APPELLATE CRIMINAL.

Before Mr. Justice Carr and Mr. Justice Mya Bu.

1927

Nov. 16

K.E.

v.

MAUNG TIN SAW AND ONE.*

Contempt of Courts Act (XII of 1926)—Publication of prejudicial comments on a case pending trial is contempt of Court—Printer's responsibility cannot be evaded by contract—Journalist's responsibility.

Held, that the publication of comments on a case which is pending trial in a Court amounts to contempt of Court if the comments are such as are likely to prejudice the administration of justice in the case. A printer cannot escape liability imposed on him by law by alleging a contract with the owner of the press that he was not to be responsible for the contents of the publications. A journalist should acquaint himself with his duties and liabilities. Youth and inexperience or a subsequent apology would not be an excuse as a rule.

A. Eggar (Government Advocate) for the Crown.

CARR and MYA BU, JJ.—On the 12th of August 1927, there was instituted in the Court of the Subdivisional Magistrate of Prome a criminal prosecution which was registered as Criminal Regular Trial No. 82 of 1927. That case is still pending. In it certain persons of standing are accused of serious offences, including rape.

The Zigwet Journal is a weekly periodical published in Rangoon. In the issues of that journal dated the 16th, 23rd, and 30th of August there were published accounts of the abovementioned case. One of the persons accused in the case took exception to comments in these accounts and on the 31st August petitioned the District Magistrate of Prome, asking that action should be taken in respect of them. The District Magistrate brought the matter to the

* Criminal Miscellaneous Application No. 46 of 1927.

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notice of this Court and on his report these proceedings were instituted.

Extracts from the three issues of the Journal abovementioned have been put in in evidence and are filed as Exhibits A, B and C. These contain comments on the case and severely condemn the conduct of the persons accused. They proceed on the assumption that the allegations made in the case against those persons are true and that those persons are guilty of the offences of which they are accused.

The respondent Maung Tin Saw is the Editor and Publisher of the Zigwet Journal, while the second respondent, C. L. Jani, is its Printer. Exhibit D is the statutory declaration under section 5 of the Printing Presses and Books Act, XXV of 1867.

Exhibit E is an authenticated copy of the diary of Criminal Regular Trial No. 82 of 1927 of the Court of the Subdivisional Magistrate of Prome, which shows that the case was pending trial on the dates of publication of Exhibits A, B and C.

All these facts are admitted by both respondents, who have been formally charged under section 3 of the Contempt of Courts Act, XII of 1926.

Maung Tin Saw states that these comments were published by his assistant while he was ill and unable to attend to his work. He says further that when his attention was drawn to them by the receipt of notices from an advocate, on behalf of the persons accused in the criminal proceedings, he published apologies in the issues of the Zigwet Journal dated the 6th, 13th and 20th of September. He has produced these issues and the apologies contained therein have been admitted in evidence as Exhibits 1, 2 and 3. These are apologies to the persons aggrieved by the comments. He now expresses sincere regret for the publication of the comments and apologises to the Court.

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C. L. Jani states that he can neither speak nor read Burmese and was unaware of the contents of the articles until he received the notices mentioned by Maung Tin Saw, when he insisted on the publication of the apology. He adds that when he undertook the printing of the journal he informed the proprietor that since he was ignorant of Burmese he could not accept any responsibility for the contents of the journal. He too expresses sincere regret and now apologises to the Court.

Both respondents add that since the 8th October last the Zigwet Journal has ceased to exist.

In the circumstances we do not propose to go into the question of fact involved in Maung Tin Saw's statement, or to consider whether the fact of his illness, if established, would constitute a sufficient defence to the charge. With regard to Jani's statement we are clearly of opinion that it is not a valid defence. In the absence of an express provision allowing him to do so no person can contract out of a responsibility imposed upon him by law in such a matter as this, and a printer's responsibility for matter printed by him is well established.

It is also well established that the publication of comments on a case which is pending trial in a Court amounts to a contempt of Court if the comments are such as are likely to prejudice the administration of justice in the case. That the comments now in question are likely to have this effect is beyond doubt. They proceed throughout on the assumption that the allegations against the persons accused are true and that those persons are guilty of the offences of which they are accused. For example Exhibit C begins thus:—"That those creatures of Prome have unjustly and wilfully wronged . . . . (the complainant in the case) is clear

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from the disappearance of the car driver. This being so the Asoya (Government or Court) should dispense justice according to law without giving way to the four kinds of Agadi (deviations from the path of duty or rectitude such as greed, anger, fear or ignorance)."

The publication of the comments is therefore clearly a contempt of Court and punishable under Act XII of 1926. The comments are most objectionable and the case is a bad one of its kind. Ordinarily we should not be prepared to accept an apology in such a case. But we take into account the following considerations :—

1. The case is, we believe, the first of its kind to come before this Court. Vernacular journalism in Burma is of relatively recent development and it is probable that the law relating to contempts of Court in journalism is yet imperfectly understood.

2. Both of the respondents are young and appear to us to be inexperienced.

3. They had already, before receipt of notice in these proceedings, published in the journal in question a full apology to the persons directly aggrieved, and had withdrawn the imputations against them. It is true that this was done only on receipt of a lawyer's notice, which detracts considerably from its force.

4. The demeanour of the respondents before us has been such as to lead us to believe that their apology is sincere and that they really regret their error.

No one of the considerations alone would induce us to pass over what is undoubtedly a serious offence. In particular the plea of ignorance and inexperience is not in itself a good one. Before any person embarks on a journalistic career it is

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incumbent on him to make himself acquainted with the duties and liabilities of the profession, as well as with its privileges.

In any subsequent case of this kind it is unlikely that we shall be prepared to accept the considerations 2, 3 and 4, abovementioned as sufficient to justify the acceptance of an apology.

But in the present case we think that there are sufficient grounds for doing so. We therefore accept the apology of the respondents and, while finding that they have clearly committed the offence charged, direct that they be discharged without punishment under the proviso to section 3 of Act XII of 1926.

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

1927

Nov. 21.

MAUNG BA THAN
v.
THE DISTRICT COUNCIL OF PEGU.

Civil Procedure Code (Act V of 1908), s. 109 (c)—'Fit case for appeal to His Majesty in Council,' meaning of—Case of private importance to one party only and not of appealable value not fit for certificate.

Where a case fulfils the requirements of section 110 of the Civil Procedure, Code, the petitioner is entitled to a certificate for appeal to His Majesty in Council but if the amount or value of the subject-matter on appeal is below the appealable value, then the case must be otherwise a fit one for appeal.

Section 109, clause (c) contemplates cases where there are questions, for example, relating to religious rights and ceremonies, to caste and family rights or such matters as the reduction of the capital of companies as well as questions of wide public importance in which the subject-matter in dispute cannot be reduced into actual terms of money.

An applicant in a defamation case where the value is below Rs. 10,000 cannot claim the certificate, though the case may be of great importance to himself, if it is not of great importance to the public or to the other party.

Banarsi Parshad v. *Kashi Krishna*, 28 I.A. 11 (P.C.); *Radhakrishna Ayyar* v. *Swaminatha*, 48 I.A. 31 (P.C.)—*referred to.*

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* Civil Miscellaneous Application No. 110 of 1927 arising out of Civil First Appeal No. 36 of 1926.