

the family nor a relative of the deceased. No objection was taken to the reading of these depositions as not being within the terms of the consent, nor to the use of any of them at a trial taking place at an earlier time than that at which the writer had proposed that they should be used, apparently as a concession, in order to obtain the desired postponement.

The trial Judge having refused to reserve a case, leave to appeal was recently granted by this Court, on the grounds of the improper reception of evidence, and that there was in fact no evidence of the commission of the offence charged in the indictment. . . .

The first objection, though somewhat faintly pressed on the argument, appears to us to be fatal to the conviction.

It is not a little singular that, although the prisoner seems to have been represented by counsel at the trial, no consent by that counsel to the admission of the depositions taken at Harmon's trial, appears to have been given or asked for. The only thing relied upon by the Crown as justifying or authorizing that method of proving some of the most important elements in the charge against the prisoner, was the letter . . . above referred to. In the absence of any explanation, I should have thought it reasonably clear from the terms of that letter, that the offer to admit the depositions was made as a concession for the postponement of the trial to suit the writer's convenience until 6th January, and, that not having been acceded to, that the trial ought to have been proceeded with and the case proved against the prisoner in the regular way.

It is, however, enough to say, even assuming that the consent was wide enough to authorize the admission of the depositions specified therein at a trial taking place at any time, yet some depositions, those namely of Charters and Thom, were put in which were not covered by it. These ought to have been rejected by the trial Judge. That of Charters was perhaps unimportant, but the same cannot be said of Thom's. It was urged that no objection was taken by counsel, and that is true, but, if a mistake is made by counsel, that does not relieve the Judge in a criminal case from the duty to see that proper evidence only is before the jury: *The Queen v. Gibson*, 18 Q. B. D. 537; *The Queen v. Saunders*, [1899] 1 Q. B. 490; *Regina v. Petrie*, 20 O. R. 317.