

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

APRIL 26TH, 1920.

\*REX v. COPPEN.

*Criminal Law—Murder—Trial—Order of Addresses of Counsel—Criminal Code, sec. 944—Right of Counsel for Crown to Address Jury last—Waiver—Reply—Prejudice of Prisoner—Commenting on Failure of Accused to Testify—Canada Evidence Act, sec. 4 (5)—Remarks of Counsel for Crown—Judge's Charge—Verdict of Manslaughter not Possible on Evidence—Misdirection or Nondirection.*

Case stated by LATCHFORD, J., after the trial and conviction of the prisoner on a charge of murder:—

(1) Was I right in my interpretation of sub-sec. 3 of sec. 944 of the Criminal Code, and was the accused prejudiced in his defence by his counsel being refused the privilege of addressing the jury last, subject to the right of counsel for the Attorney-General to reply?

(2) Were the provisions of sub-sec. 5 of sec. 4 of the Canada Evidence Act violated by the Crown prosecutor stating to the jury that all the evidence was given by the Crown, and that certain facts had appeared from the evidence, and that no explanation of these facts had been offered, and no explanation was possible?

(3) Did I fail to sufficiently instruct the jury upon the distinction between murder and manslaughter?

(4) Should I have directed the jury that on the charge laid they could find one of three verdicts, namely, "murder," "manslaughter," or "not guilty?"

(5) Was there misdirection or nondirection of the jury by the use by me of the following words?

\* This case and all others so marked to be reported in the Ontario Law Reporter.