

There was no sort of evidence of any authority in any operator to send such a message.

One only of the two operators employed at the place from which the message was sent, was called as a witness; and he testified that he had sent no message except to the Toronto newspapers. He does not seem to have been asked as to his duties, or anything as to the accused or his connection with this office, or knowledge of that which was done there, if any.

The original proceedings, throughout the prosecution, have been sent up with the case stated; and the facts which I have set out are taken from them: the facts are incorrectly set out in the stated case. It should be corrected: Criminal Code, R.S.C. 1906 ch. 146, sec. 1017, sub-sec. 3.

The facts ought to be accurately stated in every case, and the questions submitted should be such only as have actually arisen in the prosecution, and are necessary for its proper determination: there is no power to state merely hypothetical, abstract, or unnecessary questions.

I would direct the discharge of the accused.

MAGEE, J.A.:—The Police Magistrate has submitted four questions.

With reference to the first one, as there are no particulars given either in the statement of the case or in the copy of evidence as to the nature of the "reports of the races" which it is said the defendant gave instructions should be received for transmission to the newspapers, or as to the "reports" "sent accordingly," it would be impossible for the Police Magistrate or this Court to say whether or not they constituted any infraction of sec. 235; and he was right, upon the evidence in this particular case, in not convicting the defendant in respect of information the nature of which was not proved.

As to the second question, the Police Magistrate states "that the instructions given by the defendant to the telegraph operators on the race-course was to receive reports of the races from the reporters of newspapers for transmission to various newspapers, and that reports were sent accordingly to certain newspapers in the city of Toronto."

I do not find any evidence as to any instructions by the defendant. Possibly there was some admission to that effect, but, if so, it should have been noted. The Police Magistrate further states that "there was one telegram received from the Detroit News . . . and the reply thereto, upon which solely I convicted the defendant."