

within the meaning of the Arbitration Act, R.S.O. 1897, c. 62, s. 8; and, therefore, one party having failed, after notice from the other, to appoint an arbitrator, the other might appoint a sole arbitrator.

Decision of STREET, J., 2 O.L.R. 301, affirmed.

*In re Sturgeon Falls Electric Light and Power Co. and Town of Sturgeon Falls*, 2 O.L.R. 585, overruled.

*A. B. Aylesworth*, K.C., for appellants. *R. McKay*, for respondents.

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GENERAL SESSIONS OF THE PEACE, COUNTY OF YORK.

McDougall, Co. J.] THE KING v. KARN. [Dec. 9, 1901.

*Crim. Code, s. 79 (c)*—*Words charged as being an offence under must be interpreted in their natural and primary sense.*

The prisoner, who was a manufacturer and dealer in a medicine advertised as a "Female Regulator," was indicted under s. 179 (c) of the Code.

The indictment charged that the prisoner "did unlawfully, knowingly, and without lawful justification or excuse, offer to sell, advertise and have for sale or disposal a certain medicine, drug or article, commonly known as 'Friar's French Female Regulator,' intended or represented as a means of preventing conception or causing of abortion or miscarriage, and did thereby then commit an indictable offence, contrary to the *Crim. Code, s. 179 (c)*."

A box of the medicine was produced in evidence. On the back of this box, in conspicuous lettering, was printed, "Caution—ladies are warned against using these tablets during pregnancy." Circulars were also produced explaining that its object was to promote a natural condition in the patient—it having the properties of an emmenagogue—which accompanied the remedy. No evidence was offered shewing the ingredients of the tablets, and the Crown simply pressed for a conviction for the offence of advertising.

*Dewart*, K.C., for Crown. The caution in reality counsels the employment of the medicine to avoid pregnancy.

*Du Vernet* and *S. W. Burns*, for prisoner.

*Held*, in accordance with the contention on behalf of the prisoner, that the words used by him must be taken in their natural and primary sense, and could not in this view be treated as coming within the contemplation of the above section of the Code. The case must be dealt with as though the allegation had been the subject of a criminal libel. The learned Judge directed the jury to return a verdict of not guilty, reserving a case to the Crown.

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NOTE.—Whilst on the evidence before him the learned Judge probably came to the proper conclusion, the result might have been different if