1966 *Present :* **T. S. Fernando, J., Abeyesundere, J., and Sri Skanda Rajah, J.**

IN RE U. N. WIJETUNGE

APN/GEN/39/65—In the matter of a Rule under section 47 of the Courts Ordinance

Commissions of Inquiry Act (Cap. 393)—Sections 10 and 12—Offences punishable as offences of contempt of the authority of the Commission—Limited number only—Courts Ordinance (Cap. 6), ss. 3, 47, 57—Civil Procedure Code, ss. 109, (2), 137 (2), 140, 394, 395, 650, 656, 682 (2), 713, 717, 718—Penal Code (Cap. 19), ss. 2, 3, 4—Industrial Disputes Act, s. 40A (1)—Applicability of maxim expressio unius exclusio alterius.

No acts and omissions are punishable by the Supreme Court under section 10 of the Commissions of Inquiry Act as offences of contempt against or in disrespect of a Commission of Inquiry except the offences specified in section 12 (1) of that Act. Accordingly, a person who writes an article in a newspaper in disrespect of a Commission of Inquiry cannot be punished for an offence of contempt.

RULE under section 47 of the Courts Ordinance.

H. W. Jayewardene, Q.C., with *D. S. Wijewardene* and *A. Ameresinghe*, for the respondent.

V. Tennekoon, Q.C., Solicitor-General, with *H. L. de Silva*, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

June 29, 1966. T. S. FERNANDO, J.—

Acting under section 2 of the Commissions of Inquiry Act (Cap. 393), the Governor-General on the 6th May 1965 appointed a Commission of Inquiry consisting of three members to inquire into and report on the working and administration during the period 1st January 1960 to 6th May 1965 of the Co-operative Wholesale Establishment established under the Co-operative Wholesale Establishment Act (Cap. 126), with special reference to certain matters specified in the warrant of appointment.

Sometime after the Commission had commenced public sittings to hear evidence there appeared in an issue of the " Sun " daily newspaper of the 16th September 1965 an article entitled " High Cost of Living and the Government " purporting to have been written by the respondent. That article contained the following passage regarding the Commission of Inquiry referred to above :—

" A Commission is inquiring into the affairs of the C. W. E. just now. But we fear the Commission will unduly drag out the inquiry until another election is on the way. "

The Commission requested the respondent to appear before it on the 21st September 1965. The respondent did so, accepted authorship of the article and stated that he meant no disrespect to the Commission. He was called upon by the Commission to show cause on the 24th September 1965 why he should not be reported to this Court for having committed the offence of contempt of the authority of the Commission. The respondent appeared by counsel before the Commission on the said 24th day of September and repeated that he meant no disrespect to the Commission, and counsel for him contended (before the Commission) that there is no provision in the Commissions of Inquiry Act for punishment of a contempt of this nature, if indeed it was a contempt at all. He submitted that the only contempts punishable under section 10 of the Act are those acts or omissions declared by section 12 (1) of the said Act to be contempts against or in disrespect of the authority of the Commission. The Commissioners, however, stating that in their opinion the respondent has committed a contempt against or in disrespect of the Commission made a report to this Court, and the Court issued a *Rule nisi* on the respondent requiring him to show cause why he should not be punished under section 47 of the Courts Ordinance (Cap. 6).

Section 47 of the Courts Ordinance empowers the Supreme Court to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or of any other Court which such other court has not jurisdiction under section 57 to take cognizance of and punish. Section 57 confers a special jurisdiction on every District Court, Court of Requests or Magistrate's Court to take cognizance of and punish (by the procedure and with the penalties in that behalf by law provided) every offence of contempt committed in the presence of the Court itself and all offences which are committed in the course of any act or proceeding in the said courts and which are declared by any law for the time being in force to be punishable as Contempts of Court. That section itself expressly indicates that this special jurisdiction was conferred for the purpose of enabling the Courts concerned to maintain their proper authority and efficiency.

On behalf of the respondent it was contended before us that a Commission of Inquiry is in no sense a " Court " which the Courts Ordinance defined (in section 3) as denoting a Judge empowered by law to act judicially alone, or a body of Judges empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially. As was said in *Brajnandan Sinha v. Jyoti Narain* [1]," in order to constitute a court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement ".

[1] *A. I. R. (1956) S. C. 66.*

A Commission of Inquiry is merely a fact-finding body reporting to the Authority that appointed it (in this case the Chief Executive of the State), and no consequences flow by reason of the Act (Cap. 393) from the findings embodied in that report. They are neither authoritative nor binding.

Mr. Jayewardene, on behalf of the respondent, argued that the only acts or omissions which the Act contemplated as punishable are those " statutory " contempts defined in section 12 (1), *i.e.*, the failure to obey summons, refusal or failure without cause (*a*) to give evidence and (*b*) to produce a document or other thing. These failures or refusals render a person so failing or refusing guilty of the offence of Contempt against or in disrespect of the authority of the Commission. Section 10 of the Act which enacts that " every offence of contempt committed against or in disrespect of the authority of a commission appointed under this Act shall be punishable by the Supreme Court or any Judge thereof under section 47 of the Courts Ordinance as though it were an offence committed against or in disrespect of the authority of that Court "— so the argument proceeded—was intended to punish only the " statutory " contempts above referred to.

The learned Solicitor-General who appeared before us as *amicus curiae*, and whose assistance at the argument I acknowledge thankfully, did not suggest that a Commission of Inquiry exercised anything near a judicial function, but he contended that what section 10 of the Act has effected is a conferring on the Supreme Court of a jurisdiction to punish contempts committed against or in disrespect of the authority of a Commission of Inquiry. He pointed out that section 10 has not defined what constitutes an offence of contempt of a Commission just as section 47 of the Courts Ordinance did not attempt to define what constituted an offence of contempt of a court. He submitted that, as in the exercise of its jurisdiction under section 47 the Court has not declined to act on the ground that the offence of contempt of court has not been defined, so in the exercise of its powers under section 10 of the Act the Supreme Court should evolve a body of precedents in the same way that the Court has evolved a body of precedents which serves now as a guide in understanding what constitutes a contempt of a court.

I am inclined to agree with the contention of Mr. Jayewardene that section 12 which defines the ' statutory ' contempts has the effect of limiting the operation of section 10 to those acts or omissions described in section 12. It is correct to observe that section 12 should ordinarily have preceded section 10, but the order in which the sections appear in the enactment has no particular significance in the context here, and in any event the Act has to be considered and construed as a whole.

Our attention was drawn by the learned Solicitor-General to several sections of the Civil Procedure Code (*i.e.*, sections 109 (2), 137 (2), 140, 294, 295, 650, 656, 682 (2), 713, 717 and 718) as indicating that a number

of acts and omissions have been expressly made punishable as contempts of court or have been deemed by law to be contempts of court, and that these are by no means exhaustive of the acts and omissions that constitute contempt of court. It was therefore submitted that the class of acts mentioned in section 12 of the Act are themselves not exhaustive of the category of contempts which the Act contemplated.

The reason for making this kind of non-exhaustive express provision to which the learned Solicitor-General drew our attention is made intelligible, in my opinion, by a consideration of the judgment of the Collective Court in the case of *In re Ferguson* [1]. That was a judgment delivered in the year 1874, at a time anterior to the enactment of the present Courts Ordinance (No. 1 of 1889). Morgan A.C.J., delivering the judgment of the Court, stated—(see p. 188)—that the power to punish for contempts generally—a power which, with certain qualifications, is inherent in every court—was not expressly given even to the Supreme Court by the Charter of 1801 nor was it, on the other hand, expressly taken away. Regulation 2 of 1816 which purported to regulate the practice in criminal proceedings before Provincial and Sitting Magistrates' Courts described therein as " Inferior Courts " expressly provided that nothing therein contained " shall be construed to extend or in any wise affect the proceedings or authority of the Supreme Court ". That regulation further provided for all cases of contempt to be transmitted to the Advocate Fiscal, for that officer to decide whether the accusation was fitting to be tried before the Supreme Court or referred to an inferior jurisdiction. That Regulation was amended by Regulation No. 15 of 1820 which authorized the Provincial and Sitting Magistrates' Courts of Colombo " to punish by fine or imprisonment, or both, to the extent of their general powers in that respect, all contempts committed before them before their own view and also, upon proof, all contempts of their process or of the officers acting in the execution thereof ". The Regulation of 1820 expressly provided that nothing therein should be " construed to extend to or in any wise affect the proceedings or authority of the Supreme Court ".

The Charter of 1833 contained no reference to the power of the Supreme Court or District Courts (the two Courts which that Instrument established) to dispose of cases of contempt ; but it drew the distinction between the two courts, and gave larger powers to the former. The Rules and Orders of Court framed under the authority of the Charter, and promulgated with that Instrument, provided for District Judges punishing by fine or imprisonment, or by both if necessary, " all contempts committed before themselves, and also upon due proof all contempts of their process or of their officers acting in the execution thereof ".

The offence of contempt of court was one recognised by the Roman-Dutch law—see Voet Bk. V—Title 1—Section 2.—(2 Gane's translation, p. 5)—and I might usefully refer here to section 4 of the Penal Code

[1] *(1874) 1 N. L. R. 181.*

(Cap. 19) enacted in 1883 to provide a general penal code for Ceylon. While abolishing by section 3 thereof the Roman-Dutch criminal law and enacting by section 2 that " every person shall be liable to punishment under this Code, and not otherwise, for every act, or omission contrary to the provisions thereof, of which he shall be guilty within Ceylon ", it preserved by section 4 " the power heretofore possessed by the Supreme Court or any Judge thereof of summarily punishing persons guilty of contempts of the said Court ".

I have quoted extensively from the judgment of the Collective Court as I think it indicates the explanation for or the reason why all the sections to which the Solicitor-General drew our attention providing expressly for the punishment of certain specified acts or omissions came to be enacted. After their enactment in that way, the District or other Court concerned received power to take cognizance of those contempts which might otherwise have had to be reported to the Supreme Court to be adjudicated upon and punished by that Court. Merely because the acts and omissions so declared to be contempts of court are not exhaustive of the offences of contempt of court, it would be fallacious, in my opinion, to seek to find an analogy in bodies other than Courts and to say that the acts and omissions expressly declared to be contempts of a Commission are not exhaustive of the acts and omissions that can constitute contempts of a Commission.

Section 12 (2) of the Commissions of Inquiry Act provides for the transmitting by a Commission to the Supreme Court of a certificate setting out whether a person has committed any offence of contempt referred to in section 12 (1), but makes no provision for transmitting a certificate in any other case. This consequential provision does lend some little support to the argument on behalf of the respondent that only the ' statutory ' contempts are punishable, although one must recognise, as the Commission itself has already observed, that it is far from conclusive of the validity of the respondent's main argument. Moreover, the Commission is not thereby deprived of adequate or satisfactory means of communicating or reporting to the Supreme Court an act or omission which in the Commission's opinion is a contempt of its authority provided the Supreme Court was empowered to take cognizance thereof and impose punishment therefor.

Mr. Jayewardene, however, brought to our notice section 40A (1) of the Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 62 of 1957 as affording an illustration of the kind of provision the legislation has enacted when it intended to render an act bringing a body other than a regular court into disrepute a contempt of court. The absence of such a provision in reference to acts bringing a Commission of Inquiry into disrepute strengthens, in my opinion, the validity of the argument that the Commissions of Inquiry Act intended to punish only the ' statutory contempts ' described in section 12 (1). The maxim *expressio unius exclusio alterius* is, in my opinion, also applicable here.

Moreover, if the argument in support of making this Rule absolute cannot be placed higher than that the interpretation of the relevant provisions admits of ambiguity, our duty is to favour a strict construction of this penal provision.

In my opinion, however, the point we have here to decide admits of no serious ambiguity. Any little doubt one might have been induced to entertain has been dispelled by reference to the provisions of the Tribunals of Inquiry Act, 1921 (11 Geo. 5, Ch. 7), which is of particular significance on the point I have hitherto discussed in this judgment. By section 1 (2) of that Act. if any person—

(*a*) on being duly summoned as a witness before a tribunal makes default in attending ; or

(*b*) being in attendance as a witness refuses to take an oath legally required by the tribunal to be taken, or to produce any document in his power or control legally required by the tribunal to be produced by him, or to answer any question to which the tribunal may legally require an answer ; or

(*c*) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been a contempt of that court ;

the chairman of the tribunal may certify the offence of that person to the High Court . . . . and the Court may thereupon inquire into the alleged offence . . . . . and punish that person in like manner as if he had been guilty of contempt of the Court. Paragraphs (*a*), (*b*) and (*c*) of section 12 (1) of our Act (Cap. 393) appear to reproduce in effect all that is there in paragraphs (*a*) and (*b*) of section 1 (2) of the United Kingdom Act ; but the omission to enact a provision similar to paragraph (*c*) of this last-mentioned Act, being deliberate, is a strong indication that the intention of the legislature was not to punish things other than those expressly described.

I have set out above the reasons why I reached the decision at the end of the argument that the Rule should be discharged and that was the decision of the majority of the Court.

ABEYESUNDERE, J.—I agree.

SRI SKANDA RAJAH, J.—

I would respectfully adopt the view expressed by Holmes, J., in *Northern Securities Co. v. United States* [1] that it is useless and undesirable as a rule, to express dissent. Therefore, I would content myself by stating that the submissions made by the learned Solicitor, and which have been set down at length by my brother T. S. Fernando, appear to me to be right.

Rule discharged.

[1] *193 U. S. 197 at 400.*