GEORGINA GIRVIN .....APPELLANT; 1911

AND

*Oct. 19.
*Oct. 24.

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Criminal law—Evidence—Verdict.

Evidence making a *primâ facie* case for the Crown in a criminal prosecution, if unanswered and believed by the jury, is sufficient to support a conviction of the person accused.

APPEAL from the judgment of the Supreme Court of Alberta affirming the conviction of the appellant, at the trial, upon an indictment for arson, on an appeal by special leave upon questions of law in respect of which the trial judge, Stuart J., refused to reserve a case for the opinion of the court *in banco.*

The following statement was made by the learned trial judge in refusing the application for a reserved case by counsel for the appellant.

STUART J.—"I refuse to reserve the following questions for the opinion of the court, *en banc,* at the next sittings of the said court to be holden at Calgary, in Alberta.

"(I.) Does the evidence merely point to a suspicion of guilt instead of being the legal evidence necessary to support a conviction ?

"(II.) Was I right in refusing to dismiss the

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

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charge against the accused at the close of the case for the Crown upon application made by counsel for the accused ?

"(III.) Was the evidence of the witnesses McMinn and McIntosh as to the removal of certain horses alleged to be the property of Samuel Wilson pursuant to an alleged arrangement with the said Wilson, properly admitted by me, there being no evidence that the accused had any knowledge of any horses being on the premises, of their removal, or of any such arrangement, and objection being taken by counsel for the accused ?

"(IV.) Was that portion of my charge to the jury being 'a person who tells an untruth when not under oath is not a person who is likely to be believed even when they are under oath' improper ?

"(V.) Was that portion of my charge to the jury proper being, 'people do peculiar things and yet is it a probable thing that she would do — to leave a bundle of papers there in that store in a drawer which was apparently unlocked for so long containing incriminating evidence against her husband of his relations with another woman,' there being no evidence whatever of the said papers containing any incriminating evidence ?

"(VI.) Was I right in refusing to allow counsel for the accused to have the said papers handed in to the jury while deliberating upon their verdict unless so requested by the jury ?"

A. A. McGillivray for the appellant.

Wallace Nesbitt K.C. and *Christopher C. Robinson* for the respondent.

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The Chief Justice.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—I have always understood the rule to be that the Crown, in a criminal case, is not required to do more than produce evidence which, if unanswered, and believed, is sufficient to raise a *primâ facie* case upon which the jury might be justified in finding a verdict. A careful perusal of the evidence here satisfies me that there is evidence quite sufficient to prove that the house was destroyed by a fire under circumstances which clearly pointed to incendiarism, and that the accused might fairly be presumed to have set the fire. When the Crown's case was closed, of the three persons who had means of access to the building on the night of the fire two had given their evidence, frankly and fully testifying to all that occurred; the third, the accused, volunteered to go into the witness box and attempted to explain away those things which were calculated to throw suspicion upon her. To say the least, her explanation is not satisfactory. Her denials of facts that are proved beyond all doubt are very much to her discredit. In any event, the jury having had occasion to hear the story of the three persons who alone admittedly might have caused the fire, and the theory of accident being eliminated, came to the conclusion, on evidence which, in my opinion, was sufficient, that the appellant was guilty of the offence with which she was charged and no reason has been given here to justify us in setting that verdict aside. The facts are so fully and clearly discussed in the judgments below that I do not feel it necessary to say more.

Appeal dismissed.