

prisoner (which was not credible and was inconsistent with the results of the post mortem examination) was in favour of a verdict of "guilty."

On an application for a new trial in a civil case, an affidavit from a witness contradicting his evidence at the trial cannot be received: *Rushton v. Grand Trunk R.W. Co.* (1903), 6 O.L.R. 425, and other cases.

Even if the affidavit were believed, the verdict was not against the weight of evidence. Leave to appeal under sec. 1021 of the Code should be refused.

But, at the request of the prisoner's counsel, there should be reserved for the opinion of the Court of Appeal the question of law whether the trial Judge was bound as a matter of law to give leave to move for a new trial on the ground that the verdict was against the weight of evidence.

The prisoner was sentenced to 15 years' imprisonment; but, under sec. 1023 of the Code, the sentence should be suspended that the opinion of the Court of Appeal may be had—the prisoner to remain in custody.

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HARRIS V. GARSON—LENNOX, J., IN CHAMBERS—NOV. 11.

*Judgment—Defendant not Appearing at Trial—Judgment for Plaintiff on Proof of Claim—Setting aside—Terms.*—Motion by the defendant to set aside a judgment directed to be entered for the plaintiff at the recent sittings for trials in London, the defendant not appearing and the plaintiff giving evidence in proof of claim. LENNOX, J., in a written judgment, said that, upon the defendant, within one week, giving security for payment of the amount of the judgment and costs, to the satisfaction of the Registrar at London, or, within one week, paying the amount of the judgment and costs into Court to the credit of this action, the judgment should be vacated and a new trial had between the parties, and the costs of this application and of the recent trial should be costs in the cause to the plaintiff in any event. If the defendant failed to comply with any one of the conditions imposed, within the time limited, the motion should stand dismissed with costs. Ford, for the defendant. E. C. Cattnach, for the plaintiff.