

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of McLeod v. St. Aubyn, from the Supreme Court of St. Vincent ; delivered 22nd July 1899.

Present at the hearing :

LORD WATSON.

LORD MACNAGHTEN.

LORD MORRIS.

LORD DAVEY.

[*Delivered by Lord Morris.*]

This case arises on appeal from the judgment and order dated 3rd May 1897 made by the Acting Chief Justice of the Supreme Court of Judicature of the Island of St. Vincent, the Appellant being Charles John McLeod, and the Respondent Geoffrey Peter St. Aubyn, the Acting Chief Justice of St. Vincent.

At the time of the happening of the events which led up to the order appealed from, the Appellant was a barrister-at-law practising in the Supreme Court of St. Vincent, of which the Respondent was the Acting Chief Justice. At the time there was a weekly newspaper called the *Federalist* printed and published in the Island of Grenada, the Appellant was the agent and correspondent of the said newspaper for St. Vincent and sent letters and articles to the said newspaper from St. Vincent which were always printed in a special column headed "St. Vincent." The *Federalist* newspapers were sent by post to subscribers at St. Vincent. The Public Library of St. Vincent was a subscriber and ordinarily

received its copy of said newspaper by post. The Librarian was Benjamin Stephen Wilson. The *Federalist* of 31st March 1897 contained a leading article entitled "The Administration of Justice," as follows:—

"The Administration of Justice.

"At the present time, more than any other, it seems to be absolutely necessary, that the administration of justice in the several West Indian colonies should inspire the confidence of every class of the population with the stagnation in trade, the absence of ready money, the want and misery which prevails, the suffering inhabitants of these islands may grow reckless and desperate if on the bench they failed to find that impartial protection which a British judiciary implies. Happily for us in Grenada, the honesty, independence and impartiality of the bench is beyond the faintest shadow of suspicion. If the people in Grenada did not possess confidence in the superior courts there had been a serious state of affairs especially after the sweeping sales of the properties of the peasants for overdue taxes. This confidence and faith in the Supreme Court of the island is well founded, for no judge here has ever, within living memory, forgotten for a moment the sacred nature of the office which he fills nor the importance of the decisions which he may pronounce.

"All the other islands do not appear to be as fortunate as Grenada. St. Vincent especially has suffered more, perhaps, than any other from mal-administration of justice. In Mr. Trafford the public had no confidence, and his *locum tenens*, Mr. St. Aubyn, is reducing the judicial character to the level of a clown. Law and order will only be observed when the tribunals of justice is (*sic*) pure and impartial.

"It does not seem from the letter of 'Fairplay' which appears in another column, that the Acting Chief Justice of St. Vincent is capable of maintaining the noble traditions of the British bench. He has apparently been too wrapped up and intermingled with personal disputes and squabbles of a questionable character to allow him to deal honestly and impartially with questions which come before him to be judicially settled. To nod and wink to counsel engaged in cases is not at all dignified in a Judge; it becomes doubly criminal when he who performs these grievances and gymnastics is solemnly adjudicating questions of the utmost importance, involving the liberty, almost the life, of British subjects.

"Mr. Chamberlain having severely rebuked and censured Mr. St. Aubyn for gross partiality as a magistrate we fail to see how he could have been appointed as Acting Chief Justice of St. Vincent. If as police magistrate, with limited jurisdiction, Mr. St. Aubyn displayed in the administration

“ of justice, his violent partizanship would he not as a Chief
 “ Justice, with absolute jurisdiction, give reins to his passions,
 “ and prostitute one of the most sacred secular positions
 “ merely to gratify his venom and his spleen? He has, it
 “ appears, done so, and thereby created a feeling of disquiet
 “ and unrest. If the people can have no faith in the findings
 “ of the Chief Justice, they may, doubtless, be tempted to
 “ redress their own wrongs, either of a private or public
 “ nature, with this result, that he who may be the chief cause
 “ of illegality will escape scathless whilst those he has
 “ provoked to an outbreak will become the victims of martial
 “ chastisement.

“ St. Vincent has suffered much from the maladministration
 “ of justice.

“ Discontent which might have culminated in riot, has only
 “ been prevented by the influence and exertion of the St.
 “ Vincent editor of this journal, we hope, he may be able to
 “ assist in allaying the dissatisfaction which prevails, con-
 “ sequent on the misconduct of the Acting Chief Justice. This
 “ ought not to be a difficult matter, especially as a strong
 “ desire is expressed that his Honour W. S. Commissiong,
 “ Q.C., Acting Chief Justice of Grenada should be appointed
 “ successor to Mr. Trafford. A week or two ago, all classes
 “ of the community, without regard to public and political
 “ differences, presented an address to the Acting Chief Justice
 “ of Grenada, indicative of the respect and esteem in which he
 “ is held, especially from his impartial, honest, and upright
 “ demeanour as a Judge, with such a man presiding over the
 “ Supreme Court of St. Vincent we are perfectly satisfied that
 “ complaints respecting the administration of justice would no
 “ longer be heard. Mr. Commissiong’s experience as a prac-
 “ tising barrister extends over a term of twenty-five years.
 “ Sir Walter Sendall, acknowledging Mr. Commissiong’s
 “ ability at one time offered him the appointment of Chief
 “ Justice of St. Vincent, then vacant, ill-health prevented him
 “ accepting it at the time, but we have no doubt, that his
 “ Honour will not refuse to go to St. Vincent if the position of
 “ Chief Justice of that island were offered him. It would be
 “ well if a petition to this end were formulated for signatures
 “ in St. Vincent and then forwarded to the Colonial Office.
 “ There is no doubt but that the administration of justice in
 “ St. Vincent is rotten and corrupt, and that except some one
 “ be appointed to the bench who will inspire confidence and
 “ respect, the already oppressed peasantry may be goaded into
 “ madness. Mr. Commissiong, having as a Judge won the
 “ confidence, the respect, and the esteem, of even his most
 “ violent political opponents, and having served the Govern-
 “ ment for a long number of years is entitled as well by his
 “ service as his ability to be successor to Mr. Justice Trafford,
 “ and we hope our fellow citizens in St. Vincent in their own
 “ interest, in the cause of the pure and impartial administration

“ of justice in this island, will successfully press his claim upon
“ the Colonial Offices.”

It also contained a letter dated from St. Vincent of the date of 15th March 1897 as follows :—

“ No. 4.

“ A Judicial Scandal.

“ To the Editor of *The Federalist*.

“ Sir,

“ Kindly grant me space in your unfettered and fearless
“ journal to expose the scandalous state of things that has
“ existed here since Mr. Geoffrey Peter St. Aubyn’s appoint-
“ ment as Acting Chief Justice in November last.

“ The public career of this gentleman is interesting. A
“ briefless barrister, unendowed with much brain who
“ religiously attended with his empty bag at the several Courts
“ of London in the forlorn hope of picking up a case he, after
“ long weary years of waiting exchanged the law for the stage
“ (being a good amateur actor) and tried to earn an honest
“ penny by turning his undoubted histrionic talent into account.
“ In the meantime he had become an assiduous hanger on at
“ the Colonial Office and applied for every vacancy real or
“ imaginary, that he heard of, and it was whilst he was ‘starring’
“ in the provinces that, in an evil moment for St. Vincent, he
“ was appointed police magistrate of the Kingstown District in
“ May 1891 at a salary of 450*l.* a year. His demeanour in the
“ Magistrate’s Court has been anything but dignified, and he
“ has indulged in offensive expressions to the litigants before
“ him which were discreditable to one in his position.

“ A man of the Torquimada type, narrow, bigoted, vain,
“ vindictive, and unscrupulous, he takes advantage of his
“ position to vent his spleen upon those whom he hates, though,
“ unlike Torquimada, fortunately, he is unable to send them
“ to the stake.

“ He distinguished himself by openly advocating that all
“ games of chance be played at the club, when, as police
“ magistrate, it was his duty to punish those playing games of
“ chance. But in the case of Mr. Sheffield late Headmaster of
“ the Grammar School, the biter got bit rather severely and
“ his spite and vindictiveness nearly landed him into serious
“ trouble. Mr. Sheffield when his school was prosperous and
“ he was in easy circumstances was drawn into the Kingstown
“ Club, that haunt of dissipation and gambling ; the poor man
“ was ruined, and had to leave the club as a defaulter, where-
“ upon a dead set was made by a clique headed by Mr. St.
“ Aubyn, upon the unfortunate man and every effort was made
“ to smash him.

“ Two women had a case before Mr. St. Aubyn as police
“ magistrate upon one of them, who had tried to blackmail
“ Mr. Sheffield, mentioned his name, Mr. St. Aubyn pressed

“ the woman to make scandalous accusations against Mr. Sheffield. Mr. Branch, another of the clique wrote an anonymous letter in the *Sentry* on the matter, and after sometime the administrator, egged on by the clique, ordered the Grammar School Board to institute an inquiry. At the meeting the principal witness against Mr. Sheffield was Mr. St. Aubyn who in the most venomous manner repeated the accusations which he had extracted from the woman in his Court. Upon these facts being laid before the Secretary of State, Mr. Chamberlain took a very unfavourable view of Mr. St. Aubyn’s conduct, severely censured him, told him that his conduct had been most un-English, and plainly hinted that his promotion would be stopped.

“ Mr. St. Aubyn returned in November last lying under the cloud, but Mr. Thompson, who himself had taken a strong stand against Mr. Sheffield, appointed him to act as Chief Justice during the continued absence of Mr. Trafford. Mr. St. Aubyn soon showed that he was utterly unfitted for such a post. He hob-nobs with 2 or 3 of the barristers, winks significantly at them in court, and in the trial of cases he has cast to the winds the ordinary principles of justice and fairplay which require a judge to keep even the scales of justice between parties.

“ At the Sessions in November in the case against James Jack for larceny, the prisoner was undefended and he called as a witness a woman named Emily Sirus. The Acting Attorney-General in a few questions completely disposed of the witness by showing that she was a bad character and had been to prison many times. But Mr. St. Aubyn, to the disgust of everyone present, for a full quarter of an hour closely cross-examined the witness, sneered at her asked her such questions :— ‘ Why do you remember such a day, is it because you had gone to jail that day,’ &c., and brought all the weight of his position against the undefended prisoner in the dock.”

“ At the recent Sessions, Mr. St. Aubyn’s action on the bench was most extraordinary, more befitting a prosecuting counsel bent upon securing a conviction than a judge. In the case against James Dacon for carnal knowledge of a girl under 13 years, the prisoner having given evidence on his own behalf, was subjected to a long and able cross-examination by the Acting Attorney-General, but Mr. St. Aubyn, satisfied, tried his persuasive powers and closely questioned the unfortunate man, putting him surprise questions clearly with a view to forcing a confession out of him, but Dacon having remained firm in his innocence, Mr. St. Aubyn threw his head back looking quite annoyed and in his summing up he said that Dacon was either very cunning or an idiot as nothing could be made out of him in cross-examination. He charged the jury strongly against the prisoner though after the evidence of Dr. Pereira for the prosecution and the evidence for the defence it was clear that the prisoner must

“ get off. The jury in the teeth of the summing up, acquitted the prisoner. Mr. St. Aubyn could not conceal his vexation at this result.

“ The next day, when the case against Jack James for feloniously wounding was on, Mr. St. Aubyn exhibited feelings quite unprecedented in a British court of justice. His manner was most theatrical. He energetically fanned himself fumed and fretted—hardly took a note of the evidence for the defence, told the Attorney-General it was a waste of time to cross-examine the prisoner’s witnesses, interrupted Mr. McLeod, prisoner’s counsel, without rhyme or reason, and in his summing up told the jury that the defence was an insult to their intelligence that they must bring in a verdict of guilty and recommend the prisoner to mercy. He added: ‘Gentlemen make up your minds in the box.’ But the jury, the sole and exclusive judges of the evidence, resented this dictation, and retired, and after mature deliberation returned a verdict of not guilty. Mr. St. Aubyn’s face was a picture. No judge has ever received such a humiliating snub. Jurymen who were present said that they had never seen such conduct on the part of a judge.

“ Simply because Mr. McLeod was solicitor for Mr. Sheffield, Mr. St. Aubyn has shown the greatest antipathy to that gentleman. He goes out of his way to be most offensive and discourteous to Mr. McLeod, and regrettable passages at arms have taken place between the two.

“ It is the general opinion that Mr. St. Aubyn has proved himself incapable of filling the important position of judge, requiring calmness and dignity and evenness of conduct towards all and the hope is expressed that if, as is anticipated, Mr. Trafford does not return, Mr. Commissiong will be appointed judge of this colony.”

“ Yours faithfully,
FAIRPLAY.”

“ St. Vincent, 15th March 1897.”

On Friday evening 2nd April 1897 the Appellant received by mail from Grenada some copies of the *Federalist* of 31st March and on the same evening the Appellant went, as was his habit, to the Library. On arriving there he met a friend Mr. T. R. Nairn who in conversation mentioned that the *Federalist* newspaper had not arrived. The Librarian Mr. Wilson stated that he had not received it as the post was late but that he could have it in the morning. The Appellant then stated that he had received his copies and offered one to the Librarian Mr. Wilson

and handed it to him to be returned the following morning. On the 17th April the Appellant appeared as counsel in a case called on before the Respondent, who thereupon directed the Registrar to postpone cases in which the Appellant was engaged as counsel until 24th April. On that day the Respondent made an Order calling upon the Appellant to attend in Court on 3rd May 1897 to show cause why he should not be committed for contempt of court in publishing the said copy of *Federalist* by the handing of it to the Librarian on the evening of 2nd April 1897. On the 1st May the Appellant made and filed an affidavit as cause against the said Order *nisi* and on the 3rd May the Appellant appeared in Court. In his said affidavit the Appellant swore that on the said 2nd April the steamer arrived much later than usual from Grenada and that he received a few copies of the *Federalist* near to 8 o'clock p.m. that he proceeded to the Library to get some papers before it closed, the hour of closing being 8 o'clock p.m. The Appellant stated in his said affidavit the circumstances under which he lent the copy of the *Federalist* to Mr. Wilson and was corroborated in that respect by Mr. Nairn. He further swore that he did not go to the Library to deliver the said copy, that he had not read the newspaper and had not the slightest idea that it contained the article headed "The Administration of Justice" or the letter signed "Fairplay." On the 3rd May 1897 the Appellant appeared by counsel before the Respondent. His counsel stated that neither the letter nor the article in the *Federalist* of 31st March was written by the Appellant. The Respondent after hearing the arguments of Appellant's counsel made the Order appealed from, which is as follows:—

"Whereas by an order dated the 24th day of April 1897
"stating that on the letter headed 'A Judicial Scandal' dated

“ the 15th day of March 1897 and signed ‘Fairplay’ and the
 “ article headed ‘The Administration of Justice’ dated the
 “ 31st day of March 1897 (both appearing in a certain copy of
 “ an issue of a certain newspaper called *The Federalist* dated
 “ the 31st day of March 1897 annexed and exhibited respec-
 “ tively to the affidavits of Benjamin Stephens Wilson and
 “ Herbert Horatio Holder respectively) being read and the
 “ said affidavits proving the said copy of the said issue of the
 “ said newspaper to have been published and otherwise dealt
 “ with as therein mentioned by Charles John McLeod Esquire
 “ barrister-at-law and solicitor of the said Court being respec-
 “ tively read and upon the Court taking the matter thereof into
 “ consideration and deeming the conduct of the said Charles
 “ John McLeod therein mentioned and the said publishing of
 “ the said copy of the said issue of the said newspaper by the
 “ said Charles John McLeod a contempt of this Court. It
 “ was ordered that Charles John McLeod of Lot 103 in
 “ Kingstown Esquire barrister-at-law and solicitor of the said
 “ Court having personal notice thereof should attend this
 “ Court on Monday the third day of May 1897 at the hour of
 “ eleven o’clock in the forenoon and should then show cause
 “ why he should not be committed for contempt of this
 “ honourable Court in publishing the said copy of the said
 “ issue of the said newspaper called *The Federalist* (wherein
 “ were the said letter and article) on the 2nd day of April
 “ 1897 and for his said conduct and the said Charles John
 “ McLeod attending this Court this day pursuant to the said
 “ order and the affidavits and exhibit filed in this matter this
 “ day being read and upon hearing Mr. Arthur Wellesley
 “ Lewis and Mr. James Eldon McCombie Salmon of counsel
 “ for the said Charles John McLeod and the honourable the
 “ Acting Attorney-General and Mr. Conrad Johnson Simons
 “ of counsel and this Court being of opinion that the said
 “ Charles John McLeod has (being agent in Saint Vincent for
 “ the said newspaper) by negligently publishing the said copy
 “ of the said issue of the said newspaper called *The*
 “ *Federalist* (wherein were the said letter and article con-
 “ taining matter scandalising the said Court) on the 2nd day of
 “ April 1897 been guilty of a contempt of this Court doth
 “ order that the said Charles John McLeod do stand com-
 “ mitted to the Kingstown prison for fourteen days for his
 “ said contempt.

“ Dated the 3rd day of May 1897.

“ By the Court,

“ GEOFFREY P. ST. AUBYN,
 Acting Chief Justice.”

“(Seal.)

The Respondent for the purpose of giving the
 Appellant time for apologising stayed the issuing
 of the committal order until the following day

4th May, on which day the Appellant attended and made the following statement :—

“ May it please the Court,

“ Since the adjournment of the Court last night I have seriously considered my position. I am aware of the grave responsibility which rests upon me. I am aware that the loss of my freedom may entail want upon those dependent on me. But I have come to the conclusion that I cannot conscientiously do what I am asked to do, viz. :—make an affidavit pleading guilty to and expressing contrition for a crime of which I know I am innocent.

“ I am prepared to express regret that I should have inadvertently and innocently, without the knowledge that it contained matter which this Court has held to be libellous and a contempt of Court, lent the man Wilson a paper for his personal use for one night. But beyond that my conscience does not allow me to go.

“ Should your Honour unfortunately think that such an expression of regret is insufficient, I have no alternative but to submit, under protest, and under reserve of all rights as to appeal or otherwise, to the judgment that your Honour has been pleased to pass upon me.

“ C. J. McLEOD.

“ St. Vincent,

“ In Court, this 4th day of May 1897.”

The Respondent would not accept that apology which he considered insufficient, as not containing an expression of regret by the Appellant of the nature of the publication itself. The Appellant was arrested and committed to prison for a period of fourteen days.

Now what are the considerations applicable to the case? Committals for contempt of Court are ordinarily in cases where some contempt *ex facie* of the Court has been committed, or for comments on cases pending in the Courts. However, there can be no doubt that there is a third head of contempt of Court by the publication of scandalous matter of the Court itself. Lord Hardwicke so lays down without doubt in the case of the *Champion* and *St. James' Evening Post* in 2nd Atkyns p. 471. He says “ one kind of contempt is scandalising the Court itself.” The power summarily to commit for contempt of Court is considered necessary for the proper

administration of justice. It is not to be used for the vindication of the Judge as a person. He must resort to action for libel or criminal information. Committal for contempt of Court is a weapon to be used sparingly and always with reference to the interests of the administration of justice. Hence when a trial has taken place and the case is over, the Judge or the Jury are given over to criticism.

It is a summary process and should be used only from a sense of duty and under the pressure of public necessity for there can be no landmarks pointing out the boundaries in all cases. Committals for contempt of Court by scandalising the Court itself have become obsolete in this country. Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies consisting principally of coloured populations the enforcement in proper cases of committal for contempt of Court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of, and respect for the Court. On that view was this a case in which the Respondent was under the circumstances justified in making the committal order of 3rd May 1897? The Appellant was not alleged to be the writer or author of the article or letter in the *Federalist* of 31st March. He was not the printer or publisher of the newspaper. He was a mere agent and correspondent of it at St. Vincent. On the evidence it must be assumed that he innocently and without any knowledge of the contents handed under the circumstances he stated the copy of the newspaper to Mr. Wilson. It would be extraordinary if every person, who innocently handed over a newspaper or lent one to a friend with no knowledge of its containing anything objectionable, could be thereby constructively but necessarily

guilty of a contempt of a Court because the said newspaper happened to contain scandalous matter reflecting on the Court. The Respondent arrived at the conclusion that the Appellant was guilty of negligence in not making himself acquainted with the contents of the newspaper before the handing of it to Mr. Wilson. This assumes there was some duty on the Appellant to have so made himself acquainted. That is a proposition which cannot be upheld. A printer and publisher intends to publish and so intending cannot plead as a justification that he did not know the contents. The Appellant in this case never intended to publish. Their Lordships are of opinion the Appellant was not under the circumstances of this case guilty of a contempt of Court. Their Lordships are also of opinion the apology offered by the Appellant before his committal contains sufficient to have called on the Respondent to stay his hand. It is an unconditional expression of regret for the act for which he was arraigned. Their Lordships will therefore humbly advise Her Majesty that the order of 3rd May 1897 be rescinded and this appeal allowed. The Respondent will pay to the Appellant his costs of this appeal, but from the date on which the Appellant was permitted to proceed with his appeal *in formá pauperis* his costs will only be allowed on that footing.
