IN RE CHARLES DEAN.

1913

*Feb. 23.
*Feb. 25.

Criminal law—Habeas corpus—Common law offences—Construction of statute—"Supreme Court Act," R.S.C., 1906, c. 139, s. 62—Jurisdiction of Supreme Court judges.

The jurisdiction of judges of the Supreme Court of Canada in respect of *habeas corpus ad subjiciendum* extends only to cases of commitment on charges of offences which are criminal by virtue of statutes enacted by the Parliament of Canada; it does not extend to cases of commitment for offences at common law or under statutes enacted prior to Confederation which are still in force. *Re Sproule* (12 Can. S.C.R. 140) referred to.

The offence of housebreaking as described in the Imperial statute, 7 & 8 Geo. IV., ch. 29, sec. 15, became part of the criminal law of British Columbia on the introduction of the criminal law of England into that colony by the Ordinance of 19th November, 1858, continued to be so until the Union of the province with Canada, and since then by virtue of sec. 11 of the "Criminal Code," and it is not an offence to which sec. 62 of the "Supreme Court Act," R.S.C., 1906, ch. 139, has application.

APPLICATION, in Supreme Court Chambers, at the City of Ottawa, for the rule calling upon the keeper of the common gaol in the County of Westminster, at the City of New Westminster, in British Columbia, to shew cause why a writ of *habeas corpus ad subjiciendum* should not issue to bring up the body of one Charles Dean who was, as alleged, confined in the said gaol under a warrant of commitment, dated 5th September, 1912, to stand his trial upon a charge of the offence of housebreaking.

J. Travers Lewis K.C. supported the application.

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

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IN RE DEAN.

Duff J.

E. F. B. Johnston K.C. on behalf of the Attorney-General for British Columbia, shewed cause.

DUFF J.—I think I have no jurisdiction to entertain this application. It will not be necessary, in view of my opinion as to the construction of section 62 of the "Supreme Court Act," to decide the point raised by the contention of Mr. Johnston, on behalf of the Attorney-General for British Columbia, that that enactment is beyond the competence of the Parliament of Canada. Section 62 is as follows:—

> Every judge of the court shall, except in matters arising out of any claim for extradition under any treaty, have concurrent jurisdiction with the courts or judges of the several provinces to issue the writ of *habeas corpus ad subjiciendum* for the purpose of an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada.
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> 2. If the judge refuses the writ or remands the prisoner, an appeal shall lie to the court.

The language indicates an intention on the part of Parliament to confer only a strictly limited jurisdiction. Anything like frequent interposition in the administration of the criminal law in the provinces by the judges of the Supreme Court of Canada, through the instrumentality of the writ of *habeas corpus,* would obviously lead to the most undesirable results; and, before exercising the authority in a given case, I think it is my duty to scrutinize most carefully the terms in which that authority is given to ascertain whether or not the case is clearly one of those in which it was intended to be exercised.

The jurisdiction extends only, I think, to those cases in which the "commitment" has followed upon a charge of a criminal offence which is a criminal offence by virtue of some statutory enactment of the Parliament of Canada; it does not, in my opinion, ex-

tend to cases in which the "commitment" is for an offence which was an offence at common law or under a statute which was passed prior to Confederation and is still in force.

That, I think, is the effect of previous decisions by judges of this court. See *Re Sproule* (1). The offence for which the applicant was committed to stand his trial is thus described in the warrant of commitment:

> He, the said Charles Dean, at the City of New Westminster, in the County of Westminster, on the 15th day of September, A.D. 1911, did unlawfully break and enter the counting-house of the Bank of Montreal, situated at the corner of Columbia and Church streets, in the City of New Westminster aforesaid, and the sum of $271,000, the property of the said Bank of Montreal, then and there being found therein then and there steal, contrary to the form of the statute in such case made and provided.

These words aptly describe an offence under section 15 of 7 & 8 Geo. IV. ch. 29, which became part of the law of British Columbia under the ordinance of the 19th November, 1858, introducing the civil and criminal law of England into that colony. This enactment continued to be a part of the criminal law of British Columbia down to the time of the Union with Canada, and, by section 11 of the "Criminal Code" it is now part of the "criminal law" of the province in so far as it has not been repealed, "altered, varied, modified or affected" by competent legislative authority. The only change relates to the nature of the punishment to which an offender is liable.

Section 62 has, consequently, no application.

Application refused.

(1) 12 Can. S.C.R. 140.