

The two appellants were tried together in the County Judge's Criminal Court at London before the Junior Judge, for burglary and theft, and were both convicted. He granted them leave under section 1021 of the Criminal Code to appeal to this Court for a new trial on the ground that the verdict was against the weight of evidence.

The appeal to Court of Appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE LENNOX.

P. H. Bartlett, for the defendants.

J. R. Cartwright, K.C., for the Crown.

HON. MR. JUSTICE MACLAREN:—It was strongly argued on their behalf before us that if the conviction of either of the accused was against the weight of evidence, they should both have a new trial, and a dictum of Robinson, C.J., in *Reg. v. Fellowes*, 19 U. C. R. at p. 54, was cited in support of this proposition. It is to be observed, however, that that was a case of conspiracy, as was also *Reg. v. Gompertz*; 9 Q. B. 842, where Lord Denman, C.J., laid down the same rule. No authority was cited to us, nor have I found any for such a rule in a case of burglary like the present. If this had been a case of conspiracy it would have necessarily been applicable to them both. In my opinion the general rule is that laid down by Lord Kenyon, C.J., in *Rex v. Mawbey*, 6 T. R. (also a case of conspiracy), at p. 368, where he says that the Courts will grant or refuse a new trial according as it will tend to the administration of justice. I do not find anything in the law or in the facts of the present case to prevent the cases of these two appellants being considered separately, each on its own merits, and if the evidence warrants it, different conclusions being arrived at.

According to the evidence the Arva Mill, a short distance north of London was broken into on the night of March 27th, 1912, the safe blown open and two small cheques and \$178.15 in cash stolen. The empty cash-box was found in a field close to the road leading to London. Fairbairn gave evidence and said he was a peddler who had sold out his stock in Sarnia and Watford, and had beaten his way to London on a freight train arriving on Monday