

BLASPHEMOUS LIBEL.

THE KING v. ERNEST V. STERRY.

CHARGE TO THE JURY.

By His Honour Judge Coatsworth.

Gentlemen of the Jury: We are coming near the end of this remarkable case and you have to deal with it just the same as you deal in any other criminal case that is brought before you. You have all to agree on the verdict, and it is your duty to give the accused man the benefit of any reasonable doubt arising upon the evidence. It must be a reasonable doubt and must not arise from any prejudice or bias or favour of any kind, but if when you are coming to your final conclusion you feel compelled to say to yourselves and to each other, "Well after all there is a reasonable doubt as to whether this man is guilty or not" it is your duty to give him the benefit of that reasonable doubt and to bring in a verdict of not guilty. If on the other hand, after weighing the matter, you come to the conclusion beyond all reasonable doubt that he is guilty then it will be your duty to bring in a verdict to that effect.

You have had read to you the charge laid against this man. He is charged in this indictment—this is the indictment—with having committed this offence under Section 198 of the Criminal Code. "Everyone is guilty of an indictable offence and liable to one year's imprisonment who publishes any blasphemous libel. (2) Whether any particular published matter is a blasphemous libel or not is a question of fact. Provided that no one is guilty of a blasphemous libel for expressing in good faith and in decent language or attempting to establish by arguments used in good faith and conveyed in decent language, any opinions whatever upon any religious subject."

Probably nothing is more sacred to us than our religion. We have ever been taught to reverence the name of God. I know I am right in saying this is so strongly impressed upon our lives that we not only speak but think of God with reverence.

We regard Him as the supreme Ruler of the Universe. Also as our Maker and Creator through whom alone we believe we live, move and have our being. We regard taking God's name in vain as a sin. He is to us our heavenly Father. It is part of our faith that God so loved the world that He gave His only begotten and well beloved Son that whosoever believeth on Him should not perish but have eternal life.

All that we have in this world worth having we believe comes from God. We look to Him also for salvation in the world to come after we have passed out of this life.

Our conception of God is so much a part of every life that it is an integral part of our national life. So much is this the case that we are prepared to say that love to God and trust in Him are the very foundation of our nation's greatness.

The Bible, the Holy Scriptures, are to us the revelation of God's will concerning us and all His people. It contains the only history of the creation, and in this Book God's will and law for His peoples' guidance is revealed.

We look upon the Bible as the basis of every good law in our country. It is to us the dearest and most precious book in all the world. Sooner would we part with every other book than the Bible. It is in reality to us the book of books.

It is always painful to hear any person question any part of the Bible. We do allow that any person may disbelieve in God and the Bible and may express that belief in language or by writing. We insist however that in doing so the language or writing must be couched in respectful terms such as are appropriate in dealing with such a subject as is most sacred to nearly every person in our land.

When the language or writing is in such disrespectful and indecent terms as to be resented by and be an offence to all our God-fearing people and to outrage their feelings and sense of propriety, then it becomes blasphemy. It is for you to decide whether the expressions in this paper, which the accused says he published and for which he is wholly responsible, have passed the limits of a decent and respectful expression of opinion and have in their terms become so indecent and disrespectful as to outrage the feelings of our people and constitute the crime of blasphemy.

I have read to you the section of the Code with regard to blasphemy. There are many decisions as you have already heard with regard to it.

"A blasphemous libel consists in the publication of any profane words vilifying or ridiculing God, Jesus Christ, the Holy Ghost, the Old or New Testament or Christianity in general, with intent to shock and insult believers, or to pervert or mislead the ignorant and unwary; and if a publication be full of scurrilous and opprobrious language,—if sacred subjects are treated with levity, if indiscriminate abuse is employed instead of argument,—then a design to wound the religious feelings of others may be readily inferred. But where the work is free from all offensive levity, abuse and sophistry, and, in fact, the honest and temperate expression of religious opinions conscientiously held and avowed, it is not a blasphemous libel."

Then again blasphemy is set out as "intended and calculated to wound the feelings of mankind or to excite contempt and hatred against the church or religion or to promote immorality, . . . but that matters couched in decent and proper language and published and intended in good faith to advance the religious opinions which the publishers regard as true, are not blasphemous merely because their publication is likely to wound the feelings of those who have contrary opinions or because their general adoption might tend by lawful means to alterations in religion or in the constitution of the church . . . If the decencies of controversy are observed,

even the fundamentals of religion may be attacked, without a person being guilty of blasphemous libel."

Then it goes on to say: "but that publications which, in an indecent and malicious spirit, assault and asperse the truth of Christianity or the Scriptures, in language calculated and intended to shock the feelings and outrage the belief of mankind, are properly to be regarded as blasphemous so as to be fit subjects for criminal prosecution."

There is reported in this paper these words, "If cunning Old Moses" and "This touchy Jehovah whom the deluded superstitionists claim to be the Creator of the whole universe, makes one feel utter contempt for the preachers and unfeigned pity for the mental state of those who can retain a serious countenance as they peruse the stories of His peculiar whims, freaks and fancies and His frenzied megalomaniac boastings." These "deluded superstitionists" mean you and me.

Now, what you have to consider is whether or not you regard these words as constituting an outrage on the feelings of yourselves and the rest of the community who read these expressions of the Most High, as to whether you consider that the decencies of controversy have been observed in the statements made here, or whether they go to the extent of outraging the feelings of the community and yourselves.

The accused man admitted in the box yesterday that he published and distributed copies of this paper. He told you about giving a copy to the Prime Minister, the Honourable G. Howard Ferguson, and also to the Honourable C. McCrea, Minister of Mines for Ontario, and that he also left a copy in the office of Mr. Armour, Crown Attorney, and otherwise distributed copies to other people.

He also intended to have copies distributed amongst school children; he says distributed amongst the higher schools.

What you have to consider, gentlemen, is whether or not this publication is limited to the decency of proper controversy. He is perfectly entitled to express his opinions so long as he does so in respectful and proper language that does not outrage your feelings and the feelings of the rest of the community. You have heard what he has written of Moses, Moses the law-giver and of the Almighty and of the whole Scriptures and, as I have already stated, you have to determine whether he has gone beyond the bounds or the limits of decent controversy and has outraged the feelings of the community. If you think there is any reasonable doubt, as I told you at the beginning of my charge, then you must return a verdict of not guilty. If on the other hand you come to the conclusion that he has outraged the feelings of the community then it is your duty to bring in a verdict of guilty.

—Jury retires.

Mr. Cross: Your Honour, I have a few observations to make in regard to your charge to the jury. In fairness to the accused I should like to make a few observations.

The Court: Yes.

Mr. Cross: In fairness to the accused I think that you should instruct the jury as to whether there was an intention on the part of the accused

which was calculated to outrage the feelings of the community. I don't know if you sufficiently expressed to the jury or explained to them that there must be the intent, "intended or calculated to outrage the feelings of the community."

The Court: I think I mentioned that.

Mr. Cross: I don't know, Your Honour. I think the jury should be instructed with regard to this, there was the intent, the guilty mind, whether he intended to outrage the feelings of the community. I think that is the ingredient of the charge.

Mr. Murphy: I think you explained that to them.

The Court: Perhaps I had better call them back.

—Jury returns.

The Court: *Gentlemen of the Jury*, Mr. Cross has asked me to direct you as to whether there was the intention in this publication, as you see in the indictment, "with intent to asperse and vilify the Almighty God and bring the Holy Bible, the Holy Scriptures and the Christian religion into contempt." You must make up your minds whether there was that intention and whether it was published and calculated to arouse the resentful feeling of the community. That is all, gentlemen.

—Jury retires at 12.25.

—Jury returns at 12.50.

Verdict: Guilty.

The Court: I will give my sentence in the morning.

NOTE.—Sterry was sentenced to sixty days' imprisonment, to run consecutively with a ten months' sentence (being four months definite and six months indeterminable) he was at the time serving for theft. An appeal was entered and argued before the Appellate Division on the 4th May, 1927, when the court, consisting of Latchford, C.J.A., Riddell, J.A., Middleton, J.A., Masten, J.A., and Orde, J.A., unanimously dismissed the appeal and confirmed the conviction and sentence.