

FIRST DIVISIONAL COURT.

NOVEMBER 8TH, 1916.

*REX v. SINCLAIR.

Criminal Law—Theft—Summary Trial by Police Magistrate under sec. 777 (5) of Criminal Code—Motion to Quash Conviction—Dismissal of—Appeal to Divisional Court—Jurisdiction—Secs. 797 and 1013 of Code.

Appeal by the defendant from the order of CLUTE, J., 36 O.L.R. 510, dismissing the defendant's motion to quash his conviction by the Police Magistrate for the City of Toronto on the 17th March, 1916. The defendant was charged before the magistrate with the theft of \$5, was tried summarily under sec. 777 (5) of the Criminal Code, and convicted.

The appeal came on for hearing before MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A., and RIDDELL, J., when objection was taken by the Court as to jurisdiction to hear the appeal.

J. G. O'Donoghue, for the appellant.

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

MEREDITH, C.J.O., read the judgment of the Court. He said that the motion before Clute, J., and the appeal were misconceived, as the summary convictions provisions of the Criminal Code were not applicable to a prosecution under sec. 777 (5). See 8 & 9 Edw. VII. ch. 9. It is only where the trial has taken place before two magistrates that an appeal lies in the same manner as from a summary conviction under Part XV. (sec. 797). The only appeal which lies in a case such as this is that given by sec. 1013 of the Code, which provides that an appeal from the verdict or judgment of any Court or Judge having jurisdiction in criminal cases, or of a magistrate proceeding under sec. 777, on the trial of any person for an indictable offence, shall lie, upon the application of such person if convicted, to the Court of Appeal, in the cases thereinafter provided for, and in no others.

The appeal must therefore be quashed.

The same conclusion was reached in *Regina v. Racine* (1900), Q.R. 9 Q.B. 134, 3 Can. Crim. Cas. 446.