

plaintiff's right to redeem. Judgment directed to be entered for plaintiff for redemption, with a declaration that plaintiff is not entitled to credit for profits upon the stock transactions. No costs to either party up to hearing. Costs of appeal to plaintiff, to be set off. Further directions and subsequent costs reserved.

MAY 29TH, 1902.

C. A.

REX v. RICE.

*Criminal Law—Murder—Conspiracy—Charge to Jury—Verdict—Criminal Code, secs 61 (2), 227 (d), 228 (a), (2).*

Case reserved by FALCONBRIDGE, C.J., at the Toronto Autumn Assizes, 1901. The prisoner was indicted for the murder of William Boyd on the 4th June, 1901. There was only one count in the indictment. The evidence shewed that the prisoner, Fred Lee Rice, and two other men, Rutledge and Jones, were on the day in question being driven in a cab through the streets of the city of Toronto, all three handcuffed together (they being at the time under trial for burglary), with Boyd and another man, both constables, sitting opposite to them in the cab, when, at the corner of Gerrard and Sumach streets, a parcel containing two revolvers was thrown into the cab. The weapons were seized by Rice and Rutledge, and Boyd was shot dead. The trial Judge in his charge divided the case into two branches, first, whether Rice's hand fired the shot which killed Boyd, and second, if not, whether Rice was guilty of murder, under the circumstances, if the hand of one of the other men fired the shot. The Judge told the jury that up to the time the weapons were thrown into the cab, there was no evidence of a conspiracy or collusion, but that after that there might have been a common resolve to escape from lawful custody, and, if there was such common resolve or design, that Rice might be found guilty of murder. The jury disagreed as to the first branch of the case, and found the prisoner guilty on the second branch. Three questions were reserved for the consideration of the Court: (1) Was there any sufficient evidence to warrant the verdict? (2) Was the Judge's direction to the jury on the question of conspiracy or common design correct? (3) Was the finding of the jury a proper one, or was there a mistrial.

T. C. Robinette, for prisoner.

J. R. Cartwright, K.C., and Frank Ford, for Crown.

ARMOUR, C.J.O.—I am of the opinion that there was sufficient evidence to warrant the verdict as found by the