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TRIAL BY NEWSPAPER

ADMINISTRATION OF JUSTICE.

CONTEMPT OF COURT.

MANAGING EDITOR FINED £100.

Delivering the judgment of a Divisional Court yesterday, Mr. Justice Darling said that it was time, in the public interest, that trial by newspaper should be stopped, and his lordship, with whose opinion Mr. Justice Avory and Mr. Justice Rowlatt agreed, added that if the process of trial by newspaper continued the Court would not shrink from sentencing the offender to a term of imprisonment.

The case in which their lordships had heard counsel was that of "Rex v. Donald (ex parte Starchfield)," in which a rule nisi had been granted against Mr. Robert Donald, managing editor of *Lloyd's Weekly News*, to show cause why he should not be committed for contempt of Court. Mr. Donald was found to be in contempt through the publication in *Lloyd's Weekly News* of an affidavit by Mrs. Agnes Starchfield. The affidavit, it was said, was prejudicial to her husband, John Starchfield, who at the date of the publication was charged with the murder of his son.

Their lordships imposed a fine of £100, with costs to the applicant.

Counsel were: The Attorney-General (Sir J. Simon, K.C.), Mr. Bodkin, and Mr. H. Branson (instructed by the Treasury Solicitor), for the Director of Public Prosecutions; Mr. Shearman, K.C., and Mr. Eustace Hills (instructed by Messrs. Hopwood and Sons), for respondent; and Mr. Hemmerde, K.C., and Mr. G. W. H. Jones (instructed by Mr. Lewis Margetts) for John Starchfield.

Mr. Shearman said that the rule nisi had been granted with some reluctance. From evidence called for John Starchfield in February the point was raised that the boy was seen with a woman, who was described as carrying a parcel and looking like a tailoress. Mrs. Starchfield was a tailoress, and rumours got about, although there was no suggestion by the defence that the mother was involved. Subsequently Mrs. Starchfield's statement, which was published in *Lloyd's Weekly News*, accounted for the whole of her movements on the day of the murder. The whole of that communication had been carefully examined, and there was not, from beginning to end, a single word that would prejudice John Starchfield.

PRECAUTIONS TAKEN.

Mr. Justice Darling: If somebody got the woman to make an affidavit which is exculpating her on oath, is not that somewhat inculpating on oath the man?

Mr. Shearman: I do not think that there was any suggestion in the defence that the tailoress woman was the mother, but people do get talking.

In an affidavit, Mr. Shearman proceeded, Sir Charles Mathews stated that the affidavit by Mrs. Starchfield contained matters cardinally affecting the issue of the trial. Mr. Donald, the managing editor, had made an affidavit in which he said he did not actually edit the paper, but he did not desire to avoid any responsibility. If the publication complained of was regarded as in any way prejudicial to the trial he apologised, and expressed his sincere regret. Mr. Parris, the acting editor, had also made an affidavit in which he accepted responsibility for the publication.

Several readers had written letters in which they made suggestions against Mrs. Starchfield, and he thought it was fair to give her an opportunity of making a statement if she desired to do so. He took every precaution that nothing should appear which could be capable of creating in the minds of readers of the statement any prejudice against John Starchfield or would prejudice his defence. Copies of *The Daily Telegraph* had, Mr. Shearman added, been put in to show that all the statements that had been made in connection with the outrage were known to the public.

Mr. Justice Avory asked why it was necessary to impress anyone with the movements of Mrs. Starchfield on Jan. 8.

Mr. Shearman said that the public were interested in her movements because she was the mother of a boy who had been murdered.

Mr. Justice Avory: You are developing this theory that criminal cases are to be tried by newspapers before they come into court. You are saying that persons who are not witnesses, or not competent witnesses, ought to be allowed to make their statements in newspapers before the trial takes place.

Mr. Shearman: I deprecate anything of the kind. Suppose I saw something printed in *The Daily Telegraph*—selecting a perfectly respectable paper—and I wrote, "Please deny this; I was not there," that is not trial by newspaper. I have even heard members of the Bench say, "I hope the newspapers will take notice of this application." (Laughter.)

Mr. Justice Darling: That is when the judge wants somebody else to give someone a subscription. (Laughter.)

VULGAR CURIOSITY.

Mr. Justice Rowlatt: Do you say this affidavit is not intended as a contribution towards elucidating the crime?

Mr. Shearman: No. There is vulgar curiosity on anything and anybody connected with a crime.

Mr. Justice Avory said that the object, and the only effect of the affidavit, must be to show that it was impossible that Mrs. Starchfield could have had anything to do with the murder. If it did that, it closed the door to a possible line of defence.

Mr. Justice Rowlatt: It surely is most disadvantageous and regrettable from every point of view that affidavits should be published. It is quite a new thing in this country. It is well known in other countries.

Mr. Shearman: It is an error of taste.

Mr. Justice Rowlatt: Taste! It is putting the whole administration of justice on a wrong footing.

Mr. Shearman: I hope your lordships will bear in mind that there was an earnest desire to avoid contempt of Court.

Mr. Justice Darling: I think you may take it that people in their senses do not desire to commit contempt of Court, because they know what will follow.

Mr. Justice Avory: That is what they keep editors for. (Laughter.)

Mr. Shearman: One does know a case where people prefer to do a thing and pay a fine.

Mr. Justice Darling: Do you know people of that kind? You had better bring them here. (Laughter.)

Mr. Justice Avory: The fine must have been too small.

Mr. Shearman replied that respondents were people holding responsible and respectable positions, and they desired to keep well, not only with the Court, but with all other respectable society.

CASE FOR THE CROWN.

The Attorney-General said he accepted the explanation that the newspaper was not conscious of doing wrong, but that was the more reason why this should be stopped. It was against the public interest, and a breach of our own traditions if one deprived an accused person of the advantage, however faint it might be, of suggesting that he was not the murderer, and that his wife was. He (the Attorney-General) did not want to treat respondent as if he were the only person who ever offended. It unfortunately had happened in recent years that that class of offence had become increasingly frequent. It was really difficult to believe that Mrs. Starchfield had volunteered her statement out of an overflowing heart. It was a lamentable thing that people who were closely associated with the circumstances surrounding a crime should be regarded as fair game to newspapers of a certain kind, and thereby the principle by which justice was sought to be administered in this country should be completely altered.

It would not be fair to treat respondent as if he had invented this new form of literature. He (the Attorney-General) did not want to use extravagant language, but the Director of Public Prosecutions assured him that, especially in capital cases, the amount of interference in recent years from newspaper investigation with what used to be the ordinary work of the Public Prosecutor was striking and was increasing. Nobody wanted to deprive newspapers of their fullest right to report or to comment, but he asked the Court to lay it down that newspapers were mistaken if they supposed that they could publish what they liked so long as it was not comment. Newspapers, like any other people, must refrain from making statements fairly calculated to interfere with the course of justice.

Mr. Justice Avory: In other words, they ought not to anticipate the report which they will be justified perhaps in publishing later.

The Attorney-General said that the putting forward of the statement in the form of an affidavit was a criminal offence. Proceeding, he admitted that there had been cases in which assistance had been given by the publication of photographs in newspapers.

Mr. Justice Darling: I have tried cases in which the whole value of the identification of witnesses was absolutely destroyed by questions being put which tended to show that a witness had seen a newspaper in which was reproduced a photograph of the person charged.

Mr. Hemmerde: Every witness in this case

say that they help the administration of justice by publishing the photographs.

The Attorney-General: It cuts both ways.

LAW OF CONTEMPT.

Mr. Justice Darling, giving the judgment of the Court, said it was well established that to publish a thing, either in the nature of comment or a statement of fact which, in the opinion of the Court, was calculated to prejudice a trial which was pending was of itself contempt of Court. In what his lordship proposed to say he did not wish to be understood in any way to question the right of any person who might know that he was suspected of a crime to publish what he believed might help to exculpate him. Of course, he did that, and anyone who might assist him did it subject to this, that in exculpating himself he must not prejudice the case of another with regard to whom a judicial inquiry might be pending.

If a person, whose conduct was questioned, did not do more than publish facts which would go to show that he was unjustly suspected, if he did not do anything which would indicate that another person might possibly be guilty and deprive that other person of a reasonable and legitimate defence, then his lordship would not say that there had been contempt of Court. It must always be a question whether that which was published was calculated to prejudice a trial which was pending. It did not follow either that a person to justify himself naturally prejudiced another. It would be beyond what his lordship, at all events, would wish to lay down that anything he should say on this occasion should diminish the right of a person to defend himself legitimately and not at the expense of another.

From the affidavits of those concerned in the production of the newspaper they knew there had been all manner of remarks about Mrs. Starchfield. It was perfectly plain that many people must have suspected the parents of the child. They were people who had quarrelled, they were living apart, and they were both poor. The man was living in a Rowton House and the woman was getting a precarious living as a tailoress. The child was a burden to whoever had to support it, and the child being found murdered suspicion would first fall upon those to whom it had been a burden. What Mrs. Starchfield did on Jan. 8 was no more important to the public than what any other woman did on that date, except as connected with the Willie Starchfield murder.

INQUIRY NARROWED.

Therefore, it was perfectly plain that what Mrs. Starchfield desired was to prove an alibi for herself. That necessarily narrowed the inquiry to a very small point indeed. Once an alibi was proved for Mrs. Starchfield the case of the father was damaged and very seriously damaged. It was perfectly plain that Mrs. Starchfield made observations which pointed clearly to suspicions against her husband, but these the editor cut out, because they went beyond the mere exculpation of Mrs. Starchfield and went towards inculpation of her husband. That would have been manifestly dangerous matter for any newspaper to publish

John Starchfield was committed for trial, and it was not too much to assume, having regard to the circulation of this newspaper, that very large numbers of people had read the affidavit of Mrs. Starchfield, and that these people would be probably of the very class from whom a London jury might be drawn. The identification of Starchfield by a number of witnesses was so unsatisfactory that the judge at the trial stopped the case, and it did not go to the jury, but it might very well have been that the case would have gone to the jury.

This Court must lay down general rules as to what was contempt of Court, and could not say that because no harm had resulted no contempt had been committed. If Starchfield had been convicted, no one could have failed to say that the jury might well have been prejudiced by what was published in *Lloyd's News*.

JUDICIARY'S POWERS.

"It seems to me," his lordship continued, "that this is an instance, as the Attorney-General contended, of the extreme disadvantage of a process which, as he pointed out, has grown up and has increased since the time twenty years ago that Mr Justice Wills alluded to it as trial by newspaper and it is time in the interests of the public that it should be stopped.

"It is not necessary that newspapers should take upon themselves the trial of cases which will be tried by people whose duty it is to try them and who have the experience to try them—trials which take place in open court and by people drawn from the public of the country directed by those whose business it is to direct them.

"There is no public advantage in newspapers absorbing powers discharged by the judiciary, and how little they know how to do it is proved in this case, because here they have gone and committed a criminal offence, they have induced a commissioner for oaths to commit a criminal offence by getting an affidavit from a woman who had no right to make an affidavit, and by procuring the affidavit to be sworn by a commissioner who had no right to take the oath of a woman in these circumstances. Then they flaunt this document in the face of the public as being much more than a mere statement of a letter to a newspaper, as being much more than comments by an editor, because it is represented as being really a quasi-judicial document."

"We have come to the conclusion," his lordship proceeded, "that if this process of trial by newspaper continues after the warning which has been given, the Court will be bound to inflict imprisonment, and will not shrink from doing it. The disadvantage to the public is enormous, and people who are prepared for gain, because no one can doubt for a moment why this was published—for the motive of selling the newspaper—people who are prepared to do that, must be prepared to suffer a severe penalty, if they interfere with the course of justice and set themselves up as a tribunal for trying cases in which his Majesty's subjects are involved.

"Perhaps with a feeling that the punishment may be inadequate, because, of course, this newspaper is very rich, and a fine of a certain number of sovereigns will probably leave them not much worse off, but not desiring to do anything vindictive, and accompanying it with a warning that those who continue this trial by newspaper must expect severe treatment, the Court has come to the conclusion that the rule should be made absolute, and that a fine of £100 be imposed with the costs."

Mr. Justice Avory, who agreed, said that but for the strong views of the other judges as to the amount of the fine, it would have been much heavier. His lordship's opinion was that the amount of the fine imposed was entirely inadequate to answer the object which was intended. For years past the dangerous practice of trial by newspaper of serious criminal charges had been very much on the increase. Warnings had been given over and over again to newspapers that serious consequences would follow if it was not discontinued. It was bad enough when the practice was followed of anticipating the evidence which witnesses were to give in a sensational trial but when it came to publishing the statement of a person who could not be a witness at the trial it was ten times worse.

Mr. Justice Rowlatt said it was not out of place to appeal to newspapers that if they desired that our administration of justice should be the best, they should give up the practice referred to, and take it from those who had the opportunity of judging that it was really a serious public danger.

Mr. Shearman having asked that costs should not be allowed to the Crown.

Mr. Justice Avory asked: Would you like to disclose how many hundreds of pounds this newspaper made by this?

Mr. Shearman: I do not suppose that anyone knows whether one pound was made.

Mr. Justice Avory: I do.

The Attorney-General said that as the Crown were made parties to the rule so as to set an example he would withdraw the application for costs.

Their lordships made the rule absolute, with costs to the applicant.