

A few days prior to the time for delivery of particulars, the solicitors for the respondent, and the solicitors for the petitioner, who was also the respondent in a cross petition, gave mutual undertakings for the production of their clients, at Toronto, for their preliminary examination for discovery under s. 17 of The Ontario Controverted Elections Act (R.S.O., c. 11). The respondent, Clark, after appearing before the examiner in pursuance of his solicitors' undertaking, refused to be sworn and examined, alleging a prior agreement, to which the petitioner was not a party, for dropping the petition. It was ordered that the respondent attend before the special examiner, at Toronto, at his own expense, for viva voce examination under oath, and that the time for delivery of the particulars be extended until forty-eight hours after the conclusion of the respondent's examination; the particulars in the cross petition to be delivered contemporaneously therewith. It was further ordered that service of the order and appointment upon his solicitors be sufficient service upon the respondent. Costs to the petitioner in any event over and above the amount of taxable costs between party and party restricted by the statute.

Drayton, and *Slaght*, for the petitioner; *Eric Armour*, for the respondent.

CRIMINAL CASES.

Meredith, C.J.C.P.]

REX v. HERBERT.

[Jan. 15.

Self-confessed murderer—Acquittal of accomplice—Withdrawal of plea of guilty—Dangerous precedent.

Gerald Sifton and Walter Herbert were accused of murdering Joseph H. Sifton, the father of the former. Herbert pleaded guilty and, at the subsequent trials of Sifton, at London, in 1901 and 1902, he gave evidence on behalf of the Crown. The first trial resulted in a disagreement of the jury, but on the second trial Sifton was acquitted.

At the London Winter Assizes, before MEREDITH, C.J.C.P., application was made Jan. 15, 1903, on behalf of Herbert for leave to change his plea of guilty to one of not guilty.

E. Meredith, K.C., and *T. G. Meredith*, for the prisoner.

Magee, K.C., for the Crown, stated that he had been instructed in the event of the plea being changed not to offer any evidence, and except to point out that a dangerous precedent might be established, he did not seriously oppose the application.

MEREDITH, C.J.:—The Court has power to permit the accused, at all events where sentence has not been pronounced, to withdraw his plea of guilty. There remains therefore only the question whether this is a proper case in which to exercise discretion.

I do not think there is any danger of this case forming a dangerous precedent, because I venture to believe, searching the records of this