

It is not contrary to law to sell or advertise for sale the drug or medicine in question. The Act strikes at the abuse, not the use of it, which may be perfectly legitimate. From the nature of its action, however, it is a drug extremely susceptible of being used for an improper purpose, or at a period when it might produce a result which ought not to be sought for, and it cannot, therefore, be wrong to warn against its use for such purposes, or at such a period. In the absence of evidence that the warning on the outside of the box was intended to be read as an invitation to do the very thing warned against, in other words, that it was not an honest warning, I should have thought the learned Chairman of the Sessions was right in saying that the jury would not be justified in inferring from the warning alone that the drug was intended or represented as a means of preventing conception or causing abortion. There is, however, a paragraph in the "directions" which is of a more doubtful character, viz. : "Thousands of married ladies are using these tablets monthly. Ladies who have reason to suspect pregnancy are cautioned against using these tablets." I think the learned Chairman should have held that this language, read of course with the rest of the printed matter, was capable of the obnoxious meaning, and that the jury could have legitimately inferred from it that the tablets were thereby represented at least as a means of preventing conception. Their object and operation in promoting and ensuring the regularity of the menstrual flow, which is, popularly at all events, supposed to be interrupted by conception, is so clearly and explicitly stated, that it might well be asked for what other purpose married ladies, or others who might desire to prevent pregnancy, would be likely to be using them monthly. I think, therefore, it would have been right to have left the case to the jury ; and that, if they had taken an unfavourable view of the meaning of the paragraph referred to, a conviction might have been supported.

This expression of opinion will probably be sufficient as a guide in future cases of a similar kind, as we are not obliged, nor do I think it would be right, even if we have the power to do so, to direct a new trial, the defendant having been tried and actually acquitted ; though it may be, in consequence of an erroneous direction. The cases ought to be extremely rare in which the Court would think it right to place the accused a second time in jeopardy for the same offence, contrary to what has hitherto been one of the fundamental principles of English law. I express no opinion on this point at present ; but it is not to be overlooked, that what the section