

FIRST DIVISIONAL COURT.

MARCH 14TH, 1919.

REX v. GUROFSKY.

Criminal Law—Obtaining Money by False Pretences—Evidence—Promissory Guaranty not False Representation of Fact.

Case reserved by the Senior Judge of the County Court of the County of York, under the provisions of sec. 1014 of the Criminal Code.

The defendant was tried by the Judge and convicted of obtaining by false pretences from three foreigners the sums of \$25, \$25, and \$19.40 in money.

The question submitted was: Was there any evidence upon which the defendant could properly be convicted of the offence charged?

The case was heard by MACLAREN, MAGEE, and HODGINS, J.J.A., MIDDLETON, J., and FERGUSON, J.A.

L. M. Singer, for the defendant.

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

MIDDLETON, J., read the judgment of the Court. He said that the evidence was very confused, as the witnesses were mainly foreigners, examined through an interpreter.

Gurofsky was a ticket-agent, who sold tickets to foreigners desiring transportation to Europe. The foreigners concerned some time previously had bought tickets, but had been refused leave to enter the United States en route.

On the occasion in question, Gurofsky charged them \$25 in addition to the price of the tickets, guaranteeing that they would be permitted to pass the border and would not get into trouble. One of the men had not enough money to pay this, and so paid the smaller sum only.

The learned Judge in his reasons for judgment finds "the false pretence was that Gurofsky alleged that he had a right to guarantee their entrance into the United States for the purpose of going to Marseilles and to Malta. The evidence shews that he had no right to guarantee; it was a false pretence and a false representation to these foreigners."

In the view of the Court, the evidence did not disclose this false representation; the guaranty in its nature was promissory; Gurofsky was to communicate with the Customs authorities—to telegraph and to telephone—so as to secure the free passage of the men. This was not a false representation of fact, which is essential to the offence.

For these reasons, the question should be answered in the negative, and the conviction should be quashed.