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*Feb. 3.
*Feb. 23.

HIS MAJESTY THE KING.....APPELLANT;

AND

PIERRE DÉCARY .....RESPONDENT.

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

Criminal law—Appeal—Jurisdiction—Whether dissenting judgments in a court of appeal disclosed a dissent on a question of law within the meaning of section 1023 of the Criminal Code.

The respondent, a divisional registrar appointed under regulations, enacted by order in council under powers conferred by a Dominion Act of 1940, concerning National War Services, was found guilty and convicted on two charges of having committed offences in contravention of some provisions of these regulations. On an appeal by the respondent, the appellate court, by a majority of three to two, quashed the verdict and the conviction. The judgment of the majority of the Court declared the verdict to be unreasonable for reasons resulting from *inter alia* an examination of the relative values of the testimony adduced by the Crown and the testimony given by the accused. The judgment did not rest upon any view of the majority upon a question which was a question of law alone. The judgment of one of the dissenting judges was simply to the effect that he was "of the opinion that the appeal should be dismissed", while the other dissenting judge held that there should be a new trial, without stating, either expressly or by implication, that such conclusion was based upon an opinion that the majority proceeded upon any error in point of law alone. On the appeal to this Court by the Attorney-General for Quebec, the respondent moved to quash such appeal.

Held that no jurisdiction lies in this Court to entertain the appeal: neither of the judgments of the two dissenting judges of the appelllate court discloses a dissent on a question of law within the meaning of section 1023 of the Criminal Code.

MOTION by the respondent to quash an appeal to this Court by the Attorney-General of Quebec from a judment of the Court of King's Bench, appeal side, province of Quebec, which had quashed a verdict of guilty and the conviction of the respondent on charges of having committed offences in contravention of regulations concerning National War Services.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgment now reported.

Aimé Geoffrion K.C. for the appellant.

G. Fauteux K.C. for the respondent.

* PRESENT:—Duff C.J. and Rinfret, Kerwin, Hudson and Taschereau JJ.

The judgment of the Court was delivered by

THE CHIEF JUSTICE—As is well known, appeals to this Court in criminal cases are regulated by the Criminal Code. By section 1023 of the Code it is enacted:—

Any person convicted of any indictable offence whose conviction has been affirmed on an appeal taken under section ten hundred and thirteen may appeal to the Supreme Court of Canada against the affirmance of such conviction on any question of law on which there has been dissent in the Court of Appeal.

"The Attorney-General of the province may appeal to the Supreme Court of Canada from the judgment of any court of appeal setting aside a conviction or dismissing an appeal against a judgment or verdict of acquittal in respect of an indictable offence on an appeal taken under section ten hundred and thirteen on any question of law on which there has been dissent in the Court of Appeal.

Turning to section 1013, that section provides:—

A person convicted on indictment may appeal to the court of appeal against his conviction,

(*a*) on any ground of appeal which involves a question of law alone,

(*b*) with leave of the court of appeal, or upon the certificate of the trial court that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone or a question of mixed law and fact; and

(*c*) with leave of the court of appeal, on any other ground which appears to the court of appeal to be a sufficient ground of appeal.

The respondent, Pierre Décary, was tried upon a charge preferred by the Attorney-General of the province of Quebec before the Hon. Mr. Justice Lazure and a jury on the 10th of June, 1941. The charge contained three counts, of which it is only necessary to quote the first and third:—

(1) A Montréal, district de Montréal, du 1er du mois d'octobre 1940 au 23 du mois d'avril 1941, Pierre Décary, régistraire de division, nommé en vertu des Règlements de 1940 sur les Services Nationaux de Guerre, Jean Tarte et Mike Maloley et autres personnes inconnues ont comploté ensemble et les uns avec les autres pour frauduleusement, en demandant, exigeant, obtenant, recevant et acceptant, directement ou indirectement, des argents de personnes soumises aux Règlements de 1940 sur les Services Nationaux de Guerre ou d'autres pour elles, nuire à l'application et à la mise en vigueur des dits règlements.

* * *

(3) A Montréal, district de Montréal, du 1er du mois d'octobre 1940, au 23 du mois d'avril, Pierre Décary, régistraire de division, nommé en vertu des Règlements de 1940 sur les Services Nationaux de Guerre, a provoqué et excité Jean Tarte et Mike Maloley à commettre et leur a conseillé et leur a fait commettre l'offence suivante, savoir: de faire des offres, propositions, dons, prêts, promesses, d'offrir et de donner des compensations, rémunérations, directement et indirectement, à lui-même, fonctionnaire et personne chargée de l'application des Règlements de 1940

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sur les Services Nationaux de Guerre, et ayant à remplir des fonctions qui s'y rapportent, dans le but d'obtenir frauduleusement pour des tiers, un ordre d'ajourner l'appel pour le service militaire.

Contre la forme du Statut en tel cas fait et pourvu, et contre la Paix de Notre Souverain Seigneur le Roi George Six, sa Couronne et Sa Dignité.

The respondent was found guilty and convicted on both of these two counts. He appealed from this conviction and the court of appeal, by a majority of three to two, quashed the verdict and the conviction.

It is convenient, I think, to set forth the grounds upon which the judgment of the majority of the court of appeal rests, as they appear in the formal judgment:—

Attendu que l'appelant invoque à l'appui de son appel divers moyens basés uniquement sur des questions de fait, d'autres sur des questions de fait et de droit et aussi sur des questions de droit seulement;

Attendu que l'appelant soutient, en particulier, que le verdict n'est pas raisonnable et n'est pas supporté par le poids de la preuve; qu'à sa face même, ce verdict, comportant une recommandation à la clémence de la Cour, est un verdict déraisonnable résultant d'un compromis illégal entre les jurés qui avaient des doutes sur sa culpabilité et ne lui en ont pas donné le bénéfice; que le seul témoignage incriminant rendu contre lui ne pouvait, à raison de l'ensemble de la preuve et plus particulièrement de son propre témoignage, servir de base à un verdict de culpabilité, et qu'à raison des circonstances et de la façon dont ce seul témoignage incriminant a été donné, il y lieu de l'écarter entièrement et qu'il ne peut servir de base raisonnable à un verdict de culpabilité;

Attendu que de toute la preuve rapportée par la Couronne devant le jury, le seul témoignage pouvant incriminer l'appelant est celui du témoin Jean-Louis Tarte dont les affirmations sont nettement, catégoriquement et spécifiquement niées par l'appelant;

Attendu qu'il ressort du verdict, tel que libellé, que le doute que devait nécessairement produire dans l'esprit des membres du jury ce conflit de témoignages, n'a pu être complètement éliminé et qu'il y a lieu, en pareil cas, pour la Cour, saisie du présent appel, d'étudier, peser et apprécier la preuve et de lui donner sa véritable interprétation et son plein effet;

Attendu que les circonstances qui ont précédé et entouré le témoignage de Jean-Louis Tarte, telles qu'elles sont dévoilées par le dossier donnent à ce témoignage un caractère particulier et qui en affecte la force probante à un point tel, qu'en face des dénégations claires, explicites et convaincantes de l'appelant, il serait déraisonnable d'asseoir un verdict de culpabillité contre lui sur l'un ou l'autre des deux chefs d'accusation qui lui sont reprochés;

As appears from the enactments of section 1023, quoted above, the Attorney-General's right of appeal from a judgment of the court of appeal, setting aside the conviction of an accused, is limited to some ground which raises a question of law on which there has been a dissent in the court of appeal. It is well settled by the decisions of this

Court that such ground must raise a question of law in the strict sense and that it is not a competent ground of appeal if it raises only a mixed question of fact and law.

Counsel for the respondent moved to quash the appeal of the Attorney-General from the judgment of the court of appeal alleging that there was no dissent in the court of appeal upon any such question of law and, consequently, that there is no competent ground of appeal available to the Attorney-General.

After fully considering the able argument presented by Mr. Fauteux, on behalf of the Attorney-General, our conclusion is that for the reasons advanced by Mr. Geoffrion the Attorney-General has no right of appeal in this case.

There were two judgments delivered by learned justices of the court of appeal which were in disagreement with the conclusion of the majority, and the point to be considered is whether or not either of these judgments discloses a dissent on a question of law within the meaning of section 1023 of the Criminal Code.

It is convenient, first of all, to notice that the judgment of the majority of the Court does not proceed upon the ground that there was no evidence in support of the accusations before the jury in the sense that it was within the power of the trial judge, and, therefore, of course, his duty, to direct a verdict of not guilty to be entered. The judgment obviously proceeds under section 1013 (*b*), or (*c*), which gives a right of appeal upon leave to the court of appeal on any ground which involves a question of fact alone or a question of mixed law and fact, or on any other ground which appears to the court of appeal to be a sufficient ground of appeal. The judgment pronounces the verdict to be unreasonable for reasons resulting from *inter alia* an examination of the relative values of the testimony adduced by the Crown and the testimony given by the accused. It is quite plain that the judgment does not rest upon any view of the majority upon a question which is a question of law alone.

Turning now to the judgments of the minority, Mr. Justice Hall simply says:—

> I am of the opinion that this appeal should be dismissed.

Plainly there is here no dissent upon any question of law.

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Mr. Justice Walsh, in the reasons delivered by him for his conclusion that there should be a new trial, does not say, either expressly or by implication, that this conclusion is based upon an opinion that the majority proceeds upon any error in point of law alone.

It is plain, therefore, that the record discloses no material enabling the Attorney-General to bring his appeal within the conditions prescribed by the enactments of the Criminal Code, and the appeal must, consequently, be quashed.

Appeal quashed.