

In re PATRICK WHITE,

ON APPLICATION IN CHAMBERS FOR A WRIT OF HABEAS
CORPUS.

1901

*May 17.

Practice—Habeas corpus—Binding effect of judgment in provincial court.

An application for a writ of *habeas corpus* was referred by the judge to the Supreme Court of the province and, after hearing, the application was refused. On application subsequently made to a judge of the Supreme Court of Canada, in chambers ;

Held, that under the circumstances it would be improper to interfere with the decision of the provincial court.

APPLICATION to Sedgewick J., in chambers, for a writ of *habeas corpus* to inquire into the cause of commitment of the petitioner on a conviction by the Stipendiary Magistrate of the City of Halifax, N.S.

The circumstances under which the application was made are stated in the judgment reported.

Haydon for the application.

Newcombe K.C. contra.

After hearing the parties the following judgment was pronounced by :

SEDGEWICK J.—The applicant is confined in a Nova Scotia gaol by virtue of a conviction of the Stipendiary Magistrate of the City of Halifax for stealing certain goods “in or from” a warehouse belonging to the Intercolonial Railway. He first applied to the Chief Justice of his province for a writ of *habeas corpus* which was refused. Then he applied to Graham J. who referred the matter to the Supreme Court. After argument and due consideration his application was again refused, two judges dissenting. No appeal was

*PRESENT :—His Lordship Mr. Justice Sedgewick, (in Chambers.)

1901

In re
WHITE.

Sedgewick J. Courts Act.

taken from such judgment and he now renews his application to me, a judge of the Supreme Court of Canada, under section 32 of the Supreme and Exchequer

That section may give me all the power which the common and statute law gives to judges of superior courts in matters of *habeas corpus*, but it does not constitute me a court of appeal with jurisdiction to void or reverse judgments of the Supreme Court of Nova Scotia. If I have in the premises equal and co-ordinate power with a judge of that court, my power most certainly does not extend further. The suggestion is almost impertinent, but were either of the two judges of the provincial court who until now have had no part in the matter, to grant the writ and, in spite of the judgment of the Supreme Court, and in vindication and assertion as well of his autonomy as of his possibly superior and conceivably infallible knowledge of law, to release the prisoner, his action, violating elementary principles as to legal authority and precedent, would be open to not undeserved censure. In the case supposed he would unhesitatingly and without question accept as law the judgment of his court. And what he should and would do, I must also do.

Even if I thought the imprisonment illegal, (which I do not), I would not, and under the circumstances above stated, I cannot interfere.

The application is refused.

Application refused.