

FIRST DIVISIONAL COURT.

MARCH 1ST, 1917.

\*REX v. BAINBRIDGE.

*Criminal Law—Indictment for Seditious Libel—Single Count—Demurrer—Motion to Quash—Amendment—Jury—Verdict of “Guilty”—Effect of—Consent of Grand Jury to Amendment of Indictment—Necessity for—Trial upon Seven Libels—Conviction upon two—Only one Found by Grand Jury—Discharge of Prisoner.*

On the 22nd November, 1917, the accused was tried before HODGINS, J.A., and a jury, and convicted, upon an indictment for a seditious libel.

Some questions as to the regularity of the indictment and other questions were raised at the trial by demurrer and motion to quash and were overruled by the Judge, who refused to state a case for the appellate Court: see ante 218.

The accused moved a Divisional Court of the Appellate Division for leave to appeal from the convictions. Leave was granted, and the trial Judge directed to state a case: ante 338.

The case stated by the trial Judge was heard by MACLAREN and MAGEE, J.J.A., CLUTE, J., FERGUSON, J.A., and ROSE, J.

R. T. Harding, for the accused.

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

MAGEE, J.A., read a judgment in which, after referring to facts and citing authorities and provisions of the Criminal Code, he said that the questions asked in the stated case should be answered as follows:—

(1) Should the demurrer to the indictment have been allowed?

A. Yes.

(2) Should the motion to quash the indictment have been allowed. A. Yes.

(3) If the two previous questions, or either of them, are answered in the affirmative, does the verdict make the indictment good? A. No.

(4) Could the amendment of the indictment which was made at the trial be rightly made without the privity of the grand jury? A. No.

(5) Should such amendment have been made in any case?

A. Not without the privity and consent of the grand jury.

(6) Was there any impropriety or defect in the proceedings