

J. H. FORTIER AND OTHERS APPELLANTS;
 AND
 HIS MAJESTY THE KING RESPONDENT.

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 * Nov. 19.

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

*Appeal—Leave to appeal to Supreme Court of Canada—Criminal law—
 Conflict of judgments—Indictment—Formal charge in writing setting
 forth offence—Description of offence—Insufficiency—Conspiracy—Sec-
 tion 1025 Cr. C.*

The appellants were charged with having conspired together and with others during a certain period and at named places "par la supercherie, le mensonge et d'autres moyens frauduleux, pour frauder le public et les porteurs d'obligations de la Cie Légaré * * *"; and they were convicted. The appellate court unanimously affirmed the conviction; and the appellants seek leave to appeal to this Court under section 1025 Cr. C. on the ground that the judgment intended to be appealed from conflicts with the judgment of some other court of appeal in a like case.

Held, that the application should be refused.

The judgment intended to be appealed from does not conflict with the decision of this Court in *Brodie v. The King* ([1936] S.C.R. 188).

* PRESENT:—Kerwin J. in chambers.

(1) (1896) 27 Can. S.C.R. 68.

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In that case the accused were charged with having conspired together and with others, during a certain period and at a named place "thereby committing the crime of seditious conspiracy." In the present case, the accused are not charged with having committed a crime in the abstract like "murder" or "theft"; the offence is charged in such a way as to lift it from the general to the particular.

Also, the judgment intended to be appealed from does not conflict with the decision in *The King v. Sinclair* ((1906) 12 C.C.C. 20). In that decision, the only matter determined, relevant to this application, was that the charge, with the particulars, did not disclose any offence under section 394 Cr. C.; the charge in the present case does not allege or suggest a conspiracy to do anything of the kind referred to in the judgment in the *Sinclair* case.

MOTION under section 1025 of the Criminal Code for leave to appeal to this Court from the judgment of the Court of King's Bench, appeal side, province of Quebec, upholding the conviction of the appellants. Leave to appeal was refused by the judgment now reported.

Lucien Gendron K.C. and *Laval Fortier* for the motion.

Antoine Rivard K.C. and *Noël Dorion K.C.* contra.

KERWIN J.—The appellants were convicted after a trial before Mr. Justice Prévost and a jury on the following charge:—

Que depuis le ou vers le premier janvier mil neuf cent vingt-sept, jusqu'au ou vers le vingt-trois mars, mil neuf cent trente cinq, à Québec, dans le district de Québec, aux Trois-Rivières, dans le district des Trois-Rivières, à Montréal, dans le district de Montréal, et ailleurs dans la province de Québec,—Joseph Herman Fortier, Pierre Wilfrid Fortier, et Pierre Célestin Falardeau, tous trois de la cité de Québec, ont ensemble et avec d'autres personnes inconnues, comploté par la supercherie, le mensonge et d'autres moyens frauduleux, pour frauder le public et les porteurs d'obligations de la Compagnie P. T. Légaré Limitée, corporation légale ayant son principal siège d'affaires à Québec, et les actionnaires et créanciers de la dite compagnie, et entre autres Peter alias Pierre Légaré, dame Béatrice Légaré-Miller, Findlays Ltd, et autres, et la Cie P. T. Légaré susdite, commettant ainsi par là le crime du complot pour frauder, contre la forme du statut en tel cas fait et pourvu.

The Court of King's Bench (in appeal) unanimously affirmed the conviction, and the appellants now seek leave to appeal to the Supreme Court of Canada under section 1025 of the Criminal Code. They must show that the judgment in the Court of King's Bench conflicts with the judgment of some other court of appeal in a like case.

It is suggested that such a judgment is *Brodie v. The King* (1). Upon comparing that decision with that of the Court of King's Bench, it is quite apparent that there is no conflict. In the *Brodie* case the accused were charged with having conspired together and with others, during a certain period, and at a named place, "thereby committing the crime of seditious conspiracy." Here the accused are charged with having conspired together and with others, during a certain period, and at named places,

par la supercherie, le mensonge et d'autres moyens frauduleux, pour frauder le public et les porteurs d'obligations de la Compagnie P. T. Légaré Limitée, corporation légale ayant son principal siège d'affaires à Québec, et les actionnaires et créanciers de la dite compagnie, etc.

They are not charged with having committed a crime in the abstract like "murder" or "theft"; the offence is charged in such a way as to lift it from the general to the particular. It is argued that the formal charge should have alleged that the conspiracy was to defraud the public and those named of \$ (naming the sum) or at least of "money." I do not agree that the judgment in the *Brodie* case says or infers that in such a charge as is here under consideration any such allegation is necessary. I think attention might very well be called to the concluding paragraph of that judgment.

It is then contended that the decision of the court below is in conflict with *The King v. Sinclair* (2), a judgment of the Supreme Court of the Northwest Territories. The matter there came before the court on a case stated by the trial judge and all it determined (so far as the point under consideration is concerned) was that the charge, with the particulars, did not disclose any offence under section 394 of the Criminal Code (now section 444 and the section under which the present charge is laid). At pages 23-24, Wetmore J. states:—

The conspiracy contemplated by the section is not one to defraud a candidate of his hopes or expectations of being elected, or the electors or the public of their hopes or expectations of having a certain candidate elected. The conspiracy intended is one to deprive or defraud "the public or any person" of certain substantial rights such as its or his property or means or something of a like character.

Two members of the court concurred in these reasons. Newlands J., speaking for himself and one other member

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(1) [1936] S.C.R. 188.

(2) (1906) 12 C.C.C. 20.

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of the court, expresses a similar view in somewhat different language.

This judgment does not conflict with that from which it is sought to appeal in the present case as the charge here does not allege or suggest a conspiracy to do anything of the kind referred to in the judgment in the *Sinclair* case. Counsel for the accused objected to the definition of a conspiracy to defraud, given by the trial judge and approved by the Court of King's Bench, but unless they are able to show that in so defining, the Court has decided contrary to a judgment of some other court of appeal in a like case, there is no jurisdiction to grant leave to appeal. The *Sinclair* case (1) was the only one to which they re-

(1) (1906) 12 C.C.C. 20.

ferred as being such a judgment, and for the reasons just stated I am of opinion that that judgment is not one in a like case.

The third ground upon which the accused sought leave to appeal was that the case for the defence was not put to the jury. I disposed of this contention at the hearing as it is obvious that the judgment in this case could not upon that point be in conflict with any other court. The position is not that there has been dissent in the court below upon a question of law; and while the principle is well established that the trial judge is to place the defence properly before the jury, and there are many cases exemplifying the rule, the Court of King's Bench, in the present case, has come to the conclusion that this was done.

The application is refused.

Motion refused.
