

GASTON BLAIS..... APPELLANT;
 AND
 HIS MAJESTY THE KING..... RESPONDENT

1948
 *May 13
 *June 25

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

Criminal law—Theft—Goods valued at less than \$25—Summary conviction—Deputy Recorder—Jurisdiction—Magistrate—Cities and Towns Act of Quebec, c. 233 R.S.Q. 1941, sections 647, 648—Summary Convictions Act of Quebec, c. 25 R.S.Q. 1941, section 6—Criminal Code, section 771 (a) (i).

The appellant pleaded guilty to a charge of theft of goods valued at \$19 laid under Part XVI of the Criminal Code and was sentenced to six months imprisonment by the Deputy Recorder of the City of Westmount, Quebec. It was argued in appeal that the Deputy Recorder had exceeded his jurisdiction as he was not a magistrate within the meaning of section 771 (a) (i) of the Criminal Code. The Court of King's Bench, appeal side, affirmed the conviction.

Held: The Deputy Recorder having been clothed with the jurisdiction of two justices of the peace by the provisions of the Summary Convictions Act of Quebec, was within the definition of "other functionary" in section 771 (a) (i).

*PRESENT: Rinfret C.J. and Taschereau, Rand, Estey and Locke JJ.

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APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming (Pratte J.A. dissenting) the conviction of the appellant by the Deputy Recorder of Westmount, Quebec, on a charge of theft of an object valued at less than \$25.

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

J. A. Budyk, K.C. for the appellant.

Rene T. Hebert, K.C. for the respondent.

The Chief Justice: The appeal should be dismissed.

The judgment of Taschereau and Locke JJ. was delivered by

Taschereau, J.—The appellant was charged with the theft of an object of a value of less than \$25. He elected a summary trial under the provisions of Part XVI of the Criminal Code, and after having pleaded guilty was sentenced to six months imprisonment by Mr. A. E. Laverty, Deputy Recorder of the City of Westmount.

The Court of King's Bench (1), Mr. Justice Pratte dissenting, confirmed the conviction, and the appellant now appeals to this Court.

Section 771 of the Criminal Code says:—

(a) "magistrate" means and includes,

(i) in the provinces of Ontario, Quebec and Manitoba, *any recorder, judge of a county court if a justice of the peace, commissioner of police, judge of the sessions of the peace, and police magistrate, district magistrate, or other functionary or tribunal, invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices, and acting within the local limits of his or of its jurisdiction.*

It is argued that Mr. Laverty, being a deputy recorder, is not a magistrate within the meaning of this section and that, therefore, he exceeded his jurisdiction when he sentenced the appellant.

Under the *Cities and Towns Act*, chap. 233, R.S.Q. (1941), section 647, the recorder may appoint under his hand a deputy recorder, who must be an advocate of five years standing, and, the person so appointed, says section 648,

shall possess, for and during the time limited in the instrument containing his appointment, or, if no time be therein limited, then from the date of the registration as aforesaid, until the revocation thereof, the jurisdiction, and be vested with all the rights, powers and privileges, and shall discharge all the duties of the Recorder, to the exclusion, for the time being, of the person so nominating him.

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Mr. Laverty was duly appointed "deputy recorder" by the recorder of the City of Westmount, and he was therefore invested with all the powers of the recorder himself. But it is argued, that section 771 Cr. C. gives power only to a "recorder" to hear cases under Part XVI, that the "recorder" is a "persona designata" by the Code, and that therefore a "deputy recorder" although invested with the same powers by the provincial authority, is not a "magistrate" included in paragraph (1) of section 771.

I find it quite unnecessary to determine this point for the reason that Mr. Laverty being a "deputy recorder", has the jurisdiction of two justices of the peace. Section 6 of *The Summary Convictions Act of the Province of Quebec*, chap. 25, R.S.Q. (1941) reads as follows:

Any Judge of the Sessions of the Peace, Police Magistrate, District Magistrate or Recorder, appointed for any territorial division, and any Magistrate authorized to perform acts usually required to be done by two or more Justices of the Peace, may do alone whatever is authorized by an act of this Province to be done by any two or more Justices of the Peace.

Mr. Laverty having the same powers as the recorder himself is a person, as section 771 says, "invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices". He was, therefore, competent to convict the appellant as he did.

The appeal should be dismissed.

The judgment of Rand and Estey JJ. was delivered by

RAND J.—The appellant pleaded guilty to a charge of theft of goods valued at \$19 laid under Part XVI of the Code before the Deputy Recorder of the City of Westmount, Quebec and was sentenced to six months' imprisonment. An appeal was taken on the ground that the Deputy was without jurisdiction under that Part but the Court (1), Pratte, J. dissenting, interpreted the words "any

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Recorder" in section 771 (a) (i) defining the word "Magistrate", to include a Deputy Recorder, and rejected the appeal.

Section 771 (a) (i) in addition to "any Recorder", designates as Magistrate, "any other functionary or tribunal, invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more Justices"; and as I find the Deputy Recorder in this case to be such an "other functionary", it is unnecessary to examine the ground on which the Court of Appeal proceeded.

The charter of Westmount incorporates the provisions of the *Cities and Towns Act*, chap. 233, R.S.Q. (1941) dealing with a Recorder's Court, sec. 648 of which defines the powers of the Deputy Recorder:—

648. The person so appointed shall possess, for and during the time limited in the instrument containing his appointment, or, if no time be therein limited, then from the date of the registration as aforesaid, until the revocation thereof, the jurisdiction, and be vested with all the rights, powers and privileges, and shall discharge all the duties of the Recorder, to the exclusion, for the time being, of the person so nominating him.

The Summary Convictions Act of the Province, chap. 25, R.S.Q. (1941) by sec. 6 enacts:—

Any Judge of the Sessions of the Peace, Police Magistrate, District Magistrate or Recorder, appointed for any territorial division, and any Magistrate authorized to perform acts usually required to be done by two or more Justices of the Peace, may do alone whatever is authorized by an act of this Province to be done by any two or more Justices of the Peace.

And the expression "territorial division" is defined to include a city.

From the foregoing, it is clear that the powers of the Recorder embrace that scope of authority aimed at in section 771 (a) (i), and with these, in turn, the Deputy Recorder has been clothed; the latter is, therefore, such a functionary as is described in the paragraph and is invested with the jurisdiction of a magistrate for the purposes of Part XVI.

The appeal must be dismissed.

Appeal dismissed.

Solicitor for the appellant: *J. A. Budyk.*

Solicitor for the respondent: *Rene T. Hebert.*