

Correspondence.

APPEALS IN CERTIORARI MATTERS.

To the Editor, CANADA LAW JOURNAL:

DEAR SIR:—Several points of interest to the profession arose in connection with the endeavour to quash a conviction in *Rex v. Sinclair*, 7 O.W.N. 131.

Sinclair was convicted before the Police Magistrate for Toronto of stealing \$5.00 from the Grand Trunk Railway Company, for whom he was working as a conductor. The evidence for the Crown showed that \$5.00 had been quietly "slipped" to Sinclair to induce him not to collect the regular fare for three persons, the fare being \$8.25. A motion to quash the conviction (made under Rule 1279) was refused by Mr. Justice Clute (33 O.L.R. 510). Leave to appeal to the Court of Appeal from Mr. Justice Clute's decision was given by Mr. Justice Kelly, under Rule 1287.

Upon the appeal coming on to be heard before the Court of Appeal, counsel for the accused was called upon to shew by what right an appeal could be taken to that Court from the decision of Mr. Justice Clute, the Court intimating its opinion that no such appeal lay. The following memorandum was thereupon submitted to the Court:

"Sec. 576 of the Criminal Code gives power to the Court to make rules

(3) For regulating in criminal matters the pleading, practice and procedure of the Court, including the subjects of . . . certiorari. . . ."

By virtue of such authority Rules 1279 to 1288 were passed on 27th March, 1908. (See *Holmsted*, p. 143.)

Rule 1279 provides "In all cases in which it is desired to move to quash a conviction . . . the proceeding shall be by notice of motion," etc.

Rule 1284 makes the motion returnable before a Judge in Chambers; and

Rule 1287 says: "An appeal shall lie from the order of the Judge to a Divisional Court" (now the Court of Appeal) "if leave be granted by a Judge of the High Court."

That leave was granted by Hon. Mr. Justice Kelly.

The above rules are still in force and applicable to criminal proceedings in the Supreme Court of Ontario as at present constituted: