1936 *Present :* **Abrahams C.J., Akbar S.P.J., and Koch J.**

In the Matter of a Rule under Section 51 of the Courts Ordinance on H. A. J. Hulugalle, Editor, "Ceylon Daily News".

Contempt of court—Article scandalising the Judges of the Supreme Court—Imputation against them in taking unauthorized holidays—Article calculated to lower the authority of the Supreme Court—What constitutes contempt.

The respondent, the Editor of the "Ceylon Daily News", was charged with contempt of court in respect of certain passages appearing in a leading article, published in his newspaper.

The article entitled "Justice on holiday" was in the following terms :—

> With all this talk of the law's delays it seems an ironical jest that the Supreme Court and the District Courts of Colombo should close for two weeks, presumably for the Race Meet in Colombo. This fortnight's relaxation appears to be the special privilege of these Courts, for the other Courts in Colombo and the outstations, as well as the Legal Department are expected to perform their duties during that period. His Majesty's Judges in England are not off duty for the Derby or for the fasionable Ascot Meet. They do not obviously mix up sport with their judicial functions. Here in Ceylon Public Servants have a surfeit of holidays to make less fortunate members of the public grow green with envy. But when in addition to Christmas holidays, the long Easter vacation, and the other leave privileges the Supreme Court and the District Court of Colombo close shop during the August Race Meet, the public has a right to question the propriety of this tradition. It is indeed a tradition of what old bureaucrats would call the halcyon days of the public service when Government servants did just as they liked. Now times have changed and especially in the case of the judiciary there is the greater necessity to speed up the administration of justice if the public grievance

[1] *12 N. L. R. 379.* [2] *4 C. W. R. 265.*

about the law's delay is to be redressed. But, instead of removing the obvious causes which lead to arrears of work, the tendency is to talk glibly about lack of staff and the need for more officers to man the judiciary. The tax payer is always there to give his money to pay for more Judges, more Commissioners of Assize and other officers. Even in his Budget speech Sir Baron Jayatilaka dwelt at length on the law's delays and prefaced his remarks on that point by announcing the increase in the financial provision made for the Supreme Court. Neither more funds nor more personnel for the judiciary will help in preventing delays in the administration of justice so long as the tradition symbolised in the August race meet holidays continues. After all what is this great sport for which justice is held up for a fortnight? It may have been sport in the past but to-day it seems to have descended to an orgy of gambling shared by the high and the low of the land. It does seem incongruous that two weeks intensive operations in spotting the double and treble should coincide with special leave for Courts of law. The sooner the judicial officers and members of the legal profession co-operate to stop this exclusive August holiday the nearer will be the day when there will be no complaint about the law's delay.

Held, that the article imputed a serious breach of duty to the Judges of the Supreme Court in taking an unauthorized holiday during the month of August for the purpose of attending a race meeting—whereas in fact the August vacation was authorized by Statute—and contained a further imputation of dishonesty to the Judges in attributing the arrears of work in the Supreme Court to lack of staff and funds while the arrears were really due to their addiction to sport instead of a conscientious devotion to their duties.

Held further, that the article was calculated to bring the Supreme Court into contempt and to lower its authority.

In order to bring a Court or Judge into contempt something must be said of a Judge in relation to himself as a Judge, *i.e.*, in relation to the performance of his judicial duties.

To constitute contempt it is not essential that something derogatory must be said of a Judge, while he is actually administering justice.

THIS was a Rule issued on the respondent, the Editor of the "Ceylon Daily News", to show cause why he should not be committed for contempt in respect of certain passages in a leading article published in his newspaper entitled "Justice on holiday". The article is fully reproduced in the headnote. The rule set out the offending passages in the article and the innuendoes placed upon them, which are reproduced in the judgment. The respondent in his affidavit stated that he was the Editor of the newspaper but was not the writer of the article in question. He protested his respect for the Supreme Court and submitted that the passages did not bear the meanings attributed to them.

R. L. Pereira, K.C. (with him *H. V. Perera, A. R. H. Canekeratne* and *J. R. Jayewardene*), for respondent.—The position we take up is that the article deals with measures and not with men. The innuendoes are not justified by the language used in the article. The law of contempt is applicable only to that class of cases where the publication would interfere with the administration of justice. In the *Bahamas Case*[1] it was held by the Privy Council that a grossly satirical article which may

[1] *(1893) A. C. 138.*

be a libel on a Judge was not a contempt of court as the article did not or was not calculated to obstruct or interfere with the due administration of justice. In that case it was suggested, *inter alia*, that the Chief Justice took holidays to which he was not entitled. The language in this article may be infelicitous but my submission is that there is no contempt.

[Counsel then proceeded to address the Court on the affidavit submitted by the respondent and on the article.]

The article criticises the number of holidays enjoyed by the Supreme Court in contrast with the rest of the public service. The August holiday is the holiday for which there is the least justification. Before the Ordinance of 1906, the Courts enjoyed this holiday as a traditional one. The Ordinance was introduced to meet the wishes of the Bar, which asked that holidays should begin and close on definite dates. The writer calls for the co-operation of the Bench and the Bar to do away with this holiday.

[ABRAHAMS C.J.—There is no suggestion in the article that these holidays are statutory holidays.]

It would be doing violence to the language of the article to say that it suggests that the Judges are taking holidays to which they are not entitled. Your Lordships were not responsible for starting the tradition of the August holidays. These August holidays have been taken without interruption for the last forty years or more. No one who knows Ceylon can say that the holidays were taken for the first time this year by the Supreme Court. Even if the innuendoes suggested by the rule are the proper innuendoes, my submission is that the Court is not thereby scandalized. The stream of justice remains pure and undefiled. There is no reference to any Judge or the Bench in general as in the *Calcutta case* (*In the matter of Tushar Kanti Ghosh* [1]), where the judiciary was attacked for hobnobbing with the executive. In the case of a libel it is the most innocent construction that should be put on the words. In the case of contempt the same principle applies, see words of Mukerjee J. in *R. v. Ghose* [2]. This article is not even a libel on the Supreme Court. It refers to the holidays enjoyed by a group of Courts, and it attacks the holidays whether they are enjoyed by Statute or by tradition. There is nothing scandalizing in saying that some of the Judges of the Supreme Court are desirous of attending the races. The jurisdiction now sought to be exercised is only considered necessary in the sense that extreme measures are sometimes necessary. The jurisdiction must be jealously and carefully watched and exercised with the greatest reluctance and anxiety. (*The Republic of Costa Rica v. Erlanger* [3].)

The law of contempt contemplates the prevention of undue interference with the administration of justice, not the vindication of the dignity of a Judge, nor the person of the Judge. (*Helmore v. Smith* [4].)

[ABRAHAMS C.J.—The article says that the Judges mix up sport with their judicial functions in the administration of their public duty.]

That is, I submit, what the article does not say. The rule as issued does extreme violence to the whole intention and purpose of the writer.

[1] *A. I. R. (1935) Cal. 419.*
[2] *45 Calcutta 169 at p. 224.*
[3] *(1877) 36 L. T. 332.*
[4] *(1886) 35 Ch. D. 449.*

If the writer wished to be malicious he could have said that the Supreme Court adjourned before the statutory vacation began. He could have said something similar to what had been said of Chief Justice Elverton in the *Bahamas case*.

The writer is advocating a cause, abolition of holidays which he thinks he is justified in doing. Nobody regrets more than the Editor, the respondent, who was not the writer, that this Court should have placed upon the article the construction placed upon it in the rule issued. In Ceylon we are not given to the habit of trying to bait Judges for the mere amusement of it. We have risen far above that. It was furthest from the intention of the writer to bring any sort of ridicule or odium on the Supreme Court. The Editor, who read and passed the article, says that he never for one moment put on the article the construction placed upon it in the Rule.

H. V. Perera (continued the argument).—A writing referring to a Judge or attacking a Judge does not amount to a contempt of court unless it shakes the confidence of the public in the performance of judicial acts in a seat of justice. If it has that effect then the writer or publisher may be dealt with summarily under the jurisdiction of the Court, but if it has not that effect, although there may be an attack, though it be venomous, unjustified and untrue, it does not come under this jurisdiction and cannot be dealt with summarily.

[ABRAHAMS C.J.—If he is attacked as a Judge.]

It is rather difficult to dissociate a Judge from the person who administers justice. One can draw a distinction between the judicial acts of a Judge and the extra-judicial acts of a Judge.

It must be an attack on the capacity of a Judge to administer justice, duly, impartially and properly. A reference to a Judge who deliberately absents himself from Court to amuse himself is not an attack on him *qua* Judge ; it is an attack on him as a man.

[ABRAHAMS C.J.—Suppose it was said that a Judge instead of hearing a case, folded his arms and went to sleep, and refused to listen to Counsel.]

That would be contempt of court because the Judge is seated in the seat of justice. I have not found a single case where a man has been dealt with for suggesting that a Judge does not perform his judicial functions punctually, when there is no allegation that when he does perform his judicial functions he does not perform them excellently and impartially. The grievance may be that he performed his judicial functions so very seldom.

The only case when a man has been dealt with in circumstances similar to the present case, and when it is suggested that the Judge did not come to the seat of justice for the purpose of disposing of justice is *In re Bahamas Islands* (*supra*). The Privy Council held this was not contempt.

There is a jurisdiction to punish for contempt. But when a case arises the limits of that jurisdiction must be examined. Reference may be made to the purpose for which a Court exists ; for the administration of justice, duly, impartially and with reference solely to the facts judicially brought before it. An act or writing would be contempt of court if it defeated the purpose for which Courts are constituted or was calculated to interfere or interfered with the proper performance of judicial acts.

This would catch up a case where without an aspersion on a Judge or jury there was discussion on a pending case. The effect of the writing complained of should be to shake the confidence of the public, so that the public may view a judicial act with suspicion. An allegation that a Judge is not in his seat performing his judicial duties is not contempt. First there must be an allegation. There must be further implications and innuendoes. If the allegation and innuendoes and everything else comes to nothing more than that a Judge does not sit in his seat, then it is not contempt of court. The public opinion on the Judges as men may be lowered but not any opinion as to their capacity to administer justice, when they sit in the seat of justice. An allegation that a Judge adjourned Court for two days to prevent a plaintiff obtaining his judgment early would be contempt. In addition to the allegation there is the implication of bias against the Judge. There is an improper motive for not sitting. A statement that the Judge adjourned because he preferred leisure for work would not be contempt.

This jurisdiction is available not for the protection of the dignity of the Court, but for the protection of the public. The truth of the matter is irrelevant. The truth of an allegation is important only in a libel action. The test is not whether one libel was more gross than another, but whether there has been a libel on a Judge *qua* Judge, with reference to his acts in the seat of justice. A libel on a Judge *qua* Judge may not necessarily be contempt. It may be alleged that Justice X is lazy or drinks. The way in which you refer to a man does not matter. The allegation must be examined. An allegation of arbitrariness or partiality would shake public confidence. The gravamen of the charge is that by lowering the authority of a Judge you reflect adversely on his judicial acts.

See *Rex v. Editor, New Statesman,*[1] where a distinction is drawn between legitimate criticism of a Judge and such an imputation of a lack of fairness and impartiality as constitutes contempt of court. The object of this jurisdiction is not to satisfy the public but to protect the public. The public may have other grievances beside the fact that Judges take too many holidays. An allegation that shakes the confidence of the public in the system, in the man and not on judicial acts is not a contempt. The jurisdiction for contempt is dependent entirely on case law and not on statute law. If the allegation does not fall within the principle of decided cases, the doctrine of contempts cannot be applied. There is not a single case approaching this case except *The Bahamas case* (*supra*) which is in our favour. It is not a mere accident that there are no cases similar to this, human nature being what it is, and considering the gross libels said about Judges.

In a place like Ceylon, except in an extreme case this jurisdiction should not be used. In this case the essential ingredient of contempt is absent since the authority of the Court was not lowered.

J. W. R. Illangakoon, K.C., S.-G. (with him *H. H. Basnayake, C.C.,* and *M. F. S. Pulle, C.C.*), for the Attorney-General, on notice.—The passages complained of are calculated to bring the Supreme Court into contempt, by lowering its dignity and scandalizing the Court.

[1] *44 T. L. R. 301.*

Public criticism of matters affecting the administration of justice must be fair, temperate and respectful. There must be no interference with the administration of justice and no improper motives should be alleged. Subject to these qualifications, the public and the press are given full liberty of criticism of any act or omission of a Court of Justice. The object of the discipline is not to vindicate any offended dignity of the Court but to prevent any wrong being done to the public by weakening the influence and authority of the Courts which are set up for the good of the public.

This article is a most unfair article. The innuendoes placed upon it in the Rule are justified. The article imputes that the Judges were so unscrupulous with regard to their duties that they closed the Courts for the August vacation in order to indulge in a passion to gamble or attend the races.

(Counsel then commented on the article.)

As regards the law of contempt, all the known authorities have been cited. The opinion of Justice Wilmot expressed in 1765 has been consistently followed.

A certain amount of deference and respect is due to the Supreme Court. It is that which helps to enable the administration of justice to be upheld in the Island. If any attempt is made to remove that respect and deference, that would be a contempt.

De Villiers on Injuries shows that there is contempt in any statement disrespectful to a Court of law or Judges in their capacity as Judges.

Counsel cited the following authorities:—*McLeod v. Stanlyn*[1]; *R. v. Almon*[2]; *In the matter of Armand de Souza*[3]; *Ambard v. A.-G. of Trinidad*[4]; *Bahamas case*[5]; *History of Contempt of Court by Sir John Fox, p. 18.*

Cur. adv. vult.

September 21, 1936. ABRAHAMS C.J.—

The defendant, who is the Editor of the "Ceylon Daily News", appeared 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 court in respect of certain passages recorded in a leading article published in his newspaper on August the 6th last, and entitled "Justice on Holiday". For better understanding the reflections on the Judges alleged in the Rule to be contained in this article, it is desirable that the article itself should be set out at length:—

Justice on Holiday.

With all this talk of the law's delays it seems an ironical jest that the Supreme Court and the District Courts of Colombo should close for two weeks from Friday, presumably for the Race Meet in Colombo. This fortnight's relaxation appears to be the special privilege of these Courts, for the other Courts in Colombo and the outstations, as well as the Legal Department, are expected to perform their duties during that period. His Majesty's Judges in England are not off duty for the Derby or for the fashionable Ascot meet. They do not obviously mix up sport with their judicial functions. Here in Ceylon, Public Servants have a surfeit of holidays to make less fortunate

[1] *(1899) A. C. 549.*
[2] *(1765) 97 E. R. 94.*
[3] *(1914) 18 N. L. R. 33.*
[4] *(1936) A. C. 322.*
[5] *(1893) A. C. 138.*

members of the public grow green with envy. But when in addition to Christmas holidays, the long Easter vacation, and the other leave privileges the Supreme Court and the District Courts of Colombo close shop during the August race meet, the public has a right to question the propriety of this tradition. It is indeed a tradition of what old bureaucrats would call the halcyon days of the Public Service when Government officials did just as they liked. Now times have changed and especially in the case of the judiciary there is the greater necessity to speed up the administration of justice if the public grievance about the law's delays is to be redressed. But instead of removing the obvious causes which lead to arrears of work the tendency is to talk glibly about the lack of staff and the need for more officers to man the judiciary. The taxpayer is always there to give his money to pay for more Judges, more Commissioners of Assize and other officers. Even in his Budget speech Sir Baron Jayatilleke dwelt at length on the law's delays and prefaced his remarks on that point by announcing the increase in the financial provision made for the Supreme Court. Neither more funds nor more personnel for the judiciary will help in preventing delays in the administration of justice as long as the tradition symbolized in the August Race Meet holidays continues. After all what is this great sport for which justice is held up for a fortnight? It may have been sport in the past but to-day it seems to have descended into an orgy of gambling shared by the high and low of the land. It does seem incongruous that two weeks' intensive operations in spotting the Double and the Treble should coincide with special leave for Courts of law. The sooner the judicial officers and members of the legal profession co-operate to stop this exclusive August holiday the nearer will be the day when there will be no complaint about the law's delays.

The objectionable passages and the innuendoes said to be intended, were set out in the Rule and are as follows :—

" (1) With all this talk of the law's delays it seems an ironical jest that the Supreme Court and the District Courts of Colombo should close for two weeks from Friday, presumably for the Race Meet in Colombo . . . . His Majesty's Judges in England are not off duty for the Derby or for the fashionable Ascot Meet. They do not obviously mix up sport with their judicial functions. Here in Ceylon, Public Servants have a surfeit of holidays to make less fortunate members of the public grow green with envy. But when in addition to Christmas holidays, the long Easter vacation, and the other leave privileges the Supreme Court and the District Courts of Colombo close shop during the August Race Meet, the public has a right to question the propriety of this tradition. It is indeed a tradition of what old bureaucrats would call the halcyon days of the Public Services when Government officials did just as they liked ",

" meaning thereby that in spite of the fact that the Judges of the Supreme Court are amply provided with holidays, they habitually take in August a further holiday of two weeks to which they are not justly entitled for the mere purpose of indulging a passion for race-going and that their behaviour in so doing is in contrast with that of His Majesty's Judges in England who keep their judicial functions separate from sport ".

and

" (2) Neither more funds nor more personnel for the judiciary will help in preventing delays in the administration of justice as long as

the tradition symbolized in the August Race Meet holidays continues. After all what is this great sport for which justice is held up for a fortnight ? "

"meaning thereby that the delays in the administration of justice are due to the unwarranted closing of the Supreme Court by the Judges owing to the August Race Meet and that the Judges know or ought to be aware of this fact instead of which they prefer to attribute it to inadequacy of staff and insufficiency of funds ".

The defendant, in his affidavit, stated that he was the Editor of the Newspaper but was not the writer of the leader. He denied that the passages complained of contained the meanings attributed to them in the Rule. He protested his respect for the Judges and said that if he had thought that the passages bore the meanings attributed to them, whether the same amounted to a contempt or not, he would not have permitted publication.

I think it also desirable, in order to ascertain whether the alleged meanings can be reasonably attributed to the article, that it should be carefully examined and that certain facts should be set out. These are as follows :—During the month of August in Colombo, it is, and has been the case for a number of years, that what may not inaptly be called a carnival of sport and social functions takes place ; these functions include the Kennel Club show, football matches under both Codes, hockey and cricket matches, boxing championships, and the most important meeting during the year of the Ceylon Turf Club. The Supreme Court goes into vacation for ten working days which overlap this carnival period, and this year during that vacation there occurred two race days, one only of which was on a week-day afternoon, the other taking place on a Saturday afternoon. Incidentally the Supreme Court does not sit on a Saturday in Term time. The Assize Courts during this August vacation invariably continue to function, and there is also a vacation Judge who sits on one day during the vacation.

The vacations of the Supreme Court are prescribed by Statute, namely " An Ordinance for the establishment and regulation of vacations in the Supreme Court, No. 1 of 1906 ", as amended by Ordinance No. 2 of 1928. The necessary provision runs as follows :—

" Section 4 of the principal Ordinance is hereby amended so as to read as follows :—

" (1) The Christmas vacation shall commence on the twenty-second day of December and terminate on the twelfth day of the next following January.

Provided that if the thirteenth is a Thursday and the day following is a public holiday, or if the thirteenth is a Friday, then the Christmas vacation shall terminate on the Saturday next following.

" (2) The Easter vacation shall commence on Maundy Thursday and shall continue for twenty-three days.

" (3) The August vacation shall commence on such day in August as the Chief Justice shall appoint in each year for the purpose and shall continue for twelve days.

" (4) The days of the commencement and termination of each vacation shall be included in such vacation ".

So far as the August vacation is concerned, the amendment added two days. The District Courts are under the direction of the Attorney-General and are independent administratively of the Supreme Court. By Financial Regulations of the Government (see F. R. 1100) vacations of the District Court depend upon the state of the roll of cases. I might mention here, though it is not necessary to do so, that action has been taken in respect of the Supreme Court only as it appeared from the reference to His Majesty's Judges in England and the later reference to the financial provision made for the Supreme Court that the Supreme Court was specially aimed at. For some years now, delays in the disposal of cases both civil and criminal in the Supreme Court have been the occasion of much concern to the Government and to the Judges of the Court, and undoubtedly have been the occasion of public interest and, it may be, of discussion. Last year the Judicial Commission presided over by the late Chief Justice was appointed to investigate the state of civil business in the Courts in General. The report was published in March this year. Various reasons were given for the delays but it was not suggested, nor did it appear in evidence, that the statutory vacations should be abolished or curtailed, but it was certainly recommended that there should be an increase of the Supreme Court Bench. At the present moment the number of cases in arrears on the appellate side of the Supreme Court is well over 700, and it is manifest that no appreciable reduction can be made in these arrears without an increase in the Judiciary. In fact it is not beyond the bounds of possibility that without this increase the Courts may be able to hold their own in the flow of business. In addition to the Supreme Court Judges, Commissioners of Assize are appointed from time to time to cope with the excessive criminal work. This year the Supreme Court Judiciary has been increased by one.

The species of contempt alleged against the defendant is that which was described by Lord Hardwicke L. C. as " scandalizing a Court or a Judge " (*In re Read and Huggonson* [1]). This was defined by Lord Russell of Killowen C.J. in *Reg v. Gray*,[2] as " any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority ". It was suggested by Counsel for the defendant at an early stage of these proceedings that if committals for this type of contempt are not actually out of date in Ceylon that we should be very slow indeed to take action in this manner, and that moreover it would be more desirable that proceedings should be taken as for defamation since in proceedings for contempt the Court itself is both prosecutor and judge. There was cited to us in support of the first suggestion the case of *McLeod v. St. Aubyn* [3], in which Lord Morris delivering judgment in the Judicial Committee of the Privy Council said that committals for contempt of Court by scandalizing the Court itself had become obsolete

[1] *(1742) 2 Atk. 471.*

[2] *(1900) 2 Q. B. 36.*

[3] *(1899) A. C.549.*

in England. This observation was disproved next year by the incidence of the case of *Reg v. Gray* (*supra*) and as the Privy Council applied the law laid down in respect of this kind of contempt in that case as a test in the recently decided case of *Ambard v. Attorney-General for Trinidad* [1], I think that it is not open to argument that what has been done in England ought not to be done in Ceylon in the proper circumstances. Further, committals for this kind of contempt are not unknown in Ceylon, since *In the matter of Armand de Souza, Editor of the Ceylon Morning Leader* [2], a Full Bench of this Court declared that committals for contempt by scandalizing the Court were punishable in Ceylon. As to the second suggestion, I would quote the words of Woodroffe J. commenting on a similar suggestion made *In the case of Moti Lal Ghose* [3], where he said "That observation applies to all cases of contempt, and if it were given effect to, the Court would be deprived of its jurisdiction in every case". I might also say at this juncture that it has been urged upon us by Mr. H. V. Perera, who argued the law in a most able and interesting manner, that there has been no reported case of the kind similar to this where the contempt alleged was said to consist of charges against Judges for something not actually done while adjudicating, and that we should be careful not to extend the principles that have been laid down in cases of committal to other cases they were not intended to cover. That has been conceded by the Solicitor-General who appeared in support of this Rule. He has been unable to find a case where the facts were parallel. But though I agree that the Court should not be precipitate to adopt summary procedure, I think that if the case falls within what we regard as well defined principles we not only can but we should exercise our powers in the public interest. In *Helmore v. Smith* [4], the Court of Appeal said that though the case before them was a novel case, it did amount to contempt of Court and was quite properly treated as such.

It is now for us to decide whether the editorial in question does bear the meaning which it is alleged to bear in the Rule issued. In deciding this we have to put ourselves in the place of the readers of the paper and decide to the best of our ability, subjecting the language to the test of our own intelligence, what impression it created on the minds of those who read it. In this connection I would refer to the words of Wood Renton C J. in the case of *Armand de Souza* referred to above. The learned Chief Justice said, "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

[1] *(1936) A. C. 322.*
[2] *18 N. L. R. 33.*
[3] *45 Cal. 199.*
[4] *(1886) 35 Ch. D. 449.*

of the passages in question is justified by its language". The learned Solicitor-General has analysed before us the article, and has commented on it in detail, and has contended that the readers of the newspaper would undoubtedly place upon it a construction which has been placed upon it in the Rule. This appears to be the substance of his submission. It is alleged, he says, against the Supreme Court that it enjoys a privilege denied to other Courts in Colombo (with the exception of the District Court, Colombo), and the outstations and to the Legal Department, of relaxing from its duties for a fortnight for the purpose of enabling the Judges to attend the race meeting in Colombo. That the Judges exercise this privilege for the purposes of amusing themselves in that way is implied in the contrast between their conduct and that of His Majesty's Judges in England who were said obviously not to mix up sport with their judicial functions, the inference clearly being that His Majesty's Judges in Ceylon do mix up sport with their judicial functions, that is to say, they interrupt their labours to resort to race-going. The further inference is that the Judges have not that proper conception of their duties which is held by the Judges in England, who are admittedly the model which His Majesty's Judges overseas should copy. Then it went on to point out that not being satisfied with the Christmas holidays, the Easter vacation and other leave privileges, the Supreme Court adjourns its sittings during the August race meet, and that this practice of adjournment is a continuance of a tradition dating back to the times when public servants did just as they liked. The statement that the public has a right to question the propriety of this tradition is clearly an indication in the mind of the writer that the practice was not justified, and taken with the foregoing reference to mixing up sport with their judicial functions the impression created in the mind of the reader would obviously be that the Judges maintain a practice of taking a holiday, not because they need it as a rest from their labours, but because they want to go racing, which is conduct unworthy of the example set by His Majesty's Judges in England. The writer then goes on to say that times have changed, which is an indication that it is time that the Judges changed with these times. The reader is then told that instead of removing the obvious causes which lead to arrears of work, the tendency is to talk glibly of the lack of staff and the need for more officers to man the judiciary, and that the taxpayer is always there to give his money to pay for an increase of staff, but that it is useless to provide more money and more judicial staff as long as this tradition of closing the Courts for the August race holidays continues, which interval for sport holds up justice for a fortnight. By "the obvious causes which lead to arrears of work" the writer clearly intends to refer to this fortnight's holiday in August. He charges the persons who can remove these obvious causes with preferring to talk instead about lack of staff, and he implies by the concluding words of that passage that it is no use providing more money and more men as long as this August holiday, which is treated in the article as the sole cause for delays in the administration of justice, is allowed to continue. Having, then, blamed the Judges for their addiction to amusement instead of conscientious attention to their judicial duties, and having held them responsible for the arrears of work, to clear away which they ask for more

staff, and having said that more staff will be useless as long as justice continues to be held up for a fortnight in this way, he then proceeds to aggravate the indignity offered to the Judges by referring to the sport, judicial patronage of which holds up justice for a fortnight, as an orgy of gambling which brings both the high and the low into contact.

It appears to me that this article is not only disrespectful to the Judges in its mode of expression but must undoubtedly have a tendency to lower the Supreme Court as a body in the eyes of the public, imputing to the Judges a serious breach of duty by taking an unauthorized holiday for the mere purpose of going to race meetings, adding to this imputation a further imputation of dishonesty in attributing the present regrettable arrears of work in the Courts to lack of staff, when the Judges themselves are the cause of that state of things. It is obvious that the public would think very meanly of the Supreme Court if it treated these charges as true.

It has, however, been argued with much force and eloquence by Mr. R. L. Pereira, that it is the holidays and not the Judges that are being attacked. It is, he says, "an onslaught on measures, not on men". It is not said, he says that the Judges are not justly entitled to this holiday. What is suggested is that it is not desirable that it should now be taken. He further says that there is nothing to show that this article does not attack the Ordinance which now embodies the tradition in the August holiday, or the tradition itself. From start to finish of this article there was not one word about the Ordinance or any other legal measure establishing the Court vacation. Surely any man of intelligence who had not wilfully overlooked the existence of the Ordinance would have indicated in the article that the Judges had no option but to adjourn in August, and the appeal would have been to the State Council to amend the law, and possibly there would have been an appeal to the Judges to forego in the public interest that holiday which the defendant says he does not contend that they were not justly entitled to. It cannot for a moment be denied that the article is addressed to the Judges not in terms of persuasion but in terms of expostulation. If that is not so, what is the meaning of the reference to mixing up sport with judicial functions. There has been no attempt to explain that most stinging phrase. Further, how can it have been intended to attack a traditional practice of closing the Courts and not attack those persons who maintain the practice, when it is denounced as an improper practice—a practice which is a relict of the days when Government officials did just as they liked. Practices do not create themslves nor do they maintain themselvs, they are the creation of men and are maintained by men.

It is then argued from the legal aspect that even assuming that the Judges are attacked, they are not attacked *qua* judges but *qua* men, and that there can be no contempt here because their judicial functions are nowhere referred to. Now the test applied in the case of *Ambard v. The Attorney-General for Trinidad*, above referred to, in the class of contempt known as scandalizing a Court or a Judge, was the definition in *Reg. v. Gray*, which runs as follows:—"Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to

lower his authority is a contempt of court", and it was further said in that case that this definition was to be taken subject to one and an important qualification, that Judges and Courts were alike open to criticism and that if reasonable argument or expostulation was offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of court. It is of course clear from that definition that to bring a Court or a Judge into contempt, something must be said of a Judge in relation to himself as a Judge, that is to say, in relation to the performance of his judicial duties. So far as I can understand an argument which appears to me to be refined to a degree, to constitute a contempt of court of this description something derogatory must be said of a Judge while he is actually administering justice. I am entirely unable to see how a Judge cannot be disparaged as a Judge if it is said of him that he is guilty of a breach of any of the duties which he owes to the public as a Judge. If I understand Counsel aright, if it is falsely said of a Judge that when he is sitting on the Bench instead of listening to the argument of Counsel he gambles with dice with the Registrar, that would amount to a contempt of court. But if it was falsely said of him that he adjourned his Court during sitting hours because he wanted to dice in his private room with the Registrar, that would not be a contempt of court. I am afraid that to the average person who read of the doings of this Judge he would be regarded as unworthy to sit in the seat of judgment. Nor can I see the difference between the illustrations I have given and the statement about a Judge that instead of coming to his Court as usual on an ordinary working day, he remained in his house to hold a gambling party. It seems to me that it is as much a part of the duty that he owes to the public to attend the Court for the trial of cases, as it is to give due attention to his work when he is in Court and to continue to sit for the despatch of business, unless he has good reason to adjourn. Surely what is implied concerning the Supreme Court and the Judges of the Supreme Court in this case is that they have enough rest from their labours in the form of the holidays at Christmas and Easter, and that therefore every one of them ought to go on *de die in diem* from Easter to Christmas unless there is reasonable cause to adjourn, instead of which as a body they take unto themselves the privilege of closing the Courts for a fortnight for an unworthy reason. How can it be said that this is not alleged against them as Judges but only as men ?

Our attention has been directed to the case of *In the matter of a Special Reference from the Bahama Islands*[1]. It was argued for the defendant that there is a close similarity between that case and this, in that the Chief Justice of the Bahama Islands was charged in a letter to a newspaper with taking an unauthorized holiday, and that the Judicial Committee of the Privy Council said that that letter might have been a libel but that it was not a contempt of court. It is very difficult to infer anything from that case because Their Lordships gave categorical answers to certain questions put to them by the Secretary of State for the Colonies and gave no reasons for their answers. I do not think that we are in a

[1] *(1893) A. C. 138.*

position to supply the reasons for those answers. I would say, however, that the facts are altogether different, as in that case the Judge brought the attack upon himself by descending into the arena of newspaper controversy. Further, if I may say so with respect, there does not appear to be anything to show that the allegation in that case was not true. It is also argued that the innuendoes cannot amount to a contempt because, to use the exact words of Mr. H. V. Perera, they do not tend to affect the confidence of the public in the judicial acts and determinations of the Judges when performing their judicial functions. That seems to me to assume that it is necessary to prove that the confidence of the public must be affected in that respect. If the test to apply is that which was applied by the Privy Council in the case of *Ambard v. The Attorney-General for Trinidad* (*supra*), namely, that any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority is a contempt, it seems to follow as a matter of course that the administration of justice is endangered by being brought into disrepute.

It is implied, so far as I can follow the elaborate argument, that it is only when the confidence of the public that the Juges will adjudicate justly is undermined, that a contempt is committed. Reference was made to the citation in the *King v. Davies*[1] of the observations of Wilmot C.J. in the *King v. Almon* (1765) where that learned Judge said that "Attacks upon the Judges excite in the minds of the people a general dissatisfaction with all judicial determinations". I think a reply to the argument of Mr. Perera is that assuming such dissatisfaction is not presumed inevitably to flow from contempt of the authority of the Judges, I can hardly believe that members of the public, if they once conclude that the Judges of the Supreme Court are guilty of a serious breach of their judicial duties in one respect, will not think it highly probable that they will be guilty of a breach of duty in every other respect. Besides, if I may say so with respect, I do not see why the expression "dissatisfaction with judicial determinations" should only mean dissatisfaction with the correctness and impartiality of decisions. A decision may be thoroughly unsatisfactory on account of a serious delay in rendering it, and through lapse of time it may be perfectly useless to the party claiming its benefit. I am of the opinion that it is as much the duty of a Judge to do justice with as little delay as is reasonably possible, as it is to do justice correctly and impartially. There is an old saying that justice is ever sweetest when it is freshest. Clause 40 of Magna Charta says, "To none will we sell, to no one will we deny or delay rights or justice", which clearly means that the Judges are bound to the public not only to do justice incorruptly or impartially but to do it swiftly. It seems that if I acceded to the argument of Counsel in this respect I should concede that it is the business of the Judges only to keep the stream of justice pure and not to prevent it from being dammed to a trickle by a congestion of cases. Surely it is only commonsense to conclude that public confidence in a speedy disposal of cases by the Judges to the best of their ability in view of prevailing circumstances, is likely to be undermined.

[1] *(1906) 1 K. B. 32.*

In my opinion the article bears the construction placed upon it, and the defendant has failed to show cause why he should not be committed for contempt of court.

That is a serious contempt. The language employed is extremely offensive. Moreover, at a time like this the article is most mischievous. Reforms in the Courts are, as I have said, much to the fore at the moment, and the public is of course interested to know what will be done and how much it may cost. The plight of the taxpayer is graphically depicted in the article and he is given little comfort when he is told that it will be useless to pay for an increased judiciary when the delays which an increased Bench will be appointed to cope with are caused by the Judges themselves and by conduct unworthy of their office. It is obvious that the confidence which the public is presumed to have, as Wilmot C.J. puts it, in the *King v. Almon* (*supra*) in the wisdom and integrity of the Judges that the power they have is applied to the purpose for which it was deposited in their hands, is seriously jeopardised by allegations of the kind which the offending article contains, and that power would ultimately be fretted away if such allegations were allowed to pass unremarked.

It would be thoroughly undesirable that the press should be inhibited from criticising honestly and in good faith the administration of justice as freely as any other institution. But it is equally undesirable that such criticism should be unbounded. The rights of such criticism and the limitations imposed upon these rights are, if I may respectfully say so, well defined in the concise and most trenchant words of Lord Atkin in *Ambard v. Attorney-General of Trinidad* (*supra*) :—

> "But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way ; the wrong headed are permitted to err therein ; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".

It was open to the defendant, as to anyone else, to hold and express the opinion that there are too many Court vacations or that they are too long or are fixed at inconvenient times, or that portions of them should at this juncture be sacrificed to the public interest, and had that been all no objection could have been taken in this Court.

The defendant states he was not the writer of the offending article and I see no reason to disbelieve him. But he does not deny that he passed the matter for publication and his responsibility is therefore hardly less than if he had written it. No apology has been tendered. At the same time it must be observed with no little satisfaction that proceedings in contempt have been infrequent in Ceylon, in fact there has been no

committal since the case of *Armand de Souza* in 1914, when an order for one month's imprisonment was made. While taking this into consideration, I think at the same time the Court should, in the interests of the public, mark its reprobation of the indignity offered to itself.

Herbert Alexander Jayatileka Hulugalle, the order of the Court is that you be imprisoned until the rising of the Court, and that you do pay a fine of Rs. 1,000 or suffer simple imprisonment for three months in default of payment.

Rule absolute.