

and the case is heard all over again. By paragraph (a) of subsection 3 of section 12 a transcript of the notes of the evidence taken by the court stenographer on the original trial may, by consent of the parties, be used before the county court judge. Under paragraph (b) of the same subsection the court may use the transcript in its entirety if it is satisfied that the attendance of witnesses cannot be reasonably obtained; or under paragraph (c) as to formal matters if it is satisfied that the opposite party will not be prejudiced.

Hon. Mr. Aseltine: I do not like that provision as to formal matters.

Hon. Mr. Hayden: Well, there may be some things here with which I do not entirely agree.

Hon. Mr. Aseltine: I do not think my friend would agree with that provision.

Hon. Mr. Hayden: I am making a general explanation of the bill, knowing that in committee I will be able to voice my objections and make any suggestions I wish. I am inclined to the view that when a person has a right of appeal his consent should be required in relation to anything that may cause him to give up any of the absolute rights which he enjoys. I am not very happy about paragraph (c), but I do not think it is very important; I do not see how the court could go wrong as to what is of a formal nature and what is not.

Hon. Mr. Aseltine: The accused may not have been properly represented at the preliminary hearing, and there may not have been proper cross-examination of the witnesses. In those circumstances he would have to abide by what had taken place.

Hon. Mr. Hayden: Paragraph (c) reads as follows:

... if by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced;

The court would look at the evidence tendered by the Crown, which might for instance be as to the consents necessary under some government prosecutions. Such a matter would be formal, and should the court go wrong in the matter of law, I suppose the accused would have a right of a further appeal. Frankly, I am not enamoured of the provision, but I do not speak more forcibly about it because I do not think it deals with the most important part of the section. The question of whether the accused was represented by a lawyer, and there was a proper opportunity for cross-examination is more important. But a transcript of the evidence could not be placed before the court unless the accused consented to it. I think the accused is protected under paragraph (a) of subsection 3.

Hon. Mr. Duff: May I ask my honourable friend how we got along for the past fifty years without the special legislation which he is introducing now?

Hon. Mr. Hayden: I suppose I might answer my friend by asking how we got along fifty years ago without the advanced medical science that we have today. We got along somehow, and the healthy survived. Under the Criminal Code as it was then many accused persons may have lost some of their rights because they could not afford a lengthy repetition of the trial. They would consider the cost, and decide not to appeal. But that does not prevent us from progressing and from streamlining our justice to the same extent that we have streamlined other matters.

Hon. Mr. Farris: Before my honourable friend leaves section 12, may I ask him if he is not exaggerating the effect of that section? All that it does is to allow a court stenographer to prove what happened at a summary trial. Is not that so?

Hon. Mr. Hayden: I am glad my friend has raised that point. In many cases where a court stenographer has taken the notes the magistrate has refused to certify the transcript. Under the existing section of the Code, the only way that the transcript of evidence taken at the trial could be submitted on appeal would be by producing the transcript and having it certified by the magistrate. That is an added reason for the amendment.

Hon. Mr. Farris: Is that not the only effect?

Hon. Mr. Hayden: Yes, although paragraphs (a) and (c) are new.

Hon. Mr. Farris: But they relate only to getting in the evidence of the stenographer.

Hon. Mr. Hayden: Yes. But I am pointing out that as the section stands, there is no way of getting in all the evidence taken before the justice unless the requirement in paragraph (b) of the present section is satisfied. It will be noted by reference to the opposite page that subsection 3 as it now stands simply provides that:

Any evidence taken before the justice at the hearing below, certified by the justice, may be read on such appeal, and shall have the like force and effect as if the witness was there examined if the court appealed to is satisfied by affidavit or otherwise that the personal presence of the witness cannot be obtained by any reasonable efforts.

Paragraph (a) enlarges that subsection in that it permits all the evidence, certified by the magistrate or by the court stenographer who has taken it, to be put in evidence and to have the consideration of the judges without any further condition.