

1929

IN RE SINGER

*Aug. 3.
*Aug. 8.

Habeas corpus—Jurisdiction of Judge of Supreme Court of Canada—*Supreme Court Act, R.S.C., 1927, c. 35, s. 57*—Commitment by Commissioner for contempt of order made under s. 22 of *Combines Investigation Act, R.S.C., 1927, c. 26*.

The jurisdiction of a judge of the Supreme Court of Canada, under s. 57 of the *Supreme Court Act, R.S.C., 1927, c. 35*, to issue a writ of *habeas corpus*, held not to extend to the case of a commitment by a commissioner appointed under the *Combines Investigation Act, R.S.C., 1927, c. 26*, for contempt of an order made by the commissioner under s. 22 thereof.

APPLICATION for a writ of *habeas corpus*. It was alleged on behalf of the applicant that the warrant under which he was restrained of his liberty and confined in gaol did not disclose on its face a right or justification so to restrain or confine. The warrant was made by a Commissioner appointed under the *Combines Investigation Act, R.S.C., 1927, c. 26*, and ordered the applicant's detention in gaol until he should have purged his contempt of an order made by the Commissioner under s. 22 of the said Act, for that the applicant did at Toronto, Ontario, on July, 22, 1929, "unlawfully refuse after being lawfully ordered to do so, to be examined under oath before me, a Commissioner under the said Act, by Order in Council P.C. No. 1311, of the Dominion of Canada; and for that he did at Toronto aforesaid on the said date unlawfully refuse to produce the documents, books, and papers of [certain associations named] ordered by me to be produced by him under the authority vested in me by the said Act as the Commissioner so appointed."

*Newcombe J. in Chambers.

W. F. O'Connor K.C. and F. D. Hogg K.C. for the applicant.

No one *contra*.

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NEWCOMBE J.—My jurisdiction to issue a writ of *habeas corpus ad subjiciendum* is limited by section 57 of the *Supreme Court Act*, and it may be exercised only “for the purpose of an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada.”

My difficulty about this application is to bring it within the words of the statute. This is not the sort of commitment intended, and, moreover, the inquiry in which the commissioner was engaged was not “in any criminal case” within the meaning of the law. The statute evidently points to a criminal prosecution sanctioned by the Parliament of Canada and charging a case visited by commitment. When Parliament, for the purpose of defining jurisdiction, speaks in the general terms used of “commitment in a criminal case under an Act of the Parliament,” I think it may safely be held to the distinct and unequivocal meaning, and therefore restricted to commitment for an offence which Parliament has constituted or declared; I would exclude a mere incidental or collateral exercise of the power which a commissioner for inquiry possesses to enforce attendance or obedience on the part of a witness, which, although conferred by reference upon a commissioner under sections 18 and 22 of the *Combines Investigation Act*, affects only his jurisdiction to make an order. There are provisions in this Act, under the caption “Offences and Penalties,” sections 33, 34, 36 and 38, by which it is enacted that a person shall be guilty of an offence, and liable, on summary conviction or indictment, to fine or imprisonment, who wilfully interferes with the proceedings of a commissioner, or fails to attend, or to give evidence, or to produce books and papers, or who otherwise obstructs, impedes or prevents the investigation. These provisions, or some of them, doubtless sanction commitment in the sense in which the *Supreme Court Act* uses the term; but the jurisdiction to impose the appropriate penalty and to adjudge the commitment is conferred, not upon the commissioner, but upon the competent tribunals under the enactments of the *Criminal Code* with respect to summary convictions or indict-

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Newcombe J. I refuse the application.

able offences; and the commitment in question is not, and does not profess to be, founded upon any of these provisions. It seeks to apply a common law remedy.

Application refused.
