JACOB KALICK.....APPELLANT;

1920
*Oct. 12.
*Nov. 2.

AND

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN.

Criminal law—Bribery—Violation of provincial Act—"Administration of justice"—Cr. C. ss. 2, 157, 164—(C) 31 Vict. c. 71, s. 3—"The Saskatchewan Temperance Act," Sask., S. (1917) *c.* 23.

A bribe given in order to induce a police officer not to proceed against the party giving it for violation of "The Saskatchewan Temperance Act" is given with intent to interfere with the "administration of justice" under section 157 of the Criminal Code. Idington J. *contra.*

Per Idington J. (dissenting)—Section 157 of the Criminal Code can only herein be held relevant to a peace officer or public officer as defined in the interpretation clause of the said code; and appellant was not acting within such definition but merely performing a duty of inspecting books under the "Saskatchewan Temperance Act", and reporting, which could have been discharged by any one. The offence in question was one against section 39 of the said "Temperance Act", and hence impliedly excluded by section 154 of the said code from falling within section 157 thereof.

APPEAL from the judgment of the Court of Appeal for Saskatchewan (1), affirming the judgment of the trial court, with a jury, in the judicial district of Swift Current, in Saskatchewan.

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*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.

(1) (1920) 3 W.W.R. 99.

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The accused appellant was indicted as follows: "For that he, . . . with intent to interfere corruptly with the due administration of justice, did corruptly give to one . . . police officer a bribe . . . in order to induce (him) not to proceed against the said (accused) for violation of the Saskatchewan Temperance Act." The accused was found guilty by the jury but he prayed for a case to be reserved for the Court of Appeal.

The question submitted in the reserved case stated by the trial judge and the circumstances of the case, are fully stated in the above head-note and in the judgments now reported.

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

Harold Fisher for the respondent.

THE CHIEF JUSTICE.—I concur with Mr. Justice Anglin.

IDINGTON J. (dissenting).—The appellant was indicted in the King's Bench Judicial District of Swift Current, in Saskatchewan, as follows:

> .....For that he, the said Jacob Kalick, on the 20th of December, A.D. 1919, with intent to interfere corruptly with the due administration of justice did corruptly give to one Abraham Weder, a Police Officer, a bribe to wit—the sum of one thousand dollars ($1,000) in order to induce the said Abraham Weder not to proceed against the said Jacob Kalick for violation of the Saskatchewan Temperance Act.

On this he was found guilty by the jury and thereupon the learned trial judge reserved for the Court of Appeal the following question:—

> Was a bribe given in order to induce a Police Officer not to proceed against the accused for violation of the Saskatchewan Temperance Act, given with intent to interfere with the administration of justice under section 157 of the Criminal Code? The evidence and charge to the jury is hereto annexed.

The majority of the Saskatchewan Court of Appeal answered in the affirmative.

The dissenting opinion of Mr. Justice Newlands which gives us, by virtue of section 1024 of the Criminal Code, the jurisdiction to hear an appeal therefrom, held that the offence disclosed by the evidence did not fall within said section 157 of the Criminal Code inasmuch as it was not specifically defined by the said Code as a crime, and was specifically provided for by the 39th section of the Saskatchewan "Temperance Act" under and by virtue whereof the officer in question was acting when alleged to have been bribed.

The section 39 of said Act reads as follows:—

39. 1. No police officer, policeman or constable shall, directly or indirectly, receive, take or have any money for reporting or not reporting any matter or thing connected with the administration of this Act, or for performing or omitting to perform his duty in that behalf, except the remuneration and allowances assigned him in virtue of his office by the Government of the Province.

2. Any police officer, policeman or constable receiving, or any person offering money contrary to the provisions of this section shall be guilty of an offence and liable to a penalty of $100 and in default of immediate payment, to imprisonment for three months.

He held that, inasmuch as Parliament has the exclusive jurisdiction of declaring what is, or may constitute a crime, and had only declared offences against provincial legislation to be crimes when and so far as falling within section 164 of the Criminal Code, which he held could not be so operative or effective as the circumstances in question herein required in order to maintain said conviction. That section reads as follows:—

164. Everyone is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any Legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law.

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That, which is simply a re-enactment of the Criminal Code of 1892, seems, not only an express declaration of what (when merely resting upon disobedience of an Act of Parliament or of a legislature) is to constitute an indictable offence, but also to limit or restrict the indictable quality of the offence to something which is not within the reservation expressed by the term

> unless some penalty or other mode of punishment is expressly provided by law.

That enactment of the Criminal Code of 1892 was in substitution of 31 Vict. ch. 71, sec. 3, which was the earliest enactment of the Dominion Parliament giving the added strength of its enactment by virtue of the exclusive jurisdiction it had over criminal law, to help the enforcement of provincial legislation.

As I have always understood, the policy pursued in this regard has been to help the provincial legislation but to carefully abstain from trenching upon the provincial legislative powers, or wishes of the provincial legislators, as expressed by themselves relative to the sanctions to be imposed by provincial legislation.

Such being the case when we find any provincial legislative enactment containing an express sanction to secure its enforcement, its terms ought to be respected and be the limit in that regard.

It seems idle to take as our guide the vulgar idea of what may constitute a crime, when we have a much better guide in the history of the legislation emanating from Parliament as above outlined.

Then turning to the details of what has to be considered in light thereof, we have, in section 2 of the Criminal Code, the definition and interpretation of the words "Peace Officer" and "Public Officer" which are used in the said section 157, now in question.

Why should we go beyond these for the purposes of this case?

There certainly is nothing in the Saskatchewan "Temperance Act" that seems to justify any departure from these respective definitions, nor in the code to render it imperative to expand either definition in relation to the particular officer in question herein.

What were his duties? What office did he fill, under the Saskatchewan "Temperance Act" which would render it fitting he should be looked upon as either a peace officer or a public officer within the meaning of section 157 of the Criminal Code, now in question?

He may have been in fact a peace officer, or worn the uniform of such, but the actual duty in question which he had to discharge was under the liquor department created under said Act to inspect the books which appellant, as a druggist, was bound by said law to keep as a vendor of liquor, and compare the incoming supply of liquors with the outgoings served from said supply, and the prescriptions authorizing sales, and report the result of such inspection and audit to his superior officer.

Any man or woman sent by the liquor department to discharge such simple duty could have made just as good a report. It was not in any legal sense necessary to have sent a constable, or peace officer, or public officer, as defined by the code, to perform such a duty.

And sending one apparently so decorated surely did not help to bring him within the meaning of section 157.

The evidence of Weder, the officer in question, tells the story as follows:—

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Q. What was the first conversation you had with him?

A. When I came into the drug store I asked for the record and Mr. Kalick gave them to me and I went back into the dispensary to do the work there.

I sat down at the little table in the dispensary, Mr. Kalick came in and says "listen here, I will give you $100.00 and you leave the books alone."

I said I would not do that. I then went to work and started to check up the books and just before I was through Kalick came up again and asked me how I was getting along.

I replied that I was of the opinion that he had to account for some shortage. He said, "I will give you $500 and you leave the books alone," or rather, "Fix up the books so that they will be all right."

I said I did not know whether he would be short or not yet, that I was not through.

After I was through checking up the books I found a shortage of liquor and I asked Mr. Kalick if he could account for the shortage and he did not say anything to that.

So then he offered me $1,000 to call the matter square, that is the way he put it.

This illuminates the story relative to the nature of the duties that were being discharged and the offence of the appellant.

Unless we are to hold that the administration of the Saskatchewan "Temperance Act" and "the administration of justice" are synonymous terms, I fail to see how we can bring this offence, which the foregoing quotation and the remainder of the story unfold, assuming the strict interpretation of it as against the appellant, within the meaning of the indictment assumed to be founded upon section 157 in question.

I have no doubt upon the facts interpreted as contended for against the appellant, and in the absence of legislation relevant thereto, that he might have been held to have offended at common law as suggested in the court below, or against section 39 of the Saskatchewan "Temperance Act,"

I cannot see, even if the conviction herein stands, how the appellant could plead that, if prosecuted at common law or under said section 39 of said Act, in bar of such prosecution.

That seems to me not only the fair test, but the one which the law imperatively requires to maintain this conviction as founded on section 157.

In short I agree with Mr. Justice Newlands that the offence now in question disclosed by the evidence was, if interpreted against the appellant, clearly one against the above quoted section 39, s.s. 2, and hence impliedly excluded by section 164 of the Criminal Code from falling within section 157, now in question.

Moreover, assuming there might, in the absence of special or specific legislation bearing on the question, have been found something offensive against the common law, it is not that we have to deal with but section 157. And I submit we must read that and section 164 together, and apply the law that fits the crime.

I, therefore, am of the opinion that the appeal should be allowed.

DUFF J.—The stated case is in these words:—

On Feb. 5th, 1920, at Swift Current, the accused was found guilty by a jury on the charge: "For that he, the said J. Kalick, on the 20th day of December, 1919, with intent to interfere corruptly with the due administration of justice, did corruptly give to one Abraham Weder, a police officer, a bribe, to wit: the sum of one thousand dollars ($1,000.00) in order to induce the said Abraham Weder not to proceed against the said J. Kalick, for the violation of the Saskatchewan Temperance Act."

The question submitted for the opinion of the Court is:

Was a bribe given in order to induce a Police Officer not to proceed against the accused for violation of the Saskatchewan Temperance Act, given with intent to interfere with the administration of justice under section 157 of the Criminal Code?

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It seems clear that giving a bribe to prevent prosecution for an offence is *prima facie* an interference with the administration of justice. Mr. Chrysler argues that it is not within those words in the context in which they appear in section 157 on two grounds:

1. That the offence is specifically dealt with in those parts of the same section as well as in section 164 of the code and that the normal scope of the phrase must receive some restriction in consequence. I cannot perceive the application of sec. 164 and as to the other parts of section 157 they do not touch the case of accepting or giving a bribe for affording protection against a prosecution for an offence and that the facts proved established a case of giving a bribe for such a purpose is assumed in the question submitted.

2. He argues that the application of the section is limited to offenders or persons supposed to be or suspected of being or fearing that they are offending against the criminal law strictly so called, that is to say, against the criminal law as falling within the exclusive jurisdiction of the Parliament of Canada. While the word "crime" in the Criminal Code generally speaking applies only to crimes strictly so called and probably has that restricted meaning in this section, I think there is nothing requiring us to limit the meaning of the words administration of justice in the way suggested.

The appeal should be dismissed.

ANGLIN J.—The reserved case assumes that the defendant endeavoured to stifle a prosecution for a violation of the Saskatchewan "Temperance Act" by bribing a police officer, Was the bribe

given with intent to interfere with the administration of justice under section 157 of the Criminal Code

is the question propounded. In my opinion it was.

It is quite immaterial whether the police officer actually intended or contemplated instituting a prosecution. It suffices that the appellant gave the bribe with intent to head off such a proceeding. The due administration of justice is interfered with quite as much by improperly preventing the institution of a prosecution as by corruptly burking one already begun.

Two contentions were pressed by Mr. Chrysler—(a) that interference with a prosecution for a contravention of a provincial penal statute is not within the purview of section 157 of the code; and (b) that if any offence against that section was committed it was that of bribing a police officer

to protect (the appellant) from detection or punishment

and not that of

interfering corruptly with the due administration of justice.

(a) The obvious purpose of section 157 is to declare criminal and to render indictable the corruption or attempted corruption of officers engaged in the prosecution, detection or punishment of offenders. "Offenders" is a very wide term (*Moore* v. *Illinois*) (1), and the use of it affords a strong indication that the application of section 157 should not be restricted, as counsel for the appellant argued, to cases in which the bribe is offered or given to prevent the prosecution, detection or punishment of a person who is, or apprehends that he may be, charged with a crime indictable under the criminal code or at common law. The contravention of a valid provincial penal statute is an offence and a person who commits it is an offender.

(b) I am unable to agree with the contention that, if what the appellant did amounted to bribing a Peace

(1) 55 U.S.R. 13, at p. 19.

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Officer with intent "to protect (himself) from detection or punishment etc." within the concluding phrases of clause (a) of section 157, it cannot warrant his conviction for the crime of bribing a peace officer with intent to interfere corruptly with the due administration of justice provided for in the earlier and more comprehensive phrases of the same clause. That the act charged against the appellant was done with intent to interfere corruptly with the due administration of justice in the ordinary acceptation of that phrase is conceded. The mere fact that it might also warrant a conviction under the more restricted terms of the concluding phrase of clause (a) is not, in my opinion, a sufficient reason for cutting down the plain meaning of the earlier phrase. Other instances of similar overlapping occur in the Criminal Code.

Moreover, in order to bring the case within the concluding phrase of clause (a) a finding that the appellant had committed, or had intended to commit, a contravention of the Saskatchewan "Temperance Act" would be essential. No such finding has been made. No such issue was presented to the jury. No such charge was laid. Whether the appellant had in fact committed, or had intended to commit, an offence against the Saskatchewan "Temperance Act" was quite irrelevant and immaterial to the charge as laid. It was only essential that, being apprehensive of prosecution for such an offence, the appellant should have bribed the police officer with intent to prevent the realization of that possibility. Upon the case presented he could not have been convicted under the concluding phrase of clause (a); but upon the facts assumed in the reserved case he was, in my opinion, rightly convicted under the earlier clause.

It is quite unnecessary to consider whether the breach of a provincial penal statute which provides its own penalty is a "crime" within the meaning of that word as used at the end of clause (a) of section 157. Expressing no opinion upon that question, I allude to it merely to observe, with great deference, that cases such as *In re McNutt* (1), referred to by the learned Chief Justice of Saskatchewan, and the later and decisive case of *Mitchell* v. *Tracey* (2), which deal with the meaning and scope of the words "arising out of a criminal charge" in section 39 (c) of the Supreme Court Act, would appear to me to afford little or no assistance in determining it.

The appeal fails.

BRODEUR J.—This is a criminal appeal. The appellant was convicted before a duly constituted tribunal with having corruptly interfered with the administration of justice in giving to a police officer a bribe of $1,000 in order to induce this police officer not to proceed against him for violation of the Saskatchewan "Temperance Act."

The charge had been laid under section 157 of the Criminal Code which makes it an indictable offence for any person to give to a police officer employed for the prosecution, detection or punishment of offenders any money with intent

1° to interfere with the administration of justice; or

2° to procure the commission of any crime; or

3° to protect from detection or punishment any person having committed or intending to commit a crime.

The reserved case which is now before us is submitted in the following words:

(1) 47 Can. S.C.R. 257. (2) 58 Can. S.C.R. 640.

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Was a bribe given in order to induce a police officer not to proceed against the accused for violation of the Saskatchewan "Temperance Act" given with intent to interfere with the administration of justice under section 157 of the Criminal Code?

It is contended by the accused that he was prosecuted for having corruptly interfered with the administration of justice, that the giving of money to protect from detection any one committing a crime before any proceedings have been instituted for the punishment of that crime is not interfering with the administration of justice and that it is another offence dealt with otherwise.

The Court of Appeal for Saskatchewan answered the reserved case in the affirmative, Mr. Justice Newlands dissenting.

The police officer who received the bribe had been instructed by his superior officers to check the liquor sales made by the appellant and to see whether the latter had unlawfully sold any liquor contrary to the dispositions of the Saskatchewan "Temperance Act," and to find out whether information should not be laid against the appellant.

The work which the police officer was carrying out was authorized by the law and was absolutely necessary to put the wheels of justice in motion.

I am of opinion that the "administration of justice" mentioned in section 157 of the Criminal Code should not be restricted to what takes place after an information had been laid; but it includes the taking of necessary steps to have a person who has committed an offence brought before the proper tribunal, and punished for his offence. It is a very wide term covering the detection, prosecution and punishment of offenders.

The appeal should be dismissed with costs.

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MIGNAULT J.—On the ground that the charge against the appellant, and on which a verdict of guilty was returned by the jury, comes within the terms of article 157 of the Criminal Code, the jury having found the appellant guilty of having, on the 20th day of December, 1919, with intent to interfere corruptly with the administration of justice, corruptly given a bribe to a police officer to induce him not to proceed against the appellant for violation of the Saskatchewan "Temperance Act," I am of opinion that the question submitted should be answered in the affirmative. To give a bribe to a police officer with this intent is a corrupt interference with the administration of justice within the terms of Article 157. It is, in my opinion, immaterial whether proceedings were then pending or merely likely to be taken, and I do not think that the fact that these proceedings were to be instituted under the Saskatchewan "Temperance Act" takes the case out of the operation of this section of the Criminal Code.

The appeal therefore fails and should be dismissed.

Appeal dismissed.