

JOSIAH GILBERT..... APPELLANT;

AND

HIS MAJESTY THE KING..... RESPONDENT.

1907
*Feb. 1.ON APPEAL FROM THE SUPREME COURT OF THE NORTH
WEST TERRITORIES.*Criminal law—Crown case reserved—Appeal—Extension of time for
notice of appeal—"Criminal Code" s. 1024—Order after expira-
tion of time for service of notice—Jurisdiction.*

The power given by section 1024 of the "Criminal Code" (R.S.C. (1906) ch. 146) to a judge of the Supreme Court of Canada to extend the time for service on the Attorney-General of notice of an appeal in a reserved Crown case may be exercised after the expiration of the time limited by the code for the service of such notice. *Banner v. Johnston* (L.R. 5 H.L. 157) and *Vaughan v. Richardson* (17 Can. S.C.R. 703) followed.

APPLICATION, on behalf of the prisoner, for an order extending the time for the service of a notice of appeal from the judgment of the Supreme Court of the North-West Territories, affirming the conviction of the prisoner, Wetmore J. dissenting.

The prisoner was convicted, on 16th November, 1906, on the charge of murdering one Barrett Henderson, and sentenced to be hanged on the 18th of January, 1907. Pursuant to the provisions of section 743 of "The Criminal Code, 1892," the case was reserved for the opinion of the Supreme Court of the North-West Territories, *in banc*, and was heard on the questions reserved in the said court on the 9th of January, 1907, at Calgary, in the Province of Alberta, and judg-

*PRESENT:—Mr. Justice Davies, in Chambers.

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ment was reserved. Subsequently, on the 15th of January, 1907, judgment was pronounced on the reserved case affirming the decision of Newlands J., at the trial, in respect to the matters objected to, by the majority of the said court *in banc*, Wetmore J. dissenting.

An application was then made to the Minister of Justice, at Ottawa, for a new trial under the provisions of section 748 of the "Criminal Code, 1892," and, owing to the time occupied in correspondence, travelling from Regina to Ottawa, and obtaining a reply from the Minister, more than fifteen days elapsed after the date of such affirmance of the conviction, and, in the meantime, no notice of appeal therefrom had been served upon the Attorney-General as required by the provisions of section 1024 of the "Criminal Code," R.S.C. (1906) ch. 146. In consequence of the expiration of the time so limited, the application was made, in Chambers, for an order to extend the time for the service of the necessary notice.

Bethune and *Balfour* appeared in support of the application.

DAVIES J.—An application was made to me, at Chambers, to-day on behalf of the prisoner for an order under the 750th section of the "Criminal Code of 1892," now section 1024 of the "Criminal Code," R.S.C. (1906), ch. 146, to extend the time for service of notice of appeal from the judgment of the Supreme Court of the North-West Territories refusing a new trial.

As the court of appeal was not unanimous in af-

firming the conviction of the prisoner he had a right,
on serving notice on the Attorney-General

within fifteen days after such affirmance or such further time as
may be allowed by the Supreme Court of Canada or a judge thereof.

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to appeal to the latter court against the affirmance of
such conviction.

For reasons set out in the affidavits and exhibits
produced before me, he did not give the notice of ap-
peal and now, after the expiration of the fifteen days,
applies for an extension of the time.

The only question upon which I had any doubt was
as to my power to grant the extension after the expir-
ation of the fifteen days. A construction requiring
the application to be made within the fifteen days
would, in a section such as this dealing with the crim-
inal law and where sometimes, as in the case before
me, the prisoner's life is at stake, be a very narrow
one and might in many cases which can be conceived
of in a country of the extent of the Dominion of Can-
ada, if adopted, defeat the object which Parliament
seems to have had in view. I, therefore, felt strongly
inclined to adopt the broader construction and to hold
that the power of extension is exercisable under the
section even after the expiration of the prescribed
period.

There are two authorities which seem to be con-
clusive upon the point. One is that of *Banner v.*
Johnston (1), at pages 170 and 172, and the other that
of *Vaughan v. Richardson* (2).

Reference is also made to *The North Ontario Elec-
tion Case; Wheeler v. Gibbs* (3), which was discussed

(1) L.R. 5 H.L. 157.

(2) 17 Can. S.C.R. 703.

(3) 3 Can. S.C.R. 374.

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by Sir William Ritchie C.J., in *The Glengarry Election Case*(1), at page 460.

I have had the advantage of consulting with the Chief Justice and with Mr. Justice Girouard, who agree with me that in view of these authorities, there can be no doubt of my power to make the order.

Ordered accordingly.

Solicitor for the applicant: *James Balfour.*