

1/81

IN THE PRIVY COUNCIL

No. 25 of 1979

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

CHARLES WOODROW WRIGHT

Appellant
(Plaintiff)

- and -

THE GLEANER COMPANY LIMITED

Respondent
(Defendant)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
Westminster,
London, SW1E 6HB

SIMMONS & SIMMONS,
14 Dominion Street,
London, EC2M 2RJ

Solicitors for the Appellant

Solicitors for the Respondent

O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

CHARLES WOODROW WRIGHT Appellant
(Plaintiff)

- and -

THE GLEANER COMPANY LIMITED Respondent
(Defendant)

RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

CHARLES WOODROW WRIGHT Appellant
(Plaintiff)

- and -

THE GLEANER COMPANY LIMITED Respondent
(Defendant)

10

RECORD OF PROCEEDINGS

No.1

Statement of Claim

Suit No. C.L. 1164 of 1973

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
COMMON LAW

BETWEEN CHARLES WOODROW WRIGHT PLAINTIFF

A N D THE GLEANER COMPANY LIMITED DEFENDANT

In the
Supreme
Court

No.1
Statement
of Claim

18th
September
1973

20

1. The Plaintiff is and was at all material times an Engineer employed to Jamaica Public Service Company Limited.

2. The Defendant is and was at all material times the proprietors and publishers of "THE STAR" a newspaper having a wide circulation throughout the island.

30

3. On page 5 of the issue of the said newspaper dated Monday, January 29, 1973 under the heading "CRUEL HUBBY CAUSED WIFE TO HAVE MANY MISCARRIAGES", the Defendant falsely and maliciously printed and published of and

In the
Supreme Court

No.1
Statement of
Claim
18th September
1973
(continued)

concerning the Plaintiff the following
words :-

"Petitioner said that 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."

10

4. By the said words the Defendant meant and was understood to mean that the Plaintiff was mentally ill and was hospitalised in a mental institution.

PARTICULARS PURSUANT TO SECTION
170(2) of CAP.177

(a) The Plaintiff was the Respondent in Divorce proceedings in respect of which the aforementioned words were published.

20

(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 the Bellevue Hospital.

5. The Plaintiff has in consequence been gravely injured in character, credit and reputation, and has been brought into public scandal, odium and contempt.

30

AND THE PLAINTIFF CLAIMS DAMAGES

S E T T L E D
(Sgd) H.L. da Costa
H.L. DaCOSTA, Q.C.

D A T E D the 18th day of September,
1973.

K.C. BURKE & CO.
ATTORNEYS-AT-LAW FOR THE PLAINTIFF

FILED and DELIVERED by K.C. BURKE & CO. of 40
47 Duke Street, Kingston, Attorneys-at-Law
for the Plaintiff this 18th day of September
1973.

Suit No. C. L. 1164 of 1973

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
COMMON LAW

BETWEEN CHARLES WOODROW WRIGHT PLAINTIFF
A N D THE GLEANER COMPANY
LIMITED DEFENDANT

- 10 1. The Defendant makes no admission as to paragraph 1 of the Statement of Claim.
2. The Defendant admits paragraph 2 of the Statement of Claim.
3. The Defendant admits that it published the words set out in paragraph 3 of the Statement of Claim but denies that it published the said words falsely or maliciously of the Plaintiff.
- 20 4. The Defendant denies that the said words were published with the meanings or any of them as alleged in paragraph 4 of the Statement of Claim or that the said words are capable of bearing any meaning defamatory of the Plaintiff as alleged.
- 30 5. Further or in the alternative, the Defendant says that the words referred to in paragraph 3 of the Statement of Claim were a fair and accurate report published in the said newspaper of proceedings in public of the Supreme Court of Judicature of Jamaica and therefore the alleged occasion of publication was an occasion of absolute privilege.
- 40 6. Further or in the alternative, the Defendant says that the words set out in paragraph 3 of the Statement of Claim are in their natural and original meaning and without the meanings alleged in paragraph 4 of the Statement of Claim, true in substance and in fact.

PARTICULARS

The Plaintiff's former wife gave evidence to this effect on the hearing of the Petition in

In the
Supreme Court

No.2
Defence
3rd December
1973
(continued)

Wright vs Wright Suit No. D1100 of 1972,
on the 26th day of January 1973.

7. Further or in the alternative, the Defendant says that, if (which is denied) the said words referred to in paragraph 3 of the Statement of Claim were not true in substance or in fact or alternatively, were capable of bearing any meaning defamatory of the Plaintiff, the Defendant will give in evidence the fact that it offered to make an apology to the Plaintiff but that the Plaintiff by his Attorney at Law rejected the said offer. 10
8. The Defendant denies that the Plaintiff has been seriously injured either in his character or his credit or his reputation and either in the way of his office or his calling or his profession. The Defendant further denies that the Plaintiff has been brought into public scandal or odium or contempt or that he has been lowered in the estimation of right thinking members of the society generally. 20
9. Save as is hereinbefore expressly admitted the Defendant denies each and every allegation contained in the Statement of Claim as if the same were herein set out and traversed seriatim.

SETTLED

(Sgd) Norman W. Hill 30
NORMAN W. HILL
December 3, 1973

FILED AND DELIVERED this 6th day of
December 1973 by MILHOLLAND, ASHENHEIM &
STONE of No.11 Duke Street, Kingston,
Attorneys-at-Law for the abovenamed
Defendant.

No. 3

Defendant's Notice to
Produce

In the
Supreme Court

No. 3
Defendant's
Notice to
Produce

(Undated)

SUIT NO. C. L. 1164 of 1973

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
COMMON LAW

BETWEEN CHARLES WOODROW WRIGHT PLAINTIFF
AND THE GLEANER COMPANY
LIMITED DEFENDANT

10

TAKE NOTICE that you are hereby required to produce and show to the Court at the trial of this action all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this action and in particular :

(a) Letter of 4th April 1973 along with enclosure.

20

(b) Letter of 25th April 1973

(c) All medical records, bills and receipts involving the Plaintiff's admission to, treatment at and discharge from St. Joseph's Hospital in or about the month of August 1972.

30

(d) All doctor's bills and receipts in respect of medical treatment to the Plaintiff during the month of August 1972.

DATED the day of 1975.

Milholland, Ashenheim & Stone
Attorneys-at-Law for the Defendant

TO: The Plaintiff
Or His
Attorneys-at-Law
Messrs. K.C. Burke & Co.
47 Duke Street, Kingston

40

FILED by MILHOLLAND, ASHENHEIM & STONE of No. 11
Duke Street, Kingston, Attorneys at Law for
the abovenamed Defendant.

In the
Supreme Court

No.4
Defendant's
Notice to admit
facts
9th May 1975

No. 4

Defendant's Notice
to admit facts

Suit No. C. L. 1164 of 1973

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
COMMON LAW

BETWEEN CHARLES WOODROW WRIGHT PLAINTIFF
AND THE GLEANER COMPANY
LIMITED DEFENDANT

TAKE NOTICE that the Defendant in this 10
action requires the Plaintiff to admit, for
the purposes of this action only, the several
facts respectively hereunder specified, and
the Plaintiff is hereby required, within six
days of the service of the Notice to admit
the said several facts saving all just
exceptions to the admissibility of such
facts as evidence in this action.

DATED the 9th day of May 1975.

Milholland, Ashenheim & Stone 20
Attorneys-at-Law for the Defendant

To: The abovenamed Plaintiff
Or His
Attorneys-at-Law
Messrs. K.C.Burke & Co.,
47 Duke Street,
Kingston.

The facts the admission of which is
required are :

1. That the Plaintiff was a patient at 30
St. Joseph's Hospital between the 5th
and the 18th August, 1972.
2. That Dr. Royes saw and treated the
Plaintiff at the said Hospital during
the said period and, if so, on what
dates.
3. That the Plaintiff received bills for
medical treatment received during the
month of August 1972.

FILED by MILHOLLAND, ASHENHEIM & STONE of 40
No.11 Duke Street, Kingston, Attorneys at Law
for the abovenamed Defendant.

Defendant's Notice to
admit documents

No.5
Defendant's
Notice to
admit documents
12th May 1975

Suit No. C. L. 1164 of 1973

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
COMMON LAW

BETWEEN CHARLES WOODROW WRIGHT PLAINTIFF
AND THE GLEANER COMPANY
LIMITED DEFENDANT

10 TAKE NOTICE that the Defendant in this
cause proposes to adduce in evidence the
several documents hereunder specified, and
that the same may be inspected by the Plaintiff,
his Attorney-at-Law or agent at the offices
of Milholland, Ashenheim & Stone 11 Duke Street,
Kingston on Tuesday the 13th day of May 1975
between the hours of 10:00 a.m. and 1:00 p.m.
and between the hours of 2:15 p.m. and
20 4:30 p.m.; and the Plaintiff is required,
within forty-eight hours from the last
mentioned hour to admit that such of the said
documents as they purport respectively to have
been; that such as are specified as copies are
true copies and further that such documents
constitute evidence that the statements
therein appearing to have been made by the
witnesses named in such documents were so made.

DATED the 12th day of May 1975.

30 Milholland, Ashenheim & Stone
Attorneys-at-Law for the Defendant

TO: The abovenamed Plaintiff
Or His
Attorneys-at-Law
Messrs. K.C. Burke & Co.
47 Duke Street, Kingston

The documents the admission of which is
required above are :

40 A typed copy of the notes of evidence
taken by the Hon. Mr. Justice Rowe in
the Supreme Court of Judicature of Jamaica
on the 26th day of January 1973 at the
hearing of Suit No. 1100/72 between Lena
Lee Wright and Charles Woodrow Wright.

FILED by MILHOLLAND, ASHENHEIM & STONE of No.11
Duke Street, Kingston, Attorneys at Law for the
abovenamed Defendant.

In the
Supreme Court

No.6
Proceedings

19th May 1975

No. 6

Proceedings

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE HIGH COURT OF JUSTICE
IN COMMON LAW
C.L. 1164/73

19.5.75

BETWEEN CHARLES WRIGHT PLAINTIFF
AND THE GLEANER COMPANY
LIMITED DEFENDANT 10

Mr. H.DaCosta Q.C. with Mr. Berthon
McCaully Q.C. and Mr. K.C.Burke for Plaintiff.

Mr. Norman Hill Q.C. and Mr. Richard
Ashenheim for Defendant.

Jury empanelled

Miss Grace Buller Secretary	
Mrs. Barbara Boopsingh	Scientific Officer
Mr. Gilbert Denning	Householder
Mr. Noel Fraser	Householder
Lloyd Hennie	Proprietor 20
Wayne Hosang	Managing Director
Ralston Chin	Managing Director

Mr. DaCosta opens

Solmard on Tort's 16th edition page 142
para.148 Halsbury 3rd edition volume 24
Page 23 para.44.

Plaintiff's
evidence

No.7
Charles Woodrow
Wright
Examination

No. 7

Charles Woodrow Wright

CHARLES WOODROW WRIGHT - Sworn

Living 6 Elmwood Terrace Forrest Hill 30
Saint Andrew P.O. Box 371 Kingston 10.
Mechanical Engineer by profession Diploma
Royal Tech. College Glasgow, its now known
as Strat. Clyde University Glasgow also
Diploma from City & Guilds of London
Institute in Metal Work first class. This
Diploma was got before my diploma in
Engineering. This entitles me to construct
Steel towers, truck bodies - Grills Hydro

electric components Turbo generator components etc, etc. Been qualified as a Mechanical Engineer over 20 years. Since qualified as a Mechanical Engineer have been continuously engaged in engineering.

In the
Supreme Court
Plaintiff's
evidence

No.7
Charles
Woodrow Wright
Examination
19th May 1975
(continued)

10 Present occupation is service supervisor in charge of Workshop of Jamaica Public Service Company Orange Street. Have been with the Company from 14.11.60. Working week is 5 working days. I am on call on Saturday and Sundays and Public Holidays. In December 71 at work everyday of that month including Saturday and Sundays Christmas Day and Boxing Day. Was formerly married to one Lena Lee Wright now divorced. Divorced in January 1973. My wife was the Petitioner when I was the Respondent. I did not defend the proceedings. Know Star News owned by the Gleaner Company Ltd.

20 Star Newspaper tendered and administered Exhibit 1. Shown to witness (page 5 5th column) I have read this paper before on 29th January 73 about 5.15 p.m. This is the date of this issue. I purpotes to carry a report of the Divorce proceedings. Headline is Cruel Hubby Caused Wife to have many miscarriages.

30 I bought a copy of the newspaper and I read the article on the same day at about 5.15 p.m. After reading the article I was upset and angry. Bought copy of the paper on the Public Service Compound on Orange Street. Bought it from a Star boy. I usually buy the star on the compound of Jamaica Public Service from the Star boys who came there every working day. Other employees buy the star from the star boy its well patronised by Jamaica Public Service. When I bought my copy saw other employees buy the star at the same time as myself. After I read the article I was upset I got 2 phone calls. I was still upset after the phone calls. What upset me in the article chiefly column 5 (Passage read "Petitioner said..... there"). This was the passage that chiefly upset me. Upset by this passage because it was not true.

0 I was not ill in 1971, that includes December 1971 I was not ill. I was not ill in 1971 went to work everyday and was on call on Saturday Sunday Christmas and Boxing Day. Secondly I was never a patient at the Bellevue Hospital at any time neither outdoor or indoor. I was never admitted at any time to Bellevue Hospital. Passage untrue as I was never a patient of Doctor Kenneth Royes. First sentence of passage the name Kenneth Royes. Its emphasised in bold letters in the print.

In the
Supreme Court

Plaintiff's
evidence

No.7
Charles
Woodrow Wright
Examination
19th May 1975
(continued)

I was upset by this emphasis of Kenneth Royes because Doctor Kenneth Royes as a well known or a foremost psychiatrist attached to the Bellevue and Bellevue was a mental Asylum.

Doctor Kenneth Royes was attached to it. When I was the report the following day I consulted my solicitor Mr. K.C.Burke 47 Duke Street that is 30th January 73.

Went to work the following day I drove a car, park my car. Company gave me a shelter Parking Lot to park my car below my office with my name in the parking area.

Parked my car there - that day 30th January 73.

Noticed on my car park as I parked my car above my name I saw something written.

Ques: What you saw written?

Mr. Hill objects.

Saw several writings on the wall I saw there. 20

Could not remove the wall with the writings.

I read the writings. Writings made by something like Black Paint.

Ques: What was the writing. Mr.Hill objects.

Evidence secondary is admissible as hearsay.

Otherways this evidence could have been put before Court, particularly that was the day he consulted his lawyer.

10

No.8
Proceedings
19th May 1975

No. 8
Proceedings

30

Mr. McCaully

Evidence is admissible hearsay rule which does not apply. He is giving evidence of his own direct deception.

True question is whether it is the best evidence of what was on the wall. Submit where it is not possible to produce the best evidence, secondary evidence is admissible he could not have brought the wall but saw the writing it is of his own perception. 40

Mr. Hill replies

See no difference in principle if you read something written on paper, by someone else and if you are unable to produce by any means then you are entitled to give secondary evidence do not see how the mischief that was intended by rule of evidence to prevent people saying things without being able to verify it can be obviate by saying that he could not bring 50

the wall. We have not heard if it still there. The words used if a photograph had been taken rule of Court recognise admissibly of such evidence in so far as photographs would reproduce his perception but what was on the wall we would have no objection of admitting it, this perception may have been affected by his own state of mind having read the article no opportunity taken to be able to produce objectivity. What was written on the wall don't think the rules can be overcome simply by saying witness read the wall as Jury who have to judge the issues did not see what was written on the wall and so not able to judge its meaning.

10

Court Rules

Objection over-ruled.

No. 9

Charles Woodrow Wright

20

In chief continues.

Writing on the wall was "Man, man, go back to Bellevue,". Where my parking space is elevated and the star boys sell stars on the ground level. My car is parked on the ground level and the star boys sell papers at the ground level.

30

Star boys to sell papers could pass my car very closely. When I saw the writing I called a few of my men from the Department. Showed them the writing and asked them to clean it off that is painted over as it was oil based. Felt angry and humiliated when I saw the writing.

40

This was in Jamaica Public Service Orange Street, there are about 300 employees more or less there. After I gave the instructions I proceeded to go upstairs to my office. To get to my office I park my car against the wall I walk around and go upstairs through a passage way and go into my office. On my way to the office there were stickers on the passage way. Poster pasted on the passage way go upstairs in the landing and I turn to my office. There were three separate markings in my office on the wall. One poster which I removed and which I have in my possession. (Document shown to witness). This was the poster I removed. In evidence exhibit 2. There were other markings. Walls of my office is hardboard. Poster was put on Drawing Pins on the wall of my office.

50

In the
Supreme Court
Plaintiff's
evidence

No.8
Proceedings
19th May 1975
(continued)

No.9
Charles
Woodrow Wright
Examination
19th May 1975
(continued)

In the
Supreme Court

Plaintiff's
evidence

No.9
Charles
Woodrow Wright
Examination
19th May 1975
(continued)

There were markings on the walls in my office in black must have been black paint I think. There were two separate markings on the wall. I can remember what was written on the wall. One was I THINK "Wright the mad man."
On 31st January, '73 there were further writings, they were put up and I asked the man to remove the writing and they would be put up again. It was disgusting and torturous. My department have 17 men. We have conferences, lectures and debates the men came to my office. Passage to my office is used by other employees. Writings were in this passage way used by other employees in the relay Department and Regulation Department. Made report to company Safety Officer Mr. Roy Leon about these writings. Asked him to take photographs of the markings on the wall. Can't remember the day that he did so. He had the company's camera. He took 2 different sets of photographs.
Court adjourns to 2 p.m.
Resumes 2 p.m.
Jury checked - all present.

10

20

Charles Wright (still on oath)

In chief continues

(2 photographs shown to witness)

These are the photographs he took. It is an instamatic camera photograph together photograph tendered in evidence as exhibit 3. Writing on one photograph is "Wright the Bellevue man" and second "Wright the made man."

30

Was metal worker and construct tanks etc. Have done this type of work for the Jamaica Public Service. It's part of my job with Jamaica Public Service. Have never done that type of work privately. I would like to. Have had one opportunity to do so. I could not make use of this opportunity because of the Star publication.

40

Because :-

Mr. Grant Manager Director of Industrial Supply Company Ltd.

I was negotiating with Mr. Grant with the possibility of requiring equity in his company.

This would give me a chance of expanding his company into metal work fabricating truck bodies, trailers, tanks, etc.

50

Mr. Grant wrote to me on April 10th, 1973, there were tentative arrangements.

Ques: What were these arrangements.

Mr. Hill:

If argument existed by any letter in the

circumstances letter with reference writing in April 10th 1973 don't know if he is speaking of something written or oral.

In chief continues:

10 Tentative argument was not in writing we were discussing. Tentative argument was that I would expand on his company by creating a metal working section in my spare time and I would be responsible for running that section with my expertise and background. I would be paid for that. I was going to have some of the equity and be paid for running that section of the Company part time. No rule of Jamaica Public Service disallowing any employee from being on the board of other company in Jamaica.

Received a letter from the Manager.

20 As a result of Star Report I suffered quite a lot of embarrassment my girl friend shun me that is she just wouldn't see me again. I was subjected to numerous anonymous phone calls. Some during the day and some even very later at nights at 6 Elmwood Terrace all refer to Bellevue.

No. 10
Proceedings

In the
Supreme Court
Plaintiff's
evidence

No.9
Charles
Woodrow Wright
Examination
19th May 1975
(continued)

No.10
Proceedings
19th May 1975

Mr. Hill I must object.

Mr. McCaully

30 Cites Cross on evidence 4th edition page 402. We are trying to establish that the statement was not the truth of the statement.

Mr. Hill

40 My friend has forgotten the question. Question which I objected to was to elicit the words used in the phone calls. He had already laid the foundation that is saying it was a result of the star report. He has already establish that it was a result of the star report that he received the telephone calls and he is going further and asking to relate what transpired in the conversation on the telephone.

Court rules

Objection overruled.

In the
Supreme Court

Plaintiff's
evidence

No.11
Charles
Woodrow Wright
Examination
19th and 20th
May 1975
(continued)

No. 11

Charles Woodrow Wright

Received telephone calls they were chiefly relates to my being in Bellevue. Sometimes the caller said "You mad man" and hang up even at 11.30 p.m. at nights. There was one call - rude used indecent language and said Bellevue. After these calls I felt very badly and angry and humiliated. Suffered other embarrassment at functions, dinners conferences parties I was cold shouldered. I received letter from Mr. Grant. This is the letter I got from Mr. Grant letter is dated April 10th 1973. In evidence Exhibit 4.

10

Mr. McCaullay

Now wish to put in bundle of 6 letters refer to in Mr.DaCosta opening.

Letter dated 12th March 1973

" " 16th March 1973

" " 4th April 1973

" " 16th April 1973

" " 25th April 1973

" " 1st May 1973

20

Agreed bundle of correspondence, together in evidence exhibit 5 (exhibit 5 shown to witness). Have seen copies, original of exhibit 5 before today. Was kept informed of this correspondence. Gave my Solicitors instructions on 30th January, 1973.

30

Last letter is dated 1st May 1973 from Milholland Ashenheim & Stone to Mr. Burke. From date I saw my solicitor to 1st May I was offered no compensation for the damage I suffered for the libel of which I complain neither up to this present day. I am now claiming damages for libel.

Cross-
Examination

XXN Hill

Exhibit 1 shown to witness.

Did say when I read article in the star I was chiefly upset by what appeared in column 5. I am saying that column 5 upset me. May be I did say chiefly. Did intend to convey the impression that other parts of the article upset me but not as column 5. Column 5 of article shown to witness.

40

Ques: Was it the date that appeared in line 5 that upset you.

Mr. McCaullay objects.

Unfair context witness is being asked about a column in a particular line without being shown the article.

50

I was unaware of the article being in witness possession I withdraw the objection.

Ans. If contributed

Ques. If date has been August 1972 would it have made any difference or would it have contributed.

Ans. It may not have contributed.

Ques. Did the refer once to Bellevue upset you.

10 Ans. Certainly it did.

Ques. If it had said Saint Josephs would it have upset you.

Ans. Not as much.

Ques. Did the name of Dr. Royes upset you.

Ans. Yes.

Ques. Bold type which appear in column 5 of Dr. Royes also upset as it emphasised his name.

20 Ques. I meant that my putting Dr. Royes name in bold type it upset you.

Ans. I was looking at the whole verse Yes it affected me in the context.

Column 1 of article (shown to witness)

See my wife name in bold capital in the column also my name. See Dr. Royes name in small letters in column 6.

Ques. Do you agree that on the first occasion in which a name appear in the article the names are in all bold capital through the whole article.

30 Ans. Yes I think so.

I realised at the time it was a report of Divorce proceedings between my wife and myself. I was not in Court. I did not hear the evidence given by my wife.

I became upset and went to see my lawyer the following day 30th January 1973.

Have never been treated by Dr. Royes for shingle.

40 Ques. Have you ever been treated by Dr. Royes.

Ans. Have never been his patient. Have never been treated by Dr. Royes. I would not go to Dr. Royes for him to treat me for shingles.

He was a foremost psychiatrist. The sort of treatment I would see Dr. Royes for would relate to illnesses a psychiatrist would treat. I went to work every day in December 71 and I am on call Saturday Sunday Christmas and Boxing Day.

50 Between 5th August 72 and 18th August 72 I was in Saint Joseph Hospital for shingles. Dr. Mendes treated me, I cannot recollect any other Doctor no other Doctor treated me to my knowledge. I am saying I was treated by one Doctor in Saint Joseph Hospital Dr. Mendes. I am not aware of whether Dr. Mendes called in Dr. Royes. He may have but I

In the
Supreme Court

Plaintiff's
evidence

No.11
Charles
Woodrow Wright
Cross-
Examination

19th and 20th
May 1975

(continued)

In the
Supreme Court

Plaintiff's
evidence

No.11
Charles
Woodrow Wright
Cross-
Examination

19th and 20th
May 1975

(continued)

could not say that.

I was not admitted on 5th August 1972
suffering from Paranoid depression. Not
correct to say I saw Dr. Royes on a few
occasions while I was in St. Josephs.
Not correct that I was treated by Dr. Royes
at St. Josephs Hospital.
Ques. Would it be correct that you were fully
aware of what happened in St. Joseph
Hospital. 10

Ans. Yes I was collective.

Deny I was refer by Dr. Mendes to Dr. Royes
for treatment on 5th August 1972.

Deny that on 7th August 1972 I were seen by
Dr. Royes.

Deny that at 11.40 a.m. on the 7th August
1972 Dr. Royes prescribed the following
treatment :

Injection of Valium. Valium tablets.

Deny he prescribed Probentine tablets not 20
to my knowledge or injection of Valium
every 12 hours not to my knowledge.

Dr. Royes never administered any injection
to my knowledge.

Deny between 5th-7th August 1972 I was seen
by Dr. Royes.

IF HE SAW ME I DID NOT SEE HIM.

Ques. That depends on your condition if you
were depressed is it possible he treated
you and you did not know? 30

Ans. No sir.

Ques. If you were psychotic and very
restless after your admission would you
have realised if Dr. Royes came there.

Ans. I would have seen Dr. Royes if he
came there I did not know Dr. Royes. No
other Doctor but Dr. Mendes treated me in
St. Joseph Hospital.

(Nurse J. Northover called into Court
Witness asked to observe the witness) 40

Ques. Do you recognise that nurse.

Ans. I think she is from St. Joseph. I
know she was there I think I saw her at
St. Joseph during the time I was there.

Deny on 6th August 1972 I was very depressed
and weepy

Ques. Correct to say you left the hospital
in pyjamas.

Ans. I went home in dressing gown yes.

Deny I was removed from the hospital by my 50
brother-in-law against medical advice
wrong sir.

I left the hospital I told Dr. Mendes I
was going hime I discharged myself from
the hospital.

Ques. The most upsetting part of column 5
was the refer to Bellevue.

Ans. The entire paragraph was abominable

and disgusting.
Up to January 1973 I had never been treated by Dr. Royes I did not know him.
Ques. Did you know that Dr. Royes was in private practice.
Ans. I was not even interested in Dr. Royes. I don't know if he was in private practice I don't even know where his office were.
Ques. Let's ignore column 5 of the article for the purpose of this question, would it be correct to say that apart from that paragraph nothing else in the article upset and humiliated you.
Ans. My major upset was column 5. Apart from column 5 the rest of the article embarrassed me but not as much as column 5 to a degree not as much as column 5.
Deny I am not speaking the truth when I say I was not treated by Dr. Kenneth Royes.
Ques. If paragraph had read that you had been admitted to St. Joseph and treated by Dr. Royes would you have been embarrassed humiliated and upset.
Ans. I would have had it corrected would not be embarrassed or upset not half as much.
The statement that I had been admitted to St. Joseph hospital would be true but it would not be true that I had been treated by Dr. Royes.
I know that Dr. Royes is dead. There is a difference between being treated by a Doctor and being a patient of a Doctor. As far as I was concerned I was a patient of Dr. Mendes one of the family doctor.
Ques. If he calls in another Doctor say Dr. Royes would regard yourself to not being that other Doctor patient.
Ans. Unknowingly I would not be his patient. If a doctor was called in by my doctor with my consent and he treated me I would say I was the patient of the other doctor if I CONSENT.
It is the consent that makes the difference I must decide who I want to treat me. Dr. Mendes never came with any other doctor. I was in the hospital for about 13 days. From the start he treated me I think he was available from those days.
I think he came at night and during the day. I think a nurse gave me an injection, got I remember 2 injections. No male nurse attend me during the time I was there.
Was never aggressive always a loving man. I was never in a condition described as very aggressive during the time in hospital. It is not correct that on 17th August 72 you were very aggressive and refused to be treated

In the
Supreme Court
Plaintiff's
evidence

No.11
Charles
Woodrow Wright
Cross-
Examination
19th and 20th
May 1975
(continued)

In the
Supreme Court

Plaintiff's
evidence

No.11

Charles
Woodrow Wright

Cross-
Examination

19th and 20th
May 1975

(continued)

by a male nurse and refuse to take
injections and after sometime you became
more calm and relaxed.

Ans. Never had a male nurse in my life.

Sugg. That on 18th August 72 9.00 a.m.
you left St. Joseph Hospital unknown to
either Dr. Mendes or the hospital staff.

Ans. No sir wrong.

I am not sure probably last year sometime
Dr. Mendes left Jamaica. Bill for
\$241.25. I have a copy of it. Bill is
dated 12th May 1975. I am referring to a
letter dated 12th May 1975. This is what
I call the Bill. Blue Cross does not send
its members a Bill. I sign Dr. Mendes form
and he gets his money. Bill for hospital
fees sent to Blue Cross. I have asked
Blue Cross for a statement of my account
and they gave me this letter dated 12th
May 1975. This letter does not show how
the figure \$241.25 is arrive at.

Ques. Would you get the bill for me
tomorrow morning showing \$241.25?

Ans. I got the bill from my doctor. I
got part of the bill not covered by Blue
Cross.

I got \$148 from Hospital and the rest from
Dr. Mendes, Blue Cross gave me that in
a breakdown.

Breakdown of hospital expenses and Doctor
expenses not in this letter doctor bill
is there.

Got a bill from doctor of \$40.00. This
bill shows Blue Cross paid Dr. Mendes
\$54. out of \$94.

There must have been a bill totalling
\$241.25 submitted to Blue Cross.

I did ask Blue Cross for a breakdown of
the hospital and Dr. Mendez charges.

I went and asked Blue Cross for a bill and
they gave me the statement last week.

Asked Blue Cross for hospital charges and
Dr. Mendez bill and they gave me this
letter dated 12th May 1975.

A lady gave me a rough note not signed.

She told me Dr. Mendes was my only doctor
there. I asked her. The Bill was high and I
asked her.

Part heard and adjourned to 20.5.75

20th May 1975

Court resumes 20.5.75

Jury checked all present.

CHARLES WRIGHT (sworn)

XXN Hill continues

Have not been able to get the bill showing
how the \$241.25 was arrived at.

I did not ask at that time of night, it
was too late. They open at 9.30 a.m.

10

20

30

40

50

Since yesterday made a little effort
 but it was in vain as I had no time.
 I did not know that during the year 1972
 Dr. Royes was in Private Practice.
 Did not know that Dr. Royes had left the
 Bellevue hospital and retired. Did not
 know that Dr. Royes returned to act as
 S.M.O. for a short period at Bellevue
 Hospital. (Page 2 of statement of claim
 10 paragraph 4(c) read to witness) I knew
 Dr. Royes was a Psychiatrist and he was
 S.M.O. attached Bellevue Hospital. Exhibit
 4 letter of 10th April 73 shown to witness
 from Mr. Grant. There does not appear to
 be a date written under this date 10th
 April, 1973. Between word "April 73" do
 not see remnants of script. Did say no
 rule which prevents me as an employee of
 Jamaica Public Service from being Director
 20 of a Company.
 Did say I was going to take charge on part
 time basis of the metal works of the company.
 Did not ascertain from Jamaica Public
 Service whether I would be permitted to
 do so.
 (Exhibit 4 shown to witness)
 It was a proposal we were putting through.
 I was going to come in and a company would
 be formed and I would put in equity in the
 30 company.
 Exhibit 4 was the only document I have in
 relation to this. Negotiations between
 Grant and myself commence just-sometime in
 between December 72 and January 73. After
 I received exhibit 4 I replied to Mr.
 Grant letter. Nothing has happen since
 then. Did say certain Posters and
 Placards appeared on compound of Company
 where I worked.
 40 Was not able to ascertain who had placed
 the placards.
 I don't know if they were stranger or
 employees, there is strict security there.
 Would not regard the conduct of persons
 who put up posters as normal.
 Ques. Do you agree that conduct suggest
 that those persons might have felt that this
 was some way of getting back at you.

In the
Supreme Court

Plaintiff's
 evidence

No.11
 Charles
 Woodrow Wright
 Cross-
 Examination
 20th May 1975
 (continued)

MR. McCAULLAY OBJECTS

50 This was an invitation for witness to express
 an opinion not intended to illicit any fact.

MR. HILL

Opinion may very well amount to a fact. It
 is Germain evidence of Posters and Placards
 were as much opinion as well as fact. Submit
 having regard to the fact that any inference
 or inuendo may be expected to arise for what

In the
Supreme Court

Plaintiff's
evidence

No.11
Charles
Woodrow Wright
Cross-
Examination
20th May 1975
(continued)

was contained in those placards or writing was most material to ascertain whether or not those were the work of people who bore grudges.

He said there are 300 workers in the same premises as himself it is most material.

I will rephrase the question.

Ques. Would there be any employees of the 300 on that compound who might not feel or will have grudges against you?

10

Ans. There may be. I have had to discipline workers prior to that day. During January - May 1973 I was kept informed on the correspondence and matters in that bundle Exhibit 5.

(Document shown to witness)

I have seen a copy of this document. First time I saw a copy of the document I think it was given to me sometime in December 72 I am not quite sure can't remember quite clearly.

20

Think it was December 1972. Copy of document was served to me by a man. This is a certified copy of the notes relating to the Divorce proceedings. My solicitor never gave me a copy of it. Between January and May 73 my solicitor never show me any part of the document. (2nd page of document were asked to look at it and read it to himself)

30

Witness: I have read it

Bundle correspondence Exhibit 5 shown to witness. Letter dated 12th March page 2 first and second paragraph.

Ques. Up to that time 12.3.73 had you seen the copy of certified copy of notes of evidence in the Divorce proceedings?

Ans. Yes, I saw the copy but I did not go through it. I had been given a copy I had a copy.

40

This letter dated 12.3.73 written to Gleaner was making it clear that (1) I had never been admitted to Bellevue Hospital and (2) that I had never been a patient of Dr. Royes.

Ques. Were you also in this letter making it clear to the Gleaner Company that you had not been treated by Dr. Royes?

No.12
Proceedings

In the
Supreme Court
Plaintiff's
evidence

No.12
Proceedings
20th May 1975

Mr. McCaullay objects

10 This cannot be done. Letter not written
by the witness. This is a document
exhibited Counsel is now asking the witness
to interpret the document. That is for
the court and jury no where in this document
is there any statement to the effect that
he was not treated by Dr. Royes. The 2
paragraphs both deny categorical that he
was ever a patient of Dr. Royes.

3rd Objections

20 Pleadings, Statement of Claim, issues clear
paragraph 3 what is complained of.
Paragraph 6 of defence. Page 2 of letter
dated 1.3.73 states that what his instructions
were and information he obtained Hew & Bell
3rd para. not instructions given to Mr. Burke.
I hope Mr. Hill will rephrase his question
1st para. is a of the libel.

Mr. Hill

30 Submit it is a permissible question as far
as the issues. Para.5 of defence of
Plaintiff wants to make a distinction between
(sic) treatment and being a patient that is a
matter to be decided by the jury. Entitled
to checked from the Plaintiff Precise
Parameton of the phrase that appear in both
para. 1 or 2 patient of Dr. Royes I am
entitled to establish that what falls within
the campus of that phrase. Permissible
invisible to find out from witness whether
he was saying what Mr. Burke saying in this
letter.

Court Rules

Objection upheld.

In the
Supreme Court

No. 13

Plaintiff's
evidence

Charles Woodrow Wright

No.13
Charles
Woodrow Wright
Cross-
Examination
20th May 1975
(continued)

Ques: Did you make any distinction in giving instructions to your solicitor between your never or not having been a patient of Dr. Royes on the one hand and your having been treated by Dr. Royes on the other hand.

Ans: No I made no distinction.

Ques: So far as you were concerned even if you had been treated by Dr. Royes you would not have given these instructions because the article said you were a patient of Dr. Royes.

10

Ans: I don't understand.

I read the article saying I was a patient of Dr. Royes. I would have defined myself carefully to my solicitor if I had been treated by Dr. Royes I would have told him I had been treated by him. I did not tell my solicitor that I had been treated by Dr. Royes. (Exhibit 5 shown to witness) 2nd letter dated 4th April 73. From Mr. Ashenheim to Mr. Burke, this letter was brought to my attention (2nd para. read) This was brought to my attention from April 1973.

20

Ques: At that stage did you give specific instructions as to whether or not you had been under treatment of Dr. Royes.

30

Mr. McCaullay objects

He cannot ask the witness of his conversation with his solicitor.

Mr. Hill

No objection was taken 2 questions ago and this amounts Submit it is a direct consequence of the ruling which the court made.

Mr. McCaullay

Objection was taken when he asked question 12th March. Now he is asking question on another period.

40

Court Rules

If the question is intended to elicit the distinction that witness has made in relation to being patient of Dr. Royes or treatment by Dr. Royes.

Objection overruled

In the
Supreme Court

Plaintiff's
evidence

No.13
Charles
Woodrow Wright
Cross-
Examination

20th May 1975

(continued)

10 Ans: I did give specific instructions
as to whether or not I were under treatment
of Dr. Royes. When I saw this letter I
did ascertain whether or not my wife had
said I was under treatment of Dr. Royes.
(Document shown to witnesses 3rd of 2nd
page). I did obtain a certified copy of
the notes of evidence of the divorce case
I read the certified copy of the notes.

10 Ques: Is it correct that your wife did
say that you were under treatment in St.
Joseph hospital by Dr. Royes.

Mr. McCaullay objects.

He asked the witness whether he read the
copy then invited the witness to confirm
what were in the notes, witness cannot
give evidence of what he lead (sic) in the
notes.

20 Mr. Hill

Have not asked witness to say what was in
any document. In letter of 12th March it
was being contended on the Plaintiff behalf
that the wife did not say that he had been
a patient of Dr. Royes, in the letter of
4th April witness agreed contents of 2nd
para. had been brought to his attention of
what his wife had said and as a result of
this being shown to him he sought and
30 obtained, am asking the witness whether
the statement in the letter was not correct.
I am rephrasing the question.

Ques: Did you ascertain whether or not the
statement that your wife had said in
evidence that you were under treatment from
Dr. Kenneth was correct.

40 Ans: Yes. That statement was not correct.
3rd letter from bundle exhibit 5 letter
dated 16.4.73. This was written on my
instructions by Mr. Burke. This was after
I had seen the letter from M.H.S. of 4th
April 73.

Ques: In this letter would it be correct to
say you were saying two things. 2nd para
(read).

50 Ans: That was the first thing I was saying.
3rd para. I said my former wife had not
said in her evidence I was at my time. I
am saying I had never been treated by Dr.
Royes and also saying my former wife had not
said in her evidence in the Divorce proceed-
ings that I had been treated by Dr. Royes.
When this letter was written I had already
seen a certified copy of notes of evidence.
Letter of 4th April contain a draft apology.
Ques: Was it made clear to you that the

In the
Supreme Court
Plaintiff's
evidence

No.13
Charles
Woodrow Wright
Cross-
Examination
20th May 1975
(continued)

defendant was prepared to publish an apology which clearly stated that you had never been admitted to Bellevue hospital.

Ans: No this was not made clear to me. (Letter of 4.4.73 para.3 and apology shown to witness)

Disagree the defendant company had indicated by my letter and defendant apology it was made to public apology which made it clear that I had not been admitted to the Bellevue Hospital. I was admitted to a hospital in 1972, at that time I was married and my wife was aware of the fact that I was admitted, it was to St. Joseph Hospital.

10

Did say I ascertain whether or not the statement in the 2nd paragraph of letter which enclosed the apology was correct. Statement was not correct.

20

Did ascertain whether or not that my wife had stated if I had been admitted to any hospital.

2nd para. Draft apology

Up to word respondent.

Agree looking at that para. as far as you were concerned those words were correct.

Ques: Looking at the draft the Gleaner Company was prepared to publish an apology which indicated that your wife had said.

30

Ans: That is not correct.

Ques: Was it my understanding from letter of apology that the gleaner company was willing to state the publicity that the hospital your wife said you were in was not the Bellevue Hospital.

Ans: Relevance if the apology has nothing to do with what my wife said in Court, that is not why I rejected it.

Ques: Did you understand and appreciate that the company was prepared to publish an apology that the hospital your wife had refer to was not Bellevue but St. Josephs.

40

Ans: Yes I understand this in fact.

Ques: Is it not correct to say that you rejected the apology tendered because it still contained a reference to Dr. Kenneth Royes.

Ans: Not wholly, other reason why I rejected the apology was that the stigma is still evident in the apology of been mentally deranged.

50

Ques: Indicate in the apology where that stigma appear.

Ans: The 3rd line from the bottom read respondent was admitted as a patient of Dr. Kenneth Royes.

Precise words that carry the stigma is all the words.

Ques. If I or any one else had changed that line to read "had been treated by Dr. Kenneth Royes would you have accepted that apology."

Ans. No I would not as the stigma would still be attached.

10 Ques. In April 1973 you rejected the apology because you refer to your having some connection with Dr. Kenneth Royes who was a foremost psychiatrist.

Ans. That is partly correct. I would rather to ask my attorney to reconsider the entire apology. To destroy completely any stigma the apology would have to contained which clear my name of Bellevue or being a patient of Dr. Royes or I was not treated by Dr. Royes.

20 Ques. As far as you feel if your wife had said you had been treated by Dr. Royes. The apology would have to repudiate the evidence of your wife.

Ans. Not necessarily.

Ques. If your wife had said you had been a patient of Dr. Royes would the apology have had to contradict that statement.

Ans. No (last paragraph of apology shown to witness)

30 Ques. If your wife had said that she had arranged for you to see Dr. Royes and that you have agreed and that you had in fact seen Dr. Royes on few occasions would you have accepted an apology in the terms of para of Draft.

Ans. No sir.

40 Ques. If your wife had said precisely what I just put to you in the question above would you have accepted an apology which omitted the word "Admitted"

Ans. No sir.

Ques. If wife had say the same question I put to you early would you agree that those words would suggest that you were a patient of Dr. Royes.

Ans. Those words would not indicate that I was a patient of Dr. Royes.

Did say I only became the patient of the other doctor when I consent.

50 Say if my wife said that I would not have considered myself a patient of Dr. Royes because I did not consent. Agree.

If my wife said that she had arranged for me to see Dr. Royes and I had seen him on a few occasion that would convey to my mind that she was saying I was a patient of Dr. Royes.

Ques. Did you at any time suggest a draft apology in keeping with what you knew, your

In the
Supreme Court
Plaintiff's
evidence

No.13
Charles
Woodrow Wright
Cross-
Examination
20th May 1975
(continued)

In the
Supreme Court

Plaintiff's
evidence

No.13
Charles
Woodrow Wright
Cross-
Examination
20th May 1975
(continued)

wife had said in the Divorce Proceedings.
Ans. I did not submit a draft apology.
Neither did I amend the draft apology
submitted having regard to what I under-
stood my wife to have said.

My girlfriend shun me. She would not
see me again.

Part of article (sic) I complain about is
column 5. It is about 9 lines. Small
section of the entire article. Majority
of article dealt with allegations of my
treatment of her.

Said my girlfriend shun me was purely
because of the words complain of it had
nothing to do with the alleged treatment
of my wife or attitude to children.
When I left the hospital not correct to
say I was diagnosed as suffering from

Dr. Mendez continue
to treat me. After I went home I think
Valium is a tranquilizer.

I would expect to be treated by a doctor
if Dr. Royes qualification and experience
if I was suffering from depression.

Agree that one can have certain conditions
that require treatment from a psychiatrist
and that these conditions do not necessar-
ily involve any question of mental
impairment.

Agree in the article my wife gave evidence
re herself and called Dr. Royes. Not
suggesting that wife was mad.

Looking at the article I did not feel that
as my wife had seen Dr. Royes I did not
conclude she was mad or suffering from
any mental impairment.

After I left the hospital I returned home
and my wife was there.

Re-examination

Re XXN McCaully

Letter dated 4.4.73 shown to witness
Letter dated 12.3.73 shown to witness
In letter of 12.3.73 2nd para there my
solicitor sets out the passage of which
I complained.

In XXN I was refer to a document Statement
of Claim para 4 (read)

This was my complaint.

If the draft apology had contained a denial
of that complaint in effect and substantial
I would have accepted it.

Did say I have never been treated by Dr.
Royes for Shingles treated by Dr.Mendez
for Shingles.

Dr. John Mendez admitted me to St.Joseph
Hospital. He came along with me the same
day. I did discharge myself from the
hospital I told Dr. Mendez that I was

leaving the following day that is what I mean when I say I discharge myself.

In the Supreme Court

Bills

Plaintiff's evidence

Did say I received no bills they were sent to Blue Cross. I read bills from Dr. Mendez I have copies of it here. I have not seen personally any of the bills sent to Blue Cross.

No.13
Charles Woodrow Wright
Re-examination
20th May 1975

Placards

(continued

10 Can't say if the placards were put by employees or strangers. Stranger cannot easily enter the Jamaica Public Service compound.

No. 14

Bancroft Fitzgerald Smelle

No.14
Bancroft
Fitzgerald
Smelle
Examination

BANCROFT FITZGERALD SMELLE sworn:

10th May 1975

20 Living 32 Tuna Avenue Harbour View Kingston 17. Now employed by Jamaica Public Service Company. Personnel office employment and special projects. Stationed at Orange Street. Was in employment of Jamaica Public Service in 1971 as Assistant Director of Personnel. Known Plaintiff. He was an employee of the Company in 1971. Have consulted my records from December 1971. He was not absent from work on and working day from Monday to Friday during that period.
30 Outside working hours no official policy re workers working elsewhere. I would know as Personnel Officer. Practically it was wide spread within the organisation and there is no prohibiting such conduct.

XXN Bill

Cross-examination

40 Personnel Officer in relation to one activity. There is a Mr. Brown who is General Industrial Relations He would be the Senior Executive Officer dealing with Industrial and Personnel. I have never enquired of the G.M. whether there was any official policy.

Re XXn DaCosta None

In the
Supreme Court

No. 15

Proceedings

Plaintiff's
evidence

No.15
Proceedings
20th May 1975

Mr. DaCosta, I was calling a witness re
the photographers.

Mr. Hill

I don't think it necessary I am not
making any issue of the photographer.

Mr. DaCosta

Case for Plaintiff
Part heard
Jury checked all present.

10

Mr. DaCosta

My friends shown medical record of plaintiff
Dr. Mendez appear to be his doctor from
the records.

His admission was for Shingles and per
depression.

He was refer to Dr. Royes that is he came
into the hospital and himself administered
one injection. Plaintiff was seen by
Dr. Royes. It doesn't affect the gravamel
of my case.

20

Mr. Hill

It has saved me having to call a witness
and Nurses have save time by this admission.
Records shown that Dr. Royes came in and
visited the patient plaintiff on more than
one occasion.

Details of illness not relevant not necessary
to call the witness except in one respect
certain answers were given by the plaintiff
which could be considered by the nurses
with what transpired there. Follows from
the admission that certain construction can
be placed on those.

30

Ask that Mr. Wynter from the hospital and
the nurses be released and I return the
medical records to Mr. Wynter.

Mr. Hill

Notice to admit was served on Plaintiff
that is notice to admit dated 12.5.75
True copy of typed copy Notes of evidence.
I have shown it to my friend and he says
he has no objection if I produce the
document.

40

Tendered by consent Copy of notes of

evidence in evidence Exhibit 7.
Letter of 12th May 1973 from Blue Cross
and bill from Dr. Mendez.
Together exhibit 6.

In the
Supreme Court
Plaintiff's
evidence

Mr. DaCosta

No.15
Proceedings
20th May 1975
(continued)

10 Rather unusual situation has arisen.
Thought my friend was going to open and
call witnesses. My friend has decided
he is calling no witnesses. If my
friend does not object would ask if
adjournment could be taken now and I
address tomorrow.

Mr. Hill

I would have no objection to this course.
That is the case for the defence.
Part heard adjourned to 10 a.m. 21.5.75.
Court resumes 10 a.m. 21.5.75
Jury checked all present.

20 Jury to consider verdict
Jury retire 4.15 p.m.
Jury return 5.40 p.m.

Verdict 5-2

Move for Judgment
Judgment for Plaintiff in sum of \$2,000.00
with costs to be taxed or agreed.
Stay for 6 weeks.

No.16

Outline of Judge's
Summation

No.16
Outline of
Judge's
Summation

20th May 1975

30 In the Supreme Court
Before: Mr. Justice Willkie
Suit No. C.L. 1164 of 1973 - C.A.29 of 1975
Between: Charles Woodrow Wright
Plaintiff
And The Gleaner Company
Limited
Defendant

40 (The following is by no means
exhaustive of my directions to the jury; and
represent outline of the summation).

This is an action for libel brought
by the plaintiff, Charles Woodrow Wright
against the Gleaner Company Limited.

In the
Supreme Court

No.16
Outline of
Judge's
Summation

20th May 1975
(continued)

Plaintiff's complaint is set out
in his statement of claim.

- (a) Statement of Claim read; and
- (b) Defendant's answer is as set out
in the defence (b)(i)) Defence read.

DUTY OF JURY

- (1) To find facts and draw reasonable
inferences.

In this connection you can find
these facts only from the evidence that 10
you hear in this Court from the different
witnesses. You saw the witnesses and
you will have to say which of the witnesses
you believe.

You cannot come to a decision
influenced by any extraneous considera-
tions i.e. sympathy, gossip you might
have heard outside the Court room. You 20
must come to your findings of facts purely
on the evidence from the witnesses you
have heard. Having come to your findings
of fact you apply those facts to the law as
I define it and come to your decision.
Now, I shall tell you what the law
applicable to the case is, you are
absolutely bound by my directions on the
law, but you are the sole judges of the
facts. I cannot tell you what facts to
find. 30

My only duty in relation to the
facts is to remind you of the evidence
which has been given, and to make such
comments which I think are reasonable and
necessary or that may be of assistance
to you in arriving at your decision. May
disregard my comments if you do not agree.

Similarly comments of counsel. Now,
every man is entitled to his good name
and to the esteem in which he is held by 40
others and has a right to claim that his
reputation shall not be disparaged by
defamatory statements, made about him to
third person without lawful justification
or excuse.

LIBEL:

Defamation is the publication of a
statement which tends to lower a person
in the estimation of right thinking

members of society generally, or which tends to make them shun him, or which tends to bring a person into hatred, contempt or ridicule.

It is LIBEL if the statement is in permanent form.

Now the words must tend to give rise to the feeling I have described in the definition. To THE REASONABLE MAN.

10 REASONABLE MAN:

20 This would rule out on the one hand persons who are so lax or so cynical that they would think none the worse of a man whatever was imputed to him - and on the other hand those who are so censorious as to regard even trivial accusations if they were true as lowering another's reputation, or who are so hastily as to infer the worst meaning to any ambiguous statement.

It is not these but the ordinary citizen whose judgment must be taken as the standard.

30 You will have to ask yourselves: Would the words tend to lower the plaintiff in the estimation of right thinking members of the society? or would the words tend to excite only pity and sympathy in the minds of reasonable people who would nevertheless be inclined to shun plaintiff's society? or would the words tend to bring plaintiff into hatred, contempt or ridicule.

If the answer to this question is yes, then the statement is libellous, PROVIDED THE STATEMENT HAS BEEN PUBLISHED.

40 PUBLICATION: - means the communication of the statements to at least one other person than the person defamed. Publication is an essential of defamation.

BURDEN OF PROOF - Balance of probabilities. on Plaintiff. Plaintiff to prove.

50 Publication;
Words refer to him;
Words defamatory in ordinary and natural meaning or that
The words are defamatory as a result of some special meaning or inference to be attached to or drawn from the words;

In the
Supreme Court

No.16
Outline of
Judge's
Summation

20th May 1975
(continued)

In the
Supreme Court

No.16
Outline of
Judge's
Summation
20th May 1975
(continued)

That the statement was false.

EVIDENCE:

Go through evidence under each head.

Publication of Article by defendant -
admitted in defence.

Words refer to Plaintiff

Plaintiff's evidence.

Formerly married to Lena Lee Wright.
Now divorced. Divorced in January 1973. 10
Wife was petitioner and he was respondent.
Did not defend the proceedings.

Ex. 1 - Read Star Newspaper on 29th January,
1973. Star purported to carry report of
divorce proceedings. Was upset. Chiefly
by passage in article column 5. Consulted
his lawyers who wrote to the Company.

Bundle of correspondence Exhibit 5
(read through)

Apology offered.

On that evidence, are you satisfied 20
that the article did refer to plaintiff?
If you are, then :

ARE WORDS DEFAMATORY IN their
NATURAL & ORDINARY MEANING?

Words are normally construed in their
natural and ordinary meaning i.e. in the
meaning in which reasonable men of ordinary
intelligence, with the ordinary man's
general knowledge and experience of wordly
affairs would be likely to understand them? 30

This is a matter of fact for you.
A person reading those words, what would
they mean to reasonable men of ordinary
intelligence?

EVIDENCE:

Plaintiff states that on reading them
he was upset. He stated that the entire
paragraph was abominable and disgusting.
That it embarrassed him.

Plaintiff told you of the writings on 40
the wall he saw outside his garage at work
in black paint 'Man go back to Bellevue'

and placard - exhibit 2 (read). Photograph
- exhibit 3 (shown). Anonymous telephone
calls. You cannot use this to say it
was libellous. You have to say if well
thinking persons would find it so. He
(sic) has to discipline workers etc. So
members of the jury, what do you under-
stand the words to me? Do you find
that the natural and ordinary meaning of
10 the words meant that the plaintiff was
mentally ill and was hospitalized in a
mental institution as the plaintiff
alleges? and bear in mind that the burden
is on the plaintiff to satisfy you of this
on a balance of probabilities and if they
have that meaning is the statement
defamatory of plaintiff as I have defined
it or do you find as the defence contends
20 that the natural and ordinary meaning of
the words are not defamatory of the
plaintiff? It is a matter for you.

In the
Supreme Court

No.16
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Summation

20th May 1975
(continued)

Plaintiff is alleging that the words
taken by themselves have a defamatory
meaning in that they convey a defamatory
imputation that the words in the article
have a special meaning or inference to be
attached to or drawn from the words.

Plaintiff is saying that:

- 30 (a) The only Bellevue Hospital in Jamaica
is a mental asylum.
- (b) Dr. Kenneth Royes was a well known
psychiatrist and senior medical
officer at the Bellevue Hospital;
that the words carry an innuendo.

What the plaintiff is saying is that
taking these into consideration by the
words the defendant meant and was understood
to mean that the plaintiff was mentally ill
and was hospitalized in a mental institution.

40 Do you accept this? are you satisfied
that this is so? It is a matter for you.
You will have to say if you are satisfied.
That this is what was meant and what was
understood by the article and whether or
not the article was defamatory to plaintiff.
That shortly put, members of the jury, is the
evidence put forward by the plaintiff. Do
you accept this evidence? are you satisfied
by plaintiff that :

- 50 (a) The words were published by the defendant
of the plaintiff that they were false and
that they meant and was understood to

In the
Supreme Court

No.16
Outline of
Judge's
Summation

20th May 1975
(continued)

mean that the Plaintiff was mentally ill and was hospitalized in a mental institution?

It is a matter for you.

You see members of the jury, the law is that falsely imputing insanity or ^{sic} mental affliction to a man defamatory in itself so it is a matter for you to say whether or not the article was defamatory of the plaintiff. Do the words tend to lower the plaintiff in the estimation of right thinking members of society generally or would it make them have pity on him and yet shun him or would they tend to bring him into hatred, contempt and ridicule? If you are satisfied that they would, then you might very well say the words are defamatory of the plaintiff. If you are not so satisfied, then you should say that the words are not defamatory of plaintiff. 10 20

DEFENCE

We come now to consider the defences:

PRIVILEGE

Now, even if you were to find that the statement was defamatory, the defendant would not be liable if publication was on a privileged occasion.

There are certain occasions on which public policy and convenience require that a man should be free from responsibility for the publication of defamatory words. These are the occasions that the law protect. They are called privilege occasions. 30

Special provision is made in the law re Newspapers Sec.15 Libel and Slander Act states a fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings be privileged (Go through proceedings Divorce Court date of publication). 40

You will recall that the evidence which is not in dispute is that the article complained of is the report of the divorce proceedings between plaintiff and his wife.

The defendants are relying on this defence. Defendants are saying in effect

that the words were a fair and accurate report published of the divorce proceedings.

In the
Supreme Court

Now, it is the defendant who is relying on this defence so the burden is on the defendant to satisfy you on a balance of probabilities that this is so. Defendant must prove, must satisfy you that it is a fair and accurate report of the proceedings.

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Outline of
Judge's
Summation
20th May 1975
(continued)

10 It is not necessary that it be verbatim; an abridged or condensed report will be quite in order provided it gives a correct and just impression of what took place in Court i.e. provided it is substantially a fair report of what took place.

20 If there are a few slight inaccuracies in the report or slight omissions it would not affect the report i.e. one may well not say it was not a fair and accurate report. A report in a newspaper is not to be judged by the same strict standard of accuracy as a report coming from the hand of a trained lawyer a fair and reasonable latitude should be given.

 But if the report contained gross inaccuracies i.e. substantial inaccuracies, then one may very well say that it is not a fair and accurate report.

30 We go to the evidence:

 You will have to make a comparison between :

- (1) The newspaper report; and
- (2) The notes of evidence taken at the hearing of the divorce proceedings.

40 You compare the entire article, not just the words complained of. Having done so - Do you find inaccuracies in the article? If yes, are they substantial? Are you satisfied and it is for defendant to so satisfy you that this article is a fair and accurate report of the proceedings in the divorce hearings. It is a matter entirely for you. I do not think it necessary to go through in details the two articles. When you retire you will have them so go through them carefully and decide for yourselves. We come now to a further defence put forward by defendant.

50 It is - JUSTIFICATION.

In the
Supreme Court

No.16
Outline of
Judge's
Summation
20th May 1975
(continued)

Justification means - TRUE. What
defendant is saying here is :

- (1) That the words are in their natural
and ordinary meaning; and
- (2) Without the meaning that plaintiff
has put on them i.e. that the words
in their ordinary and natural meaning
do not mean and cannot be understood
to mean that the plaintiff was mentally
ill and was hospitalized in a mental
institution; and 10
- (3) Defendant is going on to say that the
words are true in substance and a fact.

The onus is on the defendant to
satisfy you on a balance of probabilities of
all this.

Now for this defence to succeed,
defendant will have to satisfy you that
the evidence covers every material part of
the alleged libel. 20

If the evidence does not satisfy you
in relation to a part, you will have to
examine that part and decide whether as
that part stood it would be libellous as
I have defined it to you. If you find
that this is so then the plea of justifi-
cation would fail.

You see members of the jury, a plea
of justification means that all the words
were true and covers not only the bare
statements of fact, contained in the
alleged libel, but also any imputation
which the words in their context may be
taken to convey, so bear this in mind. 30

There is, however, this qualification.

If you find that the words complained
of contains two or more distinct charges
against the plaintiff, the defence of
justification shall not fail by reason only
that the truth of every charge is not
proved if the words not proved to be true,
do not materially injure the plaintiff's
reputation, having regard to the truth of
the remaining charges. 40

We come to the evidence.

In chief plaintiff stated that :
(Exhibit 1 - Article - Shown to him)

1. Plaintiff said he was never ill in December 1971, that he worked every day.

In the
Supreme Court

2. That he was never a patient at the Bellevue Hospital in December 1971 or at any time.

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3. That he was never a patient of Dr. Kenneth Royes.

20th May 1975

4. He stated the name Kenneth Royes is written in bold letters.

(continued)

10 5. That Dr. Royes is a well known
(sic) psychairist attached to the Bellevue
Hospital and Bellevue is a mental
asylum and Dr. Royes was attached to
it.

20 He was vigourously cross-examined by
Mr. Hill and he denied that he was ever
treated by Dr. Royes at any time. He
admitted he was ill and was admitted to
Saint Joseph's Hospital on August 5-18,
1972, for shingles but he denied that he
was ever a patient of or was treated by
Dr. Royes and plaintiff maintained that
position to the end of his evidence.

30 It was, however, later conceded by
plaintiff's counsel that plaintiff was
treated by Dr. Royes while in Saint
Joseph's Hospital. He was in the hospital
for shingles and paranoid depression. He
was referred to Dr. Royes by Dr. Mendez
his doctor, and Dr. Royes came and visited
him on more than one occasion and gave
him injection and treatment.

You may well accept that the plaintiff
was a patient of Dr. Royes.

Comment on denial by plaintiff - credit
of plaintiff.

40 Is he telling a deliberate lie or is
it that due to his illness he was unaware
of the presence and treatment by Dr. Royes?
You will have to bear this in mind. Matter
for you. Dr. Royes was a psychiatrist.

You will recall plaintiff agreeing
that one would consult Dr. Royes not in
cases of a person suffering from shingles
but for an illness a psychiatrist would
treat.

Does a psychiatrist treat diseases of
the mind? Matter for you.

In the
Supreme Court

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Judge's
Summation

20th May 1975
(continued)

If you find this to be so, can you say that you are satisfied that plaintiff was being treated for some mental illness by Dr. Royes? Matter for you.

Plaintiff stated in chief that the name Kenneth Royes in block letters was intended to emphasize his name. That this upset him.

What plaintiff is inviting you to infer is that in emphasizing Dr. Royes's name, the inference to be drawn from this is that he was being treated for mental illness as Dr. Royes was a psychiatrist. 10

He, however, agreed that in the article the first occasion on which a name appear the names are all in block letters which includes his wife's name, and the inference the defendant is inviting you to draw is that it is apparently how names are set out in articles and that it was not intended to emphasize Dr. Roye's name and is of no significance. 20
A part of the article states :

"He left the hospital before he was discharged. Plaintiff admitted that he told Dr. Mendez he was leaving the hospital and he left in pyjamas and dressing gown.

What do you understand him to be saying. Is he saying that he left the Hospital before he was discharged? Of course, the context in which this statement was made in the article is that he was in Bellevue Hospital as a patient of Dr. Royes and left the Hospital (Bellevue) before he was discharged. Would you say that this phrase is substantially true? It is a matter for you. 30

It is clear from plaintiff's evidence, if you accept it, that : 40

1. Plaintiff was not ill in December 1971. Article states that plaintiff was ill in December, 1971. No evidence has been adduced by defendant to show that plaintiff was ill in December 1971, so if you accept plaintiff's evidence on this point the article is untrue in this regard.

2. (a) Plaintiff's evidence is that he was never admitted to Bellevue Hospital as a patient of Dr. Royes. 50

(b) Article states that he was so admitted.

In the
Supreme Court

Plaintiff, however, now concedes that in August 5-18, 1972 admitted Saint Joseph's Hospital where he was patient of Dr. Mendez and he was referred by Dr. Mendez to Dr. Royes who treated him.

No.16
Outline of
Judge's
Summation

20th May 1975

(continued)

10 3. (a) Article states that he (plaintiff) left the Hospital before he was discharged (Bellevue)

(b) Plaintiff admits he told Dr. Mendez he was leaving the Hospital. Does this mean he was not discharged?

4. (a) Article states plaintiff accused her (wife) of conniving with the doctor to keep him there (in Hospital Bellevue)

20 (b) Defendant has brought no evidence to support this part of the allegation.

Of course, you will have to consider whether this is an immaterial detail. If you find it to be so, defendant need not justify it. So that is the evidence for your consideration on this point.

30 You have to consider the article as a whole with particular reference to the words complained of and consider every material part of the alleged libel. You also consider the evidence and say if you are satisfied that the defendant has proved true every material part of the alleged libel.

You will have to say whether the defendant has justified the main charge, the gist of the libel. Has the substance of the libellous statement been justified to your satisfaction?

If yes, then the libel would be justified.

40 Again, if you find any distinct charge against plaintiff the truth of which not proved, can you say that that portion does not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges? If yes, then the libel is justified.

In the
Supreme Court

No.16
Outline of
Judge's
Summation

20th May 1975
(continued)

APOLOGY

If you should find that the plaintiff had been libelled by the defendant then you will have to consider the question of apology.

Now, an offer of apology is not a defence to libel but its effect is to mitigate damages.

Now for the offer of apology to be effective it should amount to a full and frank withdrawal of the charges or suggestions, conveyed and contain, an expression of regret that such charges or suggestions were ever made. 10

The apology should therefore be so worded that an impartial person would consider it reasonably satisfactory in all circumstances.

It is for you, members of the jury, to say whether the apology was sufficient. 20

Evidence

You have the letter dated 4th April, 1973, with draft apology attached and letter dated April 16th, 1973, letter dated 25th April, 1973, letter dated 1st May, 1973 (all read). You also remember the evidence of plaintiff in this regard. Can you say that this was a sufficient apology having regard to the words used in the article? It is a matter for you. 30
If you are satisfied that it was a sufficient apology then it would mitigate the damages. If you find it was not, then it would not.

Damages

Damages are compensation for the loss suffered by plaintiff owing to the conduct of defendant. The principle is that the injured party should be put as nearly as possible in the same position so far as money can do it as if he had not been injured. 40

Go through heads.

Evidence:

1. Plaintiff told you how he felt when he read the article.

2. The paintings on the wall of his garage.
3. The placards (in evidence)
4. The paintings on wall in corridors where employees pass to his office (photographs)
5. The telephone calls
6. His girl shun him.
- 10 7. Transaction with Mr. Brown (Exhibit 4 letter dated April 10th, 1973 (read)).

In the
Supreme Court

No.16
Outline of
Judge's
Summation
20th May 1975
(continued)

Questions:

1. Are the words in their natural and ordinary meaning defamatory to plaintiff? Yes or no.
2. Are the words a fair and accurate report of the proceedings in the divorce proceedings? Yes or no.
- 20 3. Are the words substantially true? Yes or no.
4. Is the apology sufficient?
If Yes
5. How much damages?

In the
Supreme Court

No.17
Judgment
21st May 1975

No. 17

Judgment

Suit No. C. L. 1164 of 1973

IN THE SUPREME COURT OF JUDICATURE OF
JAMAICA

COMMON LAW

BETWEEN CHARLES WOODROW WRIGHT PLAINTIFF

A N D THE GLEANER COMPANY
LIMITED DEFENDANT

The 21st day of May 1975. 10

THIS ACTION having on the 19th day
of May 1975, 20th day of May 1975 and
this day been tried before the Honourable
Mr. Justice Wilkie with a Special Jury of
the parishes of Kingston and Saint Andrew
and the Jury having found :-

- (1) That the words complained of are
defamatory of the plaintiff
- (2) That the Report contained in the
Star Newspaper of 29th January, 1973 20
is not fair and accurate report of
the Divorce Proceedings on 26th
January 1973
- (3) That the words complained of are not
substantially true
- (4) An award of \$2,000.00 damages to the
Plaintiff, and the said Mr. Justice Wilkie
having ordered that Judgment be entered
for the Plaintiff for \$2,000.00 and costs
to be agreed or taxed. 30

IT IS ADJUDGED that the Plaintiff
recover against the Defendant \$2,000.00
and costs to be agreed or taxed.

K.C.BURKE & CO.
Attorneys-at-Law for the
Plaintiff

Notice of Appeal

No.18
Notice of
Appeal

30th June 1975

IN THE COURT OF APPEAL
CIVIL APPEAL NO. 29 1975
C.L. No. 1164 of 1973

BETWEEN THE GLEANER COMPANY
LIMITED DEFENDANT/
APPELLANT

10 AND CHARLES WOODROW WRIGHT
PLAINTIFF/
RESPONDENT

20 TAKE NOTICE that the Court of Appeal
will be moved so soon as Counsel can be heard
on behalf of the abovenamed Defendant-Appellant
ON APPEAL from the whole of the judgment
directed to be entered for the Plaintiff-
Respondent on the trial of this action before
His Lordships Mr. Justice Wilkie sitting with
a Special Jury on the 19th, 20th and 21st
days of May 1975 whereby it was ordered that
there should be judgment for the Plaintiff-
Respondent against the Defendant-Appellant
for \$2000 with costs:

FOR AN ORDER that :

- (a) The judgment entered herein for the Plaintiff-Respondent against the Defendant-Appellant for \$2000 with costs be set aside.
- 30 (b) Judgment be entered for the Defendant-Appellant with costs.
- (c) Alternatively, that judgment be entered for the Plaintiff-Respondent against the Defendant-Appellant in such lesser sum as this Honourable Court deems fit.
- (d) Alternatively, that a new trial be ordered; and
- (e) The Plaintiff-Respondent do pay the costs of and incident to this Appeal.

40 AND FURTHER TAKE NOTICE that the following
are the grounds upon which the Defendant-
Appellant will rely at the hearing of the said
Appeal.

- 1. That the verdict of the Jury is unreasonable and cannot be supported having regard

In the Court
of Appeal

No.18
Notice of
Appeal
30th June 1975
(continued)

- to the evidence and the admissions
on behalf of the Plaintiff-Respondent.
2. That the Learned Trial Judge
misdirected the Jury on the issue of
justification.
 3. That the Learned Trial Judge misdirected
the Jury on the issue of whether or
not the report was a fair and accurate
report.
 4. That the Learned Trial Judge failed to 10
direct the Jury on the effect of
admission made on behalf of the
Plaintiff-Respondent.
 5. That the Learned Trial Judge erred
when he directed the Jury to the effect
that the Defendant-Appellant had
tendered an apology.
 6. That the Learned Trial Judge failed to 20
direct the Jury on the principles of
Law applicable where a Defendant is
prevented by the conduct of a Plaintiff
from tendering an apology.
 7. That the award of damages by the Jury
is manifestly excessive in all the
circumstances.

DATED the 30th day of June, 1975.

SETTLED: (Sgd) Norman W. Hill
NORMAN W. HILL
30th June 1975

Milholland Ashenheim & Stone 30
Attorneys-at-Law for the
Defendant/Appellant

To: The abovenamed Plaintiff/Respondent
OR

To: His Attorneys-at-Law
Messrs. K.C.Burke & Co.
47 Duke Street,
Kingston.

FILED by MILHOLLAND, ASHENHEIM & STONE of 40
No.11 Duke Street, Kingston, Attorneys-at-Law
for the abovenamed Defendant/Appellant.

Certificate of Order

J A M A I C A

No.19
Certificate
of Order

12th July 1978

CORRECTIVE NOTICE CIVIL FORM 9
IN THE COURT OF APPEAL

CERTIFICATE OF THE ORDER OF THE COURT

R.M. Civil Appeal No. 29 of 1975

Appeal from the Judgment of the Supreme Court
..... dated the.....day of.....
19.... .. motion

10

R.M. Civil Appeal No.29/75

Between

The Gleaner Company (Plaintiff/Defendant)
Limited Appellant(s)

And

Charles Woodrow Plaintiff/Respondent(s)
Wright

.....

This appeal came on for hearing on the 12th
day of July, 1978 before

20

The Hon. Mr.Justice Henry J.A.
The Hon. Mr.Justice Melville J.A.
The Hon. Mr.Justice Carberry J.A.

in the presence of Mr. N.Hill Q.C. and
Mr. D. Murray

for the Appellant(s) and Mr. B.Macaulay & Mr.
K.C. Burke & Mrs. Macaulay for the Respondents.

I hereby certify that on Order was made
as follows :- 12th July, 1978
appeal allowed.

30

New trial ordered. Appellant to have
costs of appeal to be agreed or taxed.
Costs below to abide result of new
trial.
Written judgment to be delivered.

Given under my hand and the Seal of the Court
this 24th day of July, 1978.

Messrs. Milholland, Ashenheim & Stone,
Attorneys-at-Law.

40

Mr. K.C.Burke
Attorney-at-Law.

The Deputy Registrar,
Civil Registry

.....
Deputy Registrar Ag.

In the Court
of Appeal

No.20
Judgment

21st February
1979

No. 20
Judgment

IN THE COURT OF APPEAL JAMAICA

SUPREME COURT CIVIL APPEAL NO. 29/75

BEFORE: THE HON. MR. JUSTICE HENRY, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.
THE HON. MR. JUSTICE CARBERRY, J.A.

GLENER CO. LTD. - DEFENDANT/APPELLANT

V.

CHARLES WOODROW WRIGHT - PLAINTIFF/RESPONDENT 10

Mr. Norman Hill, Q.C., and Mr. David Murray
for the Defendant/Appellant.

Mr. Berthan Macaulay, Q.C., Mr. K.C. Burke
and Mrs. M. Macaulay for the Plaintiff/Respondent.

March 1,2,3; April 17,18,19,20;
and July 12, 1978; February 21, 1979

CARBERRY, J.A.

On the 12th day of July, 1978, we gave judgment in this matter, allowing the appeal and ordering a new trial on both liability and damages, and we promised to put our reasons in writing. We do so now. 20

On Monday January 29, 1973, the Appellants published in their "Star" newspaper an account of the undefended divorce petition brought by the Respondent's wife against him and heard before Mr. Justice Rowe on Friday the 26th January, 1973. The report was published under the caption: "Cruel hubby caused wife to have many miscarriages." 30
The divorce was on the ground of cruelty, and after a preliminary paragraph purporting to sum up the story, it consisted of a report of the wife's evidence, which broadly speaking occupies two pages of foolscap, and a short paragraph setting out the evidence of her supporting witness Dr. Kenneth Royes as to her condition as a result of the Respondent's treatment. The case was a distressingly average type of case, and no exception was taken to the headline or content, save as to a short paragraph taken from the account of the wife's evidence. 40
It reads :-

"Petitioner said that 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."

In the Court
of Appeal

No.20
Judgment

21st February
1979

(continued)

The Respondent's Statement of Claim
alleged :-

10 "4. By the said words the Defendant meant and was understood to mean that the Plaintiff was mentally ill and was hospitalized in a mental institution.

Particulars pursuant to Section
170(2) of Cap.177

(a) The Plaintiff was the Respondent in the Divorce proceedings in respect of which the aforementioned words were published.

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

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

Section 170(2) of the Judicature
(Civil Procedure Code) of Jamaica
reads :-

30 "In an action for libel or slander if the Plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of such sense."

40 This provision formerly to be found in the United Kingdom Rules of the Supreme Court in Order 19 Rule 6 (see now Order 18 Rule 12, and Note 18/12/14), now appears in Order 82 Rule 3. In brief it requires the Plaintiff in an action for libel or slander to give particulars of facts which he relies on to show that there is an innuendo or hidden defamatory meaning about which he complains in the offending matter. Where he alleges meanings which are not obvious he should also set them out.

50 The Defence pleaded to this action canvassed the following points: (a) There was a denial that the words were defamatory or capable of being defamatory; (b) The Defendants

In the Court
of Appeal

No.20
Judgment

21st February
1979

(continued)

asserted that the words were a fair and accurate report of judicial proceedings; this involves two aspects, first the common law defence of privilege on that score, and secondly the statutory defence available to newspapers under The Libel and Slander Act Section 15, (formerly Cap.219) which provides :

"A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged....."

10

The Section was borrowed from the United Kingdom Law of Libel Amendment Act, 1888, Section 3. The consensus of opinion is that the common law affords only qualified privilege, but that the Statute provides absolute privilege. (c) Finally, the Defence pleaded that the words complained of were true, and set up the defence of justification. (d) The Defendants also added that they had offered to make an apology to the Plaintiff, but that he had rejected it. As no payment into Court was made the offered apology did not fall within the terms of Section 2 of The Libel and Slander Act (borrowed from Lord Campbell's Act of 1843, Section 1) but it was a matter to be considered on the issue of damages.

20

30

The action was heard before Mr. Justice Wilkie and a special jury on the 19th, 20th and 21st of May, 1975. It resulted in a verdict by the jury in favour of the Plaintiff/Respondent in the sum of \$2,000.00. The present appeal seeks to set aside that Judgment.

At the trial the Plaintiff/Respondent was the principal witness. He claimed that the particular paragraph complained of had caused him great embarrassment at his work place and elsewhere. He is an engineer by profession and claimed that his workmen or some of them or possibly workmen in the plant not under his supervision wrote up rude paint and chalk marks on the walls calling him the "Bellevue man", "mad baby killer" and so forth. He denied on oath that he was ever a patient of Dr. Royes, or had ever been treated by him. He admitted having been a patient of Dr. Mendez in August 1972 and that he was admitted to St. Joseph's Hospital, but claimed that it for the treatment of shingles only.

40

50

10 Dr. Royes was a foremost psychiatrist attached to Bellevue Asylum and he would consult him only for mental illness. While at St. Joseph's he was fully aware of what happened there and was 'collective'. He denied having been seen or treated by Dr. Royes, and denied receiving injections or drugs from him or on his orders. He had been in St. Joseph's for about two weeks and had left in his pyjamas and dressing gown. He discharged himself from the hospital. He equated treatment by Dr. Royes and Bellevue, and his complaint was that the offending passage meant that he was made, mentally ill, and that he had lost the chance of a favourable business deal because of it. He knew that Dr. Mendez was off the island, and that Dr. Royes was dead.

20 The note taken by Mr. Justice Rowe of the undefended divorce case was put in evidence by consent. It occupies some three and a half pages of foolscap. The jury had the chance to compare it with the Defendant/Appellant's version in the "Star" newspaper. Rowe, J.'s note of the wife's evidence corresponding to the passage complained of reads thus :

30 "In July 1972, husband was ill in hospital. I arranged for him to see Dr. Royes as Respondent was very depressed. Respondent agreed to see Dr. Royes. After a few occasions he ceased. After a while, Respondent wanted to go home. He wanted his clothes and his keys. He came out of Hospital in dressing gown and when he reached home he kicked down door and locked up telephone. My colleague was terrified; I felt embarrassed.
40 I began to feel that I had reached physical and mental end of road...."

50 The longhand note taken by a trial judge hearing an undefended divorce is at best of times short and condensed. It does not purport to be a verbatim note of the evidence given. The note made by Rowe J. does not mention the name of the hospital. If the name of the hospital was not mentioned but the name of Dr. Royes was, it is easy to see how a reporter could have assumed that the hospital was Bellevue, with which Dr. Royes had become identified. Neither the reporter nor the wife was called to give evidence. It is clear however that Bellevue was wrong: the hospital was St. Joseph's. The date was also wrong, it was July, 1972

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(Plaintiff/Respondent says 5th to 18th August), not December, 1971. So the newspaper report was incorrect on both these points.

The trial took a rather remarkable course. At the close of the case for the Plaintiff, counsel for the Defence showed to counsel for the Plaintiff the medical record of the Plaintiff. It is not clear whether these were the records from St. Joseph's Hospital, or Dr. Mendez, probably the former. On the strength of this, Plaintiff's counsel formally admitted that Plaintiff had been admitted to St. Joseph's Hospital for shingles and paranoid depression, that he was referred to Dr. Royes, who came into the hospital and himself administered one injection. It appears that he visited the Plaintiff on more than one occasion. Plaintiff's counsel admitted that Plaintiff was seen by Dr. Royes, but added that "it doesn't affect the gravamen of my case."

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The Defence called no witnesses and closed its case after this admission was made. An adjournment was taken, and next day counsel addressed and the judge summed up to the jury.

Unfortunately no verbatim note was taken of the summing-up. We have been presented with outline notes made by the judge as to what he proposed to say. Alternative versions prepared by the Defendant/Appellants' instructing attorney and by the Gleaner Reporter were not agreed to and are not before us. This puts everyone in a position of some difficulty, particularly when the Grounds of Appeal address themselves to non-direction on important aspects of the case. It is not easy to understand why in expensive litigation of this sort the precaution of employing a shorthand reporter for the summing-up was not taken by one or other party.

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Five Questions were left to the jury:

1. Are the words in their natural and ordinary meaning defamatory to the Plaintiff? Answer: Yes.
2. Are the words a fair and accurate report of the proceedings in the divorce proceedings? Answer: No.
3. Are the words substantially true? Answer: No.

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4. Is the apology sufficient?
(no answer given)

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5. If yes How much damages?
Answer: \$2,000.00

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10 Before us all the grounds or defences argued below have been in effect re-argued, and it has been argued that the directions of the learned trial judge as to them were inadequate and that the jury's verdict was unreasonable.

20 (a) The first ground of appeal was to the effect that the verdict of the jury was unreasonable and could not be supported having regard to the evidence and the admissions made on behalf of the Plaintiff/Respondent. This raised the issue of whether the words were defamatory or capable of being defamatory. Mr. Hill for the Appellants advanced a somewhat technical argument. He said that to report that the Plaintiff had become ill and had been admitted to a hospital and treated by a Doctor was not on the face of it defamatory; it became defamatory only by reason of the particular hospital and the particular doctor. It was therefore necessary for the Plaintiff to prove the particular facts relied on to show that there was an innuendo or hidden defamatory meaning. The Plaintiff had
30 therefore correctly pleaded an innuendo. It was not open to the jury to find that the words in their natural and ordinary meaning were defamatory of the Plaintiff, they could only find the word defamatory if the innuendo had been left to them, and there was no sufficient evidence to support the innuendo as only the Plaintiff had given evidence about Bellevue and Dr. Royes.

40 I must confess that I (but fortunately not my brothers) at first found great difficulty in following the argument. The Bellevue Hospital is so well known as the only asylum or explicit mental hospital in Jamaica that at first glance I myself would have thought the words defamatory in their ordinary and natural meaning. Further, the status of Bellevue Hospital is a matter of Statute; it is expressly so recognized and treated in The Mental Hospital Act. I
50 would have been prepared to treat its status and function also as a matter of which judicial notice could be taken. (Though the late Dr. Royes was almost equally well known, I agree that some proof of the nature

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of his specialist practice would be required). However, in any event, the questions as formulated for the jury were agreed by the respective counsel, no question directed to the innuendo as opposed to the ordinary and natural meaning was left to the jury and we do not consider that at this stage it is open to the Appellant to contend that an inappropriate question was left to the jury: See Seaton v. Burnand (1900) A.C. 135 at 143. 10

I think, speaking for myself, that the words "admitted to Bellevue as a patient of Dr. Kenneth Royes" would be very likely to convey to the ordinary Jamaican man in the street, reasonable man, or man in the jury box the impression that the person so admitted was suffering from mental illness and would be prima facie defamatory: See Halsbury, 3rd Edition Vol. 24 page 23, para.44, and Morgan v. Lingen (1863) 8 L.T. 800; Totten v. Sun Printing & Publishing Association (1901) 109 Fed. R. 289 and Cowper v. Vannier 20 Ill. App. 2 D. 499 (where imputing that the Plaintiff was recovering from a mental illness was held libellous). 20

However, in as much as we have ordered a new trial this issue will be once more before the jury, who will be required to find on these issues, with properly formulated questions left to them to cover the technical points involved. 30

(b) Justification: It was complained that the learned trial judge had misdirected the jury on the issue of justification.

It is clear that the Defendants' case, coupled with the admission by counsel for the Plaintiff, had established that the Plaintiff was not speaking the truth when he denied ever having been treated by Dr. Royes for mental illness. We must take it as established that he had been admitted to St. Joseph's Hospital for shingles and paranoid depression, and that he was there treated by Dr. Royes. It was clear however that he had not been admitted to Bellevue. It was also clear that he had left the hospital discharging himself. It was also clear that the "Star" had got the dates wrong as well as the hospital. 40 50

The law of defamation has over the years become one of the most technical portions or areas of the common law, and this appears

most clearly in the defence of justification. There are historical and sociological reasons for this. The remedy for defamation was introduced and strengthened to reduce the incidence of duelling. Plaintiffs were to be persuaded to use the legal remedies rather than to resort to violence to defend their honour. For this reason it appears that the early cases were heavily weighted in favour of the Plaintiff. Further, the law is here engaged in balancing two conflicting and competing interests, that of the Plaintiff in preserving his reputation (and the community's interest in seeing that he did so by legal and non-violent means) and on the other hand the traditional rights of free speech and the community's right to discuss and comment on matters of public interest. McPherson v. Daniels (1829) 10 B. & C. 263 at 272 contains an often quoted dictum by Littledale J. that "The law will not permit a man to recover damages in respect of an injury to a character which he either does not, or ought not, to possess." In some other common law jurisdictions statute law requires not merely that the Defendant prove that the words complained of were true, but that he prove that it was for the public benefit that they were published: (See for example, Howden v. "Truth" and "Sportsman Ltd. (1937) 58 C.L.R. 416: Defamation Act, 1912, New South Wales).

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Since the law presumes that every man is of good repute until the contrary is proved, it is for the Defendant to plead and prove affirmatively that the defamatory words are true or substantially true: (Halsbury, 3rd Edition Vol.24, page 44, para.75: and see Beevis v. Dawson (1957) 1 Q.B. 195. The Defendant is also required to give particulars of the matter relied on to justify the offending words. The justification must be as broad as the libel itself. All the charges complained of in the offending article must be justified and they must be accurately met. This presses hard upon the Defendant as some of the early cases show: See for example Weaver v. Lloyd (1824) 2 B. & C. 678; 107 E.R. 535 (The case of the cruel horseman); Clarkson v. Lawson (1829) 6 Bing 266 and 587; 130 E.R. 1283 and 1407 (The case of the extortionate proctor (bailiff); Goodbourne v. Bowman (1833) 9 Bing 532, 131 E.R. 712 (The case of the corrupt or pecculating mayor); Smith v. Parker (1844) 13 M. & W. 459; 153 E.R. 191 (The case of the violent school teacher); Helsham v. Blackwood (1851) 11 C.B.

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111; 138 E.R. 412 (The case of a report suggesting an unfair duel).

Further, it will be noted that it is the charges complained of that must be justified. This means that it is open to the Plaintiff to choose to complain of one or two passages, sentences, out of an article or matter that may contain other charges or remarks which are as damaging or even more damaging than those of which he complains.10
As to these other charges as to which no complaint is made it seems that all the Defendant can do is to ask that the whole publication or matter be put before the jury, so that they may see the context of the passage complained about: Cooke v. Hughes (1824) Ryan & Mood 112; 171 E.R. 961 and see S. & K. Holdings Ltd. v. Throgmorton Publicns (1972) 3 All E.R. 497. The Defendant may not plead "why pick this passage out, I said much worse things about you of which you have not complained"; See Viscount Sommonds in Plato Films Ltd. v. Speidel (1961) A.C. 1090 at page 1125; it may be a subject of comment only: Lord Radcliffe, at page 1127; that the position may produce some degree of injustice is clear: See Lord Denning at pages 1142 - 1143. Efforts by Defendants to meet this by offering evidence in mitigation of damages to show that 30 the Plaintiff ought not to enjoy a reputation are severely curtailed by the rule that what is in issue is the Plaintiff's general reputation and not his character or disposition, and that proof of specific acts by him may not be offered unless it goes to show that by reason of their being well known in the community, he had no reputation or very little: See Scott v. Sampson (1882) 8 Q.B.D. 491; Hobbs v. Tinling (1929) 2 K.B. 1 40 approved in Plato Films Ltd. v. Speidel (supra). If the Plaintiff does go into the witness box, he personally may be cross-examined on these matters "as to credit" but no evidence can be led on them if he does not admit or disputes them: Hobbs v. Tinling, (supra). This has led to some odd results see Goody v. Odhams Press Ltd. (1966) 1 Q.B. 333; (1966) 3 All E.R. 369 (One of the robbers in the Great Train robbery suing for 50 libel; to what extent could his previous convictions be put in evidence. Would it be necessary to prove the train robbery over again?) However, the position is modified by two factors: the Defendant may plead and prove substantial justification, and if the charges made in the offending article are severable, he may plead and prove partial

justification, i.e. he may show that some of them are true. There is now a third factor: The Defamation Act (closely following the U.K. Defamation Act, 1952) now provides in Section 7 :-

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"7. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges."

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The Section quoted mitigates but does not substantially alter the effect of the common law. It has always been open to the Defendant to cover "the main charge or the gist of the libel". (Gatley: Libel and Slander, 7th Edition (1974) paragraph 1043; Halsbury, 3rd Edition Vol. 24: Libel and Slander, page 46 paragraph 81). The question at issue has usually been, and it is so here, what is the main charge or gist of the libel? Has it been met?

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Illustrations are to be found in cases such as Edwards v. Bell (1824) 1 Bing 403; 130 E.R. 162; (The parson who was alleged to have abused his congregation from the pulpit); Clarke v. Taylor (1836) 2 Bing N.C. 654; 132 E.R. 252; (exposing a swindler who had swindled in Manchester, and observing he had just come to Leeds: allegation re Leeds met by proof of swindling in Manchester); Morrison v. Harmer (1837) 3 Bing N.C. 759; 132 E.R. 603; (exposing the quack cure-all patent medicine: the real ground of complaint that it was a system of wholesale poisoning being met; it was not necessary to justify epithets "scamps and rascals"); The case of Alexander v. N.E. Railway (1865) 6 B. & S. 340; 122 E.R. 1221; is worth more than a passing mention, it covered, as does this case, both justification and the defence of reporting of judicial proceedings. The report published by the train company stated that the Plaintiff had been convicted for riding on their train without a ticket and fined £9.1.10 including costs, or three weeks imprisonment. The defence pleaded that in fact Plaintiff had been fined £1 and to pay costs £8.1.10, or three weeks in default; Plaintiff replied that it was two weeks in default, (which must be taken to be true). At issue was whether the plea

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was sufficient justification. This was then a point of pleading. Fully argued, some of the remarks of the Court will bear repetition: Mellor J: "The gist of the libel is that the Plaintiff was sentenced to pay a sum of money, and in default of payment to be imprisoned." Cockburn C.J: "The case resolves itself into a question of degree of accuracy, which is for the jury" Blackburn J: "The substance of the libel is true: the question is whether what is stated inaccurately is of the gist of the libel." The Court held that the plea, as a plea, was sufficient. It would be for the jury to decide if it was in fact a substantial justification, and sufficiently accurate. We do not know what the jury did in fact decide.

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The same problem of misreporting the conviction arose in Gwynn v. S.E.Railway (1868) 18 L.T. 738. Here the Plaintiff complained that the report alleged a penalty in default of three days hard labour instead of three days imprisonment. Cockburn C.J. left it to the jury to say whether there was any substantial difference: if so justification would fail; observing however that as Plaintiff would in either case have been shown to be acting dishonestly the damages would be affected. Was the statement substantially true? The jury answered by awarding Plaintiff £250 damages. Gwynn's case certainly shows that English juries did not like Railway companies. But it also shows that the issue of substantial justification, (and also the accuracy of the report), is a matter for the jury, properly directed. So far as the effectiveness of the pleading goes, the Courts were usually prepared to hold that it was sufficient:

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Biggs v. Great Eastern Railway (1868) 18 L.T. 482. Whether the gist of the libel has been met is almost always then a question for the jury, and it must be rare for a case to arise in which it could be said that the matter should be withdrawn from them and the charge held to have been justified, or that their verdict that it was not substantially justified could be set aside as perverse; (it would be equally difficult to set aside their verdict that it had been justified: Broome v. Agar (1928) 138 L.T. 698). But it is clear that whether the gist of the libel has been met must at least have been left sufficiently clearly to the jury if the verdict is to be upheld. The complaint here is that the learned trial judge

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did not sufficiently direct the jury at to what constituted the "Sting" or "gist" of the libel; it is also complained by the Appellants that the learned judge should have told the jury that that "sting" or "gist" had been justified.

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10 Remebering that what we have here is the "outline" of the summing-up, and that what is alleged in effect is "non-direction" we have found it difficult to decide. But we have anxiously searched for directions on these matters: Was the sting of the libel that the Plaintiff was mentally ill and was hospitalized in a mental institution? Does the St. Joseph's Hospital take "mental" patients? (There seems to be no evidence on that save that the Plaintiff went there, and for that illness as well as shingles).
20 Did the sting go further, i.e. that he was so mentally ill that he needed admission or confinement in a mental institution? Before us, counsel for the Plaintiff has suggested additional "stings" to the libel, i.e. that having regard to the character of Bellevue in the Mental Hospital Act, there is a suggestion that he had "escaped" therefrom and so was not only still mentally ill but dangerous. (It should be observed however
30 that this further suggestion seems to have been advanced for the first time before us and was not pleaded).

40 While the learned trial judge did direct the jury on many of the matters relating to the plea of justification that have been mentioned above, we came to the conclusion that he did not sufficiently direct them as to what was the gist of the libel, and invite their attention to the various "gists" that might be alleged to be fairly found in it, and as to whether the Defendant/Appellant had proved substantially that which was complained of. As conducted the case presented certain difficulties. It maybe doubtful if the jury fully appreciated the admission that was made by the Plaintiff's counsel, or understood the extent to which it had been shown that the Plaintiff had denied or concealed the truth, wittingly or
50 unwittingly in the witness box, and if unwittingly, did this not in itself lend support to the charge that he was "mentally ill"? The question of whether there has been substantial justification is however one for the jury, properly directed. We are not, I think, entitled to substitute our own views upon the matter, and on this score we were of opinion that there must be a new trial and so

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ordered on the 12th July, 1978.

One further observation should I think be made: there is a difference between whether the substantial sting of the libel has been justified, i.e. whether the real charge or sting has been met, or if not whether there is still matter to be complained of that has not been justified, and on the other hand the question as to the accuracy of the report as a report. For example, the question of dates may be relevant to the accuracy of the report (was the witness reported correctly on the dates given by her), but would have little bearing on whether the sting of the libel, mental illness etcetera had been established. I am not sure that this was sufficiently made clear to the jury on the directions given, and they may have been led to conclude that if the defendant alleged mental illness in December, when it was in fact August of the ensuing year, the sting of the libel had not been met. 10 20

Having regard to our views on the issue of justification it is possible to deal with the other issues more succinctly.

(c) At common law qualified privileges attached to reports of judicial proceedings. In R. v. Wright (1799) 8 Term R. 293, 101 E.R. 1396 (actually a case on Parliamentary privilege), Lawrence J. remarked on the publication of reports of court proceedings:- 30

"Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public, more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings...." 40

Over the years the privilege has been extended as to the types of proceedings that may be covered, whether they can be reported on a day to day basis till completion, whether "unscheduled" interruptions may be reported, whether they may be abridged or condensed versions, or must be verbatim. Commentary must be kept distinct from the report, but if what is reported is "substantially a fair account of what took place, 50

there is entire immunity for those who publish it...." per Campbell L.C.J. Andrews v. Chapman (1853) 3 C. & K. 286; 175 E.R. 558. See also Lewis v. Levy (1858) E.B. & E. 537; 120 E.R. 553.

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The burden of proving the fairness and accuracy of the report rests on the Defendant who publishes it but slight flaws are permissible: Hope v. Leng Ltd. (1907) 23 T.L.R. 243.

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The fairness or accuracy of the report is a question for the jury: Turner v. Sullivan (1862) 6 L.T.N.S. 130; not every mistake will destroy the privilege, but some very slight mistakes have been held to do this: Blake v. Stevens (1864) 11 L.T.N.S. 543 (Text book citing a case alleging Plaintiff was "struck off" where he was only "suspended" as a solicitor) and see too Furniss v. Cambridge Daily News (1907) 23 T.L.R. (issuing of a false invoice, report alleging issuing of an invoice he knew to be false); Mitchell et al v. Hirst, Kidd & Rennie Ltd. (1936) 3 All E.R. 872, (conviction of driving away car without owner's consent, reported as stealing car); but the Courts are more willing to intervene in this sphere and may withdraw a case from the jury on the ground that there was no evidence of unfairness or inaccuracy to go to the jury, see Kimber v. Press Association (1893) 1 Q.B. 65; (1861 - 73) All E.R. 115; compare Leslie v. Mirror Newspapers Ltd. (1971) 45 Aust. Law Jo. R. 700.

In this area also, the legislature has intervened, and under Section 15 of The Libel and Slander Act fair and accurate reports in newspapers of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously be privileged. (Compare the U.K. Law of Libel Amendment Act, 1888, Section 3). The better view is that the Statute affords absolute privilege.

Jamaica has never adopted the U.K. Judicial Proceedings (Regulation of Reports) Act, 1926 (16 & 17 Geo. 5, Ch. 61) which restricts the publication of newspaper reports of divorce and nullity proceedings, so that so far as the publication of such reports as that which forms the subject matter of these proceedings go, the dicta referred to in R. v. Wright (supra) continues to apply with full force.

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(continued)

Having carefully examined pages 76 to 77 of the Record in which the learned trial judge in his "outline" for the summing-up deals with privilege, it appears to us that the complaints that have been made under this head are not justified. The judge did in effect tell the jury to deal with the Defendants' report in their paper, comparing it with the Divorce Court's note of the evidence, as a whole. He might have distinguished more accurately between the question of whether the report was a fair and accurate report of what the witness said in the Divorce Court, as distinct from the question of whether what was published in the report was in fact substantially true. Some of the complaints that have been made relate to passages in which he discussed the latter problem rather than the former. In a case in which the defences of both justification and fair and accurate report of judicial proceedings are combined, it is necessary to keep this distinction before the jury. For example if the witness mis-states the dates of her husband's illness, and the press report reports the same date, while it may (or may not) affect the issue of justification, i.e. what is in truth and fact the correct date, it would not affect the question of the accuracy of the report. The complaint made before us has taken passages dealing with the issue of justification and treated them as dealing with the issue of fair and accurate report of judicial proceedings.

(d) On the issue of damages we incline to the view that the directions we have seen in the Judge's "outline" summing-up were inadequate. Assuming for the moment that the jury did find (properly directed) that the sting of the libel had not been fully justified, and that the report was inaccurate because it mentioned Bellevue as the hospital, while the witness had not specified which hospital it was, we think that the jury should have been advised that the damages would lie not for imputing mental illness, treated by Dr. Royes, (with whatever connotations that carried), for that was admitted, but only for the further suggestion that it was severe enough to warrant admission to the state mental institution rather than to a private hospital. How much this would add to the sting of proven admission to a private hospital for paranoid depression and treatment therein by the doctor in charge of the state mental institution would be the question to which

10 the jury should have been invited to address their minds. Having regard to the view that we have come to as to the direction or non-direction on the issue of justification, and the fact that we have ordered a new trial, it is not necessary to express an opinion on the question of whether or not the damages here awarded (\$2,000.00) was excessive or not, beyond noting with some interest that the Plaintiff, through his counsel, exercised his right to withhold consent to this Court assessing damages, though he complained that the damages were "small."

In the event we have allowed the appeal and ordered a new trial. The Appellant will have the costs of the appeal. The costs of the first trial will abide the result of the new trial.

20 I think it would be proper to express the hope that having regard to the history of this piece of "prestige" litigation, the parties will on the next occasion take the precaution of having a shorthand note made of the summing-up of the learned trial judge.

HENRY, J.A. - I agree.

MELVILLE, J.A.- I agree.

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(continued)

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Majesty in
Council

Order granting Final
Leave to Appeal to Her
Majesty in Council

16th July 1979

IN THE COURT OF APPEAL

CIVIL APPEAL NO.29 of 1975

BETWEEN CHARLES WOODROW WRIGHT Plaintiff/
Respondent

A N D THE GLEANER COMPANY Defendant/
LIMITED Appellant 10

Application of CHARLES
WOODROW WRIGHT to Appeal
to Her Majesty in Council

The 16th day of July 1979

UPON READING the Motion on behalf of
Charles Woodrow Wright the Plaintiff/
Respondent dated the 17th day of May 1979
and filed herein

AND UPON READING the Affidavit of
Keith Constantine Burke sworn on the 16th 20
day of May 1979 and filed herein

AND UPON HEARING Mr. Berthan Macaulay
of Queen's Counsel and Mr. K.C.Burke of
Counsel for Charles Woodrow Wright the
Plaintiff/Respondent and Mr. R.G.Ashenheim
of Counsel for the Gleaner Company Limited
the Defendant/Appellant

IT IS HEREBY ORDERED that final leave
to appeal to Her Majesty in Council from
the Order of the Court of Appeal made on 30
the 12th day of July 1978 is hereby granted

AND IT IS FURTHER ORDERED that the costs
of and incidental to the Motion abide the
result of the appeal.

Sgd. (Illegible)

R E G I S T R A R A G

ENTERED by K.C.BURKE & CO. of 47 Duke Street,
Kingston, Attorneys-at-Law for CHARLES
WOODROW WRIGHT the PLAINTIFF/RESPONDENT.

EXHIBITS

1

Report, "The Star" Newspaper

THE STAR, Monday, January 29, 1973

CRUEL HUBBY CAUSED WIFE TO HAVE MANY
MISCARRIAGES

10 THE MARRIAGE BETWEEN THE TEACHER and
the engineer was unhappy from it was only 10
days old - the teacher tried in vain to show
her husband that having children was a part
of a happy marriage, but the engineer had
other plans, which he expressed with cruelty.

This was the gist of the evidence,
given by LENA LEE WRIGHT, senior lecturer at
the Shortwood Teachers' Training College and
a Chief Examiner of Examinations set in
Jamaica, who is living at 11 Lindsay Crescent,
Kingston 10.

20 She sought the dissolution of her marriage
on the ground of cruelty against CHARLES
WOODROW WRIGHT, engineer employed to the
Jamaica Public Service Co. and living at 6
Elmwood Terrace, Forest Hills, St. Andrew,
before Mr. Justice Rowe, in the Divorce Court
on Friday.

MISCARRIAGES

30 Petitioner told the court that as LENA
LEE McCOURTIE, she was married to the
respondent on April 4, 1964. The marriage
was performed by the Rev. W.R.F. McGHIE at
the University Chapel of the West Indies.
After the marriage they both lived at 6
Elmwood Terrace Forest Hills.

She said that there were no children
from the marriage even though she had several
pregnancies, which resulted in miscarriages,
due mainly to her husband's treatment, which
was very cruel from 10 days

40 said that her husband treated her with callous
disrespect. Petitioner told the court that
she had taken pains to do everything to make
her husband happy, as she was on holidays and
both of them were using the same car. One
evening she was to prepare his dinner but
she was busy doing some work in the house first
before going into the kitchen.

Her husband shouted to her and said:
"You no gon ah kitchen yet?" This she said,

EXHIBITS

1

Report,
"The Star"
newspaper

29th January
1973

EXHIBITS

1
Report
"The Star"
newspaper
29th January
1973
(continued)

made her feel embarrassed and as if she had made a mistake in marrying. Petitioner told the court that they had jointly built a home, but certain sections including the kitchen were not built the way they had planned it, so they had borrowed £600 (\$1,200) to finish the house. She had to pay back all the money, as her husband refused to contribute.

In June of 1964, she had gone in search of a mortgage loan as her funds had run low. On her return in the evening she was feeling ill and told her husband of her condition; yet he quarrelled with her about not preparing his dinner herself, instead of allowing their helper to do it. 10

Sometime in July, 1966, petitioner became pregnant but discovered that she was having a miscarriage. She went to doctor but the doctor had to leave for a conference and a friend of hers contacted another doctor for her. Her husband told her that he would not be paying the bills. This she said embarrassed her as her friend told her that she was disappointed by petitioner's conduct. Petitioner discovered that surgery could help her to conceive and she told her husband so. He told her that he was not interested, because if she had surgery it would not be because of him but someone else. 20 30

Mrs. Wright said that she had to look after the matter herself. On her return from the hospital after her surgery both of them slept in different rooms. This she said was mostly because she would have to climb the stairs if she wanted to sleep with him on the upper floor.

One night while she was still ill, he forced her to have sex with him. This was after he had abused her. His action left her depressed and she left the home for some weeks. She returned because he promised that he would change his "cruel ways". Petitioner said that her husband never kept his promise. Conditions continued like that until April, 1968, when she again became pregnant and informed her husband. He told her: "So you think you have done me a favour by being pregnant? Well I am going to show you how cruel I am." She said that he would drive her roughly over all types of roadway. 40 50

On one occasion, she spoke to him and he said: "Oh your pregnancy torments me."

Petitioner told the court that as a result of her husband's bad treatment she lost the child, in her 34th week of pregnancy. At this stage she said: "I do not see why a person should have four bedrooms and rattle around it without children." She further stated that she loved children and believe should have her own. Petitioner said that she suggested to her husband that they adopt a child and her husband said that the child would turn out to be a criminal as she would not know whose child it was. Petitioner related how her husband would beat her pillow, while she slept at nights to awake her - for the rest of the night she would have to stay awake, she told the court.

10

She related an incident which she said took place one day, while both of them were seated at the dinner table. He husband looked at her and said: "Why don't you leave the table? You are spoiling my appetite."

20

Petitioner said that 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.

Petitioner told the court that because of her husband's behaviour, she herself had to consult Dr. Royes. She said that on August 23, 1972, she cleaned up the house - then calmly packed and drove out and left him. She went to Montreal and threw herself down in her sister's bed.

30

Doctor Kenneth Royes gave evidence in support of the petition. In his testimony he said that it would be unwise for the petitioner to return to live with her husband.

Petitioner was granted a decree nisi on the ground of cruelty, with costs against her husband. Her petition was presented by Dr. LLOYD BARNETT.

40

EXHIBITS

1
Report
"The Star"
newspaper
29th January
1973
(continued)

EXHIBITS

4
Letter,
B.B.Grant to
Charles Wright
10th April 1973

EXHIBITS

4
Letter, B.B.Grant to
Charles Wright

19 Kensington Crescent
Kingston 5

April 10, 1973

Mr. Charles Wright,
c/o Jamaica Public Service Co.Ltd.
151 Orange Street 1
Kingston

10

Dear Charles,

I regret that after our many discussions regarding the possibility of your having an equity in Industrial Supply Company and my telling you that the terms you propose are O.K. I am unable at this time to conclude negotiations with you.

You are aware that the bulk of the money with which I hope to finance this business is being given to me by Dad and it would not be in my best interest to do anything to incur his disfavour; he has expressed his disapproval of your being associated with this business as a result of the report in the 'Star' sometime ago of your commital to the Bellevue Hospital.

20

I do feel that with your engineering experience your association with this company would prove invaluable but at the moment my hands are tied. I do hope you will appreciate my position in the matter.

30

Yours truly,

B.B. Grant

EXHIBITS

5(a)

Letter, K.C.Burke & Co.
to Gleaner Company Ltd.

EXHIBITS

5(a)

Letter,
K.C.Burke &
Co. to
Gleaner
Company Ltd.

12th March 1973

March 12, 1973

REGISTERED

Gleaner Company Limited,
North Street,
KINGSTON

10

Dear Sirs,

Charles Woodrow Wright

We have been consulted by Mr. Charles Woodrow Wright with reference to a report of a divorce case of his wife, Mrs. Lena Lee Wright, against him, appearing on page 5 of the Star newspaper of Monday 29th January 1973, wherein it was stated in your report:-

20

"Petitioner said that 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."

30

According to our instructions that is a serious and unwarranted libel against our client, Mr. Charles Woodrow Wright, for the reason that no evidence whatsoever was given to the Court either by the Petitioner, Mrs. Lena Lee Wright, or any of her witnesses to the effect that Mr. Wright was admitted to the Bellevue Hospital as a patient of Dr. Kenneth Royes.

We are instructed that in truth and in fact our client has never been admitted to the Bellevue Hospital, and further that he has never been a patient of Dr. Kenneth Royes.

40

We have also been informed by Messrs. Hew and Bell, the Attorneys-at-Law for Mrs. Lena Lee Wright in her divorce proceedings, that they "can state quite positively that there was no evidence given that the Respondent was admitted to Bellevue Hospital or that he was a patient of Dr. Royes."

We have been further instructed that our

EXHIBITS

5(a)

Letter,
K.C.Burke &
Co. to
Gleaner
Company Ltd.
12th March
1973
(Continued)

client did not defend the divorce proceedings in Court on the day of hearing.

We have also obtained from the Supreme Court a copy of the Notes of Evidence taken by the Judge at the hearing of the divorce and again there was no evidence whatsoever that our client was admitted to Bellevue Hospital as a patient of Dr. Kenneth Royes.

We have been instructed by our client that the publication has caused great disress to him and has grossly affected his image and damaged his reputation and prestige besides other things. He has been harassed and has suffered great humiliation as a result of your libel committed on him. 10

We have been instructed to demand reasonable and proper compensation by way of damages from you and also a written apology in such form as we may approve in large prints in both the Daily Gleaner newspaper and the Star newspaper over a specified period approved by us immediately. We also require that you pay our client's legal costs in connection with this matter. 20

In default of your complying with our request within twenty-one days of the date hereof we will have no other alternative but to carry out the instructions of our client and institute legal proceedings against you. 30

KCB/msr
Yours faithfully,
K.C. BURKE & CO.

Stamp
REGN No. 3032 CERTIFICATE OF POSTING A REGISTERED ARTICLE
ADDRESSED TO: GLEANER CO.LTD.
North St.
Kingston, Jamaica 13 MR 73
REGISTRATION FEE PAID
Receiving Officer's Signature (or initials) 40

EXHIBITS

5(b)

EXHIBITS

5(b)

Letter, Gleaner Company Ltd.
to K.C. Burke

Letter
Gleaner
Company Ltd.,
to K.C.
Burke

16th March
1973

THE GLEANER COMPANY LIMITED
Established 1834 Incorporated 1897

DIRECTORS

L.E. ASHENHEIM, M.A., CHAIRMAN
L.W. ABRAHAMS, F.A.I.A., J.P.
C.E. D' COSTA, J.P.
COL. M.R. DECORDOVA, C.B.E., J.P.
P.G. ASHENHEIM, M.A., B.C.L.
S.G. FLETCHER, J.P.
G.A. SHERMAN, MANAGING DIRECTOR
T.E. SEALY, C.B.E., J.P.
A.R. CUTHBERT, F.C.A.S., J.P.
P.H. WRIGHT
J.D. ASHENHEIM, M.F.C.P.

10

20

7 North Street,
P.O. Box 40
Kingston, Jamaica, W.I.

CABLES: GLEANER, JAMAICA
TELEPHONE: 932-3400
(20 lines)

16th March 1973

Mr. K.C. Burke,
Attorney at Law,
46 Duke Street,
Kingston.

30

Dear Sir,

Re Charles Woodrow Wright

I beg to acknowledge receipt of your
letter dated 12th March 1973 re the above,
and wish to advise that we have referred
same to our Attorneys Messrs. Milholland
Ashenheim & Stone, who will no doubt be
contacting you shortly.

Yours sincerely,

THE GLEANER COMPANY LTD.
(Sd.) G.A. Sherman

GAS:KM Managing Director

40

The Daily Gleaner The Sunday Gleaner
The Week-End Star The Jamaican Weekly Gleaner
"Children's Own"

5(c)
Letter,
Milholland
Ashenheim &
Stone to
K.C.Murke
with draft
Apology
4th April 1973

EXHIBITS
5(c)

Letter, Milholland,
Ashenheim & Stone to
K.C.Burke with draft
apology

MILHOLLAND, ASHENHEIM & STONE
ATTORNEYS-AT-LAW & NOTARIES PUBLIC

RICHARD G. ASHENHEIM, M.A., P.O.Box 82
B.C.L., Kingston, 10
EDWARD C. ASHENHEIM, M.A., Jamaica.
B.C.L.
JOHN C. STONE, M.A. 4th April, 1973
WILLIAM H. SWABY
PATRICIA G. COOKE
BRYAN L. ASHENHEIM, M.A.

RAYMOND A. CLOUGH

CABLES: LEX. JAMAICA

PLEASE QUOTE REF.

K.C.Burke, Esq.,
Attorney at Law, 20
47 Duke Street,
Kingston.

Dear Sir:

Your letter dated March 12, 1973 written
on behalf of your client Mr.Charles Woodrow
Wright to our clients Gleaner Company Limited,
has been sent to us to deal with.

We have now had an opportunity of carefully
checking the facts, and from our instructions
and information, we are satisfied that although 30
the hospital to which, according to Mrs.Wright's
evidence, Mr. Wright was admitted was not in
fact Bellevue Hospital, nevertheless her
evidence in the divorce case in fact alleged
that Mr. Wright was under treatment from Dr.
Kenneth Royes.

In the circumstances, we hereby on behalf
of the Gleaner Company Limited offer to publish
in "The Star" newspaper an Apology for having 40
stated the wrong hospital in the Star report
of the case to which you have referred.

We suggest that the form of Apology
attached would, in the circumstances, be
appropriate and would invite your comments and

EXHIBITS

5(c)

Letter
Milholland
Ashenheim &
Stone to
K.C. Burke
with draft
Apology

4th April
1973

(continued)

views on the draft.

In the circumstances, the Gleaner Company Limited would also be prepared to pay your client's reasonable costs in the matter.

Please let us hear from you in connection with the foregoing offer.

Yours faithfully,

Milholland, Ashenheim & Stone

RGS:FG
Encl.

10

DRAFT

APOLOGY

In the issue of "THE STAR" of Monday, January 29, 1973, in a report of the hearing of the divorce petition brought in the Supreme Court by Lena Lee Wright against Charles Woodrow Wright it was reported that "Petitioner said that respondent became ill in December, 1971 and was admitted to Bellevue Hospital as a patient of DR. KENNETH ROYES".

20

The Gleaner Company Limited is now satisfied that the Hospital to which, the petitioner had stated in her evidence in the case that the respondent had been admitted as a patient of Dr. Kenneth Royes was not Bellevue Hospital and hereby tenders its profound apology and regret to Mr. Charles Woodrow Wright for the error in the report.

EXHIBITS

5(d)
Letter, K.C.
Burke & Co.
to Milholland
Ashenheim &
Stone

16th April
1963

EXHIBITS

5(d)
Letter, K.C.Burke & Co.
to Milholland, Ashenheim &
Stone

Messrs. Milholland, Ashenheim & Stone,
Attorneys-at-Law,
11 Duke Street,
KINGSTON.

Dear Sirs,

10

Charles Woodrow Wright
Your ref: RGA:FG

We have for acknowledgment your letter of
4th April 1973, which in effect continues the
libel against our client.

Our client was never at any time in his
life treated by Dr. Royes nor had he at any
time in his life been admitted to Bellevue
Hospital.

Further, Mrs. Wright in her evidence did
not say that Mr. Wright was ever at any time
treated by Dr. Royes or that he was ever at
any time a patient at Bellevue Hospital. She
did not allege that in her Petition or did she
give that evidence in Court.

20

We have a copy of the Judge's Notes of
Evidence and we also have a letter from Messrs.
Hew & Bell, the Attorneys-at-Law for Mrs.
Wright, which verify the above facts stated
in this letter.

30

In the circumstances, the draft form of
apology submitted by you which states that
the Petitioner had stated in her evidence
that the Respondent had been admitted as a
patient of Dr. Royes, is completely wrong and
out of order as there was no such evidence in
Court.

Please submit another draft apology
within seven days, and we are also to remind
you that our client is claiming damages besides
his costs in the matter.

40

If you do not comply with our request
within seven days, then we will have no other
alternative but to carry out the instructions
of our client and file action in the Supreme
Court against your client.

KCB/smr
Yours faithfully,
(Sgd) K.C.Burke & Co.

EXHIBITS

5(e)

Letter,
Milholland
Ashenheim &
Stone to K.C.
Burke

EXHIBITS
5(e)

Letter, Milholland Ashenheim
& Stone to K.C.Burke

25th April
1973

MILHOLLAND, ASHENHEIM & STONE
ATTORNEY-AT-LAW & NOTARIES PUBLIC

RICHARD G. ASHENHEIM, M.A. P.O.Box 92
B.C.L. Kingston,
EDWARD C. ASHENHEIM, M.A. Jamaica
B.C.L.

10

JOHN C. STONE, M.A. 25th April 1973
WILLIAM H. SWABY
PATRICK G. COOKE
BRYAN L. ASHENHEIM, B.A.

RAYMOND A. CLOUGH

CABLES: LEX. JAMAICA

PLEASE QUOTE REF.

20

K.C.Burke, Esq.,
Attorney at Law,
47 Duke Street,
Kingston.

Dear Sir,

Re: Charles Woodrow Wright
and The Gleaner Co.Ltd.

We thank you for your letter dated 16th
April 1973.

30

According to our instructions, Mr.Wright
was not only in fact treated by Dr. Kenneth
Royes, but also Mrs. Wright in fact said so
in Court at the hearing of the divorce
petition.

If you still have any doubt as to the
latter allegation, we would invite you to
join with us in a joint application to see
His Lordship Mr. Justice Rowe who tried the
divorce petition and (sic) noted of evidence.

Yours faithfully,
(Sgd) Milholland, Ashenheim
& Stone

40

RG/FG

EXHIBITS

5(f)

Letter,
K.C.Burke &
Co. to
Milholland
Ashenheim &
Stone
1st May 1973

EXHIBITS

5(f)

Letter, K.C.Burke & Co.
to Milholland Ashenheim &
Stone

May 1, 1973

Messrs. Milholland, Ashenheim & Stone,
Attorneys-at-Law,
11 Duke Street,
KINGSTON.

10

Dear Sirs,

Charles Woodrow Wright
Your Ref: RGA:FG

We have for acknowledgment your letter of 25th April 1973, and again observe that the effect of your letter is a continuation of the libel on our client.

In our opinion we do not think it proper for us to see His Lordship Mr. Justice Rowe in this matter.

20

We have already obtained from the Registrar of the Supreme Court a copy of the Notes of Evidence taken by the Judge as mentioned in our letter to you of 16th April 1973.

We also had received a letter from Messrs. Hew & Bell, Attorneys-at-Law for Mrs. Lena Wright in the Divorce Petition in which they stated (inter alia) :-

"We can state quite positively that there was no evidence given that the Respondent was admitted to Bellevue Hospital or that he was a patient of Dr. Royes."

30

Our client instructs us that he was never at any time treated by Dr. Kenneth Royes, and we have been instructed as confirmed by the Judge's Notes of Evidence and also by the letter from Messrs. Hew & Bell to us that Mrs. Wright did not say so at the hearing of the Divorce Petition.

40

Yours faithfully,
(Sgd) K.C.Burke & Co.

KCB/smr

EXHIBITS

6

Certificate from
Blue Cross of
Jamaica and
Bill

12th May 1975

EXHIBITS

6

Certificate from Blue Cross
of Jamaica and Bill

BLUE CROSS OF JAMAICA

Federated Health Insurance Association Ltd.
85 Hope Road,
Kingston 6

Tel: 937-9821
937-9822
937-9945

0

12th May, 1975

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Charles Woodrow Wright has been a member of the Blue Cross Health Scheme since February 1, 1970.

According to our records, Mr. Wright was hospitalized for thirteen (13) days during 1972 at the St. Joseph's Hospital from 5th August to 18th August. The diagnosed condition submitted to us was Herpes Zoster (Shingles).

0

Blue Cross paid a total of \$241.25 towards Hospital and Medical expenses during the period of Mr. Wright's illness.

(Sgd) Derven G. Pullar

D.G. PULLAR
GENERAL MANAGER

EXHIBITS

6
Certificate
from Blue
Cross of
Jamaica and
Bill
12th May
1975
(continued)

Mr. Charles Wright,
P.O. Box 371
Kingston 10

To: DR. JOHN H. MENDES
L.R.C.P. Ed.L.R.C.S. Ed.L.R.F.P. & S.Glas.
D.C.M.T. (Lond)

48 Hagley Park Plaza
Kingston 10
Jamaica W.I.

PHONE:
OFFICE: 936-6560
RES: 927-8256

10

For Professional Services

Re. A/C Bill \$40.00

I am sorry I have to send you a bill
but Blue Cross only pay £54.00 out of \$94.00
from your A/C

Thanking you,

J.H. Mendes

With the compliments

E & OE

NOTE: This account is made up to 20th Oct. 1972.
All payments and charges after this date are
not included.

20

Notes of Evidence
Lena L. Wright
v. Charles
W. Wright
26th January
1978

EXHIBITS

Notes of Evidence, Lena L.
Wright v. Charles W. Wright

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN DIVORCE

SUIT NO. D 1100 of 1972

BETWEEN LENA LEE WRIGHT PETITIONER
A N D CHARLES WOODROW
WRIGHT RESPONDENT

10

26th JANUARY, 1973

dissolution of marriage Wife's Dissolution
of Marriage Petition for ~~Divorce~~/on grounds of
Cruelty.

Dr. Lloyd Barnett for Plaintiff.
Respondent called and does not answer.

LENA LEE WRIGHT Sworn:

Teacher - 11 Lindsay Crescent.

On 4.11.64, married Respondent at University
Chapel - Marriage Certificate, Exhibit 1.

20

No previous proceedings.
I have been treated with callous indifference
irritability and singular lack of considera-
tion. Husband shouted, "You no gawn a
kitchen yet?" within ten days of marriage.
House was built by both of us and through
a loan. I borrowed \$1,200.00 and I had
to pay back money and other expenses. I
became ill after trying to get mortgage.
Husband abusive and spoke loudly.
Up to then I had prepared his meals.

30

In 1966 I became pregnant and started
to have miscarriage and I was admitted to
University Hospital.

Professor left for Conference.
Husband did not advise me of alternative
medical arrangements and he said scornfully-
"who would have paid that bill?"
Surgeon suggested a kind of surgery - husband
was not interested - I borrowed the money
and got surgery done.

40

Husband visited me in Hospital.
He would spend five minutes or so.
After returning from hospital, initially
I slept in downstairs bedroom. About two
weeks after operation, husband began to
instill fear in me. Husband locked door
and then he abused me, dragged me upstairs

EXHIBITS

7

Notes of
Evidence
Lena L. Wright
v. Charles
W. Wright

26th January
1978

(continued)

and had sexual intercourse with me.
Physically, I was unable.
Physical injury and feeling of 10th rate chattel.
I called husband and told him I needed time to
get better.
Husband abused me. He later got in touch with
me and I returned within two weeks.
In April 1968 I again found I was pregnant. I
was happy. Told husband - he said, "you think
you have done my a favour" and I was going to
see how cruel he was going to be. 10
He would not aid me financially.
He drove roughly.
Husband said, "So you think you are delicate."
Husband said, "Your pregnancy torments me."
In November when baby 34 weeks old, I slipped
and fell and baby died.
I made suggestions to Respondent to adopt child.
He said child would become a criminal.
20 I went to Montreal. 20
Spoke to Gynaecologist. Doctor gave me advice.
There was no improvement in relationship when
I told him of this.
I was awakened with a start with violent blows
on my pillow.
One day I had cooked and served Respondent's
Sunday lunch. Husband said to me - why don't
you leave the table, you are spoiling my
appetite.
30 I could not feel like a civilized human being. 30

In July 1972 husband was ill in hospital.
I arranged for him to see Dr. Royes as Respondent
was very depressed.
Respondent agreed to see Dr. Royes.
After a few occasions he ceased - after a while
Respondent wanted to go home. He wanted his
clothes and his keys.
He came out of hospital in dressing gown.
When he reached home, he kicked down door and
40 locked up telephone. 40
My colleague was terrified - I felt embarrassed.
I began to feel that I had reached physical and
mental end of road.
Consulted Dr. Royes and he treated me.
In August I got in a day's worker - I left the
house.
Treatment was unbearable. I went to Montreal.
I was born in Jamaica.
Husband is Jamaican.
50 He has always lived in Jamaica. 50
No living issue of marriage.

KENNETH ROYES Sworn:

Consultant Psychiatrist - 12 Hope Road,
Kingston 10.
I saw Mrs. Wright and the Plaintiff.
First occasion was eight weeks before 26th October,

EXHIBITS

7

Notes of
Evidence
Lena L. Wright
v. Charles
W. Wright

26th January
1978

(continued)

i.e. end of August to 12th and 21st September,
two occasions - 5th and 12th October.

I have seen her subsequently.

I investigated her mental and physical
condition.

Her condition was one of persisting depression
and upset state of mind as a reaction to
circumstances. The circumstances were the
domestic relationship and the husband's
attitude.

I advised her after seeing her on several
occasions. I realized that she was getting
worse as long as she stayed in same house as
husband and I advised that for a moratorium
period she should reside else where.

No real indications of an improvement of
conditions which would make it possible or
wise to return to home where her husband was.

Service proved.

Decree Nisi on ground of cruelty.

Costs against Respondent.

(Initialled)

I, Hazel E. Johnson, Deputy Registrar
of the Supreme Court of Judicature of
Jamaica DO HEREBY CERTIFY that the foregoing
is a true copy of the Notes of Evidence
taken by the Honourable Mr. Justice Rowe at
the hearing of the Divorce Petition in
Suit No. D1100/72 between Lena Lee Wright
Petitioner and Charles Woodrow Wright
Respondent on the 26th day of January 1973.

DATED the 24th day of January 1974

(Sgd) Hazel E. Johnson
Deputy R E G I S T R A R

IN THE PRIVY COUNCIL

No. 25 of 1979

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

CHARLES WOODROW WRIGHT

Appellant
(Plaintiff)

- and -

THE GLEANER COMPANY LIMITED

Respondent
(Defendant)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
Westminster,
London, SW1E 6HB

SIMMONS & SIMMONS,
14 Dominion Street,
London, EC2M 2RJ

Solicitors for the Appellant

Solicitors for the Responder