1959

Mar. 4
*Apr. 28

GERALD SMITH .....APPELLANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Criminal law—Juvenile delinquents—Whether notice of hearing served on parents—Conviction made in absence of parents—Certiorari—Lack of jurisdiction—Leave to appeal granted by Supreme Court of Canada—Criminal Code, 1953-54 (Can.), c. 51, ss. 141, 414, 705, 708(1)—The Juvenile Delinquents Act, R.S.C. 1952, c. 160, s. 10(1)—The Supreme Court Act, R.S.C. 1952, c. 259, s. 41.

The appellant, a boy aged 14, was declared by a judge of the Winnipeg Juvenile Court to be a juvenile delinquent. He moved before a judge of the Court of Queen's Bench for an order quashing the conviction without the actual issue of a writ of certiorari on the ground, *inter alia*, that his parents had not been properly served with a notice of hearing of the charge. His application was dismissed, and this judgment was affirmed by a majority in the Court of Appeal. Leave to appeal was granted by this Court subject to argument as to the right to grant leave.

Held: The appeal should be allowed and the finding of delinquency quashed.

Per Kerwin C.J. and Judson J.: This Court had power to grant leave to appeal under s. 41(1) of the *Supreme Court Act*. Section 41(3) of the Act had no application as the judgment appealed from was not one affirming a conviction.

Section 10(1) of the *Juvenile Delinquents Act*, which requires that written notice of the hearing of any charge of delinquency shall be served on the parent or parents of the child concerned, had not been complied with. The letter written to the father by the probation officer was not compliance with the section and the mere fact that thereafter the father was advised verbally of the nature of the charge did not mend matters. Furthermore, the father was not afforded the right to be present at the hearing as mentioned in s. 10(1). It was no answer to say that the granting of a writ of certiorari was a matter of discretion. No such question could arise where the terms of a statute had not been complied with.

Per Locke and Martland JJ.: Compliance with s. 10 of the *Juvenile Delinquents Act* is a condition precedent to the Juvenile Court judge acquiring jurisdiction, and it was shown in this case that the section had not been complied with. Furthermore, the record disclosed a failure to comply with the imperative provisions of s. 708(1) of the *Criminal Code*, which requires that the substance of the information shall be stated to the accused and that he shall be asked whether he pleads guilty or not guilty. Sections 17 and 38 of the *Juvenile Delinquents Act* do not relieve the judges of the Juvenile Court from complying with s. 708(1) of the Code.

*PRESENT: Kerwin C.J. and Locke, Cartwright, Martland and Judson JJ.

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Per Cartwright J.: Service on the parent or parents of the appellant of notice of hearing was an essential preliminary, in the absence of which the judge of the Juvenile Court acted without jurisdiction. Furthermore, there was neither arraignment nor plea in this case. This was clearly a case in which the writ of certiorari should be granted.

APPEAL from a judgment of the Court of Appeal for Manitoba[1], affirming a decision of Campbell J. Appeal allowed.

J. L. Crawford, for the appellant.

G. E. Pilkey, for the respondent.

The judgment of Kerwin C.J. and Judson J. was delivered by

THE CHIEF JUSTICE:—On September 23, 1957, the appellant Gerald Smith, then fourteen years of age, was declared by the judge of the Winnipeg Juvenile Court and Family Court to be a delinquent and was fined $10. An application that the finding of a delinquency against the child be quashed without the actual issue of a writ of certiorari was dismissed by Campbell J. on December 23, 1957, and an appeal from his decision was dismissed May 16, 1958, by the Court of Appeal for Manitoba[1], Adamson C.J., Coyne and Montague JJ., the Chief Justice dissenting. On June 26, 1958, we granted Gerald leave to appeal to this Court on all points mentioned in his notice of motion subject to argument as to our right to grant leave. The appeal did not come on for argument until March 4, 1959.

For a proper appreciation of the questions involved it is necessary to set forth the attending circumstances in some detail. On August 15, 1957, the information and complaint by Julius Chmielewski, probation officer of the Winnipeg Juvenile Court and Family Court was taken "that Gerald Smith, a child, did on or about the 7th day of June, 1957, at the City of Winnipeg, in the said Province, commit a delinquency in that he did unlawfully and indecently assault Helen Balaban, a female, contrary to the form of the statute in such case made and provided". According to the affidavit of the probation officer filed on the application to Campbell J., he attempted unsuccessfully from August 16 to August 27, 1957, to get in touch by tele-

[1] (1958), 25 W.W.R. 97, 121 C.C.C. 103.

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phone with Gerald's parents or either of them at their home in Winnipeg and on August 27 sent a letter by post to Matthew Smith, the child's father, addressed to him at his home, reading as follows:

Dear Mr. Smith:— Re: Your son Gerald

This is to advise you that you must be present with your son for a court hearing on Friday, August 30th, at 10 o'clock in the morning.

On August 29, 1957, the father admitted to the officer having received the letter but indicated that he could not be present with Gerald at Court on August 30 as he was leaving Winnipeg on a business trip. The officer informed the father that his son and four other juveniles were charged in regard to an indecent assault upon a little girl in a shack behind the father's home. The father indicated that this was nothing serious but rather a boyish prank. He requested that the matter be remanded for two weeks to Friday, September 13, 1957, and the matter was so arranged.

According to the same affidavit, the father telephoned the officer on September 12 requesting a further remand to Monday, September 16, on the ground that he would be out of the city for the weekend. The officer intimated that the mother could bring the child to Court but the father indicated that his wife knew nothing of the matter and he did not want her to become involved, but he assured the officer that he would be present at Court with Gerald and that he would not require any further remand. On September 16 neither the father nor child appeared in Court and a warrant was issued for the apprehension of the child. On September 20 he was arrested without the knowledge of his parents and was brought before the judge of the Winnipeg Juvenile Court and Family Court, and was remanded in custody to September 24. Later in the day, on September 20, the mother attended at the office of the probation officer and was informed by him of the circumstances of the delinquency alleged against Gerald.

Three other juveniles were apprehended in connection with the same delinquency and appeared in Court on July 8 and the final disposition of the matter so far as they were concerned was completed July 16. On August 30, a fourth boy attended Court with his mother, on which date the matter of that charge was completed.

The transcript of what occurred in Court on Friday, September 20, is as follows:

JUDGE: Gerald, how old are you?

GERALD: 14.

JUDGE: 14. When is your birthday?

GERALD: March 2nd.

JUDGE: You didn't show up when you were supposed to show up so we issued a warrant. Why weren't you here?

GERALD: I didn't know.

Mr. CHMIELEWSKI: His father was doing all the arranging Your Honor, the boy was away all summer on the farm. The father was in touch with me three times and asked to remand the case and remand the case and then he forgot to make any arrangements. He asked me to remand the case definitely for Monday, he's going to be here, and he didn't even bother to phone and tell me about it. I think he's just giving us the run-around, so as a result a warrant was issued for this boy. It's unfortunate, but the boy didn't know what arrangements were made to be here or not. The father was carrying out all the arrangements.

JUDGE: That's all very well but this lad was in here and he's charged with a pretty serious offence.

Mr. CHMIELEWSKI: No. Your Honor he wasn't here. He was charged but he was not here.

JUDGE: Oh I see. There's an Information here sonny that on or about the 7th of June, a long time ago, unlawfully and indecently assault Helen Balaban. What about that is that correct or not? What did you do?

GERALD: We took her pants down and let her go.

JUDGE: Is this one of the boys that had that Club?

Mr. CHMIELEWSKI: Yes, this happened to be in his own yard.

JUDGE: Well the father is not here again this morning?

Mr. CHMIELEWSKI: There's nobody here. I didn't know anything about this family . . . is your mother sick? (To Gerald)

GERALD: I don't know whether she is.

Mr. CHMIELEWSKI: Doesn't she live at home?

GERALD: She's at home.

JUDGE: Well we'll remand this to September 24th, that's Tuesday, at 10 o'clock. Okay.

Mr. CHMIELEWSKI: In custody?

JUDGE: Yes.

COURT ADJOURNED.

What may be taken to be a return to a writ of certiorari, if it had been granted, appears on the back of the information and complaint where the judge indicated that on September 23 "Case brought forward to this date at request of Mr. Chmielewski. Delinquent. Fine $10.00". It was on that date that counsel appeared for the first time and requested an adjournment as there had not been sufficient

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time for him to be properly instructed. He stated that, on the facts as he understood them, he would advise the boy to plead not guilty. The adjournment was refused, the judge taking the position that the boy had already admitted the delinquency. All this time the father was kept outside the room in which the hearing was taking place and it was only then that the judge directed that he be brought in. During the discussion which ensued between the judge and the father the latter said that there had been a misunderstanding as to the date to which the hearing was to be finally adjourned. Considering that there had been a plea of guilty by the child the magistrate imposed a fine of $10.

This Court had power to grant leave to appeal under subs. (1) of s. 41 of the *Supreme Court Act*, R.S.C. 1952, c. 259:

> 41. (1) Subject to subsection (3), an appeal lies to the Supreme Court with leave of that Court from any final or other judgment of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court.

Subsection (3) reads:

> 41. (3) No appeal to the Supeme Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence.

It has no application as the judgment of the Court of Appeal is not one affirming a conviction.

In connection with the first ground of appeal "that the Juvenile Court Judge has no jurisdiction" no reference was made on the argument before us to s. 414 of the *Criminal Code* which reads in part:

> 414. Subject to this Act, every superior court of criminal jurisdiction and every court of criminal jurisdiction that has power to try an indictable offence is competent to try an accused for that offence
>
> (*a*) if the accused is found, is arrested or is in custody within the territorial jurisdiction of the court;

As pointed out by the Chief Justice of Manitoba, we must take judicial notice of the Order-in-Council appointing Emerson J. Heaney, Esquire, a Juvenile Court Judge. He was appointed by the Lieutenant-Governor-in-Council of

Manitoba under the authority of subs. (1) of s. 6 of *The Child Welfare Act*, R.S.M. 1954, c. 35, whereby the Lieutenant-Governor-in-Council may establish Courts for the purpose of dealing with juvenile delinquents under *The Juvenile Deliquents Act* and define their respective territorial jurisdictions. It was, therefore, a Court duly established under a provincial statute for the purpose of dealing with juvenile delinquents in accordance with what is now s. 2(1)(*b*) of the *Juvenile Delinquents Act*, R.S.C. 1952, c. 160. Subsection (1) of s. 5 thereof provides that prosecutions and trials under the Act shall be summary and shall *mutatis mutandis* be governed by the provisions of the *Criminal Code* relating to summary convictions in so far as such provisions are applicable. Part XXIV of the *Criminal Code* relates to summary convictions and included therein is s. 705:

705. Every summary conviction court has jurisdiction to try, determine and adjudge proceedings to which this Part applies in the territorial division over which the person who constitutes that court has jurisdiction.

However, it has been held by the Court of Appeal for Ontario in *Rex v. Abbott*,[1] that s. 577 of the old *Criminal Code* which, for present purposes, is in the same terms as s. 414 of the new Code, applied where, although the offence charged had been committed outside the territorial limits of the jurisdiction of a Court, the accused was in custody within those limits. Leave to appeal from that decision was refused[2] on two grounds, one of which was that it was not in conflict with a prior decision of the Ontario Court of Appeal in *The King v. O'Gorman*[3].

In view of the fact that no argument was adduced with reference to s. 414 of the Code, I say nothing about the first ground of appeal but proceed to a consideration of another objection urged on behalf of the appellant; that is that, as required by subs. (1) of s. 10 of the *Juvenile Delinquents Act*, due notice of the hearing of the charge of delinquency was not served on either parent. That subsection reads as follows:

10. (1) Due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child, or if there be neither parent or guardian, or if the residence of the parent or parents

[1] [1944] O.R. 230, 81 C.C.C. 174, 2 D.L.R. 378.
[2] [1944] S.C.R. 264, 82 C.C.C. 14, 4 D.L.R. 481.
[3] (1909), 18 O.L.R. 427, 15 C.C.C. 123.

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or guardian be unknown, then on some near relative living in the city, town or county, if any there be, whose whereabouts is known, and any person so served has the right to be present at the hearing.

The letter of August 27, 1957, is certainly not a compliance with this section and the mere fact that thereafter the father was advised verbally of the nature of the charge does not mend matters. On this ground the appeal should be allowed and in this connection it might be pointed out that the father was not afforded the right to be present at the hearing as mentioned in the latter part of the subsection. I quite agree with the Chief Justice of Manitoba that prior thereto the father was most neglectful but that cannot cure the defect. Nor is it any answer to say that the granting of a writ of certiorari is a matter of discretion. No such question can arise where the terms of a statute have not been complied with.

While it appears to be clear that the Juvenile Court judge was bearing in mind what had been said when the other children were before him, it is preferable to pass no judgment on the other points raised on behalf of the appellant.

The appeal should be allowed and the orders of the Court of Appeal and of Campbell J. set aside. In view of the fact that the appellant was in custody from September 20 to September 23 and of the long time that has elapsed since then, there should not be a new trial, but the finding of deliquency should be quashed. In fact, counsel for the Crown agreed that, if the Court came to the conclusion that the finding could not stand, there should not be a new trial.

The judgment of Locke and Martland JJ. was delivered by

LOCKE J.:—The appellant, Gerald Smith, then a boy of fourteen years, was on August 15, 1957, charged in an information laid by a probation officer under the provisions of the *Juvenile Delinquents Act*, R.S.C. 1952, c. 160, that he:

did on or about the 7th day of June, A.D. 1957 at the City of Winnipeg in the said province commit a delinquency in that he did unlawfully and indecently assault Helen Balaban, a female, contrary to the form of the statute in such case made and provided.

The offence of indecent assault is indictable and one guilty of the offence is liable to imprisonment for five years and to be whipped, under the provisions of s. 141(1) of the *Criminal Code*.

The evidence does not disclose that the fact of the information having been laid was communicated directly to the boy but, in an affidavit made by the probation officer which was filed in the proceedings taken before Campbell J. hereinafter referred to, that official stated that he made several attempts to communicate with the parents of the boy and, these failing, he wrote a letter on August 27, 1957, to the boy's father, Matthew Smith, addressed to his home in Winnipeg, saying:

> This is to advise you that you must be present with your son for a court hearing on Friday, August 30th, at 10 o'clock in the morning.

This notice appears to have been given in purported compliance with s. 10 of the *Juvenile Delinquents Act* which, so far as it need be considered, reads:

> Due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child.

On August 29, Matthew Smith came to the office of the probation officer in Winnipeg, and, according to the latter, admitted that he had received the letter and asked that the hearing be adjourned from August 30 for two weeks. The officer agreed to this and swears that at this time he informed the father that his son and four other juveniles were charged with an indecent assault upon a little girl. He further states that on September 12 Matthew Smith telephoned to him asking for a further adjournment from September 13 to September 16, assuring the probation officer that he would be present at that time with the boy. This adjournment was made but on September 16 neither the boy nor his father appeared.

On that date a warrant was issued for the arrest of the boy. The material does not disclose the date of the arrest but on September 20 the boy was in custody and was brought before the judge of the Juvenile Court and a transcript of what took place at this time forms part of the record. When the boy was asked by the judge why he had not appeared on the previous occasion, his answer was that

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he did not know about the matter and the probation officer explained to the Court that all the arrangements had been made with the father. There is no suggestion that any notice of what was apparently intended as a hearing of the charge and which was then held was given to either of the boy's parents or that either of them knew anything about it until after the event.

As the record discloses, the information was not read to the boy, the judge contenting himself with saying to him that there was an information saying that on or about the 7th of June he had unlawfully and indecently assaulted Helen Balaban, and then asked:

> What about that? Is that correct or not. What did you do?

To this the boy replied:

> We took her pants down and let her go.

This answer appears to have been interpreted by the judge as a plea of guilty. No other evidence was given. It appears from the affidavit filed by the probation officer that three other boys had been apprehended, charged with the same offence, and these charges had been disposed of on July 16, more than two months previous. A fourth boy also involved, it was stated, had appeared on August 30, 1957, in the Court when the matter was dealt with. There was no evidence given as to where the alleged offence had been committed but the probation officer told the judge that Gerald Smith was one of the boys that had a club, meaning, apparently, a boys' club, and that the occurrence had taken place in the back yard of his father's property.

At the conclusion of these proceedings on September 20, the judge did not announce his decision but remanded the boy to custody until September 24. On September 23, Mr. J. L. Crawford, a barrister practising in Winnipeg, appeared on the instructions of the father before the judge of the Juvenile Court and asked that the matter be reopened and the boy permitted to withdraw what had apparently been regarded as his plea to the charge. The judge declined to permit this and announced that he was going to fine the boy $10 and this was paid. The information which had been

laid and which was endorsed with the record of the various remands so-called bears an endorsement reading: "Delinquent, fine $10."

Section 5 of the *Juvenile Delinquents Act* provides that, except as otherwise provided in the Act, prosecutions and trials shall be summary and shall be governed by the provisions of the *Criminal Code* relating to summary convictions in so far as such provisions are applicable, whether or not the act constituting the offence charged would be, in the case of an adult, triable summarily, with certain exceptions which do not affect the present matter.

Section 708(1) of the *Criminal Code* provides in part that, where the defendant appears before a summary conviction Court, the substance of the information shall be stated to him and he shall be asked whether he pleads guilty or not guilty to the information where the proceedings are in respect of an offence that is punishable on summary conviction, a provision which is rendered applicable by the terms of s. 5 above mentioned.

Section 37 of the *Juvenile Delinquents Act* provides for an appeal from any decision of a juvenile Court by leave of a judge of the Court of Queen's Bench, an appeal which, if granted, is heard by a judge of that Court. The appellant in the present matter did not apply for leave but moved before Campbell J. for an order quashing the conviction without the actual issue of a writ of *certiorari*.

In the reasons for judgment delivered by that learned judge he said in part:

> I find that there was more than adequate notice to the father of the hearing of this charge. Section 10 of the *Juvenile Delinquents Act* 1929 has been adequately complied with.

He further was of the opinion that a plea had been properly taken, that the nature of the charge had been explained in the proper manner by the Juvenile Court judge and that there had been no denial of justice. It is, in my opinion, unnecessary to consider the portion of the reasons delivered by the learned judge dealing with what was said to be the refusal of the Juvenile Court judge to hear counsel on behalf of the boy and his refusal to permit what was considered to be the plea of guilty to be withdrawn.

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The opinion of the majority of the learned judges of the Court of Appeal[1] was delivered by Coyne J.A. who considered that sufficient information had been given to the boy as to the nature of the charge and that he had fully understood it, that the evidence showed that full information as to the charge was conveyed to the father on August 29 and that Campbell J. had in refusing to direct that a writ of *certiorari* be issued and the conviction quashed properly exercised his discretion. Adamson C.J.M., who dissented, would have directed that a writ of *certiorari* be issued and the conviction quashed upon the grounds, *inter alia,* that s. 10 of the *Juvenile Delinquents Act* had not been complied with and that, accordingly, the Juvenile Court judge had not acquired jurisdiction to hear the charge and that there had been no arraignment and plea taken as required by s. 708(1) of the Code.

As provided by s. 17 of the *Summary Convictions Act,* R.S.M. 1954, c. 24, the evidence taken in this matter is to be treated as part of the conviction or order in any proceedings other than an appeal to the County Court to quash the conviction, whether by *certiorari* or otherwise. I agree with the learned Chief Justice of Manitoba that it was shown that s. 10 of the *Juvenile Delinquents Act* had not been complied with. The language of the section is imperative:

> Due notice of the *hearing of any charge* of delinquency shall be served on the parent or parents.

The letter written to the father by the probation officer on August 27 gave notice of a hearing on August 30, though the offence with which the son was charged was not stated. While the father was informed of the nature of the charge on August 29, the hearing referred to in the letter did not take place, the matter being adjourned by arrangement until August 30, and again by arrangement with the father until September 16 when neither the father nor the son appeared. Accepting the statement made by the boy on September 20, he knew nothing about the matter. There is no pretense that any notice, either in writing as required by s. 10 or oral, was given to the father or the mother of the hearing which took place after the boy was arrested on

[1] (1958), 25 W.W.R. 97, 121 C.C.C. 103.

September 20, and it is upon the evidence that was taken at that time that the finding that he was a delinquent was based.

Compliance with the section is, in my opinion, a condition precedent to the Juvenile Court judge acquiring jurisdiction. The principle applied by the Court of Appeal for Manitoba in *Rex v. Howell*[1] applies.

I am further of the opinion, in agreement with the learned Chief Justice, that the record discloses a failure to comply with the imperative provisions of s. 708(1) of the Code. The offence with which this boy was charged was that defined by s. 141 of the *Criminal Code* but, by virtue of s. 3 of the *Juvenile Delinquents Act,* such an offence by a child of the age of the appellant is to be known as a delinquency and dealt with as provided in that Act. Section 708(1) requires that the substance of the information shall be stated to the accused and that he shall be asked whether he pleads guilty or not guilty. There was, in my opinion, an insufficient compliance with the first of these requirements. It is unlikely that a boy of fourteen would understand what an "information" was or appreciate the gravity of the offence defined by the *Criminal Code* with which he was charged. These are matters that should have been explained to him before he was permitted to plead. As to the second requirement, he was not asked whether he pleaded guilty or not guilty to the information. On the contrary, the boy was told that there was an information that some three months previously he had unlawfully and indecently assaulted Helen Balaban and the questions then put to him which are quoted above were simply an invitation to him to make a statement of what had occurred. The boy had been deprived of the protection the presence of his father would have afforded by the failure to comply with s. 10 and should not have been permitted by the judge to make a statement without at least being warned that he was not obliged to say anything. The failure of the Juvenile Court judge to discharge what was his clear duty in this respect to the boy appearing before him without counsel does not go to the question of jurisdiction, but the

[1] (1910), 19 Man. R. 317, 13 W.L.R. 594, 16 C.C.C. 178.

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failure to comply with the plain provisions of s. 708(1) does. The principle applied in *Howell's* case is also applicable in these circumstances, in my opinion.

The contention that s. 17 of the *Juvenile Delinquents Act* which provides that the trial may be as informal as the circumstances will permit, consistently with a due regard for a proper administration of justice, and of s. 38 that a juvenile delinquent shall be treated not as a criminal but as a misdirected or misguided child, in some way relieves the judges of that court from complying with s. 708(1) of the Code, cannot be supported. I can see no difficulty in complying with ss. 17 and 38 of the *Juvenile Delinquents Act* while following the requirements of that section.

As upon these grounds it is my opinion that the conviction cannot stand, I express no opinion upon the other objections raised to the proceedings in the present matter.

I would allow this appeal, set aside the judgment of the Court of Appeal and the order of Campbell J. and direct that the finding of delinquency be quashed.

CARTWRIGHT J.:—The relevant facts are stated in the reasons of the Chief Justice and those of my brother Locke which I have had the advantage of reading.

I agree with their conclusion that service on the parent or parents of the appellant of notice of the hearing held on September 20, 1957, as imperatively required by s. 10(1) of the *Juvenile Delinquents Act,* was an essential preliminary, in the absence of which the learned judge of the Juvenile Court acted without jurisdiction. It was on that date that the learned judge took from the appellant what he regarded as a plea of guilty. The supposed plea was the only foundation for the finding of delinquency.

The finding that the learned judge was, for the reason just mentioned, without jurisdiction to proceed with the hearing is sufficient to dispose of this appeal, but I am also of opinion that there was neither arraignment nor plea. If the learned judge had said to the appellant,

> There's an information here sonny that on or about the 7th of June, a long time ago, unlawfully and indecently assault Helen Balaban. What about that is that correct or not?

It might have been arguable that this was a sufficient compliance with the provisions of s. 708(1)(*a*) of the *Criminal Code,* but the addition of the words,—"What did you do?" —transformed what might have been regarded as a question as to whether the appellant pleaded guilty or not guilty into an invitation to him to make a statement as to what had occurred.

As to the suggestion that the writ of *certiorari* should be refused in this case as a matter of discretion, in my opinion the rule by which the Court should be guided is accurately stated in the following passage in Halsbury's Laws of England, 3rd ed., vol. 11, p. 140:

> Although the order is not of course it will though discretionary nevertheless be granted *ex debito justitiae,* to quash proceedings which the Court has power to quash, where it is shown that the Court below has acted without jurisdiction or in excess of jurisdiction, if the application is made by an aggrieved party and not merely by one of the public and if the conduct of the party applying has not been such as to disentitle him to relief; . . .

In my opinion, this is clearly a case in which the writ should be granted.

I do not find it necessary to express an opinion on any of the other matters argued before us.

I would dispose of the appeal as proposed by the Chief Justice.

Appeal allowed and finding of delinquency quashed.

Solicitors for the appellant: Munson & Crawford, Winnipeg.

Solicitor for the respondent: The Attorney-General of Manitoba.