H. C. OF A. 1920.

PROPRIETORS OF THE DAILY NEWS LTD. v. AUSTRALIAN JOURNALISTS' ASSOCIATION.

in the *Municipalities' Case* (1). I trust that these points, which were supposed to be already laid to rest by the cases to which I have referred, will not be exhumed again.

The last objection as to the conviction calls for no comment other than that it is unsubstantial and untenable.

In my opinion the appeal fails.

Appeal allowed. Conviction set aside.

Solicitors for the appellant, *Lynch, McDonald & Elliott.*

Solicitors for the respondent, *Gillott, Moir & Ahern.*

B. L.

(1) 26 C.L.R., 508.

Cons *R v Lansbury* [1988] 2 QdR 180

Cons *O'Sullivan v Lunnon* 67 ALR 423

Cons *R v Lansbury* 33 ACrimR 12

[HIGH COURT OF AUSTRALIA.]

THURLEY . . . . . APPELLANT;
COMPLAINANT,

AND

HAYES . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

H. C. OF A. 1920.

HOBART, *May* 3.

Knox C.J., Gavan Duffy and Rich JJ.

Police Offences—Insulting language—Calculated to provoke breach of the peace—Police Act 1905 (*Tas.*) (5 *Edw. VII. No.* 30), *sec.* 137 (IV.).

Sec. 137 of the *Police Act* 1905 (Tas.) provides that "No person shall, in any public place, or within the hearing of any person passing therein . . . (IV.) Use any threatening, abusive, or insulting words or behaviour with intent or calculated to provoke a breach of the peace, or whereby a breach of the peace may be occasioned."

Held, that the words "calculated to provoke a breach of the peace" in that sub-section mean likely to have that effect.

Held, also, that the words "You are sponging on the Government and you waste public money and I will report you," spoken to a returned soldier, might properly be found to be insulting and to be calculated to provoke a breach of the peace.

Decision of the Supreme Court of Tasmania (*Ewing* J.) reversed.

APPEAL from the Supreme Court of Tasmania.

At the Police Office at Scottsdale, Tasmania, before two Justices of the Peace, a complaint was heard by which Edward Harold Thurley charged that Richard Hayes in a public place used towards the complainant insulting words calculated to provoke a breach of the peace, such words being "You are sponging on the Government and you waste public money and I will —— well report you." The justices found that the defendant had used the words complained of to the complainant, who was a returned soldier, and they convicted the defendant and fined him £2 10s. with £2 4s. costs. The defendant obtained an order *nisi* for a prohibition, which was made absolute by *Ewing* J., who held that the words used were not of such an insulting character as to lead to the conclusion that the result would be a breach of the peace.

From that decision the complainant now, by special leave, appealed to the High Court.

Gilbert Johnstone, for the appellant, referred to *Sellers* v. *Bishop* (1); *R.* v. *Justices of Clifton*; *Ex parte McGovern* (2); *Smith* v. *Davis* (3); *Evans* v. *Bacon* (4).

There was no appearance for the respondent.

The judgment of the COURT, which was delivered by RICH J., was as follows:—

This is an appeal from *Ewing* J., who set aside a decision of magistrates convicting the respondent of an offence under sec. 137 (iv.) of the *Police Act* 1905, which runs as follows: "No person shall, in

(1) 11 A.L.R. (C.N.), 61.
(2) (1903) S.R. (Qd.), 177.
(3) 11 Tas. L.R., 62.
(4) 5 Tas. L.R., 51.

H. C. OF A. 1920.

THURLEY v. HAYES.

any public place, or within the hearing of any person passing therein . . . (IV.) Use any threatening, abusive, or insulting words or behaviour with intent or calculated to provoke a breach of the peace, or whereby a breach of the peace may be occasioned." The prosecution was based on that portion of the sub-section which forbids the use of insulting words calculated to provoke a breach of the peace. The portion of the sub-section relating to intent and the portion relating to the actual occurrence of a breach of the peace were not in question. It is important to make this distinction, because the case of *R* v. *Justices of Clifton*; *Ex parte McGovern* (1), on which *Ewing* J. relied and from which he in effect quoted, was confined to the effect of the third part of the sub-section, and therefore has no relevancy to the present case. With regard to *Sellers' Case* (2), it has relevance to the phrase "insulting words," but it affords no assistance in the present instance. "Insulting" is a very large term, and in a statement of this kind 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." We find in the same dictionary: "Hence 'insulted,' treated with contemptuous abuse, outraged." 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 words.

The insulting words must be used so as to be "calculated to provoke a breach of the peace." Whether words are so used on any particular occasion depends entirely on the circumstances. The place must be a public place, or the words must be used within the hearing of any person passing therein; that the section requires: but they may be used in circumstances which would exclude either the possibility or the probability of having the effect postulated by the enactment. For instance, if they were used at a public telephone to a person a hundred miles away, it would be absurd to attribute that effect to them, but, if circumstances are proved upon

(1) (1903) S.R. (Qd.), 177.

(2) 11 A.L.R. (C.N.), 61.

which the justices could reasonably think that the insulting words were calculated to produce the effect against public order which the enactment is designed to prevent, we do not consider that we are at liberty to interfere with their decision. As to the word "calculated," it has been frequently held equivalent to "likely to have the effect." (See *North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.* (1); *Boord & Son* v. *Bagots, Hutton & Co.* (2); *In re Lyndon's Trade Mark* (3); *Catts* v. *Murdoch* (4).)

We therefore think that the learned Judge was in error in reversing the decision of the magistrates, and that their decision ought to be restored by allowing this appeal.

Appeal allowed. Order nisi discharged. Conviction affirmed. Respondent to pay costs of proceedings in Supreme Court and High Court.

Solicitors for the appellant, *Crisp & Crisp.*

B. L.

(1) (1899) A.C., 83, at p. 84.
(2) (1916) 2 A.C., 382, at pp. 387, 394.
(3) 32 Ch. D., 109, at p. 119.
(4) 24 C.L.R., 160, at p. 161.