

The defendant was charged for that he did "publicly express an adverse or unfavourable statement, report, or opinion which may tend to weaken or in any way detract from the united effort of the people of Canada in the prosecution of the war, contrary to the form of the order in council" of the 16th April, 1918, made under the War Measures Act, 1914. The order appears in the Canada Gazette of the 17th April, 1918, and provides (sec. 1 (d)) that it shall be an offence "to print, publish, or publicly express any statement, report, or opinion which may tend to weaken" etc. (as in the charge).

The evidence before the magistrate shewed that the defendant, in a factory in which he was working, made certain statements, in the hearing of other workmen, to the effect that the British Parliament was bleeding Canada dry; that King George was just as bad as the Kaiser and did not go any nearer to the battle-front; that people here were foolish to enlist. The remarks were made in conversation and so that only 4 or 5 persons could hear the speaker. He did not speak from a platform or box.

The magistrate (23rd May, 1918) convicted the defendant and imposed a fine of \$50 and costs.

After stating the facts and the testimony given, the magistrate asked the question whether he was right in convicting.*

W. A. Skeans, for the defendant.

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

SUTHERLAND, J., in a written judgment, said, after stating the facts, that it was argued on behalf of the defendant that to create an offence under the order in council the words complained of must have been uttered in a speech or address or sermon in some public place, such as a street, a hall, a church, and to persons there assembled.

The learned Judge was of opinion that the magistrate was justified in coming to a different conclusion. The proper meaning to be given to the words "publicly express" is, to express openly to others, who are present or within hearing, opinions of the character and tendency referred to in the order in council.

Even in cases of alleged indecent exposure of the person, where the *place* is of importance, and the question whether it is a public place or not a matter for consideration, it has been suggested that the charge may lie if the offence is committed before several persons, even if the place be not public: *Regina v. Wellard* (1884), 14 Q.B.D. 63.

The conviction was right.

Motion dismissed with costs.

*As to the form of the question, see *Rex v. McBrady*, ante 369.