

3rd. October, 1951.

Judge :

The Hon. Mr. Justice J. Caruana Colombo,
B.Litt., LL.D.

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

Libel — Fair Comment — Proof.

A fair comment on a matter of public interest is no libel or slander.

This, however, does not mean that the words are not defamatory, i.e. not injurious to the reputation, if they are an assertion of some alleged fact, and not a comment. For the assertion of a fact is no comment at all; and if the fact alleged is denied by the plaintiff, and the defendant cannot prove that the fact alleged by him is true, there must be a verdict for the plaintiff.

Moreover, the onus of proving that the words complained of are a comment, and that they are a comment on a matter of public interest, lies with the defendant.

The insinuations in the injurious words may be indirect; the allusions may be obscure; but if there is a meaning in the words at all, the Court will find it out.

If an article in a newspaper conveys a defamatory meaning to a person who reads it in the manner in which such articles are usually read by an ordinary person, it is immaterial that another meaning might be derived from a critical scrutiny of the words.

It is also immaterial that the injurious statements affect also certain Government officials, so long as they also bear an injurious meaning to the plaintiff.

The Court, — Upon seeing the writ-of-summons, wherein plaintiffs in their capacity afore mentioned, after premising that the defendant, in the newspaper "The Bulletin" no. 6881 (Daily no. 637) of the 26th. April, 1949, and no. 6889 (Daily no. 644) of the 4th. May, 1949 (Exhibits A & B), published, or permitted, or did not impede, the publication of two articles entitled (1) "The National Jobbery", appearing in the first column of the third page of the issue of the 26th. April, 1949, and (2) "Printing Lottery", appearing in the fourth column of the third page of the issue of the 4th. May, 1949, both of which articles are offensive and dishonouring to the plaintiffs in their aforesaid capacity, and injure their reputation and expose them to public contempt; ask that, every

necessary declaration being prefaced and any expedient direction being given, defendant be condemned to pay to the plaintiffs, as damages, such sum as shall be determined by this Court, not exceeding £400. Without prejudice to the criminal action and the recovery of actual damages. With costs, and with interest thereon according to law from date of service of the present writ-of-summmons;

Omissis:

Upon considering;

That it has been proved that in the period of the introductory campaign of the National Lottery in Malta, the Director of the Lotto Department allotted to plaintiffs some jobbing work to be done in connection with that venture. In the issue of the newspaper "The Bulletin" of the 26th. April, 1949, and of the 4th. May, 1949, of which defendant was at the time the editor, there appeared the two articles for which plaintiffs take exception, in as much as they consider them to be defamatory. As a matter of fact, they argue that those articles, suggest (1) that there was collusion between plaintiffs and the Government Lotto Department responsible for the giving out of a printing work in connection with the National Lottery, in order to secure the jobbing work in question; (2) that plaintiffs have changed their policy because of that work so secured by them; (3) that plaintiffs do not serve the public interest and are indifferent to local problems, the "Times of Malta" being solely an imperialistic organ carrying on political opposition in an underhand manner, devoid of public support;

Upon considering;

That defendant submits that the claim is groundless, both in law and in fact. However, there is no doubt that the two articles above referred to are libellous. They contain:—

(a) Imputations of irregular granting by the Government Department concerned of printing work to plaintiffs. In the first article it is stated: "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?" And

in the second article one reads:— "The printing of yet another National Lottery poster at the Progress Press calls for the most forthright condemnation of the way in which the Department concerned is administered. The Prime Minister, having refused to pronounce himself on Dr. Colombo's resignation, must assume full responsibility for any irregularity committed in the departments which previously came under the Finance Ministry. What is behind it all? What connection exists between the Progress Press and the Lottery Department? Why should the Progress Press have an almost complete monopoly of lottery printing? For the sake of justice and the good name of all officials concerned, an investigation should be carried out, and a statement published, together with the amount spent with the Progress Press on the National Lottery jobbery by the Lottery Department — a department which is a creation of the Finance Minister, and as such should be beyond reproach". These two articles, taken as a whole, tend to show that there was wrongful conduct, that is collusion, between plaintiffs and the Government Lotto Department, in the giving out of the jobbing work in question:

(b) Insinuation that plaintiffs changed their policy for the sake of securing or consequent upon their getting the jobbery work aforesaid. It is stated in the first article: "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". These words reflect a mercenary motive, and therefore they are injurious, because they insinuate dishonesty, that is, a change of policy on the part of plaintiffs, merely to secure or for having secured that jobbing work;

(c) An imputation that plaintiffs lack patriotism and are disloyal to their country. In the second article it is stated: "It would be the climax of irony if it were the case of a printing press waxing fat on profits, to enable it to subsidise that organ of imperial interest printed at the same press, an organ

which has always stood in the way of attaining our aspirations and has been the most bitter underhand political opponent of Labour. Surely, this is the case where the "Times of Malta" should attack the opposition for neglecting to press forward the real interests of the people". The insinuation that a newspaper has stood in the way of attaining, and consequently obstructed national aspirations, implies a charge of lack of patriotism, and as such is injurious;

Upon considering;

That defendant further pleads that the articles complained of are not directed against the plaintiffs nomine, but concern the working of a Government Department, and, as such, are to be taken as a "fair comment";

That a fair comment on a matter of public interest is no libel or slander. This, however, does not mean that the words are not defamatory, i.e. not injurious to the reputation. If they were not defamatory, of course, no action would lie. It is only when the words do tend to injure the reputation of the person to whom they refer that the question arises: "Can they be excused as being a fair comment on a matter of public interest," — Odgers, "On Libel and Slander", page 159;

Surely, the matter of allocation by the Government of the jobbing work in question is a matter of public interest, and defendant had every right, indeed almost the duty, to comment freely on that matter, and fearlessly to expose abuses, should any one be found to exist. But it has been proved, as stated, that the words used in those two articles are defamatory; and so the question is: "Can defendant be excused in that, though the articles are defamatory, they are a fair comment on a matter of public interest? Now, it is an established principle that the defence to an action of libel on a matter of public interest fails, unless the words complained of are a comment, and not an assertion of some alleged matter of fact (Odgers, loc. cit., p. 160). The assertion of a fact is not a comment at all. If the words complained of contain allegations of fact which are denied by the plaintiff, and which defendant cannot prove to be true, there must be a verdict for the plaintiff. The onus of proving that his words are a comment, and that they are a comment on a matter of public

interest, lies on the defendant" (Odgers, *ibid.* p. 161). Now, no evidence at all has been brought by defendant in support of his plea. The two articles above mentioned contain allegations of fact, which have been denied by the plaintiff and which defendant has failed to show that they are true. Those allegations, moreover, have been proved to be not truly stated, and the evidence has disclosed that they are not substantiated;

Upon considering;

That it is true that the insinuations contained in the two articles above referred to are indirect, and also, and perhaps in a greater extent, affect certain Government officials. But, though indirect, those insinuations bear a defamatory meaning and are injurious to plaintiffs. "The insinuation may be indirect, and the allusion obscure; still, if there be a meaning in the words at all, the Court will find it out..... If an article in a newspaper conveys a defamatory meaning to a person who reads it in the manner in which such articles are usually read by an ordinary person, it is immaterial that another meaning might be derived from a critical scrutiny of the words" (Odgers, *ibid.* p. 97). Also, it is immaterial to the case that the injurious statements affect also certain Government officials, so long as they also bear injurious meaning to plaintiffs;

For the foregoing reasons;

Adjudges that the claim brought forward by plaintiffs be allowed to the extent of thirty pounds (£30), with interest as from the 28th. May, 1949, and with costs, including those which have been reserved.