HARRY RICHLER .....APPELLANT;

AND

HIS MAJESTY THE KING .....RESPONDENT.

1939

* Feb. 27.
* March 21.

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

Criminal law—Evidence—Charge of receiving stolen goods—Explanation by accused—Good faith—Lack of knowledge of goods being stolen—Whether explanation by accused is a reasonable one—Discharge by the Crown as to onus of proving accused's guilt—Duty of trial judge.

The appellant was charged with the offence of receiving stolen goods and was found guilty. At the trial, the appellant and some other witnesses were heard in support of appellant's explanation that he had bought these goods in good faith and without any knowledge that

* PRESENT:—Duff C.J. and Rinfret, Cannon, Kerwin and Hudson JJ.

(1) (1817) 3 Mer. 86.

(2) (1921) 62 Can. S.C.R. 617.

1939

RICHLER
v.
THE KING.

they were stolen effects. The appellant appealed to the appellate court on the ground that his explanation was a reasonable one, that the Crown had failed to discharge the onus of proving beyond a reasonable doubt the accused's guilt and that the explanation was equally plausible as to his innocence or to guilt. The majority of the appellate court affirmed the conviction, one judge dissenting on the ground that there was no evidence upon which the appellant could be convicted.

Held, that the appeal should be dismissed. The question to which it was the duty of the trial judge to apply his mind was not whether he was convinced that the explanation given was the true explanation, but whether the explanation might reasonably be true; or, in other words, whether the Crown had discharged the onus of satisfying the trial judge beyond a reasonable doubt that the explanation of the appellant could not be accepted as a reasonable one and that he was guilty.—*Rex* v. *Schama* (11 C.A.R. 45); *Rex* v. *Searle* (51 C.C.C. 128) and *Re Ketteringham* (19 C.C.C. 159) ref. and app.—Under all the circumstances of the case, it cannot be held that there was no evidence that the explanation offered by the appellant was one that the trial judge might not find could not reasonably be accepted as true.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, affirming (Pratte (*ad hoc*) J. dissenting) the conviction of the appellant for the offence, under section 399 of the Criminal Code, of receiving or retaining in his possession stolen goods knowing them to be stolen. By the judgment now reported the appeal to this Court was dismissed.

Lucien H. Gendron K.C. for the appellant.

John Crankshaw K.C. for the respondent.

The judgment of the Chief Justice and Rinfret, Kerwin and Hudson JJ. was delivered by

THE CHIEF JUSTICE.—The proper direction on the trial of an accused charged under section 399 of the Criminal Code with receiving or retaining in his possession stolen goods, knowing them to be stolen, is explained in three judgments to which our attention was called by Mr. Gendron.

In the *Schama* case (1), the Lord Chief Justice explained the rule as follows:—

Where the prisoner is charged with receiving recently stolen property, when the prosecution has proved the possession by the prisoner, and that

(1) (1914) 11 C.A.R. 45, at 49.

the goods had been recently stolen, the jury should be told that they may, not that they must, in the absence of any reasonable explanation, find the prisoner guilty. But if an explanation is given which may be true, it is for the jury to say on the whole evidence whether the accused is guilty or not; that is to say, if the jury think that the explanation may reasonably be true, though they are not convinced that it is true, the prisoner is entitled to an acquittal, because the Crown has not discharged the onus of proof imposed upon it of satisfying the jury beyond reasonable doubt of the prisoner's guilt.

This passage was applied by the Appellate Division of Alberta in a judgment delivered by Harvey C.J. in *Rex* v. *Searle* (1).

In the *Ketteringham* case (2), Avory J. said:

> The question which should have been left to the jury was simply: "Did the appellant receive the goods in such circumstances that he must then have known them to have been stolen?" The question, however, which was left was whether the jury thought that the account given by the appellant's son in evidence of the manner in which he became possessed of the goods could be accepted. The jury should have been told not only that they could acquit, but that they ought to acquit, the appellant if they were satisfied that his explanation was consistent with his innocence.

The question, therefore, to which it was the duty of the learned trial judge to apply his mind was not whether he was convinced that the explanation given was the true explanation, but whether the explanation might reasonably be true; or, to put it in other words, whether the Crown had discharged the onus of satisfying the learned trial judge beyond a reasonable doubt that the explanation of the accused could not be accepted as a reasonable one and that he was guilty.

The dissenting judge did not put his dissent on the ground that the trial judge had misdirected himself on any point of law, or that he had not applied his mind to the precise question which it was his duty, as indicated in what has just been said, to determine. He dissented on the ground that there was no evidence upon which the accused could be convicted and I assume that to mean that there was in point of law no evidence to support a verdict of guilty. After considering all the circumstances, I am unable to agree with this view; in other words, I am not satisfied that there is no evidence that the explanation

(1) (1929) 51 C.C.C. 128 at 131. (2) (1926) 19 C.A.R. 159, at 160.

1939

RICHLER v. THE KING.

Duff C.J.

offered was one that the trial judge might not find could not reasonably be accepted as true.

The appeal must be dismissed.

CANNON, J.—I would dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant: *Gendron, Monette & Gauthier.*

Solicitor for the respondent: *Jacques Fournier.*