

ORDE, J., IN CHAMBERS.

FEBRUARY 5TH, 1921.

*REX v. BARNES.

Coroner—Jurisdiction—Witness Subpœnaed to Give Evidence at Inquest Refusing to Testify—Issue of Warrant for Apprehension—Motion to Quash or for Prohibition—Witness Charged with Manslaughter of Person on whose Body Inquest Held—Charge Laid before Issue of Subpœna—Committal for Trial—Compellable Witness—Canada Evidence Act, sec. 5—"Witness"—"Person"—Claim of Exemption—Warrant Enforceable beyond Limits of Coroner's County—Coroners Act, sec. 35—Style of Proceedings—Criminal Cause.

Motion by Henry G. Barnes for an order quashing a warrant for his apprehension issued by a coroner or prohibiting the coroner or any officer of his court or any peace officer from executing the warrant or arresting the applicant thereunder and prohibiting the coroner from issuing any further process, subpœna, or warrant to compel the applicant to attend and give evidence at an inquest or to arrest him for such purpose.

A. Courtney Kingstone, for the applicant.
Edward Bayly, K.C., for the coroner.

ORDE, J., in a written judgment, said that on the 19th September, 1920, one William E. Rossiter was injured upon the Toronto and Hamilton highway, in the county of Peel, and died the same day in Toronto. Dr. W. A. Young, an associate coroner for the County of York, thereupon proceeded to conduct an inquest upon the body of Rossiter; and on or about the 2nd October, 1920, the applicant, who resided in the township of Louth, in the county of Lincoln, was subpœnaed by the coroner to attend the inquest on the 4th October, 1920, and give evidence on behalf of the Crown touching the death of Rossiter.

Before the issue of the subpœna, Barnes was charged before the Police Magistrate for the Village of Port Credit, in the County of Peel, with manslaughter in having caused the death of Rossiter, and was, on the 27th September, 1920, committed by the magistrate for trial upon that charge, and was at the time of this motion in the custody of his bail awaiting trial.

At the inquest, on the 4th October, 1920, Barnes appeared with counsel, and, upon the advice of counsel, refused to give evidence or to hold himself bound by the subpœna, on the ground that a charge of manslaughter was then pending against him upon