

THEODORE GEORGE CHOUINARD ...APPELLANT;

AND

HER MAJESTY THE QUEENRESPONDENT.

1963
*Jan. 31
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IDA McDONNELLAPPELLANT;

AND

HER MAJESTY THE QUEENRESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Criminal law—Summary convictions—Appeals—Whether affidavit of service identified the respondent sufficiently—Criminal Code, 1963-64 (Can.), c. 51, ss. 722, 723.

The information upon which the appellant Chouinard was convicted on summary conviction of impaired driving described the informant as "Roger Eugene Moore, a member of the Royal Canadian Mounted Police, Saskatoon, Sask." The affidavit of service of the notice of appeal to the District Court stated that Corporal Roger E. Moore of the Royal Canada Mounted Police was served with the notice, but the affidavit did not state that Moore was the informant. Pursuant

*PRESENT: Taschereau, Cartwright, Fauteux, Martland and Ritchie JJ.

¹[1942] 1 All E.R. 187, 28 Cr. App. R. 102 at 110.

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to an objection by the Crown, the District Court Judge refused to hear the appeal on the ground that he had no jurisdiction since he could not satisfy himself that the respondent had been served with the notice of appeal as required by s. 722 of the Criminal Code. The Court of Appeal dismissed the appeal from that judgment. The appellant was granted leave to appeal to this Court.

A similar situation presented itself in the case of the appellant McDonnell charged and found guilty of unlawfully selling liquor, where the informant was described as "Lee J. Corey, of Saskatoon, Sask., Peace Officer".

A. W. Prociuk, for the appellants.

B. L. Strayer, for the respondent.

At the conclusion of the argument, the following judgment was delivered

TASCHEREAU J. (orally, for the Court):—It will not be necessary to hear you in reply, Mr. Prociuk. We are all of opinion that this appeal should be allowed. We think that the affidavit of service which was filed was sufficient, as the presumption would be that Roger E. Moore was the respondent, unless that fact was questioned, which it was not. Had it been doubtful whether Moore was the respondent, we are of opinion that the learned District Court Judge could and should have looked at the information which would have shown at once that Moore was in fact the respondent.

We would accordingly allow the appeal, set aside the judgment of the Court of Appeal¹ and of the District Court Judge and remit the case to the District Court Judge to be heard and disposed of.

The decisions of this Court, referred to in the reasons of the Court of Appeal, are not decisive of the point raised on this appeal. The appellant is entitled to his costs throughout.

The decision in the Chouinard case will apply also to the McDonnell case. That appeal also will be allowed with costs throughout.

Appeals allowed with costs.

Solicitors for the appellants: McCool, Prociuk & Co., Saskatoon.

Solicitor for the respondent: D. A. Todd, Regina.