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Feb. 2.

[CROWN CASE RESERVED.]

THE QUEEN v. TOMLINSON.

Criminal Law—Larceny—Threatening Letter—Demanding Money with Menaces—The Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 44.

In order to constitute the offence of sending a letter demanding money with menaces, within the meaning of 24 & 25 Vict. c. 96, s. 44, it is not essential that the "menace" should be a threat of injury to the person or property of the prosecutor, or a threat to accuse him of a crime; the offence may be committed if there be a threat to accuse him of misconduct not amounting to an offence against the criminal law.

CASE stated for the opinion of the Court by Lawrance J.

The prisoner was tried at the Carnarvon Assizes on an indictment charging him, under 24 & 25 Vict. c. 96, s. 44, with sending a letter to one John Thomas Morgan, demanding money with menaces, and in a second count with uttering the letter. It was proved that the prisoner, who was in the prosecutor's employ, was discovered by the prosecutor and his wife in the commission of an act of immorality with a woman named Kate Youde in the prosecutor's stable, in consequence of which the prosecutor discharged the prisoner from his service. Subsequently the prosecutor received by post the following letter in the prisoner's handwriting: "On the rocks only had a day and a half work since leaving Wrexham i want you to let me have 10s. so that i can get a can and brush and if i do not get it on or before Tuesday morning i shall let Mrs. Morgan and your friends know of yours doings with (Kate Youde) you must understand i am not going to suffer to hide you i have had enough of it. You are at liberty to show this to your lawyer or anyone else if you like but i shall certainly do it."

At the close of the case for the prosecution the prisoner's counsel contended that the menaces contained in the letter were not menaces within the meaning of s. 44 of 24 & 25 Vict. c. 96, but that such menaces must be of injury or violence to the person or property, or of accusation, as contained in ss. 46 and 47 of that statute. The objection was overruled, and the

prisoner was found guilty by the jury, but was released from custody pending the determination of this case.

The question for the opinion of the Court was whether the learned judge was right in holding that the threats contained in the letter above set out were such threats as were contemplated by s. 44. (1)

No counsel appeared on either side.

LORD RUSSELL of KILLOWEN C.J. This case is not altogether free from difficulty, and I regret that it has not been argued before us. The question turns upon the true construction of s. 44 of the Larceny Act, 1861; but in order to determine it we must look at other sections of that Act which deal with a cognate subject-matter. The next section deals with the demanding of property with menaces or by force with intent to steal it, while s. 46 deals with the offence of sending a letter threatening to accuse a person of crime with intent to extort money or other property, and it should be observed that the

(1) By the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 44, "Whoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing, shall be guilty of felony"

By s. 45, "Whosoever shall with menaces or by force demand any property of any person, with intent to steal the same, shall be guilty of felony"

By s. 46, "Whosoever shall send, &c., any letter or writing, accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any in-

famous crime as hereinafter defined, with a view or intent in any of such cases to extort or gain by means of such letter or writing any property, chattel, money, valuable security or other valuable thing, from any person, shall be guilty of felony"

By s. 47, "Whosoever shall accuse or threaten to accuse, either the person to whom such accusation or threat shall be made or any other person, of any of the infamous or other crimes lastly hereinbefore mentioned, with a view or intent in any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused, or from any other person, any property, &c., shall be guilty of felony"

By s. 49, "It shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation to be caused or made by the offender or by any other person."

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class of accusations dealt with by that section are accusations of crime only. In addition to these sections I need only refer to s. 49, which makes it immaterial whether the menaces or threats are of violence, injury or accusation to be caused or made by the offender or any other person. Coming back to the question of the construction of s. 44, we have to ask ourselves the question whether the sending of this letter is evidence of demanding money with menaces.

The point was taken by the prisoner's counsel that the word "menaces" as used in s. 44 imported a threat of injury to the person or property; in other words, that it must be a menace or threat suggesting that, in the event of the demand not being complied with, some injury would be caused to the person or property of the person threatened. Is this narrow meaning to be placed upon the word? In s. 45 a distinction is drawn between two classes of menaces; the language used is "with menaces *or* by force," and it would therefore seem that the legislature contemplated that under the word "menaces" would be included not merely threats to person or property, but also menaces involving no doubt a threat of injury, but of injury not confined to the person or property of the person threatened. In the present case one can see the threat in the letter—a threat to disclose to the wife of the prosecutor alleged indecent behaviour on his part; and the injury so threatened might be much more serious than many cases of injury to person or property. I should have regretted if the Court had felt compelled to confine the construction of the word "menaces" in the way suggested, with the result of excluding such conduct as that of the prisoner from the purview of the criminal law. It is suggested that s. 49, in saying that it shall be immaterial whether the menaces or threats are of violence, injury or accusation, refers only to violence to the person, injury to the person, or such an accusation of crime as is contemplated by s. 46; but on the whole, though not without hesitation, I think that the word "menace" has a wider meaning than that for which the prisoner's counsel contended at the trial, and that it may well be held (though I am laying down no exhaustive definition of the word) to include menaces or threats of a danger by an accusation of misconduct, though of mis-

conduct not amounting to a crime, and that it is not confined to a threat of injury to the person or property of the person threatened.

There is some warrant for this interpretation. What is the meaning of "menace" in the dictionaries? Johnson, Richardson and Worcester give it as a "threat"; Ogilvie and Webster as a "threat or threatening; the declaration or indication of a disposition or determination to inflict an evil; the indication of a probable evil or catastrophe to come." There being no definition in the statute of the precise meaning which the legislature intended to attach to the word, we must give it its natural ordinary meaning, unless that can be displaced by something in the context or in other portions of the statute. I see nothing in this statute which ought to lead us to give the word the restricted meaning suggested.

Authority upon the question is not very strong. In *Reg. v. Smith* (1) a letter of a very extraordinary kind was written threatening great evil to a bank, which was to be avoided if 250*l.* was deposited in a place indicated; the question was whether this came within 7 & 8 Geo. 4, c. 29, s. 8, the provisions of which are reproduced in the statute which we are now considering, and the Court held without any hesitation that it did. One other case may be noticed, that of *Reg. v. Walton* (2), and I refer to this because the Court, while stating what it conceived to be the meaning of the section, pointed out the character of the menace which must be used before it could come within the meaning of the statute. In that case the prisoner had threatened to execute a distress warrant, which he had no authority to do; and the conviction was quashed on the ground that it was not for the judge to do more than lay down the principle on which the jury should proceed in considering whether the menace was a menace within the meaning of the statute; that it was not for him to say as a matter of law that the prisoner's conduct constituted a menace within the statute, and that he ought to have told the jury that the question was whether the threat or words used were such as would naturally and reasonably operate on the

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(1) 1 Den. C. C. 510; 19 L. J. (M.C.) 80. (2) L. & C. 288; 32 L. J. (M.C.) 79.

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mind of a reasonable man ; in other words, whether they would have such an effect on such a person as to deprive him of his free volition and put a compulsion on him to act as he would not act otherwise. In the present case no question arises as to the ruling of the learned judge ; the jury have come to the conclusion that the threat was a threat of that description ; and the only point for us is whether it is a menace within the statute. For the reasons I have given, I think the conviction was right.

POLLOCK B. I am of the same opinion, and have nothing to add.

WILLS J. I am of the same opinion. I think that the case comes within s. 49, although it is not necessary that it should do so ; the words “injury” and “accusation” ought to receive a liberal interpretation, and not to be confined to any specific class of injuries or accusations ; that which will do a person harm comes, in my opinion, within the meaning of “injury.” I do not think that the word “accusation” is confined to cases coming within s. 46, which deals with accusations of offences of a peculiarly bad character, nor can I think that it applies only to accusations of criminal offences ; it must have the meaning given it in ordinary language. With regard to the doctrine that the threat must be of a nature to operate on a man of reasonably sound or ordinarily firm mind, I only desire to say that it ought, in my judgment, to receive a liberal construction in practice ; otherwise great injustice may be done, for persons who are thus practised upon are not as a rule of average firmness ; but I quite appreciate the fact that the threat must not be one that ought to influence nobody.

CHARLES J. I am of the same opinion. I can see nothing in the other sections of the statute which places any restriction on the word “menace” in s. 44.

LAWRANCE J. concurred.

Conviction affirmed.

W. J. B.