APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Madhavan Nair and Mr. Justice Gentle.

1938, November 16.

P. S. TULAJARAMA RAO, APPLICANT,

v.

SIR JAMES TAYLOR AND OTHERS, RESPONDENTS.*

Contempt of Court—Case sub judice*—Comment on, or suggestion as to the course to be adopted by Court in—Contempt—Honesty of motive, no excuse—Comment on proceedings which are imminent but not yet launched in Court with knowledge of the fact constitutes contempt of Court—Discussion in newspaper of rights and wrongs of a pending case constitutes contempt—Difference between discussion of a pending case on the one hand and reference to same and giving items of news connected with pending case on the other—Latter permitted—Power to commit for contempt of Court, not to be lightly used but should be reserved where contempt is deliberate and of such a nature that committal is called for.*

Held by the Full Bench.—(i) To comment on a case which is *sub judice* or to suggest that a Court should take a certain course in respect of a matter before it constitutes contempt and honesty of motive cannot remove it from this category. The criterion is not whether the Court will be influenced, but whether the action complained of is calculated to prejudice the course of justice.

(ii) To comment on proceedings which are imminent but not yet launched in Court with knowledge of the fact is as much a contempt as comment on a case actually launched.

Rex v. *Parke*(1) and *Rex* v. *Daily Mirror. Ex parte Smith*(2) referred to.

(iii) A discussion in a newspaper of the rights and wrongs of a case when pending before a Court is improper and constitutes contempt of Court. But this does not mean that reference cannot be made to pending cases or that items of

* Application No. 1854 of 1938 in Original Petition No. 158 of 1938.
(1) [1903] 2 K.B. 432, 437. (2) [1927] 1 K.B. 845.

news which are connected with pending cases should not be published.

(iv) The power to commit for contempt of Court is not to be lightly used and should be reserved for cases where the contempt is deliberate and of such a nature that committal is called for.

In the matter of the Indian Companies Act (VII of 1913) and in the matter of the Travancore National and Quilon Bank, Ltd. (in Liquidation).

K. Krishnaswami Ayyangar and *A. Seshachari* for applicant.—Comment on a case which is *sub judice* constitutes contempt and honesty of motive is no defence; see *Raja of Venkatagiri* v. *Rama Naidu*(1), *Bapayya Naidu* v. *Bapayya*(2) and *Rex* v. *Parke*(3). *Sub-judice* means "not disposed of" and does not mean "actually pending". *In re Crown Bank. In re O'Malley*(4), which is on all fours with the present case, is disapproved in *The Queen* v. *Payne*(5) and *New Gold Coast Exploration Company, In re*(6). *See* also Halsbury's Laws of England, Hailsham Edition, Vol. 7, page 10, note (n). *The William Thomas Shipping Co., Ld., In re. H.W. Dillon & Sons, Ld.* v. *The Company. In re Sir Robert Thomas*(7), which is followed in *Raja of Venkatagiri* v. *Rama Naidu*(1), distinguishes *The Queen* v. *Payne*(5). The defence of fair comment on a matter of public interest does not extend to matters *sub judice* and the fact that the publication was made *bona fide* will not take the case out of the category of contempt of Court, since the publication is calculated to prejudice the course of justice; see *Tichborne* case cited as footnote to *Daw* v. *Eley*(8). Even mere publication of a winding-up petition *in extenso* amounts to contempt of Court; see *In re Cheltenham and Swansea Railway Carriage and Wagon Co.*(9).

The scheme for reconstruction of the Bank was one that was imminent on 22nd July 1938 and comment on the same amounts to contempt of Court; see *Rex* v. *Parke*(3), *Rex* v. *Daily Mirror. Ex parte Smith*(10) and Halsbury's Laws of England, Hailsham Edition, Vol. 7, pages 7 and 9.

(1) I.L.R. [1938] Mad. 545.
(2) (1938) 2 M.L.J. 520.
(3) [1903] 2 K.B. 432, 437.
(4) (1890) 44 Ch.D. 649.
(5) [1896] 1 Q.B. 577.
(6) [1901] 1 Ch. 860.
(7) [1930] 2 Ch. 368, 375, 376.
(8) (1868) L. R. 7 Eq. 49.
(9) (1869) L.R. 8 Eq. 580.
(10) [1927] 1 K.B. 845.

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Nugent Grant for respondents 1 to 3.—If the facts constitute punishable contempt the respondents tender their apology. Contempt jurisdiction is jealously guarded but sparsely exercised. There was no proposal under section 153 of the Indian Companies Act pending before STODART J. on 22nd July 1938. The opposition to adjudication had been by that time withdrawn. In *Rex* v. *Parke*(1) the matter had been placed before the Petty Sessions and it was only a question of time when the matter would be referred to the Assizes. In that interval the publication was made and it was under these circumstances the matter was held to be imminent. Whether a particular matter was imminent or not has to be judged with reference to the facts of each particular case. The publication of the letter complained of was not calculated to interfere with the course of justice. If at all, the present case came under the third category of contempts mentioned in *The William Thomas Shipping Co., Ld., In re. H. W. Dillon & Sons, Ld.* v. *The Company. In re Sir Robert Thomas*(2), viz., that it prejudices mankind against parties to a cause before it is heard.

[THE CHIEF JUSTICE.—The scheme for reconstruction was referred to by STODART J. in his order for appointing provisional liquidators.]

At the worst that matter might have been in the contemplation of parties but it was not a matter that was imminent.

[THE CHIEF JUSTICE.—How can you say that a letter which says that an order for liquidation should be made does not constitute contempt of Court ?]

It is not punishable contempt ; see *Ex parte Gaskell & Chambers Ld.*(3). As a fact no damage has been done and the course of justice has not been interfered with.

T. R. Venkatarama Sastri and *P. R. Srinivasan* for the Editor of the "Hindu".—The scheme for reconstruction was not pending before Court. There was a possibility of the same coming up before Court in a contingency. The creditors and share-holders must make up their minds and then apply for reconstruction. Under those circumstances the opinion of the Reserve Bank was sought.

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(1) [1903] 2 K.B. 432, 437.
(2) [1930] 2 Ch. 368.
(3) [1936] 2 K.B. 595.

[The CHIEF JUSTICE.—The first respondent might offer his opinion to the Premier but he cannot ventilate it in the press. What do you say to *Rex* v. *Editor of the Daily Mail*. *Ex parte Factor*(1) ?]

The Bank had branches throughout British India and the Native States and the share-holders were spread over the whole of India. The method of making the affairs of the bank known to them through the press was adopted since that was the surest and speediest method. It was not with a view to interfere with the course of justice. If it is technical contempt it ought not to have been brought up before Court. *Plating Company* v. *Farquharson*(2) deals with a case of publication in the press by advertisement and not by a circular ; *see* also *The Queen* v. *Payne*(3), *Rex* v. *Tibbits*(4), *Legal Remembrancer* v. *Matilal Ghose and Others*(5) and *The Government Advocate, Burma* v. *Saya Sein*(6).

V. C. Gopalaratnam and *V. K. Tiruvenkatachari* and *K. R. Vepa* for other respondents.

Advocate-General (Sir A. Krishnaswami Ayyar) for the Provincial Government.—The act of releasing the letter was an act of the Provincial Government. They take the full responsibility for the publication. Under the circumstances they would have been failing in their duty if the letter had not been released for the information of the share-holders and creditors of the Bank.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by LEACH C.J.—The petitioner in this case applies for the committal of Sir James Taylor, the Governor of the Reserve Bank of India, Mr. M. M. Bhargava, the manager of the Madras Branch of that Bank, and Mr. G. A. Johnson, the acting editor of the " Madras Mail " for alleged contempt of Court. The action of the first respondent complained of is that he procured the publication of a letter dated 22nd

(1) (1928) 44 T.L.R. 303.
(2) (1881) 17 Ch. D. 49.
(3) [1896] 1 Q.B. 577.
(4) [1902] 1 K.B. 77.
(5) (1913) I.L.R. 41 Cal. 173 (S.B.).
(6) (1929) I.L.R. 7 Ran. 844.

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July 1938, written by him to the Prime Minister of the Madras Government with reference to a petition then before this Court for the compulsory winding-up of the Travancore National and Quilon Bank, Ltd. The letter was published in the local press on 9th August at the request of the first respondent conveyed in a letter by the second respondent to the Secretary of the Government of Madras, Development Department. The complaint against the acting editor of the " Madras Mail " is that he published the letter and also published a leading article commenting on a scheme for reconstruction which was about to be placed before the Court and a letter from " A creditor " commenting on the same matter. The application came on for hearing before this Bench on 19th October. In the course of the arguments it appeared that the first respondent's letter had been published in other Madras papers, namely, the " Hindu ", " Indian Express ", " Dinamani ", " Swadeshamitran " and " Andhra Patrika". As the petition which had been filed showed a *prima facie* case of contempt, the Court directed that the editors of these newspapers should also be called on to show cause and the hearing was adjourned in order that notices might be served upon them. This has now been done and the editors of these newspapers have entered appearances.

The Travancore National and Quilon Bank (which I shall hereafter refer to as " the Bank ") suspended payment on 21st June 1938. The head office of the Bank was in Madras and it had many branches inside and outside the Presidency. The suspension of payment was therefore a matter of great public and private concern. On 22nd June a petition for the winding up of the Bank was presented to the Bombay High Court and on the same day a similar petition was

filed in the District Court of Quilon, which is in the State of Travancore. The next day a petition for its winding-up was also presented to this Court. A run on the Bank commenced on 15th March and as it continued to grow in intensity the Bank was compelled to close its doors. Before suspending payment the directors applied to the Reserve Bank of India for financial help. The Reserve Bank naturally wished to investigate the affairs of the Bank before committing itself and on 20th June an investigation was commenced, but before it could be completed the suspension of payment took place. The directors of the Bank then wanted the Reserve Bank to take charge of its assets and conserve them pending further investigation. Discussions took place between the Minister for Industries, the Officials of the Finance Department of the Government of Madras and the Deputy Governor of the Reserve Bank on 27th June and between the Prime Minister and the Deputy Governor on 29th June. On 30th June the Government of Madras issued a communication to the press stating that the Government had anxiously considered all possible steps that could be taken to meet the situation and, in consultation with the authorities of the Reserve Bank, it was suggested that the Bank should apply to the Reserve Bank to undertake an immediate and thorough investigation through competent auditors and accountants appointed by them into the affairs of the Bank and agree to act according to such advice as might be tendered as a result of the investigation " for the continuation, reorganization, or liquidation of the Bank, whichever course was finally suggested ". The Reserve Bank estimated that the expenses of the investigation would amount to Rs. 10,000 and intimated its willingness to undertake the investigation

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if this sum were forthcoming. On 2nd July the Bank asked the Court to appoint provisional liquidators and to sanction the payment of the Rs. 10,000 out of the assets of the Bank. The application was heard by STODART J. who granted the first part of the application the same day, but by an order delivered on 5th July dismissed the application for the payment out of the Rs. 10,000 on the ground that he had no power to grant it. The hearing of the winding-up petition was then adjourned to 28th July.

On 8th July the Reserve Bank intimated its willingness to undertake the investigation at its own expense and the next day appointed a special officer for the purpose, but when he went to the premises of the Bank in Madras he met with some opposition from the Bank officials. It would appear that the opposition was subsequently withdrawn because on 17th July the special officer was in a position to make a preliminary report. On 18th July the first respondent came to Madras and on his arrival the preliminary report of the special officer was handed to him. The first respondent remained in Madras for two days during which time he had an interview with the Prime Minister and received a deputation from a committee of creditors who were interested in the reconstruction of the Bank. On 22nd July the first respondent wrote to the Prime Minister the letter complained of in the petition. In it he expressed the opinion that the only conclusion to be drawn from the material so far available was that the interest of the depositors would best be served by allowing the liquidation proceedings to take their course without further postponement and it seemed to him that it would be in the best interest of the depositors that the liquidation should be carried out for the Bank as a whole, as from the preliminary

figures furnished to him it would appear that the proportion of the assets to the liabilities was considerably larger in Travancore than in British India. The letter recommended that no further attempt should be made to postpone liquidation proceedings and concluded with the statement that the writer had no objection to the publication of the contents of this letter if the Prime Minister so desired.

On 27th July an application was made to the appellate side of this Court for an order staying the proceedings in the winding-up petition pending the hearing of the appeal which had been filed against the order of STODART J. refusing to allow the Rs. 10,000 to be paid out of the assets of the Bank for the purposes of the investigation by the Reserve Bank. That this appeal should have been persisted in seeing that the Reserve Bank had agreed to undertake the investigation at its own expense is a matter of some surprise. The Court refused an order of stay, but heard the appeal itself on 9th August and by an order dated 12th August dismissed it. On 28th July by an order of VENKATARAMANA RAO J. the hearing of the winding-up petition was further adjourned to 18th August. On 9th August the second respondent wrote a letter to the Secretary to the Government of Madras, Development Department, forwarding a copy of the preliminary report of the special officer appointed to investigate the affairs of the Bank together with other documents and in the course of this letter said :—" I am directed by the Governor of the Bank to intimate to you that we consider it would be very helpful if the Madras Government would release to the press the Governor's official letter dated 22nd July 1938 addressed to the Prime Minister." As the result of this letter the Government of Madras issued to the press for publication the first respondent's letter and it was published

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in the local press the same day. The petition for the winding-up of the Bank was then pending and was not dealt with until 5th September when VENKATARAMANA RAO J. passed an order for compulsory winding-up. A scheme of reconstruction of the Bank had in the meantime been presented on behalf of certain creditors. In his order granting the winding-up petition, the learned Judge directed the official liquidators to report on the scheme, and that is how the matter stands at present.

The petitioner complains that the letter of the first respondent constitutes contempt of Court inasmuch as it expresses an opinion that the winding-up petition should be granted. There is much force in this contention. In asking the Government of Madras to release the letter for publication we are convinced that the first respondent had no intention to act in contempt. His intention was merely to inform the creditors and shareholders of the Bank what he considered should be the proper attitude to adopt with regard to the winding-up petition. The intention of the first respondent and the *bona fide* nature of his action have an important bearing on the question whether the Court should take action on the petition, but good intention is not the deciding factor in a matter of contempt. To comment on a case which is *sub judice* or to suggest that the Court should take a certain course in respect of a matter before it undoubtedly constitutes contempt and honesty of motive cannot remove it from this category. If this were to be allowed persons in a position to assist the Court by their evidence might be prevented from coming forward, and persons appearing as witnesses might be influenced in their testimony. The criterion is not whether the Court will be influenced but whether the action complained of is calculated to prejudice the course of

justice. In the present case it has been shown that one creditor at least was influenced by the letter of the first respondent. We refer to the letter which appeared in " The Madras Mail ". In this letter which is dated 16th August and was published on 19th August the writer says :

" After reading that opinion (that of the first respondent expressed in his letter of 22nd July) I am strongly for the immediate liquidation of the Bank and probably many other depositors have changed their minds after knowing the statement of the Reserve Bank ".

and concludes :

" For the reconstruction of the Bank it is necessary to create confidence and I fail to see how this can be done if the scheme is not backed by the Reserve Bank. I think that, in the absence of higher and more reliable authority, the creditors must believe the Reserve Bank, whose opinion is that 'no useful purpose would now be served by postponing liquidation proceedings '."

At the time when the first respondent's letter was published the reconstruction scheme had not been placed before the Court, but it was known that a committee of creditors proposed to put forward a scheme. The matter was in fact mentioned in the course of the arguments heard by STODART J. at the beginning of August. To comment on a case which is about to come before the Court with knowledge of the fact is in our opinion just as much a contempt as comment on a case actually launched. In *Rex* v. *Parke*(1) WILLS J. in the course of his judgment observed :

" Great stress has been laid by Mr. Danckwerts upon an expression which has been used in the judgments upon questions of this kind—that the remedy exists when there is a cause pending in the Court. We think undue importance has been attached to it. It is true that in very nearly all the cases

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

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which have arisen there has been a cause actually begun so that the expression, quite natural under the circumstances, accentuates the fact, not that the case has been begun, but that it is not at an end. That is the cardinal consideration. It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased."

The question whether there can be contempt of Court when proceedings are imminent but not yet launched was also discussed in *Rex* v. *Daily Mirror. Smith, Ex parte*(1), but as the question did not call for a decision no decision was given. Lord HEWART C.J., however, quoted the passage which has just been cited from the judgment of WILLS J. and as there was no indication of disapproval it may, we think, be taken that the leaning was in the same direction.

As we have already indicated the Court does not in any way doubt that the first respondent was actuated by the best motives, but inasmuch as he publicly advised the acceptance of the petition for winding up, a matter which the Court was being called upon to decide, and as a reconstruction scheme was about to be put before the Court, we are constrained to hold that there was in law contempt of Court. The second respondent played a less important part in the matter and in writing to the Prime Minister on 9th August he was acting on the instructions of the first respondent. He, however, shared in securing the release for publication of the letter complained of and while the Court acquits him also of any intention to act in contempt and accepts that he acted in good faith, he did in fact share in the contempt.

We will now turn to the position of the editors of the respective papers. As we have mentioned they all

(1) [1927] 1 K.B. 845.

published the first respondent's letter of 22nd July and the "Madras Mail" published a leading article on the proposed reconstruction scheme and the letter from "A creditor". The "Hindu" published a statement from the "Secretary, Central Committee of Creditors, Travancore National and Quilon Bank, Madras," and a statement from the managing editor of "Indian Finance" strongly recommending the acceptance of the scheme. The "Indian Express" published a leading article, and the statement from the Secretary, the Committee of Creditors. The "Swadeshmitran" published a shorter statement from the Secretary of this Committee. The "Dinamani" and the "Andhra Patrika" merely published the first respondent's letter.

As the publication of the letter of the first respondent constitutes contempt of Court, the editor of each paper in which it appeared must be deemed to share in the contempt. We do not think it is necessary to enter upon a detailed discussion of the other matters which appeared in these papers relating to the affairs of the Bank. The Court regards the publication by the "Madras Mail" of the leading article of 22nd July and the letter from "A creditor" and the publication by the "Hindu" of the statement of the managing editor of "Indian Finance" as also constituting contempt of Court but will treat the other published statements as not being in contempt. As in the case of the first and second respondents, the Court accepts the statement that the editors had no intention of acting in contempt and that their *bona fides* is not in any way in question. The fact that the first respondent's letter was sent to them by the Government led them to publish it without pausing to consider its effect. The editor of the "Andhra

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Patrika " states the position very well in his affidavit showing cause. He there says : " The very responsible and eminent character of the source from which the communique was issued, misled me into publishing the letter, without scrutinising its contents in a more searching manner than I did."

The Court has been asked to give an indication of what may and what may not be published in circumstances such as these. It is impossible for the Court to do so. It would mean traversing a very long distance and even then it would not lead to a complete statement. It is, however, fundamental that a discussion in a newspaper of the rights and wrongs of a case when pending before a Court is improper and constitutes contempt of Court. This does not mean that reference cannot be made to pending cases or that items of news which are connected with pending cases should not be published. No objection could for instance be taken to the publication in the press of a statement that the creditors of a company in respect of which a winding-up order has been passed have put forward a scheme for reconstruction, but what cannot be permitted is a discussion of the attitude which the Court should adopt when considering the scheme.

The power to commit for contempt of Court is not to be lightly used and should be reserved for cases where the contempt is deliberate and of such a nature that committal is called for. In the present case all that can be said is that the respondents acted without due consideration. They have all expressed their regret to the Court and we think that the matter may be left there. Sufficient has probably been said to prevent a similar situation arising in future.

At the conclusion of the arguments the learned Advocate-General addressed the Court on behalf of

the Government of Madras. He stated that the Government accepted the responsibility for the publication of the letter of the first respondent, and that the Government felt it would be failing in its duty to the share-holders and depositors scattered in different parts of India and Ceylon if it did not release the letter of the first respondent. There can be no duty to release for publication in the press a letter advising on a matter which is *sub judice* and the release itself constituted a technical contempt, but no complaint has been made of this and we, of course, accept the learned Advocate-General's statement that the Government felt it its duty to publish the letter.

The learned Advocate for the petitioner has left the question of costs entirely to the Court. Had he pressed for costs, we should not have made an order for their payment. We consider that the petitioner who was obviously in possession of the full facts was not justified in proceeding against one newspaper alone. What his motives were it is unnecessary to inquire, but he was obviously not impartial in his action. In these circumstances, there will be no order for costs.

Solicitors for respondents 1 to 3 : *King and Partridge.*

G.R.