

HOWARD SMITH PAPER MILLS }
 LIMITED AND OTHERS } APPELLANTS;

AND

HER MAJESTY THE QUEEN RESPONDENT.

1956
 *Oct. 29,
 30, 31
 Nov. 1, 2,
 5, 6, 7
 1957
 May 13

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law—Conspiracy in restraint of trade—Defences—Whether intended prevention or lessening of competition “undue”—Validity of indictment—Whether different offences created by the Criminal Code, R.S.C. 1927, c. 36, s. 498(1)(d)—Application and effect of the Combines Investigation Act, R.S.C. 1927, c. 26, s. 41, enacted by 1949 (2nd sess.), c. 12, s. 3, renumbered and amended by 1952, c. 39, ss. 6, 8—The Interpretation Act, R.S.C. 1952, c. 158, s. 19.

It is not necessary, to support a charge under s. 498(1)(d) of the *Criminal Code*, 1927, that the prosecution should establish any detriment to the public from the agreement made, nor is it a defence to such a charge that the agreement resulted in public benefit, through reasonable prices and profits. The section is designed to protect free competition, and any agreement for the prevention or lessening of that competition, to an extent that is “undue” within the authorities, is punishable. The section proceeds on the footing that the preventing or lessening of competition is in itself an injury to the public, and is not concerned with public injury or public benefit from any other standpoint.

An indictment alleging that the accused conspired “to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply” of goods is not bad for duplicity, or as charging several offences in the alternative. A single conspiracy is contemplated by s. 498(1)(d), *viz.*, one to “prevent or lessen competition”, and the words following are merely means by which that competition may be prevented or lessened. For the same reason, it is not correct to strike out the words “production” and “manufacture” from the conviction merely on the ground that there was no evidence of a conspiracy expressly directed to the prevention or lessening of competition in these two respects.

Section 41 of the *Combines Investigation Act*, 1927, as enacted in 1949 and amended and renumbered in 1952, applies on a prosecution for a conspiracy completed before the coming into force of the 1952 amendment. The effect of the section is to render admissible in evidence written communications, described as “inter-office memoranda”, from one servant of an accused corporation to another even if they never left the premises of the company in whose possession or on whose premises they have been found. Such documents, when admitted, are *prima facie* evidence not only against the corporation in whose possession they were found but against other alleged conspirators mentioned in them.

*PRESENT: Kerwin C.J. and Taschereau, Rand, Kellock, Locke, Cartwright and Fauteux JJ.

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APPEAL by 22 companies and one individual from the judgment of the Court of Appeal for Ontario (1), affirming the conviction of the appellants and one other company by Spence J. (2) on an indictment under s. 498(1)(d) of the *Criminal Code*, R.S.C. 1927, c. 36 (one other company and another individual, also indicted and convicted, did not appeal to the Court of Appeal), and a cross-appeal by the respondent. Appeal dismissed and cross-appeal allowed.

Leave was granted by Cartwright J. on November 22, 1955, to appeal on the following questions of law:

1. Did the Courts below err in holding that section 41 of the Combines Investigation Act, R.S.C. 1952, Ch. 314 as enacted by, 1949 (Second Session) Ch. 12, section 3, and as amended by 1952, 1 Elizabeth II, Ch. 39, was applicable to this case?

2. Did the Courts below err in law in holding that a number of documents consisting of written communications from one servant of an accused corporation to another servant of the same corporation, which documents were referred to at the trial as "inter-office memoranda", were admissible in evidence against all the accused?

3. Did the Court of Appeal for Ontario err in not holding that the indictment and/or the conviction was void for duplicity in that it states two separate offences in the alternative under section 498(1)(d) of The Criminal Code namely the offence of agreeing to unduly lessen competition and the offence of agreeing to unduly prevent competition?

4. Did the Court of Appeal for Ontario err in not holding that the indictment and/or the conviction was void for duplicity in that it states in the alternative the several offences under section 498(1)(d) of agreeing as to manufacture, purchase, barter, sale, transportation or supply?

5. Did the Court of Appeal err in law in not holding that the effect of wartime control orders, directives and requests, proven in evidence, was to constitute a break in the continuity of any alleged agreement or agreements between the accused and in not holding that the conviction was bad in law as being a conviction on one count with reference to two alleged agreements which are distinct in time?

6. Did the Courts below err in holding that the element of "undueness" required by section 498(1)(d) may be proved by reference only to the scope and extent of the agreement or arrangement complained of and without proof of detriment to the public?

7. Did the Courts below err in ruling that they were precluded from having regard to evidence tending to show public benefit, reasonableness of prices and profits, and, particularly, did the learned Trial Judge err in the ruling which he expressed (at 1954, O.R. p. 572) in the following words, "In considering the evidence adduced I am not free to find that the lessening intended was not undue on the basis of any necessity of the industry, reasonableness of prices resulting or reasonableness of profits obtained"?

(1) [1955] O.R. 713, 112 C.C.C. 108, 22 C.R. 205, [1955] 4 D.L.R. 225.

(2) [1954] O.R. 543, 109 C.C.C. 65, 19 C.R. 1, [1954] 4 D.L.R. 161.

The application for leave to appeal was opposed. Counsel for the respondent moved for leave to cross-appeal but stated that such leave was sought only if the application of the appellants should be allowed. Leave was granted to cross-appeal on the following question of law:

Did the Court of Appeal for Ontario err as a matter of law in varying the conviction by striking out the words "production" and "manufacture"?

Joseph Sedgwick, Q.C., John J. Robinette, Q.C., Hazen Hansard, Q.C., John D. Pickup, Q.C., A. Laurendeau, Q.C., D. K. MacTavish, Q.C., and John M. Coyne, for the appellants.

N. L. Mathews, Q.C., and B. J. MacKinnon, for the respondent.

THE CHIEF JUSTICE:—I agree with Mr. Justice Kellock and desire merely to make a reference to the refusal by this Court of leave to appeal from the decision of the Court of Appeal for British Columbia in *Regina v. Morrey* (1). There the accused had been found guilty of an indictment preferred under the *Combines Investigation Act*, but the Court of Appeal set aside the conviction. The Crown did not appeal to this Court on any dissent expressed by Mr. Justice Davey, but desired leave in order to raise a number of questions. This Court thought that, irrespective of these questions, the order made by the Court of Appeal setting aside the conviction and, if the Crown so desired, ordering a new trial could be justified on other grounds, and that if any of the points suggested by the Crown arose in the present appeal they could be dealt with when judgment was delivered. It is apparent, however, that none is involved in the present determination.

TASCHEREAU J.:—The appellants were charged under s. 498(1)(d) of the *Criminal Code*, as in force prior to November 1, 1952, on an indictment, the material portion of which, for the purposes of the present appeal, reads as follows:

During the period from 1933 to the 31st day of October, 1952, both inclusive, . . . did unlawfully conspire, combine, agree or arrange together and with one another and with . . . [others named in the indictment] to

(1) (1956), 19 W.W.R. 299, 115 C.C.C. 337, 24 C.R. 319, 6 D.L.R. (2d) 114.

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unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply . . . of articles or commodities which may be the subject of trade or commerce, to wit, book papers including general printing and converting papers, fine papers including rag content and sulphite writing paper, coated papers, miscellaneous fine papers including blotting and bristols, groundwood printing and specialty papers containing more than 50% groundwood and other fine papers, and did thereby commit an indictable offence contrary to the provisions of the Criminal Code, section 498, subsection (1)(d).

The appellants were found guilty by Mr. Justice Spence, sitting without a jury, and this judgment was unanimously confirmed by the Court of Appeal for Ontario. Mr. Justice Cartwright granted leave to appeal to this Court on questions of law, and leave was also granted to cross-appeal on the following question:

Did the Court of Appeal for Ontario err as a matter of law in varying the conviction by striking out the words "production" and "manufacture"?

The facts are not in dispute, and as they have been summarized by my colleagues, it is unnecessary to deal with them once more.

I agree with Kellock and Cartwright JJ. and I am of the opinion that this appeal should be dismissed.

I wish however to add a few observations concerning the necessity of showing detriment to the public, and as to the meaning of the word "unduly" found in s. 498(1)(d) of the old *Criminal Code*, under which the charge is laid.

It has been argued on behalf of the appellants that the offence is not complete, unless it has been established by the Crown beyond a reasonable doubt, that the agreement was detrimental to the public, in the sense that the manufacture or production was effectively lessened, limited or prevented, as a result of the agreements entered into. It has also been suggested that there is no offence, if it is shown that the acts complained of were beneficial to the public. With these submissions I entirely disagree. Conspiracy is a crime by itself, without the necessity of establishing the carrying out of an overt act. Stephen (Digest of the Criminal Law, 9th ed. 1950, p. 24), basing his opinion on *Regina v. Whitchurch et al.* (1), goes as far as saying:

When two or more persons agree to commit any crime, they are guilty of a misdemeanour called conspiracy whether the crime is committed or not, and though in the circumstances of the case it would be impossible to commit it.

The public is entitled to the benefit of *free competition*, and the prohibitions of the Act cannot be evaded by good motives. Whether they be innocent and even commendable, they cannot alter the true character of the combine which the law forbids, and the wish to accomplish desirable purposes constitutes no defence and will not condone the undue restraint, which is the elimination of the free domestic markets.

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It is my strong view that traders, manufacturers and producers cannot, as the law now stands, monopolize a substantial part of the markets of the country in given industries, to promote their own business interests, and then set themselves up as public benefactors, by saying to the Courts that the conspiracy was organized in order to achieve the stabilization of prices and production.

I believe that the law has been clearly expressed by Mr. Justice Mignault in *Stinson-Reeb Builders Supply Company et al. v. The King* (1):

Injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine, is what brings an agreement or a combination under the ban of section 498 Cr. C.

Vide also *Container Materials, Limited et al. v. The King* (2) where Sir Lyman Duff, then Chief Justice, said at p. 152:

The enactment before us, I have no doubt, was passed for the protection of the specific *public interest in free competition*. That, in effect, I think, is the view expressed in *Weidman v. Shragge* (1912), 46 S.C.R. 1, in the judgments of the learned Chief Justice, of Mr. Justice Idington and Mr. Justice Anglin, as well as by myself. This protection is afforded by stamping with illegality agreements which, when carried into effect, prevent or lessen competition unduly and making such agreements punishable offences; and, as the enactment is aimed at protecting the public interest in free competition, it is *from that point of view* that the question must be considered whether or not the prevention or lessening agreed upon will be undue . . . That is only another way of putting what was laid down in *Stinson-Reeb v. The King* [supra], which, it may be added, was intended to be in conformity with the decision in *Weidman v. Shragge*, as indicated in the passages quoted in the judgment.

Weidman et al. v. Shragge (3) and *Rex v. Elliott* (4) are also to the same effect.

(1) [1929] S.C.R. 276 at 280, 52 C.C.C. 66, [1929] 3 D.L.R. 331.

(2) [1942] S.C.R. 147, 77 C.C.C. 129, [1942] 1 D.L.R. 529.

(3) (1912), 46 S.C.R. 1, 20 C.C.C. 117, 2 D.L.R. 734, 2 W.W.R. 330.

(4) (1905), 9 O.L.R. 648, 9 C.C.C. 505.

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I have therefore reached the conclusion that this appeal should be dismissed, and I would dispose of the cross-appeal as proposed by my brother Kellock.

The judgment of Rand, Kellock and Fauteux JJ. was delivered by

Taschereau J.

KELLOCK J.:—As the questions submitted to this Court are questions of law, our jurisdiction being limited to such questions, the findings made by the Courts below upon the evidence are not in question. It will be convenient to deal first with questions 6 and 7.

The offence of which the appellants have been convicted is provided for by s. 498(1)(d) of the *Criminal Code*, R.S.C. 1927, c. 36, which provides that:

Every one is guilty of an indictable offence . . . who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, . . .

(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.

“Such” refers back to the earlier paragraphs in which the article or commodity is described as “any article or commodity which may be a subject of trade or commerce”.

It is contended that as the word “prevent” is used in s. 498(1)(d) in the sense of absolute elimination, the word “unduly” is meaningless unless it be interpreted as involving injury to the public. It is therefore argued that it is a defence to a charge under the section if it be shown that the agreement entered into by the accused had in view the interests of the parties or public benefit such as “reasonableness of prices” or obviation of the “hardships of a depression by keeping all mills working part-time as a result of which a real public advantage is gained”, to use language employed by the appellants in their factum. While “prevent” quite commonly is used in the above sense it is also used in the sense of “hinder” or “impede”. In the French version the word is “prévenir” which also is commonly used in the sense of “empêcher”. In this sense the word “unduly” is appropriate in connection with both “prevent” and “lessen”.

The appellants further contend that the word "unduly" in the statute should be interpreted by calling in aid the provisions of the definition of "combine" in the *Combines Investigation Act*, R.S.C. 1927, c. 26, as amended by 25-26 Geo. V. (1935), c. 54, s. 2, where it is defined for the purposes of that statute as, *inter alia*, a combination which "has operated or is likely to operate to the detriment or against the interests of the public whether consumers, producers or others". It is contended that if s. 498(1)(d) of the *Criminal Code* is to be construed without reading similar words into it "parties to the same agreement might be found guilty if charged under section 498(1)(d), without proof of public detriment, while they would go free on the same evidence if charged under the Combines Investigation Act".

I cannot accept this contention. If there is a difference between the offences described in the two statutes, Parliament has deliberately so intended. It will be seen, however, that s. 498(d) does have in view injury to the public but injury to the public of a character expressly specified by the section itself.

In the course of his judgment in *Container Materials, Limited et al. v. The King* (1), Duff C. J. C. said:

The second point arises from the contention of the appellants that the essence of the offence is an agreement to do something injurious to the public; that such injury to the public must appear from the evidence and must be found as a fact in order to establish a legal basis for a conviction. At p. 152, the learned Chief Justice dealt with this contention as follows:

The enactment before us, I have no doubt, was passed for the protection of the specific public interest in free competition. That, in effect, I think, is the view expressed in *Weidman v. Shragge* (1912), 46 S.C.R. 1, in the judgments of the learned Chief Justice, of Mr. Justice Idington and Mr. Justice Anglin, as well as by myself. This protection is afforded by stamping with illegality agreements which, when carried into effect, prevent or lessen competition unduly and making such agreements punishable offences; and, as the enactment is aimed at protecting the public interest in free competition, it is *from that point of view* that the question must be considered whether or not the prevention or lessening agreed upon will be undue . . . That is only another way of putting what was laid down in *Stinson-Reeb v. The King*, [1929] S.C.R. 276, which, it may be added, was intended to be in conformity with the decision in *Weidman v. Shragge*, as indicated in the passages quoted in the judgment.

The other members of the Court who took part in the judgment expressed in other words the same principle.

(1) [1942] S.C.R. 147 at 151, 77 C.C.C. 129, [1942] 1 D.L.R. 529,

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When it is considered that in the course of his dissenting judgment in the Court of Appeal in the above case (1) Henderson J.A. had said at pp. 195-6(D.L.R.):

In many of the cases the purpose or objective of the alleged conspiracy has been, *per se*, a crime. A very different situation arises where the purpose of the agreement is a proper one on its face and entered upon in good faith in the belief not only that it is within the legal rights of the parties, but in the case of a trade agreement, is for the good of the particular industry and the public who are concerned.

At p. 196:

The Crown accepts the view that there having been an association of manufacturers in this industry prior to 1931, and the industry being in a bad way financially, having taken heavy losses and being in danger of collapse, the object of the accused was to form an association which would stabilize the industry, put it on a sound footing and make it prosperous.

It is charged by the Crown that in effecting this object the accused did unduly stifle competition . . . No evidence is offered in support of the view that in standardizing their products the accused did any injury to the public or to their consumers. For all that appears to the contrary, one is entitled to conclude that this stabilization and standardization was all for the benefit both of the industry and of the consuming public . . .

At 204:

I do not find in this huge record . . . evidence to prove injury to trade and commerce. To the contrary, I find that the evidence indicates that Canadian manufacturers in this industry have, by their efforts, stabilized the industry, greatly increased its sales to the benefit of shareholders, employees and the public interest,

it is plain that the contention now put forward by the appellants was effectively negated by the judgment of this Court.

Anglin J., as he then was, in *Weidman et al. v. Shragge* (2) had said at pp. 42-3:

. . . the prime question certainly must be, does it, however advantageous or even necessary for the protection of the business interests of the parties, impose improper, inordinate, excessive, or oppressive restrictions upon that competition the benefit of which is the right of every one? *The King v. Elliott*, 9 C.C.C. 505, at p. 520.

This judgment received the approval of this Court in *Stinson-Reeb Builders Supply Company v. The King* (3), *per Mignault J.* at p. 278. At p. 280 Mignault J. said:

Injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine, is what brings an agreement or a combination under the ban of section 498 Cr. C.

- (1) *Rex v. Container Materials Ltd. et al.*, 76 C.C.C. 18, [1941] 3 D.L.R. 145.
- (2) (1912), 46 S.C.R. 1, 20 C.C.C. 117, 2 D.L.R. 734, 2 W.W.R. 330.
- (3) [1929] S.C.R. 276, 52 C.C.C. 66, [1929] 3 D.L.R. 331.

It is therefore clear that the Courts below dealt with the matter before them from the proper point of view. The statute proceeds upon the footing that the preventing or lessening of competition is in itself an injury to the public. It is not concerned with public injury or public benefit from any other standpoint.

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It was contended that the case at bar was distinguishable from all previous cases of a similar character which had reached this Court in that the agreement constituting the conspiracy was not to be found within the four corners of a written document but had to be deduced from oral evidence, correspondence, minutes and other writings. This contention is, in my opinion, untenable. It relates merely to a matter of evidentiary proof.

The answer to questions 6 and 7 must, therefore, be in the negative.

With respect to question 5, it is not necessary, in my opinion, to discuss the argument which was addressed to us in so far as that argument was founded upon matters of evidence. The essence of the argument is that although the agreement, which the Courts below have found to contravene the provisions of s. 498(1)(d), continued without break throughout the period mentioned in the indictment, and although s. 498(1)(d) remained unrepealed, the agreement ceased to come within the ban of the section during the period of the wartime controls for the reason that all possibility of competition in fine papers was eliminated by virtue of the legislation then in effect.

In my opinion the short answer to this contention is contained in part of the reasons for judgment of Duff C.J.C. in the *Container Materials* case, *supra*. At p. 153 the learned Chief Justice, after pointing out that the Court of Appeal had held that the aim of the parties to the agreement there in question had been to secure effective control of the market in Canada and that they had been very largely successful in effectuating that aim, went on to say: "But the fact that *such was the agreement* affords in point of law a sufficient basis" for a finding that the section had been contravened.

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Assuming that during any part of the period of control the aim of the parties to the agreement could not have been successfully carried into execution, such a fact would not, in law, constitute any answer to the indictment.

In *Regina v. Aspinall et al.* (1), Brett J.A., as he then was, said, at pp. 58-9:

Now, first, the crime of conspiracy is completely committed, if it is committed at all, the moment two or more have agreed that they will do, at once or at some future time, certain things. It is not necessary in order to complete the offence that any one thing should be done beyond the agreement. The conspirators may repent and stop, or may have no opportunity, or may be prevented, or may fail. Nevertheless the crime is complete; it was completed when they agreed.

In his Digest of the Criminal Law, 9th ed. 1950, Stephen J. says at p. 24:

When two or more persons agree to commit any crime, they are guilty of the misdemeanour called conspiracy whether the crime is committed or not, and though in the circumstances of the case it would be impossible to commit it.

The authority relied on is *Regina v. Whitchurch et al.* (2), and, in my opinion, it fully justifies the statement in the text.

The appellants referred to the decision of the Court of Criminal Appeal in England in *Rex v. West et al.* (3). In that case, however, the regulations in question had been amended so that in effect there were three separate offences charged. Nothing of that kind is in question here. Section 498(1)(d) remained in force throughout. The fact that the wartime controls were of a temporary nature no doubt influenced the parties to the conspiracy in continuing their agreement throughout. That the agreement did continue is sufficient in itself in point of law even had the Courts below been unable to find, as in fact they did find, that the agreement was not as ineffective during the period of the controls as the appellants contend.

In my opinion, therefore, question 5 must also be answered in the negative.

With regard to question 3, it is contended that the indictment states two separate offences in the alternative, namely, the offence of agreeing to unduly lessen competition and the offence of agreeing to unduly prevent competition.

(1) (1876), 2 Q.B.D. 48.

(2) (1890), 24 Q.B.D. 420.

(3) [1948] 1 K.B. 709, [1948] 1 All E.R. 718, 32 Cr. App. R. 152.

Again, with regard to question 4, the error the Court below is alleged to have fallen into is in failing to hold that the indictment was void for duplicity in that it states in the alternative the several offences under s. 498(1)(d) of agreeing as to manufacture, purchase, barter, sale, transportation or supply.

To return to the statutory language that everyone is guilty of *an* indictable offence "who conspires, combines, agrees or arranges with any other person . . . (d) to unduly prevent or lessen competition in the production", etc., in my opinion, upon the proper construction of these words, there is but one offence created. To adopt in part language used by Meredith J., as he then was, in *Rex v. Elliott* (1):

The crime is in the conspiracy, not in the unlawful acts comprehended in it.

A little later on the same page the learned judge pointed out that

By looking at the acts agreed to be done, instead of only at the agreement to do them, the crime is apt to be wrongly multiplied.

As the question involved in the cross-appeal is allied to questions 3 and 4, I propose to consider it at this point also. That question is as to whether the Court of Appeal erred in law in striking from the conviction the words "manufacture" and "production". In the course of its judgment the Court of Appeal (2) affirmed the finding of the trial judge that

the Mills as a group and the Merchants as a group did conspire with one another to lessen or prevent *competition* in the fine paper industry in Canada; the Mills at the production level, the Merchants at the wholesale level. Within that broad, over-all, all-embracing agreement each group had its part to play in accomplishing their common purpose.

The Mills, pursuant to a common understanding between them and the Merchants, co-operated with the Merchants to prevent, if possible, any inroads by others into the wholesale field in which the Merchants operated; and the Merchants in turn, pursuant to a common understanding between them and the Mills, co-operated with the Mills to prevent, if possible, any mill *competition* from the only source where it really existed, namely, foreign manufacturers.

(The italics are mine.)

There was, of course, evidence upon which such a finding could be made.

(1) (1905), 9 O.L.R. 648 at 651, (2) [1955] O.R. at p. 726.
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In my opinion, on the plain reading of s. 498(1)(d), the accused may be charged with conspiring "to unduly prevent" competition in any one or more of the modes mentioned in para. (d) depending upon the evidence to be adduced, or, similarly, "to unduly lessen" competition and he may also and no doubt will invariably be charged with conspiring "to unduly prevent or lessen" by any one or more of such means. The fact that, as in the case at bar, there was no evidence directed to the word "barter" has no effect upon the result nor would it have had if that word or any of the other intended modes of carrying the conspiracy into effect had been omitted, so long as one of the statutory means was specified. The Crown could, for example, if it did not intend to adduce evidence with regard to any of the other words contained in the section, confine itself to charging a conspiracy with regard to "manufacture" only.

Accordingly, the form of the present indictment is authorized by s. 498(1)(d) and that being so, it falls within ss. 852(3) and 854 of the *Criminal Code*. The decision of this Court in *Belyea v. The King*; *Weinraub v. The King* (1), is authority for the view I have expressed and is unaffected by the fact that s. 1010(2) of the *Criminal Code* as it then stood no longer exists.

With regard to the question raised by the cross-appeal, it will be observed that in the extract from the reasons of Roach J.A., quoted above, the learned judge was directing his mind to the essence of the charge under s. 498(1)(d), namely, the conspiracy to prevent or lessen "competition". Subsequently, however, when the learned judge came to deal with the question which is now the subject of the cross-appeal in this Court, he did so in the following two passages:

I do not think that the evidence establishes that they conspired to prevent or lessen *production and manufacture* in Canada, but of that I shall have more to say later (2).

And subsequently:

As earlier stated herein, I do not think that as between the two groups there was a conspiracy to lessen or prevent *production or manufacture* (3).

(1) [1932] S.C.R. 278, 57 C.C.C.
318, [1932] 2 D.L.R. 88.

(2) [1955] O.R. at p. 735.
(3) *Ibid.* at p. 737.

With respect, these passages appear to lose sight of the nature of the charge, namely, the conspiracy to unduly prevent or lessen "competition" in production, manufacture, etc. There is, therefore, here an error in a matter of law, namely, an erroneous construction of the statutory offence and the charge contained in the indictment, and not in the question of fact as to whether or not there existed or did not exist any evidence of conspiracy to lessen or prevent competition in production or manufacture, as to which the learned Justice of Appeal had made a contrary finding, namely, that

the Mills as a group and the Merchants as a group did conspire with one another to lessen or prevent *competition* in the fine paper industry in Canada; the Mills at the production level, the Merchants at the wholesale level. Within that broad, over-all, all-embracing agreement each group had its part to play in accomplishing their common purpose (1).

In my opinion, this a finding that the mills and merchants together did conspire to unduly prevent or lessen competition in both production and manufacture as well as in purchase and sale. The object of the mills was to limit competition in production and manufacture to themselves as against outsiders and in this they were aided by the common agreement of the merchants. Even if the mill competition which was in view was from foreign manufacturers, the finding expressly includes this, namely, that there was a common understanding between mills and merchants "to prevent, if possible, any *mill* competition from the only source where it really existed, namely, foreign manufacturers". In my opinion, therefore, the Court of Appeal erred in striking out the words "production" and "manufacture" from the indictment.

It is contended on behalf of the appellants that there is no jurisdiction in this Court under the provisions of s. 1025 of the *Criminal Code* to entertain the cross-appeal as it is said that there was no "setting aside" of the conviction within the meaning of s. 1014. I cannot agree. A conviction upon a charge of conspiring to unduly prevent

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(1) [1955] O.R. at p. 726.

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or lessen competition in the barter of any commodity is, to my mind, as I have already pointed out, not the same as a conviction of conspiring with respect to the preventing or lessening of competition in the purchase or sale of a commodity. Accordingly, in substituting a conviction of conspiring to unduly prevent or lessen competition in the purchase, barter, sale, transportation and supply of an article, the Court of Appeal necessarily set aside the conviction made by the trial judge, namely, that of conspiring to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of that commodity.

With regard to question 1, the contention of the appellants is essentially founded upon the language of subs. (2) of s. 41 of the *Combines Investigation Act*, R.S.C. 1927, c. 26, as enacted by 1949 (2nd sess.), c. 12, s. 3, and amended by 1952, c. 39, ss. 6 and 8. By virtue of s. 6 of the 1952 Act the former s. 39A was renumbered as s. 41.

It is contended for the appellants that s. 41 is not a procedural but a substantive enactment and can have no retrospective operation, and further, that the reference to s. 498 in subs. (2) is confined to s. 498 of the *Criminal Code* as enacted by s. 11 of the statute of 1952, which begins with the following words:

11. Sections four hundred and ninety-eight and four hundred and ninety-eight A of the *Criminal Code* chapter thirty-six of the Revised Statutes of Canada, 1927, are repealed and the following substituted therefor:

The contention is that the words "section four hundred and ninety-eight" in subs. (2) of s. 41 refer to the s. 498 enacted by the statute of 1952 and, accordingly, that even though s. 41 is to be considered a procedural enactment, it is expressly made applicable only to prosecutions under the new s. 498. It is therefore said also that, as the prosecution here in question is in respect of the period ending with October 31, 1952, to which s. 498 of the *Criminal Code* as it stood on that date is the applicable section, resort cannot be had to the antecedent of s. 41, namely, s. 39A, enacted in 1949 by 13 Geo. VI, c. 12, as that section, although continued by s. 6 of the 1952 legislation as s. 41, ceased,

by reason of its amendment by s. 8 of the same statute, to have any application to a prosecution under the old s. 498.

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There is no question, in my opinion, that s. 41 is procedural in its nature and in so far as the appellants' argument is dependent upon a contrary view it cannot be supported.

In my opinion the *Interpretation Act*, now R.S.C. 1952, c. 158, affords an answer to the appellants' contention. By s. 19 (1), it is provided that where any Act or enactment is repealed, then, unless the contrary intention appears, such repeal does not, save as in the section is otherwise provided,

- (d) affect any offence committed against any Act, enactment or regulation so repealed or revoked, or any penalty or forfeiture or punishment incurred in respect thereof, or
 - (e) affect any . . . legal proceeding or remedy in respect of any such . . . penalty, forfeiture or punishment as aforesaid,
- and any such . . . penalty, forfeiture or punishment may be imposed, as if the Act . . . had not been repealed.

Accordingly, regardless of any repeal of s. 498 of the *Criminal Code*, the liability to prosecution thereunder continued. This, of course, the appellants concede.

It is further provided by subs. (2) of s. 19 that

Where other provisions are substituted for those so repealed or revoked, then, unless the contrary intention appears, . . .

- (c) in the recovery or enforcement of penalties and forfeitures incurred . . . under the Act, enactment or regulation so repealed or revoked, . . . *the procedure established by the substituted provisions* shall be followed as far as it can be adapted.

This appears to be a clear enactment that s. 41, as enacted or amended by the statute of 1952, is to apply with any necessary adaptation to a prosecution under s. 498 as it stood prior to the legislation of 1952. The "necessary adaptation" is, of course, to read "section four hundred and ninety-eight of the *Criminal Code*" as referring to the "old section" 498.

In my opinion also, the objection raised by the appellants which is the subject-matter of the second question

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is completely answered by the language of s. 41. Granted the applicability of the section to the prosecution here in question, para. (c) of subs. (2) provides that

a document proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant

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shall be *prima facie* evidence . . .

- (ii) that anything recorded in or by the document as having been done, said, or agreed upon by *any* participant or by an agent of *a* participant was done, said or agreed upon *as recorded* and, where anything is recorded in or by the document as having been done, said or agreed upon by an agent of *a* participant, that it was done, said or agreed upon with the authority of the participant.

(The italics are mine.)

It is, in my opinion, the plain language of this legislation that where a document of the character mentioned states, for example, that two participants agreed upon a thing, that is *prima facie* evidence against both notwithstanding that the statement may appear in a document which is an "inter-office memorandum" which never left the premises of the participant in whose possession or on whose premises ("used or occupied") it was found. This subject does not lend itself to extended comment. There was, accordingly, no error on the part of either Court below in the respect raised by the second question.

In this view, the appellants fail, the cross-appeal succeeds and the conviction made by the learned trial judge should be restored.

The judgment of Locke and Cartwright JJ. was delivered by

CARTWRIGHT J. [after quoting the indictment and setting out the questions on which leave to appeal and to cross-appeal was given]:—The facts are set out in the reasons for judgment of the learned trial judge (1) and in those of the Court of Appeal (2), and it is not necessary to repeat them.

(1) [1954] O.R. 543, 109 C.C.C. 65, 19 C.R. 1.

(2) [1955] O.R. 713, 112 C.C.C. 108, 22 C.R. 205, [1955] 4 D.L.R. 225.

I propose to deal with the questions in regard to which leave to appeal was granted in the order in which they are set out above.

As to the first question two submissions were made. It was argued, first, that s. 41 does not fall within the general rule that enactments dealing with procedure apply to bygone transactions, that the radical changes it makes in the law of evidence go beyond any mere matter of procedure, and that consequently it ought not to be given retrospective effect; and, secondly, that on the true construction of *An Act to Amend the Combines Investigation Act and the Criminal Code*, 1952, 1 Eliz. II, c. 39, s. 41 does not apply to breaches of s. 498 which occurred before the repeal of that section and its re-enactment, in a slightly different form, by s. 11 of the 1952 Act.

As to the first of these submissions, it may well be that the circumstance that a statute deals with a matter of evidence is not necessarily conclusive as to its having retrospective effect. I agree with the following observations of the learned author of Phipson on Evidence, 9th ed. 1952, p. 1:

Law is commonly divided into Substantive Law, which defines rights, duties and liabilities; and Adjective Law, which defines the procedure, pleading and proof by which the substantive law is applied in practice.

The rules of *Procedure* regulate the general conduct of litigation; the object of *Pleading* is to ascertain for the guidance of the parties and the Court the material facts in issue in each particular case; *Proof* is the establishment of such facts by proper legal means to the satisfaction of the Court, and in this sense includes disproof. The first-mentioned term is, however, often used to include the other two.

In *Gardner v. Lucas et al.* (1), Lord Blackburn says, at p. 603:

Now the general rule, not merely of *England* and *Scotland*, but, I believe, of every civilized nation, is expressed in the maxim, "*Nova constitutio futuris formam imponere debet non praeteritis*"—*prima facie*, any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to shew it, it might be retrospective. For instance, I think it is perfectly settled that if the Legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they

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should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal.

It will be observed that Lord Blackburn differentiates between enactments making alterations in the form of procedure and those making alterations in matters of evidence but appears to regard both as *prima facie* retrospective; he continues:

But where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid—to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding—I think the *prima facie* construction of the Act is that it is not to be retrospective, and it would require strong reasons to shew that is not the case.

The very question raised in this first submission is dealt with by Casey J., giving the unanimous judgment of the Court of Queen's Bench, Appeal Side, in *Eddy Match Co. Ltd. et al. v. The Queen* (1), particularly at p. 13, which was followed by the learned trial judge. I am in substantial agreement with the reasons of Casey J. on this point. While s. 41 makes a revolutionary change in the law of evidence, it creates no offence, it takes away no defence, it does not render criminal any course of conduct which was not already so declared before its enactment, it does not alter the character or legal effect of any transaction already entered into; it deals with a matter of evidence only and, in my opinion, the learned trial judge was right in holding that it applied to the trial of the charge before him.

As to the second submission of the appellants, in regard to the effect of s. 11 of the 1952 Act, set out above, for the reasons given by my brother Kellock I agree with his conclusion that this submission must be rejected.

It follows that I would answer question 1 in the negative.

As to question 2, I am in agreement with the reasons and conclusion of my brother Kellock.

Questions 3 and 4 may conveniently be dealt with together. In opening his argument on these questions Mr. Robinette called attention to the fact that the very point involved appears to have been decided, adversely to his

contention, by the judgment of this Court in *Belyea v. The King*; *Weinraub v. The King* (1), particularly at pp. 281-2; but he argued that the judgment of this Court in *Archer v. The Queen* (2) is inconsistent with that in *Belyea v. The King* and that we are free to examine the matter *de novo*. The question raised in the *Archer* case was as to the validity of a conviction in proceedings under *The Summary Convictions Act*, R.S.O. 1950, c. 379. This Court was unanimously of opinion that a conviction on an information charging two offences in the alternative was invalid and that the defect was not cured by s. 723 or s. 725 of the 1927 *Criminal Code*. The governing principle is stated by my brother Locke at p. 40, quoting from the judgment of Avory J. in *Rex v. Surrey Justices; Ex parte Witherick* (3):

It is an elementary principle that an information must not charge offences in the alternative, since the defendant cannot then know with precision with what he is charged and of what he is convicted and may be prevented on a future occasion from pleading *autrefois convict*.

That this principle, except in so far as it may have been modified by statute, is equally applicable to a count in an indictment does not appear to me to admit of doubt. It is so decided in many cases and it is sufficient to refer to the statement of Humphreys J. giving the unanimous judgment of the Court of Criminal Appeal in *Rex v. West et al.* (4):

... it is elementary law that no more than one offence may be charged in any one count of an indictment.

I can find nothing in the judgments of this Court or of the Court of Appeal in the *Belyea* case to indicate that those Courts decided whether the fifth count in the indictment, which is set out in the report of the trial judgment (5), and was in substance identical with that in the case at bar, charged only one offence or charged in the alternative more offences than one; although there is a sentence in the judgment of the trial judge, Wright J., which suggests that he assumed for the purposes of his decision that the count contained charges of separate offences.

(1) [1932] S.C.R. 279, 57 C.C.C. 318, [1932] 2 D.L.R. 88.

(2) [1955] S.C.R. 33, 110 C.C.C. 321, 20 C.R. 181, [1955] 2 D.L.R. 621.

(3) [1932] 1 K.B. 450 at 452.

(4) [1948] 1 K.B. 709 at 718, [1948] 1 All E.R. 718, 32 Cr. App. R. 152.

(5) [1931] O.R. 202 at 204 (*sub nom. Rex v. Singer et al.*).

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That learned judge said, at p. 205:

I do not think the fact that the offences were stated in the alternative, under the particular circumstances of this case, leaves the indictment open to be quashed.

As at present advised, I do not think that the judgment of this Court in the *Belyea* case requires us to hold that more offences than one can validly be charged in a single count whether in the alternative or otherwise and I desire to reserve my opinion on that question until it becomes necessary to decide it. The reason that I do not find it necessary to pursue the matter further is that I agree with the conclusion reached by my brother Kellock and by Roach J.A., that the indictment in the case at bar charges only one offence, a single conspiracy. I would accordingly answer questions 3 and 4 in the negative.

As to question 5, I agree with the reasons and conclusion of my brother Kellock.

Questions 6 and 7 may conveniently be dealt with together as the answers to them depend upon the interpretation of s. 498(1)(d) of the *Criminal Code*.

In approaching these questions it is convenient to consider first how they were dealt with in the Courts below. We must proceed upon the facts as found in those Courts. These are summarized in the following passages in the reasons of Roach J.A. (1):

On all the evidence, the trial judge made specific findings of fact as follows:

1. "... that well before the year 1933 these seven accused companies [the Mills] and the J. R. Booth company had entered into a firm agreement to control and fix prices and deal with many other elements . . . and that agreement has continued from then until the end of the period charged in the indictment, the 31st October 1952". (O.R., p. 579.) (I should perhaps here state that the E. B. Eddy Company leased the assets of J. R. Booth Company on 1st January 1945 and purchased those assets, except certain Crown leases and water-rights, in April 1946.)

2. "... with the exception of some very unimportant merchants . . . these accused merchants controlled all of the wholesale trade in fine paper in Ontario and Quebec. The co-conspirator merchants occupied a similar position in the remainder of Canada, and the accused merchants and co-conspirator merchants through their membership in the Canadian Paper Trade Association engaged actively in agreeing amongst themselves as to the complete and absolute control of the wholesale paper trade in the Dominion of Canada." (O.R., p. 580.)

(1) [1955] O.R. at pp. 718-9 and 726.

3. That the two groups came together through the agency of the Mills Relation Committee of the Merchants; "that the merchants and the mills on many occasions did make agreements and that those agreements were merely supplementary to and carrying out the main mill-merchant agreement to lessen competition in fine paper throughout the whole of Canada (O.R., p. 585); that the accused corporations [both Mills and Merchants] and Mr. Turgeon, were parties to the main agreement lessening competition, and that the accused Moffitt aided and abetted the original creation of that agreement and was, if anything, the most effective agent—so far as the merchants were concerned—in carrying out the agreement. . . ."

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In my opinion the learned trial judge was right in holding that the Mills as a group and the Merchants as a group did conspire with one another to lessen or prevent competition in the fine paper industry in Canada; the Mills at the production level, the Merchants at the wholesale level. Within that broad, over-all, all-embracing agreement each group had its part to play in accomplishing their common purpose.

The Mills, pursuant to a common understanding between them and the Merchants, co-operated with the Merchants to prevent, if possible, any inroads by others into the wholesale field in which the Merchants operated; and the Merchants in turn, pursuant to a common understanding between them and the Mills, co-operated with the Mills to prevent, if possible, any mill competition from the only source where it really existed, namely, foreign manufacturers.

At p. 733, Roach J.A. concludes that, on the evidence as to what happened in the case at bar, "the consumer or whoever buys from the wholesaler does not get the benefit of any competition at either the manufacturing or the wholesale level".

The learned trial judge having rightly held that the interpretation of s. 498(1)(d) and particularly of the word "unduly" is a matter of law proceeds to a careful review of most of the decisions of the Courts of this country which deal with the meaning of the section and, while he does not, in any one passage, formulate a positive interpretation of the clause, he reaches the conclusion which he expresses as follows (1):

Therefore I have come to the conclusion that in determining whether an agreement had as its object to lessen competition unduly, I must be guided by the interpretation of that adverb assigned in the decisions of the Courts to which I have referred, and in considering the evidence adduced I am not free to find that the lessening intended was not undue on the basis of any necessity of the industry, reasonableness of prices resulting or reasonableness of profits obtained.

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As to the meaning of the word "unduly", the views expressed by Roach J.A. do not appear to me to differ in any matter of substance from those expressed by the learned trial judge. The learned Justice of Appeal deals with the matter as follows (1):

As to what is meant by "unduly", we can start with the decision of this Court in *Rex v. Elliott* (1905), 9 O.L.R. 648 at 657 . . . Osler J.A. delivering the judgment of this Court said that competition is lessened or prevented "unduly" if it is lessened or prevented "in an undue manner or degree, wrongly, improperly, excessively, inordinately".

In *Weidman et al. v. Shragge* (1912), 46 S.C.R. 1 at 37 . . . Duff J., as he then was, said: ". . . I have no hesitation in holding that as a rule an agreement having for one of its direct and governing objects the establishment of a virtual monopoly in the trade in an important article of commerce throughout a considerable extent of territory by suppressing competition in that trade, comes under the ban of the enactment".

In the same case at p. 42, Anglin J., as he then was, said: ". . . the prime question certainly must be, does it, however advantageous or even necessary for the protection of the business interests of the parties, impose improper, inordinate, excessive, or oppressive restrictions upon that competition the benefit of which is the right of every one".

What Duff J. and Anglin J. there said was quoted with approval later in *Stinson-Reeb Builders Supply Company et al. v. The King*, [1929] S.C.R. 276. . . .

In *Rex v. Container Materials Ltd. et al.*, 76 C.C.C. 18 at 43 . . . Robertson C.J.O. said: "Competition from which everything that makes for success is eliminated except salesmanship is not the free competition that s. 498 is mainly designed to protect".

In the same case in the Supreme Court of Canada, *sub nom. Container Materials, Limited et al. v. The King*, [1942] S.C.R. 147 . . . Kerwin J., as he then was, with whom Hudson and Taschereau JJ. concurred, having first referred to the *Stinson-Reeb* case and *Weidman et al. v. Shragge*, continued: "Under the decision of the *Stinson-Reeb* case, the public is entitled to the benefit of free competition except in so far as it may be interfered with by valid legislation, and any party to an arrangement, the direct object of which is to impose improper, inordinate, excessive or oppressive restrictions upon that competition, is guilty of an offence . . . the matter must be looked at in each case as a question of fact to be determined by the tribunal of fact upon a common sense view as to the direct object of the arrangement complained of".

The defence introduced evidence which was intended to show that the prices charged by the Mills were reasonable having regard to the necessities of the Mills. Such evidence, in my opinion, is no answer to a charge laid under s. 498 for the reason stated by Anglin J. in *Weidman et al. v. Shragge*, *supra*.

Applying the test laid down in the cases to which I have referred the agreement between the two groups was one to lessen or prevent competition unduly.

(1) [1955] O.R. at pp. 735-6.

In the last sentence in this passage Roach J.A. appears to regard the decisions from which he has quoted as laying down a single test for he speaks of "the test laid down". I must confess that I have found difficulty in discerning just what that test is. As was pointed out by Anglin J., in *Weidman et al. v. Shragge, supra*, at p. 41, the conclusion is inescapable that Parliament contemplated that there may be agreements to prevent or lessen competition which do not fall within the prohibition of s. 498(1)(d); the intended prevention or lessening must be "undue" to render the agreement criminal. "Undue" and "unduly" are not absolute terms whose meaning is self-evident. Their use presupposes the existence of a rule or standard defining what is "due". Their interpretation does not appear to me to be assisted by substituting the adjectives "improper", "inordinate", "excessive", "oppressive" or "wrong", or the corresponding adverbs, in the absence of a statement as to what, in this connection, is proper, ordinate, permissible or right.

The conclusion of the learned trial judge in the case at bar, affirmed by the Court of Appeal, appears to me to be that because the purpose and effect of the agreement of the appellants was the virtual elimination or prevention of all competition which would otherwise have entered into wholesale dealings in the products in question in Canada, the object of the agreement is necessarily "undue", and the making of it is criminal, even although it be affirmatively proved (a) that the prevention of competition intended to be brought about, and in fact brought about, was no more than was necessary to permit the industry to develop and survive in Canada, (b) that the participants derived only reasonable profits, and (c) that the prices charged to the purchasers of the products were at all times reasonable. I do not intend to imply that I regard these three matters as having been proved; the question of law is whether the Courts below were right in holding that, if proved, they would afford no answer to the charge, and in treating the evidence tendered to prove them as irrelevant.

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Cartwright J. The provisions of the *Combines Investigation Act* and the *Criminal Code* envisage voluntary combinations or agreements by individuals against the public interest that violate their prohibitions.

Had the matter been one with which we were called upon to deal unaided by earlier decisions which are binding upon us, I would have found this conclusion a surprising one. As was said by my brother Rand in *Re The Farm Products Marketing Act* (1):

A similar view was expressed by Lord Atkin in *Proprietary Articles Trade Association et al. v. Attorney-General for Canada et al.* (2).

Had the three matters mentioned above, which the learned trial judge regarded as irrelevant, been proved, I would have found it difficult to regard the agreement as being in either intention or operation "against the public interest". But the matter is not *res integra*; and, in my view, the learned judges in the Courts below are right in interpreting the decisions to which they refer as supporting the conviction of the appellants on the findings of fact which are summarized in the passages quoted above from the reasons of Roach J.A.

In essence the decisions referred to appear to me to hold that an agreement to prevent or lessen competition in commercial activities of the sort described in the section becomes criminal when the prevention or lessening agreed upon reaches the point at which the participants in the agreement become free to carry on those activities virtually unaffected by the influence of competition, which influence Parliament is taken to regard as an indispensable protection of the public interest; that it is the arrogation to the members of the combination of the power to carry on their activities without competition which is rendered unlawful; that the question whether the power so obtained is in fact misused is treated as irrelevant; and that the Court, except I suppose on the question of sentence, is neither required nor permitted to inquire whether in the particular case the intended and actual results of the agreement have in fact benefited or harmed the public.

(1) [1957] S.C.R. 198 at 219-20.

(2) [1931] A.C. 310 at 323-4, 55 C.C.C. 241, [1931] 2 D.L.R. 1, [1931] 1 W.W.R. 552.

In other words, once it is established that there is an agreement to carry the prevention or lessening of competition to the point mentioned, injury to the public interest is conclusively presumed, and the parties to the agreement are liable to be convicted of the offence described in s. 498(1)(d). The relevant question thus becomes the extent to which the prevention and limitation of competition are agreed to be carried and not the economic effect of the carrying out of the agreement. In each case which arises under the section the question whether the point described has been reached becomes one of fact.

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In the case at bar, accepting the interpretation of s. 498(1)(d) set out above, to which I think the authorities bind us, the agreement made by the appellants appears to me, on the facts as found, to fall within the terms of the section.

I conclude that questions 6 and 7 must be answered in the negative.

Nothing would be gained by my attempting to form an opinion as to whether the state of the law, brought about by the interpretation of the section to which I think we are bound, is a desirable one. If it should be that in construing the word "unduly" the Courts have failed to discern the true intention of Parliament it is, under the principle of *stare decisis*, too late for us to reopen the question, and the remedy, if one is required, lies in the hands of Parliament.

It follows from what I have said above that, in my opinion, the appeals should be dismissed.

In view of the dismissal of the appeals, the cross-appeal ceases to have any great importance. Having concluded for the reasons given above in dealing with questions 3 and 4 that the indictment, following as it does the words of s. 498(1)(d), charges only one offence, although it describes alternative modes of committing it, I am of opinion that

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the amendment of the conviction ordered by the Court of Appeal was not necessary and I concur in the disposition of the cross-appeal proposed by my brother Kellock.

Appeals dismissed; cross-appeal allowed.

Agents for the appellants' solicitors: Gowling, MacTavish, Osborne & Henderson, Ottawa.

Solicitor for the respondent: F. P. Varcoe, Ottawa.

*PRESENT: Kerwin C.J. and Taschereau, Rand, Cartwright and Abbott JJ.

(1) [1956] O.R. 455, [1956] I.L.R. 1-222, 4 D.L.R. (2d) 284.

(2) [1955] O.R. 56, [1955] I.L.R. 1-170, [1955] 2 D.L.R. 457.