

ASHWORTH, J.: I agree.

BLAIN, J.: I also agree.

Case remitted.

Solicitors: *Grangewood, Allen & Co.* (for the landlords); *Douglas-Mann & Co.* (for the tenants); *Solicitor, Ministry of Housing and Local Government.*

[*Reported by NAEEM BUTT, Esq., Barrister-at-Law.*]

R. v. METROPOLITAN POLICE COMMISSIONER,
Ex parte BLACKBURN (No. 2).

[COURT OF APPEAL, CIVIL DIVISION (Lord Denning, M.R., Salmon and Edmund Davies, L.JJ.), February 26, 1968.]

Contempt of Court—Publications concerning legal proceedings—Criticism of administration of justice—Court of Appeal—Judgment regarding non-enforcement of gaming laws criticised—Error of fact in matter published—Right of fair comment on matters of public importance.

Criticism, however vigorous, of a judgment or a decision of a court will not constitute contempt of court, if it is made in good faith and is reasonable, even though it contains error; but it is desirable that criticism should be accurate and fair, bearing in mind that the judiciary cannot enter into public controversy and thus cannot reply to criticism (see p. 320, letter G, and p. 321, letters A and F, post).

Dictum of LORD RUSSELL OF KILLOWEN, C.J., in *R. v. Gray* ([1900-03] All E.R. Rep. 59 at p. 62) applied.

[**Editorial Note.** While the decision in the present case shows that the courts are open to criticism by reasonable comment on, or protest at, a judicial act as being contrary to law or to the public good, yet the liberty of the press in this matter is no greater and no less than the liberty of every subject of the Queen. Personal scurrilous abuse of a judge as a judge, for example, is and has always been contempt of court (compare per LORD RUSSELL OF KILLOWEN, C.J., in *R. v. Gray* ([1900-03] All E.R. Rep. at p. 62, letters E, F); so also are publications of matter that are calculated to interfere with the administration of justice.

As to contempt of court by criticism of the administration of justice or by attack on judges, see 8 HALSBURY'S LAWS (3rd Edn.) 7, paras. 8, 9; and for cases, see 16 DIGEST (Repl.) 22-24, 159-179.]

Case referred to:

R. v. Gray, [1900-03] All E.R. Rep. 59; [1900] 2 Q.B. 36; 69 L.J.Q.B. 502; 82 L.T. 534; 64 J.P. 484; 16 Digest (Repl.) 23, 176.

Motion.

This was a motion by the applicant, Albert Raymond Blackburn, by notice dated Feb. 21, 1968, to the Court of Appeal for an order that the Right Honourable Quintin Hogg, P.C., Q.C., M.P., was guilty of contempt of court in that he published in the issue of "Punch" dated Feb. 14, 1968, an article which brought or sought to bring the Court of Appeal into ridicule or contempt or to lower its authority. The facts are set out in the judgment of LORD DENNING, M.R.

The case noted below* was cited during the argument in addition to the one referred to in the judgment of EDMUND DAVIES, L.J.

The applicant appeared in person.

Sir Peter Rawlinson, Q.C., and *J. P. Harris* for the respondent.

LORD DENNING, M.R.: Some few days ago (1) we had before us an application by Mr. Albert Raymond Blackburn, seeking an order of mandamus against the Commissioner of Police of the Metropolis. After that case was

* *Ambard v. A.-G. of Trinidad and Tobago*, [1936] 1 All E.R. 704; [1936] A.C. 322. (1) [1968] 1 All E.R. 763.

reported, the respondent, Mr. Quintin Hogg, wrote an article in "Punch" dated Feb. 14, 1968, under the heading "Political Parley". Mr. Blackburn today moves the court saying that Mr. Quintin Hogg, by this article, has been guilty of contempt.

Let me read the salient passages in the article. It starts:

"The recent judgment of the Court of Appeal is a strange example of the blindness which sometimes descends on the best of judges. The legislation of 1960 and thereafter has been rendered virtually unworkable by the unrealistic, contradictory and, in the leading case, erroneous, decisions of the courts, including the Court of Appeal. So what do they do? Apologise for the expense and trouble they have put the police to? Not a bit of it. Lambaste the police for not enforcing the law which they themselves had rendered unworkable and which is now the subject of a Bill, the manifest purpose of which is to alter it. Pronounce an impending dies irae on a series of parties not before them, whose crime it has been to take advantage of the weaknesses in the decisions of their own court. Criticise the lawyers, who have advised their clients. Blame Parliament for passing Acts which they have interpreted so strangely. Everyone, it seems, is out of step, except the courts... The House of Lords overruled the Court of Appeal... it is to be hoped that the courts will remember the golden rule for judges in the matter of obiter dicta. Silence is always an option."

That article is certainly critical of this court. In so far as it referred to the Court of Appeal, it is admittedly erroneous. This court did not in the gaming cases give any decision which was erroneous, nor one which was overruled by the House of Lords. Is the article, however, a contempt of court?

This is the first case, so far as I know, where this court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us, but which we will most sparingly exercise: more particularly as we ourselves have an interest in the matter. Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication. Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.

So it comes to this. Mr. Quintin Hogg has criticised the court, but in so doing he is exercising his undoubted right. The article contains an error, no doubt, but errors do not make it a contempt of court. We must uphold his right to the uttermost.

I hold this not to be a contempt of court, and would dismiss the application.

SALMON, L.J.: The authority and reputation of our courts are not so frail that their judgments need to be shielded from criticism, even from the criticism of Mr. Quintin Hogg. Their judgments, which can, I think, safely be left to take care of themselves, are often of considerable public importance. It is the inalienable right of everyone to comment fairly on any matter of public

importance. This right is one of the pillars of individual liberty—freedom of speech, which our courts have always unfailingly upheld. It follows that no criticism of a judgment, however vigorous, can amount to contempt of court, providing it keeps within the limits of reasonable courtesy and good faith. The criticism here complained of, however rumbustious, however wide of the mark, whether expressed in good taste or in bad taste, seems to me to be well within those limits.

LORD DENNING, M.R., pointed out on Mr. Blackburn's application for an order of mandamus that there had been decisions of the courts, one recently overruled in the House of Lords, which had introduced doubts into one corner of the field of the gaming law (2). Incidentally, those decisions were not decisions of the Court of Appeal, as Mr. Hogg stated, but that is of little consequence. They, however, hardly excuse the inertia which allowed large gambling empires to be built up before they were delivered.

The purpose of the legislation of 1960 was plain: to do away with the legal taboos on gaming and at the same time to prevent its commercial exploitation. The provisions of the Act of 1960 were clear and effective to achieve the purpose of Parliament—which is more than can be said for some modern legislation. They failed to do so and gambling empires flourished, not because of any fault in the provisions of the Act but for lack of sufficiently energetic action to enforce them.

No one could doubt Mr. Hogg's good faith. I, of course, entirely accept that he had no intention of holding this court up to contempt; nor did he do so. Mr. Blackburn complains that Mr. Hogg has not apologised. There was no reason why he should apologise, for he owes no apology, save, perhaps, to the readers of "Punch" for some of the inaccuracies and inconsistencies which his article contains. I agree that this application should be dismissed.

EDMUND DAVIES, L.J.: The right to fair criticism is part of the birth-right of all subjects of Her Majesty. Though it has its boundaries, that right covers a wide expanse and its curtailment must be jealously guarded against. It applies to the judgments of the courts as to all other topics of public importance. Doubtless it is desirable that critics should, first, be accurate and, secondly, be fair, and that they should particularly remember and be alive to that desirability if those whom they would attack have, in the ordinary course, no means of defending themselves.

In *R. v. Gray* (3), LORD RUSSELL OF KILLOWEN, C.J., said:

"Judges and Courts 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."

Whether, despite his great learning and his distinction as a Queen's Counsel, Mr. Hogg paid proper respect to the standards of accuracy, fairness and good taste when he was composing his "Punch" article may, unhappily, be open to doubt. But whether his article amounted to contempt involves different and graver considerations. For my part also, inaccurate though the article is now acknowledged to be in a material respect, I have no doubt that contempt has not been established, and I would accordingly refuse this application.

My conclusions regarding the fairness and good taste of the article in question are immaterial, and I, therefore, refrain from revealing them. To that extent, and that extent only, I propose to observe what Mr. Hogg, in his article, described as "the golden rule" for judges in relation to obiter dicta, namely that "Silence is always an option".

Application dismissed.

Solicitors: *Bull & Bull* (for the respondent).

[Reported by F. GUTTMAN, Esq., Barrister-at-Law.]

(2) See [1968] 1 All E.R. 767.

(3) [1900] 2 Q.B. 36 at p. 40; [1900-03] All E.R. Rep. 59 at p. 62.