On the other hand, Parliament, in using the word "official," will be presumed to have intended the ordinary meaning and therefore to have included therein a minister unless the contrary intention is shown. In effect that contrary intention in this instance would require an intention that notwithstanding officials in general are to be prosecuted for bribery, nevertheless ministers are to be immune. There is no such intention indicated and on the contrary there is to be found the intention that ministers are not to be immune. It follows that the word "official" should receive its ordinary meaning and should therefore be taken to include Sommers as minister of lands and forests.

The appellants also contended that the convictions should be quashed because the appellants were not arraigned under the indictment of June 26, 1958; this contention should not succeed for the reasons given by my brother Bird.

In conclusion, these appeals should be dismissed.

ALBERTA

SUPREME COURT — EGBERT, J.

Regina ex rel Christoffersen v. Minister of Highways

Automobiles — Driver's Licence — Whether Right or Privilege — Vehicles and Highway Traffic Act, S. 7 — Cancellation or Supervision "For Any Other Reason Appearing to the Minister to Be Sufficient" — Nature of Discretion Conferred — Suspension of Licence for Extra-Provincial Conviction — S. 152 — Right of Licensee to Licence on Complying with Said Section.

The claim of an Alberta resident to a driver's licence is a right and not a privilege. The requirement of technical competence imposes a duty, but it does not reduce such right to a privilege. Once such duty is performed, the right remains intact and unimpaired. There is nothing in *The Vehicles and Highway Traffic Act*, RSA, 1955, ch. 356, which reduces such right to a privilege.

Sec. 7 of the said Act, which provides that the minister may cancel or suspend a driver's licence "for any other reason appearing to the minister to be sufficient," does not confer a discretion to be exercised arbitrarily. The quoted words relate to the infraction by the licensee of some statutory provision, or to his unfitness to drive.

The respondent, upon being notified that the applicant had been convicted of impaired driving in Ontario, suspended his Alberta licence "pursuant to sec. 152" of the said Act. On the applicant furnishing proof of his financial responsibility, the respondent refused to cancel the suspension and the applicant sought a *mandamus* order.

Held, the order should be granted. The respondent having invoked and acted under said sec. 152, he could not rely on any other section of the said Act, and the applicant having complied with the provisions of the said section, the applicant was entitled to have the suspension removed.

[Note up with 1 CED (2nd ed.) *Automobiles*, sec. 36; 3 CED (CS) *Words and Phrases* (1946-1957 Supps.).]

Michael Bancroft, for applicant.

J. W. Anderson, for respondent.

April 2, 1959.

EGBERT, J. — This is an application for a *mandamus* order compelling the minister of highways of the province of Alberta to restore to the applicant, Christoffersen, his Alberta driver's licence.

The applicant, a resident of Calgary, was the holder of Alberta driver's licence No. 0459004 issued to him on August 28, 1957. He was also the holder of an Ontario driver's licence.

On October 10, 1958, while visiting in Ontario, he was convicted under sec. 223 of the *Criminal Code*, 1953-54, ch. 51, at Fort William, Ontario, of driving a motor vehicle while his ability to drive was impaired by alcohol. His driver's licence was not suspended by the convicting magistrate as it might have been under the provisions of the *Criminal Code*, but his Ontario licence was automatically suspended for a period of three months by virtue of sec. 54 of the Ontario *Highway Traffic Act*. The Ontario licence was surrendered to the convicting magistrate at Fort William.

The Ontario department of transport sent a notice of this conviction to the motor vehicle branch of the Alberta department of highways, and the applicant received a notice dated November 28, 1958, advising him that his Alberta driver's licence was, by reason of his conviction in Ontario, suspended for six months. At about the same time he received notice from his insurance agents that his insurance for public liability, etc. was cancelled.

The applicant subsequently obtained new insurance through the Alberta assigned risk plan, effective on January 13, 1959, and prompt notice of this was given to the Alberta department of highways. In the interim the applicant had not driven his car. The minister of highways refused, and continues to refuse, to remove the suspension of the Alberta licence, despite the obtaining of new insurance by the applicant, and this application is the result of that refusal.

The sole issue is whether the minister had authority by virtue of the provisions of *The Vehicles and Highway Traffic Act*,

RSA, 1955, ch. 356, to suspend the applicant's Alberta licence by reason of his conviction in Ontario, and to maintain that suspension at this time.

At the outset I must express my shocked amazement at the contention of counsel for the minister that the claim of a resident of Alberta to a driver's licence—and consequently to drive upon the highways of Alberta—is a privilege and not a right. Since time immemorial the Queen's subjects have been free to move along the Queen's highway provided only they kept the Queen's peace. While the requirement of technical competence in the operation of that modern mode of conveyance, the motor vehicle, may, for the public safety, require the subject to prove that competence, as a condition to the issue of a licence to drive —and the consequent right to drive—that requirement does not reduce a "right" to a "privilege." Because it is my *duty* to be technically competent to drive, my *right* to drive is not destroyed, although it may be taken away from me or suspended if I fail in the performance of my duty. The introduction of a dangerous mode of conveyance has not destroyed or impaired my right, but it has enlarged my duty. The keeping of the Queen's peace now embraces an obligation on me to be so technically and physically competent that I shall not drive to the danger of any other of Her Majesty's subjects. When I have fulfilled my obligation, when I have performed my duty, my right to move freely upon the Queen's highway remains intact and unimpaired.

I know of no legislation which has reduced my inviolable right to drive into a privilege to be granted or refused at the uncontrolled whim of some petty bureaucrat. Counsel for the minister suggests that such legislation is contained in *The Vehicles and Highway Traffic Act*, and he refers particularly to secs. 7, 17, 20 (3) and 152 (3) of that Act.

Sec. 7 provides that the minister may cancel or suspend any driver's licence for misconduct or infraction of the provisions of the Act and certain other Acts, including the *Criminal Code*, or upon being satisfied of the unfitness, physical or otherwise of the holder, "or for any other reason appearing to the Minister to be sufficient."

Aside from being very dangerous legislation, the quoted words would seem to lend some authority to counsel's contention that driving is a privilege and not a right. However, I am confident that any court, reading the section as a whole, keeping in mind the principle that a statute is not to be construed as taking away a vested right except by clear intendment or necessary application, would interpret the quoted words as relating to the

infraction by the licensee of some statutory provision, or to his unfitness to drive. In other words the quoted words do not confer upon the minister a discretion to cancel or suspend a licence because he does not like the color of the licensee's eyes, or the cut of his coat, but only for an adequate reason allied to the reasons set forth in the earlier part of the section—all of which relate to a breach of the licensee's correlative duty upon which his right is dependent. Moreover, I would point out that the section has nothing whatever to do with the initial "right" to drive; it merely provides that if the subject fails in his *duty*, then his *right* may be cancelled or suspended.

Sec. 17 authorizes the minister to refuse to issue a driver's licence to any person unless he is satisfied by examination or otherwise of the physical and other competency of the applicant to drive without endangering the safety of the general public. Again this section relates not to the subject's *right* to drive, but to his *duty* to be technically and physically competent to operate a potentially dangerous vehicle.

Sec. 20 (3) provides for the automatic suspension of a driver's licence when he is convicted under the *Criminal Code* of driving while his ability to drive is impaired by alcohol or any drug—a section again dealing not with the subject's right to drive, but to a suspension of that right upon his failure to perform his duty.

Sec. 153 deals with suspension of licence upon conviction for various offences, or upon forfeiture of bail after being charged with one of these offences, and subsec. (3) provides for suspension in the case of conviction in any other province, or in any state of the United States of America for any offence which if committed in Alberta would have been a violation of the provisions of sec. 153. Again the section deals with the suspension of the right upon failure of the subject to perform his duty.

It will accordingly be seen that none of the sections to which counsel for the minister refers, constitutes that legislation to which I have referred, which converts the right of the subject to move freely upon the Queen's highway, to a privilege to be granted or refused at the whim of an executive officer of the Crown. I might add that the two authorities referred to by counsel for the minister, *Prov. Sec. of P.E.I. v. Egan* [1941] SCR 396, 76 CCC 227, and *Fairbairn v. Highway Traffic Board* (1957) 22 WWR 256, 26 CR 255, 119 CCC 24, appear to me to have no bearing whatever on the point counsel seeks to establish.

The suspension of the applicant's licence purported to be under sec. 152 of the Act—and the particular subsection applicable is

subsec. (3) of that section to which I have just referred. Both counsel in their written arguments have discussed the effect of sec. 20 (3), but since the minister has not acted nor purported to act under that section, I cannot see that it need be considered. He has acted under sec. 152, and so states in the notice of suspension, and accordingly only that section, as it may be affected, of course, by other sections of the Act, need be considered.

Sec. 152 (3) reads as follows:

> "152. (3) Upon receipt by the Minister of official notice that a driver licensed under this Act has been convicted or forfeited his bail in any other province or in any state of the United States of America, for an offence that, if committed in this Province, would have been a violation of the provisions of this section, the Minister shall suspend every such licence until such person has given proof of financial responsibility in the same manner as if the said conviction had been made or the bail forfeited by a court in the Province."

One of the offences referred to in subsec. (1) of the section is an offence under sec. 223 of the *Criminal Code*, under which the applicant was convicted in Ontario.

It will be observed that the minister's duty to suspend the applicant's licence, upon receiving notice of the Ontario conviction, was mandatory, but it will also be observed that this mandatory duty is not to suspend for any fixed period, but for an indefinite period, until the person has given proof of financial responsibility. This proof was furnished by the applicant on or about January 13, 1959, when the minister was advised of the obtaining of new public liability and property damage insurance. It would seem to follow that upon receipt of such proof the minister should promptly have cancelled the suspension of the applicant's licence.

Counsel for the minister, however, relies on the provisions of sec. 17, and says that the minister is, by virtue of that section, authorized to require the applicant to be re-examined before the issue of a licence. Sec. 17, to which I have already referred, simply authorizes the minister to refuse to issue a licence unless he is satisfied by examination or otherwise of the physical and other competency of the applicant to drive a motor vehicle without endangering the safety of the general public. The applicant is not applying for the issue of a driver's licence—he already has a licence which is merely suspended—he is merely asking that the suspension be lifted because he has complied with the

provisions of sec. 152 (3). Accordingly in my view sec. 17 has no application whatever. Counsel for the minister next contends that the minister was required to suspend the applicant's licence for a term of six months by reason of the Ontario conviction, by virtue of sec. 20 (3) of the Act. As I have pointed out the minister has not acted, nor purported to act, by virtue of the provisions of sec. 20 (3). It may very well be that there was some confusion in the minds of the officials of the motor vehicle branch as to what section of the Act they were really acting under, but the notice of suspension clearly states that the suspension is "pursuant to sec. 152 of the *V.H.T. Act*." Accordingly, in my view, the minister cannot rely on a section of the Act which he did not invoke, and under which he did not act.

Finally, counsel for the minister contends that the minister is required to demand and receive from the applicant proof of financial responsibility before the reissue of the licence, "subject to the expiry of the six months statutory suspension." This argument seems to result from a confusion between the provisions of sec. 20 and sec. 152. Under sec. 152 (3) the minister clearly had no right to suspend the licence for a period of six months or any other definite period. His only right was to suspend it until the applicant gave proof of financial responsibility—which he has done.

In my view the applicant has been entitled to a cancellation of the suspension of his licence since he furnished proof of his financial responsibility on or about January 13, 1959. The application is therefore granted with costs.

ALBERTA

SUPREME COURT — EGBERT, J.

Snyder v. Powell (Powell Estate)

Limitation of Actions — Tort Action against Estate — Limitation Period Applicable — Trustee Act, S, 33 — Whether Special Legislation — Limitation of Actions Act, S. 5 (2) (3) — Effect of.

Sec. 33 of *The Trustee Act*, RSA, 1955, ch. 346, which provides for a limitation period of one year on actions in tort against the estate of a deceased person, is exhaustive, special legislation specially limiting the right of action there created. Accordingly, by virtue of sec. 5 (2) of *The Limitation of Actions Act*, RSA, 1955, ch. 177, sec. 5 (3) of the latter Act, providing for a limitation period of two years, has no application to such action. *Keates v. Lewis Merthy Consoli-*