1/1981

IN THE PRIVY COUNCIL No. 25 of 1979

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN

CHARLES WOODROW WRIGHT — Appellant / Plaintiff

- and -

THE GLEANER COMPANY LIMITED — Respondent / Defendant

CASE FOR THE RESPONDENT

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1. This is an appeal from a judgment of the Court of Appeal of Jamaica (Henry JA, Melville JA and Carberry JA) dated the 21st February 1979 which allowed the Respondent's appeal from the judgment entered for the Appellant after a trial before Wilkie J and a special jury, whereby it was ordered that the Respondent should pay to the Appellant damages of $2,000 and the costs of the action. The order of the Court of Appeal was for a new trial of the action. p. 46 p. 42

2. This is a libel action. This appeal raises the following questions for decision :

(i) whether the learned trial Judge properly directed the jury upon the following issues in the action :

(a) the defence of justification;

(b) the defence that the words complained of were privileged as being a fair and accurate report of judicial proceedings;

(c) the meaning of the words complained of;

(d) the issue of damages.

(ii) whether the Court of Appeal for Jamaica ought to have entered judgment for the Respondent instead of ordering a new trial of the action.

3. The Respondent publishes a newspaper circulating in Jamaica and entitled "The Star". The
p. 63 issue for 29th January 1973 included a lengthy report of proceedings for divorce brought against the Appellant by his then wife which had been heard in open
p. 77 court on 26th January 1973.

4. The complaint of the Appellant in this action is limited to a single short paragraph from the report published in "The Star". The paragraph complained of read as follows :

p. 65, l. 22 "Petitioner said that the respondent became ill in December 1971 and was admitted to Bellevue Hospital as a patient of Dr. Kenneth Royes. He left the hospital before he was discharged and accused her of conniving with the doctor to keep him there".

p. 1 5. On the 18th September 1973 the Appellant commenced proceedings against the Respondent for
p. 2, l. 3 damages for libel. The complaint was limited to the words set out in paragraph 4 hereof. The Appellant contended that the said words were defamatory of him by unnuendo in that they meant that he was mentally ill and was hospitalised in a mental institution.

p. 2, l. 11 6. In paragraph 4 of the Statement of Claim there were pleaded the particulars relied upon by the Appellant to support the innuendo meaning. The material particulars were :

(b) the only Bellevue Hospital in Jamaica is a mental asylum.

(c) Dr. Kenneth Royes was at all material times a Psychiatrist and Senior Medical Officer (acting) attached to Bellevue Hospital.

7. The Appellant complained that the said paragraph from the report in the newspaper was "an unwarranted libel" upon him because, according to his

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solicitors' letters dated March 12th and April 16th 1973, he had never been admitted to Bellevue Hospital and further had never been a patient of the psychiatrist Dr. Royes or been treated by him. It was implicit in the said letters that the Appellant had not at any material time required or received psychiatric treatment. p. 67 p. 72

8. By its Defence the Respondent : p. 3

(i) denied that the words complained of were defamatory of the Appellant;

(ii) contended in the alternative that the said words were a fair and accurate report of the divorce proceedings heard on 26th January 1973 and therefore were absolutely privileged;

(iii) contended in the further alternative that the words were true in substance and fact.

The Respondent further denied the damage alleged and relied in mitigation upon the offer made to publish an apology in the newspaper.

9. Shortly before the trial started the Respondent served upon the Appellant Notice to Admit the following facts : p. 6

(1) that the Appellant was a patient at St. Joseph's Hospital between the 5th and 18th August 1972;

(2) that Dr. Royes saw and treated the Appellant at the said Hospital during the said period and, if so, on what dates;

(3) that the Appellant received bills for medical treatment received during the month of August 1972.

The Respondent further served Notice to Admit certain documents relating to the medical treatment received by the Appellant. The Appellant did not, however, admit any of the facts set out above; nor did he produce the documents referred to above. p. 7

10. At the trial, which commenced on 19th May 1975, the Appellant in his evidence in chief maintained p. 8

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p.9, l.53 his denial that he had been admitted to Bellevue Hospital
p.9, l.55 or that he ever had been the patient of Dr. Royes. The Appellant further gave evidence in chief that, following the publication of the report complained of, he had seen
p.11, l.21 writings on the wall and posters at his place of work
l.40 which referred to him as "the mad man". The Appellant further gave evidence of a tentative business deal
p.12, l.33 which he claimed to have lost as a result of the pub-
p.12, l.44 lication complained of.

11. In cross-examination the Appellant conceded that
p.15, l.51 between 5th and 18th August 1972 he was in Saint Joseph Hospital. But the Appellant testified :

p.15, l.52 (i) that he was in hospital for shingles;

p.16, l.2 (ii) that he was not admitted to hospital suffering from paranoid depression;

p.15, l.41 (iii) that he was not treated by Dr. Kenneth
p.17, l.19 Royes;

p.16, l.14 (iv) that he had not seen or been given an injection by Dr. Royes during his time in hospital.

p.16, l.49 The Appellant agreed he had left hospital in his dressing gown and that he discharged himself.

12. On 20th May 1975 Leading Counsel for the Appel-
p.28, l.13 lant, after he had closed his case, made the following admissions on behalf of his client :

(i) that the Appellant had been admitted to St. Joseph's Hospital for shingles and for paranoid depression;

(ii) that Dr. Royes had treated the Appellant in hospital;

(iii) that Dr. Royes had seen the Appellant on more than one occasion and had himself administered an injection.

In the light of these admissions the Respondent called no evidence.

13. The learned Judge summed up on 20th May 1975.

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Five questions are left to the jury, namely : p.41, l.13

1. Are the words in their natural and ordinary meaning defamatory of the Plaintiff. Yes or No?

2. Are the words a fair and accurate report of the proceedings in the divorce proceedings?

3. Are the words substantially true. Yes or No?

4. Is the apology sufficient? If Yes (sic).

5. How much damages?

The jury answered the first question in the affirmative, the second and third questions in the negative and awarded the Appellant $2,000 damages. p.42, l.17

14. The Respondent appealed to the Court of Appeal of Jamaica (Henry JA, Melville JA and Carberry JA). On 12th July 1978 the Court of Appeal gave judgment allowing the Respondent's appeal with costs and directing a new trial of the action. p.45

On 21st January 1979 the Court of Appeal gave their reasons for allowing the appeal. Carberry JA in his judgment, with which Henry JA and Melville JA agreed, held : p.46

(i) that the trial Judge had misdirected the jury on the issue of justification; p.57, l.32

(ii) that the trial Judge's directions on the issue of damages were inadequate. p.60, l.36

As to the further grounds of appeal, Carberry JA held that the complaints of the Respondent as to the directions on the issue of privilege were not justified. p.60, l.1 Carberry JA expressed no decided view on the Respondent's contention that the verdict of the jury was unreasonable in as much as the Court of Appeal had ordered a new trial of the action before another jury. p.52, l.28

15. On 16th July 1979 the Court of Appeal of Jamaica made an Order giving final leave to the p.62

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Appellant to appeal to Her Majesty in Council.

16. By petition lodged on 8th January 1980 the Respondent prayed for special leave to appeal to Her Majesty in Council from so much of the judgment of the Court of Appeal of Jamaica as ordered that there should be a new trial of the action. By the said petition the Respondent sought leave to contend before Her Majesty in Council that the Court of Appeal should have entered judgment for the Respondent.

17. The Respondent submits that this appeal should be dismissed with costs for the following, amongst other

R E A S O N S

1. BECAUSE in his summing-up in relation to the issue of justification, the learned Judge wrongly directed the Jury that, for this defence to succeed, the Respondent had to satisfy them that
p. 36, l. 17 every material part of the alleged libel was true. He further wrongly directed the Jury that a plea
p. 36, l. 28 of justification means that all the words were true including any imputations conveyed to those words.

2. BECAUSE in so directing the Jury the learned Judge was imposing an excessive burden of proof upon the Respondent. A defendant pleading justification is required to establish no more than the substantial truth of the sting of the libel: Edwards v. Bell [1824] 1 Bing 403; Clarke v. Taylor [1836] 3 Scott 95; Sutherland v. Stopes [1925] A.C. 47. Such a defendant is not required to prove the truth of matters which do not add to the sting of the libel. It is accepted that the learned trial Judge posed the
p. 39, l. 34 question for the jury whether the substance of the libel had been justified to their satisfaction. But he did so briefly and at a later stage in his summing-up after reviewing the evidence. The learned Judge gave little, if any, assistance to the jury on the vital questions what was the sting or gist of the libel and whether that sting or gist had been proved to be substantially true.
p. 57, l. 32 Carberry JA in the Court of Appeal was right to say that the direction to the jury on this aspect of the case was insufficient.

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3. BECAUSE the summing-up of the learned Judge on the issue of justification ignored the reality of what had taken place during the trial. The sting of the words complained of was that the Appellant had been mentally ill. Both before the trial and in the course of his sworn evidence at trial the Appellant denied the truth of this charge. The effect of the admissions made after the close of the Appellant's case was that, contrary to the sworn evidence of the Appellant, he had been admitted to hospital suffering from paranoid depression and there been treated by a psychiatrist. The sting of the libel was therefore justified. Neither the identity of the hospital nor the date of the Plaintiff's admission materially added to the sting. The learned Judge should have directed the jury accordingly. Moreover he could and should have directed the jury as to the consequence of the admissions made on behalf of the Appellant by his Counsel.

p. 67 p. 9
p. 72 p. 16
p. 28, l. 13

4. BECAUSE the summing-up contained further directions that were either wrong in law or insufficient. Firstly, the Appellant's case was that the words complained of were defamatory of him by innuendo. Yet the learned trial Judge suggested to the jury that the issue was whether the words were defamatory in their natural and ordinary meaning. The learned Judge wrongly suggested that the Appellant's reaction when he read the words complained of was relevant to the issue as to the meaning of the words. It is for the jury to decide what the words would convey to ordinary reasonable readers of the newspaper. By directing the jury that "the law that falsely imputing insanity or mental affliction to a man is defamatory in itself", the learned Judge confused the issues of meaning and justification and arrogated to himself a decision which it was for the jury to make.

p. 32, l. 23
p. 32, l. 36
p. 34, l. 5

5. BECAUSE further the learned Judge did not put to the jury the Respondent's case as to the meaning of the words, namely that they did not bear the innuendo meaning pleaded on behalf of the Appellant because there was no alternatively sufficient evidence that the extrinsic facts relied

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on were known to readers of The Star : see Lewis v. Daily Telegraph [1964] AC 234; Fullam v. Newcastle Chronicle [1977] 1 WLR 651.

6. BECAUSE the learned Judge failed properly
p. 34, l. 23 to direct the jury on the issue of privilege as being a fair and accurate report of judicial proceedings. The Respondent conceded throughout that the date of the Appellant's illness and the identity of the hospital were incorrectly stated in the newspaper report. The Respondent's case was that, despite these admitted inaccuracies, the report taken as a whole was neither substantially inaccurate nor substantially unfair in relation to the Appellant. It is submitted that this is the proper test for deciding whether such a report is privileged : see Cook v. Alexander [1974] QB 279. The learned Judge erred in failing so to direct the jury. He should have reminded the jury of the substantial parts of the newspaper report of which the Appellant did not complain. He ought further to have directed the jury that, if they found for the Respondent on the issue of justification, they ought to find in favour of the Respondent on the issue of privilege.

7. BECAUSE the summing up of the learned Judge
p. 40, l. 36 on the issue of damages was inadequate. It was inadequate in the following respects :

(i) the Judge failed to direct the jury to consider the damage to the reputation of the Appellant in the light of those parts of the newspaper report of which he did not complain and those parts of the newspaper report of which he did complain but of which the truth was established.

(ii) although no special damage was claimed by the Appellant, the Judge wrongly
p. 40, l. 36 directed the jury to consider the loss suffered by the Appellant, and referred in
p. 41, l. 9 detail to evidence about the loss of a business opportunity.

(iii) the Judge failed to direct the jury that the
p. 41, l. 1 paintings on the wall, the placard and the

anonymous telephone calls were relevant (if at all) to injury to the feelings of the Appellant and not otherwise.

(iv) the Judge wrongly directed the jury that in order effectively to mitigate the damages the apology tendered on behalf of the Respondent had to be shown to amount to a full and frank withdrawal of the charges and imputations made against the Appellant. p. 40, l. 9

20. In the event that this appeal is dismissed the Respondent further submits that the Court of Appeal of Jamaica was wrong to order a new trial and should have entered judgment for the Respondent for the following, amongst other

R E A S O N S

1. BECAUSE in the light of the admissions made on behalf of the Appellant by his Counsel the only possible verdict was that the words complained of were substantially true

2. BECAUSE the verdict of the jury was in all the circumstances of the case perverse and unreasonable

3. BECAUSE Carberry JA in the Court of Appeal was wrong to hold the Court of Appeal was not entitled to substitute their own views upon the matter and in all the circumstances of the case ought to have done so.

CHARLES GRAY

PETER BOWSHER

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