

of the shares. The threats were made partly by letter and partly by the mouth of an emissary named Carter. His submission was that a "menace" within the meaning of the section meant a threat of criminal violence or of injury to character. But all threats of injury to character were not within the section. The threats must be such as would put the person threatened, if a person of ordinary nerve, in terror; they must be such threats as would interfere with his volition and power of judgment. These conditions were not satisfied in this case. Mr. Foote criticized the summing-up of the Judge at the trial on this point, and quoted the following statutes, cases, and authorities: 7 Geo. II, c. 21, s. 1; 4 Geo. IV., c. 54, s. 5, 6, 8; Larceny Act, 1861, ss. 44, 45, 46, and 47; Hale's "Pleas of the Crown," sub. "Robbery"; Hawkin's P.C. (1824 edit.) at p. 214; Rex v. Jones, Rex v. Donnelly, and Rex v. Hickman (Leach C.C., at p. 139, 193, and 278); Reg. v. Smith (1 Den. C.C., 510); Reg. v. Walton and Ogden (9 Cox C.C., 268); and Reg. v. Tomlinson (11 *The Times* L.R., 212; [1895] 1 Q.B., 706.)

Continuing Mr. Foote submitted that evidence of another transaction in which it was said Carter had been sent as an emissary of Boyle for the purpose of blackmail was wrongly admitted.

On this point he was stopped.

Merchant adopted Mr. Foote's argument.

Mr. Muir for the Crown contended that the evidence was admissible on the ground of agency. Was Carter Boyle's agent for the purpose of demanding blackmail? It was alleged that on the earlier occasion the money had been paid in gold. Here no money was actually paid; but the Crown alleged that the money was asked for in gold. The evidence was rightly admitted as showing the intention to blackmail and as part of the history of the case.

At the conclusion of the argument the Court adjourned in order that the appellants might appeal against another conviction against them on an indictment for misdemeanour containing several charges under section 3 of the Libel Act, 1843, of threatening to publish and proposing to abstain from publishing articles with intent to extort money.

At the adjourned hearing Mr. Herbert Jacobs appeared for Merchant; Boyle appeared on this occasion in person; Mr. Cecil Whiteley (Mr. R. D. Muir with him) appeared for the Crown.

Mr. Herbert Jacobs now contended that at the trial of this indictment there was no evidence showing that Merchant was associated with Boyle in the acts charged.

Mr. Whiteley having dealt with the evidence upon which the Crown relied, Boyle, addressing the Court, said that he did not propose to continue his appeal against this conviction. He pleaded for a reduction of the maximum sentence of five years' penal servitude that had been passed upon him with a concurrent sentence of two years' imprisonment. He said that he was suffering from chronic insomnia. His physical condition was such that he was unable to say all that he wished to the Court.

Mr. Herbert Jacobs addressed the Court on Merchant's appeal against his sentence of 18 months' imprisonment.

Counsel for the Crown were not called upon on the question of sentence.

The Lord Chief Justice delivered a written judgment on the appeals against the convictions for felony, holding that the meaning of the word "menaces" in section 45 of the Larceny Act, 1861, was not restricted in the way contended for by the appellants. Having referred to Reg. v. Walton and Ogden (9 Cox, C.C., 268) and Reg. v. Tomlinson (11 *The Times* L.R., 212; [1895] 1 Q.B., 706) his Lordship said that they thought it would be unwise to attempt to lay down any exhaustive definition of the words of the section. The degree of fear or alarm which a threat might be calculated to produce upon the mind of the person on whom it was intended to operate might vary in different cases and in different circumstances. A threat to injure a man's property might be more serious to him and have greater effect upon his mind than a threat of physical violence. When there was evidence of such a threat as was calculated to operate upon the mind of a person of ordinarily firm mind, and the jury had been properly directed, it was for them to determine whether in fact the conduct of the accused had brought him within the section, and whether in the particular case the "menace" was established. If the threat was of such a character that it was not calculated to deprive any person of reasonably sound and ordinarily firm mind of the free and voluntary action of his mind, it would not be a "menace" within the meaning of the section. In their judgment, when a man with intent to steal, threatened either to do violence to the person of another or to commit acts calculated to injure the property or character of another, it was a "menace" within the meaning of the section. They thought that the summing-up of the learned Judge in substance was in accordance with the view that they had expressed, and that there was ample evidence to go to the jury.

The Court also held that the evidence complained of was admissible as tending to rebut the defences of the accused.

Delivering the judgment of the Court on the appeal on the conviction for misdemeanour, the Lord Chief Justice said that the argument had been put forward that there was not sufficient evidence to show the association of Merchant with Boyle for unlawful purposes. There was an abundance of such evidence: and it had always been open to Merchant to call evidence in rebuttal. There was ample evidence to justify that conviction. Dealing with the appeals against sentence, his Lordship said that neither the age of Boyle nor his present health was a ground upon which the Court could act. No doubt the authorities would take into account his health and decide whether he should be accorded special privileges.

The Court was of opinion that Mr. Barnett, the chairman of the Roumanian Consolidated Oilfields (Limited), by prosecuting the appellants had rendered a great public service. Operations such as those carried out by the appellants were by no means infrequent. It was very difficult to bring the perpetrators to justice, as they were usually men well skilled in all the arts of avoiding detection and often acted by the hands of agents. To persons engaged in large transactions in the City it was a most serious matter to have a newspaper published in this way, with posters attacking companies involving the most grave consequences to those concerned, often even ruin. The offence was that of blackmail: one of the most detestable known to the Courts. The demanding of money to obtain the silence of persons such as the appellants was a matter which when detected deserved a very severe sentence. There was no ground for interfering with either sentence. The maximum sentence passed on Boyle of five years' penal servitude for the felony would stand, as would the concurrent sentence on the other indictment. As to the sentence of 18 months' imprisonment passed on Merchant, if anything it was too lenient. That sentence also would stand. The sentences would date from the conviction.

Solicitors: Mr. Harry Wilson; Mr. Percy R. Gibbs; the Director of Public Prosecutions.

## EXTRACTS FROM NEW ZEALAND GAZETTE.

(From Gazette, 1914, pages 2800 and 2813.)

### *Amendment of Police Regulations.*

LIVERPOOL, Governor.

#### ORDER IN COUNCIL.

At the Government House at Wellington, this thirteenth day of July, 1914.

Present:

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

IN pursuance and exercise of the powers and authorities conferred on him by section fourteen of the Police Force Act, 1913, His Excellency the Governor of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby revoke the regulations numbered one, three hundred and eight, four hundred and fifteen, and four hundred and seventeen of the regulations made on the eighth day of February, one thousand nine hundred and thirteen, under the Police Force Act, 1908, and in lieu thereof doth hereby make the regulations set forth hereunder, which said regulations shall form part of and be read together with the regulations hereinbefore referred to; and doth declare that such revocation and the regulations hereby made shall take effect on the first day of August, one thousand nine hundred and fourteen.

#### REGULATIONS.

##### CONSTITUTION OF THE FORCE.

1. THE present establishment of the New Zealand Police Force consists of the following ranks, viz.:-

- Commissioner.
- Superintendents.
- Inspectors.
- Sub-Inspectors.
- Senior Sergeants (including Chief Detectives).
- Sergeants (including Detective Sergeants).
- Detectives.
- Constables.
- Surgeons.
- Matrons.