

## **Dorothea Palmer collection**

Examinations, volume 1 : first count, the 21 women, Constable Martel, Chief Manion, Miss Palmer, Dr. DeHaitre. (WA17-22)

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[x] Bill of particulars

REX vs. PALMER

County Court House, Ottawa, 14th October, 1936.

(Hearing for argument re Bill of Particulars; present: His Worship Magistrate L. Clayton.

A. W. Beament, Esq., K. C., for Defence.  
Raoul Mercier, Esq., Crown Attorney pro tem.  
John E. Fagan sworn as Shorthand Reporter.)

Mr. Mercier:

You have a copy of the information?

Mr. Beament:

I have of the original information.

Mr. Mercier:

In order to begin: my learned friend is asking for certain particulars; I may say now, subject to changes we may have after, I intend to have this information amended to read:

"That Dorothy Palmer of the City of Ottawa within the space of six months last past, to wit, between the 1st day of August, 1936 and the first day of September, A. D. 1936, at the Town of Eastview, aforesaid, did unlawfully and knowingly and without lawful justification or excuse:

"(a) offer to sell an article to one Mrs. Dorothy Leblanc which said article was intended or represented as a means of preventing conception."

The Court:

"(a)" is "offer to sell"?

Mr. Mercier:

Yes, your Worship.

The Court:

"Did unlawfully"?

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Mrs. Dorothy Leblanc Count "a".

REX vs, PALMER

Eastview, 21st October, 1936.

(Hearing of evidence on Count "a"; present:  
His Worship Magistrate L. Clayton.

The accused.

Raoul Mercier, Esq., Crown Attorney pro tem.

P. W. Wegenast, Esq., K. C. and A. W. Beament, Esq., C., for the Defence.

John E. Fagan sworn as Shorthand Reporter.)

The Court:

Read the charge to the accused:

Chief Manion: (reads information )

"Canada, )

Province of Ontario, ) General Form of

Town of Eastview, ) Information on Oath.

To Wit: )

The information and complaint of Constable Emile Martel of the Town of Eastview, taken upon oath before me, the undersigned, one of His Majesty's Justices of the Peace, in and for the Town of Eastview, at the said Town of Eastview, this 16th day of October in the year of our Lord one thousand nine hundred and thirty-six who said that he is informed and verily believes that Dorothy Palmer of the City of Ottawa within the space of six months last past, to wit, between the 1st day of August, 1936 and the first day of September, A. D. 1936, at the Town of Eastview, aforesaid, did unlawfully and knowingly and with-out lawful justification or excuse:

(a) offer to sell an article to one Mrs. Dorothy

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Mr. Mercier:

"(a) offer to sell an article to one Mrs. Dorothy Leblanc which said article was intended or represented as a means of preventing conception." And; "(b) did advertise in the Town of Eastview, County of Carleton, in 1936."

Mr. Beament:

Two separate charges?

Mr. Mercier:

Yes, in order to prevent the word "or", and I might add we will specify a name in that instance; there is only one known instance. And: "(b) in the Town of Eastview, County of Carleton, between the first day of August, 1936 and the first day of September, 1936, advertise means, instructions, drugs or articles intended or represented as a means of preventing conception," And: "(c)" that the said Dorothy Palmer in the Town of Eastview, between the first day of August, 1936 and the first day of September, 1936, did publish an advertisement of a means of instructions or articles, as a means of preventing conception."

The Court:

"(b)" is "did advertise" and "(c)" is "did publish an advertisement"?

Mr. Mercier:

Yes.

The Court:

And "(d)"?

Mr. Mercier:

"Did have for disposal means or instructions,

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Mr. Mercier:  
and articles intended or represented as a means of preventing  
conception." All to be headed by: "the said Dorothy Palmer".

Mr. Beament:  
Four charges?

Mr. Mercier:  
Yes.

The Court:  
"Did offer to sell" and "did advertise"?

Mr. Mercier:  
Yes, instead of saying "or".

The Court:  
It gives a clearer defence.

Mr. Beament:  
No; what we are charged with, I confess I don't know.

The Court:  
This, I presume, will make it more clear?

Mr. Mercier:  
This information was laid by the police officer who laid the charge and it is amended to read a little more clearly than that; after I have gone through with it; and I submit in view of the circumstances, [x] subject to any objection from my learned friend and your Worship's ruling, to assure the accused of a fair trial. If the accused did not commit this offence or if the accused did not sell any means, subject to the defence, of preventing conception as enumerated in the indictment, she would have no reason to have any further particulars, and if she has sold anything --there is a case on that in Clerk's Criminal Cases, volume 8, page 69

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Mr. Beament:

I haven't been furnished with copies of these new offences.

The Court:

There is an application for amendment.

Mr. Beament:

I am not opposing the amendment; I was warned about it, but I think he has [/] had ample time to prepare a new information, so I need not rely too much on my memory to know what this [xxx] lady is charged with.

Mr. Mercier:

This is the case of Regina vs. Stapleton and others: "The defendant is

entitled..... enable him to get them."

Mr. Beament:

I don't know what this is amended to until I receive copies of the charges. My friend will admit I have been after him to give me copies.

Mr. Mercier:

I understand that.

The Court:

Couldn't you have had here today, Mr. Mercier, an amended information ready to enter into the record?

Mr. Mercier:

I might possibly have had that, but my learned friend will admit we discussed this informally. The charge is not amended materially.

Mr. Beament:

I am not surprised at the amendment but at not having the draft charges prepared.

Mr. Mercier:

It is all contained in this publication and advertising.

The Court:

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The Court:

Perhaps I don't know what you are asking.

Mr. Mercier:

I am not asking for anything; I have read the amended charge.

The Court:

You are not asking to have the charge amended?

Mr. Mercier:

I will ask that, but I take the opportunity today of telling him what; I will supply copies of the amended charge.

The Court:

You are supplying them today?

Mr. Mercier:

No, the police laid the charge and they will be there Friday.

The Court:

I think the point well taken: before we get to the particulars we should like to know what the charges will be.

Mr. Beament:

Perhaps we will take the charges up seriatim; different considerations may apply.

Mr. Mercier:

Changes must be made in upper court.

Mr. Beament

Yes, but we should have new informations, re-sworn.

Mr. Mercier:  
I am telling - .

Mr. Beament;  
What is the first?

Mr. Mercier:

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Mr. Mercier:  
"That Dorothy Palmer at the Town of Eastview, County of Carleton,  
between the first of August, 1936 and the first of September, 1936,  
knowingly and without lawful justification and excuse, offer to sell[x] a  
means of instructions, articles and means to prevent conception,"

Mr. Beament:  
In the Town of Eastview, over a period of a month, we are told we are  
accused of offering to sell articles to prevent conception?

Mr. Mercier:  
Yes.

Mr. Beament:  
We deny categorically -- how can I know the defence unless I know what  
articles were offered for sale; secondly, the time should be more detailed,  
because if we made an offer to sell, a month is an absurd time;  
particularize and say the place where the alleged act took place.

Mr. Mercier:  
I think that is unreasonable. Particulars may be asked to give the accused  
a fair trial, but are not needed in this case. Now, I have referred to Regina  
vs. Stapleton and in that it was held:  
"That the Court will not order particulars to be furnished unless he has no  
knowledge of an over-taxed charge".

Mr. Beament;  
Where the accused - ?

Mr. Mercier:  
We are alleging serious acts, such as advertising.

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Mr. [xxxxxxx] Beament:  
By, "offer for sale"?

Mr. Mercier:  
That is one particular person.

Mr. Beament:  
If the Crown knows who, we are entitled to it.

Mr. Mercier:  
The Crown just learned it.

The Court:  
It is not in the proposed emended information.

Mr. Mercier:  
There is only one person; I don't remember the name.

Mr. Beament  
My learned friend offers to give the name?

Mr. Mercier:  
Yes.

Mr. Beament:  
And that person no doubt will know the date, place and what was offered to sell him or her.



Mr. Mercier:

It is not my custom to interview witnesses for the Crown before giving their evidence; if that person does know the date, there might be people there who might not remember the exact date in the month of August and, on the question of advertising -

Mr. Beament:

We will leave that until we come to it.

The Court:

Yes; the first charge is: "offer to sell certain articles", and you state in your emended information you will set out the name of the person to whom this alleged

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The Court:

sale was offered?

Mr. Mercier:

Yes, because that name is available.

The Court:

That should be sufficient. "An article for preventing conception"; I don't think that is going to mislead you; you are not alleged to have offered books or groceries, but an article for means of preventing conception. Those are very narrow in their application.

Mr. Mercier:

I understand it is up to the Crown to prove these articles can be used for that purpose, but surely my learned friend should not ask me the name of the doctor or his evidence or anybody who can possibly give evidence.

Mr. Beament;

I am not asking the names of witnesses but particulars of the offence; I

am not trying to find out who the witnesses are except insofar as finding out in detail the offence with which I am charged so I can meet it.

The Court:

I think, Mr. Beament, alleging the name of the person to whom the offer to sell was made of these articles during the month of August should give you information upon which to base your defence.

Mr. Beament:

On the first charge my learned friend kindly pointed out the case - it is a decision of the Supreme Court of Canada.

The Court:

The Brodie case?

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Mr. Beament:

If you wish I shall read it.

The Court:

Yes.

Mr. Beament:

Well, if you have it?

The Court:

But maybe some particular thing?

Mr. Beament:

It is a judgment of Rinfret only; I read the judgment of the Court and I don't think perhaps it is necessary for me to read the more introductory portions of the judgment and I might, I think, also say this: some of these things I will read are perhaps dicta in relation to this particular case, but they are dicta to the whole Supreme Court of Canada. I don't think all is necessary in relation to the facts in this particular case to be considered. It

is in Canada Law Reports, part 5, May 31, 1936, the Buck case: "The general provisions as to indictments"

Mr. Mercier:  
What page?

Mr. Beament:  
191 to 196, about the middle of the page, where the statute is quoted:  
"...some way or other." There are two views.

The Court:  
No, I don't think there is that diversion of views.

Mr. Beament:  
I am reading this in relation to all the charges.

The Court:  
But at the moment there is not such a wide divergence.

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Mr. Beament:

No. " ...." (continued on next page) ".... adequate." Then it is in French, by Justice Bernier.

Mr. Mercier:  
".... followed by trial.

Mr. Beament:  
"It. is not possible .... it has now become our duty to decide the section .... Section 852 .... time, place and matter .... Section 853". Section 853 obviously contemplates changes or the section covering the omission of details would be useless. ".... Section 855 .... no court .... objectionable". The rest has application to the particular wording. At the bottom of page 196 and page 197: ".... referred to in the charge .... each of these sub-sections begins with 'further'. I will say 'the person, place and thing' .... fair

trial .... sub-section 'g' .... 'd', 'e', 'f' and 'g' .... 859 ' (page 198) '.... acts in general .... lift it from the general to the particular." Of course, we are dealing with a case of conspiracy. I think from then on they simply apply those principles.

Mr. Mercier:

Except in the last paragraph: "I do not want to depart with this appeal .... certain generalities .... page 200." They add that also.

Mr. Beament :

That is a very strong judgment.

Mr. Mercier :

Undoubtedly.

The Court:

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The Court:

It clarifies it a great deal.

Mr. Mercier:

So far as this case itself is contained, the section of the Code alleges a special act in itself; it is not a general act, but a special act of selling certain things.

Mr. Beament:

That is no more special than the act of murder.

Mr. Mercier:

Oh, yes, it is; it is much more general. As to particulars, I am perfectly satisfied to give any of them within reason but I should not be fettered in my prosecution of the case.

The Court:

That is so.

Mr. Mercier:

It is quite reasonable if a person offers to sell a certain person, if the Crown alleged this act was general I don't think I could offer any particulars; there may be thirty, forty or fifty witnesses.

The Court:

On the first count, "offering to sell"?

Mr. Mercier:

Not in this particular case.

The Court:

Let us dispose of this particular one; we have four. Mr. Mercier; I don't know what my learned friend wants any further; it is an article intended or represented to prevent conception; I don't suppose my learned friend wants me to produce the article before trial. I submit [xx]

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Mr. Mercier:

it is my duty to produce it at the trial and that I prove it can be used for that purpose. There is no doubt of that. If I do not prove that and that it was offered --- I submit we cannot give the whole theory of the Crown on this thing; we must prove certain acts were done contrary to that section and that they were done by the accused.

The Court:

My interpretation of that Brodie case is that it is very simple; I may be wrong, but my interpretation of the Brodie case is that on any count on indictment there should be not only allegation of the offence in the words of the Code or proper language equal to the wording of the section of the Code but there should be sufficient in the wording of the indictment to take the charge [xx] out of the general and specify the particular act alleged by the offence. Now, in specifying the particular act the Crown doesn't have

to go into minute detail as to the specific act alleged.

Mr. Beament:  
That is right.

The Court:  
As long as it gives sufficient details so that the defence knows what it is charged with.

Mr. Beament:  
It is the detail of the act.

The Court:  
If it is felt the charge doesn't contain sufficient particulars it is for the defence to ask further particulars and for the Court to decide.

Mr. Mercier:  
Yes, I agree to that; I am not more interested in

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Mr. Mercier:  
fettering my learned friend than in fettering my prosecution.

The Court:  
In this it is proposed the Crown amend it, that the accused between the first day of August, 1936 and the first day of September, 1936, did offer for sale articles for the prevention of conception to a certain person?

Mr. Mercier:  
Yes.

The Court:  
I think there is sufficient detail there to base your defence on that particular charge.

Mr. Beament:  
I am entitled, I think, to particulars of those.

Mr. Mercier:  
I have shown them to my learned friend.

Mr. Beament:  
I have seen things taken from the lady; it was outside the date of this offence; the police on a certain date arrested this lady and found certain things which they rightly or wrongly seized; I think wrongly under all the circumstances, and now we are charged with an offence at an earlier date. I don't know what that has to do with it unless it is particulars of another offence.

The Court:  
Your charge is that between these thirty-one days you are charged with selling?

Mr. Beament:  
Offering to sell.

The Court:

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The Court:  
Offering to sell to a certain person. Surely the defence knows whether there was any offering for sale in that period.

Mr. Beament  
But that assumes guilt on the part of the accused. If the Crown knows --- it must know what it was -- if we did offer to sell -- what objection can there be to the Crown [x] saying what. The Crown surely is not out to get an unfair prosecution?

Mr. Mercier:

I haven't done it in eleven months and I am not going to now. But if laws demand full particulars and the whole evidence I am not in it and I am not interested, but it is my purpose to be as fair as possible as to what particulars he may be entitled to. I submit there is no imputation this woman is guilty until proved, if she is. We allege she did sell something and this other case, the Stapleton case, it is made very clear there that the -- page 69 -- "The Court will not order particulars to be furnished in the absence of an affidavit he has been over-charged."

Mr. Beament:

That is an overt act and there is none here.

The Court:

Yes, it is.

Mr. Beament:

But in what?

The Court:

An article as a means of preventing conception.

Mr. Beament:

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Mr. Beament:

I can't see it.

Mr. Mercier:

If a person attempted to utter a forged document it shouldn't be necessary to say it was a note or cheque and the date.

Mr. Beament:

Surely under Brodie that would be clearly a [xxxx] bad [xx] indictment.

Mr. Mercier:



To so-and-.so.

Mr. Beament:

That would be a bad indictment, and it is an argument in my favour; I suggest the example my learned friend so gives is an excellent condition in my favour; an indictment of uttering a forged document to Smith on such a date.

The Court:

You have the time, place and person.

Mr. Beament:

But not the thing.

Mr. Mercier;

[xx] A certain [xxxx] instrument. In order to do that we any, "intended or representing as a means to prevent conception." Now, I intend to bring certain pamphlets.

Mr. Beament:

It was my friend was objecting to giving evidence.

Mr. Mercier:

I went to be reasonable.

The Court:

Please keep to the first charge; you are talking about pamphlets.

Mr. Mercier:

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Mr. Mercier:

I have seen the instrument which I am endeavouring to prove, that it was offered as an instrument intended to prevent conception.

The Court:  
You couldn't say article or instrument?

Mr. Mercier:  
Yes.

The Court:  
That would be further particulars.

Mr. Mercier;  
And not being a technician I don't know if my learned friend brings objection to the word "instrument"?

Mr. Beament:  
I am trying to get it clear enough to give this lady a fair trial; I don't know any of the evidence, but I think he should be able to tell from entitlement or particulars superimposed on it what it is, but not the whole evidence of the Crown.

Mr. Mercier:  
On that first one I don't think anything further can be given unless the whole evidence is given; I am willing to take a chance on it. I am willing to accomodate [accommodate] my learned friend as much as I can and as much as I decently can, but I certainly am not going to offer any particulars I am not ordered to except those I am willing to, because I think they are perfectly fair and give notice enough to the person of what charged and where it was done.

The Court:  
I think I will hold that the wording is as proposed will be sufficient for the Court in the indictment to

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The Court:  
prevent any unfair trial on behalf of the accused, as far as the first count is

concerned. Naming the person to whom the offer of sale is alleged to have been made, the place and time, the thing being an article intended to prevent conception.

Mr. Mercier:

The second is: "That Dorothy Palmer in the Town of Eastview between the first day of August, 1936 and the first day of September, 1936, did advertise means of instructions, medicine, drugs or articles intended or represented as a means of preventing conception." This is an advertisement.

The Court:

What is an advertisement?

Mr. Mercier:

We allege she advertised. Add to that, if my learned friend want's: "By means of a pamphlet."

Mr. Beament:

I am not drawing the Crown's informations for him; he promised to have them ready and we could discuss them.

Mr. Mercier:

I said we would discuss this in order to save time.

Mr. Beament;

There is no basis for discussion; these informations apparently are not ready.

Mr. Mercier:

There is no question of particulars. I accommodated [accommodated] Mr. Berger for a time and then my learned friend wasn't

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Mr. Mercier:

ready.

Mr. Beament:

Let us clear that up once and for all. The first thing when I came in the Crown Attorney said, "I am going to amend the information." I said, "let me have the amended information and that hasn't been produced yet and my learned friend thinks I am bludgeoning him, delaying the case.

Mr. Mercier:

I am sorry if it is so but we said we would discuss a certain form of indictment.

The Court:

It would have been better to have it in writing; you have given it verbally and it can be changed.

Mr. Mercier:

It is being taken down and if my learned friend wants to proceed next Wednesday and Thursday, there is plenty of time to get that.

Mr. Beament:

It is intricate and an important case and my learned friend has had weeks to amend these [x] informations.

The Court:

We have had the second count; then you said, "by means of a pamphlet": do you intend putting that in?

Mr. Mercier:

No, I went to know my learned friend's objections; I am perfectly willing to leave it as it is there.

Mr. Beament:

I am willing to also, because it is clearly so bad an indictment, under the Brodie case, it would never stand.

The Court:

The Court:  
I can't draw your indictments for you.

Mr. Mercier:  
I am not asking your Worship to.

The Court:  
All I could say ..

Mr. Beament:  
Is that as read,- the second count?

Mr. Mercier:  
Yes.

Mr. Beament:  
I would like to have particulars of the person to whom this advertising was done and the means by which the advertising was carried out and times.

Mr. Mercier:  
To several different persons in the Town of Eastview by means of a pamphlet.

Mr. Beament:  
I would like the particulars of this pamphlet.

Mr. Mercier;  
I suppose I would have to give the pamphlet or cite it. There is another means, which would be laying twenty-five or thirty different charges against this woman. Of course, one of the defences on that is common good. I am taking this as a way of explaining my attitude.

The Court:  
Just a minute, Mr. Mercier: you suggest Miss Palmer did between certain times advertise to several different persons at the Town of Eastview by means of a pamphlet?

Mr. Mercier:  
Yes.

The Court:

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The Court:

There are particulars; I agree with the defence.

Mr. Beament:

[xxxxxxxxxxxxxxxxxxxx] I am applying for particulars, not to amend the indictment; I am only applying for particulars.

The Court:

The application for amendment is being made in open Court Friday.

Mr. Mercier:

The indictment will stand as it is; he can ask for certain particulars, but I would undoubtedly have to lay twenty-five or forty charges and then I could be more specific.

Mr. Beament:

If it is as read by the Court Reporter, but it would not be more difficult to give particulars now than in forty charges.

Mr. Mercier:

If he can prove it to the Court.

The Court;

I think there should be particulars as to the mode and manner of advertising.

Mr. Beament:

And the person to whom the advertising was done.

The Court:

Probably you would have to separate them into multitudinous [xxxxxxx] acts.

Mr. Beament

I don't think so.

The Court:

It is a separate [\*\*\*\*\*} act, each advertisement.

Mr. Beament:

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Mr. Beament:

Yes, it could be a separate offence, just so, if against a newspaper which goes out to a million people, by proving advertising; it takes two or three people to prove publication.

The Court:

That is limiting the Crown in its prosecution; they may wish to call in many people. If you specify certain persons the indictment is limited to them.

Mr. Beament:

I am not speaking about the indictment.

The Court:

Particulars become part of the indictment.

Mr. Beament:

I am [/] not arguing with the indictment.

The Court:

Shall be read into the record -- section 860 -- the particulars, as though in the indictment.

Mr. Mercier:

Now, has your Worship decided it should be said, "by means of a pamphlet"?

The Court:

I certainly think that should be in.

Mr. Mercier:

Then I should have been made to say to whom, where and when; I don't think I should have to enumerate all the witnesses who have seen this pamphlet or seen it published.

The Court:

I think that the mode and manner should be sufficient; that is all the particulars I would order as to particulars of advertising -- the mode and manner, which I

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The Court:

understand will be to several different persons, by means of a pamphlet.

Mr. Beament:

The pamphlet should be specified.

The Court:

I don't know how the Crown can specify the pamphlet.

Mr. Mercier:

Without reciting it.

Mr. Beament:

"Entitled so-.and-so." It is so clear that is in contemplation; unfortunately none of these cases have been reported under this section and there is no legislation in England on it.

The Court:

Which doesn't make it easy for the Court.

Mr. Mercier:

Or for the Crown.



Mr. Beament:  
The Crown must specify.

The Court:  
It is specifically set out in the Code particulars may be ordered as to passages in a book.

Mr. Beament:  
And because of that it necessarily means particulars may be ordered of passages, it pre-supposes the identity of the book should be part of the charge.

The Court:  
But section 869 doesn't state about information for means of preventing conception. 869 refers solely to section "a" of 867.

Mr. Beament:

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Mr. Beament:  
Right.

The Court:  
This charge, it seems to me, comes under section "c". If it is the same thing, why not specify it?

Mr. Beament:  
It is covered by two other sub-sections, by "a", further describing any document or words and further describing any person, place or thing referred to, in the indictment. It is 859, "e" and "g". If we went around exposing a pamphlet as suggested it should be easy to describe that pamphlet with sufficient particularity that it can be identified. I don't suggest the wording in full but surely he can say a pamphlet published by so-and-so, entitled so-and--so, and the pamphlet's first words and last words being so-and-so; something to identify it. But, under this, he could

bring in any document of any kind.

Mr. Mercier:

My learned friend doesn't mean that surely it must be a pamphlet as specified; something must be left for argument.

Mr. Beament:

I can understand the reluctance of the Crown to let us know what we are charged with.

Mr. Mercier:

The Crown is not reluctant to let you know what you are charged with. She is charged with a certain offence, having done such-and-such a thing. Evidence will be produced there of that and that can't be an unfair trial because the accused can deny ever[x] seeing

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Mr. Mercier:

those or every having done it.

Mr. Beament:

There my friend pre-supposes guilt.

Mr. Mercier:

I do not pre-suppose guilt. A person is charged with a certain offence.

Mr. Beament:

If you are accused of showing these women something you are either innocent or guilty. If guilty, you should know what it is.

The Court:

In the case of Rex vs. Stapleton -- I haven't read it -- it is only an excerpt, but the editors of this book take it from the case, and I don't know whether it is clear in this case or not, but it is alleged to hold: "In a later case, before the English Court of King's Bench, this doctrine was indirectly

confirmed; and, it was held, that, on a special count alleging overt acts, the Court will not order particulars to be furnished, in the absence of an affidavit by the defendant denying knowledge of the acts charged, and of sufficient information to enable him to meet them. 'The general principle,' said Lord Coleridge, 'applies only to this extent, to give such information as is sufficient to enable the defendant fairly to defend himself when in Court; but, on the other hand, not to fetter the prosecutor in the conduct of his case.' Now, the Crown alleges to prove overt acts of advertising by means of [x] pamphlets to several individuals in the Town of Eastview, between such-and-such dates,

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The Court:  
means to prevent conception by means of information contained in the pamphlets.

Mr. Beament:  
It doesn't allege any overt act.

The Court:  
Of advertising.

Mr. Mercier:  
That section of the Code describes -

The Court:  
The particulars will be: the pamphlet to certain persons, without describing the persons, - the pamphlet as a means of preventing conception.

Mr. Beament:  
How can you swear it was unless you know the person to whom this pamphlet was supposed to be shown; how can you know unless the particulars are given. I don't know why or how it can be supposed the defence can grope around in the dark to find out what they are charged with and the very breadth of the whole thing makes it increasingly

important the defendant should know what she is up against; I haven't the faintest idea how to defend this lady.

Mr. Mercier:

She is charged with advertising certain things to prevent conception; surely that in itself is sufficient; advertising to certain people the means.

Mr. Mercier:

That I would commit murder in Ottawa in January, 1937, [xxxxx] with an axe.

Mr. Mercier:

And thereby kill so-and-so.

Mr. Beament:

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Bill of Particulars.

Mr. Beament:

You haven't said that; that is what you should say.

Mr. Mercier;

It is not comparable to a charge of murder; this is general and public and if we can't prove it the case is dismissed.

The Court:

I think perhaps I would like you, if [xx] at all possible, to specify the nature of the pamphlet and that is as far as I will order particulars.

Mr. Mercier:

That would be ordering the Crown to make a resume of the pamphlet.

The Court:

Can't you specify some short entitlement; has it a title?

Mr. Mercier;

Yes, my learned friend has seen it.

The Court:  
Set out the entitlement of the pamphlet.

Mr. Mercier:  
I have no objection to letting my learned friend have a copy.

The Court;  
Not the same thing, but set out: a pamphlet entitled so-and-so as a means of preventing conception, to several persons.

Mr. Mercier:  
I submit I shouldn't have to go that far, but if your Worship orders it, I must abide with that decision.

The Court:  
I will order that.

Mr. Mercier:

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Bill of Particulars.

Mr. Mercier:  
I want to be especially fair and certainly the accused will get a fair trial to which she is entitled.

The Court:  
What about the third count?

Mr. Mercier  
It is to publish an advertisement.

Mr. Beament  
Does the Crown really seriously submit this woman published an advertisement?

Mr. Mercier;  
Publication and distribution.

Mr. Beament:  
Isn't that covered by advertising? He says publication and advertising have synonymous [synonymous] meanings.

The Court:  
Section 207(a): "The defendant exposed to public view an obscene book," rather than [xxxxxxx] publishing.

Mr. Beament:  
It is the only place in law publishing has that somewhat technical meaning and I suggest here the word publishing is meant in non-technical [xx] sense, or otherwise it would be given as the same meaning as advertising.

The Court:  
At the bottom of the page itself, Section 861, it expressly declares -.

Mr. Beament:  
That is blasphemous libel.

The Court:

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Bill of Particulars.

The Court:  
"No count for publishing a blasphemous, seditious obscene or defamatory libel, or for selling or exhibiting an obscene book, pamphlet, newspaper or other printed or written matter, shall be deemed insufficient on the ground that it does not set out the words thereof." Selling or publishing obscene books or pamphlets, as though they deem the word publishing in the sense of publishing and exposing is confined to libel.

Mr. Beament:

Unless those words are intended to apply to a person who prints books, not a person doing the publishing or advertising [advertising]. This will be long enough without conflicting it with information which in fact has no foundation of any kind. If you can convict me of the first two charges you will do good.

The Court:  
There is the question what publishing means.

Mr. Beament:  
All these counts arise out of the same circumstances and multiply many times and it doesn't get any better.

Mr. Mercier:  
According to the information I have I could swear out two hundred warrants in [xx] Eastview and Ottawa.

The Court:  
In view of Section 861, that offhand seems to me to limit the application of the word publishing.

Mr. Beament:  
If you can't convict on advertising you can't convict on publishing.

Mr. Mercier:

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Bill of Particulars.

Mr. Mercier:  
We will drop that.

The Court:  
"d "?

Mr. Mercier:  
"Have for sale means or articles intended as a means of preventing

conception.

Mr. Beament;  
The same dates?

Mr. Mercier:  
Yes. I think it is reasonable and I think the Crown is going far enough; the thing is general; it is a general offence, not a special one. There are [ / ] a number [xx] of offences the Crown alleges were committed. If there were only one offence to the Crown's knowledge, undoubtedly there would be no charge at all.

Mr. Beament:  
I formally apply for particulars of the articles we are alleged to keep for sale.

Mr. Mercier:  
What particulars he wants - ?

[xxxxx] Mr. Beament:  
Describe them; you say we had certain articles for sale. You say articles generally suitable for -

Mr. Mercier:  
Or represented as a means of preventing conception.

Mr. Beament:  
There are many ways of preventing conception.

Mr. Mercier:  
We will just prove they are means of preventing conception.

Mr. Beament:

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Mr. Beament:



I want to know what the articles are. You can prevent conception with anything from a spade to a sponge, properly applied.

The Court:

I don't think I will order any further particulars.

Mr. Mercier:

Your Worship will make up the order and I can have a copy in the morning?

Mr. Beament:

The Crown Attorney should furnish me with them sometime tomorrow with the amended informations and particulars.

The Court:

I don't think there are any particulars in the first count.

Mr. Mercier;

"did offer for sale,"

The Court:

And the name of the person to whom the offer was made. I will order particulars of mode and manner of advertising and entitlement of pamphlet; those are the only particulars I am ordering. I can't very well make that order until the information has been amended. On Friday you will apply for leave to amend in those three counts and then you can ask for particulars.

Mr. Mercier:

The fact is, if I am going to amend the informations I might amend them too to include the particulars.

Mr. Beament:

If all the particulars within his Worship's order are included.

Mr. Mercier:

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Mr. Mercier:

I want tomorrow to prepare the information containing the three counts and I will show my learned friend a draft copy and if it meets with his approval or there are further suggestions,- I will be amenable.

The Court:

If you want to include in your amended information the particulars I have ordered here today it will save my preparing an order and having Mr. Beament ask for an order and having it read into the record.

Mr. Mercier:

Then we can withdraw this one (the original information) and prepare a new one?

Mr. Beament:

Yes.

The Court:

And arraign the accused on the other three.

Mr. Mercier:

And with notice to my learned friend.

(Adjournment made to 16th October. 1936).

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Amended information.

REX vs. PALMER

Eastview, 16th October, 1936.

(Accused arraigned on amended information; present:

His Worship Magistrate L. Clayton.

Raoul Mercier, Esq., Crown Attorney pro tem.

A. W. Beament, Esq., X. C., for Defence.

John E. Fagan as Shorthand Reporter).

The Court:

Mr. Mercier: what is the situation this morning in this case?

Mr. Mercier:

We are prepared to withdraw the information before the Court now and have the accused charged under the amended information, with this exception: in paragraph "a" Dorothy Leblanc should be substituted for Dorothy Mousseau. I was informed yesterday that was the name and I am informed this morning he did not give me the correct name, through a mistake.

The Court:

What should be the correct name?

Mr. Mercier:

Dorothy Leblanc.

The Court:

Better arraign the accused on this new information.

Chief Manion: (reads amended information):

"Canada,

Province of Ontario, Town of Eastview, To Wit:

General Form of Information on Oath.

The information and complaint of Constable Emile Martel of the Town of Eastview, taken upon oath

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Amended information and arraignment.

Chief Manion:

before me, the undersigned, one of His Majesty's Justices of the Peace, in and for the Town of Eastview, at the said Town of Eastview, this 15th day of October in the year of our Lord one thousand nine hundred and thirty-six who said that he is informed and verily believes that Dorothy Palmer of

the City of Ottawa within the space of six months last past, to wit, between the 1st day of August, 1936 and the first day of September, A. D. 1936, at the Town of Eastview, aforesaid, did unlawfully and knowingly and with-out lawful justification or excuse;

(a) offer to sell an article to one Mrs. Dorothy Leblanc which said article was intended or represented as a means of preventing conception.

(b) did advertise to several persons in the said Town of Eastview, by means of a pamphlet entitled: 'Birth Control and some of its simplest methods:' and also 'Le Controle de la natalite et quelques unes de ses methodes plus simples,' instructions, drugs, medicine or articles intended represented as a means of preventing conception.

(c) did have for disposal means or instructions represented or intended as a [x] means of preventing conception, contrary to subsection (a) section 207 of the Criminal Code of Canada in such case made and provided.

(sgd.) E. Martel.

Taken and sworn before me the day and year and at the place above mentioned;

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Arraignment.

Chief Manion:  
(sgd.) R. Manion,  
Jl., Eastview,"

The Court:  
You wish to proceed with election and plea this morning?

Mr. Beament:  
I understand we adjourn without plea until Wednesday.

Mr. Mercier:  
Quite satisfactory.

The Court:

And the first information is withdrawn?

Mr. Mercier:  
Yes, and replaced.

The Court:  
The first one is withdrawn and this one now stands. If satisfactory, I will set Wednesday morning at ten o'clock in this court room.

Mr. Mercier:  
Satisfactory.

Mr. Beament:  
I want to formally apply for particulars of the article offered Mrs. Leblanc and particulars of the place where the offer was made. That is with reference to the first sub-portion of the charge and particulars of names and places. Count "b": particulars of the names of persons to whom and places at which the alleged advertising took place. Count "c": particulars of the means or instructions which the accused is said to have had for disposal.

Mr. Mercier:

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Arraignment and Further Particulars.

Mr. Mercier:  
As to the instructions, I may call your Worship's attention: they are contained in particulars already understood and agreed to be given: the title of the pamphlet. I am not prepared to supply any more unless ordered.

Mr. Beament  
In respect to "c" it is not given.

Mr. Mercier:  
The instructions, he said.

Mr. Beament:

That is charge "b".

Mr. Mercier:

If I understand correctly the meaning of "c" it is: "did have for disposal means or instructions represented or intended as a means of preventing conception." I said, insofar as instructions were concerned, it would stand as in clause "b".

The Court:

That you can satisfy that point, Mr. Mercier, by giving particulars of the instructions and if the same as clause "b" then there is no reason why that can't be included in the count. As it stands: "did have for disposal means or instructions" is not particularized. If the same as Count "b", I suppose there is no reason why it cannot be included.

Mr. Mercier:

If the instructions are the same under the same section of the Code. It is almost vexatious. The accused should have a fair trial; there is no doubt of that. My learned friend is fully apprised.

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Further Particulars.

Mr. [xxxxxxx] Beament:

The purpose of particulars is: (a) knowing what the accused is charged with; and (b) limiting the prosecution.

Mr. Mercier;

If someone is accused of selling liquor, we must say to whom?

Mr. Beament;

No doubt.

Mr. Mercier:

In any case I will supply any particulars you order but not unless ordered by the Court. I am perfectly willing to stand on the charges as they are now; I [xxxxx] might say also for the purpose of the record, unless there

is an affidavit supplied by the defendant that he has no knowledge of this ?

The Court:

As regards clause "c" that might be particularized to the extent you mention, Mr. Mercier, and I would order particulars as to means or instructions, to be supplied the defence. As far as clause "a" and clause "b" are concerned, I think there is sufficient information and particulars in that to enable the accused to prepare a fair defence.

Mr. Mercier;

Then I might ask for particulars of the particulars asked by my-learned friend?

The Court:

No, the accused asks particulars of means or instructions the accused had for disposal.

Mr. Mercier;

How am I to know what will satisfy my learned friend as

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Further Particulars.

Mr. Mercier:

to particulars of particulars?

The Court:

You supply the particulars and if not satisfactory to the accused he can apply to me and if I rule they are satisfactory, that is all. If I rule not satisfactory you can supply more. That is the only particulars, as I said.

Mr. Mercier:

By letter?

The Court:

Written, to form part of the record and a copy supplied to him.

Mr. Beament:  
Attached to the information.

The Court: (to accused).  
Same bail; appear here Wednesday morning at ten o'clock.

(Hearing adjourned).

(The particulars later supplied were as follows:

"Particulars as to paragraph Tie:

"The 'means' therein referred to are the exhibition to certain persons in the Town of Eastview of rubber articles, tubes of jelly and other articles of similar nature which were alleged to be intended or represented as a means of preventing conception. "The 'instructions' therein referred to are the instructions contained in the pamphlet referred to in paragraph 'b'.")

(page A-1 follows).