



**CROMWELL, J.A.: (Orally)**

The appellant was convicted of driving while his licence was revoked contrary to s. 287(2) of the **Motor Vehicle Act**, R.S.N.S. 1989, c. 293. His appeal to the Supreme Court of Nova Scotia was dismissed by Moir, J. and from that decision the appellant now seeks to appeal to this Court, requesting that leave be granted for the purpose. The proposed appeal is provided for under s. 7 of the **Summary Proceedings Act**, R.S.N.S. 1989, c. 450 and **Criminal Code of Canada**, R.S.C. 1985, c. C-46, s. 839 which give the appellant a right to appeal, with leave of the Court, on any ground involving a question of law alone.

On or about December 10, 1996, the appellant was stopped by a police officer and informed that his licence was suspended. The suspension had come about automatically pursuant to s. 278(2) of the **Motor Vehicle Act** as a result of a previous conviction for driving while his license was suspended or revoked.

At trial, the appellant testified that he was totally unaware that he was driving while suspended. He produced to the police officer at the time he was stopped a letter from the Registry of Motor Vehicles (dated June 11, 1996) concerning the non-payment of fines. The letter provided in part that:

... until advised by the Court that the fine(s) and costs have been paid in full, the Registrar ... will not (1) renew your driver's license or owner's permit, (2) plate or register a vehicle in your name or (3) issue a document or provide any service to you. ... All inquiries respecting the payment of the fine(s) and costs must be directed to the Court ...

The appellant's position is that he ought not to be convicted because he

was mistaken as to the fact of his license being revoked or, alternatively, that he was induced by the letter from the Registrar to believe that his license was not revoked.

Moir, J. found that the appellant's error concerning the revocation was one of law and therefore held that it afforded no defence unless the appellant's error of law was officially induced. Moir, J. further held that the Registrar's letter was not capable of supporting the appellant's contention that it had induced him to make an error of law.

Before this Court, the appellant advances essentially the same arguments as were placed before Moir, J.

With respect to the first issue, the appellant says that the defence of due diligence is available to this strict liability offence if the appellant reasonably believed in a mistaken set of facts which, if true, would render the act innocent. In my view, the decision of the Supreme Court of Canada in **R. v. MacDougall**, [1982] 2 S.C.R. 605 requires us to reject this argument. In that case, an automatic licence cancellation was reactivated upon the dismissal of Mr. MacDougall's appeal to the County Court. He was charged with driving while his license was canceled and defended on the basis that he believed he was entitled to drive. In addressing this issue, Ritchie, J., speaking for a unanimous Court which included Dickson, J., as he then was, said at page 612:

... I am unable to treat the respondent's mistake otherwise than as a mistake of law in relation to his right ... to drive after his appeal had been dismissed. This was a mistake of law which does not afford the respondent a defence...

That leaves the question of whether the appellant here can avail himself of the excuse of officially induced error. The status of this excuse in Canadian law was reviewed comprehensively by Lamer, C.J.C. in **R. v. Jorgensen**, [1995] 4 S.C.R. 55. I can find no error in Moir, J.'s conclusion that the letter relied on by the appellant does not bring him within the sorts of situation that may give rise to the excuse of officially induced error.

Leave to appeal is granted but the appeal is dismissed.

Cromwell, J.A.

Concurred in:

Hallett, J.A.

Pugsley, J.A.

NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

WILLIAM ROBERT NURNBER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

REASONS FOR  
JUDGMENT BY:

CROMWELL, J.A.  
(Orally)