

Com. v. Knight, 12 Mass. 277; *Com. v. Pollard*, 12 Met. 229; *Com. v. Byron*, 14 Gray 31; Wharton Cr. L., s. 2263; 2 Russell on Crimes (7th Am. ed.) 639, 642.

Carter, solicitor, for the state, cited *State v. Holding*, 1 McCord 31; 2 Arch. Cr. L. & Pl. 1749, 1750, notes; *State v. Keyes*, 8 Vt. 57; *State v. Carpenter*, 20 Vt. 9.

DOE, C. J. The statute might be violated by an attempt to procure the commission of perjury, without a specification of the desired testimony. If the defendant did not know what particular evidence he wanted, its materiality might be proved. It would not be presumed that he wanted, and intended and was understood to solicit, proof of something immaterial. But, whether the evidence solicited is known or unknown, and whether it is or is not set forth in the indictment, its materiality must be proved, and must be alleged expressly, or otherwise. The allegation of facts which show that the testimony probably was material, is not sufficient.

Demurrer sustained.

BINGHAM, J., did not sit.

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Whether a verdict is against the evidence is a question of fact, to be decided at the trial term.

TRESPASS. The defendant excepted to the refusal of the judge at the trial term to set aside a verdict for the plaintiff, as being against the evidence.

Copeland and Eaton (of Maine), for the plaintiff.

Hastings, F. Hobbs, and Eastman, for the defendant.

FOSTER, J. The question whether a verdict is contrary to the evidence is a question of fact, to be decided by the judge presiding at the trial. *Fuller v. Bailey*, ante, p. 71; *Lefavor v. Smith*, ante, p. 125; *Hill v. New Haven*, 37 Vt. 501, 512; *Clark v. Congregational Society*, 45 N. H. 333, 334.

Exception overruled.

ALLEN, J., did not sit.