

if the contention of the Crown as to the law is correct, he would, upon the facts proved, find both the accused guilty.

I am of the opinion that it is not necessary for us to answer any of the first three questions, which relate to the proceedings taken by the County Court Judge for the filling up of the vacancies caused by the absence of three members of the statutory Board of Registrars, and alleged irregularities and non-observance of the Manhood Suffrage Act.

The fourth question is as follows: "Were the proceedings before the said W. G. Merritt, as said Registrar, judicial proceedings as defined by sec. 171 of the Criminal Code of Canada?"

The "judicial proceeding" in which perjury may be committed is defined in sec. 171 as a proceeding which is held "before any person acting as a Court, Justice, or tribunal having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not before such Court or person so as to authorise it or him to hold such proceeding, and although such proceeding was held in a wrong place or was otherwise invalid."

The words "judicial proceeding" in the foregoing section were interpreted by the Supreme Court in a case of *Drew v. The King*, 33 S.C.R. 228, in which a Justice of the Peace appointed for a group of counties sat in a case which, according to the provincial Act creating the offence, could be tried only by a Justice residing in the county in which the offence was committed, whereas the Justice who tried the case and administered the oath actually resided in another county of the group. It was admitted that he had no jurisdiction, and was not a tribunal *de jure*; but, because he was a tribunal *de facto*, and was exercising judicial functions, the Court held that it was a "judicial proceeding," and that the accused was rightly convicted of perjury.

Following this decision, as we must do, the fourth question above-quoted should be answered in the affirmative; and the County Court Judge should have found the defendants guilty.

MEREDITH and HODGINS, J.J.A., each gave reasons in writing for the same conclusion.

GARROW and MAGEE, J.J.A., also concurred.

*Judgment accordingly.*