

OCTOBER 29TH, 1910.

*REX v. TRAPNELL.

Criminal Law—Assisting Prisoners to Escape—Lunatics Acquitted on Charges of Murder — Detention in Provincial Asylum—Criminal Code, sec. 192—Order of Lieutenant-Governor of Province—Lawful Custody under Sentence of Imprisonment for Less than Life—Evidence to Support Conviction—Accomplice—Corroboration.

Case reserved by the Junior Judge of the County Court of Wentworth upon the conviction of the defendant in the County Court Judge's Criminal Court upon a charge of assisting two men to escape from the Hamilton Asylum for the Insane, where they were confined under the order of the Lieutenant-Governor of the province after being tried and acquitted upon charges of murder, upon findings by juries of insanity.

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

M. J. O'Reilly, K.C., for the defendant.

J. R. Cartwright, K.C., for the Crown.

The judgment of the Court was delivered by MEREDITH, J.A. :—It is essential to ascertain, in the first place, the character of the custody in which the men who escaped were held. They were confined in that which is called the criminal house of the Provincial Asylum at Hamilton, upon an order of the Lieutenant-Governor of the province, made under sec. 969 of the Criminal Code; so that their custody must have been as criminals; otherwise the enactment would be *ultra vires*: civil rights and the establishment, maintenance, and management of asylums are exclusively provincial matters.

But it is said that these men had been acquitted, and how then could they be detained except as lunatics simply? It is true that they were, in a sense, acquitted by the juries by which they were tried; but the acquittal was a part only of the verdicts; they were special verdicts under sec. 966 of the Criminal Code, the full import of which was that each had committed the crime with which he was charged, but was insane at the time, and on that ground only

* This case will be reported in the Ontario Law Reports.