

## CRIMINAL LIABILITY WHERE THERE IS NO CRIMINAL INTENTION.

them as they consider necessary to be preserved as evidence in some future proceedings, to be destroyed at the expiration of the time thereafter allowed for lodging an appeal.

It appeared that one Henry Scott, who was a tradesman, living at Wolverhampton was a member of a body called "The Protestant Electoral Union," the object of which was "to protest against those teachings and practices of the Romish and Puseyite systems which are in England immoral and blasphemous: to maintain the Protestantism of the Bible and the liberty of England, and to promote the return to Parliament of men who will assist them in those objects, and particularly to expose and defeat the deep-laid machinations of the Jesuits and resist grants of money for Romish purposes." In furtherance of the objects of this body, Mr. Scott had made considerable purchases of a pamphlet called "The Confessional Unmasked," which purported to show the supposed depravity of the Romish priesthood, and the iniquity of the confessional; and it did so by extracts from the works of certain Romish theologians who had written on the practice of auricular confession, in which matters of a most obscene and disgusting character were discussed as proper subject for inquiry at the confessional. Mr. Scott had, to promote the objects of his society of bringing down condemnation of the Roman Catholic confessional, sold publicly, at prime cost, a vast number of these pamphlets, when proceedings were taken against him under the section of the 20 & 21 Vic., c. 83, above quoted, and a great quantity of unsold pamphlets were seized at his house, and were in due course ordered by the justices to be destroyed. Having appealed against this decision, the case came on before the Recorder of Wolverhampton, who found "that the appellant did not keep or sell the said pamphlet for the sake of gain, nor to prejudice good morals, though the indiscriminate sale and circulation of them is calculated to have that effect; but he sold the pamphlets as a member of the said Protestant Electoral Union to promote the objects of that society, and to expose what he deems to be the errors of the Church of Rome, and particularly the immorality of the confessional." The learned recorder further said that he was of opinion that under the circumstances the sale and distribution of the pamphlets would not be a misdemeanor, nor be proper to be prosecuted as such, and accordingly that the possession of them by the appellant was not unlawful within the meaning of the statute; and he therefore quashed the order of justices and directed the pamphlets seized to be returned to the appellant, but granted a case for the opinion of the Court of Queen's Bench upon the subject.

It will be observed that the right of the justices to seize the books was dependent upon the fact that they were of such a character and description that the publication of them would be a misdemeanor and proper to be prosecuted

as such. Upon the case being argued in the court above, the judges differed from the recorder in his opinion upon the subject, holding that the publication of the pamphlets would be a misdemeanor, and proper to be prosecuted as such. In giving his judgment, Cockburn, C. J., says: "He (the recorder) reversed their decision upon the ground that, although this work was an obscene publication, and although its tendency upon the public mind was that suggested upon the part of the information, yet that the immediate intention of the appellant was not so as to affect the public mind, but to expose the practices and errors of the confessional system of the Roman Catholic Church. Now, we must take it upon this finding of the learned recorder that such was the motive of this publication—that its intention was honestly and *bona fide* to expose the errors and practices of the Roman Catholic Church in the matter of confession. Upon that ground the learned recorder thought that an indictment could not have been sustained inasmuch as to the maintenance of an indictment it would have been necessary that the *intention* should be alleged, namely that of corrupting the public mind by the obscene matter in question. In that respect I differ from him. I think that, if there be an infraction of the law, and an intention to break the law, the criminal character of such publication is not affected or qualified by there being some ulterior object which is the immediate and primary object of the parties in view, of a different and honest character. . . . I take it, therefore, that, apart from the ulterior object which the publisher of this work had in view, that the work itself is in every sense of the word an obscene publication, and that consequently, as the law of England does not allow of any obscene publication, such publication is indictable. We have it, therefore, that the publication itself is a breach of the law. But then it is said, 'Yes, but his purpose was not to deprave the public mind; his purpose was to expose the errors of the Roman Catholic religion, especially in the matter of the confessional.' Be it so; but then the question presents itself in this simple form. May you commit an offence against the law, in order that thereby you may effect some ulterior object which you have in view, which may be an honest and even a laudable one? My answer is emphatically, 'No.' . . . I take it that where a man publishes a work manifestly obscene, he must be taken to have had the intention which is implied from the act, and that as soon as you have an illegal act thus established *quoad* the intention and *quoad* the act itself, it does not lie in the mouth of a man who does it to say, 'Well, I was breaking the law, but I was breaking it for some wholesome and salutary purpose.' The law does not allow that. You must abide by the law, and if you accomplish your object you must do it in a legal manner or let it alone; you must not do it in a manner which is illegal." Other learned judges expressed similar views.