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Present : **Pereira J. 1914.**

In the Matter of the Rule on DE SOUZA, Editor of the Ceylon Morning Leader, to show cause why he should not be punished for Contempt of Court.

Contempt of Court-Proper process to be issued by Supreme Court- Publication of false material concerning a trial calculated to hold the Court up to odium-Attributing to Judge conduct akin to bullying a jury-Judge may direct a jury to reconsider verdict if he does not approve of it.

The proper process to be issued by the Supreme Court requiring the attendance in Court of the accused in a proceeding for contempt of Court is a Rule under the Seal of the Court, Although a summons under section 798 of the Civil Procedure Code would not be altogether out of order.

The deliberate and wilful publication in a newspaper of false and fabricated material concerning a trial had in Court, calculated to hold the Court or the Judge thereof up to odium or ridicule, amounts to an undue interference with the administration of justice and an obstruction to public justice, and is hence a contempt of Court; and so is the publication of a charge attributing to the Judge conduct akin to bullying the jury.

On a criminal trial in the Supreme Court, if the Judge does not approve of the verdict returned by the jury, be may direct them to reconsider it.

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THE rule served on the defendant was as follows :-

Upon reading the paragraph entitled "An Extraordinary Huftsdorp Incident, " which was printed and published in the Ceylon Morning Leader newspaper of Tuesday, March 31, 1914, and the editorial article headed " The Bights and Wrongs of Jurors," printed and published in the issue of the said newspaper of Wednesday, April 1, 1914, which paragraph and editorial article had reference to certain proceedings had on the trial of one Kahatapiliyege Pedrick for culpable homicide sot amounting to murder on March 30, 1914, at a sitting of the Hon. the Supreme Court in its criminal jurisdiction, the Hon. Mr. James Cecil Walter Pereira, K.C., Puisne Justice, presiding, it is ordered that Armand de Sousza, editor of the said Ceylon Morning Leader newspaper, do appear in person and show cause before the said Court sitting as aforesaid at Hulftsdorp on Friday next, the 3rd instant, at 11 o'clock of the forenoon, why be should not be punished for contempt of Court for holding up to public odium the said Judge at the said Court in the manner following :-

(1) By setting forth in the said paragraph headed " An Extra ordinary Hulftsdorp Incident" in the said newspaper certain false and fabricated statements intended and calculated to lead to the inference that the order made by that said Judge in the said case, directing the jury to reconsider their verdict, and discharging the jury from further service, was harsh, unreasonable, and vexatious; the false and fabricated statements being, inter alia, (1) that there was evidence in the said case that the deceased inflicted severe injuries on the accused and several of his relatives, whereas in truth and in fact there was absolutely no evidence that the deceased inflicted such injuries, and there was a total absence of evidence of any fact or circumstance that could possibly have supported a plea of the exercise by the accused of the rights of private defence of the person; (2) that only one witness, namely, the Police Vidane, undertook to say that it was the accused who dealt the fatal blow; (3) that it was not within the powers of the presiding Judge to direct reconsideration of a unanimous verdict; (4) that one of the jurors was assured by the Crown Counsel responsible for the prosecution that he personally had no hesitation in accepting their verdict as sound.

(2) By stating (in the editorial article aforesaid) that the said Judge was guilty of conduct " which came as near an exhibition of bullying as a Judge of his scrupulous care, legal acumen, and eminent good sense could possibly even unwittingly bring himself to."

Bawa, K.C. (with him Elliott and C. H. Z. Fernando), for the defendant.

April 6, 1914. **PEREIRA J.-**

In this matter Mr. Bawa, appearing for the accused, took exception to the procedure adopted in the issuing of a rule on the accused, and argued that the process should have been a summons under

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section 723 of the Civil Procedure Code. The Civil Procedure Code, as may be gathered from its preamble, was passed to consolidate and amend the laws relating to the procedure of the Civil Courts of
the Island, and it almost altogether regulated the procedure of the District Courts and Courts of Requests, and I doubt that chapter LXV. of the Court, in which is included section 793, was ever intended to apply to the Supreme Court. The only indication of such an intention is in section 800 of that chapter, which does no more than repeat the provision of section 81 of the Courts Ordinance as to the punishment to be imposed by the Supreme Court in cases of contempt. Assuming, however, that that section affords sufficient authority for the application of the whole chapter to the Supreme Court, it is clear that there are sections in the chapter which in their very nature are inapplicable to the Supreme Court. This Court in its collective capacity has already held that section 798 has no application to the Supreme Court (In re Wijesinghe[1][(1913) 16 N. L. R. 312.]); and it is manifest that the section relied on by the learned counsel for the accused cannot apply to the Supreme Court, because that section provides for a form of summons to be signed by the Judge of the Court, and Judges of this Court never sign processes that issue from it. The processes issue duly sealed with the seal of the Court under the hand of the Registrar. If chapter LXV. of the Civil Procedure Code is at all applicable to the Supreme Court, it would be applicable, as observed by me in the course of the argument on the present rule, mutatis mutandis. It has apparently been so regarded by this Court in cases since the coming into operation of the Civil Procedure Code. In the case of a Rule on the Proprietors and Publishers of the " Times of Ceylon " Newspaper, reported at page 317 of vol. I. of Browne's Reports-a Full Court case-it will be seen that the procedure adopted was exactly the same as that in the present case. The mandate in the case reported
at page 4 of vol. IV. of Tambyah's Reports was a rule and not a summons, and so apparently was the process in the case of Sumangala v. Dharmarakhita[2][(1908) 11 N. L. R. 195.] There are other cases. I do not go to far as to say that a summons in terms of section 793 of the Civil Procedure Code would be out of order, but I think that the more appropriate process from the Supreme Court is a rule in the form of that issued in this case. However that may be, it is clear that there is no substance in the objection. It is a mere technicality, because the present rule contains as much information to the accused as a summons under section 793 would have contained. The difference between the two processes is only in name.

Now, the first charge against the accused is that he published in his paper certain false and fabricated statements intended and calculated to lead to the inference that certain orders made by a Judge of this Court were harsh, unreasonable, and vexatious. Four

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of these false or fabricated statements are mentioned in the rule, but I shall deal with only two of them, that is to say, the first and the second, because the third is a statement involving a question of law, and I shall deal with it later under a different head; and the fourth is a statement with reference to which the evidence of Mr. Crown Counsel Barber was necessary, but he was not in Court to give the necessary evidence. I may, however, in this connection mention that on the 3rd April Mr. Barber, in open Court, stated that the statement with reference to him in the paragraph in question was absolutely false. Now, the first statement is that there was evidence, in the case referred to in the rule, that the deceased inflicted fairly severe injuries on the- accused. Mr. Bawa sought to draw a distinction between the terms in which this statement was set forth in the rule and those in which it was expressed in the paragraph in the Ceylon Morning Leader (see document B filed). What Mr. Bawa has pointed out is, no doubt, a distinction, but it is a distinction without a difference. Nobody reading the paragraph in question could fail to see that what was intended to be conveyed by it was that it was proved as a fact in the case that the deceased inflicted fairly severe injuries on the accused. Similarly, the second false statement was intended to convey, and did convey, the idea that the charge in the case was supported by the evidence of only one witness, namely, the Police Vidane. As I say in my " statement of facts " appended to these proceedings, the charge was supported by the evidence of two eye-witnesses and the statement of the deceased to the Police Inspector. It was proved as well as a charge in a criminal case could be expected to be, and then, as now, I entertained the firm conviction that the case had resulted in a deplorable miscarriage of justice. However, it was not because the jurors had unreasonably refused to accept as true the evidence of eye-witnesses that I requested them to reconsider their verdict, but my reasons were based on two legal grounds, which became manifest on statements made to me by the foreman, as will be seen in the " statement of facts " referred to above. The first one was that there was not an iota of evidence of any act, fact, or circumstance which gave rise to the necessity of the exercise by the accused of the right of private defence of the person; and secondly, that the jurors were wrong in not regarding the statement of the deceased to the Police

Inspector as evidence, because that statement had nor been made on oath. But these reasons were carefully suppressed in the paragraph in question, and the false statements mentioned above were set forth, in order to give the public the impression that my orders were harsh, unreasonable, and vexatious, and to support the adverse editorial comment in the same paper (see document C). It has been said that " 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

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or would treat that as contempt," and the nigh authority of Russell C.J. in the well-known case of The Queen v. Gray[1][(1900) 2 Q. B. 36-40.] has been cited in support of this proposition. It was hardly necessary to cite any authority in support of the proposition. As I mentioned on a former occasion similar to the present, I would gladly welcome fair criticism, to the fullest extent, on my orders and judgments as a Judge of this Court. Reasonable argument and expostulation, however, is one thing; the publication of false and fabricated material in order to hold the Court or Judge up to odium or ridicule is another. The accused published the material either knowing that it was altogether false, or that it had been fabricated by designing individuals, or conveniently shutting his eyes to the tainted and doubtful sources from which it emanated, in order, in any case, to hold this Court up to odium and ridicule. He distinctly says, in his article headed " The Rights and Wrongs of Jurors " (see document D), that so far as his report was concerned " it was compiled in this office, most of the reporters being absent from Court when the incident occurred, " and " that the representation of what occurred, and the reasons for it, were naturally coloured by the medium through which it finally reached us. " After this damaging admission, one should have expected an expression of regret at the attitude already taken up by the editor, but, on the contrary, he heaps Ossa upon Pelion by, on apparently the same fabricated material, charging the Judge with having done something which was as near an exhibition of bullying as was possible in the case of a Judge of his character. Whether all this was the result of a mere itch for vituperation of those in high authority in the country, or a desire to advance the interest of a newspaper by pandering to the morbid tastes of a clientele craving for claptrap and sensationalism, makes little difference. This Court has been held up to odium, and there has been an undue interference with the administration of justice. On the second charge set forth in the rule, namely, the charge of attributing to the Judge conduct akin to bullying, Mr. Bawa, to my surprise I must confess, argued that this Court had not the power to direct a jury to reconsider a unanimous verdict. On this point the words of section 248 of the Criminal Procedure-code appear to me' to be too clear for argument. Section 247 enacts that where before the verdict is announced the jury, in answer to a question put, state that they are not unanimous, the Judge may order them to retire for further consideration. Section 248 refers to a later stage of the case. It enacts in effect that after the verdict is declared by the jury, whether they are unanimous or not, the Judge may direct them to reconsider it, if he does not approve of it. There is neither any word nor expression in section 248 nor is there any rule or canon of construction, that would limit the operation of sub-section (2) of section 248 to the case mentioned in

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sub-section (1). The Indian authorities cited by the learned counsel for the accused do not apply, because, according to the Indian Code, it is only when the jury are not unanimous that the Judge can require them to reconsider their verdict; and a more drastic remedy than that is provided where the Judge does not agree with the verdict, namely, to refuse to accept the verdict and to discharge the jury. So that, so long as the Judge has the right to require the jury to reconsider their verdict, when he does not approve of it, would the exercise of that tright be bullying in any sense of the term ? It is said that the right of the jury to decide on the facts, vested in them by law, should be respected, but it must be remembered that the same law vests in the Judge a right to refuse to accept the verdict in the first instance if he does not approve of it, and to ask the jurors to reconsider it. Is that right not to be respected by those concerned ? Then, as regards my order discharging the jurors, it is not correct to say that I made that order as a protest against the return of what I thought was a wrong verdict, although I might with reason have done so. I felt from personal observation that many of the jurors had not the capacity to appreciate a situation like that induced by the circumstances of the case, and I thereupon formed the opinion that an order discharging the jurors was called for in the interests of justice, and I made order accordingly, as I was entitled to do under the latter part of section 230 of the Criminal Procedure Code. In matters of this nature it is difficult for the lay mind to form a correct estimate of the merits of orders and judgments of Courts of Justice. It is difficult for it to gain a correct conception of the reasons, facts, and circumstances that support those orders, and it is possibly on that account that an eminent-Judge once observed: " Nothing can be of greater importance to the welfare of the public than to put a stop to the animadversions and censures which are so frequently made on Courts of Justice. They can be of no service, and may be attended with the most mischievous consequences . . . . . When a person has recourse, either by a writing, by publications in print, 6r by any other means, to calumniate the proceedings of a Court of Justice, the obvious tendency of it is to weaken the administration of justice, and in consequence to sap the very foundation of

the constitution itself " (Buller J. in King v. Watson[1][2. T. B. 205.]). The present case is a bad type of the class referred to by the learned Judge. The accused having armed himself with what purported to be a report of certain proceedings of this Court, full of false and fabricated statements, and which, to say the least, was (according to his own confession) " coloured by the medium through which it finally passed," commenced to indulge in the game of reckless and impudent attack on the Judge, the last phase of which was a charge against him of conduct which was only next door to "bullying. " Although on

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the application of the accused I had all the jurors concerned summoned and in attendance in Court, not one of them was called to prove that the jurors were " bullied." The conduct of the accused was aggravated by the attitude he took up, at the commencement of the argument, in denying the charges and omitting to admit, fairly and squarely, that he was the editor of the Ceylon Morning Leader newspaper, and insisting on proof of the fact, and my feeling until the end of the proceedings was that nothing but a substantial term of imprisonment would be adequate punishment for his offence. He has, however, albeit tardily, tendered an apology, in which he unreservedly withdraws the insinuations made by him, and expresses his regret, and he may rest assured that it is after a long and continued mental struggle between my sense of duty towards the Bench of which I have the honour to be one of the occupants, on the one hand, and the propriety of tempering justice with mercy, wherever permissible, on the other, that I have decided upon imposing on him a fine of Rs. 250.

I find the accused guilty on the charges made against him, and sentence him to pay a fine of Rs. 250. (In default one month's simple imprisonment.)