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or by indictment—the said order in council is therefore valueless for the prosecution of the said offence.

3. The complainant had no authority to opt for the procedure, and consequently could not opt for the procedure by indictment in preference to that by summary conviction.

4. It being impossible to find the appellant guilty of the substantive offence, he cannot be found guilty of the conspiracy to commit the same.

5. The order in council refers to the appellant's actions as an offence, and not as an indictable offence, and therefore he cannot be convicted of conspiracy, as this crime exists only when the object of same is an indictable offence.

These points were disposed of by Rinfret, Kerwin, Hudson and Taschereau, JJ., and Bond, J. (*ad hoc*). The judgment of the Supreme Court, dismissing the appeal, was delivered by Kerwin, J., on June 10, 1942; see *Dallman v. The King*, 77 C.C.C. 289. It was

held that the provisions of s. 22 (1), Foreign Exchange Control Order, are valid, and the other sections of the order need not be considered because, even if any question could be raised as to them, they do not imperil the validity of the order at large and do not affect the particular offence charged and the proceedings taken in this case. The provision of the order, s. 40 (1), permitting prosecutions to be either on summary conviction or on indictment is not *ultra vires*. Judge Kerwin also ruled that under s. 573, Cr. Code, the words 'indictable offence' merely mean an offence which may be prosecuted on indictment and thus include offences under the Foreign Exchange Control Order and Regulations which are declared by s. 40 (1) thereof to be punishable "on summary conviction or on indictment." An offence created by such order may therefore form the subject of a charge of conspiracy under s. 573, Cr. Code.