

LOUIS DESROSIERS ..... APPELLANT;

1962

\*Feb. 27  
Apr. 24

AND

J. M. R. THINEL ..... RESPONDENT.

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

*Criminal law—Carrier—Taxi—Transporting passengers for hire within limits of airport—Order-in-Council—Validity of regulations—Whether delegated powers to Minister—Department of Transport Act, R.S.C. 1952, c. 79 s. 25—Aeronautics Act, R.S.C. 1952, c. 2—Airport Vehicle Control Regulation 4A.*

The appellant was summarily convicted of illegally operating a taxi service within the limits of an airport. His conviction was quashed in a trial *de novo* before a judge of the Superior Court. The Court of Appeal restored the conviction. Leave to appeal was granted by this Court.

*Held:* The appeal should be dismissed.

Regulation 4A of the Airport Vehicle Control Regulations, which provides that no person shall, without the authority in writing of the Minister of Transport, operate a commercial passenger vehicle on an airport, and which was adopted by the Governor-in-Council pursuant to s. 25 of the Department of Transport Act for, *inter alia*, the management, proper use and protection of airports under the management or control of the Minister of Transport, is within the scope of the legislative authority conferred upon the Governor-in-Council by Parliament. The granting of such authority to the Minister by Order-in-Council was not a delegation of legislative authority. It merely indicated how the Minister should exercise his responsibility of managing and controlling a public work entrusted to him by statute.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec<sup>1</sup>, restoring the conviction of the appellant for illegally operating a taxi service within an airport. Appeal dismissed.

*L. P. Pigeon, Q.C.*, for the appellant.

*R. Bédard, Q.C.*, and *G. Côté*, for the respondent.

The judgment of Taschereau, Abbott, Martland, and Ritchie JJ. was delivered by

ABBOTT J.:—Appellant, a taxicab operator in Sept-Iles, on October 14, 1958, was convicted by a district Magistrate of having

\*PRESENT: Taschereau, Fauteux, Abbott, Martland and Ritchie JJ.

<sup>1</sup>[1960] Que. Q.B. 813.

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illégalement, le ou vers le 3 mai 1958 exploité à Sept-Îles, district de Saguenay, sans autorisation écrite du Ministre des Transports à cet effet un véhicule commercial à voyageurs sur l'aéroport de Sept-Îles, propriété de la Couronne du Chef du Canada en transportant contre rémunération des voyageurs au moyen d'un auto-taxi, le tout contrairement à l'article 4-A du règlement concernant le contrôle des véhicules sur les aéroports édicté par le décret C.P. 1953-942 et de ses amendements à date, C.P. 1955-1443 et C.P. 1956-1666, se rendant ainsi passible des peines prévues à l'article 22 dudit règlement.

He was condemned to pay a fine of \$5 and costs.

The Superior Court for the District of Saguenay, sitting in appeal, and in a trial *de novo* pursuant to s. 719 et seq. of the *Criminal Code*, quashed the conviction. Upon appeal to the Court of Queen's Bench<sup>1</sup>, the appeal was allowed and the conviction restored. Leave to appeal from that judgment was granted by this Court.

The facts are not in dispute. The sole question in issue is one of law, namely, whether certain provisions contained in an Order-in-Council concerning the operation of commercial passenger vehicles within airports under the administration and control of the Minister of Transport, are within the scope of the legislative authority conferred upon the Governor-in-Council by Parliament.

The provisions in question are contained in the "Airport Vehicle Control Regulations", established by Order-in-Council P.C. 1953-942 as amended by P.C. 1955-1443 and P.C. 1956-1666, s. 4A, of which reads:

4-A (1) No person shall, without the authority in writing of the Minister,

- (a) carry on any business on an airport relating to the renting or otherwise providing of commercial passenger vehicles, or
- (b) except as provided in subsection (2) operate a commercial passenger vehicle on an airport.

(2) A commercial passenger vehicle may be operated within an airport, without authority in writing by the Minister, for the purpose of carrying passengers

- (a) from a place outside the airport to a place inside the airport; or
- (b) on a trip originating within the airport, pursuant to arrangements made prior to the arrival of the vehicle at the airport.

The Sept-Iles airport is a civil airport and is the property of the Crown in the right of Canada. In addition to landing strips and surrounding land together with buildings, plant

<sup>1</sup>[1960] Que. Q.B. 813.

and machinery, access roads leading from the landing strips and buildings to public roads outside the property are provided by the Crown.

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The Court below held—and in my respectful view held correctly—that authority for the provisions contained in s. 4A of the Airport Vehicle Control Regulations, is to be found in the *Department of Transport Act*, R.S.C. 1952, c. 79, and in particular in s. 25 of that Act which reads:

25. The Governor in Council may from time to time make such regulations as he deems necessary for the management, maintenance, proper use and protection of all or any of the canals or other works under the management or control of the Minister, and for the ascertaining and collection of the tolls, dues and revenue thereon.

The airport at Sept-Iles is clearly a work “under the management or control” of the Minister of Transport. Section 3(c) of the *Aeronautics Act*, R.S.C. 1952, c. 2, provides that it is the duty of the Minister

to construct and maintain all Government aerodromes and air stations, including all plant, machinery and buildings necessary for their efficient equipment and upkeep;

As Mr. Justice Hyde has pointed out in the Court below, the vehicular approaches within an airport are properly subject to control in the interests of proper management and have not the full character of public highways upon which the public has the right to pass and repass. The management of an airport, in the interest both of the Crown and of the public, may well require a limitation and control of many kinds of commercial activities within its boundaries, including the regulation of taxi services. The operation of a taxi service is clearly a commercial activity, is so defined in s. 2 of the Airport Vehicle Control Regulations above referred to and, in my opinion, the regulation of commercial activity within an airport clearly comes within the meaning of “management, proper use and protection” of such airport.

The Governor-in-Council exercising the powers given in the statute, established the Airport Vehicle Control Regulations which provide for the control of all vehicular traffic using an airport and which limit such use by commercial vehicles. Under these Regulations the Minister of Transport is given discretion and authority to determine, among other matters, what persons shall be allowed to “carry on any business on an airport relating to the renting or otherwise providing of commercial vehicles”. The granting of

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such authority to the Minister by Order-in-Council is not a delegation of legislative authority. It merely indicates how the Minister shall exercise his responsibility of managing and controlling the public work entrusted to him by the statute.

I would dismiss the appeal with costs.

FAUTEUX J.:—I agree with my brother Abbott whose reasons I had the advantage to read. I only wish to point out some of the reasons why the decision of this Court in *City of Verdun v. Sun Oil Co. Ltd.*<sup>1</sup>, strongly relied on by appellant in support of the contention that s. 4A of the Airport Vehicle Control Regulations is *ultra vires* of the Governor-in-Council, has here no application.

Purporting to implement its statutory authority to restrict by a zoning by-law the right of land-owners to use their property as they see fit, the City of Verdun did, by the provision impugned in that case, transform that authority into a mere administrative and discretionary power to cancel by resolution a right which, untrammelled in the absence of any by-law, could only be regulated in a proper one. For that reason, the provision was declared *ultra vires* of the City.

The situation here is entirely different. The right to carry on a private business on airports which are the property of the Crown in the right of Canada is vested in no one. The Crown may find it expedient to grant this right to any one under such terms and conditions as may be found appropriate. By the statutory provisions referred to in the reasons of my brother Abbott, Parliament authorizes the Governor-in-Council to make such regulations as the latter deems necessary for, *inter alia*, the management, proper use and protection of airports which are under the management or control of the Minister of Transport. Pursuant to this authority, the Governor-in-Council adopted the Airport Vehicle Control Regulations, of which s. 4A provides that no person shall, without the authority in writing of the Minister, i.e. the Minister of Transport, carry on, on these airports, a business similar to that conducted by appellant. This provision cannot be held to be restrictive of the alleged right claimed but not possessed by appellant. In its prohibitive form, the provision, if violated, gives rise to penal

<sup>1</sup>[1952] 1 S.C.R. 222, 1 D.L.R. 529.

sanctions, thus insuring with greater effectiveness the management and control of these airports. With the unlimited discretion given by Parliament to the Governor-in-Council, the latter, had he deemed it necessary, might well have determined, by regulations, the circumstances in which the Minister should grant the authority. This, however, Parliament did not require the Governor-in-Council to do. In the exercise of the power given to him by s. 4A, the Minister performs an act which, of its nature, is clearly administrative.

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I would dismiss the appeal with costs.

*Appeal dismissed with costs.*

*Attorney for the appellant: François Francoeur, Seven Islands.*

*Attorney for the respondent: Louis Paradis, Baie Comeau.*

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