SC CR 77 014

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN, upon the information of Steven Martens, sworn the 13th day of October, A.D. 1976, the Informant,

Respondent

- and -

DAVE THOMPSON, Defendant,

Appellant

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ppeal from Justice of the Peace John Anderson-Thomson

ppeal heard March 17, 1977 at Yellowknife, N. W. T.

udgment of the Court filed April 1, 1977

ppeal allowed

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easons for Judgment of:

The Honourable Mr. Justice C. F. Tallis

ounsel on the Hearing:

Mr. D. Cooper, for the Crown (Respondent)

Appellant, in person

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE C. F. TALLIS

The Accused, Dave Thompson, was convicted before Justice of the Peace John Anderson-Thomson on a charge under Section 25(1)(j) of the City of Yellowknife Highway Traffic By-Law which read as follows:

> "on or about the 16th day of September A.D. 1976, at Yellowknife, N.W.T., being the owner of a Ford vehicle bearing 1976 N.W.T. Licence No. 13-847, did unlawfully park the said vehicle on a highway in an area designated as a "No Parking" area by a traffic control device located above or to the side of the highway, contrary to Section 25(1)(j) of the City of Yellowknife Highway Traffic By-Law."

This matter came before me by way of a trial *de novo* on March 17, 1977 and I reserved judgment to fully consider the arguments that were raised before me. During the course of oral argu-

ment I indicated that it was possible that the appeal should be allowed on a technical ground. However in view of the fact that the Appellant personally gave evidence I prefer to deal with the matter on the merits.

Section 25(1)(j) of the City of Yellowknife Highway Traffic By-Law provides as follows:

> "25. (1) Subject to Subsections (2) and (7) no person shall park a vehicle so that any portion thereof is:
>
> (j) except as provided in Subsection (2), on any portion of a highway designated as a "no parking" or "restricted parking" area by a traffic control device located above or to the side of the highway;"

Section 25(7) of the said By-Law further provides:

> "25. (7) Subsections (1) to (5) inclusive do not apply when a vehicle is so disabled that it is not practicable to avoid stopping and temporarily leaving it in contravention of the provisions of those Subsections, provided all reasonable steps to comply promptly therewith are taken."

The law is very clear that the offence charged must be proved beyond a reasonable doubt. In this case Constable Norman Wannotch gave evidence for the prosecution. His evidence did establish a prima facie case with respect to an offence under Section 25(1)(j) of the City of Yellowknife Highway Traffic By-Law. However he candidly acknowledged that he had no recollection of the conversation that had occurred when he wrote out the ticket to the Appellant.

The Appellant gave evidence under oath in a frank and forthright manner. His evidence was not in any way shaken on cross-examination. I accept his evidence as being truthful and from that evidence I am satisfied that his truck did sputter and subsequently stall because it ran out of gas. He managed to get the truck into a loading zone although it was not parked straight as one would ordinarily expect.

Subsequent to his difficulty the Appellant walked to a service station and obtained gasoline which he brought back to his truck. He started the truck up and was allowing the truck to warm up and function properly when the ticket was given to him. The Appellant acknowledged that he waited for perhaps a few minutes for his unit to warm up and it could be argued that he perhaps could have moved it a little sooner. However I think this is one of those cases where the maxim *de minimis non curat lex* applies because in my opinion the Appellant acted in a very reasonable manner having regard to all the circumstances that were outlined in evidence. In this particular case I would also point out that it was brought to the attention of the Court that the Appellant (who was undefended by counsel) might have a valid defence under Section 25(7) of the Traffic By-Law. In doing this learned Counsel for the prosecution clearly recognized his responsibility as an officer of the Court in bringing authorities to the attention of the Court which might throw light upon the matter under consideration. This obligation is placed on Counsel regardless of whether or not the particular authorities assist the parties bringing it to the attention of the Court.

In this connection reference might also be made to the judgment of *Plant v. Urquhart* (1922) 1 W.W.R. 632.

Under the circumstances I am satisfied that this is a proper case in which to allow the appeal. I accordingly acquit the Appellant on the charge under Section 25(1)(j) of the City of Yellowknife Highway Traffic By-Law.

There will be no order as to costs and if the Appellant has already paid the fine imposed in the Court below I direct the same be returned to him by the Clerk of the Court.

I would point out that in this particular case it was suggested that where an accused person contests a charge and is found guilty, the Court as a matter of general principle would be entitled to impose a greater penalty than the voluntary penalty that would have been paid if a person decided to plead guilty. I reject this contention as a general principle to be applied because I do not believe that an accused person should be penalized for pleading not guilty to a charge on which he is subsequently convicted. In some cases the evidence may disclose aggravating circumstances which would warrant an increase in the usual penalty. However where no such aggravating circumstances exist then the penalty imposed by way of fine should not be greater than if voluntary payment had been made.

Dated at Yellowknife, Northwest Territories this 1st day of April, A.D. 1977.

C. F. Tallis

C. F. Tallis, J.S.C.