
MARIO E. LATTONI AND BER- }
 NARD A. CORBO }

APPELLANTS;

1958
 *May 28
 Jun. 26

AND

HER MAJESTY THE QUEEN RESPONDENT.

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

Criminal law—Conspiracy to commit offence—Distinction from substantive offence—Inapplicability of limitation-period prescribed for substantive offence—The Immigration Act, R.S.C. 1952, c. 325, ss. 50-52, 56.

*PRESENT: Kerwin C.J. and Taschereau, Rand, Martland and Judson JJ.

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A charge of conspiracy to commit offences under the *Immigration Act* is one of criminal conspiracy under the *Criminal Code* and is neither in form nor in substance a charge under the *Immigration Act*. Consequently the provisions of the latter Act as to time-limits for instituting prosecutions have no application to such a charge.

Criminal law—Appeals—Whether accused “acquitted” by trial Court—Judgment on motion to quash indictment—Proper order on appeal if judgment set aside—The Criminal Code, 1953-54 (Can.), c. 51, ss. 584(1)(a), 597(2)(a).

A motion to quash an indictment was made on the arraignment of the accused and the trial judge granted the motion in the following words: “Acte d'accusation cassé et les deux accusés sont acquittés.”

Held: This judgment constituted an acquittal within the meaning of s. 584(1)(a) of the *Criminal Code* and the Crown had a right to appeal from the decision. The Court of Appeal having reversed the judgment of the trial judge, the accused were entitled to appeal to the Supreme Court under s. 597(2)(a).

Held, further: The proper order for the Court of Appeal to make in such circumstances was that the record be returned to the Court below and that there be a new trial.

APPEAL by the accused from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, setting aside a judgment of a Judge of the Sessions of the Peace. Appeal dismissed subject to a variation.

The two accused were charged in an indictment containing numerous counts summarized as follows by Owen J. in the Court of Queen's Bench:

The Respondents were charged with having, between the 1st January 1950 and the 31st December 1952, conspired together and with others to commit the following criminal acts:

- (a) Bribing an agent of the Crown to issue false visas (Sec. 408 and 368 Cr. C.).
- (b) Bringing immigrants into Canada illegally (Sec. 408 Cr. C.).
- (c) Obtaining by false pretences (Sec. 408 and 304, 323 and others Cr. C.).
- (d) Making false documents (Sec. 408 and 309 Cr. C.).
- (e) Using forged documents (Sec. 408 and 311 Cr. C.).
- (f) Defrauding certain persons of several thousand dollars (Sec. 408 and 323 Cr. C.).

In the same indictment the Respondents were accused of having between the same dates committed the following criminal acts:

¹[1958] Que. Q.B. 360.

1. (a) Using false documents.

(b) Causing persons to use these documents as though they were genuine (Sec. 311 and 21 Cr. C.).

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2. (a) Doing or omitting to do certain things for the purpose of enabling persons to use false documents.

(b) Assisting persons to commit the same criminal acts (Sec. 311 and 21 Cr. C.).

On the arraignment of the accused, their counsel moved to quash the indictment and this motion was granted by Proulx J.S.P., whose reasons for judgment contained the following paragraphs:

PREAMBULE

Dans cet acte d'accusation, il est clair qu'on a essayé de contourner la loi, par le truchement de la conspiration!

Toutes les infractions substantives dont il est question dans les différents chefs d'accusation sont couvertes par les arts. 50, 51, 52 de la *Loi sur l'Immigration*, même les infractions commises hors du Canada selon l'art. 54 de la dite loi.

L'article 5, para. 2, du *Code Criminel* stipule que "nul ne doit être condamné au Canada pour une infraction commise hors du Canada" mais "sous réserve de la présente loi [le *Code Criminel*] ou de toute autre loi du Parlement du Canada".

En principe, on aurait dû poursuivre sous la *Loi sur l'Immigration*. Mais voilà! toutes les infractions prévues par la *Loi sur l'Immigration* sont poursuivables sur déclaration sommaire de culpabilité, sauf les infractions prévues par l'art. 51, qui peuvent être poursuivies par voie de mise en accusation avec le consentement du ministre.

Or, l'art. 56 de la *Loi sur l'Immigration* stipule que les procédures sur déclaration sommaire de culpabilité doivent être intentées dans les trois ans qui suivent la date de l'infraction.

L'acte d'accusation allègue que les infractions auraient été commises du 1er janvier 1950 au 31 décembre 1952, et la dénonciation est datée du 28 mars 1956. Il est évident que la poursuite a procédé en vertu du *Code Criminel*, parce que la procédure sur déclaration sommaire de culpabilité en vertu de la *Loi sur l'Immigration* était prescrite; on passait outre à l'intention du législateur.

* * *

CONCLUSION

On retrouve aux arts. 50, 51 et 52 de la *Loi sur l'Immigration*, toutes ces accusations de complicité et infractions substantives du *Code Criminel*. Nous pouvons même aller jusqu'à dire que les éléments de conspiration se retrouvent dans le para. (j) de l'art. 50 de la *Loi sur l'Immigration*. C'est comme si l'on avait mis cette loi et le *Code Criminel* côte à côte et recherché dans le code ces infractions prescrites sous la *Loi sur l'Immi-*

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gration ou pour la poursuite desquelles il fallait le consentement du ministre. Ensuite, on a logé des accusations de conspiration pour justifier la poursuite sous le *Code Criminel* et contourner la loi.

Dans mon humble opinion, cet acte d'accusation est une parodie de la procédure, un déni de justice, une moquerie de la loi et surtout un souverain mépris du législateur.

Le Tribunal conclut que tous ces chefs d'accusation sont irréguliers, illégaux et nuls, de nullité absolue!

En l'occurrence, la Cour ne peut rien modifier, comme on pourrait le faire en certains cas sous l'art. 510(3) du *Code Criminel*: en toute conscience, elle ne peut que casser un tel acte d'accusation et acquitter les accusés.

The Crown appealed to the Court of Queen's Bench which allowed the appeal and ordered "that the record be returned to the Court below in order that the trial of the accused may proceed according to law".

The accused obtained leave to appeal to the Supreme Court of Canada.

J. Cohen, Q.C., and F. Kaufman, for the appellant Lattoni.

D. Dansereau, Q.C., for the appellant Corbo.

J. Miquelon, Q.C., and A. Nadeau, for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an appeal by the accused against the judgment of the Court of Queen's Bench (Appeal Side), Province of Quebec, setting aside the judgment of Judge W. Proulx, a Judge of the Sessions of the Peace for the District of Montreal, which latter judgment had granted a motion to quash the indictments preferred against the appellants. The first argument on their behalf is that Judge Proulx did not acquit them and that there was no right of appeal by the Crown from his decision. It might be pointed out that, if this argument were correct, there would be no appeal to this Court, because under s. 597 of the *Criminal Code* the accused would not be persons who had been acquitted of an indictable offence and whose acquittal had been set aside by the Court of Appeal.

However, the appellants' first contention cannot prevail.
 The following appears at the end of the formal judgment
 of Judge Proulx:

Le Juge rend le jugement suivant: Acte d'accusation cassé et les
 deux accusés sont acquittés. Annexé au présent jugement le Jugement
 de M. le Juge W. Proulx cassant l'acte d'accusation et acquittant les
 accusés.

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His reasons conclude:

. . . en toute conscience, elle [la cour] ne peut que casser un tel acte
 d'accusation et acquitter les accusés.

His report to the Court of Appeal ends:

Pour toutes ces raisons, j'ai cru de mon devoir de casser un tel acte
 d'accusation, en toute conscience, justice et équité.

Reading all of these documents in their entirety I agree
 with the Court of Appeal that the judgment of Judge
 Proulx was a final judgment quashing the indictment
 because he considered that all criminal proceedings as a
 result of the alleged acts of the accused were prescribed.
 I also agree that it was not a judgment on procedural
 grounds owing to a defect in the indictment and there-
 fore if the accused were charged subsequently with the
 same offences as those embodied in the indictment, they
 could plead *autrefois acquit*. It was a decision on a ques-
 tion of law alone and being a judgment or verdict of
 acquittal was appealable under s. 584 of the Code.

As to the grounds upon which Judge Proulx proceeded,
 there was no obligation on the Crown to lay charges under
 the *Immigration Act*, but it was entitled to prefer an
 indictment, as it did, charging conspiracy which could be
 laid only under the Code. Any period of prescription that
 might apply under the *Immigration Act* is not applicable
 to charges of conspiracy under the Code.

The appeal should be dismissed but the judgment of
 the Court of Queen's Bench (Appeal Side) should be
 amended by striking out the last paragraph thereof* and
 inserting in lieu thereof the following:

DOTH ORDER that the record be returned to the Court below and
 that there be a new trial.

Appeal dismissed subject to a variation in the judgment.
Attorney for the appellant Lattoni: J. Cohen, Montreal.

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A. Nadeau, Montreal.
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*This paragraph read as follows:

“DOTH ORDER that the record be returned to the Court below in order that the trial of the accused may proceed according to law.”
