

GEORGE E. BUCK..... APPELLANT;

1917

AND

*Feb. 23, 26.

*June 22.

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF
THE SUPREME COURT OF ALBERTA.

Extradition—Specific offence—Conviction for similar offence—"Extradition Act," R.S.C. [1906] c. 155, s. 32.

B. was extradited to Canada from the United States on a charge of fraud by instigating the publication in a newspaper, the *News-Telegram*, of a false statement that oil had been struck in a well in which he was interested. He was convicted in Canada of the offence of fraud in concurring in the publication of the same false statement in another newspaper no mention of which was made in the proceedings before the Extradition Commissioner.

Held, Idington and Brodeur JJ. dissenting, that B. was convicted for an offence other than the one on which the warrant for extradition issued and the conviction should be quashed.

APPEAL from a decision of the Appellate Division of the Supreme Court of Alberta (1), confirming, by an equal division of opinion, the conviction of the appellant by the trial judge.

The circumstances of the case are stated in the judgments now reported.

A. A. *McGillivray* for the appellant.

R. C. *Smith* K.C. and G. G. *Hyde* for the respondent.

THE CHIEF JUSTICE.—The facts of this case are fully set out by my brothers Duff and Anglin. To avoid a wearisome repetition, I refer to their opinions.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

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There can, of course, be no doubt, that, under the Treaty with the United States, a fugitive criminal may not be committed for extradition,

except upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found would justify his apprehension and commitment for trial, if the crime or offence had been there committed.

It is equally certain that the person surrendered shall not be triable for any offence other than the offence for which he was surrendered, until he shall have an opportunity of returning to the country by which he was surrendered.

The nature of the offence for which the accused was extradited must therefore be gathered from the warrant and the depositions filed before the extradition commissioner, and those depositions must disclose the facts which, according to the laws of the place where the person charged is found, amount to the crime for which he is subsequently tried. I was at first disposed to hold that the indictment on which the accused was tried, being drafted in the very terms of the information upon which he had been committed by the police magistrate and subsequently held for extradition, it was impossible to say that he was tried for an offence different from that for which he was extradited. But, having looked at the case of *Reg. v. Balfour*, which is unfortunately very imperfectly reported in 30 L.J. News, p. 615, I have come to a different conclusion. In that case certain counts which were challenged as not warranted by the extradition papers were withdrawn by the Crown and the trial and conviction proceeded on the counts not open to this challenge. The inference would appear to be that there is no jurisdiction to try a fugitive criminal in England for any offence not disclosed by the depositions, &c., on which his extradition was obtained.

Reference was made, at the argument, to *United States v. Rauscher*(1), but there the prisoner was extradited on a charge of murder and tried for a lesser offence, which was not included in the treaty. The opinion expressed, however, by Mr. Justice Miller, as speaking for the full court, seems to support the contention that the person surrendered may not be prosecuted for an offence which is not mentioned in the demand, that is, in the warrant or depositions. The reason for this rule would seem to be that the demand for extradition is a criminal proceeding and the accused has a right, not only to cross-examine, but to adduce evidence before the magistrate, and in order to enable him to do this effectively he is entitled to be informed of the specific offence with which he is charged. The publication of a statement on one day in a newspaper cannot be said to constitute the same offence as the publication in another newspaper on another day of a statement which may, or may not be to the same effect or identical with the first. On the extradition proceedings, the only statement proved was the one published by Tyron in the *News-Telegram*. At the trial the statement relied upon, which was said to be the subject of the charge, was that published by Creely in the *Albertan*, which was not before the extradition commissioner, and it cannot, therefore, be said that he was extradited for having concurred in the publication of that statement.

I would, therefore, allow the appeal on the short ground, that in view of the fact that the particulars furnished at the trial for the purpose of describing the means by which the offence charged in the indictment was committed, refer to a statement different from the one mentioned in the depositions before the extradition

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commissioner, it cannot be said that this indictment corresponds as it should with the depositions and information used for the application for extradition.

The appeal should be allowed with costs.

IDINGTON J. (dissenting).—The claim that the appellant was tried for some offence for which he was not surrendered by the United States is, in my opinion, unfounded.

We have not, as perhaps we should have, before us the information laid before the United States Commissioner, and therefore, are left to inference regarding its contents.

That I submit is a difficulty in the way of appellant, who has been convicted in a prosecution under and pursuant to the terms of a warrant of surrender which appears to be as follows:—

DEPARTMENT OF STATE.

To all to whom these Presents shall come,

GREETINGS:

Whereas, His Excellency Sir Cecil Arthur Spring-Rice, Ambassador Extraordinary and Plenipotentiary of Great Britain,

Accredited to this Government, has made requisition in conformity with the provisions of existing treaty stipulations between the United States of America and Great Britain for the mutual delivery of criminals, fugitives from justice in certain cases, for the delivery up of George E. Buck, charged with the crime of fraud by a director and officer of a company, committed within the jurisdiction of the British Government;

And whereas, the said George E. Buck has been found within the jurisdiction of the United States, and has, by proper authority and due form of law, been brought before Paul J. Wall, Commissioner in Extradition for the District of Kansas, for examination upon said charge of fraud by a director and officer of a company;

And whereas, the said Commissioner has found and adjudged that the evidence produced against the said George E. Buck is sufficient in law to justify his commitment upon the said charge, and has, therefore, ordered that the said George E. Buck be committed pursuant to the provisions of said treaty stipulations.

Now, therefore, pursuant to the provisions of section 5272 of the Revised Statutes of the United States, these presents are to require

the United States Marshal for the District of Kansas, or any other public officer or person having charge or custody of the aforesaid George E. Buck, to surrender and deliver him up to such person or persons as may be duly authorized by the Government of Great Britain to receive the said George E. Buck to be tried for the crime of which he is so accused.

In testimony whereof, I have hereunto signed my name and caused the Seal of the Department of State to be affixed.

Done at the City of Washington, this 3rd day of July, 1916, and of the Independence of the United States the 140th.

James Short,

Agent of the Attorney-General.

ROBERT LANSING,

Secretary of State.

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Surely the fair inference is that the warrant is founded upon and follows in its terms the charge as laid before the Commissioner, and that we have not the right to impute to the Commissioner a neglect of duty in that regard.

Then we have the evidence, put before the Commissioner, of a number of witnesses. That given by Fletcher, proving an admission of the appellant relative to the publication in the *Albertan*, is in general terms and seems wide enough to cover any statement put forth by that newspaper at or about the time in question such as testified by Cheely.

There does not seem to have been anything specifically limiting the inquiry before the Commissioner in the United States who had to consider the demand for the extradition of appellant.

Moreover, the trip of Mr. Cheely to the well in question was testified to by at least one witness whose evidence as well as that of Fletcher appears in the deposition submitted to that officer. And the witness so testifying remarks gravely, when pressed as to the nature of the business in hand on that occasion and the purpose of taking Cheely with others concerned, he did not think Cheely had gone merely for the ride. I agree.

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There was clearly evidence before the Commissioner bearing upon the offence of which appellant is convicted, such as, if nothing else in the case before the Commissioner, would have entitled him to have certified as required by the statute and the Department of State, which had thereby, before it, a copy of the entire evidence, to have acted in issuing said warrant.

What is a fair presumption, seeing accused was surrendered upon such a warrant?

Is it not that for anything pointed to in the evidence likely to justify a prosecution for the offence set forth it was intended to be covered and he to be tried therefor?

The fact that there were several other charges of a like kind alleged to have taken place about the same time by another issue of falsehood does not help the accused, it seems to me, but rather tends to justify the surrender as related to any or all of them.

Much has been made of an error in relation to these other charges which seems beside what is, in law, involved herein.

It is not such informations, as laid before magistrates in this country, that is the test, but that which appears on the whole case before the Commissioner as containing evidence upon which such a warrant could issue.

The informations laid in this country are but a means for getting evidence in a judicial proceeding which can be said to have been taken under the sanction of an oath and when presented to a foreign Commissioner may, as happened herein, constitute but a part of the entire evidence upon which the Commissioner may act.

I have no manner of doubt, the surrender was intended to cover, and did cover, any of the numerous

offences made to appear in the evidence before him, in such manner as would justify one of our own magistrates committing for trial.

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I think, therefore he was convicted of an offence within the grounds upon which he was surrendered, and upon evidence thereof disclosed in the material laid before the Commissioner as expressive of the purposes of those demanding his surrender, and assented to thereby.

The case as presented to us involves no other question within our jurisdiction and hence the appeal should be dismissed with costs.

DUFF J.—The defendant was convicted after a trial at Calgary under section 414 of the Criminal Code of the offence of concurring, as director of a public company, in making, circulating or publishing a statement which he knew to be false in a material particular, with the intent described in the section. The sole ground of appeal which I propose to consider (because, I think, on that ground the appellant is entitled to succeed) consists in the proposition advanced on behalf of the appellant that he, the appellant, having been surrendered by a foreign state, the United States of America, in pursuance of article three of the Extradition Convention of 1889 with that State, has in the proceedings out of which the appeal arises, been convicted of an offence, other than the offence for which he was surrendered in contravention of that article and of section 32 of the “Extradition Act,” R.S.C. 1906, ch. 155.

The substance of the conviction is stated in the judgment of the trial judge in the following words:—

That between the 7th and 9th of May, George E. Buck was guilty of the charge as laid, and that he did, in the City of Calgary, concur

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in publishing a statement, which statement was known to him to be false in a material particular, with intent to induce persons to become shareholders of the Black Diamond Oil Fields, Ltd.

The prosecution of the appellant was commenced on the fifteenth of October, 1915, when three informations were laid against him before the Police Magistrate at Calgary. By two of these informations, charges of conspiracy were preferred and by the third, a charge that the appellant at the City of Calgary, on, or about the 7th of May, 1914, concurred in making a false statement within the meaning of section 414 of the Criminal Code, with the intent there mentioned. In May, 1916, the appellant having been found in the State of Kansas, extradition proceedings were commenced against him on the complaint of the Province of Alberta and by this complaint the appellant was charged with the offences set forth in the three informations already referred to and with nothing else. The appellant was delivered over to the Province of Alberta on the authority of a warrant of the Secretary of State of the United States of America on the third of July, 1916, for trial upon the third of the above-mentioned charges, the charge under section 414 of the Criminal Code, his surrender upon the charge of conspiracy being refused; and the warrant recited that requisition had been made for the delivery of the appellant "*charged with the crime of fraud by a director and officer of a company*" and required the officer having custody of the appellant, to surrender him "*to be tried for the crime of which he is so accused.*"

The appellant's attack upon the proceedings is this. The substance of the charge against him both before the Magistrate in Calgary and before the Extradition Commissioner under section 414 of the Criminal Code was, he avers, that he concurred in the publication on

the 7th of May, of a certain "statement" which was put in evidence consisting of an article in a newspaper published in Calgary, the *News-Telegram*. This, he says, was really the "charge" made against him before the Extradition Commissioner; and the crime so imputed to him, concurring in the publication of the "statement" mentioned on the information, was the crime referred to in the warrant of the Secretary of State as that with which he is there said to be "charged" or "accused" and for trial upon which he was surrendered.

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It is not disputed that if the appellant is right in this, the appeal ought to succeed; for it is quite apparent that the learned trial judge acquitted the appellant of any criminal offence in the publication of the 7th of May, in the *News-Telegram* and that the judgment against him in general terms that he concurred in the publication of a false statement between the "7th and 9th of May" is when translated into concrete terms, neither more nor less than judgment against him for the offence of concurring in the publication of a false statement on the 9th of May, having reference to a "statement" published in another newspaper through the instrumentality of other persons and differing in most material particulars from that published on the 7th.

Without attempting to express any general opinion as to the effect of the words "prospectus, statement or account" in section 414 of the Criminal Code, there can, I think, be very little doubt (assuming an offence was committed under that section by publishing or by concurring in publishing the "statement" which appeared in the *Albertan* on the 9th) that this offence was a distinct offence from any committed (if one had been committed) in publishing or concurring in publishing

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the earlier statement in the *News-Telegram* on the 7th of May. The two statements, as I have mentioned, differ in most material respects, so much so indeed, that the learned trial judge has held that while the publication of the second statement was an offence, the publication of the first statement was not an offence; and it could not plausibly be contended that what was done on the 9th or on the 8th, in procuring the publication of the second statement on the 9th, was only the culminating step in a single offence which originated in the steps taken to procure the publication of the article which had appeared on the 7th.

And it is closely *ad rem* to observe that a charge of publishing the statement which appeared on the 7th, is obviously and admittedly a very different accusation from the charge of publishing the statement which appeared on the 9th; admittedly I say, because of the fact just alluded to, namely that the second was held to be criminal and the first comparatively innocuous.

The appellant then having been convicted of the offence of concurring in the publication of the "statement" which appeared on the 9th, in the *Albertan*, does it appear that he was not surrendered to be tried for that offence? The answer to that question, as the observations already made imply, turns upon the answer to the question, was that the offence or one of the offences with which he was "charged" or "accused" within the meaning of the warrant of surrender? The direction in the extradition warrant is broad enough no doubt, to cover the charge of criminality in the publication of either "statement"; and it would be no valid objection, assuming two offences to have been charged, that they should be both dealt with in one committal, *Re Meunier* (1), and there was, in my judg-

(1) [1894] 2 Q.B. 415 at page 419.

ment, in the depositions before the Extradition Commissioner evidence which would have justified a comital upon a "charge" in respect of the publication of the second "statement" if such a charge had been preferred.

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But, was such a "charge" before the Extradition Commissioner? I have already mentioned the fact that the "statement" which appeared in the *News-Telegram* was actually put in evidence in support of the information laid before the Magistrate in Calgary. This was the only "statement" shewn to be false in any particular, of which evidence was offered by the prosecution before the Magistrate. It is quite true that counsel for the defence brought out in cross-examination of one of the witnesses a reference to a remark alleged to have been made by the appellant, which I think the Magistrate might have held amounted to sufficient evidence of an admission that a "statement" had been published in the *Albertan* which was false in a material particular and a criminal statement within section 414. But this isolated passage in the cross-examination of one of the witnesses was not followed up; no fresh information was laid, the existing information was not amended, the article in the *Albertan* was not produced; and when the complaint was made before the Extradition Commissioner, based entirely upon the evidence taken in Calgary, it was laid in terms identical, as regards the charge under section 414, with the terms of the information. When to these circumstances we add the fact that the article published on the 9th, was offered in evidence at the trial, not in proof of the publication of it or the concurring of the publication of it as a substantive offence, but as evidence of acts similar to the acts charged and pointing to the fraudulent intent of the appellant in

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relation to those acts, the inference seems to be that no "charge" was intended to be laid in relation to the publication of the 9th, until the trial stage, at least, was reached.

By article 10 of the Treaty of 1842, "all persons who being *charged* with" crimes of the kinds specified, "committed within the jurisdiction" of either of the contracting powers "found within the territories of the other" are, on requisition, to be delivered up,

provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so *charged* shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed.

A surrender under the treaty presupposes a charge within the meaning of this article and although it is perhaps unnecessary to cite authority I refer to pp. 422 & 423 of Moore on Extradition, paragraph 288, in which it is pointed out that it is essential that the offence "*charged*" should be averred in a manner sufficiently explicit to enable the party accused to understand precisely what he is "*charged*" with. That was laid down in the case of *Farez* (1), and it is, I think, indisputably correct. It must be assumed that the Extradition Commissioner acted in the spirit of this principle and that the appellant was committed under that "*charge*" which was clearly laid and in respect of which it is not disputed that there was evidence sufficient to justify a committal and not in respect of something which, it must be inferred, was not intended to be and was not in fact "*charged*" although suggested with more or less distinctness in the evidence; we must in a word, assume that the Commissioner acted in accordance with the fundamental principle of sound legal procedure, which requires that an accused

(1) 7 Ilatchford, 345.

person shall have notice, not only of the evidence against him, but of the nature of the "charge" supposed to be established by the evidence.

In my opinion the appeal ought to succeed.

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ANGLIN J.—The substantial question on this appeal, on which the learned judges of the Appellate Division of the Supreme Court of Alberta were equally divided in opinion, is whether the charge on which the accused was convicted is "the offence (the extradition crime) for which he was surrendered" within the meaning of article three of the Extradition Treaty between Great Britain and the United States and within section 32 of "The Extradition Act," R.S.C. [1906], ch. 155.

It is, in my opinion, incontrovertible that "the offence for which (the accused) was surrendered" means the specific offence with the commission of which he was charged before the Extradition Commissioner and in respect of which that official held that a *prima facie* case had been established and ordered his extradition, and not another offence or crime, though of identical legal character and committed about the same time and under similar circumstances. The Supreme Court of the United States so held in *Re Rauscher* (1). In delivering the judgment of the court Mr. Justice Miller said, at p. 424:—

That right (of an extradited person), as we understand it, is that he shall be tried for only the offence with which he is charged in the extradition proceedings and for which he was delivered up.

I do not entertain the slightest doubt that this is a correct statement of the law under the present treaty and the Canadian statute, the former of which, in terms restricts the right of trying an extradited person to "the offence for which he was surrendered" while

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the latter prohibits his prosecution or punishment in Canada, "in contravention of any of the terms of the (extradition) arrangement * * * for any other offence" than the extradition crime of which he was accused or convicted and in respect of which he was surrendered.

It is perhaps worth noting that the stipulation in the Ashburton Treaty of 1842, construed in the *Rauscher Case* (1), was wider than that now in force. It provided against detainer or trial of the person surrendered for any offence committed prior to his surrender, other than the *extradition crime proved by the facts* on which the surrender is grounded.

The defendant has been convicted of an offence against section 414 of the Criminal Code, in having, while president and manager of the Black Diamond Oil Fields Ltd., concurred in the circulation or publication of a *statement* known to him to be false in a material particular, with intent to induce persons to become shareholders in that corporation.

Now it appears in evidence that an article was published in a Calgary newspaper (the *News-Telegram*) on the 7th May, 1914, in which it was falsely stated that the Black Diamond Oil Fields Ltd. had struck oil at their well near Black Diamond, and that the defendant had procured the publication of this article through one Tyron, a reporter on the staff of that newspaper. This was the only "statement" proved on the preliminary investigation before the Police Magistrate into the charges against the defendant.

On the 8th of May, 1914, as appears from the evidence given at the trial, one Cheely, a reporter on the *Albertan*, another Calgary newspaper, was taken by

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the defendant to the Black Diamond Oil Fields and was there imposed upon by a fraudulent demonstration and given false information which led to his writing and publishing in the *Albertan* on the 9th of May, an article containing a similar false statement.

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Assuming both these statements to be within the purview of section 414 of the Criminal Code, there is no room to doubt that the defendant's concurrence in the publication of each of them constituted a distinct crime or offence and that proof of conviction or acquittal after trial on a charge in respect of one of them would not support a plea of *autrefois convict* or *autrefois acquit*, as the case might be, to a like charge in respect of the other.

The Cheely article was not before the Magistrate on the preliminary investigation and no proof was made either of its contents or of its publication. The only allusions in the evidence before the Magistrate to an article in the *Albertan* were these incidental statements made by one of the witnesses, Fletcher, which I copy from the factum filed on behalf of the Crown:—

A. He said Tyron of the *News-Telegram* was taken out, but they did not take the matter seriously and they had to get the *Albertan* and he had got a good write up for them, but they had not obtained the monetary results they expected.

Q. From the talking? A. From putting the oil in.

Q. Was there a big strike of oil there? A. According to the *Albertan*.

Q. The *Albertan* is a pretty reliable journal? A. They are when they get reliable information.

Q. Were you present when the *Albertan* ever got any information? A. No, sir.

Q. You don't know anything about it? A. I know Mr. Buck told me he put (it?) over them; that is all I know; and could not over the *News-Telegram*.

Q. When did Mr. Buck tell you that? A. In Medicine Hat, on the 12th of May.

Q. And where were you when he told you? A. I don't know which street.

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Q. What day was the big strike? A. The 7th May was the supposed strike.

It will be noticed that this evidence gives no date of publication and, as the appellant's counsel said, it may refer to any one of several articles commendatory of the company's undertaking which the evidence shews appeared in the *Albertan*.

At the trial, counsel for the defendant objected to the admission of evidence relating to the circumstances which led up to the publication of the Cheely article of the 9th May, on the ground that the offence of having concurred in that publication had not been the subject matter of any charge before the Extradition Commissioner. In support of his objection he referred to an affidavit of the Crown prosecutor in which he deposed that the Cheely article had been called to his attention in September, 1916, and that a copy of it was procured for him on the 4th October, 1916, which, he says, "was the first time I have ever seen the article in question in connection with the charge herein." The defendant's extradition had been ordered in July.

Counsel for the Crown met this objection by claiming the right to prove a "similar act" as evidence having "a bearing on the offence for which he (the defendant) was extradited"; and it was in this way, as "additional evidence pertaining to the same charge"—no doubt relevant on the question of intent—that the proof of publication of the Cheely article and of the defendant's concurrence therein was admitted by the trial judge.

Yet it was for his concurrence in the publication of the Cheely article in the *Albertan* that the appellant has been convicted. The trial judge so states, and counsel for the Crown so admits. The learned judge had already intimated that he considered that the

charge, so far as it rested on the Tyron article, had not been proved.

That, apart from evidence of identity and proof of the Canadian law, the only evidence before the Extradition Commissioner was that taken on the preliminary investigation before the Police Magistrate, is also distinctly stated in the factum filed on behalf of the Crown. The only charge under section 414 of the Code investigated by the Police Magistrate, was concurrence in the publication of the Tyron article in the *News-Telegram*, and it was on that charge that extradition was ordered. The Cheely article was unknown to the Crown prosecutor in connection with the charge against Buck, until long after the preliminary investigation and extradition proceedings had been concluded. It had not been proved before the Magistrate and consequently its contents and publication were unknown to the Extradition Commissioner. It is therefore impossible that he should have ordered extradition in respect of the offence committed by the defendant in concurring in that publication. It is only for the offence for which he was surrendered, and not for some other offence, casually and imperfectly disclosed in the evidence which was before the Commissioner, that the person surrendered can be lawfully tried and convicted.

Because the conviction is contrary to the terms of the treaty and contravenes section 32 of the "Extradition Act," I think it cannot be sustained. I reach this conclusion somewhat less reluctantly, because I am not altogether satisfied that persuading a reporter to publish in a newspaper an untrue article such as those before us is an offence within section 414 of the Criminal Code. This I understand to be the view expressed by Mr. Justice Stuart at the conclusion of his judgment, probably sufficiently definitely to constitute a

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ground of dissent of which the appellant can take advantage in this Court.

The defendant is certainly not entitled to any sympathy. That he committed a gross criminal fraud was overwhelmingly proved. He fully deserved the term of imprisonment to which he was sentenced. But much as it is to be regretted that such a scoundrel should escape punishment, it is of vastly greater moment that the good faith of this country shall be scrupulously maintained and a strict observance of its treaty obligations insisted upon.

For these reasons I would allow the appeal.

BRODEUR J. (dissenting).—The only point that we have to examine on this appeal, is, whether the offence for which the appellant has been extradited differs from the one for which he has been tried and convicted.

The appellant was a director of a company called Black Diamond Oil Fields Ltd., a company formed for the purpose of extracting oil near Calgary, in the Province of Alberta. The operations of the company were not as successful as desired by the appellant, and the wells which were being opened and made, did not produce the oil which was expected. The company was then in a very serious financial embarrassment; when in the month of May, 1914, the appellant decided to put some oil in the well, which was being opened, and to arrange to bring newspaper reporters who would, after having inspected the well, publish statements shewing that oil had been struck.

He tried that at first with a Mr. Tyron, who was connected with the *News-Telegram* of Calgary; but the publication was not made to the satisfaction of the appellant.

Then he tried with another newspaper called the

Albertan, and this time was successful. Mr. Cheely, the reporter of that newspaper, was taken to the well in the automobile of the appellant; the derrick was worked in his presence; oil was drawn from the well; and a statement of the appellant that oil had been struck was published in that newspaper, in an article written by Cheely.

A charge of fraud by a director was made under section 414 of the Criminal Code, against Buck. He was committed to trial on that charge, and among the witnesses examined at the preliminary examination, was a man by the name of Fletcher, to whom the appellant admitted that he was responsible for the statement which had been published in the *Albertan*.

The accused then fled to the United States and he was extradited on the charge of having committed a fraud as a director and manager of a company.

When the trial took place, the charge of fraud was proved mostly by the evidence of Cheely, and by the statements which were made by Buck to the latter.

It is claimed now that Cheely had never been mentioned in the proceedings before the Extradition Commissioner, but that the statements which were mentioned against him, though substantially the same, were made to some other person.

The offence for which the appellant was extradited and convicted was having concurred in the publication of a statement, that oil had been found in the wells of the company of which Buck was a director. It is true that the statement made to Cheely was not specifically mentioned in the proceedings before the Extradition Commissioner; but the evidence of Fletcher, on which the Extradition Commissioner passed judgment, shews conclusively that the appellant concurred in the publica-

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tion of the fraudulent statements of the *Albertan*. The offence and the charge which were preferred against the appellant were general in their character, and it seems to me that the Crown was perfectly well justified in proving by different ways and by different circumstances how the fraud was committed and what statements were published.

It was not then a question of a charge being different from the one on which the extradition took place; it was the same offence and the same charge which were considered in both cases, except that on the trial, the evidence was more specific and was proved more efficiently.

I cannot say then, in those circumstances, that the appellant was tried for a different offence, and I am of the opinion that he was rightly convicted, and that the appeal should be dismissed with costs.

Appeal allowed with costs.