and in the absence of mitigating or justifying circumstances which might be disclosed at the trial—amounted to murder.

He was clearly of opinion that the indictment was legally and properly preferred within the provisions of secs. 872 and 873 of the Criminal Code.

The second question was not even plausible. The depositions of Mrs. Duncan, a witness called for the defence, were not put in, even for the purpose of shewing previous statements made by her, for she admitted what she said on the preliminary inquiry in the Police Court; and, even if it had been otherwise, the learned Judge carefully pointed out to the jury—in connection with other matters arising upon the trial—that evidence of statements made out of Court, or on any other occasion than on the trial, were not to be taken as proof of the truth of the allegations previously made, and only went to the credibility of the witness: and counsel for the accused cross-examined the principal witness for the Crown, Mrs. Gerrard, on the same unsigned depositions.

As to the third point. Before imposing the sentence, the learned Judge said:—

"Mr. Kelly, is there anything you would like to say on behalf of the prisoner?"

Mr. Kelly: "Before doing that I would like to ask for a stated case upon another ground—the comment of the learned counsel for the Crown to the jury with reference to the failure of the accused to testify, *if his comment did go that far*. I wish that included in my request for a stated case."

In the opinion of the learned Judge, counsel for the Crown did not comment upon "the failure of the person charged . . . to testify," or in any way contravene the provisions of sec. 4 (5) of the Canada Evidence Act. He did not in any way suggest that the accused could give evidence on his own behalf, nor did counsel for the accused understand that he did, as was manifest from the qualified, tentative way in which he referred to it. In his address to the jury he insisted that the Crown was "bound to shew, bound to clear up, just what happened upstairs;" and dwelling and "ringing the changes" upon this argument, clearly intended the jury to infer that the Crown was *keeping back* something that if disclosed would tell in favour of the accused. If counsel for the Crown had not explained the position of the Crown, it would have become the Judge's duty to refer to the matter. From first to last there were only three people upstairs: Isaacs, who was dead; George Duncan, the accused; and Mrs. Duncan, his reputed wife. Mrs. Duncan was called by the defence, and disclosed, or professed to disclose, all she knew about the matter.