thought there was not) any evidence to enable it to be determined by which of the prisoners the offence was committed, the conviction must be quashed.

OCTOBER 12TH, 1915.

HERRINGTON v. CAREY.

Promissory Note—Accommodation Makers — Duress — Agreement to Stifle Prosecution—Failure to Prove—Findings of Fact of Trial Judge—Appeal.

Appeal by the defendants from the judgment of MIDDLETON, J., noted 8 O.W.N. 451.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

Gordon Waldron, for the appellants.

R. J. McLaughlin, K.C., for the plaintiff, respondent.

GARROW, J.A., delivering the judgment of the Court, said that the difficulty of the defendants was with the facts and not with the law. No one disputed that an agreement not to prosecute as the consideration for the note would be an illegal consideration; nor did any one dispute that such an agreement need not be expressed, but might be implied if the circumstances in evidence warranted such an inference. That there were no such circumstances proved was the opinion of MIDDLETON, J., and with that opinion GARROW, J.A., entirely agreed.

The appeal was a hopeless one, and should be dismissed with costs.

OCTOBER 12TH, 1915.

RE TORONTO GENERAL HOSPITAL TRUSTEES AND SABISTON.

Landlord and Tenant—Lease—Renewal — Rent — Valuation of Premises—Arbitration—Evidence—Possibility of Putting in Railway Siding—Admissibility.

Case stated by arbitrators for the opinion of the Court, under sec. 29 of the Arbitration Act, R.S.O. 1914 ch. 65.

The arbitration was for the purpose of ascertaining the amount to be paid to the trustees as rent upon the renewal of a lease of hospital lands.