

Eng. Rep.]

REG. V. COOTE.

[Eng. Rep.]

Crown, and due deliberation had, on the case transmitted to this court from the Court of Queen's Bench, sitting on the Crown side at Montreal, it is considered, adjudged, and finally determined by the court now here, pursuant to the statute in that behalf, that an entry be made on the record to the effect that in the opinion of this court the production of the depositions made by the prisoner before the Fire Commissioners at Montreal was illegal, and, therefore that the evidence adduced on the part of our Sovereign Lady the Queen does not justify the verdict, which is hereby quashed and set aside.

"But this court, considering that the conviction is declared to be bad from a cause not depending upon the merits of the case, does hereby order that the said prisoner, Edward Coote, be tried anew on the indictment found and now pending against him, as if no trial had been had in the case, and that for the purpose of standing such new trial, he be bound over in sufficient recognizance to appear on the first day of the next ensuing term of the Court of Queen's Bench, sitting on the Crown side, at Montreal, and thereafter from day to day until duly discharged."

From this judgment Badgley and Monk, JJ., dissented.

On the 15th March, 1872, an application was made by the Attorney-General for the Province of Quebec, Canada, on behalf of the Crown, to the said Court of Queen's Bench, for leave to appeal to Her Majesty in Her Privy Council, and such leave was refused.

On the 10th May, 1872, special leave was granted by Her Majesty in Council to appeal from the said judgment of the said Court of Queen's Bench, of the 15th March, 1872.

Sir John B. Karstlake, Q. C. and *Bompas* for the appellant.—The depositions were properly received in evidence by the judge before whom the indictment was tried. They were admissible although made on oath, and although made by the prisoner as a witness whose attendance might have been compelled. At the time the depositions were taken, no charge had been made against the prisoner, and he had the right of refusing to answer questions tending to criminate him. The prisoner answered voluntarily, and Badgley, J., states that he "frequently exercised his privilege of refusing to answer certain questions." It was not necessary that the Fire Commissioners should caution the prisoner that statements made by him on the inquiry might be used in evidence against him. The statute

(11 & 12 Vict. c. 42 s. 19) relates only to proceedings before magistrates, and caution given to accused persons. There was no ground for moving in arrest of judgment; nor had the court power to grant a new trial, for the statute empowering the court to grant a new trial (Consolidated Statutes of Lower Canada, c. 77 s. 57) was repealed by 32 & 33 Vict. c. 29, s. 80, which gives no such power. They cited the authorities given in the judgment *post*, and further, 1 Taylor on Evidence, 743; Rosc. Crim. Evidence, 62; Joy on Confessions, 62, 68; *Reg. v. Gillis*, 17 Ir. C. L. Rep. 512.

Judgment was delivered by

Sir ROBERT P. COLLIER.—Edward Coote, the respondent, was convicted of arson, subject to a question of law reserved by Badgley, J., (the judge who presided at the trial), for the consideration of the appeal side of the Court of Queen's Bench, in pursuance of c. 87, sect. 57 of the Consolidated Statutes of Lower Canada. The question reserved was, whether or not the prosecutor was entitled to read as evidence against the prisoner depositions made by him under the following circumstances:—An Act of the Quebec Legislature appointed officers named "Fire Marshals" for Quebec and Montreal respectively, with power to inquire into the cause and origin of fires occurring in those cities, and conferred upon each of them "all the powers of any judge of session, recorder or coroner, to summon before him and examine upon oath all persons whom he deems capable of giving information or evidence touching or concerning such fire." These officers had also power, if the evidence adduced afforded reasonable ground for believing that the fire was kindled by design, to arrest any suspected person, and to proceed to an examination of the case and committal of the accused for trial in the same manner as a justice of the peace. Upon an enquiry held in pursuance of this statute as to the origin of a fire in a warehouse, of which Coote was the occupier, he was examined on oath as a witness. No copy of his depositions accompanies the records, but their lordships accept the following statement of Badgley, J., as to the circumstances under which they were taken: "Among the several persons examined respecting that fire was Coote himself, upon two occasions at an interval of three or four days between his two appearances, on each of which he signed his deposition taken in the usual manner of such proceedings, and which was attested by the commissioners. Upon both occasions he acted voluntarily and without constraint; there was no charge or accu-