

1951

*Oct. 23

WILFRED WATTERWORTHAPPELLANT;

AND

HIS MAJESTY THE KINGRESPONDENT.

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL OF
PRINCE EDWARD ISLAND.

Criminal Code—s. 286—Theft—Grand Juries—Sufficient Evidence for true bill.

APPEAL from the judgment of the Court of Criminal Appeal of Prince Edward Island (1), Campbell C.J. and Tweedy and McGuigan JJ., dismissing the accused's appeal from his conviction and sentence following his trial before McGuigan J. and a jury on a charge of theft under s. 386 of the *Criminal Code*. Following a preliminary inquiry a grand jury returned a true bill on the indictment. Prior to the swearing of the petit jury appellant's counsel moved to quash on the grounds that the grand jury had examined only one witness and that from the evidence given by him at the preliminary hearing the Crown had failed to establish the identity, ownership or unlawful conversion of the goods, essential elements of the offence charged. In support of the motion *Rex v. Court* (2) was cited and the judgment of Campbell C.J. therein that an indictment found by a grand jury on inadmissible or inadequate material must be quashed. The motion was refused and the trial proceeded with. On the appeal to the Court of Criminal Appeal and before this Court the same ground was pressed, as well as misdirection and non-direction by the trial judge.

D. L. Mathieson K.C. for the appellant.

J. O. C. Campbell K.C. for the respondent.

At the close of the appellant's argument the Court retired. On its return to the bench, Kerwin J. speaking for the Court stated: It will not be necessary to call on you, Mr. Campbell. On the first point we express no opinion on the

(1) (1951) 26 M.P.R. 159;
100 C.C.C. 64.

(2) (1947) 19 M.P.R. 436;
3 D.L.R. 223;
88 Can. C.C. 27.

*PRESENT: Kerwin, Rand, Kellock, Estey, Locke, Cartwright and Fauteux JJ.

correctness of the decision in *Rex v. Court*. It is sufficient to say there is nothing in this case to show that the grand jury did not have before it sufficient evidence to justify it bringing in a true bill. On the other points we are all of opinion that while there were errors in the trial judge's charge to the jury, those errors were immediately corrected upon them being called to the judge's attention by Counsel for the appellant. In the circumstances, it cannot be said that the trial judge did not put before the jury the defence raised on behalf of the appellant.

The appeal is, therefore, dismissed.

Appeal dismissed.

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WORTH
v.
THE KING