

The Ontario Weekly Notes

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COURT OF APPEAL.

DECEMBER 14TH, 1909.

REX v. SPINELLI.

Criminal Law—Murder—Refusal of Trial Judge to State Case for Court of Appeal—Motion for Leave to Appeal—Objections to Evidence—Leading Questions, not Objected to—Judge's Charge—Provocation—Intoxication—Manslaughter—Refusal to Postpone Trial.

Motion by the prisoner for leave to appeal to the Court of Appeal from the refusal of RIDDELL, J., the trial Judge, to reserve a case after a conviction for murder: see ante 187.

The motion was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

A. R. Hassard, for the prisoner.

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

Judgment refusing the application was pronounced on the 22nd November, 1909, and reasons in writing were afterwards given.

OSLER, J.A.:—The motion for leave to appeal from the refusal of the learned trial Judge to reserve a case was supported by some 15 objections to the evidence and the charge and the procedure at the trial, very ingeniously taken and earnestly argued by the prisoner's counsel. Those relating to the evidence seem to resolve themselves into the complaint that leading questions were occasionally (and without objection) put to a witness by the counsel for the Crown, some of them involving a statement or statements of fact said not to have been proved or previously made by the witness. Evidence elicited by a leading question, not objected to at the time or overruled by the Judge, cannot be said to be wrongfully received or not to be admissible. Its value or weight is for the jury, but an examination of the evidence satisfies me that the prisoner has no ground of complaint in this particular,