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to act upon that declaration. If that were done the Board would in paying the money to the employer thereafter not be determining his right to it in any proceedings before it, but would simply be giving effect to the judgment of this Court by disposing of money in its custody to the person judicially declared to be entitled thereto. However, the question of what would be the proper order for this Court to make can be determined when it arises.

It might also be suggested that the Board at least has jurisdiction to set aside its own acceptance of the agreement, but that relief is not sought in the proceedings before the Board and it is not clear in the case of a statutory body such as this that an inherent jurisdiction should be implied beyond what is expressly conferred by the statute.

It is sufficient for the present to say that for the foregoing reasons we are of opinion that the Board has no jurisdiction to entertain these proceedings and that the questions in the case stated should be answered—1. Yes. 2. No.

Questions answered accordingly.

Solicitors for the applicant: *Norris & Norris.*

P. E. J.

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Police Offences—Insulting words—Likely to provoke a breach of the peace—Whether evidence of personal insult essential—Police Offences Act 1928 (*No.* 3749), *secs.* 24, 25.

The expression "insulting words" in sec. 24 of the *Police Offences Act* 1928 is not limited to words disparaging a person's moral character. It includes scornful abuse of a person or the offering of any personal indignity or affront. Under the section it is not necessary to show that the words were personally insulting to a person present, or to someone closely associated with somebody present, at the time they were used.

ORDER TO REVIEW.

Robert Bennett Brickell was charged before a Court of Petty Sessions at Ararat upon an information laid by Eric Cooladdie Annett, constable of police, under sec. 24 of the *Police Offences Act* 1928 that, on the 7th April 1940, in a public place, to wit, Barkly Street, Ararat, he did use insulting words whereby a

breach of the peace was likely to be occasioned. The evidence showed that on the occasion in question the defendant, using an amplifying apparatus, made a speech from a stationary car around which a considerable crowd had gathered; that in the course thereof, speaking of the cancellation by the mayor of Ararat of permission to use the town hall for a religious meeting, he made reference to the religion of the mayor himself, and thereafter to the Roman Catholic Church, referring to it, according to the evidence in support of the information, as a "racket" which had "left a bloody and slimy trail." The defendant and his witnesses testified that the words used were: "The organisation responsible is that whose blighting influence has spread over most of the countries of Europe and whose slimy hands, dripping with blood unrighteously shed, is subtly but effectively grabbing control of this country, namely, the Roman Catholic Hierarchy of Authority which operates from the Vatican city, Rome, and carries on the biggest racket ever perpetrated upon mankind, blasphemously attaching the name of God and Christ to their racket." There was evidence, which is set out in the judgment, that the words used offended some witnesses and that in their opinion a breach of the peace was likely to have been occasioned by the use of the words. The defendant was convicted and fined 2*l.*, in default seven days' imprisonment.

An order *nisi* was obtained to review the decision of the Court of Petty Sessions on the ground that there was no evidence on which it was entitled to act in convicting the defendant of the offence charged.

D. M. Little, for the defendant, to move the order absolute—By reason of the circumstances there was no evidence that the words used were insulting. "Insulting" in sec. 24 of the *Police Offences Act* 1928 has a narrower meaning than "offensive". There must be insult to the personal feelings of those hearing the words. [He referred to *Anderson* v. *Kynaston* (*a*); *Lendrum* v. *Campbell* (*b*); *Ex parte Breen* (*c*); *Sellers* v. *Bishop* (*d*).]

Gowans, for the informant, to show cause—"Insulting" in sec. 24 of the *Police Offences Act* 1928 should not be limited in

(*a*) [1924] V.L.R. 214; 45 A.L.T. 150.
(*b*) [1932] 32 S.R. (N.S.W.) 499.
(*c*) [1918] 18 S.R. (N.S.W.) 1.
(*d*) [1905] 11 A.L.R. (C.N.) 61.

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meaning as it has been in New South Wales. The decisions there are based on the history of the New South Wales legislation. [He referred to *Thurley* v. *Hayes* (*e*); *Ex parte Breen* (*f*); *R.* v. *Garrett* (*g*).] Section 25 of the Act first came into existence with the *Police Offences Act* 1891. It occupies its position immediately following on section 24 only by chance, and interpretations of the New South Wales equivalent of section 25 should not necessarily be applied to section 24.

D. M. Little, in reply, referred to *Acton* v. *Crawford* (*h*).

Cur. adv. vult.

O'BRYAN J. read the following judgment: The defendant was convicted of an offence against sec. 24 of the *Police Offences Act* 1928 of having in a public place used insulting words whereby a breach of the peace was likely to be occasioned. An order *nisi* to review this conviction was granted on the ground that there was no evidence sufficient to warrant such a conviction.

The evidence showed that the defendant was seated in a sedan motor car in a public street and was there, by use of a microphone connected with an amplifier, making a speech which contained remarks of a highly offensive and vituperative character of the Roman Catholic Church. His counsel before me contended: 1. That the remarks, though admittedly offensive, were not insulting. 2. That, though calculated to offend and arouse the indignation, not only of members of that Church, but also of any person of liberal mind, they were not likely to provoke a breach of the peace. 3. That, even if they were in fact insulting words and in the circumstances likely to lead to a breach of the peace, there was no sufficient evidence that there was present any person to whom the words were personally insulting, or any person who was closely connected with any other person to whom the words were personally insulting, and that for that reason an offence under sec. 24 of the Police Offences Act had not been established.

As to the first contention, Mr. Little in my opinion sought to give too narrow a meaning to the word "insulting". He suggested that it was confined to words of disparagement of one's

(*e*) [1920] 27 C.L.R. 548.
(*f*) [1918] 18 S.R. (N.S.W.) 1.
(*g*) [1896] 2 A.L.R. (C.N.) 321.
(*h*) [1888] 14 V.L.R. 937; 10 A.L.T. 150.

moral character, and that, *e.g.*, words of abuse of a man's professional capacity or physical appearance are not insulting words. I can see no reason for so limiting the meaning of the word "insulting". It is a word of wide import, and in this section covers, in my opinion, scornful abuse of a person or the offering of any personal indignity or affront. The words used by the defendant in this case were, in my opinion, clearly capable of a meaning insulting to (*a*) the dignitaries of the Roman Catholic Church, and (*b*) any member of that Church. A Catholic would, I have no doubt, hearing the words in question, regard them as an abusive attack upon his personal religious beliefs and practices and would thereby suffer a personal affront. To say to a man that his religion is a sham, that it is a mere dishonest business and trickery, is to offer him a personal indignity as direct as possible. The words used in this case are capable of such a meaning and were probably so intended and understood. Certainly I cannot interfere with the finding of the justices that the words used were insulting words. This view is in accordance with the decision of *Wise* v. *Dunning* (*i*).

That the words were likely to occasion a breach of the peace seems to me to be beyond doubt. There was evidence, apparently accepted by the justices, that a considerable crowd had gathered, that people became agitated, that if the constable had not intervened there might have been a riot, that people in the vicinity said, "Stop him or we will", and that the constable thought that if he had not stopped the defendant, a breach of the peace would have been occasioned. The only contention made by Mr. Little in this matter was that because a police constable intervened before trouble occurred, the justices should have held that in the circumstances (*i.e.*, because a constable was present) no breach of the peace was likely. It would be an extraordinary result if a person whose conduct otherwise clearly fell within this section were to be acquitted merely because an imminent breach of the peace was averted by the timely action of some sensible bystander in preventing his further utterances. The result would be, in effect, that there could be no conviction under this section unless a breach of the peace actually occurred. The section requires only that the breach was intended to be provoked or was likely to be occasioned. (*Cf.* the section as it stood in 1890—"may be

(*i*) [1902] 1 K.B. 167, at pp. 176, 178.

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occasioned'', *Vidler* v. *Newport* (*j*); *Clarson* v. *Blair* (*k*). The section was amended by the Police Offences Act of 1912.) In my opinion, not only were the justices right in their finding, but the evidence in this matter showed very clearly that but for the commendably ready action of the constable a breach of the peace would probably have occurred.

The final contention fails also, in my opinion, for two reasons. I am inclined to the view that the facts of this case did warrant a finding by the justices that some Roman Catholics were present in the ''considerable crowd'' which had gathered, and that if such a finding were necessary to uphold the conviction I should assume that it was made. However, I do not base my decision on this view of the case. It is relevant, however, to note that, even on the assumption that there were no Roman Catholics present, the words used were so objectionable that even those of a different religion were provoked into actions which showed that a breach of the peace was imminent. A consideration of the language in section 24 does not lead me to the conclusion that the expression ''insulting words'' should be limited to words which are insulting to a person present or to someone closely associated with somebody who was present when the words were used. The object of section 24 seems to be the preservation of public order and decency, and the gravamen of the offence created by the later words of the section is the intention to provoke a breach of the peace, or the likelihood of a breach of the peace being occasioned. In this view of the section it is unnecessary to give any very limited meaning to the expression ''insulting words''. Rich J. in delivering the judgment of the Court in *Thurley* v. *Hayes* (*l*) (a case under a Tasmanian section very like section 24) said: '' 'Insulting' is a very large term, and in a statement of this kind it is generally understood to be a word not cramped within narrow limits. In the *Oxford Dictionary* under the word 'insult', we find it means in a transitive sense 'to assail with offensively dishonouring or contemptuous speech or action; to treat with scornful abuse or offensive disrespect; to offer indignity to; to affront, outrage'. . . . There is, therefore, in this case no warrant for saying that the words complained of and found to have been used were not legally capable of being regarded as insulting

(*j*) [1905] 5 S.R. (N.S.W.) 686.
(*k*) [1872] 3 V.R. (L.) 202.
(*l*) [1920] 27 C.L.R. 548, at p. 550.

words." I must say that I find some difficulty in understanding why a person who uses words which in the ordinary use of the English language are insulting words, and uses them in a public place with the intention of provoking a breach of the peace, does not come within both the spirit and language of this section.

Mr. Little, however, drew my attention to two decisions of the Full Court of the Supreme Court of New South Wales: *Ex parte Breen* (*m*) and *Lendrum* v. *Campbell* (*n*), in which the same expression was considered in a section very similar to sec. 25 of our *Police Offences Act* 1928. In those cases the Court had to consider the expression unaccompanied by any limitation as to intent or probable consequences such as is found in section 24. It was the absence of any such limitation that led the Court to consider whether the very wide expression in its context did not indicate an implied intention by the Legislature that the words were not to be given their full literal meaning. In *Ex parte Breen* (*o*) Cullen C.J. said: "It will be seen that the section in its amended form, introduced into the Police Offences Act of 1908 as an amendment of the Vagrancy Act, is a very much more drastic provision than that which was previously in operation. . . . Now, unless freedom of criticism of our national institutions was intended by the Legislature, both in peace and war time, to be very much more restricted than it ever has been before, it is necessary to be extremely careful in applying the words of such a stringent enactment, and, in the first place, it is necessary to see in what sense the word 'insulting' is used. The word is often used in a very wide sense. One speaks of an insult to a man's intelligence, an insult to his loyal and patriotic sentiments, or an insult to his religious convictions. The collocation in which the word 'insulting' is used in this enactment seems to have a much narrower scope than that. I do not mean to say that offensive disrespect, either towards a man's national sentiments or his religion, may not sometimes assume the aspect of a personal insult to himself. What I mean is that the word 'insulting' as used in the enactment seems to have regard to the more personal feelings of individuals to whose hearing the words may come."

These decisions would be of very great weight if one were considering the meaning of the words in section 25, and, while

(*m*) [1918] 18 S.R. (N.S.W.) 1.
(*n*) [1932] 32 S.R. (N.S.W.) 499.
(*o*) [1918] 18 S.R. (N.S.W.) 1, at pp. 4-5.

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I recognise the force of the argument that the repetition of the same expression in two succeeding sections of the same statute generally leads to the conclusion that the words are used with the same meaning in both sections, the history of the sections in our Act leads me to a different conclusion. Section 24 in very nearly its present form is to be found in *The Police Offences Statute* 1865, sec. 26. The present section 25 was first enacted by the *Police Offences Act* 1891. Prior to the 1891 Act there would appear to have been no reason for interpreting the expression "insulting words" in section 24 in the manner indicated by the New South Wales decisions. The creation of a new offence using similar words cannot affect the interpretation of the earlier section. It is an accident of consolidation that the sections are now found one following the other, and this should not affect the interpretation which the earlier section would have received prior to the passing of the later enactment. For these reasons my opinion is that the limitation which the New South Wales Court held should be attributed to the words of a section corresponding to our section 25, should not be applied to section 24.

Since the case was argued my attention has been drawn to the case of *Egan* v. *Townley* (*p*). That case was concerned with the expression "abusive language." It is not clear from the report what was the reason for the decision. More than one explanation suggests itself to my mind, and I am unable to get any assistance from it. The defendant was charged and convicted of intending to provoke a breach of the peace. The probable ground of the decision was that there was no evidence that the defendant intended to provoke a breach of the peace.

I accordingly hold that the defendant's conduct in this case fell within both the spirit and the letter of the section creating the offence of which he has been convicted. For these reasons the order *nisi* will be discharged with costs.

Order nisi discharged.

Solicitor for the informant: *F. G. Menzies,* Crown Solicitor.

Solicitors for the defendant: *Nevett, Nevett & Glenn.*

[On the 3rd June 1940, the High Court of Australia refused leave to appeal.]

R. R. R.

(*p*) [1872] 2 Q.S.C.R. 204.