

1952
 *Dec. 3, 4
 *Dec. 15

RENE DUPUIS APPELLANT;
 AND

HER MAJESTY THE QUEEN RESPONDENT.

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

*Criminal law—Illegal possession of cigarettes—Admissibility of statement
 made by accused—Whether warning should always be given.*

APPEAL from the judgment of the Court of Queen's Bench, appeal side, province of Quebec, quashing the appellant's acquittal and ordering a new trial.

J. Guy Blanchette and *J. L. Peloquin* for the appellant.

Roland Dugré Q.C. and *Benoit Turmel* for the respondent.

The COURT:—We agree with the members of the Court of King's Bench (Appeal Side) all of whom decided that the trial judge came to the conclusion that the statement made by the appellant at Richmond was not free or voluntary because he, the trial judge, considered that irrespective of all the circumstances it was necessary that the appellant should have been previously warned. This is contrary to the law as laid down by this Court in *Boudreau v. The King* (1) and, therefore, there was a right of appeal by the Crown from the acquittal.

On the basis of the evidence on the voir dire that appears in the record, there is nothing to indicate what the trial judge would have done as to the admissibility of the statement if he had not misdirected himself. The appeal should therefore be dismissed so that a new trial may be had.

Appeal dismissed.

Solicitor for the appellant: *J. G. Blanchette.*

Solicitors for the respondent: *R. Dugré and B. Turmel.*

*PRESENT: Rinfret C.J. and Kerwin, Taschereau, Kellock and Fauteux JJ.