20/69

SUPREME COURT OF VICTORIA

MacRAE v JOLLIFFE

Starke J

13, 16 October 1969 — [1970] VicRp 8; [1970] VR 61; (1969) 21 LGRA 249

SUMMARY OFFENCE – RALLY HELD AT THE SIDNEY MYER MUSIC BOWL – DR BILLY GRAHAM ADDRESSED THE MEETING, HYMNS WERE SUNG AND PRAYERS OFFERED – DEFENDANT THREW A BUNDLE OF PAMPHLETS IN THE AIR AND USED INAPPROPRIATE LANGUAGE – CHARGED WITH DISTURBING A MEETING OF PERSONS LAWFULLY ASSEMBLED FOR RELIGIOUS WORSHIP – WHETHER THE MEETING AMOUNTED TO "RELIGIOUS WORSHIP" – CHARGE DISMISSED BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR: *SUMMARY OFFENCES ACT* 1966, S21.

HELD: Order nisi discharged.

1. The informant failed on his proofs. It was fair to say that the evidence rather suggested that people were invited to a rally to hear Dr Graham speak, but even if this was wrong it had to be remembered that being a criminal prosecution, the informant had to prove that this meeting was a meeting for religious worship and prove it beyond reasonable doubt. It was impossible to say on the evidence whether the address of Dr Graham was the main feature of the programme or whether the various religious observances were the main part. Whilst it may be inferred that the address was of a theological character, the mere fact that an address was of such a character would not make the meeting one of religious worship.

2. There was evidence that some people were openly drinking alcohol. This activity was quite inconsistent with any form of worship. There was evidence that the meeting was advertised as a rally and the substance of the advertisement was an exhortation to the public to "Come and hear Dr Graham speak". These facts were also quite opposed to any concept of religious worship. It was quite consistent with the evidence that the hymns, prayers and Bible reading were mere adjuncts to the main purpose of the meeting or rally, namely the address of Dr Graham.

3. All in all, bearing in mind that the burden of proof was on the prosecution, the magistrate was quite right in dismissing the information. Indeed the evidence demanded that he should do so.

STARKE J: On the evening of 21 March 1969 the Evangelist, Dr Billy Graham, held a meeting or rally at the Sidney Myer Music Bowl which was attended by some 25,000 people, including the defendant, Jill Rosemary Jolliffe. Dr Graham apparently presided. Hymns were sung, prayers were offered and the Bible was read to the crowd and Dr Graham addressed the meeting. People were then asked to come forward to make a decision for Christ, whatever that may be. The defendant made her way through the crowd at this juncture, threw a bundle of pamphlets in the air and shouted loudly "Bullshit". This was certainly unladylike conduct on her part, but she is not charged with being unladylike but with an offence under the provisions of s21 of the *Summary Offences Act* 1966.

This section provides:

> "Any person who wilfully and without lawful justification or excuse the proof of which lies on him disquiets or disturbs any meeting of persons lawfully assembled for religious worship or assaults any person lawfully officiating at any such meeting or any of the persons there assembled shall be guilty of an offence. Penalty $250 or imprisonment for three months."

I might say in parenthesis that the information as worded disclosed no offence, but as the argument both before me and below proceeded on the footing that it was properly drawn nothing turns on this circumstance. I have no doubt if it had been necessary I could and should have amended the information.

It appears from the material before me that the meeting was widely advertised as a rally

and the substance of the advertising was an exhortation to "Come and hear Dr Graham speak". Neither the words "religious" nor "worship" were used in the advertisements. It further appears that quite a number of people were openly drinking alcohol at the meeting. It also appears that the meeting was not interrupted and Dr Graham did not cease to speak on account of the defendant's interruption. It further appears that at the time one woman was in tears, but the informant could not say that this was because of the defendant's conduct, and that another woman and a professor complained of the defendant's conduct.

On 29 April 1969 the Chief Stipendiary Magistrate at the Court of Petty Sessions, Melbourne, dismissed the information. His Worship held that the meeting was an evangelistic meeting and it did not amount to a meeting for religious worship within the meaning of the section.

On 27 May 1969 Master Bergere granted the informant an order nisi in the following terms:

> "(a) That the magistrate was wrong in holding that the proceedings at which the conduct alleged against the defendant occurred had been an Evangelical meeting did not amount to religious worship.
>
> (b) That the magistrate should have held that the meeting at which the said conduct occurred was a meeting of persons lawfully assembled for religious worship, notwithstanding that the proceedings at the meeting did not follow the ritual of any particular sect or denomination.
>
> (c) That the magistrate should have held that the uncontradicted evidence before him established a *prima facie* case that the defendant had disturbed a meeting of persons lawfully assembled for religious worship."

The central point in the case is the meaning of the expression "religious worship". There can be little doubt that the defendant acted wilfully or that she had no lawful justification, nor can there be doubt that the persons present constituted a meeting and were lawfully assembled. The question is was the meeting or rally a meeting of persons lawfully assembled for religious worship, for if they were so assembled for any purpose other than for religious worship no offence was committed under the section. I have been unable to find any authority touching on the construction of s21 or on the construction of the words "religious worship" nor has the industry of counsel disclosed any such authority.

The noun "worship" is defined in the *Shorter Oxford Dictionary* in this context as follows:

> "Reverence or veneration paid to a Being or Power regarded as supernatural or divine; the action or practice of displaying this by appropriate acts, rites or ceremony."

This definition rather suggests to my mind the observance of a standard ritual or practice in the nature of divine service, although not necessarily conducted in a church or other fixed place.

In *Goodson v MacNamara* [1907] VicLawRp 19; [1907] VLR 89; 12 ALR 547, the defendant was charged with having behaved in an insulting manner in a building where divine service was being publicly held under the provisions of the then *Police Offences Act*. It appeared that a Sunday meeting took place in a public theatre at which hymns, prayers, illustrated songs, limelight views, orchestral music and an address on "Melbourne's Sins and Follies" constituted the programme, and it was there that the alleged insulting behaviour took place. In the course of his judgment Hood J said at (VLR) p92; (ALR) p548:

> "It is not easy to draw the exact line between a 'divine service' and a 'religious meeting' or between a 'congregation' and an 'audience', or between a 'sermon' and a 'lecture', and it is also true, as the magistrate said, that 'divine services' take many forms, but in the present instance the form assumed does not, in my opinion, come within the Act. In a general sense almost all religious observances may be called 'divine service', but the Legislature was, I think, dealing with a limited class. The 'divine service' is to be publicly held primarily in a church or chapel, and while I do not attempt any complete definition, I think that the idea of public worship in some regular fashion is the prevailing guide. If the main object be public worship the fact that the congregation was largely attracted by a popular preacher or by any similar motive would not deprive the proceedings of its character of 'divine service'. But if the main principle be that of a lecture or address the meeting cannot be one

> of divine service either by reason of the subject matter of the discourse or by the adjuncts of prayer or sacred songs. Making every allowance for the unchallenged statement by the witness that this was 'divine service' and for the fact that there was a religious character about the assembly, yet a consideration of the ticket forces me to the conclusion that the real object was an address or lecture. I can conceive that it would be possible to have a 'divine service' within the meaning of the Act at which there might be an address such as that named on the card, and even the specified music and other attractions, but when these constitute the primary objects of the meeting they cannot be converted into a 'divine service' by adding thereto prayers and hymns."

That case was followed by Irving CJ in *Ryan v Hircoe* [1922] VicLawRp 46; [1922] VLR 504; 28 ALR 235; 43 ALT 216. I appreciate that these cases were dealing with the expression "divine service", whereas I am dealing with the expression "religious worship". Nevertheless I am of opinion that much of what Hood J said applies to this case. Like Hood J in *Goodson v MacNamara*, I am not tempted in this case to attempt a complete definition of the expression "religious worship". I think, like Hood J, that public worship in some regular fashion is the prevailing guide.

In my opinion, the informant in this case fails on his proofs. I think it fair to say that the material before me rather suggests that people were invited to a rally to hear Dr Graham speak, but even if I am wrong about that it must be remembered that being a criminal prosecution, the informant had to prove that this meeting was a meeting for religious worship and prove it beyond reasonable doubt. In my judgment he has clearly failed to do so.

It is impossible to say on the evidence whether the address of Dr Graham was the main feature of the programme or whether the various religious observances were the main part. I dare say that it may be inferred that the address was of a theological character, but I would say with some confidence that the mere fact that an address was of such a character would not make the meeting one of religious worship.

Then again there is evidence that some people were openly drinking alcohol. This activity is quite inconsistent with any form of worship. There is evidence that the meeting was advertised as a rally and the substance of the advertisement was an exhortation to the public to "Come and hear Dr Graham speak". These facts are also, in my opinion, quite opposed to any concept of religious worship. In my judgment, it is quite consistent with the evidence that the hymns, prayers and Bible reading were mere adjuncts to the main purpose of the meeting or rally, namely the address of Dr Graham.

All in all, bearing in mind that the burden of proof is on the prosecution, I consider the magistrate was quite right in dismissing the information. Indeed the evidence demanded that he should do so.

In the result the order nisi will be discharged. I order that the respondent's costs be taxed and when taxed paid by the applicant not exceeding $120.

APPEARANCES: For the applicant/informant MacRae: Mr RC Tadgell, counsel. Thomas F Mornane, Crown Solicitor. For the respondent/defendant Jolliffe: Mr P Guest, counsel. TN Zigouras, solicitor.
