tended to exercise dominion over it on the company's behalf, and this was sufficient.[24]

In concluding, Their Honours drew attention to the scantiness of the evidence due to the way in which the case had been argued below.

This decision on a question which, with variations on the basic factual framework, will arise with increasing frequency, definitively settles the law for Victoria regarding accession of title, giving a reasonable adjustment of the competing rights of two innocent owners dealing here with a hirer who defaults, without involving the application of rigid, over-refined, and eventually unrealistic, criteria.[25]

J. M. BATT

TRANSPORT PUBLISHING CO. PTY LTD v. THE LITERATURE BOARD OF REVIEW[1]

Interpretation of Objectionable Literature Act 1954 (Queensland)—'objectionable'—undue emphasis on sex—admissibility of evidence concerning effect of publications on abnormal persons

In *Transport Publishing Co. Pty Ltd v. The Literature Board of Review* it was held by the Full High Court, McTiernan and Webb JJ. dissenting, that certain publications were not 'objectionable' within the meaning of section 5 (1) of the Objectionable Literature Act 1954 (Queensland). These publications were distributed by the three defendant companies, Transport Publishing Company Proprietary Limited, the Action Comics Proprietary Limited and the Popular Publications Proprietary Limited. On 20 December 1954, their distribution in Queensland was prohibited by the Literature Board of Review on

[24] *Supra*, n. 3.

[25] The varying results possible from the operation or non-operation of 'contractual accession' clauses and from the application or non-application of the doctrine of accession are quite logical, but may occasionally lead to curious results: *e.g.*, a buyer in possession under the Goods Act 1928 can pass property in an article selling it outright, but not by affixing it to a chattel bought under a hire-purchase agreement containing a 'contractual accession' clause.

Dean, *op. cit.*, 98-99, somewhat reluctantly approves the kind of decision reached in *Rendell's* case, but it seems that he would give a wide operation to the doctrine of estoppel against a plaintiff owner of attached accessories. Formerly he had considered that the property would pass by accession *(op. cit.* (1st ed. 1929) 96); but this view had been investigated and criticized in the useful article by Sawer, *loc. cit.*, where the writer showed that the statement in *Halsbury's Laws of England* (1st ed.) xxii, 401, was based on a false analogy with the land law. (In the second ed. (1937) xxv, 208, the rule is modified, but is still over-stated and inaccurate). Sawer considers the *dicta* of Blackburn J. in *Appleby v. Myers* (1867) L.R. 2 C.P. 651, 659-660, *obiter* and distinguishes the case. The doctrine of accession in Roman law, as stated by him, is very similar to the rule laid down in *Rendell's* case (strange though this may seem in view of the court's remarks there on Roman law) and in urging the adoption of the former Sawer would clearly approve the type of decision reached in the instant case.

[1] [1958] Argus L.R. 177. High Court of Australia; Dixon C.J., Kitto, Taylor, McTiernan and Webb JJ.

the ground that in its opinion the literature was objectionable. The three defendant companies obtained orders *nisi* to review in the Supreme Court of Queensland and upon the hearing the Full Court by a majority discharged the orders *nisi*. It determined that the literature unduly emphasized matters of sex and was likely to be injurious to morality. The defendants then applied to the High Court for special leave to appeal.

The criterion for determining whether literature was objectionable within the Act was supplied by a definition of the word 'objectionable' in section 5 (1). This required that regard should be had *inter alia* to the classes of persons amongst whom it was likely to be distributed, and to the question of whether it unduly emphasized sex, or was indecent or likely to be injurious to morality.

The majority of the High Court felt that the former requirement referred to ordinary human nature and people at large, criteria not subject to proof by evidence, whether expert or not. Anyway they felt that however the words 'persons, classes of persons and age groups'[2] were construed, evidence ascertaining the effect of such literature upon admittedly delinquent girls committed to a Home could not be admissible. Much other evidence was also inadmissible, but the majority made no attempt to disentangle it from the general mass of the evidence, believing that such efforts would be of little assistance.

This evidence, however, was of great importance to McTiernan J. who felt that section 5 (1) contemplated the need to protect unstable adolescents, and other impressionable and abnormal readers. The psychiatric evidence on the question whether the pictures of lovers kissing and embracing were likely to stimulate unstable teenagers to immoral behaviour was vital. So too was the evidence of the matron of the Salvation Army Home who considered that the magazines would excite the girls in her charge, and the pictures of 'pick-ups' would do them particular harm. Webb J. agreed that such evidence was important, in that it showed that the literature retarded the rehabilitation of girls with early sexual experience by keeping it before their eyes.

The High Court was similarly divided on the second question, as to the nature and quality of the literature itself. The Act imparts little precision to the criterion 'objectionable' by the list of characteristics it provides. The problem, superficially a semantic one, comes down to a conflict between two social requirements, the maximum in freedom of expression, and the need to protect young and foolish minds from exploiting, corrupting influences.

[2] Objectionable Literature Act 1954 s. 5 (1) (Queensland).

Literature is 'objectionable' if it:

(i) unduly emphasises matters of sex, horror, crime, cruelty, or violence; or
(ii) is blasphemous, indecent, obscene, or likely to be injurious to morality; or
(iii) is likely to encourage depravity, public disorder, or any indictable offence; or
(iv) is otherwise calculated to injure the citizens of this State.

The publications in question included 'Real Love', 'Intimate Love Stories' and 'Darling Romance'. They consisted of 'consecutive drawings in panels of young persons in postures of enthusiastic affection, often kissing and fondling, and indulging in absurd and slangy exotic patter'.[3] No-one denied the incredible folly of the publications. 'The stories are extremely silly, the letterpress is stupid, the drawings are artless and crude and the situations are absurd.'[4] But whilst they contain an affront to the reader's intelligence, they were hardly a threat to her morals. At least, so the majority believed. There is marked conflict between the majority and the dissentients on the nature of these publications, both groups assuming rather extreme positions in the controversy.

McTiernan J. felt that 'it is correct to say of all the publications that they are calculated to stimulate the sensual passions of teenagers and adolescents and to inculcate brutish standards of conduct for sweethearts and to debase courtship and marriage'.[5] Further,

> the drawings in many cases are calculated to convey that it justifies conduct which rather has the appearance of being bestial than a manifestation of love. Illicit intercourse is nowhere explicitly represented as a motive, but the pictures and stories are likely to inflame the venereal passions of the classes of young persons likely to devour this trash.[6]

Naturally, on this view, the literature falls within section 5 (1), which prohibits undue emphasis on matters of sex and those likely to be injurious to morality.

Of the same magazines the majority felt no abhorrence. On the contrary, they were pleasantly surprised.

> The theme of them all nearly is love, courtship and marriage. Virtue never falters and right triumphs. Matrimony is the proper end and if you are not told that happiness ensues it is the constant assumption. . . . The pages contain nothing prurient, lewd or licentious. The tone is the complete contrary. . . . Needless to say, there are adventures, hazards, threats of violence, and escapes to excite the apprehensions of a fond reader. Whatever sensations are aroused by the narrative must be short-lived. For a story seldom occupies more than a dozen pages.

[3] [1958] Argus L.R. 177, 184, *per* McTiernan J.
[4] *Ibid.*, 181, *per* Dixon C.J., Kitto and Taylor JJ.
[5] *Ibid.*, 186.
[6] *Ibid.*, *per* McTiernan J.

That the majority derived amusement from the case is evidenced by these passages:

'There are, of course, bad men and they are sometimes wealthy', and 'Moreover, the eyes of the heroine are drawn with lids either drooping or unduly raised and her lips, though drawn in black and white, are obviously as rosy as lipstick can make them.'[7]

From the same passionate scenes as those in which McTiernan J. saw immorality and impropriety and conduct not characteristic of decent young people, the majority saw only that 'Their feelings for one another are intense and joy and happiness are represented as coming from a love that is as deep and passionate as it is devoted'.[8] They were indignant that merely because 'Their kisses, though pure, are full and perhaps prolonged',[9] the Supreme Court should hold that the said magazines unduly emphasized sex.

This case, though perhaps of little significance as a matter of 'pure' law, provides us with an insight into the minds of our most prominent judges grappling with an apparently simple statutory interpretation problem created by the inherent limitations of the English language. We need not subscribe to the analytical cynicism of Jerome Frank to concede that a 'realist' approach to such a case as this will be the most fruitful in determining its use as a precedent, combining, as it does, problems of statutory interpretation and moral controversy. Here, the court's discretion is so great as to completely minimize the significance of established legal principles as factors underlying the ultimate decision.

M. J. ROET

[7] *Ibid.*, 180 *per* Dixon C.J., Kitto and Taylor JJ.
[8] *Ibid.*
[9] *Ibid.*

BOOK REVIEWS

The Sanctity of Life and the Criminal Law, by GLANVILLE WILLIAMS, LL.D. (Faber & Faber Ltd, London, 1958), pp. 1-310. Price £1 10s. sterling.

This is an English edition of a book first published in 1956, under arrangements made by the Columbia Law School, in the United States. In substance it is a collection of a series of lectures delivered by the author in 1956 at Columbia University in the James S. Carpentier series. From the author's preface to the English edition it would appear that such revisions as have been made since the first publication of his lectures have been mainly in the way of bringing the references up to date.

Dr Glanville Williams' high repute as a scholar of the greatest distinction in the field of the common law is too well known to need any emphasis from me. In particular, he has in recent years devoted himself especially to the study of criminal law and procedure, and his contributions to that study have justly been regarded as having exceptional merit.

It was therefore confidently to be expected that another major contribution would emerge when Dr Williams was invited to give the 1956 Carpentier lectures. There have been many distinguished lecturers in this particular series; indeed, so many of the Carpentier lectures have become legal classics that it would be invidious to single out any particular titles as worthy of special mention. Furthermore, Dr Williams chose as his theme an extremely important topic, the broad nature of which is indicated by the title of his book.

At the time of writing I have read several reviews of Dr Williams' latest work. On the whole, they are highly commendatory, although some reviewers confess to having a degree of dissatisfaction with some of the author's lines of argument. Dean William D. Warren, of the Columbia University Law School, also commends the work highly in a foreword to the book.

In these circumstances it may seem rash for me to express a contrary opinion. Nevertheless I should be less than honest if I failed to state that this work on the whole leaves me with a feeling of profound dissatisfaction. I do not think that it measures up to the standard which the author has set for himself in his previous writings, and I believe that it has serious and important defects. To explain this opinion, I must go into some detail.

Before embarking on a criticism, however, I must state the general theme of the book. The author draws attention to this in his preface to the original American edition. After noting that 'much of the law of murder rests upon pragmatic considerations of the most obvious kind' he points out that there are forms of murder or near-murder, the prohibition of which may not be justifiable on the same considerations. He has in mind infanticide, abortion, and suicide. Connected with the problem of prohibiting the infliction of death is that of the imposition of restrictions upon abstention from the creation of life. Here we encounter the problems involved in sterilization, contraception, and artificial insemination. And allied with the problem of suicide is that of 'mercy killing', or, as the author often prefers to put it, the administration of euthanasia.

We are thus confronted with seven questions which may truly be called vital. Dr Williams has undertaken to discuss each of these questions. His