

Notes on Recent Cases

R. v. Broomfield

Unlawful Possession of Public Stores—Equipment Inadequately Marked— Departmental Initials Not Enough to Identify Property

Government and military equipment often is marked merely with the first letter of each word appearing in the relevant departmental name; thus the letters "R.C.A.F." have been used to mark Royal Canadian Air Force property. The Criminal Code, however, prescribes that the official mark for militia stores and equipment is the broad arrow within the letter C, and according to the decision given in the present case it is imperative that the proper mark be on an article belonging to public stores before such article can be identified.

Following a complaint that tires had been stolen from No. 7 Release Centre, R.C.A.F., Calgary, Alta., military police on Mar. 14, 1945, discovered on an automobile owned by D. W. Broomfield, a sergeant in the air force, two re-capped tires embossed with the letters R.C.A.F. These letters which had resisted obvious attempts to scrape them off were partially concealed by the rubbery coating applied during the retreading process. Service police removed the tires from the vehicle and Broomfield appeared before his commanding officer on a charge of being in improper possession of them. But it could not be proved definitely that the tires had been on his car, and the case was dismissed.

R.C.A.F. officials then decided to have Broomfield charged under the Criminal Code, and on August 8 the local R.C.M.P. detachment was asked to investigate. Search of the suspect's premises yielded two wooden propellers which he admitted taking from a hangar, a small rubber tail wheel and a pair of rubber boots bearing a mark of the English government. These articles were seized but as nobody could testify under oath that

they bore a Canadian Government mark action concerning them was dropped.

With respect to the tires, however, Broomfield was charged with Unlawful Possession of Public Stores, s. 434 Cr. Code, which provides that every one who, without lawful authority, the proof of which lies on him, possesses any public stores bearing any mark which by s. 432 has been appropriated for use on stores the property of His Majesty in the right of his Government of Canada, knowing them to bear such mark, is guilty of an offence. The tires were valued at more than \$25 and the accused elected summary trial under Part XVI. He appeared on August 30 at Calgary before Police Magistrate I. F. Fitch and pleaded not guilty. The prosecution was conducted by M. H. Staples, K.C., the defence by C. E. Smith, K.C.

The mark to be used on public stores, provided for in s. 432 Cr. Code is the name of any public department or the word "Canada", either alone or in combination with a Crown or the Royal Arms, and s. 991 (2) provides that if a person charged with the offence relating to public stores mentioned in s. 434 was, at the time at which the offence is charged to have been committed, in His Majesty's service or employment, knowledge on his part that the stores to which the charge relates bore the marks described in s. 432 shall be presumed until the contrary is shown.

Statements made by the accused during the investigation were ruled inadmissible and the court after hearing the evidence of both sides dismissed the charge on grounds that there was no proof that the tires carried the required marks, and that