not been sworn to before them, and bring in a verdict based on evidence given in the earlier proceedings, and that any such evidence must not weigh with them in arriving at their verdict.

The learned Judge reserved a case accordingly, stating the facts as above, and submitting the question: "Was there in my charge to the jury either misdirection or nondirection in respect to the use made at the trial of the evidence of these three witnesses, or any of them, given at the inquest or at the preliminary investigation?"

The case was heard by MEREDITH, C.J.C.P., CLUTE, RIDDELL, LENNOX, and MASTEN, JJ.

C. R. McKeown, K.C., for the defendant.

J. R. Cartwright, K.C., and Edward Bayly, K.C., for the Crown.

CLUTE, J., read a judgment in which he set out portions of the trial Judge's charge and portions of the evidence. He said that counsel for the Crown in effect placed before the jury evidence taken at the inquest, not by asking questions in the ordinary way—even leading questions—but by reading a large portion of such evidence before the questions were asked. It was not open to question, the learned Judge said, that, if the evidence of the witnesses taken at the inquest had been tendered at the trial as part of the Crown's case, it must have been rejected. It was not the case of secondary evidence being tendered, the witnesses being dead or out of the country. Here it was urged that what took place on the examination of the witnessess who had previously given evidence at the inquest entitled the jury at the trial to receive and give weight to the evidence so taken at the inquest, because (it was said) the witnesses, although called by the Crown, proving adverse and having denied their evidence given at the inquest, might be contradicted by the production of the evidence at the inquest; and, that evidence having been proved by the coroner and put in, the jury could treat it as evidence for all purposes, and therefore in support of the facts tending to prove the prisoner's guilt. This was a startling proposition.

The learned Judge then examined a large number of cases cited by counsel for the Crown, and said that none of them supported the argument; and that secs. 9, 10, and 11 of the Canada Evidence Act, R.S.C. 1906 ch. 145, did not in any way strengthen the Crown's contention.

The learned trial Judge told the jury that it would be for them to come to a conclusion with reference to the statements made by individual witnesses at the trial and on a previous oc-