

REGINA VS CARBRAY:

Quebec, April, 1887.

CORAM SIR A. A. DORION, C.J., Grand Jury and depositions of absent witnesses.

HELD, that affidavits taken at a preliminary investigation before a magistrate but not in presence of the accused, cannot be used as evidence before the Grand Jury in the absence of the witnesses.

The Grand Jury came into Court and asked whether the depositions of certain witnesses could be used as evidence for the prosecution in support of a bill submitted to them for bribery at an election.

Dunbar, Q.C., for the defendant informed the Court that these were not depositions but affidavits made when the warrant to apprehend was issued. They were not taken in the presence of the accused person nor had he had an opportunity of cross-examining them. Not having been taken in conformity with R.S.C., Ch. 174, S. 222, the depositions were not admissible in evidence.

He referred to Archbold, pp. 82 and 276, 10 Cox, 274.

Hearn Q.C., for the private prosecutor argued that the Grand Jury might act upon the depositions, and cited 12 Cox, 353 and 13 Cox, 158.

Dorion, C.J. held that the depositions were not admissible, having been taken out of the presence of the person accused and without his having had an opportunity of cross-examining the deponents.

He would not follow the decision in R. vs Bullard, 12 Cox, 353, wherein Byles J. made the extraordinary observation that "the Grand Jury were not bound by any rules of evidence, that they were a secret tribunal and might lay by