LOUIS MINDEN AND ANOTHER.... APPELLANTS;

AND

HIS MAJESTY THE KING..... RESPONDENT.

1935

* Nov. 13.
* Nov. 15.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Criminal law—Appeal—Leave to appeal to Supreme Court of Canada—Court of appeal judgment conflicting with judgment of another court of appeal "in a like case"—Judgments must be in criminal matters—The Supreme Court of Canada is a "court of appeal" within section 1025 Cr. C.*

Under the provisions of section 1025 of the Criminal Code, a party applying for leave to appeal must show that "the judgment appealed from conflicts with the judgment of any other court of appeal in a like case."

*Held* that a judgment of a court of appeal "in a like case" must be a judgment rendered in criminal proceedings or upon criminal matters.

*Held,* also, that the Supreme Court of Canada is comprised among the courts of appeal contemplated in that section.

MOTION under section 1025 of the Criminal Code for leave to appeal to this court from the judgment of the Court of Appeal for Ontario upholding the conviction of the appellants. Leave to appeal was refused by the judgment now reported.

*A. N. Lewis K.C.* for the motion.

*J. Sedgewick K.C. contra.*

RINFRET J.—Upon their trial before His Honour Judge Boles, sitting in the County Court Judge's Criminal Court of the county of Wentworth, the appellants were found guilty of having unlawfully, after the presentation of a

* PRESENT:—Rinfret J. in chambers.

1935

MINDEN
v.
THE KING.

Rinfret J.

bankruptcy petition against them, condoned and participated in the making and presenting of a false statement to the creditors of Minden's Ltd. for the purpose of obtaining the consent of the creditors or any of them to an agreement accepting fifteen cents on the dollar in full of the debt of Minden's Limited, and of having thereby committed an offence contrary to ss. 191 (*p*) and 201 of the *Bankruptcy Act*.

The Court of Appeal of Ontario confirmed the conviction.

The appellants now apply for leave to appeal from the judgment of the Court of Appeal on the ground that the judgment conflicts with that of the Supreme Court of Canada in the case of *Electric Motor and Machinery Company, Limited* v. *The Bank of Montreal* (1).

To understand the situation, it is necessary to state only a few facts.

Minden, after the presentation of the bankruptcy petition, on the 16th December, 1932, attempted to make an arrangement with the creditors and to obtain a composition from them. To persuade them to accept his offer, he caused to be prepared a statement of assets and liabilities. Both courts found that the statement so prepared to form the basis of the negotiations was fraudulent and falsely represented the true assets, altogether omitting, as it did, a large block of goods which he pretended not to regard as seasonable stock.

The statement was made on the 20th December, 1932. The actual adjudication in bankruptcy did not take place until the 27th December.

One of the questions which the Court of Appeal had to decide was whether a false and fraudulent statement made between the date of presentation of the petition in bankruptcy and the date of the adjudication in bankruptcy may be held an offence under subsection (*p*) of section 191 of the *Bankruptcy Act*.

The Court of Appeal referred to subsection 11 of section 4 of the Act, which reads as follows:—

> 11. The bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the presentation of the petition on which a receiving order is made against him.

(1) [1933] S.C.R. 634.

And the Court ruled that the effect of that statutory provision was to make the bankruptcy begin at the time of the presentation of the petition for all purposes.

Accordingly the decision was that the accused must be found to have made the false and fraudulent statement after having been adjudged bankrupt, and contrary to subsection (*p*) of section 191. And the appeal was dismissed.

In the case of *Electric Motor & Machinery Company, Limited* v. *The Bank of Montreal* (1), the Court had to construe subsections (*q*) and (*r*) of section 191 of the *Bankruptcy Act*. The debtor had made an authorized assignment on the 3rd November, 1930. Subsequently, through its trustee, it submitted for approval to the bankruptcy court a proposal for a compromise. The demand of approval was contested by the Bank of Montreal. The bankruptcy court found as a fact that in and during the years 1927, 1928 and 1929, the authorized assignor had knowingly made to the bank three false statements of the character described in subsections (*q*) and (*r*); that these were offences under the subsections mentioned, and that

this being established, the court, under art. 16, parag. 2, of the *Bankruptcy Act*, was bound to refuse the approval of the proposal of compromise.

In the Court of King's Bench (Quebec), that judgment was upheld by the majority of the court (Létourneau and Saint-Germain JJ. dissenting).

Upon appeal to this Court, it was held that the acts dealt with in subsections (*q*) and (*r*) of section 191 are in terms the acts of a person

who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, or who has made an authorized assignment,

and that, upon the plain meaning of the words, the offences described in the subsections in question had reference to the acts of a person who had already been adjudged bankrupt, etc. Therefore, the acts complained of, committed prior to the bankruptcy, were not criminal acts within the contemplation of subsections (*q*) and (*r*) of section 191.

On the present application it was urged on behalf of the appellants that subsection (*p*) is couched in language similar to that of subsections (*q*) and (*r*), and that, therefore, the judgment sought to be appealed from is in conflict with the judgment of this Court in the *Electric Motor* case (1).

(1) [1933] S.C.R. 634.

1935

MINDEN v. THE KING.

Rinfret J.

The application is made under section 1025 of the Criminal Code. The appellants must show that

> the judgment appealed from conflicts with the judgment of any other court of appeal in a like case.

Section 1012 of the Criminal Code defines the interpretation to be given to the words " court of appeal " in part 19 dealing with Procedure by Indictment. Those words mean

> the court designated by paragraph (7) of section two of this Act as the court of appeal for the province in which the conviction was had.

If we refer to paragraph (7) of section two, we find that it enumerates the courts of appeal of final resort in each of the nine provinces of Canada and in the Yukon Territory. The Supreme Court of Canada is not mentioned in the enumeration.

Notwithstanding this, I think the Supreme Court of Canada is among the courts contemplated in section 1025 of the Act under the words: " any other court of appeal "; and I think it has always been so regarded, both in the discussion and in the judgments upon applications for leave similar to the present one (See: *Hill* v. *The King*) (1), although perhaps the point was not expressly decided.

The object of the section being to insure uniformity of interpretation and of application of the criminal law throughout the Dominion, it stands to reason that a conflict between the judgment of a provincial court of appeal and that of the Supreme Court of Canada must necessarily have been one which Parliament had in view when it enacted the section. The Supreme Court of Canada is a court to which, by force of the Criminal Code, an appeal may be brought in certain cases involving criminal matters; and, in that respect, it satisfies the language of section 1025: " any other court of appeal."

Therefore, I consider that it was open to the appellants to base their application upon an alleged conflict between the judgment of the Court of Appeal of Ontario in the present case and the judgment of the Supreme Court of Canada in the *Electric Motor* case (2).

But when it comes to the next point raised by counsel representing the Attorney-General of Ontario, the appellants do not fare so well. In *Electric Motor & Machinery Company Limited* v. *The Bank of Montreal* (2), the sub-

(1) [1928] S.C.R. 156. (2) [1933] S.C.R. 634.

ject-matter of the case was not criminal law. As appears by the short statement of the facts made at the beginning of this judgment, the *Electric Motor* case (1) was about the approval of a proposal for a compromise. It was only indirectly and as an incident to the main question that the court was called upon to construe subsections (*q*) and (*r*) of section 191 of the *Bankruptcy Act*. It was not done for the purpose of deciding whether the debtor had to be convicted of the criminal offence covered by the section, but only with the view of adjudicating upon the application for approval of the compromise. Obviously this was not a criminal proceeding.

Under these circumstances, I am of opinion that the judgment in the *Electric Motor* case (1) does not meet the condition required in section 1025 that it should be " the judgment of any other court of appeal in a like case."

Repeating again that the purpose of the section is to render as uniform as possible the administration of the law in criminal matters, *The King* v. *Janousky* (2); *Arcadi* v. *The King* (3), my view is that, when Parliament used the expression " any other court of appeal in a like case," it must be taken to have referred to a court of appeal adjudicating in criminal proceedings or upon criminal matters. Section 1025 is in the Criminal Code; and general language of that kind must be presumed to refer to the subject-matter of the statute where the section is to be found.

For those reasons, I hold that the judgment of this court in *Electric Motor & Machinery Co.* v. *The Bank of Montreal* (1) is not a judgment of another court of appeal in a like case with that of the judgment sought to be appealed from.

I may say further that, even assuming the other points in favour of the appellants, I do not understand the judgment of the Court of Appeal to be in conflict with the judgment of this Court in the *Electric Motor* case (1). The latter judgment, as already stated, decided that, in order to be offences under subss. (*q*) and (*r*) of s. 191, the acts must have been committed by the debtor after he has been adjudged bankrupt. In the present case, the Court of Appeal also expresses the same view in respect to another subsec-

(1) [1933] S.C.R. 634. (2) [1922] 63 S.C.R. 223, at 225.
(3) [1932] S.C.R. 158, at 160.

1935

MINDEN
v.
THE KING.

Rinfret J.

tion of section 191, to wit: subsection (*p*). Then, however, Middleton, J.A., delivering the written judgment of the Court of Appeal, points out:

> The Supreme Court of Canada, in its judgment, did not attempt to discriminate between the date of the presentation of the bankruptcy petition and the date when the person was adjudicated bankrupt, nor was the effect of section 4 (11) considered and that decision cannot be regarded as having any direct bearing upon the present case.

In the *Electric Motor* case (1), that point did not come up, for the false statements complained of had been made and submitted to the creditors long before the date of the presentation of the petition, in fact, several months before and at a time when it might even have been a question whether the debtor was then insolvent. The neat point which the Court of Appeal had to decide in the present case was not present in the other case. So that the two judgments did not turn on the same question.

The application for leave to appeal will, therefore, be dismissed.

*Motion dismissed.*

---

(1) [1933] S.C.R. 634.