28 ta' Ottubru, 1946 Imhallef:

L.Onor. Dr. W. Harding, B.Litt., L.L.D.

Reat ta' min jibghat bil-Posta Artikoli Indecenti,
Oxxeni, jew Empji — Delitt — Kontravvensjoni —
Preskrizzjoni — "Impious Articles" — "Mens Ret" —
Edizzjoni Riveduta tal-Ligijiet ta' Malts —
Art. 7 tal-Kodiči Kriminali — Art. 28 ta' l-Att

Dwar l-Ufficeju tal-Posta (Kap. 85).

Il-kriterju adottat mill-leģislatur malti biez jiņi stabbilit liema preskrīzzjoni hija applikabili ghall-azzjoni kriminali huwa dak talpiena li ghalih huwa suģģett ir-reat li jkun. Kriterji ohra, ghalkemm teorikament huma aktaz prečiži, fil-prattika però jāihu konfužjoni.

- Ghaldaqatant il-preskrizzioni ta' l-azzioni kriminali kontra min iirrendi ruhu hati tur-reat kontemplat fl-art. 28 ta' l-Att dwar
 l-Ufficciju tal-l'osta (Kap. 85) mhijiex dik ta' tliet xhur preskritta ghall-kontracrenzionijiet, imma dik ta' sentejn preskritta gharreati; ghaliex l-Att fuq imsemmi ghal dak ir-reat jippreskriri
 l-pieni tad-delitti, u mhux tal-kontracvenzionijiet, u ghalhekk jikkunsidrah bhala delitt.
- Il-ligijiet ünkorporati fl-Edizzfoni Riveduta tal-Ligijiet ta' Malta gkadhom dawk stess li kienu gabel, u bdew isekku mill-jum tar-rispettiva promulgazzioni ta' l-Rdizzjoni Riveduta. Gkalkekk mhix sostenibili l-allegazzioni illi d-dispozizzionijiet kontenuti f'dik l-Edizzioni ma humiex applikabili ghal reati li gew kommossi gabel ma giet promulgata dik l-Edizzioni Riveduta.

L-imsemmi art. 28 tal-Kap. 85 jikkontempla r-reat tq' min jibghat bil-posta kotba, stampi, kitba, u kull xorta ta' artikoli jew oğğetti li huma "indecent, obscene or impious".

II-kelma ''impious'' fil-materja kija ekwipollenti ghall-kelma ''blasphemous''.

Biex il-ktieb jew artikolu nkriminat jista' jitgies bhala "impions", mhwe bižžejjed li jkun fik u jesprimi veduti kontra xi religjon partikulari, u, hawo Malta, mhwe bižžejjed' li jesprimi reduti anti kattoliči; imma hemm bžonn illi dawk il-veduti jkunu cspressi bi kliem offensir li jissorpassa l-limiti tal-kontroversja dečenti u li jwajga' s-sentimenti religjuži ta' hadd iehor, Il-fatt hiss li l-materja nkriminata jkun fiha erruri dommatiči u sentimenti anti-kattoliči ma jirrendiæ "impious" dik il-materja, n kwindi na jirrendiz passibili ta' dan ic-reat lil min jibghat bil-posta dik il-materja.

Min jibgkat bil-posta materja simili ma jistaz jallega li ma kellur "mens rea", hilli jgkid illi kuwa ma kelluz il-ksieb li jgarrag lil kadd iekor, jew li kuwa bagkat l-artikolu nkriminat lill-persuni kolti u mkuz ta' ftit edukazzioni; gkaz la darba dak l-artikolu jikkontjeni espressjonijiet li jetčedu l-limiti tad-dečenza fil-kontrorereji u jaffendi s-sentimenti religjuti ta' kadd iekor, gkandu jiği ritenut li min bagkat bil-posta dik il-materja risd fil-fatt jaffendi dawk is-sentimenti religjuti; jiğifieri ried dak li kuwa l-effett naturali ta' l-att li huwa ried u ghamel volontarjament.

Dan hu appell ta' l-imputat kontra s-sentenza moghtija mill-Qorti Kriminali tal-Magistrati ta' Malta fl-20 ta' Awissu 1946, li biha gie misjub hati talli f'dawn l-ahhar sentejn, b'attijet eżekutivi ta' l-istess riżoluzzjoni, kiser l-art, 28 ta' l-Att dwar l-Ufficcju tal-Posta (Kap. 85), billi baghat bil-posta oggetti li joffendu r-Religion, u gie kundannat ghall-piena tal-prigunerija ghal żmien hmistax il-gurnata, minbarra li giet ordnata l-konfiska tal-kotba eżibiti;

Trattat 1-appell,..... din il-Qorti kkunsidrat;

Ghandu jinghad, l-ewwelnett, illi l-indağini ta' fatt giet dispensata f'din is-sedi ta' l-appell bid-dikjarazzjoni, maghmula mid-difensur ta' l-appellant fl-udjenza tat-23 ta' Settembru 1946, u verbalizzata fol. 21 ta' dan l-inkartament, illi ma hux kontestat illi l-kotba nkriminati gew fil-fatt impustati mill-imputat, u illi l-kotba l-ohra ežibiti kienu fil-fatt fil-

poter tieghu. Ghalhekk hu pačifiku illi, apparti l-kotha li nstabu d-dar ta' l-imputat u dawk li hu kkonsenja spontaneament lill-Pulizija wara l-perkwizizzjoni, it-tliet kotha lohra bit-titolu "Intolerance", "Religion reaps the whirlwind", u "Hope", (indirizzati t-tieni u t-tielet lil Dr. Caruana Curran u lil Dr. Miceli rispettivament, u konsenjat l-ewwel wiehed lir-Reverendu Sacerdot Bartoli Galea mid-destinatarju), kif ukoll id-dsatax-il ktieb mižmuma mill-Postmaster General fit-transitu taghhom mill-Posta, ĝew impustati mill-imputat;

Lewwel kwistjoni sollevata mid-difiža hija dik tal-preskrizzjoni ta' l-azzjoni. Id-difiža ssostni, infatti, illi r-reut ("offence") li bih jinsab addebitat l-appellant ma hux delitt, imma kontravvenzjoni u li ghainekk, skond l-art. 683 (f) Kap. 12, l-azzjoni kriminali relativa tinsab preskritta bl-gholuq ta' tliet xhur. Ma hux kontrastat li l-fatt sar qabel Awissu ta' l-1945, mentri l-pročeđuri nbdew fl-ewwel ta' Awissu 1946. Il-Prosekuzzjoni ssostni, inveći, illi r-reat huwa delitt, u li ghalhekk it-terminu tal-preskrizzjoni hu ta' sentejn, skond l-art. 683 fl-inčiž (e) tieghu;

Dan il-pont ģie diģā rizolut mill-ģurisprudenza tal-Qrati Maltin. Gie ritenut fil-kawża "Francesco Azzopardi vs. Dr. Mizzi", App. Civ. Sup. 9 ta Novembru 1917, App. Krim. "Pulizija vs. Gati", 27 ta Marzu 1942, "Pulizija vs. Vella" 26 ta Novembru 1943, u "Pulizija vs. Mifsud" 9 ta Fran 1944, illi I-kriterju, mhux teoriku, imma prattiku, adottat mill-leģislatur malti fl-art. 7 tal-Kap. 12, hu dak tai-pienu. Fis-sentenza l-ahhar ĉitata ĝie osservat illi, ghalkemm kriterji ohra jistghu jidhru aktar preĉizi, fil-fatt iĝibù konfuzjoni, u l-kriterju tal-piena hu aktar zgur, u in sostanza jirrifletti l-kriterju teoriku tal-gravità tar-reat; ghaliex hu prezumibili illi l-leĝislatur jikkommina piena aktar serja meta l-fatt kriminuz ikun aktar gravi;

Issa, f'dan il-każ, reat taht l-art. 28 tal-Kap. 85 iğib ilpiena jew tal-multa, jew tad-detenzjoni, jew tal-priğunerija. Id-detenzjoni (ara art. 7 Kap. 12) hija piena tal-kontravvenzjonijiet, imma l-multa u l-priğunerija huma pieni tad-delitti. Ghalhekk il-piena dominanti hi dik tad-delitti (priğunerija jew multa, li fin-nuqqas ta' hlas tiği konvertita fi priğunerija), u r-reat ghandu jitqies delitt. Dan apparti l-konsiderazzjoni illi r-reati kontemplati fl-art. 28 ma jistghux ragjonevolment jitqiesu li huma kontravvenzjonijiet, li generalment jigu nkriminati mhux ghaliex "mala per se", imma ghaliex jikkonkorri motiv iebor ta' prevenzjoni, bhal kaz ta' "public nuisance", u li fihom, in linja ta' massima, il-"moral blame" tkun nulla jew ta' entità traskurabili;

Ghalhekk din l-ewwel deduzzjoni tad-difiża ma hijiex attendibili. Il-preskrizzjoni applikabili hi dik bijennali, u ma hux kontrastat li dan it-termnu ta' sentejn ma ghaddhiex;

Id-difiża, fir-rikors u anki fit-trattazzjoni, issollevat ukoll il-kwistjoni ta' l-inapplikabilità tal-liĝi ĉitata mill-Ewwel Qorti, jiĝifieri l-Kap. 12 u l-Kap. 85 ta' l-Edizzjoni Riveduta tal-Liĝijiet ta' Malta. Inghad illi meta sar dan il-fatt addebitat lill-appellant, l-Edizzjoni Riveduta kienet ghadha ma harĝetx:

Din id-deduzzjoni bil-fors hi dovuta ghall-impressjoni totalment zbaljata ta' l-indoli tar-Revised Edition. Hu semplicement assurd li wiehed jitkellem fuq il-ligijiet ta' qabel l-Edition bhalli kieku dawn gew revokati u promulgati mill-gdid bl-Edizzjoni. U-ligijiet inkorporati fl-Edition ghadhom dawk li kienu, u bdew isehhu, kull wahda, fid-data tal-promulgazzjoni rispettiva, u mhux affattu mid-data ta' l-Edition, L-Edition, fi kliem Sir Alison Russell, fi trattat minnu publikat fl-1938. "Legislative Drafting and Forms", hija ntiza biss "to make available in convenient form all the statute law that is really living, and no more, and to clear up difficulties arising from what James J. called 'divers cross and cuffing statutes, and some so penned that they may be taken in divers, yea, contrary senses' '' (pp. 301-302). Is-setghat moghtijin lil Commissioner bil-ligi (Ord. XXVI ta' 1-1936) ma holqux ligijiet godda. Fejn kien hemm bżonn ta' emendi li kienu jmorru aktar 'il hemm minn alterazzionijiet verbali, saru ligijiet godda "ad hoc", debitament promulgati bid-data taghhom rispettiva. Il-Proklama tal-Gvernatur (tas-17 ta Januar 1946-Gazzetta tal-Gvern no. 9399) ma ghamletx hlief tiddikjara illi t-test wahdieni, tajjeb u awtentiku, tal-ligijiet, hu dak ta' l-Edition-xejn aktar; u ma ppromulgatx il-ligijiet inkorporati fl-Edition mill-gdid:

Ghalhekk dan il-mezz tad-difiża hu assolutament insussistenti; u anki fis-sentenza appellata. id-dizzjoni użata f'xi konsiderando (fol. 10), fejn jissemma l-Att III ta' l-1924 bhalli kieku kien xi ligi diversa mill-Kap. 85, hi improprja;

Ikkunsidrat;

Illi l-art. 28 Kap. 85, li tahtu giet migjuba l-imputazzjoni, ighid hekk:— "No person shall send by post any indecent or obscene print, picture, photograph, litograph, engraving, book, card, or any other indecent, obscene, or impious article.....";

Il-parti rilevanti ghal din il-ks - ža qieghda fil-kliem "impious article";

A propožitu tal-lokuzzioni užata, id-difiža, sew fir-rikors ta' l-appell, kemm fit-trattazzjoni tal-kawża, osservat illi, peress li fi-ewwel bicca ta' l-artikolu, fein hemm biss il-kliem "indecent or obscene", jissemmew specifikatament l-oggetti kontemplati bhala hekk "indecent or obscene", u peress li fit-tieni parti, fejn mai-kliem "indecent" u "obscene" tiz-died l-alternativa ta "impious", jinghad "any other article", ghalhekk, kwantu ghal dak li hu "impious", id-difiża tippretendi li l-oggett ghandu jkun xi oggett divers minn dawk partikolareĝijati fl-ewwel bićća ta' l-artikolu. Però dina l-inter-pretazzioni ma hijiex accettabili, ghaliex hi tali pratikament li tinnewtralizza d-dispożizzjoni ghal dak li jirrigwarda "impious articles", kontra l-principju illi "semper ea est arcenda interpretatio qua lex omni ratione destituatur"; u tidher aktar logika l-interpretazzjoni illi hi projbita l-impostazzjoni ta' dawk l-oggetti u ta' kull oggett iehor, jekk hu "indecent, obscene or impious'-liema interpretazzioni hi konformi anki mat-test antik taljun li kien ighid "nessuno può spedire per posta, stampati, pitture, fotografie, litografie, incisioni, libri, cartoline, od altre cose indecenti, oscene od empie......... Cert hu illi, anki fl-espressjoni "any other article" hemm ilkelma "article" li, in riferenza ghall-posta, tikkomprendi, skond it-tieni artikolu nterpretativ tal-ligi, "any printed matter";

Ikkunsidrat:

131-132, Vol XXXII, p. 1V.

Illi l-kwistjoni kollha qieghda, kif tajjeb u bi studju enkomjabili tal-kaž argumenta d-difensur ta' l-appellant, "jekk fil-kotba nkriminati hemmx jew le materja li tista' titqies 'impious' ". Dan hu l-"punctum saliens" ta' dan l-appell;

Meta jinghad "il-kotba nkriminati" qeghdin jiğu komprizi anki dawk id-dsatax-il wiehed li ğew mizmuma fit-transitu taghhom mill-posta; ghaliex il-liği (art. 48 (2) Kap. 85) tghid espressament illi "the detention in the post office of any postal article, on the ground of its having been sent in contravention of the provisions of sections 26, 27 or 28, shall not exempt the sender from any proceedings which might have been taken if the postal article had been delivered in due course of post". Ghalhekk, minbarra t-tlieta li fil-fatt gew f'idejn id-destinatarju, jistghu ghall-finijiet ta' l-imputazzjoni taht l-art. 28, jitqiesu — s'intendi jekk ikun henim bżonn — anki dawk id-dsatax-il ktieb li ğew miżmuma;

Ikkunsidrat;

Hu ta' l-akbar importanza li jiği rilevat illi l-eżami tal-Qorti ghandu jiği limitat, stante t-termini ta' l-imputazzjoni u l-lokuzzjoni tal-liği li tahtha saret din l-imputazzjoni, ghallpont fuq imsemmi — "jekk il-kontenut tal-kotba hux "impious" jew le. b'dak kollu li timporta l-kelma "impious";

Fost il-liğijiet statutarji ta' Malta hemm dispozizzjonijiet ohra "in pari materia". Hekk, fl-art. 161 tal-Kodići Kriminali, Kap. 12, hemm kontemplat ir-reat ta' kull min, bi kliem, b'gesti, b'kitba, stampata jew le, bi stampi jew b'xi mezz iehor vižibili, ikasbar publikament ir-Reliĝjon Kattolika Apostolika Rumana, inkella joffendi r-Reliĝjon Kattolika Apostolika Rumana billi jkasbar lil dawk li huma ta' din ir-Reliĝjon jew lill-Ministri taghha, jew kull haĝa li tkun oĝĝett ta' devozzjoni tar-Reliĝjon Kattolika Apostolika Rumana, jew li tkun ikkonsagrata jew destinata biss ghad-devozzjoni ta' din ir-Reliĝjon; u in forza ta' l-art. 43 idem, jista' jkun responsabili min ikun kompliĉi, billi xjentement jaĝevola l-preparazzjoni jew konsumazzjoni tar-reat, per ežempju bit-tqassim ta' stampati. Hekk ukoll, il-Liĝi ta' l-Istampa (Kap. 117) tikkontempla r-reat ta' min jinĝurja eĉĉ. lill-Isqof ta' Malta jew ta' Ghawdex (art. 6), kif ukoll ir-reat ta' min ikasbar lill-Qdusija Tieghu l-Papa; u fl-art 9 idem il-liĝi tolqot il-fatt ta'

min iqassam stampati b'ingurji jew bi tkasbir simili;

Imma l-imputazzjoni odjerna hi bažata mhhx fuq dawn il-ligijiet, imma biss fuq l-art. 28 tal-Kap. 85, u l-Qorti ghandha ghalhekk bilfors tirrestringi ruhha ghall-ežami hekk limitat. Appena hemm bžonn jiždied illi, peress li l-imputazzjoni hi "in foro saeculari", ir-ragunamenti tal-Qorti ghandhom jižu ristretti ghall-punto di vista legali, apparti dak li, filkamp morali, jista jkun dnub;

Biex jista' jiği rizolut il-pont devolut f'dan l-appell, hemm bzonn li jiği stabbilit xi tfisser legalment il-kelma 'impious'. Il-Qorti hi ta' fehma illi ghandha tikkoncentra aktarx fuq il-kelma 'impious' tat-test Ingliz milli fuq il-kliem 'li josfendu r-Rel'gjon' tat-test Malti; ghaliex, mentri dan it-test hu recenti, b'mod li ghad ma kienx hemm opportunità li jiği kommentat mid-dottrina u l-gurisprudenza, il-kelma uzata fit-test Ingliz tista' tiği aktar precizata fil-portata taghha bil-kommenti ii, minn zmien, saru minn awturi u f'gudikati. Del resto, l-ispirtu tal-klawsola 49 (1) tal-Lefters Patent ta' l-1939 hu li, f'kazijiet simili, ghandu jkollu preferenza t-test Ingliz;

L-Imhallef sedenti, wara li rrifletta fuq dan il-pont in bazi ghall-istudji dottrinali u gurisprudenzjali, hu ta' l-opin-joni illi l-kelma "impious" hija ekwipollenti ghall-kelma "biasphemous" f'dan il-kontest. Difatti, meta aktar 'il quddiem jigu ĉitati interpretazzjonijiet ta' l-espressjoni "blasphemous", wiched jinnota illi f'dawk iĉ-ĉitazzjonijiet hi wżata bhala ekwipollenti l-kelma "impious"; u ghalhekk din il-Qorti qieghda tekwipara l-interpretazzjoni tal-kelma "impious" ghal dik tal-kelma "blasphemous";

Starkie — Ediz. tal-Folkard, 1876, pag. 593 — ighid hekk: — "The first grand offence of speech and writing is speaking blasphemously against God, or reproachfully concerning religion, with an intent to subvert man's faith in God or to impair his reverence of Him. Blasphemies against God and religion may be regarded, spiritually, as acts of imbecile and 'impious' hostility against the Almighty, or temporally, as they affect the peace and good order of civil society. It is in the latter relation only that such offences are properly cognisable by municipal laws. To attempt to redress or avenge insults to a supreme and omnipotent Creator would be ab-

surd; but when it is considered that such 'impieties' not only tend to weaken and undermine the very foundation on which all human laws must rest, and to dissolve those moral and religious obligations, without the aid of which mere positive laws and penal restraints would be ineffectious, but also immediately tend to acts of outrage and violence, being, for the most part, gross insults to those who believe in the doctrines which are held up to scorn and contempt, they necessarily become an important subject of municipal coercion and restraint. Offences of this nature are punishable in the temporal courts with fine and imprisonment, because they tend to subvert all religion and morality, which are the foundation of Government". L-istess awtur, fil-pag. 597, juża darbtejn ii-kliem "impious libel", dejjem fis-suggett ta "blasphemous publications". U l-Wharton, fil-"Law Lexicon", jiddefinixxi'l-ke'ma "blasphemy" bil-khem "to speak 'implously', to revile':

Stabbilit ghalhekk illi l-kelma "impious" hi ekwipollenti ghall-kelma "blasphemous", il-Qorti sejra tghaddi biex težamina l-ģudikati li kien hemm dwar din il-materja, biex minnhom tiddeduči x'inhi l-portata tal-kelma "impious", os-

sija !"blasphemous";

Fost id-decizjonijiet antiki, dik li hi maggiorment kwotata hi dik "Rex vs. Taylor" (1676). 1. Ventr. 293, 3 Keble, 607, 621, fejn il-kliem inkriminati kienn illi "Religion is a cheat"; u l-gudikant. Sir Matthew Hale, a propozitu ta' dan il-kaz, kien qal:— "Such kind of wicked, blasphemous words were not only an offence to God and Religion, but a crime against the laws, State and Government, and therefore punishable in this Court; for to say 'Religion is a cheat' is to dissolve all those obligations whereby civil society is preserved, and Christianity is parcel of the laws of England, and therefore to reproach the Christian Religion is to speak in subversion of the law";

Fil-kawża "Rex vs. Woolston", I Barnard, 162, 266, Il-Prim Imhallef Raymond, a propozitu tal-fatt inkriminat f'dik il-kawża (I-akkużat Woolston kien qal illi I-mirakli ta' Sidna Gesti Kristu kellhom jiftehmu mhux letteralment, imma allegorikament jew mistikament) hekk qal:— "Christianity in general is parcel of the Common Law of England, and there-

fore to be protected by it. Now, whatever strikes at the very root of Christianity tends manifestly to a dissolution of the civil government. I would have it taken notice of that 'we do not meddle with any differences in opinion, and that we interpose only where the very root of Christianity itself is struck at', as it plainly is by this allegorical scheme, the New Testament and the whole relation of the life and miracles of Christ being denied.....;

Fil-kawża "Rex vs. Ramsey and Foote", 15 Cox. C.C. 231, ic-Chief Justice Coleridge hekk qal:— "If the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blas-

phemous libel.....;

Fil-kawza "Bowman vs. Secular Society Ltd.", 1917. A.C. 406, deciza mill-House of Lords, Lord Buckmaster (p. 475) esprima rubu hekk:— "Assuming that the object of the Society involved a denial of Christianity, it was not criminal, in as much as the propagation of anti-Christian doctrines, apart from scurrility or profanity, did not constitute the offence of blasphemy....... blasphemy is constituted by violent and gross language, and the phrase reviling the Christian religion' shows that without vilification there is no offence";

Minn dawn id-decizjonijiet l-Imhallef sedenti jidhirlu li

jista jiddeżumi dawn il-principji :-

1. Biex il-kliem inkriminati jelfilu taht il-kelma "blasphemous" ew "impious", hemm bžonn illi jkunu jirrigwardaw (ara Fraser, "Law of Libel and Slander", page 196; ara wkoll Starkie, Folkard Edition, fl-estratt gå citat fuq). Il Alla, lil xi Persuna tat-Trimità, lis-Sakra Skrittura, lill-Kristjanežimu in generali, u lir-Religjon in generali;

2. Jekk il-publikazzjoni nkriminata tkun tikkonsisti, filkliem ta' Sir William Blackstone, "Commentaries, 51, f" rational and dispassionate discussions", u jekk "the decencies of controversy are observed" (ara kliem ta' Coleridge C.J. filkawża fug čitata), allura ma hemm xejn li jista' jitqies, legalment (apparti l-morali), "impious"; u ghalhekk, biex ikun hemm ir-reat, jehtież illi l-lingważż użat ikun "profane", jew "scurrilous", jew "abusive", jew "intemperate"; appuntu ghaliex b'dan il-mod biss tkun tidher l-intenzjoni ta' l-awtur

li joffendi "the religious feelings of others";

Din tidher li hija (dejjem limitatament ghall-art, 28 tal-Kap. 85) il-vera požizzjoni legali — apparti minn dak li hu dmir ta' kattoliku fil-kamp morali skond ma tghallem il-Knisja, materja li ma tidholx "in foro saeculari", u apparti wkoll dispožizzjonijiet ohra tal-liģi, bhal dawk fuq čitati, li jirrigwardaw il-vilifikazzjoni tar-Reliģion Kattolika, jew tal-Papa, ečć.;

Ghalhekk, l-Imhallef sedenti ma jirritjenix korretta bhala liği l-propozizzjoni li fuqha mxiet l-Ewwel Qorti fis-sens li kull kitba, li fiha hemm erruri dommatici jew ereziji, jew sentimenti anti-kattolici, ghandha titqies "sic et simpliciter" bhala "impious". Jekk ma hemmx lingwagg abuziv, jew "intemperate" b'mod li tiği murija l-intenzjoni ta' min kiteb li joffendi s-sentiment religiuz, allura l-kitba ma hijiex, ghall-

finijiet ta' l-art, 28, "impious";

Li-ewwel Qorti rrilevat ić-ćirkustanza illi, ghad li hawn Malta hi rikonoxxuta l-"libertà di culto" (ara infatti l-klawsola 56 (1) tal-Letters Patent 1939, Vol. VI Rev. Edit., fein jinghad: "All persons in Malta shall have full liberty of conscience and the free exercise of their respective modes of religious worship), però r-Religion Kattolika Apostolika Rumana hija dikjarata b'ligi (ara Kap. 79) bhala r-Religion ta' Malta u l-Gżejjer li jaghmlu maghba; u minn dan l-Ewwel Oorti gibdet il-konkluzioni li kull ma hu kuntrarju ghal dik ir-Religion hu ghalhekk "impious". Din li-Qorti ma taqbelx f'dan, ghaliex kieku kien hekk, protestant f'Malta langas jista' jibghat bil-posta lil protestant iehor, per eżempju, il-"Book of Common Prayer" bla ma jaqa' taht is-sanzjonijiet tal-ligi. Il-kelma "impious" timporta tkasbir tar-Religjon bi kliem abuživi, b'mod li jigi offiž is-sentiment religiuž u b'mod li jigi manifestat il-hsieb ta' l-imputat li joffendi r-Religion:

Jehid ghalhekk Starkie (lok, cit. pag. 600):— "If it can be collected from the circumstances of the publication, from a display of offensive levity, from contumelious and abusive expression applied to sacred persons or subjects, that the design of the author was to occasion that mischief to which the matter which he published immediately tends, to destroy,

or even to weaken men's sense of religious or moral obligations, to insult those who believe by casting contumelious abuse and ridicule upon their doctrines, or to bring the established religion and form of worship into disgrace and con-

tempt, the offence against society is complete";

U fit-trattat tieghu "On Libel and Siander" l-Odgers ighid:— "It is the malicious intent to insult the religious feelings of others by profanely scoffing at all they hold sacred, which deserves and receives punishment"; u aktar tard (prig. 404 loc. cit.) l-istess awtur ighid li hemm ir-reat "where our religious feelings are insulted and outraged by wanton and unnecessary profanity". U ikompli ighid:— "There surely it is right that some provision should exist to prevent such an offence to the highest and noblest instincts of our nature";

L-istess il-Fraser ighid:— "The publication must be

L-istess il-Fraser ighid:— "The publication must be made with intent to wound the feelings of believers, or to lead astray the uneducated. This particular intent is the gist of the offence, and is usually inferred from the intemperate and scur-

rilous tone adopted by the defendant";

Jekk, però, is-semplici fatt li kitba tkun kuntrarja ghol xi religion partikulari ma hux biżżejjed, u ghalhekk ma hux bižžejjed li, hawn Malta, kitba jkoliha sentimenti anti-kattolici, avvolja r-Religion Kattolika hi r-Religion stabbilita filligi, b'dana kollu però, l-istess fatt jista' jinfluwixxi, fil-fehma ta' l-Imhallef sedenti, ff-apprezzament tac-cirkustanzi li jistghu jinduću lill-gudikant biex jirritjeni li s-sentimenti reli-gjuži huma offiži, jew li l-lingwagg hu "intemperate". Infatti jidher logiku li wiehed jirritjeni li f'pajjiż eminentement kattoliku, kliem offensiv li jissorpassa l-limiti tal-kontroversia decenti dwar principji tar-Religion li jghożżu I-Kattolići, ma jistghux hlief iweggghulhom is-sentimenti taghhom ("wound the feelings of believers"—Fraser, p. 196, loc. cit.). U hekk ukoll, min-naha l-ohra, jekk maltı li jibghat bil-posta lil maltin ohra, kattolici, kotba li fihom ikun hemm kliem "intemperate" dwar affarijiet li, bhala kattolici, huma ighożżu, jidher logiku li wiehed jirritjeni li l-mittent ried il-konsegwenzi naturali ta' l-ağir tieghu, jiğifieri li jiğu niweğiğin is-senti-menti tad-destinatarju. F'dan is-sens biss, ghall-finijiet ta' l-art. 28 Kap, 85, jista' jitqies il-fatt tal-karattru anti-kattoFku ta' stampati akriminati, imma ma jistax jinghad li hemm ir-reat, u li l-istampat hu "impions" semplicement ghaliex

jesprimi veduti anti-kattolići;

Stabbiliti dawn il-principji, l-eżami tal-Qorti ghandu issa jigi dirett ghall-investigazzjoni tal-kontenut tal-kotba f'dan każ partikulari. Li-Ewwel Qorti, peress li rriteniet li kien biżżejjed, ghall-finijiet tar-reat taht l-art. 28 fuq imsemmi, il-karattru anti-kattoliku, ikkunsidrat sufficjenti d-dikjarazzjoni, affermanti dak il-karattru, maghmula fix-xhieda tar-Reverendu Sacerdot Bartoli Galea. Peress, però, li l-Imhallef sedenti pircitjeni li hemm bżonn illi, minhabba li jigu espressi opinjonciet anti-kattolici, jew eretici, jew opinjonijiet li jkun filmun erruri domnatici, illi jkun hemm il-vilifikazzjoni, ossija kliem offensivi, ghallekk din il-Qorti eżaminat necesarjament il-kotba in kwistjoni;
Fil-ktieb intitolat "Hope" l-awtur jidhol fil-kwistjoni tal-

Purgatoriu. Kif jaf kull kattoliku, fid-"Decretum De Purgatorie", Trid. Sess. XXV. jinghad illi l-Knisja Kattolika, illuminata mill-Ispirtu Santu, ghallmet dejjem, skond is-Sagri Skritturi u t-tradizzjonijiet tas-Sauti Padri, illi ježisti I-Purgatorju, u illi l-erwieh li hemm fih jiğu assistiti bis-suffrağji tal-fedeli, partikolarment bis-Sagrificciu ta' l-Altar. Kieku l-awtur innega biss I-ežistenza tal-Purgatorju u gieb, f'mod "sober" u "temperate", argumenti favur it-teži kuntrarja tieghu, allura—apparti dejjem il-kamp tal-morali—ma kienx jista' jinghad illi heimi xi haga ''impious''. Ižda din il-Qorti jidhrilha illi ''the decencies of controversy'' ma gewx osservati. Jinghad infatti fil-ktieb, fost affarijiet ohra :- "The socalled Gregory the Great was Pope of the Roman Catholic sect from 595 to 604. He was subject to epileptic fits and went into trances, being bound by the demon's power. In one of such trances the demons poured into his mind frightful visions of a purgatory of fire and torments. This Pope, over 500 years after Jesus and the Apostles died, was the one who made the fiery "purgatory" a part of the doctrine of Roman Catholic Religion". Aktar tard jinghad: - "The entire purgatory scheme, with its system of high and low masses at corresponding money rates, is a base fraud, as will more fully appear in the course of this discussion. It is obtaining money under

Aktar 'il quddiem, a propožitu ta' l-istess suggett, jinghad :-- "In other words --- Mr. Lovejoy observed --- if the enemies of God went down into their underground air-ruid shelters, Jehovah God would reach down and get them there. The papers report that the Pope has such an air-raid shelter". Fil-pag. 32 ta' l-istess ktieb l-awtur jehodha kontra l-principju ta' l-immortalità tar-ruh. Anki hawn hu, però, ma jillimitax ruhu ghall-argumenti esposti, kif qal Erskine J. in "Shore vs. Wilson". 9 C.1 and Fin. pp. 524, 525, "soberly and reverently", imma juža lingwagg abuživ. u forsi anki, fil-parti fejn jissemma Rex, "offensive levity". Infatti jinghad hekk: - "What is a soul? Religion's idea thereof is the heathen's idea, and hence issues forth from the demons. Therefore we must at the outset discard what religion teaches...... 'U aktar l-isfel, fil-pag. 33, hemm hekk :-- "Oh, Mr. Hopewell-chirped up attentive Deborah-according to that definition, why, even our dog Rex is a soul, although the preachers say that dogs, cats and other animals don't have souls. Your pet Rex is a soul. The Bible plainly teaches that before God created the human soul on earth he created animal souls to inhabit the land and sky and waters of the sea". Fil-pag. 36 "the immortal soul doctrine" tissejjah "heathenish :

Fil-ktieb "Religion Reaps the Whirlwind" il-kittieb jib-da biex jghid "Shall the world go religious to prevent a third world war?" U aktar 'il quddiem jattribwixxi ghar-religion il-fatt ta' żewż gwerer, u jghid: "If religion has twice shown itself helpless to prevent world war, if also provocative of it, will 'organised religion' not bear a heavy responsibility for a third such visitation upon tortured humanity?" Fil-paż, 14 jinghad illi "religion has in reality been practising demonism". Fil-paż, 27 jiżi diskuss dak li hemm jissejjah "the so-called sacrifice of the Mass", u l-awtur jikkwalifika "the practice of saying prayers for souls supposed to be in purgatory"

bhala "diabolical fraudulent, and working injury to mankind":

Aktar 'il quddiem, f'dan il-ktieb, l-awtur jidhol fid-domma tat-Trinità—dak il-Misteru li hu l-bazi tar-Religjon, u li l-Koncilju Tridentin fil-Katekižmu ghallem (i, 1, 4) li ghandu jigi kunsidrat taht tliet aspetti : I-Ewwel Persuna u I-Kreazzjoni; it-Tieni Persuna u r-Redenzjoni; u t-Tielet Persuna bhala fonti ta' Santifikazzjoni. Ma' l-argumenti kuntrarji tieghu l-awtur izid dawn il-klien: :— "The doctrine of the Trinity is drawn from heathen religions, which taught a trinity of demon gods Hence too the Trinity doctrine is borrowed from demonism". Fil-pag. 50 jinghad illi "in many religious organisations, images and paintings are used in worship"; u mbaghad jinghad "this shows that the usage originated with Satan the devil to deceive the people". Filpag. 58 jinghad :- "The mask is down! The truth of God's Word has ripped it off, and 'organised religion' stands exposed as being not of the Lord God and Christ, but of their enemy Satan the Devil. It stands stripped of its Christian professions, and stands naked as being demonism. Religion is revealed as the unchangeable foe of Christianity";

Il-ktieb intitolat "Intolerance" origina minn incident fi New Jersey, u diversi mill-invettivi huma diretti kontra dawk li hadu parti f'dan l-incident; iżda hemm anki attakki aktar generali. Jinghad fil-pag. 19:- "Following the days of the Apostles, true Christianity continued to grow, and the Roman Emperor Constantine, manifestly for a selfish purpose. formed a state religion and labelled it Christianity on earth". Fil-pag. 30, ghal "clergy" ta' "organised Christianity", jinghad :- "By their action they have identified themselves as being against God and for his enemy the Devil", Fil-pag. 40 ghal "Catholic Hierarchy", jinghad :- "They have practised religion and use it as a means of extracting great amounts of money from the poor and honest people. They tell the people each side to pay one-half the cost. You must choose whether to follow the Devil's representatives or to follow Christ. You must hear the truth in order to know which way to go. The truth is found only in the words of Jehovah God". Šija fil-qoxra ta' barra, sija pag. 151, hemm stampa li

tirrapprezenta, fost obrajn, membru tal-kleru f'mod li ma hux

čertament rispettuž;

Minn dawn I-estratti li, biex tiftiehem is-sehtenza, il-Qorti tabilfors kellha tirriproduči, jidher illi min kiteb dawk it-thet kotba ma zammx ruhu fil-"limits of decent controversy". Ma' argumenti li, anki jekk fallaci, jistghu almenu jit-qiesu "dispassionate", huwa zied "fanatical abuse" u "scurrilous attacks upon individuals". Id-Dottrini tal-Fidi Nisranija gew mhux biss kombattuti b'argumenti li, anki jekk zbaljati, almenu huma temperati fit-ton, imma ma' dawn l-argumenti zdiedet l-irriverenza u li "scoffing", flimkien ma' imputazzjonijiet gravi ta' dizonesta fuq "sacred persons" u "objects". Biex tigi kombattuta d-dottrina tal-Purgatorju ma kienx hemm bzonn jissemma l-allegat incident ta' Gregory the Great, u langas kien hemm bżonn li jintużaw il-kliem "fraud" u dawk ta' "obtaining money under false preten-ces", u langas ta' l-"air raid shelter", anunenokkê l-awtur ma riedx jixhet ir-ridikolu fuq dak li kien qieghed jattakka. Biex tigi kombattuta d-dottrina ta' l-immortalità tar-ruh, ma hemmx bžonu li tissei ah bhala li tigi "from the demons", u lanqas jissemmew l-annimalı. L-ağğett'vi ta' ''diabolical, de-ceptive, fraudulent.....' ma kienux mehtieğa biex l-aw-tur jghid dak li deherlu li ried jghid fuq is-suffrağji ghallerwieh tal-Purgatorju, Biex jigi kombattut il-Misteru tat-Trinitā ma kienx mehtieš li jinghad li ģej minn "demonism". Ir-Reliģjon in ģenerali, bil-kleru ta maghha, jissejhu bhala alleati ta Satana u bhala ghedewwa tal-Kristjaneżniu. Kattoličižmu ma hux, skond l-awtur, blief mezz biex jigu estorti 1-flus. Min hu mal-Papa hu kunsidrat mill-awtur bhala li hu ma' Satana stess;

Dan kollu ma jistax ma jkunz offensiv ghas-sentimenti reliğjuži. Ir-Reliğjon, bhala komprendenti "sacred persons or objects", hi udubljament vilifikata, u rapprežentata fl-estratti fuq riportati bhala "cheat", biex wiehed juža l-kliem tal-kawża ta Taylor fuq čitata, jew, fil-kliem tal-kawża ta Jacob "live (Starkie, Folkard Edit, pag. 596), "spurious and chimerical and a piece of forgery and priestcraft". Ir-rimarki fuq riportati jtendu li jweggghu s-sentimenti tal-kredenti billi jipproduču disprezz tar-reliğjon u l-kleru;

Kwantu ghall-"mens rea", ghandu jinghad. illi Emputat. malti, meta baghat kotba simili lil maltin kattolici, f'Malta Kattolika, fejn l-"established religion" hija r-Religion Kattolika, ma setax ma jridx il-konsegwenzi naturali tal-ghemil tieghu, li cjoè jwegggha s-sentimenti religiuzi ta' hadd iehor:

Inghad a propožitu, fil-gurisprudenza ingliža, "a party miss be considered, in point of law, to intend that which is necessary or natural consequence of that which he does" (Rex vs. Harvey 2 B & C, p. 264). U l-Harris (Wilshere Edit., pag. 26) ighid:— "If a man voluntarily does on act from which harm naturally arises, he is deemed to intend harm'. Ghalhekk xejn ma jiswa lill-imputat li jghid li hu qassam dawn il-kotba biex-kif qal hu-''idawwal'', ghaliex hu ma setax, fic-cirkustanzi tal-kaz, ma jkunx jaf l-effett li jista' jkollhom dawk il-kotha; u konsegwentement hu prežunt li ried dak l-effett. Dan apparti l-osservazzjoni assennata ta' li Starkie (loc. ĉit.) illi "as a matter of discretion and prudence it might be better to leave the discussion of such matters to those who, from their education and habits, are most likely to form correct conclusions......" Langas tiswa biex tnehhi l-"mens rea" l-osservazzjoni tad-difensur fis-sens illi l-kotba (dawk eżaminati u obrajn) żew mibghutin lil nies kolti, u mhux ta' ftit edukazzjoni, u li ghalhekk l-imputat ma setax kellu l-intenzjoni li jqarraq lil hadd iehor; ghaliex jista' jigi facilment ribattut illi l-intent ta' min jaghti ruhu ghal propaganda simili hu aktar raggunt jekk titqarraq persuna kolta. li facili hi stess imbaghad tigbed maghha ohrajn anqas kolti. milli persuna ta' istruzzioni skarsa li ma ikoliha ebda nfluwenza fuq hadd iehor:

Ghalhekk din il-Qorti taqbel filli tirritjeni lill-Imputat bati skond l-akkuża, però fuq il-końsiderandi ga esposti, li jid-differixxu ghalhekk minn dawk li rriteniet l-Ewwel Qorti f'dan is-sens: fil-fehma tal-Magistrat, il-fatt li jkun hemmerruri dommatici (u kwindi ereżiji) u sentimenti anti-kattolici, hu biżżejjed ghalbiek ikun hemm ir-reat; l-Imhallef sedenti, invece, jirritjeni illi mentri ghall-finijiet spiritwali, hemm il-"blasphemia haereticalis" meta "manifestum errorem continet" (ara Bellacosa—Theologiae Moralis Rudimenta, pag. 43. u Devoti—"Institutionum Canonicarum", Lib.

IV. pag. 135), u xejn aktar ma hemm bžonn, ghall-finijiet però tar-reat ta' "impiousness" jew "blasphemy" "in foro saeculari" hemmi bžonn li jkun hemmi l-užu ta' kliem "intemperate", ossija "offensive", b'mod li tista' tigi dežunta l-intenzioni "to wound the feelings of believers";

Kwantu ghali-piena, peress li ma jirrizultax mili-attijet pročesswali li l-imputat ma kellux sal-lum kondotta tajba, tista' tinghata lilu, ghal din id-darba, l-alternativa ta' piena ta' flus; specjalment billi l-konsenja spontanea tal-kotba li liu ghamel lill-Pulizija wriet certa resipixxenza fl-imputat:

Ghal dawn il-motivi;

Tiddecidi;

Billi-ghalkemm ghal motivi dversi-tikkonferma a-sentenza appellata u tičhad l-appell. Il-piena tkun dik tal-multa ta' £25, tithallas žmien tnax-il gurnata mil-lum, Liema piena hi, minn issa, dikjarata konvertibili (art. 16 l-ahhar proviso Kap. 12), f'kaž ta' nuqqas ta' hlas, fil-prigunerija ghal žmien hmistax-il gurnata. Tibqa' konfermata l-konfiska, Ir-Reģistratur ghandu jiehu hsieb li dawa il-kotba ma jigrux fl-idejn.