The second indictment referred to in the reserved case contained three counts. The first count charged the accused, under sec. 405 of the Code, with having in February, 1909, knowingly and fraudulently, by false pretences, obtained from the Northern Crown Bank $5,000 with intent to defraud the said bank. The third count charged the accused, under sec. 405, with having, knowingly and fraudulently, by false pretences, procured the said bank to pay and deliver to the National Matzo Company various sums of money aggregating $5,000.

The County Crown Attorney, who represented the Crown at the General Sessions, informed the presiding Judge that as to the charges which were laid under sec. 405 of the Code the Crown would offer no evidence; and counsel for the Crown before us did not press for an affirmative answer as to these two counts.

The second count of the indictment charged that the accused, "in incurring a debt or liability to the Northern Crown Bank, did obtain credit under false pretences from the said bank." This count was laid under sec. 405A., which was added to the Code by sec. 6 of ch. 18 of the statutes of 1908, 7 & 8 Edw. VII., and which reads as follows: "Every one is guilty of an indictable offence and liable to one year's imprisonment who, in incurring any debt or liability, obtains credit under false pretences, or by means of any fraud."

This section was introduced to overcome the defect in our law pointed out by the Quebec Court of Appeal in Regina v. Boyd (1896), 4 Can. Crim. Cas. 219, viz., that sec. 405 applied only to the obtaining by false pretences of something capable of being stolen, and not to the obtaining of credit. The new section 405A. . . . was copied from the Imperial Debtors Act, 32 & 33 Vict. ch. 62, sec. 13(1), which was considered in Regina v. Bryant (1899), 63 J.P. 376, and it was held . . . that the Act did not apply where credit was given to some person other than the party making the application for it.

The facts of the present case are, however, different. The accused in fact incurred a liability for himself, if not a debt, and obtained a credit for himself on his guarantee, although the money was actually paid to the company of which he was a director and shareholder; and be benefited by it.

This section was considered by the Quebec Court of Appeal in Rex v. Campbell (1912), 5 D.L.R. 370, and it was there unanimously held to be applicable to a case where the president of a company had fraudulently obtained credit for the company.