

The question reserved by the Chairman was: "Was I right in withdrawing the case from the jury on the above ground?"

The case was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

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

J. W. Roswell, for the defendant.

OSLER, J.A.:—The proceeding in which the alleged perjury was committed was commenced by information, and it is difficult to understand why the proper and well-known course of procedure in proving it by production of the information was not followed. *Rex v. Drummond*, 10 O. L. R. 546, *Rex v. Legros*, 17 O. L. R. 425, *Regina v. Moore*, 61 L. J. M. C. 80, and *Regina v. Dillon*, 14 Cox C. C. 4, . . . shew that the omission was fatal to the prosecution, and that the prisoner, for lack it may be, only of the formal but necessary evidence of the former proceeding in which the alleged perjury was committed, was properly acquitted.

See also *Rex v. Eugene Brooks*, 11 O. L. R. 525, *Regina v. Gibson*, 18 Q. B. D. 537, and *Regina v. Moore*, supra, which are strong to shew that the objection to the defect in the proof was properly taken, or that it was not too late to take it, as it was taken here, at the close of the case for the Crown.

The answer to the question submitted must, therefore, be in the affirmative.

MACLAREN, J.A., gave reasons in writing for the same conclusion, in which he referred, in addition to the cases cited by OSLER, J.A., to *The Queen v. Hughes*, 4 Q. B. D. at p. 628; *Regina v. Coles*, 16 Cox C. C. 165; *Archbold*, 23rd ed., p. 1053; *Roscoe*, 13th ed., p. 681; *Phipson*, 3rd ed., p. 497; *Rex v. Yaldon*, 17 O. L. R. at p. 182; *Dove v. Benjamin*, 9 A. & E. 644; *Goslin v. Corry*, 7 M. & G. 342; *Reed v. Lamb*, 6 H. & N. 757; *Jacker v. International Cable Co.*, 5 L. T. R. 15; *Webb v. Ottawa Car Co.*, 2 O. W. R. at p. 63; *McLennan v. Gordon*, 5 O. W. R. at p. 101; *Regina v. Brittleton*, 12 Q. B. D. 266; *Regina v. Garneau*, 4 Can. Crim. Cas. 69; *Regina v. Saunders*, [1899] 1 Q. B. 490; *Taylor on Evidence*, 10th ed., sec. 1881 (c).

MOSS, C.J.O., and GARROW, J.A., concurred.

MEREDITH, J.A., dissented, for reasons stated in writing, being of opinion that there could be no "record" of the proceedings be-