

in a hurry to catch a car and that the trench was on his direct route to do so.

*F. McDonald, K.C., for appeal. H. Mellish, K.C., contra.*

Full Court.]

[Dec. 14, 1912.

THE KING *v.* GRAVES ET AL. (No. 1).

*Criminal law—Murder—Indirect cause of death—Existence of malice or ill-will—Instructions to jury—Refusal of trial judge to reserve case—Appeal allowed.*

The prisoners, while in a partly intoxicated condition invaded the lawn in front of deceased's house and used profane and abusive language acting in a disorderly manner. Deceased requested them several times to leave and on their refusal to do so produced a loaded gun and said he would give them one more chance to go or he would fire. The prisoners thereupon made a rush at deceased who reversed the gun and struck one of them a blow on the head with the butt of the gun, which caused the gun to be discharged, inflicting a severe wound upon deceased, which, in connection with subsequent ill-usage on the part of the prisoners, produced a condition of shock resulting in his death. The jury found the prisoners guilty of murder. A reserved case was applied for and refused.

*Held* (by the majority of the court), allowing defendants' appeal.

1. That the prisoners would not be responsible for the discharge of the gun in the hands of deceased unless he was induced by fear to handle it as he did, and that the existence or non-existence of such fear was an essential point for submission to the jury.

2. That the prisoners were entitled to have submitted the question whether, at the time they did any act which resulted in deceased producing the gun, they, as reasonable men, contemplated that death or grievous bodily harm was likely to result.

3. That the injury caused by the gunshot wound should have been distinguished from those caused by the subsequent ill usage.

4. That the prisoners were entitled to have submitted the question whether the production of the gun by deceased constituted provocation, and, in that connection, the intoxication