereafter as the Parliamentary Post Office. There were departmental memoranda, apparently, indicating the character of the office to be established which are not in evidence, but the letter, coupled with the facts found by the trial judge, determines with sufficient accuracy for our present purposes the character of it.

As to outgoing mail, the letter states:

Letters and other matter prepaid by postage stamps would be stamped and "primary" sorted in the Legislative Assembly Post Office. This mail would be sent in "lock" bags to the Quebec Post Office, where it would be carefully looked over before being distributed for despatch * * * All mail for despatch originating with any of the Provincial Departments should be deposited in the Legislative Assembly Post-Office.

As to incoming mail,

A duly authorized messenger representing all the Legislative Assembly Departments would call at the Quebec Post Office and sign for all registered mail for all the Departments, which he would deliver as instructed to the several Departments located in the Legislative Assembly building. The lock bag containing the ordinary mail would be sent to the Legislative Assembly Post Office, where it would be distributed and messengers from the various branches call at that post office for the mail.

* * *

Mails would be conveyed as often as required by a courier with horse drawn vehicle, whose services would be paid for by the Legislative Assembly.

Again,

* * * the Legislative Assembly Post Office would be a self-contained operating institution governed by the rules and regulations of the Post Office Department of Canada.

Now, this letter makes it quite clear that this Parliamentary Post Office was established at the request of the Legislative Assembly for the convenience of the Legislative Assembly and the Government departments housed

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in the same building and their employees; and that the intention of the letter is to give the authority of the Postmaster-General to the establishment of such an office, where mail would be received from the Quebec Post Office in one of the Departmental sacks; that such sacks would be opened at the Parliamentary Post Office and the mail contained therein distributed in the usual way to be called for and delivered to persons to whom the mail might be addressed or to messengers of the Departments. It was also contemplated that mailable matter prepaid by postage stamps would be received and stamped with an official stamp of the usual character and provisionally sorted in the Post Office and sent forward in an official bag to the Quebec Post Office. It was contemplated, there can be no doubt, that this Parliamentary Post Office would be used by all the members and employees of the Legislature; as well as by the employees of the Departments. The effect of the letter beyond doubt is to authorize the use of legends indicating where mail would be received as such; where letters, for example, properly stamped, would be collected and dealt with as mail.

The learned trial judge has found as a fact that letters are registered in this Post Office; and it appears that, for a period which ended in 1935, Post Office orders were issued.

The Parliamentary Post Office was to be, as the letter states, under the control of an official designated as Postmaster and there is evidence to the effect that this official receives from the Postmaster of Quebec, who acts as inspector of the post offices in the city of Quebec, the circular communications addressed to postmasters generally and communications sent to him by the inspector are addressed to him as "The Postmaster of the Parliamentary Post Office." The letter of the Deputy Postmaster General, as we have seen, makes it quite plain that the office is to be governed by the rules and regulations of the Post Office Department.

It must have been fairly clear to anybody reading the *Post Office Act* that a "post office" operated in the manner contemplated would, in the absence of authority from the Postmaster-General, infringe the *Post Office Act*; and, on the evidence, the learned judge was entitled to start from the premise that the Parliamentary Post Office

was in fact established and operated under such authority. He has, indeed, found as a fact that the Postmaster of the central post office in Quebec gives instructions and governs and directs the administration of the Parliamentary Post Office and that this is done conformably to the control of this post office by the Postmaster-General and to the circumstance that it is subject to the departmental regulations.

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I concur with the following observations of Mr. Justice St. Jacques:

L'établissement des bureaux de poste nécessaires au service des postes relève entièrement du Ministre, et l'on sait que les députés ministres sont particulièrement préposés à l'application des détails de la loi.

C'est dans l'exercice des pouvoirs qui sont confiés au ministère des Postes par les articles 35 et 39 de la loi que ce bureau particulier a été établi dans l'édifice du Gouvernement provincial.

Il est évident que le ministre des Postes, représenté par le sous-ministre, n'a pas voulu que ce bureau ait le caractère complet et absolu des bureaux de poste ordinaires qui sont établis un peu partout dans les cités, suivant les besoins du service des Postes. On a voulu que ce bureau soit simplement un "clearing-house" où seraient transportées par un messenger dûment autorisé par le Gouvernement provincial toutes les lettres adressées aux divers services du Gouvernement provincial et qui sont reçues au bureau de poste principal établi dans la cité de Québec, sur la rue Buade.

Il est prévu à ce document, émis par le sous-ministre des Postes en 1919, que le sac fermé contenant le courrier ordinaire serait envoyé au bureau de poste de l'Assemblée Législative où les lettres seraient distribuées, et les messagers des différents services du Gouvernement Provincial pourraient recevoir à ce bureau les lettres qui y parviennent.

Il faut retenir de ce document la phrase suivante:

"In brief, the Legislative Assembly Post Office would be a self-contained operating institution governed by the rules and regulations of the Post Office Department of Canada."

Il est évident que des bureaux semblables existent dans d'autres parties du pays, puisque le sous-ministre dit:

"The office would not be a postal station, but a clearing house, similar to that conducted by the Federal Parliament and applicable to the various Legislative Assemblies."

Jusqu'à 1935, le ministère des Postes permettait aux employés de ce bureau d'émettre des mandats et des bons de poste, tout comme on le fait dans les bureaux de poste réguliers. Ce privilège a été supprimé par le ministère des Postes en 1935.

La recommandation des lettres peut se faire au "bureau de poste du Parlement" qui perçoit le coût de cette recommandation.

Il importe peu, me semble-t-il, que les employés qui travaillent dans ce bureau de poste soient engagés et payés par le Gouvernement provincial. C'est à cette condition que le ministère des Postes a consenti à l'établissement dans l'édifice du Gouvernement provincial d'un tel bureau.

Ce bureau est-il régulier ou non, au sens absolu de la loi? Ce n'en est pas moins un bureau de poste où l'on reçoit des lettres qui ont été

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confiées à la poste et où l'on reçoit également des lettres pour être confiées à la poste.

There was evidence, I repeat, before the trial judge from which he might not improperly conclude that the officials of the Parliamentary Post Office, the postmaster and others, in all their activities, in undertaking to receive, collect, send or deliver letters and in receiving, collecting, sending, delivering letters and having in possession letters for the purpose of so conveying and delivering them, were acting under the authority of the Postmaster-General; and I think Mr. Justice St. Jacques is on solid ground in holding that, in view of the evidence and of the findings of the trial judge, the Parliamentary Post Office was a post office established by the Postmaster-General in exercise of his powers under the *Post Office Act* and, therefore, a post office within the contemplation of section 364 of the Criminal Code. It is a post office within the scope, as I think, of section 7 and constituted as such by the authority of the Postmaster-General. Such being the case, it follows necessarily in my view that the letter in question had not ceased to be a "post letter" within the meaning of section 364 when it was abstracted by the appellant. Admittedly, it was in the Parliamentary Post Office among a number of other letters in process of being distributed when the abstraction occurred.

It was contended before us on behalf of the appellant that the delivery of the post bag to the courier whose duty it was to take the bag from the Quebec Post Office to the Parliamentary Post Office was a delivery to the person to whom the letter was addressed. The dissenting judges in the court below appear to have taken the view that the latter was not delivered until it reached the Parliamentary Post Office. The trial judge was entitled to find, however, as a fact, and in effect did so find, that the courier was acting under the authority of the Postmaster-General in carrying an official bag from one post office to another post office and that there was no delivery to the addressee.

The appeal should be dismissed.

CANNON J.—In his factum, the respondent states the point to be decided by us as follows:

The Court of King's Bench did not come to the same understanding upon the words "post letter." Whilst the majority asserted that the

letter, at the time of its withdrawal by the appellant, was still "in transit," the dissentient minority claimed that at that time it was already in the hands of he to whom it was addressed, or at least that it should be considered so.

Thus this is the disputable point, at the time of the theft, which is not doubted, was the above described letter still, yes or no, a "post letter" in the meaning of the law?

Under the provisions of the Act respecting the postal service, R.S.C., c. 161, section 2, par. (j),

"Post letter" means any letter transmitted by the post or delivered through the post, or deposited in any post office, or in any letter box put up anywhere under the authority of the Postmaster-General, whether such letter is addressed to a real or a fictitious person or not, and whether it is intended for transmission by the post or delivery through the post or not; and a letter shall be deemed a post letter from the time of its being so deposited to the time of its being delivered to the person to whom it is addressed, or so long as it remains in the post office or in any such letter box or is being carried through the post; and a delivery to any person authorized by the Postmaster-General to receive letters for the post shall be deemed a delivery at the post office, and a delivery of any letter or other mailable matter at the house or office of the person to whom the letter is addressed, or to him, or to his servant, or agent, or other person considered to be authorized to receive the letter or other mailable matter, according to the usual manner of delivering that person's letters, shall be a delivery to the person addressed."

Exhibit P2 concerning the organization of the post office at the Parliament contains the following about the delivery of the mail addressed to the Parliament Buildings:

Mails will be conveyed as often as required by a courier with horse drawn vehicle, whose services would be paid for by the Legislative Assembly.

* * *

The Legislative Assembly Post Office would be conducted without any expense whatever to the Post Office Department of Canada, and there would be no account for the purchase of stamps in view of the fact that stamps would be purchased as hereinbefore mentioned.

In brief, the Legislative Assembly Post Office would be a self-contained operating institution governed by the rules and regulations of the Post Office Department of Canada. It would be operated and officered by *clerks appointed by authority of the Legislative Assembly*, who would obtain supplies of postage stamps from the City post office and postal stations, or from stamp vendors or sub-offices of their own choosing, *conveying the mail bags both ways between the Quebec Post Office and the Legislative Assembly, without expense to the Post Office Department of Canada in any way.*

An office of this nature would not be recognized as a regular post office, being simply a clearing house, as the Department could not undertake to establish either a sub-office or a regular office in a separate institution such as Provincial Government building, as all post offices have to be for the service of the general public, and under the *direct control* of the Department. Letters and other matter prepaid by postage stamps would be stamped and "primary" sorted in the Legislative

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Assembly Post Office. This mail would be sent in "lock" bags to the Quebec Post Office, where it would be carefully looked over before being distributed for despatch.

A *fully authorized messenger* representing all the Legislative Assembly Departments would call at the Quebec Post Office and *sign for all registered mail for all the Departments* which he would deliver as instructed to the several departments located in the Legislative Assembly Building. The lock bag *containing the ordinary mail would be sent to the Legislative Assembly Post Office*, where it would be distributed and messengers from the various branches call at that post office for the mail.

Exhibit D1 contains the regulation as to the distribution of correspondence:

Art. 246. Distribution des correspondances.

La responsabilité du ministère au sujet d'un objet quelconque de correspondance cesse lorsque la distribution en a été effectuée, soit au destinataire, soit à une personne dûment autorisée à recevoir sa correspondance, ou à une personne aux soins de qui cet objet était adressé, et le ministère ne peut entreprendre de faire des recherches relativement au traitement dudit objet lorsqu'il en a disposé régulièrement.

Now, as to what happened to the letter addressed to J. P. Bergeron, we have the evidence of the postmaster, J. B. L. Morin, who is the Federal official in charge of the main post office and of all the stations within the city of Quebec. Here is what he says:

Q. Maintenant, M. Morin, voulez-vous dire à quel endroit se fait la délivrance des lettres destinées au Parlement de Québec?

R. Nous livrons la malle au représentant officiel du Parlement provincial, qui vient quatre fois par jour chercher la malle au bureau de poste de Québec.

Q. A quel endroit?

R. A l'intérieur du bureau.

Q. De votre bureau de poste à vous?

R. Au bureau chef, à l'intérieur du bureau.

Q. A la rue Buade?

R. A la rue Buade, au même endroit que toutes les autres malles. C'est remis par le département de l'expédition.

Q. C'est là que vous faites votre délivrance?

R. Oui.

La Cour:

Q. Au bureau central?

R. Au bureau central, M. le Juge.

Me Choquette C.R.

Q. Et une fois que cette délivrance est faite par votre bureau de poste aux employés du gouvernement provincial, avez-vous encore un contrôle sur ces lettres, sur cette malle et ces courriers?

R. Non. Nous n'avons *aucun contrôle*, mais nous coopérons avec le . . .

Q. Avez-vous des employés qui travaillent au Parlement, du ministère des postes?

R. Aucun.

* * *

La Cour:

Q. On vous demande si, parce que cela n'est pas compris dans la liste, vous pensez, vous êtes sous l'impression que ce n'est pas un bureau de poste?

R. Je suis de l'opinion que ce n'est pas un bureau de poste officiel.

* * *

Q. Où est-ce que cette lettre-là a été délivrée par les autorités postales?

R. Dans leur *paquet de malle* destiné au Parlement Provincial.

Q. A quel endroit l'avez-vous délivrée?

R. On l'a délivrée ici, au bureau de poste de Québec.

Q. Et vous l'avez délivrée à qui?

R. * * * A leur employé autorisé là * * *

Q. Leur employé? quel employé?

R. L'employé des * * * du parlement provincial.

Q. Par des employés des postes que vous avez délivré ça?

R. Bien * * * l'employé autorisé à venir chercher la malle.

Q. Avez-vous livré ça à des employés du Ministère des Postes, c'est ça que je vous demande?

Me Dorion C.R.,

Du Ministère Fédéral des postes?

Me Choquette C.R.,

Du Ministère fédéral des postes, Oui?

Du Ministère fédéral des postes, non.

It would, therefore, appear that delivery took place and was completed, as contemplated by Dr. Coulter's letter within the central post office when the duly authorized messenger took out the parcel of letters addressed to the Parliament Building. The dissenting judges, however, seem to have reached the opinion that delivery took place only after it reached Parliament and that it was still under the control of the Dominion authorities between the main post office and the Parliament Building. This does not agree, in my opinion, with the facts as they appear by the evidence of Morin, the only person who really knows about the exact relationship in actual practice between the Dominion Postal Service and the Parliament distribution office. I would say that the control and responsibility of the Dominion post office authorities on this particular letter ceased from the moment that it was delivered in the main post office to the representative of the provincial authorities. Although my views do not agree fully with the dissenting judges in appeal, as to the time and place where delivery took place, I agree with them on the construction of the statutory definition of "post letter." For slightly different reasons, the same conclusion is reached, to wit: in law, the letter was abstracted *after* it had been delivered

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to the duly constituted agents of the provincial authorities and it had passed out of the control of the Dominion Post Office; the abstraction took place when it was no more a "post letter," or "lettre confiée à la poste."

I am of opinion that the conviction should be quashed and the appeal allowed.

CROCKET J.—This is an appeal under s. 1023 of the Criminal Code from a majority judgment of the Court of King's Bench of the province of Quebec affirming a conviction made against the appellant in the Court of Sessions of the Peace for the theft of a letter containing money "dans le bureau de poste du Parlement" in the city of Quebec contrary to the provisions of s. 364 of the Criminal Code. Dorion and Galipeault JJ. were the dissenting judges.

When the appeal came on for hearing in this court Mr. Rivard for the Crown in pursuance of notice objected to the court's jurisdiction to entertain it on the ground that the dissent in the court below was not on a question of law as provided by s. 1023 of the Criminal Code, and moved to quash the appeal for that reason. As this objection appeared to involve a consideration of the grounds of the appeal itself, the learned Chief Justice suggested that it would be more convenient to allow the appeal to proceed and hear counsel on the merits as well as on the jurisdictional objection. The motion to quash and the appeal itself were, therefore, argued together.

As to the motion to quash, Mr. Rivard contended that the record of the dissent appearing in the entry of the formal judgment of the court, under the provisions of s. 1013 of the Criminal Code, shewed on its face that it was a dissent on a question of fact or on a question of mixed law and fact.

This entry stated that Judges Dorion and Galipeault dissented, holding that the charge of theft of a post letter is not proven, and that the evidence only discloses theft of a sum of \$1.50, entailing a maximum penalty of six months.

While it may very well be said, if one looks only at the statement "that the charge of theft of a post letter is not proven," that it may indicate a dissent upon a pure question of fact or a mixed question of law and fact, the

words which immediately follow would seem to me to shew that the real basis of the dissent was that the theft which the evidence disclosed as having been committed by the defendant was not the theft of a post letter within the meaning of s. 364 of the Criminal Code, for which he would be liable to a minimum penalty of three years under the provisions of that section.

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However this may be, there seems to be no doubt that this court will look at the notes or written reasons of dissenting judges, and whenever necessary at the notes or reasons of the majority judges or any other portion of the record to ascertain the real grounds upon which any dissent is based, if the formal judgment of the court omits to state these grounds specifically or fails to make them clear.

An examination of the written reasons for both the majority and the dissenting judgments in the present case makes it quite clear, as I read them, that the only question considered in the court below was whether upon the undisputed facts disclosed by the evidence the Bureau de Poste du Parlement, where the letter was stolen, was a "bureau de poste" or the letter the appellant was charged with stealing there a "lettre confiée à la poste" within the meaning of s. 364 of the French version of the Criminal Code or s. 2 (the interpretation section) of the Canada *Post Office Act*.

St. Jacques J., who, having been deputed by the court for the purpose, signed the formal judgment containing the ground of dissent as above stated, sets out in his own notes four grounds on which the appeal was heard. All these he describes as "motifs de droit," and states that the facts are not in dispute. After pointing out, as to the first two grounds relied on by the appellant, viz.: (1) The Bureau de Poste du Parlement was not upon the evidence "un bureau de poste au sens de la loi," (2) The letter the appellant was charged with having stolen was not upon the evidence "une lettre 'confiée à la poste' au sens de la loi," that they were in effect one and the same, His Lordship said that there was, therefore, only one point to be decided on the appeal, i.e., "au sujet du sens qu'il faut donner, au regard de la loi, aux mots lettre confiée à la poste." He held, not only that the stolen letter fell within the definition of a "lettre confiée à la poste" given

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in the interpretation section of the *Canada Post Office Act* because it had been posted the previous day in the Quebec City Post Office and was stolen before it had reached the addressee or other person authorized to receive it for him, but also that the "Bureau de Poste du Parlement," though not a regular post office, fell within the definition of "Bureau de poste" given in the same section of that Act as a place where "lettres confiées à la poste" are received.

Létourneau J., in his notes, confirmed the conviction for the reason that the bureau, where the letter was stolen, was a "bureau de poste" in the sense which the *Canada Post Office Act* gives to these words since that office was undoubtedly a place where "lettres confiées à la poste" or other mailable matter were distributed, sorted, etc., within the meaning of that statute.

Walsh J. concurred with the latter and the accused's appeal was, therefore, dismissed for the reasons indicated.

Dorion and Galipeault JJ. dissented from these conclusions of the majority judges on the ground that the accused stole the letter in a place which was not a "bureau de poste" and the letter not a "lettre confiée à la poste," within the meaning of the definition of these expressions given in s. 2 of the *Canada Post Office Act*, for the reason that upon the undisputed facts as disclosed by the evidence, the so-called Parliament post office was officered and operated entirely by appointees of the Quebec Provincial Government, over whom the Post Office Department of Canada had no control, and that the letter in question, at the time it was stolen, had ceased under the provisions of s. 2 of the *Canada Post Office Act* to be a post letter within the meaning of that section.

Dorion J., in his notes, set out the provisions of the *Canada Post Office Act*, which define "bureau de poste" and "lettre confiée à la poste" as well as other provisions of that Act, and also discussed a letter from the Deputy Postmaster-General under date of March 12, 1919, addressed to the then Postmaster of Quebec city regarding the request of the Legislative Assembly for the installation of a post office in the Parliament Building. This letter set forth the conditions under which the proposed office should be instituted and the mail delivered from the Quebec city

Post Office. Among the conditions stated were: the proposed office would be a self-contained operating institution governed by the rules and regulations of the Post Office Department of Canada; that it would be operated and officered by clerks appointed by authority of the Legislative Assembly, who would obtain supplies of postage stamps from the city post office and postal stations, etc., conveying the mail bags both ways between the Quebec city Post Office and the Legislative Assembly without expense to the Post Office Department of Canada in any way. The letter stated that an office of this nature would not be recognized as a regular post office, being simply a clearing house, as the Department could not undertake to establish either a sub-office or a regular office in a separate institution such as a Provincial Government building, as all post offices have to be for the general service of the public and under the direct control of the Department. It was also stated that a duly authorized messenger representing all the Legislative Assembly departments would call at the Quebec city Post Office and sign for all registered mail for all the departments, which he would deliver as instructed to the several departments located in the Legislative Assembly building; that the locked bag containing the ordinary mail would be sent to the Legislative Assembly post office where it would be distributed and messengers from the various branches call at that post office for the mail.

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It is evident, therefore, that all the judges, who heard the appeal in the Court of King's Bench, treated the problem before them, viz.: whether the accused was properly convicted of the offence with which he was charged under s. 364 of the Criminal Code, as one which involved a question or questions of law only inasmuch as all the facts relating thereto were established by undisputed and undisputable evidence.

In my opinion they were right in doing so. No question was involved on the appeal as to the weight or appreciation of evidence by inference or otherwise as in *Gauthier v. The King* (1), where it was held by this court, assuming that the question whether there was any evidence to support a conviction should be deemed a question of law, the

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question whether the proper inference has been drawn by the trial judge from facts established in evidence is really not a question of law, but purely a question of fact for consideration. The conviction of the appellant for the theft with which he was charged under s. 364 of the Criminal Code admittedly could not properly have been made if the Bureau de Poste du Parlement was not a "bureau de poste" within the meaning of that section of the Code and of the interpretation section of the *Canada Post Office Act*, or if the letter he was charged with stealing, at the time of the theft, was not a "lettre confiée à la poste" within the meaning of those statutory provisions, no matter what inferences may have been drawn from established facts as to the culpability of the appellant in respect of the commission of the theft of the letter itself. As to whether the place where the theft was in fact committed was or was not such a bureau de poste or the stolen letter such a letter depends entirely on the interpretation of the statutory provisions referred to. The letter of the Deputy Postmaster-General of March 12, 1919, was produced by the Crown on the trial as evidence of the conditions under which the Bureau de Poste du Parlement was instituted and was to be operated. As regards its meaning and effect upon the two vital issues involved in the appeal that also was for the decision of the trial court as a question of law. These two questions are manifestly in my judgment questions of law alone, and two of the judges of the Court of King's Bench having dissented from the majority judgment upon them, I am of opinion that the appellant has a right to a further appeal to this court under the provisions of s. 1023, and that the motion to quash the appeal should be dismissed.

As to the merits of the appeal it is apparent that s. 364 of the Criminal Code creates an offence which relates to the conduct of the postal service of Canada and that in virtue of the provisions of s. 6 of the Code the words "bureau de poste" and "lettre confiée à la poste" must be given the meaning assigned to them by s. 2 of the *Post Office Act*, c. 161, R.S.C., 1927. I am of opinion that the definition of "bureau de poste" given in par. (1) of that section as embodying "a place where post letters or other mailable matter are received or delivered, sorted, made up

or despatched" or, as the French version states it, "un lieu où les lettres confiées à la poste ou autres objets transmissibles sont reçus ou délivrés, distribués, triés, formés en paquets ou expédiés," must be taken as necessarily implying a bureau or place which is under the control and supervision of the Post Office Department of Canada. Otherwise any room or place in any large business establishment which maintains a staff for the receipt, classification, distribution, delivery or despatch of any letters brought to the establishment by its own employees or stamped and addressed for transit through the regular postal service would constitute a post office within the meaning of the *Post Office Act* and of s. 364 of the Criminal Code. I am of opinion also that the definition in the same section of the *Post Office Act* of the words "post letter," or, as it is in the French version, "lettre confiée à la poste" and the proviso that a letter shall be deemed a post letter from the time of its being deposited in any post office "to the time of its being delivered to the person to whom it is addressed, or so long as it remains in the post office or in any such letter box or is being carried through the post" shew that the intention was that no letter should be deemed a post letter within the meaning of the *Post Office Act* unless it be in the custody and control of some post office or branch of the postal service, which is under the direct control of the Post Office Department of Canada.

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Although the letter of March 12, 1919, from the Deputy Postmaster-General to the Postmaster at Quebec regarding the agreement for the establishment of the "bureau de poste du Parlement" says that that office would be a self-contained operating institution governed by the rules and regulations of the Post Office Department of Canada, its whole tenor, in my judgment, shews that it is in no sense a post office in the true sense of the *Post Office Act*, but simply a clearing house for the reception and distribution of outgoing and incoming mail for the convenience of the Legislative Assembly and the Departments of the Provincial Government situated in the Parliament Building. Indeed the letter explicitly states that an office of this nature would not be recognized as a regular post office, "as the Department could not undertake to establish either a sub-

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office or a regular office in a separate institution such as a Provincial Government building, *as all post offices have to be for the general service of the public and under the direct control of the Department.*"

If I am right in my construction of the two material paragraphs of the *Canada Post Office Act*, it follows that the "bureau de poste du Parlement" is not a "bureau de poste" within the meaning of s. 364 of the Criminal Code, and also that the letter which the defendant was charged with stealing therein was not a "lettre confiée à la poste" at the time of the theft in the sense of that expression as given in s. 2 of the *Canada Post Office Act*. The letter at that time was neither in a "post office" nor "being carried through the post," the Post Office Department's control and responsibility of and for it having ceased upon its delivery at the so-called "bureau de poste" which is officered and operated by appointees of the Provincial Government entirely at the latter's expense and over which neither the Quebec city post office nor the Post Office Department had any control.

For these reasons I would allow the appeal and quash the conviction in so far as it applies to an offence against s. 364.

KERWIN J.—The accused was charged under section 364 of the Criminal Code that he "a volé une lettre dans la bureau de poste du parlement," and the question is what construction is to be placed upon the expression "un bureau de poste" in clause (b) of section 364, which, for this purpose, by virtue of section 6 of the Code, is to have the meaning assigned to it by section 2, paragraph (l) of the *Post Office Act*, R.S.C., 1927, chapter 161. That paragraph states:—

(l) "post office" means any building, room, post office, railway car, street letter box, street stamp-vending box, receiving box or other receptacle or place where post letters or other mailable matter are received or delivered, sorted, made up or despatched.

It is to be noted that not only does it include a building, etc., where post letters are received, etc., but also a building, etc., where other mailable matter is received, etc. By section 2 (h):—

"mailable matter" includes any letter, packet, parcel, newspaper, book or other thing which, by this Act or by any regulation made in pursuance of it, may be sent by post.

That is "post office" means any building, etc., where any letter which may be sent by post is received, etc. Now it cannot have been intended that any letter which *may* be sent by post is *in* a post office unless it is *in* a building, room, etc., which building, room, etc., is under the control of the Postmaster-General as part of the postal service of Canada. In my opinion that is the construction to be given to section 364 of the Code.

Section 4 of the *Post Office Act* enacts:—

4. There shall be at the seat of government of Canada a department, known as the Post Office Department, for the superintendence and management, under the direction of the Postmaster-General, of the postal service of Canada.

By section 7, the Postmaster-General has authority to do a number of things. By section 35 he has the sole and exclusive privilege of conveying, receiving, collecting, sending and delivering letters within Canada. By section 39 he may establish one or more branch post offices.

It may be assumed that the Postmaster-General would be justified, under his powers, in permitting certain actions to be done to accelerate the work of the postal service proper, such as, for instance, allowing private commercial houses to collect all the mailable matter of its employees and even such as has been deposited by members of the public in receptacles provided by the concerns themselves. He might authorize them to use a machine which would indicate that the postage had been paid. He might permit the inhabitants of an outlying settlement to deal with mailable matter in various ways. He might not object to the sign "Post Office" being used under certain conditions. And it may be assumed that he could from time to time revoke or alter any directions given, or regulations made, by him with respect to such matters.

There is no dispute as to what he has done in the present case. There is in evidence a letter from the Deputy Postmaster-General to the Postmaster at Quebec, and there is certain oral testimony bearing on the question which is uncontradicted. To summarize from such evidence:—

1. Those engaged in what is called the Parliamentary Post Office are employees of the Provincial Government and not of the Post Office Department; as are also the couriers who transport the bags between the Quebec Post Office and the Legislative Assembly Building.

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2. There is a "primary sorting" in the building.
3. Receipts are given for mailable matter which the senders decide to register.
4. At one time money orders were issued although the authority for so doing has since been withdrawn.
5. To quote from the letter of the Deputy Postmaster-General:—

In brief, the Legislative Assembly Post Office would be a self-contained operating institution governed by the rules and regulations of the Post Office Department of Canada.

But

An office of this nature would not be recognized as a regular post office, being simply a clearing house, as the Department could not undertake to establish either a sub-office or a regular office in a separate institution such as Provincial Government building, as all post offices have to be for the service of the general public, and under the direct control of the Department.

The office would not be a postal station, but a clearing house, similar to that conducted by the Federal Parliament and applicable to the various Legislative Assemblies. In this case postal note, money orders and savings bank business could not be put into effect, as the Assembly Post Office would not be a regular post office, nor published in the Canada Official Postal Guide.

Bearing in mind all these considerations, the quarters in the Legislative Assembly Building in Quebec, set aside by the provincial authorities, cannot be said, in my opinion, to be part of the postal service of Canada even though what was done was by the consent or authority of the Postmaster-General.

However, what we are asked to do is to construe an expression used by Parliament in describing an offence. Parliament indeed has provided for various offences which may be termed "postal offences" as, for example, section 365 of the Code; and it has seen fit to differentiate between the punishments that may be imposed for such offences. We are not concerned with the reason for such distinctions. Unless the courts below are correct in their interpretation of the section under which the accused was charged, he is entitled to have the conviction set aside.

A motion was made to dismiss the appeal for want of jurisdiction but I am of opinion that this appeal is on a question of law on which there has been dissent in the Court of King's Bench, as provided by section 1023 of the Criminal Code. A perusal of the dissenting judgment satisfies me that the dissent was on the proper construction of section 364 of the Code. There are no facts in dispute

and it is not a "question whether the proper inference has been drawn by the trial judge from facts established in evidence" as in *Gauthier v. The King* (1). This Court had to consider what was a question of law when the proper construction of a statutory provision was involved in *Township of Tisdale v. Hollinger Consolidated Gold Mines* (2). Referring to the finding made by the Ontario Railway and Municipal Board that the property attempted to be assessed was situate on "mineral land," the judgment states at page 323:—

It seems, as found by the Supreme Court of Ontario, that upon the evidence adduced and the findings of the Board, we would be precluded from interfering therewith if we agree in law with their view as to the meaning of the statute. The construction of a statutory enactment is a question of law, while the question of whether the particular matter or thing is of such a nature or kind as to fall within the legal definition of its term is a question of fact.

In *Loblaw Groceries Co. Ltd. v. City of Toronto* (3), the Court, at page 254, dealt with the argument that the courts below having reached the conclusion that the land and building were used as distribution premises, this is a finding of fact with which we ought not to interfere.

The judgment proceeds:—

But it is a question of law that is made the subject-matter of the right of appeal from the County Judge upon a stated case and we are bound to determine upon the proper construction of the amendment whether or not upon the facts stated the land and building are caught by the increased rate of assessment.

I have not lost sight of what the Court was dealing with in the two cases cited and I am not unaware of the danger of relying upon statements extracted from a judgment without relating them to the facts of the particular case, but the principles therein declared appeal to me as affording a criterion which may usefully be followed in arriving at a conclusion in this case.

It was stated in the dissenting judgment that while the conviction should be set aside, the accused should be found guilty of some other offence. The only other offence suggested is one which would carry with it a sentence which the accused has already served, and under the circumstances, therefore, I would restrict our judgment to allowing the appeal and setting aside the conviction.

Appeal allowed and conviction quashed.

(1) [1931] S.C.R. 416.

(2) [1933] S.C.R. 321.

(3) [1936] S.C.R. 249.