Privy Council Appeal No. 46 *of* 1935

Andre Paul Terence Ambard - - - - - *Appellant*

v.

The Attorney-General of Trinidad and Tobago - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND MARCH 1936

Present at the Hearing:

LORD ATKIN.

LORD MAUGHAM.

SIR SIDNEY ROWLATT.

[*Delivered by* LORD ATKIN]

This is an appeal by special leave from an order of the Supreme Court of Trinidad and Tobago ordering the appellant to pay a fine of £25 or in default to be imprisoned for one month for contempt of court, and further ordering him to pay the costs of the proceedings as between solicitor and client.

The first question that arises is whether as contended by the respondent the Privy Council is incompetent to entertain an appeal from an order of a Court of Record inflicting a penalty for contempt of Court. The decisions on the point are conflicting. In *Rainy* v. *Justices of Sierra Leone* (1852) 8 Moo. P.C. 47, a Board consisting of Lord Cranworth, Knight Bruce L.J., Dr. Lushington and Sir Edward Ryan undoubtedly decided that no such appeal lay. Lord Cranworth, in giving the judgment of the Board, after pointing out that in this country every Court of Record is the sole and exclusive judge of what amounts to a contempt of Court proceeded :—

> " We are of opinion, that it is a Court of Record, and that the law must be considered the same there as in this country; and, therefore, that the orders made by the Court in the exercise of its discretion, imposing these fines for contempts, are conclusive, and cannot be questioned by another Court; and we do not consider that there is any remedy by petition to the Judicial Committee to review the propriety of such orders."

The argument, with respect, is not convincing, for it would seem to apply equally to all decisions in criminal cases which at that time in both this country and the colony were conclusive and could not be questioned by any Court.

In *McDermott* v. *Chief Justice of British Guiana* (1868) L.R. 2 P.C. 341, leave to appeal from a committal for contempt had been given " without prejudice to the competency of Her Majesty to entertain an appeal ". At the hearing the Board, consisting of Lord Chelmsford, Wood L.J., Sir James Colvile and Sir E. Vaughan Williams, treated the hearing as a motion to revoke the leave. An incidental question was whether the Court that imposed the penalty was a Court of Record and in giving the judgment of the Board Lord Chelmsford said that the applicant had to show either that the Court was not a Court of Record or that if it was yet there was something in the order which rendered it improper and therefore the subject of appeal. He proceeded to say :—

> " Not a single case is to be found where there has been a committal by one of the Colonial Courts for contempt, where it appeared clearly upon the face of the Order that the party had committed a contempt, that he had been duly summoned, and that the punishment awarded for the contempt was an appropriate one, in which this Committee has ever entertained an appeal against an Order of this description."

It would appear to their Lordships that the grounds of decision assume that jurisdiction exists at any rate in cases where it does not appear on the face of the order that the party had committed a contempt, etc. Whether this means that if the order merely recited that a contempt had been committed without more the Board would examine the alleged contempt is not clear. But in *Surendranath Banerji* v. *Chief Justice of Bengal* (1883) 10 I.A. 171, on an appeal from a committal for contempt by the High Court in Calcutta, the Board examined the written article which was complained of and said that it was clearly a contempt of Court. They set out the passage from L.R. 2 P.C., p. 363, which has just been quoted, and proceed: " Their Lordships having decided that the libel was a contempt of Court, and that the High Court had jurisdiction to commit the petitioner for a period of two months, the case is not a proper one for an appeal to Her Majesty ". This decision is difficult to reconcile with the doctrine that found favour in *Rainy's* case *supra*, that the Colonial Court is sole judge of what constitutes a contempt, and that there is no remedy by way of appeal to His Majesty in Council to review the propriety of such orders.

However, in 1899, in the case of *McLeod* v. *St. Aubyn* [1899] A.C. 549, the Judicial Committee entertained an appeal from an order committing for contempt and allowed the appeal with costs against the respondent. The point that there was no jurisdiction to entertain such an appeal was not taken, but it seems unlikely that if it were a good point it should not have occurred to counsel or to any of the members of the Board before whom the case came at different stages. Their Lordships have sent for the record in that case and

they find that it first came before a Board consisting of Lord Hobhouse, Lord Macnaghten, Lord Morris and Sir Richard Couch on an *ex parte* petition for leave to appeal, when leave was given. It then came before a Board consisting of Lord Watson, Lord Davey and Sir Richard Couch on a petition to proceed in *forma pauperis* which was granted. The appeal was finally heard and determined and allowed by a Board consisting of Lord Watson, Lord Macnaghten, Lord Morris and Lord Davey. The Board in this case quite plainly assumed jurisdiction and their Lordships respectfully agree with their view. There seems no reason for limiting in this respect the general prerogative of the Crown to review all judicial decisions of Courts of Record in the dominions overseas whether civil or criminal: though the discretion as to the exercise of the prerogative may have to be very carefully guarded. It should be noticed that the Order in Council of 1909 dealing with the jurisdiction of the Supreme Court of Trinidad and Tobago, St. R & O. 1909, p. 854, imposes no limit other than pecuniary as to the orders, decisions, etc., of the Supreme Court from which there may be an appeal: and it would appear from it that the Supreme Court itself could have granted leave to appeal to the Privy Council from this order in the present case. But apart from any question of this kind their Lordships come clearly to the conclusion that it is competent to His Majesty in Council to give leave to appeal and to entertain appeals against orders of the Courts overseas imposing penalties for contempt of Court. In such cases the discretionary power of the Board will no doubt be exercised with great care. Everyone will recognise the importance of maintaining the authority of the Courts in restraining and punishing interferences with the administration of justice whether they be interferences in particular civil or criminal cases or take the form of attempts to depreciate the authority of the Courts themselves. It is sufficient to say that such interferences when they amount to contempt of Court are quasi-criminal acts, and orders punishing them should, generally speaking, be treated as orders in criminal cases, and leave to appeal against them should only be granted on the well-known principles on which leave to appeal in criminal cases is given.

On these principles their Lordships proceed to examine the complaint made in this case. In June, 1934, one, Joseph St. Clair, was charged at the Sessions, Port of Spain before Gilchrist J. and a jury on an indictment containing two counts, one charging the accused with attempt to murder a superior officer, the second with shooting with intent to do grievous bodily harm. It appears that the accused fired his rifle at the officer but failed to hit him He was found guilty on the second count with a recommendation to mercy and was sentenced on 12th June to eight years hard labour. He did not appeal.

At the same sessions, one, John Sheriff, was charged before Robinson J. and a jury on an indictment containing three counts, (1) wounding with intent to murder a particular woman, (2) wounding with intent to murder generally, (3) wounding with intent to do grievous bodily harm. It appears that he attacked with a razor and seriously mutilated a woman who was not the person he had intended to attack. He was convicted on the third count and was sentenced on 14th June to seven years hard labour. After sentence he said, " I give notice of appeal " and on 20th June filed formal notice of appeal against his conviction. His appeal eventually succeeded apparently on the ground of misdirection and the conviction was quashed. Meanwhile on 29th June the present appellant, who is the editor-manager and part proprietor of a daily newspaper called " The Port of Spain Gazette ", published the article which has been found to constitute a contempt of court. He did not write it but revised it editorially before publication and undoubtedly is fully responsible for its publication. It is necessary for the purposes of this case to consider the whole article. It was as follows :—

" The Human Element.

" Many years ago, it used to be a rather interesting feature of one of the English publications to draw pointed attention, in parallel columns to the strangely anomalous differences between the sentences imposed by various magistrates and judges in cases which seemed, from the reports, to present a fair similarity of facts. In some quarters, the criticism,—often unexpressed in actual words,—was resented as taking no account of circumstances which a judge was fully entitled to give effect to, though they might not strike the ordinary reader of the press reports. But on the whole, it was felt that, in the majority of instances, useful public service was rendered by this showing up of the inequalities of legal punishments. In Trinidad it must often have occurred to readers of the proceedings in our criminal courts, both inferior and superior, how greatly the personal or human element seems to come into play in awarding punishment for offences. No question is here involved as to the justification for the convictions; it is assumed, and we believe it to be no unjustified assumption, that in the great majority of cases accused persons are seldom convicted except upon thoroughly satisfactory evidence; and a small number of appeals which succeed, when based upon the plea of the innocence of the prisoner of the offence charged, may be regarded as sufficient proof of that. It is the inequality of the sentences as fitting the circumstances of the offences that seem to often demand some comment. And if we here venture to draw attention to this, it is not by any means with the idea of confirming popular opinion as to the inherent severity or leniency of individual judges or magistrates, but simply with a view to inviting consideration of a matter that must, and in fact does, cause adverse comment amongst the masses as to the evenness of the administration of justice in Trinidad. In two recent cases has it been thought by the public that the sentences imposed by two different judges have been open to such criticism. In the one case, a man stood indicted for the seriously grave offence of shooting at his superior officer with intent to murder him. There seems no doubt that had it not been for the prisoner's failure to shoot straight—a thing at which he himself marvelled openly—he must

have killed the officer. No doubt, as was brought out in evidence (and perhaps to an even greater degree than was proved), the man was suffering under the effects of constant provocation; but in addition to all else, there was this to aggravate the crime, that the offender was a trained member of a military body, presumably well disciplined, and that to have used a lethal weapon to which his position gave him easy access and with it to have attempted the murder of his officer is a thing regarded in most quarters as peculiarly heinous. The sentence imposed on conviction was eight years, which, on the assumption of good conduct, means release at the end of six years. The other case was one in which a man stood charged with a peculiarly brutal act of wounding with a razor—his victim, a woman who was shortly to have become a mother, being so terribly injured that for a long time it seemed quite probable she would die. On conviction, the sentence imposed by another judge on this prisoner was seven years, which, on the assumption of good conduct, means release at the expiration of five years and a quarter. Had either of these two cases stood alone, it is quite likely that the sentences would have passed uncommented upon; for neither of them is, in itself, what might be described as a lenient one. But coming together as they did at the same sessions and within a day or two of each other, they have created in the public mind an impression that the former was as unduly severe as the latter was lenient. Both, it is true, were for attempted murder. In both cases a deadly weapon was used. And while some may think that, as we stated above, the military relationship between the prisoner and his intended victim in the first case rendered the matter graver from an official viewpoint, yet, on the other hand, in the shooting case, no one, providentially, was injured, and much provocation was proved, whereas in the razor slashing case (assuming the facts proved by the Crown to be true), there does not appear to have been any provocation, while, on the contrary, the attack was made on a woman unknown to or by the accused, whom he mistook for someone else. Surely there might have been expected rather more effect to have been given to the recommendation from the jury to mercy in the first case; and surely, in the other, it would have been more in accord with public opinion as to the need for stern suppression of such attacks had the learned judge been able to see his way to impose a considerably more severe term of imprisonment; the more so in view of the fact that there was, absolutely no intimation from the jury that they thought any leniency might properly be shown. We fully realise that the infliction of the sentence is entirely in the discretion of judge, who has a wide latitude, from a few days to life-long imprisonment for the crime of attempted murder. But equally is it usually expected that the fullest consideration will be given to the recommendation of a jury for mercy. Assuming therefore, that eight years' hard labour in lieu of the 20 years which many persons fully expected would be passed, fairly represents an effectual concession to the jury's views, the opinion has been fully expressed that the seven years passed on the razor slasher was far too little for the crime he had committed. And we do not think we are wrong in saying that, as a rule, some weight is given by judges to the question of whether a prisoner succeeded or failed in committing the crime he stands charged with. As we have pointed out, though in both of these cases, the Crown alleged and the jury found, an attempt to murder, in the one case that attempt failed completely—through no fault of the prisoner, it is true: in the other the attempt, while providentially failing, resulted in terrible mutilation of the woman who was the victim. It is painful at all times to have to urge the insufficiency of a punishment inflicted; and we wish it to be distinctly appreciated that we

> dissociate ourselves from those who regard one judge as habitually severe or another as habitually lenient. Yet we do think that if some way could be devised for the greater equalisation of punishment with the crime committed, a great deal would have been achieved towards the removal of one frequent cause for criticism of the sentences passed in our various criminal courts."

On 3rd July, the Attorney-General gave notice of motion to the Registrar of the Supreme Court that he would move for an order nisi calling upon the appellant to show cause why a writ of attachment should not issue against him for his contempt in publishing the article in question and on the same date an order nisi was made by the Court in the terms of the notice of motion. The notice and the order nisi at first were limited to contempt in publishing an article calculated to interfere with the due course of justice the complaint being that it was improper having regard to Sheriff's pending appeal. Later it was amended so as to include a complaint that the article contained " statements and comments which tend to bring the authority and administration of the law into disrepute and disregard." In this amended form the matter came before the full Court consisting of the Chief Justice and Gilchrist and Robinson JJ. It was heard on various days in July, and on 5th September, the Chief Justice gave the judgment of the Court. He acquitted the appellant of contempt in respect of the pending appeal of Sheriff: and no more need be said on that point. But he found that the article was written with the direct object of bringing the administration of the criminal law by the Judges into disfavour with the public, and desiring to impose a penalty which if relatively light would yet emphasize that, while the Judges would place no obstruction in the way of fair criticism of their performance of their functions, untruths and malice would not be tolerated, he fined the respondent £25, in default one month's imprisonment, and ordered him to pay the costs of the proceedings to be taxed between solicitor and client. The formal judgment, slightly departing from the wording of the oral judgment recited that the appellant had committed a contempt of Court, the article having been written " with the direct object of bringing the administration of the criminal law in this Colony by the Judges into disrepute and disregard " so following the amended order nisi.

Their Lordships can find no evidence in the article or any facts placed before the Court to justify the finding either that the article was written with the direct object mentioned or that it could have that effect: and they will advise His Majesty that this appeal be allowed. It will be sufficient to apply the law as laid down in *The Queen* v. *Gray* [1900] 2 Q.B. at p. 40, by Lord Russell of Killowen L.C.J.

> " 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 is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere

> with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L.C. characterised as ' scandalising a Court or a judge '. (*In re Read and Huggonson* [1742] 2 Atk. 291, 469.) 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."

And that in applying the law the Board will not lose sight of local conditions is made clear in the judgment in *McLeod* v. *St. Aubyn* (*supra*) where Lord Morris after saying that committals for contempt of Court by scandalising the Court itself had become obsolete in this country, an observation sadly disproved the next year in the case last cited, proceeds :—

> " Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of coloured populations, the enforcement in proper cases of committal for contempt of Court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and respect for the Court."

But whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way : the wrong headed are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

In the present case the writer had taken for his theme the perennial topic of inequality of sentences under the text " The Human Element " using as the occasion for his article the two sentences referred to. He expressly disclaimed the suggestion that one of the particular Judges was habitually severe, the other habitually lenient. It is unnecessary to discuss whether his criticism of the sentences was well founded. It is very seldom that the observer has the means of ascertaining all the circumstances which weigh with an experienced Judge in awarding sentence. Sentences are unequal because the conditions in which offences are committed are unequal. The writer is, however, perfectly justified in pointing out what is obvious that sentences do vary in apparently similar circumstances with the habit of mind of the particular Judge. It is quite inevitable. Some very conscientious Judges have thought it their duty to visit particular crimes with exemplary sentences; others equally conscientious have thought it their duty to view the same crimes

with leniency. If to say that the human element enters into the awarding of punishment be contempt of court it is to be feared that few in or out of the profession would escape. If the writer had as journalist said that St. Clair's sentence was, in his opinion, too severe: and on another occasion that Sheriff's sentence was too lenient no complaint could possibly be made: and the offence does not become apparent when the two are contrasted. The writer in seeking his remedy, as has been remarked by the Supreme Court, has ignored the Court of Criminal Appeal: but he might reply that till such a Court has power on the initiative of the prosecution to increase too lenient sentences its effect in standardising sentences is not completely adequate. It appears to their Lordships that the writer receives less than justice from the Supreme Court in having untruths imputed to him as a ground for finding the article to be in contempt of court. He has correctly stated both offenders to have been charged with intent to murder: and though he has subsequently inaccurately stated that the conviction of both affirmed that intent, yet seeing that both were convicted of the same intent, viz., to do grievous bodily harm, the reasoning as to unevenness of sentence appears to have been unaffected. And it seems of little moment that the writer thought that this sentence might be for life instead of in fact being for 15 years. If criticism of decisions could only safely be made by persons who accurately knew the relevant law, who would be protected? There is no suggestion that the law was intentionally mis-stated.

Their Lordships have discussed this case at some length because in one aspect it concerns the liberty of the press which is no more than the liberty of any member of the public to criticize temperately and fairly but freely any episode in the administration of justice. They have come to the conclusion that there is no evidence upon which the Court could find that the appellant has exceeded this right, or that he acted with untruth or malice, or with the direct object of bringing the administration of justice into disrepute. They are satisfied that the Supreme Court took the course they did with a desire to uphold the dignity and authority of the law as administered in Trinidad; there nevertheless seems to their Lordships to have been a misconception of the doctrine of contempt of court as applied to public criticism. A jurisdiction of a very necessary and useful kind was applied in a case to which it was not properly applicable, and this in the view of their Lordships has resulted in a substantial miscarriage of justice. Acting, therefore, on the principles enumerated in the first part of this judgment as applicable to appeals from convictions for contempt of court, their Lordships will humbly advise His Majesty that this appeal be allowed and that the order of the Supreme Court dated 5th September, 1934, be set aside. The respondent must pay the costs here and in the Court below.

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n the Privy Council.

ANDRE PAUL TERENCE AMBARD

v.

THE ATTORNEY-GENERAL OF TRINIDAD AND TOBAGO

DELIVERED BY LORD ATKIN

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