

*Decision of the Indecent Publications Tribunal*

IN the matter of the Indecent Publications Act 1963 and in the matter of an application by the Secretary for Justice for the classification of *Another Country* by James Baldwin.

## DECISION OF THE TRIBUNAL

THE tribunal has been called upon to consider an application by the Secretary for Justice as to whether the book *Another Country* by James Baldwin published by Michael Joseph Ltd. is indecent or not, or alternatively for a decision as to its classification. The tribunal had the benefit of submissions on behalf of the Secretary for Justice by the Solicitor-General (Mr H. R. C. Wild, q.c.) of a general nature as to the scope and purpose of the Act (the Indecent Publications Act 1963), and by Mr Savage in reference to the particular book submitted; also by Mr E. D. Blundell who, with Mr L. M. Grieg, appeared for the publisher. In addition, an application by the New Zealand Library Association (an incorporated body) to be joined as a party, was allowed by the tribunal notwithstanding some doubt as to whether that association had established a right so to be joined. A representative of that association made submissions.

An application was made by Mr Savage before the hearing commenced for an interim order forbidding publication of the name of the book in any report of the proceedings before the tribunal. There is some doubt whether section 15 of the Act contemplates or authorises an order so limited, but in this particular case the name of the book to be considered had already been widely published and the tribunal considered it would be futile to make such an order which was accordingly refused.

No evidence was called on behalf of the Secretary for Justice, his counsel merely tendering the book and contending that of its nature it called for a critical examination and for consideration to be given as to whether it was not indecent; or alternatively whether its sale should not be restricted pursuant to section 10 (b) of the Statute.

On behalf of the publisher, evidence was submitted. Three witnesses were called—Dr Groves, Associate Professor of Social Anthropology at the University of Auckland; Professor Crawford, Associate Professor of English at the University of Auckland; and Mr Roy Parsons who conducts a retail bookselling business in Lambton Quay, Wellington.

The tribunal charged as it is with a responsible and difficult task has given careful consideration to the book itself (which has been read by all the members), to the evidence tendered, and to the submissions made. The tribunal, applying the terms of the Act, has no hesitation in deciding that the book is not indecent within the meaning of section 10 (a) of the Act. It is the view of the tribunal that the book is a serious, powerful, and effective portrayal of life in the negro community of New York; and indeed this was conceded by counsel for the Secretary for Justice. It deals in the main with the indignities to which the negro is there subject, sexual relations including homosexuality are treated in much detail, but in the opinion of the tribunal it is a sincere portrayal of life in a particular part of New York, depicting the loneliness, misery, and frustration suffered by the negro, and is moreover a portrayal prompted by humanitarian motives.

Mr Savage's contentions were broadly that the book offended against propriety or delicacy to such an extent as to render it indecent within the meaning of the Act, that it dealt with crime (i.e. homosexuality) in a manner injurious to the public good, and that it dealt with sex in a manner injurious to the public good. It was conceded that to a person of intelligence and of mature mind, capable of appreciating the message the book sought to convey, it might not be injurious, but that for juveniles it would tend to debase or corrupt and that at least there should be an order restricting the sale of it to adults. Mr Blundell, on behalf of the publisher, contended, and Dr Groves and Professor Crawford supported, that the work was highly moral, describing people living in the state and conditions depicted in the book, that it was true to life as regards the community it dealt with, that its presentation of race relations, the causes of social conflict, and the physical and social indignities to which the negro was submitted, were integral to the message the author was seeking to convey. Mr Savage emphasised that some of the descriptions of sexual episodes and some of the dialogue was expressed in foul language and there is substance in this contention. There are passages which, considered in isolation, might fairly be regarded as indecent, but in the mouths of the characters with whom the book deals, and in their context, these passages are not out of place. The obscenities in dialogue are not inappropriate in their setting. Words cannot be treated in isolation from the scenes depicted and to which they relate. If these descriptions and the language were toned down, the book would lose some of its force and impact. Our assessment of the book is that it is a novel purporting to depict the life of negroes and their association with whites in New York with considerable reference to sexual relations including homosexuality; that it is a sincere and honest effort to reveal those relations as they are with all the ugliness, all the squalor, and all the misery and immorality that is present, notwithstanding glimpses of something better. We do not think it is injurious to the public good that there should be such a presentation, shocking as some of the language is.

Under the Statute of 1963 though the test of obscenity laid down nearly a hundred years ago in *R. v Hicklin* (1868), L. R. 3, Q.B. 360, and often applied since, namely whether the matter the subject of investigation was such as to deprave or corrupt, is not altogether abrogated, "indecent" is defined in the Act as including the describing, depicting, expressing, or otherwise dealing with matters of sex, horror, crime, cruelty, or violence in a manner that is injurious to the public good. Moreover, the publication if it would be in the interests of art, literature, science, or learning and would be for the public good is not to be classified as indecent. The public good is therefore under the Act the dominant consideration. In our opinion the character of a book is not to be assessed from a consideration of particular passages or words, divorced from their context. The book must be considered as a whole. Moreover one must seek to ascertain what was the purpose of the author. The evidence tendered in this regard, though necessarily opinion evidence, was of competent witnesses and of value in arriving at the author's purpose. The Secretary for Justice merely submitted the book and tendered no evidence whereas there was on behalf of the publisher evidence by persons of some standing that the book was a true and sincere representation of life in a certain community as it appeared to the author, and that such a presentation was in the public interest.

Under the Statute the burden of deciding whether the book offends against the provisions of the Indecent Publications Act 1963 is placed upon the tribunal; it must be subjective, and must necessarily be coloured in some degree by the predispositions of the members. In so far as it was contended that the tribunal should attempt to assess the standard of the community in our view this would be an impossible task. We have the opinion expressed by persons whose opinion is entitled to respect that the book as a whole is a powerful and forceful presentation expressed sincerely and honestly. It is our view that any harmful effect which the offensive passages might have upon any who limit their reading to those is counterbalanced by the desirability of preserving intact a work in which the author presents his theme with great force and sincerity.

We are accordingly not prepared to condemn the book as indecent.

There is, however, the more difficult question whether, having regard to the character and contents of the book, there should be an order restricting its distribution if not to adults, at least to persons over say 17 years of age. When consideration is being given as to whether a publication has a tendency to deprave or corrupt necessarily one gives some thought to the effect it might have upon the minds of young people to whom it might be available. It is, we think, indisputable that some standard of intelligence and some maturity of mind are necessary to appreciate the message the author seeks to convey. To a young adolescent the book might appear as no more than a narrative of sexual conduct and homosexual episodes expressed in language crude and offensive, though it may be doubted if the words commonly regarded as obscene which are used by the author are not already familiar to many young people. It cannot, in our opinion, be held that for such persons a perusal of the book is in their best interests. It would be better if they did not read it, or were not permitted to read it. If the book were going on the market now for the first time, an order restraining its sale might well be justified, but in fact it has been on sale for many months—as many as 1,400 copies have been sold. The time for the making of such a restriction would be when it first went into the shops. It is now over late to impose such a restriction even though as a result of the proceedings before the tribunal sales may be stimulated. We think the time has passed for making an order restricting sales in terms of section 10(b) of the Statute. Moreover, the format and the style and get-up are not such as to attract youthful readers. The dust cover is simple and dignified, and that the book is sold at 26s. is a relevant consideration. Were it to be published in a cheap edition with a suggestive cover, our view might well be otherwise.

We are accordingly not disposed to make any order restricting distribution.

In conclusion, we desire to say that we have been greatly assisted in our difficult task by the manner in which counsel have presented their respective cases and by those who offered their testimony as to the character and value of the book.

Our decision is, therefore, that the book is not indecent within the Indecent Publications Act 1963. We classify it accordingly as not indecent under either sections (a) or (b) of section 10 of the Statute.

16 March 1964.

K. M. GRESSON, Chairman.

*Decision of the Indecent Publications Tribunal*

IN the matter of the Indecent Publications Act 1963 and in the matter of the book *Lolita* by Vladimir Nabokov.

## DECISION OF THE TRIBUNAL

THE book *Lolita* by Vladimir Nabokov was submitted to the tribunal for decision in terms of the Indecent Publications Act 1963. Two editions were submitted. One was a fourth impression, dated October 1960, of the first edition published in Great Britain by Weidenfeld and Nicolson. It was published in a hard cover with a plain jacket. The other was