First Divisional Court.        February 7th, 1917.

## *REX v. BAUGH.

*Criminal Law—Trial for Conspiracy—Evidence—Depositions of Witness Taken at Former Trial—Absence of Witness from Canada—Proof of—Authentication of Depositions—Criminal Code, sec. 999—Time for Signing by Judge—Injustice to Defendant—Same Judge Presiding at both Trials—Judge's Charge—Misdirection or Nondirection—Criminal Code, sec. 1019—Substantial Wrong or Miscarriage.*

Case stated by the Senior Judge of the County Court of the County of York upon the trial and conviction of the defendant on a charge of conspiring with others to prosecute G. A. Stimson for an alleged offence, knowing him to be innocent thereof.

The case was heard by Meredith, C.J.O., Maclaren, Magee, Hodgins, and Ferguson, JJ.A.

I. F. Hellmuth, K.C., and T. C. Robinette, K.C., for the defendant.

J. R. Cartwright, K.C., and J. B. Clarke, K.C., for the Crown.

Meredith, C.J.O., read a judgment in which he said that the following questions were stated for the opinion of the Court:—

(1) Were such facts proved upon oath from which it could reasonably be inferred that Louis Britain, whose evidence was given at a fomer trial, was absent from Canada at the time of this trial?

(2) Was I wrong in admitting the said evidence, in view of the fact that, at the time the application to admit the said evidence was made, such evidence was not signed by the Judge before whom it was taken, but was signed by me after objection to the receipt of such evidence was taken by counsel for the accused?

(3) Should there be a new trial on the ground of misdirection or nondirection in my charge to the jury?

It was conceded by counsel for the prisoner that the answer to the first question must be in the affirmative; and it should be so answered.

The question as to the admissibility of the evidence of Louis Britain related only to the manner in which the stenographer's transcript of it was authenticated by the signature of the Judge, and not to the other requirements of sec. 999 of the Criminal