

If such precautions were sufficient, supposing the plaintiff, at the time of his imprisonment, to have been in an impaired state of health, a fortiori they were sufficient if he was at that time in a good state of health, and this positive finding in answer to question 6a thus negatives the previous findings of negligence or breach of duty.

Thus there are two inconsistent and irreconcilable findings in regard to a matter which goes to the root of the action, rendering it impossible to base thereon any judgment in favour of either party, and the result is a mistrial.

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NOVEMBER 30TH, 1907.

C.A.

REX v. PAUL.

*Criminal Law—Murder—Judge's Charge—Evidence—Misdirection—New Trial.*

Case reserved by ANGLIN, J., at the trial, upon the application of the prisoner, who was found guilty of murdering one Henry Schelling.

W. Proudfoot, K.C., for the prisoner.

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

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, JJ.A.), was delivered by

MOSS, C.J.O.:—The case as stated raised two questions for the opinion of the Court. Upon the argument a motion was made on behalf of the prisoner with a view to raising two other questions.

The first question in the case relates to the manner in which certain evidence with regard to the finding of a small book, said to be the property of the deceased, and supposed to have dropped from his pocket while his body was being dropped or carried by the prisoner to where it was afterwards found, was dealt with by the learned Judge.