SOCIETY BRAND CLOTHES LTD (PLAINTIFF) ..... } APPELLANT;

AND

AMALGAMATED CLOTHING WORKERS OF AMERICA AND OTHERS..... } RESPONDENTS.

1930
*Oct. 22, 23.
*Dec. 23.

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

Labour union—Unincorporated association—Legal entity—Whether suable —Point raised at trial—Law of foreign country—Arts. 79, 176 C.C.P.

The respondent, Amalgamated Clothing Workers of America, having its principal place of business in the city of New York, was described in the proceedings as "an unincorporated association"; the other respondents were also described as unincorporated bodies having their head offices and principal place of business in the city of Montreal. They filed an appearance by counsel and pleaded to the merits of an action in damages. At the trial, counsel for the respondents raised orally for the first time the point that, not being legal entities, they were not suable.

Held that the respondents could not be legally sued.

Per Anglin C.J.C., Newcombe, Rinfret and Cannon JJ.—An unincorporated labour union has no legal existence and cannot be considered in law an entity distinct from its individual members and is not suable in the common name.

Per Duff and Rinfet JJ.—The question whether the respondent, the Amalgamated Clothing Workers of America, is or is not a "person"

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Cannon JJ.

1930

SOCIETY BRAND CLOTHES LTD. v. AMALGAMATED CLOTHING WORKERS OF AMERICA.

in the judicial sense, i.e., whether or not the members of the collectivity described as such constitute a judicial person distinct from the personality of the individuals, is a question to be decided by the law of New York; and, according to that law, the above unincorporated labour union is not a judicial person in the pertinent sense.

Per Anglin C.J.C. and Newcombe and Cannon JJ.—There is nothing in the record to show that the respondents are "foreign corporations or persons duly authorized to appear in judicial proceedings under any foreign law." (Art. 79 C.C.P.).

Per Anglin C.J.C. and Newcombe, Rinfret and Cannon JJ.—The point that a defendant is not a suable legal entity can be raised at any stage of the proceedings. Art. 176 C.C.P. does not apply to the incapacity of a defendant where it appears throughout on the face of the proceedings. The courts should *proprio motu* take notice that an aggregate voluntary body, though having a name, cannot appear in court as a corporation, when in reality not incorporated.

Per Rinfret J.—This case is distinguishable from the case of *Payette* v. *United Brotherhood of Maintenance of the Way Employees* (25 Q.P.R. 78).

Judgment of the Court of King's Bench (Q.R. 48 K.B. 14) aff.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, P. Cousineau J. (2), and dismissing the appellant's action in damages and quashing an interlocutory injunction against respondents.

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

H. Weinfield K.C. for the appellant.

P. Bercovitch K.C. and *J. Spector* for the respondents.

The judgments of Anglin C.J.C. and Newcombe and Cannon JJ. (Rinfret J. concurring but writing separately) were delivered by

CANNON J.—The defendants were sued for damages and an injunction under the following designation:

Amalgamated Clothing Workers of America, an *unincorporated* association, having its head office and principal place of business for the province of Quebec in the city and district of Montreal, and all the local branches of the said Amalgamated Clothing Workers of America existing in the city and district of Montreal, and the "Montreal Joint Board" of the said Amalgamated Clothing Workers of America, an *unincorporated* subsidiary association of the said Amalgamated Clothing Workers of America, having its head office and principal place of business in the city and district of Montreal.

(1) (1929) Q.R. 48 K.B. 14. (2) (1929) Q.R. 67 S.C. 388.

The trial judge and a majority of the Court of King's Bench dismissed the action against these defendants on the ground that, being unincorporated and not possessing any civil personality, they could neither legally be constituted defendants, nor be sued.

The Court of King's Bench unanimously allowed the appeal, however, and maintained the action against some additional individual respondents, who were condemned to pay to the plaintiff appellant the sum of $6,286.02; and also upheld and declared absolute and permanent as against them the interim injunction which had been granted pending the trial. Mr. Justice Rivard and Mr. Justice Hall, dissenting, would likewise have maintained the appeal against the Amalgamated Clothing Workers of America and would have included them in the foregoing condemnation. Rivard J., in his opinion, seems to go further than the formal judgment and would also hold responsible the "Montreal Joint Board," the other respondent.

The individual defendants did not appeal from this condemnation; and, so far as they are concerned, the judgment is final and binding on both parties.

The plaintiff, however, has come before this court seeking judgment against the two unincorporated bodies, and the only question before us is whether or not an unincorporated labour union may be considered in law an entity distinct from its individual members, suable in the common name and liable to damages recoverable out of the common fund; or, in other words, does legal theory conform to industrial reality and subject an unincorporated collectivity to responsibility for its tortious acts?

We cannot add much that would be useful to the remarks of the learned trial judge and to the opinion of Mr. Justice Bond in the Court of King's Bench. The respondents are not sued as a corporation, or partnership or as entities having legal existences distinct from that of their individual members, but as "unincorporated associations." An attempt was made, however, to show that because in the state of New York, where the first named respondent has its principal establishment, an unincorporated association can be sued through its president or its treasurer, under art. 79 of the Code of Civil Procedure of Quebec, that association may be sued and brought before the courts of

1930

SOCIETY BRAND CLOTHES LTD. v. AMALGAMATED CLOTHING WORKERS OF AMERICA.

Cannon J.

that province. In the State of New York, there is the following statutory provision:

ACTION OF PROCEEDING AGAINST UNINCORPORATED ASSOCIATIONS

An action or special proceeding may be maintained, against the president or treasurer of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership therein, either jointly or in common of their liability therefor, either jointly or severally. Any partnership, or other company of persons, which has a president or treasurer, is deemed an association within the meaning of this section.

On this point we share the views of Mr. Justice Bond, who says:

It is to be observed, however, from a reading of this section, that while headed as an action against an unincorporated association, the text indicates that the action which is contemplated, and may be maintained is one against the president or treasurer of such association in a representative capacity as representing all the individual members, and moreover, is applicable only to certain restricted cases, for or upon which the plaintiff may maintain such an action or special proceeding against all the associates by reason of their interest or ownership, or their liability jointly or in common. The law in question does not purport to incorporate such an association, nor does it appear to recognize such an association, except in so far as it authorizes action against the president or the treasurer under certain particular circumstances, and in the event of a judgment being obtained, the same may be satisfied out of any personal or real property belonging to the association or owned jointly or in common by all the members thereof. (Section 15). In other words, this law appears to create or authorize what, in other jurisdictions, are frequently termed "representative" or "class" actions. The organization itself is not authorized to appear in judicial proceedings.

In this instance, the writ was not issued against either the president or the treasurer, and nothing shows that the defendants now before the court are, to use the terms of 79 C.C.P., "foreign corporations or persons duly authorized under any foreign law."

But it is claimed that the respondents could not raise this point orally at the trial, because they had not, either by way of preliminary motion or by their plea to the merits, alleged that they are not an entity known to the law and capable of appearing in court proceedings.

Our present Chief Justice, in *Local Union No. 1562, United Mine Workers of America et al* v. *Williams et al* (1), said, at page 257:

While I should have thought it better, had the defence in addition to the bare denial of incorporation contained a plea that the Local Union is

(1) (1919) 59 Can. S.C.R. 240.

not registered, is not a partnership, and, as an entity not known to the law, cannot be sued by its adopted name, (R. 93), I incline to think this issue was sufficiently raised by the explicit traverse of the allegation that the Local Union is a body corporate. But, if not, the objection of suing the Local Union being its non-existence as an entity known to the law, I confess my inability to understand how any conduct of those representing that body, such as that here relied on, can create an estoppel which would justify the granting of a judgment against it. A judgment should not wittingly be entered against a non-entity.

Brodeur J., concurred with Anglin J., as did also Duff J., who said (at p. 246):

In order to prevent misconception, I ought to state * * * that this is not, in my judgment, a proper case for amendment, and, moreover, that in disposing of the appeal, we are bound to give effect to the contention that the Union is not a suable entity.

Mignault J., dissented, *dubitante,* and Idington J., also dissented.

This question is referred to, in his opinion, by Mr. Justice Rivard, as follows:

Dans de telles conditions, pourrait-on prêter aux unions non incorporées une sorte de quasi-personnalité civile qui les rende aptes au moins à être poursuivies? (Cf. *United Mine Workers of America* v. *Coronado Coal Co.* (1), C. Suprême des Etats-Unis, 5 juin 1922; D.P. 22-2-153, et note de M. Edouard Lambert.) Pareille solution ne contredirait ni notre décision dans l'affaire de *Rother* (2), ni celles de l'honorable Juge Charbonneau dans *Cournoyer* v. *La Fraternité unie des charpentiers et menuisiers d'Amérique* (3) et l'honorable juge Rinfret dans *Payette* v. *The United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers* (C.S. Montréal 3 février 1923) (4); mais il serait contraire aux principes de l'adopter comme règle absolue.

Je ne crois pas cependant qu'il soit plus nécessaire de prononcer là dessus qu'il ne l'était dans ces causes.

Dans la cause des *United Mine Workers of America* v. *Williams,* jugée par la Cour Suprême du Canada (5), "the issue of want of legal entity was sufficiently raised by the explicit denial of the allegation that the local union was a body corporate."

Dans notre espèce, ce moyen de contestation est-il soulevé? L'est-il en la manière qu'il faut dans notre système de procédure? Je ne le crois pas.

Les deux associations ou unions sont bien décrites, dans les brefs de sommation, comme n'étant pas incorporées; mais elles n'ont pas même pris acte de cette particularité dans leur description par les demanderesses, et, dans leurs plaidoyere, elles se sont bien gardées d'y faire la moindre allusion. Elles n'en ont donc tiré aucun moyen de défense quelconque. Loin de soulever l'objection par exception, elles ne l'ont pas même insérée ou fait pressentir dans leurs plaidoyers au fonds. En somme, elles ont acquiescé à la citation en justice qu'on leur a faite, elles l'ont acceptée telle qu'elle. Elles n'ont pas comparu pour dire qu'elles étaient illégalement amenées devant le tribunal; au contraire, prenant avantage de l'invi-

(1) (1922) 269 U.S. Rep. 344.
(1922) Q.R. 34 K.B. 69.
(2) (1921) Q.R. 60 S.C. 105;
(3) (1914) Q.R. 46 S.C. 242.
(4) (1923) 25 Q.P.R. 78.
(5) (1919) 59 Can. S.C.R. 240.

1930

SOCIETY BRAND CLOTHES LTD. v. AMALGAMATED CLOTHING WORKERS OF AMERICA.

Cannon J.

tation que leur faisaient les demanderesses à ester en justice, elles ont prétendu faire rejeter les actions au mérite. Ce n'est qu'en dernier ressort et en plaidant oralement devant la cour qu'elles proposent ce moyen. Il est trop tard.

With respect, we cannot agree with this contention; and we feel that Article 176 of the Code of Civil Procedure which says that

> Irregularities in the writ or service or in the declaration are waived by the appearance of the defendant and his failure to take advantage of them within the delays prescribed

cannot apply to incapacity of a defendant where it appears throughout on the face of the proceedings, and we feel inclined to accept the view that a court should *proprio motu* take notice that an aggregate voluntary body, though having a name, cannot appear in court as a corporation, when in reality not incorporated.

Moreover, the decision of the Supreme Court of the United States in the *Coronado* case (1), although discussed by the parties and in the judgments *a quo,* was not mentioned in the evidence given by the two experts called by the parties to prove, as a fact, the foreign law. These two New York lawyers did not refer to it as part of the law of the state of New York which was in issue between the parties, probably because this judgment does not apply to, and does not bind the state courts or govern their practice.

Nor can the defendants be deemed quasi-corporations under the provisions of the *Professional Syndicate Act* of Quebec, 14 Geo. V, c. 112, now c. 255, R.S.Q. (1925), which they have not carried out; neither have they availed themselves of c. 125 of the Revised Statutes of Canada (1906), (now c. 202 R.S.C. (1927)), which contains the following provisions:

> 2. In this Act, unless the context otherwise requires, "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, but for *this Act,* have been deemed to be an unlawful *combination by reason of some one or more of its purposes being in restraint of trade.*
>
> 6. Any seven or more members of a trade union may, by subscribing their names to the rules of the union and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, but if any one of the purposes of such trade union is unlawful, such registration shall be void.
>
> 18. The trustees of any trade union registered under this Act, or any other officer of such trade union who is authorized so to do by the order

(1) (1921) 269 U.S. Rep. 344.

thereof, may bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint, in any court of competent jurisdiction, touching or concerning the property, right or claim to property of the trade union, and may, in all cases concerning the property, real or personal, of such trade union, sue and be sued, plead and be impleaded, in any such court, in their proper names, without other description than the title of their office.

29. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise, or so as to render void or voidable any agreement or trust.

The defendants have not registered under these provisions, no doubt because any advantage that they might secure under s. 29 of the *Trade Union Act* is already theirs under the following sections of the Criminal Code:

497. The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section.

498. Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company.

(*a*) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

(*b*) to restrain or injure trade or commerce in relation to any such article or commodity; or

(*c*) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(*d*) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees.

590. No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute.

It is therefore clear that the defendants have not the status of quasi-corporations to which the decision of the House of Lords in *Taff Vale Railway* v. *Amalgamated Society of Railway Servants* (1), might be applied.

We must accordingly reach the conclusion that, while, under the prevailing policy, our legislation gives to unin-

(1) [1901] A.C. 426.

1930

SOCIETY BRAND CLOTHES LTD. v. AMALGAMATED CLOTHING WORKERS OF AMERICA.

Duff J.

corporated labour organizations a large measure of protection, they have no legal existence; they are not endowed with any distinct personality; they have no corporate entity; they constitute merely collectivities of persons. The acts of such an association are only the acts of its members. Therefore, it cannot appear before the courts and its officers have no capacity to represent it before the tribunals of the province of Quebec, where "nul ne plaide au nom d'autrui," (Art. 81 C.C.P.). However cogent the reasons that may be urged in favour of authorizing and legalizing proceedings against unincorporated bodies, the Superior Court, and this court, cannot, under article 50 C.C.P., do more than order and control these bodies "in such manner and form as by law provided." The province of Quebec has not yet legislated to give legal existence to or recourse against unincorporated bodies. The existing legislation compels us to reach the conclusion that Parliament and the legislature have not deemed it proper or necessary to compel, even international trade unions, although governed by foreign administrators, to acquire legal existence and liability in Canada through registration. We must, accordingly, ignore the industrial reality and must refuse to regard an unincorporated labour union as, in law, an entity distinct from its individual members.

We would therefore dismiss the appeal with costs.

DUFF J.—At the conclusion of the argument it appeared to be quite clear that the impleadibility of the respondents, which the respondents disputed, could only be sustained if the respondents could be brought within art. 79 of the Code of Civil Procedure, which is in these words:

> All foreign corporations or persons, duly authorized under any foreign law to appear in judicial proceedings, may do so before any court in the province.

Admittedly the respondents are not a corporation, whether they are or are not a "person" in the juridical sense, that is to say, whether or not the members of the collectivity, described as the Amalgamated Clothing Workers of America, constitute a juridical person distinct from the personality of the individuals, is a question which is to be decided by the law of New York. The law of New York upon this subject was fully discussed in the evidence. The effect of that evidence is a question of fact. There is

no collectivity in Quebec distinct from the body which has its domicile in New York. I have examined the testimony of the professional witnesses and the authorities cited by them with the greatest care; and in the result I think the weight of argument to be adduced from what is said and from the materials referred to, lies on the side of the negative. My conclusion, that is to say, is that, in point of fact, such a collectivity is not by the law of New York a juridical person in the pertinent sense.

RINFRET J.—Je concours dans le jugement de mon collègue monsieur le juge Cannon.

Entre la présente cause et celle de *Payette* v. *United Brotherhood of Maintenance of Way Employees & Alfred Dérome & al.* (1), (où siégeant en Cour Supérieure, j'ai rendu un jugement que l'on nous a cité), je vois plusieurs distinctions à faire.

Dans la cause de Payette, la défenderesse, au bref d'assignation, était assignée sous la désignation suivante: " Corps légalement constitué de Détroit, dans l'Etat de Michigan, un des Etats-Unis d'Amérique ". Jugement avait été rendu contre elle sous cette désignation; elle avait accepté ce jugement; et la question de sa prétendue incapacité était soulevée par des tiers-saisis, au cours de la contestation de leur déclaration, à la suite d'une saisie-arrêt après jugement.

En outre, aucune loi spéciale de l'Etat du Michigan, où la défenderesse avait son principal bureau d'affaires, n'avait été prouvée dans la cause, et la seule référence fournie à la cour était la décision de la Cour Suprême des Etats-Unis dans la cause de *Coronado Coal Company of Arkansas* v. *United Mine Workers of America* (2) comme étant la loi étrangère qui s'appliquait. D'après la désignation qui lui était donnée au bref, la défenderesse était donc apparemment une corporation; et, comme l'a justement fait remarquer monsieur le Juge Bond, en appel, le jugement *re Payette* (1) repose sur le motif qui y est exprimé comme suit:

> Mais ce n'est pas la défenderesse qui soulève ces moyens. Le premier point pourrait donc être rejeté sur le simple motif que les tiers-saisis excipent du droit d'autrui et que la désignation de la défenderesse ne concerne qu'elle-même.

(1) (1923) 25 Q.P.R. 78. (2) (1921) 259 U.S. 344.

1930

SOCIETY BRAND CLOTHES LTD. v. AMALGAMATED CLOTHING WORKERS OF AMERICA.

Rinfret J.

Il y a jugement contre elle, sous le nom et la description qui lui sont donnés dans le bref de saisie-arrêt après jugement. Elle a comparu sur ce dernier bref; et elle ne se plaint ni du jugement rendu sur l'action principale, ni de la régularité de son assignation ou de sa description dans la saisie-arrêt. Cela sera amplement suffisant pour disposer du premier point.

Dans la présente cause, Amalgamated Clothing Workers of America est décrite comme "an unincorporated Association"; The Montreal Joint Board est désigné comme "an unincorporated subsidiary association of the said Amalgamated Clothing Workers of America" et les "Local Unions" Nos. 115, 167, 209, 247 et 277 comme

being unregistered and unincorporated subsidiary branches in the city and district of Montreal of the said Amalgamated Clothing Workers of America.

En outre, le principal bureau d'affaires de Amalgamated Clothing Workers of America est à New-York. La loi spéciale de l'Etat de New-York est prouvée, et elle n'a pas pour effet de conférer à ces associations la personnalité civile; elle n'en fait ni une corporation, ni une personne; elle se contente d'établir une procédure pour permettre d'assigner les associations de ce genre sans exiger la désignation et l'assignation de tous les membres de l'association.

Dans les circonstances, l'article 79 du Code de procédure civile de la province de Québec ne peut être appliqué à la défenderesse intimée, qui, aux yeux de la loi étrangère, (qui est, en l'espèce, celle de l'Etat de New-York), n'est considérée ni comme "une corporation", ni comme une "personne" et ne peut comme telle "ester en justice".

Appeal dismissed with costs.

Solicitors for the appellant: *Weinfield & Sperber.*

Solicitors for the respondents: *Bercovitch, Cohen & Spector.*