CRIMINAL APPELLATE.

Before Mr. Justice Marten, Mr. Justice Hayward and Mr. Justice Kajiji.

1920

March 12

IN RE MOHANDAS KARAMCHAND GANDHI AND MAHADEO HARIBHAI DESAI.*

Contempt of Court—Publication of proceedings pending in a Court without leave of the Court—Comments on proceedings pending in a Court—Jurisdiction of the High Court in respect of contempt of inferior Courts—High Court has power to protect inferior Courts against contempt—Practice.

Comments on or extracts from any pending proceedings before a Court cannot be published unless the leave of the Court be first obtained.

Any act done or writing published calculated (*a*) to obstruct or interfere with the due course of justice or the lawful process of the Court, or (*b*) 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* (1), followed.

The High Court has power to protect in a proper case Courts in the mofussil, over which it exercises supervision, against contempt.

Rex v. *Parke* (2) and *Rex* v. *Davies* (3), followed.

The District Judge of Ahmedabad submitted in a letter to the High Court for its determination certain questions regarding the conduct of two barristers and three pleaders who had taken Satyagraha pledge, i. e., a pledge " to refuse civilly to obey the Rowlatt Act and such other laws as a Committee to be thereafter appointed may think fit". The opponents, Editor and Manager, of a weekly newspaper, published the letter with comments while proceedings against those barristers and pleaders under the disciplinary jurisdiction of the High Court were pending:—

Held, (1) that the opponents were guilty of contempt of Court in publishing the letter pending the hearing of the proceedings ;

(2) that the comments made on the letter were of a particularly intemperate and reprehensible character and constituted a serious contempt of Court.

PROCEEDINGS in contempt of Court.

ON 22nd of April 1919, B. C. Kennedy, the District Judge of Ahmedabad, addressed a letter to the Registrar of the High Court submitting for the determination of the High Court certain questions regarding the conduct of two barristers and three pleaders who had taken Satyagraha pledge. The letter is reproduced in the judgment of Macleod C. J., at p. 21, *ante*, in the proceedings against those barristers and pleaders under the disciplinary jurisdiction of the High Court.

*Criminal Application No. 449 of 1919.

(1) [1900] 2 Q. B. 36, 40.

(2) [1903] 2 K. B. 432.

(3) [1906] 1 K. B. 32.

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On 12th of July 1919, notices were issued by the High Court in its disciplinary jurisdiction to the barristers and pleaders mentioned in the said letter.

On 6th August 1919, the opponent No. 1, the editor, and opponent No. 2, the publisher, of a weekly newspaper called the *Young India*, published the said letter under the heading "O' Dwyerism in Ahmedabad." In an article the following comments appeared on the then pending proceedings in the High Court under its disciplinary jurisdiction:—

SHAKING CIVIL RESISTERS.

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But an echo of the spirit is heard nearer Bombay also. We now know more fully than we did before the cause of the High Court notice served upon some of the Satyagrahi lawyers of Ahmedabad. The notice was prompted by a letter addressed by the District Judge of Ahmedabad to the Registrar of the Bombay High Court. We give the full text of the letter elsewhere. It remains to be seen what action the High Court will take when the case is argued before it on the 25th instant. But it is curious the way the District Judge has prejudged the issue. He considers the activities of the 'League'—we suppose he means the Satyagrahi Sabha—to be illegal. He does not hesitate to make the impudent suggestion that 'there can be no doubt that the suspension is merely a device to avoid the possibility of punishment falling on the Satyagrahis in respect of acts directly or indirectly due to their teaching and influence'. We use the adjective 'impudent' advisedly, for the very next paragraph of the precious letter states the belief of the writer that 'the above gentlemen are sincerely and conscientiously under the impression that the Rowlatt legislation is a crime. As they have that impression, I would not blame them for going to the edge of the law to oppose it'. The imputation of an unworthy motive to such men would be ungentlemanly in a stranger, it is unpardonable in one who claims to have the high opinion that the learned District Judge claims to have, of the lawyers in question. The last paragraph of the letter clearly discloses the feelings of the District Judge in the matter. He says he has 'no power to deal with the two barristers', and adds, 'very likely recent events in Ahmedabad may make it unnecessary to proceed against them' meaning, we presume, that they would be charged and convicted by the Special Tribunal. They have not been charged, it is true. But that was no fault of the District Judge. He had made up his mind that they had committed a criminal breach of the law of the land.

Thus we see that the attempts are being made with more or less vigour to suppress civil resisters. Those who are making the attempt are beating against the wind. The spirit of civil resistance thrives under suffering. Here and there a civil resister so-called may succumb and under the pressure of suffering deny his doctrine. But when once kindled it is impossible to kill the spirit of civil resistance. The only pity of it is that these traducers of civil resistance and civil resisters are consciously or unconsciously becoming the instruments for propagating Bolshevism as it is interpreted to us in India, i. e., the spirit of lawlessness accompanied with violence. Bolshevism is nothing but an extension of the present method of forcibly imposing one's doctrine or will upon others. The Government of Burma, the Government of the Punjab, the District Judge of Ahmedabad are all in their own way endeavouring forcibly to impose their will upon others, in this case, civil resisters. But they forget that the essence of

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civil resistance is to resist the will of the wrong-doer by patient endurance of the penalty of resistance. Civil resistance is, therefore, a most powerful antidote against Bolshevism and those who are trying to crush the spirit of civil resistance are but fanning the fire of Bolshevism."

On 18th of October, the Registrar, High Court, wrote to Gandhi:—

"I am directed by the Honourable the Chief Justice to request you to attend His Lordship's Chamber on Monday the 20th instant at 11 o'clock A. M. so that you may have opportunity of giving an explanation regarding the publication in 'Young India' on the 6th August of a private lettter addressed by Mr. Kennedy, District Judge of Ahmedabad, to the Registrar, Bombay High Court, together with certain comments thereon."

To this Gandhi wired saying that he was unable to attend as he was going to the Punjab and asked whether an explanation in writing would do.

On 20th October 1919, the Registrar, High Court, wrote to Gandhi:—

"With reference to your telegram of the 20th instant, I am directed by the Hon'ble the Chief Justice to say that His Lordship does not want to interfere with your preparations for going to the Punjab. His Lordship is therefore willing for the present to receive a written explanation. The point I am directed to state is that the letter and the comments thereon were published without the permission of this Court at a time when proceedings were pending in the Court in connection with the said letter."

On 22nd October 1919, Gandhi replied:—

"I am in receipt of your letter of the 20th instant regarding the "publication in 'Young India' on the 6th August of a private letter addressed by Mr. Kennedy, District Judge of Ahmedabad" and comments thereon in 'Young India.'

I am grateful to the Honourable the Chief Justice for not interrupting my preparations for going to the Punjab. The letter in question was in no way understood by me to be private nor did the contents lead me to think so. It came into my possession in the ordinary course, and I decided to publish it only after I understood that it was received by the giver in a proper, regular and open manner. In my humble opinion I was within the rights of a journalist in publishing the letter in question and making comments thereon. I believe the letter to be of great public importance and one that called for public criticism.

I trust that His Lordship will be satisfied with the explanation submitted by me.

On 31st October 1919, the Registrar, High Court, wrote to Gandhi:—

"I am directed to acknowledge the receipt of your letter of the 22nd instant and to inform you that the Hon ble the Chief Justice regrets that he cannot regard your explanation as satisfactory. However his Lordship is willing to concede that you were unaware that you were exceeding the privilege of a journalist provided that you publish in the next issue of 'Young India' an apology in the accompanying form."

The apology ran as follows:—

"Whereas on the 6th August 1919 we published in Young India a private letter written by Mr. Kennedy, District Judge of Ahmedabad, to the Registrar

of the High Court of Justice at Bombay, and whereas on the same date we also published certain comments on the said letter and whereas it has been pointed out to us that pending certain proceedings in the said High Court in connection with the said letter we were not justified in publishing the said letter or in commenting thereon. Now we do hereby express our regret and apologise to the Hon'ble the Chief Justice and Judges of the said High Court for the publication of the said letter and the comments thereon."

On 7th November 1919, Gandhi wired to the Registrar:—

"Letter 31st ultimo just received, Lahore. Regret explanation unsatisfactory. Am referring matter to counsel. Hope address on receipt counsel's opinion."

On 11th December 1919, Gandhi wrote to the Registrar.—

" With reference to your letter regarding the publication of the letter of the District Judge, Ahmedabad, in the matter of the Satyagrahi lawyers, I beg to state that I have now consulted legal friends and given much anxious consideration to the suggestion made by his Lordship the Chief Justice. But I regret to state that I find myself unable to publish the suggested apology. The document in question came into my possession in the ordinary course and being of great public importance I decided to publish and comment npon it. In doing so I performed in my humble opinion a useful public duty at a time when there was great tension and when even the judiciary was being affected by the popular prejudice. I need hardly say that I had no desire whatsoever to prejudge the issues that their Lordships had to decide.

I am anxious to assure his Lordship the Chief Justice that at the time I decided to publish the document in question, I had fully in mind the honour of journalism as also the fact that I was a member of the Bombay Bar and as such expected to be aware of the traditions thereof. But thinking of my action in the light of what has happened I am unable to say that in similar circumstances I would act differently from what I did when I decided to publish and comment upon Mr. Kennedy's letter. Much, therefore, as I would have liked to act upon his Lordship's suggestion, I feel that I could not conscientiously offer any apology for my action. Should this explanation be not considered sufficient by his Lordship I shall respectfully suffer the penalty that their Lordships may be pleased to impose upon me.

I beg to apologise for the delay caused in replying to your letter. I have been touring continuously in the Punjab, and am not likely to be free before the beginning of the next month. "

On 11th December 1919, before the receipt of the above letter, the Registrar applied for a rule *nisi* calling upon the opponents to show cause why they should not be committed or otherwise dealt with according to law for contempt of Court in respect of the publication of the said letter.

The rule was granted by Shah and Crump JJ.

On 27th February 1920, Gandhi wrote to the Registrar:—

" I enclose herewith the statement I wish to read or submit to the Court on the 3rd proximo, the date fixed for taking the rule *nisi* issued against me. I enclose also Mahadev H. Desai's statement."

[The statements are reproduced in the judgment of Mr. Justice Marten].

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Strangman and *Bahadurji*, instructed by *Little & Co.*, in support of the rule.

The opponents appeared in person.

Strangman.—The publication of the letter and the comment on it in *Young India* constituted contempt of Court in two respects: firstly, in scandalising Mr. Kennedy, and, secondly, as an attempt to interfere with the course of justice in the High Court: see *Reg. Gray*[1]. The High Court could punish for contempt of inferior Courts. If anything was done in the face of the Court which amounted to contempt, the Court (i. e., the District Court) could take action; but if anything was done outside the District Court and which the High Court thought would amount to contempt of that Court then the High Court could punish such contempt of the inferior Court: see *Rex* v. *Davies*[2].

Publication of the letter while the matter was *sub judice* amounted to contempt of Court: see *Rex* v. *Parke*[3]. Publication after the trial was different from publication before trial.

Gandhi.—I do not wish to argue the legal points because I do not rest my case such as it is on a point of law. The Court has many undefended cases and I wish to be considered as undefended. I would be entirely content with your Lordships' findings on points of law. Yet I would say that the arguments of the Advocate General have not convinced me. What I felt was that I had not prejudiced any party. I have commented on the District Judge not as a Judge but as an individual.

[MARTEN J.—Take the case of a sensational murder trial. Suppose the press commented on the events while the case was going on. What would happen?]

There is a distinction, as a layman would find, between these two cases. The District Judge wrote that letter as a complainant and was not sitting in Court to decide an action. The whole law of contempt of Court was that one ought not to do anything, or comment on the proceedings in Court while the matter was *sub judice*. But here the District Judge did something in his private capacity. I have not endeavoured to prejudice in any shape or form the decision of the High Court.

[MARTEN J.—If the Press made comments during pendency of proceedings, it would be dangerous].

If a son brought a suit against his father and if a journalist

(1) [1900] 2 Q. B. 36, 40.
(2) [1906] 1 K. B. 32
(3) [1903] 2 K. B. 432.

thought that his action was wrong, the journalist would be justified in holding the son up to public ridicule in the public press, notwithstanding that the suit was still undecided. Did our Courts prevent public men from inducing litigants to settle their claims outside? There was not an iota of disrespect shown to the Judge or the Judges in comments on this letter. I have not endeavoured to prejudice in any shape or form the course of justice.

Desai, opponent No. 2, associated himself with all that was said by Gandhi and submitted that he would cheerfully and respectfully abide by the orders of the Court.

Cur. adv. vult.

MARTEN J.—The respondents Mohandas Karamchand Gandhi and Mahadev Haribhai Desai are the editor and publisher respectively of a newspaper called *Young India*. They are charged with contempt of Court in publishing in that newspaper, on the 6th August 1919, a letter dated the 22nd April 1919 and written by the District Judge of Ahmedabad (Mr. B. C. Kennedy) to the Registrar of this Court, and also with publishing comments on that letter. The gist of the charge is that the letter in question was a private official letter forming part of certain proceedings then pending in this Court, and that the comments which the respondents made in their newspaper were comments on that pending case.

The facts are not in dispute, and may be stated briefly. The case which I have referred to is *In re Jivanlal Varajrai Desai*.[1] It arose under the disciplinary jurisdiction of this Court, in consequence of the above letter from the District Judge, whereby he submitted for the determination of this Court the question of the pleaders of the Ahmedabad Court who had signed what is known as the "Satyagraha pledge," whereby they undertook (amongst other things) "to refuse civilly to obey these laws (viz. the Rowlatt Act) and such other laws as a committee to be hereafter appointed may think fit." The learned District Judge also mentioned the names of two barristers who had signed the pledge. The point was whether that pledge was consistent with their duties as advocates and pleaders. The result of that letter was that notices were issued by this Court, on the 12th July 1919, against the advocates and pleaders in question, and it was eventually held, on the 15th October 1919, by a Bench of this Court consisting of my Lord the Chief Justice and Mr. Justice Heaton and Mr. Justice Kajiji that the Satyagraha pledge which these

(1) (1919) 22 Bom. L. R. 13.

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advocates and pleaders had taken was not consistent with the performance of their duties as such to the Court and the public.

Meanwhile, viz., on the 6th August 1919, the present respondents had published the letter in question in *Young India*, and made there the comments complained of. They had obtained the the letter in this way. For the purposes of the defence to the charge, a copy of the District Judge's letter had been supplied by the High Court to Jivanlal V. Desai, one of the counsel in question. He gave a copy to another respondent Kalidas J. Jhaveri, and the latter handed it to the editor of *Young India*, who is reputed to be the author of the Satyagraha pledge. For his conduct in so doing, Mr. Kalidas J. Jhaveri was severely reprimanded by the Chief Justice and Mr. Justice Heaton on the 10th November 1919: see *In re Kalidas J. Jhaveri.*[1]

I may now turn to the newspaper itself. On page 1 under the heading "O'Dwyerism in Ahmedabad", the District Judge's letter to this Court is set out in full. On page 2 there is a leading article headed "Shaking Civil Resisters." We have read the whole of it and I need only refer to some of its more salient features. At the outset, it mentions an alleged declaration by Sir Michael O'Dwyer of his intention of taking note of the anti-Rowlatt legislation agitation and passive resistance demonstration before there was any disturbance of the peace. It then states that Sir Michael had succeeded to an eminent degree in disturbing the peace in the Punjab, and that "the O'Dwyrean spirit" had travelled to Burma. Then follows a comment on the local Government there. The article then proceeds to say that an echo of the spirit is heard nearer Bombay, and mentions the above High Court notice to the Ahmedabad lawyers, and that it was prompted by the above letter from the District Judge, and that it remains to be seen what action will be taken by the High Court when the case is argued before it. The article then states that the District Judge has prejudged the issue: that he has made an impudent suggestion which is then quoted: that the adjective "impudent" is used advisedly: that his imputation would be ungentlemanly in a stranger and is unpardonable in his case. The article then suggests that the last paragraph of the letter means that the two barristers would be charged and convicted by the Special Bench, and that it was not the fault of the District Judge that they had not been so charged, and that the District Judge had made up his mind that they had committed a criminal breach of the law of the land. Then in the concluding portion,

(1) (1919) 22 Bom. L. R. 31.

the article states that these traducers of civil resistance and civil resisters are becoming the instruments for propagating Bolshevism, i. e. the spirit of lawlessness accompanied with violence, and that the Government of Burma, the Government of the Punjab and the District Judge of Ahmedabad, are all in their own way endeavouring forcibly to impose their will upon civil resisters, but that those who are trying to crush the spirit of civil resistance are but fanning the fire of Bolshevism. It will be noticed that this article shews on the face of it that the proceedings were then *sub judice*, and that it nowhere mentions Mr. Kennedy's name, but refers to him throughout as the District Judge of Ahmedabad.

After the proceedings against the pleaders had been disposed of, the editor of *Young India* was asked, on the 18th October 1919, to give an explanation regarding the publication of the letter and the above comments. Certain correspondence thereupon passed between him and the Registrar of this Court acting under the directions of the Chief Justice. We have read all this correspondence, and I need not repeat it in full. In his letter of the 22nd October, the respondent Gandhi wrote:

"In my humble opinion I was within the rights of a journalist in publishing the letter in question and making comments thereon. I believed the letter to be of great public importance and one that called for public criticism."

The reply of the 31st October was that this could not be regarded as a satisfactory explanation, but that the Chief Justice was willing to concede that the editor was unaware that he was exceeding the privilege of a journalist, provided he would publish in *Young India* an apology in the form therewith enclosed.

On the 7th November the respondent Gandhi telegraphed that he was referring the matter to counsel.

On the 11th December, the Acting Advocate General initiated the present proceedings by applying for a rule *nisi* against the respondents. This application was granted by Mr. Justice Shah and Mr. Justice Crump on that day, but the rule itself was not actually issued till the 19th December, and it bears the latter date. Meanwhile, a further letter, dated the 11th December, had been received from the respondent Gandhi. The writer expressed his inability to publish the suggested apology, and stated that in publishing and commenting on the latter, he had performed a useful public duty at a time when there was great tension and when even the judiciary was being affected by the popular prejudice: but that he had had no desire whatsoever to prejudge the issues which their Lordships had had to decide. Then, after referring to the honour of journalism and to his membership of the Bombay

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Bar and its traditions, the writer stated that in similar circumstances he would not act differently, and that he could not conscientiously offer any apology, and that, if that explanation was not considered sufficient, he would respectfully suffer the penalty

Subsequently, at the respondents' request, the hearing of the rule was postponed, and on the 27th February 1920 they made the following statements.—

The respondent Gandhi stated:—

" With reference to the rule-*nisi* issued against me I beg to state as follows:—Before the issue of the rule certain correspondence passed between the Registrar of the Honourable Court and myself. On the 11th December I addressed to the Registrar a letter which sufficiently explains my conduct. I, therefore, attach a copy of the same letter. I regret that I have not found it possible to accept the advice given by His Lordship the Chief Justice. Moreover, I have been unable to accept the advice because I do not consider that I have committed either a legal or a moral breach by publishing Mr. Kennedy's letter or by commenting on the contents thereof. I am sure that this Honourable Court would not want me to tender an apology unless it be sincere and express regret for an action which I have held to be the privilege and duty of a journalist. I shall therefore cheerfully and respectfully accept the punishment that this Honourable Court may be pleased to impose upon me for the vindication of the majesty of law.

I wish to say, with reference to the notice served on Mr. Mahadeo Desai, the publisher, that he published it simply upon my request and advice."

The respondent Desai stated:—

" With reference to the rule-*nisi* served upon me, I beg to state that I have read the statement made by the editor of Young India and associate myself, with the reasoning adopted by him in justification of his action. I shall therefore cheerfully and respectfully abide by any penalty that this Honourable Court may be pleased to inflict on me."

At the hearing before us, both the respondents appeared in person. The respondent Gandhi stated (*inter alia*) that he did not want to go beyond the above statements already made by him : that he would accept any ruling of law laid down by this Court, and that while submitting he had not committed any contempt of Court, he did not want to argue the point. The respondent Desai stated that he associated himself with his co-respondent.

As to the general principles of law to be applied to this case, there can, I think, be no doubt. Speaking generally, it is not permissible to publish comments on or extracts from any pending proceedings in this Court, unless the leave of the Court be first obtained. Many good reasons may be advanced for this but the underlying principle is, I think, that of the due administration of justice for the public benefit, one incident of which demands that as a matter of common fairness, both parties shall be heard at the same time and in the presence of each other on

proper evidence by an independent and unprejudiced tribunal. That object would be frustrated if newspapers were free to comment on or to make extracts from proceedings which were still *sub judice*. It matters not whether those comments and extracts favour prosecutor or accused, plaintiff or defendant. The vice is the interference with what is the Court's duty and not a newspaper's, viz., the decision of the pending case.

In *Rex* v. *Parke*,(1) Mr. Justice Wills in delivering the judgment of the Court (the other members of which were Lord Alverstone and Mr. Justice Channell) said at pp. 436-7 as follows:—

" The reason why the publication of articles like those with which we have to deal is treated as a contempt of Court is because their tendency and sometimes their object is to deprive the Court of the power of doing that which is the end for which it exists—namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it. Their tendency is to reduce the Court which has to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned. It is difficult to conceive an apter description of such conduct than is conveyed by the expression 'contempt of Court.'"

In *Rex* v. *Davies*(2) Mr. Justice Wills again delivered the judgment of the Court. At page 40 the learned Judge says:—

" What then is the principle which is the root of and underlies the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders ? It will be found to be, not the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of them, but of protecting the public, and especially those who either voluntarily or by compulsion, are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired."

Lower down on the same page, the learned Judge refers with approval to an undelivered judgment of Wilmot C. J. in 1765 which shewed that—

"The real offence is the wrong done to the public by weakening the authority and influence of a tribunal which exists for their good alone".

So, too, in *Helmore* v. *Smith*(3) Lord Justice Bowen says:—

"The object of the discipline enforced by the Court in case of contempt of Court is not to vindicate the dignity of the Court or the person of the judge, but to prevent undue interference with the administration of justice."

In *Reg.* v. *Gray*(4) Lord Russell of Killowen, in speaking of one class of contempt, said at p. 40:—

"Any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court."

Within that class fall comments on pending proceedings, and also I think premature publication of documents. Earlier in the

(1) [1903] 2 K. B. 432, 436, 437.
(2) [1906] 1 K. B. 32, 40.
(3) (1886) 35 Ch. D. 449, 455.
(4) [1900] 2 Q. B. 36, 40.

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same page, the Lord Chief Justice had dealt with another class of contempt which he thus describes :—

"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".

Within this class comes the personal scurrilous abuse of a Judge as a Judge, which was the case the Court there had to deal with. It was this class of contempt which Lord Hardwicke characterised in 1742 as "scandalising a Court or a Judge." Speaking for myself, I do not think that the expression is a happy one as it is open to misconstruction, and I doubt whether it is much used by modern lawyers. At any rate I personally prefer Lord Russell's own description of this particular class of contempt.

It makes no difference, I think, that the alleged abuse here was of a District and not of a High Court Judge. *Rex* v. *Davies*(1) shews that in England the High Court has power to protect the Courts of inferior jurisdiction and that in a proper case it should do so. I think the same power exists in India, and that subject to the precautions which Lord Russell mentions on pp. 40 and 41 this Court should extend its protection to all Courts in the mofussil, over which it exercises supervision.

As regards the premature publication of documents, the law is thus stated in Oswald on Contempt, 3rd Edn., p. 95:—

"Printing, even without comments, and circulating the brief, pleadings, petition, or evidence of one side only, is a contempt."

So, too, in Halsbury's Laws of England, Vol. VII, p. 287, it is stated:—

"It is a contempt to publish copies of the pleadings or evidence in a cause, while proceedings are pending."

For these propositions, cases beginning from 1754 are cited and they include instances of affidavits, winding-up petitions, and statements of claim which latter correspond to plaints in this country. One can easily see the evils which would arise if it were permissible to publish a plaint containing (say) charges of fraud against some respectable man before he could even put in his answer, and long before the charges could be judicially determined.

I may refer to one more case not because it lays down any new law, but because it brings the English authorities down to date, and illustrates the restrictions imposed there on the liberty of the Press, which, as pointed out by Lord Russell in *Reg.* v. *Gray*(2), is in these matters "no greater and no less than the liberty of every subject of the King." The case is *Rex* v.

(1) [1906] 1 K. B. 32. (2) [1900] 2 Q. B. 36, 40.

Empire News Limited[1] and was heard by the Lord Chief Justice of England and Mr. Justice Avory and Mr. Justice Sankey. There the newspaper had commented on a pending murder case, but did not attempt to justify its action in so doing, and the proprietors and editor expressed their deepest regret and contrition to the Court. In delivering judgment, the Earl of Reading said:—

"The Court could not permit the investigation of murder to be taken out of the hands of the proper authorities and to be carried on by newspapers. The liberty of the individual even when he was suspected of crime and indeed even more so when he was charged with crime must be protected and it was the function of that Court to prevent the publication of articles which were likely to cause prejudice. The only doubt in the case was whether the Court ought to commit the editor to prison.

"The Court had come to the conclusion that in the circumstances it must mark its sense of the offence committed which was an offence both by the proprietors and editor by imposing a fine of £1000."

The principles of law then being clear, how ought they to be applied to the facts of this particular case? In my judgment those principles prohibited the publication of the District Judge's letter pending the hearing of the notices issued by the High Court. It was contended by the respondent Gandhi that that letter was written by Mr. Kennedy in his private capacity, and not as District Judge. I think that contention is erroneous. The letter is an official letter written by the District Judge in the exercise of his duties as such, and submitting the case to the High Court for orders. As my brother Hayward has pointed out to me, the letter follows the procedure laid down in the Civil Circulars of this Court in cases of alleged misconduct by a pleader (see p. 259). It very properly sets out what the learned Judge considers to be the facts both for and against the pleaders, and gives his reasons for bringing the matter before the High Court. Indeed if he had not done so, he would presumably have been asked by the High Court for further particulars before they took any action. The letter is on lines quite familiar to this Court in other cases where the Sessions Judge in the exercise of his duties as such brings some matter before this Court with a view to the exercise of its exceptional powers. I may instance criminal references where the Sessions Judge, for the reasons given in his official letter, recommends the revision of some illegal or inadequate sentence which has been passed by a subordinate Court, and which the High Court alone can alter in certain contingencies. If in the present case the District Judge's letter contained any statements which the respondent pleaders or barristers contended

(1) (1920) The London Times, dated 20th January 1920.

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were inaccurate, that would be a matter for decision at the hearing of the notices, when all they had to say would be fully considered.

But even if the letter was written by Mr. Kennedy in his private capacity, I do not think it would make any substantial difference as regards mere publication. The letter would still form part, and a most important part, of the pending proceedings and the record thereof, and I do not think that any substantial difference can be drawn between it and the other classes of documents mentioned in the authorities cited in Oswald and in Halsbury to which I have already referred.

In my judgment, therefore, the publication of this letter was a contempt of Court.

That brings me to the comments made in the newspaper, including the heading " O'Dwyerism in Ahmedabad " under which the letter was published. These comments are not only comments on pending proceedings, but are of a particularly intemperate and reprehensible character. They prejudge the case and tend to undermine any decision which the High Court may come to at the trial. They also amount, in my opinion, to what Lord Russell describes as "scurrilous abuse of the Judge as such." In this latter connection, the question whether the letter was written by Mr. Kennedy in his private or in his judicial capacity becomes material, but as I have already stated it was in my judgment written in his judicial capacity.

Accordingly, on the authorities which I have already referred to, these comments are clearly a contempt of Court and come within both the classes to which Lord Russell refers, and in my judgment they constitute a serious contempt of Court.

We have carefully considered the various statements made by the respondents, and invited them at the hearing to give any intelligible explanation or excuse for their conduct. None such was forthcoming. In his letter of the 11th December 1919 the respondent Gandhi contends that in publishing and commenting on the letter he "performed a useful public duty at a time when there was great tension and when even the judiciary was being affected by the popular prejudice." Common sense would answer that if that tension and popular prejudice existed, it would be increased rather than diminished by abuse of the local Judge, and that that could not be the public duty of any good citizen.

But there would seem to be some strange misconceptions in the minds of the respondents as to the legitimate liberties of a journa-

list. Otherwise the respondent Gandhi could hardly have contended before us—as he in fact did—that if a son brought a suit against a father, and if a journalist thought that the son's action was wrong, the journalist would be justified in holding the son up to public ridicule in the public press, notwithstanding that the suit was still undecided. I need hardly say that this contention is quite erroneous. It may however be that principles which are quite familiar in England are imperfectly known or understood in India, and that the respondents have paid more attention to the liberty of the press than to the duties which accompany that and every other liberty.

This has much weighed with me in considering what order the Court ought to pass in this case. We have large powers and in appropriate cases can commit offenders to prison for such period as we think fit and can impose fines of such amount as we may judge right. But just as our powers are large, so ought we, I think, to use them with discretion and with moderation, remembering that the only object we have in view is to enforce the due administration of justice for the public benefit.

In the present case, the Court has very seriously considered whether it ought not to impose a substantial fine on one, if not both, of the respondents. But on the whole, I think it sufficient for the Court to state the law in terms which I hope will leave no room for doubt in the future, and to confine our order to severely reprimanding the respondents and cautioning them both as to their future conduct. That accordingly is the order I think we should pass in the present case.

HAYWARD J.—I concur. A contempt of Court was, in my opinion, committed in the mere publication of the letter of Mr. Kennedy before the trial of the matter by this Court. It might not have been realised but the reason for the rule has been explained by my brother Marten and shown to rest on numerous precedents quoted under para 615 at p. 287 of Vol. VII of Halsbury's Laws of England.

A contempt of Court of a more serious nature was, in my opinion, committed in commenting in the particular manner on that letter. It amounted clearly to "scandalising" Mr. Kennedy as District Judge within the dicta of Lord Hardwicke quoted by Lord Russell in *Reg.* v. *Gray*[1]. It was Mr. Kennedy's duty, according to established practice, to report the matter in question as District Judge for the orders of the High Court. It was in my opinion *his* duty

(1) [1900] 2 Q. B. 36, 40.

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under the general powers of superintendence vested in him as District Judge under s. 9 of the Bombay Civil Courts Act, 1869, and the duty was moreover expressly prescribed as follows:—

"The Judge who notices the misconduct of the pleader should charge the pleader therewith and, after such preliminary enquiry as he may think fit to make, should write to the Registrar requesting him to lay the charge before the Honourable the Chief Justice and Judges, who, if necessary, will call on the pleader for any further explanation he may wish to make. The Judges will then consider the whole matter in Chambers ; after which the matter will be determined by a Chamber Resolution or, where necessary, by formal proceedings in Court."

by para 14 of Chapter XVIII at p. 259 of the Civil Circulars Manual of the High Court. It has therefore become *our* duty to protect the proceedings of the District Judge under the powers shown by the precedents of *Rex* v. *Parke*[1] and *Rex* v. *Davies*[2] to be vested in us as Judges of the High Court.

A contempt of Court of an even more serious nature was, in my opinion, further committed in that the comments tended to interfere with a fair trial and to prejudice public justice. They tended to substitute what has been termed a newspaper trial for the regular proceedings before the established tribunal, the High Court. The precedents for the position include those already quoted as well as the later cases of *Higgins* v. *Richards* [3] and *Rex* v. *Empire News Ltd.*[4] quoted by brother Marten. The respondents have not denied the facts nor seriously disputed the law. They have expressed their readiness in their replies to submit to whatever punishment might be imposed on them for what they have termed "the vindication of the majesty of law" by the High Court.

It is difficult to appreciate the position taken up by the respondents. They have expressed their inability to apologise formally but have at the same time represented their readiness to submit to any punishment meted out to them. It is probable that the Editor, the respondent Gandhi, did not realize that he was breaking the law and there would be do doubt, if that were so, that it was not realised by his publisher, the respondent Desai. The respondents seem to have posed not as law-breakers but rather as passive resisters of the law. It would, therefore, be sufficient, in my opinion, to enunciate unmistakeably for them the law in these matters, to severely reprimand them for their pro-

(1) [1903] 2 K. B. 432.
(2) [1906] 1 K. B. 32.
(3) (1912) 28 T. L. R. 202.
(4) (1920) The London Times, dated 20th January 1920.

ceedings and to warn them of the penalties imposable by the High Court.

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KAJIJI J.—I concur.

[After Mr. Justice Hayward and Mr. Justice Kajiji delivered their judgments, Mr. Justice Marten said as follows:—]

The order of the Court will therefore be: "The Court finds the charges proved, it severely reprimands the respondents and cautions them both as to their future conduct."

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Crump.

KACHU RAVJI MINDHE VANJARI

v.

TRIMBAK KHEMCHAND GUJARATHI.*

1919

November 19

Civil Procedure Code (Act V of 1908), Secs. 104 (2), 47—Order XLIII, (1) (j), Order XXI, rules 89, 92—Appeal from order—Second appeal.

No second appeal lies from an order passed under Order XXI, rule 89, of the Civil Procedure Code, 1908, even if the auction purchaser is the decree holder himself.

PROCEEDINGS in execution.

Trimbak obtained a decree against Kachu, in execution of which Kachu's property was sold at a Court-sale and purchased by Trimbak on the 10th March 1916.

Kachu applied to the Court to set aside the sale under Order XXI, rule 89; but the Court declined to do so.

He then appealed against the order to the District Court; but his appeal came to grief.

Kachu then appealed to the High Court; but his appeal was summarily rejected by Heaton J. He again appealed under the Letters Patent and his appeal was admitted by Scott C. J. and Shah J.

A. G. Desai, for the respondent, raised a preliminary objection that no second appeal lay and hence no appeal under the Letters Patent is competent. Under the present Code of Civil

*Letters Patent Appeal No. 23 of 1918, against the decision of the High Court in Second Appeal No. 413 of 1918, against the decision of F. K. Boyd, District Judge of Nasik, in Appeal No. 10 of 1917, confirming the decree passed by G. M. Phatak, Subordinate Judge at Yeola, in Miscellaneous Application No. 58 of 1917.