

1933

*Oct. 23.
*Nov. 15.

SAMUEL REINBLATT APPELLANT;

AND

HIS MAJESTY THE KING RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

*Criminal law—Appeal—Jurisdiction—Formal judgment of appellate court
—Mere mention of dissenting opinion—Not specifying grounds of dis-
sent—Section 1023 Cr. C.—Subsection 6 of section 1013 Cr. C.—21-22
Geo. V, c. 28, s. 14.*

The appellant was convicted under subsection (a) of s. 415 Cr. C. Upon appeal, the conviction was affirmed by a majority of the Court, the dissent of one judge being merely mentioned in the formal judgment. Under a recent amendment (s. 14 of c. 28 of 21-22 Geo. V), subsection 6 was added to s. 1013 Cr. C. providing that, in case of a dissenting opinion, the formal judgment should specify the grounds in law on which such dissent was based. The Crown contended that, owing to the failure of the appellate court so to specify the grounds of dissent, an appeal to this Court was not open to the appellant.

Held that this Court had jurisdiction to entertain this appeal. The only section of the Criminal Code dealing with the jurisdiction *de plano* of the Supreme Court of Canada is section 1023, under which the fact that there has been a dissent on a question of law is the sole condition for the foundation of its jurisdiction: the circumstance that the grounds of dissent are not specified in the formal judgment of the appellate court does not avoid the fact of there having been a dissent, which is the only requirement contained in section 1023 Cr. C.

APPEAL by the defendant from the judgment of the Court of King's Bench, appeal side, province of Quebec, dismissing his appeal by a majority of the Court from his conviction by the Court of King's Bench, criminal side.

The appellant was convicted of the following offence:
Being president and general manager of a company called

*PRESENT:—Rinfret, Lamont, Smith, Cannon and Hughes JJ.

Rayon Trimmings Limited, which company had been declared insolvent and was being wound up, he has, during the year preceding the winding up order of the company, committed the following indictable offence, to wit: "Acting in his capacity of president and general manager, with intent to defraud, he did destroy, alter, mutilate and/or falsify the books, papers, writings, valuable securities and documents belonging to the Rayon Trimmings Limited, and/or concur in the same being done." This is an offence against subsection (a) of section 415 of the Criminal Code. The accused had also been found guilty of an offence under section 417 of the Criminal Code, but his appeal was unanimously allowed on this last conviction by the appellate court. The Crown contended that the appeal to this Court should be dismissed, because the judgment of the appellate court was not rendered in accordance with section 1013 of the Criminal Code as amended. In 1931, 21-22 Geo. V, c. 28, s. 14, subsection (6) was added to 1013 of the Criminal Code reading as follows: "Whenever an appeal under this section is dismissed by the Court of Appeal, and any judge of such Court expresses an opinion dissenting from the judgment of the Court, the formal judgment of the Court shall specify any ground or grounds in law on which such dissent is based either in whole or in part."

1933
REINBLATT
v.
THE KING.
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The formal judgment of the appellate court did not specify the grounds in law on which the Honourable Judge Howard was dissenting: it merely stated that Howard J. was dissenting.

On the appeal to this Court, it was held that the Supreme Court of Canada had jurisdiction to entertain the appellant's appeal. On the merits of the appeal this Court held that there was evidence on which it could well be found that the appellant was guilty.

Lucien Gendron K.C. and *Moses Doctor* for the appellant.

Gérald Fauteux K.C. for the respondent.

The judgment follows:

THE COURT:—The appellant was convicted under subsection (a) of section 415 of the Criminal Code.

1933
 REINBLATT
 v.
 THE KING.
 The Court.

Upon appeal, the conviction was confirmed by the majority of the Court of King's Bench, but Mr. Justice Howard dissented. In the formal judgment of the Court, the dissent is merely referred to as follows:

This is the judgment of this Court, Mr. Justice Howard dissenting.

Under a recent amendment (sec. 14 of s. 28 of 21-22 Geo. V), the following subsection was added to section 1013 of the Criminal Code:

(6) Whenever an appeal under this section is dismissed by the Court of Appeal and any judge of such court expresses an opinion dissenting from the judgment of the court, the formal judgment of the court shall specify any ground or grounds in law on which such dissent is based either in whole or in part.

In this case, the formal judgment does not specify the grounds on which the dissent of Mr. Justice Howard is based, and the Attorney-General, invoking former judgments of this Court (*Davis v. The King* (1); *Gouin v. The King* (2), and *De Bortoli v. The King* (3)), contends that, owing to the failure so to specify the grounds of dissent, an appeal to the Supreme Court of Canada was not open to the appellant.

We are of opinion that such contention cannot be upheld. The only section of the Code dealing with the jurisdiction *de plano* of the Supreme Court of Canada is section 1023. It gives to

any person convicted of any indictable offence, whose conviction has been affirmed on an appeal taken under section 1013 (the right of appealing) against the affirmance of such conviction on any question of law on which there has been dissent in the Court of Appeal.

The fact that there has been dissent on a question of law is therefore the only requirement.

In the *Davis* case (1) and in the others referred to by the Crown, upon the state of the law as it then was, no dissenting judgment could be legally pronounced, unless the court of appeal directed to the contrary, and unless the direction was plainly "evidenced by the order of the Court" (*Gouin v. The King* (4)); and this Court held that dissenting opinions expressed contrary to the prohibition of the statute should be treated as non-existent—the consequence being that there was to be found, in the record, no dissent as a result of which the right of appeal could operate under section 1023 of the Code.

(1) [1924] S.C.R. 522.

(2) [1926] S.C.R. 539.

(3) [1927] S.C.R. 454.

(4) [1926] S.C.R. 439, at 540.