

The Advocate Co., Limited - - - - - *Appellant*

v.

Arthur Leslie Abraham - - - - - *Respondent*

FROM

THE COURT OF COMMON PLEAS, BARBADOS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 9TH OCTOBER, 1945

Present at the Hearing:

LORD THANKERTON

LORD GODDARD

SIR JOHN BEAUMONT

[*Delivered by* LORD GODDARD]

The action out of which this appeal arises was brought by the respondent to recover damages for libel published by the appellants of him in their newspaper the "Barbados Advocate." He complained of two publications, one in the issue of 3rd April, 1943, and another in that of 15th April. The action was tried before the Chief Justice of Barbados and a special jury. His Honour held that the publication of 15th April was not defamatory of the respondent and withdrew it from the jury. There is no cross appeal so it is unnecessary to refer to it further. He left the other alleged libel to the jury, who gave a verdict for the respondent with £2,296 5s. od. as damages, a curious sum considering that no special damage was alleged, and judgment was entered accordingly. The appellants appeal on the grounds (1) that the words were incapable of a meaning defamatory of the respondent; (2) that inadmissible evidence was received in that all the witnesses for the respondent were asked and stated the meanings they attached to the words; and (3) that the damages were excessive. Before setting out the facts it will be convenient to deal with the second of these grounds.

All the witnesses were asked not only to whom they understood the words to refer but also what meaning they attached to them. Where a plaintiff alleges that though he is not mentioned by name he is the person at whom an alleged libel is aimed, or where a name is mentioned, that it would be understood by those who know him to refer to him, witnesses can be called to prove that they understood the words to refer to the plaintiff. But they cannot be asked what meaning they attached to the words because that is the very question the jury have to decide. The Chief Justice ought to have disallowed those questions, but no objection was taken to them, and it is now too late to raise the question of their admissibility as a ground for setting aside the verdict. Moreover His Honour in a full and careful summing up, to which no exception can be taken, put the proper question to the jury, namely, what would a reasonably intelligent person understand the words to mean.

Turning now to the facts of this case, it appears that there had been considerable criticism in the Colony as to the appointments of assistant

superintendents of police, and in particular to the recent appointment of a member of the Palestine Police to one of these positions in Barbados in preference to a candidate who was already serving in the Island police force. The Government published an explanation of the reasons which influenced these appointments, which appeared in the "Trinidad Guardian" on 25th March. At this time there were two, and only two, former members of the Palestine Police occupying these appointments in Barbados, the respondent, who had been in the Colony for some five years, and Captain Holmes-a'-Court. On 3rd April the following letter appeared in the appellants' newspaper which circulates in Barbados:—

" POLICE OFFICERS:

" To the Editor:

" Sir,—I have just read to my utter dissatisfaction and surprise, in one of the local newspapers, a reproduction of what is termed therein 'Appointment of Barbados Police Officers explained.' I must state, that to me, the reason given for the recommendation of the local candidate being appointed in some Force other than the Barbados Police Force is as perforated as a strainer.

" Is there a more beloved and popular Police Officer in Barbados than the Deputy Commissioner, Major Goddard? Certainly not. From whence came this worthy gentleman? The ranks of course. Well, then, how can anyone be so short-sighted as to presume that we Barbadians of all other people would not give unto one of our own people the maximum support should the occasion arise, especially when we are aware of the fact that that person is reflecting credit on our sons of the soil?

" It is quite obvious that if one of our people is considered worthy of filling such a responsible position, our first conclusion must definitely be that he is at least twice as capable as the outsider who may be some Lance or Full Corporal in the Palestine Police Force, the majority of whom I have been either fortunate or unfortunate to encounter, can scarcely conjugate more than six or eight of the verbs of their own language, and who, when they try to explain an idea or thought verbally never succeed without the inclusion of a sickening amount of verbosity.

" Our Junior N.C.O. is on the spot, he has the qualification plus a perfect understanding of the mentality of the people of the colony and long association with members of the Force, promote this man and give him a chance to prove whether or not he is capable of winning the affections of his compatriots were-seniors and associates before presuming that they would make it hard for him to succeed in the position. Should he fail, then you would have something to sing about, then you would have a reason for bringing into the Colony your Palestinic Lance-Corporal, who for the most part of all he would bring with him would be a strange accent and a riding-suit, to be taught among other things his job by the local unfortunate junior N.C.O.

" I earnestly hope that the representatives of the people will take this matter seriously, keeping before them the fact that they themselves are Barbadians and not members of the Palestine Police Force.

" Thanking you for space,

" I am, Sir,

" Very sincerely yours,

" A BARBADIAN.

" 26th March, 1943.

" Trinidad."

To this the respondent and his brother officer took exception, conceiving it to be aimed at them as the only two police officers in Barbados who had previously served in the Palestine Force. They consulted solicitors who, on 15th April, wrote demanding (1) a full and complete apology to be published in the paper and to be settled by the solicitors; (2) an undertaking to refrain from publishing further defamatory matter of the two officers; (3) a substantial sum for damages and costs. Thereupon the appellants published an apology in their issue for 17th April which though not settled by the respondent's solicitor was in these terms:—

" AN APOLOGY.

" It has been drawn to our attention that a letter appearing in the 'Advocate' of 3rd April under the caption 'Police Officers' has been the cause of considerable annoyance to two of our local Police Officers. We unhesitatingly tender our apologies to these two officers. In the letter

referred to the writer belittled the intelligence and efficiency of the majority of the members of the Palestine Police Force whom he had met and we regret that they should have felt that the attack was directed against them.

" It is obvious to anyone with a nodding acquaintance with Captain Abraham and Captain Holmes-a'-Court that our correspondent had never met these Officers, who are highly efficient police officers and men of high intellectual attainments respected by all sections of the community not only for these qualities, but for their easy adaptability to local conditions and their eagerness to enter into every phase of social life in the colony.

" It was not so long ago that the ' Advocate ' in an article in reply to an attack on members of the ' Palestine Police Force ' published in the ' Antigua Magnet ', stated that, whatever may have been the experience in other colonies the members of that Force transferred to Barbados were intelligent, gentlemanly and efficient officers and a credit to the local force.

" Holding the same opinion to-day we again tender our sincere apologies for any inconvenience and annoyance which our correspondent's letter may have caused."

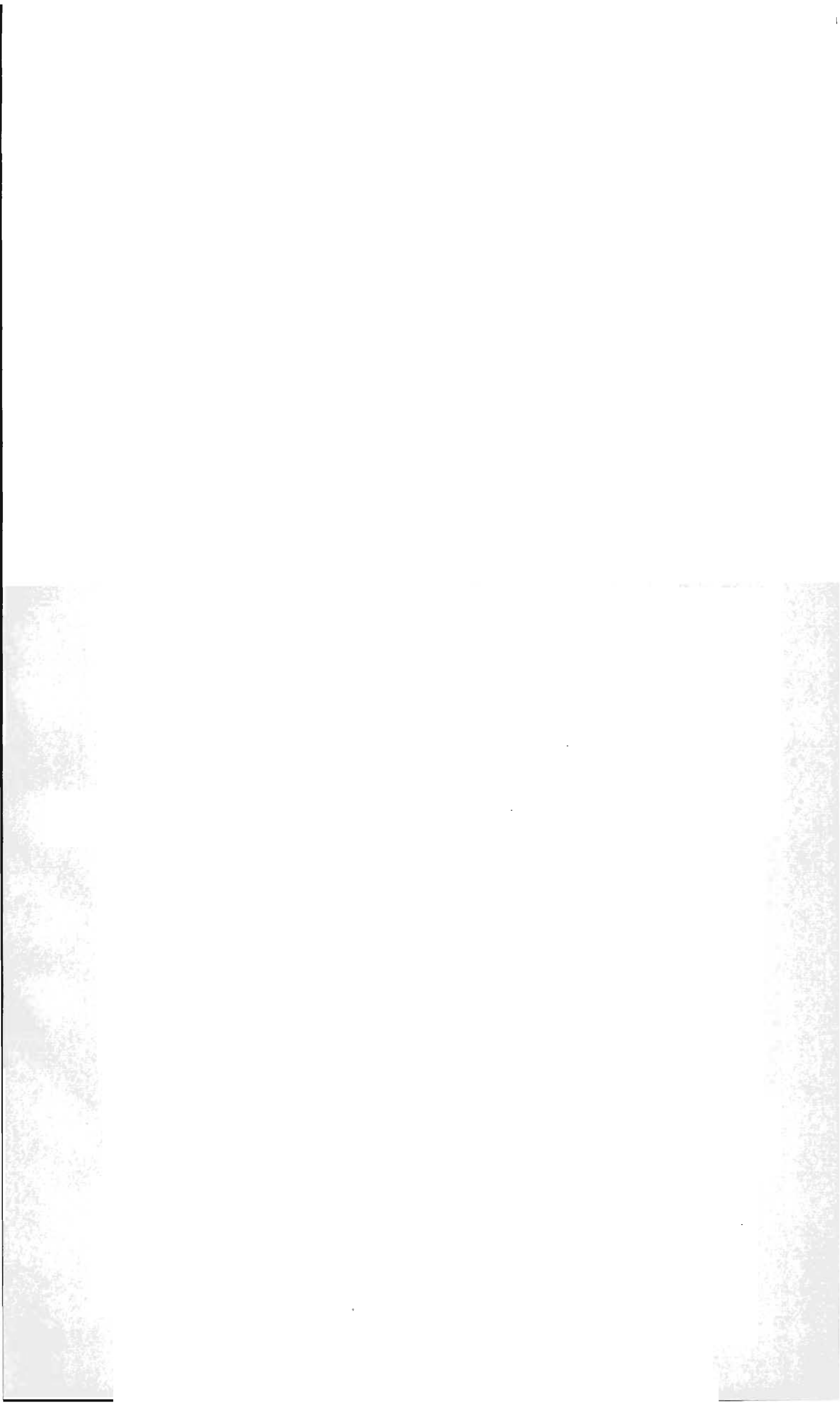
Their Lordships will refer to this apology when they come to deal with the question of excessive damages.

The respective functions of judge and jury in actions for defamation are well established and were accurately stated by His Honour at the outset of his summing up. The judge is to say whether the words are capable of a defamatory meaning and are capable of being defamatory of the plaintiff. It is for the jury to say whether they are in fact defamatory and defamatory of him. It was submitted by Counsel for the appellants that these words were incapable of defaming the respondent; they were published, he contended, of the Palestine police as a body and not of any individual member or members of that body, least of all of the respondent. Their Lordships need not enter into a full exposition of the law on this matter, as it was the subject of a recent decision of the House of Lords in *Knuppfer v. London Express Newspaper Ltd.*, 1944, A.C. 116, and passages from the speeches were read by His Honour to the jury. It is enough to say that if on a fair construction the words are spoken of a class or body of persons, an individual member of the class or body cannot sue in respect of them unless there are circumstances that show that they may be aimed at him. If they may be in all the circumstances, the judge must leave it to the jury to say if they are in fact. Among such circumstances may be the smallness of the class referred to, so that it could fairly be said that all its members are aimed at. Here there are but two police officers in Barbados who had previously served in Palestine and the plaintiff is one of them. The letter is written by a person calling himself " A Barbadian ", published in a Barbados newspaper in relation to the appointments to the force in that Island of police officers from Palestine. In these circumstances their Lordships are of opinion that His Honour was amply warranted in leaving the case to the jury. He gave them full and clear direction on the matter and there is no ground on which the verdict for the plaintiff can be disturbed.

Reluctant as an appellate tribunal always is to interfere with the amount of damages, it appears to their Lordships that the jury's award is so excessive and unreasonable that it cannot be allowed to stand. While the assessment is particularly within the province of the jury the amount must bear some relation to the damage suffered. Where it is so excessively high or so inadequate as to amount to a wholly incorrect estimation an appellate tribunal will interfere. It is enough to refer to *Greenlands v. Wilmshurst*, 1913, 3 K.B. at p. 532 and *Flint v. Lovell*, 1935, 1 K.B. 354, where the principle is explained. In libel damage is presumed and no doubt punitive or, as they are sometimes called, vindictive damages may be given, but extravagance is not to be permitted. Here there was a prompt apology, full and ample, and containing an appreciation of and testimonial to the respondent. Their Lordships confess to some surprise that after its publication the respondent thought it necessary to bring this action. His brother officer was apparently satisfied, and it is to be

observed that in his evidence the respondent stated that money was not his object. Actual damage there was none; for the annoyance, in view of the apology, many would think £100 an extreme limit. Double or even treble it for sympathy, indignation or what you will the result bears no relation to what the jury gave.

Their Lordships are of opinion that this appeal should be in part allowed; that the verdict of the jury and the judgment should be set aside in so far as it relates to the amount of damages, and that there should be a new trial limited to the amount of damages to be awarded to the respondent. As to costs the appellants have failed before this Board in their appeal as to liability, which was the principal subject of the appeal. On the other hand the respondent endeavoured to uphold the amount of damages awarded, and in this he has failed. Accordingly their Lordships think that the proper order should be that the appellants should pay the respondent one-half of his costs of this appeal. The costs of the new trial will be in the discretion of the judge who tries it. They will humbly advise His Majesty accordingly.



In the Privy Council

THE ADVOCATE CO., LIMITED

v.

ARTHUR LESLIE ABRAHAM

DELIVERED BY LORD GODDARD

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DRURY LANE, W.C.2.

1945