

FIFTH DAY

mind! And what is that to a woman? What is it, really, to the man either! He becomes merely messy and doggy, even in his mind. It needs sheer sensuality even to purify and quicken the mind. Sheer fiery sensuality, not messiness.

"Ah, God, how rare a thing a man is! They are all dogs that trot and sniff and copulate. To have found a man who was not afraid and not ashamed! She looked at him now, sleeping so like a wild animal asleep, gone, gone in the remoteness of it. She nestled down, not to be away from him."

'I do not know, I do not suggest. There is more than one meaning which you can put to those two pages, if you want to take offence. Who knows what is the effect on the young man or woman reading those two pages? What is he or she going to think? Is it going to be a good influence, or can it only corrupt and deprave? What is the tendency of it? Where is the justification contained? Where again is the good that a book can do, any book which contains a passage such as that?

'Will you turn to page 217? We will read from the bottom of the page. "Fancy that we are here!" she said, looking down at him. He was lying watching her, stroking her breasts with his fingers, under the thin nightdress. When he was warm and smoothed out, he looked young and handsome. His eyes could look so warm. And she was fresh and young like a flower. 'I want to take this off!' she said, gathering the thin batiste nightdress and pulling it over her head. She sat there with bare shoulders and longish breasts faintly golden. He loved to make her breasts swing softly, like bells." I do not know, members of the Jury, but is this a passage which gives a theme? Why introduce a little striptease into it at all? What is the point of taking off the nightdress?

'What a passage!' said Mr Griffith-Jones after reading on. 'Is that the kind of thing that qualifies a book as great literature? You would have to go, would you not, some way in the Charing Cross Road, in the back streets of Paris, even Port Said, to find a description of sexual intercourse which is perhaps as lurid as that one. And yet one is told here, and told again by the reverend gentleman, Mr Tytler, "this book is a

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suitable subject for discussion in youth clubs". I don't know whether any of you have had any experience of youth clubs. Can you imagine the bawdiness of what would follow, however seriously the discussion might be conducted, a discussion of that passage and similar passages in this book, in any youth club?

'Members of the Jury, this book has been likened to *Antony and Cleopatra*. Is it really possible to compare the two? Is it possible to bracket them in the same way, as literature? Is it possible to compare the difference in the effect that the one will have and the other will have?

'Let all these witnesses hold their views, and hold them sincerely, as they no doubt do. It is not they who are deciding this case. Parliament has said that you, twelve men and women of the community, the ordinary community if you will forgive me for saying so, the ordinary run of life, must decide, just in the same way as twelve men and women decide all the cases in this Court - not the so-called experts, not the experts on anything. I ask you to bring to bear upon this matter your knowledge of the world and of the life which the average person leads. I respectfully submit to you that the effect upon that average person must be to deprave and corrupt, must be to lower the general standards of thought, conduct, and decency, and must be the very opposite to encouraging that restraint in sexual matters which is so all-important at the present time.

'I submit to you further that there is nothing in this document which is of such great value as literature, from an educational point of view, or from a sociological point of view, nothing in this book of such value, as can justify its publication for the public good.'

Having spoken his final words with studied emphasis, Mr Griffith-Jones sat down; and everyone in Court turned to Mr Justice Byrne, who was assembling his notes for the final act in a drama that was nearing the end of its fifth day.

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'Members of the Jury,' his Lordship began, 'you have listened with the greatest care and attention to this case, and you have



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read this book. Now the time is rapidly approaching when you will have to return a verdict. It is just as well, in case you have not served on a jury before, that I should say a few words to you with regard to the function of the Judge and the function of the Jury. As Mr Gardiner told you, quite rightly, questions of law are my province. You have to accept the law from me as what I tell you it is, having the consolation of knowing that if my law is wrong it can be corrected elsewhere.

‘Then you are the sole judges of the facts. They are nothing to do with me. They are your province, and your province alone. If during the course of the observations which I shall have to make to you I express any opinion, or I appear to express any opinion, you will pay not the slightest attention to it, unless it happens to coincide with your own opinion. You are the judges of fact. As we all know, in these days the world seems to be full of experts. There is not a subject you can think of where there is not to be found an expert who will be able, or says he will be able, to deal with the situation; but *our criminal law in this country is based upon the view that a jury takes of the facts and not upon the view that experts may have.*\*

‘There are two limbs to this case, and they cannot be dealt with both at once. They must be taken separately in order that you shall see what the position is so far as the law is concerned. Before I tell you anything about the law let me say this to you. This case is quite plainly, is it not, an important case? Every criminal case is important to the defendant who is charged with the commission of an offence. Here it is quite true that the dock is empty, that a company is charged, and it is a company, as you know, that bears the highest reputation and a company that has acted with the utmost propriety in regard to this matter.

\* In the event of a conviction and appeal, this would presumably have been pleaded as a misdirection. For if Parliament makes ‘scientific merits’ relevant, and provides for the calling of scientific experts, can a Judge properly tell a jury to ignore such evidence and form their own scientific views? If not, are literary merits subject to a different test?

#### THE JUDGE’S SUMMING-UP

‘You will recollect that publication has to be proved; the offence is *publishing* an obscene article. All that is meant by publishing for the purpose of this case is handing a copy of this book to somebody. It was arranged, agreed, that the company, rather than distribute copies of this book to some bookseller so that he could publish it and could be prosecuted, said: “No, we won’t allow anybody to take our place. We, the company, ourselves will publish it.” You will recollect that it was arranged that a police officer should go to their office and be handed a copy or copies of the book. As I say, the company have acted with great propriety. It is an important case from their point of view. Two of the directors who have given evidence have told you that they have for some time desired to publish this novel by Lawrence, but they felt, and incidentally you may think that it is not without significance, that they were unable to publish it until 1959 when the Statute was passed under which this Prosecution is taking place, which gave them as defendants the right to call evidence with regard to literary or other merits connected with the publication.

‘Now it is an important case from the point of view of the defendant company, but it is an equally important case from the point of view of the public which you represent. Because is it right or is it wrong to say that in these days our moral standards have reached a low ebb? And you, of course, will not exercise your minds about questions of taste or the functions of a censor, but you will decide whether it has been proved beyond reasonable doubt that this book is obscene. That is the first question.

‘How the Statute puts the matter is this: it provides that an article shall be deemed to be obscene if its effect is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read the matter contained in it. Of course, the first thing you would want to know is, what is meant by the words “to deprave and corrupt”, and you have had those words defined from dictionaries. One was the Oxford Dictionary, and I think it would be quite fair to put it in this way, that to deprave



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means to make morally bad, to pervert, to debase, or corrupt morally. The words "to corrupt" mean to render morally unsound or rotten, to destroy the moral purity or chastity of, to pervert or ruin a good quality, to debase, to defile. Those are the meanings of those two words. And you will observe that no *intent* to deprave or corrupt need be proved in order that this offence shall be committed. It is an objective test. Having read the book the question is, does it tend to deprave or corrupt?

'Now what are the relevant circumstances? Who are the people, having regard to the relevant circumstances, who are likely to read the book? Well, what we know about it is this, it was to be put, or is to be put, according to the verdict you give, upon the market at a price of 3s. 6d. a copy, which is by no means, you may think, an excessive price for the book. In these days when not only high wages but shall I say high pocket-money to younger members of the community are the order of the day, 3s. 6d., you might think, would be putting this book within the grasp of a vast mass of the population. You must bear that in mind in deciding whether there is a tendency to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read the matter contained in it.

'Well now, evidence has been given in this case by a number of witnesses called on behalf of the defendant company, and I am not prepared to say that some of the evidence that they gave was not relevant upon this first question that you have to decide, as to whether the book is obscene. But a good deal of the evidence that they gave was certainly not relevant to this issue of obscenity. The evidence that you have to consider with regard to whether this book is obscene, which is the first question you have to decide, is the evidence of the book itself.

'Now, how are you to do it? You must consider the book as a whole. You must not select a passage here and a passage there and say, for the sake of argument, "Well, we think *that* is obscene and we think *that* is obscene." You must take the book as a whole. Another thing you must not do is this: you

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must not regard yourselves as a board of censors with blue pencil in hand, saying to yourselves, "Well, I don't think it is very desirable that that piece should be put in and I think we will cut out that piece." You are not acting as a board of censors. You are deciding whether it has been proved that the offence of publishing an obscene publication has been committed.

'You will also bear in mind that it is not a question of taste. When Mr Gardiner opened this case on behalf of his clients before you read the book, you may remember that he said you would be shocked and that you might be disgusted when you read the book. Well now, of course, there is a considerable difference between that which shocks and disgusts and that which depraves and corrupts. Therefore the mere fact that you are shocked or disgusted, the mere fact that you hate the sight of the book when you have read it, does not solve the question as to whether you are satisfied beyond reasonable doubt that the tendency of the book is to deprave and corrupt. Many observations made by judges have been cited to you by learned Counsel. I have no doubt you will pay very great attention to them, but there is just one passage that I would like to draw your attention to simply for this reason, that it puts in words very much better than I could put it the view that I would like you to bear in mind in deciding this case. I refer to some observations by Mr Justice Devlin (as he then was) when he was engaged in trying a case\* similar to this, which in those days was called Criminal Libel. What he is reported as having said is this: "Then there is obscene libel; and just as loyalty is one of the things which is essential to the well-being of a nation, so some sense of morality is something that is essential to the well-being of a nation, and to the healthy life of the community; and, accordingly, anyone who seeks, by his writing, to corrupt that fundamental sense of morality is guilty of obscene libel." I would only venture to make this difference in the words that he used: where he says, "... and accordingly, anyone who seeks by his writing to corrupt", I would prefer to say,

\* *The Image and the Search.*



"... and accordingly, anyone who by his writing *tends* to corrupt that fundamental sense of morality is guilty of an obscene libel".

'And then he went on to say this. "Of course, there is a right to express oneself, either in pictures or in literature. People who hold strong political views are often anxious to say exactly what they think, irrespective of any restraint, and so too a creative writer or a creative artist, one can well understand, naturally desires complete freedom within which to express his talents or his genius. But he is a member of the community like any other member of the community. He is under the same obligation to other members of the community as any other is, not to do harm, either mentally or physically or spiritually, and if there is a conflict between an artist or writer in his desire for self-expression, and the sense that morality is fundamental to the well-being of the community, if there is such a conflict, then it is morality that must prevail."

'Well now, that is the duty that you have to perform. Having read that book, you must ask yourselves, as men and women of this world, not with prudish minds but with liberal minds, the question: is the tendency of that book to deprave and corrupt those who are likely to read it? Because, you know, once a book goes into circulation it does not spend its time in the rarefied atmosphere of some academic institution where the young mind will be perhaps directed to it and shown how to approach it and have indicated to it the real meaning of it, and so forth; it finds its way into the bookshops and on to bookstalls, at 3s. 6d. a time, into public libraries, where it is available for all and sundry to read. And you must ask yourselves, looking at that book, reading it dispassionately: are you satisfied beyond reasonable doubt that it has a tendency to deprave and corrupt?

'You have been told by some of the witnesses who gave evidence upon the other limbs of this case - with which I will deal in due course - you have been told by them all kinds of things about its meaning. Those witnesses, all of them, or nearly all of them, men or women of letters, some of them sociologists, some of them psychologists, came to tell you

about the ethics of the matter. They, it may be (for many of them have been students of this author for many years) are able to read into that book some message or some meaning that they decide the author is trying to convey, and nobody, of course, for one moment questions the honesty of their opinions. You have got to look at that book as a book that you yourselves might have bought for 3s. 6d. at a bookstall and read, and you must ask yourselves the question: does it tend to deprave and corrupt?

'Now, what is the story that the book tells? You are the judges of that. You have had all kinds of opinions expressed with regard to it. It has been said to be a moral tract. It has been said to be a virtuous and puritanical production, and it was said to be a book that Christians should read. You had all those expressions of opinion about it. But what do *you* think about it? Whether some of you have a great knowledge of Lawrence as an author, I know not; but what do *you* think of that book, reading it for yourselves? What is the story? Is it right to say that the story is the story of a woman who first of all, before she is married, has sexual intercourse and then, after marriage, when her husband has met with disaster in the war and has become confined to a wheelchair, paralysed from the waist downwards, after marriage, she, living with her husband in this dreary place of Wragby (I think it was called), commits adultery on two occasions with somebody called Michaelis while her husband is downstairs in the same house, and then proceeds to have adulterous intercourse with her husband's gamekeeper? And that is described - it is for you to say; if you do not agree with what I am saying now you will pay no attention to it - that is described in the most lurid way, and the whole sensuality and passion of the various pieces of sexual intercourse is fully and completely described.

'If you have any reasonable doubt as to whether it has been proved to your satisfaction that the tendency of the book is to deprave and corrupt morals, of course you will acquit, and that will be an end of this case. But, on the other hand, if with your knowledge of the world and with your knowledge



now of that book, having read it for yourselves, you are satisfied beyond reasonable doubt that that book has a tendency to deprave and corrupt those who might, in the circumstances, be expected to read it, you, of course, will not hesitate to say so.

'That really is the first limb of this case; and, as I said to you, before 1959, before the passing of the Obscene Publications Act of that year, the defendant company felt, although they wished to do so, that they could not publish that book because, prior to the passing of the Statute under which this charge is made, defendants were not allowed by law to call any evidence with regard to the literary or other merits of the book. Thus there was simply the book for the Jury to read, and it was for the Jury then to determine the question as to whether there was a tendency to deprave and corrupt the morals of persons who might read it and the morals, as the old law put it, "of persons whose minds might be affected by such matter" - or words to that effect.

'But Section 4 of the new Act - and it is only right that you should have this quite clearly before you - provides that a person shall not be convicted if it is proved that publication of the article in question is justified as being for the public good on the grounds that it is in the interests of science, literature, art, or learning, or other objects of general concern. By Sub-section (2) of the same Section it is provided "that the opinion of experts as to the literary, artistic, scientific, or other merits of an article may be admitted in any proceedings under this Act either to establish or to negative the said ground". It is by virtue of that Sub-section that the defendants have called this body of evidence before you.

'As I understand that Section, it was not the intention of Parliament to provide immunity to an author or publisher who published an obscene book *simply* because that work had literary or other merits. In my own view, and I am telling you this as a matter of law, the important words in that Section are the words that the publication "is justified as being for the public good"; and that being so I give you this direction as a matter of law. If you are not satisfied that the book is obscene,

of course, as I have told you, that is an end of the case; you acquit. But if, on the other hand, you are satisfied that the book is an obscene book, then you must go on to consider this further question, and I give you this direction with regard to it. The question is: have the defendants established the probability that the merits of the book as a novel are so high that they outbalance the obscenity, so that its publication is for the public good? In other words, in my view, it was not the intention of Parliament by that Section to say, "Well, if somebody who is a skilful author is prepared to write filth, and write it very well, he will escape conviction." What has to be established, that is to say the probability of the matter has to be established, is that the merits of the book are so high that they outbalance the obscenity so that its publication is for the public good.

'The burden of proof, as lawyers call it, is in this Section put upon the defendants. Whether the book is obscene or not - there the onus of proof is put upon the Prosecution. The Prosecution, as you know, have to prove "beyond reasonable doubt". If there is a reasonable doubt, the Jury acquit. In *this* Section the *defendants* had to prove these matters, and that means they had *not* got to prove beyond reasonable doubt; all they have to do is to satisfy you as to the probability of the matter which they are called upon to establish. Thus, if you come to the conclusion that this book is obscene, you must ask yourselves this further question. I will repeat it once again so that you shall have it in mind. Have the defendants established the probability that the merits of the book as a novel are so high that they outbalance the obscenity, so that its publication is for the public good?

'As I say, a vast number of witnesses have been called. It is conceded by the Prosecution that this is a book of some literary merit. You observed that many of the witnesses were in fact not cross-examined. Indeed, it would be very difficult for the Prosecution to adopt any other attitude, you may think, because, after all, the evidence - which is undisputed - is that D. H. Lawrence is one of the great authors of the twentieth century.' (It may be observed here, with respect, that the



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Prosecution had frequently found it possible to cross-examine in a way that presented Lawrence as a semi-literate pornographer - 'Is *that* good writing?' and so on.) 'Although many of the witnesses said that this was by no means his best book, nevertheless they all subscribed to the fact that it was a book of literary merit.

'It has also been said to be a book of other merit as well, and as I have told you the Statute speaks of literary merit and of "objects of general concern". It has been said by witnesses called on behalf of the defendants that it is a book of merit, not only literary merit, but also from a sociological point of view, from an ethical point of view, and from an educational point of view. That is what has been said.

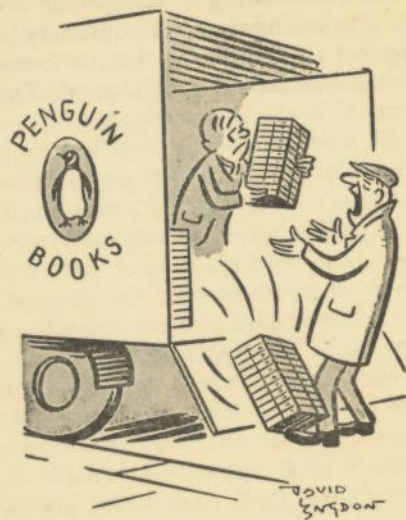
'It will be necessary, therefore, for me to remind you of some of the evidence that has been given by those witnesses who were called before you on behalf of the defendants. You will recollect I told you that those witnesses were called in order to assist you. You are not governed by the opinions which they have expressed. You are the judges of the matter. You decide whether you accept their evidence, and what weight you will attach to it. They are all matters for you. Because you get a tremendous number of witnesses called it does not follow that you will be weighed down by the weight of the evidence. You will consider the evidence, and decide what view you take of it.

'There is only just one other matter I will mention before we adjourn this afternoon, and it is this. Just for a moment I am going back to obscenity because I omitted to mention this to you, and I want to make it complete. You are considering this book, and no other book. You, very likely, with your knowledge of this world, know perfectly well that there are a vast number of obscene books which can be bought. You will not judge this book by saying to yourselves, "Oh, this book is not as bad as that book", or "This book is worse than that book". Other books have got nothing at all to do with this case. You might just as well say that because somebody was not charged with some particular type of offence, nobody should be charged with it.'

#### THE JUDGE'S SUMMING-UP

It was four o'clock, and the proceedings had reached a 'natural break'. Mr Justice Byrne said that the remainder of his observations, which would not take very long, would be best reserved for the following morning; they would concern the Jury's task of balancing the book's obscenity (if they found it obscene) against the likelihood that its literary or other merits would redound to the public good. The Court adjourned.





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David Langdon in PUNCH, 16 November 1960

## THE SIXTH DAY

2 NOVEMBER

'MEMBERS of the Jury,' resumed Mr Justice Byrne the next morning (Wednesday, 2 November), 'in considering this case I would repeat to you an observation that was made by Mr Griffith-Jones. He said, "Keep your feet on the ground". In other words, do not allow yourselves to get lost in the higher realms of literature, education, sociology, and ethics. I say that for this reason. I am going to refer in some little detail to the evidence of some of the witnesses who were called.

'There were two witnesses who were called on behalf of the defendants who made observations, expressed views, which lead me to make that observation to you for your consideration. Do not for one moment imagine I am asking you to take any particular views at all. I put these matters before you for your consideration. You are the judges of the matter.

'One of the witnesses you will recollect was Mrs Bennett. She said: "A reader who is capable of understanding him" - that is to say, Lawrence - "would learn much of what his view is." [Pause] Well, who are the people who are capable of understanding him? You have to think of the public at large. Another witness, Professor Muir, said: "I think it is impossible to understand any one book of Lawrence without having read all, and that this" - that is this book - "is very fundamental to the understanding of the whole."

'If a person is an authority on English literature as the vast bulk of these witnesses unquestionably are, if a person has been a student of this particular author as the great bulk of these witnesses have all been, then this book, you may think, might present a very different picture, so to speak, from what it would to a person with no literary background, no learning or little learning, and no knowledge or little knowledge of



Lawrence. Those are the considerations which in my view you must apply to this aspect of the case.

'Now just let me remind you of the evidence. I do not propose to remind you of the evidence of every one of these witnesses, but I will remind you of the more salient features of the evidence of a number of them.'

His Lordship then selected salient passages from the evidence of twenty-one of the witnesses, quoting from the type-written transcript of each day's proceedings, and rounding off each citation with a few words of studied disengagement.

Thus of Mr Graham Hough, who had said that Lawrence was concerned with 'the nature of proper marriage', he said: 'You will have to ask yourselves what you understand him to mean when he speaks of "the nature of proper marriage"'. There was a proper marriage in this book, Lady Chatterley and her lawful husband. Another relationship, which it is suggested became a permanent relationship, was the relationship between Lady Chatterley and the gamekeeper, but there is nothing in the book to indicate that it was ever a marriage or ever would be. You have read the book, and you will know whether it is right or wrong to say that Lady Chatterley's husband had said that he would not divorce her. The gamekeeper, incidentally, had a wife also. Thus what the ultimate result there would be is a matter for you to consider.' And of Mr Hough's view that promiscuity was condemned by Lawrence, but that adultery figured in 'a great deal of fiction in Europe, from the Iliad on', the Judge said: 'Well, you have got to say what view *you* take of the matter. Of course, pay the greatest attention to the evidence of these witnesses, who no doubt have all expressed very sincere opinions with regard to this book, but you are the final judges of the matter whether there was promiscuity, whether promiscuity was condemned in this book by Lawrence.' Promiscuity and adultery had, indeed, become major issues, obscenity and exculpatory merit being for that purpose irrelevant. Mr Hough had said that, in using the four-letter words, Lawrence was trying to redeem words which were 'normally obscene' and 'generally used in contexts of mockery or abuse'. 'Is that *your* view of it?' asked

the Judge. 'Is *that* what he is trying to do? You have read the book. You must be careful not to be led away by what some people have decided is the real message and the real thought which were operating so far as the author was concerned. *Is* he wishing to find language in which these sexual matters can be discussed openly, or is he using those words, as you read the book, coarse words, the sort of words which might be used by a man in the position of the gamekeeper? Are those words part of the general make-up of this book which in the submission of the Prosecution is not justified as being for the public good?'

Some of the witnesses, continued Mr Justice Byrne, had said: 'Well, the book really does not deal simply and solely with sexual relationships; it deals with other matters as well - the industrial state of the country, the hard lives that people are living, the way it affects human relationships and so forth.' The Judge compared this with Miss Helen Gardner's view that the descriptions of sexual intercourse were central to the theme and meaning of the book. 'Whether you find there is very much of this book which deals with that aspect or not is a matter for you,' he said, 'but at any rate Miss Gardner said that the core and heart of the book's theme and meaning was the description of sexual intercourse.' And of Miss Gardner's evocation of Henry James and 'the bitch goddess success', the remoteness of men from each other and from the sources of happiness, his Lordship said: 'Well, as I say, these various witnesses have purported to tell you what was in the mind of the author, what the message was that he was proposing to give or attempting to give by this book, and of course you will pay whatever attention you consider is right to their evidence, and you will make your assessment of it. But you will no doubt ask yourselves whether, unless a person was a student of literature, an authority on English literature, and a student of Lawrence, he would be able to read into this book the many different things that many of these witnesses have said he intended should be in the book.'

Mrs Joan Bennett had said, of the allegation that Lawrence set adulterous intercourse on a pedestal, that he was 'obviously



set against promiscuity', and that 'by "adulterous" he means that a marriage can be broken when it is unfulfilled - the book is not against divorce'. (Pause) 'Well,' said the Judge, 'what on earth *that* answer means is a matter for you to consider, but she clarified it a little later on. She disagreed that sex is dragged in at every conceivable opportunity and that the story is little more than padding. She was asked why she said that, and her answer was: "Well, for one thing, it is not wholly about sex. I mean, Lawrence is also interested in, though I don't think he does this quite so well, he is clearly interested in social questions in the book; and some part of the book is concerned with upper classes, middle classes, working classes, and their relations to one another. But in any case I don't think 'padding' is the right word, because you are all through the story being led to the climaxes, which are, I suppose, what are objected to."

'Then Mr Gardiner put some more questions, one of which was, "When you said that Lawrence's view on marriage appeared from the book, what exactly did you mean by that?"', and she said "Well, I meant that what appears very clearly in the book is that he believes that marriage - not in the legal sense . . ." What *is* a marriage if it is not in a legal sense? [Pause] What *are* we talking about? This is a Christian country, and quite apart from Christianity there is a lawful marriage, even if it is only contracted before a registrar. What *are* we talking about - "a marriage not in the legal sense"? However, . . . he believes that marriage - not in the legal sense - that the union between two people for a lifetime and with possibility for childbearing included, marriage in that sense is of the highest importance, of almost sacred importance." Almost sacred importance', repeated Mr Justice Byrne slowly.

And later, after a long dissection of Mrs Bennett's answers in cross-examination on marriage and adultery, he came to the point where he had intervened himself: 'Mr Griffith-Jones said, "This book, my learned friend in his opening says that it clearly showed the author's very strong support for marriage; but this series of adulterous intercourses - you don't suggest that that shows a very strong support for marriage, do

you, in the sense that I use the word marriage?" The answer was, "Well, *you* use the word - could you define the sense you use it in?"'. I intervened at that moment and said, "Lawful wedlock, madam. You know what that means, do you not?" She said, "Yes. Well, I am afraid I would have to repeat that the book shows that as to lawful wedlock Lawrence believes that it can be, as I believe the law allows, broken on certain conditions." Mr Griffith-Jones said, "I do not want to repeat it, but he shows the woman breaking it without any conditions at all, without even telling her husband, does he not?" The answer was, "Yes." Question: "And indeed one does not want to speak disrespectfully of the dead, but if one is talking about what the author's views were and what he was endeavouring to show, that is in fact, is it not, exactly what he himself had done? He had run off with his friend's wife, had he not?" The answer was, "Yes." Question: "And married her?" Answer: "Yes." Question: "And it is just that type of behaviour, is it not, that is depicted in this book?" To that the witness did not make a reply. The question was repeated, "Is it not?" Answer: "You mean that a woman is shown . . .", and she was interrupted by the question, "I mean a man running off with another man's wife. It is just that which is happening throughout this book? The whole book is about that subject, is it not?" The answer was, "Yes." [Pause] That was *her* evidence.' (It will not escape the reader's notice that, in a trial concerned with *obscenity* and its possible justification by literary merit, the whole of this colloquy had been concerned with the question, universal as it is in world literature, of adultery.)

His Lordship then turned to the evidence of Dame Rebecca West, who, on the literary merits of the book, had said that it was 'full of sentences of which any child could make a fool because they are badly written'. 'That', said Mr Justice Byrne, 'was *her* view, for what it is worth.' Dame Rebecca had said that although many pages in the book seemed to her ludicrous, a work of art was 'not an arbitrary thing', it was 'an analysis of an experience and a synthesis of the findings of the analysis that makes life a serious matter and makes the



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world seem beautiful; and though there are ugly things, though there is this unsuccessful attempt to handle the ugly words, this is still from that standard a good book, in my opinion.' 'Well,' said Mr Justice Byrne, 'you will decide the matter.'

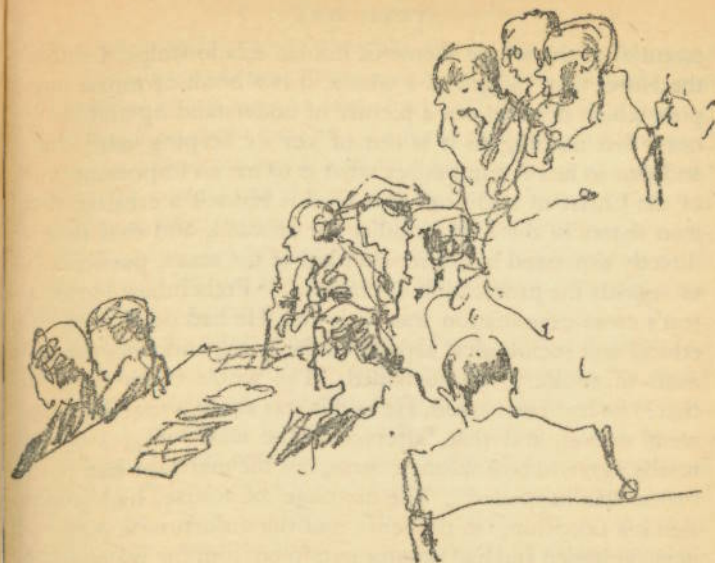
Then, he said, they entered the world of ethics when the Bishop of Woolwich gave evidence. He said that what Lawrence was trying to do was to 'portray the sex relationship as something essentially sacred'. Mr Justice Byrne looked up from his notes. 'Something essentially sacred!' he said slowly. He recalled the Bishop's quotation of Archbishop William Temple, that 'Christians do not make jokes about sex for the same reason that they do not make jokes about Holy Communion, not because it is sordid, but because it is sacred, and I think Lawrence tried to portray this relation as in a real sense something sacred, in a real sense an act of holy communion.' It had seemed to many people in Court that this reference to an act of total communion between two persons might indeed, in the Lawrentian view of life, partake of the character of holiness. But - 'Where *are* we getting to?' said the Judge expressively. 'You will consider. It is for *you* to decide. Reading that book, do *you* find that it is a book in which the author is trying to portray sex in a real sense as something sacred, as an act of holy communion?'

Coming to the Bishop's cross-examination about the ethical value of the book, the Judge came back also to adultery.

'Then', he said, 'I put the question: "As you read the book does it portray the life of an immoral woman?"', and the answer was, "It portrays the love of a woman in an immoral relationship in so far as\* adultery is an immoral relationship." Well,' said Mr Justice Byrne, nevertheless, 'is adultery an immoral relationship? It is a matter for you to consider.'

Mr Gardiner had asked the Bishop whether *Lady Chatterley's Lover* was a book which, in his view, 'Christians ought to read'. (This was not generally understood to be a suggestion

\* The phrase 'in so far as' was understood by most people in Court to mean 'inasmuch as'; accepting as a fact of social judgement that adultery is an immoral relationship, and that to that extent *Lady Chatterley* was an 'immoral woman'.



that it should be a set book for the faithful, but rather an inquiry whether they should be told not to read it at all. The Bishop had seemed to say no more than that they might read it with profit. He was going on to say why, when Mr Griffith-Jones objected.) But 'at any rate,' said the Judge, 'there is the Bishop saying that he thinks this is a book that Christians ought to read. It is for you to say whether you are of opinion that this is a book which is designed as being for the public good.'

'And so one goes on through the evidence of these witnesses. Then we come to another clergyman, Prebendary Hopkinson. He dealt with the ethical and sociological merits of the book. He said it was a book of moral purpose. He put it in this way (so that one shall not summarize his evidence too much): "It seems to me to be a study in compassion and human tenderness, not solely in relation to the two leading characters but in relation to all the other persons of the book; that, as part of this instrument of essential human relationships, it deals with a physical one, and he seems to me to deal with it with respect and honesty and only in so far as it is



essential to the whole theme of human relationships. I think, therefore, that, judged as a whole, it is a book of moral purpose which does set out a picture of understanding and kindness, that nothing in it is out of key or keeping with that, and that in fact it emphasizes what is to me an important part of the Christian tradition: that God is himself a creator, that man shares in the responsibility for creation, and that that is directly expressed in the relationship of the sexes, particularly as regards the procreation of children." Prebendary Hopkinson's cross-examination was reviewed. He had dealt with the ethical and sociological aspects of the book, and thus the *leit-motiv* of adultery was sustained. 'The whole book is about that?' he had been asked. He said it was about a marriage that went wrong, and that 'afterwards she takes what I would totally agree to be a wrong course, but the marriage had failed before this happened'. 'The marriage, of course, had failed', said his Lordship, 'in the sense that the unfortunate man had been wounded and had become paralysed from the waist down. But that was Prebendary Hopkinson's view of the matter.'

Even Mr Richard Hoggart, there to testify about literary merit, was kept largely to adultery. He had said that the relationship between Constance Chatterley and the gamekeeper was not conceived as a promiscuous relationship, but really moral. 'Does that agree with *your* reading of this book?' the Judge asked the Jury. 'Do *you* find that the relationship was really moral? Do *you* find that there was any spark of affection between these two people until quite late in the book? There were all the instances of sexual intercourse between them, to the accompaniment of these four-letter words, as they are called. Do *you* find - it is for you to say, and you, of course, will not pay the slightest attention to what I am saying unless you agree with it; I only put it forward for your consideration - do *you* find that in the earlier stages those people had a spark of affection for each other, or were they merely having sexual intercourse and enjoying it, and out of that sexual intercourse perhaps some affection ultimately sprang? It is for you to say. You have read the book. You are the judges.'

'Mr Hoggart was eventually cross-examined, you will

remember, about one of the passages in this book upon the question as to whether it was virtuous if not puritanical, and the passage was read to him, I think I am right in saying, beginning on about page 180 (I am not going to read it to you, you have read the book and you have heard passages read over and over again). Mr Griffith-Jones, having read that passage to Mr Hoggart, said: "That again, I assume you say, is puritanical?" And the answer was, "It is puritanical in its reverence." [Pause] Well, it is for *you* to say what weight you attach to *that* opinion.'

Mr Cammaerts, the headmaster of a Grammar School, had said that it was the only book he knew that treated the sexual relationships between human beings in a really serious way, and that it would have the effect on most young people interested in this problem of giving them a serious approach to it. 'Does *that* coincide with your view of the matter', asked the Judge, 'that this book has the effect, on most young people who are interested in the problem of sexual relationships between human beings, of giving a serious approach to it? [Pause] Well, there it is.'

His Lordship quoted without comment the evidence of Miss Beryl Jones, and of Miss C. V. Wedgwood ('she is an author, you will recollect, of some dozen books . . .'). Mr Francis Williams was quoted at some length on Lawrence's belief that the intellectuals were an effete and doomed society, and on the justification of the use of four-letter words for Lawrence's artistic purpose. 'There again,' Mr Justice Byrne said, 'he, like a number of these witnesses, is looking into the mind of the author and saying what, in his opinion, the author was driving at. Whether that is apparent, or was apparent to you when you read this book is another matter. Whether it would be apparent to the public when they read this book is a question that you have to decide, because you have to decide whether the publication of this book is justified as being for the public good.'

'Then Doctor Hemming,' he continued, 'who, you will recall, is a Doctor of Philosophy, and a consultant to publishers on psychological and educational matters - he said of



this book that in his opinion it is an antidote to the idea that sex is nothing more than a physical thrill. You will, of course, make up your *own* minds about that. *You* will decide that and ask yourselves whether upon reading this book as ordinary persons, without great knowledge of literature, without a great knowledge of the author, whether you regard it as an antidote to the idea that sex is nothing more than a physical thrill, or whether it leads you to the conclusion that it is a book which indicates a *tremendous* amount of thrill in sexual intercourse. Those are entirely matters for you, and don't think for one moment I am asking you to take any particular view. It is entirely your province.

'I am not dealing with every witness who gave evidence, because I don't think it is necessary, but there was Mr Norman St John-Stevas, who is an author and a Barrister-at-Law, and he dealt with the literary merit of the book, and he said it was a moral book.' His Lordship did not remind the Jury that Mr St John-Stevas was a Roman Catholic, or that he was the author of the text book so much quoted during the trial, *Obscenity and the Law*. But in dealing with Mr St John-Stevas's opinion - a personal one, not advanced as being that of the Catholic hierarchy - that Catholics might profit by reading the book, his Lordship said: 'Well, that was *his* view. You may perhaps think it a little presumptuous for him to say every Catholic priest should read the book, because he would profit by reading it. But at any rate, he is entitled to express his opinion and he has expressed it and it is for you to say what you think of it.

'Then there was the Master of the Temple, who was full of praise for this book. There was Mrs Russell, an author, a book reviewer, and a critic [it was Miss Dilys Powell], and *she* said sex in this book is treated on a holy basis. Whether you agree with that is for you to determine. Sex is treated on a holy basis', his Lordship repeated carefully.

'And there was Mr Day Lewis, who is an author and poet and publisher. He said that in his view this was not one of Lawrence's greatest novels, "that it is too much affected in places by his wish to persuade the reader towards what he con-

sidered to be the right and wholesome view of sex. At the same time, I feel it to be in quite a different class, a higher class, than the average proficient novel or the average best seller." He was asked whether in fact the only relationship that existed between Lady Chatterley and Mellors was the sexual relationship and he said, "I would agree that most of their talk together is about the sexual side of their relationship, but, for all that, when I read the book I got the strong impression that they were getting to know each other better . . ." [Pause] well, probably they would, I suppose, ". . . they are coming to understand each other better, to feel greater tenderness and tolerance for each other, and this is conveyed to you in the way they talk."

'And there was another reverend gentleman who gave evidence, Mr Tytler, who was the Director of Religious Education in the Diocese of Birmingham, and he said he thought it was a suitable subject for discussion in youth clubs.

'There', said Mr Justice Byrne, 'is a summary of a good many of the witnesses who gave evidence, and I have not troubled you with the evidence of every witness.' (Among the witnesses with whose evidence he had not troubled the Jury, to the real surprise of many in Court, was Mr E. M. Forster.) 'It is conceded by the Prosecution that there is some literary merit in this book. Of course, you must ask yourselves whether some people who have given evidence on behalf of the defendants have approached their task upon the basis: "Lawrence is a good author, this is a book written by Lawrence, and therefore this is a good book." You must ask yourselves whether, as you have read the book, you find that you can agree with that, with all the things that they say Lawrence was saying, was trying to say, the things that they indicate were the message that he was trying to give his readers. You must ask yourselves whether you agree with these expressions of opinion or whether you disagree; because although these witnesses are called to assist you, you, of course, are not bound by their evidence; you are the judges; you make up your minds.'

He then briefly and very clearly restated the law as it



applied to the questions of fact and opinion they had to consider; and he concluded: 'Now, there is the case. You have listened to it, if you will permit me to say so, with the greatest attention. I have pointed out to you the importance of this case, from the public point of view as well as from the point of view of the defendants. The verdict must be the verdict of each one of you, and now will you be kind enough to retire and consider your verdict and tell me how you find.'

The Jury stood up, ready to move off: an usher restrained them while, with uplifted testament, he swore convincingly that he would keep them 'in some convenient place', allow no one to speak to them, and not even speak to them himself. And they filed out of Court at three minutes before midday. The Judge began disposing of some prisoners who were 'up for sentence' on less heinous indictments, and for the Penguin community there began a wait of three hours.

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It was at 2.53 p.m. that the knell-like whisper swept the Old Bailey corridors: 'Jury coming back.' Court No. 1 quickly filled, the doorways silting up with those who had been too slow off their marks. The Jury came in with their usher, and the Clerk of the Court called their names over, to make certain (one supposed) that they were the same jury.

'Members of the Jury,' said the Clerk, 'are you agreed upon your verdict?' The usher motioned to the foreman to stand up. 'We are', said the foreman, standing up.

'Do you find that Penguin Books Ltd are guilty or not guilty of publishing an obscene article?' - 'NOT GUILTY', said the foreman loudly and firmly; and no one can ever know whether that meant 'not obscene', or 'obscene but justified'.

'And that', prompted the Clerk, traditionally, 'is the verdict of you all?' (It is a question that always raises the sudden fear that a foreman will begin saying 'Well, sir, there *are* two of us who . . .') 'Yes', answered the foreman, though his voice was drowned by an outburst of clapping and one or two noises

that sounded scandalously like cheers from among the elated *litterati* at the back of the Court. This was sibilantly suppressed by the ushers, who, under genuine indignation, can produce the noise of escaping steam; and it was then found that Mr Gerald Gardiner was addressing the Judge.

'My Lord, I apply for costs, if your Lordship thinks it is a proper case, and I do so on the following grounds. In opening this case Mr Griffith-Jones said, no doubt accurately, that "the Company did, in effect, provide evidence of publication of the book, in order that it should be brought before the jury really *as a test case*". I can understand the desire of the Director of Public Prosecutions to obtain a decision on the construction of this new Act and how it would work; but nobody appreciates being the vehicle for such a case.

'Perhaps your Lordship will allow me to say this. Penguin Books were hopeful that there would not be a prosecution, very largely because, while the form of the law in America is different, all the questions to be considered, such as the standing of the author, the descriptions of intercourse, the four-letter words, the integrity and purpose of the author, the literary merit, were considered in the American case by the American Court and before the Court of Appeal.' (This, properly enough, was the first clear indication in the trial of a fact which, even if it was unknown to the majority of the Jury, was known to almost everyone else in Court: the decision of a United States Federal Court, a year before, that *Lady Chatterley's Lover* was not an obscene book. If the Jury were surprised, no doubt they were also fortified.)

'As your Lordship will appreciate,' continued Mr Gardiner, 'the costs of a case of this kind have been very extensive.' (They were actually £13,000.) 'A number of witnesses and prospective witnesses have all had to be seen. As, therefore, the case was opened by the Prosecution *as a test case*, I would respectfully submit that it is a case in which a very substantial contribution ought to be made to the costs of the defendants.'

It seemed to most people present a reasonable enough



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application. Costs in criminal cases may be recovered against the Crown through county funds in the event of an acquittal *if* the Judge makes the necessary order; the mere acquittal is not itself enough to justify this (says a Home Office ruling of 1948), and Lord Goddard laid down in 1952 that 'the power should be reserved for exceptional cases', but the Judges have in recent years been more generous than they were. Too much English case-law has been dearly bought, for the future benefit of all, by luckless litigants subsidizing the law's uncertainties. Mr Justice Byrne had decided that Penguin Books must buy some more. He seemed at first to be about to give some reasons for this; but at last he smiled, a little enigmatically, and pushed his chair back.

'I will say no more than this,' he said, 'that I will make no order as to costs.'

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One important, final consideration was suggested in a letter written to Penguin's solicitors by Canon V. A. Demant of Christ Church, Oxford. He thought that publication as a Penguin was for the public good; but not, he said, 'in the sense that if no one had written this sort of thing, somebody should.'

And let Mr Gerald Gardiner, denied by the rules of procedure the last word to the Jury, have the last word here: 'There is one thing about which I want to be quite plain, because in my submission it is of some importance not only that you (the Jury) should realize this but that everybody should realize it. It is this: that no one should think that if the use of these words for this special purpose, by this particular author, in this particular book, is legitimate, it will follow that these words can be used by any scribbler writing any kind of novel.'

It was the words that caused all the trouble, putting her Ladyship on trial as an adulteress where a more conventionally spoken gamekeeper might have lent her the immunity of Emma Bovary and Anna Karenina. Two cheers, then for Constance Chatterley and the Act of 1959; but we have been warned.

*The Works of D. H. Lawrence in Penguins*

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LADY CHATTERLEY'S LOVER

(with an introduction by Richard Hoggart) · 1484

KANGAROO · 751

THE LOST GIRL · 752

THE PLUMED SERPENT · 754

THE RAINBOW · 692

SONS AND LOVERS · 668

THE TRESPASSER · 1480

THE WHITE PEACOCK · 760

WOMEN IN LOVE · 1485

ENGLAND, MY ENGLAND · 1482

THE LADYBIRD · 1483

LOVE AMONG THE HAYSTACKS AND

OTHER STORIES · 1512

MORNINGS IN MEXICO *and*

ETRUSCAN PLACES · 1513

TWILIGHT IN ITALY · 1481

SELECTED ESSAYS · 753

SELECTED LETTERS · 759

SELECTED POEMS · DII

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A biography of D. H. Lawrence, *THE INTELLIGENT HEART* by Harry T. Moore (1514), is also published in Penguins.

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