

authority, might say, "Since I have thrown off the trammels of office (meaning the duties of his office), I shall do so and so. I submit that this is the fair construction to be put on the sentence that the priest had thrown off the trammels of the Church. It is not intended and cannot be considered to have any offensive meaning whatever. The paragraph goes on to say—"In doing so, he has followed the example of Pere Hyacinthe." Now what is the example of Pere Hyacinthe? I propose to read to your Worship a portion of the biography of this celebrated man from "Men of the Time."

Mr. Macassey: My learned friend might just as well read a portion of "Paradise Lost." It has nothing to do with the question.

Mr. Howorth: I submit that I may read a portion of it.

His Worship: What do you say a libel is? You say that the defendant is not in any sense liable. What is your proposition as to the law of libel?

Mr. Howorth: The law of libel provides for any statement containing expressions of hatred or ill-will against a person or body of persons, or where it may be calculated to provoke a breach of the peace. I submit that this paragraph does not contain any of those elements. In analysing the paragraph itself, I submit that it is competent for me to read from this work ("The Men of the Time") an extract from the biography of Father Hyacinthe, to show that any Roman Catholic Priest, in following his example, has done nothing dishonourable either in regard to himself or to his church.

His Worship: Mr. Howorth, will take this proposition, that the imputation brings him into contempt or ridicule of society. Would not that be libellous? I do not say the world at large when referring to society. Take the Good Templars. Supposing that this imputation had been spoken against a member that he had broken his vow to abstain a great many times, and had so been brought into ridicule of society.

Mr. Howorth: That is a case in point. Supposing that Bishop Moran inserted a paragraph in his paper, and said that a Good Templar had broken his vows and taken to drinking.

His Worship: I am not aware that Bishop Moran has a paper.

Mr. Macassey: I have not heard of it either.

Mr. Howorth then read from "Men of the Time" the particulars of Pere Hyacinthe's marriage, and contended there was nothing offensive in the paragraph in making reference to the character of such a man as Father Hyacinthe. No one—not the Roman Catholics themselves—had any right to take that in any offensive sense whatever. That is all I have to urge—that there is nothing in the paragraph itself which can be construed into libel at all. And I now come to the second ground—that the body of the Roman Catholic clergy in Dunedin are not libelled—that it is not a libel upon them as a body. That is the case contended for by the prosecution; and in support of the contention the learned counsel cited *The King v. Williams*, 5, B. Alderson, 595. The question in that case was whether a criminal information should issue against the Durham clergy of the Established Church of England. The Roman Catholic clergy are not established by law. I submit that they cannot in this Court be recognised as a legal body.

Mr. Macassey: They are authorised to marry.

Mr. Howorth: They are persons authorised to marry according to the Marriage Acts. It is alleged as a libel on the whole body, or Bishop Moran could not have brought the case into Court. The language of the paragraph itself is so perfectly clear that it refers to one person only. It says: "A reverend father of the Roman Catholic Church, Dunedin, has thrown off the trammels of the Church." What is clearer than that it refers to one individual? If he cannot be identified, then no one can be injured.

His Worship: Supposing it is impossible to say it is one person out of three, is there no redress?

Mr. Howorth: No, I submit not. That is the case in point. I submit that on the authority of the case I have just cited it is clear that, if this paragraph applies to one individual of a particular church, it cannot be considered as applicable to the whole. If I am right in my contention on this third ground, the case made for the prosecution must altogether fail. I will now proceed to the evidence which has been adduced on the part of the prosecution. I may pass over that of Messrs. Cahill, Fleming, and Griffin, with the observation that their testimony went to show that if a priest ceased to be a priest he could do as he liked.

Mr. Macassey observed that Mr. Griffin had given no specific information on the point.

His Worship: I may state that a Justice of the Peace presiding in such proceedings as the present has no power to weigh the evidence. To put a strong case, suppose that in defence there was conflicting testimony brought forward of a very strong kind sufficient to shake the whole case of the prosecution, has the Justice the power to balance the one against the other, and then to make up his mind and to say, "There is no case?" I apprehend that he has no such power. If you just look at the Justices of the Peace Act, the words of the Act seem to shut out from the power of the Justices any dealing with the evidence for the accused altogether. It is left as it were for the jury to weigh the evidence. The Justice sits merely in a ministerial capacity, doing a ministerial duty, considering whether there is sufficient evidence to send the case for trial. Nothing he says does affect the innocence or guilt of the accused.

Mr. Howorth: If your Worship is not satisfied of the sufficiency of the evidence there can be no committal.

His Worship: There is the plea of *alibi*. There may be exceptions, but I will put it as strong as this: I will say that a Justice may be perfectly satisfied in his own mind that there is no chance of conviction, and yet be bound to send the case for trial.

Mr. Howorth: I submit that unless the Court is satisfied that there is a *prima facie* case, your Worship cannot commit.

His Worship: I think you will find in Justice Johnston's work

laying down to you.

Mr. Howorth: I submit that until there is a *prima facie* case made out for the prosecution, it is your Worship's duty to weigh the evidence. I contend that there is not a *prima facie* case made out. It seems perfectly clear to me that your Worship must weigh the evidence, in order to decide if it is sufficient. Therefore, any observations that I may make upon the nature of the evidence itself may aid your Worship in coming to a conclusion.

His Worship pointed out that according to par. 744 of Justice Johnston's book, it is only for the Justice to say whether there is sufficient evidence to put the accused on his trial.

Mr. Howorth: I submit that that implies that your Worship must judge of the sufficiency of the evidence.

His Worship: Judge Johnson goes on to say that it is not the certainty of conviction, but the desirability of more searching investigation of the case for trial. I may have grave doubts in my own mind, but the case may be of such importance to the individuals concerned and to society at large as to justify the Magistrate in committing.

Mr. Howorth: There are abundance of precedents in this Court where prosecutions have been commenced in this Court and been dismissed. I am speaking of this Court, when it was the Justices of the Peace Court. There are numerous instances where the Justices of the Peace have taken upon themselves the decision of the cases and have discharged the accused. I have not a note of any of the cases, but my recollection is to that effect.

His Worship: I do not think I have taken that responsibility. Anyone who does so is taking a judicial duty.

Mr. Howorth: If your Worship thinks that there has been a *prima facie* case made out my client must submit to your decision and be committed.

His Worship: My own opinion at present is that unless you can enlighten me to the contrary, that I have no power sitting as Justice to decide as to conflict of testimony or to weigh evidence.

Mr. Howorth: I submit that it is competent for your Worship to do so under the Justices of the Peace Act. I can show that the evidence that has been given is not of a reliable character. For instance, Mr. Petre's evidence speaks of things which could not have existed. He must have forgotten what occurred or been misinformed of the fact when he stated that the marriage of Father Hyacinthe caused a great scandal in the Church, and that he was not received into society. Now, from the biography I have just read, it shows how thoroughly mistaken Mr. Petre was. It says that Lady Stanley and Dean Stanley, who are intimately acquainted with the Queen, were amongst the guests at Father Hyacinthe's wedding.

Mr. Macassey: Mr. Petre was speaking of the people of his own Church.

Mr. Howorth: Why, Pere Hyacinthe was afterwards appointed to the cure of Geneva, and shows that he could not have lost caste. Mr. Petre, or at all events some of the witnesses said that if a priest were once married he was to be looked upon as a thief or a convict. These persons are entirely wrong.

His Worship: They are only looking at the matter from their own point of view.

Mr. Howorth: They are welcome to enjoy their own opinions, but when they endeavour to show the mind of the public it becomes so utterly absurd. Your Worship will recollect that Mr. Petre was specially asked whether Father Hyacinthe would be received into society, and I think I am justified in stating that he is entirely mistaken as to the circumstances connected with Father Hyacinthe's marriage. The very fact of his having been appointed to a cure in Switzerland shows that he was highly respected even by his own Church.

Mr. Macassey: If my learned friend has stated that as a matter of fact, I may say I am informed that it is entirely untrue.

Mr. Howorth: I find that it is stated in "The Men of the Time." This is a standard work.

Mr. Macassey mentioned that standard works were not always strictly accurate. For instance, in "The Men of the Time," the name of the present Chief Justice of Victoria was printed Paul instead of Stawell.

Mr. Howorth: Bishop Moran and his witnesses have stated that a Roman Catholic priest would be a perjurer if he did not keep his vow of celibacy as a priest. Now, if Brother John Hyde Harris, Brother John Hislop, and Brother Sir Donald McLean, were to perjure themselves by breaking their oaths and severing their connection with that much abused association, the Freemasons, would it be a libel on the Masonic body for Bishop Moran to take notice of such a circumstance in the *NEW ZEALAND TABLET*? I think not. At all events, his Lordship did not think so when Lord Ripon in 1874 cast off his sworn allegiance to the ancient craft, and entered the fold of the Romish Church. The fact that he might be regarded a renegade and a perjurer was not considered a bar to his admission; and if I am correctly informed, great was the rejoicing of the Roman Catholic Church thereat.

His Worship: But are you right in your facts? Did Lord Ripon throw over his allegiance to the Freemasons by becoming a Roman Catholic? Did he tell his wife and his friends the secrets of the Order? Did he open up the secrets of the prison-house? (Laughter.)

Mr. Howorth: I am not aware whether he went to that extent or not. I know for a fact that Lord Ripon did throw off his allegiance to the Freemasons, and that there was very considerable rejoicing by the members of the Roman Catholic Church themselves. Again, with regard to the Good Templars. If it were said that a Good Templar had broken his vows, and taken to drink, that would not be a libel on the Good Templars. I will now direct your Worship's attention to the manner in which this action was commenced. And here I would beg to say that, while I have the greatest sympathy with Bishop Moran in his desire to protect the good name of the ladies and gentlemen with whom he is connected,

(Concluded on page 7.)