

THIYAGARAJAH

v.

SHAHUL HAMEED AND TWO OTHERS

COURT OF APPEAL.

L. H. DE ALWIS, J. AND MOONEMALLE, J.

C. A. 518/82-D. C. MATALE L/2999

OCTOBER 17, 18, 19, 20, 24, 25, 26, 27, 28, 1983 ; NOVEMBER 7, 8, 9, 10, 11, 14, 17, 18, 1983, DECEMBER 8 and 9, 1983.

*Inerim Injunction to restrain structural alterations—Notice issued without enjoining order—Pending inquiry respondents restore premises to former condition.**Contempt of Court, sections 792 and 793 of Civil Procedure Code read with Article 105 (3) of the Constitution.*

The 1st defendant-respondent was the tenant of premises No. 128, Trincomalee Street, Matale. On the 4th of February, 1982, he made certain structural alterations to the roof and parts of the building.

The petitioner who was landlord instituted this action in the District Court of Matale on 9.2.82, seeking inter alia, a declaration that the contract of tenancy had been terminated by operation of law on account of the destruction of the premises by the 1st respondent, for ejection and damages and also for an interim injunction restraining him from further demolishing or destroying the said premises and/or erecting any unauthorised structure thereon until the final determination of the action.

On 9.2.82, the learned District Judge issued notice of the interim injunction and summons on the 1st respondent.

The 1st respondent filed objections to the application for the interim injunction and inquiry into the application, and answer were fixed for 16.2.82

Inquiry into the application for an interim injunction was re-fixed for 30.3.82. The 1st respondent filed answer wherein he sought permission to restore the roof to its original condition.

When the inquiry was still pending the 2nd and 3rd respondents at the instance of the 1st respondent worked hurriedly on 1.3.82 and restored the building and replaced the roof to its original position. The petitioner took out a commission and obtained a report that all additional structures that the 1st respondent had made in the premises on 4.2.82 had been removed and the roof replaced.

On 30.3.82 when the trial and inquiry were taken up in Court, the Attorney-at-law for the 1st respondent gave an undertaking that no further damage will be caused to the premises, until the determination of the inquiry. The Court accordingly entered an interim injunction in terms of paragraph 5 of the prayer to the plaint.

The petitioner moved the Court of Appeal under Article 105 (3) of the Constitution read with sections 792 and 793 of the Civil Procedure Code to deal with the respondents for contempt of Court.

Held –

(1) Unless an enjoining order or injunction had been issued, the respondents were under no duty to maintain the status quo until the determination of the action and no contempt of Court had been committed by the respondents on 1.3.82 in restoring the premises to its former condition while the inquiry into the application for an interim injunction was pending before Court.

(2) The restoration of the premises to its original state on 1.3.82 did not interfere with the function of the Court in ascertaining the truth, nor was it an obstruction to the administration of justice in the circumstances of this case. The acts of the respondents do not constitute an abuse of the process of Court and do not amount to a contempt.

Cases referred to

- (1) *Gnanamuttu v. Chairman U. C. Bandarawela*, (1942) 43 N.L.R. 366.
- (2) *Silva v. Appuhamy*, (1899) 4 N.L.R. 178.
- (3) *Daniel v. Ferguson*, (1891) 2 Ch. 27.
- (4) *Van Joel v. Hornsey*, 65 L.J. Ch. 102 ; (1896) 2 Ch. 774.
- (5) *Joseph v. Asst. Excise Commissioner and others*, A.I.R. [1953] Travancore – 145.
- (6) *Uoseph Uoseph v. Minister for Food Travancore Cochin*, A.I.R. (38) [1951] Tra. – Cochin, 226 (2).
- (7) *Sheeraj v. Batra*, AIR [1955] Allahabad 638.
- (8) *A. G. v. Times Newspapers Ltd.* [1973] 3 All E.R. 54 H.L.
- (9) *Raymond v. Honey* [1981] 2 All E.R. 1084.
- (10) *Re Brambivale Ltd.*, [1969] 3 All E.R. at 1064.
- (11) *Hewamanne v. Manik de Silva and The Associated Newspapers of Ceylon, Ltd.* S.C. 2/83 (Sp) Rule 1/83, Supreme Court Minutes of July 1983.

APPLICATION under sections 792 and 793 of the Code of Civil Procedure read with Article 105 (3) of the Constitution.

H. W. Jayewardene, Q.C., with *A. K. Premadasa* and *D. S. Wijesinghe* for the petitioner.

Dr. Colvin R. de Silva with *M. Moussoof Deen* for the respondents.

February 10, 1984.

L. H. DE ALWIS, J.

A brief narrative of the events in their chronological order that led to these proceedings for contempt of Court, is necessary.

Premises No. 128, Trincomalee Street, Matale, belong to the petitioner, and the 1st defendant-respondent has been the tenant of these premises for the past twenty odd years, paying a monthly rental of Rs. 52/92. The 1st respondent is carrying on a hardware shop in these premises. The 2nd and 3rd respondents are his sons. On the 4th of February, 1982, the 1st respondent removed the front portion of the roof of the premises and raised the central pillar and the southern wall by 2 1/2 feet in order to construct a new roof with asbestos sheets in place of the old Sinhala tiles. The reason he gave was that the roof timber had decayed and on 3.2.82, a beam cracked and the roof caved in. He was advised by a carpenter to replace the roof timber and he decided to put in asbestos sheets. The premises originally consisted of 2 units numbered 126 and 128 and the common wall separating them had been removed and they were converted into one premises numbered 128. On the 4th of February, the 1st respondent also replaced some of the timber of the door frames which gave entrance to the shop as they too were found to be decayed. He further constructed a curb wall of about a foot in height across the entrance to the shop for the purpose, he alleged, of preventing rain water flowing into the shop which was on a slightly lower elevation than the adjoining road.

The petitioner carries on a business at No. 363, Trincomalee Street, about a 1/4 mile away from the 1st respondent's premises and on seeing the alterations being carried out in premises No. 128 by the 1st respondent he went to the Matale Police Station at 10.25 p.m. that night and made a complaint marked "X" against the 1st respondent. He also sent a telegram P 2, followed by a letter P 33, to the 1st respondent asking him to stop the unauthorised building alterations in the premises. Police Constable 8483 Karunaratne of the Matale Police went for inquiry the next day and after making observations at the premises, ordered the 2nd respondent who was present, to stop further work.

On 5.2.82, the petitioner obtained the services of a photographer, Chandrasekaram, to take photographs Y 1 to Y 3 of the premises that day, showing the front portion of the roof

completely removed and the central pillar and southern wall or the wall on the right side of the building raised by 2 1/2 feet. On this evidence he instituted action No. L/2999, in the District Court of Matale on 9.2.82, seeking, inter alia, a declaration that the contract of tenancy had been terminated by operation of law on account of the destruction of the premises as aforesaid by the 1st respondent, for ejection and damages and also for an interim injunction restraining him from further demolishing or destroying the said premises and/or erecting any unauthorized structure thereon until the final determination of the action (vide plaint P1).

On 9.2.82, the learned District Judge issued notice of the interim injunction and summons on the 1st respondent returnable on 11.2.82. Notice and summons were served on the 1st respondent on that day itself. On the same day, 9.2.82, the 1st respondent submitted a building plan for effecting certain structural alterations to the said premises, to the Municipal Council of Matale, without the knowledge or consent of the petitioner.

On 11.2.82 the 1st respondent appeared in Court in answer to the notice and summons and filed objections to the application for the interim injunction. Inquiry into the application was fixed for 16.2.82, and the same date was given for filing the answer.

On 12.2.82, the petitioner made an application to Court for the issue of a commission to Licensed Surveyor and Valuer S. Ranchagoda to report on and value the damage caused to the premises on 4.2.82. The Commissioner duly inspected the said premises in the presence of both the petitioner and 1st respondent on 13.2.82 and tendered his report (P 9) to Court on 15.2.82, confirming that the front portion of the roof and the door frames had been removed ; that a short wall of bricks one foot high and 24 feet long had been constructed where the door frames stood ; and that the central pillar and the southern edge of the wall had been raised by 2 1/2 feet.

Answer was filed on 16.2.82 and inquiry into the application for an interim injunction was postponed on that day for 30.3.82. At paragraph 20 of his answer the 1st respondent requested the permission of the District Court to restore the roof to its original condition. On 17.2.82, the 1st respondent made an application to the Rent Board of Matale, for permission to re-erect the structures

that were demolished by him. The Chairman of the Rent Board noticed the petitioner to be present at an inspection to be held by him on 24.2.82 at 3.45 p.m., but the petitioner through his Attorney-at-Law replied by letter refusing to attend, as the matter was sub judice.

The main complaint of the petitioner on which the present application for these contempt proceedings is founded is that although the inquiry had been postponed for 30.3.82, and was pending in Court, the 1st, 2nd and 3rd respondents with the assistance of a large number of labourers worked hurriedly day and night on 1.3.82 and demolished the curb wall that they had constructed, reduced the height of the central pillar and southern wall by 2 1/2 feet and replaced the roof to its original position. The photograph P 17 taken of the premises on 2.3.82 shows the premises as they were in their original state. The petitioner obtained re-issue of a commission from Court to Mr. Ranchagoda on 17.3.82 to report to Court on the damage caused to the premises on 1.3.82. The Commissioner inspected the premises on 23.3.82 and made his report P 19 on 24.3.82. It reveals that all the additional structures that the 1st respondent had made in the premises on 4.2.82 had been removed and the roof replaced.

On 30.3.82, when the trial and inquiry were taken up in Court, the Attorney-at-Law for the petitioner submitted that he applied for an interim injunction because the 1st respondent had broken down the roof and wall of the premises in suit. The Attorney-at-Law for the 1st respondent gave an undertaking that no further damage will be caused to the premises, until the determination of the inquiry. The Court accordingly entered an interim injunction in terms of paragraph 5 of the prayer to the plaint.

On 1.3.82 it was the 2nd and 3rd respondents who were present in the premises and supervised the restoration operations in the absence of the 1st respondent who had gone to Colombo to meet his creditors. The 1st respondent however admitted that the work was done at his instance. The petitioner has now invoked the power of this Court under Article 105 (3) of the Constitution read with sections 792 and 793 of the Civil Procedure Code to deal with the respondents for contempt of Court in respect of the matters mentioned in the prayer to the petition. Summons in Form 132 of the Civil Procedure Code was issued and served on the

respondents and the matter has come up for inquiry. To avoid repeating the matters referred to in the prayer to the petition I shall reproduce in toto the contents of the summons that was issued by this Court in Form No. 132 under section 793 of the Civil Procedure Code, which provides for summary procedure in respect of contempt of Court.

The summons reads as follows :-

"WHEREAS your attendance is necessary to answer to a charge of contempt committed against the authority of the District Court of Matale in that while the inquiry into an application for an interim injunction in D. C. Matale, Case No. L/2999 was pending before the said Court, you have on or about 1.3.1982,

(1) demolished part of premises bearing assessment No. 128, Trincomalee Street, Matale :

(2) erected and/or carried out building operations in the said premises ;

(3) demolished and reduced by 2 1/2 feet the height of the southern wall of the said premises and of the central pillar in the said premises, which said acts were calculated ;

(i) to anticipate and forestall the Order and Judgment of the District Court of Matale at the inquiry and trial which had been fixed for 30.3.1982, and to prevent a just and fair hearing of action No. L/2999 in all its stages ;

(ii) to prejudice, interfere with or obstruct the fair hearing, the due course of justice and the authority of the District Court of Matale and was in abuse of the process of Court and in breach of the duty owed to maintain the status quo in respect of the said premises till such time as the Court made an Order and/or delivered Judgment in respect thereof.".

I must confess that a great deal of the evidence led in these proceedings relating to the events preceding 1.3.82 is irrelevant to the matter of the contempt of Court under consideration, although

learned Counsel maintained that it was material. This Court was thus constrained to record the evidence. For instance, whether or not the alterations to the premises were carried out on 4.2.82 with the prior consent of the petitioner or not is not relevant to the issue of the contempt alleged to have been committed on 1.3.82. I do not propose to express any view on the matter of the consent and certain other matters as they will have to be considered and adjudicated upon in the main action in the District Court. I shall confine my attention only to those matters that have a bearing on the charges of contempt of Court referred to in the summons issued by this Court, on the respondents, in respect of the acts alleged to have been committed on 1.3.82. The summons itself expressly charges the respondents with doing certain acts on 1.3.82. There is no dispute that on 1st March, 1982, the inquiry into an application for an interim injunction in D.C. Matala Case No. L/2999, was pending. That is borne out by the proceedings and by the subsequent undertaking given by the respondents in Court on 30.3.82, when the inquiry was taken up for hearing.

It will be noted that no enjoining order or interim injunction issued by the District Court was in operation on 1.3.82. The question of the respondents acting in disobedience to any order of the District Court therefore does not arise for consideration. The complaint of the petitioner, as stated earlier, is that the respondents restored the premises to its former condition while the inquiry into the application for an interim injunction was pending before the Court, and that it amounted to a contempt of the Court. Learned Queen's Counsel for the petitioner himself submitted that the question for determination is whether the conduct of the respondents on 1.3.82 was in contempt of Court.

I shall now refer to the acts complained of in the summons which are alleged by the petitioner to amount to a contempt of Court. Dr. de Silva, who appeared for the respondents, submitted that the charge refers to several acts of contempt and lacks clarity and unambiguity. For instance he submitted that "to forestall" is one thing while "to prevent a just and fair hearing of the action" is another thing. I am of the view that the charge gives the respondents sufficient particulars of the acts of contempt alleged to have been committed by them and have not misled or prejudiced them.

Count (1) of the charge is that the respondents demolished a part of premises bearing assessment No. 128, Trincomalee Street, Matale. All the charges relate to the work done in the premises on 1.3.82. According to the petitioner himself all that the respondents did on 1.3.82 was to demolish the short curb wall that they themselves had built ; reduce the height of the southern wall and central pillar by 2 1/2 feet which they had raised ; and to replace the roof which they had removed, in order to restore the premises to their original condition. What the respondents did was to remove the alterations they had themselves effected to the premises on 4.2.82, and replace the roof. They had merely restored the premises to their original state. In short, they undid what they had done in the premises on 4.2.82. No damage to or demolition of the premises had taken place on 1.3.82.

Count (2) states that they erected and/or carried out building operations in the said premises. The building operations are those referred to above in count (1) and had for their object the restoration and not the destruction of the premises in suit. Per se, they constitute no offence, except, as alleged, in relation to sub-Paragraph (i) and (ii) of charge (3) which I will deal with presently.

Count (3) specifies the particular acts done by the respondents which are alleged to amount to a contempt of Court by reference to sub-paragraphs (i) and (ii). Count (3) omits any reference to the removal of the 1 foot high curb wall constructed by the respondents and the replacement of the roof. However if the intention of the petitioner was that the matters alleged in sub-paragraphs (i) and (ii) refer to all the 3 charges, then they would relate to the two items also which are omitted in count (3).

The question now is whether doing the items of work referred to in the charges amounts to a contempt of Court. For the sake of convenience I shall enumerate them as follows :-

- (1) Demolish and reduce by 2 1/2 feet the height of the southern wall.
- (2) Demolish and reduce by 2 1/2 feet the central pillar.
- (3) Demolish and remove the 1 foot high and 24 feet long curb wall constructed by the respondents.
- (4) Replace the front portion of the roof of the premises.

It is not the petitioner's case that this work was carried out in disobedience to an interim injunction issued by Court. For no enjoining order or interim injunction had been issued by Court by that date. An interim injunction was sought by the petitioner from the District Court in terms of paragraph (5) of the prayer to the plaint and is as follows :

"For an interim injunction restraining the defendants from further demolishing or destroying the said premises and/or erecting any unauthorised structure thereon until the final determination of this action". It was issued only on 30.3.82.

The petitioner may have been unaware of what the respondents were doing in the premises behind the barricade of planks shown in photograph Y1. But it was quite evident that the roof had been removed and the central pillar and southern wall had been raised. That was done for the purpose of constructing a new roof with asbestos sheets. The structure was unauthorised because the new roof would have violated the street line regulation. In fact the building alteration application P 22 submitted to the Municipal Council was refused for this reason. When all efforts to get the permission of the local authority failed and since the petitioner objected to any alteration of the premises and the rains were imminent, the respondents, in order to protect their stock-in-trade, removed the alterations they had effected and restored the building to its original state, nay, to a better condition, as the evidence discloses. They had replaced the decayed timber of the roof and the door frames with new timber.

The petitioner's case is that the acts set out above which constitute the three charges in the summons were done while the application for the interim injunction was pending and were calculated :-

- (i) " To anticipate and forestall the Order and Judgment of the District Court of Matale, at the inquiry and trial which had been fixed for 30.3.82 and to prevent a just and fair hearing of action No. L/2999 in all its stages :

- (ii) To prejudice, interfere with or obstruct the fair hearing, the due course of justice and the authority of the District Court of Matale and was in abuse of the process of Court and in breach of the duty owed to maintain the status quo in respect of the said premises till such time as the Court made an Order and/or delivered judgment in respect thereof."

The application for an interim injunction in terms of paragraph (5) of the prayer to the plaint, was allowed only on 30.3.82. In other words on 1.3.82 when the acts referred to above were committed there was no interim injunction in operation but only an application for one pending in the District Court. It is on this basis that the contempt proceedings have been brought. There can therefore be no disobedience to any interim injunction issued by Court, on that day.

Learned Queen's Counsel for the petitioner contended that the acts committed on 1.3.82 in the premises, at the instance of the 1st respondent, were intended to efface evidence of the wrongful acts done on 4.2.82 and constituted an attempt to forestall the order and judgment of the District Court, at the inquiry into the application for an interim injunction and the trial of the main action.

The authorities relied on by learned Queen's Counsel however do not support his contention. In *Gnanamuttu v. Chairman U.C. Bandarawela* (1) an interim injunction restraining the 1st respondent from discontinuing the petitioner's water supply had already been issued by the District Court and the Supreme Court found that the telegram notifying the 1st respondent of the issue of the interim injunction had reached him before he disconnected the water supply and that therefore he was guilty of contempt. In *Silva v. Appuhamy* (2) too, an injunction had been granted and disobedience to it was held punishable even though it had been irregularly issued. In the present case there was no disobedience to an interim injunction issued by the District Court, on 1.3.82

In *Daniel v. Ferguson* (3) the defendant, in an action to restrain him from building so as to darken the plaintiff's lights, upon receiving notice of a motion for injunction, put on a number of extra men and by working night and day ran up his wall to a height of nearly 40 feet before receiving notice that an ex parte interim injunction had been granted. In view of the defendant's conduct,

The Court of Appeal upheld the order of the lower Court that the wall he had erected, be pulled down at once since he had endeavoured to anticipate the action of the Court by hurrying on his building. See also *Van Joel v. Hornsey* (4).

In *Joseph v. Asst. Excise Commissioner and others* (5) the Court endorsed what it said in *Quseph Ouseph v. Minister for Food, Travancore, Cochin* (6) as follows :-

" If a party, knowing that his opponent has either approached the Court or is taking steps to approach it for specific relief, does anything to make the grant of the relief, by way of prevention, ineffective, the Court has always jurisdiction to pass orders even in ordinary cases, in a mandatory form, and to direct the restriction of the status quo ante in the manner, and to the extent possible ".

In such cases the power of the Court is restricted to the issue of mandatory orders only since there has been no disobedience to an order of Court. In these latter cases no notice of the issue of the interim injunction had reached the defendant. Hence no action for contempt for disobeying the orders of Court could be taken. Instead the Court issued a mandatory order to undo what the defendant had done hurriedly.

In the present case no interim injunction had been issued by Court before 1.3.82, but only notice of the application for one had been served on the first respondent. In these circumstances, in my view, no contempt of Court has been committed by the respondents in what they did on 1.3.82 and, even if it were with a view to forestalling or anticipating the order or judgment of the District Court, the only order the Court could make was to issue a mandatory order. But that is out of the question, because it would only result in the removal of the roof and cause more damage to the premises if they were left exposed to the elements.

Learned Queen's Counsel for the petitioner next submitted that the function of the Court is the ascertainment of the truth in a case but the respondents had obstructed and frustrated this object by destroying the evidence of their unlawful acts by their conduct on 1.3.82. They had also prevented the Court from ascertaining the truth by rendering an inspection of the premises after 1.3.82, futile.

In *Sheeraj v. Batra* (7) the D.S.P. prevented the Police investigation into an applicant's report about an offence by sending a forged application for its withdrawal to the Magistrate. It was held to amount to an interference with the course of justice and punishable as a contempt of Court.

In *A.G. v. Times Newspapers Ltd.* (8) which concerned a publication of legal proceedings, Lord Diplock was of the view that "the due administration of justice requires first that all citizens should have unhindered access to the constitutionally established Courts of criminal and civil jurisdiction for the determination of disputes as to their legal rights and liabilities."

In *Raymond v. Honey* (9) it was held that the petitioner who was a prisoner had a right to unhindered access to the Courts, and an act which prejudiced that right or obstructed or interfered with the due course of justice or with lawful process was contempt. In that case the Governor of the prison stopped certain documents and an accompanying letter of the prisoner-petitioner constituting an application to commit the Governor for contempt: This amounted to conduct calculated to prejudice the requirement that a citizen should have direct access to the Courts and the Governor was therefore guilty of contempt.

These cases are not applicable to the facts of the present case. The respondents at no time sought to conceal what they were doing in regard to the alterations in the premises on 1.3.82 or to obstruct the Court in ascertaining the truth of it. What they did on 1.3.82 is admitted by them and indeed there is the report of the Commissioner of Court who inspected the premises in regard to its condition. It was therefore unnecessary for the Court to inspect the premises to ascertain the truth of the case in view of the abundance of evidence available in regard to the condition of the premises. On both occasions Police Officers had also visited the premises and made observations. The version of the respondents is that since the rains were imminent, they decided to replace the roof by restoring the premises to their original state in order to protect their stock-in-trade. Godage the carpenter who did the roof work said that as soon as he had finished, the rains came down. The

petitioner alleged that the work was hurried through on 1.3.82 since notice to quit had just been served on the 1st respondent in the District Court action. In *Re Bramblevale Ltd.* (10) Lord Denning, M.R. said: "Where there are 2 equally consistent possibilities open to Court, it is not right to hold that the offence is proved beyond reasonable doubt". It was held in that case that contempt of Court was an offence of a criminal character and must be proved with such strictness as was consistent with the gravity of the offence charged and the Court could not be said to be satisfied beyond reasonable doubt, that the appellant still had the books in November 1968, See also *Gnanamuttu v. Chairman U.C. Bandarawela and another* (supra). In view of the two equally consistent versions given by the parties for the hurried work, I do not think the requisite burden of proof has been discharged. I do not think that the restoration of the premises to their original state on 1.3.82, interfered with the function of the Court in ascertaining the truth or, was an obstruction to the administration of justice in the circumstances of this case.

Learned Queen's Counsel next argued that the respondents had a duty to maintain the status quo until the determination of the action, unless they obtained the permission of the Court to alter it. In my view, unless an enjoining order or injunction had been issued, the respondents were under no such duty. In the absence of such an order, a party is at liberty to deal with his property as he wishes. But it must be noted that in the present case the respondents in their objections did ask the District Court for permission to restore the premises to their former state and to replace the roof.

There are also allegations in the summons that the respondents prevented a just and fair hearing of the action in all its stages and that they prejudiced, interfered with, or obstructed the fair hearing, the due course of justice and the authority of the District Court of Matale. As pointed out earlier, there is nothing in their conduct on 1.3.82 to indicate that they obstructed or interfered with the administration of justice. They merely restored the premises to their original, if not to a better condition. These acts did not affect the dignity or authority of the Court.

Absing the process of Court is explained by Aiyer in *Law of Contempt*, 1960, Gour, 2nd Edition at page 365 as, " a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive ". Halsbury 4th Edition, Vol. 9, at paragraph 38, states in regard to abuse of process in general : " The Court has power to punish as contempt any misuse of the Court's powers. Thus the forging or altering of Court documents and other deceptions of the like kind are punishable as serious contempts. Similarly, deceiving the Court or the Court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt. Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive ". The acts of the respondents committed on 1.3.82 do not therefore constitute an abuse of the process of Court.

Halsbury 4th Edition, Vol. 9, page 3 referring to the different kinds of contempts says : " Contempt of Court may be classified either as (1) Criminal contempt, consisting of words or acts obstructing, or tending to obstruct or interfere with, the administration of justice or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgments, orders or other processes of the Court, and involving a private injury ". But later he says " The classification of contempts as criminal or civil has become progressively less important and has been described as 'unhelpful and almost meaningless' in the present day ". The distinction between criminal and civil contempt is no longer prevalent today.

The law applicable in this country in the case of contempt is the English Law (Per Wanasundera, J. in the unreported case of *Hewamanne v. Manik de Silva and the The Associated Newspapers of Ceylon Ltd.* (11) His Lordship went on further to say " the law of contempt has now reached the stage when it has to be regarded as a separate branch of law carrying with it its own principles and procedures ".

Aiyer in *Law of Contempt* 1960, Gour, 2nd Edition at page 18 states that " the law of contempt is not a codified law, as an act of contempt can adopt innumerable ways and methods which has

rendered it impossible to give a satisfactory definition of the term. Every case of contempt will have to be carefully gone into to determine whether the peculiar circumstances associated with it warrant or justify contempt proceedings against the contemner ". In other words as Aiyer says elsewhere at page 222 " Everything depends on the peculiar circumstances of each case, and, therefore, no hard and fast rule, as to what does or does not constitute contempt of Court, could be laid down. I am conscious that the categories of contempt are not exhaustive but learned Queen's Counsel for the petitioner was unable to cite a single authority in support of his case in the present proceedings, nor have I been able to find any myself. I am therefore of the view that the acts complained of in the charges, which were committed by the respondents on 1.3.82, do not constitute a contempt of the District Court of Matale.

I accordingly dismiss the charges laid against the respondents and acquit them.

Before I part with this record I wish to refer to several erasures, omissions and interpolations that were discovered in the statements made by the petitioner Thyagarajah, marked 1 R5 and recorded in the Matale Police Information Book at page 120, paragraph 118 under date 4.2.82 and in the statement marked 1 R8 and recorded in the Information Book at page 271 paragraph 11 under date 1.3.82. These erasures and interpolations appear to have been made in contravention of Police Circulars or Regulations and have not been authenticated by the author of them. Further there are discrepancies between the original statements and the certified copies of them, 1 R14 and 1 R15, issued by the Police. I therefore direct that the Information Books along with certified copies of 1 R14 and R15 and certified copies of the evidence given in these proceedings by PC 8483 Karunaratne, PC 13460 Wimaladasa, PS 6620 Bandara and IP Hapuarachchi be forwarded to the Inspector-General of Police, for any action he may deem necessary to take in the matter.

MOONAMALLE, J.—I agree.

Charges dismissed. Respondents acquitted.