

appeal to the Judicial Committee of the Privy Council, took out a summons for an order granting a stay of proceedings pending such appeal, and Morrison, J., to whom the application was made, granted the order. An appeal was taken from this order to the Court of Appeal on the ground, *inter alia*, that the judge had no jurisdiction to stay the execution of an order of the Court of Appeal.

*Held*, *LIVING*, J.A., dissenting, that a judge of the Supreme Court had no jurisdiction to order a stay of proceedings in the circumstances, and that the proper tribunal to apply to was the Court of Appeal.

*P. Higgins*, for appellant. *A. M. Whiteside*, for respondent.

Full Court.]

[Sept. 29.

REX v. DEAKIN.

*Criminal law—Affirmation—Conditions precedent to—Duty of judge—Discretion—New trial—Criminal Code, sec. 1018.*

At the trial the evidence on which the accused was convicted was given by a witness who was a Church of England minister, but not actively following his profession. On being offered the Bible to take the oath in the usual form, he said: "I affirm." No objection was made at the time, but on the cross-examination being reached, he was asked: "What is your object in making an affirmation, then, instead of taking an oath on the Bible?" He answered: "I believe it is optional with the court," and, "I consider that that is a private matter of my own discretion." To a statement that for private reasons he had retired from the diocese of British Columbia, he was asked: "Are those reasons that you do not believe in Christian doctrines?" He answered: "I appeal to the judge whether I have to reveal my private conscience to the gentleman." He was not asked whether he had conscientious scruples against the taking of an oath on the Scriptures. His appeal was sustained and the defence was not allowed to cross-examine witness on his religious belief. Two questions were reserved for the opinion of the Court of Appeal: (1) Could the judge consider the statements of this witness as evidence, inasmuch as he did not state that his objection to taking an oath was on grounds of conscientious scruples?

(2) Should the judge have allowed accused's counsel to cross-examine said witness on the question of his belief in Christian doctrines, and was the accused prejudiced in his defence by my refusal?