

JANUARY 23RD, 1905.

C.A.

REX v. ELLIOTT.

Criminal Law—Conspiracy—Trade Combination—Preventing or Lessening Competition—Criminal Code, sec. 520 (d)—“Unduly”—Conviction—Evidence Justifying—Association of Traders—Constitution and By-laws—Limitation of Time for Prosecution—Continuing Offence—Appeal from Conviction—Cross-appeal by Crown.

Defendant was indicted for an offence against sec. 520 (d) of the Criminal Code, which enacts that every one is guilty of an indictable offence and liable to a penalty not exceeding \$4,000 nor less than \$200, or to two years' imprisonment, who conspires, combines, agrees, or arranges with any other person, or with any railway, steamship, steamboat, or transportation company, (d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, or supply of any article or commodity which may be a subject of trade or commerce, or in the price of insurance upon person or property.

The indictment came on for trial at the Brantford jury sittings of the High Court in April, 1903, and defendant elected to be tried in April, 1903, and defendant elected to be tried without a jury, as permitted by sec. 4 of 52 Vict. ch. 41 (D.) He was accordingly tried by MEREDITH, J., and found guilty on that count of the indictment framed on the clause of the Code above referred to.

Defendant appealed to the Court of Appeal in the manner provided by sec. 5 of 52 Vict. ch. 41; and the Crown cross-appealed, seeking a conviction upon the other counts.

W. S. Brewster, K.C., for defendant, argued that the word “unduly” in sec. 520 meant no more than “unlawfully,” and that, as the acts which were the subject of the alleged conspiracy or agreement were not unlawful, it was not an offence within the Act to conspire or combine or agree to do or commit them. (2) That the prosecution was not commenced in time under sec. 930, which provides that no action, suit, or information shall be brought or laid for any penalty or forfeiture except within two years after the cause of action arises or after the offence is committed, unless the time is otherwise limited by the Act, and that in the present case the time began to run from the date at which the agreement was first entered into.