

"Would not the same right apply to capital cases? What could be done in a capital case? Is there any distinction which can be drawn? If the prerogative of Her Majesty gives this individual the right of appeal, could any rules or regulations be imposed whereby the right of appeal could be governed, or could be restricted? So you would go through the whole catalogue of cases, and there is no doubt whatever that whenever punishment was likely to ensue, there would follow an appeal to Her Majesty in Council, and consequently, not only would the course of justice be maimed, but in very many instances it would be entirely prostrated.

"These are the reasons which operate upon our minds in rejecting this application—not at all forgetting that injustice may have been done in this individual case, and not at all forgetting that the power of the Crown may be invoked in another shape, and that that injustice may be remedied. Their Lordships are of opinion that they cannot, under the existing circumstances, advise Her Majesty to admit this right of appeal, but they doubt not that justice will be done, because they would suggest that an application should be made to the constituted authorities who have the power to afford a remedy, though in a different way.

"They doubt not that when it is represented to those authorities that this suggestion emanates from the Judicial Committee, they will not be loth to examine into the circumstances of the case, and to do that which justice may require."

The same judge said in the case of "*The Queen vs. Eduljee Byramjee*" (5 Moore's P. C. C. 290):—

"But if the Crown has really, by this charter, reserved to itself the right of granting an appeal in such cases, what are the inevitable consequences? To cause execution to be done would be in effect to prevent the right of granting an appeal vested in the Crown, and to take away from the prisoner convicted, the right of laying his case before his sovereign, and of obtaining a reconsideration of it.

"For it must be remembered, that if a reconsideration by way of appeal be reserved to the Crown, the right of applying for it must be reserved also. But if this were really the state of the law, we doubt whether any court, or any authority would think itself justified in ordering execution to be done till there had been an opportunity given to the prisoner of applying to the Crown for a reconsideration of the case according to the right reserved to the Crown and the prisoner. Many very evil consequences must follow necessarily in this state of things. A long period must elapse before an application to the Crown could be made, and its decision could be known, and eventually, where the leave to appeal was refused (and it must be presumed that this would generally be the case), execution would follow the sentence after so long an interval, that all benefit to be expected from a public example would be lost; and to this it may be added that in a great majority of cases the convicts themselves would be kept in a state of miserable suspense to suffer in the end the same ignominious death to which they were sentenced."

In a country like Canada comprising an area of three and a half million square miles, with seven Provinces, besides the great Territories, each possessing a fully organized judicial system, and with a Supreme Court of Appeal from all, the inconveniences and obstructions which have been so justly described in the foregoing citations may be felt in a greater degree than in a colony differently situated. Were it generally supposed that an appeal to Her Majesty in Council would lie in all criminal cases such appeals would be directed in capital cases merely for the sake of delay, after every other effort to obtain commutation or respite had been exhausted; and indeed this has actually been attempted in several instances.

The undersigned believes that no difficulty can arise on the question as to whether such a statute as the one under review is within the competence of the Parliament of Canada.

The British North America Act recites that "The union of the Provinces into one Dominion under the Crown with a constitution similar in principle to that of the United Kingdom, would conduce to the welfare of the Provinces and promote the interests of the Empire." It enacts that (sec. 9) "The executive government and authority of and over Canada is vested in the Queen." That (sec. 17) "There shall