1951 *Present :* **Nagalingam J., Basnayake J. and Gunasekara J.**

THE ATTORNEY-GENERAL, Applicant, *and* VAIKUNTHAVASAN, Respondent

S. C. 358—IN THE MATTER OF A RULE NISI FOR CONTEMPT OF COURT COMMITTED IN RESPECT OF M. C. MATARA, 23,219

Contempt of Court—Tender of apology—Measure of punishment.

The respondent, who was the editor, printer and publisher of a newspaper, published an article containing matter which was calculated to prejudice the fair trial of a case that was then pending before a Magistrate's Court. He admitted the offence, but denied that he ever intended to commit a contempt of court. Expressing contrition, he pleaded that the offence was unwittingly committed owing to his inexperience as a journalist.

Held by Basnayake J. and Gunasekara J. (Nagalingam J. dissenting), that in the circumstances a sentence of fine should be passed. An offender guilty of contempt of court should not be permitted to go unpunished merely because he acknowledges his offence and expresses regret.

IN the matter of a Rule Nisi issued under section 47 of the Courts Ordinance.

R. R. Crossette Thambiah, *K.C.*, with *A. C. M. Ameer*, Crown Counsel, for the Attorney-General.

G. E. Chitty, *with S. P. Amarasingham*, *Vernon Wijetunge* and *N. Kanekaratne*, for the respondent.

Cur. adv. vult.

October 10, 1951. NAGALINGAM J.—

At the instance of the Attorney-General a Rule was issued on the respondent calling upon him to show cause why he should not be punished for contempt of Court in that he being editor, printer and publisher of a weekly English newspaper called " People's Voice " published in the issue of the said newspaper dated 20th April, 1951, an article entitled " Threat to Murder Leftist Leader—Hakmana Police Run Riot " which said article was calculated to prejudice the fair hearing of the Matara Magistrate's Court case No. 23,219 before this Court in its Assize jurisdiction.

The article referred to an incident that had taken place at Hakmana on 14th April, 1951, in which at least one person lost his life as a result of receiving stab injuries and certain others were wounded. The article was published, as stated earlier, on 20th April, 1951, and the respondent in his affidavit states that to the best of his knowledge and belief at the time he published the article he was not aware of any proceedings having been instituted in a court of law in respect of the incidents which were the subject of the article. The affidavit of the Assistant Superintendent

of Police, however, clearly establishes that on 15th April, 1951, the Magistrate of Matara commenced an inquiry under the provisions of the Criminal Procedure Code. That inquiry obviously was one in terms of section 153 of the Criminal Procedure Code and constituted proceedings before a Court of Law.

Learned Counsel for the respondent in attempting to show cause suggested that a possible view was that there were no legal proceedings in a Court of Law at the date of the publication as no charge had been framed against any accused person, and that therefore the publication did not amount to a contempt of Court in that it could not be said that it could have been the intention of the respondent in publishing the article to prejudice the fair trial of any case.

I do not think this contention is entitled to any weight. When a report is made to a Magistrate under section 148 (1) (*b*) of the Criminal Procedure Code, it could properly be said for the purpose of the law of contempt that a proceeding has commenced which is pending before a court of law and it is immaterial whether in the report any person is named or not. The cases of *King v. Parke* [1] and *Rex v. Clarke* [2] support this view. I do not, however, wish it to be understood that in no circumstance would a rule for contempt of Court lie where a publication is made calculated to prejudice the fair trial of a case that may thereafter be instituted in respect of incidents that may have occurred earlier. In other words, the question whether in fact at the date of publication a proceeding should be pending at all, is a question that must be decided when it does arise and in appropriate proceedings.

The respondent, however, in this case has unreservedly admitted the commission by him of a contempt and has tendered his apologies and thereby submits himself to the mercy of the Court. In these circumstances there can be little doubt but that the rule should be made absolute.

The further question however remains to be considered as to what, if any, should be the punishment that should be imposed on the respondent. In regard to this question I think it is but proper and right that a court of law should take into consideration all mitigating circumstances and temper justice with mercy. The respondent states, and it has not been challenged, that he started this paper in January this year without any previous experience of journalism, he having been employed as a clerk till 1950 after he had left school. He also says that he published the article as an item of public interest and of news value but without any intention to influence or prejudice the trial of the case. There is the further circumstance that the publication was made at a very early stage of the proceedings, and the effect of such a publication at that date (to prejudice mankind against a party to the cause) would have been almost nil. Besides, the respondent has at the earliest possible opportunity without raising any technical or other plea made a full and complete apology.

[1] *(1903) 2 K. B. 432.* [2] *(1910) 103 L. T. 636.*

In the case of *Hunt v. Clarke* [1], Lord Justice Cotton in dismissing an appeal from an order refusing an application to issue a rule laid down certain principles which have a large bearing on the question of sentence:

> " My view was in substance this, that where the offence complained of is of a slight and trifling nature, and not likely to cause any substantial prejudice to the party in the conduct of the action or to the due administration of justice, the party ought not to apply, and is mere waste of time to do so, and that it is not merely a proceeding in order to have the case properly conducted and justice properly administered, but that it is a mere waste of time to attempt to throw costs on the person who has done the act, where it is obvious there could not be any case calling upon the Court for committing, which is a more serious matter to be done, and only to be done when the administration of justice really requires it. "

In our own Courts this view of Lord Justice Cotton has been reflected particularly in the case of *Veerasamy v. Stewart* [2] which is the last of the reported cases in our Courts on this matter ; but before I deal with this case I shall briefly refer to the earlier cases which were cited at the Bar.

The case of *Abdul Wahab v. Perera* [3] was a case where the respondents expressly published leaflets containing matter which was calculated to prejudice the fair trial of a case that was then pending before the Magistrate's Court. In that publication certain inflammatory language was also used calculated to excite racial feeling. The learned Chief Justice who delivered the judgment refers to this aspect of the article being calculated to excite racial feeling and social indignation. It may be a matter of doubt that such a circumstance should have been taken into consideration even in regard to the sentence, for an incitement of racial feeling is one which is not a matter properly within the law of contempt of Court. There are other provisions of the law under which a transgression of that kind can be punished but the point to be remembered is that the object of the publication of the leaflet was to summon a meeting with a view to bring to the notice of the public not only the heinous nature of the crime but also the guilt of the accused whose name was specifically disclosed. That such an organised attempt at interference with the course of justice is a serious case of contempt there can be little doubt and in that case the Court imposed the fine of Rs. 200 on each of the respondents. Arising out of the same incident another rule was issued on a leading Proctor for his participation in the publication of the notice and for that he did preside at a public meeting in pursuance of the notice. In that case, in view of the position the respondent held in the public life of the area and in view of the fact that he was a live wire behind the publication, he was sentenced to pay a fine of Rs. 500.

In 1938 in the case of *Jayasinghe v. Wijesinghe* [4], where again there was a publication of a notice the avowed object of which was to make reference to certain criminal pleadings then pending and the effect of which would have been to prejudice the accused in the case in his defence at the trial, the Court sentenced the respondent to pay a fine of Rs. 100.

[1] *(1889) 58 L. J. Q. B. D. 490.*
[2] *(1941) 42 N. L. R. 481.*
[3] *(1936) 39 N. L. R. 475.*
[4] *(1938) 40 N. L. R. 68.*

I now come to the case *Veerasamy v. Stewart et al.* [1] which was a case far more serious than the present one in its effect in regard to prejudicing the fair trial of the accused person concerned in the case and that was a case where the respondent maintained the position that no offence had been committed by him by the publication. An apology was tendered only after the Court had held that a clear contempt of Court had been committed. Even in those circumstances, Soertsz J. while making the rule absolute gave the following as his reasons for not imposing any punishment:—

> " In all these circumstances, and particularly in view of the fact that I have found that it was not the purpose of the respondents when they published these articles to cause prejudice to the accused or to interfere with the course of justice, I think that it will be sufficient if I order that the rule be discharged, in view of the apology that has been tendered by the respondents. This apology, I think, will serve the purpose the petitioner had in view in making this application. "

Applying these principles to the present case where the respondent at the beginning of his career as a journalist without any previous experience and without any intention to prejudice the trial of the case published the article, and that at a very early stage of the proceedings in the Magistrate's Court, resulting in its having little or no effect in regard to the actual trial of the case, I think the ends of justice would be amply met if the rule were made absolute and no further punishment were inflicted.

My order therefore is that the rule be made absolute.

BASNAYAKE J.—.

On the application of the Attorney-General a Rule Nisi for contempt of Court was issued on the respondent Krishnapillai Vaikunthavasan. The allegation in the application was that on the 20th day of April, 1951, the respondent published in the issue of the newspaper called " People's Voice " an article entitled " Threat to Murder Leftist Leader—Hakmana Police Run Riot ". That article contained the following objectionable passages:—

> " Under the auspices of the Rural Development Movement the D. R. O. and Medical Officer of Health had organised a National Day Celebrations at Hakmana on New Year Day on the 14th. The celebrations took place at the police station.
>
> In spite of the exhortations of the Minister for State and his prohibition stalwarts the consumption of liquor seems to have been one of the principal part of the celebrations. Quite a number of Richard Aluvihare ' most efficient ' police force were dead drunk.
>
> A quarrel arose between one of the local residents Warnasuriya and a police constable. It led to words and others had to intervene and the resident was persuaded to go home where he was locked inside his house by relations who were afraid of further trouble.
>
> But our ' efficient ' police force was not going to leave it at that. Three police constables who were playing a prominent part in the celebrations. one of whose main aims was to inculcate crime prevention

[1] *(1941) 42 N. L. R. 481.*

in the area, went in search of Warnasuriya. Meeting his brother, Albert, on the way they stabbed him. Then it was a case of stabbing everybody who came on the scene. One man, Lambis Silva, was stabbed to death. Another woman died of injuries later. Several others are lying in a critical condition in hospital . . . . .

The incidents took place within a few yards of the police station.

How do you account for this wanton lawlessness on the part of the police force ? Is it that they were just drunk or had run amok ? By careful investigation and discussion with a number of people of the area I have come to the conclusion that this sort of behaviour is part of the deliberate attempt of the police, acting on instructions, to intimidate and terrorise the people of the area.

We must remember that Hakmana is in the Matara District—the Red stronghold, the Stalingrad of Ceylon, as it is usually called. The Member for Hakmana is a Communist. Hence the police have been given instructions to teach the people of the area a good lesson for the ' crime ' of having voted Communist and to bring them round to a suitable frame of mind before the next general elections. They have been instructed to use force indiscriminately and no questions would be asked. In obeying these instructions to the letter the poor police constables are sometimes not able to draw a line between communist supporters and U. N. P. supporters. This is what happens when the police is trained to kill . . . . .

The crime at Hakmana was committed with weapons taken from the police station. The constables left after making threats in the hearing of the Inspector of Police and yet the Inspector went to the scene only after the killings. The weapons were handed over to him by the constables and the Inspector is still on duty . . . . .

The position in the Southern Province has degenerated to such fantastic proportions that the other day the Superintendent of Police, Mr. Colin Wijeyasooriya, had the audacity to send a message to Dr. S. A. Wickremasinghe, the communist leader, through Mr. Premalal Kumarasiri, that if the Doctor would not discontinue his attacks on the police, he would be opening himself to assault and risk of murder by the police . . . . .

The U. N. P. Government must hold itself responsible before the people for these police brutalities and murders. "

When the Rule came up for hearing, counsel for the respondent tendered an affidavit in which the respondent while admitting his offence denied that he ever intended to commit a contempt of court. He apologised and expressed his contrition and offered to publish an unqualified withdrawal of the offending passages. He pleaded that the offence was unwittingly committed owing to his inexperience as a journalist.

In the course of his affidavit he stated—

(*a*) that he was the editor, printer, publisher, and proprietor of a weekly English newspaper called " People's Voice ",

(*b*) that he printed and published the article in question,
(*c*) that he was not the author of the article,
(*d*) that he started the publication of the paper in question only in January, 1951,
(*e*) that he had no previous training or experience as a journalist as he had been a clerk since he left school,
(*f*) that he had no intention of prejudicing the fair hearing of the case against the assailants of the deceased Lambis Silva,
(*g*) that he was not aware that at the time he published the article legal proceedings had commenced,
(*h*) that his paper is printed and published and mainly circulated in Colombo and that no more than 40 copies were in circulation in Matara and Galle.

The only question that now remains for consideration is the sentence that should be passed on the respondent. Learned counsel pleaded that the respondent should be treated as a first offender and discharged with a warning and not punished. He relied strongly on the case of *Veerasamy v. Stewart et al.*[1].

According to the passages quoted in the application of the Attorney-General, it would appear that the writer purported to give a first-hand account of the events that occurred at the National Day Celebrations at Hakmana on 14th April, 1951. Now the respondent's publication was made on 20th April, 1951. Marambe Liyanage Lambis Silva had been killed on 14th April, 1951, and the Magisterial inquiry into his death had commenced on 15th April, 1951. The inquiry stood adjourned for 28th April, 1951. In a case of contempt of this nature the question that arises for decision is not whether the publication in fact interferes, but whether it tends to interfere with the due course of justice, and if it tended to prejudice either the mind of the judge or any other person who would have to consider the case, then it is a publication that ought not to be allowed. There can be no doubt that the article in the instant case, which contains a highly coloured and far from impartial account of the events leading to the death of Lambis Silva, tends to interfere with due course of justice.

In regard to the question of sentence I find myself unable to take the view that the respondent should go unpunished. Contempt of Court is a very serious offence and is ordinarily punishable with imprisonment. The case books contain instances in which offenders have been punished with a fine. The instances in which guilty offenders have been discharged with a warning are rare. The most recent English case which is one of those rare instances is *Rex v. Weisz & another*[2]. The reasons for the course taken by the Court are stated thus in the judgment of Lord Goddard:

"We have now to consider what penalty, if any, should be imposed on Mr. Martin. We do not overlook the fact that he sent the papers to counsel, who settled the indorsement. We have not been asked to hear any application against counsel, and therefore only say this;

[1] *(1941) 42 N. L. R. 481.* [2] *(1951) 2 T. L. R. 337; (1951) 2 All E. R. 408.*

no doubt, had counsel been asked to explain his action, he would have said, as Mr. Martin has said, that this form of indorsement has been often used in these cases without its ever having been said to be a contempt, and he might well have pointed particularly to *Gugenheim v. Ladbroke & Co. Ltd.*[1]. We recognize that there is considerable force in this, and as we have already said with regard to the solicitor it ought to be regarded as strong mitigation. We hope, however, that counsel as well as solicitors will always bear in mind that they owe a duty to the Court as well as to their clients, and that a main object in requiring the signature of counsel or a solicitor to pleadings settled by them is to prevent issues, whether called feigned or fictitious, from being presented to the Court. Henceforward there will be no excuse for using this form of indorsement, or, we would add, one such as ' Money due under a contract in writing made between the parties ', when the claim is simply in respect of gaming or wagering. While holding Mr. Martin guilty of a contempt, we acquit him of any intention to act in contempt of the Court, and he has, by his counsel, offered a full apology. We therefore impose no penalty on him . . . ."

There appears to be an impression that an apology to the Court erases the effect of a contempt of this nature. In order to remove that impression I wish to repeat here the words of Darling J. in *Rex v. Clarke* [2]:

" It is not to the Court that an apology can do any good. Apology is due to the person whose trial might have been prejudiced, and the public whose interest it is to see that justice is fairly administered in this case, and not to the Court which has no feeling in the matter."

For, as was observed by Darling J. in the same case:

" When one does repent of a wrong we will not punish him as though he still persisted in his wrongdoing."

Now, in regard to the case on which counsel relied, I wish to observe with the greatest respect that the decisions collected therein to my mind afford no support for the course taken, nor am I able to reconcile the concluding paragraph of that judgment with the earlier observations, three passages of which I quote below:—

" It may well be that when the true facts are known these descriptions may fit the crime, but the use of these expressions at this stage is calculated to prejudice the accused in regard to the charges preferred against them."

" I fully appreciate this and I should not have been disposed to take serious notice of the petitioner's complaint if it related only to the use of the word ' murder ', and if that word occurred in this first editorial only . . . . But the difficulty here is the insistence upon the fact that the offence is murder. "

" Again it may well be that when the true facts are ascertained by the proper tribunal these statements may prove to be correct, but to say all this at this stage when the case is due to be tried is calculated to prejudice the accused. "

[1] *(1947) 1 All E. R. 292.* [2] *(1910) 103 L. T. 636.*

I find myself unable to regard that case as an authority for the proposition that an offender guilty of contempt should go unpunished when he acknowledges his offence, expresses regret, and offers to make amends. The instances where offenders guilty of contempt even though of a technical nature have been punished despite the tendering of an apology and the expression of regret are many. It is sufficient to mention here the cases of *In re Labouchre & another—Ex parte the Colombus Company, Ltd.* [1] and *Greenwood v. The Leather-Shod Wheel Company, Ltd.* [2]. The latter case is similar to the instant case in many respects. There too the respondent admitted his offence and expressed his regret both by affidavit and through his counsel. He had no direct interest in the prosecution of the action, he had been editor of the paper for hardly a month when the contempt was committed, he was a young man and had but little experience in the management of newspapers, and he offered to publish an apology in his paper. Despite all this he was asked to pay £20 and the costs of the applicant. When dealing with the question of punishment it must be remembered that the jurisdiction of the court exists not only to prevent the mischief in this particular case, but also to prevent similar mischief arising in other cases. I have given very careful thought to the question of punishment. In view of the repentance of the respondent and the mitigating circumstances, I refrain from imposing a sentence of imprisonment. I sentence the respondent to pay a fine of Rs. 250. If he does not pay it, he will undergo six weeks' rigorous imprisonment.

I make no order as to costs as these proceedings are of a quasi-criminal nature and under our law costs cannot be awarded in criminal or quasi-criminal proceedings except in the case provided by section 352 of the Criminal Procedure Code.

GUNASEKERA J.—I concur in the order proposed by my brother Basnayake.

Rule made absolute.