AIME BOUCHER ..... APPELLANT;

AND

HIS MAJESTY THE KING..... RESPONDENT.

1949

*May 31
*Jun. 1, 2, 3
*Dec. 5

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*Jun. 9, 12, 13
*Dec. 18

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

*Seditious libel—Religious pamphlet distributed by Witness of Jehovah—Seditious intention—Good faith—Whether incitation to violence is necessary element of seditious libel—Whether jury was properly charged—Criminal Code, R.S.C. 1927, c. 36, s. 133 (as amended by S. of C. 1936, c. 29, s. 4) and s. 133A (as enacted by S. of C. 1930, c. 11, s. 2).*

Neither language calculated to promote feelings of ill-will and hostility between different classes of His Majesty's subjects nor criticizing the courts is seditious unless there is the intention to incite to violence or resistance to or defiance of constituted authority.

The definition of a seditious intention given in Stephen's Digest of the Criminal Law, 8th Ed. p. 94, to the extent that it differs from the foregoing, disapproved.

Appellant was convicted by a jury of having published a seditious libel, by distributing copies of a pamphlet containing alleged seditious passages, to several persons at St. Joseph, in the district of Beauce,

PRESENT AT FIRST HEARING: Rinfret C.J. and Kerwin, Taschereau, Rand and Estey JJ.

*PRESENT AT SECOND HEARING: Rinfret C.J. and Kerwin, Taschereau, Rand, Kellock, Estey, Locke, Cartwright and Fauteux JJ.

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in the province of Quebec, contrary to s. 134 of the *Criminal Code*. The conviction was affirmed by a majority in the Court of King's Bench (Appeal Side). An appeal to this Court was allowed on grounds of misdirection and improper rejection of evidence. On the first hearing of this appeal, heard by a Court of five judges, the majority ordered a new trial. Application was then made, and granted, to have the appeal reargued before a full Court of nine judges. On the reargument, it was conceded on behalf of the Crown that the conviction should be quashed due to errors in the trial judge's charge, and the only question which remained was as to whether there was evidence upon which a properly instructed jury could find the appellant guilty of publishing a seditious libel by reason of the publication of the pamphlet here in question.

*Held:* (Reversing the judgment appealed from) the Chief Justice, Taschereau, Cartwright and Fauteux JJ. dissenting, that the accused should be acquitted as there was no evidence, either in the pamphlet or otherwise, upon which a jury, properly instructed, could find him guilty of the offence charged.

*Per* Rinfret C.J. (dissenting): Since the *Criminal Code* has dealt with the matter, the Courts must administer the law respecting seditious libel in accordance with the Canadian legislation and not in accordance with statements by commentators in England. Section 133(4) of the *Code* makes it clear that the advocating of force is not the only instance in which an accused could be found guilty of a seditious intention. Moreover, it does not belong to this Court to pass upon any other passage of the charge than those referred to in the dissent in the Court of Appeal, nor to decide itself whether there was any ground for coming to the conclusion that the document was or was not a seditious libel. What the jury alone had to decide was: (*a*) whether the document contained matters which were producing or had a tendency to produce feelings of hatred and ill-will; (*b*) whether the accused pointed out these matters in order to their removal; and (*c*) whether he did so in good faith. This Court has no authority to decide these questions, more particularly in view of the fact that the jurisdiction of this Court in criminal cases is limited to the points of dissent in the Court of Appeal (which, in this case, were exclusively on the ground that the charge was incomplete and erroneous in certain respects and had exceeded the limitations imposed by the rules of law).

*Per* Taschereau, Cartwright and Fauteux JJ. (dissenting): That, although to render an intention to create ill-will and hostility between different classes of His Majesty's subjects seditious there must be an intention to incite resistance to lawfully constituted authority (and this cannot be found to have been the intention here); at common law an intention to vilify the administration of justice and bring it into hatred or contempt or to excite disaffection against it is a seditious intention, the *Criminal Code* has not altered the law in this respect and as the words of the pamphlet furnish evidence upon which a properly instructed jury could reasonably find the existence of that intention, there should be a new trial.

(The history of the law relating to a seditious intention considered and the authorities reviewed).

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), dismissing, Letourneau C.JA and Galipeault JA dissenting, appellant's appeal from his conviction, at trial before a jury, on the following charge: "Que le ou vers le 11 décembre, 1946, à St Joseph dans le district de Beauce, le dit Aimé Boucher de Ste Germaine a publié des libelles séditieux contenues dans un fascicule intitulé "La haine ardente du Québec pour Dieu, pour Christ et pour la liberté est un sujet de honte pour tout le Canada", en les exhibant en public ou les faisant lire ou les montrant ou les délivrant, ou les faisant montrer ou délivrer dans le but de les faire lire par quelqu'un, le tout malicieusement et contrairement au code Criminel du Canada, spécialement aux articles 133, 134 et 318.

The points of dissent in the Court below, to which this Court was limited in its consideration of this case, were as follows:

1) That references in the charge to the facts proven in the case appealed more to the religious or national sentiments of the jury than to the latter's reason;

2) That the trial judge should not have undertaken to establish that some of the statements in the document were erroneous, after he had properly ruled that the truth of the statements was immaterial;

3) That the trial judge misdirected himself when he told the jury that it ought to find the accused guilty if it thought that the document was of a nature to insinuate that in Quebec the administration of justice was biased, that the clergy controlled the Courts, and that there existed in that Province an apparent hate for God and Christ and Freedom;

4) That a certain objection to a question put by the defence and of a nature to establish the good faith of the accused should not have been maintained;

5) That the trial judge misdirected himself when he stated that he could not see where the jury could find that there was a doubt in this case.

(1) Q.R. [1949] K.B. 238.

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*A. L. Stein K.C., W. G. How and D. B. Spence* for appellant at the first hearing.

*A. Lacourcière K.C.* for respondent at the first hearing.

*W. G. How* for appellant at the second hearing.

*L. H. Gendron K.C.* for respondent at the second hearing.

THE CHIEF JUSTICE (dissenting): There has been a rehearing in this appeal, but the appellant has failed to convince me that I should modify the reasons for judgment which I had written after the first hearing and which were as follows:

The appellant was convicted by a jury of publishing a seditious libel contrary to Section 133 of the *Criminal Code* and the conviction was affirmed by the Court of King's Bench (Appeal Side) of the Province of Quebec (1), the Chief Justice of the Province of Quebec and Galipeault J.A. dissenting.

This Court is limited to the consideration of the points of dissent. Galipeault J.A. states in his reasons that he would have ordered a new trial "m'arrêtant uniquement aux griefs de l'appelant à l'encontre de la charge du Juge". Likewise Chief Justice Letourneau dissented exclusively on the ground that the trial judge's charge to the jury was incomplete and erroneous in certain respects and that it had exceeded the limitations imposed by the rules of law. He also would have granted a new trial. The majority of the Court of King's Bench (Appeal Side) was of opinion that no fault could be found in the learned judge's charge and the appeal of the accused should be dismissed.

Very properly Chief Justice Letourneau avoided discussing the circumstances of the trial, in view of the fact he thought that a new trial should be granted to the appellant, and I feel that I should do the same.

His reasons for dissent were that references in the charge to the facts proven in the case appealed more to the religious or national sentiments of the jury than to the latter's reason. He also thought that since the learned judge had ruled in the course of the trial that the truth of the statements contained in the libel was immaterial,

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the learned judge should not have undertaken to establish that these statements were erroneous. Further, the Chief Justice considered that the learned trial judge had misdirected himself when he said that, if the jury was of the opinion that the incriminated document was of a nature to insinuate that in the Province of Quebec the administration of justice was biased, that the Catholic clergy controlled the Courts, and that there existed in that Province an apparent hate for God and Christ and Freedom, then the jury ought to find the accused guilty.

The learned Chief Justice also found fault with the ruling of the presiding judge to the effect that a certain objection to a question put by Counsel for the defence and of a nature to establish the good faith of the accused should not have been maintained.

In addition to the above, the dissent also expresses the view that when dealing with the question of reasonable doubt, at the request of Counsel for the defence, the learned trial judge misdirected himself again when he stated that in the present case he could not see where the jury could find that there was a doubt.

Finally, the dissent also refers to a direction alleged to have been made by the trial judge in reference to the good faith of the accused, that after the jury had read the incriminated document they would have to decide if such document was really of a nature to re-establish good will between the Witnesses of Jehovah and the people of the Province of Quebec, which, the accused had stated in evidence, was his purpose in publishing the document; and when, after the charge had been delivered to the jury, the learned presiding judge was asked to inform the jury as to the nature of a blasphematory libel and a defamatory libel as contrasted to a seditious libel, the learned judge defined both defamatory and blasphematory libel, but he added:

> This was not the accusation brought against the accused. I do not believe that there is here in the document anything blasphematory. C'est plutôt un libelle séditieux qui a été produit.

The dissent finds that such a declaration on the part of the trial judge was of a nature to influence the verdict. The learned Chief Justice, therefore, concluded that the

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charge was erroneous, both on the ground of mis-direction and non-direction and that, as a consequence, the verdict was tainted with illegality.

Now those are the grounds of dissent. It does not belong to this Court to pass upon any other passage of the charge of the learned trial judge, nor to decide itself whether there was any ground for coming to the conclusion that the document now in question, and for which the accused was brought to trial, was or was not a seditious libel. If this Court were to so decide, it would attribute to itself a finding which is exclusively the province of the jury. As an illustration of this, I might point out that under Section 133 (*a*) of the *Criminal Code* the question of the good faith of the accused forms a necessary part of the circumstances to which the jury must direct its attention; and, of course, good faith is essentially a matter left to the jury, properly directed, and regarding which this Court has no right to interfere.

I would be willing to accept some of the reasons of the learned Chief Justice of the Province of Quebec, and to say that, on some of the points he refers to, the charge was incomplete and perhaps even erroneous, although, with respect, I do not agree with him in his interpretation of some of the statements made by the trial judge.

I may say, at once, without referring to any of the passages in the document distributed by the accused, that I agree with the rule laid down by Lord Cairns in *Metropolitan Railway Company* v. *Jackson* (1) and would apply it to the present case:

> The Judge has a certain duty to discharge, and the jurors have another and a different duty. The judge has to say whether any facts have been established by evidence from which negligence may be reasonably inferred; the jurors have to say whether, from those facts, when submitted to them, negligence ought to be inferred. It is, in my opinion, of the greatest importance in the administration of justice that these separate functions should be maintained, and should be maintained distinct. It would be a serious inroad on the province of the Jury, if, in a case where there are facts from which negligence may reasonably be inferred, the Judge were to withdraw the case from the jury upon the ground that, in his opinion, negligence ought not to be inferred; and it would, on the other hand, place in the hands of the jurors a power which might be exercised in the most arbitrary manner, if they were at liberty to hold that negligence might be inferred from any state of facts whatever.

(1) (1877-78) 3 A.C. 193 at 197.

In the present case all that was necessary for the Crown to do was to file the document and to prove that the accused had published it within the meaning of the law. That is what the learned trial judge stated and meant when he said:

> J'en conclus donc, et sur ce point vous devez suivre ma direction, que la preuve de la Couronne a été complète par le fait d'avoir produit le pamphlet et le fait d'en avoir prouvé la distribution.

This sentence cannot be understood otherwise than to say that the Crown had adduced all the evidence necessary to allow the jury to render a verdict on the accusation, but it does not mean that the Crown had proven its case.

Far from agreeing with the dissenting judgment of the learned Chief Justice where he quotes the presiding judge as saying:

> . . . si vous croyez qu'un document de cette nature peut laisser croire à nos canadiens de langue anglaise que dans la province de Québec, la justice n'est pas observée, que le clergé a le contrôle sur les tribunaux et enfin, qu'il y a dans la Province de Québec une haine ardente pour le Christ, pour Dieu et pour la liberté, dans ce cas-là, vous devez condamner Boucher.

And where he says that the remarks of the trial judge were "of a nature to prejudice and vitiate the verdict", I would point out that such a passage should not have been detached from its context. The whole passage reads as follows:

> Si vous trouvez qu'il n'y a rien de séditieux dans cet article, vous devez acquitter Boucher. D'un autre côté, si vous l'avez lu, après en avoir apprécié tous les termes qu'il contient, vous croyez qu'il peut en résulter dans la Province de Québec un élément de discorde et de trouble qui peut devenir sérieux, si vous croyez qu'un document de cette nature peut laisser croire à nos canadiens de langue anglaise que dans la Province de Québec, la justice n'est pas observée, que le clergé a le contrôle sur les tribunaux et enfin, qu'il y a dans la Province de Québec une haine ardente pour le Christ, pour Dieu et pour la liberté, dans ce cas-là, vous devez condamner Boucher.

It is, therefore, apparent that the learned judge was there telling the jury that if they found nothing seditious in the document they had to acquit Boucher, but that if, on the contrary, they thought there was something seditious in it, in the nature of what he enumerates in the passage, then they ought to condemn him. I cannot find anything objectionable in that way of presenting the matter to the jury.

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Then in respect of the objection to certain evidence which is mentioned in the dissenting judgment and the fact that it was maintained by the learned judge, my humble view is that the question to which the objection was maintained was illegal and that it was properly maintained. In that instance Boucher was asked to state the impression he intended to convey by a reading of the pamphlet, according to what he himself thought and his appreciation of the pamphlet. Surely it did not exclusively belong to the accused to state to the jury what he intended to convey; it was for the jury itself to come to a conclusion as to what the document conveyed to the people among whom it was distributed. Again the passage of the charge quoted by the learned Chief Justice is as follows:

> Vous lirez ce document-là, Exhibit P-1, et vous déciderez si réellement il est de nature à ramener la bonne entente entre les témoins de Jéhovah et les gens de la province de Québec.

This is merely a reference to the fact that Boucher had claimed that he had distributed the document in order to "ramener la bonne entente entre les témoins de Jéhovah et les gens de la province de Québec"; and the learned judge was telling the jury that, having read the pamphlet, it was for them to decide whether it was of a nature to bring about what Boucher had contended.

The learned Chief Justice also points to the sentence in the charge:

> C'est plutôt un libelle séditieux qui a été produit.

The meaning of that sentence is quite clear, more particularly if it is read in conjunction with the context. The learned trial judge had been asked by Counsel for the accused to instruct the jury on the nature of blasphematory and defamatory libel. He gave the instruction asked for and then concluded by saying:

> But in this case you are not concerned with either of those. The document which has been filed, if anything, is rather a seditious libel.

With due respect, I cannot find any other meaning to that sentence which, of course, so understood cannot be held to be objectionable.

That concludes my analysis and review of the dissenting judgment of the learned Chief Justice of Quebec. I am of opinion that the several points to which I have just referred

were not well taken. However, I would otherwise agree with the remainder of his reasoning and, on that account, I am of opinion that a new trial should be ordered in this case.

Now, dealing with a general review of the case, I would first observe that the French version of the document is the one to which the attention of the jury should be brought, because admittedly the region in which it was distributed is largely, if not exclusively, French speaking. The document in French would, therefore, be the one that could affect the people among which it was published. Having read it several times I would say without hesitation that it contains statements upon which the jury might reasonably come to the conclusion that such statements are in the nature of seditious libels; and, applying the language of Lord Cairns in the *Metropolitan Railway Company* case (*supra*), my view would be that the presiding judge could direct the jury that it might reasonably infer that the document could be looked upon, under Canadian law, as a seditious libel. It would, of course, be for the jurors to say whether, when submitted to them, guilt ought to be inferred. Merely as an illustration of what I have in mind I would refer to the several passages where the document says that the French Canadian Courts are so much under the influence of the Catholic priests that they are thereby induced to confirm infamous sentences and to render judgments not according to their judicial duties and oath, but as a result of the influence of the priests.

Here is the passage to which I refer. The French version reads:

> Toutes les cours Canadiennes Françaises étaient tellement sous l'influence sacerdotale qu'elles confirmèrent la sentence infâme, et ce ne fut que lorsque la cause fut portée en Cour Suprême du Canada que le jugement fut renversé.

The English version reads:

> All the French Canadian courts were so under priestly thumbs that they affirmed the infamous sentence, and it was not until the case reached the Supreme Court of Canada that judgment was reversed.

Perhaps it should be noted here that the statement that the judgment was reversed by the Supreme Court of Canada

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is a falsity. The judgment in question is that of *Brodie* v. *The King* (1), having been reported, it is therefore public and it is sufficient to refer to that judgment to see that it is absolutely incorrect to say that there was a reversal. The Supreme Court merely quashed the indictment and the conviction on the ground that the necessary averments were omitted and the necessary ingredients were lacking in the indictment preferred against the appellants and that their absence constituted defects in matters of substance. But the Court stated that the Crown was at liberty "to prefer a fresh indictment if so advised."

In Canada it should not be forgotten that the criminal law of the country is contained in the *Criminal Code;* and as was pointed out in *Brodie* v. *The King*:

> It cannot be that the criminal law should be administered as though there were no code.

The sections of the *Criminal Code* referring to seditious libel are sections 133 and 133A. This was first enacted by section 123, chap. 25, 55-56 Victoria (1892), the section then having four paragraphs. In 1906, by sec. 132, chap. 146 of the Revised Statutes of Canada adopted in that year, sec. 123, above mentioned, was amended by the deletion of paragraph one of that section. In 1927 when the subsequent Revised Statutes of Canada were adopted this section 132, of chap. 146, R.S.C. 1906, was retained without amendment as sec. 133. By chap. 29, 1936 S.C., a fourth paragraph was added to sec. 133. In addition in 1930 a new section 133A, was enacted by chap. 11 of the Statutes of Canada of that year, and that section was retained without amendment in the amendments of 1947.

Under the law as it stood at the material time, that is when the appellant distributed what is alleged to have been the seditious libel, section 133 stated that "a seditious libel is a libel expressive of a seditious intention".

It was argued by Counsel for the appellant that the *Code* does not define "seditious intention". Of course, subsection (4) of section 133 enacts that "everyone shall be presumed to have a seditious intention who publishes, or circulates any writing, printing or document in which it is advocated or who teaches or advocates, the use, without

(1) [1936] S.C.R. 188.

the authority of law, of force, as a means of accomplishing any governmental change within Canada"; but the subsection begins by the words "without limiting the generality of the meaning of the expression 'seditious intention' ". Therefore, we have it here that the advocating of force is not the only instance in which an accused could be found guilty of a "seditious intention".

Then if we turn to section 133A, also in force when the present appellant was proven to have distributed the seditious libel, the legislator there indicated certain cases where one would not be deemed to have had a seditious intention only because he intends in good faith

> (c) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.

Of course, one cannot but be impressed by the analogy of that section added in 1930 with sections 114 and 115 of Stephen's "Digest of the Criminal Law", as they were at the time of the drafting of the *Criminal Code* in Canada in 1892, and also by the definition of "sedition" given by Russell "On Crime", Vol. 1, 9th edit., p. 87.

But the very fact that the Canadian Code has dealt with the matter compels the Canadian Courts to administer the law with regard to seditious libel in accordance with the Canadian legislation and not in accordance with statements by commentators in England, or even with pronouncements by judges administering justice in Great Britain. Indeed that was the very ruling of the Judicial Committee of the Privy Council in *Wallace-Johnson* v. *The King* (1), where it was held that the provisions of the Gold Coast Criminal Code were clear and unambiguous and intended to contain as far as possible a full and complete statement of the law of sedition in the Colony, and that, therefore, the English common law as expounded in a judgment rendered in England was inapplicable. Under Part I of the Canadian *Criminal Code* (sections 8 et seq.) the Courts in this country can refer to the law of England only in so far as a matter has not been dealt with by the Canadian Parliament. Even if in section 133, as it was originally enacted, we did not find sufficient to decide what Parliament thought should be considered as a sedi-

(1) [1940] A.C. 231.

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tious intention, we certainly have some indication of the legislator's mind in subsection (4) as it now stands and as it was introduced by the amendment of 1936. As already pointed out, what is stated there as creating a presumption of seditious intention is qualified by the words "without limiting the generality of the meaning of the expression".

Section 133A, introduced in 1930, by chap. 11 of the Statutes of Canada of that year, undoubtedly contains some indication of the legislator's view of what constitutes seditious intention under the law of Canada. Subsection (*c*) refers to the pointing out of matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects and it says that if one only intends "in order to their removal, to point out such matters", he shall not be deemed to have a seditious intention if he "intends it" in "good faith". It necessarily follows that even pointing out these matters in order to their removal will not relieve an accused of the guilt of seditious intention unless he did it in good faith. Therefore, if you have a matter which is producing, or has a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects, a jury would be justified in finding that a man, under Canadian jurisdiction, ought to be found guilty of seditious libel, unless the jury comes to the conclusion that the man in question pointed out these matters "in order to their removal" and that he did so "in good faith."

In my humble view, therefore, it is unnecessary in the present case to refer to any pronouncements either in Great Britain, and less so in the United States, as the learned Counsel for the appellant invited us to do, because here in Canada we have the precise legislation on the issue; and what the jury alone has to decide here with regard to Boucher is:

(1) Whether the document which he distributed contained matters which were producing, or had a tendency to produce feelings of hatred and ill-will between classes of His Majesty's subjects; ;

(2) Whether he pointed out these matters in order to their removal; and

(3) Whether he did so in good faith.

These three questions are strictly the province of the jury. I cannot see by what authority this Court should decide that Boucher pointed out these matters in order to their removal, or that he did so in good faith, more particularly in view of the fact that the Supreme Court of Canada's jurisdiction in criminal cases is limited to point of dissent in the Court of Appeal. There was absolutely no dissent on these matters in the Court below. The dissenting opinions of Letourneau C.J. and of Galipeault J.A. are expressly limited to misdirections, or non-directions, in the learned trial judge's charge; and the only points which this Court has to decide are whether the alleged misdirections, or non-directions, are really to be found in the charge, and the consequence can only be that there should be a new trial, if they are so found.

I would not like to part this appeal, however, without stating that to interpret freedom as licence is a dangerous fallacy. Obviously pure criticism, or expression of opinion, however severe or extreme, is, I might almost say, to be invited. But, as was said elsewhere, "there must be a point where restriction on individual freedom of expression is justified and required on the grounds of reason, or on the ground of the democratic process and the necessities of the present situation". It should not be understood from this Court—the Court of last resort in criminal matters in Canada—that persons subject to Canadian jurisdiction "can insist on their alleged unrestricted right to say what they please and when they please, utterly irrespective of the evil results which are often inevitable". It might well be said in such a case, in the words of Milton, "Licence they mean when they cry liberty", or as expressed by Mr. Edouard Herriot, "La liberté doit trouver sa limite dans l'autorité légale".

For these reasons, in this particular appeal, the conviction should be set aside on the grounds of misdirection and non-direction, and a new trial should be directed.

KERWIN J.—This is an appeal by the accused from a decision of the Court of King's Bench (Appeal Side) for the Province of Quebec (1), affirming his conviction for

(1) Q.R. [1949] K.B. 238.

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publishing a seditious libel contrary to section 133 of the *Criminal Code*. Chief Justice Letourneau dissented and, as Mr. Justice Galipeault agreed with his reasons, reference thereto may conveniently be made throughout as expressing the dissent with which this Court is concerned. Prior to the hearing, we dismissed a motion by the Crown to quash the appeal on the ground that the dissent was on questions of fact alone because we are all of opinion that there was dissent on questions of law.

The charge against the accused is that he published a seditious libel by distributing copies of a pamphlet to several persons at St. Joseph, in the District of Beauce, which pamphlet contained certain alleged seditious passages. The editors of the pamphlet are stated therein to be Watch Tower Bible and Truth Society, Toronto, Ont., and the accused is a member of Jehovah's Witnesses. There is no doubt as to the publication by the accused in the manner charged but the question is whether what he published constituted the criminal offence known as seditious libel.

Section 133 of the *Criminal Code* under which the charge was laid must be considered together with section 133A enacted in 1930, and these now read:

133. Seditious words are words expressive of a seditious intention.

2. A seditious libel is a libel expressive of a seditious intention.

3. A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

4. Without limiting the generality of the meaning of the expression "seditious intention" everyone shall be presumed to have a seditious intention who publishes, or circulates any writing, printing or document in which it is advocated, or who teaches or advocates, the use, without the authority of law, of force, as a means of accomplishing any governmental change within Canada.

133A. No one shall be deemed to have a seditious intention only because he intends in good faith,—

(*a*) to show that His Majesty has been misled or mistaken in his measures; or

(*b*) to point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or of any province thereof, or in either House of Parliament of the United Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or,

(*c*) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.

Subsection 4 of section 133 was enacted in 1936, at which time Parliament repealed the much discussed section 98, but for our purposes subsection 4 need not be considered. With the exception of this subsection, these enactments follow the corresponding provisions of the Draft Criminal Code, prepared by the Commissioners in England and while "seditious intent" is nowhere defined in our Code, it has always been accepted that the definition proposed by the Commissioners accurately sets forth the law of England on the subject. This definition had been adopted by the Commissioners almost verbatim from that found in Stephen's Digest of the Criminal Law. As explained by Cave J. in *Reg.* v. *Burns* (1), the latter had the authority not only of Mr. Justice Stephen but also of the very learned judges who were associated with him in drafting the proposed English Criminal Code. On the following page, Cave J. points out that Mr. Justice Stephen was a judge of very great accuracy and that, for the proposition laid down in his Digest for seditious libel, there was to be found undoubted authority. The authorities and the history of the matter are set out in Volume 2 of the History of the Criminal Law of England by the same author at p. 298 et seq. That definition should be adopted as the law of Canada.

The definition appears as article 114 in the 8th edition of Stephen's Digest and, together with article 115, are as follows:

ARTICLE 114

SEDITIOUS INTENION DEFINED

A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of, His Majesty, his heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite His Majesty's subjects to attempt otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.

An intention to show that His Majesty has been misled or mistaken in his measures, or to point out errors or defects in the government or constitution as by law established, with a view to their reformation, or to excite His Majesty's subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out,

(1) (1886) 16 Cox C.C. 355 at 359.

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in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill-will between classes of His Majesty's subjects, is not a seditious intention.

ARTICLE 115

PRESUMPTION AS TO INTENTION

In determining whether the intention with which any words were spoken, any document was published, or any agreement was made, was or was not seditious, every person must be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

The accused as one of the members of Jehovah's Witnesses distributed a pamphlet in which complaint was made of what was said to have occurred with reference to some of those members. He was entitled to complain of what he conceived to be existing grievances and, in so doing, he was not restricted to a calm and dispassionate exposé, such as might be expected in a court of law.

Specifically, he was entitled to point out what he alleged were errors or defects in the administration of justice and also, in order to effect their removal, matters which were producing, or had a tendency to produce, feelings of hatred and ill-will between the residents of the Province of Quebec and Jehovah's Witnesses. Evidence could be led by the accused in an endeavour to show the truth of these statements as it would be relevant, but as was admitted by counsel for the accused, relevant only, to the question whether the accused intended to point out those matters in good faith as provided by section 133A of our Code.

Chief Justice Letourneau points out that after ruling that the truth or falsity of the allegations made in the pamphlet was immaterial, the trial judge, at various times, picked out various passages in the pamphlet and, referring to each, said: "C'est encore une fausseté". I agree with the Chief Justice that the issue of good faith was not put accurately to the jury.

The question of seditious libel is always one of great delicacy, requiring from the trial judge an instruction distinctly drawing to the attention of the jury the various elements that must be found before they may convict of the offence charged and applying the law to the evidence in the record. I agree with the Chief Justice that this was not done in the present case. The main element which

it was necessary for the jury to find was an intention on the part of the accused to incite the people to violence or to create a public disturbance or disorder: *Reg.* v. *Burns supra; Reg.* v. *Sullivan* (1); *Rex* v. *Aldred* (2); *The King* v. *Caunt* not reported but referred to in a note in 64 L.Q.R. 203. The use of strong words is not by itself sufficient nor is the likelihood that readers of the pamphlet in St. Joseph de Beauce would be annoyed or even angered, but the question is, was the language used calculated to promote public disorder or physical force or violence. In coming to a conclusion on this point, a jury is entitled to consider the state of society or, as it is put by Chief Justice Wilde in his charge to the jury in *The Queen* v. *Fussell* (3)—

> You cannot, as it seems to me, form a correct judgment of how far the evidence tends to establish the crime imputed to the defendant, without bringing into that box with you a knowledge of the present state of society, because the conduct of every individual in regard to the effect which that conduct is calculated to produce, must depend upon the state of the society in which he lives. This may be innocent in one state of society, because it may not tend to disturb the peace or to interfere with the right of the community, which at another time, and in a different state of society, in consequence of its different tendency, may be open to just censure.

This, it should be noted, was said at a trial at the Central Criminal Court before the Chief Justice, Baron Parke and Maule J. An instruction to the same effect was given in *Reg.* v. *Burns supra* by Cave J., of whose charge it is stated generally, at page 88 of the 9th edition of Russell on Crime, that the present view of the law is best stated therein. Reference might also be made to the words of Coleridge J. in his charge to the jury in the later case of *Rex* v. *Aldred* (4):—

> You are entitled also to take into account the state of public feeling. Of course there are times when a spark will explode a powder magazine; the effect of language may be very different at one time from what it would be at another.

While the jury must consider the question of good faith in accordance with section 133A of our Code, it will be noticed that that section specifically states that no one shall be deemed to have a seditious intention *only* because he intends in good faith to show or point out the matters

(1) (1868) 11 Cox C.C. 44.
(2) (1909) 22 Cox C.C. 1.
(3) (1848) 6 St. Tr. (N.S.) 723 at 762.
(4) (1909) 22 Cox C.C. 1 at 3.

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mentioned. The jury should be charged that if they find good faith on the part of the accused, and if in their opinion there is nothing more in the case, the accused is entitled to an acquittal; but, if in addition to that good faith, there was an intention on the part of the accused to create public disorder or promote physical force, or that notwithstanding the motives of the accused the natural tendency of the words (and therefore the intention) was to create such disturbances, then they would be entitled to find a verdict of guilty.

The decision of the Judicial Committee in *Wallace-Johnson* v. *The King* (1), is not of assistance as there it was held merely that the provisions of the Gold Coast Criminal Code were clear and unambiguous and intended to contain as far as possible a full and complete statement of the law of sedition in the Colony, and that, therefore, the English common law as expounded in the *Burns* Case was inapplicable. Nor are the quoted decisions in the Supreme and other Courts of the United States of any real help. Many of them deal with the "clear and present danger" doctrine in construing statutes with reference to the applicability of the First and Fourteenth Amendments to the Federal Constitution and all depend upon that Constitution and laws which are alleged to infringe its provisions. It is strictly unnecessary to consider Chief Justice Letourneau's dissent that the trial judge did not charge the jury sufficiently or properly on the question of reasonable doubt but even if the dissent be not well-founded, the charge in this respect exhibits the very minimum that could be held to be sufficient and is not to be recommended.

There was evidence in the document itself, taken, as it must be, with all the other circumstances, upon which a jury after a proper charge as outlined above, could find the accused guilty, and the conviction should, therefore, be set aside and a new trial directed.

Since the distribution of my reasons in this appeal, there has been a reargument as a result of which I have been persuaded that the order suggested by me is not the proper one to make. With the exception of the last

(1) [1940] A.C. 231.

paragraph, what I have already said may stand, with the following additions. The intention on the part of the accused which is necessary to constitute seditious libel must be to incite the people to violence against constituted authority or to create a public disturbance or disorder against such authority. To what is stated previously that "the question is, was the language used calculated to promote public disorder or physical force or violence", there should be added that that public disorder or physical force or violence must be against established authority. An intention to bring the administration of justice into hatred or contempt or exert disaffection against it is not seditious unless there is also the intention to incite people to violence against it. So far as the decision in *R.* v. *M'Hugh* (1) is in conflict with this opinion, it should not be followed.

Whatever else might be said of the contents of the pamphlet, there is not in it, read in the light of all the surrounding circumstances, any evidence upon which a jury, properly instructed, could find the appellant guilty of the crime with which he was charged. The conviction should be set aside and a judgment and verdict of acquittal entered.

TASCHEREAU J. (dissenting):—At the first hearing of this appeal, the Court did not agree as to the ingredients that are necessary to constitute the offence of seditious libel. Upon application, a new hearing was granted and heard by the full Court, and in view of the opinions now expressed by the majority, it is settled I think that generally speaking, the writings complained of must, in addition to being calculated to promote feelings of ill-will and hostility between different classes of His Majesty's subjects, be intended to produce disturbance of or resistance to the lawfully constituted authority.

But as pointed out by my brother Cartwright, there is another definition of seditious intention which I think, must be accepted. I agree with him that an intention to bring the administration of justice into hatred or contempt or to excite disaffection against it, is a seditious

(1) (1901) 2 Ir. R. 569.

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intention. In the present case, there is I think sufficient evidence upon which a properly instructed jury could find that there was a seditious intention.

I have no doubt, that in view of the defective charge of the trial judge, this appeal cannot be dismissed, and I would therefore for the reasons given by my brother Cartwright, quash the conviction and direct a new trial.

RAND J.:—For the reasons given by me following the first argument, I would allow the appeal, set aside the verdict and conviction and enter judgment of not guilty.

(The reasons given by Mr. Justice Rand, following the first argument, read as follows).

This appeal arises out of features of what, in substance, is religious controversy, and it is necessary that the facts be clearly appreciated. The appellant, a farmer, living near the town of St. Joseph de Beauce, Quebec, was convicted of uttering a seditious libel. The libel was contained in a four page document published apparently at Toronto by the Watch Tower Bible & Tract Society, which I take to be the name of the official publishers of the religious group known as The Witnesses of Jehovah. The document was headed "Quebec's Burning Hate for God and Christ and Freedom Is the Shame of all Canada": it consisted first of an invocation to calmness and reason in appraising the matters to be dealt with in support of the heading; then of general references to vindictive persecution accorded in Quebec to the Witnesses as brethren in Christ; a detailed narrative of specific incidents of persecution; and a concluding appeal to the people of the province, in protest against mob rule and gestapo tactics, that through the study of God's Word and obedience to its commands, there might be brought about a "bounteous crop of the good fruits of love for Him and Christ and human freedom". At the foot of the document is an advertisement of two books entitled "Let God be True" and "Be Glad, Ye Nations", the former revealing, in the light of God's Word, the truth concerning the Trinity, Sabbath, prayer, etc., and the latter, the facts of the endurance of Witnesses in the crucible of "fiery persecution".

The incidents, as described, are of peaceable Canadians who seem not to be lacking in meekness, but who, for distributing, apparently without permits, bibles and tracts on Christian doctrine; for conducting religious services in private homes or on private lands in Christian fellowship; for holding public lecture meetings to teach religious truth as they believe it of the Christian religion; who, for this exercise of what has been taken for granted to be the unchallengeable rights of Canadians, have been assaulted and beaten and their bibles and publications torn up and destroyed, by individuals and by mobs; who have had their homes invaded and their property taken; and in hundreds have been charged with public offences and held to exorbitant bail. The police are declared to have exhibited an attitude of animosity toward them and to have treated them as the criminals in provoking by their action of Christian profession and teaching, the violence to which they have been subjected; and public officials and members of the Roman Catholic Clergy are said not only to have witnessed these outrages but to have been privy to some of the prosecutions. The document charged that the Roman Catholic Church in Quebec was in some objectionable relation to the administration of justice and that the force behind the prosecutions was that of the priests of that Church.

The conduct of the accused appears to have been unexceptionable; so far as disclosed, he is an exemplary citizen who is at least sympathetic to doctrines of the Christian religion which are, evidently, different from either the Protestant or the Roman Catholic versions: but the foundation in all is the same, Christ and his relation to God and humanity.

The crime of seditious libel is well known to the Common Law. Its history has been thoroughly examined and traced by Stephen, Holdsworth and other eminent legal scholars and they are in agreement both in what it originally consisted and in the social assumptions underlying it. Up to the end of the 18th century it was, in essence, a contempt in words of political authority or the actions of authority. If we conceive of the governors of society as superior beings, exercising a divine mandate, by whom

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laws, institutions and administrations are given to men to be obeyed, who are, in short, beyond criticism, reflection or censure upon them or what they do implies either an equality with them or an accountability by them, both equally offensive. In that lay sedition by words and the libel was its written form.

But constitutional conceptions of a different order making rapid progress in the 19th century have necessitated a modification of the legal view of public criticism; and the administrators of what we call democratic government have come to be looked upon as servants, bound to carry out their duties accountably to the public. The basic nature of the Common Law lies in its flexible process of traditional reasoning upon significant social and political matter; and just as in the 17th century the crime of seditious libel was a deduction from fundamental conceptions of government, the substitution of new conceptions, under the same principle of reasoning, called for new jural conclusions: *Bourne* v. *Keane* (1).

As early as 1839 in *Rex* v. *Neale* (2), Littledale, J., in his charge to the jury, laid it down that "you are to consider . . . whether they meant to excite the people to take the power into their own hands, and meant to excite them to tumult and disorder; the people have a right to discuss any grievances they have to complain of but they must not do it in a way to excite tumult", which Stephen, in Vol. 2 of his History of the Criminal Law at page 375, sums up: "In one word, nothing short of direct incitement to disorder and violence is a seditious libel". Coleridge, J. in *Rex* v. *Aldred* (3), used these words: "The man who is accused may not plead the truth of the statement he makes as a defence to the charge; nor may he plead the innocence of his motive. That is not a defence to the charge. The test is not either the truth of the language or the innocence of the motive with which he publishes it. The test is this: was the language used calculated, or was it not, to promote public disorder or physical force": (85 Sol, J. (1941), 251). The language used must, obviously, be related to the particular matters in each case complained of.

(1) [1919] A.C. 815.
(2) 9 C. & P. 431.
(3) (1909) 22 Cox C.C. 1.

This development is to be considered also in the light of the practice in administering the law of seditious words followed after Fox's Libel Act of 1792. The jury in such cases by its right under the statute to bring in a general verdict, must, in addition to the publication of the libel and its meaning, have found a seditious intention. That meant more than the issue of the writing knowing what it contained. The Act was interpreted as requiring the libel to have been published with an *illegal* intention. The word "intention" was not always clearly differentiated from indirect purpose or motive, but if the intention, as envisaging immediate or proximate response, regardless of a remote object of whatever nature, was illegal, the libel was seditious.

Stephen suggests a theoretical continuity of the law by taking that Act to have made material those consequential allegations such as of ill-will, disaffection, etc., with which the early indictments were liberally encumbered, but which were looked upon as formal or assumed as necessary effects of the libel otherwise seditious. But if that is sound, then we must have regard to the sense which they then bore; and it would seem to be clear that they signified feelings and attitudes toward established authority.

The definition of seditious intention as formulated by Stephen, summarised, is, (1) to bring into hatred or contempt, or to excite disaffection against, the King or the Government and Constitution of the United Kingdom, or either House of Parliament, or the administration of justice; or (2) to excite the King's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established; or (3) to incite persons to commit any crime in general disturbance of the peace; or (4) to raise discontent or disaffection amongst His Majesty's subjects; or (5) to promote feelings of ill-will and hostility between different classes of such subjects. The only items of this definition that could be drawn into question here are that relating to the administration of justice in (1) and those of (4) and (5). It was the latter which were brought most prominently to the

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notice of the jury, and it is with an examination of what in these days their language must be taken to mean that I will chiefly concern myself.

There is no modern authority which holds that the mere effect of tending to create discontent or disaffection among His Majesy's subjects or ill-will or hostility between groups of them, but not tending to issue in illegal conduct, constitutes the crime, and this for obvious reasons. Freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of our life. The clash of critical discussion on political, social and religious subjects has too deeply become the stuff of daily experience to suggest that mere ill-will as a product of controversy can strike down the latter with illegality. A superficial examination of the word shows its insufficiency: what is the degree necessary to criminality? Can it ever, as mere subjective condition, be so? Controversial fury is aroused constantly by differences in abstract conceptions; heresy in some fields is again a mortal sin; there can be fanatical puritanism in ideas as well as in mortals; but our compact of free society accepts and absorbs these differences and they are exercised at large within the framework of freedom and order on broader and deeper uniformities as bases of social stability. Similarly in discontent, affection and hostility: as subjective incidents of controversy, they and the ideas which arouse them are part of our living which ultimately serve us in stimulation, in the clarification of thought and, as we believe, in the search for the constitution and truth of things generally.

Although Stephen's definition was adopted substantially as it is by the Criminal Code Commission of England in 1880, the latter's report, in this respect, was not acted on by the Imperial Parliament, and the *Criminal Code* of this country, enacted in 1891, did not incorporate its provisions. The latter omits any reference to definition except in section 133 to declare that the intention includes the advocacy of the use of force as a means of bringing about a change of government and by section 133A, that certain actions are not included. What the words in (4) and (5) must in the present day be taken to signify is the use of language which, by inflaming the minds of people into

hatred, ill-will, discontent, disaffection, is intended, or is so likely to do so as to be deemed to be intended, to disorder community life, but directly or indirectly in relation to government in the broadest sense: Phillimore, J. in *R.* v. *Antonelli* (1) "seditious libels are such as tend to disturb the government of this country . . .". That may be through tumult or violence, in resistance to public authority, in defiance of law. This conception lies behind the association which the word is given in section 1 of chapter 10, C.S. Lower Canada (1860) dealing with illegal oaths:

> To engage in any seditious, rebellious or treasonable purpose;

and the corresponding section 130 of the *Criminal Code*:

> To engage in any mutinous or seditious purpose.

The baiting or denouncing of one group by another or others without an aim directly or indirectly at government, is in the nature of public mischief: *R.* v. *Leese & Whitehead* (2); and incitement to unlawful acts is itself an offence.

This result must be distinguished from an undesired reaction provoked by the exercise of common rights, such as the violent opposition to the early services of the Salvation Army. In that situation it was the hoodlums who were held to be the lawless and not the members of the Army: *Beatty* v. *Gillbanks* (3). On the allegations in the document here, had the Salvationists been arrested for bringing about by unlawful assembly a breach of the peace and fined, had they then made an impassioned protest against such treatment of law abiding citizens, and had they thereupon been charged with seditious words, their plight would have been that of the accused in this case.

These considerations are confirmed by section 133A of the *Code*, which is as follows:

> WHAT IS NOT SEDITION.—No one shall be deemed to have a seditious intention only because he intends in good faith,—
>
> (*a*) to show that His Majesty has been misled or mistaken in his measures; or
>
> (*b*) to point out errors or defects in the government or constitution of the United Kingdom, or of any part of it, or of Canada or any province thereof, or in either House of Parliament

(1) 70 J.P. 4.
(2) 85 Sol Jo. 252.
(3) (1881-82) 9 Q.B.D. 308.

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of the United Kingdom or of Canada, or in any legislature, or in the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or,

(c) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.

This, as is seen, is a fundamental provision which, with its background of free criticism as a constituent of modern democratic government, protects the widest range of public discussion and controversy, so long as it is done in good faith and for the purposes mentioned. Its effect is to eviscerate the older concept of its anachronistic elements. But a motive or ultimate purpose, whether good or believed to be good is unavailing if the means employed is bad; disturbance or corrosion may be ends in themselves, but whether means or ends, their character stamps them and intention behind them as illegal.

The condemned intention lies then in a residue of criticism of government, the negative touchstone of which is the test of good faith by legitimate means toward legitimate ends. That claim was the real defence in the proceedings here but it was virtually ignored by the trial judge. On that failure, as well as others, the Chief Justice of the King's Bench and Galipeault, J. have rested their dissent, and with them I am in agreement.

But a further question remains. In the circumstances, should the appellant be subjected to a second trial? Could a jury, properly instructed and acting judicially have found, beyond a reasonable doubt, a seditious intention in circulating the document? In the heading is the chief source of resentment but there are also statements, such as the insinuation of the part played by the Church in judicial administration and the role of some of the clergy in the prosecutions, which offend likewise. Now these allegations are inferences and conclusions drawn from the facts and incidents presented in detail which the accused was ready with evidence to prove, and it is obvious that they and the matters from which they are deduced, must be read together. When it is said that Quebec hates Christ, it is hate sub modo; it means that to persecute is to hate, and that to hate those who follow and love Him, i.e. the

Witnesses, for what they do in His service, is to hate Him. Only in that manner can the real intention evidenced by the document be appreciated.

The writing was undoubtedly made under an aroused sense of wrong to the Witnesses; but it is beyond dispute that its end and object was the removal of what they considered iniquitous treatment. Here are conscientious professing followers of Christ who claim to have been denied the right to worship in their own homes and their own manner and to have been jailed for obeying the injunction to "teach all nations". They are said to have been called "a bunch of crazy nuts" by one of the magistrates. Whatever that means, it may from his standpoint be a correct description;I do not know; but it is not challenged that, as they allege, whatever they did was done peaceably, and, as they saw it, in the way of bringing the light and peace of the Christian religion to the souls of men and women. To say that is to say that their acts were lawful. Whether, in like circumstances, other groups of the Christian Church would show greater forebearance and earnestness in the appeal to Christian charity to have done with such abuses, may be doubtful. The courts below have not, as, with the greatest respect, I think they should have, viewed the document as primarily a burning protest and as a result have lost sight of the fact that, expressive as it is of a deep indignation, its conclusion is an earnest petition to the public opinion of the province to extend to the Witnesses of Jehovah, as a minority, the protection of impartial laws. No one would suggest that the document is intended to arouse French-speaking Roman Catholics to disordering conduct against their own government, and to treat it as directed, with the same purpose, towards the Witnesses themselves in the province, would be quite absurd; in relation to the courts, it is, to use the language of section 133A, pointing out, "in order to their removal", what are believed to be "matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects." That some of the expressions, divorced from their context, may be extravagant and may arouse resent-

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ment, is not, in the circumstances, sufficient to take the intention of the writing as a whole beyond what is recognized by section 133A as lawful.

Where a conviction is set aside, this Court must dispose of the appeal as the justice of the case requires; and where the evidence offered could not, under a proper instruction, have supported a conviction, the accused must be discharged: *Schwartzenhauer* v. *The King* (1); *Manchuk* v. *The King* (2); *Savard and Lizotte* v. *The King* (3).

I would, therefore, allow the appeal, set aside the conviction, and order judgment of acquittal to be entered.

KELLOCK J.:—In opening his argument, counsel for the Attorney General admitted that the charge of the learned trial judge was so defective it could not be supported. Accordingly, the appeal must be allowed and the conviction of the appellant, confirmed as it was by the Court of Appeal (4) with two members dissenting, must be set aside, and the only question which arises is as to the order which this court should make. The appellant contends that there is no evidence upon which a jury, properly instructed, could find the appellant guilty of seditious libel beyond a reasonable doubt by reason of the publication of the pamphlet here in question. On the other hand, the respondent submits there should be a new trial. In the determination of this question, it is necessary at the outset to consider the true nature of the offence charged.

By sec. 133 (*a*) of the *Criminal Code,* seditious libel is defined as

> a libel expressive of a seditious intention.

Subsection 4 reads as follows:

> Without limiting the generality of the meaning of the expression "seditious intention" everyone shall be presumed to have a seditious intention who publishes or circulates any writing, printing or document in which it is advocated, or who teaches or advocates, the use, without the authority of law, of force, as a means of accomplishing any governmental change within Canada.

So far as the *Code* is concerned, "seditious intention" is not defined apart from this subsection, and except for

(1) [1935] S.C.R. 367.
(2) [1938] S.C.R. 341.
(3) [1946] S.C.R. 20.
(4) Q.R. [1949] K.B. 238.

s. 133A, one is forced back to the common law. The pamphlet here in question does not, of course, come within the said subsection.

Counsel for the Attorney General founds himself upon the definition given in Russell, 9th Ed., p. 87. This is essentially the definition laid down by Sir James Stephen in his "Digest of the Criminal Law", which first appeared in 1877.

It is not necessary to discuss the whole law of seditious libel, but only so much as is relevant to the points of difference between the parties, namely, whether or not incitement to violence is a necessary ingredient, and whether that part of the definition which states that an intention "to promote feelings of ill-will and hostility between different classes of His Majesty's subjects", taken literally and by itself, is sufficient.

Stephen's complete definition was adopted by the Royal Commissioners in England in s. 102 of their draft code. In a note the Commissioners state that it is as accurate a statement of the existing law as they could make. Their references in support of this statement are set out in Crankshaw, 5th Ed. at p. 542. I have read all of these, but I can find no support in any of them for the second point stated as a bald proposition without more. The only case in which such language appears at all in any of the references given is *O'Connell* v. *The Queen* (1), where it is included with other matter in a number of the counts of the indictment there in question, but nowhere does it appear alone as constituting a count. Moreover, the indictment in *O'Connell's* case was not for seditious libel but for conspiracy. At p. 234 Tindal L.C.J. in advising the House of Lords, said:

> Indeed there can be no question but that the charges contained in the first five counts do amount, in each to the legal offence of conspiracy, and are sufficiently described therein. There can be no doubt but that the *agreeing* of divers persons together to raise discontent and disaffection amongst the liege subjects of the Queen; to stir up jealousies, hatred and ill-will between different classes of Her Majesty's subjects; and especially to promote among Her Majesty's subjects in Ireland feelings of ill-will and hostility towards Her Majesty's subjects in the other parts of the United Kingdom, and especially in England; which charges are found

(1) (1844) 11 cl. & F. 155.

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in each of the five counts which first appear in the indictment—do form a distinct and definite charge in each, against the several defendants, of an agreement between them to do an illegal act.

Lord Campbell, who alone of all the members of the House refers to this matter, says at p. 403 that he considers that any person who deliberately attempts to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects—to make the English be hated by the Irish or the Irish to be hated by the English—is guilty of a "most culpable proceeding", and that if several combine to do so they commit a "misdemeanor." Lord Campbell does not equate "culpable proceeding" and "misdemeanor." The latter is technically the only offence mentioned and if Lord Campbell intended to describe an offence in each case he certainly knew how to do so.

As is frequently mentioned in the authorities, probably no crime has been left in such vagueness of definition as that with which we are here concerned, and its legal meaning has changed with the years. It is relevant, therefore, to refer to some extent to its history. It is traced by Stephen himself in Vol. II of his "History of the Criminal Law of England" at p. 299 ff. He points out that two different views may be taken of the relation between rulers and their subjects. If, on the one hand, the ruler is regarded as the superior of the subject, and being by the nature of his position presumably wise and good, the rightful ruler and guide of the whole population, it must necessarily follow that it is wrong to censure him openly; that even if he is mistaken, his mistakes should be pointed out with the utmost respect; and that whether mistaken or not, *no censure* should be cast upon him likely or designed to diminish his authority. On the other hand, if the ruler is regarded as the agent and servant, and the subject as the wise and good master who is obliged to delegate his power to the so-called ruler because, being a multitude, he cannot use it himself, it is obvious that the result must be the opposite. In this view, every member of the public who censures the ruler for the time being exercises in his own person the right which belongs to the whole of which he forms a part. He is finding fault with his servant. If

others think differently, they can take the other side of the dispute, and the utmost that can happen is that the servant will be dismissed and another put in his place or perhaps that the arrangement of the household will be modified. The author says that to those who hold this latter view fully and carry it out to all its consequences, there can be no such offence as sedition. There may indeed be breaches of the peace which may destroy or endanger life, limb or property, and there may be incitements to such offences, but no imaginable censure of the government, *short of a censure which has an immediate tendency to produce such a breach of the peace,* ought to be regarded as criminal. Stephen then makes the statement that each of the above views has had a considerable share in moulding the law of England.

with the practical result of producing the *compromise* which I have tried to express in the articles of my Digest.

Holdsworth, in Vol. VIII of his History, refers to the two views outlined by Stephen and says that the first of these views was the accepted view in the 17th century, but that the second was gathering strength during the latter part of the 18th century.

and is now the accepted view.

He does not speak of a "compromise" and founds himself on *R.* v. *Lovett* (1), per Littledale J. at 466, and *R.* v. *Sullivan* (2), per Fitzgerald J. at 58.

In *R.* v. *Lovett* (1) the court was concerned with a handbill containing three resolutions passed by a large number of people assembled, calling themselves the "General Convention", in which they complained of the use in Birmingham of the metropolitan police from London, the first resolution calling the police "an unconstitutional force from London". The third complained of the arrest of a Dr. Taylor, calling it a summary and despotic arrest and stating that it afforded another convincing proof

of the absence of all justice in England, and clearly shews that there is no security for life, liberty or property till the people have some control over the laws they are called upon to obey.

The indictment charged that the defendant intended "to incite divers liege subjects of the Queen to resist the laws and to resist the persons so being part of the metro-

(1) (1839) 9 C. & P. 462. (2) (1868) 11 Cox C.C. 44

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politan police force in the due execution of their duty, and to bring the said force into hatred and contempt, and to procure unlawful meetings, and to cause divers liege subjects of the Queen to believe that the laws of this kingdom were unduly administered, and intending to disturb the public peace, and to raise discontent in the minds of the subjects of the Queen, and raise and excite tumult and disobedience to the laws."

Littledale J., in his charge to the jury, said: "if this paper has a direct tendency to cause unlawful meetings and disturbances, and to lead to a violation of the laws, that is sufficient to bring it within the terms of this indictment, and it is a seditious libel."

Stephen, at p. 375, says with respect to this charge:

> In one word, nothing short of a direct incitement to disorder and violence is a seditious libel.

It therefore clearly appears that in the view of Stephen himself, his definition must be read at the least as implying an intention to incitement to violence. In confirmation of this view, the following appears on p. 381 of the same work:

> The question would be whether the writer's object was to procure a remedy by peaceable means, or to promote disaffection and *bring about riots.*

It is noteworthy that the draft code of the Royal Commissioners was not accepted by Parliament, and in my opinion, incitement to violence toward constituted authority, i.e. government in the broad sense, or resistance having the same object, is, upon the authorities, a necessary ingredient of the intention.

In *R.* v. *Sullivan* (1), Fitzgerald J., in the course of his address to the grand jury, said at p. 45:

> Sedition is a crime *against society,* nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or in writing, which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition are generally to induce discontent and insurrection and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have *for their object*

(1) (1868) 11 Cox C.C. 44.

to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder.

At p. 50 the learned judge also said:

. . . there is no sedition in censuring the servants of the Crown, or in just criticism on the administration of the law, or in seeking redress of grievances or in the fair discussion of all party questions. You should remember that you are the guardians of the liberty and freedom of the press, and that *it is your duty to put an innocent interpretation on these publications if you can.* But if, on the other hand, from their whole scope, you are *coerced* to the conclusion that their object and tendency is to foment discontent and disaffection, to excite to tumult and insurrection, to promote the objects of a treasonable conspiracy, to bring the adminisration of justice into disrepute, or to stir up the people to hatred of the laws and the constitution, then you may, if you think fit, and you ought to find the bills, and send the case to be tried by a petit jury.

In *R.* v. *Antonelli* (1), Phillimore J. as he then was, in the course of his charge said:

Seditious libels are such as tend to disturb the government of this country . . .

Stephen at page 298 of the same work, in referring to seditious offences, says:

All these offences presuppose dissatisfaction with the existing government, and censure more or less express upon those by whom its authority is exercised and the offences themselves consist in the display of this dissatisfaction in the various manners enumerated.

While the paragraph begins with the sentence,

The second class of offences against internal public tranquillity consists of offences not accompanied by or leading to open violence.

the author had already said on page 242:

Another class of offences against public tranquillity are those in which no actual force is either employed or displayed, but in which steps are taken *tending to cause it.* These are the formation of secret societies, seditious conspiracies, libels or words spoken.

In *R.* v. *Aldred* (2), Coleridge J., in the course of his summing up, said at page 3, with reference to the charge before him:

The word "sedition" in its ordinary natural signification denotes a tumult, an insurrection, a popular commotion, or an uproar; it implies violence or lawlessness in some form.

The learned judge continued:

The test is not either the truth of the language or the innocence of the motive with which he published it, but the test is this: was the language used calculated, or was it not, to promote public disorder or physical force or violence *in a matter of State?*

(1) 70 J.P. 4.

(2) (1909) 22 Cox C.C. 1.

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In *R.* v. *Burdett* (1), Best J. at page 131 told the jury they were to decide whether the paper there in question was a sober address to reason or an appeal to their passion calculated to incite them to acts of violence and uproar. If the latter, it was a seditious libel. At page 376 of his History, Stephen says that the law as to political libels has not been developed or altered in any way since this case.

Lord Cockburn, in the introduction to his "Examination of Trials for Sedition in Scotland", says at page 8:

> The guilt, when analized, resolves into disrespect towards the authority of the State; meaning by disrespect all criminal obloquy or ridicule, or defiance; and by the State, not merely the supreme power, but all the high political bodies and officers that represent it. The quality indicated by the term political (or by some equivalent term) is essential; because there are many merely public officers or bodies, who, as they represent none of the power of the State, can scarcely be the objects of seditious attack. I do not see how the East India Company or the Bank of England could, as such, be libelled seditiously. To give the attack the quality of seditiousness, it must be capable of being justly viewed as a contempt of public authority. Hence the usual objects of the offence are, the sovereign, the Houses of Parliament, the administrators of justice, public officers and departments wielding and representing the State's power or dignity. It is the public majesty that must be assailed, and that must be required to be protected. Sedition is the same thing, in principle, against the State, with the misconduct of the member of the private society who, because he dislikes something that is done, insults the president and defies the majority. The guilt of sedition is often described as consisting of its tendency to produce public mischief—and so it is. But it is not every sort of mischief that will exhaust the description of the offence. It must be that sort of mischief that consists in, and arises out of directly and materially obstructing public authority.

At page 20 Lord Cockburn quotes from Starkie at page 525, as follows:

> The test of intrinsic illegality must, in this as in other cases, be decided by the answer to the question—Has the communication a plain tendency to produce public mischief, by perverting the mind of the subject, and creating a general dissatisfaction with the Government? . . . It may be said, Where is the line to be drawn? . . . To this it may be answered that, to render the author criminal, his publication must have proceeded from a malicious mind; bent, not upon making a fair communication, for the purposes of exposing bad measures, but for the sake of exciting tumult and dissatisfaction.

Baron Hume, in his work published in 1844, says at page 558 of Vol. I:

> For the characteristic of sedition lies in the forwarding, preparing and producing such a state of things as may naturally issue in public trouble and commotion; and it is thus a different sort of guilt from that of those who are actively engaged in the tumult or rising, if any ensue.

(1) 4 B. & A. 95; 106 E.R. 873.

Further, riot and sedition differ in their scope and object. Sedition is a State crime; which is levelled against the government, structure of laws, or political order of the land; or at least has relation to some object of public and general concernment; in regard to which, if any hostile rising ensue, the offender shall be guilty of no lower crime than treason. Whereas the objects of riot or convocation of the lieges . . . are matters of local and private grievance; things in which a particular place or neighbourhood only is interested, and such as in nowise tend to challenge the authority or unsettle the order or economy of the State . . . The crime of sedition lies therefore in the stirring of such humours, as naturally tend to change and commotion in the State.

All these authorities are uniform in support of the view which I have above expressed.

In *Regina* v. *Burns* (1), Cave J., in the course of his charge to the jury as to what was seditious, referred to the definition of Stephen J. and the draft code, and stated that the defendants before him were charged with the seditious intentions, first to incite Her Majesty's subjects to attempt otherwise than by lawful means the alteration of some matter in church or state by law established, and second to promote feelings of hostility between different classes of Her Majesty's subjects. After stating that these, and particularly the second, were somewhat vague and general, he went on to say at page 363:

. . . if you think that those defendants, if you trace from the whole matter laid before you that they had a seditious intention to incite the people to violence, to create public disturbances and disorder, then undoubtedly you ought to find them guilty. If from any sinister motive, as for instance, notoriety, or for the purpose of personal gain, they desired to bring the people into conflict with the authorities, or to incite them tumultuously and disorderly to damage the property of any unoffending citizens, you ought undoubtedly to find them guilty. On the other hand, if you come to the conclusion that they were actuated by an honest desire to alleviate the misery of the unemployed—if they had a real bona fide desire to bring that misery before the public by constitutional and legal means, you should not be too swift to mark any hasty or ill-considered expression which they might utter in the excitement of the moment.

At page 366:

What you are asked to decide on is whether the prisoners . . . did upon this occasion, in Trafalgar Square, incite the people whom they were addressing to redress their grievance by violence. Did they intentionally incite ill-will between different classes in such a way as to be likely to lead to a disturbance of the public peace?

Even on the footing of the law laid down in this case, if an intention to incite ill-will between different classes of

(1) (1886) 16 Cox C.C. 355.

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subjects is sufficient, that incitement, in the view of Cave, J., must be such as naturally leads to violence. In connection with the above decision, however, a writer in 85 Solicitor's Journal at page 252 says that there is no direct precedent for the inclusion in the definition of publishing a seditious libel, of incitement of ill-will and hostility between different classes of subjects. This writer says that *O'Connell* v. *The King, ubi cit.,* is often quoted as an authority for such a view and that Stephen J. had relied apparently on the words of Tindal L.C.J. to which I have already referred. This writer again points out, however, that that case was a case of conspiracy and not of sedition, and goes on to say that stirring up and creating ill-will between classes was the subject of a criminal charge in *R.* v. *Leese* (1), reported in The Times of the 22nd of December, 1936, the two classes there being Jews and non-Jews, but the offence charged was not that of seditious libel or seditious words, but of public mischief. It is to be noted that the actual indictment in Burns' case did not rely alone upon an intention to stir up ill-will between different classes of subjects, but the intention alleged was of

> wickedly, maliciously and seditiously contriving and intending the peace of our said Lady the Queen, and of this realm, and of the liege subjects of our said Lady the Queen, to disquiet and to disturb, and the liege subjects of our said Lady the Queen, to incite and to move to contempt, hatred and dislike of the Government established by law within this realm, and to incite and to move and persuade great numbers of the liege subjects of our said Lady the Queen to insurrections, riots, tumults, and breaches of the peace, and to stir up jealousies, hatred and ill-will between different classes of the said liege subjects, and to prevent by force and arms the execution of the laws of this realm, and the preservation of the public peace.

and it was alleged that the words complained of were spoken

> of and concerning the Government as established by law within this realm, and of and concerning the Commons House of Parliament and the members thereof, and of and concerning divers liege subjects of our said Lady the Queen whose names are to the jurors aforesaid unknown.

The actual subject matter of the trial before Cave, J. therefore, was not simply an indictment charging words spoken tending to create ill-will between classes of subjects simpliciter, but incitement of such ill-will *inter alia,* all directed against government.

(1) 85 Sol. Jo. 252.

In my opinion, there is a great distinction between the subject matter of *Burns'* case and that of *Leese's* case. It cannot be that words which, for example, are intended to create ill-will even to the extent of violence between any two of the innumerable groups into which society is divided, can, without more, be seditious. In my opinion, to render the intention seditious, there must be an intention to incite to violence or resistence or defiance for the purpose of disturbing constituted authority. I do not think there is any basis in the authorities for defining the crime on any lower plane.

The title of the pamphlet here in question is, "La haine ardente du Québec pour Dieu, pour Christ, et pour la liberté est un sujet de honte pour tout le Canada." The opening paragraph proceeds to plead for a calm and sober consideration of the evidence presented in the pamphlet in support of the title. It is clear that the author identifies the sect (and I do not use the word in any offensive sense) of Jehovah's Witnesses with the servants of Christ. His point is that the experiences of members of the sect in the province, as detailed in the pamphlet (which the defence proposed to prove by evidence to which the Crown effectively objected) establish that those who were instrumental, directly or indirectly, in bringing about the occurrences described, must be considered, as the title states, as hating Christ because, notwithstanding any lip-service to Him, such conduct towards His servants (the Witnesses) speaks louder than words.

The pamphlet recites at considerable length instances of destruction of Bibles, of mob violence, even on private property, unrestrained by the police, who, instead of arresting the mobsters, arrested the unoffending Witnesses engaged in distributing Bibles or Bible leaflets. It is alleged that the latter were subjected to heavy fines, prison sentences and delay in the disposition of these charges, as well as to the exaction of exorbitant bail. The pamphlet concludes on the note that the

> force behind Quebec's suicidal hate is priest domination. Thousands of Quebec Catholics are so blinded by the priests that they think they serve God's cause in mobbing Jehovah's witnesses.

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The author quotes St. John 16:2 as foretelling this, and he proceeds to say that such a course will lead to destruction. The reader is asked to avoid this by turning from following men and traditions to the study and the following of Bible teaching.

The pamphlet indicates that there existed, in certain sections of the province at least, a strong feeling against the Witnesses, and the argument for the Crown, on the basis that incitement of ill-will between classes is sufficient, was that the publication of this pamphlet would increase such ill-will and subject those engaged in its distribution to attack. In my opinion, it cannot fairly be said that the pamphlet is open to any such construction. There was no doubt opposition on the part of numbers of people to the Witnesses. The pamphlet says so. But the stated object of the pamphlet was to plead for its removal. It is impossible, in my opinion, to say that the intention of the author of the pamphlet, or of the appellant, was to foment this opposition or to stir up ill-will against himself and the fellow members of his sect, certainly not to the point of disturbing constituted authority. To say that the advocacy of any belief becomes a seditious libel, if the publisher has reason to believe that he will be set upon by those with whom his views are unpopular, bears, in my opinion, its own refutation upon its face and finds no support in principle or authority. Any such view would elevate mob violence to a place of supremacy. Christianity itself, in any form, could hardly exist on the basis of such a view of the law. The *Code* itself protects places of worship from violence and disturbance and the decision in *Beatty* v. *Gillbanks* (1), establishes that the lawbreakers are those who resort to violence rather than those who exercise the right of free speech in advocating religious views however such views may be unacceptable to the former. The occasions of violence described in the pamphlet here in question were of a nature differing not at all from the situation described in the case just mentioned.

I conclude, therefore, subject to one aspect of the matter to be mentioned, that there was no evidence upon which

(1) (1881-82) 9 Q.B.D. 308.

a jury, properly instructed, could reasonably infer a seditious intention on the part of the appellant. How far short the pamphlet falls of that set forth by Fitzgerald J. in *Sullivan's* case already cited, needs no amplification.

Although little or no mention was made on behalf of the Crown of any reflection in the pamphlet upon the courts or the administration of justice in the province as bringing it within a proper definition of the offence charged, the matter should be referred to.

In Russell 9th Ed. p. 241, the author states that public attacks on courts of justice have *in some instances* been treated as a form of sedition. He refers to *O'Connell* v. *R.* (1); *R.* v. *Gordon* (2); *R.* v. *Collins* (3). On the other hand, the writer in 85 Solicitor's Journal 251, says that "old cases in which reflections on judges have been punished are in reality cases of contempt of court and are no precedent for the crime of sedition."

In *The King* v. *Almon* (4), certain libellous passages upon the Court of King's Bench and the Chief Justice were made the subject of contempt proceedings. In *McLeod* v. *St. Aubyn* (5), a similar case, Lord Morris refers to committals for contempt of this character as having become obsolete in England, the courts being satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. However, in *Regina* v. *Gray* (6), and in *R.* v. *New Statesman* (7), convictions were had for contempt in respect of such statements.

At the present time, therefore, in England, matter of the character here in question, if made the subject of criminal process at all, appears to be treated as contempt of court rather than as seditious libel. Such matter may, of course, be regarded from the standpoint of seditious libel if intention of the necessary character be established. A definition set forth in Vol. IX of Halsbury's Laws of England at 302, so far as relevant on this aspect of the matter, is:

> A seditious intention is an intention—
> (1) to bring into hatred or contempt, or to excite *disaffection* against . the administration of justice,

(1) (1843) 5 St. Tr. (N.S.) 1.
(2) (1787) 22 St. Tr. 177.
(3) (1839) 3 St. Tr. (N.S.) 1149.
(4) (1765) Wilm. 243; 97 E.R. 94.
(5) [1899] A.C. 549.
(6) [1900] 2 Q.B. 36.
(7) 44 T.L.R. 301.

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to which I would venture to add, "the end and purpose being to defeat its functioning." In *O'Connell* v. *The Queen* (1), for instance, a case of conspiracy, the 8th count includes the following:

> with the intent to induce Her Majesty's subjects to withdraw the adjudication of their differences with and claims upon each other from the cognizance of the said tribunals by law established, and to submit the same to the judgment and determination of other tribunals to be constituted and contrived for that purpose.

The 9th count includes:

> and to assume and usurp the prerogative of the Crown in the establishment of courts for the administration of the law.

In considering this aspect of the matter, it is essential, in the present case, to keep in the forefront of one's mind what has already been said as to the burden of the pamphlet, and the pamphlet itself should be read as a whole. It does not speak generally of the administration of justice in the province, nor of the courts generally, and the references to the courts are bracketed with references to the local legislative bodies and the local police in their attitudes and conduct towards the sect of Jehovah's Witnesses.

Everything put forward by the writer to the charge of these bodies, like all other matter of which the pamphlet complains, is lumped under the heading, "Hateful Persecution of Christians." This is but one aspect of the single protest running from the beginning to the end. The sect is identified by the author, in exclusive terms, with the servants of Christ. (It is one of the tenets of these people that they alone are the custodians of Christian truth.) The argument is that the conduct complained of, because it is directed against His servants, can be motivated only by hate for Him, notwithstanding what may be said to the contrary by those who are regarded as persecutors. All of this leads up to the plea, with which the pamphlet concludes, for the study of God's Word, the Bible, by those whose conduct is complained of, and if studied, love for Christ will replace the hatred, with a consequent cessation of the causes of complaint. Whatever might be the result as establishing contempt of court if the expressions with regard to the courts could be singled out from the criticisms of the other persons and agencies with which the pamphlet

(1) (1844) 11 Cl. & F. 155.

deals, such a course is not possible in the present case. The complaint is one and indivisible. As it is abundantly plain, in my opinion, for the reasons already given, that the intention behind the portions of the pamphlet to which I have referred earlier in this judgment is to obtain cessation of the conduct complained of, it is not possible to ascribe a different motive to the statements with reference to the courts. There is therefore no basis for ascribing to the author or publisher of the pamphlet an intention to defeat the functioning of the administration of justice, without which it cannot be seditious.

The Code, in s. 133(*a*), expressly provides that

No one shall be deemed to have a seditious intention only because he intends in good faith

(*b*) to point out errors or defects in . . . the administration of justice; or to excite His Majesty's subjects to attempt to procure, by lawful means, the alteration of any matter in the state; or

(*c*) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.

For the reasons given, it is not possible to construe the pamphlet as evidencing any intention other than that which I have already described, and as there was no affirmative evidence on the point outside the pamphlet, the offence charged failed as a matter of evidence. As a necessary result, the question of good faith, a matter normally for the jury, does not arise, and the pamphlet falls within what is, by the statute, expressly excluded from the realm of that which is seditious.

I would therefore allow the appeal, quash the conviction and direct an acquittal.

ESTEY, J.:—This is an appeal under sec. 1023 of the *Criminal Code* on questions of law raised in the dissenting opinions of the learned Judges in the Court of King's Bench (Appeal Side) of the Province of Quebec (1). The appellant was convicted of seditious libel in that he did on or about the 11th of December, 1946, at St. Joseph "dans le district de Beauce," distribute a pamphlet entitled "La haine ardente du Québec pour Dieu, pour le Christ, et pour

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la liberté, est un sujet de honte pour tout le Canada." Upon appeal this conviction was affirmed, Chief Justice Letourneau and Mr. Justice Galipeault dissenting.

The pamphlet consists of four pages entitled as aforesaid which the appellant admitted he had read and distributed. The main issue is, therefore, whether the appellant had a seditious intention in distributing and thereby publishing the pamphlet.

There were several points raised in the dissenting opinions but it will be sufficient to confine the discussion to two of them, namely, that the learned trial Judge in charging the jury (*a*) did not sufficiently define "seditious intention", (*b*) did not adequately explain to the jury the place and meaning of "reasonable doubt."

A "seditious libel" is defined in sec. 133 of the *Criminal Code*, the material part of which reads:

> 133. Seditious words are words expressive of a seditious intention.
> 2. A seditious libel is a libel expressive of a seditious intention.

A "seditious intention" is not defined in either sec. 133 or in any other part of the *Code* and we must therefore look to the common law. It will there be found that the definition in Stephen's "Digest of the Criminal Law", 5th ed., p. 70, and described by the commissioners who prepared the draft of the English Code to be "as accurate a statement of the existing law as we can make", is generally accepted.

This is set out in sec. 102 of the Draft Code:

> A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, or the Government and Constitution of the United Kingdom or of any part of it as by law established, or either House of Parliament, or the administration of justice; or to excite Her Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of any matter in Church or State by law established; or to raise discontent or disaffection amongst Her Majesty's subjects; or
> to promote feelings of ill-will and hostility between different classes of such subjects:
> Provided that no one shall be deemed to have a seditious intention only because he intends in good faith to show that Her Majesty has been misled or mistaken in her measures; or
> to point out errors or defects in the Government or Constitution of the United Kingdom or of any part of it as by law established, or in the administration of justice, with a view to the reformation of such alleged errors or defects; or to excite Her Majesty's subjects to attempt to procure by lawful means the alteration of any matter in Church or State by law established; or

to point out in order to their removal matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of Her Majesty's subjects.

Seditious words are words expressive of or intended to carry into execution or to excite others to carry into execution a seditious intention.

While the foregoing definition has never been enacted as part of our *Criminal Code,* the proviso was enacted in our first Code in 1892 as part of sec. 123 (S. of C. 1892, c. 29) and was deleted by an amendment in 1919 and re-enacted in 1930 and is now sec. 133A (S. of C. 1930, c. 11, s. 2).

The learned trial Judge did not discuss a "seditious intention" in the terms of or in terms similar to those in the foregoing definition more than to say that a seditious intention is one "to provoke feelings of ill-will and hostility between different classes of His Majesty's subjects," and expressed it in French as follows:

. . . le libelle séditieux c'est la publication ou la distribution d'un pamphlet, ou d'un écrit injurieux, blessant, et qui peut provoquer de la haine et de la discorde parmi les différentes classes de sujets de Sa Majesté.

However vague and indefinite the words "ill-will and hostility" may be when read as part of the foregoing definition of sedition, they are certainly more so when, as in this case, they were stated to the jury as separate and apart therefrom.

Cave, J. in *Rex* v. *Burns* (1), referred to the foregoing definition as somewhat vague and general and particularly that portion reading "ill-will and hostility between different classes of Her Majesty's subjects." This vague and general character is further emphasized in "Law of the Constitution", Dicey, 9th ed., p. 244, where, after pointing out that the law permits publication of statements indicating "the Crown has been misled, or that the government has committed errors, . . . and, in short, sanctions criticism of public affairs which is bona fide intended to recommend the reform of existing institutions by legal methods," the learned author concludes:

But any one will see at once that the legal definition of a seditious libel might easily be so used as to check a great deal of what is ordinarily considered allowable discussion, and would if rigidly enforced be inconsistent with prevailing forms of political agitation.

(1) (1886) 16 Cox C.C. 355.

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The foregoing emphasizes the importance of intention and the necessity of a trial Judge explaining to a jury, in such a case as here, the meaning of "intention to promote feelings of ill-will and hostility between different classes" of His Majesty's subjects as an essential in the offence of sedition.

In determining whether a seditious intention is present in a particular case, the language of Fitzgerald, J. in *Rex* v. *Sullivan* (1), adopted by Cave, J. in *Rex* v. *Burns*, (*supra*), is pertinent:

> Sedition has been described as disloyalty in action, and the law considers as seditious all those practices which have for their object to excite discontent or disaffection, to create public disturbances, or to lead to civil war; to bring into hatred or contempt the sovereign or the government, the laws or constitution of the realm, and generally all endeavours to promote public disorder.

Stephen's "History of the Criminal Law of England" Vol. 2, p. 375:

> In one word, nothing short of direct incitement to disorder and violence is a seditious libel.

*Rex* v. *Burns*, (*supra*), and other authorities rather indicate that an intention to incite something less than violence is sufficient, and that the offence of sedition is committed if it be established that the parties charged intentionally incited ill-will and hostility between different classes of citizens in such a manner as may be likely to cause public disorder or disturbance. It will be recognized that one may freely and forcefully express his views within the limits defined by the law. Those engaged in campaigns or controversies of a public nature may cause feelings of hatred and ill-will but it does not at all follow that those taking part therein and causing these feelings are acting with a seditious intention. The essential, without which there cannot be sedition, is the presence of a seditious intention as above defined and which is a fact to be determined on the evidence adduced in each case.

The defence contended that the appellant's conduct came within the provisions of sec. 133A(*c*).

> 133A. No one shall be deemed to have a seditious intention only because he intends in good faith,—
>
> (*c*) to point out, in order to their removal, matters which are producing or have a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.

(1) (1868) 11 Cox C.C. 44.

The appellant's position is therefore that hatred and ill-will already existed between different classes in Quebec and that in the publication of this pamphlet he was only setting forth those matters which had and were producing hatred and ill-will between different classes with the intention, in good faith, that they might be removed.

The presence of these issues requires that the definition of sedition should have been explained and so related to the facts of this case that the jury would be assisted in understanding the issues and the relevant factors to be considered in arriving at their conclusions. With great respect the above quotation from the learned Judge's charge does not satisfy either of these requirements.

I therefore agree with the learned Chief Justice and Mr. Justice Galipeault that the charge of the learned trial Judge was under the circumstances inadequate.

Then with respect to the contention that the learned trial Judge did not adequately charge the jury relative to the burden of proof and reasonable doubt, I am also in agreement with the learned Judges who dissented.

The learned trial Judge at the outset stated to the jury:

> D'autre part, si la Couronne n'a pas établi le bien fondé de l'acte d'accusation, l'accusé devra être acquitté.

and in the course of his address stated:

> J'en conclus donc, et sur ce point vous devez suivre ma direction, que la preuve de la Couronne a été complète par le fait d'avoir produit le pamphlet et le fait d'en avoir prouvé la distribution.

Then referring to sec. 133A the learned Judge stated:

> Cet amendement veut dire qu'il n'y a pas de libelle dans le cas où un accusé prouve qu'il était de bonne foi.

and also:

> . . . si vous croyez qu'un document de cette nature peut laisser croire à nos canadiens de langue anglaise que dans la Province de Québec, la justice n'est pas observée, que le clergé a le contrôle sur les tribunaux et enfin, qu'il y a dans la Province de Québec une haine ardente pour le Christ, pour Dieu et pour la Liberté, dans ce cas là, vous devez condamner Boucher.

Up to that point the learned trial Judge had made no reference to reasonable doubt. Toward the end of his charge he called the attention of the jury to the request

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of counsel for the defence that they should be instructed to give the benefit of the doubt to the accused. He then explained that:

> Dans toute action, dans toute offense, le juge doit toujours dire aux jurés que s'il y a un doute, j'entends un doute raisonnable basé sur les faits, ils doivent en donner le bénéfice à l'accusé, mais il faut que ce doute soit sérieux, non pas un doute basé sur la pitié. Dans la présente cause, je ne vois pas sur quoi pourrait porter le doute.

Again at the conclusion of his address when counsel for the appellant asked that they be further instructed as to their duty with respect to reasonable doubt, the learned trial Judge stated:

> Messieurs les jurés, si vous aviez un doute que ce document là ne soit séditieux, vous en donnerez le bénéfice du doute à l'accusé.

It was not then, nor had it been explained to the jury that the burden rested upon the Crown to prove the essentials of the crime and if upon the whole of the evidence they had any reasonable doubt they should find the accused not guilty. Instead of that, as would appear from the above quotation commencing "si vous croyez", the jury might well conclude that the proof of the Crown had been sufficient and that if they believed the pamphlet would lead those Canadians speaking the English language to believe as he stated in the above quotation they must find Boucher possessed a seditious intention. Further, referring to the question of good faith, the jury might well have erroneously concluded from the instruction given that the burden rested upon the accused. Under the circumstances of this case the learned trial Judge should have charged the jury in language to the effect that if upon the whole of the evidence, the language of the pamphlet as well as the oral evidence, they were not convinced beyond any reasonable doubt that the appellant had a seditious intention in distributing the pamphlet they should find him not guilty. *Woolmington* v. *Director of Public Prosecutions* (1); *Rex* v. *Steane* (2).

With respect, the learned trial Judge did not adequately explain to the jury the position and effect of reasonable doubt. On the contrary he may have in effect taken the

(1) [1935] A.C. 462 at 482. (2) (1947) 116 L.J.K.B. 969.

question entirely out of the hands of the jury by stating, just before concluding his address:

> Dans la présente cause, je ne vois pas sur quoi pourrait porter le doute.

The jury having been misdirected, the question arises whether the conviction should be quashed and a new trial directed or the accused discharged.

Sec. 1024(1) reads as follows:

> 1024. (1) The Supreme Court of Canada shall make such rule or order thereon, either in affirmance of the conviction or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect.

In *Manchuk* v. *The King* (1), it was held that "this Court has authority, not only to order a new trial, or quash the conviction and direct the discharge of the prisoner, but also to give the judgment which the Court of Appeal for Ontario was empowered to give in virtue of s. 1016(2)." The same observation would apply to sec. 1014(3), where it is provided:

> Subject to the special provisions contained in the following sections of this Part, when the Court of Appeal allows an appeal against conviction it may,—
>
> (*a*) quash the conviction and direct a judgment and verdict of acquittal to be entered; or
>
> (*b*) direct a new trial; and in either case may make such other order as justice requires.

Where, apart from the evidence held inadmissible, there is evidence from which the jury may find the accused guilty a new trial was directed: *Allen* v. *The King* (2). But where, apart from the evidence improperly admitted there is no evidence which in law would support a verdict this Court directed that the conviction be quashed and a verdict of acquittal directed: *Schwartzenhauer* v. *Rex* (3).

It is therefore important to determine whether there was any evidence which in law would support a verdict of guilty which in this case would include a finding that the appellant in distributing this pamphlet acted with a seditious intention.

The Crown asked the jury to find the intention of the accused from the language of this four-page pamphlet.

(1) [1938] S.C.R. 341.
(2) (1911) 44 Can. S.C.R. 331.
(3) [1935] S.C.R. 367.

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Nine excerpts from it were specifically embodied in the indictment. These, however, cannot be read separate and apart, but rather their meaning and effect must be determined by reading and construing them in relation to the statements in the pamphlet as a whole.

The pamphlet is entitled, as already stated, "La haine ardente du Québec, pour Dieu, pour le Christ, et pour la liberté, est un sujet de honte pour tout le Canada." In the first paragraph the reader is requested to "calmly and soberly and with clear mental faculties reason on the evidence presented in support of the above-headlined indictment." Then follows a recitation of facts and circumstances in support of the conclusions that the witnesses of Jehovah are ill-treated and their freedom to worship according to the tenets of their religion denied; and that this condition exists because members of the judiciary, police and groups of citizens are directed and controlled by the priests of the Roman Catholic Church. All of which the pamphlet declares to be contrary to the principles of Christianity and that "such blind course will lead to the ditch of destruction. To avoid it turn from following men and traditions, and study and follow the Bible's teaching; that was Jesus' advice." This is the appeal made to all who read this pamphlet. It does not disclose an intention, nor reading the pamphlet as a whole can it be concluded that it is calculated to incite persons or classes of persons to acts or conduct leading to public disorder or disturbance. On the contrary, the pamphlet stresses the view that if the plea therein contained is acted upon the existent ill-will and hatred will disappear and the interference complained of will no longer exist. In these circumstances it is difficult to conclude that the appellant in distributing and publishing this pamphlet was doing so with a seditious intention.

We are not, however, left in this case with respect to a seditious intention to the construction of the pamphlet alone. The appellant gave evidence on his own behalf. He explained that he was a minister of the witnesses of Jehovah, that hatred and ill-will already existed against

Jehovah's Witnesses and that he had read the pamphlet and distributed it, as he explained:

R. Dans le désir de faire connaitre les choses qu'il y a dans le pamphlet pour faire transformer les persécutions passées contre les témoins de Jéhovah pour que tous les gens de bonne volonté connaissent les choses . . . pas pour soulever de la haine ou pour soulever du trouble comme sont venus le dire les témoins qu'il n'y avait pas au de soulèvement.

.....

Q. Quand vous avez distribué cela, dans quel dessein était-ce?

R. Dans le dessein que les gens verraient que le monde après avoir pris connaissance de ce qu'il y a dans ce pamphlet là, voit le gouvernement et que les autorités prennent les moyens pour reformer des choses et qu'il n'y ait plus de persécutions, c'était justement dans ce dessein là pour que les hommes de bonne volonté voient pour prêcher la paix et demeurent en paix, tandis que vous les voyez parler de haine tout le temps.

The appellant specifically denied that he had any intention of creating public disorder; on the contrary he stated that he desired to establish peace between the Roman Catholics and the witnesses of Jehovah. He stated:

. . . je l'ai étudié, je l'ai lu et j'ai vu des faits.

Apart from this general declaration, he deposed that it was his own child, eleven years of age, referred to in the pamphlet who, because of her religious views, was expelled from her school.

The learned trial Judge in the course of his charge suggested that the distribution of this pamphlet was a ludicrous or strange way to effect a reconciliation. The conduct of the appellant may not only, in the opinion of the learned trial Judge, but of many others, be ludicrous or strange. That, however, is quite apart from the question whether the appellant had, upon the whole of the evidence, a seditious intention.

The good faith of the appellant in distributing this pamphlet was directly in issue under sec. 133A(*c*). He, in the course of his evidence as above indicated, adopted as true the statements in the pamphlet. The truth of the pamphlet is not a defence to a charge of sedition but if the facts set out in the pamphlet are untrue, evidence to that effect would have gone far to have shown the appellant did not act in good faith. No such evidence was adduced.

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The learned trial Judge himself observed in the course of his address:

> Nous n'approuvons pas ces actes qui peuvent être commis contre les témoins de Jéhovah, mais vous pouvez vous demander s'ils ne peuvent pas s'expliquer.

The conduct on the part of any group in Canada which denies to or even interferes with the right of the members of any religious body to worship is a matter of public concern. The pamphlet, in the conception of the appellant as he deposed, discusses such an interference. He pledged his oath that it sets forth facts and circumstances which establish this interference with repect to the rights of the Witnesses of Jehovah to worship in the Province of Quebec and that hatred and ill-will exist toward them. He believed the plea set forth in the pamphlet would remove that hatred and ill-will and the interference would cease. He therefore, as he deposed, in good faith and for that purpose published and distributed the pamphlet. No evidence was introduced to contradict any of these factors and therefore the evidence here adduced brings this position of the appellant within the provisions of sec. 133A, already quoted.

The facts as set forth in the pamphlet may be inaccurately stated, even incorrect and the comments unjustified. The statements in it may be objectionable, even repugnant to some and provoke ill-will and hatred. That, however, is not sufficient. It still remains to be proved as a fact that the accused acted with a seditious intention. Under sec. 133A that intention does not exist if the appellant's conduct was within that section and he was acting in good faith. The evidence of good faith on behalf of the defence is consistent with the intent and purpose of the pamphlet as therein expressed and no evidence has been adduced to the contrary. The onus rested upon the Crown throughout to prove beyond a reasonable doubt that the accused acted with a seditious intention and this record does not disclose any evidence that would properly sustain a verdict that the accused possessed such an intention.

The appeal should be allowed, the conviction quashed and a judgment and verdict of acquittal directed to be entered.

I would clarify my previous reasons by adding that a seditious intention must be founded upon evidence of incitement to violence, public disorder or unlawful conduct directed against His Majesty or the institutions of the Government.

This intention, which the pamphlet makes plain, I have reviewed in my previous reasons. The judges, members of the Legislature and the police were all criticized upon the same basis and with the same intention. We are here concerned only with the offence of sedition. With great respect, I am of the opinion that in all cases the intention to incite violence or public disorder or unlawful conduct against His Majesty or an institution of the State is essential. This pamphlet, particularly when considered with due regard to the provisions of section 133A, as I previously stated, does not disclose any evidence that would properly support a verdict that the accused possessed a seditious intention.

The appeal should be allowed, the conviction quashed and a judgment and verdict of acquittal directed to be entered.

LOCKE J.:—The charge upon which the appellant was found guilty was that of publishing a seditious libel. It is conceded on behalf of the Crown that the conviction must be quashed due to errors in the judge's charge, the nature of which it is unnecessary under these circumstances to discuss. For the Crown it is contended that a new trial should be ordered; for the accused that as there was no evidence of a seditious intention on his part his acquittal should be directed.

That the accused published the pamphlet in question to various persons was proven. If there is any evidence that this was done with a seditious intention, it must be found in the document itself. In so far as it may be said to indicate a seditious intent as reflecting upon the administration of justice, it reads as follows:

> What of her judges that impose heavy fines and prison sentences against them (Jehovah's witnesses) and heap abusive language upon them and deliberately follow a malicious policy of again and again postponing cases to tie up tens of thousand of dollars in exorbitant bails and keep hundred of cases pending?

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and:

> Here are some instances revealing Quebec's hatred for God's Word as well as for freedom: In Hull, E. M. Taylor, septuagenarian, of Namur, Quebec, was sentenced to seven days in prison for having distributed Bibles without a permit. In Recorder's Court his attempted explanation was curtly ended by the recorder's ordering him off to prison. Two of Jehovah's witnesses were arrested for distributing free a Bible pamphlet, charged with sedition, and sentenced to 60 days imprisonment or $300 fine. All the French Canadian courts were so under priestly thumbs that they affirmed the infamous sentence and it was not until the case reached the Supreme Court of Canada that judgment was reversed.

and:

> But regardless of this decision (an Order of McKinnon, J.) the lawless arrests of Jehovah's witnesses continue almost daily in Montreal and district, and in the Recorder's Courts they are subjected to abusive tirades. For example, in June of 1946 Recorder Leonce Plante denounced the witnesses as a "bunch of crazy nuts," set cash bail as high as $200 and threatened that if some witnesses came before him again bail would be $1,000. At present, 1946, there are about 800 charges stacked up against Jehovah's witnesses in Greater Montreal, with property bail now involved being $100,000 and cash bail more than $2,000. Court cases are adjourned time after time, to inconvenience and increase expense for Jehovah's witnesses. To have their cases heard, during one short period the witnesses had to appear on 38 different occasions.

A further reference to the courts reads:

> Why, Catholic domination of Quebec courts is so complete that in the courtrooms the imagery of the crucifix takes the place of the British Coat of Arms, which appears in other courts throughout the Dominion.

but this, in my opinion, cannot be said, in itself or when read together with the remainder of the pamphlet, to afford any evidence of a seditious intent. The pamphlet contains in addition charges that the Legislature has passed laws that are unfair to Jehovah's Witnesses and of misconduct on the part of the Provincial Police and of the Royal Canadian Mounted Police, but it is not contended that these are libels published with a seditious intent.

While in some jurisdictions as in India and the Gold Coast seditious conduct or a seditious intention have been defined by statute, this has not been done in Canada. Section 133 of the *Criminal Code* declares that seditious words are words expressive of a seditious intention and that a seditious libel is a libel expressive of a seditious intention, while section 133(*a*) declares that no one shall be deemed to have a seditious intention in certain defined circumstances. When the *Code* was drafted in 1892 and

introduced into Parliament it contained a clause defining a seditious intention in terms similar to those contained in section 102 of the *Criminal Code* which was drafted but never adopted in England and which accepted Stephen's definition, but this was rejected in the House of Commons. While the definition of a seditious intention given in the current edition of Stephen's Digest, or that of sedition given in Russell on Crimes, have been taken in various Canadian cases as accurately expressing the common law, so far as I am aware the authorities said to justify these definitions have not been closely examined to determine whether they justify these respective statements of the law nor, so far as I can ascertain has it been considered whether, in view of the alteration of the respective functions of the Sovereign and the elected representatives of the people since the days preceding the passing of the Bill of Rights in 1688, the old authorities are to be accepted as now binding.

Sir James Fitzjames Stephen's definition in substantially its present form was first enunciated by him in the first edition of his Digest of the Criminal Law of England published in 1877. In the current edition of that work the definition, in so far as it is relevant to the present question, reads:

> A seditious intention is an intention to bring into hatred or contempt or to excite disaffection against the administration of justice.

The matters are stated disjunctively and must be considered separately. The words used are "hatred or contempt against the administration of justice," which must necessarily, I think, include the manner of its administration by individual judges or others discharging judicial functions. Assuming this and the accuracy of the definition, in my opinion, the first three of the quotations from the pamphlet, without more, afford evidence proper to be submitted to a jury of an intention to excite contempt or hatred of the individuals referred to, or of the manner in which justice had been administered by them in the particular matters referred to. If, on the other hand, to Stephen's definition should be added "with the intention of inciting resistance to or disobedience of the law or the

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authority of the state," which, I think, more correctly defines the offence, I think the pamphlet affords no evidence.

In Stephen's History of the Criminal Law of England (vol. 2, p. 301), the learned author states that the first definite instance he had found of a law relating to a quasi-seditious offence was a provision of the first Statute of Westminster passed in the year 1275 (Edw. 1, cap. 34) which provided a penalty for the publishing of false news or tales whereby discord may grow between the King and his people or "the great men of the realm." In the case de *Libellis Famosis* (1), the reason for Sir Edward Coke's opinion that a libel against a magistrate or public person is a greater offence than one against a private person is thus stated: (p. 255)

> . . . for it concerns not only the breach of the peace, but also the scandal of government; for what greater scandal of government can there be than to have corrupt or wicked magistrates to be appointed and constituted by the King to govern his subjects under him? And greater imputation to the state cannot be than to suffer such corrupt men to sit in the sacred seat of justice, or to have any meddling in or concerning the administration of justice.

Coke used the three expressions "the King", "the government" and "the state", and at a time when the judges held office at the King's pleasure. This view of the law appears to have been adopted in the case of libellous statements upon those holding other offices in the gift of the Queen as in *Udall's case* (2), where a Puritan Minister was charged with having published a libel upon certain of the bishops: the report shows that the judges considered that publishing a libel with a malicious intent against the bishops regarding the exercise of powers vested in them by the Queen was a seditious libel upon Her Majesty and the state and Udall was condemned to death. The court apparently proceeded upon the same ground in *Rex* v. *Darby* (3). At this time it is clear that, at least in the mind of King James II, the judges were his nominees expected to do his bidding. In a note to the report of the trial of *The Seven Bishops* (4), it appears that following the acquittal of the bishops the King dismissed Holloway

(1) (1606) 5 Co. Rep. 125*a*; 77 E.R. 250.
(2) (1590) 1 St. Tr. 1271.
(3) (1688) 3 Mod. 139.
(4) (1688) 12 St. Tr. 183 at 431.

and Powell JJ., each of whom had expressed the opinion that there was no libel "and would have meditated some further severity if his following reign would have allowed it." In that view of the position of the judges there was perhaps some foundation for a contention that a reflection upon their honesty or capacity was a reflection upon the King. I think the change that took place following the accession to the Throne of William and Mary in 1688 bears upon the present question. While it was not so declared in the Bill of Rights, from the time William III came to the Throne the commissions of the judges were by their terms to endure during their good behaviour and not merely at the King's pleasure, and this was expressly provided by the *"Act for the Limitation of the Crown and Better Securing the Rights and Liberties of the Subject"* (12-13 Wm. III, cap. 2). In effect the change brought about by the revolution of 1688 was to transfer the sovereignty from the King to the House of Commons. While the change came gradually the executive power of the Crown was by degrees transferred to what has been termed "a board of control chosen by the legislature out of persons whom it trusts and knows to rule the nation (Taswell-Langmead's Const. Hist. 10th Ed. p. 668). While the personal influence of the sovereign over the administration of affairs continued to be exercised in varying degrees between the revolution of 1688 and the passing of the Reform Bill in 1832, when it may properly be said that the control of the affairs of the nation was finally assumed by the elected representatives of the people, parliamentary government by means of a ministry, nominally the King's servants but really representing the will of the party majority for the time being in the House of Commons, was fully and finally established under George I and George II. During Lord North's administration, however, from 1770 to 1782, the personal influence of George III was constantly exerted, he reserving to himself all of the patronage and nominating and promoting the English and Scottish judges, appointing and translating bishops and dispensing other preferments in the Church (May Const. Hist.; i.58).

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An examination of the reports of trials for seditious conduct during the 18th century indicates a gradual change in the grounds upon which they were based. While in *R.* v. *Tutchin* (1), which was a proceeding for publishing a seditious libel upon the Ministers of the Crown and upon the Navy, Holt, L.C.J. said that it had always been looked upon as a crime to "procure animosities as to the management of" the government, and in *R.* v. *Francklin* (2), where the charge was of seditiously contriving to traduce the administration of His Majesty's government and Ministers of state and to bring "His present Majesty in his administration of the government into suspicion or ill-opinion of his liege subjects," the Attorney-General who prosecuted fell back on Coke's statement of the law as to a libel upon a public person and Lord Raymond, C.J. made it clear that he considered the reflections made upon the officers of the government were seditious as reflections upon the King, the charge against Lord George Gordon in 1787 did not proceed upon that footing. The first of the two indictments against Gordon charged him, inter alia, with intending to excite a general disaffection among His Majesty's subjects towards the administration of justice and the Attorney-General argued that his object in writing the petition in question was to call upon the prisoners to resist the execution of the laws that they had broken and to provoke His Majesty's subjects to rise in defence of the injured persons.

In *Rex* v. *Cobbett* (3), the accused was charged with publishing certain libels on the Earl of Hardwicke, Lord Lieutenant of Ireland, Lord Redesdale, Lord High Chancellor, the Honourable Francis Osborne, one of the justices of the Court of King's Bench in Ireland and Alexander Marsden, an Under-Secretary in the office of the Chief Secretary of the Lord Lieutenant. The prosecution arose out of the publication in England by Cobbett of a number of letters which were thereafter shown to have been written by the Honourable Robert Johnson, a justice of the Court of Common Pleas in Ireland. These contained, in addition to charges against the capacity of the Lord Lieutenant,

(1) (1704) 14 St. Tr. 1095 at 1096. (2) (1731) 17 St. Tr. 626.
(3) (1804) 29 St. Tr. 1.

statements reflecting upon both the capacity and honesty of Lord Redesdale and Osborne, J. and statements attacking the conduct of the government in Ireland and of certain officers of the government. Of the six counts in the indictment two contained allegations that the publications were seditious. The second charged in part the publication of divers:

scandalous, malicious and seditious matters and things of and concerning the said part of the said United Kingdom and the persons employed by our said Lord the King in the administration of the government of the said part of the said United Kingdom and of and concerning the said Charles Osborne, so being such justice as aforesaid and the said Alexander Marsden, so being such under-secretary as aforesaid.

and the fourth charged the accused with:

unlawfully, maliciously and seditiously devising and intending as last aforesaid and also further unlawfully, maliciously and seditiously devising and intending to traduce, defame and vilify the said John Lord Redesdale, so being such chancellor and privy councillor.

Lord Ellenborough in addressing the jury said in part: (p. 50)

The question for your consideration is whether this paper is such as would be injurious to the individuals and whether it is calculated to be injurious to the particular interest of the country. It is no new doctrine that if a publication be calculated to alienate the affections of the people by bringing the government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime. It has ever been considered as a crime; whether it be wrapped in one form or in another. The case of the *King* v. *Tutchin* decided in the time of lord chief justice Holt has removed all ambiguity from this question; and although at the period when that case was decided great political contentions existed, the matter was not again brought before the judges by any application for a new trial.

Concluding he said: (p. 54)

If you are of opinion that the publications are hurtful to the individuals or to the government you will find the defendant guilty.

It would appear that if Lord Ellenborough considered that the matters referred to in the second and fourth counts amounted to seditious conduct, and this does not appear to me to be clear, it was not upon the ground that to impute misconduct to the judges was a reflection upon the King but rather that they were so as calculated to alienate the affections of the people from the government or to bring it into "disesteem." While in *R.* v. *Hart and White* (1), the accused were charged with unlawfully and

(1) (1808) 30 St. Tr. 1194.

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maliciously devising and intending to bring the administration of justice in England into hatred and contempt by publishing a libel, the charge was not of seditious conduct and while Grose, J. in charging the jury said that the letters were "most wicked, gross and abominable libels" he did not suggest that they were seditious.

In Stephen's History (p. 373) it is said that since the Reform Bill of 1832 prosecutions for seditious libel have been so rare in England that they can be said practically to have ceased. I am unable to find any reported case in England since Cobbett's case in 1804 in which words or writings calculated or intended to bring either the administration of justice by the courts, or its administration by partcular judges, into contempt have been made the basis of proceedings for seditious conduct. There are, however, three cases originating in Ireland: *O'Connell* v. *R.* (1); *R.* v. *Sullivan* (2) and *The Queen* v. *McHugh* (3). The charge against Daniel O'Connell and others was that of seditious conspiracy and the trials took place at a time of great political unrest in Ireland. While this case is referred to by Stephen as one of the authorities for his definition of a seditious intention it does not, in my humble opinion, support the portion of that definition which we are now considering. The charge in O'Connell's case was of seditious conspiracy and there were eleven counts in the indictment. The proceedings were initiated in the Court of Queen's Bench in Ireland and the question of the sufficiency of the indictment was considered in the House of Lords where the opinion of Chief Justice Tindal and six of the judges was asked by the Law Lords in advance of their decision in the matter. As pointed out by Chief Justice Tindal each count of the indictment charged one conspiracy or unlawful agreement and no more and, in so far as the conspiracy "to diminish the confidence of Her Majesty's subjects in the tribunals duly and lawfully constituted for the administration of justice" was included in the counts other than the tenth, it was included with other acts as together constituting the offence said to be described in the count. The charge was that the accused did "un-

(1) (1844) 11 Cl. & F. 155.
(2) (1868) 11 Cox C.C. 51.
(3) (1901) 2 Ir. R. 569.

lawfully, maliciously and seditiously combine, conspire, confederate and agree with each other" in the manner alleged in the various counts. If any support is to be found for this part of Stephen's definition in this case, it must be derived from what was said as to the tenth count which differed from the eighth and ninth in that it charged as an offence to conspire to bring into hatred and disrepute the tribunals established by law in Ireland for the administration of justice and to diminish the confidence of Her Majesty's subjects in Ireland in the administration of the law, since here that aspect of the matter is divorced from other charges of unlawful acts. Tindal, C.J. said in part that an agreement by various persons to raise discontent and disaffection among people and to stir up hatred and ill-will between different classes and to promote feelings of ill-will and hostility in Ireland against the people of England was an illegal act, but says nothing to the effect that such conduct was seditious. As to the alleged conspiracy to bring the general administration of the law into disrepute and diminish the confidence of Her Majesty's subjects in it, he said that such an agreement was "to effect purposes in manifest violation of the law." Since the charge as to each of the counts was that the accused did unlawfully, maliciously and seditiously conspire and since to conspire together to commit any offence punishable at law undoubtedly amounted to a criminal conspiracy and was an illegal act, this does not appear to advance the matter. Lord Denman (p. 364) who said that he did not agree with the judges in thinking that there were only two objectionable counts and that there were other counts open to very serious objection said in part:

> I should be sorry to preclude myself by anything which I may now say from giving a judicial opinion against counts so generally stated and charging as an unlawful act a conspiracy to excite disaffection with the existing tribunals for the purpose of procuring a better system. I am by no means clear that there is anything illegal involved in exciting disapprobation of the courts of law for the purpose of having other courts substituted more cheap, efficient and satisfactory.

Lord Campbell (p. 403) who said that he had no doubt that there were various good counts in the indictment said that:

> A conspiracy to effect an unlawful purpose, or to effect a lawful purpose by unlawful means, is, by the common law of England, an

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indictable offence; and it is fit that, if several persons deliberately plot mischief to an individual or to the State, they should be liable to punishment, although they may have done no act in execution of their scheme.

As to the subject matter of the tenth count he said without referring to the language of the count that:

> A conspiracy generally to bring into discredit the administration of justice in the country, with a view to alienate the people from the government, would certainly be a misdemeanour.

He pointedly refrained from saying that to speak in a manner intended or calculated to bring the administration of justice into disrepute simpliciter was seditious conduct or that to conspire with others to do so amounted to a seditious conspiracy.

The second of the Irish cases is *R.* v. *Sullivan and Pigott* (1), where the charge was seditious libel of Her Majesty's government. In a lengthy charge to the grand jury Fitzgerald, J. after saying that sedition is a crime against society, nearly allied to that of treason, attempted to define the offence and in the course of doing so said that: (p. 45)

> The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion.

The charges followed by a year the uprising in Ireland as a result of the Fenian conspiracy and the learned judge said further (p. 47):

> Assuming you find the articles to be seditious—that they were published with the intent laid in the indictment—namely, to spread, stir up, and excite disaffection and sedition amongst the Queen's subjects, to excite hatred and contempt towards Her Majesty's Government and administration, to encourage, foster, and keep alive the Fenian conspiracy, to spread information and intelligence respecting that conspiracy amongst its members in this country, and to keep them and other evil-disposed persons well informed of the acts and proceedings of their brother conspirators in America

they should find a bill and, having said this, proceeded to say that while every man is free to write as he thinks fit he must not under the pretence of freedom "bring justice into contempt or embarrass its functions." Since these statements were made in a charge to a grand jury the learned judge did not refer to authorities and there is thus no indication as to what he relied upon to support the

(1) (1868) 11 Cox C.C. 44 and 51.

statement last referred to. My own view is that he intended his last remark to be read in conjunction with what he had said earlier and accordingly meant that to endeavour to promote public disorder or defiance of the law by bringing the administration of justice into contempt was seditious conduct: if he did not mean this, I think, with respect, that the statement was inaccurate as a statement of the common law.

The last of the Irish cases to which I have referred is *The Queen* v. *McHugh* (1), where the accused was charged with publishing a wicked, scandalous and malicious libel of and concerning the administration of justice, intending to bring it into contempt and to scandalize and vilify William Drennan Andrews (Andrews, J.) and the jurors by whom a certain action had been tried. The indictment did not charge that the conduct was seditious but the court did not consider that this was necessary. O'Brien, L.C.J. adopted Stephen's definition regarding conduct intended to bring the administration of the law into contempt and said that while a judge in his judicial character should always welcome fair criticism of his judicial conduct, deliberate misconduct in his judicial character must not be imputed, and that to say of a judge that he was actuated by any other motive than a simple desire to arrive at the truth and to mete out justice impartially was seditious. Other authority for this sweeping statement is not given. Murphy, J. concurred with the Lord Chief Justice, Gibson, J. stated that an intent to bring the administration of justice into contempt is a seditious intent, Madden, J. agreed and referred to the charge to the jury by Grose, J. in *R.* v. *Hart* (2). There, however, as above stated, the charge was not of publishing a seditious libel.

There are two reported cases in Canada in which it may be said that this part of Stephen's definition was applied. The first of these is *R.* v. *Brodie and Barrett* (3). The case does not appear to have been otherwise reported and the decision in this Court which quashed the conviction on the ground that the indictment did not disclose any offence does not affect the matter under consideration. Brodie

(1) (1901) 2 Ir. R. 569.
(2) (1808) 30 St. Tr. 1194.
3) [1936] S.C.R. 188.

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and others were charged as parties to a seditious conspiracy. This was based upon their having distributed in the City of Quebec a number of pamphlets with what was said to have been a seditious intention. These pamphlets included extravagant charges against the clergy, "big business" and against practically every branch of the government which, it was said, was contaminated and improperly influenced, and said that there would be no peace so long as the unholy alliance of "commercial and political oppressive power with hypocritical religion" continued to exist. They contained also other statements particularly offensive to the Protestant and Roman Catholic clergy. The charges made were so sweeping that they may well have been considered as including an attack upon the manner in which justice was administered. The learned judges of the Court of King's Bench (Appeal Side) adopted Stephen's and Russell's statements as to what constituted seditious conduct and, apparently considering that the pamphlets were really an attack against all organized authority, upheld the conviction.

In *Duval* v. *R.* (1), all the accused, also members of Jehovah's Witnesses, were charged with seditious conspiracy in connection with the distribution of pamphlets which contained, among other extravagant statements, the following:

> Satan has become the prince of the earth and humanity is in his grip; all human institutions are in his control; the church, the financial bodies, the political governments, the bar, the bench, have become corrupt and serve the purposes of Satan, who has blinded humanity.

Following the decision of the Court in *Brodie's* case the conviction for conspiracy was sustained. It does not appear that in either of these cases in Quebec the question as to whether conduct designed to bring the administration of law into contempt without more was seditious was considered. In view of the nature of the other statements it was perhaps thought unnecessary to do so.

While the charge in *R.* v. *Burns et al* (2), was not based upon words impugning the administration of justice or the conduct of judges or other judicial officers, Mr. Justice Cave in the course of his charge to the jury read Stephen's definition of a seditious intention and said that for every

(1) Q.R. [1938] 64 K.B. 270. (2) (1886) 16 Cox C.C. 355.

proposition there laid down there was to be found undoubted authority. The charge against John Burns and the other accused, briefly stated, was of intending to incite insurrections, riots, tumults and breaches of the peace and to stir up hatred between different classes of the King's subjects and to prevent by force the execution of the laws of the realm and the preservation of the public peace. The approval expressed by Cave, J. of Stephen's definition must be considered, however, with further statements that he made to the jury such as (p. 359):

> There is undoubtedly no question at all, as the learned Attorney-General has said, of the right of meeting in public, and the right of free discussion is also perfectly unlimited, with the exception, of course, that *it must not be used for the purpose of inciting to a breach of the peace or to a violation of the law.*

and further (p. 363):

> If you think that these defendants, if you trace from the whole matter laid before you that they had a seditious intention to incite the people to violence, to create public disturbances and disorder, then undoubtedly you ought to find them guilty.

While in so far as the charge approved that portion of Stephen's definition relating to an intention to bring into hatred or contempt or to excite disaffection against the administration of justice, the statement of Cave, J. is obiter, when the charge is read as a whole it appears to me to be properly construed as saying that such an intention is seditious if intended to incite a breach of the peace or a violation of the law.

If what was said by Fitzgerald, J. in *Sullivan's* case was not intended by him to bear the meaning I suggest, it must have been based on the view of the law expressed by Coke in 1606, by Holt, L.C.J. in *Tutchin's* case in 1704, and by Lord Ellenborough in *Cobbett's* case in 1804. The passage from Lord Holt's charge to the jury, referred to by Lord Ellenborough, as reported in 14 St. Tr. at p. 1128, reads:

> To say that corrupt officers are appointed to administer affairs is certainly a reflection on the government. If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it. And nothing can be worse to any government, than to endeavour to procure animosities, as to the management of it; this has been always looked upon as a crime, and no government can be safe without it be punished.

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It is not a matter for surprise that there has been difficulty in defining an offence the nature of which in this and in other cases has been stated in such general terms. In Donogh's History and Law of Sedition (3rd Ed. p. 5) it is said that when the report of the Select Committee regarding the proposed amendments to the Penal Code for India was presented by Stephen in 1870, he said there was a very long history about seditious libel compiled from various authorities contained in Russell on Crime ,that the law was "very vaguely expressed" and that he hoped that someone might soon reduce to a few short sentences the great mass of dicta on the subject. This he himself attempted to do seven years later in his Digest. Writing of this in his History of the Criminal Law published in 1883 (p. 298) Stephen, after referring to the contrasting views of the position of the Sovereign, the one that he is the agent and servant of his people, the other that being the superior of his subjects and by the nature of his position presumably wise and good, the rightful ruler and guide of the whole population, it must necessarily follow that it is wrong to censure him openly, said (p. 300):

> These are the extreme views each of which has had a considerable share in moulding the law of England with the practical result of producing the compromise which I have tried to express in the articles of my Digest. It has no claim to that quasi-mathematical precision, which even in the most careful writings is rarely, if ever, attainable, but I think it is sufficiently distinct to afford a practical guide to judges and juries in the discharge of duties which are now seldom imposed upon them. I will now attempt to sketch the history of the various legal controversies which have for the present ended in this compromise.

I think when the cases are examined the sense in which the word "compromise" is intended is not clear since the portion of the definition we are now concerned with appears to be founded on the conception of the law stated as aforesaid in *Cobbett's* case, which in turn appears to be consistent with the view expressed by Sir Edward Coke in 1606.

In his charge to the jury in *R.* v. *Lambert and Perry* (1), Lord Ellenborough said that the prosecution treated the language complained of as a libel upon the person of the King and upon his administration of the government of the Kingdom and that if it meant that His Majesty during his reign had taken an erroneous view of the interests of

(1) (1810) 31 St. Tr. 335 at 363, 367.

the country and imputed nothing but honest error, he was not prepared to say that that of itself was libellous. If, however, it be assumed for the purpose of argument that to intend to reflect upon the wisdom or judgment of the occupant of the Throne by words or writings be a seditious intention, to impugn the honesty or capacity of a judge or of a recorder or of several of them cannot, in my opinion, be any evidence of such an intention. Judges of the Superior Courts in England, as in Canada, are appointed by patents from the Crown and hold office during good behaviour. While thus appointed in His Majesty's name, they have been for a very long time indeed chosen by the government in power, a Cabinet chosen from the elected representatives of the party holding the majority in Parliament. In accordance with long established constitutional practice the occupant of the Throne, and in Canada his representative, acts on the advice of his Ministers and it appears to me quite impossible to suggest that a libel upon one chosen to administer justice in this manner can conceivably be considered as a reflection upon the Sovereign. If it were so in the case of the judges, it would presumably be so in the case of all persons holding offices under patents from the Crown upon the principle upon which Udall was convicted in the year 1590, such as certain of the dignitaries of the established Church in England and Ministers of His Majesty's Provincial governments in Canada. Is it to be said that to adversely criticize the conduct or impugn the motives of the occupants of such an office would evidence an intention to reflect in any manner upon the occupant of the Throne? In the case of the recorders in the Province of Quebec appointed by the Lieutenant-Governor in Council under the provisions of the *Cities and Towns Act* (R.S.Q. 1941, c. 233, s. 643), it appears to me equally impossible to say that a reflection upon their honesty or capacity is a reflection upon the Sovereign. Assuming Coke's statement accurately declared the common law of England at that time, the reason which formed its basis has disappeared with the changed status of the judges and the manner in which they are chosen and

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appointed and this is, in my opinion, no longer the law either in England or Canada: cessante ratione legis cessat ipsa lex.

For this reason, I think also it is error to say that at the present time to reflect upon the capacity or honesty of one or more judges or recorders in a manner calculated to bring them and the manner in which the law is administered by them into contempt is seditious as a reflection upon His Majesty's Ministers or the government responsible for their selection and appointment. Taswell-Langmead (10th Ed. p. 740), speaking of the period following the passing of the Bill of Rights, says that the press soon became the favourite instrument of party warfare and that each party when in power endeavoured to crush its opponents by prosecuting as seditious libels all publications which supported the opposition. There were from time to time up to the period shortly prior to 1832 some prosecutions of this nature in England but there have been, so far as I can find, none such since that date. The right of free public discussion upon all matters affecting the state and its government, subject only to the restraint imposed by the laws both civil and criminal as to defamation, and in the case of the administration of justice to the law as to contempt of court, has long since become firmly established. It is the right of His Majesty's subjects to freely criticize the manner in which the government of the country is carried on, the conduct of those administering the affairs of government and the manner in which justice is administered, subject to these restraints. The criminal law as to defamatory libel is declared in Canada in the *Criminal Code*. Section 317 defines a defamatory libel and section 324 declares that no one commits an offence by publishing any defamatory matter which he, on reasonable grounds, believes to be true and which is relevant to any subject of public interest, the public discussion of which is for the public benefit. The existence of this right of public discussion is wholly inconsistent with a rule of law that judges or others administering justice or Ministers of the Crown are immune from criticism on the ground that to impugn their honesty or capacity is a reflection upon the government. It is very much too late

in the day to say that "if a publication be calculated to alienate the affections of the people by bringing the government into disesteem, whether the expedient be by ridicule or obloquy" it is a crime.

The question remains whether it is accurate to say that "a seditious intention is an intention to excite disaffection against the administration of justice" as stated by Stephen. This, in my opinion, depends upon the meaning to be assigned to the word "disaffection." The word is defined in the Oxford English Dictionary as "absence or alienation of affection or kindly feeling, dislike, hostility": and in a different sense "political alienation or discontent; a spirit of disloyalty to the government or existing authority." When the Indian Penal Code was drafted in 1870 Stephen advised against defining the word, saying that it was difficult to define but impossible to mistake. Donogh (3rd Ed. p. 72) reports him as saying: "and so courts of equity would not define fraud lest fraud were committed outside the definition." Only if disaffection be construed as meaning resistance to or disobedience of the law or the authority of the state is it accurate, in my opinion. The statements complained of in the present matter cannot be said to evidence any such intention.

I concur in the opinion of my brother Kellock that that portion of Stephen's definition which declares that "to intend to promote feelings of ill-will and hostility between different classes of such subjects" is a seditious intention, without more, is inadequate as a statement of the common law and I agree with his conclusion upon this aspect of the matter.

I would allow this appeal, quash the conviction and direct the acquittal of the accused.

The dissenting judgment of Cartwright and Fauteux JJ. was delivered by

CARTWRIGHT J.:—On a consideration of all the evidence given at the trial of the appellant and of the charge to the jury of the learned trial judge, I am in agreement with, what I understand to be, the unanimous opinion of the court, that the conviction of the appellant must be set

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aside; and I think that the learned counsel for the Crown was right in his decision not to argue that it should be upheld. The question debated before us was as to whether we should order a new trial or direct a verdict of acquittal to be entered.

No relevant evidence tendered by the Crown appears to have been rejected and if, as the appellant contends, on the evidence in the record no jury properly instructed could reasonably have convicted him of the offence charged, it would not, I think, be proper to direct a new trial.

There was ample evidence in the record that the appellant had read the pamphlet, which the Crown submits is a seditious libel, and had distributed copies to several persons. There is no evidence of a seditious intention on the part of the appellant except such as is furnished by the pamphlet itself. It is scarcely necessary to say that the words of a document published with knowledge of its contents may in themselves furnish ample evidence of a seditious intention.

A great portion of the able arguments addressed to us was directed to the question whether the document was, on its face, capable of supporting the inference that it was intended to promote feelings of ill-will and hostility between different classes of His Majesty's subjects and if so whether such an intention, without more, is a seditious one. In my opinion it would have been open to the jury to infer from the words of the document that it was intended to promote feelings of ill-will and hostility between different classes of His Majesty's subjects; and if such intention is, of itself, a seditious intention it would, I think, be proper to direct a new trial as, while the question whether such an inference could be drawn would be for the Judge, the question whether it ought to be drawn would be for the jury.

Undoubtedly several text-writers of high authority do give as one of several definitions of a seditious intention, the definition referred to above. To the definitions quoted in the reasons for judgment of other members of the court may be added that in Halsbury's Laws of England (2nd Edition) Volume 9, page 302: "A seditious intention is

an intention . . . to promote feelings of ill-will and hostility between different classes of such subjects."

The obvious objection to accepting this as a sufficient definition, unless we are bound by authority to do so, is that such acceptance would very seriously curtail the liberty of the press and of individuals to engage in discussion of any controversial topic. It is not easy to debate a question of public interest upon which strong and conflicting views are entertained without the probability of stirring up, to a greater or less degree, feelings of ill-will and hostility between the groups in disagreement.

The reasons of my brother Kellock bring me to the conclusion that the definition quoted above ought not to be accepted without qualification, and that before a writing can be held to disclose a seditious intention by reason of being calculated to promote feelings of ill-will and hostility between different classes of His Majesty's subjects it must further appear that the intended, or natural and probable, consequence of such promotion of ill-will and hostility is to produce disturbance of or resistance to the authority of lawfully constituted government. I do not think that, on the evidence in the record in this case, a jury could properly find that the pamphlet in question was calculated to have such effect by reason of its tendency to promote such feelings of ill-will between classes. If the words of the pamphlet did not disclose any other sort of seditious intention I would not favour the ordering of a new trial.

There is, however, another definition of seditious intention found in many of the text-writers which in my opinion requires consideration, although comparatively little stress was laid upon it in argument.

The definition in Halsbury's Laws of England (2nd Edition) Vol. 9, page 302, commences as follows:

> A seditious intention is an intention—(1) to bring into hatred or contempt, or to excite disaffection against the King or the Government and Constitution of the United Kingdom, or either House of Parliament, or the administration of justice.

For the purpose of considering its application to the case at bar this definition may be shortened to read, "A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the administration of justice."

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This definition is qualified by the paragraph which follows:

> But an intention is not seditious if the object is to show that the King has been misled or mistaken in his measures, or to point out errors or defects in the Government or Constitution with a view to their reformation, or to excite the subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, with a view to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill-will between classes of the King's subjects.

It will be observed that this definition corresponds almost exactly with that in Stephen's Digest of the Criminal Law, 8th Edition, pages 94 and 95, which in turn is very similar to that set out in Section 102 of the Draft Code. The relevant words of the definition in the Draft Code are:

> A seditious intention is an intention to bring into hatred or contempt or to excite disaffection against . . . the administration of justice . . . : Provided that no one shall be deemed to have a seditious intention only because he intends in good faith . . . to point out errors or defects . . . in the administration of justice, with a view to the reformation of such alleged errors or defects.

In the report of the Commissioners on the Draft Code, at page 20, they make the following statement: "Section 102, relating to seditious offences, is taken without alteration from the Bill. It appears to us to state accurately the existing law as stated in the authorities noted in the margin of the Draft Code. On this very delicate subject we do not undertake to suggest any alteration of the law."

The marginal note to section 102 of the Draft Code is as follows:

> This is as accurate a statement of the existing law as we can make. See 60 Geo. 3 & I Geo. 4, c. 8. *O'Connell* v. *R.* 11, Cl. & F. 155,234. *R.* v. *Lambert & Perry,* 2 Camp. 398 *R.* v. *Vincent,* 9 C. & P. 91. We are unable to assent to the proposition that 33 Geo. 3, c. 29 (Irish Act) is declaratory of the common law.

The two statutes to which reference is made in the marginal note and the cases of *R.* v. *Lambert and Perry* and *R.* v. *Vincent,* do not assist in the solution of the question with which we are immediately concerned.

In *O'Connell* v. *Reg.* (1), the 8th, 9th and 10th counts in the indictment are set out at pages 163 and 164 of the report as follows:

> 8th Count—That the said defendants, unlawfully and seditiously intending, etc., to bring into disrepute and to diminish the confidence of Her Majesty's subjects in the tribunals duly and lawfully constituted

(1) (1844) 11 Cl. & F. 155.

in Ireland for the administration of justice; on, etc. with force, etc. at etc., unlawfully, maliciously and seditiously did combine, conspire, confederate, and agree with each other and with divers other persons whose names are to the jurors unkown, to bring into hatred and disrepute the tribunals by law established in Ireland for the administration of justice, and to diminish the confidence of Her said Majesty's liege subjects in Ireland in the administration of the law therein, with the intent to induce Her Majesty's subjects to withdraw the adjudication of their differences with and claims upon each other from the cognizance of the said tribunals by law established and to submit the same to the judgment and determination of other tribunals to be constituted and contrived for that purpose, in contempt, etc.

The 9th count was the same as the 8th, omitting from the introductory part the words "in Ireland," after the words "duly and lawfully constituted"; and in the last part of the count, after the words "administration of the law therein," omitting the allegation as to withdrawing the adjudication of differences, and substituting the following: "and to assume and usurp the prerogative of the Crown in the establishment of Courts for the administration of the law, in contempt," etc.

The 10th count was the same as the 8th in the introductory part, but the charge was in general terms, that the defendants unlawfully, maliciously, and seditiously did combine, conspire, confederate, and agree with each other and with divers other persons whose names are unknown, to bring into hatred and disrepute, the tribunals by law established in Ireland for the administration of justice, and to diminish the confidence of Her Majesty's liege subjects in Ireland in the administration of the laws therein, in contempt, etc.

It will be observed that in each of these counts the intention "to bring into hatred and disrepute the tribunals by law established for the administration of justice and to diminish the confidence of Her Majesty's subjects therein" was described as seditious.

The first question submitted by the House of Lords for the consideration of the Judges is set out at page 231 of the report as follows:

> Are all or any, and if any, which, of the counts in the indictment bad in law; so that if such count or counts stood alone in the indictment, no judgment against the defendants could properly be entered up on them?

The answer to this question insofar as it relates to Counts 8, 9 and 10 is found at pages 235 and 236. The judges were unanimously of opinion that these three counts were good in law. There is nothing in the reasons of the Law Lords who by a majority of three to two rejected the final result arrived at by the majority of the judges which throws any doubt upon the opinion that the counts set out above were good in law and that, had they stood alone

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in the indictment, judgment against the defendants could properly have been entered up on them. While, as has been pointed out, this case was one of seditious conspiracy it appears to me to furnish support for the view that an intention to bring the administration of justice into hatred and disrepute and to diminish the confidence of His Majesty's subjects therein is a seditious intention.

In Odgers on Libel and Slander, 6th edition at page 432, there is the following statement:

> We have already dealt with such contemptuous words as are defamatory of the Courts of Law, or of individual Judges, or of the administration of justice as a whole; *such words are seditious and punishable as such.* (see ante p. 426).

The reference to page 426 is to the following passage:

> It is a misdemeanour to speak or publish of any Judge of a Superior Court words which would be libellous and actionable per se, if written and published of any other person holding a public office.
>
> It is also a misdemeanour to speak or publish words defamatory of any Court of Justice or of the administration of the law therein, with intent to obstruct or invalidate its proceedings, to annoy its officers, to diminish its authority and dignity or to lower it in public esteen.
>
> Such words, whether spoken or written, are punishable on indictment or information with fine or imprisonment or both. They are also in every such case a contempt of Court punishable summarily by the Court itself with fine or commitment, as to which see post, Chap. XX.
>
> It is immaterial whether the words be uttered in the presence of the Court, or at a time when the Court is not sitting and at a distance from it (Crawford's Case, 13 Q.B. 613; 18 L.J.Q.B. 225); nor need they necessarily refer to the Judges in their official capacity.
>
> But there is no sedition in just criticism on the administration of the law. "A writer may freely criticize the proceedings of courts of justice and of individual judges—nay, he is invited to do so, and to do so in a free, and fair, and liberal spirit. But it must be without malignity, and not imputing corrupt or malicious motives" (per Fitzgerald, J., in *R.* v. *Sullivan*, 11 Cox, C.C. at p. 49). "It certainly is lawful, with decency and candour, to discuss the propriety of the verdict of a jury, or the decisions of a judge, . . . but if the extracts set out in the information contain no reasoning or discussion, but only declamation and invective, and were written, not with a view to elucidate the truth, but to injure the characters of individuals, and to bring into hatred and contempt the administration of justice in the country, "then the defendants have transgressed the law, and ought to be convicted (per Grose, J., in *R.* v. *White and Another*, 1 Camp. 359, n).
>
> To assert that a Judge had been bribed, or that in any particular case he had endeavoured to serve his own interest, or those of his friends or of his party, or wished to curry favour at Court, or was influenced by fear of the Government or of any great man, or by any motive other than a simple desire to arrive at the truth and to mete out justice impartially, is seditious.

The passage just quoted is contained in the chapter dealing with "seditious words" and it is, I think, clear that in the opinion of the learned author words calculated to bring the administration of justice into hatred or contempt are punishable either on indictment as being a seditious libel or summarily as being a contempt of court.

The case of *R.* v. *White and Another* 1 *Camp.* 359 (*n*), mentioned above, is more fully reported *sub nom R.* v. *Hart and White* (1).

It appears that one Chapman and one Bennet had both been tried for murder before Leblanc, J. and a jury and had been found not guilty. The defendants Hart and White published letters criticizing these verdicts and reflecting in disparaging terms on the Judge and members of the jury.

They were tried upon an information preferred by the Attorney-General containing several counts. The substance of the charge was that the accused "intending to bring the administration of justice and the trial by jury as by law established in England into hatred and contempt among the liege subjects of our said Lord the King and to raise and excite disaffection and discontent in the minds of the liege subjects of our said Lord, the King . . . did publish a certain scandalous, malicious and defamatory libel of and concerning the said respective trials of the said William Chapman and Thomas Bennett and of and concerning the verdicts aforesaid according to the tenor and effect following, (the libel was here set out) to the great scandal and disgrace of the administration of public justice in England."

Other counts included an allegation of intention "to traduce, defame and vilify the said Sir Simon Leblanc and the jurors and to bring the said Sir Simon Leblanc and the jurors into public hatred and contempt."

A reading of the charge to the jury of Grose, J. which is set out in full commencing at page 1190 of the Report makes it clear that in his opinion the accused ought to be found guilty if the jury reached the conclusion that the document in question was published with the intention of maligning and vilifying the administration of justice

(1) (1808) 30 St. Tr. 1131.

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in the country and casting a stigma upon it, and there is nothing in the charge to suggest that there was any further ingredient necessary to complete the offence.

In Russell on Crimes, 9th Edition at page 87, the definition is given in the following words:

> Sedition consists in acts, words, or writings intended or calculated, under the circumstances of the time, to disturb the tranquility of the State, by creating ill-will, discontent, disaffection, hatred, or contempt towards the person of the King, or towards the Constitution or Parliament, or the Government, or the established institutions of the country, or by exciting ill-will between different classes of the King's subjects, or encouraging any class of them to endeavour to disobey, defy, or subvert the laws or resist their execution, or to create tumults or riots, or to do any act of violence or outrage or endangering the public peace.
>
> When the offence is committed by means of writing, or print, or pictures, it is termed seditious libel.
>
> The offence is a misdemeanour indictable at common law.

It will be observed that this definition does not make any express reference to the courts or to the administration of justice, although the courts would presumably be included in the expression "the established institutions of the country." At page 88, the writer says,

> According to the older authorities it is seditious wantonly to defame or indecorously to calumniate that economy, order and constitution of things which make up the general system of the law and government of the country; and more particularly to degrade or calumniate the person and character of the sovereign, or the administration of his government by his officers and ministers of state, or the administration of justice by his judges, or the proceedings of either House of Parliament.

I am not able to determine whether, by the form of expression used, the learned author intends to convey the opinion that an intention to degrade or calumniate the administration of justice is no longer in law regarded as seditious; but I am inclined to think that he did not intend to express this view, as the text immediately continues with the statement that the present view of the law is best stated in *R.* v. *Burns* (1). The learned author proceeds to quote at length from the charge to the jury of Cave, J., in that case, including the following passage at page 92, in which Cave, J. was quoting with approval from the charge of Fitzgerald, J. to the jury in *Reg.* v. *Sullivan* (2),

> Viewing the case in a free, bold, manly and generous spirit towards the defendant, if you come to the conclusion that the publications indicted are not seditious libels, or were not published in the sense imputed to

(1) (1886) 16 Cox C.C. 355. (2) (1868) 11 Cox C.C. 44.

them you are bound, and I ask you in the name of free discussion, to find a verdict for the defendant. I need not remind you of the worn-out topic to extend to the defendant the benefit of the doubt. If on the other hand, on the whole spirit and import of these articles, you are obliged to come to the conclusion that they are seditious libels, and that their necessary consequences are to excite contempt of Her Majesty's Government, or to bring the administration of the law into contempt and impair its functions—if you come to that conclusion either as to the articles or prints, or any of them, then it becomes your duty honestly and fearlessly to find a verdict of conviction upon such counts as you believe are proved.

It will be observed that in the passage quoted the necessary consequences, which the learned judge said would render the publications seditious libels, are stated disjunctively and that one of them is "to bring the administration of the law into contempt and impair its functions."

In Archbold's Criminal Pleading, Evidence and Practice 32nd Edition at page 1238, it is said: "Libels on a judge or a jury may, in certain events be seditious," and at page 1146, "to impute corruption to judges has been said to be seditious."

Many of the cases cited by the respective authors in support of the definition of "seditious intention", above referred to, i.e., "to bring into hatred or contempt or to excite disaffection against the administration of justice", do not touch upon the point now under consideration but deal only with other branches of the definition of seditious intention. I have not found in any of the cases cited any expression which appears to me to be inconsistent with the above definition or to suggest that it omits any essential ingredient. The definition appears to me to have the support of the text-writers mentioned above, of the Commissioners who reported on the Draft Code (Lord Blackburn, Barry, J., Lush, J. and Sir James Stephen, later Stephen, J.) of Grose, J. in *R.* v. *White and Hart* (*supra*), of Fitzgerald, J. in *R.* v. *Sullivan* (*supra*), of Cave, J. in *R.* v. *Burns* (*supra*) and of a court consisting of Lord O'Brien, L.C.J. and Murphy, Gibson and Madden, J.J. in *Reg.* v. *M'Hugh* (1).

The last mentioned case appears to me to be directly in point. Two men had been indicted and convicted before Andrews, J. and a jury on a charge of conspiracy and

(1) (1901) 2 Ir. R. 569.

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M'Hugh was charged with publishing a libel in regard to their trial. The information set forth that the defendant M'Hugh,

being an evil disposed person, wickedly and maliciously contriving and intending to bring the administration of justice in this kingdom into contempt, and to scandalize and vilify the said William Drennan Andrews and the jurors by whom the said issue was so tried as aforesaid, and to cause it to be believed that the said jurors had violated their oaths as such jurors, on the 16th day of December, in the year aforesaid wickedly and maliciously did print and publish, and cause to be printed and published, a certain false, wicked, scandalous and malicious libel of and concerning the administration of justice in this kingdom, and of and concerning the said Right Honourable William Drennan Andrews and the jurors by whom the said issue was so tried as aforesaid, according to the tenor and effect following:

> (Here followed the libel, which in substance and effect, was a scandalous and malicious libel, concerning the administration of justice in Ireland, and concerning the Judge and jury who had tried the case.)

to the great scandal and reproach of the administration of justice, in contempt of our Lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our Lady the Queen, her Crown and dignity.

There were other counts in the information but they were substantially to the same effect.

It will be observed that neither the word "seditious" nor any similar word was used anywhere in the information. The matter came before the court on a demurrer by the Attorney General to pleas made by the accused which might have been good in a case of defamatory libel but not in a case of seditious libel and one of the questions for the court was whether or not the information charged a seditious libel. The following passages appear to me to be relevant to the point under consideration; at page 577 in the judgment of O'Brien, L.C.J.:

> The question remains, are the libels complained of seditious libels? The word "seditious" is certainly not used in the information, but we are all of opinion that it is not a word of art, and that, if the substance of what is a seditious libel is stated, this is enough. In the long history of seditious libels it has never been decided that it was essential to employ in the pleading the words "seditious" or "seditiously". On the contrary, there are cases in the books, which have been referred to during the argument in which, though the prosecutions were plainly for seditious libels, the words "seditious" or "seditiously" were not used.

At the same page:

> Have we then in this case, in substance, the essential elements of a seditious libel? No doubt the words complained of are defamatory, but have we in the averments what is equivalent to the allegation of a seditious intent? This brings me to the consideration of what is the

legal definition of a seditious intent. It is correctly stated in the late Mr. Justice Stephen's work on the criminal law. He there defines a "seditious intention" to be "an intention to bring into hatred or contempt, or to excite disaffection against, the person of Her Majesty, her heirs or successors, or the Government and Constitution of the United Kingdom as by law established, or either Houses of Parliament, or *the administration of the law*" . . . I stop here and do not give the full definition. I give only the relevant portion. An intention, then, to bring into hatred or contempt the administration of the law falls within the definition of seditious intent.

This being so, I turn to the information to ascertain whether what constitutes a seditious intent is sufficiently alleged therein. I find that it is alleged "that Patrick A. M'Hugh, wickedly and maliciously contriving and intending to bring the administration of justice in this Kingdom into contempt," did publish the libel complained of. This is the intent alleged against the defendant, and it is one of the intents which make libellous matter seditious. I am therefore of opinion that what is complained of is a seditious libel.

At page 579:

As I have already stated, if these articles refer at all to Mr. Justice Andrews, it is in his judicial character that they refer to him. In his private personal character a Judge receives no more protection from the law than any other member of the community at large; and even in his judicial character, he should always welcome fair, decent, candid, and I would add, vigorous criticism of his judicial conduct; but, on the other hand, deliberate misconduct in his judicial character must not be imputed. If a Judge deliberately misconducts himself in his judicial office, the Constitution has provided a remedy—his removal.

The law in this respect is correctly stated by Mr. Odgers in his book on libel. He says to assert that a judge has been bribed, or that in any particular case he had endeavoured to serve his own interests, or those of his friends, or his party, or had wished to curry favour at Court, or was influenced by fear of the Government, or of any great man, or by any other motive than a simple desire to arrive at the truth, and to mete out justice impartially, is seditious.

At page 584 in the judgment of Gibson, J.:

An intent to bring the administration of justice into contempt is a seditious intent, and not the less so because it is associated with aspersions on the Judge or jury who tried a particular case. The information here alleges what the law defines to be a seditious intent. The thing is there though the word is not.

At page 587 in the judgment of Madden, J.:

Probably none of the attempts which have been made to define a seditious intention, or rather to enumerate various kinds of intention which the law regards as seditious, are completely satisfactory or exhaustive. But it is clear that an intention to bring the administration of justice into hatred or contempt amounts to such an intention. The intention is, in each instance, something different from the defamatory writing. The character of the writing may be strong, and in some cases irresistible, evidence of the existence of an intention to bring the administration of justice into contempt. In other cases a jury might fairly believe that a charge was brought, against persons engaged in the conduct

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of a trial, for the purpose, not of vilifying, but of purifying, the administration of justice. In such a case the defendant ought to be acquitted, because the intention, which is the essential part of the offence, was not proven as charged.

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In my opinion at Common Law an intention to bring into hatred or contempt or to create disaffection against the administration of justice is a seditious intention and I do not find anything in the provisions of the *Criminal Code* to negative this view. Section 133 (4) of the *Criminal Code* defines one type of seditious intention but the opening words of that subsection "Without limiting the generality of the meaning of the expression 'seditious intention'", make it clear that in the view of Parliament that definition is not exhaustive.

In section 133 (*a*) it is provided that "no one shall be deemed to have a seditious intention only because he intends in good faith . . . to point out errors or defects . . . in the administration of justice." The wording of this proviso seems to indicate the view of Parliament that under some circumstances an attack on the administration of justice is to be regarded as seditious.

If it is suggested that there is an inconsistency in rejecting the definition of seditious intention contained in the Draft Code as incomplete insofar as it deals with the intention to create ill-will and hostility between different classes of His Majesty's subjects and accepting it as accurate insofar as it deals with the intention to bring the administration of justice into hatred and contempt, the answer is that, in my view, the former branch of the definition is not supported by authority, whereas the latter is.

It is true that strictly speaking none of the authorities to which I have made reference are binding upon this court but I do not think we should disturb a current of authority, which appears to me to extend over many years and against which I can find no reported judgment, unless we were clearly of the opinion that such authority was wrong in principle. Far from entertaining any such view, it appears to me that it is right in principle. It is easy to imagine many cases where an intention to create ill-will and hostility between different classes of His Majesty's subjects would not include the intention, or have the probable effect, of an interference with the due processes of lawfully constituted authority; but it seems to me that

such an interference must of necessity result from bringing the administration of justice into hatred or contempt or exciting disaffection against it.

It is not necessary to adopt everything that was said by Wilmot, J. in his opinion in *Almon's* case (1), which, although never delivered as a judgment of the court, has been quoted and accepted as a high authority in many subsequent judgments, but the following passage from page 259 appears to me to be relevant.

> The Constitution has provided very apt and proper remedies for correcting and rectifying the involuntary mistakes of judges, and for punishing and removing them for any voluntary perversions of justice. But if their authority is to be trampled on by pamphleteers and newswriters, and the people are to be told that the power, given to the Judges for their protection, is prostituted to their destruction, the Court may retain its power for some little time, but I am sure it will instantly lose all its authority; and the power of the Court will not long survive the authority of it.

The opinion in *Almon's* Case was prepared in a case of attachment for contempt and not in a case of indictment for libel. It has been suggested that a publication which amounts to a criminal contempt of the court by "scandalizing the Court" should be proceeded against, if at all, as a contempt and not as a seditious libel. It seems to me that where the nature of a publication appears to the Attorney-General to merit the institution of criminal proceedings against its publisher it is his responsibility to decide whether the matter should be brought before the courts by way of contempt proceedings or by indictment for seditious libel.

There is, I think, much to be said in favour of the view that, where it is intended to commence criminal proceedings against a person for publishing matter said to be calculated to bring the administration of justice into hatred and contempt, it is better that such proceedings should be taken by way of indictment so that the accused may have the benefit of a trial by jury, rather than by summary proceedings for contempt, in which, it has sometimes been said, the judge is at once judge of the law, of the fact, of the intention and of the sentence, and his decision is without any power of review. (See Sir John Fox, Contempt of Court (1927) page 42).

(1) (1765) Wilm. 243; 97 E.R. 94.

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It cannot be successfully argued that because a matter appears to be a criminal contempt of Court it may not also be a seditious libel. Section 15 of the *Code* recognizes that an act or omission may constitute several different offences and this was true also at Common Law (vide, e.g. *Wemyss* v. *Hopkins* (1), *Regina* v. *King* (2).

To briefly summarize my conclusions, I am of opinion that an intention to bring the administration of justice into hatred or contempt or to excite disaffection against it is a seditious intention; that an intention in good faith to point out errors or defects in the administration of justice is not a seditious intention and that it is the right of every citizen to criticize freely and vigorously the proceedings of the courts of justice, the decisions of the judges, and the verdicts of juries.

I think that in the case at bar, and in the case of every charge of publishing a seditious libel, where the gravamen of the charge is the alleged intention to bring the administration of justice into hatred and contempt, the question to be left to the jury is whether the real intention of the person charged was to vilify the administration of justice, destroy public confidence therein and to bring it into contempt; or whether the publication, however vigorously worded, was honestly intended to purify the administration of justice by pointing out, with a view to their remedy, errors or defects which the accused honestly believed to exist. As in all cases tried by a jury, there is a preliminary question for the Court whether there is any evidence on which a jury could reasonably find the existence of the guilty intention. If in the Court's opinion there is such evidence the case should be left to the jury, who after being instructed as to what is and what is not a guilty intention should be reminded that if they are in doubt as to the true intention of the accused it is their duty to acquit him.

As, in my opinion, there should be a new trial in the case at bar, it is not desirable that I should say more than is necessary about the evidence in the record. It appears to me that the words of the pamphlet furnish evidence upon which a properly instructed jury could reasonably

(1) (1875) 10 Q.B. 378. (2) (1897) 1 Q.B. 214.

find the existence of an intention to bring the administration of justice into hatred or contempt or to create disaffection against it.

I have particularly in mind the following two passages:

> . . . et que faut-il penser de ses juges qui imposent de lourdes amendes ainsi que des sentences de prison à ces personnes, qui les invectivent d'un langage injurieux, et qui suivent délibérément une politique malicieuse en ajournant maintes et maintes fois les causes, afin de retenir engagé des dizaines de milliers de dollars en cautionnements exhorbitants, et afin de garder des centaines de causes pendantes? Ces législateurs, ces corps de police et ces juges du Québec montrent-ils ainsi leur amour pour la liberté? Honnêtement, croyez-vous que ces fruits sont le produit de l'amour, ou celui de la haine? "Vous les connaîtrez donc à leurs fruits." (Matthieu 7:20, Crampon).
>
> Toutes les cours Canadiennes Françaises étaient tellement sous l'influence sacerdotale qu'elles confirmèrent la sentence infâme, . . .

While, as has been already mentioned, the greater part of the argument before us was devoted to other aspects of the case, the two passages, just quoted, were set out verbatim in the indictment, were mentioned in the charge to the jury of the learned trial Judge and were dealt with both by Counsel for the Crown and by Counsel for the Appellant in their Factums and in their oral argument.

The first quoted passage appears to me to be a direct imputation to the Judges of the Province of Quebec, not of mistake but of malice, in the performance of their judicial duties. The last quoted passage appears to me to fall directly within the passage from Odgers which was approved by O'Brien, L.C.J. in *R.* v. *M'Hugh* in the quotation set out above. It is, I think, an assertion that all those Courts in Quebec which dealt with a certain case affirmed a sentence, described not as erroneous but as infamous, and did so because they were influenced by something other than a simple desire to arrive at the truth and to mete out justice impartially.

For all of the above reasons, I am of opinion that the Appeal should be allowed, the conviction set aside and a new trial ordered.

*Appeal allowed, conviction quashed and acquittal directed.*

Solicitor for the appellant: *W. G. How.*

Solicitor for the respondent: *A. Lacourcière.*