HER MAJESTY THE QUEEN .....APPELLANT;

1964 *Nov. 27 — 1965 Jan. 26

AND

J. ALEPIN FRERES LTEE AND CLEMENT ALEPIN ..... RESPONDENTS.

(Nos. 1838-1840 C.Q.B.)

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

Labour—Criminal law—Wrongful dismissal from employment—Whether evidence to support conviction—Criminal Code, 1953-54 (Can.), c. 51, s. 367(a), 719—Supreme Court Act, R.S.C. 1952, c. 259, s. 41(3).

The respondents were convicted by a judge of the Court of the Sessions of the Peace of having, in violation of s. 367(*a*) of the *Criminal Code,* wrongfully dismissed four employees for the reason only that they were members of a lawful trade union. Prior to the date fixed for sentence, an appeal against conviction was taken by way of a new trial to a higher Court. The judge at the trial *de novo* dismissed the appeal and imposed a sentence. The conviction was quashed by the Court of Appeal on the ground that there was no evidence to sustain the conviction. The Crown was granted leave to appeal to this Court pursuant to s. 41(3) of the *Supreme Court Act.*

Held: The appeal should be dismissed.

There was, as found by the Court below, no evidence to support the conviction. There was in fact no dismissal within the meaning of s. 367(*a*) of the Code.

Travail—Droit criminel—Congédiement illégal—Preuve ne supportant pas le verdict de culpabilité—Code criminel, 1953-54 (Can.), c. 51, arts. 367(a), 719—Loi sur la Cour suprême, S.R.C. 1952, c. 259, s. 41(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(*a*) du *Code criminel,* congédié illégalement quatre employés pour la seule raison qu'ils étaient membres d'un syndicat ouvrier légitime. Avant le jour fixé 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. Le juge au procès *de novo* rejeta l'appel et imposa une sentence. Le verdict de culpabilité fut cassé par la Cour d'Appel pour le motif qu'il n'y avait

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

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pas de preuve pour le soutenir. La Couronne obtint permission d'en appeler devant cette Cour en vertu de l'art. 41(3) de la *Loi sur la Cour suprême.*

Arrêt: L'appel doit être rejeté.

Il n'y avait, comme la Cour d'Appel le jugea, aucune preuve pour soutenir le verdict. Il n'y a pas eu en fait un congédiement dans le sens de l'art. 367(*a*) du Code.

APPEL d'un jugement de la Cour du banc de le reine, province de Québec[1], cassant un verdict de culpabilité. Appel rejeté.

APPEAL by the Crown from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec[1], quashing the conviction of the respondents. Appeal dismissed.

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

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

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, in violation of the provisions of s.367(a) Cr.C., on or about October 14, 1960,wrongfully and without lawful authority, dismissed from their employment four employees of the respondent company, to wit, Jean-Guy Chastenais, Roméo Goulet, Armand Langlois and Jean-Pierre Cyr, for the reason only that they were members of the International Ladies Garment Workers Union, a lawful trade union.

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. Mr. Justice Roger Ouimet, who presided at the trial *de novo,* dismissed these appeals on November 26, 1962, and, on November 30, 1962, sentenced both respondents.

Respondents then sought and obtained leave to appeal to the Court of Queen's Bench (Appeal Side)[1] pursuant to

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

s. 743 Cr.C., on the ground that there was no legal evidence supporting their conviction. The appeal of Clément Alepin and the appeal of J. Alepin Frères Ltée bear respectively No. 1838 and No. 1840 of the records of the latter Court. The Court of Queen's Bench (Hyde, Rinfret and Montgomery JJ.A.) maintained these appeals, quashed the convictions, acquitted the respondents and ordered the complainant, Geneviève Bossé, to pay each of the respondents one-quarter of the costs of the transcription of the evidence and the preparation of the joint case in appeal.

Appellant then sought and obtained leave to appeal from these judgments to this Court pursuant to s. 41(3) of the *Supreme Court Act,* on the ground that the Court of Queen's Bench (Appeal Side) concluded in error that there was no evidence to sustain the convictions.

As accurately reviewed in the reasons for judgment of Montgomery J.A., the material facts giving rise to this case can be summarized as follows. At the relevant time, respondent company was manufacturing women's clothing, respondent Clément Alepin, the company's Secretary-Treasurer, appearing to have been in sole charge of the operations. The work was carried out on two floors of the building, the larger number of employees working on the upper floor and the four above mentioned employees, on the floor below. The company's employees were not organized into a labour union before the Spring of 1960, at about which time the International Ladies Garment Workers Union established a local in the plant and was certified as bargaining agent for the employees. While conciliation and arbitration proceedings, which started in the Fall, were pending, the President of the local, one Mrs. Latour, was dismissed by respondents. This dismissal also lead to other charges against respondents which are the object of a separate appeal to this Court. On the morning following the dismissal of Mrs. Latour, Geneviève Bossé, working on the upper floor, there tried to force respondent Clément Alepin to state in front of other employees his reasons for dismissing Mrs. Latour. Upon his refusal to do so, other employees intervened and a noisy demonstration then ensued. Being unable to cope with the situation, the management called the police. Upon arrival, the police, in order to restore the order, enjoined the demonstrators to

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leave, suggesting to them to go to their union hall. A number of employees, eventually followed by the four above mentioned who had taken no part in the demonstration, then left. Members of the union started to picket the plant that afternoon.

In his reasons for judgment, Montgomery J.A., with the concurrence of Hyde J.A., found that it was clear from the evidence of the four employees alleged to have been dismissed that, while they were also enjoined by an unidentified constable to vacate the employers' premises, there was no dismissal, within the meaning of the section, by the management, either directly or indirectly, through instructions it might have given but did not actually give to the police. Rinfret J.A., who wrote separate reasons, fully agreed with these views. At the hearing before us, counsel for the appellant strongly relied on certain statements made by Camille Alepin to some of the employees, during the demonstration. Camille Alepin had been jointly charged of the same offences with the two respondents but was acquitted in first instance by Judge T.A. Fontaine. From that acquittal, there was no appeal.

Having considered all that counsel for the appellant had to say, I am unable to find error in the opinion reached in the Court below that there was no evidence to support the convictions of respondents.

I would dismiss this appeal with costs.

Appeal dismissed with costs.

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

Attorneys for the respondents: Beaupré & Trudeau, Montreal.