

1944

*April 1.

*June 1.

ABBOTT v. THE KING

ON PROPOSED APPEAL FROM THE COURT OF APPEAL FOR
ONTARIO

Criminal law—Appeal—Application for leave to appeal to Supreme Court of Canada under s. 1025, Criminal Code—Whether Judgment sought to be appealed from conflicted with judgment “of any other court of appeal” “in a like case”.

On an application, pursuant to s. 1025, *Criminal Code*, for leave to appeal from the judgment of the Court of Appeal for Ontario, [1944] O.R. 230, dismissing the applicant's appeal from his conviction on a charge of unlawfully obtaining a sum of money by false pretences and with intent to defraud, contrary to s. 405 (1), *Criminal Code*, the applicant's contention being that the court which tried him had no jurisdiction:

Held (dismissing the application), that the judgment in *The King v. O’Gorman*, 15 Can. Crim. Cas. 173, was not “in a like case” within said s. 1025; also that said judgment in *The King v. O’Gorman*, which was rendered by the Court of Appeal for Ontario, as was also the judgment now sought to be appealed from, was not a judgment “of any other court of appeal” within said s. 1025.

APPLICATION, pursuant to the provisions of s. 1025 of the *Criminal Code* (R.S.C. 1927, c. 36), for leave to appeal to this Court from the judgment of the Court of Appeal for Ontario (1) dismissing the applicant's appeal from his conviction before the Court of General Sessions of the Peace for the County of Simcoe on a charge that he did, on or about the 31st day of August, 1942, at the Township of Nottawasaga, in the County of Simcoe, and elsewhere in the Province of Ontario, by false pretences and with intent to defraud, unlawfully obtain the sum of \$500 from Thomas Jones, contrary to s. 405 (1) of the *Criminal Code*. A contention on behalf of the applicant, that the Court of General Sessions of the Peace for the County of Simcoe had no jurisdiction to try him as the evidence established that the offence of which he was convicted was committed in the County of York and he was neither apprehended nor in custody in the County of Simcoe within the meaning of s. 577 of the *Criminal Code*, was rejected by the Court of Appeal. It was contended on behalf of the applicant in the present application that the

*PRESENT:—Rinfret C.J. in Chambers.

decision of the Court of Appeal conflicted with other judgments, including the judgment in *The King v. O'Gorman* (1), "in a like case" within said s. 1025.

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G. A. Martin for the application.

W. B. Common K.C. contra.

THE CHIEF JUSTICE.—The only judgment with which it could be seriously said there might be a conflict with the judgment of the Court of Appeal in the present case, is that of *The King v. O'Gorman* (1). The other cases referred to obviously presented no conflict at all and that was practically admitted during the argument by counsel for the appellant.

After having carefully considered the judgment in the *O'Gorman* case (1) and having given the fullest consideration to the very able argument of Mr. Martin, I have come to the conclusion that the *O'Gorman* case (1) was "not a like case", within the meaning of section 1025 of the *Criminal Code*. In the present case, the distinction is made in the reasons for judgment of the Chief Justice of Ontario and I fully agree that the two cases are distinguishable and, therefore, there exists no basis for granting leave to appeal in the present case.

There is, to my mind, a further reason why the application for leave should not be entertained. Judgment in the case of *The King v. O'Gorman* (1) was rendered by the Court of Appeal for Ontario and the judgment from which it is intended to appeal to this Court was also rendered by the Court of Appeal for Ontario. In the circumstances, it seems to me that it cannot be said this would meet the requirements of section 1025: that leave may be granted "if the judgment appealed from conflicts with the judgment of any other court of appeal". I do not think that the section applies.

The application should be dismissed.

Application dismissed.