

shareholders or partners, or with intent to deceive or defraud the members, shareholders, or creditors, or any of them, whether ascertained or not, of such body corporate or public company, or with intent to induce any person to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof."

This section of the Code was based on sec. 85 of the Canadian Larceny Act of 1869, 32 & 33 Vict. ch. 21, which was substantially copied from the Imperial Larceny Act, 24 & 25 Vict. ch. 98, sec. 84. . . . The only new matter in the Code was the insertion of the words "promoter" and "prospectus."

The evidence shewed that the accused had given a guarantee to the bank to the extent of \$10,000; also that he gave a statement of his own affairs to the bank which to his knowledge was untrue, as it omitted a liability of his to one Simon Cohen. The Judge held that sec. 414 applied only to statements of the affairs of the company, and directed the jury to acquit.

There is no doubt that the introduction of the word "prospectus" in sec. 414 has a tendency to strengthen the impression that the "statement of account" in the section has reference to the affairs of the company, and not to the personal affairs of the officer making the same, and to suggest that the maxim "*noscitur â sociis*" might possibly be applicable.

I have not been able to find a single reported case either in England or Canada where the prosecution was based upon a statement of the personal affairs of the officer accused, notwithstanding that this law has been in force in these countries for a period of 57 and 45 years respectively.

In the circumstances, there is, in my opinion, sufficient doubt as to the proper interpretation of the section to require us to give a negative answer to the question reserved for us by the trial Judge as to this indictment, inasmuch as the law ought to be clear to justify a conviction, and "the Court must see that the thing charged as an offence is within the plain meaning of the words used:" *Dyke v. Elliott* (1872), L.R. 4 P.C. 184, at p. 191.

Usually a reserved case is asked for by the Crown in case of an acquittal in order to settle the law for the future. This is not necessary in the present case, as Parliament has, by sec. 16 of ch. 13 of the statutes of 1913, 3 & 4 Geo. V., added a new section, 407A., to the Criminal Code, expressly providing for a case like the present. That section, however, is not applicable to the present case, as it was passed only on the 6th June, 1913, and the statement now complained of was made in February, 1909.