17th. October, 1949

Judge:

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

Hon. Mabel Strickland, O.B.E. ne. et *versus* Joseph James Scorey

Libel — Complaint — Corporate Body — Government Contracts — Newspapers — Liberty of the Press — Fair Comment.

Bodies of persons having a corporate personality may sue in respect of any injury caused by a defamation to their corporate or collective reputation; and the individuals composing any such body of persons may jointly maintain such an action. Moreover, if the defamation causes an injury to the individuals concerned as natural persons, apart from and independently of their corporate or collective interest, then they are entitled to sue also personally, either in the same or in a separate action.

It is true that the press is fully entitled to criticise the giving out of Government contracts, and thus to control the commitments of public funds; but this is a totally different proposition from that of charging a company with collusion with a Government department. If the incriminated matter insinuates that there has been wrongful conduct between the company obtaining a Government contract and the Government department concerned in the giving out of that particular contract, that printed matter is libellous.

It is also injurious to say of a newspaper that it has stood in the way of attaining national aspirations; for it is one thing for a writer to disagree with the policy pursued by a newspaper, and even to state that the carrying out of such policy would be detrimental to the national interests, and it is a totally different thing to make an absolute and sweeping assertion, without any relation to concrete illustrations of facts, to the effect that a newspaper has obstructed national aspirations, almost as a matter of principle.

The defence of fair comment only protects statements of opinion, and does not certainly extend to defamatory allegations of facts. Moreover, the comment must be based on actual facts, that is, the defendant in a libel action must prove the truth of the stated or asserted facts, if they are disputed.

The intention of the defendant in a libel action is immaterial; as liability for libel does not depend on the intention of the defamer, but on the fact of the defamation.

The freedom of the press is certainly one of the most treasured rights in a true democracy, but the press must also be responsible.

Nor can the defamer advocate the right to publish, almost precipitately, statements of a character damaging to others, with the intention of withdrawing such allegations if found to be untrue. It is hardly imaginable that any one could ever subscribe to such a proposition.

And it is, to say the least, highly illogical to expect that the person injured by the libel should have brought forward the facts to the notice of the defamer before instituting proceedings against him.

This is an appeal entered by defendant against a judgment given by the Criminal Court of Magistrates for the Island of Malta on the 8th. day of June, 1949, whereby he was found guilty of having libelled the complainants, personally and also in their capacities as mentioned in the charge, and sentenced to the punishment of fine (multa)of £5, with costs;

This Court;

Upon seeing the evidence..... has considered as follows;

A preliminary point was taken by the appellant, both before the Court below as well as before this Appellate Court. His contention is to the effect that it is not competent for the complainants to appear all together as plaintiffs, but that it

would have been sufficient for the Editor of "The Times of Malta" to appear singly as complainant;

For purposes of clarity, this point must be taken with the other as to whether it was competent for complainants to sue not only in their capacities as representatives of the "Allied Malta Newspapers Limited" and "The Times of Malta", as detailed in the charge, but also personally;

The balance of legal authority in English case-law is *in favour of complainants. Whatever may be the legal position* with regard to unincorporated collections of individuals (such as a political party or a members' club) which have been considered as being merely *classes of persons on which there can* be no libel (even though such a sweeping proposition has been properly qualified in the case of identification of the plaintiff—vide Button "Libel and Slander", *2nd. Edition*, 1946, *page* 63 et seq.), it appears safe to hold that bodies of persons having a corporate personality (such as the "Allied Malta Newspapers Limited") *may sue in respect of any injury caused by* the *defamation* to their corporate or collective reputation, and moreover, that the individuals composing any such body *of persons may jointly maintain such an action* (vide "Ward and another vs. Smith", 6 Bing. 749, 4 C. & P. 302; "Le Fanu vs. Malcolmson", 1 H.L.C. 637; and "Thomas vs. Moore" (1918) 1 K.B. 555; *vide also the cases quoted by* Gatley, On Libel and Slander, 2nd. edit., note no. 11, page 466);

If the defamation causes an injury to the individual concerned *"as a natural person" (apart from and independently of his corporate or collective interest)*, then he is entitled to sue personally, either in the same or in a separate action (*vide* Spencer Bower, '*A Code of the Law of Actionable Defamation*", page 68, 1908 Edition, and the authorities quoted in support in the note letter (s) at the foot of page 68). This *appears to the sitting Judge to be a logical consequence of the* general principles governing the right to sue pertaining to individuals as natural persons and to companies and corporations. In *fact, an individual considered as a natural person may sue for* an act injurious to his reputation, that is, if it is imputed to him that he has been guilty of any crime, fraud, *dishonesty, immorality, vice, or dishonourable conduct*, or if any-

thing is said which has a tendency to injure him in his profession or calling. A company or corporation is clearly entitled to sue for libels imputing to it a dishonest carrying-out of its affairs (vide Metropolitan Saloon Omnibus Co. Ltd. v. Hawkins, 1859, 4 H. & N. 87). In the case of a corporation (such as the "Allied Malta Newspapers Limited") the action is, as the legal term goes, for trade libel;

The rule was clearly laid down by the English Court of Appeal in "South Hetton Coal Co. v. North Eastern News Association", that a trading corporation or company can maintain an action in respect of an imputation of corruption, or indeed of any other wrongful conduct whatsoever, if such imputation is calculated to injure it in its "trading character". But, of course, the injury may be caused at the same time to the personal character of the individual who is a member or representative of the corporation. Button, in his afore quoted book, remarks appropriately that a statement may well be a reflection both upon the personal and upon the trading character of the plaintiff, so as to enable him to sue both for libel and for trade libel (*p. 66 ibidem*). This must not be taken to mean that every defamation of a corporation, for instance, a newspaper company, is a personal imputation upon any one connected with the newspaper. Lord Herschell, in the case "Australian Newspaper Co. v. Bennett" (1894), 23 W.R. 59, said :— "..... no doubt offensive language applied to a newspaper may cast a reflection, and be understood as casting a reflection, upon persons connected with the newspaper. But it clearly cannot be maintained that every imputation upon a newspaper is a personal imputation upon everybody connected with the newspaper. Whether it is an imputation which would attach to any individual, and, if so, to whom, must depend in each case upon the language used and upon the circumstances". In the present case, the libel is made to consist substantially in an imputation of dishonest dealing (collusion with a Government Department). Such an imputation, if it exists, is clearly one which casts a serious reflection not only upon the reputation of the plaintiff company, in the way of its business, but also upon plaintiffs personally. "If", says Gatley, "Libel and Slander", p. 459, 2nd. Edition, "a statement be made as to

the mode in which a company conducts its business, such as to lead people of ordinary sense to the opinion that it conducts its business in a dishonest or improper manner, the law is the same as in the case of an individual.....";

The foregoing principles, laid down in English case-law and by English text-writers, which this Court has quoted with approval—indeed Maltese Courts have, in libel cases, followed, more often than not, the trend of English Law, as expounded by English judges or English text-writers—lead to the conclusion that plaintiffs were entitled to sue jointly and to sue both "nomine" and personally. The plea in bar of the appellant, therefore, falls to be dismissed;

Passing on to the merits of the case, the charge of libel arose out of two articles appearing respectively in the newspaper "The Bulletin" (whereof the appellant, on his own declaration at page 66, was the editor at the time of publication) in the issue of the 26th. April, 1949 and in that of the 4th. May, 1949. Plaintiffs in their written statement at page 13, have specified those parts of the articles which they consider defamatory;

The Court below held that the articles in question were defamatory to the detriment of the "Allied Malta Newspapers Limited" and to the plaintiffs personally, in so far as they suggest that there was collusion between the Strickland Press and a Government Department responsible for the giving out of printing work in connection with the National Lottery, in so far as they state that the aforesaid Press has changed its policy because of the jobbing work in question, and in so far as it is stated that the "Times of Malta" is in the way of attaining our aspirations and is the most bitter and underhand political opponent of Labour;

This Court agrees with the Court below;

There is no doubt that the press is fully entitled to criticise the giving out of Government contracts, and thus to control the commitments of public funds. But this is a totally different proposition from that of charging a company with collusion with a Government Department. Taken together, the two articles clearly imply such collusion. In the first article, parti-

cularly in the fourth paragraph thereof, an imputation of irregularity in the granting of printing work to the Times and Progress Press is obvious. The test is always "How were the words understood by those to whom they were originally published?" "How were the words understood, giving to ordinary English words their ordinary English meaning?" "What meaning did the whole passage or article convey to the unbiassed mind?";

Now, what possible meaning can be given, on the strength of these tests, to the passage :— "The Lottery organisation came under the Minister of Finance. Many of us remember his outbursts against the Treasurer during the old Council of Government, concerning alleged irregularities over contracts for printing lotto and tombola tickets. What has he to say today?";

Odgers very pointedly says (On Libel and Slander, p. 13) :— "The insinuation may be indirect..... it may be put as a question..... still, if there be a meaning in the words at all, the Court will find it out.....";

In the article of the 4th. May, 1949, the writer comes out in the open, and, after saying that the printing of yet another Lottery poster at the Progress Press calls for condemnation, goes on to state that the Prime Minister should assume full responsibility for any irregularity of the department concerned. Then (by way of an insinuation put as a question) the writer asks :— "What is behind it all? What connection exists between the Progress Press and the Lottery Department?" The writer then proceeds to ask for an investigation, adding that the Lottery Department should be beyond reproach. Now, considering the articles as a whole, but, of course, giving to every part its proper weight, it is certain that the articles contain the "sting" to which plaintiffs took exception, that is, that there was wrongful conduct between them and the Government concerned in the giving out of this particular printing work. It is immaterial to the action brought forward by plaintiffs if the injurious statement affects also certain Government officials, because what this Court has to decide is whether it is injurious to plaintiffs as well;

In the article of the 26th. April, 1949, it is also stated

thus:— "In the past there was the severest criticism of the National Lottery and the way it was run, coming from the Stricklandian Press; but now the storm seems to have abated. It is curious, to say the least, that the former critics of the National Lottery should now be its exclusive printers";

Clearly, this is an imputation that the aforesaid Press changed its policy for the sake of getting the printing work or because of having got it — a reflection which, containing, as it undoubtedly does, a mercenary motive, cannot but be injurious. Again the insinuation is indirect, but the words, taken in their context, are clearly such as to be capable of bearing, as in fact they do bear, the defamatory meaning alleged by the plaintiff. No reasonable and unprejudiced man would understand them otherwise. The insinuation is obviously libellous, because, as stated in a report published lately in America by a Commission on the Freedom of the Press (vide "A Free and Responsible Press" by Robert Hutchens — 1947), a free press must be free from compulsions, such as governmental financial compulsion; and to say, or obviously insinuate that a newspaper has changed its policy for pelf, is undoubtedly a charge of dishonesty;

The other two imputations are also substantiated. It is injurious to say of a newspaper that it has stood in the way of attaining national aspirations; because any such statement implies a charge of lack of patriotism and of disloylty to one's own country. It is one thing for a writer to disagree with the policy pursued by a newspaper, and even to state that the carrying out of such policy should be detrimental to the national interests, and it is a totally different thing to make an absolute and sweeping assertion, without any relation to concrete illustrations or facts, to the effect that a newspaper has obstructed national aspirations almost as a matter of principle. With regard to the other statement, it would not have been libellous to state that the newspaper in question is a bitter political opponent of Labour, but the word "underhand", which implies shady dealings and methods which do not bear the light of day, is defamatory;

In the course of his submissions, the learned counsel for the appellant set up, even though, perhaps, not quite in har-

mony with recognised procedural principles, the defence of fair comment on matters of public interest. There is no doubt that the matter of the allocation of Government work is a matter of public interest, but it is an elementary principle of the law of libel that (1) the defence of fair comment only protects statements of opinion, and does not certainly extend to defamatory allegations of facts. Lord Herschell, in "Davis & Sons v. Shepstone", 1886, 11 App. Cas. 187, p. 190, said:— "The distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed or discreditable language used. It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of disconduct"; (2) The comment, which as an expression of opinion necessarily relates to some fact or set of facts, must be based on actual facts, that is, the defendant in a libel case, who puts up the defence of fair comment, must prove the truth of the stated or asserted facts, if they are disputed. It was Kennedy J. who, in "Joynt v. Cycle Trade Publishing Company", 1904, 2 K.B. 292, page 294, put the legal position in a few significant words, when he said:— "The comment must not mis-state facts, because a comment cannot be fair which is built on facts which are not truly stated";

Now, in the present instance the suggestion of irregular dealings with a Government Department, the suggestion of a change of policy for mercenary motives, the statement of obstruction to national aspirations, and the statement that the newspaper in question is an underhand opponent of Labour, are statements of facts and not comments; and, as Mellor J. remarked (vide Ball, The Law of Libel and Slander, p. 81), in such cases it is useless to plead fair comment;

Moreover, the facts are not truly stated. The evidence has disclosed that the allegations are not substantiated. Fair comment is, therefore, for this reason as well, out of the question;

The learned counsel for the appellant also submitted "passim" that the intention of the writer was not to im-

pute dishonesty to the plaintiff company, but to have matters sifted out in the public interest. This contention is, of course, untenable. It is well settled in libel cases that, in determining the proper construction to be placed upon a statement complained of as defamatory, it is irrelevant to consider the meaning which the writer intended should be placed upon it. It was laid down in "Capital and Counties Bank v. Henty" (1882) 7 App. Case 741, per Lord Bramwell, at p. 790, that "the question is not what the writer of an alleged libel means, but what is the meaning of the words he has used". And in "Cassidy v. Daily Mirror" (1929), 2 K.B. per Russell, L.J. at p. 354, it was laid down that "liability for libel does not depend on the intention of the defamer, but on the fact of defamation";

In analysing the articles complained of, the learned counsel for the appellant stated that many parts of the articles were true, and that in libel cases it is not necessary to justify every expression used by the writer. This contention is not correct. It is correct to say that, if the substantial imputation be proved true, then any slight inaccuracy in one of its details will not prevent defendant's succeeding, provided such inaccuracies in no way alter the complexion of the affair. But the justification must be as broad as the charge, and must justify the precise charge. None of the four charges constituting the libel in the present case has been in any way proved true. It is no defence, unless the whole charge is proved true;

In his note of submissions at page 21, the appellant (1) stresses the freedom of the press and its inviolate right to discuss freely matters of public interest. In his other note of submissions at page 36, the appellant (2) states that, in order to remove any possible misunderstanding concerning complainants, he published in the "Bulletin" of the 7th. June, 1949, in a prominent place in the front page, a précis report of the proceedings in the Court below, boldly headlined "Lottery Poster Printing Was Regular". The appellant goes on to say that, "had complainants brought to his notice the facts they produced in Court by way of evidence, he would have gladly published those facts, although he does-

not admit that any such action on his part would be an admission that he or "A Printer" had the malicious or simple intent of libelling complainants by the publication of the two articles under discussion";

Of the two propositions, the first is incomplete, and the second is altogether untenable and dangerous;

The freedom of the press is certainly one of the most treasured rights of true democracy, but whilst the adjective "free" is always used, the other equally important adjective is sometimes omitted — the press should certainly be free, but it must also be "responsible". The relative impersonality of the printed word, its permanence, the inability to conceal or recall what has once become printed record, the stronger bid for belief, the fact that the sophisticated public of today has by no means outgrown the feeling that what comes "in black and white" must be more of a "credendum" than what falls perishably on the ear — all this tends to impose a heavy responsibility on newspaper writers;

The other proposition would appear to advocate a right to publish, almost precipitately, statements of a character damaging to others, with the intention of withdrawing such allegations if found to be untrue. It is hardly imaginable that anyone could ever subscribe to such a proposition. Even if, "ex hypothesi", one were to concur in the principle expounded by the American Press Commission aforementioned, that "the right of free public expression includes the right to be in error" (a principle which, put so unconditionally, may appear to be too generous, and which should undoubtedly be harmonised with other basic principles in libel proceedings), it remains clear — as the said Commission was careful to add almost immediately — that the right of free public expression does not cover the right to be "irresponsibly" in error. One is certainly irresponsibly in error if one does not use due diligence in ascertaining facts before publishing them. In the present case, the Director of Public Lotto, Mr. Mifsud, stated in his evidence that the appellant never interviewed him about the facts stated in the articles. The Minister of Finance also stated that he did not remember that defendant ever approached him with regard to ascertaining facts relat-

ing to the giving out of Government printing work. It is, to say the least, highly illogical to expect — as the defendant almost, by way of blaming complainants, appears to suggest in his afore said note of submissions at page 36 — that the complainants should have brought the facts to his notice before instituting proceedings. This would be tantamount to sanctioning libellous publications, provided the defamatory statements be afterwards withdrawn;

There is one general and final remark which the Court feels it ought to make by way of comment on the whole matter. If the writer of the articles in question wished to have the matter of the allocation of Government printing work threshed out in the public interest, he could very well have limited himself to stating the bare fact that certain printing work had been given to the Progress Press without a call for tenders, and to asking for explanations, without adding, unnecessarily, the four statements which the Court has found to be libellous;

The appeal, therefore, fails, and is hereby dismissed. The judgment of the First Court is affirmed, with costs. Such costs to be taxed on a verbal request by the parties.