

sort of right to offend another's sense of decency and clean mind by placing in his hands, or bringing into his home, such a publication.

We cannot, however, re-try the case here; we can consider only such questions of law as have been reserved by the trial Judge.

It is a question of law, or at least a question for the Court as distinguished from a question for the jury, whether (1) the occasion of the publication was such as might be for the public good; and, if it might and were, then (2) whether there was evidence of excess—publication of obscenity beyond what the public good required; the other questions involved being questions for the jury, or for the Judge exercising the functions of a jury, only.

The onus of proving that the public good was served by the publication of this obscene pamphlet was upon the accused; he must excuse his obscene publication.

His one excuse is, that the interests of morality required the suppression of the play, or performance, the worst features of which were condensed and accentuated in the publication.

Is that really any excuse?

It is said that by that means public feeling might be aroused and such performance stopped. But why send the condensed prurient matter broadcast in a thousand pamphlets, with all the possibilities of leakage beyond those to whom they were to be sent, why indeed put such "unprintable" filth in enduring print at all; and, emphatically, why when the law provides simple and direct methods of accomplishing the desired end? Why not prosecute the offenders, and give them a chance to defend themselves? Why not apply to the proper persons to withdraw the license of the offending house? Why not confer with the Chief of Police, or, if need be, with the Police Commissioners, or even with higher officials—in all cases without contaminating pen or tongue with the condensed disgusting details? To say that that would be ineffectual, I cannot believe to be true. It would be neither fair nor truthful to say it without having first tried and failed; and that was not done. Indeed, as one of the Judges here pointed out, the pamphlet itself bears evidence upon its face to the contrary; no complaint of this nature is made in it; but, on the contrary, the only reference to any peace officer contained in it is of a distinctly complimentary character.

But, even if it could be that a thousand persons should be awakened to a knowledge of an obscene stage performance, surely there could be no need for disgusting details; the de-