

prisoner could have come by it otherwise than by having broken into the mill and stolen it.

At all events it is impossible for me to consider that the finding of guilt of this man was against the weight of the evidence adduced.

In regard to the other prisoner the case is quite different. None of the stolen money was proved to have been in his possession; and if they were "partners in the job" the division of profits was a most uneven one: one would have expected him to have been in possession of a fair share of the spoils.

But the case made against him was one quite sufficient to arouse grave suspicion, if nothing more, of his complicity in the crime; perhaps it was enough to require the jury to pass upon the question of his guilt or innocence if the case had been tried by a jury. However the question we have now to consider is not whether there was any evidence upon which a jury might properly have convicted, but is whether the finding of guilt is against the weight of evidence.

The learned Judge who tried the case must, I think, have had some doubt upon this question: and that doubt was, in my opinion, well founded. This prisoner ought, in my judgment, to have a new trial on this ground.

This application was made under sec. 1021 of the Criminal Code, with the leave of the trial Judge; and although it was firmly opposed, on the part of the Crown, on the merits no objection was made that this section is applicable to a jury trial only. During the argument I suggested that it might not be, and if so this Court would have no jurisdiction to make any order. But further consideration has convinced me that it is. The words are very general: "after the conviction of any person for any offence the Court before which the trial takes place" may give leave to apply to this Court for a new trial on the ground that the verdict was against the weight of evidence. There is certainly no expressed limitation of the power to jury cases; and to rest an implied limitation upon the word "verdict" alone would seem to me to be resting it upon a very frail foundation.

I am not prepared to say that it would be altogether inaccurate to describe the finding of guilty or not guilty, and its indorsements upon any record of a Judge having the power of, and acting in the capacity, of a jury, in a criminal case of a verdict. It would certainly be more convenient if