

N.S.]

GRAVES v. THE KING.

[Feb. 24.

*Criminal law—Indictment for murder—Trial—Charge to jury—
Non-direction—New trial.*

On the trial of an indictment for murder of one Kenneth Lea it was proved that the prisoners, who had been drinking, came on the deceased's lawn and commenced to shout and sing and use profane and insulting language towards him. He twice warned them away and finally appeared with a loaded gun threatening to shoot. A rush was made towards the verandah where he stood when he took hold of the barrel of the gun and struck one of the prisoners with the stock. The gun was discharged into his body and there was evidence that the prisoners then maltreated him and his wife. He was taken to a hospital in Halifax, where he died shortly after. The trial judge in charging the jury instructed them that the prisoners were doing an unlawful act in trespassing on the property of deceased and that if they were actuated by malice it would be murder, if not, it was manslaughter, drawing their attention especially to sections 256 and 259(b) of the Criminal Code. The prisoners were found guilty of murder. On appeal from the decision of the Supreme Court of Nova Scotia on a reserved case:—

Held, that the judge should have drawn the attention of the jury to sub-section (d) of section 259 and directed them to find whether or not the prisoners knew, or ought to have known, that their acts were likely to cause death and his failure to do so was non-direction for which the prisoners were entitled to a new trial.

Appeal allowed with costs.

Roscoe, K.C., for appellants. *Newcombe*, K.C., for respondent.

Duff, J.]

RE DEAN.

[Feb. 25.

(9 D.L.R. 364.)

*Theft—With breaking and entering—Cr. Code 1906, s. 11, 460—
Courts—Supreme Court (Can.)—Habeas corpus jurisdiction.*

Held, 1. The offence of breaking into a counting-house and stealing money therefrom as declared by the English statute 7-8 Geo. IV. c. 29, s. 15, was a part of the criminal law of British Columbia prior to its admission into Confederation, and