

Province of Saskatchewan

COURT OF APPEAL.

Full Court.] THE KING v. DUBUYK. [57 D.L.R. 126.

Criminal law—Motion by leave against verdict—Case reserved on question of law.

On concurrent applications, one under sec. 1021 of the Criminal Code, made by leave of the trial Judge for a new trial on the ground that the verdict is against the weight of evidence, and the other by case reserved under Code sec. 1014, as to the rejection of certain testimony offered by the defence, the Court of Appeal may allow a new trial under sec. 1021 without answering the question reserved as to the admissibility of testimony.

W. B. O'Regan, for accused. *H. E. Sampson*, K.C., for Attorney-General.

ANNOTATION FROM D.R.L.

CONCURRENT MOTIONS FOR NEW TRIAL UNDER CR. CODE SEC. 1021, AND ON CASE RESERVED.

The practice followed in the case above reported of granting a new trial on a motion under Cr. Code sec. 1021 without deciding the question concurrently brought before the Court of Appeal under Cr. Code sec. 1014, appears to be one which should not generally be adopted. It appears to have been assumed that because a new trial was being granted, which would have been the natural result on a decision favourable to the accused on either application, there was no necessity to decide whether certain testimony offered by the accused at the trial under review, and rejected by the Court below, was or was not admissible. The motion under Cr. Code sec. 1021 made by leave of the trial Judge is one of review only of the findings of fact, which in this particular case were found by a jury. The only ground for a motion under sec. 1021 is that the verdict was against the "weight of evidence."

Questions of law arising during the trial, including the question of the wrongful rejection of evidence, come within the scope of an appeal under Code secs. 1014-1019. Under sec. 1019 the Court of Appeal has to determine whether some substantial wrong or miscarriage was occasioned by the evidence having been improperly rejected if it finds the rejection to have been improper. A new trial is not to be directed on questions of law reserved, although it appears that some evidence was improperly rejected unless, in the opinion of the Court of Appeal, "some substantial wrong or miscarriage was thereby occasioned on the trial." Cr. Code sec. 1019.