HIGH COURT DIVISION.

LENNOX, J.   NOVEMBER 25TH, 1918.

REX v. DUNCAN.

Criminal Law—Committal of Prisoner for Trial on Charge of Man-slaughter—Indictment for Murder at Assizes with Consent of Presiding Judge—Criminal Code, secs. 872, 873—Depositions at Preliminary Inquiry not Signed by Deponents—Use Made of Depositions at Trial—Supposed Comments of Crown Counsel on Failure of Accused to Testify—Explanation of—Canada Evidence Act, sec. 4 (5)—Refusal of Trial Judge to State Case for Court of Appeal.

The accused was tried for murder at the Brantford Assizes on the 13th, 14th, and 15th November, 1918, found guilty of man-slaughter, and sentenced to imprisonment for 18 years.

The trial Judge, LENNOX, J., was asked to state a case for the opinion of the Court of Appeal upon the following questions:—

1. Was the accused entitled to have the indictment for murder quashed, the accused, with the concurrence of the County Crown Attorney, acting at the preliminary inquiry, having been committed for trial for manslaughter, and the indictment for murder having been preferred with the trial Judge's consent endorsed thereon?

2. Was the accused properly and legally tried, the depositions of the witnesses upon the preliminary proceedings in the Police Court not being signed by the deponents?

3. Was the trial improper or illegal by reason of comments of counsel for the Crown addressed to the jury?

The accused was arraigned and pleaded not guilty on the 12th November. The motion to quash the indictment was made after plea, to wit, on the 13th November, when the case came on for trial, and was then refused.

After the evidence was all in and the jury had retired, W. E. Kelly, K.C., for the accused, asked the trial Judge to reserve the first and second questions.

The third question was raised after the verdict of the jury had been rendered, recorded, and confirmed in open court.

N. F. Davidson, K.C., for the Crown.

LENNOX, J., in a written judgment, said, as to the first point, that "the facts and evidence disclosed in the depositions," if true—