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second and third charges should only operate alternatively the result intended can now be arrived at by the exercise by the Government of its powers under Chapter XXIX of the Criminal Procedure Code in respect of the sentence imposed under section 153A upon the third charge.

Rule discharged.

R. R.

ORIGINAL CRIMINAL.

Before Chief Justice Scott and Mr. Justice Batchelor.

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IN RE NARASINHA CHINTAMAN KELKAR.

Contempt of Court—Criticism of Judge—Language used in criticism which strikes at the root of all respect for the Court.

Any act done or writing published, calculated to bring a Court or a Judge of the Court into contempt or to lower his authority, or to obstruct or interfere with due course of justice or the lawful process of the Court is a contempt of Court.

Judges and Court are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of Court.

Reg. v. *Gray* (1), followed.

THIS was a rule calling upon Narsinha Chintaman Kelkar, editor of the "Mahratha," to show cause why he should not be committed or otherwise dealt with according to law for contempt of Court in respect of defamatory passages concerning the Honourable Mr. Justice Davar, contained in an article published by him in the issue of his newspaper dated the 26th July 1908.

The rule nisi was in the following terms :—

Upon reading the affidavit of J. C. G. Bowen, Acting Public Prosecutor, Bombay, sworn on the 12th day of September 1908 and after hearing the Advocate-General, Bombay, who applies that a rule nisi be issued against Narsinha Chintaman Kelkar, Editor and Publisher of the 'Mahratha' newspaper, requiring him to shew cause, if any he has, why he should not be committed or otherwise dealt with according to law for contempt of Court in respect of an

(1) [1900] 2 Q. B. 36 at p. 39.

article published by him on pages 349, 350 and 351 of the issue of the said newspaper dated the 26th July 1908 containing certain contemptuous and defamatory matters of and concerning the Honourable Mr. Justice Davar, one of His Majesty's Judges of the High Court, Bombay, and more particularly in respect of the following passages printed and published in the said newspaper.

* * * * *

It is ordered that the said Narsinha Chintaman Kelkar do appear before this Honourable Court on Wednesday next the 23rd of September 1908 to show cause why he should not be committed in respect of the said article. And it is further ordered that this rule be served on the said Narsinha Chintaman Kelkar through the District Court of Poona.

At the hearing Mr. Kelkar put in the following affidavit:—

I, Narsinha Chintaman Kelkar, of Poona, Hindu inhabitant, at present temporarily residing at Sardar Graha, Esplanade Road, outside the Fort of Bombay solemnly affirm and say as follows. I am a regular resident of Poona and have no permanent residence or fixed place of abode in Bombay and have come to Bombay to answer the rule issued against me. I am the editor and publisher of the 'Mahratha,' weekly paper printed and published in Poona. I am not the proprietor or manager of the paper. I admit that I wrote the article forming the subject-matter of the present notice and accept full responsibility for the same. I followed the course of the trial keenly as a personal friend of Mr. Tilak and wrote the article immediately after his conviction and hence there is a certain amount of feeling in it, but I say that in writing the article I had no desire and no intention whatever to scandalise this Honourable Court or any of the Judges thereof or to defame the Honourable Mr. Justice Davar or any other Judges of this Honourable Court. I had also no desire and no intention to interfere in any way with or obstruct the course of administration of justice. The article was written after the whole trial was finished. I honestly and conscientiously believed myself called upon as a journalist to comment on certain features of the case and to offer certain expostulations about certain things said and done in the course of the case and also to protest against certain extrajudicial expressions of opinion which, I felt, did not do justice to the character and motives of Mr. Tilak. I wrote the article in the discharge of what I believed to be my duty as a journalist and an exponent of public opinion so far as I could claim to voice it. The article was intended as a fair and legitimate comment on a matter of public interest and nothing more. With this explanation of my motives and intention and the circumstances under which the article was written, I place myself unreservedly in the hands of this Honourable Court.

On 23rd September the Rule came on for hearing.

Baptista, to show cause:—I will divide my arguments into two parts: (1) Did the publication of the article constitute contempt of Court? And (2) if it did, was it necessary in the

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interests of administration of justice that the Court should exercise its power to commit for contempt on the present occasion?

(1) The law is that so long as a case is pending no one can say or do anything which may be calculated to interfere with the course of administration of justice, but once the case is over both the Judge and the Jury are handed over to public criticism. The comments made on Mr. Justice Davar are criticisms upon him in his personal capacity. The writer has drawn distinction between the Judge as a Judge and the Judge in his personal capacity. Comments on a Judge in his personal capacity came within the rule laid down in *In the Matter of a Special Reference from the Bahama Islands*(1). Comments on Mr. Justice Davar as Judge do not exceed fair and legitimate criticism. There is no intention to vilify or bring the Court into contempt. We expressly repudiate any such intention in our affidavit. There is no word of aspersion on the integrity of the Judge. There is an amount of feeling imported in the article, because Mr. Kelkar is Mr. Tilak's personal friend and associate for many years, and wrote the articles under the influence of a great feeling.

(2) The power of committing a person for contempt is very sparingly exercised by Courts; it has almost become obsolete in England: see *McLeod* v. *St. Aubyn*(2). It has always been exercised in the interests of the administration of justice only; see *Dallas* v. *Ledger*(3). In this case there was no interference with administration of justice in any way, and committal for contempt is therefore not necessary to promote due administration of justice.

Jardine (officiating Advocate-General) in support of the rule:—The article in question suggested that the Court was deliberately partial in the trial of the Tilak case; that the Judge was acting in collusion with the Government in hurrying the trial to a conclusion; and that the Judge deluded Mr. Tilak by protestations of his desire to protect Mr. Tilak's interest into a false security

(1) [1893] A. C. 138. (2) [1899] A. C. 542.
(3) (1888) 4 T. L. R. 432 at p. 434.

which disappeared when the proceedings came to an end. Mr. Kelkar was up to the last time given an opportunity by your Lordships to express his regret but he has not availed himself of it. He must, therefore, be taken to be prepared to stand or fall by what he has written in his paper. He has directly challenged the purity of the Court. For the purpose of contempt of Court it is immaterial to consider whether the comments were made on Mr. Justice Davar as a Judge or as a gentleman. Whatever Mr. Justice Davar did or said was in his judicial capacity and in no other capacity. The Press has a full right to criticise a trial after it is finished, but the criticism should be couched in proper terms and no derogatory expressions should be used in connection with the presiding Judge. The decision in *In the Matter of a Special Reference from the Bahama Islands*[1] does not apply. The Judge there did something that was extra-judicial. In the article in question the writer has made statements which go to show that the administration of justice in the High Court is not pure.

SCOTT, C. J.—On the 16th September, we granted a rule, at the instance of the Advocate-General, calling on Narsinha Chintaman Kelkar, as editor and publisher of the "Mahratta" newspaper, to show cause why he should not be committed, or otherwise dealt with according to law for contempt of Court in respect of an article published by him in the issue of the said newspaper of the 26th of July 1908, containing certain contemptuous and defamatory matter of, and concerning Mr. Justice Davar, one of the Judges of this Court. The accused has put in an affidavit in which he admits that he wrote the article, but defends it as fair and legitimate comment, on a matter of public interest (namely, the trial of Bal Gangadhar Tilak) written after the trial was finished in the discharge of his duty as a journalist.

The article, which is in English and divided into seven paragraphs, suggests very plainly in the third paragraph that at the trial the conviction of the accused was secured by Government by the collusion of the presiding Judge; that the Judge, in allowing

(1) [1893] A. C. 138.

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only half an hour for the midday adjournment realized the importance of finishing the trial on the day before the Indian Budget debate in Parliament, and that by means of significant hints to the Advocate-General, and unusual haste in closing the proceedings the net was woven around the life of the accused surreptitiously, in the closing vesper hours. These suggestions appear to rest upon no more solid basis than the fact that, as happens from time to time in criminal trials in the High Court, the sitting was prolonged after the usual hour of rising on the last day of the trial in order to finish the case that evening.

In the fifth paragraph of the article the honesty of the Judge is again the subject of attack. He is said to have been guilty of affectation in the solicitude he expressed for the accused during the trial and that when the moment for the charge to the jury had arrived, everything was changed, for as soon as the Judge had found his liberty of speech, he made every point against the accused, taking upon himself to bestow a one-sided and adverse treatment on the incriminating articles and trying to make the case more complete for the prosecution, than the Advocate-General himself had done, by ferreting out hidden words and hidden innuendoes, which were never touched by counsel for the Crown. We have had occasion recently to examine the proceedings at the trial on the application of the accused for leave to appeal to His Majesty in Council, and we consider that there is no justification whatever for such remarks.

In the sixth paragraph of the article the writer states that he is going to blame Mr. Davar the gentleman and not Mr. Davar the Judge, and then proceeds to discuss certain remarks of the Judge uttered in his judicial capacity when passing sentences; referring to the Judge as a medical quack in a red robe, as an enemy of the accused, privileged to sit upon the Bench, as an impudent glow-worm holding his torch to the Sun.

Counsel for N. C. Kelkar has not attempted to justify the passages to which I have referred, but has claimed that a Judge after the trial is over, is handed over to criticism and that the article amounts to criticism and nothing more. In my opinion the article far oversteps the bounds of fair criticism. It attacks

the independence and honesty of the Judge without any justification and indulges in scurrilous abuse of him in his character of a Judge presiding at the Criminal Sessions of this Court.

I can make no remarks on this case more appropriate than those contained in the following passages from the judgment of the Lord Chief Justice of England in *Reg.* v. *Gray* (1).

> It is not too much to say that it is an article of scurrilous abuse of a judge in his character of a judge . . . It cannot be doubted . . . that the article does constitute a contempt of Court . . . 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 . . . Further, 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. The former class belongs to the category which Lord Hardwicke, L. C., characterised as 'scandalising a Court or a Judge.' That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen. Now, as I have said, no one has suggested . . . or could suggest, that it falls within the right of public criticism in the sense I have described. It is not criticism : I repeat that it is personal scurrilous abuse of a judge as a judge. We have therefore to deal with it . . . *brevi manu.*"

The position of N. C. Kelkar has not been improved by the defiant attitude taken up by counsel upon his instructions. Although every opportunity was given to him to submit and apologise, it was stated to the Court that he thought it more manly and straightforward to wait and see whether the Court found him guilty before offering any apology or submission.

This is a very serious case and must be met by a suitable sentence not only as a punishment for this particular contempt, but also as a warning to other persons.

(1) [1900] 2 Q. B. 36 at p. 39.

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BATCHELOR, J.—The article in respect of which this rule was granted, appeared in the English language in the respondent's newspaper, the "Mahratta." The article itself proves, and Mr. Baptista has admitted before us, that the respondent is perfectly familiar with English. The only question, therefore is, as to the meaning of the article, read as a whole and construed as it would be construed by the ordinary reader. Upon the best consideration that I can give to the article, I am clear that it constitutes a gross instance of that form of contempt of Court, by which, as it is said, the Court is scandalised. Nor is any serious attempt made to disguise this meaning. After a preparatory paragraph of no special consequence the writer proceeds at once to his thesis, and observes that "in the first place they (the public) will know what value to attach or what sense to apply to the expression that Mr. Tilak got a fair trial." Then after other allusions to the "unfairness of the trial," the writer promises to speak later of "the unfairness of the Judge." He keeps his promise in the succeeding paragraphs, which abound in scurrilous references to the "mockery of a trial," to the "affectation" of the Judge, who is represented as concealing his hostility to the prisoner until the time came to charge the jury when, we are told, he laboured, by a one-sided and adverse treatment of the articles, and by ferreting out hidden words and innuendoes unnoticed by the Advocate-General, to make the case for the prosecution more complete than Counsel for the Crown had made it. I entirely agree with that part of Mr. Baptista's address in which he insisted that, upon the conclusion of a trial, the Judge is handed over to criticism; but in my opinion, such writing as this is not criticism and is entirely beyond the reach of the argument. I agree, too, that the Court should ordinarily be slow to punish for contempt, especially where there is any ground for hope that the common sense of the many will correct the extravagance of an individual; but here I cannot doubt, that the unchecked dissemination of such views as are stated in this article, would tend to create the opinion which the respondent has expressed in his newspaper, though he does not maintain it in this Court. For among large numbers of the less instructed people of this country the groundlessness of an opinion is no obstacle to its prevalence; and it

is plain that nothing could well be more prejudicial to the administration of justice than the prevalence of such opinions as the respondent has published broadcast for the acceptance of the readers of his paper. As to the distinction which it was sought to establish, both by the respondent in his article, and by his counsel in argument, between the personal and judicial character of the Judge, I am of opinion that no such distinction exists, inasmuch as whatever was done and said by Mr. Justice Davar at the trial, was done and said by him in his judicial capacity alone.

Despite the force of these considerations, we hoped, up till the end of the hearing, that we might be able to extend to the respondent the same clemency which we had shown to similar offenders connected with another journal, but the respondent has put it out of our power to follow this course by the contumacious attitude which he has elected to adopt. In reply to questions and suggestions from the Bench, Mr. Baptista informed us that he had no instructions to express apology or regret, and that his client desired him to leave the matter to the Court on that footing. That being so, I think that we have no option but to mark our sense of the respondent's misconduct by the imposition of substantial punishment. The only circumstances of mitigation which I am able to discover are that the trial had concluded when the article was published and, as I am prepared to believe, that the respondent was partly misled by his friendship for the prisoner. On the other hand, it must be remembered that the respondent is himself a Pleader, and could scarcely have failed to realise what mischief would follow from such language as he has employed, language which strikes at the root of all respect for the Court and its authority. It must be understood that this is the ground upon which the Court is acting, and not from any desire to vindicate Mr. Justice Davar from the respondent's misrepresentations. It is in the interests of the due course of justice, and of the authority of this Court, that I conceive it to be our clear duty to take notice of respondent's misconduct. I have said that there has been no expression of regret; and that obliges me to go a little further and notice specifically the position taken by the respondent in

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this Court. When definitely questioned upon the matter, Mr. Baptista, so far as I was able to understand him, said that his client considered it would be more honest or manly to defer any expression of regret until the Court had pronounced its judgment. The plain English of this seems to be that the respondent will wait till other means of escaping punishment have proved unavailing, before he considers the desirability of expressing regret for his misconduct. That is a course in which I can see some indication of policy; but its connection with manliness or honesty is certainly remote.

For these reasons I agree with the order[1] to be made.

R. R.

(1) The order made by the Court was as follows :—

Whereas by an order dated the 16th day of September 1908 stating that on reading the affidavit of J. C. G. Bowen, Acting Public Prosecutor, Bombay, sworn on the 12th day of September 1908, and after hearing the Advocate-General of Bombay who applied that a Rule *Nisi* should be issued against the abovenamed Narsinha Chintaman Kelkar requiring him to show cause, if any he have, why he should not be committed or otherwise dealt with according to law for contempt of Court in respect of an article published by him on pages 349, 350 and 351 of the issue of the newspaper entitled "The Mahratta" and dated the 26th July 1908, containing certain contemptuous and defamatory matters of, and concerning the Honourable Mr. Justice Davar, one of His Majesty's Judges of the High Court, Bombay, and more particularly in respect of the passages set out in the said order. It was ordered that the said Narsinha Chintaman Kelkar should appear before this Honourable Court on Wednesday the 23rd day of September 1908 to shew cause why he should not be committed in respect of the said article, and the said Narsinha Chintaman Kelkar attending this Honourable Court on the 23rd day of September 1908 pursuant to the said order, and the affidavits and exhibits filed in this matter being read and upon hearing Mr. Baptista of Counsel for the said Narsinha Chintaman Kelkar and the Honourable the Advocate-General of Counsel and this Court, after taking time to consider the matter, being of the opinion that the said Narsinha Chintaman Kelkar has, by publishing the said article in the said issue of the said newspaper, been guilty of a contempt of this Honourable Court, Doth Order that the said Narsinha Chintaman Kelkar do pay a fine of Rs. 1,000 and a further sum of Rs. 200 for costs and do stand committed to His Majesty's Common Prison at the Criminal Side for a period of 14 days from the date hereof and for such further term as may elapse until the said fine and costs imposed upon him by the said order have been paid and until he shall have made suitable submission and apology to this Court.