1941

* Oct. 7.
* Oct. 10.

LA DUCHESSE SHOE LIMITED (DEFENDANT) ..... APPELLANT;

AND

LE COMITÉ PARITAIRE DE L'INDUSTRIE DE LA CHAUSSURE (PLAINTIFF) ..... RESPONDENT.

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

Appeal—Jurisdiction—Claims of several employees against same employer cumulated in single action—Each claim amounting to less than $200—Action taken by Joint Committee on behalf and for the benefit of employees—Powers of Joint-Committee granted by provincial statute—Workmen's Wages Act, Que., 1937, 1 Geo. VI, c. 49, s 20.

The respondent, a joint-committee constituted as a corporation under the Quebec *Workmen's Wages Act*, claimed from the appellant, under the provisions of section 20 (*k*) of the Act, on behalf and for the benefit of over 200 workers and apprentices, a sum of $4,790.93, amount alleged to be due for wages under a collective agreement; and also claimed under other provisions of the Act further sums, payable to the respondent itself, of $753.97 as liquidated damages and $27.40 as penalty. Nearly all the individual claims were under $100 and none of them exceeded $200. The respondent's action was maintained by the trial judge, which judgment was affirmed by the appellate court. The respondent moved to quash an appeal to this Court for want of jurisdiction.

Held that no appeal lies to this Court from the judgment appealed from. *Cousins* v. *Harding*, ([1940] S.C.R. 442) followed.

MOTION on behalf of the respondent for an order quashing the appeal to this Court, which was brought from the judgment of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the trial judge, White J., and maintaining the respondent's action.

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

Jean Genest K.C. for the motion.

E. Veilleux contra.

The judgment of the Court was delivered by

* PRESENT:—Rinfret, Crocket, Kerwin, Hudson and Taschereau JJ.

RINFRET J.—Motion to quash for want of jurisdiction.

The respondent is a committee which, by the Quebec *Workmen's Wages Act* (c. 49 of the statute I Geo. VI, 1937), is constituted a corporation and has the powers, rights and privileges appertaining to ordinary civil corporations (s. 20).

It may

demand from any employer and any employee violating the provisions of a decree respecting wages an amount equal to 20% of the difference between the wage made obligatory and that actually paid;

and such amount is "accorded as liquidated damages."

Then the statute (s. 20*k*) provides that the committee may

Notwithstanding any law to the contrary, institute, for the benefit of the employee who has not taken action and caused same to be served within one month from the due date of his salary or wages or who having taken action does not proceed with all possible diligence, any action in his favour arising out of the decree, without having to establish an assignment of claim from the person concerned and in spite of any express or implied renunciation by the latter.

The claims of several employees against the same employer may be joined in the same suit.

No employer sued by the committee may set up any grounds by way of cross demand.

The amount claimed as liquidated damages may be added to the amount of the claim.

The claim shall be deemed a summary matter and be prosecuted as such.

In this case, Le Comité Paritaire demanded $4,790.93

pour le bénéfice et avantage des ouvriers, apprentis et ouvrières ci-dessus mentionnés, chacun des dits employés devant bénéficier du jugement rendu, en faveur du demandeur, pour le montant lui revenant, à titre de solde de salaire, tel que sus-mentionné; conclut en outre le demandeur à ce que la défenderesse soit condamnée à lui payer, à lui-même, à titre de dommages liquidés, une somme de $753.97, représentant 20% des réclamations des ouvriers et une autre somme de $37.67 représentant un prélèvement de 1% conformément aux dispositions de la loi I Geo. VI, ch. 49 et de ses amendements.

The parties later admitted

that, if the Defendant Company was liable on the action instituted, the amount for which the Company was responsible was $3,568.40, plus one per cent, i.e., $27.40, and also an indemnity of 20% making in all $4,309.48.

The appellant lost both in the Superior Court and in the Court of King's Bench (appeal side). It then launched

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Rinfret J.

a further appeal to this Court; and the respondent moves to quash this appeal on the ground that the Court has no jurisdiction to hear it.

In our opinion, no material distinction can be made between this case and the case of *Cousins* v. *Harding* (1), where it was held that

> the mere fact that several plaintiffs have joined their claims in a single action does not affect our jurisdiction * * * Each claim by itself must be considered as separate for purposes of jurisdiction.

In that case, the claims of several employees against the same employer were cumulated in a single action, as authorized under sec. 22 of the *Fair Wages Act*. Under that Act, the employees brought their action in their own name, but several of them had joined in the action. It is true that, as pointed out by the appellant, by the procedure under the Quebec *Workmen's Wages Act*, which governs the present case, instead of the employees joining together and cumulating their claims in a single action, the action is brought in the name of the Committee. This is an exception to article 81 of the Code of Civil Procedure, whereby "a person cannot use the name of another to plead." But that exception does not go any further than to authorize the bringing of an action for the several claims of the employees in the name of the committee; otherwise it is made clear by the wording of the statute that the committee itself has no monetary interest in the wages sued for. The action is brought "for the benefit of the employee." There is no "assignment of claim" from the employee concerned; and the conclusions of the declaration in the case now under discussion are strictly along those lines, since the committee prayed for judgment

> pour le bénéfice et avantage des ouvriers, etc., chacun des dits employés devant bénéficier du jugement rendu en faveur du demandeur pour le montant lui revenant à titre de solde de salaire.

In the declaration, a list of the employees concerned is given with the amount or "solde de salaire" claimed on behalf of each of them. We do not doubt that the appellant could have filed—and, as a matter of fact, it did file—

(1) [1940] S.C.R. 442.

a defence alleging facts peculiar to each individual claim and having nothing to do whatever with the claim of another employee in the list.

The "solde de salaire" demanded on behalf of the employee in no case exceeds two hundred dollars. In the great majority of them, the sum claimed is below one hundred dollars. Indeed, were it not for the amount claimed as liquidated damages representing "20% of the difference between the wage made obligatory and that actually paid" ($753.97), none of the amounts mentioned would be within the competency of the Court of King's Bench (appeal side), and *a fortiori* within the jurisdiction of this Court. Moreover, as pointed out in *Cousins* v. *Harding* (1), the statute is only permissive and not compulsory.

We think the motion ought to be granted and the appeal quashed.

But the security on appeal to this Court was given and approved on the 24th day of January, 1941. The respondent might have made its motion to quash and brought it for hearing either at the February sittings or at the April sittings. Notice of motion was given only on the 26th day of September, 1941, with the result that, in the meantime, the appellant had caused the case to be printed and the appeal is set down for hearing at the present sittings of the Court. If the motion had been made promptly, as it should have been, all these costs and expenses would have been avoided. They may not be recovered from the respondent by the appellant, in view of the fact that the appellant itself should have realized that the Court was without jurisdiction to hear the appeal; but, under the circumstances, the respondent is also responsible for the delay and he should, on that account, be awarded no costs on its motion.

The motion will be granted without costs.

Motion granted without costs.

Solicitor for the appellant: *Gaston Desmarais.*

Solicitors for the respondent: *Beaulieu, Gouin, Bourdon, Beaulieu & Montpetit.*

(1) [1940] S.C.R. 442.