The counsel for the prisoner objected, but the learned judge, (McLean, C. J.,) allowed the counsel for the crown to address the jury, for the purpose of summing up the evidence brought forward on the part of the Crown.

The counsel for the prisoner objected that the only right to sum up was under the Common Law Procedure Act; and that the Common Law Procedure Act was inapplicable in a criminal case; and that at all events it was too late to sum up after he had addressed the jury on behalf of the prisoner.

The counsel for the Crown was, however, allowed to proceed, and did accordingly address the jury.

The jury found prisoner guilty, and he was afterwards sentenced to two years imprisonment in the Reformatory Prison of Upper Canada.

During Michaelmas Term last, *R. A. Harrison* obtained a rule calling upon the Attorney General or his agent to shew cause why the verdict of guilty, and all proceedings subsequent thereto, should not be set aside, and a new trial had, upon the grounds:

1. That the counsel for the Crown, not being the Attorney or Solicitor General, claimed a right of reply, was allowed to reply, and did reply, though no witnesses were called for the defendant.

2. That the verdict was contrary to law and evidence, in this, that there was no proof of the breaking and entering charged in the indictment.

3. That at the time of entering the window, through which defendant entered, was open, so that defendant was not guilty of the offence of burglary.

During last term *Richards, Q.C*, shewed cause.

He contended that the counsel for the Crown, as representing the Attorney General, had the right of reply, though no witnesses were called for the prisoner; and also contended that, whether he had or not, the exercise of the supposed right was not a ground for a new trial.

Harrison supported the rule.

He contended that the right of reply in a criminal case, where no witnesses are called for the defence, is the personal right of the Attorney General, if it exists at all; and that being so it cannot be exercised by those whom he deputes to conduct criminal prosecutions.

Mr. Harrison admitted that an error of the judge in allowing the right of reply, in a case where it does not exist, is not *per se* a ground of application for a new trial; and submitted that in this case it had worked injustice, inasmuch as the evidence was wholly insufficient to sustain the conviction.

The following authorities were cited by counsel during the argument:—7 C. & P. 676, 677; *Rex* v. *Marsden*, M. & M. 439; *Rex* v. *Bell*, M. & M. 440; *Reg.* v. *Gardner*, 1 C & K. 628; *Reg.* v. *Blackburn*, 3 C. & K. 330; *Reg.* v. *Christie*, 1 F. & F. 75; S. C. 7 Co. 506; *Reg.* v. *Taylor*, 1 F. & F. 75; *Reg.* v. *O'Connell*, 11 C. & F. 155; Har. C. L. P. A. 303 note.

DRAPER, C. J.—I think there is no such right as that claimed by the learned counsel for the crown. I do not think any such right exists in England. In England the right may be said to exist in cases where the Crown is directly concerned, as in a state prosecution, or in a prosecution for an assault on a customs or other public officer. In ordinary prosecutions for crime I do not think it exists, except where the Attorney General himself prosecutes. I have always been of this opinion, and have always so ruled in cases before me. The erroneous exercise of that right is not, however, itself a ground for a new trial; but in this case I have no hesitation in saying that the evidence was not sufficient to sustain the verdict, and, therefore, think there ought to be a new trial.

RICHARDS, J.—I also think there ought to be a new trial; but I cannot say I am free from doubt on the first point to which the learned Chief Justice has referred. The learned judges (Talfourd, Bayley and Martin) who in England have decided against the right of a crown officer, not being attorney or solicitor general, to reply where no evidence is adduced for the defence, never held the office of attorney or solicitor general, and had not the same opportunity of forming a correct opinion on the question as Chief Baron Pollock who, in *Reg.* v. *Gardiner*, 1 C. & K. 628, ruled in favor of the right. There is nothing to show that any one of the learned judges who, in England, ruled against the right were aware of the rules published in 7 C. & P. 676. On the ground that the evidence in this case was wholly insufficient to support the verdict I concur with the Chief Justice in deciding that the rule ought to be made absolute.

MORRISON, J.—I concur with the Chief Justice in thinking not only that the evidence was insufficient to support the verdict, but that the counsel for the Crown had not the right which he claimed and exercised at the trial.

Per cur.—Rule absolute.

CHANCERY.

(*Reported by* ALEX. GRANT, Esq., *Barrister-at-Law, Reporter to the Court.*)

HILL v. RUTHERFORD.

Composition deed—Effect of debtor failing strictly to fulfil terms of compromise.

The rule that the terms of composition deeds must be strictly complied with, considered and acted upon.

The creditors of an insolvent debtor, by deed, absolutely and unconditionally released their claim against him, but it appeared by a memorandum on the instrument, that such release was intended to be in consideration of the debtor delivering to them certain endorsed notes, which, however, he stated he was unable to procure, and in fact they were not delivered as had been agreed upon. *Held*, that the creditors were entitled in this court to enforce payment of their orignal claim, notwithstanding that the debtor offered to pay the sum, for which it was stipulated by the deed of composition that the notes should be given, or to give the notes agreed upon; although the court of common law had held the right of the creditors to recover was gone. SPRAGGE, V. C., dissenting.

The bill in this cause was filed by Daniel Hill, Jesse W. Benedict and William Vann; Benedict & Vann being merchants residing in New York, setting forth that on the 16th of September, 1859, defendant having become indebted to Benedict & Vann, (for goods sold to him), in the sum of $979 76, stated the account between them by signing the following;—

"$979 76 Guelph, September 16, 1857.

"Six months after date I promise to pay to the order of Benedict & Vann, nine hundred and seventy-nine dollars, seventy-six cents, at the Bank of Montreal, with current rate of exchange on New York."

Rutherford subsequently, and on the 9th of January, 1860, made an assignment to trustees for the benefit of his creditors, which contained a general release, unless the parties signing wrote "without release" after their signitures; that the deed was only executed by a few of defendant's creditors, and all without release; and the deed was afterwards abandoned, and a deed dated the 7th of August, 1860, was subsequently made; that in the interval, and in the month of June, defendant induced many of his creditors and amongst them Benedict & Vann, to believe that he was unable to pay his liabilities in full, when it was agreed between him and his said creditors, that he should pay them five shillings in the pound, payable in two equal instalments, in six and twelve months, from the first of July, 1860; and that he should give his promissory notes, satisfactorily endorsed, to secure such payments. That for the purpose of carrying this arrangement out, a document was prepared by the defendant, purporting to be between his creditors of the one part, and the defendant of the other part, which instruments defendant took to his several creditors, requesting them to sign it, on the agreement and understanding that he would deliver such promissory notes, as before mentioned; upon which understanding many did sign, amongst others, the plaintiffs Benedict & Vann; that afterwards defendants discovered he could not procure the notes to be endorsed by any one who would be satisfactory to his creditors, and thus to carry into effect in good faith the agreement for composition, and that he therefore abandoned it, and entered into a new arrangement with his creditors, which was carried into effect by an indenture dated 7th of August, 1860, purporting to be made between defendant, of the first part, Ross, Mitchell & Fisken, of the second part, the Bank of Montreal, the City Bank, and the Bank of Toronto, of the third part, and all his other creditors therein named (and among them, Benedict & Vann,) of the fourth part, which deed was transmitted by defendant to Benedict & Vann at New York, in a letter of the 28th of August, 1860, wherein he stated, in effect, "that he was unabled to get such sa-