

The Full Court.] THE QUEEN v. EARL. [Dec. 15, 1894.
Crown case reserved—Mistrial—Juror not understanding the English language—Challenging a juror.

It appeared that, after the trial and conviction of the prisoner, his counsel discovered that one of the jurors understood the English language very imperfectly. He had not made this fact known to the court or the counsel engaged in the case, and he had not been challenged.

Prisoner's counsel then contended that there had been a mistrial, and that the conviction should be quashed and a new trial granted.

The judge reserved for the court the following question :

"Is the fact that one of the twelve jurors sworn to try the prisoner did not thoroughly understand the English language a sufficient ground for holding, under the circumstances, that there has been a mistrial?"

Held: (1) That the objection taken would not, in this province, be a ground of challenge of a juror, although a judge might, in his discretion, direct him to stand aside if the circumstances were drawn to his attention.

(2) That, even if it would have been a ground for challenge, it was too late after the juror had been sworn, and it makes no difference that the cause for challenge was not known at the time.

(3) That there was no mistrial, or any ground for granting a new trial.

The provisions of s. 746 of the Criminal Code, respecting the granting of a new trial, when it is imperative, and when discretionary, explained.

Question answered in the negative, and the conviction sustained.

Howell, Q.C., for the Crown.

Andrews for the prisoner.

BAIN, J.]

[Dec. 11, 1894.

NORTHWEST COMMERCIAL TRAVELLERS' ASSOCIATION v. LONDON
 GUARANTEE CO.

Accident policy—Life insurance—Death by freezing.

This was an action to recover the amount of an accident policy issued by the defendants to C. F. Church as a member of the plaintiffs' association.

By the contract the defendants undertook to pay the insurance money within ninety days after sufficient proof that the assured "shall have sustained bodily injuries effected through external, violent, and accidental means within the intent and meaning of this contract and the conditions hereunto annexed, and that such injuries alone shall have occasioned death within ninety days from the happening thereof," with the further proviso that the insurance "shall not extend to death or disability caused by an injury of which there shall be no external and visible sign . . . nor to any case except when some injury effected as aforesaid is the proximate and sole cause of the disability or death; and no claim shall be made under this policy when the death or disablement may have been caused in consequence of exposure to any obvious or unnecessary danger."

Mr. Church was frozen to death on the prairie near Fort McLeod on the 23rd of November, 1892. He was returning to that place from one of his trips, in company with a driver. While still about eight miles out, the wagon broke down. The weather had turned suddenly very cold and stormy, and, Mr.