

of accused as to their character and habits, and shewed that they used tobacco. Evidence for defence made no change on my mind. I still found both prisoners guilty of receiving stolen goods knowing them to have been stolen. I remanded the prisoners for sentence until after the trial of the next case."

The case stated that the second charge, that of receiving razors, was tried on the 27th December also, whereupon, upon the same day, the Judge made up his mind to find both prisoners not guilty of shopbreaking, but guilty of receiving the stolen property knowing it to have been stolen, though he did not so express himself in open court at the time, and he remanded both prisoners for judgment and sentence.

On the 30th December both prisoners were tried on the third charge and acquitted.

On the 31st December the Judge sentenced both prisoners to 23 months' imprisonment on the first charge, and to the same term of imprisonment on the second charge, the second sentence to run concurrently with the first. These sentences were not passed until after the trial and dismissal of the prisoners on the third charge.

The Judge added to his certificate: "I came to my finding in the first case before hearing the second case, and I am not conscious that I was biassed in coming to my conclusion on the second case through the knowledge acquired in the hearing of the first and third cases." He also stated that no objection was taken by counsel to the adjournment or to his remanding the prisoner for judgment and sentence until all the cases were tried.

The appeal was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, and MACLAREN, JJ.A.

George F. Kelleher, for the prisoners, contended that the convictions were illegal because the Judge had mixed up the trial of the several cases in a manner calculated to prejudice the prisoners, and relied on *Hamilton v. Walker*, [1892] 2 Q. B. 25, 67 L. T. 200, 56 J. P. 583.

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

MACLENNAN, J.A.—*Hamilton v. Walker* was a case in which the evidence in support of two different charges was necessarily nearly altogether the same. Here, however, the circumstances of the three charges were altogether different as to time and place, and the only identity was in the persons charged, and the principal witness was the same in all three or at all events in the first two.