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March 27, 28.

## THE QUEEN v. GRAY.

*Contempt of Court—Publication of Comments on Administration of Justice—  
Personal Abuse of Judge with Reference to his Conduct as Judge.*

The publication in a newspaper of an article containing scurrilous personal abuse of a judge, with reference to his conduct as a judge in a judicial proceeding which has terminated, is a contempt of Court punishable by the Court on summary process.

HOWARD ALEXANDER GRAY appeared before the Court in obedience to an order made, upon the application of the Attorney-General, on the Crown side of the Queen's Bench Division, to answer for a contempt of Court committed by publishing in a newspaper—the *Birmingham Daily Argus*—an article headed "A Defender of Decency."

The facts appearing from the affidavits filed in support of the application, and admitted by counsel for Gray, were as follows :—

The Birmingham Spring Assizes commenced on March 13, and Darling J. sat in the Crown Court for the trial of prisoners. On March 15 one Wells was about to be tried before the learned judge for unlawfully and indecently publishing and uttering certain obscene and filthy words, and for unlawfully publishing and selling an obscene libel contained in a book. Before the trial of Wells was commenced Darling J. made some observations in Court, pointing out in substance that, whatever might be the rights of the case, it was inexpedient that the newspaper press should give anything like a full or detailed account of what passed at the trial, and that, although a newspaper had the right to publish accounts of proceedings in a law court, and for many purposes was protected for doing so, there was absolutely no protection to a newspaper for the publication of objectionable, obscene, and indecent matter, and any newspaper which did so might as easily be prosecuted as anybody else. The learned judge further said that, although he hoped and believed that his advice would be taken, if it was

disregarded he should make it his business to see that the law was in that respect enforced.

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On March 16, after the trial of Wells, which resulted in his conviction, had been concluded and sentence passed, and whilst the Birmingham Assizes were still continuing and Darling J. was still sitting as one of Her Majesty's judges of assize, Gray wrote and published in the *Birmingham Daily Argus*, a newspaper circulating in Birmingham, of which he was the editor, the article in question, headed "A Defender of Decency."

It is thought unnecessary to set forth this article. It was written with reference to the observations made by Darling J. before the trial of Wells, and may be described in the words of Lord Russell of Killowen C.J. (1), as being "personal scurrilous abuse of the judge as a judge."

In an affidavit made by Gray himself he described the article thus: "In writing the article . . . I used language referring to Mr. Justice Darling in terms which were intemperate, improper, ungentlemanly, and void of the respect due to his Lordship's person and office. . . . I deeply regret the publishing of the article and the inexcusable and insulting language in which it referred to one of Her Majesty's judges, and I humbly apologise to his Lordship and to the Court for my conduct, which I now, upon consideration, see reflected not only upon the individual judge but upon the bench of judges, and the administration of justice."

*Sir Richard Webster, A.-G.* (*Henry Sutton* with him), stated the facts, and said that he was prepared with authority to shew that the publication of the article was a contempt of Court, and that the proper procedure had been adopted.

[*LORD RUSSELL OF KILLOWEN C.J.* intimated that the Court were satisfied upon those points.]

*Hugo Young, Q.C.* (*Gilbert Tangye* with him), for Gray, said that he proposed to deal with the case on the merits, and not to argue the question whether or not a contempt of Court had been committed, and the right procedure adopted. He did not attempt to justify the language of the article, but stated

(1) *Post*, p. 40.

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circumstances and urged considerations which might induce the Court to deal leniently with Gray, pointing out (inter alia) that the article was written after the trial of Wells had taken place, and suggesting that the contempt was not of so serious a character as in *Skipworth's Case* (1), where the attack upon the judge was made with reference to a case then pending.

The Court ordered Gray to appear before them again on the following day.

March 28. The judgment of the Court (Lord Russell of Killowen C.J., Grantham and Phillimore JJ.) was pronounced by

LORD RUSSELL of KILLOWEN C.J. In this matter the Attorney-General, on Friday last, moved before my learned brothers who are now sitting with me for a rule calling upon Mr. Thomas Lancaster to shew cause why he should not be committed for contempt of Court by reason of the publication of an article in a paper called the *Birmingham Daily Argus*, and published on the 16th of the present month. It then appeared that Mr. Thomas Lancaster was the printer, and also the secretary and manager of the limited liability company which publishes at Birmingham the paper called the *Birmingham Daily Argus*. Yesterday when the matter again came before the Court the Attorney-General informed the Court that an affidavit had been put forward evidencing the fact that Thomas Lancaster was abroad at the time at which the article in question appeared, and that he was still abroad. At the same time, it was announced that Howard Alexander Gray was the editor and the writer, and the person solely responsible for the appearance, on March 16, of the article which is impugned as a contempt of Court. Howard Alexander Gray appears here in person, is represented by counsel, and submits himself to the judgment of this Court. The Court, therefore, is seised of this matter, and is now able to deal with it. The facts of the case are these—One Wells was indicted at the Birmingham Assizes for uttering and publishing certain indecent words, and for publishing an indecent book. The case came to be tried before Darling J., sitting

(1) (1873) L. R. 9 Q. B. 230.

under the Queen's Commission of Oyer and Terminer at Birmingham. Before the trial the learned judge thought it right to call public attention to the nature of it, and the character of the evidence which would necessarily be brought forward—evidence of various matters which it was very undesirable, from every point of view, should be published. The learned judge thought it right to warn all persons concerned, including the press of Birmingham, against the publication of any of those indecent details, taking care, at the same time, that his observations should not in any sense prejudice the matter to be tried, because he was careful to point out that, although necessarily indecent matter would be put in evidence, it did not follow that the publication of it in the actual case necessarily constituted a criminal offence. The learned judge proceeded, after giving this warning, to point out the means existing in point of law for the punishment of persons who did publish indecent matter of the kind which might be probably given in evidence. I do not think for one moment that the learned judge meant at all thereby to insult the press of Birmingham. His warning may have been unnecessary. He may not have been aware of the fact, as shewing the good sense and the propriety of that body, that there was no publication of indecent matter in the reports of the preliminary proceedings before the magistrates. I think the probability is that he had in his mind the popular but erroneous impression that there is impunity for the publication by newspapers of any matter which takes place in a court of justice. His observations having been made on March 15, on the evening of the following day, and after the trial of the man Wells had taken place, resulting in his conviction, the article in question was published. It was read yesterday by the Attorney-General; I do not propose to read it again. Of its character there can be no question. No one has described it in terms of stronger condemnation than Howard Alexander Gray in the affidavit to which I shall presently call attention. It is not too much to say that it is an article of scurrilous abuse of a judge in his character of a judge—scurrilous abuse in reference to the conduct of the judge while sitting under the Queen's Commission,

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and scurrilous abuse published in a newspaper in the town in which he was still sitting under the Queen's Commission. It cannot be doubted—indeed it has not been argued to the contrary by the learned counsel who represents Howard Alexander Gray—that the article does constitute a contempt of Court; but, as these applications are, happily, of an unusual character, we have thought it right to explain a little more fully than is perhaps necessary what does constitute a contempt of Court, and what are the means which the law has placed at the disposal of the Judicature for checking and punishing contempt of Court. 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.” (1) 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. Now, as I have said, no one has suggested that this is not a contempt of Court, and nobody has suggested, or could suggest, that it falls within the right of public criticism in the sense I have described. It is not criticism: I repeat that it is personal scurrilous abuse of a judge as a judge. We have, therefore, to deal with it as a case of contempt, and we have to deal with it *brevi manu*. This is not a new-fangled jurisdiction; it is a jurisdiction as old as the common law itself, of which it forms part. It is a jurisdiction, the history, purpose,

(1) *In re Read and Huggonson*, (1742) 2 Atk. 291, 469.

and extent of which are admirably treated in the opinion of Wilmot C.J., then Wilmot J., in his Opinions and Judgments. (1) It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt; because, if it is not a case beyond reasonable doubt, the Courts will and ought to leave the Attorney-General to proceed by criminal information. How, then, are we to deal with this matter? That it is a serious case no one can doubt, and I do not hesitate to say, speaking for myself and for my brethren, that, if it had not been for the conduct of Howard Alexander Gray since the publication of the article, and especially if it had not been for the affidavit which he has put before the Court for its consideration, we should all have thought it our duty to send Howard Alexander Gray to prison for a not inconsiderable period of time. But he has come forward and frankly acknowledged his own individual and sole responsibility in the matter. He has done more. He has, in the affidavit to which I have made reference, expressed—we hope and we believe sincerely—his regret for what he has done. In that affidavit he makes reference to the fact that other newspapers in Birmingham have made comments upon the conduct of the learned judge in question. I have to make this observation in that regard. So far as they have been at all adverted to, they were obviously comments of a very different character; but they are not before us, and we must assume that they are not before us, because the learned Attorney-General, in his discretion, did not think they were sufficiently serious to call the attention of the Court to them in order that its punitive jurisdiction might be exercised in regard to those responsible for their publication. After referring to this matter, Howard Alexander Gray, in his affidavit, says that he wrote the article under a strong feeling that sufficient trust had not been placed in the judgment, good taste, and discretion of the journalists and reporters for the press. He proceeds: “That was the only motive present to my mind in writing the article, and I wrote it on the impulse of the moment. In doing so, I used language referring to Mr. Justice

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C.J.(1) *Rex v. Almon*, (1765) Wilmot's Opinions, 243.

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Darling in terms which were intemperate, improper, ungente-  
manly, and void of the respect due to his Lordship's person and  
office. The expressions applied to Mr. Justice Darling were  
not deliberately intended to bring discredit on his Lordship,  
but were the outcome of my strong feelings. I know they can-  
not be justified, and I do not seek to justify them. I deeply  
regret the publication of the article, and the inexcusable and  
insulting language in which it referred to one of Her Majesty's  
judges, and I humbly apologise to his Lordship and to the  
Court for my conduct, which I now, upon consideration, see  
reflected not only upon the individual judge, but upon the  
bench of judges and the administration of justice, and I submit  
myself to the merciful consideration of the Court." Howard  
Alexander Gray, the judgment of the Court is that you pay  
a fine of 100*l.*, and a further sum of 25*l.* for costs, and that  
you be detained, and, if necessary, lodged in Holloway Gaol,  
until these sums be paid. (1)

*Judgment accordingly.*

Solicitor for Attorney-General : *The Solicitor of the Treasury.*

Solicitors for Gray : *Pepper, Tangye & Co., for Pepper, Tangye  
& Winterton, Birmingham.*

W. A.

(1) The numerous authorities which establish the jurisdiction at common law to punish, on the summary process of the Court, contempts committed by publishing scandalous matter of the Court itself as a Court will be found collected in *M'Leod v. St. Aubyn*, [1899] A. C. 549, at p. 551. In modern times this jurisdiction does not seem to have been exercised in England, although it has been in the Colonies. Lord Morris, delivering the judgment of the Privy Council in *M'Leod v. St. Aubyn*, said : "Committals for contempt of Court are ordinarily in cases where some contempt ex facie of the Court has been committed, or for comments on cases pending in the Courts. How-

ever, there can be no doubt that there is a third head of contempt of Court by the publication of scandalous matter of the Court itself. . . . Committal for contempt of Court is a weapon to be used sparingly, and always with reference to the interests of the administration of justice. Hence, when a trial has taken place and the case is over, the judge or the jury are given over to criticism . . . . Committals for contempt of Court by scandalizing the Court itself have become obsolete in this country. Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them."

The present case of *Reg. v. Gray* is reported as shewing that in this

[IN THE COURT OF APPEAL.]

PAYNE v. HOGG.

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Jan. 22;  
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*Prohibition—Inferior Court—Jurisdiction—Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), ss. 6, 7.*

"The cause of action" in the Salford Hundred Court of Record Act, 1868, s. 6, means the whole cause of action, and not merely the act or default which gives the plaintiff his cause of complaint.

Sect. 7 of the Salford Hundred Court of Record Act, 1868, enacts that "No defendant shall be permitted to object to the jurisdiction of the Court otherwise than by special plea, and, if the want of jurisdiction be not so pleaded, the Court shall have jurisdiction for all purposes":—

*Held* (by the Court of Appeal, reversing the decision of a Divisional Court), that, the effect of the section being to give jurisdiction to the Salford Hundred Court in cases where the want of jurisdiction is not pleaded, a defendant, against whom judgment had been recovered in that court in default of appearance, and who had consequently not pleaded to the jurisdiction, was not entitled to a writ of prohibition on the ground of want of jurisdiction.

APPEAL of the plaintiff from an order of Cozens-Hardy J. at chambers granting a writ of prohibition directed to the high steward and head bailiff of the Salford Hundred Court, and to the plaintiff in the action, prohibiting them from further proceeding in the matter of the judgment obtained by the plaintiff against the defendant, and in the matter of the execution levied thereunder and the sale of the defendant's goods and chattels.

The jurisdiction of the Salford Hundred Court is regulated by 31 & 32 Vict. c. cxxx. (the Salford Hundred Court of

country the Court will still, where the circumstances demand its action, exercise its jurisdiction to punish, on summary process, the contempt of "scandalizing the Court," although no contempt has been committed ex facie of the Court, or in respect of a case pending.

Where a contempt of Court is alleged to have been committed, the practice

is now to issue an order on the Crown side of the Queen's Bench Division, directing the person accused to appear before the Court and answer for his contempt. This was done in *Onslow's and Whalley's Case*, L. R. 9 Q. B. 219. The procedure by writ of attachment seems to have been superseded.—THE REPORTER.

# ERRATA.

<i>Page</i>	<i>Line</i>	<i>For</i>	<i>Read</i>
40	note (1)	dele 291.	
69	4 from bottom	Walter Shaw	A. B. Shaw.
213	17	<i>Bird v. Bastow</i>	<i>Bird v. Barstow.</i>
307	17	after <i>C. A. Russell, Q.C.</i>	<i>J. Mansfield</i> with him.
702-4	foot-notes	Morell	Morrell.
727	notes (1) (2)	The date of <i>Aldred's Case</i> is 1610 and of <i>Luttrell's Case</i> 1601.	
732	11	<i>Bach v. Stacey</i>	<i>Back v. Stacey.</i>
801	18	statement	settlement.