

MEREDITH, C.J.C.P., and LENNOX, J., were also of opinion, for reasons stated by each in writing, that the appeal should be allowed.

RIDDELL and MASTEN, JJ., were of opinion, for reasons stated by each in writing, that the appeal should be dismissed.

Appeal allowed; RIDDELL and MASTEN, JJ., dissenting.

SECOND DIVISIONAL COURT.

MAY 22ND, 1916.

*REX v. DUCKWORTH.

Criminal Law—Murder—Misdirection and Nondirection—Evidence of Witnesses at Coroner's Inquest Read to them at Trial—Contradiction of Former Testimony—Jury not Warned against Accepting what was Read as Evidence against Prisoner—Canada Evidence Act, R.S.C. 1906 ch. 145, secs. 9, 10, 11—Substantial Wrong or Miscarriage—Criminal Code, secs. 1018, 1019—New Trial.

The defendant was tried before KELLY, J., and a jury, in February, 1916, on an indictment for the murder of one Strutt on the 2nd November, 1915, and was found "guilty" and sentenced to be hanged.

Strutt was shot by the defendant; the defence was, that the shooting was accidental.

A coroner's inquest had been held on the day of the killing; at which Nellie Strutt, wife of the deceased, Olive Duckworth, wife of the defendant, and Hamilton Duckworth, brother of the prisoner, among others, gave evidence; the same three gave evidence upon the preliminary investigation at which the defendant was committed for trial; and at the trial, they all three again testified. Their testimony at the trial was in several respects contradictory of what they had sworn to on the previous occasions; and counsel for the Crown, in his examination of these witnesses, whose attitude was hostile, drew their attention to their testimony previously given, and read much of it to them.

The defendant applied to KELLY, J., for a reserved case, on the ground of misdirection, in that it was the duty of the trial Judge to instruct the jury that, while they could refuse to believe the evidence of any or all the witnesses called, they could not substitute for the evidence so rejected any evidence which had