

OCTOBER 26TH, 1903.

C.A.

REX v. MENARD.

Criminal Law—Thefts—Evidence of Former Offence—Acquittal—Judge's Charge.

Motion on behalf of the prisoner under sec. 744 of the Criminal Code for leave to appeal. She was tried before MACMAHON, J., and a jury at the Ottawa Assizes on the 19th September, 1903, on a charge of having stolen a sum of money from the person of one Felix Lalonde on the 11th August, 1903, and was convicted. At the trial counsel for the prisoner objected that the learned Judge erred in permitting evidence to be given that the prisoner had on the 8th August stolen a sum of money from the same Felix Lalonde.

The trial Judge refused to state a special case, and so this motion was made.

E. Mahon, Ottawa, for the prisoner.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, and MACLAREN, JJ.A.) was delivered by

MOSS, C.J.O.—It appears that earlier during the same assize the prisoner was tried on a charge of stealing \$16 from Lalonde on the 8th August. The defence was that the prosecutor lent the money to the prisoner, who was to repay it on the 11th August, and the prisoner was acquitted. At the second trial counsel for the Crown questioned Lalonde concerning what had taken place on the 8th August. It was necessary and proper to refer to that occasion in order to draw from Lalonde an explanation of his being in the prisoner's house on the 11th August. But it was not necessary to go further than to shew that his reason for going there was to receive back the money the prisoner had obtained from him on the 8th. There was no occasion for entering into the details further than to elicit testimony to that effect, and the Crown might properly have rested when it was shewn that it was arranged that Lalonde was to return on the 11th August. In the end the learned Judge put a stop to further questioning on the point, and he then pointed out that the jury at the former trial had found that the first transaction was a loan repayable on the 11th. And in charging the jury the learned Judge repeated that the other jury properly came to the conclusion that on the 8th the money was lent by Lalonde to the prisoner, and that she had agreed to return it on the 11th. The minds of the jury were thus freed from