

The appeal was heard by MEREDITH, C.J.C.P., MAGEE, J.A., CLUTE, RIDDELL, and ROSE, JJ.

J. B. Mackenzie, for the appellant.

J. R. Cartwright, K.C., for the Crown.

MEREDITH, C.J.C.P., read a judgment in which he expressed the view that the Chief Justice of the Exchequer had power to grant leave to appeal on the motion made to him for leave, and that, if the motion were renewed, he should grant such leave; but, if such leave were granted, and the whole case were before this Court, the appellant could not succeed, and therefore the appeal should be dismissed. To shew that the appeal could not succeed, the learned Chief Justice of the Common Pleas examined all the points raised by the appellant, remarking that they all struck at the jurisdiction of the police magistrate, and so might have been raised in habeas corpus proceedings without quashing the conviction. The Chief Justice was of opinion that the appeal should be dismissed.

RIDDELL, J., was of opinion, for reasons stated in writing, that the appellant was concluded by the order dismissing her motion to quash the conviction, there having been no appeal from that order—the doctrine of *res judicata* applied. The learned Judge was also of opinion that the views expressed by the Chief Justice of the King's Bench were right in all respects.

ROSE, J., was also of opinion, for reasons stated in writing, that the Court could not reconsider the matter decided by the Chief Justice of the King's Bench.

MAGEE, J.A., read a judgment in which he took the opposite view. He was of opinion that the conviction was unsupported by evidence; and, though the conviction was still unquashed, it was the only support for the warrant on which she was held; and, not being founded on evidence, both it and the warrant failed to furnish ground for holding the appellant, who was, therefore, entitled to her discharge.

CLUTE, J., was of opinion, for reasons stated in writing, that the order dismissing the motion to quash, standing as it did unappealed against, whether an appeal was permissible or not, was not an answer to the motion to discharge the prisoner upon habeas corpus. The offence charged did not fall within the class of offences in respect of which the conviction was made. The prisoner should be discharged.

*Appeal dismissed; MAGEE, J.A., and CLUTE, J., dissenting.*