

DECISION OF THE TRIBUNAL

THESE collections of limericks and anecdotes are largely puerile and harmless and although the chestnut tree has been well shaken to assemble them they would, for the most part, pass muster in the smoking room. There is, however, a large enough quantum in each of material which we do not believe to be socially acceptable to lead us to declare the books to be indecent.

In this decision we follow the sense of our decision on *Why was he Born so Beautiful and Other Rugby Songs*, dated 15 July 1968, gazetted 25 July 1968, No. 46, p. 1254, subsequently numbered 75, where we said "The question for the Tribunal is not whether footballers should amuse themselves by bawling these songs off the field, but whether their text should be given a wider circulation in what may be called the decent licence of print; and the Tribunal decides that it should not". Similarly with these paperbacks we do not consider it to be in the public interest to extend the currency of the more objectionable material included.

The Tribunal classifies them as indecent.

R. S. V. SIMPSON, Chairman.

24 March 1971.

No. 265-280

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 decisions in respect of the magazines *Figure Photography Quarterly* 1968, Vol. 55, *Photographs the Figure* No. 1, *The Queens from King* No. 1, *Yearbook of Queens* Vol. 817, *Dapper* Vol. 5, No. 3, *Swank* Vol. 16, No. 8, *Flirt 'n Skirt Annual* No. 2, *Flirt* No. 18, *Girlie Fun* No. 13, *Skirt* No. 13, *My Love Story* No. 8, 9, and 11, and in the matter of an application by the Comptroller of Customs for decisions in respect of the magazines *Nude Love in Paradise*, *Nude Love for Two*, *Skirt* No. 22.

We are required to classify under the Act the above magazines which we have listed in four groups:

- Group (a) *Figure Photography Quarterly* 1968, Vol. 55.
Photographs the Figure No. 1.
- Group (b) *The Queens from King* No. 1.
Yearbook of Queens Vol. 817.
Dapper Vol. 5, No. 3.
Nude Love in Paradise.
Nude Love for Two.
- Group (c) *Swank* Vol. 16, No. 8.
Flirt 'n Skirt Annual No. 2.
Flirt No. 18.
Girlie Fun No. 13.
Skirt No. 13.
Skirt No. 22.
- Group (d) *My Love Story* No. 8, 9, and 11.

There was no appearance by either applicant or by any of the publishers or their agents. Accordingly no submissions were made.

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THE magazines listed in the first three groups are either of the "girlie" or of the nudist type, comprising in the main nude or semi-nude illustrations of little artistic merit, but not all of them intended to be provocative. The illustrations are, in some cases, interspersed with short features and stories, mostly slender in content and occasionally frankly prurient, but sometimes more generally acceptable in tone and purpose.

The Tribunal has, on a number of occasions, adjudicated on similar publications, particularly in our decisions of 15 July 1968, commonly called the Waverley decisions and now numbered 93-103. These were published in the *New Zealand Gazette* of 25 July 1968. They classified publications of these types into three categories according to certain criteria. These criteria were also applied in Classifications No. 157 and 158 of 12 September 1969. We now apply these criteria to the publications before us, and assign classifications accordingly.

We classify the magazines listed in Group (a) above as falling within the first category and therefore not indecent. In respect of these two publications we repeat what the Tribunal said in the earlier judgment referred to, that we do not believe the Act requires that young people should be kept in ignorance of the adult form.

The magazines listed in Group (b) above we classify in the second category, and we declare them to be indecent in the hands of persons under 18 years of age. We consider that in the hands of mature persons publications of this kind are generally not unacceptable, but some restriction on their display will best give effect to the intention of the Act.

The magazines listed in Group (c) we place in the third category and we classify them as indecent.

Group (d) comprises three magazines of a different type. They are published for the stories they contain and the few illustrations of the text are generally quite unexceptionable. The stories are of no literary merit and are, in the main, flimsily contrived accounts of successions of sexual experiences. We do not consider them likely to corrupt mature persons but the apparent intention of the producers to present sex as something to be taken neither seriously nor naturally does appear to bring the magazines within the scope of the Act. It can scarcely be in the public interest that they should be published to impressionable young people.

The Tribunal classifies them as indecent in the hands of persons under 18 years of age.

R. S. V. SIMPSON, Chairman.

24 March 1971.

No. 281

Decision of the Indecent Publications Tribunal

IN the matter of the Indecent Publications Act 1963, and in the matter of an application by Calder and Boyars Ltd., London, by their duly authorised agents Swan, Davies, McKay and Co., for a decision in respect of the book *Last Exit to Brooklyn* by Hubert-Selby Jr. Published by Calder and Boyars Ltd. Distributed by Corgi Books. Paperback price \$1.70.

Mr Heron appeared on behalf of the publishers, Calder and Boyars Ltd., of London.

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Last Exit to Brooklyn has already been considered by the Tribunal, in a hard-covered edition. On 1 November 1967 that edition was held to be indecent except in the hands of adults engaged in work or research in sociological and related fields. This classification, subsequently numbered 52, was gazetted on 9 November 1967, No. 7, p. 1938. The present application is in respect of a paperback edition emanating from the same publisher, Calder and Boyars Ltd., and described as the "Post-trial edition, complete and unexpurgated". There is an introduction by Anthony Burgess detailing the history of the original edition in the English Courts.

The book now before us was submitted by Messrs Swan, Davies, McKay and Co. on behalf of the publishers; Mr R. A. Heron appeared and made submissions in support of the application.

Mr Heron invited the Tribunal to take into account the passage of time since the decision on the hard-cover edition, and to consider whether public standards might not have changed sufficiently for a less restrictive classification to be appropriate in this case. He directed our attention also to the circumstances of the prosecution of the publishers of the book in England.

Under the relevant legislation it was not open to the English Court to apply a restrictive classification of the kind contemplated under the *in rem* procedure provided by our Indecent Publications Act 1963. In England the proceedings were criminal proceedings under section 2 of the Obscene Publications Act 1959. Section 2 is the section under which defendants may claim a jury trial, and it was by a jury that these defendants were found guilty. The decision, however, was reversed by the Court of Criminal Appeal—not on grounds of being wrong in substance, but because of inadequacies in the trial judge's summing-up and direction to the jury. In the event, as Mr Heron very fairly pointed out, the book has been neither condemned nor exonerated by the English Courts, and the decision is of little persuasive force in New Zealand.

We are, however, inclined to accept Mr Heron's contention that in terms of our Act and at the present time the book, even in paperback form, should not be classified as restrictively as we classified it in 1967. At that time the Tribunal said:

Last Exit to Brooklyn describes life in a district of New York where an underprivileged and frustrated population is reduced to the extremes of lawlessness and vice. The dominant effect of the book may well be one of revulsion which could nevertheless evoke salutary compassion and concern; it has the stamp of honesty and anger; such a document should not be ignored.

Its proper use however is not as casual reading for the general public because it deals almost exclusively and in sickening detail with the grossest forms of evil. We therefore classify this book as indecent except in the hands of adults engaged in work or research in sociological and related fields.