

MIDDLETON, J., IN CHAMBERS.

OCTOBER 17TH, 1913.

REX v. VINCENT AND FAIR.

*Criminal Law—Application for Bail before Committal for Trial—Jurisdiction of Judge of Supreme Court—Criminal Code, sec. 698—Remedy of Accused—Writ of Habeas Corpus—Admission to Bail on Return—Amount of Bail—Vagrancy.*

Motion by the defendants for bail.

W. M. German, K.C., for the defendants.

J. R. Cartwright, K.C., for the Crown.

MIDDLETON, J.:—The accused were arrested and committed for trial upon a charge of fraud; and upon this charge they were admitted to bail. An information was then laid against them, charging them with vagrancy, and upon this charge they have been remanded four or five times, no evidence being taken before the magistrate. The magistrate refuses to grant bail except for a prohibitive amount—\$5,000 for each prisoner.

An application is now made for bail upon the vagrancy charge.

I do not think that, under the Criminal Code, a Judge of the Supreme Court has jurisdiction to grant bail until the accused has been committed for trial. See Criminal Code, sec. 698. Nevertheless, a prisoner is not without remedy. Under the Habeas Corpus Act, upon the return of a writ the Court may "determine touching the discharge, bailing, or remanding the person."

In *Rex v. Hall* (1907), 8 W.L.R. 642, Craig, J., in the Yukon Territorial Court, held the contrary; but he evidently misread the case of *Regina v. Cox*, 16 O.R. 228. The section of the statute referred to there by MacMahon, J., has been eliminated and is not now found in the corresponding section of the Code as it now stands. Compare R.S.C. 1886 ch. 174, sec. 83, with the present sec. 699 of the Code.

I think the alternative course suggested by MacMahon, J., is the proper one to follow; and I, therefore, grant the writ of habeas corpus, and upon its return will admit the prisoners to bail.

To save the further attendance of counsel on the return of the writ, the amount of bail was discussed; and I think that cash bail \$500 for each is adequate.