

L. T. WELCH APPELLANT; 1951

AND

*Feb. 12, 13
*Apr. 24

HIS MAJESTY THE KING RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA.*Criminal law—Having instruments for making bill paper—Whether the manufacturing of paper is necessary—S. 471 (a) of the Criminal Code.*

The having in one's possession without lawful excuse instruments enabling one to fashion or change a piece of white paper to resemble Bank of America's bill paper, is an offence within the meaning of section 471 (a) of the *Criminal Code*.

APPEAL from the judgment of the Court of Appeal for British Columbia dismissing appellant's appeal from his conviction at trial before a jury on a charge of having had in his possession instruments for making paper intended to resemble the bill paper of the Bank of America, contrary to s. 471 (a) of the *Criminal Code*.

J. Stevenson Hall for the appellant.

H. A. Maclean K.C. for the respondent.

The judgment of the Chief Justice and of Taschereau, Estey and Fauteux, JJ. was delivered by:

ESTEY J.:—The appellant was convicted of having in his "possession instruments for making paper intended to resemble the bill paper of a body corporate carrying on the business of banking, to wit, the Bank of America," contrary to the provisions of s. 471(a) of the *Criminal Code*. He was unsuccessful in his appeal to the Court of Appeal in British Columbia and obtained leave, under s. 1025 of the *Criminal Code*, to appeal to this Court.

The instruments in his possession enabled the accused to take a piece of white paper and make it into a Bank of America traveller's cheque. Counsel for the accused submits that such instruments are not included in s. 471(a). He would construe this subsection to include only those instruments which can be used for the manufacture of the bill paper from its original ingredients and not, therefore,

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to include the making of a piece of white paper into a bill paper intended to resemble the bill paper of the Bank of America. S. 471(a) reads:

471. Everyone is guilty of an indictable offence and liable to fourteen years' imprisonment who, without lawful authority or excuse, the proof whereof shall lie on him,

(a) makes, begins to make, uses or knowingly has in his possession, any machinery or instrument or material for making exchequer bill paper, revenue paper or paper intended to resemble the bill paper of any firm or body corporate, or person carrying on the business of banking;

The foregoing s. 471 follows in the statute immediately after those dealing with the offence of forgery and is included with those sections under the heading "Forgery and Preparation Therefor." It is specifically directed against the preparation for a forged bill and makes it an offence to be in possession of instruments, without lawful authority or excuse, that may be used "for making . . . paper intended to resemble the bill paper of any firm or body corporate, or person carrying on the business of banking."

While "exchequer bill paper" is defined in s. 335(k), bill paper generally, or that of a firm or body corporate or person carrying on the business of banking, is not defined, no doubt because each of these bodies selects its own particular bill paper. The Bank of America, in making its traveller's cheques, used specially designed paper. The acquisition or making of paper to resemble the bill paper of the Bank of America would be a step toward, or in preparation of, a completed forgery of its traveller's cheques. The accused was found to have in his possession instruments with which he fashioned or changed a piece of white paper, by impressions or other means, with intent that it would resemble the bill paper upon which these traveller's cheques were made. It is the possession of such instruments without lawful authority or excuse that the section makes an offence.

The submission that, because the instruments which were in the possession of the accused could not manufacture bill paper which would resemble that of the Bank of America from its original ingredients, but could only fashion or change white paper as already indicated, the accused, in having them in his possession without lawful excuse,

had not committed an offence contrary to s. 471(a) is not tenable. The words "making" and "manufacturing" are sometimes used synonymously. The word "making" is, however, a wider term and somewhat more inclusive. The mere physical fashioning or changing of a given commodity might, in some circumstances, be described as manufacturing, but, in any event, it is a making. The instruments in the possession of the accused enabled him to do just that. He fashioned or changed the white paper with these instruments and made it into that which he intended would resemble the bill paper of the Bank of America. The language of this section cannot be given the narrow construction suggested by counsel for the accused.

Counsel for the accused supported his suggested construction of s. 471(a) by reference to a number of cases which were decided under the language of particular statutes and which, therefore, do not materially assist in the construction of the section here in question. In one of the more recent, *Gamble v. Jordan* (1), the accused was charged with having flock in his possession "for the purpose of making" certain articles. He had received from his sister a mattress, the seams of which he had opened, and "removed the flock with the intention of putting it back in the same covering." It was held that the accused was neither making nor manufacturing a mattress. In the language of Avory J., at p. 153:

In one sense a new mattress may be made out of a secondhand one; new covering may be put upon old stuffing, or an old cover may be stuffed with new flock. Those are not the operations in question.

The accused, in the case at bar, was fashioning or changing a piece of white paper into a paper to be used for an entirely new and different purpose and without the additions he made it could not be so used. The white paper had to be changed or fashioned; in a word, it had to be made to serve that new purpose.

Counsel for the accused referred to ss. 14, 15, 16 and 20 of the *Forgery Act*, R.S.C. 1886, c. 165. No doubt these were present to the mind of Parliament when it enacted s. 471(a) (or rather its predecessor s. 434(a) in the *Criminal Code* of 1892 R.S.C., c. 29), which is entirely different in its language and much wider in its scope. The foregoing

(1) [1913] 3 K.B. 149.

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sections were drafted in more detail and in that sense are limited in their application and no doubt more favourable to the contention of counsel for the accused. It is not, however, from a construction of the language of those sections but rather that of s. 471(a) that the submission of counsel on behalf of the accused must be determined. The language of that section sets forth a clear intention on the part of Parliament to make that which the accused here did an offence.

The appeal should be dismissed.

LOCKE J.:—I am of the opinion that this appeal should be dismissed for the reasons given by Mr. Justice O'Halloran in delivering the judgment of the Court of Appeal.

Appeal dismissed.

Solicitor for the appellant: *H. T. Fitzsimmons.*

Solicitor for the respondent: *Eric Pepler.*
