

COUNT TOLSTOÏ NOT OBSCENE.

THE "KREUTZER SONATA" CANNOT LEGALLY BE SUPPRESSED.

PHILADELPHIA, Sept. 24.—Judge M. Russell Thayer, President Judge of Common Pleas Court No. 4, the most scholarly as well as the ablest Judge on the Philadelphia bench, to-day rendered an elaborate decision holding that Tolstoï's "Kreutzer Sonata" is not an obscene book. Charles Arentzen and other book peddlers were arrested at the instance of the Law and Order Society for selling the book. The case was elaborately argued a few days ago before Judge Thayer, District Attorney Graham appearing as the prosecutor. The case was not sent to a jury, but treated as a question of law to be first passed upon by the court. In the course of his opinion, delivered to-day, Judge Thayer said:

"The book is a novel, possessing very little dramatic interest or literary merit. There is nothing in this book which can by any possibility be said to commend licentiousness, or to make it in any respect attractive, or to tempt any one to its commission. On the contrary, all its teachings paint lewdness and immorality in the most revolting colors. Nor is there any obscenity or indecency in the language used or in the story told, however it may offend a refined taste. It undoubtedly teaches the doctrine to which I have already referred, viz., that celibacy is better than marriage and a higher and purer state of being, and that it is the ideal of a perfect Christian life, to which all Christian men and women should aspire. This strikes us, of course, as being very absurd and ridiculous, and as being opposed alike to Christianity and to the best interests of society. It may even seem to us to be the product of a diseased mind, yet the doctrine is by no means new in the world. The same idea was prevalent among many of the early Christians, who looked upon marriage as one of the consequences of the fall, and regarded it as has been said by a writer upon this subject as a tolerated admission of an impure and sinful nature.

"The hermits and anchorites of the early Christian times considered abstinence from marriage and from all sexual commerce as the triumph of sanctity and the proof and means of spiritual perfection. Modern Christianity, with cleaner and more sensible views of the subject, while it denounces licentiousness, looks upon marriage as a divine institution. Roman Catholics regard it with the veneration of a sacrament, and all Christian sects see in it an institution which lies at the foundation of all civilized society.

"Count Tolstoï's 'Kreutzer Sonata' may contain very absurd and foolish views about marriage. It may shock our ideas of the sanctity and nobility of that important relation, but it cannot on that account be called an obscene libel. There is no obscenity in it. On the contrary, it denounces obscenity of every description on almost every page. Nor can the language in which he expresses his ideas be said to be in any proper sense obscene, lewd, or indecent. It is not against the law to print or sell books which contain ideas and doctrines upon religious subjects which conflict with and are contrary to the orthodox teachings upon the subject. Every man has the right under such a government as ours to discuss such questions, either orally or in print, if he does so in a proper and becoming manner, and does not in doing so violate the decencies of life. He may call in question and argue against any received doctrine of the Christian faith, if he uses in doing so proper and becoming language, but if one should introduce into such a discussion blasphemous language or ideas, or obscene, lewd, or indecent thoughts or words, or should make his description the occasion for reviling and scoffing at the most sacred things, or speaking of them in a profane, abusive, or indecent manner, he would unquestionably be liable to be indicted and punished therefor.

"But a careful and critical reading of the whole book has clearly convinced us that it is not liable to the charge of either obscenity or indecency. On the contrary, as we have already said, its whole purpose and scope is to denounce those vices in the severest manner. The fact that the author in discussing the question of marriage has come to some silly and very absurd conclusions, opposed alike to what is ordinarily conceived to be the Christian doctrine on the subject and the general opinion of civilized societies throughout the world, does not make its publication or sale a violation of the law. The work may be offensive to our opinions and convictions, just as others are which are daily sold in our book stores without objection or challenge from anybody, but it cannot be justly said to be of an obscene or lewd character; nor is it either in its sentiments or language in any degree calculated to minister to corrupt or licentious practices, or to gratify lewd desires, or to encourage depravity in any form."

In conclusion Judge Thayer said:

"The court was reminded upon the argument that the Czar of Russia and the Post Office officials of the United States have condemned this book as an unlawful publication; that the former has prohibited its sale within his dominions and the latter has forbidden its transmission through the mails. Without disparaging in any degree the respect due to these high officials within their respective spheres, I can only say that neither of them has ever been recognized in this country as a binding authority in questions of either law or literature."

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