

Held, 1. That an indictment which contains in substance a statement that the accused committed perjury in a judicial proceeding is not bad because it does not allege that the person committed the crime with intent to deceive or mislead, so long as it complies with the requirements prescribed by s. 852 of the Criminal Code and form 64.

2. The Act to prevent the profanation of the Lord's Day, C.S.U.C., c. 104, s. 3, is still in force in Ontario. See *Attorney-General v. Hamilton Street Ry. Co.* (1903) A.C. 524. The result of the determination of that case being that the provisions of 40 Vict. c. 6, s. 6(O.) were not effective to repeal C.S.U.C., c. 104, although the latter appears in schedule A. to R.S.O. 1877, as one of the repealed Acts.

3. The prisoner could not escape conviction merely because the Crown did not produce any record of the trial or the result thereof in the police court, where the perjury was alleged to have been committed, following *Reg. v. Hughes*, 4 Q.B.D. 614; *Reg. v. Shaw*, 10 Cox C.C. 66.

Cartwright, K.C., and *Washington*, K.C., for Crown. *Lynch-Staunton*, K.C., and *O'Reilly*, K.C., for prisoner.

Full Court.]

[June 19.

CROWN BANK v. LONDON GUARANTEE & ACCIDENT CO.

Fidelity bond for bank clerks—Theft by one clerk and negligence of another preventing discovery of theft—Expenses incurred in following thief.

One Banwell, being a clerk in plaintiffs' bank, absconded, taking with him a large sum of plaintiffs' money. It was the duty of one Maunsell to check Banwell's cash. The bank tolerated Banwell and recovered a large portion of the sum stolen, but in doing so expended some \$8,000.

Held, 1. Confirming the trial judge that Maunsell was negligent in not discovering the discrepancy in Banwell's cash. This negligence consisted in the failure to observe and carry into efficient practice the duties which were imposed upon him for the purpose of discovering and frustrating any attempt to commit such a theft as was committed by Banwell. The court drew a distinction between this case and that of *Baxendale v. Bennett*, 3 Q.B.D. 52, where the negligence complained of consisted in rendering it possible for such a crime to be committed.