

SECOND DIVISIONAL COURT.

DECEMBER 20TH, 1920.

*REX v. VOLL.

Criminal Law—Indictment for Administering Poison with Intent to Endanger Life—Amendment Made at Trial—Intent to Injure, Aggrieve, or Annoy—Conviction—Power to Amend—New Indictment—Criminal Code, secs. 278, 951, 1018 (e).

Case stated by LENNOX, J., after the trial and conviction of the defendant upon an indictment for administering poison to A.B.

The question stated was: "Was I right, and particularly had I the power to amend the indictment as I did amend it, and thereupon allow the trial to proceed?"

The case was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ., and FERGUSON, J.A.

R. T. Harding, for the defendant.

Edward Bayly, K.C., for the Attorney-General.

MULOCK, C.J.Ex., read a judgment in which he said that the indictment was that the defendant "unlawfully did cause to be taken by A.B. certain poison, to wit, a mixture of whisky and carbolic acid, with intent thereby to endanger the life of the said A.B." At the conclusion of the case for the Crown, the learned trial Judge expressed the opinion that there was not evidence to support the charge covered by the indictment, but that there was evidence proper to be laid before the jury in support of an offence properly chargeable under sec. 278 of the Criminal Code, and amended the indictment so that it read, "unlawfully did cause to be administered to or taken by A.B. certain poison, to wit, a mixture of whisky and carbolic acid, with intent to injure, aggrieve, or annoy the said A.B."

In the learned Chief Justice's opinion, an act of one person which is intended to endanger the life of another person includes an act to injure, aggrieve, or annoy such other person; and, therefore, by sec. 951 of the Code, the accused, if not proved guilty of the offence charged in the unamended indictment, might, without any amendment, have been convicted of the offence of administering poison with the intent to injure, aggrieve, or annoy.

As the grand jury assented to the indictment for the major offence, they must be held to have approved of an indictment for the minor offence.