[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

DUNBABIN AND ANOTHER;

EX PARTE WILLIAMS.

H. C. OF A. 1935.

SYDNEY, *May* 28, 29.

Rich, Starke, Dixon, Evatt and McTiernan JJ.

Contempt of Court—High Court—Publication disparaging Court—Calculated to impair public confidence—Right of person indirectly concerned to bring the matter before the Court.

Any matter is a contempt of Court which has a tendency to deflect the Court from a strict and unhesitating application of the letter of the law or, in questions of fact, from determining them exclusively by reference to the evidence. Interference with the course of justice amounting to a contempt of Court may also arise from publications which tend to detract from the authority and influence of judicial determinations; publications calculated to impair the confidence of the people in the Court's judgments because the matter published aims at lowering the authority of the Court as a whole or that of its Judges and excites misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office. A party to pending litigation of the character referred to, even in general terms, in such a publication is entitled to bring the publication before the Court, which may also act *ex mero motu*.

Principles stated in *R.* v. *Fletcher*; *Ex parte Kisch*, (1935) 52 C.L.R. 248, approved.

MOTION FOR COMMITTAL.

An application was made by way of motion under rule 2 of Order XLIX. of the *High Court Rules* before *Evatt* J. by Dulcie Williams that Thomas Dunbabin and Sun Newspapers Ltd., the editor and proprietor respectively of the *Sun* newspaper, Sydney,

be committed to prison or otherwise punished for contempt of the High Court in publishing in the issue of that newspaper of 13th April 1935 a leading article which, it was alleged, (*a*) tended to prejudice the applicant in an appeal then pending before the High Court; (*b*) constituted a serious attack on the Court; (*c*) tended to scandalize the Court and was an attempt to overawe or intimidate the Court by insult and defamation and was calculated to deter actual and prospective litigants from complete reliance upon the Court's administration of justice; and (*d*) was specially calculated so to deter actual or prospective litigants who bring before the Court any question of the constitutional validity of any Commonwealth legislation. The applicant was a party to an appeal heard by the Court in March 1935, which involved a consideration of Commonwealth legislation in respect of the control and regulation of wireless generally and in particular the power of the Commonwealth to impose licence fees in connection therewith. Judgment in that appeal was reserved, and had not been delivered at the time of the hearing of this application. The article complained of was headed "Courts and Cabinets" and was as follows:—"Some time ago the Assistant Treasurer (Mr. Casey) complained of the manner in which the High Court knocked holes in the Federal laws. Those laws have certainly been perforated by the keen legal intelligences of the High Court Bench. One of the results of this game (a very expensive game for the taxpayers) is that the law which was relied upon to keep Australia white is in a state of suspended animation. A noted Czechoslovakian author, whose books nobody appears to have read, arrived in Australia recently, very much against the will of the Government, which considered that his literary excellence (like that of a number of classic books) did not entitle him to breathe the pure air of the Commonwealth. Jumping ashore, and spraining his ankle in the process, he was promptly put in gaol under the Act which gave the Government the right to keep undesirables out. Friends of the humble and oppressed tested the law, and to the horror of everybody except the Little Brothers of the Soviet and kindred intelligentsia, the High Court declared that Mr. Kisch must be given his freedom. We all, of course, ought to thank this distinguished literateur for his discovery of a flaw in one of our most

H. C. OF A. 1935.

THE KING v. DUNBABIN; EX PARTE WILLIAMS.

important Acts, a flaw which is to be mended some time or other, when Parliament deigns to sit again. When the amendments are made we should invite him to jump ashore again to see whether the new Act pleases the High Court any better than the old, or whether the ingenuity of five bewigged heads cannot discover another flaw. Upon another and more recent occasion, though it was declared by the representative of the party which passed an Act that his intention was to include secondhand dealers in the provisions of the sales tax, the High Court, with that keen, microscopic vision for splits in hairs which is the admiration of all laymen, discovered that they were not included, and that a tax had been illegally collected for over four years. Well may the Caseys and the Kellys cry, like the historic British monarch, for some gallant champion to rid them of this pestilent Court. Perhaps there is a better way. If the High Court were given some real work to do the Bench would not have time to argue for days on the exact length of the split in the hair, and the precise difference between Tweedledum and Tweedledee. Before responsible government began in this great country, with its joyful concomitants of income tax, land tax, sales tax, entertainment tax, wages tax, and other means of keeping the world safe for bureaucracy, the Chief Justice used to be required to certify that the laws of New South Wales were not repugnant to the laws of Britain. Once he had let them pass it was no use for hair-splitting lawyers to come to him for interpretations on the legality of the Acts. Some of these days a commonsense Government may tell the High Court that, as it has very little useful work to do, it will be required to examine the Acts which will be sent to it straight from the Legislature, to stamp O.K. upon them, or to suggest amendments which will make them thoroughly legal, as the case may be, and then return them by swift messengers for the Vice-Regal signature. In this way such contretemps as those centred about Messrs. Kisch and Solomon Secondhand will be avoided, and there will not be any heavy legal costs to help boost the deficits and give excuses for the politicians to slip new taxes on us all. Of course, no Government will ever dream of forcing the Judges of the High Court to touch up their bills. There was some attempt, years ago, to obtain a Court opinion on an Act before it

was put to public test, but the Judges coldly suggested that the only way to test it was by action before the Bench. To make Court and Parliament co-operate in putting out brass-bound, watertight legislation would be such a logical step forward that no Anglo-Saxon community would tolerate it. It would not be right for a Cabinet to tell the Court in conference what it meant by a phrase or a clause. The only way to find that out is to have a squad of King's Counsel arguing about it for a few weeks. Still, King's Counsel have to live, and we must do nothing to curtail their opportunities." In an affidavit sworn by him on behalf of the applicant a solicitor stated that the respondent company was controlled by Associated Newspapers Ltd., which, in turn, had a controlling interest in Radio 2 UE Sydney Ltd., a company which conducted and held a licence in respect of 2 UE Broadcasting Station, and therefore the respondent would probably be affected by the decision of the Court in the applicant's appeal heard in March 1935; and that the applicant was one of the class of persons referred to in ground (*d*) shown in the notice of motion. The secretary of the respondent company stated in an affidavit that Associated Newspapers Ltd. had no interest in Radio 2 UE Sydney Ltd., but that half of the shares of the latter company were held by the respondent company, the general manager and a director of which company were also two of the four directors of Radio 2 UE Sydney Ltd.; that details of articles such as the one complained of were left to the editorial staff and were not known to the members of the board of directors; that the members of the board had instructed him to apologize if the Court felt that the language used was so disrespectful that an apology was called for by reason of the language, and, without any admission in regard to the question of whether the article amounted to the offence of contempt, to apologize for any appearance of the suggestion that the Court did other than impartially decide all questions brought before it by litigants. The editor, and the associate editor, who wrote the article, each stated on affidavit:—"On reading the . . . article after the institution of the present proceedings, I realize that the language used is not properly respectful and without making any admission of the offence of contempt I apologize for it; and I apologize and express regret

H. C. OF A. 1935.

THE KING v. DUNBABIN; EX PARTE WILLIAMS.

that the two main ideas intended, namely to call attention to unnecessary litigation by reason of defective draftsmanship and to laugh at any possible suggestion that Courts should be lightly abolished was liable to misconstruction. I had no intention of in any way influencing this Honorable Court nor was I paying any attention to the desirability or undesirability of the present Federal legislation as to broadcasting nor had I any intention of influencing actual or prospective litigants," and that at the time the article was written, edited and published he did not have in mind either the proceedings in which the applicant was interested, or Radio 2 UE Sydney Ltd., nor did it occur to him that that company would be in any way affected by a decision in those proceedings. In answer to questions submitted on behalf of the applicant in lieu of interrogatories, the editor further stated that the article was not written as the result of a direction to the writer, nor as part of the policy of the respondent company in its attitude towards the High Court; that by the use of the words "the manner" he, as representing the editorial staff, for which he admitted responsibility, intended to represent that it was a public matter of regret that the drafting of Federal legislation so frequently occasioned its being interpreted as not effecting the real wishes of the nation; that the reference to the Assistant Treasurer's complaint was based upon certain utterances made by him to a deputation which had waited upon him with reference to sales tax on second-hand goods, as reported in the *Sydney Morning Herald* newspaper of 28th March 1935; that the passage "well may the Caseys and the Kellys cry, like the historic British monarch, for some gallant champion to rid them of this pestilent Court" referred to the expression used by Henry II. in reference to the priest Thomas a'Beckett, and the whole paragraph was intended to ridicule any suggestion of doing away with so necessary an institution as the High Court as being such a suggestion as would be entertained by lawless people; that the foundation for the statement that the declaration of the High Court giving Mr. Kisch his freedom was received "to the horror of everybody except the Little Brothers of the Soviet and kindred intelligentsia" was the general impression that conservative persons did not wish for the entry of Mr. Kisch into Australia and

were gravely disappointed that the legislation dealing with such matters was, as they thought, gravely defective, while there was a considerable feeling in favour of Mr. Kisch on the part of persons who are commonly described as "intelligentsia"; that the paragraph in which the expression "whether the new Act pleases the High Court any better than the old" appeared, bore no reference to the approval or disapproval of the members of the High Court as to subject matter, and that the word "pleases" bore reference only to the approval or disapproval of draftsmanship employed in effecting what was usually understood to be the object intended; that it was not the opinion of the respondents that the High Court had very little useful work to do and that it therefore ought to be required "to examine the Acts which will be sent to it straight from the Legislature, to stamp O.K. upon them, or to suggest amendments which will make them thoroughly legal, as the case may be, and then return them by swift messengers for the Vice-Regal signature": the obvious intention of that paragraph was to ridicule any suggestion that Courts functioning by law are not required so to function; that another statement in the article was an obvious ridiculing of the idea that Courts should function otherwise than in the well recognized fashion by sententiously stating an obvious truth.

The deponents were cross-examined on their affidavits.

Evatt J. directed that the matter be argued before the Full Court, and it now came on for argument accordingly.

Windeyer K.C. (with him *McGhie*), for the respondents. There is a preliminary objection that the applicant is not entitled to be heard. She is a common informer only. The litigation referred to does not in any way concern her.

Piddington K.C. (with him *Farrer*), for the applicant. The objection is taken too late because the parties have filed affidavits and have submitted themselves to cross-examination. The applicant is prejudiced by the article in respect of a suit now pending before this Court in which this Court has reserved its judgment. The motion should be allowed to proceed because the article constitutes a contempt of Court in the nature of scandalizing the Court.

H. C. OF A. 1935. THE KING v. DUNBABIN; EX PARTE WILLIAMS.

RICH J. The Court has noted the objection but refrains from dealing with it until the contents of the article complained of have been made known to the Court.

Piddington K.C. The applicant is not required to show that the article is likely to affect the judgment of any member of the Court. Anything which brings or tends to bring the Court into disrepute constitutes a contempt of Court. The apologies and excuses tendered to the Court are mere pretences. The article has the following features: (*a*) A falsification of the narrative with regard to what the Court has decided in cases, in order to base the attack on the Court; (*b*) there is a deliberate choice of derisive and insulting terms impeaching the usefulness and judicial uprightness of the Court as a Court; and (*c*) the affidavits read with the article show a mendacious misstatement of the facts, known to be false by the person who made it. Up to this moment there has been acquiescence by the respondents in the contempt of Court, because there has not been any contradiction, nor an announcement of any kind to the public, or to the Court, and there has not been any examination by the board of directors of the respondent company of its editor or its associate editor.

RICH J. The Court desires to hear Mr. *Windeyer* on the question of contempt.

Windeyer K.C. The offence of contempt of Court is something which is intentional, or the obvious effect of which will interfere with the course of justice. Intention is a very material factor. The article does not constitute a contempt, nor was it intended to do so. The respondents and the associate editor, the writer of the article, have expressed earnest and sincere regrets that the words objected to were used. The article does not in any way interfere with the administration of justice. Merely to suggest that the Court is functioning in a wrong way does not constitute a scandalizing of the Court. The article does not impute dishonest motives on the part of the Court. It was intended to have, and is capable of, an innocent interpretation of a satirical nature directed principally

towards the Assistant Treasurer and the Legislature, but not to any extent at all towards this Court.

[Upon the resumption after the luncheon adjournment *Windeyer* K.C. informed the Court that during the adjournment he had discussed the matter with his clients, who had instructed him not to argue further the question of contempt but to submit to what the Court felt as regards the meaning. His clients desired him to state that although they did not think the article capable of a meaning adverse to, and disrespectful of, the Court, as had been suggested, they expressed their regret for it. Counsel stated that he desired to discuss the question of penalty.]

At worst, the article may be described as a very inartistic and stupid mixture of satire with comment on current matters. It may, unfortunately, suggest a want of understanding by the Court of its proper functions, but the article does not suggest any want of personal probity on the part of the members of the Court. It cannot be construed as a serious suggestion that this Court should be abolished. The article is not calculated to obstruct or interfere with the course of justice or the due administration of law in this Court (*R.* v. *Nicholls* (1); *Bell* v. *Stewart* (2)). The applicant referred to the broadcasting company for the sole purpose of acquiring a *locus standi*. The application cannot be regarded as an attempt to obtain redress for a real injury.

[RICH J. referred to *McLeod* v. *St. Aubyn* (3).

[DIXON J. referred to *Fox, History of Contempt of Court* (1927).]

There was not any necessity for the applicant to bring the application. The matter could have been referred to the Attorney-General. Search reveals that *R.* v. *Henningham* (4) is the only authority which affirms that a contempt may be brought before the Court by any person whether personally interested or not; there it is limited to matters relating to criminal proceedings. The offence of scandalizing the Court is practically obsolete. The article cannot be regarded as a serious or deliberate attack upon, or an undermining of, the Court. What constitutes a scandalizing of the Court is shown

(1) (1911) 12 C.L.R. 280.
(2) (1920) 28 C.L.R. 419, at p. 430.
(3) (1899) A.C. 549, at pp. 561, 562.
(4) (1869) Mac. (N.Z.) 712.

H. C. OF A. 1935.

THE KING v. DUNBABIN; EX PARTE WILLIAMS.

in *Bell* v. *Stewart* (1). In all the circumstances the applicant should not be allowed her costs.

Piddington K.C., in reply. The only restriction placed upon the bringing of a "scandalizing" matter before the Court is that it must be presented to the Court by a barrister (*R.* v. *Ellis*; *Ex parte Baird* (2); *McDermott* v. *Judges of British Guiana* (3)).

Cur. adv. vult.

May 29.

The following judgments were delivered:—

RICH J. The Court is called upon to exercise its summary power of punishing contempts of Court. This jurisdiction, which is well established and belongs to this Court as well as to the Supreme Courts of the States, exists for the purpose of preventing interferences with the course of justice. Such interferences may arise from publications which are calculated to embarrass a tribunal in arriving at its decisions. Any matter is a contempt which has a tendency to deflect the Court from a strict and unhesitating application of the letter of the law or, in questions of fact, from determining them exclusively by reference to the evidence. But such interferences may also arise from publications which tend to detract from the authority and influence of judicial determinations, publications calculated to impair the confidence of the people in the Court's judgments because the matter published aims at lowering the authority of the Court as a whole or that of its Judges and excites misgivings as to the integrity, propriety and impartiality brought to the exercise of the judicial office. The jurisdiction is not given for the purpose of protecting the Judges personally from imputations to which they may be exposed as individuals. It is not given for the purpose of restricting honest criticism based on rational grounds of the manner in which the Court performs its functions. The law permits in respect of Courts, as of other institutions, the fullest discussions of their doings so long as that discussion is fairly conducted and is honestly directed to some definite public purpose. The

(1) (1920) 28 C.L.R., at p. 426.
(2) (1889) 28 N.B.R. 497.
(3) (1868) L.R. 2 P.C. 341.

jurisdiction exists in order that the authority of the law as administered in the Courts may be established and maintained. The cases are collected and the principles expounded in the judgment of *Evatt* J. in *R.* v. *Fletcher*; *Ex parte Kisch* (1). The necessity of maintaining the authority of this Court against such attacks is, perhaps, even greater than in the case of Courts under a unitary system of government. It is the constantly recurring task of this Court to decide upon the validity of the enactments of one or other of the seven Governments of Australia. Thus the Court occupies a position which makes any tendency to weaken its authority a matter of especial concern.

In the case before us, we have a publication which, in my opinion, involves a clear contempt. Its whole tendency and, I think, object is to disparage the authority of the Court and to weaken confidence in it. The article begins by alluding to two decisions recently given by the Court in which executive action by two departments of the Commonwealth Government was held to be erroneous. The reference is made under the heading " Courts and Cabinets " and is unmistakably directed to a supposed opposition between the Executive and the Court. In the one case, that relating to the *Immigration Restriction Act*, it represents the Court as putting into a state of " suspended animation " " the law which was relied upon to keep Australia white." It represents it as doing so by the exercise of " keen legal intelligences " and of so deciding " to the horror of everybody except the Little Brothers of the Soviet and kindred intelligentsia." The writer appears to be confused between two cases, that of Kisch which he mentions by name, and that of Griffin to which he probably intended to refer. He recommends that Kisch should be given another opportunity of seeing whether a new Act which the writer contemplates " pleases the High Court any better than the old, or whether the ingenuity of five bewigged heads cannot discover another flaw." The article then proceeds to refer to the second decision, that holding that secondhand goods were not liable to sales tax. The writer describes this conclusion as something discovered after over four years by the Court " with that keen microscopic vision for splits in hairs which is the admiration

(1) (1935) 52 C.L.R. 248, at pp. 257, 258.

H. C. OF A. 1935.

THE KING v. DUNBABIN; EX PARTE WILLIAMS.

Rich J.

of all laymen." The tone in which these matters are discussed is not that of informed or reasoned criticism but of sarcastic suggestion. The article then proceeds: "Well may the Caseys and the Kellys cry like the historic British monarch for some gallant champion to rid them of this pestilent Court." As appears by the article itself, the reference to "Caseys" is to the Assistant Treasurer, who, an earlier part of the article states, "complains of the manner in which the High Court knocked holes in the Federal laws." According to the evidence, the expression "and the Kellys" was introduced because of a paragraph appearing in the same newspaper a fortnight before in which the Assistant Treasurer's refusal to refund sales tax on secondhand goods was likened to an action of the bushranger of that name. The article then proceeds to make a suggestion that as an alternative to getting rid of the Court it should be given some "real work to do" so that it should not have "time to argue for days and days on the exact length of the split in the hair." The suggestion, stated briefly and stripped of decorative verbiage, was that, prior to its enactment, legislation should be submitted to the Court for judicial approval. The writer, clearly intending to refer to the decision of this Court of *In re Judiciary and Navigation Acts* (1), states: "There was some attempt years ago to obtain a Court opinion on an Act before it was put to public test, but the Judges coldly suggested that the only way to test it was by action before the Bench."

I have not stated all that the article contains, but these, I think, are the more material matters. An endeavour has been made to explain the article as intending to ridicule, not the Court, but those opposing its decisions. Except for the absence of anything to indicate sincerity of purpose, the article contains nothing to support the suggestion of irony. I think the effect of the article, as well as its purpose, is to represent that the Court exercises its ingenuity in order to defeat legislation to which great public importance attaches and that the Federal Government encounters in the Court an obstacle it might well seek to remove. This is combined with a suggestion that one of its decisions pleased no one but the "Little Brothers of the Soviet." Such imputations, if permitted, could not

(1) (1920) 29 C.L.R. 257.

but shake the confidence of litigants and the public in the decisions of the Court and weaken the spirit of obedience to the law.

Judges are not at all likely to be deterred from administering justice according to law by expressions which appear in the public press or elsewhere of displeasure at the consequences. Probably no one doubts or questions that fact. But, if it were not so, the publication of such an article might well be regarded with apprehension by a party to a case pending before the Court if it involved a doubtful and difficult question the decision of which in his favour would result in inconvenience and embarrassment to the Executive Government. It is upon this footing that the present applicant moves the Court. Groundless as may be the fear that the article could affect the Court's decision of her case, it is not possible to say that, as a party to pending litigation of that character, she is not entitled to bring the article before the Court. Indeed the Court may act *ex mero motu*, and it has been held that the Court may be put in motion by a person who has no particular interest in the contempt complained of (*R.* v. *Henningham* (1); *R.* v. *Ellis*; *Ex parte Baird* (2)).

I think the Court is bound to regard the publication as a serious contempt which it must repress. In my opinion the respondents should be convicted of contempt.

STARKE J. Motion on the part of one Dulcie Williams that Thomas Dunbabin and the Sun Newspapers Ltd. be dealt with for contempt of this Court.

The contempt relied upon is publishing a leading article in the *Sun* newspaper, of which Dunbabin is the editor. The article is calculated, it is said, to interfere with the due administration of justice in an appeal brought by the mover and pending in this Court and in which judgment has been reserved. But I regard this allegation as frivolous: there is no fear of the article in any way interfering with the due determination of the appeal or of any prejudice to the mover such as would justify the Court interfering by the summary and arbitrary process of contempt.

It is also said that the article scandalizes the Court. Any act done or writing published calculated to bring the Court into contempt

(1) (1869) Mac. (N.Z.) 712.

(2) (1889) 28 N.B. R., at p. 520.

H. C. OF A. 1935.

THE KING v. DUNBABIN; EX PARTE WILLIAMS.

Starke J.

or to lower its authority is a contempt of Court (*R.* v. *Gray* (1)). According to the Judicial Committee in *McLeod* v. *St. Aubyn* (2), committals for contempt of Court by scandalizing the Court have become obsolete in England. But modern examples of the exercise of this undoubted jurisdiction may still be found. (See *R.* v. *Gray* (3).) Courts and Judges " are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court " (*R.* v. *Gray* (1)). Ordinarily, Courts are satisfied to leave to public opinion attacks derogatory or scandalous to them (*McLeod* v. *St. Aubyn* (4)). The summary jurisdiction in this class of case should only be exerted when the case is clear and beyond doubt; otherwise the Courts should leave the matter to the process of the criminal law. The policy of allowing the Courts to determine what does or does not scandalize them may be doubted. But whilst the jurisdiction exists, they must exert it, not because " of any exaggerated notion of the dignity " of Courts, but for the " common good." All this is well settled, and is, indeed, only repetition of what English Judges have said.

The article in the present case clearly and beyond doubt is calculated to bring the Court into contempt and to lower its authority. And I regret that the respondents to this motion are so obtuse that they can discover nothing in the article which amounts to contempt of the Court: the article is regarded by them as unseemly and rude and for that regret is expressed, but otherwise it is regarded as innocent and only to be regretted if the Court decides that it amounts to a contempt of Court. But despite the attitude of the respondents, the " common good " and the " authority of this Court " will, in my opinion, be sufficiently vindicated, in this summary and arbitrary process, if the article is declared a contempt of this Court and that the respondents do pay the costs of the motion.

Beyond this, the Court should, as the Judicial Committee wisely indicated in *McLeod* v. *St. Aubyn* (4), leave to public opinion the reprobation of attacks or comments derogatory to or scandalizing it; or in serious cases leave to the proper authorities the vindication

(1) (1900) 2 Q.B. 36, at p. 40.
(2) (1899) A.C., at p. 561.
(3) (1900) 2 Q.B. 36.
(4) (1899) A.C. 549.

of the Court by the ordinary process of law, and not by the summary and arbitrary process of contempt. No prejudice or possible prejudice of any litigant's rights is involved in the present case, and no repetition of the article need be apprehended.

In these circumstances, I regard the fines proposed to be imposed upon the respondents not only as unwise, but as unnecessarily severe, and uncalled for in the public interest.

DIXON J. I agree for the reasons given by *Rich* J. that the article published contains a contempt.

The jurisdiction which we are called upon to exercise is one which cannot but be attended with some difficulty.

It is necessary for the purpose of maintaining public confidence in the administration of law that there shall be some certain and immediate method of repressing imputations upon Courts of justice which, if continued, are likely to impair their authority. But it must be done by judicial remedies, and judicial remedies are necessarily administered by the Courts themselves. The Court must, therefore, undertake the task notwithstanding the embarrassment of considering what it should do in relation to an attack upon itself. There is no practicable alternative. It can but do its best to disregard all considerations except those which strictly relate to the question whether the publication amounts in law to a contempt. That question is whether, if permitted and repeated, it will have a tendency to lower the authority of the Court and weaken the spirit of obedience to the law to which *Rich* J. has referred.

The article in this case, upon a close analysis, presents one difficulty. It inspires a feeling that its real purpose has not been fully disclosed. It is difficult to discover the reasons which animated its publication. But, whatever be the reason for the article, I am confident that any ordinary reader who read it would deduce from it that it charged the Court with a wanton destruction of legislation effected by the exercise of excessive legal ingenuity.

The question what, in these circumstances, the Court should do is naturally one for anxious consideration. It should, in my opinion, fix a penalty adequate to make it abundantly clear that such publications will be repressed. It should, at the same time, make it clear

H. C. OF A. 1935.

THE KING v. DUNBABIN; EX PARTE WILLIAMS.

Dixon J.

that it has not the least intention of repressing any criticism which may be made on the Court and its doings and the law it administers if that criticism is fair and honest and is not directed at lowering the authority of the Court. It is important that Courts should be the subjects of free criticism. It is equally important that the dignity and authority of the Courts should be maintained. It is the reconciliation of those two principles that involves the difficulty.

I think that, if a repetition of the kind of imputations made in the present case were allowed, public confidence in the Court would in the end be undermined.

I think the Court should impose a penalty which affords a definite indication of its view that the publication of such matters as this will not be allowed.

The penalties the Court has fixed are anything but excessive.

EVATT J. I agree with the judgment of *Rich* J.

MCTIERNAN J. I also agree with the judgment of my brother *Rich*.

RICH J. The order of the Court is:—The Court orders and adjudges that the respondents are guilty of contempt; that the respondent company be fined £200 and the respondent Dunbabin £50. The Court also orders the respondents to pay the costs of these proceedings.

Order accordingly.

Solicitor for the applicant, *T. F. Williams*.

Solicitors for the respondents, *Minter, Simpson & Co.*

J. B.