

GEORGES v. VELUPILLAI.

. P. C., Jaffna, 34,356.

1904.

October 19.

*Obscene books—Printing and possessing such books—Penal Code, ss. 285, 286
—Test of obscenity.*

In a prosecution under sections 285 and 286 of the Penal Code for printing and possessing obscene books,—

Held, following Cockburn, C.J., in *Queen v. Hicklin*, L. R. 3, Q. B. 371, that the test as to a book being obscene or not is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

THE accused was convicted on two counts of the charges of (1) printing, and (2) possessing for the purpose of sale, an obscene pamphlet in the Tamil language styled "Secret Science." The nature of this work is sufficiently indicated in the judgment of Wendt, J.

1904. On appeal preferred by the accused, the case came on for
 October 19. argument before Wendt, J., on 9th February, 1904.

Dornhorst, K.C. (with him *Wadsworth*), for appellant.

Rámandáthan, S.-G., for respondent.

The following cases were cited in the course of the argument:--
Queen v. Hicklin, 3 Q. B. L. R. 360; and *Empress of India v. Henderson*, 3 All. 837.

Cur. adv. vult.

19th October, 1904. WENDT, J.—

The appellant, who is the proprietor and publisher at Jaffna of a newspaper in the Tamil language called *Native Public Opinion*, has been convicted on the first count of the charge of having printed for sale an obscene pamphlet in the Tamil language styled "Secret Science," in breach of section 285 of the Penal Code; and on the second count of having in his possession the said pamphlet for the purpose of sale, in breach of section 286. The sentences on the two counts are, respectively, a fine of Rs. 100 or three months' rigorous imprisonment and a fine of Rs. 50 or two months' rigorous imprisonment. The Magistrate has ordered the destruction of all copies of the pamphlet produced in Court or to be found in the possession of accused.

The only question argued in appeal was whether the pamphlet was obscene, and to the consideration of that question I have devoted a great deal of anxious care. The book professes to be a compilation from a number of other works, and in the Court below several books published in England, in America, and in India were produced with the object of showing that the appellant's pamphlet contained nothing more objectionable than appeared in those books, which, it was said, had never been made the subject of prosecution. But the fact that the publishers of these other works were not proceeded against does not prove that such works were not obscene. One knows the very real danger that exists, in England at all events, of giving to a pernicious book, by making it the subject of such a charge, a very much wider advertisement than it would otherwise receive, and so rendering the evil more widespread by the very endeavour to suppress it. It might perhaps have assisted the appellant if he had produced some publication similar to the one in question, which had been judicially declared, to be unobjectionable on the score of obscenity; but he has not. Without that assistance we have to determine whether this book was obnoxious to sections 285 and 286 of the Penal Code.

Before proceeding further I may say that the appellant did in fact sell the pamphlet to the public in general, and that the price was only 25 cents. He also advertised it for sale in his newspaper. The preface describes it as intended to be a "guide to youths and these who have embraced the married state."

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What then is an "obscene" book? "I think," said Cockburn, C.J., in *Queen v. Hicklin*, L. R. 3, Q. B. 371, "the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall." The Police Magistrate, quoting these words, is decidedly of opinion that the book in question has that tendency, and he is further of opinion, in the words of the same learned Judge, that it "would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character." Whether the publication in question is or is not obscene, is a question of fact upon which due weight must be given to the Magistrate's opinion.

The character and scope of the book may be judged from the following titles of the fifteen heads into which its subject is divided, viz., (1) The Mystery of Generation, (2) The Male Organs, (3) The Female Organs, (4) Menstruation, (5) Impregnation, (6) Development of Fœtus, (7) The Enjoyment of Sexual Intercourse, (8) The Times of Sexual Intercourse, (9) Limits to Sexual Intercourse, (10) Masterbation, (11) Lustful Thoughts, (12) Emission, (13) Capacity for Sexual Intercourse, (14) Augmentation of Semen, (15) Venereal Diseases. I have read carefully through the work, and have arrived at the decided conclusion that as a book sold to the public at large, at a small price, its contents are clearly calculated to deprave and corrupt those whose minds are open to such immoral influences. It is impossible to deny that the writer enters into a wealth of detail which cannot but prove pernicious, even granting the propriety of disseminating knowledge on the subject generally. The ostensible object of preventing abuse of the sexual organs could quite as well have been served without the prurient particulars to be found in various parts of the book. I may refer, as examples, to the following pages of the translation: p. 21, pp. 25—29, p. 31, pp. 38—42, p. 47, p. 59.

For the reasons I have given I think the Magistrate was right and that the conviction should be affirmed.

