

LENNOX, J., IN CHAMBERS.

JUNE 23RD, 1915.

REX v. MANZI.

*Criminal Law—Attempt to Commit Rape—Conviction by Police Magistrate Quashed for Want of Jurisdiction—Detention of Prisoner pending Preliminary Hearing by Magistrate—Procedure—Place of Detention.*

Motion to quash the conviction of the defendant by a Police Magistrate for an attempt to commit rape.

E. F. Macdonald, for the defendant.

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

LENNOX, J., said that the magistrate had jurisdiction to hold a preliminary inquiry, and—the prisoner pleading guilty to one of the charges at least—to send him for trial; but the magistrate had no jurisdiction to try the prisoner upon the charge of the indictable offence of attempt to commit rape. The conviction should, therefore, be quashed, and the money paid into Court as security be paid out. There should be no order as to costs.

The motion was as to the conviction only; the prisoner was not brought up on habeas corpus; his discharge was not asked for; and it would not be proper to discharge him, if it were. But it was proper to direct what should be done. The procedure was governed by *Rex v. Frejd* (1910), 22 O.L.R. 566—the circumstances differing in this respect only, that, the prisoner being in gaol, there was no occasion for a remand.

It was suggested that the North Bay gaol was not the gaol to which the prisoner should be sent, the offence having been committed in the district of Temiskaming. But this need not occasion any difficulty, as counsel for the Crown undertook to see that the custody should be proper in this respect.

Order that the prisoner be detained in close custody until he can be brought up for hearing, and that a preliminary hearing of the charge according to law shall be had as speedily as may be, and that peace officers and others concerned shall govern themselves accordingly.