10th, January, 1949.

Judge:

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

The Police *versus* Joseph James Scorey

Libel — Governor — Chancellor of the Royal Malta University — Defamation — Fair Comment — Malice — Liberty of the Press — Newspapers — Writ-of-Summons — Judgment — Nullity — Suspension of the Printer's Licence — Forfeiture of the Printer's Press Deposit — Appeal — Retraction — Apology — "Malta (Office of Governor) Letters Patent, 1947" — "Royal University of Malta (Constitution) Ordinance, 1947" — Sections 6, 42 (1), 53 (1) and 63 of the Press Ordinance (Chapter 117)

Section 6 of the Press Ordinance (Chapter 117) adopts a three-fold, or indeed a four-fold, wording as regards libel against the person of His Excellency the Governor, i.e. insulting, reviling, or bringing into hatred or contempt, his person.

When the charge in the writ-of-summons involves all four alternatives the fact that the Court declares the defendant guilty of the charge as set out in the writ-of-summons, without limiting its finding to any particular one of the four alternatives, merely means that the Magistrate, rightly or wrongly, came to the conclusion that the defendant was found guilty of the four alternatives. Therefore the defendant cannot rightly allege that the judgment is null on the ground that the Court failed to state expressly the offence where the defendant was found guilty.

It is not altogether exact to say that the Governor is the representative of the Crown at all times and at all places within the Colony. He does not possess general sovereign power; but his authority is limited. The proper view is that he can be said to represent the Crown, and to act as Governor, whenever he acts within the limits of his authority; and his authority is derived from his Commission. He does not, by virtue of his office, enjoy the full immunities or prerogatives of the King, but only such as are expressly or impliedly conferred upon him by Statute or by his Commission as Governor.

Under the "Malta (Office of Governor) Letters Patent, 1947", the Governor acts within the limits of his authority, and therefore as

Governor, if he acts (1) in terms of his Commission, or (2) of the Letters Patent relating to his office, or (3) of the Instructions given to him, or (4) of any Order-in-Council, or (5) finally, of any other laws as may from time to time be in force in Malta.

The "Royal University of Malta (Constitution) Ordinance, 1947" states that the Authorities of the University shall consist, "inter alia", of a Chancellor, and that the Governor, or any other person for the time being administering the Government of Malta, shall be "ex officio" the Chancellor of the University. Wherefor it is obvious that when the Governor acts as Chancellor of the University, he is acting within the limits of his Authority. And it follows also that section 6 of the Press Law applies also to him when he is acting as Chancellor of the University.

The question as to whether an expression bears or not a defamatory meaning, is in each case a question of time, place, subject matter, and the common knowledge and understanding of the person publishing the matter, and the matter to whom it is published. The Tribunal must determine the question in the circumstances of each case, as it arises; as the expression complained of "per sè" might not be libellous and particular circumstances might make it so.

In conformity with this principle, the Court, in weighing the issue, should certainly not lose sight of the social standing and the personal qualities of the person to whom an incriminated article refers; and consequently, when such person is His Excellency the Governor, the Court, in weighing the issue, should take into consideration the exalted post he holds and the estimation he should be held in by the community. As a matter of fact, the Governor is one of those persons to whom the Press Law accords a special protection.

The law recognises in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his credit, and any disparagement of his good name is an infringement of this right. To amount to libel, the words must tend to lower the plaintiff in the estimation of society generally; and the writing and publishing of anything which makes him an object of ridicule is actionable. But it is necessary to take into consideration not only the actual words used, but the context of the words; the words must be taken together, in order to ascertain the "sting" of the incriminated article.

Judged on these lines, the article complained of in this case was held by the Court to be such as to bring into contempt the person of the Governor, and to constitute, as such, an offence under section 6 of the Press Law (Chapter 117).

It is not enough for the defendant to prove that he believed the imputation made by him to be true, even though it was published as belief only. If the imputation is false, and there is no other defence, he is liable, although he satisfies the Court that he "bona fide" and reasonably believed the imputation to be true. In an ordinary action for libel, malice is not essential; if the defendant has published words which have in fact injured the plaintiff's reputation, he must be taken to have intended the consequences naturally resulting from his act.

The plea of fair comment is ruled out by the fact that the defendant acknowledges the falsity of the allegation of fact. In order that defensible immunity may attach to the publication of any matter purporting to be fair comment, such comment must conform to certain requirements, amongst which is the requirement that the facts be truly stated.

It is true that the liberty of the press is a principle of paramount importance; and it is also true that a certain latitude should be given to newspaper writers; but this liberty must go subject to this, that the writer must take the consequences if the words are defamatory.

The Press Law, unlike the Criminal Code, places the Attorney General, as regards appeals from judgments given by the Lower Courts in cases under the Press Ordinance, on a perfect par with the party convicted; and an appeal is allowed to both in all cases.

When the defendant has been convicted under section 6 of the Press Law, the Court, shall, in addition to the punishment to which he may become liable, order the suspension of the printer's licence and the total of partial forfeiture of the printer's press deposit. This additional punishment is not a matter within the discretion of the Court, but is a necessary consequence imposed by law. And the application of this additional punishment is to be made by the Court even if the Prosecution makes no demand therefor.

The publication of a statement by defendant, contradicting the allegations contained in the incriminated article, as well as an unreserved apology which he might have made, do not constitute a de-

fence in an action for libel; but any such retraction or apology should be taken into account as a factor by way of mitigation of damages, even when made after the commencement of the action.

This is an appeal entered by the defendant against a judgment given on the 30th October, 1948, by the Criminal Court of Magistrates for Malta, whereby he was found guilty, as printer and proprietor of the newspaper "The Bulletin", of having, in an article which appeared in that newspaper, insulted, reviled, and sought to bring into hatred or contempt, the person of His Excellency Sir Francis Campbell Ross Douglas, Governor of Malta and "ex officio" Chancellor of the Royal University of Malta, and was sentenced to the punishment of imprisonment for the term of eight days and to the payment of a fine (multa) of £40. Moreover, the Court below ordered the suspension of the newspaper for a period of two months;

An appeal was also entered by the Attorney General; but this appeal is restricted to the extent of the punishment awarded by the First Court, in as much as the Attorney General now claims that this punishment should have also included, in terms of law, the suspension of the defendant's printer's licence for the period of one month and the forfeiture, in whole or in part, of the deposit mentioned in the Press Ordinance;

The two appeals were exhaustively dealt with by learned Counsel on both sides;

The Appellate Court, after having duly examined the record, including the depositions taken down by the Magistrate, and after hearing the arguments of Counsel, considers as follows:

It is obvious that defendant's appeal, which strikes at the merits of the judgment, falls to be dealt with in the first place;

The first point taken by the defendant is that of the nullity of the Magistrate's judgment. The argument amounts to this. Section 6 of the Press Ordinance (Ch. 117) adopts, in the part which is relevant to this case, a threefold (or indeed a four-fold) wording, that is, "insult, revile, or bring into hatred or contempt, the person of the Governor". The charge, as contained in the summons, repeats that alternative wording. The Court below declared defendant "guilty of the offence mentioned in the first charge". Defendant submits that the

Court below should have specified in its judgment whether th defendant was being found guilty of having insulted, or o having reviled, or of having brought into hatred, or into con tempt, the person of the Governor, and should not have sai merely that he was being found guilty of the charge as com prehensively framed. The Court's failure to do so, in defe dant's submission, is tantamount to a failure on the Court part to state expressly the offence whereof the defendant wa found guilty, and such failure is a good ground for annullin the judgment:

In the opinion of this Court, defendant's contention i faulty. The charge included all four alternatives ("revile, in sult, and bring into hatred or contempt"). The fact tha the Court below declared the defendant guilty of the charge as set out in the summons, without limiting its finding to any particular one of the four alternatives, merely means that the Magistrate, rightly or wrongly, came to the conclusion that the incriminated article reviled, insulted, and brought the Governor into hatred and contempt; that is, all the alternatives were included in the finding. This is not only a logical interpretation of the judgment in its operative part, but is also in strict accordance with the reasons contained in the judgment. In fact, in the course of these reasons the Magistrate, after commenting on the expressions used by the defendant in the article in question, states ("totidem verbis") :— "No proof is needed that such a description of His Excellency was calculated to insult and revile him, and to bring him into hatred and contempt". These words show very clearly the mind of the Court below, and confirm the literal and logical interpretation of the operative part of the judgment. Consequently, it is not correct to state that the Court below omitted to specify the offence of which the defendant was being found guilty. Failing such omission, there cannot be any question of the nullity of the judgment. The only question that falls to be examined is whether the Magistrate was correct or not in holding that, in the article in question, the Governor was not only reviled, but also insulted and brought into hatred and contempt. That is a matter which concerns the merits of the case,

and does not affect the validity of the judgment from the point of view of procedure;

The next point taken by the defendant, which falls to be examined at this stage, is that concerning the applicability or otherwise of section 6 of the Press Ordinance. Defendant's contention is to this effect. The article in question refers to the Governor in his capacity as Chancellor of the Royal Malta University. Sec. 6 refers to the Governor and Commander-in-Chief "ut sic". The Office of Chancellor is incidental, and not necessarily inherent to the office of Governor. Therefore the section in question (it is argued by the defence) does not apply in the present case;

In point of fact, sec. 6 refers to the Governor. The Court below dismissed this plea on the ground, as stated in the judgment, that the Governor is the representative of the Crown at all times and at all places within the Colony, and not merely when he is performing one of the acts or duties assigned to him in the Letters Patent constituting the office of Governor;

This Court comes to the same conclusion; but the argument leading to that conclusion should be more correctly enunciated. As stated by the Court below it may not be altogether exact. The position is more precisely the following;

The question appears to have been authoritatively decided by the Judicial Committee of the Privy Council in "Musgrave vs. Pulido" (1879) 5 App. Cas. 102. The judgment of their Lordships was delivered by Sir Montague Smith. It was stated in the judgment that the dictum, attributed to Lord Mansfield in "Fabrigas vs. Mostyn" (1770), that the Governor of a Colony is in the nature of a Viceroy or is quasi-sovereign, had been dissented from and declared to be devoid of legal foundation in the judgment of the Lords of the Judicial Committee delivered by Lord Brougham in the case of "Hill vs. Bigge" (1841) 3 Moo. P.C. 465. The Governor of a Colony does not represent the Sovereign generally, having only the functions delegated to him by the Crown. In the case "Cameron vs. Kyte" (1935) Knapp. 352, which came before the Judicial Committee on an appeal from the colony of Berbice, the appellants had urged that the Governor was the King's repre-

sentative exercising the general authority of the Crown, but it was decided that the Governor did not possess that general authority, but that he was an officer with a limited authority from the Crown. A governor cannot be considered as having delegation of the whole royal power in a colony, but has such authority as has been given to him;

The Board further quoted the case "Phillips vs. Eyre" (1870) L.R. 6, Q.B. 1 (Exchequer Chambers), and came to the conclusion that no authority or dictum existed to show that the Governor of a Colony possessed general sovereign power; his authority is limited (see Keir & Lawson "Cases in Constitutional Law, pp. 458, 459, 460, 461, 462);

Text writers, of course, uphold the same legal stand-point. Thus "Wade & Phillips" in their book on Constitutional Law, after saying that the Governor is appointed by the Crown, and is responsible to the Crown, go on to state that the Governor's authority is derived from his Commission, and he does not, by virtue of his office, enjoy the full immunity or prerogatives of the King, but only such as are expressly or impliedly conferred upon him, either by statute or by his Commission as Governor. His Commission does not enumerate specific powers, but refers to the Letters Patent constituting the office of governor, and to the Instructions to the Governor of the Colony (pag. 423, 1944 Edit.). Ernest Thomas, in his book "Leading Cases in Constitutional Law", under the heading "Liability of Governors and Viceroys", quotes the several cases examined in the Privy Council—judgment referred to above;

The Magistrate, at least judging by the words contained in the judgment, to the effect that the Governor is a representative of the Crown "at all times and at all places" within the Colony, appears to have held that the Governor possessed a general and unlimited authority to represent the Crown, whereas the proper view, on the strength of the authorities quoted is that his authority is limited, and that he can be said to represent the Crown and to act "qua" Governor whenever he acts within the limits of his authority;

The whole question, therefore, now clearly comes down to this: In exercising his office as Chancellor of the Royal Malta University, is the Governor acting within the limits of his

authority, and therefore "qua" Governor?—That is the point;

The correct method of approach, in order to solve this question, is to refer at once to the Letters Patent Constituting the office of Governor and Commander-in-Chief. Section 3 of "The Malta (Office of Governor) Letters Patent 1947" lays down that "There shall be a Governor and Commander-in-Chief in and over Malta, and appointments to the said office shall be made by Commission under Our Sign Manual and Signet". Section 4 runs thus:— "We do hereby authorise, empower and command, the Governor to do all things belonging to his office in accordance with these and other Letters Patent having effect in Malta. Such Commission as afore said, and such Instructions may from time to time be given to him by Us under Our Sign Manual and Signet, or through a Secretary of State, and in accordance with such Orders in Our Privy Council and other laws as may from time to time be in force in Malta". This section shows very clearly that the Governor acts within the limits of his authority, and therefore "qua" Governor, if he acts (1) in terms of his Commission, or (2) of the Letters Patent relating to his office, or (3) of the Instructions given to him, or (4) of any Order in Council, or (5) finally, of any other laws as may from time to time be in force in Malta;

The question now narrows itself down further to the point as to whether there is in force in Malta any law according to which the Governor acts "ex officio" as Chancellor of the Royal Malta University. If there be such a law, then the Governor, when acting as Chancellor, acts "qua" Governor, because he is acting within the limits of his authority, as laid down in the aforesaid Letters Patent. It need hardly be pointed out that in the Commission appointing the Governor, with regard to his powers, reference is made "inter alia" to the Letters Patent constituting his office, and therefore he acts within the terms of his Commission if he acts within the terms of the Letters Patent;

Now, on the 18th. September, 1947, the Royal University of Malta (Constitution) Ordinance, 1947, came into operation in Malta. Section 3 thereof states that the Authorities of the University shall consist, "inter alia", of a Chancellor; and in

the second subsection of that section it is laid down that the Governor, or any other person for the time being administering the Government of Malta, shall be "ex officio" the Chancellor of the University;

It is obvious, therefore, that, whenever the Governor acts as Chancellor of the University, he is acting within the limits of his authority, for the simple reason that he is acting in terms of the afore said Letters Patent, which, as has been pointed out, include his acting according to a law in force in Malta. In order to complete the legal standpoint, it should also be added that section 2 of the Ordinance states that the Royal University shall be governed by a Statute and by Regulations made thereunder, and that, according to Rule 21 of the Statute (Part. I, Chap. I), the Chancellor is the President of the Council. This is being added because the article refers to the Governor at a meeting of the University Council;

In view of the afore going considerations, therefore, section 6 of Ch. 117 is the section properly applicable to this case; the Governor, when presiding, as Chancellor, at a meeting of the University Council acts "qua" Governor;

Passing on to deal with the merits of the appeal, it will help to make matters clearer by quoting the incriminated article, which runs thus :—

"Saturday last, a special meeting of the Council of the Royal University of Malta was called, at which His Excellency Sir Francis Douglas, as Chancellor, manifested signs of extreme anger against the 'Bulletin', which the day previously had disclosed the Council's intention to defer the award of the degree of LL.D. on law students until after 15 years of study;

"Claiming that the proceedings of the University Council were secret, the Chancellor individually interrogated each member of the Council as to whether he had furnished the 'Bulletin' with the facts published regarding the new degree of LL.D.;

"The Chancellor declared there had been a leakage from the Council. He is reported to have said that when he had discovered the culprit, dire punishment would follow. Were the culprit a member of the professional body, or otherwise con-

nected with the University staff, or were he a member of Parliament, he would be expelled;

"Emphasising his remarks by violently and repeatedly thumping the table, the Chancellor demanded to know how it came about that the 'Bulletin' was able to publish the names of those present at the Council meeting of August 17th, and those who were absent from that meeting. His demand for information could not be satisfied by any one present;

"Some members of Council who were present at last Saturday's meeting say they very strongly resent the manner in which they were interrogated by His Excellency the Chancellor;

"Members of the academic body who read in the 'Bulletin' the proposal to minimise the importance of the law course graduating degree, say they very strongly resent any such hush-hush proposal;

"As a result of what happened on Saturday last, graduates of the University and others who have at heart the welfare of graduates and undergraduates, are asking the question whether University autonomy was intended to bring about rule by secret conclave, and, if not, why was His Excellency the Chancellor so furious at the disclosure of decisions taken by a body that is not governed by the Official Secrets Act;

"Further developments are expected";

It is common ground between the parties that the defendant is the owner, editor and printer of the newspaper "The Bulletin";

Before the First Court, as may be seen from the procés verbal at page 12, the defendant assumed full responsibility for the article complained of, and declared, in his defence, that he wished to prove the truth of the facts attributed by him to His Excellency the Governor as Chancellor in accordance with section 16 (1 (e) of Ch. 117;

It is not necessary for this Court to examine the point whether the plea of justification may be set up in a case which comes under section 6 of Chap. 117. It is, however, proper to remark, "en passant", that the section quoted by the defendant in the afore recorded procés verbal refers to the plea of justification "on the trial of an action for a defamatory libel

under the provisions of the last preceding section", that is under section 15, and not under section 6. However, it is a fact that, rightly or wrongly, with the concurrence of the Prosecution (see pp. 6 and 7, and procés verbal at the bottom of page 12), evidence was produced in connexion with the plea, and, as a result, in the sitting of the 16th. October last, Counsel for the defence declared that, in view of the evidence produced by the Prosecution, the defendant did not intend pressing the plea of justification further. The point, therefore, does not fall to be considered;

In his written statement, at page 4 of the record, defendant also submitted that, in so far as the words complained of consisted of expressions of opinion, they constituted fair comment, made in good faith and without malice, upon a matter of public interest;

Combining this with the oral submissions made before this Court and with the contents of the appeal petition, it appears that, with regard to the merits of the case, the defence on which the defendant relies is the following :—

(a) The incriminated article is not capable of a defamatory meaning;

(b) The article complained of was published in the honest belief that it was true;

(c) With regard to expressions of opinion, these constitute a fair comment;

With regard to the first plea (a), this Court considers as follows:

The argument of the defence is that, if there was a leakage of confidential information, due to an indiscretion on the part of a member of the Council, the Chancellor was justified in making angry reproaches, and therefore there is nothing libellous in the article, even if the facts be not true, because any reader would, far from condemning, applaud the action of the Chancellor in rebuking whosoever had been guilty of such indiscretion;

This argument is met by drawing a logical distinction. If the writer had merely stated that the Governor had complained that confidential information had been abusively divulged, and had expressed his disapproval of any such conduct on the

part of a member of the Council, then, of course, provided the expressions used were kept within measured and sober limits, there would not have been any criminal liability, at least under the section on which the Prosecution is relying, that is section 6. In any such case, if the publication were untrue, there may have been room for the application of section 22 (1), Ch. 117, which entitles any person, whose actions or intentions have been misrepresented in a newspaper, to demand and have published forthwith, free of charge, in the same newspaper, in a prominent place and in the same type, a statement by way of contradiction or explanation;

But this point is: has the writer confined himself just to so much, or has he gone further—much further?

An examination of the article in question furnishes the answer to this query without any considerable difficulty;

After stating, in the first paragraph, that the Chancellor had manifested signs of extreme anger against the "Bulletin", the writer goes on to say that the Chancellor "interrogated individually each member of the Council as to whether he had furnished the "Bulletin" with the facts published regarding the new degree of LL.D.". Proceeding further, the writer states that the Chancellor "is reported to have said that, when he had discovered the culprit, dire punishment would follow". The Chancellor is then reported as having violently and repeatedly thumped the table, demanding to know how it came about that the "Bulletin" was able to publish certain informations. "Some members of the Council", the writer goes on to say, "strongly resented the manner in which they were interrogated by His Excellency the Chancellor, and members of the academic body (it is further stated) strongly resent any such hush-hush proposal". Finally, the writer states that, as a result of what happened in the sitting, people are asking whether the autonomy granted to the University is really intended to bring about rule by secret conclave; otherwise His Excellency would not have been so furious;

As a matter of fact, therefore, the writer states that the Governor manifested signs of extreme anger, questioned each and every member of the Council as to whether it was he who had disclosed information which was confidential, threatened

dire punishment, violently and repeatedly thumped the Council table, and by his behaviour aroused the strong resentment of some of the Council members. By way of comment, the writer remarks that responsible people were wondering whether the Governor was furious at the leakage because the newly-acquired autonomy was intended to bring about in the University rule by secret conclave;

The point now is whether these statements were calculated to insult or revile the Governor, or to bring him into hatred or contempt;

George Spencer Bower, in his "Code of the Law of Actionable Defamation", p. 291, after disapproving the practice of preparing a catalogue of terms and phrases which must be, or which cannot be, or which may or may not be, defamatory, goes on to say that the question as to whether an expression bears or not a defamatory meaning is, in each case, a question of time, place, circumstances, subject matter, and the common knowledge and understanding of the person publishing the matter and the persons to whom it is published". He adds, very properly, that any attempt to stereotype or crystallise which words are or are not libellous would be worse than useless, because it might tend to encourage the idea that anything not included in the "index expurgatorius" of phrases condemned "ex cathedra" must be permissible. The tribunal must determine the question in the circumstances of each case as it arises. Local case-law has also affirmed this principle, as may be seen, "inter alia", from the report of the case "Sir Gerald Strickland vs. Spiridione Mallia", 4th. February 1928, Criminal Appeal, in which the late Judge Camilleri, sitting in this Court, said, very properly, in the course of the reasonings, that "nella valutazione dei fatti bisogna tener conto di tutte le circostanze di persona e l'ambiente nel quale si svolgono" (Vol. XXVII Maltese Law Reports, Part. IV, page 625). A practical application of the afore going principle had already been made by the Maltese Courts in the case "Sir Gerald Strickland vs. Goffredo Chretien", Civ. App. 10th. January 1927, where it was stated that although per sè the expression com-

plained of was not libellous, particular circumstances might make it so;

In conformity with this principle, the Court, in weighing the issue, should certainly not lose sight of the fact that the person mentioned in the article occupies the exalted post of Governor of a Colony, and therefore of representative of the Crown, and that the occasion referred to was one in which, "qua Governor", he was presiding over an august body, composed of persons of culture and standing. Both considerations appear to be important. The first one has long been stressed by text-writers, particularly continental ones, and also emerges from the law itself. Carrara, a leading authority in Italian Criminal Law, and for that matter in Criminal Law generally, states thus:— "Le qualità personali dell'offeso presentano una circostanza aggravante assoluta dell'ingiuria, quando esso sia tale che da ogni cittadino, per la posizione che occupa, a lui si debba rispetto". The Press Ordinance accords a special protection to certain persons, such as His Majesty the King, the Heir to the Crown, the Supreme Pontiff, the Governor, the Bishop of Malta and the Bishop of Gozo (see ss. 4, 5, 6 and 10) — a fact which clearly implies a recognition of the principle, expounded by text-writers, as expressed by Carrara "supra". The second consideration is no less weighty. It is hardly necessary to observe that persons of culture and standing, such as are, presumably, members of the Council of the Royal University, are understandably more prone to resent an imputation of abusive conduct (such as that implied by the individual questioning of members referred to in the article), and to feel offended by high-handed treatment and by threats of punishment (such as those alleged in the article), than persons of a more humble station in life;

Proceeding to enunciate certain general principles in order to solve the issue, the following are, in the opinion of the Court, fundamental: —

1. The law recognises in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his credit (see Scott vs. Sampson (1882) 8 Q. B. D. a p. 503, per Cave J.). As Gatley

remarks (On Libel and Slander, page 1, 1929 Edit.), "any disparagement of this good name is an infringement of this right". This same author defines a libel thus:— "Any written or printed words which tend to lower a person in the estimation of right-thinking men, or cause him to be shunned or avoided, or expose him to hatred, contempt or ridicule, constitute a libel" (idem, p. 14). Odgers (On Libel and Slander), after stating (page 2, 1911 Edit.) that "no general rule can be laid down defining absolutely, and once for all, what words are defamatory, and what are not, and that words which would seriously injure A's reputation might do no harm to B's, and that each case must be decided mainly on its own facts, goes on, at page 17, to include in the concept of libel "all words which hold the plaintiff up to contempt, hatred, scorn or ridicule....." Carrara, in his treatise "Programma del Corso di Diritto Criminale", Vol. III, P.S. page 9, in analysing the purport of the word "reputation" ("onore"), very properly includes in it "il sentimento della propria dignità" and "la stima o buona opinione che altri hanno di noi". The first component mentioned by Carrara is also to be found in the text-book "Le Droit Penal" of the French writer Tissot (Tome Second, Troisieme Edition, page 132), where he includes as "injure" "tout propos qui est proferé dans le dessein de blesser de juste amour propre.....";

2. To amount to libel, the words must tend to lower the plaintiff in the estimation of society generally (Gatley, idem, page 15). The Supreme Court of the United States appear to have relaxed this principle in the case "Peck vs. Tribune Publishing Co." (1909), 214, U.S., 185, where it was held that words are libellous if they impute to the plaintiff conduct which would injure him in the eyes of a considerable and respectable class of the community as a whole. The sitting judge is inclined to agree with the words of Mr. Justice Cardie, who, in the course of a considered judgment ("Mycroft vs. Sleight" (1921), 90 L.J., K.B., 883) said, quoting with approval other judgments:— "These cases seem to show that the words complained of must be such as would injure the plaintiff's reputation in the minds of ordinary, just and reasonable citi-

zens". This principle, which steers a middle course, appears to be the fair test to apply;

3. The writing and publishing of anything which renders a man ridiculous is actionable (see the cases which came before the English Courts, quoted by Gatley at page 15, note 2, and page 32, idem). It is libellous to make a person an object of ridicule. Indeed, Fraser, in his text-book "Principles and Practice of the Law of Libel and Slander", Third Edit. page 7, quotes a case ("Cook vs. Ward" (1809) 6 Bing. 409; 4 M. & P. 99), in which it was held libellous to publish in a newspaper a story in which the plaintiff is made to appear ridiculous, even though he has told it himself in the first instance;

4. In the appeal petition defendant [illegible] "contadino", to the question whether the article was such as to be likely to cause a breach of the peace. This point was not pressed in the course of the arguments; indeed it was not mentioned at all. It would appear that, under English Law, criminal proceedings for libel may not succeed if the words complained of are clearly not of a kind calculated to provoke a breach of the peace. This *ingredient*, which is apparently required for the purpose of criminal proceedings for libel under English Law, has no counterpart in Maltese Law, which is codified, nor can it be argued in any way therefrom, nor can it be in any way supported by any judicial precedent set up by a Maltese Court. It is therefore proper to say, in formulating these general principles, that this requirement does not fall to be looked into under Maltese Law. It should be added, however, that even though under English Law criminal proceedings can only be sustained in libel cases where the libel, reasonably or probably, tends to provoke a breach of the peace (R. v. Adams (1887), 58 L.J., M.C. 1; 22 Q.B.D. 66), nevertheless Chief Justice Lord Coleridge, in the case R. v. Labouchere (1884, 53 L.J., Q.B. 362; 2 Q.B.D. 320), after examining a whole list of cases, came to the conclusion that a criminal information for libel can be granted at the suit of persons who are in some public office or position, whose character was of such public importance as to require immediate vindication. So that it would seem as though the requirement of the likelihood of

a breach of the peace is, even under English Law, necessary in the case of criminal proceedings sought by private persons. It is unnecessary to say that, in this case, the matter concerns a person in a high official position, and therefore, even if the case were to be, hypothetically, considered in the light of English Law, criminal proceedings would be admissible, apart from the likelihood of a breach of the peace (see Leading Cases illustrating the Criminal Law, Wilshere 1948 Edit., nos. 175 and 198);

5. The whole of the libel must be considered. This is an eminently fair rule to adopt. In fact, W. Ball, in his text-book "The Law of Libel and Slander", p. 56, says :— "This rule of construction—that the whole of the alleged libel must be considered—may help a plaintiff as well as a defendant". "The words", as C.J. Tindal directed the jury in Shipley vs. Todhunter (1836), 7 C. & P. p. 690, "must be construed as a whole"; and Lord Halsbury, in Nevill vs. Fine Art and General Insurance Co. (1887) A.C. at p. 690, said :— "It is necessary to take into consideration not only the actual words used, but the context of the words". The words must be taken together in order to ascertain the alleged "sting" of the article;

Applying these principles, it would appear fair to hold that in the minds of ordinary, just and reasonable citizens, the gist of the article complained of is this :— The Governor, whilst presiding as Chancellor at a Council meeting of the University of Malta and "a propos" of an alleged leakage of the Council proceedings, lost control of his temper, flew into a rage, behaved in an unbecoming and undignified manner, repeatedly thumped the Council table in a fit of passion, acted high-handedly towards the members of the Council by asking each of them whether he (the member so questioned) had been guilty of this breach of confidence, and threatened them with due punishment. His behaviour was such as to arouse the resentement of the Council members, and also such as to engender the suspicion in the minds of responsible people that the autonomous status granted to the University was meant as a cloak to government of the University by secret conclave. This appears to be in fairness the only way in which the words complained of could be understood by those to whom they were

published, that is persons assumed to be of ordinary intelligence, giving to ordinary English words their ordinary English meaning. This appears to be the meaning which the whole passage would convey to an unbiassed mind;

Judged on the lines of the principles afore quoted, the article in question cannot but be regarded as constituting an offence under section 6 afore quoted. Even if the words complained of do not amount, liberally interpreted, to insulting or reviling the Governor, they do undoubtedly amount to bringing his person into contempt. It is obvious that a person in a public position who, in the circumstances of the case, behaves in the manner described in the article, is deserving of ridicule, and therefore of contempt. It is equally evident that any such behaviour tends to lower the person concerned in the estimation of right-thinking men, and to hold him up to scorn. There does not appear to be room for doubt that, taking all circumstances into consideration, the admittedly false statements contained in the article tend to affect the estimation in which the Governor should stand in the opinion of the community, and constitute, as such, a disparagement of his good name;

This Court is, therefore, of opinion, that the article in question tends to bring into contempt the person of the Governor and, as such, is an offence under section 6;

This disposes of the first plea of the defendant, whereby he claimed that the article was not capable of a defamatory meaning;

His second plea (b) says that the article was published in the honest belief that it was true;

In the course of his evidence before the Court below defendant stated as follows:— "The report contained in the article under the heading 'Stormy scene in the University Council' which appeared in the "Bulletin" of the 21st September, 1948, was published in absolute good faith, relying on the integrity of the person who furnished the information. I am not going to disclose who gave the information. I can only say that he was the same person who had furnished me with a report of a previous sitting held by the Council of the University, and which appeared in the 'Bulletin' of the 17th. September, 1948, under the heading 'Advocates to graduate as Bachelors'. I

am not going to disclose the identity of this person at his own express request.....";

Although it will be necessary for this Court to touch upon this point at a later stage of this judgment, in connection with another aspect of the case, at this stage the plea set up by the defendant is that his good faith excludes the imputation;

In the course of the argument Counsel for the defendant quoted in support of his plea the judgment given by His Majesty's Court of Appeal in the case "Dr. Masini vs. Avv. Bartolo" on the 5th. October, 1928. In that case the Court has laid down the principle that, in a trial on proceedings for libel, if the defendant did not succeed in proving the truth of the writing, but satisfied the Court that he was in good faith and that he had a just reason for publicising the facts, proving that he honestly believed the allegations to be true and that he exercised due care and diligence in ascertaining such allegations, they he may be exempted from criminal liability;

The sitting Judge, with all due respect to the learned Chief Justice and the two Judges constituting that Court when the afore said judgment was delivered, would, even apart from what will be said later, have felt a good deal of hesitation in concurring in the principle laid down in the judgment. But for the purposes of this plea it is sufficient to say that, even if the sitting Judge did concur, that principle would not be applicable in this case. In fact, in the "Masini vs. Bartolo" case, the Court was relying, in giving that particular interpretation, on the wording of section 21 of the then Press Law, Ordinance XIV of 1889. It was stated in the judgment that English and Italian text-writers and case-law had laid down a contrary principle, that is, that it was not enough for a writer to prove that he believed the imputation to be true; but, the Court said, the particular wording of art. 21 of the old law was such as to make the "animus injuriandi" the basic ingredient of the offence, and good faith might therefore exclude liability inasmuch as it excluded the "means rea". This particular wording of art. 21 of Ord XIV of 1889 (i.e. "nei casi di ingiuria che avesse per oggetto di offendere l'onore e la reputazione, ecc., ecc.) does not exist in sect. 6, and therefore the "ratio decidendi" is not the same, even if one were to agree with the inter-

pretation of art. 21 as given in the judgment afore quoted;

This Court is, therefore, of opinion that this second plea cannot be upheld; for the following reasons :—

1. It is not enough for the defendant to prove that he believed the imputation to be true, even though it was published as belief only. In a judgment quoted by Gatley (note 6 page 173, ibidem), the principle was forcefully stated thus: "If I say of a man that I believe he committed murder, I cannot justify by saying and proving that I did believe it. I can *only justify by proving the fact of murder*". *The Italian* writer Frola (Delle Ingiurie, pag. 158) similarly states: "..... già altrove dicemmo che la buona fede non vale a togliere di mezzo la diffamazione; qui ripeteremo tale principio, nel senso che se l'imputato di diffamazione non riesce ad altro se non a provare che egli in buona fede potè credere il fatto che ebbe a propalare o a stampare, non potrà certo andare esente dalla pena per la diffamazione, nè può andarne immune per ciò solo che provi che il fatto diffamatorio gli venne riferito da persone *fededegne, essendo necessario che egli provi la verità del fatto* attribuito". Odgers (ibidem, page 181) lays down the same rule in these words :— "On the other hand, if the words are false, and there be no other defence, the jury must find for the plaintiff, although they are satisfied that the defendant 'bona fide' and reasonably believed the words to be true";

2. With regard to the element of "malice", the publication need not be malicious in the statutory sense of evil intention (see Kenny, Outlines of Criminal Law, 1945 Edition, *page 366). In an ordinary action for libel, malice is never con*sidered as essential (per Bayley J. in "Bromage v. Prosser", 4 B. & C., at p. 257, and per Mansfield C.J. in "Hargrave v. Le Breton", 4 Burr. 2425). The law looks at the tendency and at the consequences of the publication, not at the intention of the publisher (see "Haire v. Wilson", (9 B. & C. 643; "Fisher vs. Clement", 10 B. & C. 472; "Hulton and Co. v. Jones", 1910 App. C. 20). If the defendant has published words which have in fact injured the plaintiff's reputation, he *must be taken to have intended the consequences naturally* resulting from his act;

This disposes of the second plea;

With regard to defendant's third plea (c), that is, tha in so far as the words complained of consisted of expressior of opinion, they constituted fair comment, this defence is rule out by the fact that the defendant has acknowledged the falsit of the allegations of fact. In "Thomas vs. Bradbury", Agne & Co. Ltd. (1906) 2 K.B., p. 638, it was held that the defenc of fair comment does not extend to cover mis-statements o facts, however "bona fide". Thus Spencer Bower (loc. cit. page 114-115) says that, in order that defensible immunity may attach to the publication of any matter purporting to be comment, such comment must conform to certain requirements, amongst which the requirement that the facts must be truly stated. As Chief Justice Cockburn observed in R. v. Carden, page 8, "to say that you can first libel a man, and then comment on him, is obviously absurd";

In the opinion of the Court, therefore, the publication was defamatory in the sense that it tended to bring into contempt the person of His Excellency the Governor, and no legal immunity or excuse attaches to the publication exonerating the defendant from criminal liability;

Great stress was laid, and properly so, during the hearing of the case, on the liberty of the press. The sitting judge is perfectly conscious of the paramount importance of this principle. But it must be properly understood. Any man is free—at least in democratic countries—to write and publish whatever he chooses of another, subject only to this, that he must take the consequences if his words are defamatory. "The liberty of the press", said Lord Mansfield in R. v. Dean of St. Asaph, 3 T.R. 431, n., "consists in printing without any previous licence, subject to the consequences of the law". And in R. v. Cobbett, 29 Howell's St. Tr. 49, Lord Ellenborough said :— "The Law of England is the law of liberty, and consistent with that liberty we have not what is called an "imprimatur"; there is no such preliminary licence necessary; but if a man publish a paper, he is exposed to the legal consequences, as he is in every other act, if it be illegal". Lord Kenyon put it very shortly in R. v. Cuthall, 27 Howell's St., Tr. 675 :— "A man may publish anything which is not blamable";

In the book "The Law of the Press", Fisher and Straian, after following the course of development through the ages of the law relating to the press, concludes thus :— "We have thus registered, as it were, the high-water mark of liberal and constructive statesmanship..... Freedom from previous restraint is expressly declared to be the keynote of the law, the 'ratio legis" in the light of which it is to be interpreted. The abuse of that freedom is an offence to be punished by law, but unless and until such an offence has been committed, the writer is free, and no preliminary censorship can come into operation to check or to guide him";

The sitting judge is also aware of the latitude which should be given to newspaper writers. Odgers states—loc. cit. page 193—"Though in strict law they stand in no better position than any other person, they generally are allowed greater latitude by juries. It is regarded as in some measure the duty of the Press to watch narrowly the conduct of all Government officials and the working of all public institutions, to comment freely on all matters which concern the nation, and fearlessly to expose abuses, should any be found to exist";

But, even applying its mind to these sound principles regulating the Press as an important factor in the social and political life of the nation, and interpreting the law, that is, in the present case, sec. 6 of Ch. 117, in the light of such principles, the Court comes to the conclusion that an offence as afore said has been, in point of fact, committed:

Proceeding further, to deal with the appeal entered by the Attorney General, it is proper to note that, whereas in terms of the ordinary Criminal Law, the Attorney General may only appeal in certain specified cases (sec. 425 Ch. 12), this particular law (Ch. 117) in section 63 places the Attorney General, with regard to appeals from judgments given by the Lower Courts in cases under the Press Ordinance, on a perfect par with the party convicted, and an appeal is allowed to both in all cases. In the present instance the Attorney General is restricting his appeal to the question of punishment, in the sense that the Magistrate should have also suspended the defend-

nut's printer's licence and ordered the forfeiture, in whole or in part, of the press deposit;

The relevant section, that is section 53 (1), lays down that, on a first conviction under specified sections, amongst which section 5 afore quoted, the Court, in addition to the punishment to which the offender may have become liable, shall order the suspension of the licence granted to the printer for a period of one month, and the forfeiture of the deposit mentioned in section 51, or part thereof. This deposit is that to be made by the prospective printer of a newspaper amounting in all to £20;

It should be noted, in order to make matters clearer, that in terms of section 42 (1), Ch. 117, on a first conviction under certain specified sections, amongst which sec. 6 afore quoted, the Court in addition to the punishment to which the offender may have become liable, shall order the suspension of the publication of the incriminated newspaper for a period of two months, and the forfeiture, in whole or in part, of the deposit made in terms of sec. 38, that is, the deposit of £200 to be made by the prospective editor; such forfeiture to be in no case less than £20. The Court below only ordered the suspension of the publication of the "Bulletin", but, even though the defendant is also the editor (see p. 12), did not order the forfeiture, in whole or in part, of the deposit made in terms of section 38; and the appeal made by the Attorney General turns only on the deposit made by the defendant "qua" printer, that is, that of £20, and not the deposit of £200 made by the prospective editor; so that the question of the forfeiture of this latter deposit does not come in at all in this appeal, but only that regarding the deposit of £20 made by the defendant as printer;

The wording of the law is such that the suspension of the printer's licence and the total or partial forfeiture of the printer's deposit is not a matter within the discretion of the Court, but a necessary consequence imposed by law;

Counsel for the defendant submitted that, in the writ of summons, the Prosecutor, besides mentioning the sections concerning the offence, i.e. ss. 6 and 15 (a), had, with regard to the additional consequences of conviction, mentioned only sec-

tion 42 (1). This section did "not" contemplate the suspension of the printer's licence and the forfeiture of the printer's deposit, which are the subject matter of the Attorney General's appeal, and which are only mentioned in section 53 (1) of the Ordinance. Therefore, it is contested, the Attorney General is not now entitled to demand the application of this latter section with regard to the suspension and forfeiture of the printer's licence and printer's deposit respectively;

This plea cannot be upheld; for two reasons:—

1. It is no part of the duty of the Police, in framing the writ of summons, to indicate the sections of the law concerning the offence or its punishment. The law does not require this (see sec. 372 (2), Ch. 12). If they choose to do so, this cannot be taken to mean that any omission on their part can operate so as to vary the course of the law;

2. Defendant's argument may have had some foundation if, as in other cases, the law in section 53 (1) had made use of the expression "at the instance of..... etc.". Thus, for example, in sec. 17 (2) of the Traffic Regulation Ordinance, Ch 105, it is stated thus:— "On conviction for an offence against such regulations the Court shall, at the instance of the Commissioner of the Police, suspend any licence held by the offender etc., etc.....";

In this case, it is obvious that the Court cannot apply the suspension unless there be the demand of the Police for such suspension. No such wording appears in section 53 (1) of the Press Ordinance, and it would not be correct for the Court to import in the law an expression which is not in it, or to construe it as if there was that expression;

The appeal of the Attorney General is therefore justified, and the Lower Court should have applied as well the punishment mentioned in sec. 53 (1) afore referred to;

The remarks made so far exhaust the merits of the case with regard to both appeals;

The sitting Judge has also addressed his mind very earnestly to the question of punishment, both the punishment already awarded by the First Court and that to be awarded as a result of the appeal made by the Attorney General. It appears that there are certain important considerations to be

made which have a substantial bearing on this question;

First of all, in order to proceed on a sound basis, it may not be amiss to remark that the Attorney General was not quite exact in stating, in his appeal petition (page 49 back, para. last but one), that the defendant had been found guilty of the two offences originally set out in the writ of summons. The declaration of guilt, properly speaking, is limited to a conviction under section 6 of the Ordinance. In fact, the Magistrate held (and correctly, in this Court's opinion) that the second charge was merged in the first charge. The words with which the Magistrate expressed himself show very clearly that he was not holding simply that, as a matter of punishment, the rules laid down by the Criminal Code with regard to concurrent offences and punishments fell to be applied, but that the second charge was merged in the first, so that the two offences were unified in one;

Now, section 6, with its comprehensive wording, necessarily comprises varying degrees of criminal liability. This Court has held that the publication complained of tended to bring into contempt the person of His Excellency the Governor. It has been explained in what way the publication has been deemed to be libellous. But, of course, there may be publications which, although falling equally under section 6 of the Press Ordinance, are much more serious in character. Thus, for instance, in cases in which words are used imputing to the plaintiff that he has been guilty of a crime, or of fraud, or of dishonesty, or of immorality, or of vice or dishonourable conduct. This, in itself — that is, the greater or lesser degree in the seriousness of the libel — must be taken into consideration for the purposes of assessing the punishment;

In the present case, however, there is even more than this. In the opinion of this Court there are certain circumstances which justify the Court in applying the provisions of section 23A of the Criminal Code, which empowers the Court, for special and exceptional reasons, to apply in its discretion any lesser punishment which it deems adequate, saving the distinction, contained in Section 7 of the Criminal Code,

between the punishments applicable to crimes and those applicable to contraventions;

Amongst those circumstances, this Court does not intend including that arising from defendant's statement that he obtained the information contained in the publication from a person whom he had reasons to consider reliable. Once that person has not been named, such circumstance cannot be considered in mitigation. Had defendant named the source of his information, then there may have been a good ground for mitigating the punishment on this account (see, with regard to English case-law on this point, Benner v. Bennett (1834) 6 C. & P. 588);

It is a fact, however, that (1) the defendant, in the issue of the "Bulletin" of the 27th. September, 1948 (exhibited at p. 10), published under the heading "University Council Rectification" a communication from the Secretary of the Royal Malta University embodying a resolution of the Council containing a "dementi" of the incriminated article. This publication was requested and made under the provisions of section 22 of Ch. 117, which runs as follows:— "Any person whose actions or intentions have been misrepresented in a newspaper, shall be entitled to demand and to have published forthwith, free of charge, in the same newspaper, in a prominent place and in the same type, a statement by way of contradiction or explanation". It is true, of course, that in terms of the same section the publication of any such "dementi" is not a bar to any other action under the Ordinance, but, on the lines of the principles equitably laid down in English judgments, it is only fair to consider such published "dementi" as a circumstance which justifies the applicability of section 23A. afore quoted. It has been held in English case-law that subsequent publication made by the defendant, minimising the injury to the plaintiff, may be admitted as mitigating circumstance (vide Gatley, page 756 ibidem);

It is true that, in publishing this statement, defendant put in brackets the words "which is published without prejudice"; but those words may have been intended to reserve any pleas which the defendant may have set up in an action

which, despite the remedy under section 22, could still be instituted, as in point of fact it was instituted, against him. In any case, it cannot be denied that in this particular case the publication of any authoritative and unanimous resolution coming from a responsible body such as the Council, and containing a categorical and detailed contradiction of the incriminated article, made in the same newspaper in which the article had appeared, presumably read more or less by the same readers, did minimise, if not even neutralise, the mischief, and should, therefore, operate as an extenuating circumstance;

(2) In the course of his evidence before the Court below the defendant declared as follows:— "Having heard the evidence produced by the Prosecution, I wish to withdraw the report published in the 'Bulletin' of the 21st. September, 1948, and to take whatever steps may be considered necessary to minimise the effects of that report and minimise any effects of any unintentional mischief it may have caused";

Now, in effect, this amounts to a full and unreserved apology. An apology is, of course, no defence to an action such as this, either under Maltese or English Law. But in England, the Courts, applying Lord Campbell's Libel Act 1843, have considered any such retraction or apology as a factor to be taken into account by way of mitigation of damages, even when made after the commencement of the action. The words used by the defendant in his evidence afore quoted unreservedly withdraw the imputation and express regret for having made it. It is a full apology (see Odgers, ibidem, pages 404 and 405);

These two factors taken together justify, in the opinion of this Court, and in the particular circumstances of this case, the application of section 23A. in defendant's favour;

Section 23A. of the Criminal Code refers to punishments. Properly speaking, the suspension of the publication of the newspaper, the suspension of the printer's licence, and the forfeiture of the deposit, are more in the nature of orders consequent upon conviction than punishments. But, particularly in view of the fact that, in sect. 23A., Ch. 12, there is no limiting proviso, such as there was in the similar pro-

vision relating to offences under the Emergency Regulations, this Courts holds that section 23A. falls to be liberally interpreted in the sense that, if there are special and exceptional reasons, the Judge may apply such punishment as he thinks adequate in the circumstances of the case, saving the basic distinction contained in section 7 of the Criminal Code;

This Court, therefore, disposes of the two appeals as follows:—

With regard to the merits, dismisses the appeal entered by the defendant and affirms the judgment of the First Court, in the sense of declaring the defendant guilty of having, by means of the publication of printed matter, brought into contempt the person of His Excellency the Governor;

Allows the appeal entered by the Attorney General, in the sense of declaring that the Court below should have also applied, on conviction, the provisions of sec. 53 (1) Ch. 117 relating to the suspension of the printer's licence and the forfeiture of the printer's deposit;

With regard to the punishment, this Court declares that, for the reasons afore stated, section 23A. of the Criminal Code falls to be applied, in the sense of awarding a lesser punishment, notwithstanding the minimum punishment laid down by the law;

Consequently, the punishment is varied as follows:—

1. The punishment of imprisonment is revoked "in toto";

2. The fine (multa) is reduced to £12, payable in six monthly instalments of £2 each, the first payment to be made within one month from today, in terms of section 16 (2) Criminale Code;

3. The period of suspension of the publication of the newspaper "The Bulletin" is reduced to four days, to run from the 13th. of this month inclusively;

4. Orders the suspension of the printer's licence standing in defendant's name for a like period of four days, to run similarly;

5. Finally, orders that the sum of £2 out of the deposit made in terms of section 50 Ch. 117, be forfeited in favour of the Crown.