ADRIEN THIBODEAU .....APPELLANT;

1955

*Jun. 6
*Jun. 28

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Criminal law—Testimony of accomplice—Whether corroborated—Whether admission made by accused was corroboration—Whether fact that accused has previously changed his plea from guilty to not guilty could be taken as corroboration.

The appellant was convicted of having broken and entered a shop with intent to commit a theft. The Crown's case was supported by the testimony of a person whom the trial judge regarded as an accomplice but whose evidence he found was corroborated by (1) an admission made by the appellant and received in evidence by the trial judge, and (2) by the fact that the appellant had previously entered a plea of guilty, which had been withdrawn by leave of the Court. The conviction was affirmed by the Court of Appeal and leave to appeal to this Court was granted on the question as to whether there had been error in the acceptance of these two items as legal corroboration.

Held: The appeal should be allowed and the conviction quashed.

Per Kerwin C.J., Cartwright and Abbott JJ.: At any time before sentence the Court has power to permit a plea of guilty to be withdrawn, and that decision rests in the discretion of the judge and will not be

*PRESENT: Kerwin C.J. and Taschereau, Cartwright, Fauteux and Abbott JJ.

(1) [1924] S.C.R. 466 at 468.

lightly interfered with if exercised judicially. The original plea should then be treated, for all purposes, as if it had never been made. Consequently, the evidence that an accused had previously pleaded guilty to the charge but had been allowed to withdraw such plea, is legally inadmissible.

There was also error in admitting in evidence the statement made by the accused, as it cannot be safely affirmed that the trial judge would have decided to admit it if he had not been influenced, as appears clearly in his judgment, by the evidence of the plea of guilty.

On the properly admitted evidence in the record it would have been unreasonable to convict the appellant.

Per Taschereau and Fauteux JJ.: The decision to allow the withdrawal of a plea of guilty rests with the discretion of the judge, and if that discretion is exercised judicially the Appeal Courts will not interfere unless there exists serious reasons. Like considerations should guide the trial judge in deciding whether a withdrawn plea of guilty should be used in evidence to implicate the accused. In the case at bar there was nothing to suggest that this should have been permitted.

In these circumstances, it was illegal to use this withdrawn plea of guilty in the consideration of the question of the admissibility of the confession. Furthermore, that statement was exculpatory, and if the trial judge had the right to disbelieve all or part of it, he had no right to supply to it, as he did, what was not in it.

The remaining evidence in the record would not reasonably justify a verdict of guilty.

APPEAL from the judgment of the Court of Queen's Bench, appeal side, province of Quebec, affirming the conviction of the appellant on a charge laid under s. 461 of the *Criminal Code*.

A. Villeneuve for the appellant.

R. Dugré, Q.C. for the respondent.

The judgment of the Chief Justice, Cartwright and Abbott JJ. was delivered by:—

CARTWRIGHT J.:—This is an appeal from a judgment of the Court of Queen's Bench for the Province of Quebec (Appeal Side) pronounced on November 22, 1954, affirming, without written reasons, the judgment of Judge Delaney a Judge of the Sessions of the Peace delivered on March 29, 1954, whereby the appellant was convicted of having, during the night of October 16-17, 1952, broken and entered a shop with intent to commit the theft of a safe, contrary to s. 461 of the *Criminal Code,* and was sentenced to two years imprisonment.

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On December 22, 1954, my brother Abbott granted leave to appeal upon the following question of law:—

> Did the trial judge err (without first giving his opinion on the conflicting evidence) in accepting as legal corroboration of an alleged accomplice (*a*) an alleged confession made by the accused and accepted on voir dire and (*b*) a previous plea of guilty, subsequently changed to not guilty, by the accused?

The theory of the Crown was that the offence charged in the indictment had been committed by four persons, namely, Dufour, Aubin, the appellant's brother Jean Paul Thibodeau, and the appellant; that the appellant had driven the other three in his automobile to the shop for the purpose of committing the offence; that Aubin had broken a window to effect the entry; that Aubin, Dufour and Jean Paul Thibodeau had entered the shop and put the safe out through the window; that the appellant had placed his car close to this window so that the others could put the safe in the car; that after the safe had been removed from the building, but before it had been placed in the car, the owner of the shop, who had been warned by an alarm connected from the shop to his house, approached the scene with a flash-light and the four persons mentioned above drove away in the car leaving the safe on the ground. The owner did not recognize any of the culprits nor did he get the licence number of the car.

The appellant was arrested in June 1953. He was indicted and tried separately. At the trial evidence was given by the four persons named above. The evidence of Dufour supported the theory of the Crown as outlined above. At the time of giving his evidence Dufour had already been convicted and sentenced for the same offence as that with which the appellant was charged. There were discrepancies between the evidence Dufour gave at the trial and that which he had given at a previous hearing. There was evidence, which he denied, that he had a grudge against the appellant and had threatened to get even with him. Aubin admitted his own participation in the offence but stated that the appellant had had nothing to do with it. Both Jean Paul Thibodeau and the appellant denied having been present at the time of the crime or having had anything to do with it.

It is obvious that if the appellant took part in the commission of the offence charged Dufour was an accomplice. The learned trial judge so regarded him but was of opinion that there were two items of evidence corroborating his story. These were (i) a statement in writing said to have been made by the appellant to a police officer, and (ii) the fact that the appellant when first arraigned on the charge before Judge Boisvert had pleaded guilty. It will be convenient to deal first with the second of these items.

The only indication in the record that the appellant had at any time entered a plea of guilty is contained in the appellant's cross-examination on the voir dire held for the purpose of determining whether or not the written statement alleged to have been made to the police officer should be admitted in evidence. I propose, however, to deal with the matter on the assumption, made by the learned trial judge in his reasons for judgment, that evidence had been tendered and received proving the fact of the appellant having pleaded guilty. The appellant was arrested on June 16, 1953. On the following day he was arraigned before Judge Boisvert and pleaded guilty. On this occasion the appellant was not represented by counsel. This plea having been entered the learned Judge adjourned the matter to June 23, 1953, for sentence. On this last mentioned date, before sentence was passed, counsel for the appellant asked permission to withdraw the plea of guilty and to enter a plea of not guilty. Permission to do this was granted by Judge Boisvert and a plea of not guilty was entered.

On February 1, 1954, the case came before Judge Delaney. The only plea in the record was one of not guilty. The charge was read to the appellant and he again pleaded not guilty. The case was adjourned and finally came on for trial before Judge Delaney on March 22, 1954. What then occurred is set out as follows in the Proces-Verbal:—

22 mars 1954

De consentement des parties, la preuve offerte dans la cause portant le numéro 12939, la Reine vs Jean-Paul Thibodeau est versée dans la présente cause pour servir à toutes fins que de droit, même le témoignage de Adrien Thibodeau, lui-même, mais pour servir en défense, plus ce qui suit:—

PREUVE SUR VOIR-DIRE:

Philippe Laroche, 49 ans, sergent-détective, Québec, Que.

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DEFENSE SUR VOIR-DIRE:

Adrien Thibodeau, 29 ans, bûcheron, St-Martin, Que.

Me Henri Lizotte argumente sur le voir-dire.

Me Roland Dugré argumente sur le voir-dire.

La Cour permet la production de la confession. (Voir jugement écrit au dossier).

FIN DU VOIR-DIRE

Philippe Laroche, 49 ans, sergent-détective, Québec, Que., lequel produit P-1 (confession).

Jean-Paul Thibodeau, 22 ans, bûcheron, Coaticook, Que.

Me Henri Lizotte, adresse le Tribunal.

Me Roland Dugré, adresse le Tribunal.

Cause prise en délibéré pour jugement le 29 mars 1954.

29 mars 1954

L'accusé est trouvé coupable et condamné à deux (2) ans de pénitencier. (Voir jugement écrit au dossier). Mandat d'emprisonnement émis.

The record in case 12939 consisted of the evidence, called by the Crown, of Bourque the owner of the store broken into, his daughter Lidia Bourque, Dufour, Aubin, Laroche a police officer, and Poulin from whom the appellant had purchased his automobile, and the evidence, called by the defence, of the appellant Adrien Thibodeau, and of two ladies who gave evidence in support of an alibi for both Jean-Paul Thibodeau and the appellant. The record included the deposition of Dufour at the preliminary inquiry. Nowhere in this record was there any mention of the appellant having at one time pleaded guilty.

Immediately following the filing of this record, Laroche and the appellant were examined and cross-examined on the voir dire for the purpose of determining whether the statement, dated June 16, 1953, later filed as Exhibit P-1, should be admitted in evidence. This statement was written out, in the form of question and answer, by the police officer and consisted of two separate sheets, the second of which only was signed by the appellant. The police officer stated that he did not give the statement to the appellant to read but that he had read it to him before he signed it. The appellant's evidence was that he had made a statement in answer to questions put to him by the police officer but that it was substantially different from the statement produced. The statement which the appellant said he had made to the officer would not have afforded any corroboration of Dufour's evidence but the statement produced by

the officer was capable of being regarded as corroboration as it contained an admission by the appellant that he had been present at the scene and time of the crime.

The cross-examination of the appellant on the voir dire concluded as follows:—

Q. Vous avez comparu devant de Juge Boisvert?
R. Oui.
Q. Vous avez plaidé coupable?
R. Oui.
Q. Ca c'était le dix-sept (17) de juin; votre sentence a été ajournée au vingt-trois (23) de juin?
R. Oui.
Q. Là, vous avez pris un avocat?
R. Oui.
Q. Vous avez obtenu la permission de changer votre plaidoyer de culpabilité?
R. Oui.
Q. C'est le lendemain que vous êtes venu ici devant le Juge Boisvert?
R. Oui.
Q. Vous avez plaidé coupable quand ils vous ont lu l'accusation?
R. Monsieur Laroche est venu me chercher pour m'amener devant le Juge. Il m'a dit: "écoute là, fais un homme de toi, tiens-toi droit et quand le Juge va te demander coupable ou non coupable, tu diras coupable"
Q. Vous dites que c'est lui qui vous a dit de dire ça?
R. Oui monsier je le jure. Je connaissais rien là-dedans, j'avais jamais été arrêté à nulle part, je connaissais rien là-dedans.

PAR LA COUR:

Q. Vous pensiez que coupable et non coupable c'était pareil, c'était la même chose pour vous?
R. Oui. Je connaissais pas ça.
Q. Vous pensiez que c'était la même chose; coupable ou non coupable c'était la même chose pour vous?
R. Je pensais que c'était la même chose. Je lui ai dit: si je dis coupable, ils peuvent-y me garder? Il dit: non, ils te garderont pas, c'est pas toi qui es là-dedans, c'est Dufour et Aubin et ton frére, c'est pas toi certain, t'as pas besoin d'avoir peur'; c'est là que j'ai dit coupable, c'est pour ça que j'ai dit coupable.
Q. Le vingt-trois (23), une semaine après, vous êtes revenu devant le même Juge avec un avocat, l'avocat Nadeau?
R. Oui.
Q. Là, vous avez obtenu la permission de changer votre plaidoyer?
R. Oui.
Q. Vous avez eu une enquête préliminaire?
R. Oui.

Laroche, although present, was not re-called and the appellant's evidence as to why he pleaded guilty is uncontradicted.

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Following this the learned trial judge gave judgment on the voir dire holding that the statement was made freely and voluntarily and should be received in evidence. In his reasons he said in part:—

> L'accusé nous dit ensuite qu'il a comparu devant un Juge, qu'il a plaidé coupable, qu'il ne savait pas ce que ça voulait dire, un homme de vingt-et-un ans, il ne voyait pas de différence entre un plaidoyer de culpabilité et un plaidoyer de non culpabilité. Il ne me semble pas que je serais justifiable, par ces simples constations, d'admettre le témoignage de l'accusé pour jeter un doute sur l'officier de police . . .

At the conclusion of the trial the learned judge reserved his judgment until March 29, 1954. On that date he convicted the appellant. In his reasons the learned judge having stated that Dufour's evidence incriminated the appellant and that Dufour was an accomplice instructed himself as follows:—

> La doctrine veut que le Juge, en appréciant la preuve, doit se rappeler qu'il est fort dangereux de condamner sur le témoignage non corroboré d'un complice, mais il a le pouvoir et il doit le faire si par ailleurs il accorde une croyance entière et absolue aux complices.

With respect this does not conform to the law as laid down in this Court in *Vigeant* v. *The King* (1), followed in *Boulianne* v. *The King* (2). In the latter case at page 622 Anglin C.J.C., giving the judgment of the majority of the Court said:—

> . . . the majority of us are of the opinion that there was misdirection in a material matter, in that the learned judge, although he warned the jury properly of the danger of convicting on the uncorroborated evidence of an accomplice, further instructed them, in effect, that if they believed his evidence, although not corroborated, it was their duty to convict . . .

It is never correct to say that the jury, or the judge trying a case without a jury, ought to convict on the uncorroborated evidence of an accomplice.

The learned judge then proceeded to deal with the question whether there was corroboration of Dufour's evidence and also with the defence of alibi in the following passage:—

> Son témoignage est-il corroboré? Il y a d'abord la confession que j'ai déclarée avoir été faite librement et volontairement et qui est au dossier. Dans sa confession, il n'admet pas sa participation directe au crime, mais admet s'être rendu et dans l'après-midi et le soir à l'endroit où l'effraction a été commise et avoir attendu les autres dans le char. Son témoignage est également corroboré par son admission de culpabilité qu'il a faite lors de sa comparution. Il a été arrêté, il a comparu devant monsieur le Juge

(1) [1930] S.C.R. 396. (2) [1931] S.C.R. 621.

Boisvert, a plaidé coupable à l'accusation telle que portée. Le Juge a ajourné sa sentence à quelques jours et lorsque le jour de la sentence est venu, l'accusé, représenté par un savant procureur, a demandé de changer son plaidoyer. La Cour lui a permis de changer son plaidoyer. Je trouve une corroboration du témoignage de Dufour dans la confession de l'accusé, dans le fait qu'il a plaidé coupable, surtout lorsque ce fait n'est pas expliqué d'une façon raisonnable. Lorsque la Cour lui demande pourquoi il avait décidé de plaider coupable, il nous dit qu'il ne savait pas la différence entre un plaidoyer de culpabilité et un plaidoyer de non culpabilité. Il me semble qu'une excuse de cette nature là ne peut pas avoir grand attention et grand mérite auprès de la Cour. Son ami et complice avait plaidé coupable, il était déjà condamné à la prison, il n'était pas sans le savoir, et il savait bien la différence entre plaider coupable et plaider non coupable. L'accusé Thibodeau a témoigné; il a nié sa participation. Sa négation, en face de sa confession, ne peut valoir. De plus, il a fait entendre des témoins pour faire une preuve d'alibi, preuve par une dame et sa fille, amie d'un des accusés. Ils ont témoigné que les deux Thibodeau étaient chez eux l'après-midi du crime, qu'ils sont restés là pendant trois jours, qu'ils ne sont pas sortis ni l'un ni l'autre, que c'était la fête de l'un des deux, que la fête a été célébrée chez elle le samedi.

Ils seraient arrivés chez elle le jeudi et ils seraient restés là jusqu'au samedi. Cet alibi n'a pas été présenté à l'enquête préliminaire. Je comprends que l'alibi doit être présenté dans le plus bref délai possible, mais que ceci veut pas dire que l'alibi présenté au procès ne peut avoir aucune importance, mais il perd sûrement de sa valeur, et dans ce cas-ci je ne peux pas apporter foi à l'alibi, en présence de la confession libre et volontaire, du témoignage de Dufour et également du plaidoyer de culpabilité de l'accusé.

It will be observed that in reaching his judgment on the voir dire, that the statement made to Laroche should be admitted in evidence, the learned trial judge was influenced by the fact that the accused had pleaded guilty; and that in reaching his judgment at the conclusion of the trial he was influenced by both the statement to Laroche and the fact of the plea of guilty in (i) accepting the evidence of Dufour and (ii) rejecting the defence of alibi.

In approaching the question whether the judge presiding at the trial of an accused who has pleaded not guilty should admit evidence that the accused previously pleaded guilty to the charge but was permitted to withdraw such plea it may first be observed that it is clear that at any time before sentence the Court has power to permit a plea of guilty to be withdrawn. As to this it is sufficient to refer to the following cases; *R.* v. *Plummer* (1), *The King* v. *Lamothe* (2), *R.* v. *Guay* (3), and *R.* v. *Nelson* (4). These cases make it equally clear that the decision whether or not

(1) [1902] 2 K.B. 339.
(2) 15 C.C.C. 61.
(3) 23 C.C.C. 243 at 245-246.
(4) 32 C.C.C. 75.

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permission to withdraw a plea of guilty should be given rests in the discretion of the Judge to whom the application for such permission is made and that this discretion, if exercised judicially, will not be lightly interfered with.

Counsel informed us that they had not been able to find any reported case in the courts of this country or in England in which the question now under consideration has been considered. This may at first seem surprising as there must have been many cases in which a plea of guilty was permitted to be withdrawn and the accused went to trial on a plea of not guilty; but it seems probable that the true explanation of the lack of authority is that suggested by counsel for the defence when he says in his factum:—

> Il nous semble qu'il répugne qu'on puisse se servir contre un accusé de son changement de plaidoyer pour arriver à l'incriminer. Il nous semble que ceci irait contre les droits primordiaux d'un accusé selon notre organisation de justice pénale. C'est sans doute pour cette raison que nous avons cherché en vain de la jurisprudence sur ce point.

It is, I think, an inference that may fairly be drawn from the dearth of authority that whenever it has been tendered the courts have refused to admit evidence that an accused had entered a plea of guilty to the charge upon which he was on trial which had later been withdrawn by leave of the Court. It is highly improbable that such evidence should have been admitted and no redress sought in an appellate tribunal. Be this as it may, I am of opinion that, where a plea of guilty has been withdrawn and a plea of not guilty substituted by leave of the Court, the Judge before whom the case comes for trial following the plea of not guilty should assume that the Judge who granted leave to change the plea did so on sufficient grounds and should treat the original plea, for all purposes, as if it had never been made.

In *Wigmore on Evidence* 3rd Edition, Vol. IV, page 66, s. 1067, the learned author says:—

> For *criminal* cases (where a withdrawn plea of guilty is later offered) the few authorities are divided.

I have examined the authorities referred to and prefer the reasoning of those judges who have held the evidence in question inadmissible. In my opinion the dissenting judg-

ment of Wheeler J. in *State* v. *Carta* (1), deals satisfactorily with the question and reaches the right conclusion. I refer particularly to the following passage at page 415:—

> Considerations of fairness would seem to forbid a court permitting for cause a plea to be withdrawn, and at the next moment allowing the fact of the plea having been made, with all its injurious consequences, to be admitted in evidence as an admission or confession of guilt by the accused. The withdrawal is permitted because the plea was originally improperly entered. No untoward judicial effect should result from the judicial rectification of a judicial wrong.
>
> The majority hold that the fact that the former plea may be explained will be a sufficient protection to the accused. Such a ruling places upon him a burden of disproving a fact which does not exist; for the withdrawal eradicated it. It brings him before the jury under the heavy cloud of suspicion created by his plea of guilty when he is entitled to come before the jury with the presumption of innocence shielding him. It makes him prove again that his plea was wrongly entered when that fact has already been judicially ascertained and settled by a court of competent jurisdiction and cannot be opened unless a higher court finds an abuse of that court's discretion.

For the above reasons I have reached the conclusion that on the trial of an accused who has pleaded not guilty evidence that he had previously pleaded guilty to the charge but had been allowed to withdraw such plea is legally inadmissible; from which it, of course, follows that evidence of the former plea can neither be given for the prosecution nor elicited from the accused in cross-examination.

It should perhaps be mentioned in passing, that, even if the question of the admissibility of evidence of the withdrawn plea in the case at bar had fallen to be determined under the rules regarding extra-judicial confessions, the evidence ought clearly to have been rejected in view of the uncontradicted evidence quoted above as to the representations made by a person in authority to the appellant while in custody which influenced him to enter the plea.

For the above reasons it is my opinion that the learned trial judge erred in admitting evidence that the appellant had previously entered a plea of guilty and in treating such evidence as corroboration of the evidence of Dufour.

It is next necessary to consider whether the learned trial judge erred in admitting the written statement Exhibit P.1. After an anxious consideration of the evidence given on the

(1) (1916) 96 Atl. 411.

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voir dire, I entertain grave doubt as to whether the prosecution can be said to have discharged the onus of shewing that the statement should be admitted. It appears to me, moreover, that it cannot safely be affirmed that the learned judge would have decided to admit the statement if he had not been influenced by the evidence of the plea of guilty which he ought to have rejected altogether. That he was so influenced appears clearly from the passage from his reasons for judgment on the voir dire quoted above. In the result I conclude that the decision of the learned judge on the voir dire can not be supported. Apart altogether from what I have said in regard to the admission of the statement P.1, the wrongful admission of evidence as to the withdrawn plea of guilty and the very considerable weight given to it by the learned judge in his reasons for convicting the appellant would be fatal to the validity of the conviction, which must accordingly be quashed.

It remains to consider what further order should be made. After a careful reading and re-reading of all the evidence, I am of opinion that on the evidence in the record which was properly admitted it would have been unreasonable to convict the appellant and that we ought not to direct a new trial.

I would accordingly allow the appeal, quash the conviction and direct a judgment of acquittal to be entered.

The judgment of Taschereau and Fauteux JJ. was delivered by:—

FAUTEUX J.:—L'appelant se pourvoit à l'encontre d'une décision de la Cour d'Appel confirmant un jugement de culpabilité prononcé contre lui par M. le Juge Delaney, de la Cour des Sessions de la Paix de la province de Québec.

Les membres de la Cour d'Appel n'ont donné individuellement aucune raison supportant la décision; et le seul considérant apparaissant au jugement formel est à l'effet qu'il n'y a pas d'erreur dans le jugement de première instance.

En toute déférence, il m'est impossible de concourir dans ces vues. Bref, cette déclaration de culpabilité repose sur le témoignage du complice Dufour, lequel est contredit par celui d'un autre complice exonérant l'appelant de toute participation coupable dans l'affaire. Pour donner effet à la version de Dufour, le Juge de première instance a erronément, à mon avis, accepté comme corroboration du

témoignage de ce complice (i) le fait d'un plaidoyer de culpabilité que l'accusé enregistra d'abord et que M. le Juge Boisvert, un autre Juge de la même Cour, lui permit subséquemment de retirer pour y substituer un plaidoyer de non culpabilité; (ii) une prétendue confession de l'accusé à la police.

(i) Le fait du plaidoyer de culpabilité. Comme le signale mon collègue le Juge Cartwright en ses notes, il est clair que la jurisprudence relative à la demande de retrait d'un plaidoyer de culpabilité établit que la décision sur telle demande teste à la discrétion du Juge à qui elle est faite et que les tribunaux d'appel n'interviendront pas sans raisons sérieuses sur cette décision, si cette discrétion a été exercée judicieusement. Dans le dossier actuel, rien ne suggère qu'une telle intervention eut été justifiée. A mon avis, l'esprit de cette règle guidant les tribunaux d'appel sur la question doit également guider le Juge au procès, quant à l'utilisation en preuve du fait de ce changement de plaidoyer pour impliquer l'accusé. Dans les circonstances, c'est illégalement que le Juge au procès a accepté comme preuve corroborant le témoignage du complice, que l'accusé avait d'abord plaidé coupable à l'accusation.

(ii) La confession. Il faut dire d'abord que pour conclure à l'admissibilité de cette confession, le Juge a encore pris en considération le plaidoyer de culpabilité en premier lieu enregistré par l'accusé; ce qui, pour les raisons déjà indiquées, était illégal. De plus, ces déclarations faites à la police par l'accusé sont exculpatoires; elles comportent une négation complète de toute participation coupable en l'affaire. Sans doute, le Juge avait le droit de ne pas croire à la vérité de toutes ou partie de ces déclarations; mais ce droit n'implique pas celui de suppléer aux déclarations ce qu'elles ne comportent pas, soit, en particulier, comme il est mentionné au jugement de culpabilité, le fait que l'appelant aurait attendu dans son automobile les personnes impliquées dans cette affaire. C'est donc affirmativement qu'il faut répondre à la question de droit sur laquelle permission d'appeler a été donnée, savoir:—

Did the trial Judge err (without first giving his opinion on the conflicting evidence) in accepting as legal corroboration of an alleged accomplice (*a*) an alleged confession made by the accused and accepted on *voir-dire* and (*b*) a previous plea of guilty, subsequently changed to not guilty, by the accused?

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L'appel doit être maintenu. Quant à l'ordonnance à rendre, je suis d'avis, comme mon collègue M. le Juge Cartwright, que, vidée des illégalités qui s'y trouvent, la preuve au dossier ne saurait raisonnablement justifier un verdict de culpabilité.

Je maintiendrais l'appel, infirmerais le jugement de culpabilité et ordonnerais l'inscription d'un jugement et d'un verdict d'acquittement.

Appeal allowed; conviction quashed, acquittal ordered.

Solicitors for the appellant: *Lizotte, Marchessault & Villeneuve.*

Solicitor for the respondent: *Roland Dugré.*