

The only race-course telegraph operator called denied having sent any message to any except Toronto papers. There is no evidence as to the person receiving or replying to the telegram or the place or office from which the reply was sent, and consequently no evidence whatever that the defendant knew anything about or authorised the transmission of the reply. The amended section 235 of the Criminal Code (clause *h*) only makes the transmission of information criminal if done "wilfully and knowingly." In answer to this second question, I would say that the Police Magistrate was not right in holding that the telegram sent to the Detroit newspaper constituted an offence by the defendant, there being no evidence that he knew of or authorised its transmission.

The third question, applying as it does to all the offences mentioned in sec. 235, is too wide; but, even limiting it to the offence charged, it is difficult to understand its bearing, as no question of intention was raised. However, in view of the answer which I think should be given to the first two questions, both the third and fourth become merely abstract ones, and do not require to be answered.

The defendant should, in my opinion, be discharged.

MOSS, C.J.O., GARROW and MACLAREN, JJ.A., agreed.

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FEBRUARY 14TH, 1911.

REX v. LUTTRELL.

*Criminal Law—Selling Newspapers Containing Racing Information—Intent to Assist in Betting—Criminal Code, sec. 235(f) — Conviction — Evidence — Stated Case — Police Magistrate—Pro Forma Finding.*

Case stated by a Police Magistrate.

The defendant was convicted on the 4th November, 1910, for selling newspapers containing information that could be made use of by book-makers and others in making bets at the races held in Toronto.

The conviction was under sec. 235 (*f*) of the Criminal Code, as amended by 9 & 10 Edw. VII. ch. 10, sec. 3.

The question stated was, whether the sale of papers containing records of the races two days after they were run, was with the intent to assist in betting, and whether the onus was on the Crown to prove that intent.