

BERNARD DUSSAULT APPELLANT;

1952
*Dec. 1, 2.

AND

HER MAJESTY THE QUEEN RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC*Criminal law—S. 461—Jury trial—Refusal of trial judge to have charge taken in shorthand—No report made under s. 1020 of the Criminal Code.*

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming, Casey and McDougall JJ.A. dissenting, the appellant's conviction following his trial before a judge and jury on a charge of breaking and entering with intent to commit a theft. The evidence was circumstantial and the defence was an alibi.

After the address of the trial judge to the jury, counsel for the defence moved that the trial judge should direct the jury to the effect that they should acquit the accused if they entertained a reasonable doubt concerning the question of alibi, to which motion the trial judge answered that that had been sufficiently explained. The address of the trial judge was not taken by a stenographer, a defence motion to have it done having been refused.

The trial judge did not furnish to the Court of Appeal a report as provided for under s. 1020 of the *Criminal Code* nor was there any application made on behalf of the appellant in the Court of Appeal for an order requiring the trial judge to comply with the section and furnish a report. (*Baron v. The King* [1930] S.C.R. 194 and *Northey v. The King* [1948] S.C.R. 135 were referred to during the argument before this Court).

The offence was committed in December 1949, the verdict was given in October 1950 and the judgment of the Court of Appeal was rendered in June 1951. In view of the fact

*PRESENT: Rinfret C.J. and Kerwin, Taschereau, Kellock and Fauteux JJ.

(1) Q.R. [1951] K.B. 556.

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— that the notice of appeal to this Court was served in July 1951 and the case filed in September 1951, counsel for the appellant was asked for, but gave no explanation as to, the cause of the delay in the setting down of the case for hearing in this Court.

Alexandre Chevalier Q.C. for the appellant.

René T. Hébert Q.C. for the respondent.

At the close of the argument on behalf of the appellant, the following oral judgment was delivered by the Chief Justice:

The Court is unanimously of opinion that it was open to the appellant to obtain before the Court of Appeal an order requesting the trial judge to file the report under s. 1020; in which case, the Court of Appeal and this Court as well would have had the proper material necessary for the consideration of the appeal. In the absence of such material, we have to dismiss the appeal.

Appeal dismissed.
