

IN APPEAL.

CANADA,
Province of Manitoba. }

COURT OF QUEEN'S BENCH.

THE QUEEN vs. RIEL.

Appeal from North-West Territories.—Presence of prisoner.—Production of papers.

PRESENT—WALLBRIDGE, C. J.; TAYLOR, KILLAM, JJ.

SUMMARY

The Court of Queen's Bench in Manitoba has no power to send a *habeas corpus* to the North-West Territories, and will hear an appeal in the absence of the prisoner.

Upon a criminal appeal from the North-West Territories, the original papers should be produced. If the prisoner cannot procure them, the Court will act on sworn or certified copies.

Winnipeg, 2nd September, 1885.

This was an appeal by a prisoner who had been convicted of treason before a stipendiary magistrate and a justice of the peace in the North West-Territories. By arrangement, counsel for the Crown and the prisoner appeared in court. The stipendiary magistrate had sent to the clerk of the court certain papers which he certified to be "a true record," with copies of the exhibits put in at the trial certified as true copies.

J. S. EWART, Q. C., and F. X. LEMIEUX and CHS. FITZPATRICK, of the Quebec bar, for the prisoner. The Statute 43 Vic. c. 25, s. 77, is as follows:—"A person convicted of any offence punishable by death, may appeal to the Court of Queen's Bench in Manitoba, which shall have jurisdiction to confirm the conviction, or to order a new trial; and the mode of such appeal, and all particulars relating thereto, shall be determined from time to time by ordinance of the Lieutenant Governor in Council."

No procedure has been provided, and there is therefore no means of procuring either the papers or the attendance of the prisoner, who is entitled to argue his case in person. In *Reg. v. Whalen*, 28 U. C. Q. B. 108, the Court of Error and Appeal refused to proceed with an appeal until the papers were properly brought before it.

C. ROBINSON, Q. C., and B. B. OSLER, Q. C., both of the Ontario bar, and J. A. M. AIKENS, Q. C., for the Crown. All the requisite papers are before the Court, and the prisoner's counsel must elect whether they will proceed or not. The Crown makes no objection to the regularity of the appeal.

WALLBRIDGE, C. J., delivered the judgment of the Court:—

The statute gives the prisoner the right to appeal, and is silent as to his presence or absence.

The North-West Territories are outside the limits of Manitoba.

This Court has no power to send a *habeas corpus* beyond its own limits, and the Statute has made no provision in this respect.

By the statute 43 Vic., c. 25, sec. 77, power is given to a person convicted, to appeal to the Court of Queen's Bench in Manitoba, which court shall have power to confirm the conviction, or to order a new trial. This extent of the power of this court, is wholly statutory. This statute, in effect, directs the prisoner to make this appeal, not merely by appearing by counsel, but by placing the court in such a position that the court can hear