CRIMINAL APPELLATE.

Before Mr. Justice Pratt, on difference between Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

EMPEROR *v.* VENKATRAO RAJERAO MUDVEDKAR.* 1922.

February 14.

Indian Penal Code (Act XLV of 1860), section 228—Insult to Judge—Contempt of Court—Criminal Procedure Code (Act V of 1898), sections 342 and 480—Trial of accused—Summary procedure—Conviction—Appeal.

The accused, being on trial by a Sessions Judge with the aid of assessors, for rioting and other offences, in the course of his statement under section 342 of the Criminal Procedure Code called the trial Judge a "prejudiced Judge." The mid-day recess then intervened. At the end of it, the accused was called upon by the Judge to withdraw the remark, but declined to do so. The Judge, thereupon, framed a proceeding under section 480 of the Criminal Procedure Code for an offence punishable under section 228 of the Indian Penal Code, convicted the accused and sentenced him to pay a fine of Rs. 50. On appeal :—

Held, by *Macleod C. J.* and *Pratt J.* (*Shah J.* dissenting), that the accused was properly convicted of an offence under section 228 of the Indian Penal Code, inasmuch as both the words he used and his conduct showed his intention to insult the Judge.

THIS was an appeal from a conviction and sentence passed by E. H. Waterfield, Sessions Judge of Dharwar.

The accused was being tried with several others for the offences of rioting, &c., by the Sessions Judge of Dharwar with the aid of assessors.

At the close of the prosecution case, in the course of which the accused had declined to cross-examine any of the witnesses the accused was asked if he wanted to make a statement under section 342 of the Criminal Procedure Code, and submitted a long statement in writing in which he called the trial Judge "a prejudiced Judge." The Court then rose for the mid-day recess.

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At the close of the recess, the Judge inquired of the accused if he was willing to withdraw the above words, but the accused declined to do so.

The Judge thereupon made out a case against the accused under section 480 of the Criminal Procedure Code, convicted the accused of contempt of Court, and fined him in a sum Rs. 50.

The accused appealed to the High Court.

The appeal was first heard by Macleod C. J. and Shah J., but their Lordships, having differed in opinion, delivered the following judgments.

MACLEOD, C. J.:—The appellant was convicted by the Sessions Judge of Dharwar of an offence under section 228 of the Indian Penal Code and fined Rs. 50 by an order passed under section 480 of the Criminal Procedure Code. The appellant was one of the accused, in what is known as the Dharwar riot case, who were being tried before the Sessions Judge sitting with assessors.

The appellant was questioned by the Judge as follows :—

Q.—Did you make the statement before the Magistrate which is now read over to you ?

A.—Yes.

Q.—Have you anything further to say ?

A.—I wish to put in a written statement.

Q.—You have begun reading that statement and stated that the Judge prejudiced against you. Are you willing to withdraw those words ?

A.—I decline to withdraw them.

Q.—Are you aware that you are liable to be dealt with for contempt ?

A.—Yes.

Q.—You have read your statement. Have you anything further to say ?

A.—No.

The appellant's statement began as follows:—

1. I have been practising as a pleader in this District for the last fourteen years.

2. The first and the fundamental requirements of a judicial trial are chiefly these :

(*a*) Investigation by impartial and independent persons;

an impartial and independent Judge ;

(*c*) an impartial and independent prosecution.

3. In this trial not only are the above three elements wanting but there is positively an admixture of contrary elements in all these branches, viz., (*a*) Investigation by persons who are guilty of the murder of innocent and unarmed persons ; (*b*) a prejudiced Judge ; (*c*) lastly prosecutors some of whom are hired for a definite purpose.

The appellant was asked after the mid-day recess if he had reconsidered his statement but replied that he declined to withdraw it. He said his statement did not amount to an offence, and moreover the Court having risen for the recess had no power to pass any order. There was nothing in that point as an order can be passed at any time before the Court rises for the day.

As mentioned above the appellant was then convicted of contempt and fined Rs. 50 or in default fifteen days' simple imprisonment.

The defence, so far as it has been urged before us and so far as it can be extracted from the petition in appeal, appears to be that the appellant during the course of the trial had formed an honest opinion that the Judge was prejudiced against the accused including the appellant, and that it was while the appellant was in this honest state of mind brought about by circumstances over which he had no control that he was called upon to make a statement. That it was at that stage that the appellant succumbed to the very natural desire of asserting his innocence, and for that purpose of giving

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expression to the feelings he entertained about the prosecution against him by making a clean breast of all that he truly and honestly believed about the prosecution and the trial. That this desire became all the more natural and necessary as the learned Judge was being assisted by assessors whose opinion had also to be moulded by properly explaining to them the attitude of the appellant. That there was no intention whatever on the part of the appellant to insult the Court.

Now I do not think that the law regarding contempts is any different in India to what it is in England. To say that the Judge trying a case is prejudiced is an insult, and in the first instance the words carry with them the intention to insult. It lies on the person uttering them to provide an explanation to show there was no such intention. They may have been uttered in the heat of an argument, and the absence of intention to insult may be proved by taking the opportunity when offered to withdraw them. No counsel or pleader could be allowed to persist in making such an imputation against the trying Judge, and though it may be admitted that a person conducting his own defence is allowed a greater latitude than legal practitioners, that must not be strained beyond the limits of decency.

Cases in which applications for transfer are made stand on an entirely different footing to the present one. As a rule they are not made because it is alleged the trying Judge is incompetent to come to a just decision but because there are circumstances beyond his control, such as acquaintance with one of the parties or a personal interest in the subject-matter of the proceedings which in law are considered as preventing him from giving an unbiased decision. It must also be remembered that on any such allegation being made,

the Judge is afforded an opportunity of giving an explanation and the superior tribunal only expresses its opinion after full consideration of all the circumstances in the case.

It is a different matter when in the course of a trial a party defending himself commits direct contempt of the Court, and if I were to decide that it was sufficient excuse for him to say that there was no intention to insult, I should be dealing a blow to the authority of the Courts, the consequence of which would be disastrous beyond contemplation.

Speaking for myself I do not think we should lightly interfere in appeal with the decision of a Judge in a matter of contempt, as he would be far more competent to ascertain whether the intention to insult was present or not. The test is not to my mind whether I on reading those papers or hearing arguments were to think that I should have forborne from taking notice of the appellant's statement but whether there is anything to show that the Judge was wrong in holding that there was contempt. Contempt of a Court which is not a Court of Record can only be made an offence by legislation, but it is an offence of an entirely different nature from the ordinary offences defined by the Penal Code and so in my opinion appeals from convictions for contempt should be dealt with having due regard to that fact. In *King* v. *Davison*[a] the defendant was fined by the Judge three times for making insulting and irrelevant remarks in the course of his address to the Jury, while defending himself against an indictment for blasphemous libels. He afterwards submitted himself to the Court and the fines were remitted. On a motion for a new trial on the ground that the Judge had no power to fine for contempt a defendant for

[a](1821) 4 B. & Ald. 329.

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impropriety in the course of his speech to the Jury, for the reason that men should not be deterred to take their remedy by due course of law, the points at issue may not have been exactly the same as in this case, but the principles which should govern a Judge in the face of insult are very clearly laid down. It was held that a Judge at *nisi prius* had the power of fining a defendant for a contempt committed by him in addressing the Jury, for every man who came into a Court of justice either as a defendant or otherwise must know that decency was to be observed there, that respect was to be paid to the Judge, and that in endeavouring to defend himself from any particular charge he must not commit a new offence.

I cannot do better than cite in full the remarks of Abbott C. J. who said (p. 333) :

"If I thought that the decision I am about to pronounce, could have the effect of restraining any person who may hereafter stand on his trial, from making a bold, as well as a legitimate course of defence, I would pause before I pronounced that decision. The question, indeed, is a momentous one. It is absolutely a question, whether the law of the land shall, or shall not continue to be properly administered. For it is utterly impossible that the law can be so administered, if those who are charged with the duty of administering it, have not power to prevent instances of indecorum from occurring in their own presence. That power has been vested in the Judges, not for their personal protection, but for that of the public. And a Judge will depart from his bounden duty, if he forbears to use it when occasions arise which call for its exercise. I quite agree that this power, more especially where it is to be exercised on the person of a defendant, is to be used with the greatest care and moderation."

And the learned Chief Justice concluded by saying (p. 335) :—

"Upon the whole, I think that the law cannot be properly administered, unless this power of fining exists, and that the exercise of it, on the present occasion, was called for by the conduct of the defendant ; and, being perfectly satisfied that the effect of it was not to deprive that defendant of anything that might have served him in his address to the Jury, I am clearly of opinion that we ought not to grant a new trial."

Holroyd J. said (p. 339) :

"In the case of an insult to himself, it is not on his own account that he (the Judge) commits, for that is a consideration which should never enter his mind. But, though he may despise the insult, it is a duty which he owes to the station to which he belongs, not to suffer those things to pass which will make him despicable in the eyes of others. It is his duty to support the dignity of his station, and uphold the law, so that, in his presence at least, it shall not be infringed."

And Best J. said (p. 341) :

"It has, since *Carlile* was tried, been seen, that persons indicted for libels, who defend themselves, think that they may insult the Judge, calumniate all who are in authority in the country, and utter blasphemy more horrible than that for which that defendant was convicted."

It may very well be that if an accused person ignorant of the law in defending himself is punished for introducing irrelevant matter, such punishment might be held to be not justified unless the party deliberately persisted after warning, but no system of justice can tolerate unbridled license on the part of a person defending himself, or accept as an excuse for an insult to a Judge, that it was necessary for the conduct of the defence or for the establishment of his innocence. The Sessions Judge did no more than his duty in drawing the attention of appellant to what he had written in his statement. Very fairly he gave the appellant an opportunity to withdraw it. The only result was the objection that the Court having risen for a short time in the middle of the day, the power of the Court to punish for the contempt was lost. Clearly the intention of the appellant was to insult the Judge and as Best J. remarked "to calumniate all who are in authority in the country." There is nothing in the petition of appeal which could lead me to come to a different opinion.

The conviction, I think, was right and the appeal should be dismissed.

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As my learned brother is of opinion that the appeal should be allowed, the appeal must be referred to another Judge.

SHAH, J.—This is an appeal under section 486 of the Code of Criminal Procedure from an order made by the Sessions Judge of Dharwar against the appellant under section 480 of the Code.

The order was made as in the opinion of the learned Judge an offence described in section 228, Indian Penal Code, was committed by the appellant in his view or presence. The learned Sessions Judge has not referred to section 228, Indian Penal Code, in his order: but it is clear that on the facts the only section out of those mentioned in section 480 of the Code that he could have in view would be section 228, Indian Penal Code.

I need not recapitulate the facts which led to those proceedings, as they have been detailed in the judgment of my Lord the Chief Justice. I have perused the whole of the statement made by the appellant as an accused person in the course of the trial. He was one of the several accused persons and read his written statement which contains the statement as regards the Judge.

The question that we have to decide in this appeal is whether the appellant intentionally offered an insult to the learned Judge within the meaning of section 228 of the Indian Penal Code in making the statement. We are not in any sense concerned with the merits of the statement in question nor with the merits of the written statement filed by him as regards the charges against the appellant at the trial; and I express no opinion whatever on the point.

In determining the intention of the appellant, we must have regard to all the facts. He made the statement in the course of a statement, which he was

entitled to make as an accused person under section 342, Criminal Procedure Code, and though he was a pleader of standing and experience, he was then in the position of an accused person defending himself. On the other hand we must have regard to the expressions used and to the context in relation to which they were used, as also to the fact that he adhered to them in spite of an opportunity very fairly offered by the trial Judge. It is clear that an accused person like any other person can be guilty of an offence under section 228 if he contravenes the terms of the section by any act or words of his own. The law imposes the restriction upon an accused person as much as upon any other person: and while a reasonable latitude ought to be allowed to an accused person in making his own defence, he cannot be allowed to act in any manner which offends against the section.

The sole question in this case is whether the accused has transgressed the reasonable limits within which he is perfectly free to put forward his defence. I have carefully considered this question. While I do not for a moment approve of the manner in which he has put forward his defence, the merits of which will have to be considered in the appeal from the convictions at the trial, I am unable to hold that in saying what he did say his intention was to offer an insult to the Judge: at least I feel very doubtful that that was his intention. His conduct is consistent with the view that his intention was to press a defence which was adopted and adhered to without sufficient thought and which was couched in improper language and not to offer an insult to the Judge.

In coming to this conclusion, I have not overlooked the observations in *King* v. *Davison*[1]. While I agree that these observations are very useful in dealing with

[1] (1821) 4 B & Ald. 329.

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each case of this type as it arises, we have to decide this appeal on facts with reference to the precise language used in a statute. The expressions were used by the accused in that case under different circumstances, and the point which the Court had to consider was whether the accused was entitled to a new trial on the ground of prejudice to his defence at the trial in consequence of the contempt proceedings. It appears from the judgment of Bayley J. in that case that the Judge alone was competent to determine whether what was done would be contempt or not, and that neither that Court nor any other co-ordinate Court had a right to examine the question whether his discretion in that respect was fitly and properly exercised. It also appears from the judgment of Best J., who had originally punished Davison for three contempts, that he had ordered the fines to be taken off as the accused had submitted to his authority. At the same time I recognize that the observations with regard to the Court's powers and duties should be borne in mind while deciding a case of contempt under the Criminal Procedure Code or under the Indian Penal Code. It must be remembered that here an appeal is expressly provided by the Code against an order made by a Court under section 480, Criminal Procedure Code, and that we are not concerned with the question whether such a sentence has prejudiced the appellant in any sense at the trial but with the question whether the appellant intentionally offered an insult to the trial Judge, as required by section 228, Indian Penal Code. The contempt cases are not always easy to decide: and the same conduct, particularly when it is near the line as in the present case, is apt to strike different minds in different ways. On a consideration of all the facts appearing on these proceedings, I am unable to affirm the proposition that

his intention to offer an insult to the trial Court is made out beyond a reasonable doubt.

I would, therefore, allow the appeal, set aside the order and direct the fine, if paid, to be refunded.

Owing to the above difference in opinion, the case was heard by Pratt J. on the 11th February 1922.

G. N. Thakor :—There is a distinction between the English and Indian law on the question whether an appeal lies from a conviction for contempt. Under the English law a distinction has been made between contempts which are criminal and those which are not criminal : an appeal lies in the latter case, but not in the former (Oswald on Contempt, 3rd Edition, p. 229) : under the Indian law not only has an appeal from a conviction for contempt passed by a lower Court been specifically provided, but the procedure has been so laid down as to enable the appeal Court to interfere : (sections 486, 480, 481, Criminal Procedure Code). The appeal Court is bound to consider the merits of the appeal for itself : see *Queen-Empress* v. *Jivachram Keshavram*[1].

Too much stress seems to have been laid upon *King* v. *Davison*[2], which was not a decision on the question here involved. The only point decided therein was that a Court had jurisdiction to commit for contempt and that point does not arise here in view of section 480. The dicta about contempt of Court in that case bear on the question of the Court's powers. The question involved there was quite different, viz., whether the defendant was prejudiced in his trial by the Judge having fined him for contempt in the course of his address to the Jury so that a re-trial of the case should be ordered. No question of the power or the propriety of the appeal Court's interference arose.

(1) 1898) Ratanlal's Cri. Cas., 978. (2) (1821) 4 B. & Ald. 329.

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The Chief Justice seems to have been influenced by the intention of the accused to calumniate all who are in authority in the country. This is absolutely irrelevant to a charge for contempt of Court under the Indian law where the only question that the Court has to consider under section 228 is whether the accused intentionally offered an insult to the Court.

Under section 228 of the Indian Penal Code, the Court must find first that there was an insult, and secondly, that the insult was intentional: *In re Surendra Nath Banerjea*[1]. The Court must come to a definite conclusion that the accused deliberately offered an insult; that is, that his intention was to commit contempt of Court. On this point the judgment of the lower Court is faulty, for there is no finding that there was an intentional insult. Even in a case, where, in making an application to the presiding Magistrate stating grounds for a transfer, the accused made scandalous and defamatory assertions concerning the Magistrate, it was held that there having been no intention on the part of the accused to insult the Court but merely to procure a transfer of his case, the accused was not guilty of an offence under section 228: *Queen-Empress* v. *Abdullah Khan*[2] and *Emperor* v. *Murli Dhar*[3].

The Court has to find out whether the predominant motive in the mind of the accused was intentionally to insult the Judge. In this case the statement came to be made thus. At the close of the case for the prosecution, the accused who had not defended himself was asked under the provisions of section 342 of the Criminal Procedure Code to make a statement. The Code makes it obligatory on the Court

(1) (1906) 10 C. W. N. 1062. (2) [1898] A. W. N. 145.
(3) (1916) 38 All. 284.

so to examine the accused. It is the only occasion when the accused can make a statement. He has got to explain the circumstances appearing against him for the satisfaction of the Judge, or the assessors or the Court of appeal. Here, the accused had to explain his conduct why he took no part in the trial and why he did not cross-examine any of the prosecution witnesses. To influence the assessors and to prepare the grounds for an appeal and to make his position look clear and consistent in the eye of the presiding Judge, the assessors and the appeal Court as also the public, he had to make the statement which he did make and was privileged to make. The law protects the accused even from the consequences of perjury and his words should, therefore, be generously interpreted. The Judge is both the prosecutor and the Judge in acting under section 480. He should, therefore, act cautiously and the appeal Court must exercise an effective control over him.

S. S. Patkar, Government Pleader, for the Crown :— An accused person is no doubt entitled to make a bold as well as a legitimate course of defence but decency and decorum must be preserved in Courts of justice: see *King* v. *Davison*[1].

The question in this case is whether the accused has intentionally offered any insult to the Judge within the meaning of section 228 of the Indian Penal Code. The Allahabad cases relating to transfer applications are distinguishable on the ground that in order to obtain a transfer it is necessary to allege that the accused would not have a fair and impartial trial. But under section 342 of the Criminal Procedure Code it is not necessary to make any such allegation but the accused has to explain the circumstances appearing in evidence against him. In this case the accused did not wish to defend himself. His intention was, therefore,

[1] (1821) 4 B. & Ald. 329 at p. 333.

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to lower the prestige of the Court. The intention clearly was to insult the Judge. The intention of the accused must be gathered from the language used. The words were in a written statement. It is not as if the statement had been made on the spur of the moment in an excess of zeal. The presiding Judge drew the accused's attention to the allegation he had made and gave him an opportunity of withdrawing it. The accused, however, declined to avail himself of the opportunity. His intention, therefore, was to insult the Judge. The appeal Court should not lightly interfere with the finding of the Judge who has taken the proceedings against the accused. The jurisdiction of the superior Court in reviewing committals by an inferior Court is limited to the consideration whether there were materials upon which the Judge ordering the committal could have reasonably inferred contempt: see *Reg.* v. *Jordan*[1]. Another reason why the lower Court's opinion is entitled to considerable weight is that contempt may be shown either by language or by manner. Language which might be perfectly proper if uttered in a temperate manner may be grossly improper if uttered in a different manner: Halsbury's Laws of England, Vol. VII., p. 283.

Thakor, in reply:—The accused was merely reading his statement. He is not charged with doing it in an offensive manner, and there is nothing to show that he did so. The trial Judge merely asked him to withdraw the allegation, and he declined to do so. Such a declining is not contempt of Court. It only shows that the appellant was acting honestly and believed in what he said.

See also *In re Dattatraya Venkatesh Belvi*[2].

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(1) (1888) 36 W. R. 797. (2) (1904) 6 Bom. L. R. 54.

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PRATT, J. :—The accused in this case has been fined for contempt of Court in a summary proceeding held by the Sessions Judge of Dharwar under section 480 of the Criminal Procedure Code.

On an appeal to this Court there was a difference of opinion between Macleod C. J. and Shah J. and the appeal has been referred to me for decision.

The contempt was the offence defined in section 228 of the Indian Penal Code. The accused was on trial for offences of riot, mischief by fire and attempt to murder, and when opening his defence put in a written statement complaining that he was being tried by a prejudiced Judge.

Such words are a gross insult to any Court of Justice, but Shah J. came to a conclusion which is expressed in the following passage from his judgment :—

"His conduct is consistent with the view that his intention was to press a defence which was adopted and adhered to without sufficient thought and which was couched in improper language and not to offer an insult to the Judge."

With great respect it seems to me that this passage confuses motive with intention. The accused's motive for using the offensive expression was to support his defence. But if the words are an offence, the excellence of the motive will not make them lawful. A Frontier Tribesman has been known to cross the border and cut off a British Bania's head merely in order to test the blade of a new sword. The motive was simple, innocent and childlike, but the intention was nevertheless murder.

I agree with Shah J. that the motive of the accused was to justify his defence. His defence was that the riot had been organised by the Police and the District officers, that the investigation had been conducted by guilty officials

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in order falsely to implicate him. It was an infamous defence which he could not hope to substantiate either by the cross-examination of prosecution witnesses or by the examination of witnesses for the defence. He, therefore, sought for various excuses for his omission either to cross-examine or to examine witnesses. One of the excuses was that it was futile to call evidence before a prejudiced Court.

No doubt, the statement did to some extent serve the purpose of his defence and was made with that motive, but it is none the less an offence if the intention was to insult.

I think the same fallacy underlies the judgment of the Allahabad High Court in *Emperor* v. *Murli Dhar*[1]. A suggestion of prejudice was made in a petition praying for an adjournment in order to apply to the High Court for transfer. The High Court reversed the conviction under section 228 apparently on the ground that "the immediate object of the application was to obtain an adjournment." But surely, however legitimate the object, it was not lawful to commit an offence in order to attain that object.

The question is whether the insult was intentional and on this point I think it clear that this intention is an inference attaching to the words themselves, and this inference is not rebutted by any *excuse* as to the motive with which the accused used the words or the object that he thought would be attained by so doing.

The referring judgment of Macleod C. J. has been severely criticised on the ground that it is based on *King* v. *Davison*[2], which deals with the more extensive jurisdiction as to contempt of superior Courts of Record. But that case is relevant as showing that the summary

[1] (1916) 38 All. 284.

[2] (1821) 4 B. & Ald. 329.

jurisdiction for contempt is essential to the proper administration of justice and that it is exercised not from any exaggerated notion of personal dignity but to prevent instances of indecorum occurring in Court.

On the other hand, also with respect, I differ from Macleod C. J. when he says that the offence under section 228 of the Indian Penal Code is of an entirely different nature from other offences as defined in the Penal Code. In all offences in the Penal Code where the intention is an essential ingredient of the offence, that intention must be strictly made out by the prosecution. This rule applies to the offence under section 228 and it is also the duty of the Court of Appeal to decide if the intention is proved. Possibly, however, all that Macleod C. J. meant was that the trying Judge's appreciation of the intention should not lightly be set aside, for apparently innocent words might be uttered in a manner which was contemptuous. I doubt if this consideration was properly appreciated by Shah J. in his hesitating conclusion that "the same conduct, particularly when it is near the line as in the present case, is apt to strike different minds in different ways."

However that may be, I find that the intention is clearly made out in the present case: first, by the words themselves, and, secondly, by the conduct of the accused. When the Judge took proceedings for contempt and the accused found that the Judge put an unfavourable construction on his words he offered no explanation. The effect of this was, I think, that he persisted in them in the sense put upon them by the Judge.

I, therefore, confirm the conviction and sentence and dismiss the appeal.

Conviction and sentence confirmed.

R. R.