1905

EMPEROR v. DOST MUHAMMAD.

but the question of title itself. This he ought not to have done. I accordingly think that the application should be allowed, and I allow the same accordingly, and set aside the two orders referred to above.

1905
July 8.

Before Mr. Justice Banerji.

EMPEROR *v.* HARI SINGH.*

Act No. XLV of 1860 (*Indian Penal Code*), *section* 292—*Distributing obscene pamphlet—Definition—Intention.*

The test of obscenity, with reference to a charge of distributing obscene literature, is whether the tendency of the matter is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress. *Empress* v. *Indarman* (1), *Queen-Empress* v. *Parashram Yeshvant* (2) and *The Queen* v. *Hicklin* (3) referred to.

The question whether a publication is or is not obscene is a question of fact.

If a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. *Reg.* v. *Gathercole* (4) and *The King* v. *Dixon* (5) referred to.

THE facts of this case are as follows :—

One Hari Singh was convicted by the District Magistrate of Agra under section 292 of the Indian Penal Code for circulating a certain obscene pamphlet, or rather broadside, styled "Itr Korani" or "Essence of the Koran." The pamphlet complained of contained, amongst other matters, a series of quotations from the Koran with the author's comments thereon. There were other passages of a more or less objectionable nature, but that more particularly forming the basis of the charge consisted of the quotation of a part of a passage from the Koran relating to the Virgin Mary. The true sense of this passage being in the first place perverted by the incompleteness of the quotation, comments were added which amounted to an attack in a very offensive form upon the doctrine of the Immaculate

* Criminal Revision No. 107 of 1905.

(1) (1881) I. L. R., 3 All., 837.
(2) (1895) I. L. R., 20 Bom., 193.
(3) (1868) L. R., 3 Q. B., 360.
(4) (1838) 2 Lewin, C. C., 237.
(5) (1814) 3 M. and S., 11.

Conception, the language employed being not such as might be used in a *bonâ fide* controversial treatise, but such as would be found only amongst uneducated persons of a decidedly low class. The conviction having been sustained in appeal by the Sessions Judge of Agra, Hari Singh applied in revision to the High Court upon the main ground that the pamphlet in question was not an obscene publication within the meaning of the law.

Sundar Lal (with whom were *Sorabji*, *Satya Chandra Mukerji* and *Lakshmi Narain*) submitted that the pamphlet was no more than an ordinary controversial work. The quotation from the Koran was a correct translation into Urdu of a passage actually to be found in the Koran. As to the comments, though, no doubt, they were not couched in very refined language, still the language which was used was employed only for the purpose of rendering the author's views more intelligible to the class of people, the not very well educated general public, which he wished to reach. The learned advocate relied mainly on the interpretation of the word "obscene" adopted in the case of *The Queen* v. *Hicklin* (3) and contended that the publication which was the basis of the present conviction did not fall within the scope of this, the leading case on the subject.

The Officiating Government Advocate (*Wallach*), in support of the conviction, argued in the first place that the question of whether the particular publication was or was not obscene was a question of fact, and, therefore, the matter being now before the Court in revision, the Court should not, according to the usual practice, disturb a concurrent finding by the two lower Courts. In the next place the publication was undoubtedly in an obscene publication, and for this he relied upon the ruling of the North-Western Provinces High Court in *Empress* v. *Indarman* (1) and of the Bombay High Court in *Queen-Empress* v. *Parashram Yeshvant* (2). Reference was also made to Webster's dictionary, and it was submitted that there was no reason for supposing that the framers of the Indian Penal Code used the word "obscene" in any other than its usual every-day meaning.

BANERJI, J.—This is an application for revision of an order of the District Magistrate of Agra confirmed by the Sessions

(1) (1881) I. L. R., 3 All., 837. (2) (1895) I. L. R., 20 Bom., 193.

1905

EMPEROR v. HARI SINGH.

Judge of that district, convicting the petitioner of an offence punishable under section 292 of the Indian Penal Code and sentencing him to one month's rigorous imprisonment. It has been found that the petitioner, who is a member of the Arya Samaj, distributed a pamphlet called the "Itr Korani," or "Essence of the Koran," containing extracts from the Koran, with the author's own comments on some of the extracts. It is in respect of one of these that the pamphlet has been held to be obscene. The passage in question and the comments on it are set forth in the judgment of the learned Magistrate. It is the comment put in brackets, which, the prosecution alleges, and the Court has found, to be obscene. The first contention raised on behalf of the petitioner is that the learned Magistrate has placed a wrong construction on the words used. I have carefully examined the passage in question, and judging by the context, by what precedes and what is clearly suggested, I think the interpretation put on the words in question is perfectly correct. It is next contended that the words used are not obscene within the meaning of section 292 of the Indian Penal Code. It is urged that the intention probably was to ridicule the Koran and the Muhammadan religion, but the language used is not obscene within the meaning of the law. The question what constitutes obscenity under the Indian Penal Code was considered by this Court in *Empress* v. *Indarman* (1) and by the Bombay High Court in *Queen-Empress* v. *Parashram* (2). The test applied in those cases was that laid down by Cockburn, C. J., in *The Queen* v. *Hicklin* (3). His Lordship said:—"I think 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 kind may fall." If a publication is detrimental to public morals and, as observed by Cockburn, C. J., in the same case, "calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it might come," it would be an obscene publication which it was the intention of the law to suppress. The learned Magistrate

(1) (1881) I. L. R., 3 All., 837. (2) (1895) I. L. R., 20 Bom., 193.
(3) (1868) L. R., 3 Q. B., 360.

has held in this case that the publication in question is one of the nature mentioned above. The finding is one of fact, and is also in my opinion correct. If the effect of a publication is to corrupt the morals of those who may read it, the object with which it was published is immaterial. To quote the words of Blackburn, J., in the *The Queen* v. *Hicklin*, to which I have already referred:—"It can never be said that in order to enforce your views you may do something contrary to public morality: that you are at liberty to publish obscene publications and to distribute them among everyone—school-boys and every one else—when the inevitable effect must be to injure public morality, on the ground that you have an innocent object in view." Besides, every person must be presumed to intend that which must be the natural and necessary consequence of his act. As was observed by Alderson, B., in *Gathercole's* case (1):—"Every man, if he be a rational man, must be considered to intend that which must necessarily follow from what he does." And in *The King* v. *Dixon* (2) Lord Ellenborough, C. J., said that "it is a universal principle that when a man is charged with doing an act of which the probable consequence may be highly injurious the intention is an inference of law resulting from the doing of the act." Therefore, even if the object of publishing the pamphlet in question was innocent (which I cannot say it was in this case), the contention that no offence was committed is not in my judgment well founded. It is the effect of a publication which is to be taken into consideration. In this case it has been found that the pamphlet was distributed among students, whose morality it was likely to corrupt. Under these circumstances I think that the Magistrate was right in holding that the accused had committed an offence punishable under section 292 of the Indian Penal Code. Having regard to the nature of the publication, I do not think I should interfere with the sentence. I accordingly dismiss the application. The applicant must surrender to his bail and serve out the remainder of his sentence.

(1) (1838) 2 Lewin, C. C., 237. (2) (1814) 3 M. and S., 11.