GORDON C. SMYTHE .....APPELLANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

1940

* Oct. 28.
* Nov. 4.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

*Criminal law—Trial—Murder—Plea of insanity—Charge to jury—Evidence—"Beyond all reasonable doubt" or "to the reasonable satisfaction of the jury."*

On a trial for murder, where a plea of insanity is advanced, the law does not require the accused, in order to succeed upon that issue, to satisfy the jury that insanity has been proved beyond all reasonable doubt; it is sufficient in point of law if insanity is proved to the reasonable satisfaction of the jury.

*Clark* v. *The King* (61 Can. S.C.R. 608) approved.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, affirming the conviction of the appellant on an indictment for murder.

The appellant, being put on trial, pleaded that he was insane when the crime was committed. Subject to this defence, the crime was proved.

The trial judge, in charging the jury, instructed them in the following terms: "* * * The whole burden of prov- "ing insanity rests upon the defence, just as the whole "burden of proving guilt rests upon the Crown. Every "man is presumed to be sane and responsible for his acts "until he, in defence of himself, proves the contrary."

*D. Gillmor K.C.* for the appellant.

*J. W. Long K.C.* for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE—It was settled by the decision of this Court in *Clark* v. *The King* (1), that where a plea of insanity is advanced on a trial for murder the law does not require the accused, in order to succeed upon that issue, to satisfy the jury that insanity has been proved beyond

* PRESENT:—Duff C.J. and Rinfret, Crocket, Davis, Kerwin, Hudson and Taschereau JJ.

(1) (1921) 61 Can. S.C.R. 608.

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all reasonable doubt; it is sufficient in point of law if insanity is proved to the reasonable satisfaction of the jury.

The law, for reasons of policy which are well understood, draws a distinction as to the sufficiency of the evidence required to establish the affirmative of the issue of guilt or innocence in criminal proceedings, and that which is generally required as the basis of decision in civil cases. Mr. Best in his instructive work (as it is described by Willes J., in *Cooper* v. *Slade* (1), 12th ed.) says at p. 82:—

> There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former, a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision; but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. The serious consequences of an erroneous condemnation, both to the accused and society, the immeasurably greater evils which flow from it than from an erroneous acquittal, have induced the laws of every wise and civilized nation to lay down the principle, though often lost sight of in practice, that the persuasion of guilt ought to amount to a moral certainty; or as an eminent judge (Parke, B.) expressed it, "Such a moral certainty as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt."

It is the rule that prevails generally in civil cases, as this Court decided in the case above mentioned, which governs the jury in determining the issue raised by a plea of insanity.

The learned trial judge in charging the jury used language which, with the greatest possible respect, I think was calculated to confuse them as to this important point of the sufficiency of evidence in relation to the issue of insanity. They may very well have got the impression that the existence of insanity must be demonstrated in the sense in which the guilt of an accused must be established beyond reasonable doubt.

Such being the case, the verdict ought not to be permitted to stand and there should be a new trial.

*Appeal allowed and a new trial ordered.*

(1) (1857) 6 H.L.C. 746, at 772.