

*Held*, also that there could be no estoppel against the applicants, or waiver of the public right.

Judgment of Divisional Court, 4 O.L.R. 272, affirmed.

*Aylesworth*, K.C., for appellants. *Riddell*, K.C., for respondents.

C. C. R.]

REX v. KARN.

[April, 14.

*Criminal law—Advertising medicine intended to prevent conception—Evidence to support conviction—Functions of judge and jury—Acquittal—New trial—Crown case reserved—Appeal.*

The defendant was tried upon an indictment for that he did 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, contrary to the Criminal Code, s. 179 (c).

The evidence for the Crown shewed that the defendant 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 boxes, in the form of tablets, and sold under the terms of an agreement, duly proved, between the defendant 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. In the "directions" there was this statement: "Thousands of married ladies are using these tablets monthly. Ladies who have reason to suspect pregnancy are cautioned against using these tablets."

The judge at the trial directed an acquittal, reserving a case for the Crown upon the question whether the evidence offered would support a conviction. A verdict of not guilty was accordingly returned.

*Held*, that the jury could have legitimately inferred from the language used that the tablets were thereby represented as a means of preventing conception, and therefore it would have been right to have left the case to the jury; and a conviction might have been supported. It is for the judge to determine whether a document is capable of bearing the meaning assigned to it, and for the jury to say whether, under the circumstances, it has that meaning or not. The Court declined to direct a new trial.

Per OSLER, J.A., Where there has been an acquittal, the trial judge should leave the prosecutor to apply for leave to appeal, rather than reserve a case.

*Cartwright*, K.C., for the Crown. *Du Ternet* for defendant.