

so as to enable a different offence to be charged on a different and later date more than thirty days before said amendment was made. Here the amendment made on the 8th January, 1912, was long after thirty days from the time when the original offence was said to have been committed, viz., on the 27th November, 1911. It goes further, and states that the substituted offence was committed on a later date more than thirty days before the said amendment was made. There is no doubt that the offence substituted by the amendment is a different offence from that originally charged in the information.

Under these circumstances, had the Magistrates power, after the thirty days, to make the amendment in question? . . .

[Reference to Rex v. Ayer, 17 O.L.R. 509; Rex v. Guertin, 19 Man. L.R. 33.]

These two judgments are not in accord. In Rex v. Ayer, the effect of the amendment allowed was, as stated in the judgment of Meredith, C.J., at p. 512, "merely to add words necessary to describe the offence intended to be charged in the informations which were insufficiently because incompletely described in them." See also The Queen v. Hawthorne, 2 Can. Crim. Cas. 468.

I think the two sections of the Act must be read together, and, so reading them, have come to the conclusion that the amendments made to the information in the present case on the 8th January, 1912, substituting a different charge on a different date, more than thirty days after the alleged commission of such different and substituted offence, were not properly made. I think they were made too late. The original charge was apparently abandoned, and the substituted charge laid too late under the statute.

The motion will, therefore, be allowed with costs. The usual order will go for the protection of the Magistrates.

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DIVISIONAL COURT.

MARCH 14TH, 1912.

GALLAGHER v. KETCHUM & CO. LIMITED.

*Trover—Conversion of Automobile—Joint Tort-feasors—Damages—Lien for Repairs.*

Appeal by the defendants from the judgment of BRITTON, J., ante 573.