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*Feb. 29.

*June 14.

DONALD DOWNIE (DEFENDANT).....APPELLANT.

AND

THE QUEEN (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE.)

Criminal appeal—Indictment for perjury—Evidence of special facts—Admissibility of.

D. in answering to *faits et articles* on the contestation of a *saisie arrêt*, or attachment, stated among other things, "1st. that he, D., owed nothing for his board; 2nd. that he, D., from about the beginning of 1880, to towards the end of the year 1881, had paid the board of one F., the rent of his room, and furnished him all the necessaries of life with scarcely any exception; 3rd. that he, F., during all that time, 1880 and 1881, had no means of support whatever."

D. being charged with perjury, in the assignments of perjury and in the negative averments the facts sworn to by D. in his answers were distinctly negatived, in the terms in which they were made.

Held, that under the general terms of the negative averments it was competent for the prosecution to prove special facts to establish the falsity of the answers given by D. in his answers on *faits et articles*, and the conviction could not be set aside because of the admission of such proof.

Even if the evidence was inadmissible there being other charges in the same count which were pleaded to, a judgment given on a general verdict of guilty on that count would be sustained.

THIS was an appeal from the judgment of the Court of Queen's Bench for Lower Canada (appeal side) maintaining the verdict and rejecting the motions for new trial, and in arrest of judgment on the following reserved case on a charge of perjury.

"At the Criminal Term of the Court of Queen's Bench, held at Montreal in the month of June last,

* PRESENT.—Sir J. W. Ritchie C.J. and Strong, Fournier, and Gwynne JJ.

(Mr. Justice Henry was present at the argument but died before judgment was delivered.)

the defendant Donald Downie was indicted for perjury. The indictment contained two separate and distinct counts. In the first count the defendant was charged with having committed perjury in a deposition which he had given on the 1st day of April 1885, when he was examined as a witness in a case then pending in the Superior Court, wherein he, Downie, was plaintiff, and Frederick W. Francis was defendant."

" By the second count, the defendant was charged with having committed perjury on the 8th day of April 1887, when examined on *faits et articles* on the the contestation of a *saisie arrêt* or attachment made in the same cause in the hands of one Benjamin Clément."

" After the close of the case for the prosecution the first count of the indictment was withdrawn from the consideration of the jury by the court, on the ground that there was no legal proof of the swearing of the stenographer by whom the deposition had been taken, and the defendant was directed to proceed to his evidence on the second count. The assignment of perjury in this count was as follows:"

" And further the jurors of Our Lady the Queen, upon their oath present that: "

" Heretofore, to wit, in a certain suit bearing the number one thousand and eight among the records of the Superior Court for the District of Montreal, in which Donald Downie of the City of Montreal, advocate, was plaintiff, and Frederic W. Francis was defendant, upon the contestation of a writ of *saisie arrêt* after judgment issued therein by the said Donald Downie against the said Frederick W. Francis, in the hands of Benjamin Clément in his quality of curator as garnishee, whose declaration declared that he owed the said Frederick W. Francis

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a life rent which life rent the said Frederick W. Francis contended was unseizable by reason of its being an alimentary allowance, he the said Donald Downie was during the trial of the issues raised upon the said garnishee's declaration duly examined, on the part of the said Frederick W. Francis, upon interrogatories *sur faits et articles*, and was then and there duly sworn, to wit, on the eighteenth day of April 1887, before the Honorable Mr. Justice Ouimet then holding the Superior Court at the City of Montreal aforesaid, and did (sic) (the word "then" is not in the indictment,) and there upon his oath aforesaid, falsely, wilfully and corruptly depose and swear in substance and to the effect following: that he *owes* nothing either legally or morally in any way for board or other small items, all of which debts had been paid by him, the said Donald Downie *long ago*. That the said Frederick W. Francis from about the early part of one thousand eight hundred and eighty till towards the end of one thousand eight hundred and eighty-one, *owed* him, the said Donald Downie for everything which went to make up the necessaries of life, not only for the rent of his rooms, but his whole living during that period of time without any interruption *scarcely* except a day or two at a time, when he might have been elsewhere, he lived at his the said Donald Downie's expense altogether. That he the said Donald Downie always paid his own board. That he and the said Frederick W. Francis lived together during one thousand eight hundred and eighty and one thousand eight hundred and eighty-one. That the said Frederic W. Francis lived with him the said Donald Downie and depended upon him exclusively for his livelihood (sic) and the said Frederick W. Francis had no means of any kind:

The negative averments to this second count of the indictment are as follows:

"Whereas in truth and in fact the said Donald Downie did at the time of answering the said interrogatories *sur faits et articles* and does still owe for board and other small debts, and more particularly to one Madame Duperrousel and to one Larin, and all of such debts had not then and have not yet been paid and he did not pay his board wherever he lived and he did then and does now owe for that purpose; and whereas in truth and in fact the said Frederick W. Francis from the early part of one thousand eight hundred and eighty till towards the end of one thousand eight hundred and eighty-one did not owe the said Donald Downie for everything which went to make up the necessaries of life, and did not owe him for rent of his rooms and his living during the whole or any considerable part of that time, and did not during that period live altogether at the said Donald Downie's expense without any interruption scarcely, and in truth and in fact the said Frederick W. Francis did not, during the years one thousand eight hundred and eighty and one thousand eight hundred and eighty-one, depend exclusively upon the said Donald Downie for his livehood (sic) and it is entirely false that the said Frederick W. Francis had no means of any kind."

"But on the contrary during that period from the month of December, one thousand eight hundred and seventy-nine, to and including November, one thousand eight hundred and eighty (sic) (the word, he, is omitted in the indictment), received from his mother's estate divers sums of money, amounting in all to fifteen hundred and forty dollars, which he used for his support and otherwise, and during the period from February, one thousand eight hundred

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and eighty-one, to August, one thousand eight hundred and eighty-one, (at which date the said Frederick W. Francis left for the city of New York, in the United States of America, and was absent for more than one year) the said Frederick W. Francis incurred personal debts at different places and to different people for rooms and board which were charged against himself."

"And the said Donald Downie did thereby commit wilful and corrupt perjury."

In September last the defendant moved to quash the indictment as illegal, irregular, vague and insufficient in law for among other reasons.

"7thly. Because the plaintiff has not set out or alleged in said indictment clearly or legally the depositions or answers of defendant against which perjury is assigned, nor recited intelligibly any part thereof, in the manner in which he is bound to do in order that the same may be negatived by him, the matters and allegations against which perjury is assigned not being positive or precise statements and not being positively and precisely negatived by the plaintiff in the said indictment as required by law, said affirmative averments being merely relative terms and matters of opinion, not being positively negatived nor susceptible of being precisely or positively denied in the terms and manner required by law."

"This motion to quash was rejected. The defendant pleaded not guilty and at the trial which took place before me in the term of November last, the prosecution adduced evidence on both counts, but having failed to prove the first count, that count as already stated, was withdrawn from the jury, who brought in a verdict of guilty on the second count."

"The record in the case of Downie against Francis was proved, including the writ of *saisie arrêt* in the

hands of Benjamin Clément, as curator, the declaration of Clément as garnishee, the contestation of the *saisie arrêt* by Francis, the rule for *faits et articles*, the oath taken by Downie before judge Ouimet and his answers on *faits et articles*, and the signature thereto."

"The following are the most important parts of the oral evidence adduced by the prosecution to prove the other facts on which perjury was assigned."

"Frederick W. Francis, the private prosecutor. Became acquainted with Mr. Downie, the defendant in 1878. My mother was interdicted at the end of 1879 and I commenced to act as curator in 1880. I became intimate with defendant in the spring of 1880. I went to board at Mr. Downie's house. Up to that time I lived on the money I drew from the estate of my mother. From the beginning of 1880 till October 1880, I drew from that source something over $1500. Mr. Downie was aware of my circumstances from the end of May 1880. In May 1880 I was indebted to him for board. At the end of May 1880 or end of June 1880 he capiased me for the amount of about $42 or $40 odd dollars I owed him for board till that time. Mr. Mercier, the bailiff, arrested me and I settled the next morning and this settled all accounts between myself and Mr. Downie up to that time."

"In June and July of that year, I boarded at Frank Larin's and a few weeks at Mde. Duperrousel. Mr. Downie paid nothing for my board or for necessaries of life to Mr. Larin or Madame Duperrousel, during that time. I paid for my own board to these parties. During the entire month of August 1880 I was at Lachute and may have run to Montreal for a day or two, but substantially I was there all the month. Mr. Downie was there also. I returned to Montreal in the end of August or the first September. The expenses of the party consisting of Mr. Downie, his sister, two

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Misses Burroughs, Mr. C. S. Burroughs, Wm. Burroughs and myself, were paid by us all in equal shares of $10 a piece. I paid my share. After returning to Montreal, I boarded at Frank Larin's in September and October of 1880. Mr. Larin sued me for part of my board which I have not paid. To the best of my belief Mr. Downie was boarding at Larin's in September and October. He did not pay my board and was sued for his own board, at the same time that I was sued myself."

"In October I was removed from the curatorship of my mother and Benjamin Clément was appointed conseil judiciaire. From that time October till the end of 1880, I received $40 from the curator Clément. It was to Downie's knowledge, for he received $14 or $15 of the $40, and he received this $14 or $15 on an order I gave him on Clément. I paid my board or was charged with it from October 1880 to the end of 1880. Mr. Downie paid nothing for me during that time. During January, February and March, 1881, I had part of a room rented on Bleury street, at Mrs. Radford's with Mr. Downie and one Hipple. Mr. Downie paid one month, Hipple paid another month and Mrs. Radford still holds me responsible for another month."

"After March, 1881, I lived at the Victoria Hotel in this city, Latour street. In April, May, June, July and August I incurred an indebtedness for my board towards Britain proprietor of the hotel."

"Having read answers of Mr. Downie on *faits et articles* in the case of Downie, Francis & Clément, *tiers saisie*. What is stated in Downie's answers as averments of second count of the indictment is untrue."

"John Murray Smith, Manager of the Bank of Toronto, at Montreal, deposed he had paid to Francis the last witness, as curator to his mother, two dividends

of $525 each. The first was paid after the 1st December, 1879 and the second after the 1st June, 1880."

Médard Edouard Mercier, Bailiff:—"In May or June 1880, I executed a capias at the instance of Downie against Francis and arrested the latter on a claim of about $40 for board, I think, up to that time. Francis settled by giving me a cheque for debt and costs."

Benjamin Clément, said:—"I am curator to the mother of Francis. Since January, 1881, and from 15th October, 1880, I was her *conseil judiciaire*. Mary Power is the mother of Francis. After I came judicial adviser I paid Francis $5, $10, $5 and $24.76. I paid Downie on the 23rd November, 1880, on an order from Francis $7.50 on account of $15."

Eliza Osbert, femme de Aubain Duperrousel, dit:—Je connais le défendeur Downie, et Francis. Ils venaient à mon restaurant en 1880. Downie me doit de l'argent pour pension vers 1880. Il venait avec Francis pendant qu'il Downie; pensionnait chez moi. Francis ne me doit rien. Il m'a toujours payé tout ce qu'il me devait. Je ne puis dire qui m'a payé la pension mensullement, mais Francis a toujours payé les extra. Tant qu'ils ont pensionné ensemble, la pension a toujours été payée quelquefois par l'un et d'autres fois par l'autre. Il ne m'est rien dû par Mr. Downie pour ce temps."

"Une semaine ou deux après que Francis eût laissé la pension il est venu chez moi et il a payé la balance qu'il me devait. Les extras étaient toujours payés comptant et c'est Francis qui les payait."

"Transquestionné.—Downie et Francis ne sont jamais venus prendre des diners à la carte après avoir pensionné chez-moi. Downie me devait $12, et il ne revenait plus."

"A un juré.—Cette somme de $12 m'était due pour

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pension après que Francis fût parti de chez-moi."

"Chacun d'eux payait sa propre pension et jamais l'un pour l'autre."

"Francis Larin.—I know defendant Downie and Francis. I kept Princess Louise hotel in Montreal in 1880. Both boarded with me during that year. They kept separate accounts. They were boarding with me at two different periods of the year, first in the spring of 1880. Mr. Francis paid me his board and in the fall Francis did not pay his board and I obtained judgment against him for a balance of his board and I still hold him responsible for that balance. Mr. Downie never paid any thing for Mr. Francis' board."

"Mr. Downie left a balance due me for board for which I have got a judgment against him. I have not been paid, but my estate has gone into insolvency. I have never been paid, but I went into insolvency in 1883, and Mr. St-Amand, who got the judgment, has been paid since my estate went into insolvency three years ago. My judgment against Francis has not been paid and is still due to my estate. Mr. Francis paid almost all the extras they had and if Francis had no money I would charge them to him."

"Upon the application of the private prosecutor through Mr. Kerr his counsel and with the permision of the court, the addition in schedule A hereto annexed was made to the present case to form part thereof as if inserted immediately before the words, after the hearing of the motion on the present page. After the hearing of motions in arrest of judgment and for new trial made on behalf of the defendant Downie, I reserved for the decision of the Court of Queen's Bench, appeal side, under the authority of the section 259 of the revised statutes of Canada,

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c. 174, the following questions:—

"1st. Was the assignment of perjury on that part of the defendant's answers on *faits et articles*, that the said Frederic W. Francis from about the early part of one thousand eight hundred and eighty till towards the end of 1881 owed him, the said Donald Downie, for everything which went to make up the necessaries of life, not only for the rent of his rooms, but his whole living; during that period of time without any interruption scarcely, except a day or two at a time, when he might have been elsewhere he lived at his the said Donald Downie's expense altogether, that the said Frederick W. Francis lived with him the said Donald Downie, and depended upon him exclusively for his livelihood," sufficiently negatived in the negative averments of the indictment as above indicated, to authorise the prosecution to prove special facts not specifically alleged in the negative averments such as that he, Francis, had paid to Downie in May or June 1880 $42 for having boarded at his house in the month of May 1880, that he had paid his board to Madame Duperrousel and part of his board to Francis Larin and was held liable by the latter for part of his board during the months of September and October 1880, that he was also held liable for part of his board at Mrs. Radford's during the months of January, February and March 1881, and by Britain for having boarded at the Victoria Hotel in the months of April, May, June, July and August 1881, and also that he, Downie, had received from Francis an order on Benjamin Clément for $15, on account of which Clément had paid him, Downie, $7.50 in November 1880."

"If the evidence of the above facts was legal the verdict should be sustained."

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"2ndly. Should the evidence so adduced be held to have been illegally allowed could a general verdict be given on the assignments of perjury based on the other facts sworn to by Downie, which assignments of perjury were properly negatived and proved but were comprised in the same count?"

"If the evidence adduced on part of the charges made in the indictment be held to have been illegally allowed, but that it is held that a general verdict could be given, there being other charges in the same count which were properly proved, then the verdict should be upheld. If on the contrary a general verdict could not be given under the circumstances, the verdict should be set aside and either the motion in arrest of judgment or the motion for a new trial which were made by the defendant should be granted."

"No sentence was passed and the defendant was admitted to give bail for his appearance at the sittings of the Court of Queen's Bench, Criminal side, on the first day of March next."

(Signed) "A. A. DORION.
C. J. Q. B."

"Schedule A—Amendment to reserved case. *Regina* v. *Downie*. Added upon application of prosecution.

"The evidence for the prosecution having been closed, the defendant, through his counsel, Mr. St.-Pierre submitted that there was no sufficient evidence to go to the jury. I ruled against him and he then produced several witnesses and among others, Jane McCandish, wife of Isaie Radford and George Britain."

Hall Q.C. for the Crown objects to the hearing of the appeal for want of jurisdiction on two grounds:

1. That from a decision of the court of crown cases reserved there is no appeal.

2. That no leave to appeal was granted or applied for. The objections were overruled.

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McCarthy Q.C. and *McIntyre* for the prisoner.

The indictment was defective in not alleging the particular matters in which the perjury consisted. *Bradlaugh* v. *The Queen* (1); *Rex* v. *Hepper* (2); *Rex* v. *Parker* (3); *Rex* v. *Sparling* (4).

And this defect is not cured by the verdict *Heymann* v. *The Queen* (5); *Aspinall* v. *The Queen* (6); *The Queen* v. *Goldsmith* (7); *Rex* v. *Mason* (8).

Hall Q.C., for the crown cited *The Queen* v. *Webster* (9); *The Queen* v. *Watkinson* (10); *The Queen* v. *Adams* (11); Taschereau's Criminal Law (12).

Sir W. J. RITCHIE C.J.—Concurred with Strong J.

STRONG J.—This was a case reserved for the opinion of the Court of Queen's Bench by the learned Chief Justice of that court (who presided at the trial of the appellant on an indictment for perjury) pursuant to the Revised Statutes of Canada, chapter 174, section 259, making provision for the reservation and disposition of any question of law arising on the trial of a person who may be convicted upon an indictment for treason, felony or misdemeanor.

The Court of Queen's Bench affirmed the conviction but were not unanimous in that judgment, one of the learned judges, Mr. Justice Cross, having dissented from the majority of the court. The defendant was therefore entitled by section 268 of the act before referred to (as amended by chap. 50 of the acts of 1887) to appeal, as he has done, to this court.

(1) 2 Q. B. D. 569; 3 Q. B. D. 607.
(2) 1 R. & M. 210.
(3) 1 C. & M. 639.
(4) 1 Str. 487.
(5) L. R. Q. B. 102.
(6) 2 Q. B. D. 48.
(7) L. R. 2 C. C. 74.
(8) 2 T. R. 581.
(9) 8 Cox C. C. 187.
(10) 12 Cox C. C. 271.
(11) 14 Cox C. C. 215.
(12) 1 Ed. vol. 2 p. 353.

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The question we have to determine is of course limited to the point of law reserved by the case stated by the Chief Justice for the opinion of the appeal side of the Court of Queen's Bench, and we are not at liberty to take into consideration any other matters of law even though they may appear on the record or on the face of the proceedings stated in the case reserved.

The indictment contained two counts. The first count having been abandoned by the crown need not be further mentioned. The second count upon which the trial proceeded charged the defendant with having falsely and corruptly sworn to certain statements in answering interrogatories on *faits et articles* in a case before the Superior Court wherein the appellant was plaintiff and one Frederick William Francis was defendant. There are three distinct statements alleged to have been sworn to by the defendant on which perjury is assigned in this second count. As regards the first and third of these statements no question has been reserved, and with them we have now nothing to do, being entitled to assume upon the case reserved that the assignments as regards them were properly pleaded, and that the evidence received at the trial as relevant to those charges was legally admissible. The objection to the sufficiency of the count which we have to consider relates to the second of these statements and the assignment of perjury applicable to it.

The indictment alleges that the appellant swore that Francis from about the early part of 1880 till towards the end of 1881 owed him, the said Donald Downie, for everything which went to make up the necessaries of life, not only for the rent of his rooms but his whole living; during that period of time without any interruption, scarcely, except a day or two at a time when he might have been elsewhere, he

lived at his the said Donald Downie's expense altogether; that the said Frederick W. Francis lived "with him the said Donald Downie and depended upon him exclusively for his livelihood and the said Frederick W. Francis had no means of any kind." Upon this perjury is assigned by purely negative averments in the terms of the allegation itself, without any averment of the affirmative facts by which such negative was to be established. The questions reserved were, whether the sworn statements of the defendant so alleged to be false were sufficiently negatived in the negative averments of the indictment as above indicated to authorise the prosecution to prove special facts not specifically alleged in the negative averments, such as that he, Francis, had paid to Downie in May or June 1880 $42.00 for having boarded at his house in the month of May 1880; that he had paid his board to Madame Duperrousel and part of his board to Francis Larin and was held liable by the latter for part of his board during the months of September and October, 1880; that he was also held liable for part of his board at Mrs. Radford's during the months of January, February and March, 1881, and by Britain for having boarded at the Victoria Hotel in the months of April, May, June, July and August, 1881; and also that he, Downie, had received from Francis an order on Benjamin Clement for $15, on account of which Clement had paid him, Downie, $7.50 in November, 1880.

If the evidence of the above facts was legal the verdict was to be sustained.

2ndly. Should the evidence so adduced be held to have been illegally allowed could a general verdict be given on the assignments of perjury based on the other facts sworn to by Downie, which assignments of perjury were properly negatived but were comprised

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in the same count.

If the evidence adduced on part of the charges made in the indictment should be held to have been illegally allowed, but it should be held that a general verdict could be given, there being other charges in the same count which were properly proved, then by the terms of the case reserved the verdict should be upheld. If on the contrary a general verdict could not be given under the circumstances, the verdict should be set aside and either the motion in arrest of judgment or the motion for a new trial which was made by the defendant should be granted.

The questions thus raised are virtually questions not of evidence but of pleading. For it cannot be doubted for a moment that the evidence objected to was relevant to establish the perjury assigned in the second assignment before referred to. It is said, however, that the indictment was so vague and general on this head, that no evidence should have been admitted in support of the negative averments of perjury before set forth and that the evidence of the witnesses stated in the case should therefore have been rejected. As authorities for this proposition the appellant relied on two cases, *Rex* v. *Hepper* (1), and *Regina* v. *Parker* (2). In my opinion neither of these cases sustains the appellant's contention. The first case, that of *Rex* v. *Hepper* (1), was an indictment for perjury which had either been found in the Court of King's Bench or removed there by *certiorari* the record in which (the defendant having of course pleaded) had been sent down for trial on the civil side at the *nisi prius* sittings held before the Chief Justice, Lord Tenterden, who by reason of his powers being limited to the trial of the issue contained in the completed record sent to him to try, had therefore no juris-

(1) R. & M. 210; 1 C. & P. 608. (2) C. & M. 639.

diction to entertain a motion to quash the indictment, to admit a demurrer, or to arrest the judgment. The indictment was for perjury against an insolvent debtor for falsely swearing that his schedule contained a full and true account of all his debts and the assignment was in terms a bare negation of the oath, without any affirmative allegation showing in respect of what omitted debts the falsity consisted. The Chief Justice holding that the indictment would for its vagueness and generality have been bad on demurrer, and that a conviction if obtained would be rendered ineffectual by an arrest of judgment, refused to try the case (all he could do) and accordingly struck it out of his paper. It is to be observed that in this case of *The King* v. *Hepper*, the indictment contained but the single assignment mentioned and not other charges in respect of which the pleading would have been good as in the present case. It is to be remarked of this case that it stands alone and no similar authority has been cited or can be found. In the present case it was properly held that a demurrer would not have been sustained nor could the judgment have been arrested for the mere generality of the pleading. The decision of the learned Chief Justice on both these points has the support of the highest authority, the opinion of the judges who advised the House of Lords in the case of *Mulcahey* v. *The Queen* (1), delivered by Mr. Justice Willes, and the decision of the House proceeding on the advice so given, particularly that of Lord Chelmsford, the first being a distinct authority that after a general verdict upon a count framed as this is, the generality of the terms in which one of the three distinct charges of perjury contained in this count was assigned would be no ground for arresting the judgment and the opinion of Lord Chelmsford distinctly laying it down

(1) L. R. 3. H. L. 306.

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that there can be no demurrer to a part of one of the counts of an indictment. The consequence is that it is impossible to say that this pleading was bad. Then if the pleading is to be considered as sufficient, the only other remaining objection can be that of relevancy. No case can be produced in which relevant evidence has been rejected upon the trial of an indictment after a plea of not guilty upon the ground of the insufficiency of the pleading. The force of this was felt by Lord Chief Justice Tindal in *Regina* v. *Parker*, the other case cited by the appellant, who told the counsel objecting to the evidence that he ought to have demurred, and that not having done so he did not see how the evidence could be excluded. It is true that in that case the Chief Justice afterwards prevailed upon the prosecution to withdraw the evidence objected to, but that was no ruling or decision, but merely an appeal to the sense of justice and fairness of the counsel for the crown. Lord Chief Justice Tindal's observation in this case that one of the assignments might have been demurred to separately from the other assignments contained in the same count is most distinctly over-ruled by Lord Chelmsford's observations in *Mulcahey* v. *The Queen* where he says:

> I have always understood that a demurrer must be to the entire count or plea and not to a part of it.

It is therefore apparent that the *King* v. *Hepper* is not an authority sufficient to sustain this appeal, and further, that upon principle and apart from authority the appellant must fail since the only possible objection to the admissibility of the evidence in question could be that it was irrelevant to the issue raised by the plea of "not guilty," a proposition which could not possibly be for a moment entertained. Further, the objection that this mode of pleading is vicious as being too vague and general whether regarded as one of a substantial or a technical character is, I think,

met by the following language of Mr. Justice Willes in delivering the opinion of the judges in *Mulcahey* v. *The Queen* already alluded to. That very learned judge there said:

> Moreover, and this is the substantial answer to these objections, an indictment only states the legal character of the offence and does not profess to furnish the details and particulars. These are supplied by the depositions and the practice of informing the prisoner or his counsel of any additional evidence not in the depositions which it may be intended to produce at the trial. To make the indictment more particular would only encourage formal objections upon the ground of variance which have of late been justly discouraged by the legislature.

These observations certainly throw much doubt on the case of *Rex* v. *Hepper* if they do not actually discredit it as an authority, but it is sufficient for the present purposes to say that the last named case does not, for the reasons given, apply to the question raised on this appeal and apart from it there is not a shadow of authority to support the defendant's pretension.

The conviction must be affirmed.

FOURNIER J. was of opinion that the appeal should be allowed for the reasons given by Mr. Justice Cross in the Court of Queen's Bench.

GWYNNE J.—The only question before us is that which was reserved under sec. 259 of ch. 174 of the Revised Statutes of Canada, namely, whether in an indictment for perjury the perjury charged was sufficiently assigned to authorise the prosecution to give evidence of certain particular facts which were tendered and received in evidence for the purpose of establishing the perjury as assigned in the indictment.

The indictment charged that the defendant Downie in a certain suit among the records of the Superior Court for the district of Montreal, in which the said Downie was the plaintiff and one Frederick W. Francis was defendant upon the contestation of a writ of

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saisie arrêt after judgment issued therein by the said Downie against the said Francis in the hands of Benjamin Clement in his quality of curator as garnishee whose declaration declared that he owed the said Francis a life rent, which life rent the said Francis contended was unseizable by reason of its being an alimentary allowance, he the said Downie was during the trial of the issues raised upon the said garnishee's declaration duly examined on the part of the said Francis upon interrogatories *sur faits et articles*, and was then and there duly sworn, &c., &c., and did upon his oath falsely, wilfully and corruptly depose and swear in substance, and to the effect following (1).

This being the defendant's oath as stated in the indictment the perjury charged was assigned as follows (2).

Now the evidence, as to the admissibility of which the question was reserved, was that of persons with whom Francis had boarded during different parts of the periods named in the assignment of perjury, namely, between the months of December, 1879, and November, 1880, and between the months of February and August, 1881, for the purpose of establishing that during those periods Francis was supplied with board and lodging by those persons at his own charge and not at all at the charge and expense of Downie, and also evidence of Downie having, in November, 1880, received from Clement, the curator of Francis' mother's estate the sum of $7.50 on account of a draft for $15, made by Francis upon Clement in Downie's favor, and also that Francis having been arrested by Downie about June, 1880, paid to him $42 for boarding in Downie's house in May, 1880.

The evidence was, in my opinion, clearly admissible. The case is very different from that of *Rex* v. *Hep-*

(1) See p. 360. (2) See p. 361.

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per (1) to which it has been likened. In that case the indictment charged that the defendant had in an oath taken by him in the Insolvent Debtor's Court falsely, wilfully and corruptly sworn that a schedule filed by him in the court contained a full, true and perfect account of all debts due to him at the time of presenting his petition to the Insolvent Court, and the assignment of the perjury was that in truth and in fact the said schedule did not contain a full true and perfect account of all debts due to him at the time, &c., in naked negation of the terms of the oath without averring wherein the schedule was untrue, imperfect and defective. The defendant thus was in effect charged with having falsely, wilfully and corruptly omitted to insert in the schedule something which was within his knowledge and which it was his duty to insert, the omission of which made the schedule which he had sworn was a true statement of all debts owing to him to be false, without pointing out what was the particular matter omitted which made the statement in the schedule to be false. The indictment in the present case is very different; the perjury assigned in it is not a simple negation of the truth of the defendant's oath, although that, perhaps, would have been sufficient, having regard to the nature of the oath which, in substance, was that Francis owed Downie, from the early part of 1880 until towards the end of 1881, for everything which went to make up the necessaries of life, not only for the rent of his rooms but his whole living during that period of time without interruption scarcely—that he, Downie, and Francis lived together during the years 1880 and 1881, and that Francis had no means of any kind, but depended upon him, Downie, exclusively for his livelihood. And the assignment, besides

(1) Ry. & M. 210.

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denying all this to be true, points out in the paragraph beginning with the words "but on the contrary &c., &c.," the particular parts which are relied upon as false, wherein it is alleged what means Francis had, and that during certain named periods he supported himself at his own cost and was not at all supported by Downie: and the evidence given (the admissibility of which is under consideration) was in support of the averments contained in that paragraph. It was not at all necessary that in order to be allowed to prove the averment that Francis had supported himself during certain named periods or any part of such periods the indictment should have gone further and stated where Francis lived during those periods and, if at hotels or lodging houses, the names of such hotels and lodging houses and of the proprietors of them and the amounts which accrued due to each, the utmost that the defendant could have any right to be informed of was that during certain periods the prosecutor intended to prove that Francis had maintained himself at his own cost and charges and that he was not maintained by Downie as the latter had sworn he had been.

Appeal dismissed without costs.

Solicitor for appellant: *S. Pagnuelo.*

Solicitor for respondent: *Geo. Duhamel.*