1954 *Present :* **Gratiaen J., Gunasekara J. and Pulle J.**

IN RE S. A. WICKREMASINGHE

IN THE MATTER OF A RULE ISSUED ON DR. SUGISWARA ABEYWARDENA WICKREMASINGHE TO SHOW CAUSE WHY HE SHOULD NOT BE PUNISHED FOR AN OFFENCE OF CONTEMPT OF COURT

Contempt of Court—Extent of right to criticise Judges.

In the course of a speech at a public meeting the respondent criticised Judges in such a manner that no person who may have been persuaded by the speech to accept the views expressed in it about the judiciary could continue to have confidence in the impartiality of the courts of justice, and in particular of the courts in the city of Galle.

Held, that it is no less an offence of contempt of court to scandalise the judiciary generally than to scandalise the Judge or Judges of a particular court.

IN the matter of a rule issued for Contempt of Court.

T. S. Fernando, Q.C., Solicitor-General, with *Douglas Jansze* and *Walter Jayawardena*, Crown Counsel, as *amicus curiae.*

Respondent in person.

Cur. adv. vult.

January 25, 1954. GUNASEKARA J.—

A Rule issued by this Court on December 9, 1953, called upon the respondent to " show cause why he should not be punished for an offence of contempt against and in disrespect of the authority of the Courts of this Island and in particular of the District Court and the Magistrate's Court of Galle " committed by the uttering of certain words in the course of a speech made by him at a public meeting held at the Galle Esplanade on October 4, 1953. The speech was made in Sinhalese, and the passage

that was alleged to constitute a contempt was set out in the Rule togethe with a translation of it in these terms :—

" I think there is no other Police Station anywhere in Ceylon which so indecently, and for no reason, scorns the rights of the people in so base a manner as the Galle Police (applause and laughter). Look ! I now come from Akuressa. Even in those village areas a permit is allowed to speak through the loud speaker till half-past six. In the City of Galle, a city where lights are on—it must be stopped at six, it is said. Yes ; cannot they (those fellows) see after six ? (laughter). That has happened because of Police chiefs of that same kind—chiefs who lead extremely uncultured and uncivilised lives ; Courts also exist which suit them well—the great pestilence of this city today. If there are judges (in Courts) who have self-respect and a back-bone it will become possible to make these a little more disciplined than this. What has happened now is that there now exists a herd who (act) as the Police say—a herd of judges—who expect to safeguard their jobs by obeying the behests of the Police. It is not a case of giving independent judgments ; it is a very great pestilence that has come about in Ceylon. "

The respondent, who appeared before us in person, admitted that he had no cause to shew why he should not be punished. He said, however, that the purpose of his speech had been to expose the wrongdoing of the police, and in particular of the police at Galle, and to suggest means by which they might be prevented from abusing their powers, and that he had not intended " to bring the judiciary into contempt ". He had not known at the time that " general criticisms " could amount to a contempt of court, but he had since been advised by his lawyers that the uttering of the words in question did constitute a contempt. " I do express my regret ", he said, " because unintentionally I broke the law by criticising the courts and brought the judiciary into disrepute. My intention was to criticise the police but not the courts ".

The respondent did not contradict or challenge the accuracy of the statements contained in the affidavits upon which the Rule was issued. The words imputed to him in the Rule are quoted from a report which, according to some of these affidavits, is based on an electrical recording of his speech made on a " Grundig " tape recorder. Further, it appears from the affidavits of four of the deponents, who say that they heard the speech, that they heard the respondent say about the judiciary what is imputed to him in this report. There can be no doubt that he did utter the words in question in a speech made at a public meeting held on the Galle Esplanade as alleged in the Rule.

It is true that the main topic of the speech was the conduct of the police. But it is also true that in his speech the respondent used language that stated or implied that the judges were devoid of self-respect ; that they had not the courage to do justice in cases where the police had done wrong ; and that they were so shameless and weak and dishonest as to give judgment in such cases in accordance with orders received from the police, for fear that otherwise they might be removed from office. It is idle for the respondent to pretend that he did not intend to bring the

judiciary into contempt; though it may be true that he did not know at the time that this "general criticism" of the judges amounted to a contempt of court, and in that sense it was "unintentionally" that he "broke the law".

What the respondent has chosen to describe as a "general criticism" is a scandalising of the general body of judges and, in the light of the context, a scandalising in particular of the judges of the courts sitting in Galle. It is far removed from an exercise of the right of criticism, about which it has been said:

> "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." *Ambard v. Attorney-General for Trinidad and Tobago* [1].

While there is no question that judges and courts are open to criticism, there is no longer any room for doubt that scandalising a judge is punishable as a contempt. An argument that no such branch of the law of contempt existed in this country was rejected by a Bench of three Judges in the case of *Armand de Souza* [2]. "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". *Reg. v. Gray* [3]. The object of this branch of the law, of course, is not the protection of the personal reputation of judges but the protection of the authority of the courts, which must be preserved in the interests of the community. It is therefore no less an offence to scandalise the judiciary generally than to scandalise the judge or judges of a particular court. No person who may have been persuaded by the respondent's speech to accept the views he expressed about the judiciary could continue to have confidence in the impartiality of the courts of justice, and in particular of the courts in the city of Galle.

For these reasons we convicted the respondent of the offence with which he was charged, and we sentenced him to six weeks simple imprisonment and a fine of Rs. 1,000 or a further term of six weeks simple imprisonment in default of payment.

The learned Solicitor-General brought to our notice a previous conviction of the respondent on a charge of disaffection laid against him under the Defence (Miscellaneous) Regulations, 1939. That was a conviction in 1940, and we did not take it into account in sentencing the respondent for the present offence. On the other hand, we did not find it possible to regard his expression of regret as a sufficient apology for his offence.

GRATIAEN J.—I agree.

PULLE J.—I agree.

Rule made absolute.

[1] [*1936*] *A. C. 322 at 335.* [2] (*1914*) *18 N. L. R. 33.* [3] [*1900*] *2 Q. B. 36.*