

1931

SAM ARCADIAPPELLANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Dec. 16.
*Dec. 28.

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

*Criminal law—Section 1025 Cr. C.—Appeal to the Supreme Court of Canada—Conflicting decisions—“ Judgment of any other court of appeal”
—Must be courts within Canada—Cr. C., s. 1012, 1025.*

The provisions of section 1025 of the Criminal Code, giving right of appeal to the Supreme Court of Canada, upon leave to appeal being granted, “ if the judgment appealed from conflicts with the judgment

*PRESENT:—Rinfret J. in chambers.

of any other court of appeal," must be taken to refer to courts within the jurisdiction of the Dominion Parliament and not to courts outside the Canadian territory. *Brunet v. The King* ([1928] S.C.R. 161) ref.

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APPLICATION for leave to appeal from a decision of the Court of King's Bench, appeal side, province of Quebec (1), upholding the conviction of the appellant for the offence of selling narcotic drugs.

Lucien Gendron for the applicant.

Gustave Monette contra.

RINFRET J.—The application is made under section 1025 of the Criminal Code, on the ground that the judgment appealed from conflicts with two decisions of the Court for Crown Cases Reserved, in England, respectively delivered in 1890 and 1894.

I think the alleged conflict does not bring the case within the condition essentially required by section 1025 of the Criminal Code. The wording of the section is that the conflict must be "with the judgment of any other court of appeal." In my view, those words used without qualification in a Canadian statute mean any other Canadian court of appeal. When the legislature of this country uses language of that kind it must be taken to refer to courts within its jurisdiction, and not to courts outside the Canadian territory. (*Jeffrys v. Boosey* (2); *Cooke v. Charles A. Vogeler & Company* (3)). It is to no purpose to argue that criminal courts in Canada may, and possibly will, follow the decisions of the English courts of criminal appeal. The whole question here is what parliament is presumed to have intended when referring to "any other court of appeal" in section 1025 of the Canadian Criminal Code; and I think the principle is that general words in a statute refer only to persons or things within the territory, unless the contrary intention is shewn.

In addition to the rule just stated, we have in section 1012 of the code the legislative interpretation of the words in question precisely for that part of the Criminal Code

(1) (1931) Q.R. 51 K.B. 533.

(2) (1854 4 H.L.C. 815, at 955.

(3) [1901] A.C. 102.

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dealing with appeals from convictions on indictments. Under subsection (b) of section 1012, "court of appeal" means the court designated by paragraph (7) of section 2 of this Act (i.e., the code) as the court of appeal from the province in which the conviction or indictment was had.

Paragraph 7 of section 2 just mentioned is an enumeration of the courts of the several provinces of Canada which are stated to be included in the expression "court of appeal."

The evident intention of Parliament in enacting section 1025 was to insure uniformity in the administration of criminal law by the courts of Canada. Bearing that in mind, the expression "any other court of appeal" should, I think, be interpreted as meaning any other court of appeal to which "a like case" may be brought under the Canadian Criminal Code, and therefore: any other court of appeal in Canada.

I have, for these reasons, reached the conclusion that the petitioner does not allege nor show a conflict between the courts of appeal contemplated by section 1025 of the Criminal Code, and that this is not a case where I have jurisdiction under that section to grant leave to appeal to the Supreme Court of Canada.

The petitioner relied, of course, on the decision in *Brunet v. The King* (1), where special leave was granted in not dissimilar circumstances. It will be seen, however, that when the case came before the full court (including the learned judge who granted leave), the court took particular care to state (*Brunet v. The King*) (2), that it was not "passing on the question of whether or not this is an appealable matter, even with leave."

For that reason, I feel that I am at liberty to decide as above. If I am wrong the appellant may yet find relief by asking the full court to revise my decision. (*In re Sproule* (3); *The Industrial Acceptance Corporation v. Canada Permanent Trust Company* (4).

Application dismissed.

(1) [1928] S.C.R. 161.

(3) (1886) 12 Can. S.C.R. 140, at 180, 209.

(2) [1928] S.C.R. 375 at 378.

(4) [1931] S.C.R. 652.