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BROWN, J.

amount of fresh evidence. The proceedings are already sufficiently complicated and if made more so would become well nigh unintelligible. It is possible also to order a new trial, but that to my mind is in the circumstances unjustified. I have indicated that I am not at present satisfied as to the exact meaning of the principal document relied on by the prosecution. The petitioners have already undergone a trial of enormous length and have served a term of over $2\frac{1}{2}$ months' imprisonment. The case is by no means such a clear one that it can be said with any confidence that a conviction after a new trial on the charges framed would be likely. I am of opinion that the interests of justice would not be served by the ordering of a new trial.

I set aside the convictions of the two petitioners, and direct that they be acquitted and released so far as this case is concerned.

APPELLATE CRIMINAL.

Before Mr. Justice Mya Bu and Mr. Justice Brown.

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Oct. 25.

THE GOVERNMENT ADVOCATE, BURMA
v.
SAYA SEIN.*

Contempt of Court—Summary powers of the High Court, when to be exercised—Interference with administration of justice essential for offence—Comments made when revision proceedings in a Criminal Case pending in High Court—Criticism of a judgment—Attack on judge's competency—Apology.

It is contempt of Court to publish an article in a newspaper commenting on the proceedings in a pending Criminal prosecution or Civil action. But the summary jurisdiction possessed by a High Court to punish for contempt ought only to the exercised when it is probable that the publication will substantially interfere with the due administration of justice.

* Criminal Miscellaneous Application No. 54 of 1929.

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Comments were published in a newspaper during the pendency of Revision proceedings in the High Court against the conviction and sentence passed by a Sessions Judge, expressing sympathy with the accused and expressing the view that a certain act although it might be an offence under the Forest Act ought not to be punished under the Indian Penal Code. *Held*, that as such comments were not likely to have any effect on the revisional proceedings, and as there was no question of any witnesses, jurors or assessors being influenced, the Court would not exercise its summary powers.

Legal Remembrancer v. *Matilal*, 41 Cal. 173—*referred to*.

A fair criticism of the justice of a decision is not contempt of Court but if the competency of a judge is attacked it would amount to contempt of Court.

The Queen v. *Gray* (1900) 2 Q.B.D. 36—*referred to*.

In the matter of a Special Reference (1893) A.C. 138—*distinguished*.

In a proper case if there is no attack on the integrity or character of a judge, the Court would accept an apology.

Gaunt (Offg. Government Advocate) for the Crown.

Ba Han for the respondent.

MYA BU AND BROWN, JJ.—On the motion of the Government Advocate the respondent, Saya Sein, has been called on to show cause why he should not be punished for contempt of Court.

The respondent is the printer and publisher of a paper known as "The Kesara" newspaper published at Moulmein.

A case had been tried in the Court of the Special Power Magistrate, Moulmein, against one U Ba Chit and a number of others. In the trial Court all the accused who had been charged were convicted. They all appealed to the Sessions Court, and that Court, whilst setting aside the convictions of the other appellants, confirmed the convictions of Ba Chit and Maung Naw.

The complaint is with reference to an article published in "The Kesara" newspaper on the 6th of August, 1929, after the Sessions Judge had passed orders.

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At the time of the writing of the article, an application in revision had been filed in this Court, and the hearing of that application was then pending. It is claimed that the respondent is guilty of contempt for two reasons: *firstly*, that in the article in question he had commented on a matter which was *sub-judice*; and, *secondly*, that the article in itself was one that was likely to bring the Judge and the Court into contempt.

The article sets forth briefly the orders passed by the Sessions Judge and then goes on to say:—

"In view of the fact that the said case implicated a big timber merchant of the Non-Burmese Community it has not only exercised the public mind much and aroused special interest and discussion but the Court-room was also crowded by spectators who came to watch the proceedings during the hearing of the case both before the Lower Court and the Sessions Court. However an appeal having been preferred in the Sessions Court directly the Lower Court had passed its judgment and sentence, we had thought that justice would prevail and have waited quietly without writing anything regarding the Lower Court's judgment. Now upon a consideration of the Sessions Judge's judgment as we do not feel that justice had been done, we shall, in duty bound, have to write and express our comment and criticism."

The article then proceeds to comment on the case. It suggests that if the facts are proved the conviction should have been under the Forest Act and not under the Indian Penal Code. It then goes on to say:—

"Here in U Ba Chit's case he has been convicted not under the Forest Act which is applicable but under section 413 of the Indian Penal Code and awarded a sentence of imprisonment for the very first offence and therefore we are very sorry. Pondering over this state of affairs in the light of the saying of the ancient ဒ·သက်နှင့်လူမသေ၊ငါ။ အရှက်နှင့်လူသေ၊ဝါဟူ။ (*lit.* Living not for life's sake, but for honour) every thoughtful person will be able to gauge the extent of grief and shame to which U Ba Chit a respectable resident who has won the trust and confidence of the people and who has acted as one of their Municipal Commissioners,

Pagoda Trustees and Executive Members of the local religious and social associations has been subjected.

Mr. Wright, the Sessions Judge, who heard U Ba Chit's appeal is yet a youth of little experience, and it must be said that his decision is not different from that of the Lower Court in the same way as the water of a well, so to speak, is not different from that of a pond. In connection with youthful Sessions Judge Mr. Justice Williams of the Calcutta High Court has recently made a definite statement in his judgment in a case heard by him, thus :— 'Owing to the practice peculiarly in vogue throughout India of investing young Judges of little legal experience in the districts with full powers to pass sentence of death a great responsibility has devolved upon the High Court.' In accordance with the dictum thus expressed as on account of the decision of a youthful Sessions Judge, U Ba Chit has been subjected to a great shame as much as to feel like almost dying of it, and as such he deserves a very great sympathy and so we have to write this by way of explanation."

The respondent does not deny the publication of this article. He expresses his willingness to tender an apology if we should think that the article did amount to contempt. But it is contended that, in fact, there has been no contempt of Court which would justify this Court in taking action.

In Halsbury's Laws of England, Volume VII, paragraph 614, it is laid down that it is a contempt to publish an article in a newspaper commenting on the proceedings in a pending criminal prosecution or civil action.

When the comments were published in the present case, there were proceedings pending in this Court. We understand the respondent to claim that he was unaware of that fact when he wrote the article. But he must have known that in such cases revision proceedings were bound to follow, and we do not consider that on this ground alone he can be held not to have been guilty of contempt. But it has been constantly laid down that the summary jurisdiction

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possessed by a High Court to punish for contempt on the ground that an article was published during the pendency of criminal proceedings ought only to be exercised when it is probable that the publication will substantially interfere with the due administration of justice.

In the case of the *Legal Remembrancer* v. *Matilal Ghose and others* (1), the learned Chief Justice, Sir Lawrence Jenkins, observes at page 221 :—

"It is not enough that there should be a technical contempt of Court; it must be shown that it was probable the publication would substantially interfere with the due administration of justice. * * * *.

Thus we find Lord Morris in delivering the judgment of the Privy Council in *McLeod* v. *St. Aubyn* ([1899] A.C. 549), describing committal for contempt of Court as a weapon to be used sparingly and always with reference to the interests of the administration of justice. This is an authority that must commend our respect. But it does not stand alone. In *Plating Company* v. *Farquharson* ([1881] 17 Ch. D. 49), Jessel, M. R., after saying that the practice of making the motions against innocent people ought to be discouraged as far as possible, added 'they lead to great waste of time and to a considerable amount of costs and unless the Court is satisfied that the publication is a contempt which interferes with the course of justice, of course, the Court ought not to interfere;' while James, L.J., said of the motion made against the proprietors of the newspaper who inserted an advertisement in the ordinary course of business, that it seemed to him to be idle and extravagant and a thing to be strongly discouraged. And later he says: 'I think these motions are a contempt of Court in themselves, because they tend to waste the public time.'"

We do not think it necessary to labour this point, as we do not understand the correctness of the principle to be contested. Can it then reasonably be said that the publication of the present article was at all likely to interfere with the due administration of justice, because it was published during the pendency of the Revision

(1) (1914) 41 Cal. 173, at pp. 221, 222.

proceedings in this Court? We cannot see how it is possible to hold that there was any such probability. We do not think it would be contended that this Court is likely to be influenced by a suggestion that, because a certain act may amount to an offence under the Forest Act, therefore, it should not also be punished under the Indian Penal Code. There is no question of any witnesses, jurors or assessors being influenced. Revisional matters are dealt with by a Judge alone and for the most part are concerned with questions of law.

The article does not in itself suggest that the writer had any thought of proceedings that might follow in revision. He definitely states that he reserved his comment until the trial in the Sessions Court was over, and we see no reason to suppose that he published the article with any idea that anything he said would be likely to have an effect on the revisional proceedings. That, of course, would not save him if, in fact, the article was likely to have such an effect. But, in our opinion, there is no probability whatsoever that the publication would substantially interfere with the due consideration of the case in revision before this Court. We do not wish to be understood as approving of the making of comments on pending Judicial proceedings. Such comments are clearly always severely to be deprecated. But even if the comments in this case amounted to a technical contempt on the ground that they were made whilst the case was *sub-judice*, we think that the authorities are clear that the case is not one in which on this ground the Court would be justified in exercising its summary powers.

There remains, however, for consideration the other point which has been raised. It is contended that the attack in the report made on the Judge itself amounts to contempt of Court. It has been laid down that any act done or writing published which is calculated to

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bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court. This principle was definitely enunciated in the case of *The Queen* v. *Gray*, (1). At page 40 of the report, Lord Russell, Chief Justice, states :—

"Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court. * * * * * . That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published ; but it is to be remembered that in this matter the liberty of the press is no greater and no less than "the liberty of every subject of the Queen."

If the article complained of had confined itself to fair criticism of the justice of the decision of the Sessions Court, then, no question of contempt on this ground would arise. But the article goes farther than this. It does not confine itself to the justice of the decision, but definitely attacks also the competency of the Judge who tried the case. It suggests that the Judge, on account of his youth, was unlikely to differ from the decision of the lower Court, and, finally states :

"On account of the decision of a youthful Sessions Judge, U Ba Chit has been subjected to a great shame as much as to feel like almost dying of it, and as such he deserves a very great sympathy * * * *."

There is, it is true, no suggestion whatsoever against the honesty or character of the Judge. But it seems to us inevitable that the publication of such remarks in a

(1) (1900) 2 Q.B.D. 36.

public newspaper must tend to bring the Court and the Judge who heard the appeal into contempt.

We have been referred on behalf of the respondent to the case of *In the matter of a Special Reference from the Bahama Islands* (1). In that case the Chief Justice of the Bahama Islands was attacked in a letter published in a newspaper. It was held that the letter in question, though it might have been made the subject of proceedings for libel, was not in the circumstances calculated to obstruct or interfere with the course of justice or the due administration of the law, and, therefore, did not constitute a contempt of Court. It seems to us, however, that that case can be clearly distinguished from the present case. There was in that case no criticism of the Judge's action in the trial of any case. It was rather a personal attack on the Chief Justice than a direct attack on his administration of justice. In the present case there is quite clearly an attack on the Judge not in his personal and private capacity but in his capacity as a Judge in the conduct of a particular case. The comments are to the effect that there has been a failure of justice owing to the incompetence of the Court, and we cannot but look upon such comments as being likely to bring the Court into contempt, and, if unchecked, ultimately to interfere with the course of justice or the due administration of the law.

We are, therefore, of opinion that the publication of the article in question did amount to a contempt of Court, and we are bound to protect Subordinate Courts from such attacks.

The respondent did not at once, when called upon to show cause, tender an unconditional apology; but in the complaint as filed before us, what was chiefly insisted on was that the publication of the article

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

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amounted to a contempt, because it took place during the pendency of the Revision proceedings in this Court. On this ground we have held that no case has been made out for us to take action, and we must, therefore, hold that on the main ground taken in the application the respondent was justified in raising the objections he did.

We understand that he is ready now to tender an apology to the Court. Bearing in mind the fact that there is no suggestion made against the integrity or personal character of the Judge in the article complained of, and that cases of this kind are fortunately rare in this province, we allow the respondent an opportunity of tendering an apology before passing sentence upon him.

* * *

On the judgment having been read over, the respondent states that he regrets that the remarks appearing in the article complained of were derogatory and in contempt of the Court of Session and the Judge of that Court, and he tenders an unqualified apology. And he undertakes to be careful not to offend in a similar manner again.

In all the circumstances of the case, we consider that the apology may properly be accepted. We accept the apology and discharge the respondent.

Considering that the main ground on which the petition was made has failed, we make no order for costs of this application.

Dr. Ba Han for the respondent undertakes that the fact of an unqualified apology having been made will be published in the respondent's newspaper.

G.B.C.P.O.—No. 68, H.C.R., 19-12-1929—3,000.