

means, the rule apparently being that if the accused asks for the services of a stenographer, he has to pay for such services, and furnish the Crown with a certified copy of the evidence.

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An amendment to section 687 of the Criminal Code, such as is suggested in the issue of the *LAW JOURNAL* of February 15th, would, in my opinion, be of great advantage in the administration of the criminal law from two points of view: firstly, in making it clear that evidence taken at a trial may be used at a subsequent trial of the same offence; and secondly, in dispensing with the absolute proof of the facts now required to be shown before depositions previously taken can be used. Many times in my practice it has been necessary to invoke the aid of section 687 where the witnesses examined at the preliminary hearing reside ordinarily in the United States, and I have experienced considerable difficulty in proving at the trial that as an actual fact the witness was absent from Canada, although from all the circumstances the inference was overwhelming.

Within a year the very point arose upon the trial of an indictment for theft at the Sandwich assizes. The main witness, a resident of the United States, who was the owner of race horses, had been in Windsor during the racing period, and had been examined on the preliminary investigation, but shortly before the trial had gone with his horses to some track in the United States. Evidence was given of his departure by the ferry to Detroit, and of his statement that he was going to some place in the United States, and that no reply had been received to a letter to his reputed address. It was suggested for the defence that he was at the Fort Erie, Ontario, track, but a telegram failed to discover him there. Mr. Justice MacMahon, the presiding judge, intimated that if necessary he would reserve a case for the full court to determine whether or not sufficient was shown to enable the deposition to be read, but as the case failed on the merits the matter dropped.

Under the suggested amendment, the difficulty we had would be removed, no injustice done to any one, as its terms leave a wide discretion with the presiding judge to determine whether or not the facts in the given case raise a reasonable inference of absence,