

On the 2nd June, 1903, the Court gave the desired leave (ante 488), and the case was argued on the 14th September, 1903.

E. E. A. DuVernet, for the prisoner.  
J. R. Cartwright, K.C., for the Crown.

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

MOSS, C.J.O.—As we are of opinion that on the second question the prisoner is entitled to a new trial, we do not deal with the first question. It is one that is not likely to arise again, and, as it is conceded that the utmost relief that the prisoner is entitled to in any event is a new trial, it is not necessary to deal with it in order to the disposition of this appeal.

On the other branch of the appeal we are of opinion that the prisoner's counsel should have been allowed to re-examine the witness Pepin upon the statement, made by him upon cross-examination by counsel for the Crown, of what the prosecutor Larocque said to him the day after the alleged shooting, about the prisoner being the person who shot at him. In his testimony at the trial the prosecutor, Larocque, fixed the time at which the shot was fired as 7.30 o'clock in the evening of Sunday the 1st March, 1903, and swore that the prisoner was the person who shot at him. Pepin testified in chief that at 7.15 that evening he had seen the prisoner and conversed with him at the corner of Friel and St. Patrick streets, about three-fourths of a mile from the place where the shot was fired. On cross-examination by counsel for the Crown, in reply to a question of what person he had first talked to about seeing the prisoner on the Sunday evening, he said he talked with Larocque. Asked, "when," he said, "The day after Larocque came to me and said Noel had shot him. I said, what time was it? Re said, half-past seven. I said I saw Noel at the corner of Friel street." The counsel for the Crown allowed the matter to rest there.

It can scarcely be doubted that the statement so made was likely to produce an impression on the minds of the jury unfavourable to the prisoner as tending to substantiate the prosecutor's testimony.

The prisoner's counsel desired to re-examine with respect to it, but was not allowed to do so; on the ground that no foundation had been laid for doing so. The prisoner's counsel submitted that he was entitled to ask the witness on re-examination with regard to what was brought out in cross-examination, but the question was ruled out.