

and causing and procuring to be sold, and also of sending and causing and procuring to be sent by post, obscene books, photographs, &c., because advertisements giving the names and addresses of the persons supplying these goods were inserted in the paper.

Mr. R. D. Muir and Mr. W. M. Powell appeared for the Crown; and Mr. Avory, K.C., Mr. J. P. Grain, and Mr. Forrest Fulton for the defendant.

The defendant was tried on an indictment charging him in several counts with selling and publishing and causing and procuring to be sold by certain persons (therein specified) obscene books, papers, and photographs; and in several other counts with sending and causing and procuring to be sent by post by certain persons (therein specified) postal packets containing obscene books, papers, and photographs, contrary to section 4 of "The Post Office (Protection) Act, 1884."

The defendant was the editor of a newspaper called *Judy*, and he published in that paper advertisements of persons in England and abroad offering for sale books, catalogues, and photographs. A sheet of paper containing these advertisements accompanied the case. The Chief Inspector of Police wrote to the advertised address and received in return postal packets containing books, &c., of a most obscene character. The defendant had been warned several times by the police that the books, &c., advertised in his paper in the same terms and by the same persons were of an obscene character, and that one of the persons so advertising (not a foreigner resident abroad) had been convicted for selling and publishing obscene libels. The Common Serjeant directed the jury that if they were satisfied that the books, &c., sent to the Police Inspector in pursuance of the advertisements were obscene, and that the defendant knew at the time he published the advertisements that they were advertisements for the sale of obscene literature and photographs, and by the publication of those advertisements he brought about the sale and transmission to the Inspector of the books, &c., they ought to convict the defendant, although he did not know the actual contents and details of the books, &c., sent; and that in judging of the defendant's knowledge they might consider not only the warnings by the police and the wording of the advertisements, but also the other advertisements appearing in the same issue of the paper. The jury found the defendant "guilty," and he was admitted to bail.

MR. AVORY, on behalf of the prisoner, said the charge was one of selling and publishing and causing and procuring to be sold divers obscene books, &c., and also, under section 4 of "The Post Office (Protection) Act, 1884," with sending, &c., the said articles by post. The defendant was really charged with aiding and abetting in the commission of the offence, which by section 8 of 24 and 25 Vict., c. 94, made him a principal in the second degree, and he could only be convicted as such, and the indictment was the same in effect as if he were charged as a principal with publishing and sending. It was admitted that all the persons advertising were foreigners residing abroad, and these would have been the principals in the first degree. But he contended that as foreigners living abroad our Courts had no jurisdiction over them, as their offence was not committed within the jurisdiction; they could not be apprehended even if, after sending, &c., these goods, they had come to England. Therefore, there being no principals in the first degree, there could be none in the second degree. [The Lord Chief Justice referred to a case recently reported in *The Times* Law Reports.] Mr. Avory.—"Du Cros v. Lambourne" (*ante*, p. 3). Secondly, he submitted that by publishing the advertisements the defendant did not "procure" the publishing, &c., of this literature. A sandwichman carrying an advertisement that a stage play would be performed at a music-hall did not "procure" the performance. It would be a dangerous extension of the criminal law to lay down that a newspaper editor was liable as an agent for every purpose served by an advertisement. Could it be said that the editor "procured" the sale at the shop of these things? If so the committee of a club who disseminated the paper among the members, or the man who took his paper home, did so also.

MR. MUIR, for the Crown, said that the foreign advertisers who, through an innocent agent, the English postman, published this literature in England were liable to English law. This was decided in "Rex v. Oliphant" ([1905] 2 K.B., 67). The sending of the postal packets was a continuing offence—"Rex v. Burdett" (1 State Trials, N.S., 2), a case where a seditious libel was written in one county and sent to another (which in those days raised the same question as offences in different countries did now), and it was held to be a publication in both countries. Therefore, if these advertisers were caught in England they could be prosecuted, and would be principals in the first degree. As to the second point, the words in section 8 of 24 and 25 Vict., c. 94, were not only "procure," but "aid, abet, counsel, or procure," and he

submitted there was ample evidence of aiding and abetting. [He cited "Reg. v. Cooper" (8 Q.B., 533) and "Parkes v. Prescott" (L.R., 4 Ex., 169).]

MR. AVORY replied.

The LORD CHIEF JUSTICE, in giving judgment, said that the very able argument he had heard on both sides had enabled him to come to a very clear conclusion without any feeling of doubt at all. He need not go into the question of the law as to principals and accessories, which they had discussed a few days ago in "Du Cros v. Lambourne" (*supra*), when they had considered the case then cited, "Reg. v. Burton" (13 Cox, C.C. 71). The authorities showed that section 8 of 24 and 25 Vict., c. 94, was only declaratory of the common law. [His Lordship read it.] The point raised in "Du Cros v. Lambourne" did not arise here, because this offence was an indictable misdemeanour, while in that case it was only an offence punishable summarily. In this case the defendant had, for his own profit, inserted in his newspaper advertisements which informed people where certain publications could be obtained, and it was found as a fact in the case that he knew that those publications advertised in his paper were of an indecent character, and if they were at liberty to draw any conclusion from the advertisements themselves there could be no doubt that he knew. The learned Common Serjeant stated the way in which he left the case to the jury, which was as follows. [His Lordship read it, *vide supra*.] He thought the Common Serjeant had done so in as favourable a manner to the defendant as it could be stated. He had told them that they must find that the defendant knew the character of the literature, &c., and that by the publication of the advertisements he had brought about the selling, &c., of them. This meant in common language the aiding, abetting, and procuring their publication and the sending of them in England or that part of it through which the prohibited literature must pass to its destination. To his mind it would be a lamentable thing if the law were not strong enough to deal with a man who had done what had been done in this case towards bringing about this state of things. It seemed to him that here was a publication to people who never might or never would in some cases have known of the existence of these things, and where they were to be obtained. Therefore their publication was directly brought about by the advertisements. They had the fact of the knowledge of the defendant as to what would be the consequences of his act derived from the warnings given to him by the police. Many of the arguments used on his behalf could just as well have been used had the defendant himself had these documents printed abroad. He thought that the direction of the learned Common Serjeant to the jury was in accordance with the law as contained in the authorities which had been cited, and he was of opinion that the conviction should be affirmed.

The other learned JUDGES concurred.

[Solicitors—Solicitor to the Treasury, for the Crown: E. M. Lazarus, for the defendant.]

EXTRACTS FROM NEW ZEALAND GAZETTE.

(From Gazette, 1907, pages 1247 and 1248.)

Clerks of Courts, &c., appointed.

Department of Justice,
Wellington, 17th April, 1907.

HIS Excellency the Governor has been pleased to appoint

Constable DOUGLAS MORTON MACKENZIE

to be Clerk of the Magistrate's Court at Owaka, from the 1st day of April, 1907, *vice* Constable W. A. Matthews, resigned; and

Constable JAMES SHEARY

to be Clerk of the Magistrate's Court at Martinborough, from the 15th day of April, 1907.

JAMES MCGOWAN.

Inspectors of Factories appointed.

Department of Labour,
Wellington, 15th April, 1907.

HIS Excellency the Governor has been pleased to appoint

Constable WILLIAM MARSHALL and
Constable HORTON CHARLES DAVID WADE

to be Inspectors under "The Factories Act, 1901."

J. A. MILLAR,
Minister of Labour.