

APRIL 14TH, 1903.

C.A.

## REX v. KARN.

*Criminal Law—Offering or Advertising for Sale Medicine for Improper Purposes—Evidence—Inference from Wording of Advertisements—Functions of Judge and Jury—Case Reserved after Acquittal—Misdirection—New Trial.*

Crown case stated by the Chairman of the General Sessions of the Peace for the County of York.

The case was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.

J. R. Cartwright, K.C., for the Crown.

E. E. A. DuVernet, for the defendant.

OSLER, J.A.—The accused was indicted at the General Sessions of the Peace for the county of York, for that he did in the month of November, 1901, unlawfully, knowingly, and without lawful justification or excuse, offer to sell, advertise, and have for sale, a certain medicine, drug, or article, described, intended, or represented as a means of preventing conception, or causing abortion or miscarriage, and did thereby commit an indictable offence contrary to the Criminal Code, sec. 179 (c).

The trial took place on the 9th December, 1901, before the Chairman of the General Sessions of the Peace and a jury.

The evidence of the Crown shewed that the accused conducted a large business in various proprietary medicines, including a certain emmenagogue or medicine for stimulating or renewing the menstrual flow. This medicine was put up in the form of tablets, and sold under the terms of an agreement, duly proved, between the accused and the manufacturer. A box was produced as made up for the purpose of sale, with a brief printed description of the contents on the outside, across which a warning in red ink and large type was printed, not to use the tablets during pregnancy. Inside the box was a printed sheet or circular giving full directions for the use of the tablets, and a separate advertising circular referring to the tablets and describing their purposes and operation was also proved.

On behalf of the Crown it was contended that the statement on the box and in both the circulars referred to, or some part of the same, or some expressions therein, shewed that the drug or article was thereby intended or represented as a means of preventing conception or causing abortion; and,