

The Ontario Weekly Notes

VOL. XVI.

TORONTO, JUNE 27, 1919.

No. 15.

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JUNE 19TH, 1919.

REX v. GIOVANZZI.

Criminal Law—Murder—Evidence—Dying Declaration.

Crown case reserved by MULOCK, C.J. Ex., as follows:—

The prisoner was tried before me at the Guelph assizes commencing on Monday the 19th May, 1919, for the murder of Alexander Dutki on Sunday the 30th March, 1919, was found guilty of murder, and sentenced to be hanged on Friday the 22nd August, 1919.

At the trial I admitted as evidence on behalf of the Crown a dying declaration of the deceased, reserving the question whether I was right in so admitting it.

The evidence in the case shewed that at about a quarter to 9 o'clock on the evening of the said 30th March, one John Nassadick and another man, thought to have been the prisoner, met Dutki and a companion, Zizza, in Alice street, in the city of Guelph, and that the man with Nassadick fired three shots out of a revolver at Dutki, all three shots hitting him, two in the abdomen and one in the thigh. The assailant then ran away, and Dutki ran a short distance after him. Morrison, a policeman on duty, in uniform, heard the firing and promptly appeared on the scene, and then hurried to the house of one Checkley, which was near by, and telephoned for an ambulance and a doctor. In the meantime some other men assisted in bringing Dutki to the Checkley house, where he was placed upon a couch. As Dutki lay on the couch, Morrison, looking at him, thought he was dying and asked him how he felt and if he (Morrison) could do anything for him (Dutki), whereupon Dutki answered, "I am killed." A number of men, including John Nassadick, had followed the wounded man into Checkley's house; and, upon his saying "I am killed," Morrison made these men, one after another, appear before Dutki, to see if