[HIGH COURT OF AUSTRALIA.]

PACKER . . . . . APPELLANT:

AND

PEACOCK . . . . . RESPONDENT.

BURRELL . . . . . APPELLANT;

AND

PEACOCK . . . . . RESPONDENT.

SMART AND ANOTHER . . . . . APPELLANTS;

AND

PEACOCK . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *March* 4, 5, 6, 13.

Griffith C.J., and Barton J.

Contempt of Court—Jurisdiction of Supreme Court of Victoria—Criminal charge—Publication of matters tending to prevent fair trial—Publication before committal for trial—Extent to which publication in newspaper is lawful.

Where a person has been arrested and charged on information with an offence in respect of which justices may commit him for trial in the Supreme Court of Victoria, the publication after his arrest and before he has been so committed of matter tending to prejudice his fair trial in the Supreme Court is a contempt of the Supreme Court which that Court has jurisdiction to punish.

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The publication in respect of a pending criminal charge of extrinsic ascertained facts to which any eye-witness could bear testimony, such as, in the case of a charge of murder, the finding of a body and its condition, the place where it was found, the persons by whom it was found, the arrest of the person accused, is lawful. But the publication of alleged facts depending upon the testimony of some particular person, which may or may not be true and may or may not be admissible in a Court of justice, and the publication of comments on alleged facts are unlawful, if such publication is likely to interfere with the fair trial of the person charged.

Decisions of the Supreme Court of Victoria (*Madden* C.J.): *In re Packer, Ex parte Peacock*, (1911) V.L.R., 401 ; 33 A.L.T., 69, affirmed.

APPEALS from the Supreme Court of Victoria.

Orders *nisi* in the Supreme Court of Victoria were taken out on behalf of Samuel Peacock, a medical practitioner, calling upon John William Packer, publisher of the *Age* newspaper, Henry Burrell, publisher of the *Argus* newspaper, and Thomas Smart, publisher, and J. E. Davidson, editor, of the *Herald* newspaper, to show cause why they should not be committed for contempt of the Supreme Court in respect of certain statements and matter relating to Peacock, published in the respective newspapers, which were alleged to tend to imperil the fair and impartial hearing before justices of an information against Peacock charging him with the murder of one Mary Margaret Davies, and the fair and impartial hearing of any charge upon which he might be committed for trial in respect of such information, and to tend to obstruct or interfere with the due course of law and justice.

It appeared that the statements and matters in question were published in the respective newspapers after the arrest of Peacock, the swearing of the information against him and his remand for the further hearing of the charge, but before he was committed for trial. The nature of the statements and matters published sufficiently appears in the judgment hereunder.

The orders *nisi* were heard before *Madden* C.J. who made them absolute and fined Packer, Burrell and Smart £200 each, and fined Davidson £100 and directed him to be imprisoned for three days, such imprisonment to be suspended on Davidson entering into a bond to be of good behaviour for 12 months: *In re Packer, Ex parte Peacock* (1).

(1) (1911) V.L.R., 401 ; 33 A.L.T., 69.

Appeals were now by special leave had to the High Court.

McArthur and *Starke*, for the appellant Packer. Contempt of Court is a criminal offence punishable on indictment: *In re Davies* (1). The Supreme Court has no jurisdiction as to contempt in respect of a proposed criminal prosecution until the prisoner has been committed for trial, for until then there is no proceeding pending in the Supreme Court: *In re Syme, Ex parte Worthington* (2). This Court should follow that decision rather than the latest English decisions in *R.* v. *Parke* (3); *R.* v. *Davies* (4); *R.* v. *Clarke* (5). The earlier English decisions do not support these later ones. The prisoner is not within the jurisdiction of the Supreme Court until commitment, for if he were he could only be released by an order of the Supreme Court, but the justices may refuse to commit him. [They also referred to *Ex parte Senkovitch* (6); *Lyons* v. *Bates* (7); *In re an Application for an Attachment* (8); *R.* v. *McKinnon* (9); *Onslow's and Whalley's Case* (10); *Supreme Court Act* 1890, sec. 18.] A newspaper may publish facts in relation to an alleged criminal offence and which for the public interest should be published. It is more for the public benefit that those who commit crimes should be discovered than that no possible chance of the trial of an accused person being influenced should be permitted. A mere statement of facts and of inferences which may be drawn from them is not calculated to unfairly influence the accused's trial. The fact that the statements in the newspapers were published long before the trial in the Supreme Court would take place should be considered in deciding whether the trial of the accused would be unfairly prejudiced. The reports of the criminal proceedings which were lawfully published were more harmful to the accused than the other statements in the papers.

Mitchell K.C. (with him *Duffy* K.C. and *McArthur*), for the appellant Burrell. The ground upon which the jurisdiction as to contempt in relation to the publication of facts tending to preju-

(1) 21 Q.B.D., 236, at p. 238.
(2) 28 V.L.R., 552; 24 A.L.T., 123.
(3) (1903) 2 K.B., 432.
(4) (1906) 1 K.B., 32.
(5) 27 T.L.R., 32; 130 L.T., 636.
(6) 10 S.R. (N.S.W.), 738.
(7) 3 Qd. J.P., 136.
(8) 2 T.L.R., 351.
(9) 12 N.Z. Gaz. L R., 423.
(10) L.R. 9 Q.B., 219.

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dice a fair trial is public interest: *R.* v. *Davies* (1). But it is for the public interest that facts concerning the sudden disappearance of a woman should be put before the public even if the publication may tend to prejudice the trial of a person alleged to have murdered her. In the case of the *Argus* there was nothing more than a statement of facts. [He also referred to *R.* v. *Payne* (2); *Plating Co.* v. *Farquharson* (3); *R.* v. *Dolan* (4); *Hunt* v. *Clarke* (5).]

Duffy K.C. (with him *Starke* and *Arthur*), for the appellants Smart and Davidson. The Supreme Court of Victoria has only the power which other superior Courts of record have of punishing for contempts of itself and has not that disciplinary power of punishing contempts of other Courts indicated in *R.* v. *Davies* (6); *Encyclopædia of the Laws of England*, 1st ed., vol. III., p. 313; *Supreme Court Act* 1890, secs. 18, 19, 20. All other Courts in Victoria have powers of punishing contempt specially given to them. See *Justices Act* 1890, secs 184, 198; *Coroner's Act* 1890, sec. 4; *County Court Act* 1890, sec. 8; *In re Dunn* (7). The power of punishing for contempts of the Supreme Court itself cannot arise until commitment. [He referred to *R.* v. *Williams* (8); *R.* v. *Lee* (9); *R.* v. *Gray* (10); *Irvine's Justices of the Peace*, 2nd ed., p. 30; *Law Quarterly Review*, vol. 24, pp. 184, 276; *Oswald on Contempt*, 3rd ed., pp. 3*n*, 13, 17.] In the case of the *Herald* there was nothing more than a statement of facts and the conclusions from them are left to the public.

Irvine K.C. (with him *Maxwell* and *Paul*), for the respondent. The complaint against all three newspapers is that they each published statements very damaging to the respondent made by probable witnesses on his trial of such a character as was certain to affect his chances of acquittal should the case come before the Supreme Court. The publication of such statements except in the way of reports of public proceedings in Courts of law is unlawful

(1) (1906) 1 K.B., 32, at pp. 40, 41.
(2) (1896) 1 Q.B., 577, at p. 580.
(3) 17 Ch. D., 49, at p. 55.
(4) (1907) 2 I.R., 260.
(5) 37 W.R., 724.
(6) (1906) 1 K.B., 32.
(7) (1906) V.L.R., 493; 28 A.L.T., 3.
(8) 2 L.J. (O.S.) K.B., 30.
(9) 5 Esp., 123.
(10) 10 Cox C.C., 184.

and a contempt of the Supreme Court. [He referred to *R.* v. *Lee* (1); *R.* v. *Fisher* (2); *Usill* v. *Hales* (3); *R.* v. *Tibbits* (4).] The decision in *R.* v. *Parke* (5) has been followed ever since and has been accepted by all the Judges before whom it has come and by the standard authorities as good law. The law or practice with regard to the enforcement of the purity of the administration of justice is a jurisdiction arising out of necessity and must depend to some extent on Judge made law; *Halsbury's Laws of England*, vol. VII., p. 296; *Russell on Crimes*, 7th ed., p. 540; *Short and Mellor's Practice of the Crown Office*, p. 346. The limit of the jurisdiction is the necessity of the case: *Archbold's Criminal Pleading*, 24th ed., p. 151; *Ex parte Senkovitch* (6); *R.* v. *Freeman's Journal* (7); *In re Dunn* (8). In a case of this kind this Court, unless it is convinced that there is no jurisdiction in the Supreme Court, should not over-rule *R.* v. *Parke* (9), the matter being one which does not affect the substantive law but merely the disciplinary power of the Supreme Court in securing purity of justice. It is admitted that the jurisdiction extends beyond the time when the case is actually pending in the Supreme Court and the only limit is that of necessity. He also referred to 2 *Hawkins Pleas of the Crown*, p. 168.

[GRIFFITH C. J. referred to *Cox* v. *Coleridge* (10).]

Duffy K.C. in reply.

Cur. adv. vult.

March 13.

GRIFFITH C.J. read the judgment of the Court:—

The jurisdiction of the Supreme Court invoked in these cases was the jurisdiction which every superior Court possesses to protect itself from any action tending to impair its capacity to administer impartial justice. Such action is called contempt of Court, and it must be action affecting the Court itself. Punishment for such contempt, however, is not inflicted in order to vindicate the affronted dignity of the members of the Court,

(1) 5 Esp., 123.
(2) 2 Camp., 563.
(3) 3 C.P.D., 319.
(4) (1902) 1 K.B., 77.
(5) (1903) 2 K.B., 432.
(6) 10 S.R. (N.S.W.), 738.
(7) (1902) 2 I.R., 82.
(8) (1906) V.L.R., 493; 28 A.L.T., 3.
(9) (1903) 2 K.B., 432.
(10) 1 B. & C., 37.

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whether Judges or jurymen, but in the interests of the public in general, and in particular of suitors, whose right to obtain a hearing of their suit free from prejudice or bias might otherwise be imperilled. The reasons for the existence and exercise of such a jurisdiction cannot, if one may respectfully say so, be better stated than in the words of Lord *Ellenborough* in *R.* v. *Fisher* (1):—"If anything is more important than another in the administration of justice, it is that jurymen should come to the trial of those persons on whose guilt or innocence they are to decide, with minds pure and unprejudiced. Is it possible they should do so, after having read for weeks and months before *ex parte* statements of the evidence against the accused, which the latter had no opportunity to disprove or to controvert? By their own public declarations we know that the minds of jurymen are often pre-occupied by such statements, and that they proceed with terror to the discharge of their duty, from the apprehension that an antecedent bias may influence their verdict. These publications tend alike to the conviction of the innocent, and the acquittal of the guilty."

The action complained of in each of these appeals is the publication in newspapers of matter relating to a charge of murdering one Mary Davies, which was alleged to be likely to prejudice the minds of the readers against the respondent and so endanger his right to a fair trial. The matter complained of was, in each instance, published after the respondent's arrest and before the examination of witnesses before justices had been begun.

The first objection taken by the appellants is that the jurisdiction of the Supreme Court does not arise until the case is actually pending in that Court, which cannot, they say, be earlier than the committal of the accused for trial. This contention is in accordance with what was, we think, the general opinion of lawyers until the decision in *R.* v. *Parke* (2), and it was so held by the Supreme Court of Victoria in *In re Syme, Ex parte Worthington* (3). In *R.* v. *Parke* (4) a Divisional Court of the King's Bench Division, constituted by Lord *Alverstone* C.J. and *Wills* and *Channell* JJ., held that the High Court had jurisdiction to commit a man for

(1) 2 Camp. 563, at p. 570.
(2) (1903) 2 K.B., 432.
(3) 28 V.L.R., 552; 24 A.L.T., 123.
(4) (1903) 2 K.B., 432.

contempt in publishing matter relating to a charge of forgery which was in course of hearing before justices; but the decision was mainly based upon the ground that forgery was an offence triable only at the Assizes which were a branch of the High Court, so that the case was one which must eventually come before it. *Wills* J., who delivered the judgment of the Court, after pointing out that the jurisdiction is confined to contempt of the Court exercising it, and stating the nature of the conduct which in such cases is described as contempt of Court, said (1):— "It is difficult to conceive an apter description of such conduct than is conveyed by the expression 'contempt of Court.' If it be once grasped that such is the nature of the offence, what possible difference can it make whether the particular Court which is thus sought to be deprived of its independence, and its power of effecting the great end for which it is created, be at that moment in session or even actually constituted or not? It is perfectly certain that by law it will and must be constituted, and that when constituted it and it alone can take cognizance of the particular offence which is the subject of the preliminary inquiry. The wrong can hardly be less because the purpose or tendency of the act complained of is that the Assize Court never shall have undisturbed power to fulfil its functions satisfactorily. The High Court exists always. To provide beforehand that one of its branches which, although it does not at the moment exist, yet must, both according to immemorial custom, and now also by Statutes and rules having the same effect, come into existence, shall be hampered and hindered in the effectual discharge of its duties as soon as it is constituted, if called upon to try a particular case which it is at all events proposed to bring into that Court, is surely an offence against the High Court itself."

This reasoning is, of course, exactly applicable to the present case, in which the charge was of murder, which in Victoria is only triable before the Supreme Court.

In *R.* v. *Davies* (2), another Divisional Court, constituted by Lord *Alverstone* C.J., and *Wills* and *Darling* JJ., adhered to the decision in *R.* v. *Parke* (3), but put the jurisdiction of the Court

(1) (1903) 2 K.B., 432, at p. 437. (2) (1906) 1 K.B., 32.
(3) (1903) 2 K.B., 432.

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on a wider basis. *Wills* J. who again delivered the judgment of the Court, said (1):—"The truth is that the constant use of the term 'contempt of Court,' owing to the fact that in the vast majority of cases the particular offence in question was an actual and direct setting at defiance of the orders of the Superior Court appealed to, in which cases the phrase 'contempt of Court' has been strictly and in the narrowest sense its apt description, and its indiscriminate application to all the Superior Courts, has tended to obscure both the foundation and object of the jurisdiction, and to throw into the shade the essential difference between the jurisdiction exercised by the Court of King's Bench and that of the other Courts, which possessed none of the relations with the inferior Courts which have always appertained to the King's Bench. The preservation of the purity of the stream of justice in the case of the other Courts could affect no other Court than that which was exercising the jurisdiction. They were not the *custodes morum* (to use *Hawkins'* phrase) in any sense analogous to that which the phrase bears when applied to the King's Bench, whose peculiar function it was to exercise superintendence over the inferior Courts and confine them to their proper duties. This, however, as it seems to us, was only one exercise of the duty of seeing that they did impartial justice, and if and when the attainment of that end required that the misdeeds of others should be corrected as well as the misfeasances of the inferior Courts themselves, it seems to us that it is no departure from principle, but only its legitimate application to a new state of things, if others whose conduct tends to prevent the due performance of their duties by those Courts have to be corrected as well as the Courts themselves."

And, after referring again to the general supervision exercised by the Court of King's Bench over inferior Courts, he said (2):—"It is because we think that we are creating no new jurisdiction, but acting strictly in conformity with the cardinal principles upon which the jurisdiction to commit for conduct tending to improperly interfere with the administration of justice rests, that we have come to the conclusion at which we have arrived. To confine the application of such principles to facts identical with

(1) (1906) 1 K.B., 32, at p. 42. (2) (1906) 1 K.B., 32, at p. 47.

or closely resembling those of preceding cases, and to hold that, because in times long gone by the chief, if not the only danger to be guarded against was the illegal exercise of arbitrary power by inferior Courts and their officers, therefore the power of this Court extends no further, and that the King's Bench cannot afford them protection as well as administer correction, would, we think, be to mistake the application of a principle for the principle itself. The mischief to be stopped is in the case of the inferior Courts identical with that which exists when the due administration of justice in the superior Courts is improperly interfered with. The reason why the Court of King's Bench did not concern itself with contempts of the other superior Courts was that they possessed ample means and occasions for protecting themselves. Inferior Courts have not such powers, although some of them, quarter sessions for example, try many more cases than are tried at assizes, and have a very extended and important jurisdiction."

The Court held, in effect, that the Court of King's Bench had power to punish contempts of inferior Courts, at any rate in criminal cases. In *R.* v. *Parke* (1), on the other hand, they had assumed that the contempt must be of the Court itself. It will be noticed that the Court expressly disclaimed the creating of any new jurisdiction. Whatever jurisdiction the High Court in England now has the old Court of King's Bench must have had at common law. These cases have since been followed in England (*R.* v. *Clarke*) (2), in New South Wales, in New Zealand, and in a case in the High Court of Madras: *Re Vinkat Row* (3) (for a copy of which we are indebted to our brother *Isaacs*), and may be taken to be generally accepted by the profession as declaring the law. The decisions were not, indeed, appealable. and could only be reviewed by a Divisional Court specially constituted *ad hoc*, as is sometimes done.

Yet, with all respect, the reasoning, especially in the case of *R.* v. *Davies* (4), is not easy to follow. The connection between the general jurisdiction of the Court of King's Bench to correct inferior Courts and a general jurisdiction to protect them is not

(1) (1903) 2 K.B., 432.
(2) 27 T.L.R., 32.
(3) 10 (Indian) Citator, 26th March, 1911.
(4) (1906) 1 K.B., 32.

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obvious, and had never before been asserted. We should, however, hesitate long before declining to follow these authorities. But we think that there is another aspect in which the asserted power of the Court of King's Bench to exercise this jurisdiction may be considered.

The jurisdiction, as already pointed out, is founded upon general principles of necessity, which has little or nothing to do with technical considerations. The procedure prescribed by law for bringing an accused person to trial is, in principle, a continuous process, beginning with arrest (or in some cases a summons which is equivalent to it) and ending with the trial. All the intermediate proceedings are, in substance, stages in this single process. It is a fact that some of the documents used are entitled in the Superior Court, while others bear the words *e.g.* "Middlesex to wit."

If there is only one Court in which the trial can take place the preliminary proceedings are necessarily taken with reference to that Court, and the case is, in substance though not in form, pending in that Court. In England, before the establishment of Quarter Sessions, the procedure was simple. The accused was arrested and remained in custody until delivered by the Justices of Gaol delivery. The Act 1 Richd. III. c. 3 authorized a justice to grant bail in cases of felony. Previously such bail could only have been granted by the Court of King's Bench. (See *per Best* J. in *Cox* v. *Coleridge*) (1). At this period all persons in custody on a charge of committing an indictable offence were in substance parties to a cause already instituted, which was justiciable only in the King's Bench, and were entitled to invoke the protection of that Court to ensure a fair trial.

The circumstance that concurrent jurisdiction in some cases was afterwards conferred upon Quarter Sessions or any other Court cannot affect this position. The cause is still potentially and substantially, if not formally, pending in the King's Bench. If a specified inferior Court had exclusive jurisdiction, this argument would not, of course, apply.

The Supreme Court of Victoria has, and always has had, the

(1) 1 B. & C., 37, at p. 52.

same jurisdiction as the Court of King's Bench had in England at common law.

These reasons (apart from any others) are, in our judgment, sufficient to show that the Supreme Court had jurisdiction to make the orders appealed from.

One question is common to all these appeals, namely, "to what extent is a public journal warranted by law in publishing matter relating to a pending criminal charge?" We were invited to formulate the limits within which such publication is lawful. But this, we think, is neither desirable nor practicable. In this, as in many other cases, it may be difficult to lay down a precise line of demarcation, but not difficult to say on which side of the line a particular case falls. One rule, however, may be stated with confidence. A publication which tends to prejudice or bias the public mind, either on one side or the other, and so to endanger a fair trial, is unlawful and a contempt of Court. The whole matter published must be considered, and its tendency must be regarded as a whole.

It was at one time thought that the publication of a report of preliminary proceedings before justices was necessarily unlawful, but this is no longer held to be the law: See *Lewis* v. *Levy* (1); *Usill* v. *Hales* (2).

Those were cases of libel, and the defence set up was what is still in England and Victoria called privilege. But the substance of the decisions was that the action complained of was not unlawful and therefore not actionable. It cannot be that an act is at the same time both absolutely forbidden by law and possibly lawful. The effect of these cases is that a fair and colourless report of proceedings in a public Court of Justice without comment is not absolutely forbidden by law.

The matter complained of in the present cases does not consist of such reports, but of statements of alleged facts expected to be proved upon the charge, with comment upon them. It was suggested rather than pressed that the permission allowed by law to publish anything relating to a pending charge of crime does not extend beyond a publication of reports of proceedings before justices. We cannot accept this view.

(1) E.B. & E., 537. (2) 3 C.P.D., 319, at p. 324.

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Publishers of newspapers have not, of course, any greater rights with respect to publication than those enjoyed by other persons. It has, nevertheless, become part of the ordinary course of life in civilized communities to publish through the medium of the press information as to matters of interest to the public, using that term to mean matters as to which the public entertain a natural and legitimate curiosity. It would be unfortunate for civilization if satisfaction of such a curiosity by this means were prohibited. The motives for the curiosity may be infinitely various. The matter may be one of general public importance, or may be interesting to only a small class of readers.

In our opinion the public are entitled to entertain a legitimate curiosity as to such matters as the violent or sudden death or disappearance of a citizen, the breaking into a house, the theft of property, or any other crime, and it is, in our opinion, lawful for any person to publish information as to the bare facts relating to such a matter. By "bare facts" we mean (but not as an exclusive definition) extrinsic ascertained facts to which any eye-witness could bear testimony, such as the finding of a body and its condition, the place in which it is found, the persons by whom it was found, the arrest of a person accused, and so on. But as to alleged facts depending upon the testimony of some particular person which may or may not be true, and may or may not be admissible in a Court of Justice, other considerations arise. The lawfulness of the publication in such cases is conditional, and depends, for present purposes, upon whether the publication is likely to interfere with a fair trial of the charge against the accused person. Comment adverse to him upon the facts is certainly not admissible.

We are not disposed, nor is it necessary in the present case to lay down any more definite rule. We proceed to deal with the facts of the particular cases before us.

PACKER'S CASE (*The Age*).

As to this case, without referring to the matter complained of in detail, which largely consists of comment, we adopt the language of the learned Chief Justice of the Supreme Court: *In re*

Packer, Ex parte Peacock (1): "I suppose no reasonable person could read that set of articles and come to any other conclusion than that the writer intended to express the view strongly felt that this was a murder by Dr. Peacock, with all the incidents to which I have referred. The whole was contrived in a way which carries the reader with it rhetorically, and it is well composed together, so that every feature is rhetorically commended to those who read. There cannot be any doubt that the great body of people in the community who read this newspaper are now of opinion that this woman has been killed and the body has been disposed of in circumstances amounting to murder, and that Dr. Peacock was the person who did it."

If the same matter were set out in a Statement of Claim or indictment for libel with an innuendo, the innuendo would be "meaning thereby that Peacock had murdered Mary Davies." And the innuendo would be abundantly justified.

Such matter widely circulated in the community cannot but tend to endanger the fair trial of the accused.

The appeal in this case therefore fails.

BURRELL'S CASE (*The Argus*).

The matter complained of in this case is of a different character. Some care appears to have been used, with a desire not to transgress the limits of legitimate journalistic functions. The most objectionable matter is contained in an article headed "Woman's Disappearance" in the issue of 2nd September, which gives a summary of the facts as supposed to be known up to that time, including a summary of the information given to the police by one Poke. This contained statements as to interviews with the deceased woman, in one of which she is alleged to have said that Peacock had done the illegal act on which the charge of murder was based, and also as to interviews with Peacock who was alleged to have told Poke that she was dead and that he had disposed of the body.

The point in the case to which the public curiosity was mainly directed was as to what had become of the body of Mary Davies, if she was dead. Her body had not, nor had any trace of it,

(1) (1911) V.L.R., 401, at p. 410; 33 A.L.T., 69.

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been found. The same article contained the following paragraph :—

"The detectives have ascertained from professional sources that within 48 hours at the outside a body could be disintegrated by being cut up, boiled, and submitted to the action of caustic soda or other chemical, and that the liquified remains could be cast into the sewer, leaving no trace of the operation."

It is suggested that the general effect that would be produced in the mind of the average reader by such an article would be a feeling of curiosity, which might be expressed as "I wonder whether Mary Davies is dead." On the other hand it is contended that the effect would be to create a clear impression that she was dead, and that Peacock had caused her death, although there might be some technical difficulties in proof if the body were not found, so that the only question to which the answer was uncertain would be "What did he do with the body ?"

On the whole we have come to the conclusion that the latter is the true effect of the matter complained of, and that the appellant was consequently guilty of contempt of Court.

SMART AND DAVIDSON'S CASE (*The Herald*).

The first article complained of in this case contained what purported to be a report of an interview with Poke, in which he detailed in the form of a narrative a series of alleged facts, including conversations with Mary Davies and with Peacock, making a connected story showing, if believed, a clear case of murder against Peacock. This is as if before the trial of an action—say for fraud—a newspaper were to publish a copy of the proofs of the plaintiff's witnesses. Such a publication is obviously unjustifiable on any possible view of the liberty of the press. We need not refer to other parts of the matter complained of.

In this case, also, therefore, the appellants were rightly adjudged guilty of contempt.

The only question remaining is as to the penalties. The gravity of the offences committed by the different appellants, in our opinion, differs in degree. The offence of the *Age* was much more serious than the others, but the penalty imposed on the

publisher was only £200, which was also the penalty imposed on the publishers of the *Argus* and *Herald* respectively, while the editor of the *Herald* was fined £100, with a nominal sentence of imprisonment, which was, however, not intended to be and was not enforced.

The appellants in the two latter cases contend that the penalty was too severe. If that imposed on the publisher of the *Age* is to be taken as the standard we are disposed to agree, but we are reminded, nevertheless, of the parable of the labourers in the vineyard.

We think, therefore, that all the appeals must be dismissed. But in order to mark the different degree of culpability in the several cases, and having regard, also, to the fact that they are, in some sense, of first impression, we think that the penalties inflicted on the publishers of the *Argus* and the *Herald* may be reduced, in the case of the *Argus* to £50, and in the case of the *Herald* to £100.

The appellants in each case must pay the costs of the appeal.

Appeals dismissed.

Solicitors, for the appellants, *Gillott & Moir*; *Blake & Riggall*; *Fink, Best & Hall.*

Solicitors, for the respondents, *Strongman & Crouch.*

B. L.