

*Rez v. Titchmarsh*, 24 Can. Cr. Cas. 38, 22 D.L.R. 272, 6 O.W.N. 317.

"The provision allowing an appeal is a matter of practice and procedure:

*Rez v. Thornton*, 26 Can. Cr. Cas. 120. The Alberta Rule is:—

"20. When the motion (*i.e.* for . . . certiorari) is made to a Judge, an appeal shall lie to the Appellate Division but subject to such right of appeal his decision shall be final.

Beck, J., there says (26 Can. Cr. Cas. at page 137):—

"To me the principle is clear. It is that a single Judge is the delegate, committee, representative or mouthpiece of the Court and that being so, his decision is always open to review and revision by the Court . . . The Rule in question is merely one of procedure to obtain such a review or revision. Such power is inherent in this Court as having all the jurisdiction of the former English Superior Courts of common law and equity."

The law is exhaustively reviewed by the whole Court, and the conclusion reached that the right of appeal is a matter of practice and not of substantive law, as it would be if an appeal were given to another Court altogether—say to the Supreme Court of Canada. Accordingly the Rule was upheld.

Ontario Rule 1287 is, therefore, sufficient authority for the appeal in the *Sinclair* case"

The judgment of the Court (Sir Wm. Meredith, C.J.O., McLaren, J.A., Magee, J.A., Hodgins, J.A., Riddet, J.) was delivered (41 O.W.N. 131) by the learned Chief Justice who said that: "The motion before Clute, J., and the appeal were misconceived as the summary convictions provisions of the Code do not apply to a prosecution under subsection 777 (5). It is only where the trial has taken place before two magistrates that an appeal lies in the same manner as from a summary conviction under Part XV. (s. 797). The only appeal which lies in a case such as this is that given by section 1013 of the Code, which provides that an appeal from the verdict or judgment of any Court or Judge having jurisdiction in criminal cases, or of a magistrate proceeding under section 777, on the trial of any person for an indictable offence, shall lie, upon the application of such person, if convicted, to the Court of Appeal, in the cases thereafter provided for, and in no others. The appeal must therefore be quashed.

The same conclusion was reached in *Reg. v. Racine*, 3 Can. Cr. Cas. 146 (1900) Que. R. 9 Q.B. 134"