HER MAJESTY THE QUEEN .....APPELLANT;

AND

J. ALEPIN FRERES LTEE and CLEMENT ALEPIN .....RESPONDENTS.

1964
*Nov. 27
1965
Jan. 26

J. ALEPIN FRERES LTEE and CLEMENT ALEPIN .....APPELLANTS;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

(Nos. 1839-1841 C.Q.B.)

APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Labour—Criminal law—Wrongful dismissal from employment—Appeal by way of trial de novo before sentence imposed—Whether judge hearing trial de novo has jurisdiction to impose sentence—Whether evidence to support conviction—Criminal Code, 1953-54 (Can.), c. 51, ss. 367(a), 367(b), 719—Supreme Court Act, R.S.C. 1952, c. 259, s. 41(1) (3).

The respondents were convicted by a judge of the Court of the Sessions of the Peace of having, in violation of s. 367 of the *Criminal Code,* wrongfully dismissed an employee for the reason only that she was a member of a lawful trade union, and of having sought by intimidation and by causing actual loss of employment to compel other employees to abstain from belonging to a trade union. Prior to the date fixed for sentence, an appeal was taken by way of a new trial to a higher Court. By agreement of the parties, only the report of the original trial was submitted as evidence. The conviction was sustained and a sentence was imposed by the judge hearing the trial *de novo.* On a further appeal to the Court of Appeal, the conviction was maintained but the sentence was quashed on the ground that the judge at the trial *de novo* had no jurisdiction to impose a sentence.

The Crown was granted leave to appeal to this Court against the finding of the Court of Appeal on the question of jurisdiction to impose a sentence; and the respondents were granted leave to appeal with respect to the conviction.

Held: The appeal of the Crown should be quashed and the appeal of the respondents should be dismissed.

It is clear from the terms of s. 41(3) of the *Supreme Court Act* that, unless the judgment sought to be appealed is a judgment "acquitting or convicting or setting aside or affirming a conviction or acquittal",

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*PRESENT: Taschereau C.J. and Fauteux, Abbott, Ritchie and Spence JJ.

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there is no jurisdiction in this Court to entertain the appeal. The judgment sought to be appealed here did not come within that description. It was related to sentence. The general proposition that matters which are not mentioned in s. 41(3) must be held to be comprised in s. 41(1) was ruled out in *Goldhar v. R.*, [1960] S.C.R. 60 and *Paul v. R.*, [1960] S.C.R. 452.

As to the appeal against conviction, the submission that there was no evidence to support it could not be accepted. The conviction was justified by the evidence. There was also no substance in the submission that the judge at the trial *de novo* was prejudiced by the reading of the reasons for judgment delivered by the trial judge.

Travail—Droit criminel—Congédiement illégal—Appel par voie de procès de novo avant le prononcé de la sentence—Juridiction du juge entendant le procès de novo d'imposer une sentence—Preuve supportant le verdict de culpabilité—Code criminel, 1953-54 (Can.), c. 51, arts. 367(a), 367(b), 719—Loi sur la Cour suprême, S.R.C. 1952, c. 259, s. 41(1), (3).

Les intimés furent trouvés coupables par un juge de la Cour des Sessions de la Paix d'avoir, en violation de l'art. 367 du *Code criminel,* congédié illégalement une employée pour la seule raison qu'elle était membre d'un syndicat ouvrier légitime, et aussi d'avoir cherché par l'intimidation et en causant la perte réelle d'un emploi à contraindre d'autres employés de s'abstenir d'être membres d'un syndicat ouvrier. Avant la date fixée pour le prononcé de la sentence, les intimés en appelèrent de ce verdict devant un juge de la Cour supérieure par voie de procès nouveau. Par une entente entre les parties, seul le dossier du procès original fut soumis comme preuve. Le verdict de culpabilité fut maintenu et le juge au procès *de novo* imposa une sentence. En appel devant la Cour d'Appel, le verdict de culpabilité fut maintenu mais la sentence fut mise de côté pour le motif que le juge au procès *de novo* n'avait pas juridiction pour imposer une sentence.

La Couronne a obtenu permission d'en appeler devant cette Cour du jugement de la Cour d'Appel sur la question de juridiction pour imposer la sentence; et les intimés ont obtenu permission d'en appeler du verdict de culpabilité.

Arrêt: L'appel de la Couronne doit être cassé et l'appel des intimés doit être rejeté.

Il est clair de par les termes de l'art. 41(3) de la *Loi sur la Cour suprême* qu'à moins que le jugement en appel ne soit un jugement «acquittant ou déclarant coupable ou annulant ou confirmant une déclaration de culpabilité ou un acquittement», cette Cour n'a pas juridiction pour entendre l'appel. En l'espèce, le jugement en appel ne tombe pas sous cette description. Il se rapporte à la sentence. La proposition que les matières qui ne sont pas mentionnées dans l'art. 41(3) doivent être comprises dans l'art. 41(1) a été mise de côté dans *Goldhar v. R.*, [1960] R.C.S. 60 et *Paul v. R.*, [1960] R.C.S. 452.

Pour ce qui est de l'appel contre le verdict de culpabilité, la proposition qu'il n'y avait pas de preuve pour le supporter ne peut pas être acceptée. Le verdict était justifié par la preuve. Le grief que le juge au procès *de novo* a été influencé par les notes de jugement du juge au procès initial n'est pas fondé.

APPEL de la Couronne et APPEL des intimés du jugement de la Cour du banc de la reine, province de Québec[1], maintenant le verdict de culpabilité mais cassant la sentence. Appel de la Couronne cassé et appel des intimés rejeté.

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APPEAL by the Crown and APPEAL by the accused from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec[1], maintaining the conviction of the accused but quashing the sentence. Appeal of the Crown quashed and appeal of the accused dismissed.

J. J. Spector, Q.C., and *M. N. Rosenstein,* for the Crown.

G. Beaupré and *M. Trudeau,* for the accused.

The judgment of the Court was delivered by

FAUTEUX J.:—In May 1961, respondents were found guilty, under Part XXIV of the *Criminal Code,* by Judge T. A. Fontaine of the Court of the Sessions of the Peace, for the District of Montreal, of having, in Montreal, on or about November 13, 1960, in violation of s.367 Cr.C., (i) dismissed from her employment with respondent company, Thérèse Latour, for the reason only that she was a member of the International Ladies Garment Workers Union, a lawful trade union, and (ii) sought by intimidation and by causing actual loss of her employment to compel other employees of the company to abstain from belonging to a trade union to which they had a lawful right to belong. Jointly charged of the same offences, Camille Alepin was acquitted.

Prior to the date eventually fixed for sentence, respondents appealed from their conviction to the Superior Court pursuant to ss. 719 *et seq.* Cr.C.; in the result, no sentence was pronounced by Judge Fontaine. The evidence submitted at the trial *de novo* was, by agreement of the parties through their respective counsel, the evidence adduced in the Court of Sessions of the Peace before Judge Fontaine. This appeal was heard by Ouimet J. who,

[1] [1964] Que. Q.B. 142.

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having considered the matter, dismissed it in November 1962 and, a few days later, imposed sentence on each of the respondents.

The latter then sought and obtained leave to enter a separate appeal to the Court of Queen's Bench[1] from the conviction as well as from the sentence. As grounds of appeal against the conviction, they contended that there was no evidence in support thereof and also that Ouimet J. had illegally read and been prejudiced by the reading of the reasons for judgment delivered in the Court of Sessions of the Peace by Judge Fontaine. As grounds of appeal against the sentence, they submitted that, in the circumstances, the jurisdiction to impose sentence was exclusively vested in the Judge of the Court of Sessions of the Peace and not in the Judge of the Superior Court hearing the trial *de novo*. On these appeals of the company and Clément Alepin, bearing respectively No. 1841 and No. 1839 of its records, the Court of Appeal (Hyde, Rinfret and Montgomery JJ. A.) rendered the following formal judgment:

> DOTH MAINTAIN THE APPEAL to the extent of quashing the order for the payment of costs by the Appellant and the sentence imposed upon him by the Superior Court (Hyde, J. dissenting as to the quashing of the sentence), DOTH order that the record be referred back to the Court of Sessions of the Peace for the District of Montreal for the imposition of sentence, and DOTH otherwise dismiss the appeal without costs (Rinfret, J. dissenting, would quash the conviction and return the record to the Superior Court).
>
> (SIGNED)
>
> G. MILLER HYDE
> G.-ED. RINFRET
> G. H. MONTGOMERY
> JJ. Q.B.

Thus in each of the appeals:—(i) the conviction was maintained by a majority judgment (Hyde and Montgomery JJ.A.); Rinfret J.A., dissenting on the basis of the second ground of appeal, would have quashed the conviction and returned the record to the Superior Court for a fresh trial *de novo;* (ii) the sentence was quashed

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by a majority judgment, Rinfret J.A. because he would have quashed the conviction and Montgomery J.A. for the reason that, in his view, the ground raised as to jurisdiction to impose sentence, was well founded. Hyde J.A., dissenting, would have maintained the sentence. In each of the appeals, the Court ordered the record to be referred back to the Court of Sessions of the Peace for the District of Montreal for the imposition of sentence.

Hence, two appeals were launched in this Court with leave thereof granted under s.41 of the *Supreme Court Act,* to wit (i) the appeal of Her Majesty the Queen against the finding of the Court of Appeal on the question of jurisdiction to impose sentence and (ii) the appeal of J. Alepin Frères Ltée and Clément Alepin, with respect to the conviction.

The recital of the material facts giving rise to these proceedings appears in my reasons for judgment delivered this day in the case of *Her Majesty the Queen v. J. Alepin Frères Ltée and Clément Alepin, Nos. 1838-1840 C.Q.B.*[1]

With respect to the appeal of Her Majesty the Queen, I have reached the opinion that this Court has no jurisdiction. Any jurisdiction this Court might have must be found in s.41 of the *Supreme Court Act,* there being, in the *Criminal Code,* no provisions permitting, in summary convictions, an appeal to this Court. The relevant provisions of s.41 to be considered are:

> 41. (1) Subject to subsection (3), an appeal lies to the Supreme Court with leave of that Court from any final or other judgment of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court.
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> 41. (3) No appeal to the Supreme Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence.

It is clear from the terms of subsection (3) that, unless the judgment sought to be appealed is a judgment "acquit-

[1] Ante p. 355.

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ting or convicting or setting aside or affirming a conviction or acquittal" of either an indictable offence or an offence other than an indictable offence, there is no jurisdiction in this Court under that subsection to entertain this appeal. The judgment here sought to be appealed does not come within that description. It is not a judgment related to an acquittal or a conviction of an offence and, while an important question of jurisdiction is involved therein, this question does not relate to an acquittal or a conviction within the meaning of subsection (3) but to sentence. Neither can jurisdiction of this Court be found in subsection (1). The general proposition that matters which are not mentioned in s.41(3) must be held to be comprised in s.41(1), with the consequence that this Court would have jurisdiction to entertain an appeal from a judgment of a nature similar to the one here considered, is ruled out by what was said by this Court in *Goldhar v. The Queen*[1] and *Paul v. The Queen*[2]. It may be a matter of regret that this Court has no jurisdiction to decide the important question which gave rise to conflicting opinions in the Court below, but strong as my views may be with respect to that question, I am clearly of opinion that this Court has no jurisdiction to entertain this appeal.

As to the appeal of J. Alepin Frères Ltée and Clément Alepin, two submissions made by counsel for appellants are to be considered. The first one is that there was no evidence that Mrs. Latour was dismissed for the reason only that she was a member of a lawful trade union (s. 367(*a*) Cr.C.) or that appellants wrongfully or without lawful authority sought, by intimidation and by causing actual loss of her employment, to compel other employees to abstain from belonging to the International Ladies Garment Workers Union (s. 367(*b*) Cr.C.). In none of the three Courts below was this submission accepted and, in my view, rightly so. From the evidence, it is sufficient to point to the following

[1] [1960] S.C.R. 60, 31 C.R. 374, 125 C.C.C. 209.
[2] [1960] S.C.R. 452, 34 C.R. 110, 127 C.C.C. 129.

statement made by Alepin to Mrs. Latour, in the afternoon of the 13th of October 1960:

> Je suis obligé de vous renvoyer, cela me fait de la peine; parce que vous êtes la présidente de l'union.

and to this other statement, also made by Clément Alepin, to foreman Lebeau, apparently with reference to Mrs. Latour's dismissal:

> Quand on coupe la tête du chef, le restant, les membres se placent, ça s'écroule.

The second submission is that Ouimet J., seized with the trial *de novo,* illegally read and was prejudiced by the reading of the reasons for judgment delivered by Judge Fontaine of the Court of Sessions of the Peace. The judgment of Ouimet J. clearly indicates that, while he expressed his agreement with Judge Fontaine, he did form his own conclusions both as to the facts and the law, after due consideration of the evidence submitted by agreement of the parties as well as the written arguments made by their counsel in support of their respective submissions. With deference, I fail to see any substance in this submission which, as well as the first made in support of this appeal, cannot be accepted.

I would therefore quash the appeal of Her Majesty the Queen, with costs, and dismiss the appeal of J. Alepin Frères Ltée and Clément Alepin, with costs.

Appeal by the Crown quashed with costs; and appeal by the respondents dismissed with costs.

Attorney for the Crown: J. J. Spector, Montreal.

Attorneys for the accused: Beaupré & Trudeau, Montreal.