

After this ruling, the Crown Attorney applied for a reserved case, which was refused, whereupon Mr. Waldron intervened on behalf of the present applicant, and submitted that the reserved case should be granted, but without success.

Upon the opening of the motion, a question was raised as to the right of the applicant to apply, and after argument judgment was reserved upon this preliminary question.

No case was cited by either counsel bearing upon the question to be determined, and the only case which bears upon it that I have been able to find is *Rex v. Gilmore* (1903), 6 O.L.R. 286. . . .

[Reference to the Criminal Code, sec. 1014, sub-sec. 2; sec. 1015, sub-secs. 1 and 2.]

It is clear that the applicant, having been bound over to prosecute, was entitled to prefer a bill of indictment for the charge on which the respondents had been committed or in respect of which he was so bound over, or for any charge founded on the facts or evidence disclosed in the depositions taken before the Police Magistrate: sec. 871.

By the Crown Attorneys Act, 9 Edw. VII. ch. 55, sec. 8, clause (b), it is made the duty of the Crown Attorney to "institute and conduct on the part of the Crown prosecutions for crimes and misdemeanours at the Court of General Sessions of the Peace"

That, at all events after a true bill has been found, unless the case is one to which clause (c), to which I shall afterwards refer, applies, the person by whom the information was laid, or who, where he may do so, has preferred the bill of indictment, has no right to take part in the proceedings at the trial, seems reasonably clear; for, if it were not so, the duty imposed upon the Crown Attorney of conducting, on the part of the Crown, the prosecution, could not be discharged.

This is made more clear by the provisions of clause (c), which require the Crown Attorney to "watch over the conduct at the . . . General Sessions of the Peace of cases wherein it is questionable whether the conduct complained of is punishable by law, or where the particular act or omission presents more of the features of a private injury than of a public offence; and, without unnecessarily interfering with private individuals who wish in such cases to prosecute, assume wholly the conduct of the case where justice towards the accused seems to demand his interposition."

The prosecution of the respondents does not come within the exception mentioned in clause (c); and, therefore, the conduct