charge as a whole, it was manifest that it was a proper one, and that the inaccuracies, real or supposed, could not have misled the jury.

Reading the charge in this case as a whole, it was a very fair and proper one, and stated clearly the questions that were to be determined and what was necessary to be proved in order to warrant a finding of "guilty;" the defence was fairly and fully put before the jury, and they were clearly told what the defence was.

Upon the other question, the Court was clearly of opinion that it ought not to require a case to be stated. It is not competent for a prisoner, at whose request evidence has been admitted, especially where that evidence would have been properly received if an affidavit had been filed proving that the witnesses were absent and unable to attend, afterwards to turn round and seek to obtain a new trial upon the ground that the evidence was improperly admitted.

The granting of a new trial, even in a capital case, is in the discretion of the Court; and in a case such as this that discretion ought not to be exercised in favour of the prisoner. There was ample evidence to warrant the conclusion to which the jury came.

In any view, sec. 1019 of the Criminal Code ("substantial wrong or miscarriage") is applicable, and affords ground for refusing to direct that a special case be stated.

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS. APRIL 16TH, 1917.

*RE WILLIAMSON, PENNELL v. McCUTCHEON.

Distribution of Estates—Insolvent Estate of Deceased Person—Moneys Made by Sheriff under Execution before Administration Order—Rule 613 (2)—Creditors Relief Act, R.S.O. 1914 ch. 81—Priority of Execution Creditors over other Creditors—Trustee Act, R.S.O. 1914 ch. 121, sec. 63 (1)—Distribution among all Creditors pro Rata—Payment of Money into Court—Distribution in Administration Proceedings—Costs.

Motion by a sheriff for leave to pay into Court moneys realised by him under execution.