

## Memorandum on the Press Law \*

FOR almost 150 years, since the Memorial which was submitted by the Maltese to H.M. The King in 1811, the necessity was felt of having an adequate law to regulate the Press in Malta. The subject was discussed by the Royal Commissioners of 1836, and since then also in the Legislative Assembly, but up to now no satisfactory position has been reached. Our present law, Ord. V of 1933, as subsequently amended, which in part follows Ord. XIV of 1889, is in many respects inferior to its model and far behind the progressive laws of modern democratic governments. For this reason the National Assembly in April, 1945, unanimously decided that the Press Ordinance of 1933 should be amended. The goal at which the present urge for a reform should aim lies in effectively guaranteeing freedom of the press and at the same time in preventing such freedom from degenerating into licence.

That part of Ord. V of 1933, which deals with criminal actions is merely complementary to the provisions of the Criminal Code dealing with the crime of defamation and with certain other particular crimes. The characteristic element of a criminal action arising from Ord. V of 1933, is that the offence must be committed by means of any printed matter. For the sake of convenience and consistency it is felt advisable that the relevant provisions of this Ord. be incorporated in the Criminal Code. A clear distinction should be made on the lines of English law between defamation committed orally, in writing or by printed matter. To the last form of defamation special provisions should be made to apply in the manner of Ord. XIV of 1889 and our present law.

Following this classification the graver offences should fall within the competence of the Criminal Court sitting with a jury. This would be in line with the corresponding provisions of Ord. XIV of 1889, which laid down that in the case of offences punishable with imprisonment for a term not exceeding

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\* Submitted by the Editor to the Press Law Revision Commission, on the 5th August, 1949.

three months or with multa not exceeding £5 or with both, the action was to be instituted before the Inferior Court with a right to appeal to the Criminal Court consisting of one judge only; all other offences were cognizable by the Criminal Court consisting of one judge sitting with a jury. Trial by jury if at all advisable is to be applied in the case of offences against the Press law. In such offences more than in any others the main, if not the whole question to be decided is a question of fact depending upon the usual or necessary meaning which certain words connote. Such offences are punishable because of the influence the defamatory publication has exercised on the minds of others. If no prejudice is caused to the injured party then there is no libel, and the jury are in the better position to interpret the incriminating material according to the meaning intended by its author and to the meaning given to it by the public or by the persons to whom it was directed. It is submitted that the dangers formerly experienced when trial by jury was introduced in this branch of law are now a matter of the past. Once the gravest of political crimes — those against the safety of the government — are tried by jury there seems to be no special danger in introducing trial by jury for those offences against the press law which are also of a political nature. As regards the other offences it is hardly understandable why oral or written defamation should be privileged by trial by jury, whereas libel committed by printed matter should be treated differently.

It is submitted that the provisions of sections 41 and 42 are too drastic. S. 41 contains certain heavy penalties which the Court cannot do otherwise but apply with equal severity whatever the degree of guilt which is imputable to the person responsible. The Court has no discretion in adapting the punishment to the gravity of the offence. Likewise in S. 42 (i) the Court **shall** order the suspension of the publication of the incriminated newspaper for a period of two months on a first conviction for certain offences and on a second conviction the publication of such newspaper is suppressed. These punishments should be made awardable at the discretion of the Court, and a maximum and minimum penalty should be prescribed. It is also submitted that the deposit required by S. 41 (4) for re-publishing a newspaper which had been suspended is just,

but that also in this case a maximum and a minimum should be laid down.

In contrast to this curtailment of powers which are usually entrusted to the Court, S. 62 grants to the Governor the executive discretionary power of ordering the suspension of a newspaper pending proceedings, even before a declaration of guilt by the Court. Such a power destroys the presumption of innocence which always lies in favour of an accused and prejudices the ultimate issue of the proceedings.

It is earnestly hoped that the above suggestions will contribute towards the urgent need of amending our press law and in securing in Malta a freedom of the press worthy of a modern and liberal civilization.

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**THE HON. Mr. JUSTICE  
J. CARUANA COLOMBO, B.Litt., LL.D.**

As we go to print we hear with pleasure of the elevation to the Bench of Magistrate J. Caruana Colombo to whom we extend our heartiest congratulations.

We also avail ourselves of this opportunity in wishing the Hon. Mr. Justice Prof. E. Ganado, the retiring judge, *ad multos annos*, and we offer to him the pages of our Journal for any fruit of his leisure hours.