

THE CONFSSIONAL UNMASKED.

On Tuesday, the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice Blackburn, Mr. Justice Mellor, and Mr. Justice Lush, was occupied nearly the whole of the day in dealing with a case which has excited considerable interest throughout the country, having reference to the legality of selling the book known as "The Confessional Unmasked," in which the lecturer Murphy has hitherto done a large trade. It appears that, during a visit of Murphy to Wolverhampton, a person named Scott, described as a metal broker, living in the town, sold from 2000 to 3000 copies of the book in question at 2s. each. During the visit of Murphy many persons will recollect that the same book was largely sold in this city; but in Wolverhampton the magistrates seized the stock in possession of Scott, and ordered its destruction, on the ground that the contents of the pamphlet were so indecent and filthy that the circulation of it was injurious to the morals of the community. An appeal against the conviction of the magistrates was made to the Recorder, who, though agreeing that "the indiscriminate sale and circulation of the book was calculated to prejudice good morals," yet quashed the conviction, on the ground that Scott merely kept and sold them "as a member of the Protestant Electoral Union, to promote the objects of that society and to expose what he deemed to be errors of the Church of Rome, and particularly the immorality of the confessional."

Mr. KIDD argued for the defendant that his intention was not to injure public morals, but the reverse. These matters were published in the present case in order to hold them up to condemnation. There were public questions—for instance, that of the endowment of Maynooth—upon which these matters were relevant.

Mr. Justice BLACKBURN.—Then, do you say that, having such an object, it justifies any amount of publication of obscene matter and any amount of public mischief?

Mr. KIDD hesitated, and said the case put was an extreme one. He thought the object would justify any extent of publication necessary for the object. He went on to adduce circumstances in which, as he contended, it had been laid down that the intention of a publication was material. He also mentioned instances in which obscene spectacles were held excusable, as in exhibitions of art; and he put the case of a Venus at a picture gallery. He likewise instanced the works of many of our popular poets—Chaucer, Shakspeare, and Burns—as containing many obscene passages.

The LORD CHIEF JUSTICE somewhat warmly protested against such comparisons, and he and the other learned Judges made various observations in opposition to the arguments of Mr. Kidd.

Mr. STAVELY HILL, Q.C., argued on the part of the prosecution that the publication of the book was a misdemeanour. He urged that either the actual interest was immaterial, or that, if material, it was to be inferred from the known effect of the publication; and that the parties who circulated it knew it must have a bad effect was, he urged, manifest from the statement on the cover of the book itself that the matters contained in it were "calculated to convert an Eden into a Sodom." That being so, the publication of it was, he insisted, criminal. Lord Mansfield had laid it down in this court long ago that a man's intent must be inferred from his doing what he knew was wrong and injurious. A bad intent was inferred from an unlawful act, and an act injurious to the public was unlawful.

After some further argument, the Judges retired to consider their decision. On their return, after being absent for about an hour,

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The LORD CHIEF JUSTICE proceeded to pronounce the judgment of the Court against the defendant. We have (he said) considered the case, and are of opinion that the judgment of the Recorder must be reversed, and that the order of the magistrates must be affirmed. It is found as a fact that the work was, to a considerable extent, obscene, and calculated to produce a pernicious effect upon the minds of those who might read it. And the magistrates were of opinion that the publication of it was a fit subject for indictment. We must take the latter finding to have been affirmed by the Recorder, for it is not upon that ground he reversed their decision; he left it quite untouched, and reversed the conviction upon the ground that, though the book was obscene, and its tendency pernicious, yet that the immediate intention of the defendant in circulating it was to expose the errors of the Confessional as it exists in the Roman Catholic Church, and we must take it that this was honestly the object. Upon that ground the Recorder reversed the conviction, thinking that it was necessary that it should appear that the object was to corrupt the public mind. In that respect I differ from him, and I think that if there be an intentional breach of the law, the criminal character of the act is not affected by the existence of some ulterior object of an honest character. It is clear that to publish an obscene book is an offence against the law of the land. It is true that there are instances of publications of a high order in literature which contain passages the tendency of which is immodest, perhaps immoral, and it is possible that in some instances these works might have been made subjects of indictment. But could it be said that, because they were not made the subject of indictment that, therefore, obscene works are not indictable? I take it that the test of obscenity is this—whether the tendency of the matter published is to deprave and corrupt the minds of those whose minds are open to such evil influences, and into whose hands it may happen to fall? Now, as to the work before us, it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of riper years, thoughts of the most foul and libidinous character. The very reason why the work is put forward, as it is said, to expose the practices of the confessional, is the tendency of questions involving matter of a certain description, to do mischief to the minds of those to whom such questions are addressed, by suggesting ideas which might otherwise not come into their minds, and if that be the case as between the priest and the penitent in the confessional, it is manifest that it must equally be so when the matter is put into a more popular form, in the shape of a series of passages, each involving some matter of most impure character. Therefore I take it that, apart from the ulterior object which the promoters of the book have in view, the work itself is, in every sense of the term, obscene; and, consequently, as the law of England does not allow such publications, it would be indictable. But then it is said that the purpose of the publication was not to deprave the public mind, but to expose the errors of the Roman Catholic religion, especially in the matter of confession. Be it so. But then the question presents itself in this simple form: May a man commit an offence against the law in order that he may effect some ulterior object he has in view, and which, it may be, is of an honest or even laudable character? To that question I answer emphatically in the negative. The law says you must not publish an obscene book. The book here published is obscene. The obscenity is clear and decided, and it is impossible to suppose that the man who published it did not know that the effect upon the minds of many of those who read it must have been of the most mischievous character. Is he justified in doing that which clearly would be wrong—morally as well as legally—merely because he thinks some greater good might be attained? And in order to prevent the spread of the Roman Catholic religion in the country, or to prevent the State from granting any assistance to the Roman Catholic Church in Ireland, is he justified in doing that of which the necessary tendency is to demoralize the public mind? To adopt such a view would be, in my opinion, to affirm what was most reprehensible. While the mischievous tendency of the book is clear, the ulterior object is most uncertain and remote of attainment. The work is distributed at the corners of streets and in all directions, and, of course, falls into the hands of persons of all classes, young and old, and of those who are pure, and whose minds are thus exposed to danger of contamination and pollution. And for what? To prevent them, it is said, from becoming Roman Catholics. Whereas the probability is that 999 out of 1000 of those into whose hands the book may come would never have heard of these matters, and would never have dreamt of becoming Roman Catholics. As, therefore, the book is one essentially mischievous, and which ought not to be published, it is not to be justified merely because of this remote and uncertain object. It is a sound maxim, not less of law than of morality, not to do evil that good may come; and, least of all, as a certain and positive evil to be done in order to promote some distant, contingent, and uncertain object which may be good. The case, therefore, for the order was made out. The publication is obscene; and if a man publishes matter manifestly obscene he must be taken to have had the intention which is to be inferred from his act, and it is not permitted to him to say that he had a good object in doing it. This the law does not allow; the law must be obeyed, and any ulterior objects must be attained by means which are not a breach of the law. I think, therefore, that the Recorder's judgment must be reversed and the conviction affirmed.

The other Judges all concurred, and an order was given to reverse the judgment of the Recorder and to affirm the order of the magistrates.