

offence, has no right during the trial to make a view of the land in respect of a transaction in which the charge of fraud was made which he was trying as such magistrate, at least where there is no consent of both the Crown and the accused to his so doing.

R. v. Petrie, 20 O.R. 317, applied.

Although s. 958 of the Criminal Code (1906) empowers the court to order that the jury on a criminal trial shall have a view of any place, person or thing, it is not to be inferred that a magistrate exercising a limited statutory power of summary trial without a jury in respect of certain indictable offences, may in like manner take a view of lands which are the subject matter of the offence charged.

D. W. F. McDonald, for defendant. *J. K. Kennedy*, for the magistrate.

ANNOTATION ON ABOVE CASE.

"Real evidence" is often produced at trials, when it is not exacted by any rule either of law or practice. Valuable evidence of this kind is sometimes given by means of accurate and verified models, or by what is technically termed a "view" i.e., a personal inspection by some of the jury of the *locus in quo*,—a proceeding allowed in certain cases by the common law, in criminal as well as in civil cases, and much extended by the statutes, 4 Anne, ch. 16, sec. 8; Juries Act (Imp.) 1825), 6 Geo. 4, ch. 50, sec. 23; Common Law Procedure Act, 1852 (Imp.), 15 and 16 Vict. ch. 78, sec. 114, and Common Law Procedure Act, 1854 (Imp.), 17 and 18 Vict. ch. 125, sec. 58. Best on Evid. 11th ed., 195; *R. v. Martin*, L.R. 1 C.C.R. 378, 12 Cox C.C. 204, 41 L.J.M.C. 113. The application for the view may be made at any time before verdict. *Ibid.*; Bowen-Rowlands on Crim. Proceedings, 2nd ed., 252.

Section 958 of the Criminal Code of Canada, 1906, is as follows:—

"On the trial of any person for an offence against this Act, the Court may, if it appears expedient for the ends of justice, at any time after the jurors have been sworn to try the case and before they give their verdict, direct that the jury shall have a view of any place, thing or person, and shall give directions as to the manner in which, and the persons by whom, the place, thing or person, shall be shewn to such jurors, and may for that purpose adjourn the trial, and the costs occasioned thereby shall be in the discretion of the Court.

"(2) When such view is ordered, the Court shall give such directions as seem requisite for the purpose of preventing undue communication with such jurors: Provided that no breach of any such directions shall affect the validity of the proceedings."

Taking a view of the locality of the offence is receiving evidence, in a sense, and the prisoner's counsel should have the opportunity of attending: *R. v. Petrie* (1890), 20 O.R. 317, 324. In that case the prisoner was