

stated case under Cr. Code, sec. 1017, a court of criminal appeal is bound to accept the statement of the trial judge, particularly where he certifies that the stenographer's notes are defective by reason of the omission of such question and answer.

4. *Appeal—Amending or perfecting—Criminal appeal—Stated case—Proof of proceedings at trial.*

The power of a court of criminal appeal on hearing a case stated by the trial judge under Cr. Code (1906), sec. 1015, to refer to such other evidence of what took place at the trial as it thinks fit is limited by Cr. Code sec. 1017 to cases in which "only the judge's notes are sent and it considered such notes defective"; there is no such power where, in addition to the judge's notes, the notes of the official stenographer accompany the stated case. (*Per* Martin, J.A.)

J. W. deB. Farris (*Leighton* with him), for prisoner.

A. D. Taylor, K.C., for Crown.

Maedonald, C.J.A., Irving, Martin, Galliher,
and McPhillips, J.J.A.]

[16 D.L.R. 149.

REX v. DAVIS.

Appeal—Joint trial for murder—Cautioning jury that admission of one defendant inadmissible against the other—Substantial wrong—Cr. Code (1906), sec. 1019.

The failure of the trial judge to caution the jury on the trial together of two persons charged with murder, that any admission or confession made by one of the accused not in the presence of the other is only evidence against the one making such confession or admission, will not be a ground for a new trial where the statement was brought out on the Crown's cross-examination of the latter as a witness on his own behalf and the co-defendant, now objecting had, by his counsel, dealt with it in cross-examination of such witness, if it be manifest to the appellate court from the evidence (including the objecting defendant's own testimony) that there had been no substantial wrong or miscarriage on the trial by reason of such warning not being given.

See as to admissions of one defendant on trial of joint indictment, *R. v. Martin*, 9 Can. Cr. Cas. 371; *R. v. Connors*, 5 Can. Cr. Cas. 70, 3 Que. Q.B. 100; *R. v. Blais*, 10 Can. Cr. Cas. 354, 358.

R. L. Maitland, for prisoner.

A. D. Taylor, K.C., for Crown.