

MARCH 24TH, 1911.

REX v. LEE.

*Criminal Law—Gold and Silver Marking Act—Guarantee of Lasting Quality—Authority of Parliament and of Provincial Legislature—Overlapping of Legislation—Ultra Vires.*

Case stated by one of the Judges of the County Court of York, by whom the defendant was convicted of a breach of the Gold and Silver Marking Act, 7-8 Edw. VII. ch. 30 (D.).

The case was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

G. Waldron, for the defendant.

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

J. Jennings, for the Minister of Justice.

MOSS, C.J.O.:—The defendant was charged before J. H. Denton, Esquire, one of the Judges of the County Court of the County of York, under the provisions of the Criminal Code relating to speedy trials of indictable offences, that he, being a dealer in gold plate ware or the like, applied a mark to certain articles, to wit five rolled gold or gold-filled or electroplated watch cases, guaranteeing or purporting to guarantee by such mark that the gold in such article or part thereof will wear or last for a specified time, contrary to the terms of the Gold and Silver Marking Act, 7-8 Edw. VII. ch. 30 (Dom.). Being so charged the defendant elected to be tried by the Judge without a jury and pleaded not guilty. In course of the trial the defendant by his counsel waived all defences except the objection that sub-sec. (b) of sec. 16 of the Gold and Silver Marking Act was ultra vires the Parliament of Canada and that therefore he could not be convicted of the charge. Counsel for the defendant stated that the defendant was not seeking to evade the Act, but desired to obtain a decision as to the validity of the legislation, and there is no reason to doubt his good faith in this respect.

The learned Judge found the defendant guilty of the charge and pursuant to an order of this Court stated a case and submitted for its opinion the following question:—

Is sub-sec. (b) of sec. 16 of the said Act ultra vires the Parliament of Canada? Sections 16 and 17 of the Act appear under the heading of "Offences and Penalties." They are the cul-