[HIGH COURT OF AUSTRALIA.]

O'SULLIVAN . . . . . APPELLANT;
COMPLAINANT,

AND

TRUTH AND SPORTSMAN LIMITED . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1956-1957.

MELBOURNE, 1956, *Oct.* 22, 23; 1957, *Feb.* 18.

Dixon C.J., Williams, Webb, Fullagar and Kitto JJ.

Criminal Law—Offence to "cause to be offered for sale" newspaper containing report relating to sexual immorality etc.—Prosecution of publisher—Offering for sale by newsagent—Meaning of "cause"—Necessity for act to be done on authority or in consequence of exercise of capacity to control—Statutory interpretation—Inclusion in one issue of newspaper of more than one report relating to immorality etc.—Whether separate offence created in respect of each such report—Police Offences Act 1953 (*No.* 55 *of* 1953) (*S.A.*), *s.* 35.

Section 35 (1) of the *Police Offences Act* 1953 makes it an offence to "offer for sale, sell, or cause to be offered for sale or sold to any person" any newspaper containing any report of legal proceedings, or other article, touching or relating to sexual immorality etc. which occupies more than a given space or carries type exceeding a given size.

Held, that the section does not make the inclusion, in the one issue of a newspaper, of every report that is sufficient in itself to satisfy the prescribed description, a distinct and separate offence.

Quaere whether the separate sale of a copy is an offence distinct from every other sale of a copy.

Held, further, that one person does not within the meaning of the provision "cause" another to do the prohibited act except where he contemplates or desires that it will ensue and it is done on his actual authority, express or implied, or in consequence of him exerting some capacity which he possesses in fact or law to control or influence the acts of the other.

Decision of the Supreme Court of South Australia (Full Court): *O'Sullivan* v. *Truth and Sportsman Limited* (1956) S.A.S.R. 58, affirmed.

APPEAL from the Supreme Court of South Australia.

On 9th May 1955, Thomas O'Sullivan, Inspector of Police, laid a complaint against Truth and Sportsman Limited, a company incorporated in the State of New South Wales and registered under Pt. XII of the *Companies Act* 1934-1952 (S.A.) for that it :—

1. Between 6th and 9th April 1955, at Adelaide, caused to be offered for sale or sold to divers persons a newspaper, namely, Melbourne Truth, dated 9th April 1955, in which a report relating to legal proceedings involving questions of sexual immorality, unnatural vice or indecent conduct occupied more than fifty lines of thirteen ems wide or the equivalent thereof : contrary to the provisions of s. 35 of the *Police Offences Act* 1953.

2. Between 6th and 9th April 1955, at Adelaide, caused to be offered for sale or sold to divers persons a newspaper, namely, Melbourne Truth, dated 9th April 1955, in which a report relating to legal proceedings involving questions of sexual immorality, unnatural vice or indecent conduct carried a heading composed of a type larger that ten point capitals : contrary to the provisions of s. 35 of the *Police Offences Act* 1953.

(Particulars of the report referred to in counts 1 and 2 were then given.)

3. Between 6th and 9th April 1955, at Adelaide, caused to be offered for sale or sold to divers persons a newspaper, namely, Melbourne Truth, dated 9th April 1955, in which a report relating to legal proceedings involving questions of sexual immorality, unnatural vice or indecent conduct occupied more than fifty lines of thirteen ems wide or the equivalent thereof : contrary to the provisions of s. 35 of the *Police Offences Act* 1953.

4. Between 6th and 9th April 1955, at Adelaide, caused to be offered for sale or sold to divers persons a newspaper, namely, Melbourne Truth, dated 9th April 1955, in which a report relating to legal proceedings involving questions of sexual immorality, unnatural vice or indecent conduct carried a heading composed of a type larger than ten point capitals : contrary to the provisions of s. 35 of the *Police Offences Act* 1953.

(Particulars of the report referred to in counts 3 and 4 were then given.)

The complaint was heard before the Court of Summary Jurisdiction at Adelaide constituted by a special magistrate. On 25th May 1955 the special magistrate convicted the defendant company on each charge having first amended such charge by striking out therefrom " or sold ", imposed a penalty in respect of each of counts

H. C. OF A. 1956-1957.

O'SULLIVAN v. TRUTH AND SPORTSMAN LTD.

1 and 2 of twenty-five pounds and in respect of each counts 3 and 4 of seventy-five pounds.

From this decision the defendant appealed to the Supreme Court of South Australia. On 21st October 1955 *Reed* J. ordered that the appeal be allowed and the convictions quashed.

From this decision the complainant appealed to the Full Court of the Supreme Court of South Australia constituted by *Napier* C.J., *Mayo* and *Ligertwood* JJ. which (*Mayo* J. dissenting) on 3rd February 1956 ordered that the appeal be dismissed (1).

From this decision by special leave, the complainant appealed to the High Court.

R. R. St. C. Chamberlain Q.C. (with him *W. A. N. Wells*), for the appellant. The idea that an act cannot be caused, except as the result of some degree of control or mandate, is fallacious. The effect is the independent act of the newsvendor who offers for sale. If one person does an act without which the result would not have happened and the act is done with the intention that the result should happen, that is a sufficient causing of the result. [He referred to *R.* v. *Moore* (2).] An act is caused where it happens although it may be initiated in another country. [He referred to *R.* v. *De Marny* (3).] The intervention of a *novus actus* is irrelevant so long as there is an intended result. [He referred to *Agnes Gore's Case* (4); *Stephen's Digest of the Criminal Law*, 9th ed. (1950), arts. 261, 262, pp. 206 et seq.; *Kenny's Outlines of Criminal Law*, 16th ed. (1952), pp. 15 et seq.] The reasoning in *Miller* v. *Hilton* (5) supports the contentions of the appellant. The "causing" took place in South Australia. [He referred also to *R.* v. *Johnson* (6); *R.* v. *Brisac* (7); *Reg.* v. *Butt* (8); *R.* v. *Coombes* (9); *R.* v. *Morgan*; *Ex parte Home Benefits (Proprietary) Ltd.* (10).] No deduction could be drawn as to the incidence of any contract between the newsagent and the respondent because the object of the contract would be the infringement of the laws of the other State. [He referred to *Foster* v. *Driscoll* (11).] *McLeod* v. *Buchanan* (12); *Shave* v. *Rosner* (13) and *Lovelace* v. *Director of Public Prosecutions* (14) are

(1) (1956) S.A.S.R. 58.
(2) (1832) 3 B. & Ad. 184 [110 E.R. 68].
(3) (1907) 1 K.B. 388.
(4) (1612) 9 Co. Rep. 81A [77 E.R. 853].
(5) (1937) 57 C.L.R. 400.
(6) (1805) 6 East. 583 [102 E.R. 1412].
(7) (1803) 4 East. 164 [102 E.R. 792].
(8) (1884) 15 Cox C.C. 564.
(9) (1785) 1 Leach 388 [168 E.R. 296].
(10) (1938) S.A.S.R. 266; (1939) 61 C.L.R. 701.
(11) (1929) 1 K.B. 470.
(12) (1940) 2 All E.R. 179.
(13) (1954) 2 Q.B. 113.
(14) (1954) 3 All E.R. 481; 1 W.L.R. 1468.

not authorities for the proposition that the *only way* in which one person can cause another to do an act is by the exercise of a positive mandate.

H. G. Alderman Q.C. (with him *J. J. Redman*), for the respondent. The word "cause" has been construed in decisions consistently over the last century always in the sense of one person exercising some measure of control more than mere permission over another person. [He referred to *Harrison* v. *Leaper* (1).] The printing of the newspapers in Victoria was lawful. The transaction between the respondent and the newsagent was a normal one between a wholesale seller and a retail seller. As the agent may return the papers to the respondent and receive a credit for the price, he is under no inducement to break the law. Even if the respondent was an accessory to selling it was not an accessory to causing. *Miller* v. *Hilton* (2), so far as it is against the respondent, is distinguishable, it being a case of master and servant. The master has a measure of control over the servant. It is submitted that for the respondent to be liable it must be involved in active intervention, not in the transaction as a whole, but in the breach of the law. The respondent was engaged in an inter-State transaction and is protected by s. 92 of the Constitution. It is not necessary under s. 35 of the *Police Offences Act* that the matter published should be indecent or immoral.

W. A. N. Wells, in reply. Section 92 is not applicable because the law is aimed at events after trade, commerce and intercourse between the States has ceased. In any event the law is a permissible regulation of undesirable matter even if it is in the course of inter-State trade. [He referred to *Hughes & Vale Pty. Ltd.* v. *State of New South Wales* [*No.* 2] (3).]

Cur. adv. vult.

1957, Feb. 18.

The following written judgments were delivered :—

DIXON C.J., WILLIAMS, WEBB AND FULLAGAR JJ. On 25th May 1955 before a special magistrate at Adelaide there were four convictions of the respondent Truth and Sportsman Ltd. for offences against s. 35 of the *Police Offences Act* 1953 (S.A.). In South Australia more than one summary offence arising out of the same facts may be charged in the same complaint: see s. 51 of the *Justices Act* 1921-1943. The convictions were upon a complaint containing four counts for as many offences against s. 35. Each

(1) (1862) 5 L.T. 640.
(2) (1937) 57 C.L.R. 400.
(3) (1955) 93 C.L.R. 127, at p. 160.

H. C. OF A. 1956-1957.

O'SULLIVAN v. TRUTH AND SPORTSMAN LTD.

Dixon C.J. Williams J. Webb J. Fullagar J.

conviction was for that between 6th and 9th April 1955 at Adelaide the respondent caused to be offered for sale to divers persons a newspaper, namely Melbourne Truth, dated 9th April 1955, in which a report contravened s. 35 in a manner which the conviction proceeded to state. Fines were imposed by each conviction amounting in all to £200. Section 35 is directed against the printing or selling of a newspaper in which any report appears of legal proceedings or other matters concerned with sexual immorality, unnatural vice or indecent conduct, if the report occupies more than a given space or carries headlines exceeding given dimensions. Separate articles in one newspaper, which means a copy of a periodical, and photographs, if they relate to the same matter, are deemed to form one report (sub-ss. (2) and (3)). The maximum penalty for the first offence is £200. The convictions all related to one issue of the Melbourne edition of the Truth newspaper. As appears from the convictions they are not based on four separate offerings for sale of four different copies of the issue, one for each conviction, but upon the conception that if in one issue there are four different things each of which would have brought the one issue, or any one copy of the issue, within the prohibitions of the section, then there are four offences.

This conception does not appear to be correct. Section 35 is not framed so as to make the inclusion, in the one issue of the newspaper, of every report that is sufficient in itself or in the dimensions of its headlines to satisfy the description, a distinct and separate offence. The offences consist in the various acts which the section forbids with reference to the printing, sale and distribution of an issue of a newspaper the contents of which are of the proscribed description. The fact that the contents include more than enough to satisfy the proscribed description, or indeed enough to satisfy it many times over, may make the offence worse, but it does not make it more than one offence. It may be that a separate sale of a copy is an offence distinct from every other sale of a copy, but that is not a question which now arises. For the convictions each speak of causing the newspaper to be sold to divers persons. On this footing there ought for that offence to have been one conviction only. But as the magistrate imposed fines aggregating no more than the maximum for one offence it may well be that to remit the matter to him for the purpose of reducing the four convictions to one would produce only a formal result ending in a liability on the part of the respondent company in a penalty of the same total amount.

It was not on the foregoing ground, namely that only one offence was disclosed, that the convictions were set aside in the Supreme Court of South Australia, but because the facts did not, in the opinion of the majority of the judges, amount to a causing of the newspaper to be offered for sale. No question was made of the finding of the magistrate that the issue of the newspaper contained matter which because of its nature the space it occupied and the size of the headlines fell within the prohibition of s. 35. The ground upon which the convictions were quashed involved the interpretation of the expression " cause to be offered for sale " in s. 35 and, for that reason, this Court, though not without hesitation, granted special leave to appeal from the decision of the Full Court (*Napier* C.J. and *Ligertwood* J., *Mayo* J. dissenting) which affirmed the order of *Reed* J. quashing the convictions (1).

The material part of s. 35 (1) provides that no person shall (*a*) print or cause to be printed ; or (*b*) offer for sale, sell or cause to be offered for sale or sold to any person ; or (*c*) have in his possession for sale or distribution, any newspaper in which any one report is of a kind falling within the prohibition. Sub-section (4) then provides that pars. (*b*) and (*c*) of the foregoing are to be construed as prohibiting within the State of South Australia the sale, offering for sale, causing to be offered for sale or sold, or having possession for sale or distribution of any newspaper containing a report contrary to sub-s. (1), whether the newspaper was printed or published within or outside the State and whether the reports therein relate to legal proceedings and other matters taking place within or outside the State. The edition of the Truth newspaper with which the convictions are concerned was printed in Melbourne by the company, which is incorporated under the law of Victoria. It is registered under the *Companies Act* 1934-1952 (S.A.) as a company established outside that State and has an office in Adelaide. The issue in question of the newspaper was that for 9th April 1955, but it was printed some days before that date and copies were despatched to Adelaide so as to arrive there and be available on 6th April. Parcels of copies of the issue were made up by the servants or agents of the respondent company at its premises in Melbourne. They were respectively marked, it may be surmised, with the names of various newsagents in Adelaide. In the case of two bundles direct proof of this was given. Some bundles so inscribed were tied together and enclosed in an outer wrapping marked with the name of the newspaper and directed to South Australian Taxi Trucks Adelaide. The bundles were then consigned by the Overland Express to

(1) (1956) S.A.S.R. 58.

H. C. OF A. 1956-1957.

O'SULLIVAN v. TRUTH AND SPORTSMAN LTD.

Dixon C.J. Williams J. Webb J. Fullagar J.

Adelaide. On the arrival of the train the taxi-truck company took the packets for delivery, the outer cover being taken from those wrapped together. One bundle went to the bookstall at the railway station and there a police officer asked for a copy before the bundle was opened. The bundle was at once untied and a copy handed to him in exchange for sixpence. The police officer did the same thing with reference to the consignment to another newsagent to whom the taxi-truck company delivered a bundle. Although there were charges of causing the sale of the newspaper, the convictions were for causing it to be offered for sale. But it will be noticed that both these sales were effected before there was any offering by the newsagents concerned. No other sales and no offerings for sale were made the subject of direct proof. The inference that copies were in fact offered for sale if the inference is to be made must rest on common knowledge of the course of affairs in the sale of newspapers and upon the probabilities. Evidence was given that the Melbourne Truth was sold by newsagents at sixpence a copy but debited to them at fourpence halfpenny a copy and that unsold copies might be returned within a limited time to the office in Adelaide of the newspapers by the newsagent who would receive a credit at that rate. It also appeared that the respondent company had made an attempt to obtain from the newsagents concerned a written agreement providing that property in the copies consigned to them respectively should pass when the consignment of the bundles to the railway took place in Melbourne. But it did not appear how successful the attempt had been. It had been unsuccessful in the case of the newsagent who sold a copy to the police officer. Save as aforesaid there was no proof of the course of dealing between the respondent company and the newsagents or of the practices of the trade, as for example with reference to the supply of boards and weekly broad sheets or with reference to the de facto influence or control that the respondent company did, or might, exercise to secure the sale of its paper, and in particular of the Melbourne edition.

On the foregoing facts or evidence the primary question is whether it might be found that the respondent company caused in South Australia copies of the issue to be offered for sale by the newsagents or, if the convictions are to be varied, caused copies to be sold to the police officer by the vendor at the Adelaide railway station and by the other newsagent. *Reed* J. considered that it ought not to be so found and on appeal from him *Ligertwood* J. took the same view. *Napier* C.J. regarded the case as on the boundary line but saw no evidence of any mandate or direction by the respondent

company to the newsagents or of any control exercised by the company over them and was not satisfied that the evidence brought the respondent company within the statutory prohibition. *Mayo* J. was of the contrary opinion. His Honour regarded the sequence of acts of the company as designed to culminate in an offering for sale by the respective agents in Adelaide and, in view of the fact that the last steps occurred in South Australia, treated the territorial limitation as occasioning no difficulty. It is evident that the difference of opinion thus disclosed is to be accounted for less by any disagreement as to the facts than by different understandings or applications of the expression " cause to be offered for sale ".

As the evidence stands we have a case of the retail sale of a newspaper, considered as an article of commerce, made by independent retailers, all parties alike being animated by every business motive to promote the sale of the article. On the state of the evidence the position of the newsagent is little different from any other retailer, except that he may return unsold copies to the supplier. No doubt before the end may be said to be " caused " within the meaning of s. 35 (1), it must appear that it was contemplated or desired. But preliminary or antecedent acts done in such contemplation or out of such a desire do not necessarily amount to a " causing ". In *Watkins* v. *O'Shaughnessy* (1) a view was expressed of the words " cause or permit any other person to use a motor vehicle " which appears to be reflected in subsequent decisions of more exalted authority. In a careful judgment the county court judge (the late Judge *Longson*) said: " For A to cause B to do anything, it seems to me that A must have some control of B's movements . . . . There must, in my view, be something involving control, dominance or compulsion of B's movements by A to 'cause' " (2). As the list of cases furnished by counsel for the respondent shows a line of authorities existed suggesting but scarcely formulating the criterion expressed by the learned county court judge. In the Court of Appeal this judgment was expressly approved, and *Finlay* L.J. described it as admirable. In *McLeod* v. *Buchanan* (3) a dictum of Lord *Wright* seems to reflect the passage cited. His Lordship said: " To 'cause' the user involves some express or positive mandate from the person 'causing' to the other person, or some authority from the former to the latter, arising in the circumstances of the case " (4). In *Shave* v. *Rosner* (5) a Divisional Court applied Lord *Wright's* dictum and the statement

(1) (1939) 1 All E.R. 385.
(2) (1939) 1 All E.R., at pp. 386, 387.
(3) (1940) 2 All E.R. 179.
(4) (1940) 2 All E.R., at p. 187.
(5) (1954) 2 Q.B. 113.

H. C. OF A. 1956-1957.

O'SULLIVAN v. TRUTH AND SPORTSMAN LTD.

Dixon C.J. Williams J. Webb J. Fullagar J.

of Judge *Longson* to the expression " cause or permit to be used on any road " in the *Motor Vehicles (Construction and Use) Regulations*. In *Lovelace* v. *Director of Public Prosecutions* (1) Lord *Wright's* dictum was applied to the expression " cause to be acted or presented, any . . . stage play . . . act, scene " in s. 15 of the *Theatres Act* 1843 (6 & 7 Vict. c. 68). On the authority of these cases in the article on Criminal Law in *Halsbury's Laws of England*, 3rd ed., vol. 10, par. 519, p. 279, what amounts to causing is laid down as a proposition of law as follows :—" If the charge is of causing an act to be done it must be shown that the accused had knowledge of the facts (*Lovelace* v. *Director of Public Prosecutions* (2)). Before a man can be convicted of causing he must be in a position of dominance and control so as to be able to decide whether the act should be done or not (*Shave* v. *Rosner* (3)), and it must be established that he gave some order, command, direction, or authority to the person doing the act (*McLeod* v. *Buchanan* (4) ; *Shave* v. *Rosner* (3) ; *Lovelace* v. *Director of Public Prosecutions* (2))." This appears to mean that when it is made an offence by or under statute for one man to " cause " the doing of a prohibited act by another the provision is not to be understood as referring to any description of antecedent event or condition produced by the first man which contributed to the determination of the will of the second man to do the prohibited act. Nor is it enough that in producing the antecedent event or condition the first man was actuated by the desire that the second should be led to do the prohibited act. The provision should be understood as opening up a less indefinite inquiry into the sequence of anterior events to which the forbidden result may be ascribed. It should be interpreted as confined to cases where the prohibited act is done on the actual authority, express or implied, of the party said to have caused it or in consequence of his exerting some capacity which he possesses in fact or law to control or influence the acts of the other. He must moreover contemplate or desire that the prohibited act will ensue. What amounts to a causing within this view by no means coincides with the definition of an accessory before the fact. " An accessory before the fact is one who directly or indirectly counsels procures or commands any person to commit any felony or piracy which is committed in consequence of such counselling procuring or commandment " : *Stephen, Digest of the Criminal Law*, 9th ed. (1950), Art. 9, p. 18. Doubtless also the accessory must be so far absent from the

(1) (1954) 3 All E.R. 481, at p. 483 ; (1954) 1 W.L.R. 1468, at p. 1471.
(2) (1954) 3 All E.R. 481 ; (1954) 1 W.L.R. 1468.
(3) (1954) 2 Q.B. 113.
(4) (1940) 2 All E.R. 179.

place of commission of the felony as to be unable to give immediate help or assistance to the other party in the course of his actually committing the felony : *Hawkins Pleas of the Crown* (1787), 6th ed. by *Leach*, bk. 2, ch. 29, s. 16 ; *Chitty Criminal Law* (1816), vol. 1, p. 262 ; *Halsbury's Laws of England*, 3rd ed., vol. 10, par. 558, p. 300.

In the present case *Ligertwood* J. expressed the view that the authorities already mentioned, which in England have given a restrained application to the conception of causing a forbidden act, should be followed. " They establish ", said his Honour, " a defined test where one person is alleged to have caused an offence to be committed by another person " (1). There is much to commend this view. It tends to greater certainty in interpretation. It provides a sensible and workable test, which, at the same time, is hardly open to objection as inelastic. Without some such interpretation the words might be used to impose criminal sanctions in a manner that could not be foreseen on conduct vaguely and indefinitely described. But being a question of the meaning of terms the definition can provide only a primary meaning which context or any other sufficient indication of a different intention would displace. In the present case no contrary intention appears and the words " cause to be offered for sale or sold " in s. 35 (1) should accordingly be understood as bearing the meaning stated.

On the evidence the newsagents sold or offered the paper in the uncontrolled exercise of their own free will. They did not deal with the papers under the authority of the respondent company or in response to its control or influence. They dealt simply as retail traders might with goods they had acquired to resell. The truth is that the newsagents and the newspaper company acted as co-operators in the production and distribution of the newspaper, each performing his or its distinct function. It might be possible to say that the newsagents, in the various States where the Melbourne Truth sells, by their readiness and willingness in the course of business to sell the newspaper *caused* the company to print it. The organised existence of the newsagents and of their course of business is a condition without which, or some equivalent of which, the printing would not take place and in this sense affords a " causing ". This, of course, is not what s. 35 (1) means by " causing ". But although the conclusion may not seem so evident, the like reasoning shows that the production and delivery of the newspaper, notwithstanding that it is a *sine qua non* to its sale by the newsagents is nevertheless not a causing of the offering for sale

(1) (1956) S.A.S.R., at p. 87.

H. C. OF A. 1956-1957.

O'SULLIVAN v. TRUTH AND SPORTSMAN LTD.

or of the sale of copies of the newspapers by the newsagents. Each does his distinct part, and, even if their respective parts are interdependent, neither part " causes " the other within any sense which s. 35 (1) intends.

This ground is enough to dispose of the appeal, which accordingly should be dismissed.

KITTO J. I agree that the appeal should be dismissed.

It is true that the acts of the respondent, from the collection of material for publication to the delivery of copies of the newspaper to newsagents in South Australia, formed a coherent sequence, designed, as *Mayo* J. said (1), to culminate in the offering of those copies by the newsagents for sale to the public in South Australia. That the newsagents should offer copies for sale in that State was intended and desired by the respondent, and it was provided for, and in a practical sense assured, by arrangements made between the respondent and the newsagents. But to see successive acts of several persons as a chain of events, in the sense that each is done in order to provide a point of commencement for the next and to contribute to an end which is common to them all, is not the same thing as discerning in them a chain of causation—using " causation " in any sense which can reasonably be extracted from the word " cause " in such a context as we are here considering. Even though it be true that each act in the chain is done for no other purpose than that the effect of the ultimate act may be obtained, if there is nothing more in the case the statement is not justified that a person who does all the acts except the last " causes " the last. It is important to recognise that what is here being considered is the " causing " of an act which involves an intention to do it on the part of the person who does it. The inquiry may well be different in the case of an event independent of such an intention. There is no doubt a difference in kind between the question whether a man who sets up a gun as a man-trap causes it to be discharged when a trespasser unwittingly presses against the string which pulls the trigger and the question whether a man who sends his office boy to the post with a letter causes the letter to be posted. The one requires consideration of the physical causes of a physical event, while the other asks how it came about that the doer of the act determined to do it. The class of cases to which the former example belongs need not be considered here. Nor, I may add, is there here a problem of causation in the sense which the expression has in the law of tort. The immediate cause of an offering for sale

(1) (1956) S.A.S.R., at p. 76.

is a decision by the person who makes the offer. A reference in legislation to causing a newspaper to be offered for sale must therefore be a reference to bringing about the decision to offer it for sale.

It is not, however, every form and degree of inducement or persuasion that satisfies the notion. I may persuade a person to do an act by pointing out to him advantages that will accrue to him if he does it, or by making to him some representation of fact. I may make such a representation by conduct, as, for instance, by so conducting myself as a garage proprietor that he is led to drive a motor vehicle in the belief that its brakes are in good order (*Shave* v. *Rosner* (1)). Yet in such a case it would be a misuse of language to say that I cause the act which is done. Certainly encouraging the doing of an act is not the same thing as causing it ; and this the *Police Offences Act* itself recognises, in s. 12 (1) (*d*). The truth is, I think, that one person cannot be said to cause another's act unless not only does the former express it as his will that the act shall be done by the latter but the latter's decision to do it is a submission to the former's will, that is to say a decision to make himself the instrument of the former for the effectuation of his will.

The expression of the will may, of course, take many forms and still be effectual to produce such a submission. It may be couched in the language of command, request, desire, hope or suggestion. That a bare request, for instance, may suffice was acknowledged by the Court of Appeal in *James & Son Ltd.* v. *Smee* (2). It is not the form of words that matters, but the effect which they are calculated to have and do have in the particular situation existing between the person who is said to cause the act and the person who does it. If the former could be seen before the event to occupy " a position of dominance and control, so as to be able to decide whether the act should be done or not ", that fact enables a causal connexion to be readily seen between an expression of his will that the act should be done and the decision of the person who did the act to do it. But it would not be correct, I think, to suppose that the pre-existence of such a position of dominance and control is a *sine qua non* of a causing the act to be done. A man may surely cause a letter to be posted by asking someone whom he meets in the street to be kind enough to post it. If the person he asks is one over whom he has some kind of authority, or to whom he is in a position to do some later favour, that may account for the latter's compliance. But there may be no such situation—the two may be strangers to one another, for example—and the explanation of the compliance with the request may be found simply in the obliging nature of the

(1) (1954) 2 Q.B. 113.

(2) (1955) 1 Q.B. 78, at p. 90.

H. C. OF A. 1956-1957.

O'SULLIVAN v. TRUTH AND SPORTSMAN LTD.

KITTO J.

person to whom it is made. Whether a person causes the act of another, and how his success in attempting to cause it is to be explained, are two quite different questions.

It cannot possibly be said, in the present case, that the newsagents submitted to the will of the respondents, regarding themselves, when offering for sale the newspapers in question, as instruments of the respondents for the purpose. There is no reason to think that they were moved by a consideration of anyone's will but their own. The language of causation is inappropriate to describe the relation between their acts and the antecedent conduct of the respondents.

Appeal dismissed with costs.

Solicitor for the appellant, *R. R. St. C. Chamberlain*, Crown Solicitor for the State of South Australia.

Solicitors for the respondent, *Finlayson, Phillips, Astley & Hayward*, Adelaide.

R. D. B.