

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Wentworth v. Mathieu, from the Superior Court for Lower Canada, Province of Quebec; delivered 17th February 1900.

Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The question in this Appeal arises upon an Act of the Legislature of Canada 27 and 28 Vict. cap 18 commonly called the "Temperance Act of 1864." Section 12 of this Act prohibits the sale of any spirituous or other intoxicating liquor unless it be for exclusively medicinal or sacramental purposes or *bond fide* use in some art, trade, or manufacture. Section 13 is as follows "Whoever by himself, his clerk, servant, " or agent, exposes or keeps for sale, or directly " or indirectly, or on any pretence, or by any " device, sells or barter, or in consideration of " the purchase of any other property, gives to " any other person any spirituous or other " intoxicating liquor, or any mixed liquor capable " of being used as a beverage and a part of " which is spirituous or otherwise intoxicating in " violation of the twelfth section of this Act, " shall incur a penalty of not less than twenty

“ nor more than fifty dollars for each such
“ offence, and whoever in the employment or on
“ the premises of another so exposes or keeps for
“ sale, or sells, or barterers or gives in violation of
“ the said section, shall be held equally guilty
“ with the principal and shall incur the same
“ penalty.” Section 17 provides that two or
more offences by the same party may be included
in one complaint provided the time and place of
each offence is stated ; but whatever may be the
number of the offences included in one complaint
the maximum of penalty imposable for them all
shall in no case exceed one hundred dollars. On
the 9th of June 1898 the Appellant made a
complaint to the District Magistrate for the
District of St. Francis in the Province of Quebec
that the Respondent on or about the 23rd of
April then last past had sold and delivered
intoxicating liquors and received payment for
the same contrary to this Act whereby he had
become liable to pay fifty dollars with costs. On
the 30th of June 1898 the Respondent was
convicted by the District Magistrate of having
on the 23rd of April then last sold and delivered
to one George Mount intoxicating liquors
contrary to the Act and adjudged to forfeit and
pay to the Appellant fifty dollars to be applied
according to law and also to pay twenty-nine
dollars and seventy-six cents for costs. On the
13th of July 1898 the Appellant made a similar
complaint to the same Magistrate of an offence
committed by the Respondent on the 19th of
April then last past and the Respondent was on
the 20th of July 1898 convicted of selling in-
toxicating liquors to one J. H. P. Armitage on the
19th of April contrary to the Act and adjudged
to forfeit and pay to the Appellant fifty dollars
to be applied according to law and ninety cents
for costs.

In addition to these convictions there were at different times between the 8th of June and the 21st of July 1898 twenty-seven other convictions of the Respondent on the complaints of the Appellant by the same Magistrate of similar offences committed on different days between the 26th of March and the 19th of May the penalty in each case being fifty dollars. On the 15th of September 1898 the Superior Court of Lower Canada on the petition of the Respondent ordered a writ of *certiorari* to issue and on the 5th of April 1899 the writ was issued in the case of the second of the convictions before mentioned namely for the sale on the 19th of April to Armitage being No. 526 in the records of the Magistrate's Court. A return having been made to the *certiorari* the Superior Court on the 5th of May 1899 pronounced its judgment annulling the conviction, and on the 14th of July 1899 Her Majesty by an Order in Council gave the Appellant special leave to appeal against this judgment upon the Appellant submitting to pay the costs of this Appeal incurred by the parties on both sides in any event if it should appear advisable to the Judicial Committee so to direct when the Appeal came on for determination and also to abide by any recommendation which their Lordships might see fit to make as to the enforcement of penalties by the Appellant against the Respondent. The judgment of the Superior Court delivered by Mr. Justice Lemieux appears from his reasons for it which are in the Record to be founded on the opinion that according to Section 15 the Legislature thought that the penalty of 100 dollars was sufficient punishment for all the breaches of the law up to the time of the prosecution and during the three months previous to it that being the limitation of time from the committing the offence for the prosecution for it, and

that the complaint of the 9th of June covered and included all offences previous to that date; that as one or more offences of the same nature against the Act could be included in the same prosecution a complaint made at a particular date for a single offence is presumed to be made and to comprehend all the offences against the Act up to the date of the complaint (Rec. pp. 39, 40). Their Lordships are quite unable to agree with the Superior Court in this opinion. It is an addition to Section 15 for which there is no authority either in the words of it or by implication. The purpose of Section 17 appears to be to prevent a prosecution under the Act where only one offence is charged failing by reason of the evidence not being sufficient to prove it or in consequence of a variance in the complaint from the evidence of the time when or the person to whom the intoxicating liquor was sold if more than one offence has been committed and the limit of the penalty to 100 dollars indirectly restrains the use of that power. There is no reason for thinking that "may" is to be imperative and the same as "shall." There is nothing which shows it is intended to have other than its natural meaning. If as the Superior Court was of opinion the Legislature thought a penalty of 100 dollars was sufficient punishment for all offences committed within three months previous to the complaint their Lordships do not doubt but that it would have said so and provided for it. The learned Judge supported his opinion by references to Russell on "Crimes" and the "American and English Encyclopædia of Laws," in which the principle is laid down that "where the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first, the plea of autrefois acquit is generally good." The meaning of this is that where the

same facts would justify a conviction for two different offences (say, burglary and petty larceny) a man who has been convicted for one offence cannot be tried over again on the same facts for the second offence. This principle has no application to the present case. Evidence that the Defendant supplied liquor to B. at a given hour and place would not support a complaint that he supplied liquor to A. at another hour or place notwithstanding that both complaints might have been included in one proceeding. Their Lordships are not aware of any general principle in Criminal Law which would support the view of the Superior Court. The Magistrate has a discretion as to the amount of the penalty between 20 and 50 dollars and where as in the present case there are many complaints by the same person of separate offences it would be right to exercise it. They are therefore of opinion that the conviction of the Respondent should not have been quashed and will humbly advise Her Majesty to reverse the judgment of the Superior Court.

Their Lordships note with satisfaction the statement of the learned Counsel for the Appellant that the penalties on the conviction of the Respondent will not be enforced, but they do not think it necessary to include a recommendation to that effect in the report which they will make to Her Majesty. In pursuance of the undertaking of the Appellant on the leave to appeal their Lordships direct the Appellant to pay the Respondent's costs of this Appeal to be taxed as between solicitor and client.
