

convicted he is entitled to a new trial by reason thereof. *R. v. Coleman* (1898), 2 Can. Cr. Cas. 523 (Ont.).

*Misdirection.*—The general rule in civil cases where there is a jury is not to entertain a motion for a new trial upon a ground of misdirection or nondirection, unless the particular point in controversy was raised at the trial and pressed upon the consideration of the Judge. The rule has been held in Ontario to be as much applicable to a criminal as a civil trial, especially when the parties to the litigation are represented by counsel. *R. v. Fick*, 16 U.C.C.P. 379; *R. v. Wilkinson* (1878), 42 U.C.Q.B. 492, 500; *R. v. Seddons*, 16 U.C.C.P. 389. But see *contra R. v. Theriault* (1894), 2 Can. Cr. Cas. 444, 460 (N.B.), and *R. v. Bain* (1877), 23 L.C. Jur. 327.

It is misdirection entitling the accused to a new trial for the trial Judge to charge the jury that the onus is upon the accused to prove an alibi set up in defence by a preponderance of testimony. *R. v. Myrshall* (1901), 8 Can. Cr. Cas. 474 (N.B.).

1. On a motion for a new trial in a criminal case made to the Court of Appeal under Code sec. 1021 by leave of the trial Judge, the same rule applies as in civil cases, namely, that a new trial will not be granted on the ground that the verdict is against the weight of evidence if the Appellate Court is of opinion that the verdict is one which a jury might reasonably find.

2. In the consideration of circumstantial evidence the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt, in order to justify the inference that he is guilty. *R. v. Jenkins*, 14 Can. Cr. Cas. 221.

The improper reception of evidence before a county Judge trying a case without a jury under the Speedy Trials Clauses will not entitle the prisoner to a new trial upon a case reserved, if the county Judge certifies therein that a part from the evidence objected to there was sufficient evidence to compel him to find the prisoner guilty. *R. v. Inthy*, 9 Can. Cr. Cas. 309, 544.

A new trial will be ordered on the ground of the wrongful admission of evidence of an alleged prior similar offence. *R. v. Pollard*, 15 Can. Cr. Cas. 75.

A new trial was refused in a murder case, where the application was based solely on an affidavit of a witness that he had misapprehended a question put to him, which had led to his answer producing a wrong impression. *R. v. Crozier* (1858), 17 U.C.Q.B. 275.

*Circumstantial Evidence.*—In cases where there is direct and positive evidence of the fact charged, and that evidence is contradicted, it may be said that no question but the credibility of the witness is presented, and that as credibility and weight of evidence are entirely