

## Regina v. Cole

(1982) 37 O.R. (2d) 144

ONTARIO  
District Court  
District of Sudbury

**Smith D.C.J.**

March 31, 1982

*Criminal law -- Offences -- Charge of personation pursuant to s. 361 of Criminal Code -- Meaning of "person" -- Whether includes fictitious person -- Criminal Code R.S.C. 1980, c. C-34, s. 361*

The accused was charged with fraudulently personating one K.L. for the purpose of obtaining a driver's licence. At the time of the application, the driver's licence of the accused was suspended under the provisions of the Motor Vehicle Accident Claims Act, R.S.O. 1980, c. 298 because of an unsatisfied judgment against him. The Crown's position was that the offence had been made out even though it could not show that there is or ever was such a person as K.L.

Held: the accused should be acquitted.

There was no doubt that the obtaining of a licence was done with fraudulent intent. Nor was there any doubt that this was a personation. The issue then was whether the accused personated any person. The trial judge reviewed the rules of interpretation of penal statutes and concluded that any ambiguity was to be resolved in favour of the accused. The trial judge then reviewed in detail the meaning of the word "person" as it has been interpreted by the courts and concluded that "person" as used in s. 361 of the Criminal Code, R.S.C. 1970, c. C-34 did not include a fictitious person. If Parliament had intended that word to include a fictitious person, it could have easily done so by inserting the word "fictitious" in the phrase "living or dead".

[Hague v. Cancer Relief and Research Institute, [1939] 4 D.L.R. 191, [1939] 3 W.W.R. 1, 160, 47 Man. R. 325, apld; Winnipeg Film Society v. Webster, [1964] S.C.R. 280, 44 D.L.R. (2d) 126, 46 W.W.R. 632, [1964] 3 C.C.C. 6, sub. nom. Winnipeg Film Society v. The Queen on the Information of Webster; London & North Eastern R. Co. v. Berriman, [1946] A.C. 278; R. v. Scott (1980) 56 C.C.C. (2d) 111, 14 Alta. L.R. (2d) 227; Reference re Meaning of Word "Persons" in Section 24 of the British North America Act, 1867, [1928] S.C.R. 276, [1928] 4 D.L.R. 98; revd [1930] A.C. 124, [1930] 1 D.L.R. 98, [1929] 3 W.W.R. 479, sub nom. Edwards et al. v. A.-G. Can. et al.; R. v. Victoria Unit (Army and Navy Veterans), 66 D.L.R. 512,

Trial of accused on a charge of personation.

N. Rauf, for plaintiff.

P.B. Keaney, for defendant.

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**Smith D.C.J.** (orally): Counsel have agreed on the facts leading to the charge and they are these; the accused in 1972 adopted the name Kenneth Lane in order to obtain a driver's licence in the Province of Ontario and has used the name Kenneth Lane since that time. At the time he made the application for and obtained the licence in the name of Kenneth Lane, the driver's licence of the accused was suspended under the provisions of the Motor Vehicle Accident Claims Act, R.S.O. 1980, c. 298, because of an unsatisfied judgment against him. It is agreed that the accused made up or fabricated the name Kenneth Lane for the purpose of obtaining the driver's licence in 1972. The Crown concedes that it is not in a position to prove that there is any such person as Kenneth lane who the accused was purporting to be. The Crown submits, however, that the accused fraudulently personated Kenneth Lane, as charged in the indictment, for the purpose of obtaining the licence and that the offence has been made out even though the Crown is not in a position or able to show that there is or ever was such a person as Kenneth Lane, or that the accused knew of such a person.

The accused is charged that he did fraudulently personate Kenneth Lane with intent to gain advantage for himself, to wit, to avoid prosecution for driving under suspension, contrary to the Criminal Code, R.S.C. 1970, c. C-34. The pertinent part of s. 361 of the Code reads: "Every one who fraudulently personates any person, living or dead, with intent to gain advantage for himself is guilty of an indictable offence and is liable to imprisonment for fourteen years".

The defence submits that extreme caution is to be exercised in interpreting this penal law and refers to the decision of the Supreme Court of Canada reported as *Winnipeg Film Society v. Webster*, [1964] S.C.R. 280, 44 D.L.R. (2d) 126, [1964] 3 C.C.C. 6, sub nom. *Winnipeg Film Society v. The Queen on the Information of Webster*. Mr. Justice Ritchie is quoted on page 12 C.C.C.

The relevant rule governing the construction of penal statutes is well summarized in 36 Hals., 3rd ed., p. 415:

"It is a general rule that penal enactments are to be construed strictly, and not extended beyond their clear meaning. At the present day, this general rule means no more than that if, after the ordinary rules of construction have first been applied, as they must by, there remains any doubt or ambiguity, the person against whom the penalty is sought to be enforced is entitled to the benefit of the doubt."

The matter was succinctly stated by Lord Simonds in *London & North Eastern R. Co. v.*

Berriman, [1946] A.C. 278 at pp. 313-4 where he said: "A man is not to be put in peril upon an ambiguity, however much or little the purpose of the Act appeals to the predilection the court."

That rule of interpretation of penal statutes has been followed repeatedly by our courts, see *R. v. Scott*, a decision of the Alberta Court of Appeal (1980), 56 C.C.C. (2d) 111, 14 Alta. L.R. (2d) 227.

There seems no doubt on the agreed statement of facts that what Robert Charles Cole did, he did with a fraudulent intent. There seems little doubt as well as that what he did was personation, which has been described as the act of representing oneself to be someone else, whether living or dead, real or fictitious. (See *Osborn's Concise Law Dictionary*.) To "personate" is also defined as involving the acting or the playing the part of another, or to assume the character of, or to play or act a part, or to pretend to be another. (See *Shorter Oxford Dictionary*.) I have said that the Court can readily infer from the surrounding circumstances the fraudulent intent of the accused. He did stand in the place of another and in my view it has been made out that he did personate by so doing.

The real issue, however, is whether he personated any person. In other sections of the Criminal Code and indeed in many British Penal Statutes the activity proscribed is the personation of a specific individual or office. (See s. 363 of the Criminal Code of Canada and in England personation of an executor or administrator or voting official). In the same *Oxford Dictionary* the word "person" is defined as the character or capacity in which one acts, person as having legal rights, human being, individual human being, a man, woman or child, human being or body corporate or corporation. The last definition is of course carried into our own Interpretation Act, R.S.O. 1980, c. 219, as including a corporation. The word "person" has had many judicial interpretations, for example, one who is *en ventre sa mere* and indeed "person" has been deemed to include a County Court judge, but in that specific reference for tax purposes. It's interesting to examine a 1928 decision of the Supreme Court of Canada in which women were said to be non-qualified persons within the meaning of s. 24 of the B.N.A. Act, 1867, [now Constitution Act, 1867], and ineligible to sit as Senators of Canada: Reference re Meaning of Word "Persons" in Section 24 of the British North America Act, 1867, [1928] S.C.R. 276, [1928] 4 D.L.R. 98. The word "person", in law, may include both a natural person (a human being) and an artificial person (a corporation): *R. v. Victoria Unit (Army and Navy Veterans)*, 66 D.L.R. 512, [1921] 3 W.W.R. 594, 36 C.C.C. 285. In law a "person" is any being that is capable of having rights and duties and is confined to that. Persons are of two classes only -- natural persons and legal persons. A natural person is a human being that has the capacity for rights or duties: *Hague v. Cancer Relief and Research Institute*, [1939] 4 D.L.R. 191, [1939] 3 W.W.R. 1, 160, 47 Man. R. 325. A human being, therefore, is a being that is real, it is not a fictitious person.

The Supreme Court of Canada in Reference re Meaning of Word "Persons" in Section 24 of the B.N.A. Act is dealing there with whether women were included in the phrase "qualified persons" under the Act. In doing so, the Court had considerable to say about the word "persons" and the definition of the word. Chief Justice Anglin, at p. 285 S.C.R., said:

There can be no doubt that the word "persons" when standing along *prima facie* includes women. (Per Loreburn L.C., *Nairn v. University of St. Andrews* [[1909] A.C. 147 at 161].) It connotes human beings -- the criminal and the insane equally with the good and the wise citizen, the minor as well as the adult.

Mr. Justice Duff, as he then was, at p. 291 S.C.R.:

"Persons" in the ordinary sense of the word includes, of course, natural persons of both sexes.

Mr. Justice Mignault quoted at p. 303 S.C.R.:

The word "persons" is obviously a word of uncertain import. Sometimes it includes corporations as well as natural persons; sometimes it is restricted to the latter; and sometimes again it comprises merely certain natural persons determined by sex or otherwise.

The decision of the Supreme Court of Canada that women were not included in the reference to "qualified persons" under the Act was reversed by the Judicial Committee of the Privy Council but without affecting the definitions to which I've just referred: *Edwards et al. v. A.-G. Can. et al.*, [1930] A.C. 124, [1930] 1 D.L.R. 98, [1929] 3 W.W.R. 479, sub nom. *Re Section 24 of the B.N.A. Act*. The Judicial Committee was of the view that women were included in the definition of qualified persons and Lord Sankey at p. 111 D.L.R. said this:

If Parliament had intended to limit the word "persons" in s. 24 to male persons it would surely have manifested such intention by an express limitation as it has done in ss. 41 and 84. The fact that certain qualifications are set out in s. 23 is not an argument in favour of further limiting the class, but is an argument to the contrary because it must be presumed that Parliament has set out in s. 23 all the qualifications deemed necessary for a Senator and it does not state that one of the qualifications is that he must be a member of the male sex.

I quote to illustrate how statutes are interpreted by the courts. One of the methods used is to adopt the natural and ordinary meaning of the words used by Parliament in the statute. The statute being interpreted by the Supreme Court of Canada and the Law Lords was not a penal statute and the Judicial Committee was of the view that restrictions should not be placed unnecessarily on the words used in the British North America Act, 1867 or derivative legislation.

This being a penal statute, I follow the same approach but with opposite effect. It is not for this Court to assume that fictitious persons are included in the definition of "person" in s. 361, simply because Parliament must have intended that without so saying. On the contrary, I understand s. 361 to refer, when using the word "person", to a human being, in this context without considering whether it involves a corporation. If Parliament had intended that word to include fictitious person, as I find on the facts that Kenneth Lane is, then it would have said so. I am bolstered in that interpretation by reading the words immediately following the word "person" in the section -- "living or dead". If Parliament had intended that a fictitious person be included in that section or in the meaning of the word "person", in my view it would have said so by simply inserting the word "fictitious" in the phrase "living or dead".

It is my conclusion that because Kenneth Lane has not been established as a "person", the charge that the accused did fraudulently personate a person is not made out. For those reasons there will be a finding of not guilty and an acquittal.

Accused acquitted.