"I am simply pointing out certain facts established in the evidence here. It is for you to believe them and give them such force as you think proper."

"But in any case if she" (the deceased) "were overcome by smoke, how do you account for the clothing heaped and the other stuff that was heaped up and around her body? You have to account for that, it seems to me."

"Now it seems to me that there is a circumstance here that excludes absolutely the explosion of the lamp. A circumstance like that you cannot get away from."

(6) Should I have put to the jury the defence suggested by counsel for the prisoner and brought to the jury's attention the medical testimony on this point?

(7) Did I misdirect or omit to direct the jury on the doctrine of reasonable doubt to the benefit of which the prisoner was entitled?

The case was heard by MEREDITH, C.J.O., MACLAREN and MAGEE, JJ.A., MASTEN, J., and FERGUSON, J.A.

T. A. Gibson and T. J. Agar, for the prisoner

Edward Bayly, K.C., and T. P. Brennan, for the Crown.

MEREDITH, C.J.O., read a judgment in which he said that the ruling of the Judge at the trial was: "The Crown counsel is not obliged to address the jury first. He may waive, as the statute calls it, and confine his whole address to what he has the absolute right to do—reply." That ruling was right. There is no reason for construing sec. 944 of the Criminal Code as meaning that counsel for the prosecution must sum up before counsel for the prisoner addresses the jury; counsel for the prosecution may waive that right or privilege; the language of the section is that he "may," not "shall," and "may" as used is permissive. The first branch of question 1 should be answered in the affirmative, and it was unnecessary to answer the second branch. The learned Chief Justice added, however, that he was unable to see that the prisoner was prejudiced or put at any disadvantage because his counsel had not the advantage of hearing a summing up by counsel for the Crown before himself addressing the jury.

Question 2 must be answered in the negative. What sec. 4 (5) of the Canada Evidence Act forbids is the commenting on the failure of the accused to testify. It was argued that this provision had been violated by counsel for the prosecution in his address to the jury. What was said by him was, after discussing the evidence: "You have the record of a crime: you have the record of an act wrongfully done upon that woman, which resulted in her death: you have the record of murder. No explanation