

CONTEMPT OF COURT BY NEWSPAPERS IN ENGLAND AND CANADA*

Contempt of Court Generally.

Contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation.¹

In its origin, all legal contempt will be found to consist in an offence more or less direct against the Sovereign himself as the fountain-head of law and justice, or against his Palace where justice was administered.² Since then it has spread to all Courts of Record, both civil and criminal.

Contempts may be divided into two classes, criminal and not criminal, *i.e.*, civil. Oswald has distinguished them in this way, "Contempts which tend to bring the administration of Justice into scorn, or which tend to interfere with the due course of justice, are criminal in their nature; but that contempt in disregarding orders or judgments of a civil court, or in not doing something ordered to be done in a cause, is not criminal in its nature."³

Another classification is the division into contempts committed in the court itself (*in facie curiae*), such as improper conduct in the court room, and those committed outside the court, such as intimidating a witness.

The usual procedure adopted in cases of contempt of court is the summary process of either a motion for committal or an application for a writ of attachment. (The distinction between an order for committal and an attachment for contempt was formerly considered to be that committal was the proper remedy for doing an act prohibited by injunction or the like, whereas attachment was the remedy for neglecting to do some act ordered to be done.⁴ This distinction is, however, obsolete today and either procedure may be used.) The ordinary criminal procedure by indictment may be employed in cases of contempt, but this is seldom resorted to.⁵

* The present article was awarded the Sir Joseph Chisholm prize at Dalhousie Law School in 1937.

¹ OSWALD, CONTEMPT OF COURT (Can. Edit.) p. 6.

² *Ibid.*

³ *Ibid.*, p. 36.

⁴ ENGLISH AND EMPIRE DIGEST, Vol. 16, p. 47.

⁵ See *R. v. Tibbets and Windust.*, [1902] 1 K.B. 77.

This summary process employed in cases of contempt out of court was introduced into our law due to an historical error. In the case of *Rex v. Almon*⁶ in 1765 Wilmot J. held that the procedure of punishment by the process of attachment without the intervention of a jury was founded upon immemorial usage. Sir John Fox⁷ has pointed out that Wilmot J. was wrong on this point, and that "In early times criminal contempt committed by a stranger out of court was proceeded against like any other trespass in the common law courts, with the assistance of a jury". However, subsequent cases followed *Rex v. Almon* and now this procedure has come to be firmly rooted in our law.

The method of such procedure for contempt committed outside the court is roughly this: one of the parties or counsel in the case out of which the contempt arose draws the court's attention to the alleged offence, then the judge orders that the responsible parties be brought before him and that certain affidavits be filed. When the accused appears, he is given an opportunity to show whether he committed the offence or not, then if the judge is satisfied that a contempt has been committed and that the accused committed it, without further proceedings the accused's punishment, a fine, imprisonment or both, is pronounced.⁸ The person charged with contempt has no right to a jury trial, or to adduce testimony of witnesses on his own behalf, and he may be required to answer interrogatories.⁹

Contempt of Court by Newspapers.

This type of offence consists of the publication of an article or comment concerning a case before the courts or criticism of the judiciary itself which is deemed such as to amount to contempt of court. Such contempt is frequently called "Constructive Contempt" and it is a contempt committed outside the court and usually criminal in its nature. One of the earliest cases of constructive contempt is the *St. James Evening Post Case*¹⁰ in 1742 where Lord Hardwicke made this frequently quoted definition: "There are three different sorts of contempt. One kind of contempt is scandalizing the court itself. There may be likewise a contempt of this court in abusing the parties who are concerned in causes here. There may be also a contempt of this

⁶ See WILMOT, NOTES OF OPINIONS AND JUDGMENTS DELIVERED IN DIFFERENT COURTS, p. 243.

⁷ 24 L.Q.R. pp. 184, 266.

⁸ See *Re Campbell and Cowper*, [1934] 3 W.W.R. 593; [1935] 1 D.L.R. 633.

⁹ *Fournier v. Atty.-Gen.* (1910), 17 C.C.C. 108.

¹⁰ 2 Atk. 469 at p. 471.

court, in prejudicing mankind against persons, before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."

Scandalizing the Court.

"Any act done or writing published calculated to bring a court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court".¹¹ This class belongs to the category which Lord Hardwicke characterized as "Scandalising a Court or a Judge."

A good example of this type of contempt is the case of *Rex v. Editor of the "New Statesman"*,¹² which arose out of a newspaper comment concerning a case in which a well known advocate of birth control was being sued for libel. The article ran in part as follows: "The serious point in this case, however, is that an individual owning to such views as those of Dr. Stopes cannot apparently hope for a fair hearing in a court presided over by Mr. Justice Avory—and there are so many Avorys." In holding this to be a contempt of court, Lord Hewart said:¹³ "It imputed unfairness and lack of impartiality to a Judge in the discharge of his judicial duties. The gravamen of the offence was that by lowering his authority it interfered with the performance of his judicial duties."

In the Canadian case of *Rex v. Ivens*,¹⁴ a newspaper commented on a conviction for conspiracy saying that the accused was tried by "A poisoned jury, by a poisoned Judge and is in gaol because of a poisoned sentence" and referred to the trial Judge as "Tommy Metcalfe". In holding the whole article to be a contempt, the court said: "His contemptuous reference to the presiding Judge as 'Tommy Metcalfe' could only be intended to bring him into contempt and to lower his dignity."

This power to commit for unfavourable criticism of a Judge is, however, subject to some qualifications. "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."¹⁵ Similarly: "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

¹¹ *Reg. v. Gray*, [1900] 2 Q.B. 36 at p. 40.

¹² (1928), 44 T.L.R. 301.

¹³ *Ibid.*, at p. 303.

¹⁴ (1920), 32 C.C.C. 358.

¹⁵ *McLeod v. St. Aubyn*, [1899] A.C. 549 at p. 561.

treat that as contempt of Court. The law ought not to be astute in such cases to criticize adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen."¹⁶ These rules have been accepted both in England and Canada and have been affirmed by the Judicial Committee of the Privy Council.¹⁷

It would seem, however, that the right to comment on a trial and its results must be confined to publications after the case is over, for if such criticism is made while a cause is still pending it might have the tendency to interfere with the fair trial of the issues or parties concerned.

Interfering with a Fair Trial.

The most frequent contempts by newspapers are those cases where the publication is deemed to interfere with the fair trial of some cause, either criminal or civil, which is at the time of the publication before the courts. This may consist of statements made in the press which might prejudice the jury or witnesses against one of the parties to a civil suit, or the accused in a criminal trial, or it may take the form of abuse of parties or witnesses which might cause a party to abandon his case for fear of public opinion or might discourage a witness, who has less at stake than the parties, from giving evidence. It is the province of the tribunal before whom the charge is tried to determine the merits of the case,¹⁸ and the courts are very astute to prevent "trial by newspaper".

A recent illustration of this type of constructive contempt is the English case of *Ex parte McMahan*¹⁹ in which the distributors and producers of cinema news reels were punished for contempt of court in labelling pictures of the incident where a revolver was thrown at the foot of King Edward VIII's horse, as being an attempt to assassinate His Majesty, since at that time McMahan had not been found guilty of any such offence but had merely been arrested and was awaiting trial. It was for the courts and not the newspapers to say whether the accused had attempted an assassination.

¹⁶ *Reg. v. Gray*, [1900] 2 Q.B. 36, at p. 40.

¹⁷ *Re Lincoln Election* (1878), 2 O.A.R. 353, at p. 369; *In re Bahamas*, [1893] A.C. 138 at pp. 148-9.

¹⁸ *Reg. v. Balfour* (1895), 11 T.L.R. 492.

¹⁹ [1936] 2 All E.R. 1514.

The basis for a conviction for this type of contempt is that the tendency of the article in question is to pervert the course of justice. It is not necessary to show that the course of justice has actually been interfered with, but merely that the publication has a tendency to do so, provided that it would probably amount to substantial interference with a fair trial, and not that it is merely "reprehensible."²⁰ "The apprehension of detriment must be of a tangible character, plainly tending to obstruct or prejudice the due administration of justice in the particular case pending. Regard must be had to all the surrounding circumstances, the manner of trial, the time of publication, the causes leading to the publication, and the tenour of what is published."²¹ The fact that the case is being tried before a judge, and not a jury, may be grounds for dismissing a technical offence of contempt since the judge is not likely to be influenced by the newspapers.²² The court may, however, consider it a substantial interference with a case before a judge alone if the article in question is of such a nature that it might prejudice witnesses or deter them from testifying or even that it might cause a party to abandon his case or make a compromise which he would not otherwise make.²³

What may Constitute Interference with a Fair Trial.

It is a contempt of court for a newspaper to publish statements about an accused person which could not be used against him at his trial.²⁴ For example, a newspaper is not permitted to publish an alleged confession of the accused before it has been admitted in evidence,²⁵ or any other statement which is prejudicial to him, such as saying that he is suspected of having committed crimes other than the one with which he is charged.

It has been held to be interference with the course of justice to state which party to a suit will probably succeed,²⁶ or to publish a copy of the statement of claim or the statement of defence while an action is pending,²⁷ or for a solicitor or one of the parties to discuss the merits of his case in the press.²⁸

²⁰ *In the Matter of the "Finance Union."* (1895), 11 T.L.R. 167.

²¹ *Re Lewis* (1915), 34 O.L.R. 518 at p. 521.

²² *Ibid.*; also *Re Rex v. Sollway*, [1936] O.R. 469.

²³ *Ex parte Greene* (1891), 7 T.L.R. 411. *In re Thomas Shipping Co. Ltd.*, [1930] 2 Ch. 368.

²⁴ *R. v. Tibbits*, [1902] 1 K.B. 77.

²⁵ *R. v. Willis and Pople* (1913), 4 W.W.R. 761.

²⁶ *Stoddard v. Prentice* (1898), 5 C.C.C. 103.

²⁷ *Granger v. Brydon-Jack* (1918), 25 B.C.R. 526 at p. 528.

²⁸ *In re Thomas Shipping Co. Ltd.*, *supra*; *Daw v. Eley* (1868) L.R. 7 Eq. 49.

In the case of *Rex v. Daily Mirror*,²⁹ it was held to be a contempt of court to publish a photograph of an accused person in a case where the question of the identity of the accused with the person who committed the crime may arise since this might prejudice witnesses called to identify the prisoner as being the guilty person.

The mere arrangement of news items may be a contempt. In the case of *Rex v. Astor*,³⁰ a newspaper published together in the same article two items of news, the first in relation to a civil cause in connection with a share transaction, the second giving a report of criminal proceedings concerning the same transaction. This was considered to be contempt of court since the jury trying the criminal case might thus have their attention called to the other case with which they were not concerned.

It has been held to be a contempt to criticize a Crown Prosecutor and accuse him of acting without proper authority,³¹ or to publish the possible defence to be pleaded by an accused person³² or under some circumstances to advertise for evidence.³³

In Alberta³⁴ it was considered a contempt for a newspaper to play on public sympathy, in an action to foreclose a mortgage, by telling of the defendant's desertion by her husband and suggesting that she had been defrauded in the transaction.

When there may be Interference with a Fair Trial.

A publication amounts to interference with a fair trial only if it relates to a case pending before the courts. A case is "pending" when the accused has been arrested but not yet committed for trial,³⁵ and remains pending where a trial has ended in the disagreement of the jury, rendering a new trial probable.³⁶ However, once judgement has been delivered, even though the time for entering an appeal has not elapsed, the action is considered to be at an end (in the absence of an appeal being actually entered) and newspapers are free to comment in a fair and reasonable manner.³⁷

²⁹ [1927] 1 K.B. 845.

³⁰ (1913), 30 T.L.R. 10.

³¹ *Re Whiteside* (1915), 9 A.L.R. 232; 26 D.L.R. 615.

³² *R. v. News of the World* (1932), 48 T.L.R. 234.

³³ *Butler v. Butler* (1888), 13 P.D. 73.

³⁴ *Hatfield v. Healy* (1911), 3 A.L.R. 327.

³⁵ *R. v. Parke*, [1903] 2 K.B. 432.

³⁶ *In re Labouchere* (1901), 17 T.L.R. 578; *R. v. Charlier* (1903), 6 C.C.C. 486.

³⁷ *Dunn v. Bevan*, [1922] 1 Ch. 276; *Re Lincoln Election* (1878), 2 O.A.R. 353, at p. 369.

Jurisdiction.

Only Superior Courts of Record have power to deal with cases of contempt committed outside the court.³⁸ The case of *Reg. v. Lefroy*,³⁹ decided that in England the power given to County Courts to deal with contempts⁴⁰ did not extend to contempts committed outside the court. It would appear that the power of County Courts in Nova Scotia in this respect is somewhat broader, since sec. 49 of the County Court Act (R. S. N. S., c. 215) states that a judge of the County Court "Shall have and exercise the same powers and authority—to deal with and punish for contempt—as are possessed by the Supreme Court or any judge thereof in like cases". It also appears that Superior Courts have the power to deal with cases of constructive contempt arising out of comments on the proceedings in an Inferior Court in the same jurisdiction.⁴¹

In Ontario it has been held that an application to attach a person for constructive contempt is a criminal matter and should not be made to a Judge in Chambers.⁴²

Appeals.

Most of the texts and digests state that there is no appeal from an attachment or committal for criminal contempt of court. A study of the cases would suggest that this statement must be qualified. In the case of *Ambard v. Atty.-Gen. for Trinidad and Tobago*,⁴³ the Judicial Committee of the Privy Council allowed an appeal from a committal for constructive contempt by the Supreme Court of Trinidad and Tobago. As to the right of appeal Lord Atkin stated⁴⁴ that acts of contempt of court "Are quasi criminal acts, and orders punishing them should, generally speaking, be treated as orders in criminal cases and leave to appeal against them should only be granted on the well-known principles on which leave to appeal in criminal cases is given." In this case a newspaper had criticised sentences of a trial judge as being too lenient, but the Privy Council was of the opinion that this was fair comment made in good faith and did not amount to contempt of court.

³⁸ *Reg. v. Lefroy* (1873), L.R. 8 Q.B. 134.

³⁹ *Ibid.*

⁴⁰ See 24 & 25 Geo. V., c. 53, s. 139.

⁴¹ *Fournier v. Atty.-Gen.* (1910), 17 C.C.C. 108.

⁴² *Southwicke v. Hare* (1893), 15 P.R. 239.

⁴³ [1936] A.C. 322.

⁴⁴ *Ibid.*, at p. 329.

in 1893 the Supreme Court of Canada held, in the case of *Ellis v. The Queen*,⁴⁵ that no appeal lay to that court in cases of contempt of court as they did not consider this offence "indictable" under the criminal code and hence not one in which they had jurisdiction to hear appeals under the Supreme Court Act. In this case they distinguished their own decision in the *Re O'Brien*⁴⁶ where they heard an appeal in a contempt case basing this right on a section, no longer in existence, of the Supreme Court Act. In the *Ellis Case*, however, the judges said that they were deciding it on the particular circumstances and not solely on the ground that contempt of court was not an indictable offence under the Code, and that they were not overruling their own earlier decision in *Re O'Brien*. Thus it would appear that it is not likely that an appeal from a committal or attachment for contempt would lie to the Supreme Court of Canada unless it could be shown to be an "indictable offence." If the procedure of indictment was used in the lower court it is submitted that an appeal should lie to the Supreme Court of Canada, but there has been no decision, as far as we have been able to discover, on this point. It is submitted that since the Judicial Committee's decision in the *Tobago Case*, other courts of Criminal Appeal should review decisions in contempt cases wherever they have jurisdiction to hear criminal appeals. Of course there could be no appeal to the Privy Council since no such right exists in Canada in respect of criminal cases.

The Quebec case of *Fournier v. Attorney-General*,⁴⁷ states that in cases of contempt of court an appeal lies to decide: (a) whether or not there was jurisdiction in the court below; (b) whether what was adjudged a contempt is such in law; and (c) whether the punishment was authorized by law. It was on the second ground that the appeal was allowed in the *Trinidad and Tobago Case*.

In the Alberta case of *Re Campbell and Cowper*,⁴⁸ which arose out of newspaper comments on the Brownlee seduction case, the Court of Appeal held that the offenders had no appeal since the trial judge had acted within his proper jurisdiction. They, however, criticised his procedure in not allowing counsel for the accused publishers to have an adjournment to prepare arguments, and stated that "In a criminal contempt case where the person charged may lose his liberty it is all important that

⁴⁵ (1893), 22 S.C.R. 7.

⁴⁶ (1889), 16 S.C.R. 197.

⁴⁷ (1910), 17 C.C.C. 108.

⁴⁸ [1934] 3 W.W.R. 593; [1935] 1 D.L.R. 633.

the Courts should proceed with extraordinary care in the exercise of an extraordinary power," thus confirming a principle frequently laid down in earlier cases. Since the *Trinidad and Tobago Case*, the case of *Re Campbell and Cowper* may well be considered wrong on the point that the appeal could not be heard although probably the same conclusions would be arrived at, namely that no appeal could be allowed in the particular circumstances, so it is not likely that any injustice was done.

Defences.

There are few defences to a charge of constructive contempt except possibly that the publication in question was fair and reasonable comment not tending to interfere with the fair trial of any cause before the courts, or that if technically there was a contempt it was not substantial enough to merit punishment.

It is no defence for an editor to show that he was not aware that the contemptuous article was being published because it is his duty to guard against committing such offences, nor is it a defence for him to say that he did not consider the article to be a contempt. Likewise, the truth of the statements published is no defence to a contempt in interfering with a fair trial, since the object of this branch of the law is to prevent "trial by newspaper".

It has been held that the Crown has a right to pardon offences of contempt of court in the same way as other criminal offences, if they are in their nature merely punitive.⁴⁹

Criticism.

In an article entitled *Procedure for Constructive Contempt*,⁵⁰ Professor Laski criticises the procedure applied in this branch of the law. He contends that criticism of judges and courts is necessary to keep judicial temper at its proper level since judges are human, and therefore fallible beings. He goes on to point out that in cases of contempt for scandalizing the court it is usually the judge criticised who decides whether or not there has been a contempt of court and the same judge also imposes the sentence. He considers this an injustice since the judge who has been abused will probably be prejudiced against the publication. He states that the person accused of contempt

⁴⁹ *In the matter of a Special Reference from the Bahama Islands.*, [1893] A.C. 138.

⁵⁰ LASKI, *STUDIES IN LAW AND POLITICS*, p. 222; (1928), 41 *Harv. L. Rev.* 1031.

has no opportunity to justify his act, no right of appeal and that there is no prerogative of pardon. He contrasts the American practice in some jurisdictions which, in cases of contempts committed outside the court, allow the accused a reasonable opportunity to prepare his case, the right to assistance of counsel and the right to call witnesses either in total disproof or partial mitigation of his alleged offence.

To remedy these evils which he alleges, he suggests that the following changes be made in the law relating to constructive contempts: (a) abolish completely the procedure by attachment; (b) have the trial in the form of an ordinary action of libel with a jury; (c) make the penalties for such an offence definite; (d) give the accused a right to appeal and a right to pardon by the Crown.

As to the right to appeal from a committal for contempt of court and the right of the Crown to pardon, it is submitted that the cases discussed above show that Professor Laski is wrong in this respect. Similarly it has been held that a person accused of contempt must be given an opportunity to answer the accusation.⁵¹

It will be noted that in many cases which we have classified as "Scandalizing the Court," the charge of contempt is heard before different judge or judges than the one who has been censured by the publication. This was the practice in two Canadian cases,⁵² so that there is not the same danger of prejudice as there is in the case where the judge who has been criticised decides the case himself.

As to the right to call witnesses it is submitted that they can be of no value since, if the accused was responsible for the publication in question, the only question at issue is whether or not the statements published amount to a contempt, which is a matter of judicial discretion and not a question of fact on which witnesses should be heard. They might, of course, be of some use in proving mitigating circumstances.

It should be noted that Professor Laski confines his criticism to the procedure and not the principles of the law of contempt, and also that he does not mention cases of interfering with the fair trial of an issue before the courts, from which we may infer that he approves of the practice followed in such cases.

⁵¹ *R. v. Evans* (1915), 21 B.C.R. 322; 24 C.C.C. 125.

⁵² *Fournier v. Atty.-Gen.*, *supra*; *R. v. Ivens* (1920), 32 C.C.C. 358; 51 D.L.R. 38.

Sir John Fox⁵³ has made criticisms similar to those of Professor Laski, as has Professor Beale⁵⁴ who is of the opinion that the summary process should be used only in cases of contempt in the face of the court and that trial by jury should be the practice in all other cases of contempt.

Another critic of the law of constructive contempt is Arthur E. Hughes⁵⁵ who directs his comments chiefly against the case of *Reg. v. Gray*,⁵⁶ where there was a committal for scandalizing the Court at a time when no case was pending before it. He submits that in all other cases there has been a case before the courts at the time of the publication. However, we must distinguish between cases of interfering with a fair trial and those which bring the courts into disrespect or disregard and the case of *Reg. v. Gray* has been approved of by many subsequent cases so that we must accept it as good law today.

In England more cases of contempt of court by newspapers arise than in Canada or the United States. This is not because the English press more frequently commits this offence, but because the law in this respect is more rigidly enforced in England. Greater liberties are allowed the press in America than in England as a writer has pointed out in commenting on the Hauptmann trial⁵⁷ in 1935. That case was tried for months in the press and by the newspapers to a degree which some English lawyers consider would have been grounds for quashing the conviction had the trial taken place in England. The strict English practice is well illustrated by the recent case of *Re McMahon* discussed earlier.

The principle of preventing trial by newspapers seems to be approved by most writers on the subject. It is a question of the freedom of the press on the one hand and the right of fair trial in Courts of Justice on the other. The press have a right to make public what takes place in the courts but not to prejudice a case at hand by criticism or predicting what will be told in court. They also have the right to criticise in a fair manner, after the case is over, so it is difficult to see how the law of constructive contempt greatly hinders the freedom of press.

The chief criticism of this branch of the law is, as we have noted, directed to the summary method adopted in dealing with

⁵³ 36 L.Q.R. 394 (1920).

⁵⁴ 21 Harv. L. Rev. 161 (1908).

⁵⁵ 16 L.Q.R. 292 (1900).

⁵⁶ [1900] 2 Q.B. 36.

⁵⁷ *The Hauptmann Trial in the Light of English Criminal Procedure*, (1935), 21 American Bar Journal, 301.

such cases. It is submitted, however, that in dealing with contempts of the type considered to amount to interference with the fair trial of a case before the courts the summary method is the best procedure to adopt since the circumstances call for "Striking while the iron is hot", so to speak, in order to prevent further chance of miscarriage of justice in the case at bar and to establish a warning to other newspapers. This type of contempt is in effect very similar to those committed in the face of the court itself and must be dealt with promptly in order to keep the court functioning without improper interference.

As to questions of contempt by scandalizing the court there is not the need for such prompt action and there could be no substantial objection to the process of indictment as used in other criminal offences, whereas, as Professor Laski has pointed out, the summary method of committal or attachment does not assure the fair trial of a person accused of contempt.

It would seem that the underlying principle involved in cases of scandalizing the court is that they constitute interference with the proper functioning of the courts in general, as distinguished from cases of interference with a particular trial out of which the comments arose, and that the purpose, as we have noticed before, is not to vindicate verbal attacks on a particular judge. For this reason it is submitted that an action for libel, which some writers suggest to be the proper method to adopt, is not appropriate to deal with cases of scandalizing the court because such an offence is essentially criminal, yet not in the nature of a criminal libel. An action for libel, however, would be the proper form of action in cases where the publication has slandered a judge in his personal capacity.

It is submitted that no change is required in the law to remedy any evils alleged to exist but merely a change in practice. The law recognizes the procedure by indictment in cases of contempt of court, and it is only necessary that this method be called into more frequent use in cases of contempt by scandalizing the court. In other cases of contempt the prerogative of pardon and the right of appeal are sufficient safeguards against any injustice which might be done by adopting the summary procedure. The few cases of constructive contempt which can be considered to have been unjust in their result suggest that there is no real need to apply greater safeguards for persons accused of this offence.

Although it would appear from the cases discussed that the law of constructive contempt is the same in Canada as in England,

it is not as frequently applied in the former⁵⁸. In the latter, fair trials and respect for the law and the courts are considered of greater importance than unlimited freedom of speech. The incidental restrictions on the press are analagous to those imposed by the law of libel and should likewise result in greater caution on the part of publishers. The members of the legal profession in Canada should consider it their duty to assist in more frequent enforcement of this branch of the law in order that the administration of justice may conform to the British standards, respected throughout the world.⁵⁹

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⁵⁸ But see *Re Rex v. Solloway*, [1936] O.R. 469; *Re Rex v. Wallbridge*, [1936] O.R. 482, and Comment in 14 Can. Bar Rev. 771; See also *Rex v. Arthur Bannister* (1936), 10 M.P.R. 391.

⁵⁹ On this whole topic, see an article by Professor A. L. Goodhart in 48 Harv. L. Rev. 885.