

1923

*Oct. 10.

*Oct. 22.

ARMAND BOISSEAU APPELLANT;

AND

HIS MAJESTY THE KING RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC*Criminal law—Reserved case—Insufficiency of the stated case—Authority to order copy of evidence—Arts. 1017, 1024 Cr.C.*

By virtue of the combined effect of sections 1017 and 1024 of the Criminal Code, the Supreme Court of Canada, when it deems it necessary, may require the trial judge to supplement the material submitted by him as a reserved case stated pursuant to an order of the court of appeal, by furnishing a copy of such parts of the evidence at the trial as are material to the disposition of the questions directed to be submitted.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, upholding the conviction of the appellant and dismissing the application made by him for a new trial on a stated case.

Laflamme K.C. and *Bazin K.C.* for the appellant.

Bertrand and *Fontaine* for the respondent.

THE CHIEF JUSTICE (for the court).—The accused was convicted on the 2nd December, 1922, of an offence under s. 477 of the Criminal Code by the Court of the Sessions of the Peace of the District of St. Hyacinthe; and the judge of that court having dismissed the application of the accused to have questions of law reserved for the consideration of the Court of King's Bench, an order was made by that court giving leave to appeal and directing the judge to state a case for the consideration of this court; and to reserve for the decisions of this court the following questions of law:

1. Did the indictment upon which the accused was arraigned, tried and convicted in this case disclose the commission of a criminal offence?

2. Was the said promissory note a false document as described by the code, article 335?

3. Was the said promissory note a forged document, as required by article 466 of the code?

4. Was the said promissory note a document such as described by article 477 of the Criminal Code?

5. Is there entire absence of proof of any intention to defraud on the part of the accused when signing and uttering the said document?

6. Was the evidence made by the Crown relating to the said note of \$3,500 dated 2nd June, 1921, payable to Dame Euphémie Gauthier Reeves, to the promissory note of \$1,500 dated 2nd November, 1921, pay-

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Mignault JJ.

able to H. Ernest Benoit, to the promissory note of \$4,000 dated 12th November, 1921, payable to Alexander Choinière and to the note of \$2,500 payable to one Pothier admissible in evidence? and that the said stated case be in due course transmitted to the clerk of the court with the record.

1923
BOISSEAU
v.
THE KING.
The Chief
Justice

A document was accordingly forwarded by the judge of the Court of the Sessions of the Peace to the Court of King's Bench, which was treated by the latter court as being a stated case within the meaning of this order. Apparently the notes taken by the judge at the trial, if any, were not sent to the Court of King's Bench, nor was that court furnished with a shorthand note of the evidence.

In the opinion of the majority of the court the facts stated in the case as framed by the learned trial judge are not of such a character as to make it possible to answer question 5 in the negative, and in the absence of a complete statement of the material evidence it is obviously impossible to answer it in the affirmative. In respect of this question there was a dissenting judgment in the Court of King's Bench.

The order of the Court of King's Bench seems to have contemplated a stated case which should in itself contain a full account of the evidence given material to that question or that the Court of King's Bench should be put in possession of a note of the evidence taken at the trial. In these circumstances, in order that this court may be in possession of the information necessary to enable it to give an affirmative or a negative answer to the question, the proper course seems to be to direct that the judge of the Court of the Sessions of the Peace furnish to this court a copy of such parts of the evidence given at the trial as may be material.

By the combined effect of subsections 1017 and 1024 of the Criminal Code this court seems to have authority to make such an order.
