
SARENO ROBERTS APPELLANT;

AND

HIS MAJESTY THE KING RESPONDENT.

1931

*May 27.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Criminal law—Keeping common gaming house—Automatic vending machine—Cr. Code, ss. 226, 229, 986 (2), 986 (4) (as amended, 1930, c. 11, s. 27).

Accused had on his premises an automatic vending machine in which customers placed a five cent coin, pulled a lever, and received from the machine a package of candy, with or without “slugs” (varying in number) which had no commercial or exchangeable value but might be used to operate the machine to shew printed legends for amusement only (no candy being emitted). The candy package emitted for the coin deposited was such as that sold over the counter for five cents, and on the sale of the candy emitted the accused made a profit.

Held (reversing judgment of the Court of Appeal for Manitoba): Accused was not guilty, under the *Criminal Code*, of keeping a common gaming house. *Cr. Code*, ss. 226, 229, 986 (2), 986 (4) (as amended, 1930, c. 11, s. 27), considered. *Rex v. Freedman*, 39 Man. R. 407, overruled. *Rex v. Wilkes*, 66 Ont. L.R. 319, approved.

APPEAL from the judgment of the Court of Appeal for Manitoba, affirming the conviction of the appellant by

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont and Smith JJ.

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R. B. Graham, Esquire, Police Magistrate, at Winnipeg, Manitoba, "for that he the said [appellant] at the city of Winnipeg aforesaid on or about the 17th day of April, A.D. 1931, did unlawfully keep a disorderly house, to wit, a common gaming house at 605 Corydon Avenue in the City of Winnipeg, contrary to the form of the statute in such case made and provided."

The following statement of facts had been agreed on by the informant and the accused:

"1. That on the 21st day of April, A.D. 1931, an Information and Complaint was laid by the Informant before Fred E. Law, one of His Majesty's Justices of the Peace for the Province of Manitoba, charging that the said accused at the City of Winnipeg, in the Province of Manitoba, did on or about the 17th day of April, A.D. 1931, unlawfully keep a disorderly house, to wit, a common gaming house at 605 Corydon Avenue in the said City of Winnipeg, contrary to the provisions of the Statutes in such case made and provided.

"2. That on the 17th day of April, A.D. 1931, a search warrant was properly and legally issued by R. B. Graham, Esquire, a Police Magistrate in and for the Province of Manitoba under the powers conferred by Section 641 of the Criminal Code of Canada.

"3. That the said Warrant was duly executed on the said 17th day of April, A.D. 1931, and on the said premises of the accused was found in operation an automatic vending machine which is filed as Exhibit 1 in this case and which customers were allowed and invited to use and operate.

"4. The said machine may be operated by placing a five cent coin or a slug which is a perforated metal disc in a slot at the top of the machine and pulling down a lever attached to the side of the said machine.

"5. On pulling down the lever, three discs which can be seen through a glass covering in front, revolve and when they come to a stop, display printed legends or sentences, such printing being on various coloured squares on each of the three discs.

"6. That in every instance that a five cent piece is deposited in the slot of the machine and the lever pulled the interior mechanism of the machine is put in motion and a

package of candy is emitted. The package of candy so emitted is identical with the package of candy which the accused sells over the counter for five cents. In operating the automatic vending machine either with a coin or a slug the machine may or may not emit certain metal discs or slugs varying in number from two to twenty depending upon what point the revolving wheels may come to rest, which discs or slugs remain the property of the accused. In some instances no slugs are emitted. These slugs or tokens have no commercial or exchangeable value but may be used by the customer to operate the machine and when it is so operated with a slug or token, it shows across the cylinders of the machine a printed legend more or less humorous for the amusement of the customer, but the use of the slug or token will not result in the operator receiving any candy. No candy is emitted when slugs are used.

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"7. That printed in the front of the machine is a notice which reads as follows:

Candy Vendor

This machine is for the sole purpose of vending candies and confections. Tokens received from this vendor are of no cash or trade value but may be used to play this vendor for the customer's amusement only. No candies or confections vended for amusement tokens.

"8. That this machine, Exhibit 1, is owned by the Accused who is the owner of the premises at 605 Corydon Avenue, in the City of Winnipeg, in Manitoba, and such premises are occupied by the Accused for the purpose of carrying on the business of a confectioner.

"9. That on the 17th day of April, A.D. 1931, an officer of the City of Winnipeg Police Force operated the said machine and deposited with each operation a five cent coin in the slot of the machine, for which he received a package of candy for every five cent piece deposited.

"10. That as a result of the said operation of the said machine the Constable received in addition six slugs which had been discharged from the said machine.

"11. That the said officer offered the said slugs to the Accused in exchange for merchandise and that the said Accused informed the officer that the said slugs had no trade or exchangeable value but that they could only be used to operate the machine."

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The note of the judgment of the Court of Appeal for Manitoba, upholding the conviction, was as follows:

On the admissions filed and on the further admission that there was profit to the Accused on the sale of the candy emitted by the automatic Vending Machine, the Appeal is hereby dismissed.

The appellant, on application to a judge of the Supreme Court of Canada, under the provisions of s. 1025 of the *Criminal Code*, R.S.C., 1927, c. 36, was granted leave to appeal to this Court.

The sections of the *Criminal Code* involved were sections 226, 229, 986 (2) and 986 (4) (as amended by s. 27 of c. 11, 1930).

The Court of Appeal for Manitoba had previously given a decision in *Rex v. Freedman* (1) which it followed in the present case. A conflicting decision was the judgment of the Appellate Division of the Supreme Court of Ontario in *Rex v. Wilkes* (2), which was relied upon by the appellant in the present case.

M. Marcus for the appellant.

F. H. Chrysler K.C. for the respondent.

After hearing argument by counsel for the appellant and for the respondent, and without calling on counsel for the appellant in reply, the Court delivered judgment orally, allowing the appeal and quashing the conviction, adopting the reasons for decision in *Rex v. Wilkes* (2), *supra*.

Appeal allowed; conviction quashed.

Solicitor for the appellant: *M. Marcus*.

Solicitor for the respondent: *John Allen* (Deputy Attorney General for Manitoba).

(1) 39 Man. R. 407; [1931] 1 W.W.R. 775. (2) (1930) 66 Ont. L.R. 319.