1923
*Jan. 15.

IN RE J. H. ROBERTS.

Jurisdiction—Habeas corpus—Applicant in custody under provincial Act "B.N.A. Act," [1867] s. 92 (14), s. 101—"Supreme Court Act," (D) 38 V., c. 11; R.S.C. 1906, c. 139, ss. 3, 35, 62—(Q) 13 Geo. V., c. 18.

The appellant in custody in the city of Quebec under the authority of a special Act of the legislature for an alleged offence against the privileges, honour and dignity of the provincial legislature of Quebec asked, pursuant to section 62 of the "Supreme Court Act," for the issue of a writ of *habeas corpus*.

Held that, owing to the absolute limitation imposed by the concluding words of section 62 "under any Act of the Parliament of Canada," the judge of the Supreme Court of Canada is without jurisdiction to grant the application.

MOTION by the applicant for the issue of a writ of habeas corpus.

The facts are fully stated in the judgment of Mr. Justice Anglin.

Armand Lavergne K.C. and *Lucien Gendron* (*Antoine Rivard* with them) for the applicant.

Chas. Lanctot K.C. and *Aimé Geoffrion K.C.* for the Attorney-General for Quebec.

ANGLIN J.—By s. 92 of the "B.N.A. Act" exclusive legislative jurisdiction is conferred upon the legislature of each province in relation to

(14) the administration of justice in the province, including the constitution, maintenance and organization of provincial courts both of civil and of criminal jurisdiction.

By s. 101 of the same Act it is enacted that

the Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance and organization of a general Court of Appeal for Canada and for the establishment of any additional courts for the better administration of the laws of Canada.

In 1875, under the power thus conferred upon it, the Dominion Parliament established the Supreme Court of Canada as a Court of Common Law and Equity and a court

*PRESENT:—Mr. Justice Anglin in Chambers.

of record, (38 V. c. 11). The Supreme Court continues to exist to-day as

> a general court of appeal for Canada and as an additional Court for the better administration of the laws of Canada

("Supreme Court Act," R.S.C. [1906] c. 139, s. 3). Both in its constitution and in its jurisdiction, the Supreme Court is a purely statutory court. It

> has, holds and exercises an appellate, civil and criminal jurisdiction throughout Canada

(s. 35), subject to certain qualifications and restrictions specified in other sections of the "Supreme Court Act." Notwithstanding the comma after the word "appellate" in s. 35 (not found in the original s. 15 of the statute of 1875, c. 11), that section relates only to the appellate jurisdiction of the court. An attempt to confer on it general, original, civil and criminal jurisdiction would hopelessly transcend the power given by s. 101 of the "B.N.A. Act," and would seriously impinge upon provincial legislative jurisdiction under s. 92 (14) of the "B.N.A. Act." From the appellate jurisdiction are specially excluded, *inter alia.*

> proceedings for or upon a writ of habeas corpus * * * arising out of a criminal charge.

As to the purview of the term "criminal charge," *vide Mitchell* v. *Tracey* (1); *Nat Bell Liquors* v. *The King* (2).

The original jurisdiction of the court, in order to keep within the limits prescribed by s. 101 of the "B.N.A. Act," is confined to "the better administration of the laws of Canada." Hence the restriction imposed by s. 62 of the "Supreme Court Act" which confers on

> every judge of the court, except in matters arising out of any claim for extradition under any treaty, 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 a criminal case under any Act of the Parliament of Canada.

The limitation imposed by the concluding words of this section is absolute. *Re Sproule* (3); *Ex parte MacDonald* (4); *Re Potvin* (5), and *Re Dean* (6). Except for the pur-

(1) [1919] 58 Can. S.C.R. 640.
(2) [1921] 62 Can. S.C.R. 118; [1922] 2 A.C. 128 at pp. 166-8.
(3) [1886] 12 Can. S.C.R. 140.
(4) [1896] 27 Can. S.C.R. 683, at p. 687.
(5) Cass. Dig. (2 ed.) 327.
(6) [1913] 48 Can. S.C.R. 235.

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pose of inquiry into commitments in criminal cases under an Act of the Parliament of Canada, a judge of this court possesses none of the original powers and is subject to none of the duties in regard to *habeas corpus* of the ordinary courts of common law, whether arising under the common law itself or conferred by Imperial or by provincial statutes. "For the better administration of the laws of Canada" such powers are not requisite. Not only have they not been conferred on this statutory court either explicitly or by necessary implication, as would be necessary, but the implication from the terms of s. 62 negativing their existence is irresistible. *Expressio unius est exclusio alterius.*

The applicant, Roberts, as appears by his petition, is held in custody at Quebec for an alleged offence against the privileges, honour and dignity of the provincial legislature of Quebec and under the authority of special legislation enacted by it. (13 Geo. V, c. 18). The cause of his commitment is that Act of the legislature. There is, in my opinion, no ground whatever for suggesting that it is in a criminal case under any Act of the Parliament of Canada.

On that simple ground I am satisfied that I am without jurisdiction to entertain the present application for the issue of a writ of *habeas corpus ad subjiciendum.* Entertaining this opinion without any doubt, I think I should not exercise the discretionary power of referring this application to the court. Rule 72; *In re Gray* (1).

If advised that I am mistaken the applicant is not without redress. Section 62 gives him a special right to appeal to the court from my refusal of the writ.

The application will be dismissed, but, as is customary [Cameron, S.C. Prac. (2 ed.) p. 300], without costs.

Motion dismissed without costs

(1) [1918] 57 Can. S.C.R. 150.