1968 *Dec. 10 1969 Feb. 17

HER MAJESTY THE QUEEN .....APPELLANT;

AND

JILLIAN WELSFORD .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law—Information—Breach of driving regulations—Signature of Justice of the Peace in jurat affixed with rubber stamp—Whether information valid—Criminal Code, 1953-54 (Can.), c. 51, s. 696.

Criminal law—Jurisdiction—Order prohibiting magistrate from proceeding with information—Court of Appeal affirming order of prohibition—Whether Supreme Court of Canada has jurisdiction to grant leave to appeal from order of Court of Appeal—Supreme Court Act, R.S.C. 1952, c. 259, s. 41.

PRESENT: Cartwright C.J. and Fauteux, Abbott, Martland, Judson, Ritchie, Hall, Spence and Pigeon JJ.

The appellant was charged under s. 64(*b*) of the *Highway Traffic Act,* R.S.O. 1960, c. 172, with failing to yield the right of way. The signature of the Justice of the Peace, acting as a Commissioner for taking oaths, had been affixed on the information with a rubber stamp. The appellant obtained an order prohibiting the magistrate or any other magistrate from proceeding with that information. An appeal to the Court of Appeal was dismissed. The Crown was granted leave to appeal to this Court, but the issue of this Court's jurisdiction to grant leave was left to be decided by the Court which would hear the appeal (see p. 441).

Held: The appeal should be dismissed.

It was necessary to decide only whether this Court had jurisdiction to grant leave to appeal from the judgment of the Court of Appeal affirming the order of prohibition and to entertain that appeal on the merits. This Court had that jurisdiction under s. 41 of the *Supreme Court Act.*

As to the merits, the Court of Appeal had rightly held that the information was a nullity.

Droit criminel—Dénonciation—Infraction au code de la route—Signature du juge de paix assermentant la dénonciation apposée au moyen d'une étampe en caoutchouc—La dénonciation est-elle valide—Code criminel, 1953-54 (Can.), c. 51, art. 696.

Droit criminel—Juridiction—Ordonnance interdisant au magistrat de donner suite à une dénonciation—Cour d'appel confirmant l'ordonnance de prohibition—La Cour suprême du Canada a-t-elle juridiction pour accorder la permission d'appeler de la décision de la Cour d'appel—Loi sur la Cour suprême, S.R.C. 1952, c. 259, art. 41.

L'appelant a été accusé sous l'art. 64(*b*) du *Highway Traffic Act,* R.S.O. 1960, c. 172, de n'avoir pas cédé le droit de passage. La signature du juge de paix qui avait assermenté la dénonciation a été apposée sur la dénonciation au moyen d'une étampe en caoutchouc. L'appelant a obtenu une ordonnance interdisant au magistrat ou à tout autre magistrat de donner suite à cette dénonciation. Un appel à la Cour d'appel a été rejeté. La Couronne a obtenu la permission d'en appeler à cette Cour, mais la question de la juridiction de la Cour d'accorder la permission d'appeler a été laissée en suspens pour être décidée par la Cour devant entendre l'appel (Voir page 441).

Arrêt: L'appel doit être rejeté.

Il est nécessaire de décider seulement la question de savoir si la Cour a juridiction pour accorder la permission d'appeler du jugement de la Cour d'appel confirmant l'ordonnance de prohibition et d'entendre l'appel sur le mérite. La Cour a cette juridiction en vertu de l'art. 41 de la *Loi sur la Cour suprême.*

Quant au mérite, la Cour d'appel a eu raison de conclure que la dénonciation était nulle.

APPEL d'un jugement de la Cour d'appel de l'Ontario[1], confirmant une ordonnance de prohibition. Appel rejeté.

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[1] [1967] 2 O.R. 496, 2 C.R.N.S. 5, [1968] 1 C.C.C. 1.

1969
THE QUEEN
v.
WELSFORD

APPEAL from a judgment of the Court of Appeal for Ontario[1], affirming an order of prohibition. Appeal dismissed.

E. G. Hachborn, for the appellant.

M. Robb, Q.C., for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an appeal from an order of the Court of Appeal for Ontario[1], dated June 12, 1967, affirming an order of Stewart J., dated November 1, 1966, prohibiting Raymond G. Gill, Esq., Justice of the Peace, or any other Justice of the Peace from proceeding further with an Information sworn on the 17th day of December, 1965, charging the respondent

> that she did while driving a vehicle license No. 103020, at 10:40 A.M., upon entering the intersection of Lawrence Ave. W., and Kimbark Blvd., from Kimbark Blvd., the first named being a highway with a stop sign at the entrance thereto, fail to yield the right of way to traffic approaching the said intersection on Lawrence Ave., W., so closely as to constitute an immediate hazard, as required by Sec. 64(*b*) of the *Highway Traffic Act.*

The appeal is brought pursuant to an order of this Court[2] made on October 26, 1967, granting the appellant leave to appeal on the following question of law:

> Whether the Court of Appeal for Ontario erred in law in holding that a rubber-stamped signature on an Information of a Justice of the Peace acting as a Commissioner for taking Oaths on an Information rendered such Information a nullity.

At the hearing of the application for leave counsel for the respondent had submitted that the Court did not have jurisdiction to grant leave and, in giving leave, the Court stated that it should be left to the Court hearing the appeal to determine the question whether we have jurisdiction to grant leave and, if this should be decided in the affirmative, to deal with the merits.

So far as the question of our jurisdiction is concerned, for the purposes of the present appeal it is necessary to decide only whether this Court has jurisdiction to grant leave to appeal from the judgment of the Court of Appeal affirming the Order of Prohibition made by Stewart J. and

[1] [1967] 2 O.R. 496, 2 C.R.N.S. 5, [1968] 1 C.C.C. 1.
[2] Page 441.

to entertain that appeal on the merits, and all members of the Court are in agreement that we have this jurisdiction under s. 41 of the *Supreme Court Act*.

On the merits of the appeal I find myself so fully in agreement with the reasons of McGillivray J. A. who delivered the unanimous judgment of the Court of Appeal that I am content to adopt them and do not find it necessary to add anything to what he has said. This does not imply any expression of opinion respecting the case to which he refers in which a typed or stamped signature was held to be valid.

I would dismiss the appeal. Pursuant to the terms of the order granting leave to appeal the appellant will pay the costs of the respondent in this Court.

Appeal dismissed, costs to the respondent.

Solicitor for the appellant: W. C. Bowman, Toronto.

Solicitor for the respondent: M. Robb, Toronto.

MOTION FOR LEAVE TO APPEAL*

On October 26, 1967, the following judgment on the application of the Crown for leave to appeal, was delivered by

THE CHIEF JUSTICE:—This is an application, made pursuant to s. 41(1) of the *Supreme Court Act,* for leave to appeal from an order of the Court of Appeal for Ontario[3], dated June 12, 1967, dismissing an appeal from an order of Stewart J., dated November 1, 1966, prohibiting Raymond G. Gill, Esq., J.P., from further proceeding with an Information charging the respondent with driving a motor vehicle contrary to s. 64(*b*) of the *Highway Traffic Act* of Ontario. The Order of Prohibition was granted on the ground that the signature of the deponent on the Information and also the signature of the Justice of the Peace before whom the Information was sworn, were both affixed with a rubber stamp instead of in the handwriting of those persons.

Counsel for the applicant informs us that a large number of other cases depend on the result of this case and argues

*CORAM: Cartwright C.J. and Judson and Spence JJ.

[3] [1967] 2 O.R. 496, 2 C.R.N.S. 5, [1968] 1 C.C.C. 5.

1969
THE QUEEN
v.
WELSFORD
Cartwright C.J.

that the judgments below are contrary to the principles of law laid down in *Regina v. Fox*[4] and *Goodman v. J. Eban Ltd.*[5] and other authorities. On these grounds we were disposed to grant leave to appeal on terms but counsel for the respondent argued that it has been decided by this Court in *Rex v. Paul,*[6] which was followed in *Fong Sing v. The Queen,*[7] that we have no jurisdiction to grant leave as the proceedings below arise out of a charge of an offence other than an indictable offence and the order sought to be appealed is not a judgment acquitting or convicting or setting aside or affirming a conviction or acquittal of such an offence.

In reply counsel for the applicant refers to *Canadian Broadcasting Corporation v. Attorney General for Ontario*[8], *Smith v. The Queen*[9], particularly at page 642, neither of which appear to have been referred to in the judgments in *Paul v. The Queen* or *Fong Sing v. The Queen,* referred to above, and also to the case of *Minister of National Revenue et al v. Lafleur*[10]. It appears difficult to reconcile these judgments and under all the circumstances it seems to us that the proper course is to grant leave to appeal, leaving it to the Court which hears the appeal to determine the question whether we have jurisdiction to grant leave and, if this is decided in the affirmative, to deal with the merits.

As the matter is in the nature of a test case, we think it proper to grant leave subject to the terms that the applicant will pay the costs of the respondent in this Court in any event of the appeal.

Leave is granted accordingly.

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[4] (1958), 120 C.C.C. 289, 27 C.R. 132, [1958] O.W.N. 141.
[5] [1954] 1 Q.B. 550, [1954] 1 All E.R. 763.
[6] [1960] S.C.R. 452, 34 C.R. 110, 127 C.C.C. 129.
[7] [1963] S.C.R. 60, 40 C.R. 195, [1963] 1 C.C.C. 113.
[8] [1959] S.C.R. 188, 122 C.C.C. 305, 16 D.L.R. 609.
[9] [1959] S.C.R. 638, 30 C.R. 230, 124 C.C.C. 71, 22 D.L.R. (2d) 129.
[10] [1964] S.C.R. 412, 46 D.L.R. (2d) 439, [1965] 1 C.C.C. 133.