

therefore, that the accused having offered to sell or having the article for sale or disposal, had committed an offence within the meaning of sec. 179 (c) of the Criminal Code, which enacts so, and it was urged that the case should be left to the jury to draw their own conclusions from the language of the printed notices, directions, and circulars proved.

The learned Chairman of the Sessions (Macdougall, C.O.J.) was of opinion, though with some doubt, that looking at the whole advertisement, it was not one advertising a medicine for preventing conception or causing abortion, and he directed an acquittal, reserving a case for the Crown, if desired, upon the question whether the evidence offered would support a conviction. A verdict of not guilty was accordingly returned.

There was no evidence for the prosecution, except that which I have mentioned; and the question simply was, whether the advertisement was one of a medicine *intended* or *represented* as a means of preventing conception, etc. If that meaning could not be drawn from the circular, the notice, and printed directions, the case for the prosecution necessarily failed, as there was no extraneous evidence to give point to the language of the printed papers, and to shew that the medicine had been sold for the purpose said to be intended or represented. The section is new, and there is no corresponding section that I am aware of in any Imperial Act.

The defendant contends that the construction of the printed documents was wholly for the Judge. For the prosecution it is urged that it was wholly for the jury. I do not agree with either contention.

There is some analogy between a case of this kind, and an indictment for sending a threatening letter, or for a libel. In Taylor on Evidence, 9th ed., sec. 43, it is said: "The respective duties of the Judge and jury in indictments for writing threatening letters, are not very clearly defined. In some cases the jury have been permitted, upon examination of the paper, to decide for themselves whether or not it contained a menace. In other cases it appears to have been determined by the Court; while on a few occasions the opinion of the jury and the Judge have been both alternately taken." Many authorities are cited. The result of the most recent and consistent is, that the jurisdiction of the Judge is to determine whether the document is capable of bearing the meaning assigned to it, and it is then for the jury to say whether under the circumstances it has that meaning or not: per Lord Morris, C.J., in *Regina v. Coady*, 15 Cox C. C. 89; *Regina v. Carruthers*, 1 Cox C. C. 138.