

BRITTON, J.

JULY 31ST, 1907.

CHAMBERS.

REX v. CAPELLI.

*Criminal Law—Murder—Death Sentence—Reprieve—Criminal Code, sec. 1063.*

Motion by the prisoner under sec. 1063 of the Criminal Code to reprieve the accused for such period beyond the time fixed for the execution of the sentence as should be necessary for the consideration of the case by the Crown. The prisoner, with one Marino, was tried at Parry Sound before TEETZEL, J., on 28th and 29th May, 1907, for the murder of William Dow. Marino was acquitted. Capelli was convicted and sentenced to be hanged on 1st August, 1907. An application was made on behalf of Capelli for the mercy of the Crown. This application was disposed of on 24th July, the Governor-General ordering that the law be allowed to take its course. This decision was not communicated to the solicitor for the prisoner until after the 27th July, but he became aware on the evening of that day from the Toronto newspapers of the decision. It was alleged that there has not been such full consideration of the facts, as counsel for the accused could present them, as would enable the Minister of Justice to determine, pursuant to sec. 1022 of the Code, that Capelli should have a new trial.

C. A. Moss and H. L. Hoyles, for the prisoner.

E. Bayly, for the Attorney-General.

BRITTON, J.:—I have read the evidence, and, while I express no opinion as to whether the accused should get a new trial or not, I think substantial justice requires that a short reprieve should be granted. The law is that a reprieve is grantable by the Court whenever substantial justice requires it. If the Minister of Justice has already fully considered all the facts mentioned in the affidavit of Mr. Keeter filed on this application, it may be that nothing will be gained by the short respite given to the prisoner, but if these facts have not been properly presented for due consideration, it is due to the prisoner that the opportunity