

& N 30; *Reg. v. Nott*, 4 Q. B. 768; *Reg. v. Scott*, 4 B. & S. 368; 29 & 30 Vic. cap. 50, s. 1.

McCarthy, contra, cited Paley on Convictions, 433; *Bailey's Case*, 3 E. & B. 607; *Reg. v. Sparling*, 1 Str. 497; *Reg. v. Neild*, 6 East. 417; *Reg. v. Pappineau*, 2 Str. 686; *Reg. v. Hazell*, 18 East. 141.

HAGARTY, C. J., delivered the judgment of the court.

This conviction, and the papers returned to us as the foundation of it, present a very singular instance of the application of this statute, and the by-law passed thereunder. The objections urged are of the most substantial character.

The first to be considered is the omission of any statement of the words used to constitute the offence.

It is said in Paley on Convictions (1866), page 210, "Another rule in describing the offence is, that it is not sufficient to state, as the offence, that which is only the legal result of certain facts; but the facts themselves must be specified, so that the court may judge whether they amount in law to the offence," citing *Regina v. Nott*, 4 Q. B. 768, 783. Again: "It may be collected, as a general rule, that, where an act in describing the offence makes use of general terms which embrace a variety of circumstances, it is not enough to follow in a conviction the words of the statute, but it is necessary to state what particular fact prohibited has been committed."

A case of *Regina v. James*, Cald. 458, is there cited, but I have not been able to see it in the book cited. Buller, J.: "It is not true that in framing a conviction it is sufficient to follow the words of the statute in all cases. In some, indeed, it may, as where the statute gives a particular description of the offence; but it is otherwise where a particular offence is included under a general description. Where a particular act constitutes the offence, it may be enough to describe it in the words of the Legislature; but where the Legislature speaks in general terms, the conviction must state what act in particular was done by the party offending to enable him to meet the charge."

Some of the older cases cited by Paley are expressly in point. In *Reg. v. Sparling* (1 Str. 497) a conviction for profane swearing was quashed because the oaths were not set out; "for what is a profane oath or curse is matter of law, and ought not to be left to the judgment of the witness. * * Suppose it was for seditious or blasphemous words, must not the words themselves be set out, be they ever so bad, that the court may judge whether they are seditious or blasphemous?"

Regina v. Scott (4 B. & Sm. 368) was a conviction for "profanely cursing one profane curse, in these words (setting them out), twenty several times repeated," and he was fined £2, apparently 2s. for each oath. The sole question was as to the right to include all the curses in one conviction. Wightman, J., says, "The curse is set out, which without doubt is profane." In *Lloyd's case* (2 Ea. P. C. 1122) it was held that an indictment for sending a threatening letter should set out the letter.

Regina v. Nott (4 Q. B. 768) was an indictment against a magistrate for administering "an oath touching certain matters and things, whereof the said J. N. at the time and on the

occasion last aforesaid, had not any jurisdiction or cognizance by any statute in force, &c. The statute 5 & 6 Wm. IV. cap. 62, sec. 13, prohibits the administering by any justice of the peace or other person, of any oath "touching any matter or thing whereof such justice, &c., hath not jurisdiction, &c., by some statute in force at the time being." The indictment was held bad. Lord Denman says, "It is quite clear the having or not having jurisdiction is matter of law depending upon facts on which the court is to form its opinion. The facts, therefore, should be so stated as to enable the court to form its opinion." Patteson, J.: "There is not anything to show what the matter of the oath was. It never can be a question for a jury whether a particular oath was or was not within a given jurisdiction."

Assuming it to be generally correct to state that it is sufficient in a conviction to follow the words of the statute creating the offence, we have to see if this conviction can be supported.

The applicant is convicted for using blasphemous language on a public highway.

The commission of the offence, defined as "using blasphemous language," is, in the words already quoted, only "the legal result of certain facts."

When a statute makes it penal to "commit any wilful and malicious mischief," it must be impossible, I think, to uphold a conviction which merely stated that a man was convicted of doing a certain "wilful and malicious mischief," without a statement of the facts constituting the offence.

It would not suffice to say that a man committed champerty, or maintenance, or seditious, &c.

In *re Perham* (5 H. & N. 30), the conviction was for unlawfully, by threats, endeavouring to force one W. J., a workman, to depart from his hiring. It was objected that the threats were not set out. The conviction was upheld. Channel, B. (at p. 32) says, "The offence is not the threat, but the forcing or endeavouring to force the workman to depart from his employment: the threats are the means by which that is done." Pollock, C. B. (at p. 34): "To whom the threats were addressed, and whether they were of a description to act upon the mind of the party threatened, so as to create the offence charged, is all matter of evidence."

I think the conviction is bad on its face.

It has also been objected that there was nothing in the evidence to give the magistrate jurisdiction to act.

The information states that B. D. has been guilty of circulating (*sic*) blasphemous and grossly insulting language in several public places and highways within the township of Tecumseh, by saying and swearing that the said W. A. defrauded her, by giving her two five-dollar bills instead of two tens.

I think it was a most absurd act of the magistrate to proceed against the woman on such a charge.

When the complainant was examined at the hearing, he merely swore that Donelly, having spun some yarn for him, refused to take silver for it, and he then gave her a ten-dollar bill, and took back six at her request, and changed another \$10, and got small bills for the same.

Another witness swears he was present w. on