

Section 690 of the Code permits any accused person on his trial for any indictable offence, or his counsel or solicitor, to admit any fact alleged against the accused so as to dispense with proof thereof: *Regina v. St. Clair*, 27 A. R. 308. This, it need hardly be said, does not warrant the admission of improper evidence nor prevent the prisoner from objecting to it, though his counsel may, by oversight or otherwise, have omitted to do so at the proper time.

The trial of this case seems to have been conducted with a degree of laxity very undesirable in any criminal case, and especially objectionable in one of a comparatively important nature, where precision in allegation and proof ought to have been required.

As regards the merits of the case, we cannot say that, if the facts disclosed by the depositions of the witnesses in Harmon's case had been regularly proved, there would not have been some evidence on which the Judge might have convicted the prisoner.

The charge is one of a very serious nature, and the conduct of the prisoner and of Harmon, however earnest their belief, very much to be discouraged, as dangerous to the community at large. While, therefore, we are obliged to quash the conviction on the ground of the reception of improper evidence, we direct a new trial. It may be that the Crown, taking into consideration the fact that the prisoner has already undergone several months' confinement, will, on application, think it proper to direct a *nolle prosequi*.

The only question stated in the case which seems necessary to be answered is the second, as to which our answer is that the depositions of Charters and Thom were not properly received.

We think the case not one for the application of sec. 746 (f) of the Code, being unable to say that no substantial wrong or miscarriage was occasioned by the improper admission of such evidence.