

29th. January, 1948

Judge :

The Hon. Mr. Justice T. Gouder, LL.D.

The Police *versus* Peter Bridle et.

**Vilification of the Roman Catholic Apostolic Religion —
Publicity — Defamation — Single Offence —
Sections 161 and 162 and 265 (1) of the Criminal Code,
and Sections 2 and 10 of the Press Ordinance.**

*From a purely legal point of view, the mere fact that a written mat-
ter is against a particular religion or against a particular reli-*

gious belief is not enough to give rise to a charge of vilification of that religion or religious belief, provided the arguments adduced are a temperate and sincere expression and the decencies of controversy are observed. But when the limits of rational and dispassionate discussion are not observed, when violent and gross language is used, and indiscriminate abuse is made use of, instead of argument, and sacred objects are treated with offensive levity, then such a charge is well founded.

It is true that publicity is an essential element of this crime under the Criminal Code; but the distribution of books containing such abusive matter constitutes that publicity which is required for the perpetration of this crime.

The distributor of such printed matter is equally guilty of this crime as the author thereof, for it is incorrect to say that only the author or the originator of the spoken words, or the author of the written words, is guilty of defamation. Therefore, a person who puts into circulation defamatory matter on paper or in print is likewise guilty of defamation, saving the rules of complicity.

The relevant provision of the Criminal Code is of a general nature, as it includes all those who knowingly put into circulation printed matter whereby the Roman Catholic Apostolic Religion is vilified or offended. And the "mens rea" in such a case is sufficiently proven by the mere fact of the circulation in Malta, where the established religion is the Roman Catholic Apostolic Religion, of books which offend that religion and its ministers, as well as the Supreme Pontiff; for the person who circulates such books must necessarily have wanted the natural consequences of his action.

However, as it is a well established rule of law that, whenever by means of the same acts founded in one and the same malicious intent, two or more rights are violated, there is a single offence, and the lesser offence is absorbed in the graver one, the distributor of such incriminated matter cannot be convicted under the provisions both of the Criminal Code and those of the Press Law, but he must be convicted only under the provisions of the Criminal Code contemplating the graver offence.

This is an appeal from a conviction, on the 3rd. October, 1947, of the appellants by the Criminal Court of Magistrates of Judicial Police for the Island of Malta, whereby the appellants were convicted of having, in various places in Malta, at

different times, in pursuance of the same design, repeatedly, by means of printed matter and pictures, publicly vilified the Roman Catholic Apostolic Religion, and given offence to the same Religion by vilifying those who profess it and its ministers, and by vilifying things which form the object of, or which are consecrated to, and are necessarily destined for Roman Catholic worship; and of having, during the same period afore mentioned, knowingly published and distributed printed matter which insulted and ridiculed the Supreme Pontiff under sections 161, 162, 20, 19 (b), 32 (1) (b) (XIII) (XII) (XI) (X), and 24 of the Criminal Code, and sections 2, 3 and 10 of the Press Ordinance; and the appellants were conditionally released as first offenders under the provisions of art. 23 of the Code afore mentioned; but exhibits marked with the letters "E" and "F", and those in cartons marked with the numbers 1 to 19, mentioned in the documents marked with the letters "G" and "H" (pages 38, 39 and 40 of the record of proceedings) were confiscated;

The following are the grounds of this appeal:—

(a) No evidence was heard by the Court below; and consequently the accused should have been discharged for lack of evidence against them;

(b) The literature objected to by that same Court does not vilify the Roman Catholic Religion, as "vilification" implies not only the use of abusive language, but that such language be used with the specific intent to hold a person or thing up to contempt, ridicule or obloquy; while the author of the said literature had no such intention, as he only meant to enlighten honest people for their eternal welfare in accordance with what the Witnesses of Jehovah think and believe to be true;

(c) The accused could not have been convicted under section 161 of the Criminal Code, for the following reasons; namely:—

1. That they have not acted publicly;
2. That they are not the authors of the said literature, and they cannot even be deemed to be accomplices;

(d) The accused could not have been convicted under section 10 of the Press Ordinance, as the object of that pro-

vision of the law is the protection of the person of the Supreme Pontiff, and not of the Hierarchy or the Government of the Vatican, and in no part of the literature objected to does the author refer to the Supreme Pontiff as an individual. Moreover, the accused had not the specific intent to ridicule the Supreme Pontiff;

The appellants finally submitted that according to the provisions of the Criminal Code they cannot be convicted of the offence contemplated in the Press Ordinance and also of the offence contemplated in section 161 of the Criminal Code, for the reason that the facts alleged in support of the former offence are included in those on which the other charge under the Criminal Code is based, and consequently the lesser offence is absorbed in the graver one;

The appeal based on the ground that no evidence was heard by the First Court was dealt with separately, and was dismissed by a judgment given on the 9th, December, 1947;

The appeal on the merits of the case was heard on the 20th, December, 1947;

The following are the facts which gave rise to these proceedings:— On the 26th, April, 1947, at about 4.30 p.m., the accused were selling books in Kingsway, Valletta. Each had an open bag of a white cloth slung over his shoulder. On one side of the bag were stamped in red colour the words "The watch tower explains the Theocratic Government, 5 cents per copy". On the other side of the bag these words were written "The watch tower awake, 5 cents per copy". Two police constables approached the accused, and asked them what they were doing. The accused answered that they were distributing the books they had in their bags against voluntary contribution. They were, thereupon, taken to the police station, where they repeated the statement to Inspector Joseph Benigni, who seized from their possession the books and booklets which were later on produced before the Court below. Those produced as documents with the letter "C" were seized from the possession of the accused Peter Bridle, and those produced as documents marked with the letter "D" were seized from the possession of the accused Fred Burgess Smedley. On the 1st, May, 1947, at about 10 a.m., the accused were at Vic-

toria Avenue, Sliema, where they rang the doorbells of several houses and offered books for sale to the persons who answered the bell. For this reason they were taken to the Police Station at Sliema, and thence to the Police Depot. P.S. 57½ Charles Grech seized from the possession of Peter Bridle the books which were later on produced before the Court below as documents marked with the letter "E", and from the possession of Fred Burgess Smedley the books which were also produced before the Court below as documents marked with the letter "F". On the following day the accused were seen again ringing the doorbell of several houses in the same street above mentioned, in Sliema, and this time they offered to explain the Bible to the persons who answered the bell. On the same day, some police officers made a search in the place where the accused resided, and Inspector Carmelo Floridaia seized from the possession of Peter Bridle the books, booklets and pamphlets, which later on were also produced before the Court below as document "G", and from the possession of Fred Burgess Smedley the books, booklets and pamphlets, which were also produced before the Court below, and which are those mentioned in the list marked with the letter "H" at page 40 of the record of proceedings. On several other occasions in Victoria Avenue and in New Street, Sliema, the accused rang the doorbell of several houses and offered to explain the Bible to the residents, and to discuss with them some of its passages. However, they were never importunate, and left when asked to do so by the persons residing at the houses where they had called;

As the Court below has stated, the accused admit having done what has been reproduced above; but they plead that they did so in conformity with their mission as ordained ministers of the Gospel and as Jehovah's witnesses. They also admit that the books above referred to, which were seized from their possession, had been by them imported in Malta and withdrawn from the Custom House, and that it was their intention to distribute in these Islands the books which were seized from their residence by Inspector Floridaia;

According to section 161 of the Criminal Code, "whosoever by words, gestures, written matter, whether printed or

not, or pictures, or by some other visible means, publicly vilifies the Roman Catholic Apostolic Religion, which is the religion of Malta and its Dependencies, or gives offence to the Roman Catholic Apostolic Religion by vilifying those who profess such religion or its ministers, or anything which forms the object of, or is consecrated to, or is necessarily destined, for Roman Catholic worship, shall, on conviction, be liable to imprisonment for a term from one to six months";

Section 162 of the same Code lays down:— "Whosoever commits any of the acts referred to in the last preceding section against any cult tolerated by law shall, on conviction, be liable to imprisonment for a term from one to three months";

The Roman Catholic Apostolic Religion is the Religion of Malta and its Dependencies, and all other religions and religious cults are tolerated (Chapter 79 of the Revised Edition of the Laws of Malta; and section 56 (1) of the Letters Patent of the 14th. February 1939, section 53 (1) of the Letters Patent of the 5th. September 1947);

Section 10 of the Press Ordinance lays down:— "Whosoever, by the means mentioned in section 2, shall insult or ridicule the Supreme Pontiff, or the Sovereign or President or other Head of State, of a country in amity with His Majesty the King, or shall insult the Government of such foreign country, or shall insult or show contempt towards its flag or other emblem, shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine (multa) of from twenty five to two hundred pounds";

According to section 2 of the said Ordinance, the offence is committed by means of the publication or distribution in the Island of Malta and its Dependencies, of printed matter from whatsoever place such matter may originate". "Printed matter" means "any writing printed in typographical characters or by lithography, or any similar device or process, on paper or other substance, as well as any bill, placard or poster, containing any sign or script, written, printed, painted, embossed, or in any other matter impressed, and includes any gramophone record". "Publication" means any act whereby any printed matter is, or may be, communicated to, or brought to.

the knowledge of any person (section 3 of the Press Ordinance);

The written matter on which the charges have been based consists of several copies of the following books, booklets and pamphlets, namely:—

- (a) "The truth shall make you free";
- (b) "The truth shall make you free—study questions";
- (c) "La verità vi farà liberi";
- (d) "Hope";
- (e) "Religion";
- (f) "The Kingdom is at hand";
- (g) "The Kingdom is at hand—study questions";
- (h) "Religion reaps the whirlwind";
- (i) "La religione miete la tempesta";
- (j) "I mansueti erederanno la terra";
- (k) "The commander of the people";
- (l) "Il comandante dei popoli";
- (m) "The coming world regeneration";
- (n) "Choosing";
- (o) "Warning";
- (p) "Theocracy";
- (q) "Let God be true";
- (r) "Freedom in the new world";
- (s) "One world one government";
- (t) "The Kingdom of God is nigh";
- (u) "The watch-tower—March 1st., 1947";
- (v) "Awake—March 8th., 1947";
- (w) "Kingdom news, world conspiracy against the truth—February, 1946";

The Court below held that all these books contain attacks against the Roman Catholic Apostolic Religion, against its Head and Supreme Pontiff, against the clergy, and against its dogmas and its doctrines. The gist of these books, taken collectively, as given by that Court, is the following:—

"Religion is against God and was invented by Satan. The Supreme Pontiff is not the representative of Christ on earth, and is not infallible. The doctrine of the Holy Trinity is false. The human soul is not immortal, and consequently it is not true that when one dies 'he goes to heaven,

purgatory or hell'. Hell, as a place of fiery torment, does not exist. Purgatory was invented by the priests so that, by saying masses for the repose of the souls of the departed, they may relieve the people of their hard-earned money. In 1914 Christ's Kingdom was established on this earth, and in the very near future the battle of Armageddon will be fought, in which all religions and religionists will be destroyed, and the survivors, Jehovah's witnesses, will continue to live on earth in happiness";

From a purely legal point of view, the mere fact that a written matter is against a particular religion, or against a particular religious belief, is not enough to give rise to a charge under the laws above quoted, provided the arguments adduced are a temperate and sincere expression and the decencies of controversy are observed. But when the limits of rational and dispassionate discussion are not observed, when violent and gross language are used, and indiscriminate abuse is made use of, instead of argument, and sacred objects are treated with offensive levity, then the charges under the provisions of the laws above mentioned are well founded;

This Court has examined a copy of each of the books above mentioned and agrees with the Court below that in very many parts of those books the limits of rational and dispassionate discussion and the decencies of controversy were not observed. Violent and gross language has been used. Sacred objects have been treated with offensive levity. Intemperate and scurrilous tone has been adopted. The doctrines of the Christian Faith have been combated irreverently and with scoffing. Sacred persons and objects have been gravely charged with dishonesty. The quotations in the judgment of the First Court, which need not be reproduced here, are ample proof of the truth of this statement;

All this tends to shake down the sentiments of believers by bringing contempt to their religion and to its ministers, and consequently the plea of the appellants that the author of the said books had in view only the enlightenment of honest people, and not the vilification of sacred persons and objects, cannot be accepted;

The appellants raised the plea that one of the essential elements of the offence under section 161 of the Criminal Code is wanting, as they did not distribute copies of the said books "in public", whilst publicity is one of the essential elements of this offence;

It appears, however, from the evidence, that the appellants were seen distributing books in Kingsway, Valletta. The books they had for distribution at that time were seized by Inspector Benigni, and they were exhibited before the Court below as documents marked with the letters "C" and "D". The following books were seized from the bag which was slung over the shoulder of the appellant Peter Bridle, namely:— "Let God be true", "The Kingdom is at hand", "Freedom in the new world", "The commander of the peoples", "Hope for the dead for the survivors in a righteous world", "One world one government", "Religion reaps the whirlwind". The following books were seized from the bag which was slung over the shoulder of the appellant Fred Burgess Smedley, namely:— "Let God be true", "Warning", "Theocracy", "Awake"—8th. March 1947", "The watch tower—March 1st, 1947" (See page 16 of the record of proceedings);

The above are some of the books of which quotations are found in the judgment of the Court below. In these books sacred persons and objects are vilified. The plea of lack of publicity, which is an essential element of the offence, cannot, therefore, be accepted;

The appellants also contend that the provisions of sections 161 and 162 of the Criminal Code do not apply, for the reason that those provisions of the law have in view the author of the incriminated printed matter, and not also its distributor. They also contend that they cannot even be deemed to be accomplices in the offence, as the rules of complicity obviously do not apply;

According to the view of the appellants, their contention is supported by a reference to section 265 of the same Criminal Code, which deals with defamation, and by a comparison between the said section of the Criminal Code and section 5 of the "Seditious Propaganda (Prohibition) Or-

dinance", and section 2 of the "Press Ordinance" (Chapter 111 and 117 respectively of the Revised Edition of the Laws of Malta);

According to section 265 (1) of the Criminal Code, a person is guilty of defamation when that person offends another by words, gestures, or by any writing, or drawing, or in any other manner, with the object of destroying that other person's reputation;

The appellants submit that in this section the same wording is used as that of section 161, and that, in the case of defamation by writing, only the originator of the spoken words, or the author of the written words, is liable to conviction for defamation;

The appellants' contention cannot be accepted, as it is incorrect to state that only the originator of the spoken words, or the author of the written words, is liable to conviction under section 265 (1) of the Criminal Code. As a matter of fact, it is an established rule that a person who repeats a defamatory statement, orally made by another person, is equally guilty of defamation ("Attard vs. Testa", inter alia, Law Reports Vol. XVI, Part IV, page 40). A person who puts into circulation defamatory matter on paper or on print, is likewise guilty of defamation, saving, of course, the rules of complicity;

Section 6 of the "Seditious Propaganda Ordinance" holds guilty of an offence against that Ordinance "any person who prints, publishes, imports, sells or offers for sale, distributes, exhibits or exposes, any seditious matter". And section 2 of the "Press Ordinance" lays down that the offences mentioned in Part II of that Ordinance (press offences in particular) are committed by means of the publication or distribution of printed matter";

From the fact that the provisions of the laws above quoted specifically hold guilty of the offence therein contemplated also the person who published or distributed the offensive matter, and, in the case of the "Seditious Propaganda Ordinance", also the seller and the person who offers for sale seditious matter, whilst the publisher, the distributor, the seller and the person who offers for sale printed matter which

vilifies the Roman Catholic Apostolic Religion are not mentioned in section 161 of the Criminal Code, the appellants draw the inference that section 161 of the Criminal Code only applies to the author of the written matter whereby the Roman Catholic Apostolic Religion is vilified or offended, as otherwise, according to the contention of the appellants, the publisher, distributor, seller, and the person who offers for sale the printed matter, would have been specifically mentioned also in that section;

The deduction of the appellants cannot be accepted. A provision of the law may, and should, be interpreted by means of other provisions of the law relating to the same object, or to analogous objects; for the reason that all these provisions are supposed to be perfectly consistent — "*Inci-vile est nisi tota lege perspecta, judicare vel respondere*". A provision contained in a particular law may not, however, be always correctly interpreted by means of a provision contained in a different law. With regard to the case under consideration, the legislator may have voluntarily chosen a general formula in one law and a detailed one in the other;

The formula adopted in section 161 of the Criminal Code is of a general nature, and it includes all those who knowingly put into circulation printed matter whereby the Roman Catholic Apostolic Religion is vilified or offended. It is not possible to come to a different conclusion, if the "*ratio legis*" is kept in mind;

As regards the "*mens rea*", this Court is of opinion that when the appellants put into circulation the books above mentioned in Malta, where the established religion is the Roman Catholic Apostolic Religion, they must have necessarily wanted the natural consequences of their action, which was that of offending the Roman Catholic Apostolic Religion by bringing contempt to that religion and to its ministers. Harris (Wilshere edit., page 26) states:— "If a man voluntarily does an act from which harm naturally arises, he is deemed to intend harm". And in "*Rex vs. Harvey*", 2 B and Cp. 264, quoted in the case "*The Police vs. Farrugia*", 28th. October 1946, per Harding J. Cr. App. Malta) it is stated:— "A party must be considered, in point of law, to in-

tend that which is the necessary or natural consequence of that which he does";

In regard to section 10 of the Press Ordinance, the appellants contend that this provision of the law aims at protecting from insult and ridicule only the person of the Supreme Pontiff as the visible Head of the Church or the Government of the Vatican. This they infer from the fact that in this provision of the law the Supreme Pontiff is mentioned together with the Sovereigns, Presidents, and other Heads of State of a country in amity with His Majesty; and also from the fact that, whilst in this law the revilement of the Government of such foreign country is contemplated, no mention is made of the Vatican;

However, it is quite useless for the appellants to make the above distinction between the person of the Supreme Pontiff and the Supreme Pontiff as visible Head of the Church, and the Government of the Vatican. In the first place, because they cannot be convicted of the offence under the Press Ordinance, for the reasons which will be given below; and in the second place, because the books above referred to contain an indiscriminate attack on the Pope, and consequently also on the reigning Pontiff; and with regard to the "mens rea" in this connection, what has been stated in respect of the other charge under the Criminal Code applies;

This Court now comes to the consideration of the last submission of the appellants, who claim that they cannot be convicted of both offences, namely of that under the provisions of the Criminal Code and of that under the provisions of the Press Ordinance, but only of the graver of these two offences;

It is a well settled rule of law that, whenever by means of the same acts founded on one and the same malicious intent, two or more rights are violated, there is only a single offence, and the lesser offence is absorbed in the graver one;

In the case under consideration the same facts, juridically considered, have given rise to the offence under the above quoted provisions of the Criminal Code, and also to the offence under the Press Ordinance. These facts are founded on the same malicious intent, and consequently the submis-

sion of the appellants must be accepted. The appellants should have been convicted only of the graver offence, under the provisions of the Criminal Code;

For the fore going reasons, the appeal on the ground ultimately mentioned must be allowed, and it must fail on all the other grounds; and as the Court below did not sentence the accused to any penalty, but granted to them, instead, the benefit of the First Offenders Act under the provision of section 23 of the Criminal Code, this Court reverses the judgment of that Court in so far as it regards the conviction under the Press Ordinance, and confirms the same judgment for the rest.
