IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA } No. M.P. 16 of 1960.
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THE QUEEN

-v-

SOUTH PACIFIC POST LIMITED.

THE QUEEN

-v-

EDWARD PHILLIPSON GLOVER.

J U D G M E N T.

These are Motions for contempt, heard together by consent, at the instance of the Secretary for Law directed to the South Pacific Post Limited and Edward Phillipson Glover, the General Manager of that publication, respectively.

The foundational facts are these: An Applicant before the Supreme Court who had come to Port Moresby from Tampa, Florida, in the United States for purposes of this litigation experienced difficulty in having the matter with which he was concerned listed. In an endeavour to expedite matters he gave an interview to the "South Pacific Post". Substantially he made these points: That he had been given six months' leave from his employment, which was due to expire on July 1st; that he had spent three thousand three hundred and fifty dollars and had been compelled to ask his family for more funds; that two Justices of the Supreme Court had declined to hear his case for the reasons that one of them knew the Respondent to the subject litigation and the other knew both the Respondent and "the man involved and named in the suit." These events so far as I can gather occurred in January last. The Chief Justice at some unspecified point of time agreed to request the Minister that a Judge be sent from Australia to dispose of this litigation. At the time of the interview that Judge had not arrived. Of the Judges who declined to sit on the matter, the litigant had this to say: "The points made by each of these Justices are reasonable and I have no quarrel with such points." As to the third and only remaining Judge of the Supreme Court, His Honour on April 6th offered to preside but stood down

in deference to objection raised by the Applicant's advisers.

On April 29th the "South Pacific Post" published an account of the interview referred to above and did so accurately. Above the article in bolder type it published the following: "An American who has been in Port Moresby for 3½ months alleged yesterday that a combination of small town loyalties and Canberra red tape is denying him justice." Those banner lines constitute the subject of this Motion.

It might be well at this point to consider the general principle applicable and to instance some matters which fall within and without the ambit of contempt. The activities of the Court and the judicial activities of the Judges who constitute it are of considerable public interest. The right to criticise and vigorously criticise Courts and Judges has never been denied to individuals or to newspapers, and contempt proceedings may never be used simply to stifle criticism. In the second place, the affront offered to a Judge and the hurt sustained by him as an individual are not relevant factors; it is the prestige of the Court which this proceeding is designed to protect, and it is the criminal, not the civil, arm of the Court which is raised in its protection. The power to deal with contempt inports, amongst other remedies, the power to imprison, and it is to be remembered that the imputing of base or improper motives to a Judge for acting or failing to act in his judicial capacity has been regarded as contempt time out of memory. It is a proposition too well established to require authority.

To return to the facts. The opening bold-type paragraph obviously purports to be a precis of the interview which follows, and the imputation seems plain enough that the "Canberra red tape" referred to is the state of affairs which resulted in failure to ensure the arrival of a Judge from Australia before April 29th, and the "small town loyalties" refers to the refusal of the Chief Justice and Mr. Justice Gore to preside over litigation because of personal acquaintance with a party and a witness likely to be called. What was intended to be conveyed by the latter phrase is, fortunately for the publishers, ambiguous. If, as Mr. Attorney submitted, it is capable only of meaning that personal ties of acquaintance with a party and a witness led the Judges concerned to delay justice to the opposite party, that could only be regarded as scandalising the Court and as amounting to gross contempt. In that event, neither retraction, apology nor any other subsequent endeavour to make amends would have prevented

committal. The term is, however, open to another interpretation, namely that advancing personal acquaintance with interested parties as a reason for refusing to preside was itself in each instance a small town loyalty - that is to say, that the Judges referred to insisted upon a narrow, insular adherence to a tenuous principle with detrimental results to a litigant. That construction, too, in my view, amounts to contempt, though of a vastly less significant type. Since these proceedings are criminal, the one more favourable to the Respondents must be adopted.

Look at it as one may, the comment is obtuse. The principle that justice should not only be done but should appear to be done has been solidly built into our legal system. It is a necessary corollary that if it is at all possible a Judge should treat his personal acquaintance with anyone concerned in litigation as debarring him from participating in that litigation. To describe adherence to that principle as a small town loyalty is indicative of an attitude so naive as to border on the childish.

In the second place, though the bold type purports to be a precis of the text of the article, the comment the subject of these proceedings is not only inappropriate to the text of the article - it is the antithesis of what was said. The text makes it quite clear that the litigant had not complained about the refusal of the Chief Justice or Mr. Justice Gore to sit. No rational person acquainted with our system could have any complaint. The precis, however, stigmatises their Honours' conduct as being actuated by small town loyalties. It is rather like seeing an article headed - "Death of Mr. Jones" - and reading under it a statement that Jones is not only alive but in the best of health.

The newspaper has published an apology which is a material factor. It has, moreover, reported to explain its use of the expression complained of. It is kinder not to analyse that explanation, which merely sets out good and sufficient reasons why the expression should not have been used, but the explanation was doubtless well meant in the circumstances.

Each Respondent will pay the cost of this application, and there will be no other Order.

J/J.

3 p.m. 20/5/60.