

1902
 *June 11.

FREDERIC LEE RICE..... APPELLANT ;

AND

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Appeal—60 & 61 V. c. 34—Criminal case.

The Act of the Dominion Parliament respecting appeals from the Court of Appeal for Ontario to the Supreme Court (60 & 61 Vict. ch. 34) applies only to civil cases. Criminal appeals are still regulated by the provisions of the Criminal Code.

MOTION for special leave to appeal from the judgment of the Court of Appeal for Ontario affirming the conviction of the appellant for murder.

As the judges of the Court of Appeal were unanimous in affirming the conviction there could be no appeal to the Supreme Court under the provisions of the Criminal Code. Counsel for the prisoner claimed, however, that 60 & 61 Vict. ch. 34 overruled the code, so far as appeals from the Court of Appeal were concerned, and that the Supreme Court of Canada could grant special leave under the latter statute.

Robinette K.C. for the motion.

Cartwright K.C., Deputy-Attorney-General for Ontario, and *Guthrie K.C.* contra.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (oral).—In the case of *The Union Colliery Co. v. The Queen* (1), it was held that under

* PRESENT :—Sir Henry Strong C.J. and Taschereau, Sedgewick, Davies and Mills JJ.

(1) 31 S. C. R. 81.

section 750 of the Criminal Code an appeal will lie from the judgment of the Court of Appeal on a reserved case provided there was a dissenting judgment. The question therefore is whether the plain provisions of the Code, which require a dissent in the Court of Appeal to give jurisdiction to this court, are no longer in force so that an appeal may now be entertained where there is no dissent. The only possible ground on which this can be rested is subsection (e) of 60 & 61 Vict. c. 34, sec. 1, passed in 1897, in which it was enacted that the provisions of a statute, itself *ultra vires*, previously passed by the Ontario Legislature, should be confirmed. The Act in its preamble states that its object is to confirm or to re-enact the inefficacious Ontario Act referred to. We have a right therefore to turn to the latter Act. When we do so we find that, on its face, it is confined to civil cases and does not attempt to interfere with criminal appeals. It was *ultra vires* because the Ontario Legislature had no jurisdiction to pass an Act regulating appeals to this court but, if it had professed to deal with criminal cases, it would have been *ultra vires* on that ground also.

It is therefore plain beyond all doubt that the subsection referred to, which authorises this court as well as the Court of Appeal to grant leave to appeal in certain cases, does not in any way apply to criminal cases.

We have therefore section 743 of the Criminal Code which gives an appeal from the judgment on a reserved case standing uninterfered with by any subsequent Dominion legislation.

Then, how can we grant this application? Not only is there no jurisdiction conferred upon us in criminal cases, where the court appealed from is unanimous, but we are expressly prohibited from interfering under

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such conditions. It is therefore plain that it is not within the competence of this court to entertain an appeal by the prisoner.

The motion must be refused.

*Motion refused.*

Solicitor for the appellant: *T. C. Robinette.*

Solicitor for the respondent: *Hugh Guthrie.*

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