

FREDERICK WILFRED HALL AND }
 HAROLD DAVID LINDEN } APPELLANT;

1962
 *Mar. 6, 7
 Mar. 19

AND

HER MAJESTY THE QUEEN RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law—Bribery—Municipal officials—Charge of attempt—Directed verdict of acquittal—Evidence—Misdirection—Appeal against order granting new trial—Criminal Code, 1953-54 (Can.), c. 51, ss. 104(1)(b), (e), 584.

The accused H was reeve of the Township of York and L was a councillor. They were jointly charged under s. 104(1) of the Criminal Code for offering to accept a sum of money to aid in procuring the passing of a measure, motion or resolution concerning the issue of a building permit. A second count of indictment contained a separate charge against L of accepting a sum of money for the same purpose. The evidence related to certain conversations by M, president of a company, and P, a building contractor, with the accused. The trial judge directed the jury to acquit on the ground that all preparations had been made for the issue of the permit before the alleged conversations had taken place, or before any money had been paid over to L. The Court of Appeal ordered a new trial. The accused appealed to this Court.

Held: The appeal should be dismissed.

It is true that the permit was issued before the passing of the bylaw but on the evidence it was issued after the conversations had taken place and it was followed by the passing of the bylaw. Although there was

PRESENT: Locke, Cartwright, Martland, Judson and Ritchie JJ.

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no express mention in the evidence of the payment of money for the purpose of procuring a vote for the adoption of the bylaw, the jury was entitled to look at the evidence as a whole—the preliminary conversations, the issue of the permit and the subsequent passing of the bylaw with the two accused voting for it. It was an error to isolate the vote from the issue of the permit and there was, in these circumstances, evidence to go to the jury on both counts.

APPEAL from a judgment of the Court of Appeal for Ontario¹, setting aside the verdict of acquittal and directing a new trial. Appeal dismissed.

Joseph Sedgwick, Q.C., for the appellant Linden.

E. Arthur Martin, Q.C., for the appellant Hall.

W. C. Bowman, Q.C., for the respondent.

The judgment of the Court was delivered by

JUDSON J.:—In the year 1956 the two appellants were municipal officials of the Township of York, Frederick W. Hall being the reeve and Harold D. Linden one of the councillors. They were jointly indicted under s. 104(1) of the *Criminal Code* for offering to accept a sum of money from one Neil J. May to aid in procuring the adoption of a measure, motion or resolution concerning the issue of a building permit to him. The second count of the indictment contains a separate charge against Harold D. Linden of accepting from one Harry D. Payne a sum of money for the same purpose. At the conclusion of the case for the Crown, on the motion of counsel for the defence, the learned trial judge directed the jury to return a verdict of not guilty on both counts. The Court of Appeal¹ held that there was error in so directing the jury, being unanimously of the opinion that there was some evidence fit for submission to the jury on both counts. The two accused now appeal to this Court from the judgment of the Court of Appeal setting aside the verdict of acquittal and directing a new trial.

The evidence on which the Court of Appeal acted is set out in full in its reasons. I do not propose to repeat more than the following brief summary.

Early in 1956 Neil J. May, the president and sole shareholder of Carbide Tool Company Limited, decided to extend his factory building in the Township of York. He first discussed a building permit with the Township Engineer and, on March 6, 1956, he completed the filing of the necessary

¹ (1961), 35 C.R. 38.

documents for the issue of the permit. On March 8, he entered into a building contract with Harry D. Payne for the construction of the building.

On March 12, at a meeting of the Committee of General Purposes of the township, May's application for the permit was approved subject to a ten-foot set-back of the north wall of the proposed building from the neighbouring lands. On March 19, the next meeting of the Committee of General Purposes took place. In the meantime May secured the consent of the owners of the neighbouring lands to the erection of the building as shown on the original plans. At this meeting of the Committee the application was approved unanimously.

The general building by-law of the township provides as follows:

- S. 4 A permit shall be obtained from the Building Inspector by the owner or the legally authorized agent of the owner, for the erection, alterations, reconstruction, removal or wrecking of, or repairs to any (or part of any) building or structure.
- S. 84 (aa) Notwithstanding anything in this By-law contained, the Building Inspector shall not grant a permit for nor shall any person erect, construct or alter, a building or structure within the Township of York to be used for the purpose of a factory, . . . unless and until the plans and specifications have been first submitted to and been approved by Council after a report thereon has been submitted to Council by the Building Inspector and by the Chief of the Fire Department.

Evidence was given by the township solicitor that the usual practice was to issue a building permit without waiting for the passing of the by-law approving the minutes of the meeting of the Committee for General Purposes, and that the passing of the by-law authorizing the permit was regarded as a mere formality. The township engineer gave evidence to the same effect.

On March 20, 1956, May applied to the township office for his building permit and was told that it was not ready. On March 21, May had a meeting with Hall in the latter's office, having made the appointment by telephone the day before. May says that at this meeting Hall solicited a bribe and sent him on to see Linden, who also made the same suggestion. May also says that Linden called Hall in his presence and discussed the issue of the permit and stated that May understood what the position was. Following this conversation, May spoke to his lawyer before he returned to

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speak to Hall. On the second interview with Hall the township engineer was called in. He said that everything in connection with the permit was in order. After the engineer had left Hall referred to the arrangement which May had made with Linden and suggested that the money could be left in the glove compartment of his car. He pointed out where the car was parked. May also says that Hall, after a telephone conversation with the building department, told him that the permit was ready and to go down to the building department. May says that he did go down to the building department but the permit was not ready and that he was told to pick it up the following day. He did attend on the following day at the building inspector's department and the permit was delivered to him. May says that he did not give any money either to Linden or to Hall. He had already spoken to a solicitor and afterwards he and his solicitor interviewed the Assistant Crown Attorney.

Payne says that he did give the sum of \$100 to Linden for the issue of a permit.

Up to this time, of course, the authorizing by-law had not been passed. There was nothing except the minute of the General Purposes Committee and what was referred to as the general practice to support the issue of the permit.

The grounds on which the learned trial judge directed the jury to acquit both accused were as follows:

The evidence clearly indicates that everything had been done as far as finalizing the preparation for the issuing of the building permit or the authorizing of the issuing of the building permit, before these alleged conversations took place with the two accused men, or before any money was paid over to Linden, as is alleged.

So it could not have been paid or could not have been promised for the purpose alleged against them, because the thing had already been done, it could not have been agreed to be paid or paid for the purpose of procuring the passage of a measure authorizing it.

The case for the prosecution is that it is open to the jury to infer from the evidence that the two appellants made an offer to accept money for assistance in obtaining a valid building permit and that this necessarily involved the passing of a by-law upon which each was entitled to vote and subsequently did in fact vote. I have outlined above the chronology of the evidence until the building by-law was passed. May, as an applicant, was in no position to demand of the building inspector that he issue a permit. It is true that the permit was issued before the passing of the

by-law but on this evidence it was issued after the conversations between May and Hall and Linden and between Payne and Linden had taken place and it was followed by the passing of the by-law. Although there is no express mention in the evidence of the payment of money for the purpose of procuring a vote for the adoption of the by-law, the jury is entitled to look at the evidence as a whole—the preliminary conversations, the issue of the permit and the subsequent passing of the by-law with the two accused voting for it. It was error to isolate the vote from the issue of the permit and there is, in these circumstances, evidence to go to the jury on both counts.

I would dismiss the appeal.

Appeal dismissed.

Solicitor for the appellant Linden: J. Sedgwick, Toronto.

Solicitor for the appellant Hall: G. A. Martin, Toronto.

Solicitor for the respondent: W. C. Bowman, Toronto.

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