

he applied for the ballot; while the charge of perjury, which was an offence under the Criminal Code was not committed until, on being challenged, he took the false oath; and, therefore, a plea of autrefois acquit could not be set up as an answer to the subsequent indictment.

Held, however, OSLER, J.A., and TETZEL, J., dissenting, that he had a good defence at common law—which was reserved to him under s. 7 of the Code—for that the identity of the person committing the offence was essential in both indictments, and the acquittal on the first indictment being a finding on that question, it was, therefore, res judicata, and could not be again raised on the perjury charge, so that the acquittal and discharge of the prisoner on the subsequent indictment should have been directed.

McEvoy, for prisoner. *Cartwright*, K.C., for Crown.

From Street, J.] *HIME v. LOVEGROVE.* [Dec. 30, 1905.
Vendor and purchaser—Covenant—Building restriction—House—Stable.

The owner of two adjoining parcels of land sold and conveyed one, the deed containing a covenant by the purchaser for himself, his heirs, executors, administrators and assigns, not to "erect or build more than one house upon the property hereby conveyed" with special provisions as to the cost and materials of "any house so erected," and as to the distance of its walls from the boundaries of the parcels conveyed. The vendor subsequently conveyed his parcel to the testator of the plaintiffs, having first erected a stable upon it. The parcel first sold by him became vested by various mesne conveyances in the defendants, who built a stable upon part of it, sufficient space being left within the described boundaries for the erection of a house of the nature and value provided for in the covenant, which house, the defendants asserted they have intended to build.

Held, that the stable being built as appurtenant to the house to be afterwards erected, there was nothing in the covenant to preclude its being so built. *Bowes v. Law* (1870) 18 W.R. 102 approved.

Judgment of STREET, J., affirmed.

Alan Cassels, for appellants. *Alfred Bicknell* and *G. B. Strathy*, for respondent.