

The intention is that the improper admission of evidence shall not in itself constitute a sufficient reason for granting a new trial, and that it is not necessarily a "substantial wrong or miscarriage." *R. v. Woods* (1897), 2 Can. Cr. Cas. 159 (B.C.).

On a trial for murder, if the trial Judge directs the jury that imminent peril of the prisoner's own life or of the lives of his family is a ground of justification for killing, in defence of his household, one of a party committing an unprovoked assault upon him, but does not direct them that a reasonable apprehension of immediate danger of grievous bodily harm to the prisoner or to his wife and family is an equal justification, such omission constitutes a substantial wrong or miscarriage occasioned in the trial, and a new trial should be ordered, where the circumstances shewn in evidence are such as to point much more to the latter ground of justification than to the former. *R. v. Theriault* (1894), 2 Can. Cr. Cas. 444 (N.B.).

If a most important and substantial ground of defence clearly disclosed by the evidence is not submitted to the jury by the Judge's charge, the conviction cannot stand, although the prisoner's counsel did not ask at the trial for any other or fuller direction. *Ibid.*

The strictness of the rule applied in civil cases in some of the provinces by which an objection not raised at a time when it could have been remedied, cannot afterwards be allowed, should not be applied to cases of misdirection in criminal cases. (*R. v. Fick* (1866), 16 U.C.C.P. 379, disapproved.) *Ibid.*

Where a deposition of a deceased witness taken on an enquiry before a magistrate has been improperly admitted in evidence at the trial, and is of such a nature that it must have influenced the jury in their verdict, its improper admission is a "substantial wrong" entitling the accused to a new trial. *R. v. Hamilton* (1898), 2 Can. Cr. Cas. 390 (Man.).

Where an alleged confession is received in evidence after objection by the accused, and the trial Judge before the conclusion of the trial reverses his ruling and strikes out the evidence of the alleged confession, at the same time directing the jury to disregard it, the jury should be discharged and a new jury impanelled. *R. v. Sonyer* (1898), 2 Can. Cr. Cas. 501.

If the trial Judge refuses to impanel a new jury in such a case, a new trial will be ordered by a Court of Appeal; but the Court of Appeal will not determine the question of the admissibility of the alleged confession. *Ibid.*

An accused person has the right to have his case submitted to the jury without any comment on his failure to testify being made by the trial Judge, and although such comment is afterwards withdrawn, the making of same is a substantial wrong to the accused, and if he is