(a) To hear any question of law arising either on the trial or on any of the proceedings preliminary, subsequent, or incidental thereto, or arising out of the direction of the Judge, which the trial Court, either during or after the trial, may reserve for our opinion: sec. 1014 (former sec. 743.)

(b) If the trial Court refuses to reserve the question, i.e., the question of law, we may hear an application for leave to appeal: sec. 1015; and, if leave is granted, may hear the case directed by us to be stated thereon as if the question had been reserved: sec. 1016.

Sections 1018 and 1019 shew that in dealing with the case reserved or directed to be stated the Court considers only the questions of law.

The evidence which the Court is empowered to receive under secs. 1015 (3) and 1017 (2) is such evidence, if any, in addition to the evidence at the trial, as may be necessary to shew the questions of law upon which it is sought to appeal.

If there is no evidence upon which a conviction could legally have taken place, that of course raises a question of law which may be the subject of a reservation or stated case.

That is not the case before us. It very plainly appears that there was evidence upon which the jury might find the prisoner guilty of the more serious offence. Whether they were influenced in doing so by the suggestion that he was attempting to commit a rape upon the woman McCormack when he was pushed off her by the deceased, we do not know. It is only too likely that they were, and, no doubt, some of the witnesses gave colour to the suggestion. It is, I must say for myself, a suggestion which ought to have been rejected by the jury as ridiculous and of no weight whatever, under the circumstances, situated as the parties were in a crowded room, to say nothing of the age of the woman. Everything which the witnesses depose to on this point is, I would say, more sensibly to be referred to the fact that both parties had been drinking and had fallen together on the floor while engaged in their maudlin horseplay. The sudden rage of the accused, and his instant, though inexcusable, use of his weapon, upon the deceased's interference, is intelligible upon this theory. It was all, no doubt, for the jury, and can now only be considered elsewhere.

A careful examination of the evidence and of the charge of the learned Judge satisfies me that there was no mis-