the absence of the prisoner, was not of itself evidence of a guilty possession by prisoner. We think the prisoner's counsel right in this statement of the law, but we cannot agree with him in thinking that it applies to the case before us. We think there was sufficient evidence of guilty possession to go to the jury, if the indictment had been for larceny.

On the second question, we do not think the evidence supports the conviction for felonious receiving. The judge of Sessions tells us distinctly that, though there was proof that the goods were stolen on or about the 2nd day of November last, "no proof was adduced as to who committed the theft."

The doctrine fully established now seems to be that "there should be some evidence to show that the goods were, in fact, stolen by some other person, and recent possession of the stolen property is not alone sufficient to support such an indictment, as such possession is evidence of stealing and not of receiving."—2 Russell, 247. I quote from the old two-volume ed., 6th Am. fr. 3 Eng. At one time this did not appear so clear, for Patteson, J., (in 1834) left it to the jury, telling them that if they "were of opinion that some other person stole the article, and that the prisoners knew of that fact, and planned together in order to get the property away, they may be convicted of receiving." "I confess," he adds, "it appears to me on the evidence rather dangerous to convict them of receiving." The jury convicted them of stealing, and the verdict was entered up as "not guilty." 2 Russell, *ib.* 6 C. & P. 399. But two years before, at the Gloucester Assizes (1832), Littledale, J., said that to support an indictment for receiving, "it was essential to prove that the property was in the possession of some one else before it came to the prisoner." 2 Russell, 484, (Ed. 5, by Prentice). This question was incidentally examined on a reserved case, *Reg.* v. *Langmead* (L. & C. 427), and there it seems to have been considered that where there was evidence from which it might be inferred that the prisoner could not have stolen the sheep himself, a conviction on the count for receiving was held to be good. As there is some apparent contradiction in the report of this case, it is well to read it, noticing that prisoner's counsel insisted that it was proved that the prisoner did not steal the article. And so generally a person cannot be both a principal in the second degree in the commission of a larceny and also a felonious receiver of the stolen goods. *Reg.* v. *Perkins*, 5 Cox, 554. *Reg.* v. *Coggins*, 12 Cox, 517. But where there is evidence of being principal in the second degree, the jury may find the party guilty of receiving. In other words, if there be evidence from which the jury may infer that the accused was either a principal in the second degree, or a receiver, and the jury find him guilty of receiving, the conviction will be maintained. 2 Russell, by Prentice, p. 475.

If it had not been for the very special statement of the reserved case that "no proof was adduced as to who committed the theft," the result might have been very different, but we cannot go beyond the reserved case.

Sir A. A. DORION, C.J., said that although he did not dissent, yet it was with great reluctance that he concurred, and if he had been sitting alone, he would probably have given the judgment the other way. However, the interpretation was in favor of the prisoner, as it should be.

MONK, J., had also had a good deal of difficulty in coming to the conclusion that the conviction should be quashed. The magistrate said in the reserved case that there was no proof as to who stole the goods, but it appeared that there was some kind of evidence that this was stolen property.

Conviction quashed.

Mousseau for the Crown.
Keller for the prisoner.

EX PARTE NARBONNE, petitioner for habeas corpus and for writ of certiorari.

Certiorari—Jurisdiction of the Court to order a certiorari for the purpose of bringing up depositions taken before a magistrate, to examine their sufficiency.

MONK, J., (*diss.*), said an application had been made in behalf of one Narbonne, committed for trial at the next term of the Criminal Court. He was charged with inciting certain individuals, residing in New York, to the commission of a certain felony, viz., to forge a quantity of Canada Postage Stamps. Being committed on this charge, he applied to this Court for a writ of Habeas Corpus, with a view to his being liberated, and he also presented an application for a writ of certiorari, to bring up the depositions