

CASES

DETERMINED BY THE

SUPREME COURT OF CANADA ON APPEAL

FROM

DOMINION AND PROVINCIAL COURTS

RENÉ OUVRARD APPELLANT,

AND

QUEBEC PAPER BOX COMPANY
LIMITED RESPONDENT.

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

Criminal law—Accused, respondent, prosecuted for alleged infractions of Order in Council dealing with maximum or ceiling prices—Accused convicted after speedy trial under Part XV of the Criminal Code—Order in Council by federal authorities creating leave to appeal to Supreme Court of Canada in cases of offences against wartime regulations—Regulations made by the Order in Council—Extent of such right of appeal—Interpretation of the conditions imposed by the Order in Council—Right of appeal to Supreme Court of Canada still subject to sections 1023 and 1025 of the Criminal Code.

Under the provisions of the Criminal Code, there existed no right of appeal to provincial courts of appeal or to the Supreme Court of Canada from judgments rendered on summary conviction under Part XV of the Code. But right of appeal to these courts was allowed, on certain conditions, by a federal order in council, coming into force on the 7th of June, 1943, from such judgments when rendered on convictions for offences against wartime regulations. Certain regulations were made and established by the order in council, amongst which those material to this appeal read as follows: an appeal shall lie to a provincial court of appeal, by leave of such court, on any ground which involves a question of law or of mixed law and fact; a further appeal from the judgment of the court of appeal shall lie to the Supreme Court of Canada by leave of such Court; and it was also regulated that "sections 1023 to 1025 inclusive of the Criminal Code shall, insofar as the same are not inconsistent with this regulation, apply to any appeal to the Supreme Court of Canada***".

Held: That the effect of the regulations made by the order in council was not to give a right of appeal to the Supreme Court of Canada

*PRESENT:—Rinfret C.J. and Kerwin, Taschereau, Rand and Kellock JJ.

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from any and all judgments or decisions of a provincial court of appeal, with the sole proviso that leave of the Supreme Court of Canada be given by that Court; but

Held: That the result and effect of the regulations were that an appeal only lies to the Supreme Court of Canada, by leave of that Court "on any questions of law on which there has been a dissent in the court of appeal" (s. 1023 Cr. C.) or "if the judgment appealed from conflicts with the judgment of any other court of appeal in a like case" (s. 1025 Cr. C.). The provisions contained in these two sections are not in any way inconsistent with the regulations and must be taken into account in any appeal to this Court under the regulations made by the order in council.

Therefore, applying to the appellant's application for leave to appeal to this Court the regulations so interpreted, the motion should be dismissed: there having been no dissent in the Court below, this Court has no jurisdiction to grant leave, as the applicant has not shown that the judgment to be appealed from, in respect to the main point involved in the appeal, conflicts with the judgment of any other court of appeal in a like case.

APPLICATION for leave to appeal to this Court from a decision of the Court of King's Bench, appeal side, province of Quebec, allowing the respondent's appeal from the judgment of the Court of King's Bench (Crown side) and quashing the conviction of the respondent, after speedy trial before the Court of Sessions of the Peace, for having committed infractions of an Order of the Wartime Prices and Trade Board. The Court of King's Bench (Crown side) had quashed the conviction in one out of ten charges, but had affirmed the convictions in the others.

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

Gérard Lacroix K.C., for the application.

Chas. A. Cannon K.C. contra.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—The appellant is an investigator of the Wartime Prices and Trade Board. The respondent, which is a manufacturer of packing boxes, was prosecuted by the appellant, acting on behalf of the Board, before the Court of the Sessions in the city of Quebec for ten alleged infractions of order in council no. 8528, dated the 1st of November, 1941 (and amendments thereto),

which deals with maximum or ceiling prices at which manufactured goods may be sold after the 1st day of December, 1941.

For the purpose of the present judgment, I do not find it necessary to enter into the particulars of each one of these charges (no. 22171 to no. 22180).

The accused was tried under Part XV of the Criminal Code and found guilty of all charges. It appealed to a judge of the Court of King's Bench (Crown Side), who heard the appeals, quashed the conviction in no. 22172, but affirmed the convictions in all the other cases.

By order in council no. 4600, which came into force on the 7th of June, 1943, the Minister of Justice having reported

that in many of these prosecutions under Part XV aforesaid, questions of law of first rate importance are not infrequently raised relating to the validity and the construction of wartime regulations and it has been represented to him that, in the interest of uniformity of decisions, as well as the true construction of all wartime regulations, further appeals should be allowed to the provincial courts of appeal and the Supreme Court of Canada wherever, in the opinion of the Court to be appealed to, an important question of law or of mixed law and fact is raised, it was deemed necessary or advisable,

for the security, defence, peace, order and welfare of Canada that such appeals be provided for.

Certain regulations were accordingly made and established and those which are material to the present appeal read as follows:—

2. In any proceedings under Part XV of the Criminal Code for an offence against wartime regulations, an appeal from a judgment of the county or district court judge, or in the province of Quebec, the judge of the Court of King's Bench, Crown Side, on any ground of appeal which involves a question of law or of mixed law and fact shall lie to the court of appeal by leave of such Court.

3. A further appeal from a judgment or decision of the court of appeal shall lie to the Supreme Court of Canada by leave of such Court.

* * *

6. Sections 1023 to 1025 inclusive of the Criminal Code shall, insofar as the same are not inconsistent with this regulation, apply to any appeal to the Supreme Court of Canada taken pursuant to this regulation.

7. The Attorney General of Canada shall have a right of appeal in any case where the Attorney General of the province in which the offence is alleged to have been committed has such right.

The respondent secured from the Court of King's Bench (Appeal Side) (that Court being the court of appeal for

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the province of Quebec referred to in the regulations) leave to appeal in the nine cases where the conviction had been affirmed. The appeals were heard by that Court both on questions of law and on questions of mixed law and fact. They were allowed in every one of the cases and the nine convictions were quashed.

The appellant then moved for leave to appeal to this court from these judgments of the Court of King's Bench under the provisions of the Order in Council No. 4600.

In his notice of motion the appellant alleged that the cases involved questions of public law and of the meaning and real extent of the regulations enacted under the *War Measures Act* of Canada; and that, amongst other questions, the Court was asked to decide mainly:—

9. (a) What may constitute a sale during the basic period under regulations enacted pursuant to the *War Measures Act* of Canada and especially in virtue of order in council no. 8528, as well as orders flowing therefrom;

(b) If the *mens rea*, or criminal intent, constitutes a necessary element in offences created by order in council no. 8528, and the orders flowing therefrom;

(c) Which is the meaning and the extent of the reference to the Canadian Criminal Code in said order in council no. 8528, and the orders made pursuant thereto.

The appellant further alleged that the decisions of the courts up till now were not unanimous on these specific points and, moreover, that the judgment rendered in the premises by the Court of King's Bench (Appeal Side) was in conflict with several other judgments of other courts of appeal in similar cases, while the Supreme Court of Canada had never so far decided these specific points in relation to the interpretation of the regulations and orders enacted pursuant to the *War Measures Act* of Canada.

The petition for leave to appeal, as originally served, did not indicate the judgments of the other courts of appeal alleged to be in conflict with the decision appealed from. As a preliminary objection the respondent, therefore, invoking the judgment in *Liebling v. The King* (1), argued that the Court should not entertain the application.

The appellant, however, had subsequently served an additional notice in which he referred to four different

judgments which he alleged to be in conflict with the judgment now appealed from and, as this additional notice was served sometime before the motion came to be heard before the Court, it was thought that this was a sufficient compliance with the rules of the Court and it was decided that the respondent "should take nothing" by the objection so made by him.

Another objection made by the respondent was that, while both the Court of King's Bench (Crown Side) and the Court of King's Bench (Appeal Side) had delivered two separate judgments on the matters now before the Court, there was only one notice of appeal to the Supreme Court of Canada and the respondent was entitled to be told from which of the two judgments the appellant intended to appeal to this Court. The appellant, being requested to optate between the two, thereupon declared that he abandoned the appeal from the judgment rendered on the case numbered 22171 and bearing number 3573 in the Court of King's Bench (Crown Side) and thus limited his appeal to the eight other convictions and to the judgment in the appeal bearing number 3574 in the Court of King's Bench (Appeal Side).

Two questions stand to be decided on the application for leave to appeal. The first one concerns the extent of the right of appeal conferred by the regulations under order in council no. 4600. The other question is whether, under those regulations as they must be interpreted, the appellant has succeeded in making out before this Court a case where leave to appeal ought to be granted to him in the circumstances.

Dealing with the first question. It must be remembered that up till order in council no. 4600 there existed no right of appeal to the Supreme Court of Canada from judgments rendered on summary conviction under Part XV of the Criminal Code. (*Attorney General for Alberta v. Roskewich* (1); *Au Chung Lam alias Ou Lim v. The King* (2)). The object of order in council no. 4600 is, amongst other things, to give a right of appeal to the Supreme Court of Canada in proceedings under Part XV of the Criminal Code.

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(1) [1932] S.C.R. 570.

(2) [1944] S.C.R. 136.

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for an offence against wartime regulations, but such right of appeal is given only under certain conditions and what we have to decide is precisely what those conditions are.

It was contended by counsel for the appellant that the effect of the regulations under order in council no. 4600 is to give a right of appeal from any and all judgments or decisions of the court of appeal, with the sole proviso that leave of the Supreme Court of Canada be given by that Court.

The respondent, however, questioned such an interpretation of paragraph (3) of the regulations and argued that there was no intention by order in council no. 4600 to change the ordinary conditions under which an appeal could be brought to this Court, except that in these matters leave of the Court itself would be required. As the law stood before, there was a right to appeal *de plano* "on any question of law on which there has been dissent in the Court of Appeal"; and also

there was a right of appeal when the judgment intended to be appealed from conflicted with the judgment of any court of appeal in a like case, provided leave to appeal was granted by a Judge of the Supreme Court of Canada.

This was under sections 1023 and 1025 of the Criminal Code and, in both instances, it applied only to proceedings in respect of an indictable offence.

If we were to accept the appellant's interpretation of the regulations, it would mean that no account should be taken of paragraph (6) which enacts that

Sections 1023 to 1025 inclusive of the Criminal Code shall * * * apply to any appeal to the Supreme Court of Canada taken pursuant to this regulation.

This paragraph states that the sections mentioned "shall apply" and, therefore, effect must be given to it "in so far as the same are not inconsistent with these regulations", as stated in the paragraph.

Now, the only inconsistency with sections 1023 to 1025 of the Criminal Code that we can find in the regulations is the proviso that the appeal lies to the Court only "by leave of such Court". Otherwise the provisions contained in sections 1023 to 1025 are not in any way inconsistent with the regulations and, therefore, must be taken into account in any appeal to this Court under these new regulations. This

interpretation is further strengthened by the fact that if order in council no. 4600 were not to be construed as just indicated, it would mean that appeals in proceedings upon summary convictions under Part XV of the Criminal Code, which did not exist before the order in council was passed, would, by such order in council, be made wider than appeals in proceedings in respect of indictable offences. That, of course, would lead to absurd consequences.

More particularly, having regard to the fact that, by force of section (9) of the order in council no. 8528, the same contravention, or failure, to observe any regulation, or order, constitutes an offence which may be tried either upon summary conviction under Part XV, or, if the Attorney General of Canada or of any province so directs, upon indictment. So that the trial of the same offence, according as upon summary conviction or upon indictment, would thus be made susceptible of an appeal to the Supreme Court of Canada under different conditions, and conditions which would be such that the right of appeal in proceedings in respect of indictable offences would be more restricted than in proceedings upon summary conviction.

It is only reasonable to believe that the intent of the order in council was to put the appeals in one or the other of these matters upon the same footing, except that on indictable offences, as already provided for by the Criminal Code, no leave is necessary when there has been in the court of appeal a dissent on a question of law, or, where there has been no dissent, a right of appeal lies by leave of a judge of the Court where the judgment conflicts with that of another court of appeal in a like case; and in proceedings on summary conviction under Part XV of the Criminal Code a new right of appeal is created, where none existed before, and all the usual conditions under sections 1023 to 1025 Cr. C. apply, except that in each case no appeal lies unless the Supreme Court itself grants leave to appeal.

In our view, therefore, the effect and result of the regulations under order in council no. 4600, so far as it applies to appeals to the Supreme Court of Canada, are as follows: In proceedings under Part XV of the Criminal Code for offences against wartime regulations an

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appeal now lies to the Supreme Court of Canada by leave of that Court "on any questions of law on which there has been dissent in the court of appeal" (Criminal Code, section 1023), or "if the judgment appealed from conflicts with the judgment of any other court of appeal in a like case" (Criminal Code, section 1025).

Applying to the present application for leave the regulations so interpreted, as there has been no dissent in this case, this Court has jurisdiction to grant leave only if it can be shown that the judgment appealed from conflicts with the judgment of any other court of appeal in a like case.

The appellant was able to suggest that such a conflict existed only on two of the questions mentioned in his notice of motion, one being:

If the *mens rea*, or criminal intent, constitutes a necessary element in offences created by order in council no. 8528, and orders flowing therefrom;

the other being:

Which is the meaning and the extent of the reference to the Canadian Criminal Code made in said order in council no. 8528, and the orders made pursuant thereto.

Perhaps it should be noted that, after all, this second question is really included in the first question.

But the appellant was unable to refer the Court to any judgment of another court of appeal conflicting with the judgment appealed from on the main point involved in the appeal, to wit:—

What may constitute a sale during the basic period under regulations enacted pursuant to the *War Measures Act* of Canada and especially in virtue of order in council no. 8528, as well as orders flowing therefrom.

The latter is really the fundamental point in the proceedings against the respondent.

The Court of King's Bench (Appeal Side), held that the proof made by the appellant of the alleged sales by the respondent during the basic period were not sales within the meaning of order in council no. 8528, but merely deliveries of articles covered by contracts of sale within the meaning of the said order entered into long prior to the 15th day of September, 1941. In consequence of that decision, the appellant has failed to establish one of the two essential elements of the offences

charged. The appellant, in view of the fact that there has been no dissent and that no conflict is alleged, is unable to ask this Court to reverse the judgment of the court of appeal on this fundamental question, and it means, therefore, that, even assuming there is a conflict on the other points raised in the appeal and even if he should succeed in getting this Court to reverse the judgment of the court of appeal on these other points, the respondent would, nevertheless, remain acquitted. The appeal would be devoid of any possible practical result and the Court would be asked only to pass upon an academic question.

In the circumstances the appeal cannot be entertained, leave to appeal should not be granted, and the motion to that effect should be dismissed.

Application dismissed.

Solicitor for the appellant: *Paul Roy.*

Solicitors for the respondents: *Taschereau, Parent & Cannon.*

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