

DESNOYERS, Police Magistrate :—This question is of very great importance, and the Canada Evidence Act being of recent legislation—July, 1893—no direct ruling has yet been made by any Superior Court to establish a precedent by which we may be governed. In the case of the *Queen v. Hopkins*, where there was a charge of manslaughter in connection with the street railway building disaster, at enquete before me, in January, 1896, I refused to admit as evidence the depositions given by the accused before the coroner at the inquest on said accident. Shortly after, in the case of the *Reg. v. Hendershott*, 26 O.R. 678, Chief Justice Meredith also refused to admit as evidence the deposition given by the accused at the coroner's inquest.

The reason of that ruling was that the Coroner's Court was considered to be a criminal Court, and, therefore, one in which the evidence would be subject to the Canada Evidence Act. From the remarks of the Chief Justice in the last mentioned case, it appears clearly that he was of opinion that if the depositions sought to be introduced had been made in a Court under Provincial, not Federal, jurisdiction, by the accused, without availing himself of his privilege to refuse answering, as his answers might tend to criminate him, he would have allowed the evidence.

The counsel for the defence has made a very able argument to demonstrate that sec. 5 protects a witness against the use of his deposition made in any Court whatsoever, but I am unable to adopt his views. I believe that if the law had so intended, it would have said so positively, and would not have limited its operations to criminal proceedings generally, and to civil proceedings respecting which the Parliament of Canada has jurisdiction.

The Parliament of Canada has no jurisdiction over the Superior Court of the Province of Quebec, and a deposition given before that Court may, in my opinion, be used in a subsequent criminal proceeding against the party who made it, unless that party made it under protest and claiming to be exempted from answering, insomuch as his answers might tend to criminate him, and even if I had any doubts about this question, I believe that it would be my duty to allow the evidence, so as to let the question come before a higher tribunal for final adjudication.

Objection is also made to the production as evidence in this case of the deposition given by the accused at the inquest held by the Fire Commissioners as to the origin of the fire in the premises occupied by the Chisholms. I am of opinion that such evidence must also be allowed, inasmuch as such depositions were given before the Canada Evidence Act came into force, and as admitted by the parties at the argument, were given by the accused without claiming their privilege.

As to the finding of the jury in the civil case, I am of opinion that it cannot be received as evidence in this trial.