

It is respectfully submitted that the Court entirely misapprehended the point before it. The appeal was not an appeal from a conviction, but an appeal in a *certiorari* proceeding, from a decision of Mr. Justice Clute refusing to quash a conviction. The case of *Reg. v. Racine* was one where an appeal was sought to be taken from a conviction and was not a motion to quash by way of *certiorari*.

It is also submitted that the right to move to quash a conviction still exists, and that, under the rules above referred to, an appeal may be had, on leave, to the Court of Appeal.

The merits of *Sinclair's* case were, of course, not determined by the Court.

Could a conviction for theft, under the circumstances, be upheld? The \$5 received was evidently a bribe offered to Sinclair not to do his duty, which was, to collect \$8.25 cash fares from the three passengers. The property in the \$5 never was in the company; it was not received for them or on their behalf; in fact, the intention in paying it was, not that the company should receive it, but that the conductor, Sinclair, should retain it for his breach of duty.

The point came up squarely for decision in Alberta in the case of *Rex v. Thomson*, 21 Can. Cr. Cas. 80 (1911), and the decision was that the receipt and retention of the money did not constitute theft.

J. G. O'DONOGHUE.

TORONTO, Dec. 13, 1916.

[We shall refer to this at length in our next issue.—Ed. C.L.J.]