

1928  
\*Apr. 20.

STINSON-REEB BUILDERS SUPPLY  
COMPANY .....  
AND  
W. & F. P. CURRIE AND COMPANY...  
AND  
ONTARIO GYPSUM COMPANY.....

} APPELLANTS;

AND  
HIS MAJESTY THE KING.....RESPONDENT.

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

*Criminal law—Conviction for conspiracy in restraint of trade—Unanimous judgment—Motion for leave to appeal—Alleged conflict with other decisions of appellate court—Sections 498, 1025 Cr. C.*

The appellants seek leave to appeal from an unanimous judgment of the appellate court in Quebec dismissing their appeal from their conviction on an indictment laid against them under section 498 Cr. C., which deals with conspiracies in restraint of trade; and the question at issue in this appeal is whether that section is within the legislative jurisdiction of the Parliament of Canada.

*Held* that leave to appeal cannot be granted as the judgment appealed from does not conflict with the judgment of any other appellate court in a like case. (S. 1025 Cr. C.).

*Attorney-General for Ontario v. Canadian Wholesale Grocers Association* (53 Ont. L.R. 627); *Attorney-General of Canada v. Attorney-General of Alberta* ([1922] 1 A.C. 191), and *Fort Frances Pulp & Paper Co. v. Manitoba Free Press Co.* ([1923] A.C. 695) disc.

\*PRESENT:—Mignault J. in chambers.

MOTION for leave to appeal to the Supreme Court of Canada, under section 1025 of the Criminal Code, from the judgment of the Court of King's Bench, appeal side, province of Quebec upholding the conviction of the appellants on an indictment laid against them under section 498 of the Criminal Code.

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*Forsyth* for the motion.

*Bertrand K.C. contra.*

MIGNAULT J.—This is a petition by the appellants for leave to appeal, under section 1025 of the Criminal Code (R.S.C., 1927, c. 36), from a judgment of the Court of King's Bench (Quebec) dismissing their appeal from their conviction on an indictment laid against them under section 498 of the Criminal Code, which deals with conspiracies in restraint of trade.

Following their conviction, the appellants brought two appeals to the Court of King's Bench, one on questions of law alone, and the other on questions stated to be of mixed law and fact. On the latter appeal one of the learned judges dissented, and a further appeal has been brought to this Court and is now pending. The appeal on questions of law alone was unanimously rejected, and the object of this application is to seek leave to appeal on the question whether section 498 of the Criminal Code is within the legislative jurisdiction of the Parliament of Canada.

Such leave cannot be granted unless the judgment to be appealed from conflicts with the judgment of any other court of appeal in a like case (s. 1025 Cr. C.). The petitioners rely on three cases which they say are in conflict with the decision of the Court of King's Bench: *Attorney-General for Ontario v. Canadian Wholesale Grocers Association* (1); *Attorney-General of Canada v. Attorney-General of Alberta* (2); *Fort Frances Pulp & Paper Co. v. Manitoba Free Press Co.* (3).

The first case was a decision of the Appellate Division of Ontario, Meredith C.J.O. and Magee, Hodgins and Ferguson JJ.A. Subject to a further reference to this decision,

(1) 53 Ont. L.R. 627.

(2) [1922] 1 A.C. 191.

(3) [1923] A.C. 695.

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I may say that, on the point in question, the constitutionality of section 498, one only of the learned judges, the Chief Justice, was of the opinion that section 498 was *ultra vires*. Magee J.A., concurred in the result; Hodgins J.A., expressed the view that section 498 was not *ultra vires*, and Ferguson J.A., found it unnecessary to consider the constitutionality of that section, inasmuch as, in his judgment, the appeal failed on the merits. There was therefore no pronouncement of the appellate court on this question, and therefore there is no conflict.

*Attorney-General of Canada v. Attorney-General of Alberta* (1), which I will call the Board of Commerce Case, is the well known decision of the Judicial Committee whereby two statutes of the Dominion Parliament, *The Board of Commerce Act* (9 and 10 Geo. V, c. 37), and *The Combines and Fair Prices Act* (9 and 10 Geo. V, c. 45) were held to be *ultra vires*.

That this judgment of the Judicial Committee may conceivably lend support to the contention that section 498 of the Criminal Code transcends the legislative jurisdiction of the Dominion, is shewn by the judgment of Chief Justice Meredith in *Attorney-General for Ontario v. Canadian Wholesale Grocers Association* (2). Nevertheless, upon full consideration, I do not think I can say that the Board of Commerce Case is a like case within the meaning of section 1025 Cr. C. The question there arose on a case stated by the Board of Commerce, under section 32 of *The Board of Commerce Act*, for the opinion of the Supreme Court of Canada. The Judicial Committee, on appeal from this court, answered in the negative the question submitted by the Board, which was whether the Board had lawful authority to make a certain order prohibiting retail dealers in clothing in Ottawa from charging as profits more than a certain percentage on cost. Section 498 of the Criminal Code was not involved in the question submitted. I do not think therefore that the petitioners can rely on the Board of Commerce Case.

In my opinion, the third case referred to by the petitioners, *Fort Frances Pulp & Paper Co. v. Manitoba Free Press*

(1) [1922] 1 A.C. 191.

(2) 53 Ont. L.R. 627.

Co. (1), is not in any way a like case, nor has it any bearing on the validity of section 498.

The petition therefore fails and should be dismissed.

*Leave to appeal refused.*

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