

SECOND DIVISIONAL COURT.

NOVEMBER 23RD, 1917.

## REX v. CURRIE.

*Criminal Law—Unlawful Application of Mark Appropriated for Use of the Crown—Criminal Code, secs. 432, 433—Proof of Application—Stated Case.*

Appeal by the defendant (upon a stated case) from a conviction by the County Court Judge's Criminal Court (York) on the 10th October, 1917, for that the defendant "did, without lawful authority, apply a Government stamp on or upon shells to be used for naval and military purposes, contrary to the Criminal Code."

The question stated was, whether there was any proof that the mark was one covered by the section of the Criminal Code under which the defendant was convicted.

The appeal was heard by MEREDITH, C.J.C.P., LATCHFORD and LENNOX, JJ., FERGUSON, J.A., and ROSE, J.

J. F. Boland, for the defendant.

Edward Bayly, K.C., for the Crown.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that, on the supposition that the defendant had been prosecuted and convicted of having unlawfully applied a mark appropriated for His Majesty's use under an order in council, as provided for in sec. 432 of the Criminal Code in its present form, contrary to sec. 433, an application was duly made under sec. 1014 of the Code for a reserved case on the question whether there was any proof adduced at the trial of the mark having been so appropriated in the manner prescribed by sec. 432; and eventually that question was stated for the opinion of this Court.

It now turned out that that supposition was an erroneous one; that the prosecution and conviction of the defendant were not for an unlawful use of such a mark; but were for the unlawful use of a mark which, under another part of sec. 432, is expressly and directly appropriated to His Majesty's use.

The case, therefore, required no consideration: the enactment itself afforded the proof of the appropriation of the mark.

Other questions were suggested and discussed, but the Court had power only to deal with the question reserved, which must be answered in the affirmative.

*Conviction confirmed.*