
HIS MAJESTY THE KING.....APPELLANT;

AND

GORDON ROBINSON (or ROBERTSON) ..... RESPONDENT.

HIS MAJESTY THE KING.....APPELLANT;

AND

HUGH LOGAN McKENNA.....RESPONDENT.

HIS MAJESTY THE KING.....APPELLANT;

AND

GEORGE CUTHBERT.....RESPONDENT.

HIS MAJESTY THE KING.....APPELLANT;

AND

GERALD ADAM BEATTY.....RESPONDENT.

1951

*Feb. 13
*Apr. 24

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Criminal law—Habitual criminal—Statute—Interpretation—Words "liable to at least" in s. 575C (1) (a) of the Criminal Code—Whether indicative of maximum or minimum penalty.

The words "been convicted of an offence for which he was liable to at least five years' imprisonment" in section 575C (1) (*a*) of the *Criminal Code* describe an offence for which the maximum penalty permitted by the law is imprisonment for five years or more, and not an offence for which the law prescribes a mandatory minimum sentence of imprisonment for at least five years.

---

*PRESENT: Rinfret C.J. and Kerwin, Taschereau, Rand, Kellock, Estey, Locke, Cartwright and Fauteux JJ.

APPEALS from the judgment of the Court of Appeal for British Columbia (1) quashing the conviction of each of the respondents on the charge of being a habitual criminal.

H. A. Maclean K.C. for the appellant.

T. F. Hurley and R. A. Reid for the respondents.

The judgment of the Chief Justice and of Kerwin, Taschereau, Estey and Fauteux, JJ. was delivered by:

FAUTEUX J.:—The nature and the course of proceedings, eventually leading to these four separate appeals, are substantially alike in all of the cases. Each of the respondents was separately indicted on two counts: one being that, at some definite time in 1950, in the province of British Columbia, he was found in unlawful possession of drugs, under the *Opium and Narcotic Drug Act 1929* as amended, and the second one charging him to be a habitual criminal within the meaning of the provisions of Part X(A) of the *Criminal Code* of Canada. The first count—which is not relevant to the point raised in the present appeal—was either admitted by the accused or found by the jury. As to the second count, the accused pleaded not guilty but were found guilty by the jury. An appeal, subsequently lodged against the latter conviction, was unanimously maintained by the Court of Appeal of the province (2), which quashed the conviction and directed a verdict of acquittal to be entered thereon. Identical in all of the cases, the judgment rests on the interpretation of the provisions of section 575(*c*) (1) (*a*) of Part X(A). On this point, and under the authority of section 1025 of the *Criminal Code,* leave to appeal to this Court was granted to the appellant.

It was agreed by counsel of all interested parties that the argument made in the appeal of *His Majesty the King* v. *Gordon Robinson or Robertson*—the first being called for hearing—would apply in all the other cases.

The opposing contentions of the parties, which are now to be considered, may more clearly be stated once the relevant part of section 575(*c*) is quoted:

> A person shall not be found to be a habitual criminal unless the judge or jury as the case may be, finds on evidence,

(1) [1950] 2 W.W.R. 1265. (2) [1950] 2 W.W.R. 1265.

1951

THE KING
v.
ROBINSON
et al.

Fauteux J.

(a) that since attaining the age of eighteen years he has at least three times previously to the conviction of the crime charged in the indictment, been convicted of an indictable offence for which he was liable to at least five years' imprisonment, whether any such previous conviction was before or after the commencement of this Part, and that he is leading persistently a criminal life; or

The submission of respondent, which prevailed in the Court of Appeal, rests on an argument, centered solely on the meaning of the words "at least"—twice appearing in the above provision—and purporting to implement the rule of literal interpretation. In both instances the words are said to mean "not less than". "Not less than"—it may be pointed out—is the qualifying phrase used by Parliament in relation to minimum mandatory sentences, which are few in number. Paraphrasing the relevant part of the provision, in a manner strictly consistent with the submission made, the provision would read: "A person shall not be found to be a habitual criminal unless it is found on the evidence that, since attaining the age of eighteen years, he has not less than three times, previously to the conviction of the crime charged in the indictment, been convicted of an indictable offence for which the minimum mandatory punishment enacted is not less than five years' imprisonment." In this category, it may immediately be noted, there is only one offence in the *Criminal Code*. The offence is dealt with in section 449:—Stopping the mail with intent to rob.

In the appellant's view, the words "at least", in the context, mean "as much as" and the questioned part of the provision should read: ". . . unless . . . he has . . . been convicted of an indictable offence for which he was liable or exposed to suffer as much as five years' imprisonment." Thus, it is said, that, in the context—and not detached therefrom—these words are indicative of a minimum manifestly related to the maximum number of years of imprisonment which the offender is liable or exposed to suffer as punishment. There are, in the *Criminal Code*, some one hundred and eighty indictable offences for which the offender is liable to receive as a maximum punishment a sentence of at least five years' imprisonment.

The will of Parliament is well manifested by the provisions of Part X(A) and the words "at least", when read

in the context, are, in my respectful view, quite inapt to defeat the primary as well as incidental purposes of this Part.

Part X(A) is new in our *Criminal Code*. Enacted in 1947, by section 18 of the *Criminal Code Amendment Act*, chapter 35, its provisions may be traced to Part II of the English Act assented to on December 21, 1908, being 8 Edward VII Ch. 59, the unabridged title of which is: "An Act to make better provision for the prevention of crime and for that purpose to provide for the reformation of young offenders and the prolonged detention of habitual criminals and for other purposes incidental thereto."

The primary purpose of Part X(A) is best indicated by the following underlined words of section 575(*b*):—

> Where a person is convicted of an indictable offence committed after the commencement of this Part and subsequently the offender admits that he is or is found by a jury or a judge to be a habitual criminal, and the court passes a sentence upon the said offender, the court, if it is of the opinion that, by reason of his criminal habits and mode of life, it is expedient for the protection of the public, may pass a further sentence ordering that he be detained in a prison for an indeterminate period and such detention is hereinafter referred to as preventive detention and the person on whom such a sentence is passed shall be deemed for the purpose of this Part to be a habitual criminal.

It is equally provided—by section 575(*g*)—that persons undergoing preventive detention may be confined in a prison or part of a prison set apart for that purpose, to be subjected to such disciplinary and reformative treatment as may be prescribed by the prison regulations. In brief, the provisions of Part X(A) are clearly directed to persons who, by reason of "criminal habits and mode of life", must, for the protection of the public, be subjected to preventive detention, for an indeterminate period. It is left to the Minister of Justice to "review the condition, history and circumstances of that person—once at least in every three years—with a view to determining whether the person should be placed out on license, and if so, on what conditions (s. 575(*h*)).

What the Legislature considers as being tantamount to "criminal habits and mode of life justifying preventive detention for the protection of the public", is indicated in the provisions of secton 575(*c*) where a minimum requirement, expressed in the form of several conditions, is estab-

1951

THE KING v. ROBINSON et al.

Fauteux J.

lished. Three of the conditions which must be found on the evidence, before a person can be branded and dealt with as a habitual criminal, are that:

(1) Since attaining the age of eighteen years

(2) he has, at least three times previously to the conviction of the crime charged in the indictment, been convicted of an indictable offence

(3) that is, not any indictable offence but an indictable offence for the commission of which the offender is liable to at least five years' imprisonment.

The corresponding section in the English Act is section 10, which, in substance, prescribes that:

(1) Since attaining the age of sixteen

(2) he has, at least three times previously to the conviction of the crime charged in the indictment, been convicted of a crime.

(3) which, according to ss. 6 of section 10, comes within the definition of a crime as precised under the *Prevention of Crimes Act, 1871.*

Thus, and under both Acts, it is not the repeated commission of all kinds of offences which may cause an offender to be found a habitual criminal. It is only the repeated commission of such offences which are therein indicated. While such indication is, under section 20 of the *Prevention of Crimes Act, 1871,* achieved by various ways, only one method to that end is used in Part X(A). The offences are not identified by names or by reference to sections describing them, but by the measure of punishment or, more precisely, by the maximum punishment which the offender is exposed to suffer. And only those crimes for which the authorized maximum punishment is at least five years' imprisonment come within the purview of Part X(A). Again, in such category, there are, in the *Criminal Code,* some one hundred and eighty crimes while there is only the crime described in section 449 for which the minimum mandatory sentence prescribed is five years' imprisonment. If the appellant's submission is right, these one hundred and eighty indictable offences are within the purview of Part X(A) which may then, and for that reason, receive as general an application as the generality

of the above quoted provisions suggest it should. If, on the contrary, the submission of the respondents is accepted, Part X(A) is inapplicable in the case of these one hundred and eighty indictable offences and applicable only to the one indictable offence defined in section 449.

That Parliament would have, in 1947, enacted all the provisions of Part X(A), and would further, by incorporating it in the *Criminal Code,* have extended—by force of section 28 of the *Interpretation Act*—its application to other federal statutes where indictable offences are created, with the sole object of dealing exclusively with the now uncommon offence of stopping the mail with intent to rob or search, is clearly untenable.

Can the intent of Parliament, manifested by the above quoted provisions, be defeated on the alleged ground of ambiguity or intractability of the language adopted by Parliament in the following phrase of subsection (1) (*a*) of section 575(*c*) "for which he was liable to at least five years' imprisonment"?

"It is quite true", says one of the learned members of the Court of Appeal, "that when one reads the subsection for the first time, the effect of the intractability of the language may not be at once apparent; the dominant impression may be that it simply excludes from its operation offences which do not merit imprisonment for five years or more. But a check on this thinking reveals one cannot fix a maximum of this kind if there is no minimum; the point at which the maximum starts automatically fixes the minimum." With this line of reasoning one cannot disagree provided, in my respectful view, both the minimum and the maximum are related to the same type of sentence. However that may be, this reasoning does not solve the question for, in the appellant's submission, the phrase "for which he was liable to at least five years' imprisonment" is related to the first kind of sentence above indicated and means "for which the authorized discretionary sentence is at least five years" while, in the respondents' view, it refers to the second kind of sentence and means "for which the mandatory sentence is at least five years". It thus becomes apparent that the controlling word in the phrase is really the word "liable", and that the meaning of this word, in the ordinary language as well as under the Code, must

1951

THE KING
v.
ROBINSON
et al.

Fauteux J.

then be ascertained to decide the issue. Of the various imports ascribed to the word "liable" in The Oxford English Dictionary, vol. VI, p. 234, the following are indicated: "Exposed, or subject to, or likely to suffer". Under the *Code,* the provisions of section 1054 make it clear that Parliament has given to the word "liable" a like practical significance. For this section reads:

> Every one who is liable to imprisonment for life, or for any term of years, or other term, may be sentenced to imprisonment for any shorter term: Provided that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted.

The opening words of this section: "Every one who is liable . . ." are clearly in reference to similar words used by Parliament in the pattern generally followed in the prescription of punishment, as illustrated in the following section:

> Every one is guilty of an indictable offence and liable to seven years' imprisonment who breaks and enters any place of public worship, with intent to commit any indictable offence therein.

(s. 456).

The words "liable to seven years' imprisonment" in section 456, read in the light of the provisions of section 1054, necessarily indicate an authorized but not a mandatory term of imprisonment. And the words "for which he was liable . . .", in the new enactment—section 575(*c*)—can only be related to similar words used in the general pattern and must, thus, be presumed to be understood in the same sense. The fact that the opposite view would entirely defeat what the above quoted provisions of Part X(A) indicate as its clear object, is no reason to nullify the presumption. That the word "liable" appears in few provisions—some ten sections under the Code—where, by exception, a mandatory term is prescribed, is of no avail as an argument against the above conclusion, for the word "liable", in its proper sense, is there equally related to the maximum authorized sentence to which the minimum mandatory term is attached. It is also of some significance that in section 263, dealing with the predetermined mandatory punishment for murder, the word "liable" is not used.

In my respectful view, the submission of the respondents cannot rest, as alleged, on the rule of literal construction.

As to the application of the narrow construction doctrine, in the construction of penal statutes, this may be said. The matter, in England, is deal with in Maxwell on Interpretation of Statutes, 9th Edition, 1946, p. 267, in the following terms:

> The rule which requires that penal and some other statutes shall be construed strictly was more rigorously applied in former times when the number of capital offences was very large (*a*), when it was still punishable with death to cut down a cherry-tree in an orchard, or to be seen for a month in the company of gipsies (b), or for a soldier or sailor to beg and wander without a pass. Invoked in the majority of cases *in favorem vitae,* it has lost much of its force and importance in recent times, and it is now recognized that the paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object.

In Canada, section 15 of the *Interpretation Act* disposes of all discussion in the premises. This section, by force of section 2, extends and applies to the Criminal Code and the following words in section 15 "or to prevent or punish the doing of anything which it deems contrary to the public good" make it clear that its provisions embrace penal as well as civil statutory provisions in any Canadian statute except if there is inconsistency or a declaration of inapplicability.

The appeal of His Majesty against each of the four respondents should be maintained, and the judgment of the Court of Appeal should be quashed. This conclusion, however, does not bring these cases to an end, for there were, before the Court of Appeal, other points besides the one discussed herein on which the respondents are entitled to have an adjudication. Adopting the course followed in *The King* v. *Deur* (1), and *The King* v. *Boak* (2), the cases should be remitted to the Court of Appeal for British Columbia in order that it may pass upon these other grounds of appeal.

The judgment of Rand, Kellock and Locke, JJ. was delivered by:

LOCKE J.:—The contention of the Crown is that while the words "at least", where they first appear in subsection (*a*) of section 575C(1) of the *Criminal Code,* are to be construed as meaning "not less than", where they again appear following the words "liable to", they are to be

(1) [1944] S.C.R. 435. (2) [1925] S.C.R. 525.

1951

THE KING
v.
ROBINSON
et al.

Locke J.

taken as meaning "as much as". Thus, if the respondents were shown to have been convicted three times or more of criminal offences for which the maximum permissible punishment was five years' imprisonment or more, this condition of the section would be complied with. The Court of Appeal (1), has unanimously rejected this contention, the learned judges all being of the opinion that in the context the expression should be construed, where used for the second time, in the same manner as when first used.

Since no mention is made of section 15 of the *Interpretation Act*, R.S.C. 1927, c. 1, in the reasons for the judgment appealed from or in the factum of either party, I judge that it was not argued in the Court of Appeal that the rules of statutory construction prescribed by that section were to be applied. Mr. Justice O'Halloran refers to the common law rules of construction but, while the result may not be affected, I am of the opinion that it is to the statute we must look. Section 15 reads:

> Every Act and every provision and enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of any thing which Parliament deems to be for the public good, or to prevent or punish the doing of any thing which it deems contrary to the public good; and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning and spirit.

This section appears to have had its origin in section 5 of c. 10, Statutes of Canada 1849 which was, with minor differences which do not affect the meaning, expressed in the same terms. It was reproduced in substantially the same form in section 6 of c. 5 Consolidated Statutes of Canada 1859 and appeared as the 39th paragraph of section 7 of the *Interpretation Act*, passed at the First Session of the Parliament of Canada in 1867, and has been continued in language identical in meaning up to the present time. Section 3 of the Act as passed in 1867 provided that section 7 and each provision thereof should extend and apply to every Act passed in the session held in that year and in any future session of the Parliament of Canada, except in so far as the provision was inconsistent with the intent and object of the Act or the interpretation which

(1) [1950] 2 W.W.R. 1265.

such provision would give to any word, expression or clause inconsistent with the context and except in so far as any provision thereof in any such Act is declared not applicable thereto. Section 2 of the *Interpretation Act*, R.S.C. 1886, c. 1, declared that the Act and every provision thereof should extend and apply to every Act of the Parliament of Canada then or thereafter passed, with the like exceptions, and the legislation was in this state when the *Criminal Code* was first enacted in 1892. Section 2 of the present Act is in like terms and its application does not, in my opinion, restrict in any way the application of section 15 to the language here to be construed.

Section 15 appears to me to be substantially a restatement of the rules for the construction of statutes contained in the Resolutions of the Barons in *Heydon's Case* (1). While in *Attorney General* v. *Sillem* (2), Pollock, C.B. said (p. 509) said that the rules of construction there stated were not to be applied to a criminal statute which creates a new offence, this argument is not available here to the respondents since the matter has been dealt with by statute. The offence of being a habitual criminal is new to our law. Clearly the language employed in defining it is capable of the construction contended for by the respondents. This, if adopted, would lead to the result that, unless the three offences or more proven against them were such that the minimum permissible punishment was five years' imprisonment, they were entitled to be acquitted. *In re National Savings Bank Association* (3), Turner, L.J. dealing with the construction of a clause in the *Companies Act 1862*, said that he did not consider it would be consistent with the law or with the course of the Court to put a different construction upon the same words in different parts of an Act of Parliament, without finding some very clear reason for doing so. There are dicta to the same effect by Cleasby, B. in *Courtauld* v. *Legh* (4), and by Chitty, J. in *Spencer* v. *Metropolitan Board of Works* (5). In the present matter the clear indication that the words "at least" are to be construed as meaning something else than "not less than", where used the second time, must be

(1) (1584) 3 Co. Rep. 7(*a*).
(2) (1863) 2 H. & C. 431.
(3) (1866) L.R. 1 Ch. 547 at 549.
(4) (1869) L.R. 4 Ex. 126 at 130.
(5) 22 Ch. Div. 142, 148.

1951

THE KING
v.
ROBINSON
et al.

Locke J.

found if at all in their association with the word "liable" and it is really the sense in which the latter word is to be understood in the context that determines the matter.

In my opinion, the requirement that statutes and their provisions are to be deemed remedial and that they shall accordingly receive "such fair, large and liberal construction and interpretation" as will best ensure the attainment of the object of the Act does not mean that the object of the Act is not to be clearly manifest from the language employed. The object of these amendments to the *Criminal Code* is to be ascertained by determining the identity of the persons against whom they are directed. In accordance with the canons for the interpretation of statutes the Act as a whole may be examined as an aid to the construction of the language of the amending sections. As appears from section 575B the legislation is designed for the protection of the public against the danger inherent in permitting habitual criminals being at large. While in sections 122, 364, 377, 449, 510A, 542 and 1054A, minimum terms of imprisonment are provided for the offences defined, in but one of these, section 449, is the minimum permissible term five years, and in none other is it more than this. In sections 122, 364, 449 and 510A the language is that the guilty person is "liable to imprisonment for a term not less than." In 14 sections of the *Code* where the prescribed punishment is or includes a fine and a minimum is prescribed the words used are also "not less than." In none of the sections is the minimum permissible term of imprisonment or fine expressed by employing the expression "at least". Where, however, only the maximum punishment by way of imprisonment which may be imposed is to be expressed, this has been done in at least 260 other sections of the *Code* by saying that the guilty person is "liable to" a penalty, leaving it to the operation of section 1054, which provides that anyone liable to imprisonment for life or any other term may be sentenced to imprisonment for any shorter term except where a minimum term is prescribed, to enable the Court to impose imprisonment for any lesser term. While in some 35 other sections of the *Code* the maximum term of imprisonment is defined by saying that it shall be for a term

"not exceeding" or "not more than" a stated period, this appears unnecessary in view of the provisions of section 1054.

The persons to whom the habitual criminal sections of the *Criminal Code* are applicable are, if the respondents' contention be accepted, only those who have on three occasions or more been convicted of offences against section 449, dealing with the offence of stopping a mail with intent to rob or search the same, and presumably such other offences for which there may hereafter be prescribed a minimum term of five years' imprisonment. Construing the subsection in the manner contended for by the Crown means that conviction on three or more occasions of any of the many other offences described in the *Code* for which the maximum imprisonment might be five years or more would comply with the subsection. The language of section 575B is that where a person is convicted of an indictable offence committed after the commencement of the Part and subsequently admits that he is, or is found by a jury or a judge, to be a habitual criminal:

> the Court, if it is of the opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public, may pass a further sentence ordering that he be detained in a prison for an indeterminate period.

It is habitual criminals as a class against whom the public are to be protected. The words "liable to", with the noted exceptions, being used throughout the *Code* to indicate the maximum sentences which may be imposed, the expression "liable to at least" in subsection 575C(1), in my opinion, conveys, and was intended to convey, the meaning contended for by the Crown. It is inconceivable to me that these new sections of the *Code* were directed against the very limited class of criminals who would be affected if the respondents' contention were correct. We are required by section 15 to interpret the subsection in such manner as will best ensure the attainment of its object according to its true intent, meaning and spirit, and to construe this language in this manner is, in my judgment, not to legislate but to comply with the directions of the statute.

I would allow these appeals and refer each case back to the Court of Appeal, in order that the other grounds of appeal raised before that Court may be there dealt with.

1951

THE KING v. ROBINSON et al.

Cartwright J.

CARTWRIGHT J.—The only question raised on this appeal is as to the proper interpretation of section 575C of the *Criminal Code*. This section is found in Part XA dealing with habitual criminals which was added to the *Code* in 1947 by 11 Geo. VI, c. 55, section 18.

The section, so far as it is relevant to this appeal, reads as follows:

> 575C. (1) A person shall not be found to be a habitual criminal unless the judge or jury as the case may be, finds on evidence,
>
> (*a*) that since attaining the age of eighteen years, he has at least three times previously to the conviction of the crime charged in the indictment, been convicted of an indictable offence for which he was liable to at least five years' imprisonment, whether any such previous conviction was before or after the commencement of this Part, and that he is leading persistently a criminal life; or . . .

The controversy is as to the proper construction of the words "been convicted of an offence for which he was liable to at least five years' imprisonment."

The respondent submits that these words, construed in their ordinary and natural meaning, describe an indictable offence as punishment for which the law prescribes a mandatory minimum sentence of imprisonment for at least five years. The appellant submits that they describe an indictable offence as punishment for which the maximum penalty permitted by the law is imprisonment for five years or more.

The solution of the question depends upon the meaning to be given to the words "liable to". Their ordinary and natural meaning is, I think, "exposed to". The intention of Parliament as disclosed in the words of the section seems to me to be to describe a class of indictable offences, and to require as one of the conditions of a person being found to be a habitual criminal that he shall at least three times have been convicted of an offence comprised in such class. The offences of which the class is composed are described by reference to the penalty which the law permits to be inflicted on a person convicted thereof, that is to say, the penalty to which he is exposed, which he runs the risk of suffering, which he is subject to the possibility of undergoing, not the penalty which he must suffer. Every indictable offence on conviction of which a person may lawfully is the permissible maximum and not a mandatory minimum. be sentenced to five years imprisonment or more is, I think,

included in the class described and every indictable offence on conviction of which a person may not lawfully be sentenced to so long a term of imprisonment as five years is, I think, excluded.

Expressing my view in different words, I think that the question an affirmative answer to which will determine that a particular indictable offence falls within the class described is: Does the law permit (not does the law require) the imposition on a person guilty of such offence of a term of imprisonment of as much as or more than five years?

The meaning which I ascribe to the word "liable" is given in the Oxford English Dictionary (1933) Volume VI, page 235. In Black's Law Dictionary, 3rd Edition (1933), page 1103, the meaning given is: "Exposed or subject to a given contingency, risk or casualty which is more or less probable". In *In re Soltau's Trusts* (1), North J. agreeing with a decision of Stirling J. in an earlier case held that the expression "is liable to be laid out in the purchase of land" does not mean "has to be laid out in the purchase of land" but means "subject to some disposition under which it may be laid out in the purchase of land".

If the words of the section only were to be considered it would be my view that their natural meaning is that attributed to them by the appellant. We are not, however, limited to a consideration of the words of the section. In order to ascertain the intention of Parliament we must construe the statute as a whole and not one part only by itself. The great majority of the sections in the Criminal Code which define indictable offences and prescribe the penalties therefor are in the following form: "Every one is guilty of an indictable offence and liable to——years' imprisonment who . . .". Section 1054 of the *Code* provides as follows:

> 1054. Every one who is liable to imprisonment for life, or for any term of years, or other term, may be sentenced to imprisonment for any shorter term: Provided that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted.

In my opinion a consideration of such sections strengthens the view that the words "liable to" followed by a stated term of years' imprisonment mean that such term In so far as Parliament may be said to grade offences, in the Criminal Code, according to their seriousness it does

(1) (1893) 2 Ch. 629.

1951

THE KING
v.
ROBINSON
et al.

Cartwright J.

so by fixing for each a permissible maximum sentence leaving it within the power and discretion of the Court, before which a person is convicted, to impose such lesser sentence as the particular circumstances may warrant, subject in the case of a few offences to a prescribed minimum. The words with which we are concerned appear to me to mean that no person shall be found to be a habitual criminal unless proved to have been convicted at least three times of an offence so serious that the permissible maximum sentence therefor is at least five years' imprisonment. They set a minimum in the field of permissible maxima.

It will next be observed that the *Code* contains only one offence, that described in section 449, for which a mandatory minimum sentence of as much as five years' imprisonment is prescribed. The words of a statute must be construed so as to give the statute a sensible meaning if possible. Here the construction for which the appellant contends gives the statute a sensible and effective meaning while that for which the respondent argues would render Part XA without effect.

In my opinion if the words of an enactment which is relied upon as creating a new offence are ambiguous, the ambiguity must be resolved in favour of the liberty of the subject, but whether or not such ambiguity exists is to be determined after calling in aid the rules of construction. I have reached the conclusion that the words of the section construed with the aid of the applicable rules, mentioned above, leave no room for doubt as to the intention of Parliament, and that such intention is that for which the appellant contends.

I would allow this appeal and those in the cases of *His Majesty the King* v. *McKenna*, *His Majesty the King* v. *Cuthbert* and *His Majesty the King* v. *Beatty* which it was agreed should abide its result and refer each case back to the Court of Appeal so that the other grounds of appeal, raised in that Court, may be dealt with.

Appeals allowed.

Solicitor for the appellant: *H. A. MacLean.*

Solicitor for the respondents: *T. F. Hurley.*