

HIS MAJESTY THE KING.....APPELLANT;

1922

*Oct. 10.

AND

THE MANITOBA GRAIN CO.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Appeal—Leave by Supreme Court—Criminal Case—R.S.C. [1906] c. 139, ss. 36 and 41—9-10 Geo. V, c. 32—Canada Grain Act, 2 Geo. V, c. 27, s. 215 (D).

Though sec. 41 of the Supreme Court Act empowers the court to grant leave to appeal “in any case whatever” in which any of certain specified matters are in controversy the right is limited to cases in which an appeal may lie as provided in sec. 36.

A conviction for contravention of sec. 215 of the Canada Grain Act the penalty for which is fine or imprisonment is a conviction in a “criminal cause” and not appealable under sec. 36 of the Supreme Court Act.

MOTION for special leave to appeal from the Judgment of the Court of Appeal for Manitoba (1) holding that sec. 215 of the Canada Grain Act is *ultra vires*.

The defendant was convicted for selling grain on commission without a licence, in contravention of section 215 of the Canada Grain Act. His conviction was quashed by the Court of Appeal, which held section 215 of the Grain Act to be *ultra vires* of the Dominion Parliament. An application for special leave to appeal to the Supreme Court of Canada was refused by the Court of Appeal on the ground that the case fell within the decision of the Judicial Committee in *The King v. Nat Bell Liquors* (2) and that there would, therefore, be no jurisdiction to entertain the appeal if leave were granted.

Taylor K.C., for the appellant contended that by the proviso to section 41 (1) of the Supreme Court Act the Supreme Court of Canada is empowered to grant special leave to appeal “in any case whatever”, if the validity of an Act of Parliament (*inter alia*) will be involved in the

(1) 32 Man. R. 52.

(2) [1922] 2 A.C. 128.

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.

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appeal, and that the court can, therefore, grant leave in cases in which the provincial appellate court could not do so.

The defendant was not represented.

The Judgment of the Court was delivered by:

THE CHIEF JUSTICE.—The majority of the court is of the opinion that the proposed appeal would be an appeal in a criminal cause within the exception in section 36 of the Supreme Court Act. The proviso to section 41 (1) enabling this court to grant special leave to appeal only “if special leave to appeal has been refused by the highest court of final resort in the province” implies that the application of the proviso is limited to cases in which the provincial court might properly have given such leave and is, therefore, notwithstanding the generality of the words “in any case whatever”, restricted to cases within section 36.

The application is accordingly refused. No costs.

Motion Dismissed without costs.
