

QUEEN vs. OPENTY.

Perjury.—Materiality of Evidence.

A conviction for perjury quashed, where the materiality of the evidence on which the perjury was assigned was not shewn.

A preparatory examination was held before the Magistrate of Carnarvon against one Morris charged with the murder of one Openty. At this examination Mrs. Openty deposed *inter alia* : "I never received any money from any one since Openty's death except for debt; nor have I caused search to be made for any money." At the Circuit Court for Victoria West, Morris was tried and convicted of the murder. Mrs. Openty was at the same Circuit charged with perjury assigned on the above statement, the indictment alleging that at the preparatory examination it was material and necessary to ascertain if Mrs. Openty had received any money except for debt, and whether she had caused search to be made for any money. Mrs. Openty pleaded not guilty, and after evidence had been given, her Counsel claimed her acquittal on the ground that the materiality of the evidence on which the perjury was assigned had not been proved. The presiding Judge, Mr. Justice FITZPATRICK, reserved the question for the decision of the Supreme Court. The accused was thereafter found guilty.

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Postea (August 1), in the Supreme Court,—

Hoskyns, for the prisoner, moved to have the conviction quashed. It was essential that the evidence on which the perjury was assigned should be material (*Roscoe on Evidence*, 7th ed., p. 805; *Greenleaf and Redfield*, vol. 3, 8th ed., p. 167). It could not be material to the charge of murder against Morris, whether or not Mrs. Openty received or made search for money.

Jacobs, A.-G., for the Crown, supported the conviction. In the indictment it did not state that it was material to ascertain whether or not Morris had committed murder, but whether a crime had been committed at all. The statement

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made was material to that enquiry. It was not necessary that the evidence should be material to any particular issue of the enquiry. It would be sufficient if it went to the credibility of a witness (3 *Russell on Crimes*, p. 12).

Hoskyns, in reply, pointed out that the indictment did not allege that the evidence was material to a question of credibility, but to the fact whether or not Mrs. Openty had received or searched for money.

DE VILLIERS, C.J. : The question is not, whether what Mrs. Openty swore to at the preparatory examination is true or not, but whether it was material to the issue raised in the indictment. It is difficult, without having all the facts and evidence before us, to say whether the statement was altogether immaterial. I can easily conceive circumstances under which the evidence would be material. The *Attorney-General* contends that it was material to the witness's credibility. But that is not the charge in the indictment. We are restricted to the records before us, and from what I can see, I cannot connect the question whether or not Mrs. Openty received money except for debts or made search for money, with the guilt of Morris as the murderer of Openty. It is not necessary to lay much stress on any supposed distinction between our law and that of England, as to materiality of the evidence. It will, for our present purpose, be sufficient to refer to the statement of the law given by *Van der Linden*, p. 314, that the crime of perjury is committed "when we premeditatedly, to the prejudice of a third person, declare under oath, that to be true which we know to be false." It is not shewn here that the evidence given could, if false, prejudice either the prisoner, or the Crown. Under these circumstances the conviction must be quashed.

DENYSSSEN, J., was of the same opinion.

Conviction quashed accordingly.
