

The case was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

T. C. Robinette, K.C., for the defendant.

J. R. Cartwright, K.C., and E. Bayly, K.C., for the Crown.

MEREDITH, J.A.:—The learned Police Magistrate seems to have been under a misapprehension of the nature of the offence with which the accused was intended to be charged: Criminal Code, sec. 235(*f*), as enacted by 9 & 10 Edw. VII. ch. 10, sec. 3. His statement is, that the charge against the accused was that of "having sold newspapers containing information that could be made use of by book-makers and others in making bets:" but there is, obviously, no criminal offence comprised in that statement; it would be extraordinary if there were. Under the Act, the offence, as applicable to such a case as this, is, selling "information intended to assist in, or intended for use in connection with, book-making," etc.

There was no evidence of any such intention on the part of the accused, in selling the papers in question; he was merely a newsboy, selling the newspapers in question, among many others, at a "news-stand." The purchaser had no intention of using them in any such manner, but bought solely for the purpose of laying an information against the boy. There was no evidence of any such intention, on the part of the printer or publisher of any of the papers. All that was contained in the papers was news such as is commonly published in all newspapers; matters of public interest. Even the betting upon the races was not mentioned. To say that because, in some indirect way, some use might be made, or attempted to be made, of the news, for the purpose of betting, it ought to be found that that was the purpose of the publication or sale, is obviously absurd. If all things out of which evil can be evolved were prohibited, there would be little left; education would be prohibited, because it might be made use of for an evil purpose.

The gist of the offence is the intention: and the intention "to assist" or "for use" must be that of the accused; if the printer or publisher had such an intention, he is not absolved because the boy who sold had not; nor is the seller absolved by the publisher's innocence, if he himself has the criminal intention in selling; each is answerable for his own sin of intention only.

If the detective had asked the boy for papers to assist him, or for use, in book-making or betting, etc., and the boy had then sold the papers, a case would have been made; but, as the case