

1968
*May 28
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RICHARD AUBREY COLLINGE.....APPELLANT;

AND

BARBARA GEERESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

*Criminal law—Trial by magistrate under Part XVI of the Criminal Code—
Whether accused entitled to have or to examine transcript of evidence
—Criminal Code, 1953-54 (Can.), c. 51, ss. 453, 454, 471, 555.*

The appellant was tried by a magistrate, under Part XVI of the *Criminal Code*, and was convicted of fraud and false pretences. In order to determine whether an appeal was advisable, he requested the respondent, the court reporter, to make a transcript of the Court proceedings available to him without charge and, in the alternative, that he be permitted to inspect the transcript of the proceedings. His request having been refused, he applied to the Court for a writ of mandamus. The judge refused the application and his decision was affirmed by the Court of Appeal. The accused appealed to this Court.

Held: The appeal should be dismissed.

APPEAL from a judgment of the Court of Appeal for British Columbia¹, affirming the dismissal of an application for a writ of mandamus. Appeal dismissed.

B. A. Crane, for the appellant.
W. G. Burke-Robertson, Q.C., for the respondent.

At the conclusion of the argument of counsel for the appellant, the following judgment was delivered:

THE CHIEF JUSTICE (orally for the Court):—Mr. Burke-Robertson, we do not find it necessary to call upon you.
We are all of opinion that when s. 471 of the *Criminal Code* directs that the evidence of witnesses for the prosecutor and the accused shall be taken in accordance with the provisions of Part XV relating to preliminary inquiries it refers to and incorporates, *mutatis mutandis*, s. 453(1) (a) and (b) and none of the other subsections of that section.

In view of this conclusion none of the other questions which were argued before us require decision.

The appeal is dismissed. There will be no order as to costs.

*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Hall JJ.
¹ (1968), 64 W.W.R. 321.

Droit criminel—Procès par un magistrat sous la Partie XVI du Code criminel—L'accusé a-t-il droit d'avoir ou d'examiner la transcription des témoignages—Code criminel, 1953-54 (Can.), c. 51, art. 453, 454, 471, 555.

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L'appelant a été jugé par un magistrat, sous la Partie XVI du *Code criminel*, et a été déclaré coupable de fraude et de faux semblants. Pour lui permettre de décider s'il devait en appeler, l'appelant a demandé à l'intimée, la sténographe de la Cour, de lui procurer gratuitement une transcription des procédures et, alternativement, qu'il lui soit permis de l'examiner. Sa demande ayant été refusée, il a présenté une requête pour obtenir un bref de mandamus. Le juge a refusé cette requête et sa décision a été confirmée par la Cour d'appel. L'accusé en a appelé à cette Cour.

Cartwright
C.J.

Arrêt: L'appel doit être repeté.

APPEL d'un jugement de la Cour d'appel de la Colombie-Britannique¹, confirmant le refus d'une requête pour obtenir un bref de mandamus. Appel rejeté.

B. A. Crane, pour l'appelant.

W. G. Burke-Robertson, Q.C., pour l'intimée.

Lorsque le procureur de l'appelant eut terminé sa plaidoirie, la Cour a rendu le jugement suivant:

THE CHIEF JUSTICE (orally for the Court):—Mr. Burke-Robertson, we do not find it necessary to call upon you.

We are all of opinion that when s. 471 of the *Criminal Code* directs that the evidence of witnesses for the prosecutor and the accused shall be taken in accordance with the provisions of Part XV relating to preliminary inquiries it refers to and incorporates, *mutatis mutandis*, s. 453(1)(a) and (b) and none of the other subsections of that section.

In view of this conclusion none of the other questions which were argued before us require decision.

The appeal is dismissed. There will be no order as to costs.

Appeal dismissed; no order as to costs.

Solicitor for the appellant: F. U. Collier, Vancouver.

Solicitor for the respondent: S. M. Toy, Vancouver.

¹ (1968), 64 W.W.R. 321.