

1931
*April 28.

CHARLES MARINO AND FRANK C. }
YIPP } APPELLANTS;

AND

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA

Criminal law—Unlawful distribution of drugs—Indictment charging two separate sales—Whether constituting two offences, contrary to s. 853 (3) Cr. C.—Meaning of the word “distribute” as used in s. 4 (f) of c. 144, R.S.C., 1927, Opium and Narcotic Drugs Act.

An appeal from the judgment of the Court of Appeal for British Columbia affirming (Macdonald C.J. dissenting) the appellants' conviction of having unlawfully distributed morphine and cocaine, on the ground that the indictment, charging two separate sales, therefore charged two offences contrary to the provisions of s. 853 (3) Cr. C. The question on the appeal was whether the word “distribute” as used in s. 4 (f) of the *Opium and Narcotic Drugs Act* covered the facts in the case.

Held, affirming the appellants' conviction, that, upon the evidence, the appellants had the drugs in question for distribution and that they did in fact “distribute” them. The appellants cannot contend that, because two separate sales were proved in evidence, two offences were actually charged, as there could be no distribution unless more than one sale was proved.

APPEAL from the judgment of the Court of Appeal for British Columbia, dismissing (Macdonald C.J. dissenting), the appellants' appeal against their conviction of having unlawfully distributed drugs.

The question in this appeal is whether the word “distributes” as used in s. 4 (f) of Chap. 144, R.S.C., 1927, *Opium and Narcotic Drugs Act*, which enacts that

Every person who

(f) manufactures, sells, gives away or distributes any drug to any person without first obtaining a licence from the Minister;

shall be guilty of a criminal offence * * *.

covers this case. The appeal is based on the ground that the indictment charges two separate sales and, therefore, charges two offences, contrary to the provisions of section 853 (3) of the Criminal Code.

The conviction might have been under subsection (d) as well as subsection (f) of section 4 of chapter 144; but it

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

purported to be under subsection (f) and must be upheld under that subsection if at all.

J. R. Nicholson for the appellants.

O. Bass K.C. for the respondent.

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On conclusion of the argument by counsel for the appellants, and without calling on counsel for the respondent, the judgment of the court was delivered by

ANGLIN C.J.C.—To contend that, because two separate sales were proved in evidence, two offences are actually charged seems absurd. How could distribution be shown unless more than one sale was proved? A single sale probably does not amount to “distribution” within the meaning of that word, as used in the Criminal Code. There is nothing to restrict what may be proved as evidence of distribution to a single sale.

It is manifest that the defendants had the drugs in question for distribution and the proof shows they did in fact “distribute” them. That seems to be all that is necessary.

As to the difficulty created by the words “to any person” found in the section in question, it is fully met by the interpretation clause in s. 31 (j) of c. 1 of R.S.C., 1927, and by the admission of counsel for the appellant that “any person” includes “any persons.”

We are all of the opinion that the appeal fails and must be dismissed.

Appeal dismissed.

Solicitor for the appellants: *J. R. Nicholson.*

Solicitor for the respondent: *Oscar Bass.*
