

been done will be no bar to his action, should the appellant think proper to bring one to establish his mortgage. . . .

Appeal dismissed without costs.

ANGLIN, J.

MAY 1ST, 1906.

TRIAL.

REX v. MCAULIFFE.

Criminal Law—Procedure—Lost Indictment—Direction to Prefer New Indictment—Grand Jury—Return of True Bill—Refusal of Prisoner to Plead—Entry of Plea by Court—Conviction—Regularity.

Motion by prisoner for a reserved case.

Prisoner having been charged with murder, the grand jury for the county of Peterborough, at the autumn assizes in 1905, found a true bill for manslaughter against him, to which defendant pleaded not guilty. Owing to the absence of a material witness for the prosecution, the trial was traversed until the spring assizes of 1906. At the opening of the spring assizes, counsel for the Crown informed the presiding Judge that in the interval the indictment against the prisoner had been mislaid or lost, the circumstances rather indicating that it had been stolen, and asked the direction of the Court as to further proceedings.

ANGLIN, J., directed that a new indictment for manslaughter be preferred before the grand jury at the assizes then opening, that being, in his opinion, the proper course in the circumstances.

This was done, and the grand jury returned a true bill. The prisoner having through his counsel declined to plead, ANGLIN, J., directed that a plea of not guilty be entered for him under sec. 657 of the Criminal Code. The trial then proceeded, and the prisoner was convicted.

R. M. Dennistoun, Peterborough, and F. D. Kerr, Peterborough, for the prisoner, moved for a reserved case to determine the propriety of the direction to submit to the grand jury the new indictment and the validity of the conviction upon such indictment.

E. Meredith, K.C., for the Crown.