

In an action where the third parties had no right to defend the action but had obtained leave to appeal in the name of the defendants of which they had availed themselves,

*Held*, that an appeal in their own name was not competent, and on motion was quashed.

*J. H. Moss*, for plaintiffs. *Armour*, K.C., for defendants. *J. Bicknell*, K.C., for third parties.

Full Court.]

REX v. BURDELL.

[Jan. 31.

*Criminal law—Burglary—Possession of stolen property—Inference of guilt—Lapse of time—Jury—Verdict—Dissent of juror—Re-consideration—Judge's charge—Comment on failure of prisoner to testify.*

The jury in a criminal trial may be sent back for further deliberation when, upon being polled, one of the jurors announces "not guilty," dissenting from the verdict of "guilty" announced by the foreman, and a subsequent unanimous verdict of "guilty" may properly be accepted.

Upon the trial of the prisoner for burglary and burglariously stealing property, the judge in his charge to the jury remarked that if they did not believe the evidence of a certain witness, they were "brought face to face with the fact that the prisoner is found in possession of a pouch which was stolen . . . and that he has not given a satisfactory explanation of how he came into possession of it."

*Held*, that the judge did not thereby intimate to the jury that the prisoner might have given evidence in his own behalf, and that an inference unfavourable to him might be drawn from the fact that he had not done so.

The burglary was on Dec. 18 or 19, 1903, and the prisoner was arrested on Feb. 16, 1904, with one of the articles stolen upon his person.

*Held*, that the judge could not properly have ruled, under all the circumstances of the case, that the lapse of time was so great as absolutely to repel any presumption that the prisoner was concerned in the burglary; and that the possession of the article and other circumstances warranted the jury in drawing an inference of guilt.

Leave to appeal was refused, and rulings of STREET, J., at the trial, were affirmed.