

in which an appeal, giving adequate relief, lies against convictions and orders made under provincial enactments, as the conviction in question was: 2 Geo. V. ch. 17, sec. 19.

That such an appeal as the prisoner might have taken in this case would afford an adequate remedy, and, indeed, would be the only means by which complete justice could be done, under all possible circumstances, is obvious.

It is, however, contended that the writ of certiorari referred to in this legislation is not such a writ of certiorari as was issued in this matter, "in aid" of the writ of habeas corpus also issued in it; what the writ meant is that which was commonly employed in proceedings taken to quash convictions.

But that contention I cannot but consider fallacious. In the first place, proceedings to quash convictions are not now, nor were when the legislation in point was enacted, taken by way of a writ of certiorari, but must be taken by way of notice of motion: Con. Rule 1279, and the Rules made under the Criminal Code. So that, unless the words "by writ of certiorari," used in the legislation in point, cover such writs as that in question, what were they aimed at? The accompanying words "or otherwise" cover proceedings by way of notice of motion. And in this legislation it is not the quashing of convictions and orders, but is appeals from summary convictions and orders, that is generally being dealt with. . . .

This legislation does not nullify the earlier legislation expressly giving a writ of certiorari in aid of a writ of habeas corpus; it merely restricts it to cases in which such writs are needed. . . .

It was also urged that a conviction brought up as this conviction was could not be quashed; the purpose of the contention being to complete the argument that only writs issued with a view to quash the conviction or order are covered by the legislation; but here, too, the contention is fallacious, or at all events in the teeth of the decision in *Regina v. Whelan*, 45 U.C.R. 396.

This case, then, being one within the statute 2 Geo. V. ch. 17, sec. 19, the writs were issued improvidently, and should be quashed. An order will go accordingly. . . .