

M. K. Cowan, K.C., and A. G. Ross, for the defendants.

W. E. Raney, K.C., for the complainants, objected that the defendants, having appealed from the conviction, could not be heard upon a motion to quash.

SUTHERLAND, J., in a written judgment, said that the defendants served a notice of appeal from the conviction to the proper Division Court; and on the 4th January, 1917, the Judge presiding in that Court quashed the appeal with costs, on the ground that it was "improperly launched," meaning thereby, as counsel agreed, that the defendants had failed to give the security which was necessary under the statute.

The learned Judge referred to secs. 2 and 4 of the Petty Trespass Act; sec. 10, sub-secs. 1 and 3, of the Ontario Summary Convictions Act, R.S.O. 1914 ch. 90; and sec. 1122 of the Criminal Code; and said that he felt obliged to give effect to the objection and dismiss the motion. If there had been a hearing before the Division Court, it would have been open to the applicants to have raised their several objections to the conviction before the Judge of that Court; and that was the forum contemplated and provided by the Act. It was their own fault that they did not, by perfecting their security, avail themselves of their right of appeal. If they had done so, it would have afforded an adequate remedy, or at all events it could not be said that it would not: *Rex v. Keenan* (1913), 28 O.L.R. 441.

Reference to *Ex p. Bradlaugh* (1878), 3 Q.B.D. 509; *Colonial Bank of Australasia v. Willan* (1874), L.R. 5 P.C. 417, 443; *Regina v. Washington* (1881), 46 U.C.R. 221; *Rex v. Cook* (1908), 18 O.L.R. 415; *Ex p. Cowan* (1904), 9 Can. Crim. Cas. 454; *Ex p. Roy* (1907), 12 Can. Crim. Cas. 533; *Rex v. Carter* (1916), 26 Can. Crim. Cas. 51.

*Motion dismissed without costs.*