

Supreme Court of Canada
Brousseau v. The King, (1917) 56 S.C.R. 22
Date: 1917-11-13

Fernand Brousseau. Appellant;

and

His Majesty The King. Respondent.

1917: October 24; 1917: November 13.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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

Criminal law—Counselling to commit offence—Criminal common law of England—Criminal Code, ss. 69, 161.

Every one is guilty of an offence who counsels another to commit it, whether the person so counselled actually commits the offence or not.

Demanding money from a contractor for aid in securing contracts from a municipal corporation is counselling the contractor to commit the offence mentioned in sec. 161 of the Criminal Code.

The criminal common law of England is still in force in Canada, except in so far as repealed, either expressly or by implication.

APPEAL from the judgment of the Court of King's Bench, appeal side¹, reversing the judgment of the Court of Sessions of the Peace, at Montreal. The accused, appellant, was discharged before the trial court; and the respondent prayed for a reserve case before the Court of King's Bench, appeal side which was granted. The Court of Appeal reversed the Magistrate's decision and sent the prisoner back for sentence.

The circumstances of the case and the questions of law are stated in the above head-note and in the judgment now reported.

N. K. Laflamme K.C. for the appellant.

J. C. Walsh K.C. for the respondent.

[Page 23]

THE CHIEF JUSTICE.—I am of opinion that this appeal should be dismissed with costs. The appellant was charged before the magistrate with having, he then being Mayor of the Council of the Town of Sault au Récollet, demanded from Beaulieu and Chagnon, two contractors with the municipality, the sum of \$2,500, as a consideration for his aid in

¹ Q.R. 26 K.B. 164.

procuring them new contracts from the municipality and renewing others in process of execution.

We are asked to say whether, these facts being admitted, they disclose a criminal offence.

I have no doubt that, as found by the majority below, the charge as laid comes directly within the language of section 69 (d) of the Code. In effect, that section provides that every one is party to and guilty of an offence who counsels or procures any person to commit the offence. I am of opinion that the word "and" in the first line is to be read disjunctively. If the offence is committed then the accused is a party to it; or, if the offence is not committed, then he who counsels is guilty of a substantive offence. It was suggested, but I hope not seriously, that in demanding payment the accused cannot be said to have counselled payment. I construe "counsel" used in collocation with "procure" to mean "advise" or "recommend" and the demand made in the admitted circumstances means at least that.

In *Rex v. Higgins*², Lord Kenyon said:—

It is argued that a mere intent to commit evil is not indictable; without an act done; but is there not an act done when it is charged that the defendant solicited another to commit a felony? The solicitation is an act.

Here the accused is charged with having actually asked and demanded the money, which is by section

[Page 24]

69 made an offence in itself; and of that act the accused admits he was guilty. To incite to commit a felony, when no felony is committed, is generally a common law misdemeanour. *The Queen v. Gregory*³. See also *Reg. v. Ransford*⁴.

Further it is an indictable misdemeanour at common law for any person in an official position corruptly to use the power of his position by asking for a bribe, which is exactly this case, and there can be no doubt in so far as this court is concerned that the criminal common law of England is still in force in Canada, except in so far as repealed either expressly or by implication. *The Union Colliery Company v. The Queen*⁵, at p. 87.

² 2 East 5 at page 17.

³ L.R., I.C.C.R. 77.

⁴ 13 Cox 9.

⁵ 31 Can. S.C.R. 81.

Complaint is made that on this construction the accused is not informed specifically of the law under which he is being proceeded against; but while the Code provides that with respect to certain offences the accused is entitled to particulars, ss. 957, 852 and 854 Criminal Code, I am not aware of any provision which requires the prosecuting officer to give notice to the accused that he is being proceeded against for the breach of some particular section of the Code or for a common law offence.

The appeal should be dismissed with costs.

DAVIES J.—I think section 69 of the Criminal Code clearly makes a person who counsels or procures another to commit an offence, guilty of a specific offence, whether the person so counselled actually commits the offence he is counselled to commit or not It is the counselling or procuring which constitutes the offence irrespective of the effect of such counselling

[Page 25]

or procuring and so in the case before us the defendant, being at the time Mayor of the town, in soliciting money for his assistance in endeavouring to procure municipal contracts for certain parties, Beaulieu and Chagnon, brought himself within the provisions of this section.

I would therefore dismiss the appeal.

IDINGTON J.—I am of the opinion that under section 69 of the Criminal Code, every one is party to and guilty of an offence who actually commits it or counsels another to commit the offence, and that when the appellant offered himself as a man to be bribed, he was suggesting and, in the ordinary meaning of the word, counselling those to whom he offered to prostitute his office for a price, and was guilty of the offence to be done.

I therefore think the Court of Appeal was right in answering the second question in the way they did, and that the appeal should be dismissed.

DUFF J.—I agree with Mr. Justice Idington.

ANGLIN J.—The purport and intent of clause (d) of s. 69 of the Criminal Code in my opinion is to make it an offence to counsel any person to commit an offence whether the actual commission of the latter offence does or does not ensue. I entertain no doubt that the

defendant in soliciting money from Beaulieu and Chagnon as a consideration for his aid in procuring municipal contracts for them counselled them to commit what would be an offence under s. 161 of the Code.

Appeal dismissed.