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HANIF MAULABAKSH v. KUTSAM.

order under the rule. But he now contends that the rule should not be applied as owing to the Police Court proceedings he has been living in Bombay for the last nine months and supporting himself by his labour. Therefore, he is a resident of Bombay. That, no doubt, is an ingenious and plausible argument, but the fact remains that the plaintiff is really a resident of a State outside British India. He has been staying in Bombay only for the purpose of taking proceedings to get his wife back. That does not constitute such residence as will enable him to escape the application of the rule.

Summons absolute. The plaintiff to give security to the extent of Rs. 1,000 for the defendants' costs within a month.

Costs costs in the cause.

Counsel certified.

Solicitors for plaintiff: Messrs. *Thakordas & Co.*

Solicitors for defendants: Messrs. *Mansukhlal Hiralal & Mehta.*

Summons made absolute.

G. G. N.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

September 28.

EMPEROR *v.* BALKRISHNA GOVIND KULKARNI*.

High Court—Jurisdiction—Contempt—Contempt of a Court in the Mofussil —Comments on pending proceedings—Allegations against the trying Magistrate.

During the pendency of a trial before the First Class Magistrate at Dharwar, the opponent, who edited a newspaper published at Dharwar,

* Criminal Application for Revision No. 211 of 1921.

published in his paper comments on the case. In the course of these comments, among other things he charged the trying Magistrate with partiality. For publishing the comments, the opponent was called upon by the High Court of Bombay, on the application of the Government of Bombay, to show cause why he should not be committed for contempt. At the hearing, a preliminary objection was raised that the High Court had no jurisdiction to deal with the contempt of inferior criminal Courts :—

Held, overruling the preliminary objection, that inasmuch as the comments by the opponent tended to impede the due administration of justice, their publication constituted a contempt of the High Court for which the opponent was liable to be committed.

Per MACLEOD, C. J.:—"The High Court possesses the same powers of punishing for contempt as the Court of the King's Bench Division by virtue of the Common Law of England."

Per SHAH, J.:—"The High Court has no power to punish contempts of criminal Courts subordinate to it.

"It is difficult to hold that because a contempt of Court is punishable under the English Common Law it is punishable as such in India even though the Indian Law does not make it punishable. It would be in effect creating a new offence to hold that a contempt of a subordinate Court as such is punishable.

"The High Court has no powers with reference to the contempts of other Courts similar to those of the King's Bench in England which it exercises under the Common Law of England. It has no powers such as the Court of King's Bench in England has as being the *custos morum* of all the subjects of the realm under the Common Law of the land. The mere fact that the High Court has powers of superintendence over the subordinate Courts does not give it any such jurisdiction."

THIS was an application by the Government of Bombay under the criminal revisional jurisdiction of the High Court.

Two volunteers of the Temperance Committee at Dharwar were tried for the offence of extortion, on the complaint of a sweeper employed in the Police Lines at Dharwar. Whilst the hearing of the case was proceeding in the Court of the First Class Magistrate at Dharwar, the opponent, who edited a weeky newspaper published at Dharwar, published comments on the

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case in the course of which he charged the Magistrate with partiality. The article ran as follows :—

"PROCEEDINGS AGAINST THE TEMPERANCE VOLUNTEERS AND THE POLICE OFFICERS' IMPUDENCE.

Proceedings have been instituted against two volunteers of the Temperance Committee for the alleged extortion of thirteen annas and the hearing commenced ten days back. The accused was defended by Messrs. Ramrao Bellari, Narayanrao Gadagkar, Dattopant Joshi, Kabbur and Guttal. The Police have appointed to conduct the case, one of their Inspectors who merely does what he is asked to do by the Police and echoes them and earns his pay without any trouble. Every one in the town seems to be under the impression that the complainants voluntarily paid the fine and that the case owes its origin to the pressure of liquor contractors who desire to make fortune by selling toddy. Moreover there is a thick rumour that on the day on which the volunteers were arrested the trying Magistrate ran up the staircase of the Collector's Office and called on Mr. Painter and that some whispers took place between them. Again the Superintendent of Police sat on the platform of the Magistrate's Court and made signs by his eyes. The chief complainant is a Bhangi under the District Superintendent of Police who receives his pay from the Police Department. The other witness has stated that he does not know what happened while he was under the influence of drink. When Mr. Bellari, pleader, suggested that it was not proper that the District Superintendent of Police should be present there when the prosecution witnesses were examined, the Saheb's face became red and he came down upon him. There was no limit to his uncalled for interruptions when the examination of witnesses was going on. When the pleader for the accused observed that it was right that co-witnesses should be examined on the same day or else there was the fear of police "Samjut," the Court adjourned the hearing one hour earlier than the hour of closing of Courts prescribed by law. Drunkards of low castes as if encouraged by the police make their aggressions on the volunteers and applaud the Police. Although the witnesses are not yet ready, the accused have not been enlarged on bail. A plea is put forward that the Police Prosecuting Inspector is away from the town. In this way, our two brave gems who stand for the promotion of the temperance virtues do not seem likely to come out of the dark Saidapur cells soon. Oh Goddess of Justice, have you become blind?

Will Sir George Lloyd throw off the net spread by his subordinates in power and see things with open eyes?"

The allegation that the District Superintendent of Police sat on the platform in the Magistrate's Court

was found to be true. The other allegations made had no substratum of truth and were denied on oath by the Magistrate and the District Superintendent of Police.

The Government of Bombay applied to the High Court for a Rule calling upon the respondent to show cause why he should not be committed for contempt of Court in respect of the publication of the above article.

A Rule was issued.

At the hearing the respondent offered an explanation, pertinent extracts from which are set out in the judgment of the Chief Justice.

G. N. Thakor, and *H. B. Gumaste*, for the respondent.

Bahadurji, Acting Advocate-General, with *S. S. Patkar*, Government Pleader, for the Crown.

Thakor :—I have a preliminary objection that this Court has no jurisdiction to deal with the alleged contempt of inferior criminal Courts.

In *In re M. K. Gandhi* [1] the contempt was of this Court and notice was also issued by this Court. The contempt consisted in publishing and commenting upon a letter of the District Judge on which this Court had issued notice while the proceedings were still pending in this Court. The contempt was not of the District Court.

Besides, there was no argument on either side as the question was not raised. The Indian cases dealing with this point are not even referred to. There are no doubt certain observations in the judgments but they were unnecessary and are mere *obiter dicta*. In any event that case cannot be taken to decide this important point.

[1] (1920) 22 Bom. L. R. 368.

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This Court has no jurisdiction for several reasons.

The contempt alleged is of a subordinate criminal Court. Neither the Charter Act nor the Letters Patent empowers this Court to deal with contempts of an inferior criminal Court.

The Government of India Act, 1915, section 106, makes no alteration in the previous law and merely confirms the jurisdiction, power and authority vested in this Court at the commencement of the Act.

The Charter Act (24 & 25 Vic. c. 104) also does not confer such jurisdiction read with the Letters Patent. Section 8 abolishes the three old Courts, viz., the Supreme Court, the Sudder Diwani Adawlat and the Sudder Fozdari Adawlat. By section 9 the powers of those Courts are inherited by the High Court subject to the provisions of the Letters Patent. The jurisdiction of the Supreme Court was, speaking generally, confined to the town and island of Bombay under the Charter Act of 1823. The Original Side of the High Court inherits the jurisdiction of the Supreme Court. The Supreme Court had no powers over subjects in the mofussil nor had it any jurisdiction over Courts in the mofussil. It had no jurisdiction, therefore, to commit for contempt of any mofussil Court and the High Court in its Original Side has even now no jurisdiction to deal with contempts of Courts outside the limits of the Original Side. We are not concerned with the powers of the Supreme Court as the High Court does not inherit its power over the mofussil Courts from that Court.

Similarly we are not concerned with the Sudder Diwani Adawlat as the contempt alleged is of a *criminal Court* in the mofussil. But the Sudder Diwani Adawlat itself had no power to commit for contempts committed outside the Court. The High Court in its

appellate criminal jurisdiction replaces the old Sudder Fozdari Adawlat. The Sudder Adawlats were not King's Courts but Company's Courts and the Sudder Fozdari Adawlat had certainly no power to try summarily any person for contempt committed outside the Court.

There is nothing in the amended Letters Patent which can be construed as conferring the jurisdiction to try a mofussil subject summarily for contempt of an inferior criminal Court.

The relevant sections of the Charter Act are sections 8, 9, 11 and 15. The relevant clauses of the Letters Patent are clauses 16, 27-28, &c.

This Court cannot appropriate to itself powers that have not been conferred upon it by statute even assuming it were desirable to have them.

I rely on the case of *Legal Remembrancer* v. *Matilal Ghose*[1] which deals very exhaustively with the point in question. The mere circumstance that this Court has powers of superintendence has been held not to confer upon it the power to try summarily for contempts of inferior Courts committed outside the Court. I rely upon the reasoning of their Lordships of the Calcutta High Court for the contention that this Court has no jurisdiction.

There is nothing in the Charter of this Court in its Letters Patent or of the Charter of the Supreme Court at Bombay or in any of the Regulations that will enable this Court to distinguish this case from that of the Calcutta case. Further, I contend that even if this Court has jurisdiction, it cannot use it unless the contempt of an inferior criminal Court amounts to an offence. I submit that the Common Law of England under which alone such an act as the present amounted to a misdemeanour does not apply to the mofussil.

[1] (1913) 41 Cal. 173.

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This Court cannot create a new offence even though it may take it upon itself to deal with it summarily. An offence can only be created by Statute. The Calcutta case above referred to supports me in this contention also (see pp. 253 and 254).

The Madras case of *In re Venkat Rao*[1] is in my favour in so far as it holds that section 15 of the Charter Act does not give jurisdiction to the High Court to deal summarily with contempts of inferior Courts. It was a civil case, the point of jurisdiction was not pressed there though allowed to be urged and the decision is entirely based on the English cases of *Rex* v. *Davies*[2] and *Rex* v. *Parke*[3]. Their Lordships have further misinterpreted the Privy Council ruling in *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court*[4]. That decision did not deal with the point now before this Court, viz., with the question of contempt of an inferior criminal Court.

The English cases are dealt with and distinguished in the Calcutta case. It was the special nature of the jurisdiction inherited by the Court of King's Bench in England from the older Courts as being in a special manner the guardian and protector of public justice throughout the kingdom.

It is not every Court of Record in England that has similar powers and I adopt the reasoning of the Calcutta case which distinguishes the cases of *Rex* v. *Davies*[2] and *Rex* v. *Parke*[3] (see pp. 208 to 210, 248, 249).

After the decision of the Calcutta High Court in 1914 the Penal Code was sought to be amended so as to confer jurisdiction by Statute on this Court. But somehow or other the law has not been amended and

(1) (1911) 21 M. L. J. 832.
(2) [1906] 1 K. B. 32.
(3) 1903] 2 K. B. 432.
(4) (1883) 10 Cal. 109, P. C.

as long as the law has not been amended I submit that the action of my client does not amount to an offence and this Court has also no jurisdiction to deal with him.

Bahadurji:—I rely on the Madras case which decides the precise point in my favour. The contempt there was not a contempt of the High Court but of a subordinate Court and the two English cases there referred to are treated as an authority for the view that the High Court as a superior Court of Record can protect inferior Courts from contempts with which they have no power to deal.

The reasoning of the case of *Rex* v. *Davies*[1] will also apply to this case. This Court is also charged with the duty of seeing that the administration of justice in the mofussil and in Courts subordinate to it remains pure and is not interfered with by attacks on the integrity of Judges or Magistrates.

The powers conferred by the Charter Act and the Letters Patent are wide enough to confer the power of protecting inferior Courts from attacks in the nature of contempts outside the Court.

This Court has powers of superintendence and appellate and revisional powers over inferior criminal Courts. Unless the power to protect the subordinate Courts is also implied in those powers it cannot properly discharge its duty of superintending. The cases before the lower Courts may at any stage come up before this Court and this Court can, therefore, deal with contempts of the authority of inferior Courts in the same way as it may with contempts of its own authority.

The English cases are also followed by our Court in *In re M. K. Gandhi*[2]. No doubt the point was not

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

(2) (1920) 22 Bom. L. R. 368.

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raised and may not have directly arisen but the Court considered it all the same.

Unless the powers are held to have been conferred on this Court it will be impossible to protect the lower Courts from attacks in cases which may ultimately come up before this Court.

The grounds on which the jurisdiction is exercised by the Court of King's Bench are equally applicable to the High Court.

I also rely on *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court*[1].

Thakor, in reply:—The question really is whether the jurisdiction has been conferred on this Court in its appellate criminal jurisdiction. If it has not been conferred upon it or if it has not inherited it the question that it may be desirable that this Court should have the jurisdiction is irrelevant.

The Calcutta and Madras views agree that the mere power of superintendence does not carry with it the power to punish for contempt.

No authority is cited to show that the Sudder Fozdari Adawlat had the power to commit for contempt. The jurisdiction is thus neither inherited nor conferred by the Charter.

It is not contended that the common law applies to the mofussil. If so, the publication is not even an offence according to Indian law. To treat it as an offence would be to usurp the functions of the Legislature which at one stage thought of amending the Indian Penal Code.

In *Surendra Nath Banerjee's case*[1] this point did not arise.

(1) (1883) 10 Cal. 109.

It is not alleged that the article amounts to a contempt of this Court: I am not charged with having committed contempt of this Court.

I submit it is difficult to conceive how it can be read as amounting to a contempt of this Court. There is not a word in the article even to remotely suggest that the writer intended any contempt of this Court.

Contempt of the inferior Court is quite distinct from contempt of this Court. The writer may publish the article and may yet have the highest respect for this Court.

Sir Lawrence Jenkins alludes to this aspect which was not even argued, and leaves the question open but his own remarks (at pp. 216 and 217) are an answer to the question raised by him. The article there referred to was not treated as a contempt of the High Court and it is inconceivable that the present article should be treated as a contempt of this Court.

C. A. V.

MACLEOD, C. J.:—This is a Rule granted at the instance of the Government of Bombay calling upon Balkrishna Govind Kulkarni, Editor and Publisher of the *Shubhodaya* newspaper at Dharwar, to show cause why he should not be committed for contempt of Court in respect of the publication of an article commenting on the proceedings in the Court of the First Class Magistrate at Dharwar against two volunteers of the Temperance Committee who were alleged to have extorted some money from a Bhangi.

The article commences:—

"Proceedings have been instituted against two volunteers of the Temperance Committee for the alleged extortion of thirteen annas and the hearing commenced ten days back...The Police have appointed to conduct the case one of their inspectors who merely does what he is asked to do by the Police

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and echoes them and earns his pay without any trouble. Every one in the town seems to be under the impression that the complainants voluntarily paid the fine and that the case owes its origin to the pressure of the liquor contractors who desire to make fortune by selling toddy. Moreover there is a thick rumour that on the day on which the volunteers were arrested the trying Magistrate ran up the stair-case of the Collector's Office and called on Mr. Painter and that some whisper took place between them. Again Police Sahebs sit in chairs on the Magistrate's dais and wink (at each other). The chief complainant is a Bhangi under the District Superintendent of Police who receives his pay from the Police Department."

There are further allegations that the District Police Superintendent was speaking in the middle when witnesses were being examined; that, when the pleader for the accused observed that it was right that co-witnesses should be examined on the same day or else there was fear of the Police tutoring, the Court adjourned the hearing one hour earlier than the hour of closing of the Court prescribed by law; that, although the evidence of the witnesses had been satisfactory, the accused were not enlarged on bail.

It can hardly be disputed that these remarks constitute a very gross contempt of Court.

In the first place such comments, while proceedings are pending in a Court of law, tend to deprive the Court of the power of doing that which is the end for which it exists, to administer justice duly, impartially, and with reference solely to the facts brought before it. Secondly, any remarks reflecting on the character or impartiality of the Magistrate in the course of the trial must necessarily be contempt: *Reg* v. *Gray*[1].

Now the innuendo in the passages complained of is perfectly clear. The public are told that the general impression is that the accused are innocent, that, instead of extorting thirteen annas from the Bhangi, they received the amount as a voluntary

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

contribution, that the liquor contractors and the Police are collaborating in the prosecution, that the trying Magistrate is taking his orders from the Collector, and in his conduct of the trial is acting with great favouritism towards the Police and with gross partiality against the accused. It is not difficult to imagine what the result of such comments would be amongst the public in times of political excitement. They would be induced to think, if the accused were convicted, that they had been denied the essentials of a fair trial and that the Court, whose function it was to render justice to all who might appear before it, had been prostituted to procure the conviction of innocent men in order to gratify the avarice of the liquor contractors.

The respondent says in his affidavit by way of explanation:—

"In publishing the article complained of I had no desire or intention in any way to interfere with or obstruct the due course of administration of justice or in any way to prejudice the fair trial of the case. I wrote the article in the discharge of what I believe to be my duty as a journalist believing in good faith that I was entitled to do so having regard to the fact that the case was regarded on all hands to be one of public interest and importance. I may add that I have all along believed that it is open to a journalist in the discharge of his duties to offer fair and legitimate comments on all matters affecting the public interest and that in the publication of the article in question I was actuated by no other motive or desire whatever than that of doing my duty to the public as a journalist by offering fair comments on matters of urgent public interest...If this Hon'ble Court is, however, of opinion that even the mere publication of comments on proceedings pending in the Court of a subordinate Magistrate amounts in law to a contempt of Court of which this Hon'ble Court will be entitled to take notice, I am willing to abide by this Hon'ble Court's ruling on the point and to express my sincere regret for having published the article in ignorance of the law governing the publication of such comments."

The respondent is a pleader of mature age and his affectation of ignorance of the law with regard to a journalist's right to comment on pending judicial proceedings can be accepted at its true value.

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With regard to his allegations against the Magistrate the respondent says :—

"I fully believed in the truth of the statement when I published the same, on the strength of a thick rumour which I had myself heard and which was confirmed by information of a definite nature personally conveyed to me by a gentleman in Government service in whom I confided and whom I had no reason to disbelieve. Being however a Government servant the gentleman is not *now* prepared to back me up by his affidavit and it would on my part also involve a breach of journalistic etiquette to disclose his name...Now that I find that the fact alluded to by me is denied on oath by the learned Magistrate and that the matter is not within my personal knowledge, I feel it to be the more honourable course for me to withdraw the same and also to express my sincere regret for having published the same."

The question for decision is whether the High Court of Bombay has jurisdiction to deal with a person who has been guilty of contempt of a Court in the mofussil subordinate to the High Court. In *In re M.K. Gandhi*[1] the respondents were charged with contempt of the High Court for publishing a certain letter which formed part of the record of proceedings then pending in the High Court; but incidentally some of the comments complained of reflected on the District Judge of Ahmedabad and it appears to have been accepted by the learned Judges that the High Court could have jurisdiction to deal with contempts of the mofussil Courts. However the question was not seriously argued, no Indian cases were cited and that expression of opinion cannot be considered as binding upon us. It is sufficient to say that at that time it did not occur to the learned Judges that such jurisdiction might be disputed.

Marten, J., said (p. 378) :—

"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*[2] shows that in

(1) (1920) 22 Bom. L. R. 368.

(2) [1906] 1 K. B. 32.

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... (*Reg.* v. *Gray*[1]) this Court should extend its protection to all Courts in the mofussil, over which it exercises supervision."

Hayward, J., said (p. 381) :—

"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...It was Mr. Kennedy's duty...to report the matter in question as District Judge for the orders of the High Court...It has...become *our* duty to protect the proceedings of the District Judge under the powers shown by the precedents of *Rex* v. *Parke*[2] and *Rex* v. *Davies*[3] to be vested in us as Judges of the High Court."

See also *Hassonbhoy* v. *Cowasji Jehangir Jassawalla*[4] where West J., in dealing with the powers of the High Court to commit for contempt, said at p. 4 :—

"Such a power indeed must exist somewhere in order to secure the administration of the law, and it can be safely restricted in the case of the lower Courts only because it is held and exercised by those to which they are subordinate."

The first direct Indian authority on the question is *In re Venkat Rao*[5]. An injunction order was passed by the District Munsiff of Bellary against Venkatrao, a pleader, in a pending suit. While proceedings were pending against him for disobedience to the injunction order, the Munsiff was served with notice of suit for damages in respect of the injunction proceedings. It was alleged in the notice that the Munsiff had acted maliciously and without reasonable cause and in furtherance of the ill-will he bore the respondent. At the hearing of the motion for contempt made at the instance of the Advocate General, counsel for the respondent tendered an apology and said he was not going to argue the question of jurisdiction. However,

(1) [1900] 2 Q. B. 36.
(2) [1903] 2 K. B. 432.
(3) [1906] 1 K. B. 32.
(4) (1881) 7 Bom. L.
(5) (1911) 21 M. L. J. 832.

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he was allowed to argue the question as *amicus curiæ*. The Chief Justice, in giving judgment, said (p. 838):—

"It seems to me that there are two questions for us to consider: First, have we inherent Common Law jurisdiction in the matter? And, secondly, have we statutory jurisdiction under the powers conferred on this Court by section 15 of the High Courts Act?"

What was the Common Law of England with regard to the powers of the King's Bench Division of the High Court in England with reference to contempts committed of inferior Courts has been decided in *Rex* v. *Parke*[1] and *Rex* v. *Davies*[2]; and the latter decision makes it clear that the King's Bench has jurisdiction to commit for contempt of an inferior Court, even if the inferior Court was dealing with a case which would not be taken to a tribunal which was a branch of the High Court. After discussing these cases and the argument that there might be a distinction between cases of contempt of an inferior civil Court and contempt of an inferior criminal Court the Chief Justice came to the conclusion that as the Privy Council had decided that the High Court had the inherent Common Law powers in connection with matters of contempt which were exercised by the old Court of King's Bench and now by the King's Bench Division and as the King's Bench Division had powers to commit for contempt of inferior Court, the High Court had the same jurisdiction. But the Chief Justice was not prepared to hold that jurisdiction was given by section 15 of the Indian High Courts Act which gave powers of superintendence with regard to subordinate Courts.

In *Rex* v. *Parke*[1] a person having been charged before the Petty Sessions with an indictable offence triable only at the assizes, matter was published in a newspaper tending to interfere with the fair trial of the

(1) [1903] 2 K. B. 432. (2) [1906] 1 K. B. 32.

charge. It was held that the High Court had jurisdiction to attach the publisher for contempt notwithstanding that at the time of publication the person charged had not been committed for trial. It was argued that there was no jurisdiction because at the time of publication of the articles complained of there were no proceedings actually pending in any Court but the Petty Sessional Court, that the jurisdiction was confined to cases in which at the time of publication there was some cause actually pending in the High Court, and that the High Court could not deal by way of attachment for contempt with interferences with the due course of justice in any Court other than itself. On this Wills J. said (p. 436) :—

"It may be conceded that the jurisdiction to commit for contempt of Court is confined to contempt of the Court exercising the jurisdiction. Upon the wider and more general question, whether this Court will treat in this fashion inroads upon the independence of inferior Courts, we propose to say a few words towards the close of this judgment. As far as the present case is concerned it does not seem to us to arise. By the Judicature Act,...the Court of a commissioner of assize is made a branch of the High Court. The crime of which Dougal was accused,...could not in the regular course of things be tried anywhere but at the assizes...It has been argued...that publication of articles of the kind in question cannot be treated as a contempt of the Assize Court unless the committal has actually taken place and a bill been found, when only, it is urged, is there a case pending in the Assize Court, and when it is also urged the jurisdiction ought to be exercised by that Court itself. A moment's consideration ...is sufficient to dispose of such a proposition...The wrong can hardly be the less because the purpose or the tendency of the act complained of is that the Assize Court never shall have undisturbed power to fulfil its functions satisfactorily. The High Court exists always. To provide beforehand that one of its branches which, although it does not at the moment exist, yet must, both accordiug to immemorial custom, and now also by statutes and rules having the same effect, come into existence, shall be hampered and hindered in the effectual discharge of its duties as soon as it is constituted, if called upon to try a particular case which it is at all events proposed to bring into that Court, is surely an offence against the High Court itself."

Then after discussing the precedents, the learned Judge proceeded at p. 442 :—

"For what they are worth, they tell rather against than for the general jurisdiction of this Court to protect inferior Courts from attacks of this kind;

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on their independence and usefulness. On the other hand, very serious and important considerations tend the other way. Many inferior tribunals are not Courts of Record, and, therefore, have no means of checking practices of the kind with which we are dealing...This Court exercises a vigilant watch over the proceedings of inferior Courts, and successfully prevents them from usurping powers which they do not possess, or otherwise acting contrary to law. It would seem almost a natural corollary that it should possess correlative powers of guarding them against unlawful attacks and interferences with their independence on the part of others...But we purposely abstain from pronouncing any opinion upon this general question, and prefer to leave it entirely open when the occasion shall arise, and at the present moment confine ourselves to saying with Wright J. that we should hesitate long before casting any more doubt than may already exist upon the capacity of this Court to deal by proceedings for contempt with cases in which attempts are made to pollute the stream of justice, and to interfere with its proper and unfettered administration by Courts which possess no adequate means of protecting themselves...."

The occasion arose in *Rex* v. *Davies*[1] where remarks had been published in a newspaper tending to interfere with the fair trial of a person charged at the Petty Sessions with an indictable offence triable either at the assizes or at quarter sessions. The Court held that the decision in *Rex* v. *Parke*[2] was applicable. But as a further question of great and growing importance, namely, the jurisdiction of the High Court to treat attacks of that kind upon the independence and usefulness of inferior Courts as offences to be dealt with *brevi manu* by the High Court in its summary jurisdiction, it was considered desirable to treat the case as if a committal had actually taken place to quarter sessions which was not a branch of the High Court. Wills J. first referred to passages in Lord Coke's Institutes and Hawkins Pleas of the Crown to show the very great trust reposed in the Court of King's Bench in respect of its control and superintendence of all inferior Courts and that it was in a special manner the guardian and protector of public justice throughout the kingdom.

(1) [1906] 1 K. B. 32. (2) [1903] 2 K. B. 432

The same may be said of this High Court with regard to the Presidency proper of Bombay. Then the learned Judge asked what was the principle which was the root of and underlay the cases in which persons had been punished for attacks upon Courts and interferences with the due execution of their orders. He said at p. 40 :—

" 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 ; see the judgment prepared by Wilmot C. J. in *Rex* v. *Almon* (1765), but not delivered because the case was allowed to drop : Wilmot's Opinions, p. 256. The word ' authority ' is used by him to express ' the deference and respect which is paid ' to the Judges of a Court and their acts ' from an opinion of their justice and integrity.' These words are apt with respect to the particular case with which he was dealing. But what possible difference in principle can there be in respect of direct attacks upon Courts or Judges, and of writings, the tendency of which is to deprive the inferior Courts beforehand of the possibility of doing evenhanded and impartial justice according to the due course of law ? To hold that there was a distinction would give colour to the notion, which cannot be too strongly repudiated, that the offended dignity of a particular Court, or of the persons who compose it, is the subject of punishment in such a case. 'The object of the discipline enforced by the Court in case of contempt of Court,' says Bowen L. J., ' 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' : *Helmore* v. *Smith* (2)[1] ; and a considerable part of the undelivered judgment of Wilmot C. J. to which we have referred is devoted to showing 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...'Attacks upon the Judges,' he says, 'excite in the minds of the people a general dissatisfaction with all judicial determinations...and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction of justice, and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever ; not for the sake of the Judges as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial and to be universally thought so are both absolutely necessary for the giving justice that free, open, and unimpaired current which it has for many

[1] (1886) 35 Ch. D. 449 at p. 455.

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ages found all over this Kingdom': Wilmot's Opinions, pp. 255, 256. With a few verbal alterations those eloquent words will apply with at least equal force to writings, the direct tendency of which is to prevent a fair and impartial trial, or at least one that can be so considered, from being had in Courts of inferior jurisdiction which have not the power of protecting themselves from such encroachments upon their independence. The public mischief is identical, and in each instance the undoubted possible recourse to indictment or criminal information is too dilatory and too inconvenient to afford any satisfactory remedy."

At p. 42 the learned Judge refers to the great principle, that Courts for the administration of justice exist for the benefit of the people, that for the benefit of the people their independence must be protected from unauthorised interference, and that the law provides effective means by which this end can be secured :—

"If it is to be secured at all in the case of the inferior Courts it can only be secured by the action of this Court, for they have not the power to protect themselves; and if it be true that the King's Bench is in any sense the *custos morum* of the kingdom, it must be its function to apply with the necessary adaptations to the altered circumstances of the present day the same great principles which it has always upheld."

The learned Judge then points out the essential difference between the jurisdiction exercised by the Court of King's Bench and that of the other Courts which possessed none of the relations with the inferior Courts which have always appertained to the King's Bench, "whose peculiar function it was to exercise superintendence over the inferior Courts and confine them to their proper duties," and continues (p. 43) :—

"This, however, as it seems to us, was only one exercise of the duty of seeing that they did impartial justice, and if and when the attainment of that end required that the misdeeds of others should be corrected as well as the misfeasances of the inferior Courts themselves, it seems to us that it is no departure from principle, but only its legitimate application to a new state of things, if others whose conduct tends to prevent the due performance of their duties by those Courts have to be corrected as well as the Courts themselves."

Then after discussing the authorities, the learned Judge says (p. 47) :—

"It appears to us that the state of the authorities, such as they are, is such as to leave the question, as was pointed out in *Rex* v. *Parke*[1], entirely open for our decision. Our attention has been called to observations of Sir George Jessel M. R. in *In re Clements*[2], as to the necessity of caution in dealing with a matter where the liberty of the subject is concerned. Such considerations have been fully present to our minds, and certainly needed no authority to enforce them. It is because we think that we are creating no new jurisdiction, but acting strictly in conformity with the cardinal principles upon which the jurisdiction to commit for conduct tending to improperly interfere with the administration of justice rests, that we have come to the conclusion at which we have arrived. To confine the application of such principles to facts identical with or closely resembling those of preceding cases, and to hold that, because in times long gone by the chief, if not the only danger to be guarded against was the illegal exercise of arbitrary power by inferior Courts and their officers, therefore the power of this Court extends no further, and that the King's Bench cannot afford them protection as well as administer correction, would, we think, be to mistake the application of a principle for the principle itself. The mischief to be stopped is in the case of the inferior Courts identical with that which exists when the due administration of justice in the superior Courts is improperly interfered with. The reason why the Court of King's Bench did not concern itself with contempts of the other Superior Courts was that they possessed ample means and occasions for protecting themselves. Inferior Courts have not such powers, although some of them, quarter sessions for example, try many more cases than are tried at assizes, and have a very extended and important jurisdiction. The danger is perhaps greater to them than it is to the Superior Courts of having their efficiency impaired by publications such as those which have given rise to the present proceedings. Thinking as we do that the application now before us asks for nothing more than the legitimate application to new circumstances of the old principles of the common law, we have come to the conclusion that we ought to grant the remedy invoked, and it remains only to consider the penalty that ought to be inflicted."

Davies was fined £ 100 and costs.

I need make no excuse for citing at so great a length from this judgment, as otherwise it would not have been possible to realise the foundations on which it

(1) [1903] 2 K. B. 432. (2) (1877) 46 L. J. Ch. 375 at p. 383.

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rested. The administration of justice is for the benefit of the people, therefore any unauthorised interference with the administration of justice is against the interests of the people. The inferior Courts cannot protect themselves against such interference, but as it is the duty of the King's Bench in exercise of its powers of superintendence to see that the inferior Courts do impartial justice and if necessary correct their misfeasance so it is also the duty of the King's Bench to correct the misdeeds of others which tend to prevent the due performance of their duties by the inferior Courts. And the key of the whole argument will be found when the learned Judge points out that whether the administration of justice by the inferior Courts or by the superior Courts is interfered with, the mischief is identical.

It seems to me, moreover, that every word in that judgment is applicable to the case before us. This High Court possesses the same powers of punishing for contempt as the Court of King's Bench by virtue of the Common Law of England. It has powers of superintendence over all the Courts, civil and criminal, in the Presidency proper and it may be noted that in this case an application has already been made to this Court to exercise its revisional powers on behalf of the accused, and by virtue of its Charter it can withdraw to itself any case, civil or criminal, pending in any of the Courts subordinate to it. It is responsible for the administration of justice not only by itself but also by all the inferior Courts, and as it is its duty to see that those Courts do not exceed their powers, I should have thought it must also be its duty to see that there is no improper interference by others which may prevent those Courts from properly exercising their powers, and therefore, if the duty lies at Common Law, the power to enforce its orders must also exist at Common Law.

However, the contrary view has been expressed by the High Court of Bengal in *Legal Remembrancer* v. *Matilal Ghose*[1] and it will be necessary to consider the judgments which cover over sixty printed pages at some length. The facts were that while proceedings in what was known as the Barisal Conspiracy Case were going on in the Court of the Additional District Magistrate at Barisal various articles appeared in the *Amrit Bazar Patrika*, a paper published in Calcutta, containing comments on the proceedings. It was contended that the publication of these articles tended to interfere with the due course and administration of justice. Jenkins C. J. said :—

"Have we...jurisdiction to commit for contempt of an inferior Criminal Court ? The question is one of considerable difficulty and cannot, as seemed to be supposed, be solved or even understood by a mere perusal of the decision in *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court*[2] and *Rex* v. *Davies*[3]. To determine the High Court's jurisdiction in this matter involves an enquiry into its constitution and the jurisdiction, power and authority it has inherited, or may otherwise possess",...

The High Court inherited all jurisdictions and every power and authority in any manner vested in the Supreme Court, the Sudder Diwani Adawlat and the Sudder Nizamut Adawlat. The Supreme Court established by Charter in 1774 was thereby constituted a Court of Record, but it had no general control or power over the mofussil criminal Courts. The Sudder Diwani Adawlat whose jurisdiction was civil was, under 21 Geo. III, c. 70, section 21, constituted a Court of Record. The Sudder Nizamut Adawlat did not appear to have been ever constituted a Court of Record and therefore it had no power to commit for contempt of an inferior Court which could only punish under Act XXX of 1841 contempts committed in the face of

[1] (1913) 41 Cal. 173 at. p. 202. [2] (1883) 10 Cal. 109 P. C.
[3] [1906] 1 K. B. 32.

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the Court. The Chief Justice then, after concluding that the High Court could not have inherited the jurisdiction from either of these abolished Courts, considered whether the jurisdiction could have become vested in it by the Charter Act, 1861, or the Letters Patent under that Act and whether the decision in *Rex* v. *Davies*[1] was applicable. Analysing the judgment in that case the Chief Justice points out that the jurisdiction assumed was inherited from the old King's Bench and was of a special character as it rested on that Court's power to punish every kind of misdemeanour as the guardian and protector of public justice throughout the kingdom, the "*custos morum*" a dignity that reverted to it or was revived after the abolition of the Star Chamber. The helplessness of the inferior Court and its subjection to the superintendence and control of the King's Bench were not the foundations of the jurisdiction but merely the occasion and the reason for its exercise. The Court considered that the proceedings before it were the legitimate application to new circumstances of the old principle of the Common Law, and, as, according to those principles, the King's Bench as *custos morum* had jurisdiction to punish on a summary proceeding as well as on indictment or information all offences in the kingdom being a contempt of Court as tending to interfere with the administration of justice, when the Court embarrassed was under the superintendence of the King's Bench and unable to protect itself, Common Law principles should be applied on a summary proceeding. Had the High Court Common Law powers to punish as an offence on a summary proceeding conduct in relation to a proceeding in a mofussil Court which was not an offence under the Indian Penal Code, and which could only be considered as a contempt of the mofussil

[1] [1906] 1 K. B. 32.

Court? As superintendence did not give jurisdiction and the King's Bench powers to punish for interference with the lower Courts did not arise from its being a Court of Record but from its Common Law powers as *custos morum*, which the High Court did not possess, it followed that the High Court had not the jurisdiction which was sought for it. The learned Chief Justice refrained from commenting on the decision in *Venkat Rao's case*[1] on the ground that to appreciate the *ratio decidendi* it would be necessary to possess an intimate acquaintance with the nature and limits of the jurisdiction of the High Court of Madras inherited from its predecessor or vested in it by its Charter. He had none of the materials necessary for that purpose nor could he tell how far the Common Law prevailed in the Madras Presidency outside the Presidency town. But, with all due respect, the *ratio decidendi* in *Venkat Rao's case*[1] is perfectly clear for the Chief Justice of Madras did not go beyond the decision of the Privy Council in *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court*[2] to the effect that the High Courts in the Presidencies were superior Courts of Record and their power of punishing for contempt was the same as in England by virtue of the Common Law of England. Then as the King's Bench had the power to punish for contempt of Court involved in the interference with the administration of justice by an inferior Court it was inferred that the High Court of Madras had the same power. If there was jurisdiction in the High Court to deal with contempt of an inferior Court it did not much matter if the jurisdiction was exercised on the ground that the contempt of the inferior Court amounted to a contempt of the Court exercising

[1] (1911) 21 M. L. J. 832.

[2] (1883) 10 Cal. 109, P. C

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jurisdiction. The cause of the difference of opinion between the Chief Justices of Bengal and Madras is obvious. The argument of Jenkins C. J. is as follows: The King's Bench had jurisdiction to punish on a summary proceeding all contempts of Court, by virtue of its position as *custos morum*, not because it was a Court of Record. The other superior Courts were Courts of Record but had no power to punish for contempts which did not tend to interfere with the administration of justice by such Courts. The High Court of Bengal was in no better position than the English Superior Courts other than the King's Bench and therefore had no jurisdiction to punish for contempts of other Courts. White C. J., on the other hand, argued, the High Court of Madras is a Court of Record, it has also powers of superintendence over the inferior Courts as the King's Bench has, and consequently the High Court has jurisdiction to punish contempts which tend to interfere with the administration of justice whether by the inferior Court or by the High Court itself. He did not think the High Court had jurisdiction under section 15 of the Indian High Courts Act. That may be so but I do not think that the learned Chief Justice can be taken as holding that if the High Court of Madras was only a Court of Record with no powers of superintendence over the mofussil Courts, it would have had jurisdiction to punish contempts which were directed in the first instance against the mofussil Courts. For he especially refers to the passage in *Rex* v. *Parke*[1] to the effect that the power of guarding the inferior Courts against unlawful attacks was the natural corrollary of the power of superintendence. Again, in the Barisal case, the contempt alleged was treated in the first instance as a contempt of the Barisal Court, and not of the High Court. White C. J.

[1] [1903] 2 K. B. 432.

considered that a matter of academical interest, but it is much more than that, when a question of logical accuracy is involved. For in *Rex* v. *Parke*[1] Wills J. conceded that the jurisdiction to commit for contempt was confined to contempt of the Court exercising jurisdiction and there is nothing in the judgment in *Rex* v. *Davies*[2] delivered by the same learned Judge which would lead one to think that what had been conceded in *Rex* v. *Parke*[1] was withdrawn in *Rex* v. *Davies*[2]. Jenkins C. J. no doubt did consider the question whether the High Court could deal with the contempt alleged on the ground that the case might come before it either for original or appellate trial at one stage or another but declined to express any opinion on the point on the ground that it had not been discussed in the argument. And, after discussing the articles complained of, the Chief Justice says (p. 220) :—

"The conclusion then to which I come is, that though we may have jurisdiction to commit for contempt of the High Court in a case of this class, still in the present case no contempt justifying summary action on our part has been established."

Stephen, J., after discussing *Rex* v. *Parke*[1] and *Rex* v. *Davies*[2], came to the conclusion that the latter decision depended on general powers possessed by the King's Bench to secure a proper administration of Justice to His Majesty's subjects which the learned Judge could not find to have been conferred upon the High Court, so that it was impossible to hold that their powers of superintendence implied any power of protection. But the learned Judge discussing what might happen if the case came before the High Court on appeal continued (p. 230) :—

"As a matter of principle it seems to me undeniable that we have a right to treat as a contempt any act committed within the local limits of our

[1] [1903] 2 K. B. 432. [2] [1906] 1 K. B. 32.

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original jurisdiction that may affect its trial on appeal, and in particular any act that may tend either to taint or impair that evidence or to cause evidence that would otherwise be forthcoming to be withheld."

However, on a review of the articles complained of, the learned Judge considered that there was no contempt, however widely the law of contempt might be stated. The decision of the Madras High Court was not discussed. Mookerjee J. considered that there was no foundation laid by the Crown for the theory that the High Court as a Court of Record had authority to punish for contempt of the Court of the Magistrate of Barisal merely because the High Court was a Court of Record which exercised powers of superintendence over that Court or because that Court was subject to its appellate and revisional jurisdiction. The hypothesis that a superior Court which exercised a power of superintendence over a subordinate Court possessed by implication a power to afford to such Courts protection against contempts of its authority, was no doubt attractive but had no solid foundation in the history of the constitution of their Courts. In dealing with *Venkat Rao's case*[1] the learned Judge said (p. 248) :—

"The proposition that the High Court in so far as it has inherited the jurisdiction of the abolished Supreme Court possesses inherent common law powers in connection with matters of contempt which were exercised by the Court of King's Bench, is of no assistance in the solution of the problem now before us, namely whether the High Court as a Court of Record can punish for contempt of a subordinate Court over which it exercises powers of superintendence and which is subject to its appellate and revisional jurisdiction. The fundamental distinction between the two questions is easily realised from an examination of the decision in *Rex* v. *Davies*,[2] upon which the Advocate-General relies as the learned Judges of the Madras High Court did in *In re Venkat Rao*[1]."

The conclusion in *Rex* v. *Davies*[2] was not based on the ground that the King's Bench Division possessed the powers merely because it was a Court of Record or

[1] (1911) 21 M. L. J. 832.

[2] [1906] 1 K. B. 32.

because it exercised powers of superintendence over inferior Courts, but was founded on a historical consideration of the supreme place in the judicature assigned to the Court of King's Bench which had power to correct errors and misdemeanours extra-judicial tending to the breach of the peace or oppression of the subjects or any other manner of misgovernment, and was in a special manner the guardian and protector of public justice throughout the kingdom. The learned Judge thought it was obvious that those considerations of a very special character had no application to the High Court of Bengal and if they were to apply the principle which lay at the foundation of the decision in *Rex* v. *Davies*[1] they would have to hold that the Common Law of England was applicable throughout the jurisdiction of the Court even to persons other than British subjects beyond what was the territorial limit of the ordinary jurisdiction of the abolished Supreme Court. On a review of the articles complained of the learned Judge thought that they did not constitute a contempt of Court of the Magistrate of Barisal much less of the High Court. The fact that none of the learned Judges considered that the articles complained of constituted a contempt had no doubt some influence on their judgments and the Chief Justice certainly refrained from holding that in no case of that class could a contempt of the High Court be committed. Although the question of the jurisdiction of the King's Bench was not decided until 1906 the effect of the decision in *Rex* v. *Davies*[1] was that according to the Common Law of England the King's Bench always had jurisdiction to deal with contempts of inferior Courts which by tending to interfere with the due administration of justice constituted contempts of the King's Bench. It would follow that the Supreme Court by its

[1] [1906] 1 K. B. 32.

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Charter had the same jurisdiction to the extent of its territorial limits. If those limits had been extended to the Presidency proper, its jurisdiction in matters of contempt would have extended in the same way, and because the Supreme Court was abolished and the territorial limits of the High Court which took its place were extended by the same measure which brought it into existence, there is no reason why its jurisdiction in matters of contempt should be restricted to the territorial limits of the old Supreme Court. Of course by territorial limits I mean the limits within which the High Court exercises appellate and revisional powers and powers of superintendence. It is true that the powers of the High Courts to correct errors and misdemeanours are defined and limited by Statute, but the power to punish for contempt remains as given to it by the Common Law. I entirely agree with Mookerjee J. when he says at p. 260:—

"The power...must be exercised with caution and only when the case is clear beyond controversy, because as Sir George Jessel observed in *Plating Company* v. *Farquharson*[1] it is an arbitrary jurisdiction. There is no limit to the amount of the fine which may be inflicted or to the length of the term of imprisonment which may be directed; there is no appeal as a matter of right against an order of attachment...It is the only criminal offence summarily punishable. The Court will consequently not make an order for attachment, unless it is satisfied beyond dispute that the order is needed peremptorily in the interests of the administration of justice."

The learned Judge refers to what historians have recorded as the policy of the Emperor Augustus in dealing with such matters but I think that in deciding whether or not to take notice of contempts the consideration which might have influenced a Roman Emperor in exercising leniency or passing them by unnoticed would have to be revalued by the Courts according to modern circumstances. We are not concerned with the fact that there are other Courts of

[1] (1881) 17 Ch. D. 49.

highest jurisdiction in India which do not possess the Common Law powers of the King's Bench. We are only concerned to see that what jurisdiction the High Court possesses, so as to preserve the administration of justice pure and unobstructed for the benefit of the people of the Presidency proper, should be exercised as occasion demands with all due care and deliberation. We must exercise the high functions entrusted to us according to due course of law, and I venture to think there is evidence, in the words of Mr. Justice Wills, to show the very great trust reposed in this Court in respect of its control and superintendence of all inferior Courts subordinate to it, and that it is in a special manner the guardian and protector of public Justice. It is by writings such as the one complained of in this case that the public mind is poisoned and their belief in the impartiality and incorruptibility of the Courts is sought to be destroyed, and we cannot fulfil that trust if the administration of justice can be interfered with without any power on our part to prevent it.

However desirable it might be that it should have that power, however attractive the hypothesis that the power of superintendence carries with it the power of protection, the High Court of Bengal can find no foundation in the history of its constitution for holding that it has that power. The High Court of Madras without considering its own history has boldly linked to a dictum of the Privy Council a modern decision which has discovered for the King's Bench its inherent powers to punish all attempts to interfere with the administration of justice.

I see nothing in the history of the constitution of this Court which should deter me from holding that we have the same powers of punishing for contempt as the King's Bench Division. The Supreme Court had

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the power but its jurisdiction in this respect was limited not by its constitution but by its geographical limits consequent on its being established by the Crown within the territories of the East India Company, for certain purposes, which left the jurisdiction and powers of the Company's Courts free from all constraint or superintendence by the Supreme Court. The jurisdiction of the Supreme Court to punish for contempt in cases of this class thus lying dormant of necessity was inherited by the High Court and although by virtue of its extended authority occasions might have arisen for its exercise, nearly sixty years have passed before even the question of its jurisdiction has come up for decision.

It is not every contempt of an inferior Court which will necessarily constitute a contempt of this Court. That is a question which must be decided in each case as it arises. Viewed in this light the question is not so much one of jurisdiction as one of fact, and I have sufficiently stated above the principles which I think should guide the Court in deciding the question of fact. For myself I have no hesitation in holding that according to those principles in the case a contempt of this Court has been committed but I recognise that owing to the conflict of authorities on the question at issue the respondent may have thought that in publishing the article complained of he was in no danger of rendering himself liable to be attached in exercise of our summary powers.

SHAH, J.:—This is a Rule issued on the application of the Government of Bombay against Balkrishna Govind Kulkarni, the Editor and Publisher of a paper, called *Shubhodaya*, published at Dharwar to show cause why he should not be committed for contempt of Court. The contempt is said to have been committed by the

publication of an article written in Kanarese on the 2nd of June 1921, in respect of certain proceedings then pending in the Court of the First Class Magistrate at Dharwar against two persons, who are described as "volunteers of the Temperance Committee", on a charge of robbery in respect of a sum of thirteen annas punishable under section 392, Indian Penal Code. It is not necessary to quote the article here. But the writer attributes partiality to the Magistrate in favour of the prosecution, criticises the proceedings in his Court in a manner which cannot possibly be described as fair, and suggests that he acts under instructions of the District Magistrate and not in accordance with his own conscience.

The publication of such an article during the pendency of the proceedings is clearly improper. The effect of the article is to scandalise the Magistrate and its tendency is to interfere with an even and impartial administration of justice for which the Court is constituted. It is clear that such a publication constitutes a contempt of that Court. It is to be regretted that such an article should have appeared in a newspaper edited and published by a person, who holds a Sanad of this Court and who is expected to understand his responsibility in a matter of this kind. It is a matter of some satisfaction that the opponent has made no serious attempt to justify the article and has expressed his willingness to abide by the ruling of this Court and to express his "sincere regret" for having published it as he says in ignorance of the law governing the publication of such comments.

The following observations in *Reg.* v. *Gray*[1] appear to be applicable to this case (p. 40):—

"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

[1] [1900] 2 Q. B. 36.

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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."

In the present case the article was published while the proceedings were pending and it is not suggested and cannot be suggested that it contains criticism of the nature indicated in the passage quoted above.

The questions that arise on this view of the article are (1) whether this Court has jurisdiction to punish the opponent for contempt of the Court at Dharwar, (2) whether it constitutes a contempt of this Court, and (3) whether the opponent should be punished having regard to the circumstances of the case as disclosed in these proceedings.

As regards the first question at the outset I may refer to the opinions expressed in *In re M. K. Gandhi*[1] on this point. If these opinions were binding upon us, without examining this somewhat difficult question, I would answer it in the affirmative in accordance with these opinions. But it appears that in that case the contempt under consideration was the contempt of this and not of a subordinate Court, and that the question of jurisdiction which arises in this case did not arise in that case. The opinions expressed there were not strictly necessary for the decision of that case. Even then the opinions so clearly expressed are entitled to great weight. Unfortunately, however, the particular point of law was not argued on both sides and apparently there was no reference to the Indian decisions on the point: nor is there anything in the judgment to show that the relevant provisions of the Statutes and the Letters Patent bearing on the point were independently examined. While, therefore, I am prepared to attach

(1) (1920) 22 Bom. L. R. 368.

great weight to these opinions, I cannot say that I am relieved from the obligation of coming to an independent conclusion on the question of jurisdiction.

The two English decisions bearing on the point are *Rex* v. *Parke*[1] and *Rex* v. *Davies*[2] and the two Indian decisions are *In re Venkat Rao*[3] and *Legal Remembrancer* v. *Matilal Ghose*[4]. The application of the view accepted in *Rex* v. *Davies*[2] to the Indian High Courts has been considered in both the Indian cases and the difficulty of the point is reflected in the conflicting decisions of the Madras and Calcutta High Courts. I have carefully considered the point of jurisdiction in the light of the judgments in all these cases, and of the arguments urged before us. I do not think that this Court has power to punish contempts of criminal Courts subordinate to this Court as such.

This Court is undoubtedly a Court of Record. It has been so constituted by the Letters Patent of 1862 and 1865: and section 106 of the Government of India Act of 1915 contains an express provision to that effect. Having regard to its powers as defined by the Statutes and the Letters Patent it would be a superior Court of Record. Undoubtedly it would have the power to punish contempts committed against itself. The old Supreme Court as a Court of Record had that power: but the old Sudder Diwani Adawlat and Foujdari Adawlat had no such power to punish persons for contempts. The High Court has got all the powers which the above Courts had subject of course to the provisions of the Letters Patent. The High Court has also powers of superintendence over all the Courts within its appellate jurisdiction. It has been held that this Court has power to punish contempts committed against itself as the superior Courts of Record have under the Common

(1) [1903] 2 K. B. 432.
(2) [1906] 1 K. B. 32.
(3) (1911) 21 M. L. J. 832.
(4) (1913) 41 Cal. 173.

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Law of England: *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court*[a]. So far there is no difficulty. But the questions whether the Common Law of England is applicable so far as the punishability of contempts of subordinate Courts as such is concerned, and whether the position of the High Court is the same as or similar to that of the Court of the King's Bench in England as regards the power to punish them are not free from difficulty and cannot be treated as settled by the above decision.

As regards the first point, certain contempts of Court are punishable at present under section 228, Indian Penal Code, and apart from the usual remedy by way of trial section 480 of the Code of Criminal Procedure provides a summary remedy for punishing them. The earliest legislation on this point, so far as I can gather, was Act XXX of 1841. A careful perusal of these provisions shows that in India while certain contempts committed "in view or the presence of the Court." are made punishable, there is no provision in the Indian Penal Code or any other Indian Act for punishing such contempts committed in the absence of the Court as in the present case. It may be that the presiding judge may be able to take proceedings in respect of a charge of defamation against the person concerned: but that is quite a different matter. All that I mean is that a contempt of Court as such is not made punishable except to the limited extent indicated in section 228, Indian Penal Code, or section 480, Criminal Procedure Code. Under the English Common Law such contempts are punishable as misdemeanour, and the remedy is either by way of indictment or summary proceedings before the Court if it has the power to punish it summarily. I feel a great difficulty in holding that because a contempt of Court is punishable under the English Common

[a] (1883) L.R. 10 I. A. 171; 10 Cal 109, P. C.

Law it is punishable as such in India even though the Indian law does not make it punishable. It would be in effect creating a new offence to hold that a contempt of subordinate Court as such is punishable.

Further, I am unable to hold that this Court has powers, which the King's Bench in England exercises under the Common Law of England, with reference to the contempts of other Courts. The provisions of the Statutes relating to the Indian High Courts, particularly sections 9 and 15 of 24 & 25 Vic. c. 104, now replaced by sections 106 and 107 of 5 & 6 Geo. V, c. 61, and of the Letters Patent of 1862 replaced by the amended Letters Patent of 1865, particularly clauses 21 to 28 relating to the criminal jurisdiction of this Court, clearly show that the jurisdiction and powers of the High Court are defined by and subject to those provisions; and it is difficult to find either in the history of this Court or in the statutory provisions defining the limitations of the powers of this Court any justification for holding that this Court has powers such as the Court of the King's Bench in England has as being the *custos morum* of all the subjects of the realm under the Common Law of the land. In the result I agree with the conclusion reached by Jenkins C. J. in the Calcutta case that the High Court has no such power. I need not labour the point that the mere fact that the Court has powers of superintendence over the subordinate Courts does not give to this Court any such jurisdiction, as both the Madras and Calcutta High Courts are agreed on this point.

I may add that the decision in *Rex* v. *Parke*[1] left this question open, and that the decision in *Rex* v. *Davies*[2] appears to me to be based upon the view that the Court of the King's Bench has powers to punish *summarily* contempts of other Courts, which are

[1] [1903] 2 K. B. 432. [2] [1906] 1 K. B. 32.

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punishable by the Common Law of the land, as being the *custos morum* of all the subjects of the realm. There it was merely a question of applying the remedy and not of considering the question whether the contempt was punishable by the law of the land.

The next question is whether the publication in question amounts to a contempt of this Court. The point is not distinctly raised in the petition; but in the argument it has been urged by the learned Advocate General that a contempt of a subordinate Court really constitutes a contempt of this Court. This question is by no means free from difficulty. On the best consideration that I can give to it I have come to the conclusion that it is not possible to lay down any general rule one way or the other. It cannot be said that every contempt of a subordinate Court is necessarily a contempt of this Court: nor can it be said that contempt of a subordinate Court can never be a contempt of this Court. In each case it must be determined as a question of fact having regard to all the circumstances including the nature of the contempt, the nature of the proceedings with reference to which the contempt is committed, the relation of the subordinate Court to the High Court with reference to those proceedings and its probable effect upon the due administration of justice.

In the present case we are concerned with the contempt involved in the publication of the particular article in the *Shubhodaya* at Dharwar, with reference to proceedings in respect of a charge under section 392, Indian Penal Code, in the Court of the First Class Magistrate at Dharwar. The article itself is an attack on the impartiality and independence of the Court. The proceeding was in respect of a charge triable by a First Class Magistrate. The charge of robbery is also triable by a Court of Session; but having regard to

the description of the offences as given in the petition I should treat these proceedings as a trial before that Court on the charge of robbery. In such a case in case of acquittal, the appeal would lie to this Court, and in case of conviction the appeal would lie to the Sessions Court, if the sentence be appealable: and in any event in case of conviction this Court would have the power to revise the order of the Court in question, and the responsibility of this Court would be co-extensive with its revisional powers under the Code of Criminal Procedure. In thus stating the position, I have not referred to the other powers of this Court under the Letters Patent, the exercise of which can be hardly treated as anything more than remotely possible. Looking at the article it is undoubtedly true that it is primarily directed against the Magistrate and not against this Court: and it is not unlikely that the publisher may not have been able to realise the possibility of its being treated as a contempt of this Court. At the same time it is clear that the attack on the impartiality and independence of the Magistrate was made at a time when the proceedings were pending: and the tendency of such publication is to impede the due administration of justice. At the same time without straining language it is not easy to say that such a contempt constitutes a contempt of this Court. Generally speaking, I entirely disapprove of such attacks on the impartiality and independence of Judges whatever their rank and position, particularly when the proceedings are pending: and I desire to express my complete agreement with the observations of Jenkins C.J. in *Legal Remembrancer* v. *Matilal Ghose*[1] at pp. 220-221 of the report, relating to the impropriety of making comments on pending cases or on judges in connection with these cases. Having regard to all the

[1] (1913) 41 Cal. 173.

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circumstances bearing on this question of fact I am not prepared to differ from the view which my Lord the Chief Justice takes that the publication of the article in question constitutes a contempt of this Court as tending to impede the due administration of justice.

This brings me to the last question as to whether the contempt is shown to be of such a character as to demand any punishment. In connection with this point, I think it must be shown that it was probable that the publication would substantially interfere with the due administration of justice. All the judges, who decided the case of *Legal Remembrancer* v. *Matilal Ghose*,[1] have emphasised this point and having regard to the nature of this jurisdiction it must be exercised with reserve and caution. I do not consider it necessary to elaborate this point in the present case. The petition is silent on this point. While the tendency of a publication may be clear, it may not be easy to determine its probable effect on the due administration of justice, which must necessarily depend upon the surrounding circumstances. On the whole, I think, it is sufficient to warn the opponent on the ground that he has committed contempt of this Court.

Before parting with this case I may state that, in my opinion, such defects as exist at present in the law relating to contempts of Courts other than the High Court can be removed only by the Legislature and that it is desirable to remove them.

AFTER the above judgments were delivered, His Lordship the Chief Justice, addressing the respondent, spoke as follows :—

BALKRISHNA GOVIND KULKARNI,

You have published remarks in your paper on a pending criminal trial, which cannot be too severely

[1] (1913) 41 Cal. 173.

condemned. Your conduct is all the more disgraceful in that it was your duty holding a pleader's Sanad to aid in the administration of justice instead of interfering with it as you have done, at a time when the public mind was much stirred by existing circumstances, and a trial, which otherwise would have passed unnoticed as one relating to a comparatively insignificant charge, had aroused considerable interest. Your remarks were calculated to excite in the minds of the people, not only the impression that innocent persons were being prosecuted by the executive authorities and would not get a fair trial at the hands of a Magistrate alleged to be under the influence of those authorities, but also a general dissatisfaction with judicial determinations, so that a danger was created that the peoples' allegiance to the laws might be fundamentally shaken and a most fatal and dangerous obstruction to the administration of justice erected. The administration of justice within this Presidency has been entrusted to us, and we have the powers in execution of the trust imposed upon us to provide that such dangers when they arise shall be removed, and in exercising those powers we seek not so much to protect ourselves as to protect the people from the evil which will result if their faith in the authority and justice of our tribunals be impaired. Taking into consideration the fact that in the conflict of the authorities you may have thought yourself beyond the reach of our summary powers, and your expression of regret, we rest content with discharging the Rule, trusting that this may be a warning to you to remember for the future that a Court of law is immune from any comment on its proceedings until it has given its decision.

Rule discharged.

R. R.