

R. v ASSOCIATED PERIODICALS Ltd. and others, ex p. the Attorney General

Supreme Court
Flaxman, C.J.
28 November 1956.

Contempt of court— article in newspaper likely to prejudice fair trial.

Two persons had been arrested and charged under the Offences against the Person Ordinance. While the matter was pending in the magistrates' court, an article appeared in a local newspaper referring to the persons apprehended as "Teddy Boys" and indicating that this was a cult of violent hooliganism. The Attorney General moved for a writ of attachment. The respondents published an apology and also apologized to the court.

Held: (i) The article was calculated substantially to interfere with a fair trial and was therefore a contempt.

(ii) The contempt was not aggravated and was mitigated by the apologies and therefore no order would be made, other than for costs.

Note. The Offences against the Person Ordinance was repealed and replaced by the Criminal Offences Ordinance (Cap. 37, 1965-69 Ed.).

Case referred to in the judgment.

R. v Davies, [1945] K.B. 435.

Motion

This was a motion by the Attorney General for a writ of attachment for contempt of court.

The Attorney General (W.G. Bryce) and A. Sanguinetti for the Crown.
J.A. Hassan for the respondents.

30 November 1956: The following order was read—

In this application the Attorney General moves for writs of attachment for contempt against the editor of the "Gibraltar Post" and its two other directors in respect of articles appearing in that newspaper in its issues of 3 and 10 November 1956. The grounds for the motion are that these articles are calculated to prejudice the due administration of justice in a case now pending in the magistrates' court, and that the publication is calculated to prejudice its fair trial.

The matter complained of has been read in this court, and it is submitted for the respondents that the articles do not constitute a contempt of court and that it cannot be said that they are calculated substantially to prejudice a trial or to interfere with the administration of justice.

It is conceded that there was no intention on the part of the respondents to bring about this undesirable state of affairs, and what I really have to consider is whether or not the articles, or either of them, are calculated to interfere with the course of justice here, and not whether the respondents intended that result. There are two main issues for determination — first, do these articles constitute a contempt of this court, and secondly, is this a case in which, in the proper exercise of my discretion, I should grant the application for attachment.

It is shewn from the affidavit of Chief Inspector Payas that the criminal case to which reference is made in the issue of 10 November is one now pending in the magistrates' court. Two persons, Boyd and Paton, are charged with an offence against the Offences against the Person Ordinance, the case now standing adjourned until 10 December next. Mr. Featherstone has said that he had no knowledge, when the article of the 3 November was printed, that anyone had been arrested in connection with the incident referred to by him, and I see no reason to doubt this statement. But he was

certainly aware of the arrests at the time of the publication of the next issue. The contents of the article shew that he had that knowledge.

As I have said, the criminal case is now pending in the magistrates' court. The charges against Boyd and Paton may be dealt with summarily, but the offences are indictable and it is possible that their fate will be in the hands of a jury in this court. At the moment they are in the court below, and it is one of my duties to watch over proceedings in that court and to prevent interferences with the course of justice there. I must however also consider the second possibility, and the relation of the articles to it.

After considering the affidavits and exhibits and the very able arguments addressed to me I have reached the conclusion that the publication of the article of 10 November was a contempt of court. I do not think it matters if it is read in connection with that of 3 November or not. The article of 10 November links the two persons apprehended by the police with what is called the Teddy Boy menace in an unmistakeable manner — they are branded as Teddy Boys before they come to trial. It seems from the articles, and it is possibly a fact, that the Teddy Boy cult is one of violent hooliganism. I do not know if this is so — there may be "good" Teddy Boys and "bad" Teddy Boys, but as far as the article of 10 November is concerned two accused persons, who must be Boyd and Paton, are, by the strongest inference linked with the "bad" ones. It is easy to see the undesirable effect that this article may have on persons who may be connected with the trial. These articles undoubtedly had a wide circulation in Gibraltar. The "Gibraltar Post" is said to have a circulation of some 2,600 copies, and it is its boast (I quote from the heading of its editorial column) that "three out of every five persons in Gibraltar" read it. In this comparatively small community the article must almost inevitably have been seen by potential jurymen, and I feel convinced that, even after a time lapse of a few weeks, the contents of the article might act prejudicially to the accused in the minds of jurymen, or even witnesses. The article is calculated substantially to interfere with a fair trial.

And even if this case does not reach a jury we have the authority of Humphreys, J. in *R v Davies*¹ as to the possible effect of prejudicial matter on the minds of persons sitting in a judicial capacity. He says that whilst a judge or magistrate is unlikely to give a decision he would not have given as a result of information improperly conveyed "it is embarrassing to a judge that he should be informed of matters which he would much rather not hear and which make it much more difficult for him to do his duty".

It has been said that contempt of court is a question, in each case, of fact, of degree and of circumstances. I have dealt with the facts and circumstances of this contempt, and it remains for me to consider the question of degree, to see if the contempt is one in which I should make the order for attachment.

¹ [1945] K.B. 435.

For the respondents it has been urged that, if there was a contempt, it is a mild one, a mere injudicious choice of words. I think it goes beyond that, and that, as I have said, the publication is calculated substantially to interfere with a fair trial by reason of the prejudice it is likely to excite against the accused. This is not a case of an aggravated contempt, but anything calculated to interfere with the course of justice is a serious matter.

I have been invited to consider the effect of the "Public Apology" and the apologies to this court tendered by the three respondents in their affidavits. These apologies are in satisfactory terms and the "Public Apology" was given prominence at the earliest opportunity. But of course the apologies cannot wholly excuse the contempts, although I feel the contempts are mitigated by them.

With this in mind, and particularly in view of the fact that this is the first case of this nature concerning the press to come before this court for many years I do not think that justice demands that I fine or imprison the respondents, or any one of them. I trust they, and others, will take ample warning from these proceedings.

The respondents will, however, bear all the costs of this motion, on which, for the reasons stated above, I shall make no other order.