

THE  
ONTARIO WEEKLY REPORTER

VOL. 24

TORONTO, APRIL 10, 1913.

No. 6

YORK COUNTY COURT.

REX v. ST. CLAIR.

*Criminal Law — Circulating Obscene Literature — Criminal Code, sec. 207—8 and 9 Edw. VII. c. 9—Intention Well-meaning—Public Good not Served—Onus on Accused—Excess—Lawful Justification or Excuse—Conviction.*

Prosecution for the circulation of certain obscene circulars tending to corrupt morals. The circular purported to report and describe a performance given at a certain theatre and the alleged object of its publication was to awaken public sentiment against the alleged immoral performances at the theatre in question. The pamphlet in question was sent chiefly to clergymen and others interested in moral reform.

DENTON, Co.J., *held*, that even if the description of the performance was an accurate one the pamphlet in question was obscene. *R. v. Hicklin*, L. R. 3 Q. B. 371; *Steele v. Brennan*, L. R. 7 C. P. 261, and *R. v. Carlyle*, 3 B. & A. 167, referred to.

That the onus which was on the accused to shew that the public good had been served by the publication had not been discharged and that in any case there was an excess beyond what the public good required.

Accused convicted under sec. 207 of Criminal Code as amended by 8 and 9 Edw. VII. ch. 9.

Prosecution under sec. 207(1a) of the Criminal Code, as amended by 8 and 9 Edw. VII., ch. 9, for "knowingly and without lawful justification or excuse, selling, distributing or circulating or having in defendant's possession for sale, distribution or circulation, certain obscene circulars tending to corrupt morals."

R. H. Greer for the Crown.

W. E. Raney, K.C., for the defendant.

HIS HONOUR JUDGE DENTON:—I do not think there is anything to be gained by reserving judgment in this case because I have made up my mind as to what the decision must of necessity be. That the defendant circulated or dis-