THE BRADLAUGH PROSECUTION

QUEEN’S BENCH, YESTERDAY.

(Sittings at Westminster before the LORD CHIEF JUSTICE and a Special Jury)

THE QUEEN v. BRADLAUGH AND ANOTHER.

This was an indictment of misdemeanor, charging Charles Bradlaugh and Annie Besant with publishing an alleged obscene book called the “Fruits of Philosophy.”

The Solicitor-General, Mr. Straight, and Mr. Meade appeared for the prosecution; the defendants defended in person.

Mr. Bradlaugh: Before the jury are sworn, I have to move your lordship to quash this indictment. The 14th and 15th Vic. provides that any objection to an indictment for any formal defect apparent on the face of it, shall be taken by demurrer, or on motion to quash, before the jury shall be sworn, and not afterwards.

The Lord Chief Justice: I am sitting at nisi prius. That contemplates a motion in banco.

The Solicitor-General: I take it to be so. The defendant, if he intended to demur, should have done it in the Crown Office or by motion in court.

Mr. Bradlaugh: I do not intend to demur. I submit my right to move to quash the indictment.

The Lord Chief Justice: I will reserve that point.

Mrs. Besant: I presume, my lord, that you will grant me the same right?

The Lord Chief Justice: Yes

Mr. Bradlaugh, with the permission of his lordship, handed a copy of the book to each of the jury. His lordship said that, having looked through the book, it seemed to him as absolutely essential that the jury should be thoroughly possessed of not only the substance, but actually the language of the book.

The Solicitor- General said that the defendants were indicted for having published an obscene work. It appeared that a Mr. Watts published some years ago a book which he called “The Fruits of Philosophy; or, Private Companion of Yong Married Couple.” It was published in Bristol, and formed the subject of an indictment. Attention having been called to it, the defendants appeared to have come to the conclusion that the result of the case was unsatisfactory, and they determined to test the question whether persons were not entitled to publish it, and they accordingly served a notice on the City authorities that they intended to do so. The whole question therefore was, whether this was an obscene book.

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 100,000. The work was originally written by an American named Charles Knowlton; it contained 47 pages of mater; 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 of philosophical and scientific disquisitions. Books which would be quite proper for the study of the surgeon or the physician would be grossly indecent if they were introduced into a girls’ school. He submitted that even if this pamphlet were intended to be 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 public 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 excuse 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 not so much in the character of a defendant as of a counsel for her numerous clients, who were scattered in immense numbers throughout the land. She pleaded for the poor generally, for the hard-worked 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 thank themselves, for by attaching factitious importance to an old-fashioned publication they had raised its 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 co-defendant, and that it was defective, inasmuch as it charged them with having a bad intent 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 intent 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 c. Lambert and others Lord Erskine had 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 their 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 should be returned she should 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 be 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 shift the responsibility for their verdict from their own shoulders on to those of the learned judge, and they must determine whether they would go down to posterity amongst the juries who had protected or amongst those 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 to all she had worked for. The jury would never be able to wipe away the remembrance of the days they would spend in this court; and if, led away by prejudice, they gave a verdict against them which they would not give against their wives, their 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 behaved 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, and who had the greatest sympathy with the poor. He was therefore a scientific man writing on a scientific question.

The court adjourned until this morning.

The defendants were cheered by a large crowd as they left Westminster Hall.