Present: Wood Renton C.J., Pereira J., and De Sampayo A.J. 1914.

In the Matter of ARMAND DE SOUZA, Editor of the *Ceylon Morning Leader*.

Contempt of Court—Publication in a newspaper—Magistrate open to suggestions from the police—Mind difficult of access to a conviction hostile to the interests of a European planter—Courts Ordinance, s. 51—Scandalizing the Judges—Is the law obsolete?

The defendant wrote in the *Ceylon Morning Leader* newspaper—

(*a*) That the Police Magistrate of Nuwara Eliya, having been himself at one stage in his career in the Ceylon Police Force, is "partial to the police view"; that he is often open to assistance and suggestions from police officers; and that they would not receive "this tremendous advantage" but for the fact that he improperly conducts part of his business in chambers. "Who is there to say what happens in his chambers?". "We find no predisposition in our minds to discredit the reports we have received."

(*b*) "That he defers far too much to planters, and that his mind is very difficult of access to a conviction hostile to the interests of a European planter."

Held,—(1) That this language justified the innuendoes respectively, (*a*) that the Police Magistrate did not exercise his own judgment, but allowed himself to be improperly influenced by the police; (*b*) that he favoured the European planting community, and could not be relied upon to do justice when a European planter was a party to a legal proceeding.

(2) That where the defendant repudiated these innuendoes, evidence to prove the allegations of fact, on which his comments were founded, and the truth of his own interpretation of his language, was irrelevant as a justification of the innuendoes.

(3) That the defendant's language, as interpreted in the innuendoes, amounted to contempt of Court.

(4) That the law of contempt by scandalizing the Court is in force in Ceylon.

WOOD RENTON C.J.—"The Court has itself to interpret the meaning of the language used, and in doing so to consider how it will be understood by the majority of those whom it reached."

THE rule served on defendant was as follows:—

In the matter of Armand de Souza, editor of the *Ceylon Morning Leader*, and in the matter of section 51 of the Courts Ordinance, 1889.

Upon reading the editorial article entitled "Justice at Nuwara Eliya," appearing in the issue of the *Ceylon Morning Leader* of Monday, December 7, 1914, which said article had reference to the administration of justice in the District and Police Courts of Nuwara Eliya-Hatton by Thomas Arthur Hodson, Esq., at present District Judge and Police

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Magistrate of the said Courts: It is ordered that Armand de Souza, editor of the said newspaper, do appear in person before us at our Court at Hulftsdorp on Saturday, December 19, 1914, at 11 o'clock of the forenoon, and show cause why he should not be punished for an offence of contempt committed against and in disrespect of the authority of the said District and Police Courts of Nuwara Eliya-Hatton in the manner following:—

(1) By publishing or allowing to be published in the said editorial article the following words:—

> "Proctors complain that throughout the progress of a trial the Judge is too often open to assistance and suggestions from the police officer. No wonder: he has been a Police Superintendent himself, and is partial to the police view. In open Court he might not be given this tremendous advantage to his Inspectors. But who is there to say what happens in his chambers? Possibly the reports that have reached us are exaggerated. But that, too, is the result of his own line of action. There is no means of checking what occurs in his chambers, and all we can say is that judging from the tearing haste and slipshod manner in which he discharged his functions on the Bench on one occasion, we find no predisposition in our mind to discredit the reports we have received."

meaning thereby that, in the administration of justice as Police Magistrate, the said Thomas Arthur Hodson does not exercise his own judgment, but allows himself to be improperly influenced by suggestions on the part of the police.

(2) By publishing or allowing to be published in the said editorial article the following words:—

> "He defers far too much to planters, and his mind is very difficult of access to a conviction hostile to the interests of a European planter,"

meaning thereby that, in the administration of justice as a judicial officer, the said Thomas Arthur Hodson favours the European planting community, and that he cannot be relied upon to do justice when a European planter is a party to a legal proceeding.

van Langenberg, K.C., S.G. (with him *V. Grenier, Acting C.C.*) appeared in support of the rule.—The words themselves proved the contempt. Counsel emphasized the words appearing in the first count: "We find no predisposition in our minds to discredit the reports we have received," and, in the second count, the passage "He defers far too much to planters, and his mind is very difficult of access to a conviction hostile to the interests of a European planter." The suggestion is clear that if the interests of the planters were in any way in question, the Judge would be in favour of deciding the case in favour of the planters.

Bawa, K.C. (with him *Samarawickreme* and *C. H. Z. Fernando*), for the defendant.—The innuendoes put upon the passages are not correct. What the defendant said is true, and he can prove it. It is not a contempt of Court at all, and if untrue, the only remedy.

the proper remedy to be adopted, would be to institute proceedings against him for libel.

As regards the first passage, there is not even a criticism of the proceedings of a court of law. There is merely a disclosure of what occurred in chambers.

Mr. de Souza then read the following statement:—

Some time in August I received several complaints from proctors and others of the irregular methods and impatient temper of the Nuwara Eliya Judge. Later on, during September, I received fresh complaints. Early in October I received a statement, signed by two proctors, containing similar complaints. I felt quite satisfied that the complaints must be true, but having decided to go to Hatton for a brief rest, I deferred dealing with the matter until I could make inquiries in person. I went to Hatton on November 22, and on the 23rd I spent over two hours in the Court, and was satisfied of the truth of the complaints after making full inquiries from those present. I myself observed that the Judge arrived about 11.30, tried cases in chambers till about 1.50, and then came on the Bench for about 10 minutes, and got through a considerable amount of work in excessive haste, postponing some cases because his train was coming, and leaving about fifteen others entirely untouched. I came back, and in due time wrote two editorials, one published on the 4th instant and the other on the 7th instant.

I did not know the Judge, and had never, to my recollection, written about him. I have no feeling whatever against him. I acted throughout from a sense of my duty as a public journalist, anxious for the safer and more careful administration of justice both at Hatton and at Nuwara Eliya. I intended no contempt of his Court, and nothing was further from my thoughts and intentions than to bring the administration of justice into contempt; my object and anxiety throughout being the exact contrary, namely, that the people of Hatton and Nuwara Eliya should have justice administered to them in a manner calculated to inspire better confidence in the administration of justice. I gathered that the people were dissatisfied and felt aggrieved.

I did not in my editorial articles state or suggest that Mr. Hodson did not exercise his own judgment in the administration of justice. Nor are the words used by me reasonably capable of such a meaning. They mean that Mr. Hodson does honestly and conscientiously, exercise his own judgment, but that he allows such judgment to be influenced by suggestions and statements improperly made by the police.

I did not in my editorial article state or suggest that Mr. Hodson, in the administration of justice, favoured the European planting community, or that he could not be relied upon to do justice when a European planter is a party to a legal proceeding. Nor are the words used by me reasonably capable of such a meaning. They mean that he concedes privileges to planters which he does not to others, and that he relies on them overmuch, and does not make due allowance for the fact that they are parties, and may even honestly overstate their case. I made it clear that there was no room in Mr. Hodson's case for any suspicion of unfairness, and that he did his duty conscientiously, and that I was satisfied that he was a straight, honest man, mistaken in the methods he adopted of doing justice.

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Mr. Bawa proposed to call Mr. Hodson. [Wood Renton C.J.—What for ?]

In order to show that his proceedings in relation to the police or European planters justified the remarks made by defendant. Mr. Hodson for the most part held his proceedings *in camera*. The defendant was entitled to prove what the Magistrate's attitude in chambers was towards police officers and planters who come before him as parties.

If a Judge committed any public breach of propriety, or disregarded the requirements of the law, any member of the public could call attention to it, whether in a newspaper or otherwise. It was not a contempt of Court, if those statements were true, to set before the public what the public must be presumed to know. That was the object for which the law required all legal proceedings to be held in public by section 86 of the Courts Ordinance, and they were entitled to criticise the proceedings.

[De Sampayo A.J.—The charge is not that you misstated facts, but that you drew improper inferences.]

The fact related against the Judge is that the Judge is too open to suggestions from police officers. Is it to be admitted that it is a fact that he defers overmuch, that his mind is difficult of access to a conviction hostile to planters ?

[Wood Renton C.J.—The only questions are whether the innuendoes correctly interpret the meaning of the defendant's language, and, if so, whether they can be justified.]

The defendant wants to show that the statements were facts, and that the comments were correct. If the facts upon which the statements were made were true, the comments were justified.

The defendant's position is not very different from the position of a member of the Legislative Council, who on learning of the facts could bring those facts forward before the Council. Every editor of a newspaper was entitled to free speech and expression of opinions in any manner he might choose as regards the manner in which justice was administered. Short of scandalizing a Court and interfering with justice in a pending case, they had absolute freedom of comment, either by speech or expression in the press.

The defendant wants to prove the manner in which the Magistrate allowed himself to be influenced. If I am given the opportunity I wish to prove this, that the Judge is too prone to the influence and suggestions from a police officer.

As regards the second charge, the defendant wants to prove that the Magistrate deferred too much to planters. That, as a matter of fact, he conceded privileges to planters that he did not concede to anybody else. He proposed also to prove that his mind was not free of bias to a conviction hostile to the interests of a planter.

[The Court was of opinion that the evidence which the defendant proposed to call was irrelevant. He was charged, not with the

allegations of fact in the article, but with the comments on those allegations as interpreted in the innuendoes, which he not only did not propose to justify but repudiated.]

[The Chief Justice called attention to the innuendoes, and asked if they were capable of being defended.]

In order to do that it is necessary to prove that the facts from which these comments are drawn are true.

[Pereira J.—Assuming that these statements are true, are these innuendoes justified ?]

If the facts were true, it was a moderate and temperate article. The innuendoes placed upon the passage by the rule were not justified. What the article complained of was the methods the Judge adopted, the result of which was that his honest *bona fide* judgment was influenced.

[Counsel proceeded to explain the meaning of the article taken as a whole, and contended that the rule had not properly stated the effect of the article.]

The summary process of attachment should not have been adopted in this case. If the defendant had misstated, he should have been prosecuted for criminal defamation. There were no comments on pending cases. The power to attach and commit being arbitrary and unlimited is to be exercised with the greatest caution, and is only to be resorted to where the administration of justice would be hampered by the delay involved in pursuing the ordinary criminal process. *Halsbury's Laws of England, vol. VII., pp. 281 et seq.* The contempt known as " Scandalizing the Judges " is obsolete in England.

[The Court referred counsel to *Queen v. Gray.*[1]] That was a scurrilous and personal attack on the Judge himself. [Wood Renton C.J. referred to section 51 of the Courts Ordinance and to *1 Browne 317.*]

The point whether scandalizing a Court may be punished under the law of contempt was not argued there. Counsel cited *Yalverton Case* [2] *Law Quarterly Review, vol. XVI., p. 292.*

[Wood Renton C.J. referred to *R. v. Almon,*[3] *R. v. Davies.*[4]]

In any event there was no attempt to scandalize the Court. The criticism of a Judge may be a libel, but was not a contempt of Court. The reasons given in England for holding that prosecutions for scandalizing a Court was obsolete in England ought to apply here.

van Langenberg, K. C., S.-G. submitted *re MacDermott.* [5]

Bawa, K.C., stated that the defendant was unable to tender any apology.

[1] *(1900) 2 Q. B. 36.*
[2] *(1899) A. C. 138.*
[3] *(1765) Wilmot's Opinions 256.*
[4] *(1906) 1 K. B. 32, at pp. 40 and 41.*
[5] *(1866) L. R. 1 P. C. 260; 2 P. C. 341.*

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The defendant, who is admitted to be the editor of the *Ceylon Morning Leader*, appears in answer to a rule, issued at the instance of this Court itself, to show cause why he should not be committed for contempt of the authority of the Police Court of Nuwara Eliya. The rule itself sets out two passages in an article published in the defendant's paper of 7th instant, which form the basis of the present charge. The article is entitled "Justice at Nuwara Eliya." It forms the second of a series of two articles dealing with the administration of justice in Hatton and in Nuwara Eliya. The defendant's counsel has himself placed both those articles in their entirety before us. They contain an elaborate series of statements with regard to alleged irregularities in the conduct of the Courts of first instance in Hatton and Nuwara Eliya. With the statements contained in those articles, in so far as they deal with alleged matters of fact, we are here in nowise concerned. There exists in this Colony, as in every part of the British Empire, ample machinery for the due and fair investigation of charges against judicial officers, and not one word shall be said in this judgment which can in any way interfere with such an investigation as to the alleged irregularities here in question, should it be deemed by the proper authorities to be advisable. The only questions before us are whether, in the first place, the innuendoes placed in the rule on the language of the two passages forming the basis of the charge are correct; and, in the second place, whether, if so, the comments involved in those passages can be defended. The first innuendo states that the effect of the language used by the defendant is to suggest that, in the administration of justice as Police Magistrate, Mr. Hodson does not exercise his own judgment, but allows himself to be improperly influenced by suggestions on the part of the police. The defendant has read to us a statement in which he personally disclaims the interpretation put by the innuendo upon his language. We have carefully considered that statement. It is obvious, however, that it is by no means exhaustive of the situation. The Court has itself to interpret the meaning of the language used, and in doing so to consider how it will be understood by the majority of those whom it reached. It was published in a daily newspaper. It is clear that the readers of such an article as this would not stop to subject it to the minute analysis which it has received at the Bar, or to consider how far the character of the warp of one line of criticism was modified by woof of a different texture. They would read the article as such articles are read every day by ordinary people, who have no time, even where they have the capacity to carry out such a process of balancing, and who would be guided in the long run by the general impression which the article left on their minds. If we apply that test, it seems to me that the innuendo which the rule has annexed to the first of the passages in question is justified by its language. It is suggested that the Police

Magistrate, having been himself at one stage in his career in the Ceylon Police Force, is " partial to the police view "; that he is too often open to assistance and suggestions from police officers; and that they would not receive " this tremendous advantage " but for the fact he improperly conducts part of his business in chambers. Then follow the significant words: " Who is there to say what happens in his chambers ? " The writer goes on to refer to reports which had reached him in the same connection, and says: " We find no predisposition in our minds to discredit the reports we have received. " Applying to this language the test of our own intelligence, and keeping in view the considerations that I have already dealt with as to the class of persons who peruse it, it seems to me that it clearly suggests that the Police Magistrate had been in the habit of allowing his judgment to be improperly influenced by suggestions on the part of the police. The innuendo on the second passage presents no difficulty. The language used is as follows: " He defers far too much to planters, and his mind is very difficult of access to a conviction hostile to the interests of a European planter. " The innuendo rightly interprets these words as meaning that the Police Magistrate favours the European planting community, and that he cannot be relied upon to do justice in cases in which planters of that community are concerned. The next point to be considered is whether or not the language so used amounts to contempt of Court. To this question there can, I think, be but one answer. We are entitled to take notice of the fact that the passages in question have been circulated broadcast through districts in which at least a large proportion of the cases that come before the Police Court are cases in which the police and planters are concerned on the one hand and the rest of the community on the other. Can it seriously be doubted that, under these conditions, the immediate effect of the publication of such language must be to paralyse the confidence of every section of the community, other than the classes supposed to be unduly favoured, in the fairness of the administration of justice ? If this be so, the passages in question come within the meaning of section 59 of the Courts Ordinance as being calculated to interfere with the maintenance of the " proper authority and efficiency " of the Court, and if they had been verbally uttered in the presence of the Court itself, they could have been punished by the Police Magistrate under that section. The suggestions embodied in these passages are, therefore, equally within the jurisdiction of the Supreme Court in the case contemplated by section 51 of the Courts Ordinance, namely, where the contempt has been committed *ex facie curiæ*. It was strenuously argued at the Bar that the contempt, if any, disclosed by the passages in question would come under the head of " scandalizing the Judges, " and that no such branch of the law of contempt existed in this Colony. To that proposition I am not prepared to

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assent. In the case of *McLeod v. Aubyn*,[1] Lord Watson, Lord Macnaghten, Lord Morris, and Lord Davey concurred in an expression of opinion that, while committals for contempt of Court by scandalizing a Court itself have become obsolete in England, in small colonies the enforcement, in proper cases, of committal for contempt of Court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and respect for the Court. The Privy Council held in that case that no contempt had on the facts been committed, inasmuch as the publication of the alleged libel consisted merely in the innocent handing of the newspaper that contained it by one friend to another, both of them being ignorant of its presence. But there is nothing in the judgment to indicate that the libel itself would not have been punished if the persons responsible for its publication had been brought before the Court. The doubt, suggested in *McLeod v. St. Aubyn*,[1] as to how far committals for contempt by scandalizing the Court were still in force in England, has been removed by the decision of three Judges of the King's Bench Division in the case of *Queen v. Gray* [2] where a scurrilous attack upon a Judge which had no reference to any pending judicial proceedings was punished by the Court on summary process. In the still later case of *R. v. Davies*,[3] the Judges adopt the language of Chief Justice Wilmot in the old case of *R. v. Almon*,[4] in which the word "authority," as it occurs in proceedings of this kind, was interpreted as meaning "the deference and respect payable to the Judges of the Court," and in which it was directly held that the remedy of scandalizing the Court existed under the English common law. There is local authority on the same point. I need only refer to the judgment of Sir John Bonser C.J. and Justices Lawrie and Withers in *In re Cappers*.[5] The language used by the defendant in this case, therefore, is contempt, and is punishable as contempt by the process by which he has been brought before this Court. There remains only the question of punishment. At this stage I desire to quote a few words from the famous, although undelivered, judgment of Chief Justice Wilmot in the case of *R. v. Almon*.[4] "The constitution has provided very good and proper remedies for correcting and rectifying the involuntary mistakes of Judges, and for punishing and removing them for any voluntary perversions of justice. But if their authority is to be trampled upon by pamphleteers and news writers, and the people are to be told that the power given to the Judges for their protection is to be prostituted to their destruction, a Court may retain its power for some little time, but I am sure it would instantly lose all its authority, and the power of the Court will not long survive the authority of it." With a few verbal

[1] *(1899) A. C. 549.*
[2] *(1900) 2 Q. B. 36.*
[3] *(1906) 1 K. B. 32.*
[4] *(1765) Wilmot's Opinions 256.*
[5] *(1896) 1 Br. 317.*

changes, these words are directly applicable to the case before us. There is, as I have said, no kind of doubt as to the right of any member of the public to criticise, and to criticise strongly, judicial decisions or judicial work, and to bring to the notice of the proper authorities any charge whatever of alleged misconduct on the part of a Judge. But it is a very different matter to claim that irresponsible persons, upon *ex parte* statements, are to be at liberty to invite themselves into the judgment seat, and to scatter broadcast imputations such as those with which we have here to do. The law of contempt, as has often been pointed out both in England and in this Colony, exists in the interests, not of the Judges, but of the community. The Supreme Court would be false to its duty if it permitted attacks of this kind to go unpunished.

Armand de Souza, you are convicted by the unanimous judgment of this Court of contempt of the authority of the Police Court of Nuwara Eliya, and you are sentenced to undergo one month's simple imprisonment.

PEREIRA J.—I entirely agree.

DE SAMPAYO A.J.—I agree.