

whether there was any evidence to go to the jury, and it was held that there was such evidence—that there must be an intent on the part of the person who is telling the fortune to delude and defraud, but it is not necessary that he should succeed in deceiving or defrauding. That case was really an authority against the defendant.

It was found by the County Court Judge that the use of the document signed by the customers was a mere sham, and that it was acted upon; but, if it had been the real thing, it would not have helped the defendant.

Conviction affirmed.

FIRST DIVISIONAL COURT.

JANUARY 10TH, 1916.

**REX v. PORTER.*

Criminal Law—Fraud of Trader—Failure to Keep Books—Period of Time—Criminal Code, sec. 417(c)—Fraudulent Intent.

Case stated by the Senior Judge of the County Court of the County of York after the conviction of the defendant, under sec. 417(c) of the Criminal Code, upon a charge that he, being a trader and being indebted to an amount exceeding \$1,000 and unable to pay his creditors in full, did not keep such books of account in his business as are required by sec. 417(c), which provides that "every one is guilty of an indictable offence and liable to a fine of \$800 and to one year's imprisonment who . . . (c) being a trader and indebted to an amount exceeding \$1,000, is unable to pay his creditors in full and has not, for five years next before such inability, kept such books of account as . . . are necessary to . . . explain his transactions. . . ."

The question reserved was, whether the defendant came within the enactment—he having been in business for a period of 9 months only.

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

T. C. Robinette, K.C., for the defendant.

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

MEREDITH, C.J.O., delivering the judgment of the Court, said that what the section was aimed at was the failure to keep books of account with the fraudulent intent of defrauding cre-