[HIGH COURT OF AUSTRALIA.]

CONSOLIDATED PRESS LIMITED AND ANOTHER . . . . . } APPELLANTS ;
RESPONDENTS,

AND

McRAE . . . . . RESPONDENT.
APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1954-1955.

1954, SYDNEY, *Aug.* 26, 27 ;

1955, MELBOURNE, *Mar.* 18.

Dixon C.J., McTiernan, Fullagar, Kitto and Taylor JJ.

*Contempt of court—Newspaper—Publication—Charges pending—Declaration by accused—Allegations of police violence—Statements by accused—Admissibility at trial—Onus of proof.*

Contempt of court is a criminal offence at common law, and, like all other criminal offences, it must, whether it be made the subject of indictment or of summary proceedings before the Supreme Court, be proved strictly.

In the course of an article headed " Man alleges police violence " a newspaper company and its acting editor published a statutory declaration by a man against whom police had laid two charges of false pretences, one of larceny and one of attempted bribery, in which he declared that he had been violently assaulted by police officers at a police station with a view to obtaining confessional statements from him, falsely charged with offering a bribe to a police officer and promised that if he signed a statement then presented to him the bribery charge would be dropped. As a result, he declared, he had signed certain statements, one of which dealt with his treatment by the police and attributed certain injuries, which he then bore, to a fight before his arrest. The declaration contained no information as to the contents of the other statements. The text of a letter sent by the man's solicitor to the Commissioner of Police complaining of serious and repeated assaults on his client by police officers and seeking an inquiry was also published in the article, which, by way of introduction, stated that the documents published spoke for themselves and that the newspaper took no sides beyond pointing out that the matters raised by the documents called for the most searching investigation.

A rule nisi calling upon the company and its acting editor to show cause why they should not be dealt with for contempt was obtained from the Supreme

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. MCRAE.

Court, upon affidavits which contained no information as to the circumstances upon which the four charges were based or as to the evidence by which they were to be supported. The affidavits failed to allege that the man in question had made statements to the police or to any other person; no statements were exhibited to them, nor was anything said in them as to the contents of any statements. No information touching the bribery charge was given. The Supreme Court found contempt proved, on the footing that the matter contained in the publication bore directly on the voluntariness of the signed statements and so upon their admissibility in evidence as confessions, and upon their probative value. Thus the essential foundation of the conviction was that the man after his arrest made statements of a confessional nature the contents of which would tend to support one or more of the charges laid against him.

*Held*, (by *Dixon* C.J., *Fullagar*, *Kitto* and *Taylor* JJ., *McTiernan* J. dissenting), that there being no evidence that the man had ever made any statements either of a confessional nature touching any of the charges laid or otherwise, it not being open to treat the allegations in the print of the statutory declaration as evidence of the truth of any of the facts it purported to state, contempt had not been made out.

Decision of the Supreme Court of New South Wales (Full Court): *Ex parte McRae*; *Re Consolidated Press Ltd.* (1954) 54 S.R. (N.S.W.) 119; 71 W.N. 69, reversed.

APPEAL from the Supreme Court of New South Wales.

One Studley-Ruxton was apprehended by police on 25th February 1954. He was charged with false pretences and with offering a bribe to a police officer. Subsequently two further charges were laid: another charge of false pretences and a charge of larceny. After the laying of the charges, namely, on 9th March 1954, the "Daily Telegraph" newspaper, of which the appellants were the publishers and acting editor respectively, published a statutory declaration by Studley-Ruxton under the heading "Man alleges police violence". Under the headlines a statement appeared that the newspaper took no sides in the matter beyond pointing out that a searching investigation was called for. Then followed a letter from the solicitor for Studley-Ruxton to the Commissioner of Police, which alleged serious and repeated assaults by the police, forwarded the statutory declaration and invited an inquiry. The declaration was then set out, alleging great violence by the police upon and after his arrest. The suggested object of the violence was the extraction of some sort of confession. The declaration further alleged that on the following day Studley-Ruxton made certain statements in writing, one of which attributed his injuries to a fight in which he was involved prior to his arrest. There was no indication

of what was contained in the other statements. Further parts of the declaration are referred to in the judgments.

The respondent applied to the Supreme Court for a rule calling on the appellants to show cause why they should not be dealt with for contempt of court. The Supreme Court (*Street* C.J., *Owen* and *Clancy* JJ.) made the rule absolute, fining the publisher £500 and the acting editor £50.

The appellants appealed to the High Court.

*K. A. Ferguson* Q.C. (with him *A. Larkins*), for the appellants. There are two main grounds of appeal. The first is that the Supreme Court placed an interpretation on the document which was not justified. Secondly, even if that interpretation was correct, the matters published were of such paramount public interest that their publication transcended any possible prejudice of curial proceedings. The following matters arise out of the declaration. (1) The newspaper made it clear that it was making no comment. (2) The names of the police were not disclosed. (3) The offence or offences for which Studley-Ruxton was arrested were not mentioned. (4) The matters in respect of which he was actually charged were not disclosed, except that an inference might be drawn that he had been charged with bribery or stealing. (5) No statement was signed on the matter of the alleged assault. (6) Four statements were signed on the day after the arrest, one referring to injuries received in a fight (of no importance); as to the other three there is no disclosure of what was in them. (7) There is no suggestion in the publication that the three statements were untrue. The basis of the judgments in the Supreme Court was that the statements were confessions, and that they were untrue. There is nothing from which such inferences could be drawn. [He referred to *Ex parte Kear*; *Re Consolidated Press Ltd.* (1).] The other basis of the judgments was that the confessions were in respect of matters with which Studley-Ruxton had been charged. There is no evidence of that.

The Supreme Court came to the conclusion that when one of these unspecified charges came to trial, one of these statements would become relevant, and the probability was that prejudice would result. The inferences were unjustified, and the possibility of prejudice highly speculative. Another factor is that the statutory declaration cannot be evidence against the appellants that any statements were signed in fact. There was no evidence produced

(1) (1954) 54 S.R. (N.S.W.) 95; 71 W.N. 52.

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

by the prosecution of that. The question of contempt or not is not purely objective. The state of mind of the person responsible for the publication must be taken into account, not only on penalty, but on liability: *Davis* v. *Baillie* (1); *Re William Thomas Shipping Co.* (2). The article was directed solely to bringing to the notice of the public complaints made of the treatment of a man after his arrest. The public interest in publishing the document outweighs the public interest in any possible prejudice to a trial: *R.* v. *Blumenfeld* (3); *Ex parte Bread Manufacturers Ltd.*; *Re Truth & Sportsman Ltd.* (4). There was evidence that over a considerable period allegations of misconduct had been made against members of the police force, and that unsuccessful attempts had been made by politicians and press to obtain an enquiry. They were conducting a campaign. This is a matter of the greatest public interest. It would be a strange result if the publication were forbidden when the victim signs a statement under duress, but not forbidden if he is strong enough to hold out against signing. The publication achieved its object; on the very day it was published, the Premier ordered a Royal Commission to inquire into the allegations.

[DIXON C.J. If the issue pending is the voluntary nature of the statement, it could be argued that that matter should be investigated by the Court.]

Yes, if that were the issue.

[TAYLOR J. You say this is a question of degree? In order to resolve it one would have to know the issue before the Court?]

Yes. Competing public interests must be relevant in a case of this sort.

*G. Wallace* Q.C. (with him *E. H. St. John*), for the respondent. This is a criminal contempt, and as such the elements are:— (1) whether matter has been published tending to impede the orderly march of justice; (2) this impediment may operate both for or against an accused person; (3) knowledge and intention of the publisher are factors to be considered, but mainly on the question of penalty. The publication does not have to go to an issue. There is contempt if it tends to influence the mind of a magistrate or a jury, or to cause feelings of sympathy. If it prejudices the mind against the accused or the prosecution, it is a contempt. The additional feature is that in the article is a denial of guilt in respect

(1) (1946) V.L.R. 486.
(2) (1930) 2 Ch. 368, at p. 375.
(3) (1912) 28 T.L.R. 308, at p. 311.
(4) (1937) 37 S.R. (N.S.W.) 242, at p. 249; 54 W.N. 98, at pp. 99, 100.

of one of the charges—bribery. In *R.* v. *Tibbits* (1) the publication complained of contained matter inadmissible at the trial. It was material of an inflammatory nature. The authorities show that the intention merely goes to the penalty. In *Davis* v. *Baillie* (2) it is said that you judge intention by consequence. A man cannot escape contempt by saying his intention was innocent. It is clear from the evidence that the appellants envisaged the possibility of this publication being contemptuous. The article alleges torture, denies guilt and alleges innocence. [He referred to *Packer* v. *Peacock* (3).] Almost every person who read this article would be seized with a sense of burning indignation against one side. Few things could be calculated to create greater prejudice in the mind of the court.

[TAYLOR J. Is any serious attack on the police force a contempt ?]

No. This was a particular man, and chapter and verse had been given of his arrest. He was before the court and had been remanded. The matter of degree exists in all these cases. " Calculated " means " is likely ".

[KITTO J. If an article has nothing to do with the matter before the court, but attacks one of the parties, how do you discover whether it is a contempt ?]

Those cases could be a technical contempt, but not punishable. Any person publishing material about another runs various risks. The answer in some cases may be that the article has no real tendency to interfere.

[TAYLOR J. If a publication is made with intention to pervert the course of justice, that would be a contempt, would it not ?]

Not necessarily. There must be a likelihood of interference with the course of justice.

[TAYLOR J. *R.* v. *Tibbits* (4) is such a case. I am suggesting that some cases, which are not contempt where there is no intention, might become contemptuous if there was an intention.]

In this branch of criminal contempt intention has to be treated on a somewhat different footing: *Bell* v. *Stewart* (5); *Davis* v. *Baillie* (6). The people who published this article knew the risk they were running, and took the risk. The doctrine of competing public interests seems to come from libel cases. [He referred to *Ex parte Gaskell & Chambers Ltd.* (7); *R.* v. *Blumenfeld* (8); *Ex*

(1) (1902) 1 K.B. 77, at pp. 79, 81, 86-88.
(2) (1946) V.L.R. 486.
(3) (1912) 13 C.L.R. 577, at pp. 588, 589.
(4) (1902) 1 K.B. 77, at pp. 81, 85, 87, 88.
(5) (1920) 28 C.L.R. 419.
(6) (1946) V.L.R. 486, at pp. 493, 494.
(7) (1936) 2 K.B. 595, at p. 602.
(8) (1912) 28 T.L.R. 308, at p. 311.

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

*parte Myerson* (1); *Sunday Times Newspaper Co. Ltd.* v. *Sun Newspaper Ltd.* (2); *R.* v. *Editor of the Daily Mail*; *Ex parte Factor* (3); *Re Labouchere* (4); *Phillips* v. *Hess* (5).] There is good reason for this doctrine being applied in bogus actions. It is to be applied carefully. There is no reported decision where the principle has been applied in cases like the present, although, no doubt, there could be such a case, where there is an emergency, and time is important. There was no urgency about the publication of this article. The article had been sent to the Premier. Had they waited one day, the publication might have been seen to have been entirely unnecessary to achieve the object of the appointment of a person to inquire into the matter. The denial of guilt in the bribery charge is completely outside this principle. [He referred to *Re Martindale* (6); *R.* v. *Tibbits* (7).] The question of contempt cannot be judged on what happened afterwards. The statements not being before the court is not relevant, as the prejudice is shown.

*K. A. Ferguson* Q.C., in reply.

*Cur. adv. vult.*

Mar. 18.

The following written judgments were delivered:—

DIXON C.J., KITTO AND TAYLOR JJ. This is an appeal from an order of the Full Court of the Supreme Court of New South Wales making absolute a rule nisi calling upon the appellants to show cause why they should not be dealt with for contempt of court. By the rule absolute the Supreme Court imposed on the appellant Consolidated Press Ltd. a fine of £500 and on the appellant James Kingston Watson a fine of £50. Consolidated Press Ltd. is the printer and publisher of the Daily Telegraph newspaper and the appellant Watson was at the material time the acting editor. On 9th March 1954 some matter was published in the Daily Telegraph concerning the arrest upon certain charges of one Studley-Ruxton and his treatment by the police. The publication of this matter was adjudged to amount to contempt of court. On the following day some further matter was published in the Daily Telegraph and that also was made a subject of the rule nisi. A majority of the Full Court (*Street* C.J. and *Owen* J., *Clancy* J. dissenting) held that the publication of this matter did not amount to contempt and on the appeal it does not come into question.

(1) (1922) 39 W.N. (N.S.W.) 260.
(2) (1919) 19 S.R. (N.S.W.) 145, at p. 151; 36 W.N. 70.
(3) (1928) 44 T.L.R. 303, at pp. 306, 307.
(4) (1901) 18 T.L.R. 208.
(5) (1902) 18 T.L.R. 400.
(6) (1894) 3 Ch. 193.
(7) (1902) 1 K.B. 77.

Studley-Ruxton was apprehended on 25th February 1954. All that we know of the proceedings against him comes from a more or less formal record made apparently for the purposes of the court of petty sessions. A copy is in evidence. According to this record he was apprehended at 6.30 p.m. on that day; the police officers apprehending him were Burchall and Hill and upon the charge sheet at 8.30 p.m. there was entered a charge of false pretences consisting in passing a valueless cheque to one Johnston. The record shows that a second charge was laid by the same officers, a charge of offering a bribe to the police officer named Hill. The time of the charge is again entered as 8.30 p.m. The record shows too that at 10 a.m. on 1st March 1954 another charge of false pretences was entered against him. In effect the charge was that he gave a valueless cheque to one Noble. In this case the time of apprehension is given as 5.30 p.m. on 25th February 1954. The names of the police officers apprehending him were Heys and Smaills. Again at 10 a.m. on 1st March 1954 a fourth charge, one of larceny of a camera, was entered against him. The time of apprehension is again given by the record as 5.30 p.m. on 25th February and the apprehending officers as Heys and Smaills.

The matter published in the Daily Telegraph on 9th March 1954 which the order under appeal adjudges to be a contempt of court is headed "Man alleges police violence". Under the headlines there is a leaded paragraph to the effect that on that page the newspaper publishes a statutory declaration in which a man alleges that the police used violence upon him and also publishes a letter from the man's solicitor to the Commissioner of Police. Next comes a statement that the documents speak for themselves and the newspaper takes no sides beyond pointing out that the matters raised in the documents call for the most searching investigation. The chief part of what follows this introduction consists in a long statutory declaration made by Studley-Ruxton describing in detail his treatment at the Darlinghurst Police Station upon and after his arrest. It is prefaced by the letter from his solicitor to the commissioner which complains that his client was seriously and repeatedly assaulted by the police, sends the statutory declaration and invites an inquiry. It is needless to set out the statutory declaration. The substance of it is that he was treated with great violence and that the suggested object of violence was to secure a confession of some sort from him. According to the statutory declaration on the following day he made certain statements in writing. One of these, according to the statutory declaration, related to his treatment by the police and attributed his injuries to

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

Dixon C.J. Kitto J. Taylor J.

a fight before his arrest. Nothing is said as to the contents of the other statements.

The substantial reason why the Supreme Court took the view that the publication of 9th March 1954 tended to interfere with the course of justice and amounted to a contempt was that the matter it contained bore directly upon the voluntariness of the signed statements and so upon their admissibility in evidence as confessions and upon their probative value. *Street* C.J. said :—" On the matter published it is clear that one question which would arise at the trial would be the question of the admissibility of these signed statements which had been obtained by the police, and if they had been extorted by the methods alleged, then obviously this evidence would be rejected at the trial. But this would be an issue for the court hearing the case and might have a most material bearing upon the outcome of these proceedings. If the court came to the conclusion that the statements were not the statements of Studley-Ruxton, but were concoctions by the police to which his signature had been attached because he had been subjected to treatment of so violent and brutal a nature that he signed to avoid the infliction of further bodily harm, then no court would allow such statements to be tendered in evidence against the accused. The matters published were, therefore, clearly relevant to an issue which, if the statutory declaration made by Studley-Ruxton was true, must arise at the trial of the charges preferred against him, and it is inescapable that the published article for that reason amounts to a contempt of court " (1). *Owen* J. treated the matter in the same way, considering the events at the police station as necessarily raising an issue of trial. His Honour made it clear enough that he regarded the question of the admissibility in evidence of the statements as one that would arise for determination at the trial :—" If Studley-Ruxton is committed for trial, the charges will be tried by a jury, some of whom no doubt will have read the issue of 9th March and thus have been given, in advance of the trial, a one-sided picture of matters which must inevitably be raised and debated at that trial. The publication, where litigation is pending either in the civil or the criminal courts, of statements made by a party to that litigation, giving his version of events which are likely to be—and in the present case must be—relevant at the trial, is most improper " (2). *Clancy* J. agreed in relation to the publication of 9th March 1954 (3).

(1) (1954) 54 S.R. (N.S.W.) 119, at p. 121 ; 71 W.N. 69, at pp. 70, 71.
(2) (1954) 54 S.R. (N.S.W.), at p. 125 ; 71 W.N. 69.
(3) (1954) 54 S.R. (N.S.W.), at p. 128 ; 71 W.N. 69.

It will be seen that the essential foundation of the view adopted by their Honours is that Studley-Ruxton after his arrest made statements of a confessional nature the contents of which would tend to support one or more of the charges entered against him. But unfortunately there is an entire absence of proof of any of the facts or circumstances constituting this foundation. There is nothing but the allegations of Studley-Ruxton contained in the statutory declaration itself from which any such facts could be spelled out and we do not think that the allegations made in the print in the newspaper of the statutory declaration should be treated as evidence of the truth of any of the facts it purports to state. The affidavits upon which the rule nisi was obtained contain no information as to the circumstances upon which the four charges were based or as to the evidence by which they were to be supported. They do not say that Studley-Ruxton made any statements to the police or to anyone else. No statements are exhibited and nothing is said as to the contents of any statements. The statutory declaration does purport to describe the circumstances leading to the charge of bribery and it represents the charge as fabricated and baseless. But no information at all concerning that charge is laid before the Court. Contempt of court is a criminal offence punishable summarily by the Supreme Court. Like every other offence the facts by which it is made out must be proved by admissible evidence to the satisfaction beyond reasonable doubt of the tribunal. Uncertain inferences from inexact proofs will not support such a charge. The very basis of the offence alleged is that there was an interference with the course of justice in the proceedings against Studley-Ruxton. But all that is made to appear about those proceedings is contained in the brief record for the purpose of the magistrates which merely narrates the apprehension, the charges, the remands etc. There is in truth no proof that Studley-Ruxton ever made any statements, there is nothing to show that any statement he may have made contains any matter relevant to any one of the charges. It may readily be conceded that if on the trial of any of the charges the contents of statements he was shown in fact to have made were relevant and if a question to be determined by the judge at a trial of any of the charges would be whether such a statement was voluntary in character so as to be admissible, then the publication in the newspaper in advance of the trial and of the proceedings in the police court of the defendant's detailed allegations that they were extorted by violence would constitute contempt of court. But the difficulty is that there is no foundation laid for the case that any of this is so. What truth there is in the

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

Dixon C.J. Kitto J. Taylor J.

assertions made in the statutory declaration cannot be known. Certainly it would be wrong to infer against the newspaper that part of the declaration is true while rejecting the rest. But nothing the statutory declaration contains is in itself evidence against the newspaper of any of the external facts necessary to support the charge. The newspaper has not published the declaration in such a way as to assert the truth of its contents. Moreover the statutory declaration gives no information about the contents of three of the supposed statements and what it ascribes to the fourth is irrelevant to any of the four offences charged. In our opinion the applicant for the rule nisi simply failed to prove the essential facts upon which the decision of the Supreme Court proceeded.

An attempt, however, was made on this appeal to support the order of the Supreme Court on two other grounds. It was said that the allegations contained in the statutory declaration against the appellants were of such a character as to provoke sympathy for Studley-Ruxton and to arouse a prejudice in his favour which would operate upon the mind of the public from which the jury would be drawn and thus tend to interfere with the proper trial of the proceedings against him. Again there is nothing to show that anything that occurred at the police station would be admissible in evidence upon his trial. There is nothing to show that all or any of the policemen concerned could give relevant evidence or would be called as witnesses. The best that can be said upon the proofs before the Court is that the jurors might identify the accused before them as the man who was the subject of the publication of 9th March 1954. This hypothesis means that although the fact that on his arrest he was said to have been violently and repeatedly assaulted by police would be irrelevant and inadmissible upon his trial, the publication of his statutory declaration alleging that he was so treated is calculated to arouse a prejudice in his favour by which the result might be improperly affected. It would be pushing the law of contempt too far if the hypothesis were accepted as warranting the order under appeal.

Then it was said that the publication dealt with the substance of the charge of offering a bribe and contained a statement in effect that it was false and foundationless. The charge is not of an indictable but of a summary offence. The charge was laid under s. 17 (d) of the *Police Regulation Act* 1899-1947. No particulars at all are given of the circumstances upon which the informant relied to support the charge. Even the identification of the charge with that referred to in the publication is left entirely to inference. What is said about the attempt to bribe is quite incidental to the

main theme which is the violent conduct of the police to the prisoner and it forms but a minor and small part in the matter published. On the proofs before the Supreme Court it would not, we think, have been right for that court on such a ground to exercise a summary jurisdiction to protect the court of petty sessions against publications calculated to interfere with its due administration of justice. For there is nothing disclosed with reference to proceedings before the magistrates except incidental statements concerning the charge in the course of a long and detailed statement directed to allegations of violent conduct on the part of the police. The actual order was not made by the Supreme Court upon any such ground. What we are asked to do is to use the ground to support the order in fact made. If the matter had been confined to that particular ground it is almost certain that the Supreme Court would not have imposed the same penalty and it is not unlikely that the court would have discharged the order altogether.

For these reasons the appeal should be allowed and the order of the Supreme Court discharged.

McTIERNAN J. In this case the Crown Solicitor of New South Wales applied to the Supreme Court for the committal of the present appellants for alleged contempt of court. The application was made in respect of two articles which appeared in the issues, dated 9th and 10th March 1954, respectively, of the "Daily Telegraph", of which Consolidated Press Ltd. was the printer and publisher, and Mr. Watson the acting-editor. The Supreme Court found that the first article contained matters which constituted a gross contempt of court, but that the second article did not contain anything which called for the exercise of the court's jurisdiction to punish summarily for contempt of court. The appellants were punished for their respective parts in the publication of the first article by the infliction of fines. They appeal against the finding adverse to them. The Crown Solicitor does not appeal. The matters in the first article, which the court found to be contempt of court, were statements made by one Studley-Ruxton. These statements were in the form of a statutory declaration which the newspaper published as part of the article. The statements were, in substance, that the police assaulted Studley-Ruxton after he was arrested to compel him to sign a false statement, and that he complained to a magistrate before whom he appeared the next day, and that when the proceedings ended, one of the police who had arrested him, threatened to get him heavily sentenced; and other police made a compact with him about the charges preferred against him. The newspaper also

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. MCRAE.

McTiernan J.

published as part of the article a letter which Studley-Ruxton's solicitor is reported, by the article, to have sent with the statutory declaration to the Commissioner of Police. According to the published report of this letter, the solicitor thereby asked the commissioner to investigate the allegations in the statutory declaration and to take criminal proceedings for assault against seven police officers named by Studley-Ruxton; and the solicitor informed the commissioner that copies of the letter and the statutory declaration had been sent to the Premier, the Leader of the Opposition and to the editors of the principal Sydney newspapers " so that they may watch the matter ". The article contained an editorial referring to Studley-Ruxton's statutory declaration and his solicitor's letter, published in the newspaper. The editorial was as follows: " The documents speak for themselves, and the Daily Telegraph takes no sides beyond pointing out that the matters raised in the documents call for the most searching investigation ". The circumstances which led the Supreme Court to find that it was a contempt of court for the newspapers to publish Studley-Ruxton's statutory declaration were that on 25th February 1954 he was arrested in Sydney by police and appeared on the next day before the Central Court of Petty Sessions, at Sydney, charged with offering a bribe of £100 to a police officer and false pretences relating to a cheque: he was remanded till 1st March 1954, and again appeared before the court on that day charged also with stealing and a second offence of false pretences relating to a cheque: he was remanded till 11th March 1954. On 9th March all these charges were pending in the court. The first of the charges would, in the ordinary course of law, be tried summarily by a magistrate: *Police Regulation Act* 1899-1947, s. 17 (d). The other three charges are indictable: *Crimes Act* 1900, ss. 117, 179. Each of them might involve trial by a jury either before the court of quarter sessions or conceivably before the Supreme Court: or the magistrate who conducted the preliminary hearing of each of these three cases might, in lieu of committing for trial, decide the question of guilt or innocence. The *Crimes Act* 1900, ss. 476-481, gives jurisdiction to a magistrate to try summarily a person charged either with stealing or false pretences, if less than £250 is involved, the accused consents, and the magistrate thinks that the case may be properly disposed of summarily. The jurisdiction of the Supreme Court to commit for contempt of court extends to contempt of the court which might try the pending charges: *R.* v. *Parke* (1). In the case of the first charge, that could only be a court of petty sessions. Each of the other charges might

(1) (1903) 2 K.B. 432.

involve trial by jury. In the case of each of these charges it is not necessary that a committal for trial should have taken place before the publication could be treated as a contempt of court: *R.* v. *Parke* (1); *R.* v. *Davies* (2).

The statutory declaration of Studley-Ruxton published in the newspaper contained a statement that on 25th February 1954, he was arrested in Sydney. It gives an account of an altercation between him and the police who arrested him, in which they declined to let him know why he was arrested and he, on his part, refused to comply with their demand that he should make a statement. Then it is related that in consequence of his refusal, the detectives took him to the Darlinghurst Police Station " for interrogation ". There follows an account of his introduction to two detectives, as a man of the type who is too " smart ", when under arrest, to answer questions by the police. Studley-Ruxton, according to the statutory declaration, was no more amenable to these two detectives than to those who arrested him. He alleges in the statutory declaration that the interrogating detectives proceeded to beat him with great brutality, and while this was taking place, a statement, alleged to have been prepared in the police station, was brought to him for signature. What is further published in the newspaper is that Studley-Ruxton said in his statutory declaration that the statement was false and he would not sign it, and thereupon the interrogating police, with the assistance of the two officers who arrested him and three others, assaulted and ill-treated him, increasing the cruelty of the attack, until he signed the statement; and that, in consequence, he suffered a fractured rib and other painful injuries. The statutory declaration published in the newspaper contains a passage alleging how the charge of offering a bribe came to be preferred. The passage occurs in the course of the description of the alleged brutality in the police station. " ' You (Studley-Ruxton) asked for a charge. I (Detective " C ") found this in your pocket I am charging you with carrying a concealed weapon and a firearm without a licence '. I (Studley-Ruxton) replied: ' You can charge me with whatever you like. I must come before a judge some time '. Detective ' C ' said: ' I will also charge you with offering a bribe to a policeman '. He then turned to Detective ' D ' and said: ' You heard him offer me a bribe of £100, didn't you? ' Detective ' D ' said: ' Yes, I did '. I did not possess £100, and I had never offered a bribe to Detective ' D ' or to any of them. I said: ' When I come before a judge I will tell him what has happened '. Detective ' C '

(1) (1903) 2 K.B. 432. (2) (1906) 1 K.B. 32.

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

McTiernan J.

said : ' If you do, we will get you ' ". The statutory declaration refers to Studley-Ruxton's appearance before the magistrate at the Central Court of Petty Sessions on 26th February. It states that Studley-Ruxton complained to the magistrate of the assaults committed by the police. Much of the remainder of the statutory declaration describes incidents presented really as the sequel to this complaint. This part of the statutory declaration deals with the charges which the police laid against Studley-Ruxton after his arrest : the several charges relating to the offer of a bribe and stealing are expressly mentioned. The statutory declaration published in the newspaper states that when the proceedings before the magistrate were over, Studley-Ruxton being still in custody, a detective said to him : " This (the complaint to the magistrate) will cost you five years ". I replied : " I warned you I would do it ". He said : " We will get you for this ". The statutory declaration identifies this detective as one of the officers who arrested Studley-Ruxton, handed him over to the two detectives in the Darlinghurst Police Station for interrogation, and joined in the brutal attacks alleged to have been made on him. Then come allegations as to the compact alleged to have been made by a police inspector with respect to the charges upon which the police were proceeding against Studley-Ruxton. Two passages occurring in the report of the contents of the statutory declaration published in the newspaper are : " Later I was taken from the cell to see an inspector (hereinafter referred to as " the inspector ") in a private room. I told him everything that had happened. He offered me whisky from a bottle from the cupboard. He gave me four drinks of whisky. He said : ' I have a bargain to put to you. If you will sign these three statements I will get Detective " C " to drop the bribery charge and any additional charges he may have. In return I want a statement from you that you received your injuries in a fight before you were arrested by my men '. He also said : ' The police force can't afford any newspaper publicity at the moment '. After my injuries and drinking the whisky I was feeling very ill and could not resist any longer. I signed the statements. For the purpose of the fourth statement (saying that I received the injuries before my arrest) I told the inspector that I had had a fight before my arrest at a time when I knew that I could afterwards prove it was not true, because at the material time I had been in company at the Carlton Hotel. The statement which I signed was entirely false. I had been in sound health and good physical condition at the time of my arrest. I signed the statement solely in order to be released from custody, in fear of further charges being laid against

me if I refused. I was never asked to sign this statement until after I had made my complaint to the magistrate in court. After I had signed the statements the inspector said to me : ' Of course you realize, David, that if you take this to Court I shall deny all knowledge of this conversation and the whisky. I shall have to support my men. You do realize that ? ' ". The second passage is : " Afterwards Detective ' C ' came to my cell and said : ' I have agreed to drop the bribe charge, but I have had to put a charge in, so I am charging you with stealing '. But the bribe charge has not been dropped ". Another statement in the statutory declaration, published in the newspaper, is that the police inspector said to Studley-Ruxton while in custody : " If you get bail tonight . . . get back to Melbourne and we will forget the warrants ". The last statement in the statutory declaration which should be noticed refers to the fact that on 1st March Studley-Ruxton was again taken before the magistrate and " further charges were preferred against him ". The evidence shows that these charges were stealing and false pretences.

It is shown by these references to the statutory declaration published in the newspaper that a substantial part of it deals directly with the charges upon which the police brought Studley-Ruxton before the court. It alleges how the police invented the bribery charge, that the police inspector made a compact with him that if he signed statements Detective " C " would " drop " that charge and " any additional charges he may have " : that this detective agreed to do so but said he had to " put in " a charge of stealing and that is how this charge came to be laid.

The particular charge to which the statement extorted by force in the police station referred is not mentioned in the statutory declaration. The arrest and forcible interrogation are presented by the statutory declaration as steps leading to the charges upon which the police brought up Studley-Ruxton before the magistrate on 25th February and 1st March. The statutory declaration clearly asserts that the detectives who made the arrest were implicated in the alleged assaults committed in the police station and, indeed, that these brutalities were committed at the instance of those officers : and, further, that one of them threatened Studley-Ruxton with measures that would result in his receiving a heavy sentence because he complained to the magistrate about the assaults. The statutory declaration is calculated to produce the impression that the purpose of the assaults was connected with proceeding against Studley-Ruxton on some charge. If it was not one of the pending charges, or, indeed, if no statement was in fact signed,

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

McTiernan J.

the publication of Studley-Ruxton's allegations was calculated to prejudice and influence the mind of a magistrate or a juryman called upon to try any of the pending charges. All these charges followed upon the arrest and interrogation of Studley-Ruxton described in his statutory declaration, and the allegations make very grave charges in respect of the arrest, and the prosecutions which followed. The allegations as to the making of a compact by the police inspector about the charges that the police had against Studley-Ruxton are damaging to the police case upon every charge. The allegations as to how the bribery charge and the stealing charge came to be preferred are calculated to produce the impression that these were spurious. Certainly, the allegations adversely reflected upon the merits of all the pending charges. The statutory declaration does not mention the subject matter of two of the charges—false pretences—but it clearly conveys that offering a bribe and stealing were not the only charges preferred by the police against Studley-Ruxton, pursuant to his arrest on 25th February; and that when the police inspector and Detective "C" came to see him after the proceedings, which took place on 26th February before the magistrate, they were concerned about making an arrangement with him touching all the charges upon which the police were proceeding against him. But it is not necessary that the subject matter of any of the pending charges should be mentioned in the statutory declaration, for its publication to amount to a contempt of court. In *Higgins* v. *Richards* (1) which was a motion to attach an editor for contempt of court, *Bray* J. said: "The answer made by the respondent was that there was no reference in the articles to the subject matter of the action. That did not seem to him to be a sufficient answer. If it was clear that the trial would be prejudiced the respondent had proved enough, though no doubt the circumstance relied on by the respondent must be taken into account, but only as one element" (2).

Contempt of court by publication is committed "where one of two things happens—where matter is published which is intended to prejudice a fair trial; or where matter is published which is reasonably calculated to prejudice a fair trial": *R.* v. *The Evening News*; *Ex parte Hobbs* (3). The question is whether the second thing happened in this case. An intention to interfere with or hamper the course of justice is an ingredient of the offence. Lord *Alverstone* said in *R.* v. *Tibbits* (4) that "this is one of the cases in which the intent may properly be inferred from the articles

(1) (1912) 28 T.L.R. 202.
(2) (1912) 28 T.L.R., at p. 203.
(3) (1925) 2 K.B. 158, at p. 169.
(4) (1902) 1 K.B. 77.

themselves and the circumstances under which they were published" (1). Other cases in which the same principle was laid down are: *Ex parte Jones* (2); *R.* v. *Fisher* (3).

The matters stated in the editorial, mentioned above, do not prevent the publication from being a contempt of court, if the statutory declaration contains matters really calculated to interfere with the course of justice. The newspaper cannot be in any better position because it adopted the neutral attitude exhibited by the editorial. Even if it had said that Studley-Ruxton's allegations were true, the publication of them would none the less be a contempt of court, if anything in them had a clear tendency towards influencing or prejudicing the mind of a magistrate or a juryman by whom Studley-Ruxton might be tried on one or more of the pending charges: *Skipworth's Case* (4); *Coats* v. *Chadwick* (5).

The newspaper, of course, did not publish the statutory declaration or anything which was in the article with the object of perverting the course of justice. It appears from the editorial that it published the article in order to bring about an inquiry into the allegations. There is no doubt that it gave added force to the allegations by publishing them. The motive or purpose with which the statutory declaration and the article were published, however worthy that motive or purpose was, does not excuse or justify the publication, if it was a contempt of court: *Onslow's and Whalley's Case* (6); *Peters* v. *Bradlaugh* (7); *Littler* v. *Thomson* (8).

The statutory declaration contains scandalous statements, very injurious to the character of the members of the police force to whom they apply. In these proceedings the Court is not concerned with the statements as libels on those officers, but with the effect of the statements upon the administration of justice. If the publication of the statutory declaration is a contempt of court, no part of the punishment to be inflicted should have any reference to any libel upon anybody, but entirely to the contempt of court. The statutory declaration is not directed to mere matters of police behaviour towards Studley-Ruxton. It makes grave imputations upon them in respect of his arrest and the charges which ensued. Nobody could entertain any doubt that the allegations are calculated to excite prejudice against the prosecuting side and everybody concerned with it at the trial of each of those charges. The allegations come completely within Lord *Hardwicke's* proposition as to

(1) (1902) 1 K.B., at p. 88.
(2) (1806) 13 Ves. Jun. 237 [33 E.R. 283].
(3) (1811) 2 Camp. 563 [170 E.R. 1253].
(4) (1873) L.R. 9 Q.B. 219, at p. 234.
(5) (1894) 1 Ch. 347, at p. 350.
(6) (1873) L.R. 9 Q.B. 219, at p. 225.
(7) (1888) 4 T.L.R. 414, at p. 417.
(8) (1839) 2 Beav. 129, at p. 132 [48 E.R. 1129, at p. 1130].

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

McTiernan J.

prejudicing mankind against a party and his case before it is heard : *St. James's Evening Post Case* (1) ; *Oswald* : *Contempt of Court*, 3rd ed. (1910), p. 91.

The publication of the statutory declaration was, in the circumstances, a contempt of court. This offence is not precisely defined, but it has its limits. What might be called a mere technical contempt does not call for the exercise of the summary jurisdiction of the Court to punish this offence. In the case of *Ex parte Gaskell & Chambers, Ltd.* (2), the court re-affirmed certain principles which were enunciated by Lord *Russell* C.J. and *Wright* J. in *Reg.* v. *Payne* (3), governing the exercise of this jurisdiction. Lord *du Parcq* (then *du Parcq* J.) said : " It has also to be borne in mind that, even if it be established in a particular case that something has been done which does amount to a contempt of Court, an application for attachment or committal still ought not to be made unless . . . that contempt is calculated really to interfere with a fair trial " (4). Lord *Goddard* (then *Goddard* J.) said in the same case : " The jurisdiction sought to be invoked in this case is a jurisdiction which it is very necessary that the Court should possess both for the vindication of its own authority and for the protection of the litigants who may come before it. On the other hand it is a jurisdiction the exercise of which may deprive the subject of his liberty without the intervention of a jury, and in circumstances in which there is no appeal. It is therefore a jurisdiction to be used with circumspection, and only to be invoked for grave and serious reasons and on real and substantial grounds " (5).

In the present case the statutory declaration published in the newspaper grossly transcended all possible limits of the liberty allowed by these principles. It was a statement made by an accused person attempting to vindicate himself and containing matters extremely damaging to his prosecution on all the charges. The affidavits filed on behalf of the appellants show that on 8th March 1954 the managing director of Consolidated Press Ltd. and Mr. Watson were aware that there were proceedings in which Studley-Ruxton was the accused pending and that the allegations in his statutory declaration might affect those proceedings. But after a conference with the company's solicitor, they decided to publish the article containing the statutory declaration, relying upon a proposition which was put in argument to escape any liability for the publication. The proposition is, in effect, that

(1) (1742) 2 Atk. 469, at p. 471 [26 E.R. 683, at p. 684].
(2) (1936) 2 K.B. 595.
(3) (1896) 1 Q.B. 577.
(4) (1936) 2 K.B., at p. 602.
(5) (1936) 2 K.B., at p. 603.

even if the publication of the statutory declaration was a contempt of court the matters contained in it were so important that the duty to publish them transcended the duty not to publish anything that would be a contempt of court. It was said that support for this proposition is to be found in *R.* v. *Blumenfeld*; *Ex parte Tupper* (1). In that case *Phillimore* J. said: "The Court had to reconcile two things—namely, the right of free speech and the public advantage that a knave should be exposed, and the right of an individual suitor to have his case fairly tried. The only way in which the Court could save both was to refuse an unlimited extension of either right. It became, then, a question of degree" (2). The principle which is decided in the case is stated in the headnote which is as follows: "Where the defendant in a libel action swears that he is going to justify the words of the alleged libel the Court will not issue a writ of attachment against him in respect of comments made by him after the issue of the writ unless it is satisfied that the plea of justification is not genuine or unless the comments are made near the time of trial or made at a place near where the trial is to take place and are calculated to deter witnesses from coming forward and speaking their minds freely or are calculated to warp the minds of jurymen" (3). In the same case *Lush* J. said: "Where the plaintiff sought to stop the defendant's mouth while continuing to comment on the case himself, the Court ought not to interfere" (4). A case of contempt of court of the same kind was *R.* v. *Editor of the Daily Mail*; *Ex parte Factor* (5). The headnote of that case is: "A publication made with the clear intention of prejudicing the fair trial of an issue pending before a court is obviously a contempt of court and will be punished as such. But where the court is satisfied that there was no such intention and yet the publication might prejudice a pending trial, the court will, in considering whether a writ of attachment should issue, take into account the circumstances of the case, and no attachment will be granted unless (*inter alia*) the court is satisfied that the pending proceeding is a genuine proceeding, brought and intended to be prosecuted to effect its avowed purpose" (5).

In each of these proceedings the pending proceedings was a libel action and it seems that it was brought for the purpose of stopping a newspaper which was the defendant from exposing the true character of the plaintiff to the public, and was hardly a genuine action. The Court in the present case cannot proceed upon the basis that

(1) (1912) 28 T.L.R. 308, at p. 311.
(2) (1912) 28 T.L.R., at p. 311.
(3) (1912) 28 T.L.R., at p. 308.
(4) (1912) 28 T.L.R., at p. 312.
(5) (1928) 44 T.L.R. 303

H. C. OF A. 1954-1955. CONSOLIDATED PRESS LTD. v. McRAE. McTiernan J.

any charge which the police preferred against Studley-Ruxton was not genuine or that it was laid in order to stop him from complaining of the alleged assaults and other improper conduct mentioned in his statutory declaration. The report of this statutory declaration contained matters which, for the reasons I have given, would, if believed, tend strongly towards influencing and swaying the mind of a magistrate or a jury by whom Studley-Ruxton might be tried on one or another of the pending charges. I think that the finding of the Supreme Court against which this appeal was brought was right and the appeal should be dismissed.

FULLAGAR J. This case arises out of the publication in the Sydney "Daily Telegraph" of a statutory declaration by a man named Studley-Ruxton. The appellants are the proprietor, and the editor at the material time, of that newspaper. The appeal is against an order of the Supreme Court of New South Wales (Full Court) adjudging the publication to be a contempt of Court, and imposing fines of £500 and £50 respectively. The publication itself, the general circumstances preceding and attending it, and what has been called its background, have been referred to, in connection with a publication of a somewhat similar nature in the "Sydney Morning Herald", in *John Fairfax & Sons Pty. Ltd.* v. *McRae* (1). The present case has seemed to me to present considerably more difficulty than that case, but I can express shortly the view which I have ultimately formed.

The two cases have much in common. In each of them the matter complained of consisted in substance of a series of allegations of brutal ill-treatment by members of the police force of a man who had been arrested. In each case the professed object of the publication—and it has not been suggested that there was any other object—was to direct public attention to a matter of obvious public importance and to obtain a full investigation, by Royal Commission or otherwise, into the truth or falsity of the allegations made. In each case charges laid by the police against the person making the allegations were in fact pending at the time of publication. But in each case not only was there no intention to commit a contempt of court or to influence in any way the outcome of any pending proceedings, but those responsible for the publication were in no way interested in, or concerned with, the guilt or innocence of the person charged.

The contempt alleged in both cases was of that class which consists in the publication of matter tending to prejudice or embarrass

(1) (1955) 93 C.L.R. 351.

the due administration of justice. It is possible that a contempt of this class may be committed although no legal proceeding has actually been commenced at the time of publication: see *R.* v. *Daily Mirror* (1). And it is clear, I think, that such a contempt may be committed without any express mention of any specific pending proceeding: see *Higgins* v. *Richards* (2). But an essential feature of the present case, as of the "Herald" case, is that the pith and substance of the matter published is not directed at, or concerned directly or indirectly with, any legal proceeding. No legal proceeding, commenced or contemplated, provides either the subject matter of what is published or the occasion for publishing it. Accordingly in each case two things have seemed to me to be plain. The first is that it cannot be enough to constitute contempt that the matter published should have a general tendency to excite suspicion and distrust of the police in relation to police prosecutions generally. And the second—which may be regarded as a corollary of the first—is that the publication cannot be held to be a punishable contempt unless it has, at some point, a real and definite bearing on the guilt or innocence of some specific person on some specific charge. In such cases it is only by virtue of such a connection between matter published and proceeding launched that the necessary tendency to impede the administration of justice can be found.

In the case of the "Herald", although I felt some doubt in relation to the publication of a certain letter from a firm of solicitors to the Premier, it appeared to me that no such connection could be found. What was published had, as it seemed to me, no real or substantial bearing on the guilt or innocence of Rigby on any of the three charges which had been preferred by the police against him. In the present case the statutory declaration of Studley-Ruxton said, or clearly implied, that the purpose of the assaults alleged had been to compel him to sign some statement or statements, which, according to the declaration, he for some time refused to sign but did eventually sign. He says: "I could not see what I was signing, and I could hardly hold the pen, but I signed my name four times." One of the sub-headings in the newspaper, printed in inverted commas, reads:—"Refused to sign unread statement". In fact four charges had, at the time of the publication in the "Telegraph", been laid against Studley-Ruxton. There were two charges of false pretences, one of larceny, and one

(1) (1927) 1 K.B. 845, at p. 851. (2) (1912) 28 T.L.R. 202.

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. McRAE.

Fullagar J.

of attempted bribery of a member of the police force. It was on the footing that the statement or statements referred to in the statutory declaration contained confessions or matter otherwise relevant to these charges, and that they could be expected to be tendered in evidence on the hearing of those charges, that the learned judges of the Supreme Court held that the publication amounted to a serious contempt of court. *Street* C.J. said :—" The assaults were described as being of a most serious nature and the object and general effect of the matter published by the paper was to suggest that some statements subsequently signed by him had been extorted from him as a result of the violence used by the police, and used deliberately for the purpose of inducing Studley-Ruxton to sign statements which had been prepared by the police without any information from him. In other words, the obvious suggestion was that the police were manufacturing evidence and using brutal violence to compel Studley-Ruxton to put his name to documents concocted by the police " (1). A little later his Honour said :—" On the matter published it is clear that one question which would arise at the trial would be the question of the admissibility of these signed statements which had been obtained by the police, and if they had been extorted by the methods alleged, then obviously this evidence would be rejected at the trial. But this would be an issue for the court hearing the case and might have a most material bearing upon the outcome of these proceedings " (2). *Owen* J. said :—" What was in fact published was a long and circumstantial account of a person charged with the commission of a number of offences of the events which he claimed had led to his signing, under duress, a false confession of guilt, and I am of opinion that the publication of such matter constituted a serious contempt which calls for the exercise by the Court of its summary jurisdiction " (3).

Contempt of court is a criminal offence at common law, and, like all other criminal offences, it must, whether it be made the subject of indictment or of summary proceedings in the Supreme Court, be proved strictly. Here the Crown did not, in my opinion, establish a case on the basis accepted by the learned judges of the Supreme Court. In order to establish it on that basis, it was necessary for the Crown to prove that some statement signed by Studley-

(1) (1954) 54 S.R. (N.S.W.), at p. 120 ; 71 W.N., at p. 70.
(2) (1954) 54 S.R. (N.S.W.), at p. 121 ; 71 W.N., at pp. 70, 71.
(3) (1954) 54 S.R. (N.S.W.) at p. 126 ; 71 W.N. 69.

Ruxton was relevant to one or more of the charges pending against him and would be prima facie admissible on the hearing of one or more of those charges. The allegations of violence and brutality against the police could only become relevant in any of the pending proceedings if some such statement were tendered by the prosecution and objection taken to it on the ground that it was not made voluntarily. And there was no evidence that any such statement might ever become relevant in this way, or had ever been made. The statutory declaration of Studley-Ruxton itself says nothing as to the nature of what is alleged to have been signed. And, even if it did, obviously it would not provide admissible evidence thereof. It provides no evidence of the truth of any fact asserted in it. The relevance of what is said to have been signed to some pending proceeding is an independent fact which it was necessary for the Crown to prove, and to prove otherwise than by mere hearsay. Whether the Crown could or could not have proved its case is no concern of ours. In my opinion, the Crown failed to make out a case on the basis accepted in the Supreme Court.

There is, however, another aspect of this case—another basis on which it might have been put—and it is this aspect of the case which has seemed to me to give rise to some difficulty.

Among the charges pending against Studley-Ruxton was a charge of attempted bribery. There are, in the published statutory declaration of Studley-Ruxton two direct references to a charge of attempted bribery. The first passage, which occurs in the course of an account of a series of violent assaults on 25th February 1954 is in the following terms :—" Detective ' D ' said : ' I will also charge you with offering a bribe to a policeman.' He then turned to Detective ' D ' and said : ' You heard him offer me a bribe of £100, didn't you ? ' Detective ' D ' said : ' Yes, I did.' I did not possess £100, and I had never offered a bribe to Detective ' D ' or to any of them." The second passage occurs in the course of an account of an alleged private interview with an inspector of police on the following day, 26th February 1954. The inspector is said to have given four drinks of whisky to Studley-Ruxton. The declaration then proceeds :—" He said : ' I have a bargain to put to you. If you will sign these three statements I will get Detective " C " to drop the bribery charge and any additional charges he may have. In return I want a statement from you that you received your injuries in a fight before you were arrested by my men.' He also said : ' The police force can't afford any newspaper publicity at the moment.' After my injuries and drinking

H. C. OF A. 1954-1955. CONSOLIDATED PRESS LTD. v. MCRAE. Fullagar J.

the whisky I was feeling very ill and could not resist any longer. I signed the statements. For the purpose of the fourth statement (saying that I received the injuries before my arrest) I told the inspector that I had had a fight before my arrest at a time when I knew that I could afterwards prove it was not true, because at the material time I had been in company at the Carlton Hotel. The statement which I signed was entirely false."

The matter set out above seems to me to stand on a very different footing from the rest of the matter published. There was a charge of attempted bribery pending, and what is published is a clear and unambiguous assertion not merely that the person charged is innocent of attempted bribery, but that the charge has been deliberately fabricated, and that, although a promise has been made for a corrupt consideration to withdraw it, it is still pending. It seems to me to be a legitimate, and indeed a fairly obvious, inference that the charge to which reference is made in the statutory declaration is the charge in fact laid against Studley-Ruxton : the information alleges that the offence was committed on the date of the events which the declaration purports to describe. It is true that the Crown would probably have been well advised to give some further particulars relating to the charge of offering a bribe, with a view to connecting the published matter with that charge. But I do not think it was necessary for the Crown to do so in order to launch a case against the proprietor and editor of the newspaper. In my opinion, it would have been open to a jury to find on the evidence, and it was open to the Supreme Court to find on the evidence, that the matter published, so far as it had reference to the offering of a bribe, had a clear tendency to prejudice and embarrass the conduct of proceedings on the charge of attempted bribery which was in fact pending. I should myself have been disposed to hold that, by reason of the publication of that particular matter though not otherwise, a punishable contempt had been committed.

The difficulty which I feel arises from the fact that this view of the case seems never to have been considered in the Supreme Court. That no particular importance was attached by the learned judges of that court to the matter relating to the offering of a bribe is made particularly clear by a passage in the judgment of *Owen* J., in the course of which he says :—" If Studley-Ruxton is committed for trial, the charges will be tried by a jury " (1). His Honour can have been thinking only of the charges of false pretences and

(1) (1954) 54 S.R. (N.S.W.), at p. 125 ; 71 W.N. 69.

larceny, for the charge of attempted bribery is an offence punishable summarily. Actually, if his Honour had thought (as I think) that the only matter which could be held to be in contempt was the matter relating to that charge, it is clear from his judgment in the "Herald" case that he would have held that the Supreme Court had no jurisdiction to deal summarily with the charge of contempt, and it is possible that the learned Chief Justice and *Clancy* J. would have taken the same view.

If the view which I entertain of this whole case had been present to the minds of the learned judges of the Supreme Court, and they had held that they had jurisdiction, various results might have followed. It would have been a possible view (though I do not think I should have taken it myself) that the references to attempted bribery constituted but a small, incidental and insignificant, part of a long narrative, which was concerned primarily with describing a series of violent physical assaults, and that those references should not be held to make criminal a publication not otherwise possessing that character. Again, there is a large element of discretion in these matters, and it might possibly have been held that, though technically a contempt had been committed, it should not be punished. It would have been a material consideration that the bribery charge would go before a magistrate, whereas the charges of false pretences and larceny would go before juries. If it had been thought that a punishable contempt had been committed, the question of penalty must have presented itself in a different aspect. It might well have been considered an extenuating circumstance that the importance of two quite short passages in the long narrative might not unnaturally escape the notice of those considering whether the narrative ought to be published or not.

My conclusion on the whole case is this. I think that the decision of the Supreme Court, based on the material in the statutory declaration as a whole, is wrong. Prima facie, therefore, this appeal should be allowed. And, in the circumstances stated above, I do not think a sufficient ground for supporting the decision is found by saying that a finding that a contempt had been committed would or might have been justified on a much narrower ground. No such finding has been made, and no such finding need necessarily have been made. It is not, I think, for this Court to make any such finding. To do so would be in some degree analogous to setting aside the conviction of a man by a jury on one charge and convicting him on another charge which never went before the jury. Some courts of criminal appeal have special statutory powers to do things

H. C. OF A. 1954-1955.

CONSOLIDATED PRESS LTD. v. MCRAE.

of that kind in a limited class of case : see, e.g., *Crimes Act* 1928 (Vict.), s. 595 (2). But it is not, in my opinion, for this Court, even though it has power to make any order which might have been made by the Supreme Court, to take upon itself any such function.

The appeal should, in my opinion, be allowed.

*Appeal allowed with costs. Order of the Supreme Court dated 14th April 1954 discharged. In lieu thereof order that the rule nisi dated 15th March 1954 be discharged with costs.*

Solicitors for the appellants, *Allen, Allen & Hemsley.*

Solicitor for the respondent, *F. P. McRae*, Crown Solicitor for New South Wales.

G. D. N.