

fendant's contention that the persons to whom the publication was to be sent could not be aroused to a sense of their duty without a descent to the obscene is very uncomplimentary to them, and is inconceivable to me; it needs much more than the defendant's contention to give me even a suspicion that such men cannot be aroused to a sense of duty as well, indeed much better, by clean and wholesome words. . . .

In my opinion, therefore, this publication, *in so far as it contains obscene matter*, could not in any reasonable way be deemed to have served the public good; and that, even if it could, there was abundant evidence to support the finding of the trial Judge that there was excessive obscenity.

Those who do not think, or do not know the circumstances, may, no doubt, deem it strange that the, said to be, well-meaning man should be convicted, and the ill-acting players escape; but whose fault is that? Plainly the defendant's. He might have had the wrong-doers upon the stage quickly arraigned and tried, and, if guilty, fittingly punished; but rather than do that he chose to condense and emphasise, and put in print to circulate, the very evils he might have restrained; he took the obviously mistaken course of committing a crime himself rather than the open and regular method of preventing, by punishment, the crime of the stage actors, if, after a fair trial, with every reasonable opportunity of defending themselves, they were found guilty.

Whatever his intention may have been, his act was a crime; and, being duly prosecuted and convicted, after being given every opportunity to defend himself, he must take the consequences; and let others take their punishment, but only when likewise prosecuted and convicted.

That the arm of the law is long and strong enough to deal effectually with immoral theatrical performances, the following provisions of the Criminal Code shew (setting out sec. 208).

And the doors of the Courts are always wide open to every reasonable prosecution; a prosecution which may be instituted by any one having reasonable grounds for laying an information.

The first three and the sixth questions reserved by the trial Judge should be answered in the affirmative; the fourth in the negative; the fifth is, consequently, immaterial.

GARROW, J.A., agreed with the opinion of MEREDITH, J.A.

MAGEE and HODGINS, J.J.A., also agreed, with some qualifications, each stating reasons in writing.