

of fact and not a question of law, and a Court of criminal appeal has no jurisdiction to grant leave to appeal in respect thereof. And an objection to a verdict on the ground that it is against the weight of evidence can only be raised by obtaining leave from the trial Court under Code sec. 1021 to apply to the Court of Appeal for a new trial. *R. v. Carlin* (No. 2), 6 Can. Cr. Cas. 507.

A question may properly be reserved as to whether or not there was any legal evidence to support the conviction; but as to the weight of evidence and the inferences to be drawn from it by the jury the case can only come before the Court of Appeal on a motion for a new trial. *R. v. McCaffery* (1900), 4 Can. Cr. Cas. 193 (N.S.).

When a reserved case has been granted upon certain questions of law, the appellant will not be allowed to appeal on further questions which were not submitted to the Judge below. *R. v. Breckenridge* (1903), 7 Can. Cr. Cas. 116 (Que.).

Failure to instruct the jury in a trial for murder upon the distinction between murder and manslaughter is a ground for ordering a new trial. And a Court of criminal appeal should direct a new trial upon a case reserved by the trial Judge after the trial in respect of such omission in the Judge's charge to the jury, although no objection thereto was taken by the defendant's counsel during the trial. *R. v. Wong On* (No. 3) (1904), 8 Can. Cr. Cas. 423 (B.C.).

*Evidence.*—On a trial for murder by shooting, where the evidence for the prosecution was of a deliberate shooting and the accused giving evidence on his own behalf claimed that the shooting was accidental and there was no evidence of provocation a verdict of guilty will not be set aside on the ground that the trial Judge withdrew from the jury the question of manslaughter by instructing them that their verdict on the evidence must be either one of guilty of murder or one of acquittal. *R. v. Barrett*, 14 Can. Cr. Cas. 464.

A reserved case may be granted at any time, however remote from the date of the trial or judgment, if it is still possible that some beneficial result may accrue to the prisoner by a decision in his favour. *R. v. Paquin* (1898), 2 Can. Cr. Cas. 134; *R. v. McGuire*, 9 Can. Cr. Cas. 554.

Whether or not the Judge presiding at the trial had jurisdiction to summarily try the defendants is a "question of law" and may be the subject of a reserved case. *Ibid.*

A reserved case should not be granted by the trial Judge unless he has some doubt in the matter upon which it is suggested that a question be reserved for the opinion of the Court of Appeal. *R. v. Letang* (1899), 2 Can. Cr. Cas. 505 (Que.); *R. v. Brindamour*, 11 Can. Cr. Cas. 315.

A question depending upon the weight of evidence cannot properly