

There was no sort of evidence of any exposure of them for sale; and there, manifestly, should have been a finding of not guilty to that extent; but there was not; on the contrary, there seems to have been a conviction in respect of which the penalty imposed was to some extent imposed.

Nor can I think that there was any reasonable evidence of a guilty knowledge on the part of the convicted man of the sale which was made, and which was of one of the books only, or of its obscene character, if it really has any.

It is quite plain that in the extensive business of the convicted man the books in question might have been bought and sold without his knowledge; he did not attend to the department in which such books, that is, "works of fiction," are sold. He testified that he did not know that there were any such books in his establishment; that he had, a year or more before, found invoices of them and returned them, because, from what he had heard, he thought their tendency was suggestive, and so did not want to sell them. There is not a word of testimony to the contrary of this; the most that can be said is, that, if dealing with a man who might be thought untruthful and tricky, there were some circumstances of suspicion, a book having been sold and other books having been found in the cellar; things which are not unsatisfactorily explained by the witnesses for the prosecution. But no one, much less a reputable man doing an extensive reputable business, is to be convicted on suspicion merely; when there is no more than that against him a verdict of not guilty should be entered. The statement that from what he had heard he thought their tendency suggestive, is a good way removed from an admission that he knew that they were obscene.

The cases which were referred to on the argument here were very different from this case; in them the obscene character of the writings was manifest, and in some of them it was the author who was prosecuted and who had sold them.

In a case of this character, where there may be different opinions as to the immorality of a book which is being generally sold here and in other countries or another country, it would seem to me to be the better course for those who object to its sale on that ground, to give notice of such objection to such a book-seller as the convicted man is, and to prosecute only if the objection is not heeded. No such book-seller can have any reasonable desire to sell such books as those in question, if they be obscene, for all there is in it for him, at the risk of being branded as a criminal and sent to the penitentiary for two years,