HIS MAJESTY THE KING.....APPELLANT; 1940

AND * Oct. 8, 9, 10. * Dec. 20.

HARRY WILMOT .....RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Criminal law—Appeal—Cr. Code, ss. 951 (3), 285 (6), 1023 (2)—Accused charged with manslaughter—Charge arising out of operation of motor vehicle—At trial accused found not guilty of manslaughter but guilty of driving in a manner dangerous to the public—Appeal by Attorney-General of the province dismissed by appellate court (with a dissent on questions of law)—Appeal by Attorney-General to Supreme Court of Canada—Jurisdiction—Whether there was a "judgment or verdict of acquittal" within s. 1023 (2)—Merits—Evidence and findings at trial.

Accused was charged with manslaughter. The charge arose out of the operation of a motor vehicle. The trial judge (sitting without a jury, as permitted by statute applicable to the province) found accused not guilty of manslaughter but, as provided for by s. 951 (3) of the *Cr. Code* (as amended in 1938, c. 44, s.. 45), found him guilty of driving in a manner dangerous to the public, under s. 285 (6) of the *Cr. Code* (as amended *ibid*, s. 16). The Attorney-General for Alberta appealed, asking that the "judgment or verdict of acquittal" at trial on the charge of manslaughter "be set aside and a conviction made in lieu thereof" or that, in the alternative, there be a new trial of accused upon said charge. The appeal was dismissed by the Appellate Division, Alta., (Harvey, C.J., dissenting on questions of law), [1940] 2 W.W.R. 401. The Attorney-General appealed to this Court.

Held: The appeal should be dismissed.

Per Rinfret, Crocket, Kerwin and Taschereau JJ.: The appeal should be quashed for want of jurisdiction.

Rinfret J.: Neither of the conditions of a right of appeal to this Court under s. 1023 (2) of the *Cr. Code* (as amended in 1935, c. 56, s. 16) exists; the Appellate Division did not "set aside a conviction" nor "dismiss an appeal against a judgment or verdict of acquittal." The judgment at trial was not an acquittal; it was a conviction upon the charge as laid, in accordance with s. 951 (3) which indicates that a conviction under s. 285 (6) may be the result of a charge of manslaughter arising out of the operation of a motor vehicle. Further, the right of appeal of an Attorney General of a province under s. 1023 (2), as it was only recently given and as criminal statutes should always be construed favourably to the accused, should not be extended beyond the strict terms of the Code.

Per Crocket J.: The judgment of the Appellate Division did not fall within the terms of s. 1023 (2). The clear intendment of s. 951 (3) is that a charge of manslaughter which arises out of the operation of a motor vehicle must be taken to include the offence described

* PRESENT:—Duff C.J. and Rinfret, Crocket, Davis, Kerwin, Hudson and Taschereau JJ.

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in s. 285 (6) and that the trial tribunal shall have the right, instead of convicting of manslaughter, to find accused guilty, on the manslaughter charge, of the lesser offence. This having been done, it cannot be said that there was "a judgment or verdict of acquittal" in respect of the charge on which accused was tried.

Per Kerwin J.: Though accused was acquitted of the charge of manslaughter, yet it cannot be said that the judgment at trial was "a judgment or verdict of acquittal in respect of an indictable offence" within the meaning of s. 1023 (2) so as to give this Court jurisdiction, particularly in view of the results which otherwise might follow (as set out *infra, per* Taschereau J.).

Per Taschereau J.: A charge of manslaughter arising out of the operation of a motor vehicle includes, by operation of s. 951 (3), a charge under s. 285 (6), though the offence under 285 (6) is not mentioned in the count. When there is an acquittal on said major offence followed with a conviction on said minor offence, it cannot be said that accused has been acquitted on the *charge as laid;* the degree of his guilt is smaller, but he has nevertheless been found guilty. For the purpose of the right of appeal given by s. 1023 (2), the word "acquittal" therein means a complete acquittal in respect of all the offences charged directly or otherwise in the same count. To hold otherwise would have the very extraordinary result that this Court, entertaining the appeal, would undoubtedly have the power to direct a new trial, as a result of which the accused, without having appealed, might be acquitted even of the charge on which he has already been found guilty at the first trial.

The Chief Justice, but for the above weighty concurrence of opinion by four Judges of this Court against this Court's jurisdiction, would have thought that the Appellate Division, Alta., was right in considering the appeal on the merits. He expressed emphatically his opinion that, on a charge such as that in the present case, a jury, having satisfied themselves that the accused, in the language of s. 951 (3), "is not guilty of manslaughter" (which is a condition of their jurisdiction to find the accused guilty of an offence under s. 285 (6)), must pronounce a verdict to that effect and that the accused is entitled to demand such pronouncement; and that such a pronouncement is an acquittal of the accused upon the charge of manslaughter under the indictment. Whether an appeal lies or not may, of course, be another question.

Per Davis J.: The appeal should be dismissed on the merits. On the evidence and the findings at trial, it cannot be said that accused killed the man with whose death he was charged by the indictment.

Per Hudson J.: The appeal should be dismissed on the ground that the trial judge, on proper interpretation of his statements, found that there was not sufficient evidence to satisfy him beyond reasonable doubt that accused caused the death of the deceased and, as a consequence, found accused not guilty of manslaughter.

APPEAL by the Attorney-General for Alberta from the judgment of the Appellate Division of the Supreme Court of Alberta (1) dismissing (Harvey, C.J., dissenting

(1) [1940] 2 W.W.R. 401; [1940] 3 D.L.R. 358.

on questions of law) his appeal from the judgment of Howson J. (sitting without a jury, as permitted by statute applicable to the province) upon the trial of the accused, respondent, on the charge that he "did unlawfully cause the death of one, Charles W. Stout, and did thereby commit manslaughter." It appeared from the evidence and the record that the charge arose out of the operation of a motor vehicle. The trial judge found the accused not guilty of manslaughter but, as provided for by s. 951 (3) of the *Criminal Code* (as amended in 1938, c. 44, s. 45), found him guilty of driving in a manner dangerous to the public under s. 285 (6) of the *Criminal Code* (as amended in 1938, c. 44, s. 16).

In his appeal to the Appellate Division, the Attorney-General asked that the "judgment or verdict of acquittal" at trial on the charge of manslaughter "be set aside and a conviction made in lieu thereof"; or that, in the alternative, there be a new trial of accused upon the said charge. In his appeal to this Court the Attorney-General asked for an order setting aside the judgment of the Appellate Division "and directing that a verdict or judgment of guilty of manslaughter be entered against" accused "in lieu of said verdict of acquittal and the appropriate punishment imposed or in the alternative an order directing a new trial or such other order as may be proper."

On the hearing before this Court the question was raised whether there had been a "judgment or verdict of acquittal" within the meaning of s. 1023 (2) of the *Criminal Code* (as amended in 1935, c. 56, s. 16) so as to give jurisdiction to hear the present appeal; and argument was heard on this point as well as argument on the merits of the appeal.

H. J. Wilson K.C. and *W. S. Gray K.C.* for the appellant.

E. F. Newcombe K.C. for the respondent.

THE CHIEF JUSTICE—The majority of the Court have come to the conclusion that no appeal lies to the Supreme Court of Canada in this case under section 1023 (2). But for the weighty concurrence of opinion on this point by four judges of this Court, I should have thought that the Court of Appeal for Alberta was right in considering the

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appeal on the merits. I do not further pursue the discussion of the question whether an appeal to this Court arises under section 1023 (2).

I am concerned to emphasize one point. Before proceeding to that point it may be as well to note in passing that Mr. Wilson, on behalf of the Attorney-General for Alberta, contended that the proceedings in the trial did not disclose a charge of "manslaughter arising out of the operation of a motor vehicle" and, consequently, that the case did not fall within section 951.

I say nothing about this point. The point I desire to insist upon is this: The enactment under consideration, section 951, subsection 3, provides in the most explicit way that it is a condition of the jurisdiction of the jury to find the accused guilty of an offence under subsection 6 of section 285 that they shall be "satisfied that the accused is not guilty of manslaughter." In the present case the accused was charged with manslaughter *simpliciter*. I can have no doubt that the jury, having satisfied themselves that the accused, in the language of the section, "is not guilty of manslaughter," must pronounce a verdict to that effect and that the accused is entitled to demand such pronouncement. Nor have I any doubt that such a pronouncement is an acquittal of the accused upon the charge of manslaughter under the indictment. Whether an appeal lies or not may, of course, be another question.

RINFRET J.—I am of opinion that this appeal must be quashed for want of jurisdiction in this Court.

The appeal is asserted by the Attorney-General of the province of Alberta against the judgment of the Appellate Division of the Supreme Court of that province, which affirmed the judgment of Howson, J., finding the respondent guilty "of driving to the public danger," under sec. 285, subs. 6, of the *Criminal Code*.

The charge laid against the respondent was that he "did unlawfully cause the death of one, Charles W. Stout, and did thereby commit manslaughter"; and it appears from the evidence and the record that such charge of manslaughter arose out of the operation of a motor vehicle.

Upon that charge, the trial judge, being satisfied that the accused was not guilty of manslaughter, but was guilty

of an offence under subs. 6 of sec. 285 above mentioned, found him (as he could do under subs. 3 of s. 951 of the *Criminal Code*) guilty of the lesser offence.

The case was then carried to the Appellate Division of Alberta by the Attorney-General, apparently taking advantage of subs. 4 of sec. 1013 of the Code, by force of which

> the Attorney-General shall have the right to appeal to the court of appeal against any judgment or verdict of acquittal of a trial court in respect of an indictable offence on any ground of appeal which involves a question of law alone.

The Court of Appeal merely confirmed the judgment condemning the respondent. It is not necessary to consider whether the right of appeal in this particular case was competently asserted before that Court.

The Attorney-General then appealed from the two concurrent judgments to the Supreme Court of Canada.

Now, the right of the Attorney-General of the province to appeal to this Court, in a case such as this, is regulated by subs. 2 of sec. 1023 of the Code. Under that subsection, the Attorney-General may appeal to this Court only

> from the judgment of any court of appeal setting aside a conviction or dismissing an appeal against a judgment or verdict of acquittal in respect of an indictable offence on an appeal taken under section ten hundred and thirteen on any question of law on which there has been dissent in the Court of Appeal.

It is, therefore, apparent that the right of appeal by the Attorney-General under the above subsection is strictly dependent upon the existence of one of two conditions: Either a judgment of the Court of Appeal setting aside a conviction; or a judgment of a Court of Appeal dismissing an appeal against a judgment or verdict of acquittal.

Neither of these conditions exists here.

The conviction against the respondent has not been set aside but, on the contrary, it was affirmed by the Court of Appeal.

Nor was there a dismissal of an appeal against a judgment or verdict of acquittal.

The respondent was not acquitted either by the trial judge or by the Court of Appeal.

When the informer laid his charge against the respondent, and upon the charge as laid, he was praying, no doubt, for a conviction of manslaughter; but he was also praying, in the alternative, by force of subs. 3 of sec. 951, for a conviction of an offence under subs. 6 of sec. 285.

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And, as a matter of fact, he got the alternative condemnation, or, in other words, he got one of the two things that he had been asking for. Upon the charge as laid, and upon that alone, the respondent was not acquitted, but he was found guilty of having driven his motor vehicle on a highway in a manner which was dangerous to the public, in accordance with the provisions of subsection 6 of sec. 285. There has been no judgment of acquittal, either by the trial judge or by the Court of Appeal, from which it was open to the Attorney-General to bring an appeal to the Supreme Court of Canada.

Subs. 3 of sec. 951 of the *Criminal Code* was introduced in 1930 by ch. 11, sec. 25, of the Statutes of Canada of that year, though in a different form.

The amendment thus introduced stated in terms that

> Upon a charge of manslaughter arising out of the operation of a motor vehicle the jury may find the accused not guilty of manslaughter but guilty of criminal negligence under section two hundred and eighty-four, and such conviction shall be a bar to further prosecution for any offence arising out of the same facts.

Later, in the amendment so made, sec. 285 (6) was substituted for sec. 284.

As a result, the situation in the present case, it seems to me, was as follows:

The accident happened. It was a single occurrence. There was only one set of facts. The informer laid his charge and therein described the occurrence as a manslaughter, without more. But I cannot close my eyes to the fact that, upon the evidence and the record, it was, if at all, a "manslaughter arising out of the operation of a motor vehicle." This, to my mind, brought the charge within the terms of subs. 3 of s. 951 of the *Criminal Code*.

After having heard the witnesses, the trial judge was "satisfied that the accused was not guilty of manslaughter but was guilty of an offence under subsection six of section two hundred and eighty-five." By force of section 951 (3) of the Code, the trial judge could then find the accused guilty of the lesser offence. And that is what he did. Parliament itself indicates in that subsection that a conviction under subs. 6 of s. 285 may be the result of a charge of manslaughter arising out of the operation of a motor vehicle. The trial judge could find the accused guilty of

the lesser offence upon the charge as laid, as a consequence of that single occurrence and upon the evidence of the single set of facts leading to it. By the will of Parliament as expressed in sec. 951 (3), the conviction for the lesser offence was one of the two convictions which the trial judge had the power to make. The judgment of the trial judge, therefore, cannot be styled an acquittal within the meaning of s. 1023 (2) of the *Criminal Code*. It was, and it is, a conviction upon the charge as laid, in accordance with the provisions of sec. 951 (3). By the very terms of that subsection, "such conviction shall be a bar to further prosecution for any offence arising out of the same facts." As a consequence of that provision of the Code, should the accused be later confronted with a charge of manslaughter based upon the same occurrence, he could plead *autrefois convict;* and that plea would have to be maintained upon the plain terms of that section of the Code.

The respondent has, therefore, been convicted upon the charge as laid; and I cannot look upon the judgment now submitted to our Court as being an acquittal in the sense that it may give the Attorney-General a right of appeal to this Court under the provisions of subs. 2 of s. 1023.

In connection with the above, one must recall that it is only recently that the Attorney-General of a province was given the right of appeal under sec. 1023; and, both on that account and because criminal statutes should always be construed favourably to the accused, I do not think the right of appeal of the Attorney-General should be extended beyond the strict terms of the Code.

It follows that the present appeal was not competently asserted and that this Court is lacking of the jurisdiction required to entertain the appeal.

Under these circumstances, the appeal must be quashed.

CROCKET J.—The accused was tried on an indictment for the single offence of manslaughter before Mr. Justice Howson. Such an indictment may be tried in Alberta without a jury, if the accused so elects, under certain unrepealed provisions of the old *North West Territories Act* still in force in that province.

S. 951, subs. 3, of the *Criminal Code* provides that:

> Upon a charge of manslaughter arising out of the operation of a motor vehicle the jury, if they are satisfied that the accused is not guilty

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of manslaughter but is guilty of an offence under subsection 6 of section 285, may find him guilty of that offence, and such conviction shall be a bar to further prosecution for any offence arising out of the same facts.

It is not questioned that this enactment applies to a trial before a Supreme Court Judge in Alberta sitting without a jury, or that the manslaughter charge in the present case arose out of the operation of a motor vehicle. The trial judge specifically found the accused guilty of driving an automobile in a manner dangerous to the public contrary to the provisions of s. 285 (6), and not guilty of manslaughter.

The Attorney-General appealed to the Court of Appeal, which merely confirmed the conviction, the Chief Justice dissenting, and this is the judgment which it is now sought to challenge in this Court under the provisions of s. 1023 (2) of the *Criminal Code* on the point or points of law raised in the dissenting opinion of the learned Chief Justice.

It was contended by counsel for the accused that the judgment of the Court of Appeal does not fall within the terms of subs. 2 of s. 1023 of the Code and that no appeal therefore lies to this Court.

I think this objection is well taken. This Court is authorized by the subsection to hear an appeal at the instance of the Attorney-General of a Province from the judgment of a provincial Court of Appeal only if the judgment is one which sets aside a conviction or dismisses "an appeal against a judgment or verdict of acquittal in respect of an indictable offence." That such conviction, or judgment or verdict of acquittal, as the case may be, must necessarily be upon the charge or indictment upon which the accused has been tried by the trial court, is obvious, for assuredly no accused person could either be convicted or acquitted "in respect of" any indictable offence which was not included in the charge or indictment to which he was required to plead. The clear intendment of s. 951 (3), to my mind, is that a charge of manslaughter which arises out of the operation of a motor vehicle must be taken to include the offence of driving a motor vehicle on a street, road, highway or other public place recklessly or in a manner which is dangerous to the public, as described in s. 285 (6) of the *Criminal Code*, and that the trial tribunal shall have the right, instead

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of convicting the accused of the principal offence of manslaughter, to find him guilty upon that charge of the lesser offence against s. 285 (6). This is what the trial judge did in the present case, he being satisfied that the accused was not guilty of manslaughter, but was guilty under the manslaughter indictment of the latter offence. The learned judge certainly could not have convicted the accused, under the indictment he was trying, of both manslaughter and an offence against s. 285 (6). He could only find him guilty of one or the other, and having found him guilty of the lesser offence, it cannot, in my judgment, rightly be said that there was "a judgment or verdict of acquittal" in respect of the charge upon which the accused was tried; otherwise his conviction for the subordinate offence would not be a bar to his further prosecution for manslaughter or any other offence arising out of the same facts, as the last clause of s. 951 (3) explicitly provides it shall be.

For these reasons I am of opinion that the judgment of the Court of Appeal does not fall within the ambit of s. 1023 (2) and that this appeal therefrom should be quashed for want of jurisdiction.

DAVIS J.—The question of the jurisdiction of this Court to entertain the appeal of the Attorney-General of Alberta, turning on the point of some nicety as to whether or not there was an "acquittal" within the meaning of sec. 1023 (2) of the *Criminal Code* in that while the accused was found not guilty of the charge of manslaughter laid in the indictment he was found guilty under sec. 285 (6) of the lesser offence of driving his motor car to the public danger, was raised by a member of the Court during the argument of the merits of the appeal. I am not prepared, without a full and considered argument of a point of such importance and widespread effect, to dispose of the difficult question involved. Suffice it to say that at present I have much doubt as to the objection to jurisdiction but, in my view of the appeal, it becomes unnecessary to determine the point.

I would dismiss the appeal on the merits. Too much emphasis has been put in this case, I think, upon the difficulties of definition of the crime of manslaughter in running-down cases. *Andrews* v. *Director of Public Prosecutions* (1). The first and fundamental question, not

(1) [1937] A.C. 576.

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touched by such difficulties, is whether or not the accused killed the unfortunate man with whose death he is charged by the indictment. That is a question of fact. Upon the evidence it is plain that the accused was driving his motor car in an easterly direction up a hill on a public highway in the suburb of Alberta Park, near the city of Calgary. It was about eight o'clock on a clear evening, May 30th, 1939. The trial judge found as a fact that the accused was travelling at a moderate rate of speed. On going up the hill the accused had run over the centre line but the trial judge found that the car was only "a little north" of the centre line—"a small amount"—"somewhat but not greatly" on the north side of the centre line. The deceased, a man within a few days of his 67th birthday, was at the same time riding a bicycle along the highway in the opposite direction. He was carrying empty beer bottles, which it had been his custom to collect and sell for a living, in a pasteboard box placed in a metal basket which was fastened to his bicycle in front of the handlebars. The accused said that when he saw the man on the bicycle come over the hill the bicycle was swerving along the road and that he, the accused, applied his brakes. Hodges, an eye witness called by the Crown, testified that the motor car "was either actually stopped or practically stopped at the moment of the impact." The trial judge found that the man on the bicycle swerved or wavered on his bicycle into the left-hand front corner of the motor car. The left front headlight of the motor car was broken and the windshield of the car was caved in. The unfortunate man died shortly thereafter from hemorrhage of the brain due to a fractured skull, and the driver of the motor car was charged with manslaughter.

The accused was tried by a judge of the Supreme Court of Alberta, without a jury, as permitted by the *North West Territories Act* of 1886 made applicable by the *Alberta Criminal Procedure Act,* 1930, Dom., ch. 12. The trial judge found the accused was not guilty of manslaughter and the Court of Appeal of Alberta affirmed that judgment, Harvey, C.J., dissenting.

There was evidence that the accused was under the influence of liquor at the time and on that evidence the learned trial judge found him guilty under sec. 285 (6) of the lesser offence of driving his car to the public danger. No appeal was taken from that conviction.

In my opinion, it cannot be said on the evidence and the findings that the accused killed the man on the bicycle, and on that ground I should dismiss the appeal.

KERWIN J.—I thought, and still think, that the accused was acquitted of the charge of manslaughter. I was at first inclined to the view that we had jurisdiction. Further consideration, however, and particularly the results (set out in the judgment of my brother Taschereau) that would follow from a decision that this Court had jurisdiction have now convinced me that this was not "a judgment or verdict of acquittal in respect of an indictable offence" within the meaning of subsection 2 of section 1023 of the *Criminal Code*. I would therefore dismiss the appeal for want of jurisdiction.

HUDSON J.—As I interpret the remarks of the learned trial judge, he found that there was not sufficient evidence to satisfy him beyond reasonable doubt that the accused caused the death of the deceased and, as a consequence, found the accused not guilty of manslaughter.

On this ground, I would dismiss the appeal.

I am inclined to agree that this Court has no jurisdiction, but as the question was raised only by a member of the Court during the argument, I would prefer to leave it open for further discussion.

TASCHEREAU J.—On the 27th of November, 1939, the respondent, Harry Wilmot, was charged before Mr. Justice Howson of the Supreme Court of Alberta of having unlawfully caused by the operation of a motor vehicle the death of Charles W. Stout, thereby committing the crime of manslaughter. In a very elaborate judgment, the trial judge found the accused not guilty of manslaughter, but found him guilty of driving in a manner dangerous to the public, having regard to all the circumstances of the case.

The section of the *Criminal Code* which authorizes the jury to find the accused guilty of the lesser offence reads as follows:—

951. (3) Upon a charge of manslaughter arising out of the operation of a motor vehicle the jury, if they are satisfied that the accused is not guilty of manslaughter but is guilty of an offence under subsection six of section two hundred and eighty-five may find him guilty of that offence, and such conviction shall be a bar to further prosecution for any offence arising out of the same facts.

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Section 285 (6) says:—

> Every one who drives a motor vehicle on a street, road, highway or other public place recklessly, or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the street, road, highway or place, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on such street, road, highway or place, shall be guilty of an offence and liable * * *

The Crown appealed to the Court of Appeal for Alberta and the judgment was affirmed, Chief Justice Harvey dissenting on a question of law. The Attorney-General of Alberta now appeals to this Court and submits that in law, the respondent should not have been convicted of the lesser offence mentioned in section 285 (6) but of manslaughter.

During the argument the question of jurisdiction of the Court was raised. The right given to the Attorney-General of a province to appeal to the Supreme Court of Canada is found in section 1023 (2) of the *Criminal Code* which is in the following terms:—

> (2) The Attorney-General of the province may appeal to the Supreme Court of Canada from the judgment of any court of appeal setting aside a conviction or dismissing an appeal against a judgment or verdict of acquittal in respect of an indictable offence on an appeal taken under section ten hundred and thirteen on any question of law on which there has been dissent in the Court of Appeal.

The law strictly limits the rights of the Attorney-General to appeal and they can be summarized as follows:

The Attorney-General may appeal:

1. From the judgment of a court of appeal setting aside a conviction;
2. From the judgment of a court of appeal dismissing an appeal against a verdict of acquittal.

It is, therefore, only when the accused has been acquitted that the Crown may appeal to this Court. In the present case, the accused has been acquitted of the charge of manslaughter, but he has been found guilty under section 285 (6) of the offence of driving an automobile in a manner dangerous to the public, and this conviction has been affirmed by the Court of Appeal.

Upon a charge of manslaughter arising out of the operation of a motor vehicle, three verdicts may be rendered: 1o. guilty of manslaughter, 2o. guilty under section 285 (6), and 3o. not guilty.

The power of the Court to convict of a lesser offence upon a charge of manslaughter arising out of the operation of a motor vehicle, was originally given in 1930, when it was said that the accused could be found guilty of criminal negligence under section 284, *Cr. C.* In 1938 (Chap. 44, section 45) the law was amended, and we now have section 951 (3), *Cr. C.*, which clearly says that the lesser offence on a charge of manslaughter arising out of the operation of a motor vehicle is the offence found in section 285 (6).

By the operation of the law, the lesser offence is included in the count, and a charge of manslaughter arising out of the operation of a motor vehicle, therefore, includes a charge under section 285 (6), although this last offence is not mentioned in the count. When there is an acquittal on the major offence followed with a conviction on the minor offence, it cannot be said that the accused has been acquitted on the *charge as laid.* The degree of his guilt is smaller, but he has nevertheless been found guilty.

To my mind, the law requires a complete acquittal in respect of all the offences charged directly or otherwise in the same count, in order to allow the Attorney-General to appeal to this Court.

To hold different views would, in my opinion, lead us to a very extraordinary result. This Court, if it did come to the conclusion that it has jurisdiction to entertain this appeal, would undoubtedly have the power to direct a new trial, and as a result of which the accused, without having appealed, might be acquitted, even of the charge on which he has already been found guilty at the first trial.

I, therefore, have to come to the conclusion that the respondent has not been acquitted within the meaning of section 1023 (2), that this Court has no jurisdiction to hear this appeal, and that it should be quashed.

Appeal dismissed.

Solicitor for the appellant: *Attorney-General for Alberta.*

Solicitors for the respondent: *Short, Ross, Shaw & Mayhood.*