

The six handsome and expensive volumes listed above belong to a luxury series published by Nagel of Switzerland and deal with the erotic elements in the art of Greece, Rome, Japan, India, Iran, and Peru. All of them are scholarly works of high quality in content and format, material for which has been supplied and compiled by reputable world authorities and institutions of learning. The text in each case is informative, in no way offensive, is entirely suitable to the dignity and artistry of the whole production, and is of undoubted value as a contribution to art and learning. The illustrations are always relevant to the study and are excellently reproduced, they of necessity include representation of the phallic motif, of various postures and practices of sexual intercourse, and of some activities which our society condemns as perversions, but which were prevalent and acceptable in other times and cultures. Some few are startling in their crudity and exaggeration; these are essential to the investigation and are far outweighed by the elegance and beauty of subject, line, colour, and composition in most of the pictures.

These books are of interest and benefit to all persons interested in art, archaeology, history, and religions; they contribute to knowledge in several fields; they are what they purport to be; only if grossly misused could they be harmful to any; their price will place some restriction on their circulation.

The Tribunal classifies this series as not indecent except in the hands of persons under 18 years, unless they be certified students of art, archaeology, or ancient history.

NATURIST OR NUDIST BOOKS AND MAGAZINES

One group of documents we are called upon to consider includes a series of *Health and Sunshine* special editions, published at Harrow by Sun and Health Ltd., as follows—

- i—*Naturist Youth at the French Coast, Montalivet*. Reprinted 1966.
- vii—*Koversada, a Declaration of Love for a Small Island*. 1966.
- viii—*Bright Sun, Savage Scenery*. 1966.
- x—*Sun, Sand, and Ocean at Montalivet*. 1966.
- xi—*Young and Joyful, La Chataigneraie*. 1967.
- xiii—*Homesick for the Mountains; Naturism in Switzerland and Austria*. 1967.

Other titles in this group are:

- Ortil's Naturist Youth in Greece*, No. 102. Hajo Ortil. *Corsican Naturism*, No. 103. Sun Seeker. 1967.
- Naturism in the Mediterranean*, No. 104. Ed., Frank Stephens. 1967.
- Naturism in Austria*, No. 105. A. Schultz-Naumburg. 1967.
- Sun Seeker*, No. 144. Ed., Frank Stephens. 1967.

We place in a second group:

- What is a Woman?*, by William M. Graham. Elysium Inc., Los Angeles. 1966.
- Schonheit Im Bild*. Band I—Dr Werner Loges; Band II—A. Baege; Band III—Andre de Dienes. ("Beauty and Nature", Vol. I, II, III.) Ed., Fankhauser. Thielle, Switzerland.

and in a third group:

- Nudist Nudes*, by Ed. Lange. Elysium Inc., Los Angeles. 1965. (Repr. of first edition, 1964.)
- The Shameless Nude*. Introduction by Ed. Lange. Elysium Inc., Los Angeles. 1965. (Repr. of first edition, 1963.)
- Sun-Warmed Nudes*, by Andre de Dienes. Elysium Inc., Los Angeles. Lyle Stuart Inc., New York. 1965.

One thing is common to all these journals: they are composed of, or primarily feature, photographs of the nude form; entirely or predominantly of the nude female form.

We were addressed at length by Mr Savage, Crown Counsel, and by Mr Campbell, the managing director of the Waverley Publishing Co. Ltd. Mr Savage called two witnesses and Mr Campbell put in numerous photostatic exhibits.

At an early stage an interim order was made prohibiting publication of the names of parties or the titles of the publications.

Mr Savage first called Mr Cousins, for the last 16 years president of New Zealand Sunbathing Inc. Mr Cousins gave evidence that certain of the journals were acceptable within his movement, but that others featured photographs too posed to be regarded by his members as bona fide from the point of view of naturism.

The Crown's next witness was Senior Sergeant Lark, of the New Zealand Police, who said that "girlie" magazines were part of the stock-in-trade of the pervert bent on seducing boys or younger men. He was not asked to give specific titles, but indicated that the journals were some which clearly indicated genital areas.

We have given careful attention to this evidence and have considered the argument put forward: we have perused the photostats and journals presented to us.

We take notice that there is in the community widespread scepticism, which we share, as to how far printed matter conduces to the commission of offences against the law. Subsection (1) (a) of section 11 requires us, in determining indecency, to take into account the likelihood of corruption; but in the case of a document which is not otherwise excep-

tionable this falls short of a direction that we should assume it to be inherently indecent because it may be used in a particular way. Nude photographs may no doubt be used in an attempt to corrupt young people; but so may old masters, or pictures of famous statuary, or even holy writ. We question whether certain of the photographs which have come under our notice would provide the would-be seducer with very much assistance. It is the spotlighting of the unfamiliar nude form that gives reproductions of photographs any special attraction they may have for the curious. If pleasant and unretouched nude pictures were as common in the community as it appears they are in the nudist clubs, then it is likely that their production would be greeted with no more unseemly excitement than it is there.

We are inclined to deprecate the practice of painting out public areas in health or naturist magazines, and we do not believe the Act requires that young people should be kept in ignorance of the appearance of the adult form.

We do not agree with the suggestion that was made to us that members of naturist clubs should form a special class of persons privileged to see publications not available to other people, nor with another suggestion that practising nudists (or naturists), whether in clubs or not, should form such a class.

We are of opinion that natural and straightforward nude photographs or collections of them in reproduction constitute a first category of publications and we regard them as unexceptionable.

We consider that other pictures or collections may fall into a second category, in which nature combines with art to produce pictures which are not unacceptable; perhaps a little more posed and with greater emphasis on the beauty of the nude human body, but in no way unpleasant or exaggerated, and without undue emphasis on genitalia or reproduction of detail. We consider that in absolute terms publications in this class could do little harm; but, taking into account, as we must, the situation in the community, we can only take what steps we may to restrict the flood of borderline publications which we believe would follow too great relaxation. To allow unrestricted entry to any great number of journals in this class would, from sheer over emphasis, be contrary to the public interest. A classification which will operate as a restriction on display will best give effect to the intention of the Act as far as publications of this kind are concerned.

There is a third category of photographs, often very skilfully produced by celebrated photographers, which appear to be deliberately unnatural or artificial, and occasionally ugly, grotesque, or contrived. These we believe to be indecent.

Because Counsel for the Crown has at this hearing spoken at some length on the process by which, in his view, we should arrive at our decision, it is proper that we should address ourselves to this point; what we have to say is of general application and may be taken to govern all the conclusions at which we arrive.

Mr Savage contended that the question of indecency is first to be determined in the light of the ordinary dictionary definition of the word; but then in terms of the enlarged definition of section 2, which extends the meaning to include "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"; but with the proviso that the determination was to be made by an objective assessment of the standard of the community.

As to the ordinary dictionary meaning of the word "indecent", counsel claimed that the word means unacceptable by the current standards of the community.

We have consulted dictionaries. The definitions given in the *Oxford English Dictionary* are of considerable authority and, in the case of this word, are similar to the definitions in other dictionaries. Of the three meanings given we think the third is the most apposite:

1. Unbecoming, highly unsuitable or inappropriate; contrary to the fitness of things; in extremely bad taste, unseemly.
2. Uncomely, inelegant in form (obs.).
3. Offending against the recognised standards of propriety and delicacy; highly indelicate, immodest; suggesting or tending to obscenity.

We read these definitions in the light of the derivation of the word decent, which means what is fitting—indecent means by derivation what is not fitting.

Counsel has suggested that our function is to assess and apply the standards of the community, as far as we can objectively do so, and has added that this may be an impossible task.

Despite the misgivings expressed by Gresson P. in the *Lolita* case (1961 N.Z.L.R. (C.A.) 542) as to the difficulty of assessing contemporary community standards, we feel that we are bound by the decision of the Full Court in *Robson v. Hicks Smith and Sons Ltd.* (1965 N.Z.L.R. 1113) to do our best in this regard. We have regard to the words of Woodhouse J., at p. 1124, in which he says, after discussing section 11:

"For these reasons, in order to ascertain the standard against which any true assessment can be made of some given material, I think it must be relevant to look to see what is currently acceptable in the community and what