

NOVA SCOTIA COURT OF APPEAL

**Cite as: R. v. Dalton, 1993 NSCA 177**

**Hallett, Roscoe and Pugsley, JJ.A.**

**BETWEEN:**

DANIEL FRANCIS DALTON	)	John P. Nesbet
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	Robert C. Hagell
	)	for the Respondent
HER MAJESTY THE QUEEN	)	
	)	
Respondent	)	Appeal Heard:
	)	September 21, 1993
	)	
	)	
	)	Judgment Delivered:
	)	September 21, 1993
	)	

**Revised Decision:** The decision has been corrected according to an erratum which reads: The last sentence should read: "The appeal is allowed and a new trial ordered."

**THE COURT:** Appeal allowed and a new trial ordered per oral reasons for judgment of Hallett, J.A.; Roscoe and Pugsley, JJ.A. concurring.

**HALLETT, J.A.**

In view of the position taken by the Crown it will not be necessary to hear from appellant's counsel.

The appellant was charged with defrauding Atlantic Motors Limited of money of a value not exceeding \$1,000.00 contrary to **s. 380(1)(b)(i)** of the **Criminal Code**. Pursuant to **s. 553(a)** of the **Code** the Provincial Court Judge had absolute jurisdiction to try to the appellant. The appellant was found guilty as charged.

The Crown states that this appeal should be allowed on the ground that before the adjudication by the Provincial Court Judge the evidence established that the amount of the fraud exceeded \$1,000.00 and as the appellant was not put to his election as required by **s. 555(2)** of the **Code** the Provincial Court Judge was without jurisdiction.

The allowed is allowed and a new trial ordered.

Doane Hallett

Concurred in:

Roscoe, J.A.

Pugsley, J.A.