THE BRADLAUGH – BESANT TRAIL

Charles Bradlaugh and Annie Besant surrendered to their recognisances on Monday morning in the Queen’s Bench Division, before the Lord Chief Justice and a special jury, to answer a charge of having on 24th March published an obscene book. Another indictment charged them with having published a similar book on the 29th of March.

The Solicitor-General (Sir H. Giffard), Mr. Douglas Straight and Mr. Mead appeared for the prosecution. Mr. Bradlaugh conducted his own defence and that of his co-defendant. Upon the Lord Chief Justice taking his seat.

Mr. Bradlaugh said: Before the jury is sworn I have a motion to make, and I think this will be the proper time to make it. My motion is that the indictment be quashed on the ground--

The Lord Chief Justice: I cannot hear it now. I am sitting here at present at nisi prius.

Mr. Bradlaugh: The Act of 14 and 15 Victoria says that every objection to every indictment and to every formal defect on the face of it shall be taken by de­murrer or motion to quash such indictment before the jury shall be sworn, and not afterwards; and it is for a defect on the face of the indictment that I move to quash it.

The Lord Chief Justice: That constitutes a motion is banco, and not before me. What do you say, Mr. Solicitor?

The Solicitor-General said the pleadings were at the Crown Office, and application should have been made there.

Mr. Bradlaugh said he did not demur to the indictment, but submitted his right to question it.

The Lord Chief Justice: I will reserve the point.

Mrs. Besant: I presume your Lordship will grant me the same privilege?

The Lord Chief Justice: Quite so.

Mr. Bradlaugh said that with the consent of the Solicitor-General the jury had been supplied with copies of the book.

The Solicitor-General, in opening the case, said the two defendants were indicted for having published an obscene book under statutes which prohibited the pub­lication of matter calculated to corrupt and destroy the morals of the people. Those in authority in the city of London were placed in the dilemma of either allowing this work to be sown broadcast over the whole city or of instituting this prosecution. The work in question was published in the first instance in Bristol by a Mr. Watts, and the defendant, wishing to test the legality of the publication, sent a notification to the clerk of the Guild­hall Police Court and to certain of the police authorities that they would attend at an address in Stonecutter-street, City, to publish the work. The police purchased some of the pamphlets, and the question to be decided was whether the defendants were entitled to sell for the sum of 6d, the book referred to to every person to whom it might occur that it was interesting or exciting to a morbid appetite to purchase a book of this description, and the question was whether the book was an obscene publication. The question of publication not being in dispute, the sole point the jury would be called upon to determine was whether this was an obscene work or not.

The Lord Chief Justice: Is that quite accurate? Supposing that the language in the work cannot of itself be characterised as obscene, but that its general effect is calculated to vitiate public morals, in my opinion the person publishing such a work would be criminally liable for their act.

The Solicitor-General explained that in using the term obscene he had not intended to convey the idea of vulgarity or coarseness, but that of a work calculated to deprave morals. The learned counsel then proceeded to read the charge of the Lord Chief Justice in the case of Regina v. Hickling, where the question was raised as to the obscenity of a publication called the "Con­fessional Unmasked," and he proceeded to say that every observation of his Lordship in that case applied with equal force to the present pamphlet, which he regretted to see had been sold to the number of one hundred thousand. The work was originally written by an American, named Charles Knowlton. It contained forty-seven pages of matter, it was asserted to be an essay on the population question, and its professed object was to show how the growth of the population might be checked. The learned counsel then proceeded to read numerous extracts from the work, which com­menced with a "Philosophical Proem." in which the evils of a large population were dwelt upon, and the desirability of checking its growth was insisted upon. Several chapters were devoted to minute anatomical details.

The Lord Chief Justice pointed out that the work did not profess to be written with the intention of suggest­ing that marriage should be dispensed with.   
The Solicitor-General said that the authors of the work put forward deep sympathy with the poor curate, and the hard-working artisan, who were now ground down by having to support large families, but it was not difficult to suggest the class of persons for whom such a production would possess fascination. Vulgarity and coarseness of expression were doubtless carefully avoided, but he submitted that prurient matters were put forward under the guise sf philosophical and scien­tific disquisitions. Books which would he quite proper for the study of the surgeon or the physician would be grossly indecent if they were introduced into a girl's school He submitted that even if this pamphlet was intended to he read by married people only it would still be immoral in the highest sense, but it was evident from the work itself that it was intended for circulation among the general public without distinction of age or sex. He did not allege that the defendants had published this work with the intention of vitiating the pure morals; but at the same time the question for the jury would be, not what was the motive which had induced them to publish the work, but what was the character of the publication and what was the effect that it was calculated to have upon public morals. No amount of good intention on the part of the defendants could ex use them if the book were an obscene one. On the whole he submitted that the work was of an obscene character, and was calculated to deprave public morals, and that its publication very properly formed the sub­ject of this indictment.

The publication having been formally proved, and the pamphlet put in.

The Solicitor-General proposed to put in evidence to show that the publication of the work had been con­tinued and that large numbers of it had been sold since this prosecution had commenced, in order to show that the defendants intended that it should have a general and not a limited circulation.

The Lord Chief Justice observed that the introduc­tion to the pamphlet showed that it was intended for general circulation, and therefore it was unnecessary to put in that evidence.

This closed the case for the prosecution.

Mrs. Besant, having adverted to the array of eminent counsel opposed to her, said that, she relied for her de­fence on the goodness of her cause. She had studied the question very carefully, and she appeared before the Court sot so much in the character of a defendant as of a counsel for his numerous clients, who were scattered in immense numbers throughout the land. She pleaded for the poor generally; for the hard-working artisan, whose wages were falling daily; the overtasked mother, worn out with her family cares; and the starving and uneducated little children, who found that what was enough for two was insufficient for twelve. She was paid for her advocacy, not by gold, but by the kind wishes and heartfelt gratitude of those for whom she pleaded. In coming before the Court on this occasion she risked much. It was no light thing for her, as a woman, to appear as a defendant in this case, to be subjected to the worst imputations, to risk her position in the world, and perhaps her liberty; but she did so cheerfully in the hope that good might result from her efforts. For the large circulation which this pamphlet had attained the prosecution must think themselves, for by attaching factitious importance to an old-fashioned publication they had raised it sale from 700 annually to upwards of 100,000. 'Turning to the in­dictment, she argued that it had been drawn up so as to create prejudice against herself and her confederate, and that it was defective inasmuch as it charged them with having a bad intention in publishing the pamphlet, whereas the Solicitor-General himself admitted that they had no evil intention in the matter. The jury would have to find not only that the work was obscene but that their intention was to deprave the public morals before they could find a verdict of guilty. The intent was the essence of the alleged offence, and in the case of The King v. Lambert and Others, Lord Erskine laid it down that we could not condemn the conduct when we must acquit the heart. She submitted that the matter of the pamphlet was not obscene, that the intention in publishing it was good, that the knowledge it conveyed was useful and necessary, and that because that know­ledge was useful and necessary it ought to be put within the reach of all, and she declared that even if a verdict of guilty were returned she would still regard herself as innocent. Dealing with the definition of the word "obscene," she congratulated herself upon the fact that she was being tried by a jury of highly cultured men who were well acquainted with the works of Shakespeare and other dramatists, and who would be well able to dis­tinguish between mere coarseness and obscenity. To excite improper passions, glowing descriptions must bet placed before the reader, but no one would think of trying to excite them by the use of mere dry physiological technicalities. The jury could not move the responsibility from their verdict from their own shoulders to those of the learned judge, and they must deter­mine whether they would go down to posterity amongst the juries who had restricted liberty. She wanted them to declare that opinion honestly expressed should not be put down because some police agents did not happen to agree with it. A verdict of guilty meant destruction to her and all she had worked for. The jury would never be able to wipe away the remembrance of the days they would spend in that court and if --- led away by prejudice --- they give a verdict against them which they would not give against their wives and daughters, and their brothers, under similar circumstances, a deep responsibility would rest upon them. The definition of an obscene work given by Lord Campbell was a work written for the single purpose of corrupting the morals of youth, and calcu­lated to shock the feelings of decency in every well-regulated mind. This prosecution was a disgrace to English justice. By whom it was instituted she could not say, but the Secretary to the Society for the sup­pression of Vice boasted that he was prompting the Solicitor-General in prosecuting those who, whether their method was well or ill judged, were honestly endeavouring to carry out a principle which they be­lieved would be of benefit to mankind. Turning to the work itself, she stated that the pamphlet was written by a duly qualified medical man resident in Boston, a man who lived a thoroughly blameless life, who had the greatest sympathy with the poor. He was, therefore, a scientific man, writing on a scientific question. The book had been published in this country for the last 43 years, by Mr. Watson, by Mr. G. J. Holyoake, by Austin and Co., and by Mr. Brookes, of the Strand. It was then published by Mr. Watts, who had pleaded guilty to the charge of publishing an indecent work in respect of this pamphlet. She and her co-defendant felt that the book could not be allowed to be condemned in that way. Before this occur­rence neither he nor herself was a publisher, but in justice to the dead they reverenced, they determined to risk everything to defend it. She admitted her full responsibility for all that appeared in the work. The question had been raised among the medical men in France as to what checks to population were healthy and what were not, and that, she submitted, was a mat­ter that might fairly be discussed without obscenity. If she could show that pauperism was the natural effect of large families, and that it was the cause of crime, the Jury could not bring in a verdict of guilty against her.

Mrs. Besant had not concluded when the Court rose.

The trial was resumed on Tuesday.

Mrs. Besant, resuming her address, said she was the more encouraged in her defence by having only that morning received a letter from Professor Bain, in which he said that he regarded this trial as one of the most critical in the history of our liberties. Mr. Darwin had objected to her proposal that the great improvement in the higher animals and in man was the result of the struggle for existence. She admitted that there would be some force in that argument if man lived on the same terms as the animal, and let the young, the weakly, the aged, the diseased, and the starving die without assistance; but under our present conditions of life such a thing was impossible, and therefore Mr. Darwin's argument did not apply.

The Lord Chief Justice: It may be well worthy of Mr. Darwin's consideration whether the result of a struggle for existence may not be twofold—namely, that beneath the small numbers of a highly gifted race a deteriorated mass may not be found.

Mrs. Besant, in support of her argument, referred to the works of Mr. Stuart Mill, Professor Leone Levi, and Mr. and Mrs. Fawcett. She deprecated the discussion of physiological questions in magazines, contended that they should be confined to works the titles of which indicated clearly the nature of their contents, and adverted to the number of letters she had received from country and town clergy urging her to proceed in her course. Mrs. Besant then proceeded to say that no physical knowledge properly taught and properly understood could be taken to be a moral evil. In the case of The Queen v Hinckley the facts put forward were all of the most disgusting character, without their conveying any knowledge or benefit to society. The misuse of knowledge did not make that knowledge bad, indecent, or obscene. The fault lay not with the giver, but the receiver of it. Would they limit medical thought by the misuse which impure minds might make of it? The same argument might be used against the general sales of knives and ropes, because with such things life might be destroyed. It was like the fifty years' old argument employed against the sale of penny boxes of Lucifer matches, because they gave the agricultural peasantry opportunities of burning hayricks which they did not possess in the old days of flint and steel. If this prosecution succeeded, Mr. Smith, a member of Her Majesty's Government, would be open to a similar prosecution in respect of the sale at railway stalls of a work which was equally open to the charge of obscenity. It could not be said that it was less indecent because it was sold for the upper classes at the price of half a crown, when the other was sold for the poorer classes for six pence.

The Lord Chief Justice: You have gone through this long and able address without saying anything that could give offence to anybody.

Mrs. Besant: My feelings of charity towards the Solicitor-General are warmer than those he has shown to me. He did accuse me of some of the vilest things a woman could do, but yet I am content to rely on the justice of the jury and not to speak too strongly of the learned gentlemen. With regard to the circulation of the work, Mrs. Besant said that if were not obscene it could not be made so by being sold for 6d. Thanking the jury for their patient attention, Mrs. Besant asked them not to find her guilty of the dreadful charge in the indictment, of an intention to corrupt the minds of the young under the pretence of purity.

There was applause when the speech was concluded.

Mr. Bradlaugh then began his address to the jury, and said he believed he should be able to show that not a line or even a word of the book could be fairly held to be open to the charge of obscenity. Mr. Bradlaugh’s address was not concluded when the Court rose.

The use was resumed on Wednesday.

Mr. Bradlaugh in resuming his address, submitted the following prepositions to the jury:—That it had been proved that the essay indicted was one upon popu­lation; that the question was one lawful to be discussed; that it had been amply shown that over-population was a fruitful source of poverty, ignorance, crime, vice, and misery; and that the advocacy of prudential checks in population was not merely lawful but was highly moral. Mr. Bradlaugh then proceeded to compare the pamphlet with other works which are commonly sold, and he submitted that its language was careful, chaste, thoughtful, and delicate, and was infinitely preferable to that used in the other works. It was horrible to put him and his co-defendant upon their trial for having stated chastely what was stated in an infinitely more coarse manner not only in medical works but in works which the Government themselves circulated among young girls in the Science and Art Schools in South Kensington. This attack upon this pamphlet must have been made by those who were either utterly ignorant of medical works, or, having the knowledge, for their own ends concealed it, and twisted and turned his work from its true meaning. He had perhaps utterly miscomprehended the spirit of English jurisprudence. In civil cases he understood that it was sometimes considered not unfair to leave the advocate for the defence to make out his case, but he did think that in a criminal case so the second leading counsel in England, matched as he was against a man and a woman, having had the knowledge before him for the last six weeks, would have felt himself under some obligation to put forward at least a little of what he knew would have to be contended for on the part of the defence. Was it fair that the Solicitor-General should have suppressed the fact that the works of which he had spoken were circulated in Government schools for girls? In conclusion, he said he trusted the jury by their verdict would send him and his co-defendant out of court absolved from the shame which the indictment sought to cast upon them.

Miss Alice Vicary, a chemist by examination of the Pharmaceutical Society of Great Britain and a medical student, was then examined by Mrs. Besant, and expressed the opinion that the pamphlet was fit for general circulation.

Dr. Drysdale, examined by Mr. Bradlaugh, said he did not think there was anything prurient or immodest in the work.

Mr. H. G. Bohn, the publisher, named several works published during his 45 years' experience in bookselling the statements in which were identical in substance with the contents of the work in question, and said they had never been the ground of any prosecution.

This cloned the evidence for the defendants, and the court then adjourned.