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HUTCHISON v. THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING.

Newcombe J.

limited for the payment of the balance of his subscription, the consideration was valuable and satisfied the requirements of the common law and of the *Bills of Exchange Act*.

A considerable part of the appellant's argument was devoted to a contention that a promissory note cannot be the subject of a gift by the maker to the payee; but it is not necessary to determine that question in this case if, as I think, the note was intended not as a gift, but as evidence of the maker's promise, in consideration of the extension of his term of credit, to pay the balance of his subscription in accordance with the tenor of the note.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Cook & Magee.*

Solicitors for the respondent: *Ewing & McFadden.*

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*Nov. 17.

LOUIS M. SINGER.....APPELLANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

Criminal law—Appeal—Jurisdiction—Statutes—Retrospective construction—Statute giving new right of appeal—21-22 Geo. V, c. 28, s. 15 (amending s. 1025, Cr. Code).

Legislation conferring a new jurisdiction on an appellate court to entertain an appeal cannot be construed retrospectively, so as to cover cases arising prior to such legislation, unless there is something making unmistakeable the legislative intention that it should be so construed. The matter is one of substance and of right. (*Doran* v. *Jewell,* 49 Can. S.C.R. 88; *Upper Canada College* v. *Smith,* 61 Can. S.C.R. 413).

In the present case, *held,* that 21-22 Geo. V, c. 28, s. 15 (amending s. 1025 of the *Cr. Code*) did not give a right to appeal to the Supreme Court of Canada from the sustaining of the appellant's conviction by a judgment of the Appellate Division, Ont., rendered prior to such legislation.

APPEAL by the defendant from the judgment of the Appellate Division of the Supreme Court of Ontario (1), dismissing his appeal from his conviction by Wright J. (2)

*PRESENT:—Anglin C.J.C. and Rinfret, Lamont, Smith and Cannon JJ.

(1) [1931] O.R. 699.

(2) [1931] O.R. 202.

of offences against the *Combines Investigation Act,* R.S.C., 1927, c. 26, and of conspiracy, contrary to the provisions of s. 498, subs. 1 (*a*), (*b*) and (*d*) of the *Criminal Code.*

Singer, the present appellant, was tried jointly with others, namely, Belyea, Weinraub, O'Connor, Paddon and Ward. At the trial, Singer, Paddon and Ward were found guilty; and Belyea, Weinraub and O'Connor were found not guilty (1). Singer, Paddon and Ward appealed from their conviction; and the Attorney-General for Ontario (under the provisions of the Act of 1930, 20-21 Geo. V, c. 11, s. 28, amending the *Criminal Code*) appealed against the acquittal of Belyea and Weinraub. The Appellate Division (2) dismissed the appeals of Singer, Paddon and Ward; and allowed the appeals of the Attorney-General, and set aside the acquittal of Belyea and Weinraub and adjudged them guilty.*

The present appeal was brought under s. 1025 of the *Criminal Code* (R.S.C., 1927, c. 36), as amended by 21-22 Geo. V (1931), c. 28, s. 15. By said amending Act (s. 15), the following was substituted for subs. 3 of said s. 1025:

3. Any person whose acquittal has been set aside may appeal to the Supreme Court of Canada against the setting aside of such acquittal, and any person who was tried jointly with such acquitted person, and whose conviction was sustained by the Court of Appeal, may appeal to the Supreme Court of Canada against the sustaining of such conviction.

The present appellant was convicted on March 23, 1931, and his conviction was sustained by the Appellate Division on June 26, 1931. The said amending Act, which was assented to on August 3, 1931, provided (s. 16) that it should come into force on September 1, 1931.

A question of jurisdiction arose, counsel for the respondent contending that no appeal lay; that the said amendment, which was subsequent to the judgment in question of the Appellate Division, was not retroactive, and upon the delivery of the judgment the conviction was affirmed, and the right of appeal must date from the rights in law existing at the time of the delivery of judgment.

W. F. O'Connor K.C. for the appellant.

D. L. McCarthy K.C. and *J. C. McRuer K.C.* for the respondent.

(1) [1931] O.R. 202. (2) [1931] O.R. 699.

*The said Belyea and Weinraub have appealed to the Supreme Court of Canada.

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SINGER v. THE KING.

At the opening of the hearing of the appeal, argument was heard upon the question of jurisdiction, and after hearing counsel for the parties, the Court retired for a few minutes for consideration and, on its returning to the Bench, the Chief Justice delivered judgment orally as follows:

ANGLIN C.J.C.—The appeal in this case was taken under s. 15, c. 28, Stats. of Canada, 1931, which became law on the 1st of September, 1931. The appellant was convicted on the 23rd of March, 1931, and his conviction was affirmed by the Court of Appeal on the 26th of June, 1931.

It is common ground that, unless there is something making unmistakeable the intention of the Legislature that a retrospective construction should be put upon the legislation so that it may cover cases arising prior thereto, no clause, conferring a new jurisdiction on an appellate court to entertain an appeal, can be so construed. The matter is one of substance and of right.

The decision in *Doran* v. *Jewell* (1), is binding upon us and is conclusive to that effect. If further authority be required on this point, it may be found in *Upper Canada College* v. *Smith* (2).

The language relied upon here, as indicative of the intention of the Legislature to require a retrospective construction of the Act, consists merely in the fact that the perfect tense is used in dealing with the matter. This, however, is legislation in regard to appeals, where it seems almost inevitable that the past, or perfect, tense should be used, as the matter dealt with, viz., the conviction in the judgment appealed from, must necessarily be an event of the past when the appeal is taken. At all events, we find nothing in the language of the Legislature in this amendment to the *Criminal Code* indicative of an intention that it should receive a retrospective construction.

Appeal quashed.

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(1) (1914) 49 Can. S.C.R. 88. (2) (1920) 61 Can. S.C.R. 413.