

has been offered, and no explanation is possible, of these facts that will exculpate the criminal whom we have not yet inquired as to in regard to that act." It was evident that in making these observations counsel was referring to the address of counsel for the prisoner, and to his not having suggested any theory as to the woman's death that would explain the condition in which her body was found, which, according to the case of the Crown, indicated that she had been murdered.

Question 3 must also be answered in the negative. Upon the evidence, if the woman was killed, there could be no question as to its being anything but murder, and there was no suggestion by counsel for the prisoner of manslaughter. The defence was that the prisoner had no part in the killing, if the woman was killed.

Questions 4, 5, 6, and 7 should also be answered in the negative.

Reference to *Rex v. Wyman* (1918), 13 Cr. App. R. 163, 165; *Rex v. O'Donnell* (1917), 12 Cr. App. R. 219, 221.

The case was fairly and properly conducted by counsel for the Crown, and the charge of the learned Judge indicated clearly to the jury what their functions were and the conclusion to which they must come before pronouncing the prisoner guilty—that they must, in order to justify a finding of guilt, reject the theories put forward on behalf of the prisoner, and come to the conclusion that it was established beyond all reasonable doubt that the woman had been murdered and that the prisoner had murdered her.

MACLAREN and MAGEE, JJ.A., agreed with MEREDITH, C.J.O.

FERGUSON, J.A., read a judgment in which he discussed only the first question stated. His view was that "our law gives the Crown Counsel a right to decline to sum up, and that the trial Judge was right in so ruling; that, if the prisoner was prejudiced in fact, he was not prejudiced in the eyes of the law, and I would answer the question accordingly."

On the other questions he agreed in the conclusion of the Chief Justice.

MASTEN, J., agreed with FERGUSON, J.A.

*Conviction affirmed.*