

NOVA SCOTIA COURT OF APPEAL

Clarke, C.J.N.S.; Chipman and Pugsley, JJ.A.

Cite as: R. v. Pye, 1993 NSCA 155

**BETWEEN:**

HER MAJESTY THE QUEEN

Appellant

- and -

FARLEY FREDERICK PYE

Respondent

) William D. Delaney  
) for the Appellant

) Respondent not  
) represented at the  
) appeal hearing.

) Appeal Heard:  
) May 19, 1993

) Judgment Delivered:  
) May 19, 1993

**THE COURT:** Appeal allowed, order quashing an information respecting an alleged offence contrary to section 434 of the **Criminal Code** set aside and the matter remitted to the Provincial Court for continuation, per oral reasons for judgment of Clarke, C.J.N.S.; Chipman and Pugsley, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.:**

The Crown alleges the trial judge erred in law when he quashed an information on the ground that it was a nullity.

The respondent was charged that on or about April 6, 1991, he committed an offence contrary to section 434 of the **Criminal Code**. The section provides:

434. Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. R.S., c. C-34, s. 390; 1990 c. 15, s. 1.

As the trial was about to begin on October 30, 1992, counsel for the respondent applied to quash the information on the basis that section 434 was not the law on April 6, 1991 because it had not then been proclaimed. Counsel for the Crown agreed. The trial judge accepted the submissions of counsel and quashed the information.

In fact, section 434 came into force on July 1, 1990, some nine months before the offence was alleged to have occurred. It was therefore an error in law to quash the information.

The appeal is allowed. The order of the trial judge is set aside. The matter is remitted to the Provincial Court for continuation.

C.J.N.S.

Concurred in:

Chipman, J.A.

Pugsley, J.A.