

Full Court.]

QUEEN v. HAMILTON.

[Dec. 23, 1898.

*Depositions, admissibility of—Evidence—Criminal Code, ss. 590 and 687.*

The principal evidence on which the prisoner was convicted was that contained in two depositions of a witness who had died before the trial.

One of the depositions objected to contained the evidence of the witness written down on a separate sheet of paper headed "Martha Louisa Walker, sworn, saith," and on several successive sheets with the signatures "K. Campbell, P.M." and "Louisa Walker" at the end. These sheets were attached to three others the first of which had the heading "Canada, Province of Manitoba, Western Judicial District," and then continued, "The depositions of Matthew Hamilton, etc., and others taken on the 25th day of March, etc., at Brandon, etc., before the undersigned one of Her Majesty's Justices of the Peace for the said province, in the presence and hearing of Alexander Hamilton who stands charged, etc." The depositions of Matthew Hamilton and Florentine Hamilton appeared on these three sheets which concluded with the statement, "Prisoner is remanded until Tuesday, March 29th at 10.30. March 25th, 1898. K. Campbell."

*Held*, that the deposition in question did not purport to have been taken before a justice of the peace or to be signed by a justice of the peace and so was not admissible under section 687 of the Criminal Code.

*Semble*. If it had been proved that section 590 of the Code had been complied with, by reading over the deposition to the witness by the latter, and the magistrate signing it, all three, magistrate, witness and accused, being present together, and that the evidence had been given in the presence of the accused, and that the latter had had an opportunity of cross-examining the witness, the deposition would have been admissible independently of s. 687, but it was not shewn that all three were present when the witness and magistrate signed, nor was it clearly shewn that the particular deposition had been read over to the witness.

The other deposition was objected to because the witness was described in the heading as "Martha Louisa Walker," whilst the signature was "Louisa Walker," and because the signature "K. Campbell" had not the letters "J. P." or "P.M." after it.

*Held*, that the document sufficiently purported to be signed by the justice before whom the deposition purported to have been taken, and was therefore admissible under section 687 of the Code.

In the result, as the jury might have been influenced by the evidence now held inadmissible, the conviction was set aside and a new trial ordered.

*Per. Juc.*, for the Crown. *Howell, Q. C.*, for the prisoner.