

IN RE FRED BROWN

1946
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Bail—Jurisdiction—Petition for writ of habeas corpus.—Dismissal by a judge of this Court.—Application for bail before same judge, pending appeal to Full Court.—Whether judge has power to grant it or is functus officio—Section 58 Supreme Court Act.

A judge of the Supreme Court of Canada, who has rendered judgment refusing a petition for the issue of a writ of *habeas corpus*, ceases to have any jurisdiction to grant an application for bail by the petitioner, pending disposition of an appeal to the Court itself from the judgment in question. The judge, from the date of his judgment, is *functus officio* and the Court alone has jurisdiction to grant bail, provided the application for *habeas corpus* is brought before it by way of appeal.

APPLICATION made before The Chief Justice of Canada in Chambers, for bail pending disposition of an appeal to the Full Court from the judgment of The Chief Justice dismissing a petition for the issue of a writ of *habeas corpus* (1).

J. C. Osborne for motion.

John J. Robinette K.C. contra.

THE CHIEF JUSTICE:—My view is that I have no jurisdiction to grant the application for bail pending disposition of the appeal to the Supreme Court of Canada from my judgment dated the 29th day of June, 1946, whereby the petition for the issue of a writ of *habeas corpus* and the discharge from custody in the Kingston penitentiary of Fred Brown, alias Fred Bronstein, was refused.

The judgment was delivered by me, as stated, on the 29th of June, and since that date I consider that I am *functus officio*.

I construe section 58 of the *Supreme Court Act* to mean that while the *habeas corpus* matter is before a judge of the Supreme Court of Canada, that judge has the same power to bail, discharge or commit the prisoner or person, or to direct him to be detained in custody or otherwise to deal with him as any court, judge or justice of the peace having jurisdiction in any such matters in any province of Canada.

(1) See *ante* p. 532.

*PRESENT:—The Chief Justice in Chambers.