1936 *Present :* **Abrahams C.J., Koch and Moseley JJ.**

ABDUL WAHAB *v.* A. J. PERERA *et al.*

IN THE MATTER OF A RULE FOR CONTEMPT OF COURT UNDER SECTION 51 OF THE COURTS ORDINANCE.

P. C. Avissawella, No. 12,421.

Contempt of court—Criminal charge pending against person—Distribution of inflammatory leaflet—Suggestion that the accused is guilty of offence—Courts Ordinance, s. 51.

Where, pending a criminal charge against a person, the respondents distributed among the public a leaflet containing inflammatory language, calculated to excite racial feeling, and suggesting that the accused in the case was guilty of the offence with which he was charged,—

***Held,* that the respondents were guilty of contempt of Court.**

THIS was an application for a rule on the respondents for contempt of court in respect of a notice issued by them convening a public meeting to discuss a criminal charge pending before the Police Court of Avissawella, in which the petitioner and some others were charged with being members of an unlawful assembly, rape, and abduction.

H. V. Perera, K.C. (with him *E. A. P. Wijeratne* and *R. G. C. Pereira*), for the petitioner.

M. T. de S. Amerasekere (with him *T. S. Fernando*), for the respondents.

J. W. R. Ilangakoon, A.-G. (with him *S. J. C. Schokman, C.C.*), for the Crown.

October 12, 1936. ABRAHAMS C.J.—

There is no doubt that this is a bad contempt of court. The language used in the leaflet, which was apparently widely distributed, can only be interpreted in one way and that is that the person named therein is guilty of the offence with which he was charged. Further, the language used is most inflammatory. It is calculated to excite racial feeling and also social indignation— a Sinhalese lady being said to have been outraged by a rich man belonging to some Muhammadan sect.

It is hardly necessary for us to enlarge on the mischievousness of such a pamphlet. In a country where trial by jury for serious offences is the rule, jurymen may be deterred from doing their strict duty by a knowledge that in the minds of the people of the district in which the crime has been committed the accused person was regarded as guilty long before he was brought to trial and in a more subtle way possibly witnesses for the prosecution and the defence may be in the one case influenced to exaggerate their evidence and in the other actually deterred from giving it. As to whether the respondents actually intend to prejudice a fair trial or not, we are of the opinion that they never stopped to think about it. As is unfortunately not seldom the ways of men in such matters,

they assumed the guilt of the accused and could not contemplate any other conclusion to the trial than his conviction. But that they acted with deliberate malice against the accused is a matter which we do not hold to be proved.

This, we understand, is the first case of its kind that has occurred in the Island. We hope that it will be a very long time before there is another. The people of this country have travelled far along the road which leads to the management of their own affairs. They have also travelled very fast along that road and must realize that these people who have the privilege of making the laws which govern them have also the stern obligation of obeying those laws.

We have hesitated whether it is not our duty to mark our disapproval of the action of the respondents by sending them to prison. But as this is the first case of its kind, as we have already said, and the respondents have not disputed the facts and not raised any technical points but have submitted themselves fully and humbly to the judgment of the Court, we have no desire in this case to be harsh. We fine them each Rs. 200 or in default sentence them to undergo three months' simple imprisonment. On the application of Mr. Amerasekere the respondents are granted ten days in which to pay the fine.

KOCH J.—I agree.

MOSELEY J.—I agree.

Rule made absolute.