ROBERT JOHN CORCORAN .....APPELLANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

1968

*May 21
June 24

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Criminal law—Information—Charge of making false statement in connection with application for admission to Canada—Information not stating what was the false statement—Oral particulars of offence given by Crown counsel before trial proceeded with—Whether information fatally defective—Criminal Code, 1953-54 (Can.), c. 51, s. 492(3)—Immigration Act, R.S.C. 1952, c. 325, s. 50(f).

The appellant was convicted by a magistrate of having made a false statement in connection with his application for admission to Canada. A motion to quash the information on the ground that it was defective was refused, but, before the start of the trial, Crown counsel told the defence what question was alleged to have been answered falsely. On appeal to a district judge, the information was again attacked and the conviction was quashed. A further appeal to the Appellate Division of the Supreme Court by the Crown was allowed and the judgment of the magistrate was reinstated. An application for leave to appeal to this Court was granted on the questions of law as to (1) whether the information was fatally defective and (2) whether the judgment of the magistrate should have been reinstated on the assumption that the information was not fatally defective.

Held: The appeal should be allowed and the case remitted to the district judge for a hearing on the merits by way of trial *de novo*.

The information was not fatally defective. The appellant knew that he was charged with making a false statement in his application. The charge as framed was not so lacking in detail of the circumstances that it did not identify the transaction. There was a right to demand particulars and, in fact, oral particulars were given. Defence counsel appeared to have been content to proceed with these oral particulars.

As conceded by the Crown, the Court of Appeal erred in reinstating the judgment of the magistrate. The proper order was to remit the case to the district judge for a hearing on the merits by way of trial *de novo*.

Droit criminel—Dénonciation—Accusation d'avoir fait une déclaration fausse à l'égard d'une demande d'admission au Canada—La dénonciation ne spécifiant pas la fausse déclaration—Détails fournis oralement par l'avocat de la Couronne avant que le procès suive son cours—La dénonciation était-elle fatalement viciée—Code criminel, 1953-54 (Can.), c. 51, art. 492(3)—Loi sur l'immigration, S.R.C. 1952, c. 325, art. 50(f).

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*PRESENT: Cartwright C.J. and Fauteux, Judson, Hall and Pigeon JJ.

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L'appelant a été déclaré coupable par un magistrat d'avoir fait une déclaration fausse à l'égard de sa demande d'admission au Canada. Une requête pour faire rejeter la dénonciation pour le motif qu'elle était viciée a été refusée, mais, avant que le procès ne débute, le procureur de la Couronne a révélé oralement à la défense la question à laquelle on prétendait qu'une fausse réponse avait été donnée. Sur appel à un juge de district, la dénonciation a encore été attaquée et la déclaration de culpabilité a été annulée. Un appel subséquent de la Couronne à la Cour d'appel a été accueilli et le jugement du magistrat a été rétabli. L'appelant a obtenu la permission d'appeler à cette Cour sur les questions de droit suivantes: (1) la dénonciation était-elle fatalement viciée et (2) le jugement du magistrat aurait-il dû être rétabli, prenant pour acquis que la dénonciation n'était pas fatalement viciée.

Arrêt: L'appel doit être accueilli et le dossier renvoyé au juge de district pour une audition du litige par voie de procès *de novo.*

La dénonciation n'était pas fatalement viciée. L'appelant savait qu'il était accusé d'avoir fait une déclaration fausse dans sa demande. L'acte d'accusation, tel que rédigé, ne manquait pas à ce point de détails sur les circonstances, qu'il n'identifiait pas l'affaire. L'accusé avait le droit de demander des détails et, en fait, des détails ont été fournis oralement. Il semble que le procureur de la défense était satisfait de procéder avec les détails qu'on lui avait fournis oralement.

Tel qu'admis par la Couronne, la Cour d'appel a fait erreur en rétablissant le jugement du magistrat. L'ordonnance appropriée aurait été de renvoyer le dossier au juge de district pour une audition du litige par voie de procès *de novo.*

APPEL d'un jugement de la Cour d'appel de l'Alberta accueillant un appel de la Couronne et rétablissant la déclaration de culpabilité imposée par le magistrat. Appel accueilli et dossier renvoyé au juge de district.

APPEAL from a judgment of the Appellate Division of the Supreme Court of Alberta allowing an appeal by the Crown and restoring the conviction imposed by the magistrate. Appeal allowed and case remitted to district judge.

Brian A. Crane, for the appellant.

John A. Scollin and *C. D. MacKinnon,* for the respondent.

The judgment of the Court was delivered by

JUDSON J.:—The appellant, Robert John Corcoran, was charged by information dated August 10, 1966, that

on or about the 11th day of February, A.D. 1966 at the City of Calgary, in the Province of Alberta, Robert John Corcoran, Advertising agent, of

205 Wolf Street, Townsite of Banff, Province of Alberta, did knowingly and unlawfully make a false statement in connection with the application for admission of himself to Canada, the said offence being contrary to Subsection (*f*) of Section 50 of the *Immigration Act,* Revised Statutes of Canada 1952, being Chapter 325 as amended.

The magistrate convicted the appellant.

At the beginning of this trial, counsel for the appellant moved to quash on the ground that the information was defective. The magistrate refused to grant this application and proceeded to hear the evidence, but before the magistrate went on with the trial, counsel for the Crown told counsel for the appellant which question and answer alleged to be false in the appellant's application for permanent admission to Canada was in issue in the case. In other words, he gave him oral particulars.

On appeal to a District Judge, the appellant's counsel again moved against the information. It is apparent from the record of the proceedings before the judge that it was made clear to him, as it had been to the magistrate, what question was involved in this information. No evidence was taken before the judge and after argument, he granted the application and quashed the conviction.

The Appellate Division of the Supreme Court of Alberta allowed the Crown's appeal and ordered that the judgment of the District Judge be set aside and that the judgment of the magistrate be reinstated.

Leave to appeal was granted by this Court on the following questions of law:

(1) Whether the information is fatally defective.

(2) Whether on the view that the information is not fatally defective the Court of Appeal erred in reinstating the judgment of His Honour Magistrate Stillwell rather than remitting the case to the Appeal Court having jurisdiction under Section 719 to hear a trial de novo under Part XXIV of the *Criminal Code.*

The question in the application for admission to Canada which gives rise to the difficulty in this case is the following:

13. Have you or has any member of your family suffered from mental illness, tuberculosis, or been convicted of a criminal offence, refused admission or deported from Canada? (If "yes" to any of these, give details) Answer—No.

The Crown's allegation was that the applicant had been convicted of a criminal offence in the United States which

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he failed to disclose. This was the oral information given by counsel for the Crown to the accused before the trial began both before the magistrate and at the trial *de novo* before the District Judge.

Section 50(*f*) of the *Immigration Act*, R.S.C. 1952, c. 325, under which the accused was charged, reads as follows:

> 50. Every person who
>
> (*f*) knowingly makes any false or misleading statement at an examination or inquiry under this Act or in connection with the admission of any person to Canada or the application for admission by any person
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> is guilty of an offence . . . .

My opinion is that this information was not fatally defective. It charges an offence punishable upon summary conviction. Section 701(1) dealing with summary convictions makes applicable ss. 492 and 493 of the *Criminal Code*. Section 492, subs. (3), provides:

> (3) A count shall contain sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to, but otherwise the absence or insufficiency of details does not vitiate the count.

The accused here knew that he was charged with making a false or misleading statement in his application for admission to Canada. I do not think that the charge as framed is so lacking in detail of the circumstances that it does not identify the transaction. There would have been no difficulty in stating in the information that what was held against the accused was that he falsely stated that he had not been convicted of a criminal offence. Failure to do this was not a fatal defect in the information.

The accused had a right to demand particulars and, in fact, oral particulars were given to him and, as the record of what happened before the magistrate indicates, whatever merits counsel for the accused may have attributed to his motion to quash, he appears to have been content to proceed with the trial with these oral particulars. The appeal cannot succeed on this ground.

However, and as conceded by the respondent, there was error in the order of the Court of Appeal in reinstating the judgment of the magistrate. I would allow the appeal,

remit the case to the District Judge for a hearing on the merits, by way of a trial *de novo*, on the information as amended by the oral particulars given before the magistrate.

Appeal allowed.

Solicitors for the appellant: Gowling, MacTavish, Osborne & Henderson, Ottawa.

Solicitor for the respondent: D. S. Maxwell, Ottawa.