

cannot be described as picture story books the provisions of section 11 (3) do not apply to them. If they could be, or if a collection of the *Wicked Wanda* or *Anny Fanny* cartoons were published in their own right, there is little doubt the Tribunal would declare the cartoons indecent.

Conversely, if the *Fabulous Furry Freak Brothers* cartoons had appeared in a context other than that of a picture story book, the provisions of section 11 (3) would not then need to have been considered.

Having made those general observations, the Tribunal now wishes to turn to consider the three aspects of these comics, which Mr LeLoir submitted could be detrimental to young readers, and therefore justified the Tribunal in classifying the publications as indecent.

Acceptance of drug taking as a normal way of life: The use of narcotics (mainly marijuana) by the primary characters in the cartoons is a predominant feature of each of the publications. This aspect of the publications led Mr LeLoir to submit that "throughout they all give an acceptance of drug taking as a normal way of life . . .". Although he did not explicitly say so, we take it that Mr LeLoir was submitting the publications were injurious to the public good because of the possibility of corruption of readers and/or the possibility of unlawful narcotics use being promoted or encouraged.

The possibility of corruption, or of effects injurious to the community could exist in the content of many works of fiction, because in all works of entertainment there is always the risk that some person will be harmfully influenced by what he has read or seen. One could not reasonably suggest that every work that could have harmful influences should be suppressed, else little would escape the censor's pen. The practical safeguard lies in assessing whether there is a real likelihood of corruption or injury to the community by persons being exposed to the material.

In this case we are satisfied that the likelihood of corruption is minimal, having regard to the fictional nature of the material and the fact that the author's aim appears to be to merely entertain the reader with humour and satire arising from the adventures of his characters.

Before we leave this aspect of the case we should deal with Mr LeLoir's submission that the present publications are similar to others considered by the Tribunal and classified as indecent in decisions 767-786 of 14 December 1973. The Tribunal has had the advantage of examining some of the publications concerned in that decision, and while they might be termed inferior in standard to the present publications, they are not entirely dissimilar. This may be seen by examining the following material extract from that decision.

Dopin Dan, Mothers Oats, Tales of Amorkins and Merton of the Movement are concerned mainly with sub-cultures, some of them associated with drugs. Sexual context is minimal and lacks the blatancy of other comics in this set. Indeed there is little which could be considered harmful to the more mature reader. However, the crudity of language along with one or two frames depicting or suggesting sexual activity and some frames depicting the administration of drug dosages could have detrimental effects on the young.

The Tribunal in that case held that the publications fell squarely within the provision of section 11 (3) and so they had to be declared indecent.

While cartoons and satirical material cannot be given carte blanche, we are not prepared to go as far, in relation to the present material as the Tribunal did in its earlier decision, in its reference to the effect of the use of narcotics by the characters in the cartoons.

It may well be that where a non-fiction magazine or book has as its dominant purpose the encouragement of unlawful narcotics use and is seriously capable of being injurious to the public good, the Tribunal will classify the material as indecent (see e.g. decision No. 951, 30 May 1980 and the other decisions cited therein).

Although satire and cartoon material is just as capable of promoting a viewpoint as is ordinary text, whether it does so is a question of fact. Further, insofar as genuine fiction and satire is concerned, leeway in the choice of subject-matter must be given to those who seek to entertain or amuse us, lest we decide too readily that a publication is merely a vehicle for the presentation of indecent material injurious to the public good.

For all the above reasons we reject Mr LeLoir's first submission.

Violence: We do not propose to deal at length with this submission. Although we accept that some of the cartoons feature incidents of violence, the publications as a whole are mild, so far as other comics are concerned, in their treatment of violence. We therefore are unable to accept Mr LeLoir's second submission.

Crude and offensive language: In two of the publications, namely *The Collected Adventures of the Fabulous Furry Freak Brothers* and *Further Adventures of those Fabulous Furry Freak Brothers*, four letter words are occasionally used. Mr LeLoir's submission on this point has caused the Tribunal some concern, because crude language is not normally a feature of a cartoon publication. However, the Tribunal, after giving careful consideration to the use of the language, is not satisfied from the sporadic references in the publications, that the effect will be injurious to the public good, even having regard to the provisions of section 11 (3). In coming to this conclusion the Tribunal has assessed the material with its collective experience and its view of current standards in the community.

For all the above reasons we are unable to agree with Mr LeLoir's third submission. We have discussed the above issues having regard to the provisions of section 11 (3). Even if those provisions did apply, we are of the view that each of the publications herein for the views already expressed are not indecent. That decision is a fortiori in the light of our finding that the provisions of section 11 (3) do not apply to the publications.

For all the above reasons we classify each of the publications herein as not indecent.

Dated at Wellington this 18th day of December 1980.

Judge W. M. WILLIS, Chairman.

Decision No. 971

Reference No. Ind. 14/80

Decision of the Indecent Publications Tribunal

IN the matter of the Indecent Publications Act 1963, and in matter of an application by the Comptroller of Customs in respect of the following publication: *Lady Chatterley's Second Lover* published by Monar Books Incorporated, New York, U.S.A.

BEFORE THE INDECENT PUBLICATIONS TRIBUNAL

Judge W. M. Willis (chairman),
Mesdames L. Edmond, H. B. Dick, L. P. Nikera, and
Mr J. V. B. McLinden.

Hearing: 22 July 1980.

Appearances: Mr P. E. F. M. Leloir for the Comptroller of Customs. Written submissions by D. W. Shirley on behalf of Shop 6.

Decision

This publication was a sample copy imported and seized at Auckland earlier this year.

As the importer has disputed the forfeiture the Customs Department has referred the publication to this Tribunal for classification prior to the commencement of condemnation proceedings pursuant to the Customs Act 1966.

Lady Chatterley's Second Lover is a paper back book 221 pages long, written by Ted Mark. The publication is really a collection of 18 short stories, one of which is used as the title for the publication.

Mr Leloir on behalf of the Comptroller of Customs submitted that the major purpose of the book was to arouse prurient interest since the base for nearly all the stories was sex and in many cases sexual episodes were explicit with crude and offensive language. He submitted further that there was insufficient non-sexual matter to redeem the book and that similar publications were classified as indecent by the Tribunal in decision No. 934, on 21 December 1979.

On the other hand, Mr Shirley stated in his written submission that although the stories were about sex, it was sex which was treated in an adult rather than merely a prurient manner. He submitted that the stories had real character and were not just a succession of sexual escapades in order to promote indecency for the sake of indecency.

The Tribunal has paid careful attention to the submissions made by both the Comptroller for Customs and by Mr Shirley. We agree with Mr Leloir that the main base for nearly all the stories is sex. However, the degree of sexual content and explicitness varies considerably from story to story. Stories such as *The Three Bears, Lady Chatterley's Second Lover, and Sharpest Blade in the West* have no literary merit and could not justify Mr Shirley's submission that "the characters themselves are real people who do and say real things and are not merely puppets on which to hang sex for the sake of sex". If a significant number of the stories had been of the nature of the three mentioned above, we would have had no hesitation in accepting Mr Leloir's submissions.