

MARCH 12TH, 1906.

C.A.

REX v. DE MARCO.

*Criminal Law — Murder — Evidence — Misdirection—New Trial.*

Crown case reserved.

T. C. Robinette, K.C., and J. M. Godfrey, for the prisoner.

J. R. Cartwright, K.C., for the Crown.

The judgment of the Court (MOSS, C.J.O., OSLER and GARROW, J.J.A., MULOCK, C.J., and BRITTON, J.), was delivered by

MOSS, C.J.O.:—The prisoner was tried before MacMahon, J., and a jury of the county of York, upon an indictment charging him with the murder of one John Hoban. He was found guilty, and, at the request of his counsel, the Judge stated a case, reserving 3 questions for the opinion of this Court:—

First, whether there was any proper evidence to be submitted to the jury against the prisoner on the indictment, and whether the case should have been withdrawn from the jury upon the evidence submitted by the Crown.

We are unable to answer this question in prisoner's favour. We cannot say that there was not evidence upon which, if they believed it, the jury might not reasonably come to the conclusion that the prisoner was the man who inflicted the wound which caused Hoban's death.

But, as we are of opinion upon the second question submitted, that there must be a new trial, we refrain from discussing the testimony in detail, and content ourselves with stating the conclusion we have reached upon a perusal and consideration thereof.

The second question relates to the testimony of one Louis Pollikofsky, a witness whose name appeared on the back of the indictment, and who was placed in the witness box by the Crown, at the request of the prisoner's counsel, and the remarks thereon of the Judge in his charge to the jury.