THE PROSECUTION OF MR. BRADLAUGH AND MRS. BESANT

THE SENTENCE

In the Queen’s Bench Division, on Thursday morning, before Lord Chief Justice Cockburn and Mr. Justice Mellor, the case of “The Queen v. Bradlaugh and Besant,” in which the defendants had been convicted of publishing an indecent pamphlet called “Fruits of Philosophy,” came before the court. The Solicitor General, with Mr. Douglas Straight and Mr. Mead, appeared for the prosecution. The defendants appeared in person.

The Solicitor General having moved for judgment, Master Mellor informed their Lordship that the record was not in Court.

The Solicitor General said that was not the fault of the prosecution.

The Lord Chief Justice did not see that the Court had power to proceed in the absence of the record.

The Master said that it was the duty of the prosecu­tion to see that the record was brought up. It was very negligent of the prosecution to have failed in taking the proper steps.

The Solicitor General stated that the solicitor for the prosecution had applied for the record, but found that it was not ready.

The Lord Chief Justice: I don't know whether the defendants intend to move for a new trial.

Mr. Bradlaugh said he did intend to make such a motion; but he proposed, in the first place, to move to quash the indictment on the ground that it was bad in law, inasmuch as, being an indictment for an obscene libel, it did not set forth and specify particularly the words upon which the charge was founded. It had been the constant practice to set out the words of an obscene libel in the indictment.

The Lord Chief Justice: You contend that the whole of this pamphlet should have been set out in the indict­ment?

Mr. Bradlaugh said that was his contention, assuming that the whole of the work was charged as being obscene; but if only certain parts of it were relied upon, those parts should have been set out. The difficulty in which he had been placed by the form of the indictment was that he did not know even now whether the obscenity charged was the advocacy of certain checks to population or the language used in advocating those checks; he also relied on the ground that the advocacy of checks to population was not an offence known to the common law.

The Lord Chief Justice: That would be a ground for moving for a new trial.

Mr. Bradlaugh said he would move for a new trial on that ground. He submitted that for the last hundred years checks to population had been discussed with perfect freedom.

The Lord Chief Justice: "That may be so; but there are checks to population which are consistent with morality, and others which are inconsistent with it. The publication of anything calculated to deprave public morals is an offence at law.

Mr. Bradlaugh submitted that if the verdict was allowed to stand a new offence against the law would he created. The population question was one that might be fairly discussed, and checks to the increase of population might be fairly advocated. There were other grounds upon which his co-defendant would move for a new trial, and with which, therefore, he would not trouble their Lordships.

Mrs. Besant said she moved to quash the indictment on the same grounds which were relied upon by her co­defendant. She did not know what was the offence of which they had been convicted.

The Lord Chief Justice: You have been convicted of publishing this book.

Mrs. Besant: Advocating these checks?

The Lord Chief Justice: It is clear that that is the issue that went to the Jury, and upon which they found their verdict. Had the work been a medical one the language used in it would not have been open to objection.

Mrs. Besant said she also moved for a new trial on the ground that the verdict was a special one, and was equivalent, looking at the terms of the indictment, to a verdict of not guilty; that the form of the words used by the Jury was self-contradictory; that the verdict, if good was against the weight of evidence; and that when the verdict was finally brought in, it was so brought in by misdirection. They had been charged in the indictment with having a corrupt intention in publishing the work, and that corrupt intention the Jury had expressly acquitted them of. When an indictment charged a corrupt intent the defendant had a right to show his good intent.

The Lord Chief Justice: There you are mistaken. This would have been a good indictment if it had merely charged you with having published an indecent book without assigning any intent at all, and the assign­ment of such an intent is mere surplusage, which may be rejected as immaterial.

Mrs. Besant proceeded to argue that the assignment of the intent was a material part of the indictment. She submitted that the special verdict as it was given by the jury should have been entered as it stood.

The Lord Chief Justice: You cannot enter a. special verdict, in a criminal case. We must enter a verdict of guilty or not guilty. It is open to you to contend that on the finding of the jury I should have directed a verdict of not guilty to be entered.

Mrs. Besant submitted that his Lordship should have taken that course.

Mr. Justice Mellor: The Jury found that you intended to publish a book than had a tendency to deprave public morals. They acquitted you of moral guilt.

Mrs. Besant urged that in a case of such difficulty, where the Jury had, taken an hour and a half to arrive at a decision, and where at length they had found a verdict, acquitting them of all corrupt intent, they were entitled in common fairness to a new trial. On those grounds she trusted that their Lordships would grant a new trial.

The Solicitor General contended that it was unneces­sary that the words in the book charged as obscene should be set forth in the indictment. That point had not been brought before the courts in this country, but it had been decided in America that it was unnecessary to set out the words charged as indecent. Was it to be supposed that the whole of the book charged as obscene was to be set out?

The Lord Chief Justice: By this course you take away from the defendants the right to demur.

The Solicitor General observed that the question libel or no libel was one for the jury, and not for the Court, and that therefore there would be no right to demur.

Mr. Justice Mellor: Are you aware of any case in which an indictment for an indecent libel has been upheld in this country when the words charged were not set forth in the indictment?

The Solicitor General replied that the indictment had been drawn in accordance with ordinary precedent, but this particular point had not been raised heretofore so far as he knew. It would be impossible to set out a picture in an indictment. The objection, however, was too late, inasmuch as it should have been raised by demurrer before plea.

Mr. Mead submitted that the technical meaning of the word " libel " was "a little book," and that the word had been used in that sense in this indictment. There­fore the ordinary incidents of the law of libel did not apply in this case, which approached in its nature that of an indecent exposure as being of the character of a public nuisance.

Mr. Bradlaugh, in reply, asserted his right to move an arrest of judgment at the present stage of the pro­ceedings and to have the offence with which he was charged fully set out in the indictment.

Mrs. Besant protested against undue weight being given to American decisions, and demanded that her case should be determined according to the law of England.

The Lord Chief Justice, in giving judgment, said that he was of opinion that there ought not to be a new trial in this case on any of the grounds relied upon by the defendants. The case was one peculiarly for the jury, than whom there could not be a better tribunal for the determination of such a question as the morality or the immorality of a work, they representing, as the Solicitor General had happily expressed it, the average intelli­gence of society. After the very powerful address of the Solicitor General to the jury, in the course of which he had appealed as much to their senti­ments as to their judgment, he (the judge) had thought it right to lay the ease before them in all the aspects in which it had been presented by both sides in the course of the trial; and the jury, who had exhibited throughout the proceedings the greatest patience and attention, had after ample deliberation found that the work was of a nature calculated to deprave public morals, and in his opinion there was no reason for disturbing that verdict. It had further been contended that the verdict of the jury was not rightly entered. The jury, having entertained doubts as to the legal effect of the facts they found proved, laid them before the Court by their verdict, and he had felt it to be his duty to tell them that where persons published a work having a tendency to deprave public morals they were guilty of an infraction of the law, whatever might be their motive publishing it. Upon that the jury had at once returned a verdict of guilty. On the whole, therefore, their Lordships could not entertain the application on the part of the defendants for a new trial. The defendants further contended that judgment should be arrested on the ground of the legal inefficiency of the indictment inasmuch as the words alleged to be obscene were not set out in it. In his opinion it would be exceedingly inconvenient to require the words to be so set out. He had been informed that it was intended to prosecute the publishers of the "Memoirs of the Count de Grammont" on the ground that they were indecent in describing too literally the licentiousness of the Court of Charles II, and it would be highly inconvenient if it were necessary to set forth the numerous volumes of which that work consisted. In his opinion this objection should have been taken by demurrer before plea, and it was now too late to take it. If their decision on this point were wrong, it could be taken a court of error.

The Solicitor General said that, the record now being in court, he prayed for judgment; and he handed in certain affidavits proving the publication and sale of the pamphlet by the defendants in large numbers since the trial, especially at a meeting at which Mrs. Besant presided, and at which numbers of young men and women were present.

Mr. Bradlaugh, in answer to the Court, said that he had no affidavits in reply.

The Lord Chief Justice said from the report which had appeared in the newspapers Mrs. Besant appeared to have stated that he had summed up in favour of the defendants. It was an entire misrepresentation of what he had done, which simply was to hold the scales of justice even.

Mr. Bradlaugh said that the report was ridiculously inaccurate, and if anything were to turn upon it he should ask for leave to meet it by affidavits.

Mrs. Besant asserted that the report was utterly inaccurate. She had no knowledge that the pamphlet was sold at the meeting. She had received a letter from one of the jurors stating that he had not concurred in the verdict. She pleaded guilty to having referred to the Lord Chief Justice as " one of the most highly

trained brains in England," and if she was wrong in having done so she begged to apologise for it. (A laugh.)

Mr. Bradlaugh said that as a matter of fact he had continued to circulate the pamphlet.

The Lord Chief Justice: Then the matter assumes a very serious aspect indeed, because that implies that notwithstanding the verdict of the jury the defendants intend to publish this book. The jury having acquitted you of any intention to break the law, we were disposed to have passed a very lenient sentence upon you; but if the law is to be openly set at defiance the case becomes a very grave one, and assumes an entirely different character.

Mr. Bradlaugh: Then we respectfully submit our-selves to the judgment of the Court.

Mrs. Besant : I have nothing to say in mitigation of punishment.

Their Lordships having consulted together for some minutes,

The Lord Chief Justice said: This case has assumed a character of very grave importance. Had the defendants announced openly in this court that having acted in error, as the Jury found they did, and to the benefit of which finding they are fully entitled, and that having had a fair and impartial trial, and having been found guilty of doing that which is an offence, they were ready to submit to the law, and would do everything in their power to prevent the publication and the circu­lation of this book which the Jury found is calculated to deprave public morals, we were prepared to have discharged them upon their own recognizances. But we cannot but see that in what has been said and done pending this trial, and especially since the verdict of the Jury has been given, the defendants, instead of submitting themselves to the law have set it at defiance by the continued sale and publication of the book in question. Therefore that which was before a comparatively light offence now assumes a very grave character, which we must punish with adequate severity. The sentence of the Court moon you, Charles Bradlaugh and Annie Besant, is that you be imprisoned for six calendar months, and. that each of you pay a fine of £200 to the Queen; and, further, that you enter into your own recognisances of £500 each to be of good behaviour for the term of two years. We have thought it right to pass that sentence because we think that there is an intention on your part to set aside the law. I am very sorry indeed to be obliged to pass such a sentence upon you, but it is the result of your own conduct.

On the application of the defendants execution was stayed in order to enable them to appeal, they entering into their own recognisances in £100 each, and giving an undertaking to cease the publication and sale of the pamphlet in the meantime.