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R. v. Rahard

Rex v. Rahard

Quebec Court (Sessions of the Peace)

Perrault, Chief Justice

Judgment: April 25, 1935

Docket: None given.

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Counsel: G. Fauteaux, for the Crown

A. H. Tanner, for the accused

Subject: Criminal; Criminal

Criminal law.

Perrault, C.J.S.P.:

1 The indictment based upon s. 198 of the Criminal Code states that the accused the Rev. Victor Rahard, while a minister of the Anglican Church situated at the Corner of Cartier & Sherbrooke Sts., in Montreal, published upon posters, a writing constituting **blasphemous libel**.

2 This case raises a very difficult and important question. Furthermore, I believe this is the first time that the question of **blasphemous libel** has been brought before our Canadian Courts under such circumstances.

3 Moreover, it must be understood that this does not involve a question of religious doctrine, but solely a legal question, that is, the application of s. 198 of the Cr. Code. This section must be interpreted and it must be decided whether the writing published constitutes **blasphemous libel**.

4 In all justice to the defence and in order to better place the dispute before you I will reproduce the entire writing from which the present action arose.

5 **The Canadian Catholic Church, Anglican rite.**

6 **Sermon by an old monk.**

7 **The seven commandments of the Church of Rome.**

8 If Christ returned to visit all His churches, He could still chase the merchants from the temple crying: 'My house is a house of prayer and you have made it a den of thieves.' (St. Matthew, c. xxi, v. 13.)

9 Judas and the Roman priest ... The Mass.

10 So Christ is sold. Judas sold Christ but did not kill him, the priests attempt to sell him and immolate him. Judas sold Christ for a large sum of money; the Roman priests sell Him every day and even three times.

11 Judas repented and threw his money away; the Roman priests do not repent and keep the money. Now what do you think of the papist religion?

12 Christ has condemned the commandments of men whatever they may be when He said to the Pharisees: 'It is in vain that they honour Me teaching maxims and human ordinances;' (Matthew, c. xv, v. 3.)

13 The Roman Church is not content with the commandments of God. She wished to have her own commandments for the satisfaction of her ambition and the prosperity of her shop."

14 First of all it should be observed that these commandments bear a false name. It is not the commandments of the Church that they should have been called but commandments of the Roman clergy.

15 These human commandments are not of God nor of universal morality nor of the conscience. They bind no one and their transgression may be considered as an act of enfranchisement in regard to usurped authority."

16 The indictment reproduced is in writing; the accused, the Rev. Victor Rahard assumes full and complete responsibility for the writing and its publication. He admits having on August 12, 1933, affixed it to the property of his church, the length of Sherbrooke St. in the eastern part of the City of Montreal in full view of passersby and especially of Roman Catholics and French Canadians who compose at least three-quarters of the population of the City of Montreal.

17 The facts are therefore established and are admitted by the parties; only a question of law remains. In his admission (ex. Da.) the Rev. Victor Rahard declares that he is a priest of the Anglican Church in Canada, that his ecclesiastical superiors have conferred upon him the charge of the church known by the name of Church of the Redeemer, situated upon Sherbrooke St. East where he has the right to preach the doctrine of his church.

18 **Upon the argument the Crown maintained the following proposition;** s. 198 of the Cr. Code interpreted literally as well as in spirit gives every freedom of opinion upon any religious subject whatever; as it gives every latitude to the expression of this opinion in writing or otherwise, provided that this publication is made in good faith and in agreeable language, in such a manner as not to offend either by its terms or expressions the feelings of others who are not of the same opinion or point of view and finally to keep from disturbing the public peace through offensive or injurious terms.

19 In short to insure the public peace among His Majesty's subjects is the object of all the provisions of the Cr. Code.

20 **On the other hand the defence maintains the following proposition: —**

1. Blasphemy is a crime by English common law which exists only in an attack against the Divinity or Christianity in general; and the writing attacks neither the Divinity or Christianity.

2. By believing that the writing was directed against the Divinity or Christianity in general, the accused would be protected by s. 198 of the Cr. Code because he attempted to establish in good faith and in decent language an opinion upon the question of religious doctrine.

3. That more particularly the statement he made regarding the Mass was part of the teaching of the Church of England; that in his capacity of priest he has the right to teach, just as he has the right to discuss, the question of whether belief in the Mass is well founded or not; for it is a question of controversy between the Roman and the Protestant Church.

4. That considering the place and the circumstances of the publication of this writing, criminal intent on the part of the accused could not be inferred.

21 At the outset I declared that this was not a question of doctrine but solely a question of law. Besides this Court is not called upon to determine the right of the accused to preach in his own church the religious doctrine which he deems fit, which

right is not debated any more than his liberty of opinion. But could he, without contravening s. 198 of the Cr. Code, publish the writing reproduced above in the terms and expressions used? That is the question which the Court has to decide.

22 This s. 198 of the Cr. Code placed under Part V. under the rubrics "offences against religion, morals and public convenience" does not define **blasphemous libel** but contains the simple statement that **blasphemous libel** constitutes an offence and is a question of fact. Nevertheless the section contains the following provision: — "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 in good faith and conveyed in decent language, any opinion whatever upon any religious subject."

23 Hence it is to be noted that our Code speaks of a religious subject and not only of Divinity or of Christianity in general, but in order to understand and know the essential elements constituting the offence of criminal libel the common law must be resorted to. It is a principle of our Criminal law (s. 16) that the English common law is applicable in our country although the subject is not specially mentioned in our Code. See Annotation, 48 Can. C.C., at p. 4.

24 "The common law jurisdiction as to crime is still operative notwithstanding the Criminal Code, but subject to the latter prevailing where there is a repugnancy between the common law and the Code" (*Rex v. Cole* (1902), 5 Can. C.C. 330).

25 The Supreme Court of Canada accepted this interpretation in *Brousseau v. The King* (1917), 29 Can. C.C. 207, at p. 209, [39 D.L.R. 114](#), at p. 115: — "The criminal common law of England is still in force in Canada, except in so far as repealed either expressly or by implication."

26 But the English common law in regard to a **blasphemous libel** has been varied with the ages. With the times and a new understanding of freedom of opinion, the doctrine and jurisprudence has attached significance to the intention of the author, to the terms used by him and to the circumstances rather than to the subject treated.

27 In Odgers on Libel and Slander, 5th ed., p. 498, it is said: — "It is the malicious intent to insult the religious feelings of others by profanely scoffing at all they hold sacred, which deserves and receives punishment."

28 And at p. 467: — "It is sufficient to prove a publication to the prosecutor himself, provided the obvious tendency of the words be to provoke the prosecutor and excite him to break the peace."

29 Blasphemy which otherwise was under the jurisdiction of the Ecclesiastical Courts, has come under the jurisdiction of the Civil Courts in order, the authors say, to prevent a disturbance of the peace. In the year 1676 in [Taylor's Case, 1 Vent. 293, 86 E.R. 189](#), the English Courts sanctioned the axiom which, since that time, has often been invoked: "Christianity is parcel of the laws of England," and the following syllogism arose: — "To disparage any part of the law of England is a crime. Christianity is a part of the law of England, therefore to disparage Christianity is a crime."

30 But later Lord Coleridge in the case of *Reg. v. Ramsay* (1883), 15 Cox C.C. 231, at p. 235, declared: — "I think that these old cases can no longer be taken to be a statement of the law at the present day. It is no longer true in the sense in which it was true when these dicta were uttered, that 'Christianity is part of the law of the land.'"

31 And further on he adds — "The principles of law remain, and it is the great advantage of the common law that its principles do remain; but then they have to be applied to the changing circumstances of the times. This may be called by some retrogression, but I should rather say it is progression — the progress of human opinion."

32 This case was decided in 1883 and established the following principle: — "The mere denial of the truth of the Christian religion, or of the Scriptures, is not enough, per se, to constitute a writing and **blasphemous libel**, so as to render the writer or publisher indictable. But indecent and offensive attacks on Christianity or the Scriptures, or sacred persons or objects, calculated to outrage the feelings of the general body of the community, do constitute the offence of blasphemy, and render writers or publishers liable at common law to criminal prosecution."

33 This doctrine was maintained in the more recent decision of *Rex v. Gott* (1922), [16 Cr. App. R. 86](#). It decided as follows: —

34 "The essence of the crime consists in the publication of words concerning the Christian religion so scurrilous and offensive as to pass the limits of decent controversy and to be calculated to outrage the feelings of any sympathiser with Christianity. In considering whether these limits have been passed the circumstances in which the words are published should be taken into account. The limits of decent controversy would certainly be passed if the circumstances in which the words were published were such that the publication was likely to lead to a breach of the peace."

35 Folkard in his *Law of Slander and Libel*, 7th ed., p. 361, interpreting the case of *Rex v. Woolston* (1729), 1 Barn. K.B. 162, 94 E.R. 112, declares: — "It may be observed, that all the recorded instances of prosecution for blasphemy, subsequent to

Woolston's case, have been for publication of indecent, scoffing, and opprobrious language against natural or revealed religion; and that in most of such cases, the jury have been directed to look both to the matter and manner of the publication in order to decide on its blasphemous quality; and in those cases where the defendants have been convicted, the judges, in the remarks they have made upon the mischievous tendency of the offence, have, usually, founded their reasons for the punishment awarded, more upon the offensive manner of the publication in the particular instances, than upon the matter itself; and all have cautiously avoided laying down any general prohibitory rule."

36 It may be noted that the English jurisprudence attaches more importance to the intention of the author and the terms in which he expresses his opinion than to the subject treated and because of the danger of disturbing the public peace. This doctrine was expressed by Starkie in his work on the Law of Slander and Libel, 3rd ed., p. 590: — "It is the mischievous abuse of this state of intellectual liberty which calls for penal censure. The law visits not the honest errors, but the malice of mankind. A wilful intention to pervert, insult, and mislead others, by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations or wilful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention, in law, as well as in morals, — a state of apathy and indifference to the interests of society, — is the broad boundary between right and wrong. If it can be collected from the circumstances of the publication, from a display of offensive levity, from contumelious and abusive expressions applied to sacred persons or subjects, that the design of the author as to occasion that mischief to which the matter which he publishes immediately tends, to destroy or even to weaken men's sense of religious or moral obligations, to insult those who believe by casting contumelious abuse and ridicule upon their doctrines, or to bring the established religion and form of worship into disgrace and contempt, the offence against society is complete."

37 And in regard to this doctrine of Starkie, Lord Coleridge in *Reg v. Ramsay*, 15 Cox C.C., at p. 236, states: — "It is my duty to lay down the law on the subject as I find it laid down in the best books of authority, and in 'Starkie on Libel,' it is there laid down as, I believe, correctly."

38 Odgers, *ubi supra*, p. 498, says: — "This view of our law against blasphemy was strongly advocated by that eminent lawyer, the late Mr. Starkie ... This is the view adopted by the Judges in the House of Lords in *Shore v. Wilson*, [9 Cl. & Fin. 355](#)[[8 E.R. 450](#)]. This is the view expressed in the admirable address of the late Chief Justice Coleridge to the jury in the case of *R. v. Ramsey and Foote*."

39 See Odgers, 5th ed., p. 478. This author expresses the same doctrine as

Starkie: —

40 "The intent to shock and insult believers, or to pervert or mislead the ignorant and unwary, is an essential element in the crime. *Actus non facit reum nisi mens sit rea*. The existence of such an intent is a question of fact for the jury, and the onus of proving it lies on the prosecution. The best evidence of such an intention is usually to be found in the work itself.

41 If it is full of scurrilous and opprobrious language, if sacred subjects are treated with offensive levity, if indiscriminate abuse is employed instead of argument, then a malicious design to wound the religious feelings of others may be readily inferred ... This would tend to show that he did not write from conscientious conviction, but desired to pervert and mislead the ignorant; or at all events that he was criminally indifferent to the distinctions between right and wrong."

42 Our s. 198 of the Cr. Code has been interpreted in a profound article by E. J. Murphy, K.C., representing the Crown in the case of *Rex v. Sterry*. He states as follows (48 Can. C.C., at p. 22): — "The question is, is the language used calculated and intended to insult the feelings and the deepest religious convictions of the great majority of the persons amongst whom we live? If so, they are not to be tolerated ... We must not do things that are outrageous to the general feeling of propriety among the persons amongst whom we live."

43 *Rex v. Pilon* (unreported) June 15, 1934, judgment of Wilson, J.; *Rex v. St. Martin* (1933), 40 Rev. de Jur. 411, Lacroix, J.S.P.; *Reg. v. Pelletier* (1900), 6 Rev. Leg. 116.

44 Hence it follows that s. 198 of the Cr. Code must be interpreted to mean that it is permitted to express any opinion whatever upon a religious subject in a public document if this opinion is expressed in good faith and in decent language since anyone may support his opinion by arguments expressed in good faith and in decent language.

45 I believe it has been shown that that is not only our Canadian law but the most recent English doctrine and jurisprudence as well.

46 Let us apply these principles to the present case. It is certain that the document published August 12, 1933, deals with a religious subject.

47 Has the Rev. Victor Rahard expressed his opinion upon this religious question in good faith and in decent language? He wrote and published that the Roman Church is not satisfied with the commandments of God; that it wished to have its own command-

ments for the satisfaction of its own ambition and the prosperity of its Shop. In other words the church to which a Roman Catholic goes to pray, where he has been baptized, where he fulfils his religious duties and where at the end of his life his body will be taken before its final rest in the cemetery, is a place of commerce. And what kind of trade?

48 And in order that there might be no mistake as to the meaning which the accused attaches to the word shop, he declares as follows: — "If Christ should return to visit all His churches He could still chase the merchants from the temples by crying 'My house is a house of prayer and you have made it a den of thieves.'"

49 Furthermore he compares the Roman priest to Judas saying: — "Although Judas sold Christ he did not kill Him while the priests attempt to sell Him and immolate Him; the Roman priests sell Him for a few cents and do not repent but keep t he money." And he concludes by saying: — "Now what do you think of the papist religion?"

50 I maintain that these terms are offensive and injurious to the Roman Catholics and of such a nature that they may lead to a disturbance of the public peace.

51 Where in the above quoted words can be found an argument expressed in good faith or in decent language to sustain the opinion of the accused. The bad faith of the accused is more than manifest. This writing is posted the length of Sherbrooke St. in a place frequented above all by the Roman Catholic and French Canadian population, and in order to give more force and authority to the statements which he made in this writing, he places at its head the words "Sermon by an old monk."

52 What could be the impression upon a Catholic population of these words "Sermon by an old monk" may easily be understood.

53 If we apply the English doctrine which I have cited above, that is to say, taking into account the circumstances of the publication as well as the terms and expressions used by the accused. We have evidence of bad faith on the part of the accused.

54 I will repeat what was said by Mr. Murphy in his article in 48 Can. C.C., at p. 22: — "The question is, is the language used calculated and intended to insult the feelings and the deepest religious convictions of the great majority of the persons amongst whom we live? If so, they are not to be tolerated ... We must not do things that are outrageous to the general feeling of propriety among the persons amongst whom we live."

55 At the hearing of the case the accused, by this counsel, made a motion to quash on the ground of the nullity of the indictment because no intent was alleged therein. I do

not believe that it is necessary to allege specially the intent in the indictment. Intent results from facts. Furthermore the indictment declares that the Rev. Victor Rahard published a blasphemous writing on August 12, 1933. And s. 198 of the Cr. Code states that a blasphemous writing constitutes a criminal offence.

56 Hence it follows that the fact that the indictment alleges that the accused published a blasphemous writing was sufficient to include all the elements of the offence.

57 What is it which constitutes a blasphemous writing? That is a question of fact left to the appreciation either of the Judge or jury. That is the import of s. 198 of the Cr. Code. As a result the motion to quash is dismissed and the accused is declared guilty.

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