

which he had been committed for trial, and that he was neither a competent nor a compellable witness at the inquest, at the instance of the Crown.

The inquest was adjourned to the 12th November, 1920, but Barnes entered into no recognizance or undertaking to appear thereat, and no further subpoena was served upon him requiring his attendance at the inquest upon that day. Barnes not appearing on that day, the coroner issued a warrant for his apprehension, directed to the Chief Constable of the City of Toronto and to all peace officers in and for that city. The warrant directed that Barnes should be taken and brought before the coroner to give evidence.

The notice of this motion and other documents were headed "In the Supreme Court of Ontario," and styled, "Rex v. Henry G. Barnes," and the notice was directed to the coroner and the Attorney-General for Ontario.

The learned Judge referred to *Regina v. Hammond* (1898), 29 O.R. 211; and secs. 667 and 940 of the Criminal Code.

It was contended for Barnes that; as the criminal charge had been already laid against him, the provisions of sec. 5 of the Canada Evidence Act did not apply to him, and he was not bound to answer.

Section 5, as it stood in the Act of 1893 (56 Vict. ch. 31), read, "No person shall be excused," etc. In 1898 the section was repealed, and a new section substituted, beginning, "No witness shall be excused." It was said that the change indicated that the person who was not to be excused from answering must be one who is otherwise a compellable witness; and, as Barnes could not be compelled by the Crown to give evidence in the criminal proceedings now pending against him, he was not a "witness" to whom sec. 5 was applicable. The learned Judge was unable to see that the change was of any real consequence; nor did he attach any importance to the circumstance that "person" is the word used in sec. 4.

Does the fact that Barnes is not a compellable witness in the criminal proceedings exempt him from being compelled to give evidence before the coroner? The learned Judge was unable to discover upon what grounds any such exemption could be claimed. Although the coroner's court is a criminal court, no one is there on trial or charged with any offence. The question of competency or compellability must be determined with reference to the particular proceeding in which it is proposed to call the person as a witness and not with reference to some other proceeding.

The coroner's warrant is enforceable beyond the limits of the county of York: sec. 35 of the Coroners Act, R.S.O. 1914 ch. 92, which was first enacted in 1911, after the decision in *Re Anderson*