

at the Spring Assizes at Walkerton directed a warrant to issue for his apprehension, and ordered the bail to be estreated, giving effect to the contention of the counsel for the Crown, viz., that the charge was not one under secs. 120, 121, 146, 147, 148 to 152 of the criminal code as to perjury, for which defendant would be liable to imprisonment for five years, but that it came under sec. 530, under which defendant is liable to one year's imprisonment for inciting or attempting to incite any person to commit any offence under any statute for the time being in force, and not inconsistent with the code.

C. H. Ritchie, K.C., for Bowman.

J. R. Cartwright, K.C., for Attorney-General for Ontario.

The judgment of the Divisional Court (BOYD, C., FERGUSON, J.) was delivered by BOYD, C.:—The offence as set out in the recognizance (the warrant not being before the Court) is not an attempt to commit the crime of subornation of perjury, as was argued, but something less, being an incitement to give false evidence, or to give particular evidence regardless of its truth or falsehood, which is a misdemeanour at common law, punishable by fine and corporal punishment: Russell on Crimes III., p. 3. In such a case it is competent for a single justice of the peace to commit for trial, and also to admit to bail, as at common law. It was competent for the grand jury to go beyond the charge contained in the magistrate's commitment if founded upon the facts or evidence disclosed on the depositions: C. Code, s. 641. As to any such variance the bail have no ground to complain, for they are bound in a sum certain, and not to stand in the place of the principal, and his failure to appear is the cause of the forfeiture of the recognizance; see R. v. Ridpath, 10 Mod. 152. The common law jurisdiction as to crime is still operative, notwithstanding the Code, and even in cases provided for by the Code, unless there is such repugnancy as to give prevalence to the later law; R. v. Carlile, 2 B. & Ald. 161. But here, the offence as set forth in the recognizance is not specified in the Code, and the power of the justice may be exercised as at common law in liberating the prisoner into the hands of bailsmen. Rude *nisi* discharged with costs.

J. Frank Palmer, Walkerton, solicitor for Bowman.