D. C. Ross, for the defendant.
H. E. Rose, K.C., for the prosecutor.

LENNOX, J.:—It is contended by the defendant that the only evidence against him is the deposition of James Moore. It is not and cannot be denied that this evidence alone will not support a conviction. The prosecution contends that, by agreement at the trial, the evidence in a previous case was to apply in this case. The evidence was taken in shorthand, has been extended, and is returned by the Police Magistrate as the evidence in the case. There is nothing in the evidence to shew that any arrangement was made that the evidence in the earlier case would be accepted in this.

Mr. Ross proposed to fortify his position by filing an affidavit shewing that counsel for Davey refused to accept the earlier evidence as applying in the Davey case. This was strenuously opposed by Mr. Rose, who referred me to Regina v. Strachan, 20 C.P. 182, as shewing that the magistrate's return is conclusive, and that I have no right to go behind it; and, subject to this, Mr. Rose produced a counter-affidavit. The doctrine of the case cited is beyond dispute, I think. The proper application of it to this case is not without difficulty. In the Strachan case the rule was invoked to confine the evidence in the case to the evidence recorded by the magistrate at the trial. Mr. Rose presses this rule of law, but desires me not only to accept the recorded evidence but to supplement it by a voluntary statement made by the magistrate. I do not think that I can do this. If this may be done, where is the matter to end? . . .

Section 63 of the Judicature Act, 3 & 4 Geo. V. ch. 19, is explicit as to what return the magistrate shall make upon a motion to quash a conviction. Within these lines, his return cannot be questioned; outside these limits his statements are extra-judicial and irrelevant.

The conviction will be quashed with costs. Order protecting the magistrate, if necessary.