

Code. The previous trial had taken place before the same Judge; and it appeared that a transcript of the stenographer's notes of the evidence, without any authentication of it by the Judge, was offered in evidence by the Crown, and that its admissibility was objected to by counsel for the prisoner, whereupon the trial Judge looked over the transcript and signed it, and it was then admitted in evidence.

Nothing is said in sec. 999 as to the time when the evidence is to be signed by the Judge, and there is no reason why it may not be signed at any time before it is admitted in evidence. It was argued by counsel for the prisoner that what is contemplated by the section is, that the evidence shall be signed at the time when or immediately after it is taken; but nothing in the section requires that construction to be given to it; and such a construction would render the section nugatory in all cases in which the evidence is taken down by a stenographer.

The second question should be answered in the negative.

The third question should also be answered in the negative.

It was to be regretted that the Crown insisted upon the second trial taking place before the Judge who presided at the first trial. It was obvious that justice required that the second trial should take place before a different Judge, for it would be difficult for any Judge to rid his mind of impressions he had formed at a former trial when the prisoner had been convicted.

MACLAREN and MAGEE, JJ.A., agreed in the result.

HODGINS, J.A., read a judgment in which he stated his agreement in the result, for reasons given by him.

FERGUSON, J.A., also read a concurring judgment, in which he went into the 3rd question, as to misdirection or nondirection, at considerable length, and referred to authorities. He was of opinion that under sec. 1019 of the Criminal Code and the authority of *The King v. Romano* (1915), 24 Can. Crim. Cas. 30, the defendant had failed to make out a case for the interference of the Court; and the 3rd question should be answered in the negative. He agreed also that the first question should be answered in the affirmative and the second in the negative.

*Judgment for the Crown.*