

letters written by McG. at O. were overt acts in furtherance of the common design, and admissible in evidence against all privy to the conspiracy; and that as the defendant C. was by his own admission privy to the large payment after it was made, it was a matter for the jury to say whether he was not a participant in the proceedings.

*Held*, also, that the transactions, conversations, and written communications between R. McG. (the partner) and his brother and the other members of the firm were receivable in evidence in the circumstances of the case. If at first not available against both defendants, they became so when the proof had so far advanced and cumulated as to indicate the existence of a common design.

*Held*, also, that evidence concerning contracts previous to the date mentioned in the indictment was properly received as introductory to the transaction in question.

*Held*, also, that letters written by a member of the firm in the name of an employee and purporting to be signed by him were also properly in evidence.

*Held*, also, that the report of an engineer was also properly in evidence, as the object of all that was done was to obtain a report in favour of the firm.

*Held*, also, that entries in the books of the firm were evidence against the defendant C. (partner in the firm), and that statements prepared therefrom by an accountant were good secondary evidence in the absence of the books withheld by the defendants.

*Quære*: How far they were evidence against the defendant McG., who was not a member of the firm?

*Held*, also, that the examination of the defendant C. in a civil action could be used against him on this trial.

*Held*, also, that the evidence of an expert in calculating results on data supplied and proper for an engineer to work upon was admissible.

*Held*, also, that evidence of a present being made to an engineer in charge of the work with the knowledge of one of the defendants was proper to be considered by the jury as casting light upon the relations between the firm and that officer.

*Held*, also, that the use of the fictitious tenders was a *deceit*, and if done to evade the results of fair competition for the contracts it was "unlawful."

*Held*, also, that although evidence was called by only one of the defendants it might have inured to the benefit of both, so the right to a general reply was with the counsel for the Crown.

*Osler*, Q.C., *Kerr*, Q.C., and *Hogg*, Q.C., for the Crown.

*S. H. Blake*, Q.C., and *Lash*, Q.C., for defendant Connolly.

*Aylesworth*, Q.C., for defendant McGreevy.

ROSE, J.]

[March 14.]

COOK v. SHAW ET AL.

*Covenant in restraint of trade—Partial—Limited time—Reasonableness—Public policy—Good faith.*

On a purchase of a manufacturing business by the plaintiff from the defendants, the latter entered into an agreement as follows: "The said parties of the