

From Macwatt, Co.J.] REX v. TREYANNE.

[Sept. 18.

*Depositions of witness—Criminal law—Inability of witness to attend trial—Preliminary enquiry—Opportunity to cross-examine—Crim. Code, s. 687.*

At a preliminary enquiry before a magistrate on a charge of indecent assault on a female, the latter's depositions were taken, the prisoner being represented by counsel, but, before her cross-examination was concluded the proceedings were adjourned to a fixed date on account of her illness. Meanwhile, after consulting the County Crown Attorney, the magistrate determined to send the case to Sarnia, and so telegraphed to prisoner's counsel asking a reply whether he would come up or not. Counsel replied that if the magistrate intended to send the prisoner to trial at any rate, it would be no use of his coming, and accordingly he did not further attend the proceedings. On the day to which adjournment had been made, the magistrate went out to the residence of the witness, and obtained her signature to her depositions as already taken, neither the prisoner nor his counsel being present, and afterwards resumed the enquiry at his own office, the prisoner being present, but not the witness, and on the evidence already taken the prisoner was committed to trial. At the trial the witness was proved to be too ill to attend and her depositions taken, as above were tendered by the Crown and admitted.

*Held*, that, in view of s. 687 of the Criminal Code, the depositions were improperly received in evidence, the prisoner's counsel not ever having had a full opportunity of cross-examining the witness, and not having waived that right as contended by the Crown.

*Ford*, for the Crown. *Tremear*, for the prisoner.

From Lount, J.]

NELSON COKE AND GAS CO. v. PELLATT.

[Sept. 19.

*Company—Preference shares—Creation of—Validity—Memorandum and articles of association—Subscription for shares—Contract by deed—Delivery to agent of company—"Issue" and "allotment" of shares—Calls—Resolutions and letters—"Offer"—Withdrawal—Formal allotment.*

In an action by a company against an alleged subscriber for shares to recover the subscription price, the defendant contended that preference shares of the company had not been lawfully created, there not having been any special resolution of the company for that purpose, as provided by s. 55 of the Companies Act of British Columbia, R.S.B.C. c. 44, under which the company was incorporated.

*Held*, that provisions for preference shares in the memorandum and articles of association were legal and valid features of the constitution of the company. *Ashbury v. Riche*, L.R. 7 H.L. 653, and *In re South Durham Brewery Co.*, 31 Ch. D. 261, followed.