

Judgment

19/1/56

PC GHR.G.T.

24, 1957

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1050

PRIVY COUNCIL

On Appeal from the West African
Court of Appeal-Gambia.

Between

P. S. N'Jie

Appellant

and

C. S. T. Edmondson

Respondent

**IN THE WEST AFRICAN COURT OF APPEAL
ON APPEAL FROM THE SUPREME COURT OF THE COLONY
OF THE GAMBIA**

C. S. T. EDMONDSON.....*Appellant*

versus

P. S. N'JIE

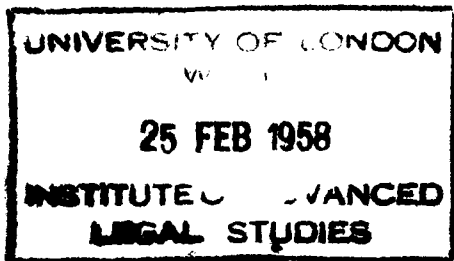
Respondent

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49832

24, 1957

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA.

Suit No. 66/1953.

Between P. S. N'Jie.....*Plaintiff*
AND

C. S. T. EDMONDSON.....
SANJALY BOJANG..... *Defendants*
A. D. BAKER.....

REPLY

The plaintiff denies the allegation of the defendants C. S. T. Edmondson and Sanjaly Bojang that the plaintiff amended the writ of summons herein without leave of the Court and says that:—

1. On the 27th day of May, 1953, in the presence of Mr. E. E. Hammond Laing, solicitor and counsel for the said two defendants, the plaintiff applied to, and obtained leave of the Court to amend the said writ of summons and to add in two defendants, namely the said Sanjaly Bojang and A. D. Baker.
2. The plaintiff will content that the defendants C. S. T. Edmondson and Sanjaly Bojang were not privileged in publishing the libel complained of.

DATED at Bathurst the 6th day of July, 1953.

(Sgd.) P. S. N'JIE,

of No. 7, Buckle Street,
Bathurst,
(BARRISTER-AT-LAW),
SOLICITOR.

To
THE CLERK OF COURTS,
BATHURST,

the above-named defendants
C. S. T. EDMONDSON
SANJALY BOJANG
A. D. BAKER

AND
MR. E. E. HAMMOND-LAING,
24, BUCKLE STREET,
BATHURST,
Solicitor for the said defendants.

**IN THE SUPREME COURT OF THE COLONY
OF THE GAMBIA.**

Suit No. 66/1953.

P. S. N'JIE.....*Plaintiff*

AND

C. S. T. EDMONDSON.....
SANJALY BOJANG..... *Defendants*
A. D. BAKER.....

REPLY

FILED this 7th day of July, 1953, At 4.25 o'clock
in the afternoon.

(Sgd.) N. H. ALLEN
for Clerk of Courts.

(Sgd.) P. S. N'JIE,
7, BUCKLE STREET,
BATHURST, GAMBIA,
SOLICITOR.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. 66/1953.

Between P. S. N'JIE.....*Plaintiff*

AND

C. S. T. EDMONDSON.....*Defendant* **5**

To: C. S. T. Edmondson, of No. 7 Denton Street, Bathurst.

YOU ARE HEREBY COMMANDED in Her Majesty's name to attend this Court at Bathurst on Tuesday the 26th day of May 1953, at 9 o'clock in the forenoon to answer a suit by Pierre Sarr N'Jie of No. 7 Buckle Street, against you. **10**

The plaintiff's claim is for damages for a libel contained in a letter dated 28th April, 1953, and addressed by the defendant to the Honourable the Attorney General imputing to the plaintiff the commission of a crime namely, forgery.

The plaintiff claims £5,000. **15**

Issued at Bathurst the 18th day of May, 1953.

Court Fees £ : : :

*(Sgd.) N. H. ALLEN,
for Clerk of Courts.*

TAKE NOTICE: That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the plaintiff to proceed to judgment and execution. **20**

CERTIFICATE OF SERVICE BY BAILIFF.

Upon the 19th day of May, 1953, this summons was served by me on C. S. T. Edmondson defendant. This I did by serving a copy of the above summons on the said defendant personally at Buckle Street opposite E. D. Lines Bathurst. **25**

*(Sgd.) J. D. RICHARDS,
Officer of Supreme Court.*

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. 66/1953.

Between P. S. N'JIE.....*Plaintiff*

AND

5 C. S. T. EDMONDSON
SANJALI BOJANG*Defendants*
ARTHUR DUDLEY BAKER

AMENDED WRIT OF SUMMONS

To: C. S. T. EDMONDSON, of Trelawney Street, Freetown,
10 Sierra Leone,
SANJALI BOJANG of No. 7 Denton Street, Bathurst,
and ARTHUR DUDLEY BAKER of No. 3 Ingram Street, Bathurst.

YOU ARE HEREBY COMMANDED in Her Majesty's name to attend
this Court at Bathurst on Thursday the 16th day of July, 1953; at 9 o'clock
15 in the forenoon to answer a suit by Pierre Sarr N'Jie, of No. 7, Buckle
Street, Bathurst, against you.

The plaintiff claims as against you the first named defendant damages
for libel contained in a letter dated 28th April, 1953, written by the said
first defendant and addressed by him to the Honourable the Attorney
20 General imputing to the plaintiff the commission of a crime, namely,
forgery, and for publishing of the plaintiff a statement by the above-named
Sanjali Bojang annexed to the said letter imputing to the plaintiff fraud
by obtaining the execution by the said Sanjali Bojang of an indenture of
conveyance dated 8th January, 1951; and as against the second and third
25 defendants Sanjali Bojang and Arthur Dudley Baker, respectively, damages
for the publication of the libel contained in the above-named two docu-
ments.

And the plaintiff claims £5,000.

ISSUED at Bathurst the 5th day of June, 1953.

30 Court Fees £ : : :

(Sgd.) N. H. ALLEN,
for Clerk of Courts.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. 66/1953.

Between P. S. N'JIE.....*Plaintiff*

AND

5

C. S. T. EDMONDSON
SANJALI BOJANG*Defendants*
ARTHUR DUDLEY BAKER

STATEMENT OF CLAIM

10 The plaintiff is a Barrister-at-Law and a Solicitor of the Supreme Court above-named, carrying on his practice at Bathurst in the said Colony of the Gambia.

2. On the 28th day of April, 1953, the defendant, C. S. T. Edmondson, wrote and forwarded a letter to the Honourable the Attorney General to the Government of the Gambia to which was annexed a statement in
15 writing made by the defendant, Sanjali Bojang.

3. In his said statement the said Sanjali Bojang said "He (Mr. P. S. N'Jie) read a document to me saying that I was selling my property to him for £1,000 and asked me to sign it. I refused to sign it. He then made another paper which was read and explained to me as a loan for
20 £100 which I signed. I paid Mr. N'Jie back the £100. "He refused to return me my title deeds saying that I had sold my house to him for £1,000" or words to that effect, thus imputing to the plaintiff the commission of the crime of obtaining the execution by the said Sanjali Bojang of an indenture of conveyance by falsely pretending that it was a security for
25 a loan.

4. The said C. S. T. Edmondson in his said letter to the said Attorney General suggested that the complaint of Sanjali Bojang as stated in his said statement "amount to an allegation of forgery" or words to that effect and suggested that the said Attorney General investigate the
30 said complaint because, as the said C. S. T. Edmondson has said in the said letter "it appeared that a crime had been committed" by the plaintiff thus imputing to the plaintiff the commission of the crime of forgery.

5. The defendant, Arthur Dudley Baker, published the said letter and statement to one George St. Clair Joof.

35 6. The alleged libellous statements have also been published of the plaintiff as a legal practitioner.

7. The plaintiff has thereby been injured in his reputation.

And the plaintiff claims £5,000 damages.

DATED at Bathurst the 4th day of June, 1953.

(Sgd.) P. S. N'JIB,
of No. 7 Buckle Street,
Bathurst, Gambia,
Solicitor.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. 66/1953.

Between P. S. N'JIE.....*Plaintiff*

AND

5

C. S. T. EDMONDSON

SANJALI BOJANG*Defendants*

ARTHUR DUDLEY BAKER

STATEMENT OF DEFENCE

1. First defendant is a Barrister-at-Law and Solicitor of this
10 Honourable Court.

2. The relation between the first defendant and second defendant
is that of a solicitor and client.

3. First defendant will contend that plaintiff cannot amend the
writ of summons issued on the 18th day of May 1953 without first making
15 application to Court for leave to amend and obtaining such leave to amend.

4. First defendant asks that the amended writ of summons and
the statement of claim be struck out as irregular and contrary to pre-
scribed rules.

5. In answer to paragraph 2 of the statement of claim the first
20 defendant says that he forwarded a copy of the said statement with a letter
dated 28th April 1953 to the Honourable the Attorney General.

6. The first defendant admits paragraph three of the statement
of claim and says that on the instructions of the second defendant and
as his Counsel and Solicitor with a duty and interest as such the first defen-
25 dant wrote and published the letter with a copy of the statement of the
second defendant annexed addressed to the Honourable the Attorney
General who has a corresponding interest and duty to receive them and
that the letter contains fair and impartial statements and was written and
sent Bona Fide along with a copy of the second defendant's statement
30 in the honest defence of his client's interest and without any malice towards
plaintiff whatsoever and by reason of the occasion on which it was written
and published the words complained of in the said letter are priviledged.

PARTICULARS ARE AS FOLLOWS:—

The first defendant was consulted and engaged as counsel and solicitor by the second defendant to advise him and to take such proceedings as were necessary for the cancellation or revocation of a deed of conveyance purporting to be a conveyance of the second defendant's house and land at 7, Denton Street, Bathurst to the plaintiff as well as to defend the second defendant in an action by a certain McCoumba N'Jie against the second defendant for recovery of possession and payment of arrears of rent in respect of the said house and land and generally to secure for him redress for his complaint against the plaintiff in regard to the said house and land as contained in the statement of the second defendant referred to in paragraph 2 of the statement of claim. 5 10

7. In answer to paragraph 4 of the statement of claim the first defendant says that he did say in his letter to the Honourable the Attorney General that the complaint of the second defendant Sanjali Bojang amounted to an allegation of forgery and did ask the said the Honourable the Attorney General to investigate the said complaint but denies that he said in the said letter that it appeared that a crime had been committed by the plaintiff. 15

8. In further answer to paragraph 4 of the statement of claim the first defendant says that the words complained of in the said letter namely the words "amount to an allegation of forgery" are incapable of the said alleged meaning or any other defamatory or actionable meaning. 20

9. The first defendant says that the said words without the said alleged meaning are no libel. 25

DATED this 19th day of June 1953.

(Sgd.) E. E. HAMMOND LAING,
Solicitor for the first defendant.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. /1953

Between P. S. N'JIE.....*Plaintiff*

AND

5 C. S. T. EDMONDSON.....*Defendant*

AMENDED WRIT OF SUMMONS.

To: C. S. T. Edmondson, of Trelawney Street, Freetown, Sierra Leone.

10 YOU ARE HEREBY COMMANDED in Her Majesty's name to attend this Court at Bathurst on Monday the 9th day of November, 1953, at 9 o'clock in the forenoon to answer a suit by Pierre Sarr N'Jie, of No. 7, Buckle Street, Bathurst, against you.

15 The plaintiff claims as against the defendant damages for libel contained in a letter dated 28th April, 1953, written by the said defendant and addressed by him to the Honourable the Attorney General imputing to the plaintiff the commission of a crime, namely, forgery, and for falsely and maliciously publishing of the plaintiff a statement made by one Sanjali Bojang and reduced to writing and annexed to the said letter imputing to the plaintiff fraud or deceit by obtaining the execution by the said Sanjali Bojang of an indent ure of conveyance dated the 8th day of January, 1951.

20 And the plaintiff claims £5,000.

ISSUED at Bathurst the 11th day of August, 1953.

Court fees £ : : :

(Sgd.) N. H. ALLEN,
for Clerk of Courts.

25 TAKE NOTICE: That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the court may allow the plaintiff to proceed to judgment and execution.

CERTIFICATE OF SERVICE BY BAILIFF.

30 Upon the 12th day of August, 1953, this summons was served by me on H. Laing defendant. This I did by serving a copy of the above summons and the particulars of claim on the said defendant personally at

(Sgd.) M. A. AUBEE,
Bailiff or Officer of Supreme Court.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. /1953.

Between PIERRE SARR N’JIE.....*Plaintiff*

AND

C. S. T. EDMONDSON.....*Defendant* 5

AMENDED STATEMENT OF CLAIM

The plaintiff is a Barrister-at-Law and a solicitor of the Supreme Court above-named, carrying on his practice at Bathurst in the said Colony of the Gambia.

2. On the 28th day of April, 1953, the defendant C. S. T. Edmondson 10
falsely and maliciously wrote and forwarded a letter to the Honourable the Attorney General to the Government of the Gambia to which was annexed a statement in writing made by one Sanjali Bojang.

3. In his said statement the said Sanjali Bojang said “He (Mr. P. S. N’Jie) read a document to me saying that I was selling my property 15
to him for £1,000 and asked me to sign it. I refused to sign it. He then made another paper which was read and explained to me as a loan for £1,000 which I signed. I paid Mr. N’Jie back the £100. He refused to return me my title deeds saying that I had sold my house to him for £1,000”, thus imputing to the plaintiff the commission of the crime of obtaining by 20
fraud or deceit the execution by the said Sanjali Bojang of an indenture of conveyance by falsely pretending that it was a security for a loan.

4. The said C. S. T. Edmondson in his said letter to the said Attorney General suggested that the complaint of Sanjali Bojang as stated in his said statement amounted to an allegation of forgery and suggested 25
that the said Attorney General investigate the said complaint.

5. The defendant by this forwarding the said letter and written statement to the said the Honourable the Attorney General falsely and maliciously published of the plaintiff the alleged libellous statements.

6. The alleged libellous statements have also been published of 30
the plaintiff as a legal practitioner.

7. The plaintiff did at the material time carry on his professions of Barrister-at-Law of the said Supreme Court.

8. The plaintiff has by the said publication of the said letter and written statement been thereby injured in his reputation. 35

And the plaintiff claims £5,000 damages,

DATED at Bathurst the 10th day of August, 1953.

(Sgd). P. S. N'JIE,
of No. 7 Buckle Street,
Bathurst, Gambia,
Solicitor.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. 66/1953.

P. S. N'JIE.....*Plaintiff*

AND

C. S. T. EDMONDSON.....*Defendant* 5

AMENDED STATEMENT OF DEFENCE.

1. The Defendant contends that the amended writ of summons issued the 11th day of August 1953 which on the face of it is one for service out of the jurisdiction is irregular as it was issued without leave and that consequently the amended writ of summons, the statement of claim and the action should be struck out. 10

2. The Defendant further contends that the service of the amended writ of summons is irregular as the writ was not personally served.

3. The Defendant is a Barrister-at-Law and solicitor of this Honourable court. 15

4. The Relation between the Defendant and Sanjali Bojang was that of a Solicitor and Client.

5. In answer to paragraph 2 of the amended statement of claim the Defendant says that he forwarded a copy of the said statement with a letter dated 28th April 1953 to the Honourable the Attorney General. 20

6. In reply to paragraph 3 of the amended statement of claim the Defendant denies that the words as set out therein in italics are the very words used in the said statement of the said Sanjali Bojang.

7. In further reply to paragraph 3 of the amended statement of claim the Defendant says that as Counsel and Solicitor of the said Sanjali Bojang and with a duty and interest as such he wrote and published the letter with a copy of the statement of the said Sanjali Bojang annexed addressed to the Honourable the Attorney General who has a corresponding interest and duty to receive them and that the letter contains fair and impartial statements and was written and sent bona fide along with a copy of the said Sanjali Bojang's statement in the honest defence of his client's interest and without any malice towards the Plaintiff whatsoever and by reason of the occasion on which it was written and published the words complained of in the said letter and the said statement are privileged. 25 30 35

PARTICULARS ARE AS FOLLOWS.

The Defendant was consulted and engaged as Counsel and Solicitor by the said Sanjali Bojang to advise and to take such proceedings as were necessary for the cancellation or revocation of a Deed of Conveyance
5 purporting to be a conveyance of the said Sanjali Bojang's house and land at 7, Denton Street Bathurst to the Plaintiff and generally to secure for him redress for his complaint against the Plaintiff in regard to the said house and land as contained in the statement of the said Sanjali Bojang referred to in paragraph 2 of the statement of claim.

10 8. The Defendant further says that together with the said statement of the said Sanjali Bojang he also forwarded to the Honourable the Attorney General a copy of a letter dated the 21st day of February 1953 which was written by the Plaintiff to the Defendant giving the Plaintiff's version of the transaction between himself and the said Sanjali Bojang.

15 9. In answer to paragraph 4 of the statement of claim the Defendant says that he did say in his letter to the Honourable the Attorney General that the complaint of Sanjali Bojang amounted to an allegation of forgery and did ask the said the Honourable the Attorney General to investigate the said complaint.

20 10. In reply to paragraph 5 of the statement of claim the Defendant says that the letter and written statement were not maliciously published by the Defendant of the Plaintiff and repeats paragraph 7 of the defence.

25 11. In reply to paragraph 6 of the statement of claim the Defendant says that the alleged libellous statements have not been published of the Plaintiff as a legal Practitioner.

DATED at Adelaide Chambers this 26th day of August, 1953.

(Sgd.) E. E. HAMMOND LAING,
Solicitor for Defendant.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. 66/1953.

Between P. S. N'JIE.....*Plaintiff*

AND

C. S. T. EDMONDSON.....*Defendant* 5

AMENDED STATEMENT OF CLAIM.

The plaintiff is a Barrister-at-Law and a solicitor of the Supreme Court above-named, carrying on his practice at Bathurst in the said Colony of the Gambia.

2. On the 28th day of April, 1953, the defendant C. S. T. Edmondson falsely and maliciously wrote and forwarded a letter to the Honourable the Attorney General to the Government of the Gambia to which was annexed a statement in writing made by one Sanjali Bojang. 10

3. The said C. S. T. Edmondson in his said letter to the said Attorney General stated that the complaint of Sanjali Bojang as stated in his said statement "In effect amounted to an allegation of forgery" and his instructions were to take proceedings to cancel the alleged deed of conveyance on the ground that it was not signed by his client and was in fact a forgery on the part of Mr. N'Jie. 15

4. In his said statement the said Sanjali Bojang said "I am the owner of No. 7 Denton Street property in Bathurst (Gambia) I bought this property in 1946 from Thomas Collingwood Faye, deceased. The title-deeds were in my possession up to December, 1950 when I gave them to P. S. N'Jie Barrister-at-Law as security for a loan of £100. 20

"In 1949 P. S. N'Jie loaned me £125 and took my title deeds as security. That was during the rains. During the trade season I paid him back the £125 and he gave me back my title-deeds. 25

"In December, 1950, I again approached P. S. N'Jie for a loan of £100. I offered my title-deeds as security against payment. P. S. N'Jie drew up a paper in which he read and explained to me in the presence of Kari Fofanna. From what we understood this paper was to the effect that he, P. S. N'Jie was buying my property for £1,000. I did not offer to sell my property and did not receive £1,000 from P. S. N'Jie. Therefore I did not agree to sign that paper. Kari Fofanna also did not agree to sign it. P. S. N'Jie then tore the paper in our presence. He made another paper, which he read and explained to us. I believed it was a loan agreement like the one we had signed in 1949. I therefore signed and felt sure that my witness, Kari Fofanna, would also sign it. But Kari Fofanna did not agree to sign it. He said that, to him, it was like the sale paper which P. S. N'Jie had torn in our presence. P. S. told us we had nothing to fear; that whenever I paid him back the loan of £100 he would return my title-deeds to me. I believed him and so I took the money. 30
35
40

“When I paid back the first loan of £125 to P. S. N’Jie he gave me a receipt together with my title-deeds. This year, before the end of the trade season (May/June) I paid back the loan of £100 to P. S. N’Jie and asked him to give me back my title-deeds. He gave me a receipt which I
 5 could not read. I cannot read or write English. Afterwards I was informed that the receipt said that I paid £100 to P. S. N’Jie for safekeeping. P. S. N’Jie had never kept any money for me before. I suspected nothing because he told me to come back another time for my title-deeds.

“In two to three days’ time I went back. P. S. N’Jie then told me
 10 that I had signed to say that he had bought my property for £1,000. We altercation. I asked how could I sell my property to him for £1,000. He said he had no time to waste; he also told me that he had sold the property. I was upset. But I did not believe it. So I waited patiently to see how he could do that.

“In November last I received a message from one Kebba N’Jie who sent to tell me that P. S. N’Jie had sold my property to him, and that he would like to come and view it. I replied to say that he could come. Next day in the afternoon Kebba N’Jie came with some of his friends. He told me that P. S. N’Jie had informed him that I was paying him rent
 20 of £15 a month for my property. I denied the allegation. I have never paid a farthing rent to P. S. N’Jie or to any one before, since I bought No. 7 Denton Street in 1946. P. S. N’Jie never called for settlement of the loan of £100. He never told me that “(He was”—torn part of page?) selling my property”.

5. The defendant by thus forwarding the said letter and written statement to the said the Honourable the Attorney General falsely and maliciously published of the plaintiff the alleged libellous statements.

6. The alleged libellous statements have also been published of of the plaintiff as a legal practitioner.

7. The plaintiff did at the material time carry on his profession
 30 of Barrister-at-Law of the said Supreme Court.

8. The plaintiff has by the said publication of the said letter and written statement been injured in his reputation.

And the plaintiff claims £5,000 damages.

35 DATED at Bathurst the 9th day of November, 1953.

(Sgd.) P. S. N’JIE,
 of No. 7 Buckle Street,
 Bathurst, Gambia,
Solicitor.

40 THE CLERK OF COURTS,
 BATHURST.

the above-named defendant,
 and to his solicitor.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

Suit No. 66/1953.

Between P. S. N'JIE.....*Plaintiff*

AND

C. S. T. EDMONDSON.....*Defendant* 5

AMENDED STATEMENT OF DEFENCE.

1. The Defendant contends that the amended writ of summons issued the 11th day of August 1953 which on the face of it is one for service out of the jurisdiction is irregular as it was issued without leave and that consequently the amended writ of summons, the statement of claim and the action should be struck out. 10

2. The Defendant further contends that the service of the amended writ of summons is irregular as the writ was not personally served.

3. The Defendant is a Barrister-at-Law and Solicitor of this Honourable Court. 15

4. The Relation between the Defendant and Sanjali Bojang was that of a Solicitor and Client.

5. In answer to paragraph 2 of the amended statement of claim the Defendant says that he forwarded a copy of the said statement with a letter dated the 28th April 1953 to the Honourable the Attorney General. 20

6. In reply to paragraph 4 of the amended statement of claim the Defendant admits that the statement set out therein is a true copy of the said statement of Sanjali Bojang sent by the Defendant to the Attorney General.

7. In further reply to paragraph 3 of the amended statement of claim the Defendant says that as Counsel and Solicitor for the said Sanjali Bojang and with a duty and interest as such he wrote and published the letter with a copy of the statement of the said Sanjali Bojang annexed addressed to the Honourable the Attorney General who has a corresponding interest and duty to receive them and that the letter contains fair and impartial statements and was written and sent bona fide along with a copy of the said Sanjali Bojang's statement in the honest defence of his client's interest and without any Malice towards the Plaintiff whatsoever and by reason of the occasion on which it was written and published the words complained of in the said letter and the said statement are Privileged. 25 30 35

PARTICULARS ARE AS FOLLOWS.

The Defendant was consulted and engaged as Counsel and Solicitor by the said Sanjali Bojang to advise and to take such proceedings as were necessary for the cancellation or revocation of a Deed of Conveyance
5 purporting to be a Conveyance of the said Sanjali Bojang's house and land at 7, Denton Street Bathurst to the Plaintiff and generally to secure for him redress for his complaint against the Plaintiff in regard to the said house and land as contained in the statement of the said Sanjali Bojang referred to in paragraph 2 of the amended statement of claim.

10 8. The Defendant further says that together with the said statement of the said Sanjali Bojang he also forwarded to the Honourable the Attorney General a copy of a letter dated the 21st day of February 1953 which was written by the Plaintiff to the Defendant giving the Plaintiff's version of the transaction between himself and the said Sanjali Bojang.

15 9. In answer to paragraph 3 of the amended statement of claim the Defendant says that he did say in his letter to the Honourable the Attorney General that the complaint of Sanjali Bojang amounted to an allegation of forgery and that his instructions were to take proceedings
20 to cancel the alleged Deed of Conveyance on the ground that it was not signed by the said Sanjali Bojang and was in fact a forgery on the part of the Plaintiff.

10. In reply to paragraph 5 of the amended statement of claim the Defendant says that the letter and written statement were not maliciously published by the Defendant of the Plaintiff and repeats paragraph
25 7 of the defence.

11. In reply to paragraph 6 of the amended statement of claim the Defendant says that the alleged libellous statements have not been published of the Plaintiff as a legal Practitioner.

30 DATED at Adelaide Chambers Bathurst this 10th day of November, 1953.

(Sgd.) E. E. HAMMOND LAING,
Solicitor for Defendant.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA

P. S. N'JIE.....*Plaintiff*

versus

C. S. T. EDMONDSON:.....*Defendant*

9/11/53. 5

Plaintiff in person

Hammond Laing and Dobbs for Defendant.

N'Jie—I ask for adjournment to file amended Statement of Claim.

The documents were only produced for inspection last week. I wish to amend by pleading the actual words used. 10

Laing—I object. It has already been amended once Words set out. I withdraw objection.

Order:— Amended Statement of Claim to be filed today.

Amended Defence to be filed tomorrow.

Hearing 11/12/53, at 10.30 a.m. 15

Costs of amendment and adjournment to be costs in the course.

(Sgd.) B. R. MILES,
Judge.
9/11/53.

11/11/53. 20

Plaintiff in person.

Hammond Laing and Dobbs for Defendant.

Plaintiff opens. I have served Notice of application for leave to file reply under Order 23 rule 14. Defendants have denied publication with malice.

They have set up privilege. 25

Reply already filed.

No objection by Hammond Laing.

Order:— Leave to file reply.

Plaintiff opens—On 2nd May 1953 I was visited by Mr. A. D. Baker at 10 a.m. He showed me a letter signed by defendant, dated 28/4/53, and copy of statement signed S. Bojang. I asked him for copies which he promised. On 9th May I wrote to defendant who is a Barrister asking
 5 for an apology. No reply. He came to Bathurst and said letter crossed. I took out a Writ before he arrived on 18th May. We met in Library at his invitation on 21st May. He expressed desire to settle. I agreed readily. He asked me for a copy of my letter. I gave it to him. No reply. What followed was “without prejudice.” I was accused of forgery in his letter. In
 10 Bojang’s statement I was accused of misrepresentation. Attorney General on request of defendant sent documents to Police. What Police did I do not know. No proceedings taken. I was not officially asked for an explanation. Statement not signed by Bojang. He omitted wilfully and intentionally to forward to him a tenancy agreement between Macoumba N’Jie and
 15 Bojang. Defendant had on a previous occasion published a libel against me. He afterwards apologised and I was satisfied.

PIERRE SARR N’JIE. Xtian. Sworn—I am the plaintiff I live at 7 Buckle Street Bathurst. I am a Barrister-at-Law and a Solicitor of this court. I claim against defendant C. S. T. Edmondson, a Barrister-at-Law £5,000
 20 damages for publishing of me two libellous Statements contained (1) in a letter dated 28th April 1953 addressed to the Honourable the Attorney General. (Notice to produce given.) (2) a Statement typewritten not signed by writer. (Notice to produce given). (put in as Exhibit P.1). The ink signature is fresh. I say the allegations mean that Sanjaly Bojang did not sign
 25 the Conveyance and that I signed it myself or had someone else to sign it. The defendant did nothing about proceedings between 9th May and August when he took out a Writ of Summons for Sanjali Bojang to have the Conveyance set aside. The case failed. The statement of Sanjali Bojang I complain against the whole. It amounts to an allegation not that he did not
 30 sign the conveyance but that he signed it because I misrepresented to him that the Indenture was a loan for £150 and not an out and out sale for £1,000. The letter and statement both impute to me the commission of two different crimes, i.e. forgery and obtaining the execution of a legal document by fraud. Previous to 28th April i.e. on 10th February, 1953
 35 I had received a letter from the defendant about a complaint which Sanjali Bojang had made to him in which he asked for an explanation. I produce this (Exhibit P.2). I replied on 21st February 1953. (Notice to Produce given.) I produce a copy. (Exhibit P.3). I subsequently forwarded to him the conveyance to Mr. N’Jie. (Exhibit P.4) produced. The Tenancy
 40 Agreement of which I have a copy. (Objection). I produce the Conveyance of 24/11/52. (P.5). (Objection is withdrawn on production of a letter from defendant of 6/7/53). I produce the copy of Tenancy Agreement. (P.6) and a letter from Defendant P.7).

Ex P.1

Ex P.2

Ex P.3

Ex P.4

Ex P.5

P.6-7

In forwarding letter of 28/4/53 defendant did not enclose the copy Tenancy
 45 Agreement. In February 1950 I received a cable from Mr. S. J. Forster from Freetown (I refuse to admit this) That was followed by a letter from the Attorney General forwarding to me a letter from defendant. I mislaid the letter from defendant as I was moving my office.

(Laing objects to evidence as irrelevant).

I rule evidence admissible on issue of malice.

I produce a copy. (Admitted de bene esse marked X1) Identified. That XI.
 letter was forwarded to ~~be~~ by the Attorney General). I replied denying
 I had received £102 from Mr. Forster and that instead the estate was 5
 owing me. I went to Freetown soon after that on a business visit the
 defendant came to see me with one Mr. S. A. Benka Coker, a Barrister
 to explain the reason for the allegation. He explained that he had been
 so informed by Mr. Forster. I accepted the explanation and did nothing
 about it. All the material on which he based his accusation was a state- 10
 ment by Mr. Forster. I had never before heard of the name Laura Thomas
 nor the name of the defendant. The defendant did not write to me before
 writing to the Attorney General.

After the issue of the writ in this action the defendant came to Bathurst.
 On 21st May 1953 I received a massege in consequence of which defendant 15
 and I met in the library. The defendant asked why I had summoned him.
 I said "well this is the second time you have done this thing and you know
 as a lawyer that the correct thing for you to have done if you believe your
 client was to take out civil proceedings to have the conveyance between
 myself and Sanjali Bojang cancelled". He was sitting in a chair and I on 20
 the table. He moved his chair closer to me and said "how can I do that
 when I dont believe the man"? Look. The statement is not signed but I
 am going to get it signed today."

I saw the statement which he had with him. I saw it was not signed.
 Mr. Richards, a clerk in the Court office came in half way through called 25
 by the defendant to have a copy made of the statement and the letter to
 the Attorney General. He said to me "why not proceed against the Attor-
 ney General? he made the publication. If he had kept the paper at his office
 no one would have seen it. In Sierra Leone one lawyer does not take a
 case against another lawyer. What we do is that we send a complaint to 30
 the Attorney General who would take no action. Nothing more would
 be heard about it." I smiled and said "well here that would not happen
 and the Attorney General would investigate the complaint." He said "if
 you take proceedings against him I will back you up". I said "all right
 let me have copies and I will consider it". It was then he called in Mr. 35
 Richards. After asking him in my presence to make for me a copy of each
 document I left. I did not receive the copies which Mr. Richards said in
 his presence he could let me have before the end of that morning. I pro-
 duce a letter I got from defendant dated 20th June. (Exhibit P.8) I produce
 my reply dated 30th June. (Exhibit P.9) It was on the same day I asked 40
 him for an explanation. I said I would consider his suggestion. It was then
 he said the letters had crossed. I had a copy made and given to him of
 your letter dated 9th May. I had no explanation. There was a reply to
 my letter of 30th June. (Exhibit P.7). He took no action himself to have
 the deed cancelled until two days before this case was fixed for hearing 45
 F .8 F9.

when he instituted proceedings on 20th May. I say that there is nothing in all the transaction between the defendant and Sanjali Bojang and the defendant and Attorney General which showed that the defendant believed that the statement of Sanjali Bojang was correct. In the course of this year
 5 the defendant paid two visits to Bathurst. On one occasion only did he travel by ship. On all the rest by air. He was present to hear judgment in Sanjali Bojang's case at the end of July. That was the last time he came. I have suffered as a result of this publication. The two documents were produced by the Attorney General to the Superintendent of Police who
 10 gave it to the Assistant Superintendent Mr. Ferguson to investigate the matter. I was not interviewed by Mr. Ferguson. We chatted about it. He called at my chambers and he mentioned it. The matter was known to the clerks in the Attorney General's Office and both documents were published to Mr. G. St. Clair Joof, Barrister-at-Law. The result of those accusations
 15 were that I noticed some hostile appearance in the person of the Assistant Superintendent of Police.

Adjourned to 12.15 p.m.

12.15 p.m. There were only three visits by defendant to Bathurst. The letter of 28th April was not made private. I saw it.

20 P.W. 2 ANTHONY CUTHBERT SPURLING. Xtian—sworn Xd by Plaintiff.

I am Attorney General of the Gambia. I live at No. 7 Fajara. I did receive a letter. I dont know what the date was, making some complaint about P. S. N'Jie. I passed it on to the Superintendent of Police. I have not got
 25 it now. (further examination reserved)

P.W. 3. JAMES NEISH FERGUSON. Xtian. Sworn.

Xd by plaintiff.

ExP10. 30 I am acting Superintendent of Police. I live at 10 Wellington Street, Bathurst. I have in my custody a letter by one Edmondson of Freetown to the Attorney General. I produce this (Exhibit P:10), together with the enclosure (Exhibit P.11). It was handed to me by the Superintendent of Police. It was handed to me by the Superintendent of Police on 7th May. It was in a confidential envelope. It has been in my safe ever since. It was forwarded to me in a sealed envelope marked "confidential". It was in a file marked
 ExP.12 35 "confidential". I produce the file (Exhibit P.12). I made certain enquiries. I saw certain people and then reported verbally to the Attorney General in his office. I saw a man named Bojang who called on me and also I also saw the Plaintiff who called on me with one Fo Fana. I made notes of the accusation on Friday 8th May at 4.25 p.m. in Plaintiff's chambers.

Xxd Laing. Sanjali Bojang's story up with what was in the statement.
 Re-xd. I did not tell him about the statement.
 He came three times into the office. He said "you have a communication from Mr. Edmondson".

Plaintiff Xxd Dobbs.

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The defendant is enrolled here as a barrister and solicitor of this Court. This is attached to the letter dated 28th April a copy of my letter of explanation. I do not agree that the complainant before starting civil proceedings must wait for somebody to start criminal proceedings. The statement of Sanjali Bojang makes very serious allegations against me. The defendant is not right in saying they are allegations of forgery. What he says is that it was signed under a misrepresentation. If the police had told defendant they did not think there is anything in the allegations there was nothing to stop him taking civil proceedings. In the civil action these allegations were made against me in Court. I consider the civil proceedings as an aggravation of the injury done to me. If defendant had drawn up an information for his client to swear he would not have been more unkind to me. I dont think the Magistrate would have issued a warrant. No Magistrate would believe this story. I agree that if it comes to the knowledge of a member of the public that a crime has been committed it is his duty to report it to the proper authority. But the person reporting takes the risk that Mr. Edmondson has taken. In the letter to the Attorney General I object to the whole of the letter and particularly to the words "in effect they amount to an allegation of forgery" and "that it was not signed by my client and was in fact a forgery on the part of Mr. N'Jie." If defendant had merely sent the statement of Bojang I would have still brought the action. The statement was libellous. He had no right to report at all acting as a responsible lawyer on an unsigned statement making allegation of the kind against a solicitor. I certainly would have investigated the matter by looking at documents and going to the registry. The Attorney General is not I think the only person to whom complaints against legal practitioners could be made. On a previous occasion Mr. Edmondson had been told he should complain to the Commissioner of Police Freetown. Mr. Ferguson told me in 1949 Edmondson says Mr. Forster has converted Mrs. Thomas's money. I am not going to act on it. He should contact the Commissioner of Police in Freetown who could communicate with me. I think the proper quarters to go is the Police if a complaint is made of something criminal. The Attorney General is the leader of the Bar and I would rather somebody else knew rather than he. He could report to the Attorney General, I suppose. The tenancy agreement was sent at the same time as the conveyance to the defendant. Defendant would not be so insentious as to support my explanation. You must believe a report before you make it. He honestly believes a complaint he must pass it on. Defendant said I should sue the Attorney General and at the interview. He said "Why dont you sue the Attorney General? He published the libel not me." The interview is all I said it was.

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Defendant instituted proceedings on 15th July.

The letter (XI) was a letter to the Attorney General was a suggestion that I had misappropriated Laura Thomas's money. There was a letter signed by Lawyer Forster at Freetown in Edmondson's Chambers as Edmondson told me afterwards which said "forward Laura Thomas's money £112 estate of Johanese Davis to Lawyer Edmondson Freetown." Mr. Forster was Colonial Magistrate then. He had started acting in the estate. I rented his previous office before I moved. I took over no estate or litigation from him. He apologised in Freetown. I wrote to the Attorney General. This is a copy (Exhibit P.14). (Letter XI marked in as P.13). As a result of my letter he was ready to apologise.

In this case he has not apologised.

Mr. Edmondson conducts his practice mostly in Freetown so far as I know. He lives there. He is not frequently coming my path. Whenever I have met him, I have been on reasonable affable terms. Apart from these two instances I know of nothing he has done which shows he dislikes me or wants to do me harm. On one occasion we travelled from Freetown to here. We did not make advances to each other. It was on the "Accra." When he took out proceedings he made no charge of forgery. He relied on misrepresentation. No evidence was given in support of the charge of forgery. He gave the same evidence as in his statement to Edmondson.

P.W. 3. JOSEPH DAVIDSON RICHARDS.

Xd Plaintiff.

I am employed in the Clerk of Courts' office at Bathurst.

I know Mr. Edmondson the defendant.

I saw him with plaintiff in the Court Library. One of them called me. Mr. Edmondson at the time was having a batch of documents in his possession whilst plaintiff was present. Mr. Edmondson asked me to make typewritten copies of some of the documents he had in his possession. The understanding was that the copies were for the plaintiff. Amongst the documents was one foolscap size paper typewritten in red. I made the copies and gave them back to Mr. Edmondson. In the afternoon of the same day the plaintiff asked me if the copies were ready. I told him "yes". I had returned them to Mr. Edmondson. This looks like one of them (Exhibit P.1). The contents were something like this. I dont remember the contents of the other. I heard no conversation except that those copies were for the plaintiff.

No re-examination.

Adjourned to 9.30 a.m. 12/11/53.

(Sgd.) B. R. MILES,
Judge.

P.W.2. ANTHONY CUTHBERT SPURLING recalled.

Xd by Plaintiff.

I received certain correspondence from Mr. C. S. T. Edmondson in 1950. I produce a letter dated 2/2/50 from Edmondson to the Attorney General (Exhibit P.15) a letter dated 6/2/50 from Plaintiff to Attorney General (Exhibit P.16) and a letter dated 7/2/50 from the Attorney General to Mr. Edmondson (Exhibit P.17). 5 Ex. P. 15
Ex. E. 16
Px. P. 17

I remember receiving the letter of 28th April 1953 (Ex. P. 15). It was in this condition. I never saw the envelope. "I think if the envelope had been marked "confidential" it would have come to me unopened. That is the normal practice. It is not the normal practice for correspondence marked "confidential" to be opened by my clerk." I saw it on my desk. I dont know who brought it. If it came by registered post the Post office slip would be signed by me. If not marked confidential it would be opened by the appropriate clerk. At most probably but not necessarily be opened by Mr. A. D. Baker or one of the clerks in that office. I sent the letter to the Superintendent of Police. It had the enclosure which is attached to it now. I think the letter must have been presented to me in this cover. I myself wrote "confidential" on the cover when I wrote my minute to the Superintendent of Police. 10
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Xxd by Hammond-Laing.

I sent the letter produced to Mr. Edmondson (put in Exhibit P.18) on receipt of the letter. I thought I had a duty to investigate this matter. Ex P. 18

Mr. Baker does not deal with all confidential matters. He may deal with some. 25

Re-ex. It was a signed letter making a complaint about the professional conduct of a member of the Bar in the Gambia. I thought it was my duty to investigate it. I cannot say whether I noticed that the statement was signed or not. It would not have made any difference to my action if I had. My careful investigation of the case would arise after the report from the police. 30

The Attorney General in this territory carries out the duty of Director of Public Prosecutions. (A.G. asks for attendance money).

P.W. 4. ABOUBACAR ABDOULIE GAYE. Sworn on Koran. 35
Ex. Plaintiff.

I am employed in the Postmaster General's Department as a clerk. I deal with the delivery of registered postal matters including letters. I produce a registered slip (Exhibit P.19). The document produced is the receipt Ex. P. 19

Ex. P. 20 issued from the Freetown Post Office for a Registered letter. I cannot read the number (Exhibit 20) A. D. Baker signed for the receipt of the letter on 2nd May 1953.

No. re-ex.

5 P.W. 5. ARTHUR DUDLEY BAKER.

Xed Plaintiff.

I live at Bathurst. I am Chief Clerk to the Attorney General. I have seen the letter (Exhibit P.10) before today I received it from the Post Officer, that is my signature on the slip (P.19). I opened the letter, stamped it
 10 opened a file and put it into the Attorney General's tray. That is the file. (P.12). I headed the file. I had to read the letter to do that. No other clerk in the office read it to my knowledge. I know St. Clair Joof. He was legal assistant and lands officer on 2nd May 1953. He was in the same building. He had a spare key to his own office next door to the Attorney General
 15 2 feet away. He could as legal assistant deal with a matter like this. I did not show the letter to Mr. St. Clair Joof because it was addressed to the Attorney General.

Xd Dobbs. I do sign some registered letter receipts although they are addressed to the Attorney General. The first knowledge the Attorney
 20 General had that a registered letter had been sent to him was when he saw it in the file. I do not remember that the envelope had a second envelope marked "confidential" inside. I do not deal with confidential matters myself. There are confidential clerks at the Secretariat. I do deal with them when they are passed out to me.

25 To Court. If there had been an envelope enclosed marked "confidential" I would not have opened it.

Further xxd. I did not show the letter to the plaintiff.

Re-xd. I did not visit the plaintiff on 2nd May.

GEORGE ST. CLAIR JOOF. Xtian sworn

30 Xd Plaintiff. I am a Barrister-at-Law and solicitor of this Court. I live in Bathurst at 12 Perseverance Street. I have seen the letter (P.10) before. I saw it in my office. I was working as legal assistant and Lands officer up to 2nd May 1953 when I went on leave on 4th May. I retired on pension on 8th July last. On 2nd May as I was clearing my drawer of my private
 35 papers a little after 12 o'clock a Mr. A. D. Baker brought this letter to me. He told me it was addressed to the Attorney General and that it was a report by one Mr. Edmondson about P. S. N'Jie and he thought it would interest me. I read the letter through as well as the attachments to it. It was five or ten past twelve. This was in my office. I handed the letter
 40 back to him and I saw him take it in to the Attorney General.

Xed by Hammond-Laing.

I am surprised to learn that Mr. Baker has said he never showed it to me. He brought it to me in person.

WILLIAM OJAGO MAX GRANT. Christian. Sworn,

P.W.7

Examined by Plaintiff.

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I live at 8 Lancaster Street Bathurst. I am employed in H.M. Customs. I have seen the document (Exhibit P.1). There is writing by me on it. (identifies "the writing). The signature on it is mine. I do not know who prepared it. I explained it to Sanjali Bojang. This was at Tountain House where Mr. Edmondson was staying. I cannot say whether Sanjali Bojang 10 knew what was in it before I explained it. That was signed by Sanjali Bojang on 19th May 1953. There is a calendar in the House. That was the very day.

No cross-examination.

To Court. Lawyer Edmondson asked me to do this. He said "this letter was written and there was no signature of Bojang neither a witness. 15 Whether he understands it I dont know. Yet still you could read it and explain it to him."

Re-x Dobbs. He told me that was a statement sent to him from here to Freetown which had not been signed. He showed it to me first. I could see it purported to be a statement by Sanjali Bojang. He was anxious to ensure that Bojang understood the contents. Bojang cannot read English. 20 No re-examination.

P.W. 8 ALIEU BADARA N'JIE. Mohammedan, sworn.

Examined by Plaintiff.

I am Clerk of Courts Bathurst. I produce the record of proceedings in 25 Civil Suit 93/53 Sanjali Bojang vs. P. S. N'Jie and Macoumba N'Jie. It is in volume 28 of the Supreme Court record. The proceedings appear at pages 281, 291—331. 333—4, and judgment at p. 337.

No cross examination.

Close of case for Plaintiff.

30

Hammond Laing states he is calling no witnesses.

I submit 1. Occasion priveleged and no evidence of malice to go to the jury. You are judge and jury. Para. 4 of amended defence. Relationship was solicitor and client. No dispute as to this Defendant owes duty to client. Letter written pursuant to that duty. Attorney General says he 35 acts as Director of Public Prosecutions. (Exhibit P.18) shows Attorney General realises his position.

Halsbury 1st edition Vol. 18 p. 626 Sec. 1263. Duty legal moral or social of perfect or imperfect obligation. Corresponding duty to receive it.

Baker V. Carrick 1 Q.B.D. 1894. p. 838. 840—1. Statement in ordinary course of duty to client.

- 5 To whom was libel published? No allegation of publication to Joof and Baker in Statement of Claim. Szalatnay-Stacho V. Fink 1947 K.B.1. 13. Unless ground for knowing accusation to be false it was duty to act.

Belief or no belief in truth immaterial. Test is duty.
Gatley on Libel and Slander 4th Edition p. 395.

- 10 Forgery. Criminal Code Sec. 329.
Smith V. Selwyn. 1914. 3 K.B. 98 P.105.
Gatley. 220 "reason to suspect". Does not matter how much or hasty the charge if bona fide.

- Denial by defendant that he told plaintiff he did not believe charge in his letter to plaintiff. No responsible solicitor would dare to say Attorney General should be sued.

Malice.

Duty of plaintiff to establish spite. Indirect motive. Not a title of evidence of spite or indirect motive. Plaintiff admits defendant not resident in this

- 20 Colony.
Plaintiff's letter was attempt to get evidence.
Plaintiff. Defendant has abandoned defence. Para. 1—13 I have given instances of malice.

- 25 Previous libel. Defendant apologised. I submit no privilege. Defendant cannot blow hot and cold. They say they were not published of me as a legal practitioner. Language used not justified by Statement of Bojang. Fraser on Libel 7th Edition p. 169.

Way in which letter sent is evidence of malice.

Grant's evidence indicates Sanjali did not know of statements he sent.

- 30 Clerk & Lindsell 10th Edition. 721.

Odgers 4th Edition 320.

Civil proceedings shall have been taken and then stayed.

This has been done in case 42/46 in this Court.

Reasonable grounds necessary. Fountain v. Boodle.

- 35 1822 3. Q.B.D.

Recklessness is proof of malice.

Royal Aquarium v. Parkinson 1892 1. Q.B.D. 437. 66. L.T.

Recklessness or indifference.

Clark v. Molyneaux 37 L.T. 694. Carelessness.

- 40 Cooper v. Blackmore 1886. 2.T.L.R. 746.

Blake v. Albion Assurance Society 840 L.T. 211.

Odgers p. 331 "knew charge false". 322—3.

- 45 Gatley 592.

C. A. V.

B. R. MILES,

Judge.

12/11/53

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 66/53.

P. S. N'JIE *versus* C. S. T. EDMONDSON.

JUDGMENT.

In this case the plaintiff Mr. P. S. N'Jie claims the sum of £5,000 5
damages against the defendant Mr. C. S. T. Edmondson for libel. The
plaintiff and the defendant are both Barristers-at-Law. The plaintiff carries
on his practice at Bathurst and the defendant at Sierra Leone. The defen-
dant is on the roll of barristers admitted to practice in this territory. The
libel is contained in a letter dated the 28th of April, 1953, written by the 10
defendant to the Attorney General of the Gambia. With this letter was
enclosed a statement purporting to have been made by one Sanjali Bojang.
The statement in question was typed and in the English language. It was
unsigned. At that date the defendant was acting as a solicitor for Sanjali
Bojang who wished to set aside a deed of conveyance of certain property 15
namely No. 7 Denton Street, Bathurst executed by Sanjali Bojang and
conveying the property to the plaintiff. The statement in question alleged
that Sanjali Bojang executed the conveyance on the faith of a representa-
tion by the plaintiff that it was an agreement for a loan of money from
the plaintiff to Sanjali Bojang. 20

In his letter the defendant stated that the allegation in Sanjali
Bojang's statement in effect amounted to an allegation of forgery. He
further said that his instructions were to take proceedings to cancel
the alleged deed of conveyance on the ground that it was not signed by
his client i.e. Sanjali Bojang and that it was in fact "a forgery on the part 25
of Mr. N'Jie."

The Attorney General on receipt of this letter passed it to the Acting
Superintendent of Police for investigation but no further action was taken
on the matter by the Attorney General on receipt of the report from the
Acting Superintendent of Police. 30

It is not disputed that the letter of the 28th of April and the state-
ment annexed thereto are defamatory of the plaintiff in that they impute
to him the commission of a criminal offence, namely—forgery. Justifica-
tion is not pleaded and the only defence is that the letter was published
on a privileged occasion without malice on the part of the defendant. 35

I should mention that on the 15th of July, 1953, proceedings were
taken on behalf of Sanjali Bojang claiming the cancellation of the deed
of conveyance on the ground that it was not executed by him and in the
alternative that it was executed on the misrepresentation of the plaintiff.
These proceedings failed. 40

I shall deal first with the claim of privilege. It is said on behalf of
the defendant that he wrote and published the letter of the 28th of April
and statement in the course of his duty as counsel and solicitor acting

for Sanjali Bojang and that the Attorney General had a corresponding interest and duty to receive them.

The defendant is in my opinion correct in stating, as he did in his letter, that it was necessary for a criminal remedy to be pursued before
 5 civil proceedings are commenced where the civil suit is based upon an alleged crime i.e. a felony by the other party See *Smith v. Selwyn* 1914 K.B. 98. The crime imputed to the plaintiff was a felony viz. forgery contrary to section 329 of the Criminal Code. The Attorney General was in my
 10 opinion the correct authority to whom to refer the matter since he performs in this territory the duties of Director of Public Prosecutions. The defendant had a duty as solicitor for Sanjali Bojang to take whatever steps were necessary to prosecute Sanjali Bojang's claim against the plaintiff. I hold therefore that the letter and statement were published to the Attorney General on an occasion of qualified privilege. And if the matter
 15 rested there the case for the plaintiff would fall to the ground.

The case does not end there however. The plaintiff has pleaded malice on the part of the defendant. The defendant having established the onus resting upon him to show that the occasion was privileged the burden now shifts to the plaintiff to prove that the defendant was actuated
 20 by malice.

Malice means some indirect motive other than sense of duty. (1 Lord Campbell C.J. in *Dickson and the Earl of Welton* 1 F. & F. at page 427)—“It matters not how harsh or hasty the defendant may have been or how untrue the charge if he bona fide made it” (Cave J. in *Brown v.*
 25 *Hawkes* 1891. 2 Q.B. at 722).

“If the defendant honestly believed the statement to be true omission to make any enquiry is not in itself evidence of malice. Nor is it evidence of malice that he did not take sufficient time to verify the fact before making the statement.” (Gatley on Libel and Slander, 4th edition p. 591) “But
 30 honest belief must be founded on some sort of reasonable basis and therefore in determining whether such honesty did in fact exist the jury are entitled to take into consideration the grounds on which it is founded (Gately p. 592)” I can conceive many cases where the fact that an alleged belief was destitute of all reasonable foundation would suffice of itself to
 35 convince the Court that it was not really entertained.” (1 Lord Herschell in *Derry v. Peek* 1889 14 A.C. p. 369). The question is, has the plaintiff adduced sufficient evidence to warrant the conclusion that the defendant did not honestly believe the statement of Sanjali Bojang to be true and that he was not acting bona fide. I should mention here that no evidence
 40 was called on behalf of the defendant at the trial.

Evidence has been given by the plaintiff of an interview which took place between himself and the defendant on the 21st of May, 1954, in the law library at this Court. The defendant had by then apparently received the Writ of Summons, in this case. In the course of the conversation the

plaintiff states that he told the defendant "you know as a lawyer the correct thing for you to have done if you believed your client was to take out civil proceedings to have the conveyance between myself and Sanjali Bojang cancelled." The plaintiff then says that the defendant's reply was "how can I do that when I don't believe the man"? The plaintiff repeated the substance of this conversation in a letter to the defendant in his reply dated the 30th of June, 1953, but it is only fair to say that the defendant in his reply to that letter denied that he had used the words in question. I do not believe for a moment that Mr. N'Jie has fabricated this evidence and I am satisfied that the conversation was as related by him. The fact that the defendant on top of making the allegation of forgery against the plaintiff should have seen fit to instruct his legal advisers to accuse the plaintiff of perjury when he himself was not prepared to go into the witness box in support of the accusation is I think eloquent of his attitude towards the plaintiff.

The fact that the defendant did not honestly believe the information upon which he acted is of itself strong evidence of malice but there are other matters which in my opinion show a malicious intention to injure the plaintiff which may be summarised as follows:—

1. The recklessness with which the charge was made. As was pointed out by Lord Esher M. R. in *Royal Aquarium v. Parkinson* 1892 1 Q.B. 431. "If a person from anger or some other motive has allowed his mind to get into such a state as to make him cast aspersions on other people regardless whether they are true or false it has been held, and I think rightly held, that a jury is justified in finding that he abused the occasion." Now what was the position so far as the defendant knew it on the 28th of April? He had before him a type-written unsigned statement in English. He had also before him a letter of explanation by the plaintiff dated the 21st of February together with a copy of a tenancy agreement entered into between Sanjali Bojang and Macoumba N'Jie to whom the premises had been sold by the plaintiff. Neither the defendant nor Sanjali Bojang gave evidence and the circumstances in which this typed statement was prepared remain shrouded in mystery. I think however that is an irresistible inference that the defendant had by that time not seen Sanjali Bojang and he therefore had no opportunity to judge whether he was a reliable and trustworthy individual or not. The letter had been sent to him while he was at Freetown and he had no means of knowing whether it was even a genuine document or not. This much is clear from a remarkable interview which took place at Bathurst on the 19th May, 1953 after the plaintiff had instituted this suit. On that occasion one Max Grant was called in by the defendant to interpret the document Ex. P. 1 which is a copy of the statement forwarded to the Attorney General, and to ascertain whether Sanjali Bojang understood the contents. So far then from believing that the statement was true the defendant up to that time did not know whether the statement was a statement by Sanjali Bojang or not.

2. The excessive publication of the libel. It is clear from the evidence of the Attorney General and Mr. Baker that the envelope in which the letter was contained was not marked private or confidential. It was accordingly opened by Mr. Baker in accordance with the usual office routine and placed in an open file. There is evidence which I accept, although denied by Mr. Baker, that the then Legal Assistant was shown this letter by Mr. Baker. Mr. Baker had no right to show the letter to the Legal Assistant although it might be some excuse that the letter was not marked private or confidential. Be that as it may, the defendant as a barrister must have had sufficient knowledge of office routine to be perfectly aware that a letter which is not marked private or confidential is bound to pass through one or more pairs of hands before it reaches the addressee.
5
3. The allegation in the first sentence of paragraph 3 of the letter dated the 28th of April that the deed of conveyance was not signed by his client and was in fact a forgery on the part of Mr. N'Jie is not borne out by anything in the annexed statement. Sanjali Bojang's whole case was that he signed the document on the faith of a misrepresentation as to its nature. Sanjali Bojang at no time suggested that his signature had been forged by Mr. N'Jie.
10
20
4. The defendant had on a previous occasion in 1950 libelled the plaintiff in a letter to the then Attorney General. I do not propose to go into details; the relevant correspondence is in evidence. The defendant subsequently apologised to the plaintiff for that libel and no proceedings were taken.
25
5. The failure of the defendant when he forwarded the statement of Sanjali Bojang to the Attorney General to enclose the copy of the tenancy agreement which had been sent to him by the plaintiff. It is true that he forwarded the plaintiff's own letter but the tenancy agreement was an important document since it was entirely inconsistent with the allegation made by Sanjali Bojang. There was in my opinion no excuse for this. And it is further indicative of the defendant's desire to injure the plaintiff.
30
6. The conduct of the defendant in these proceedings is I think not immaterial on this issue also. He has not appeared in Court or called any evidence. He made an application on the first day of the trial for his evidence to be taken in Sierra Leone. He based his application on an affidavit from a medical practitioner to the effect that he was unfit to travel. This application was withdrawn before I had an opportunity of ruling on it. He then instructs his Advocate in his absence, to impute to the plaintiff the deliberate fabrication of evidence. I ought perhaps to make it clear that I do not accept the contention in paragraph 7 of the reply that the consistent plea of privilege is evidence of malice. Reliance has been placed by Mr. Hammond-
35
40

Laing on the decision in Szalatnay-Stacho v. Fink. 1947. K.B.1. In that case the facts were very different since the defendant had before him statements the genuineness of which, as opposed to this veracity, was not questioned. Moreover there was no evidence of malice on the part of the defendant. 5

For the reasons above stated I hold that the privilege is destroyed by malice on the part of the defendant.

This leaves only the question of damages. I must confess that I have found this a matter of some difficulty. The libel itself is a most serious one. It is difficult, indeed, to conceive a graver charge against a member of the Bar than one of forgery. At the same time the degree of publication was not extensive. Apart from the Acting Superintendent of Police there is evidence that only two other persons besides the Attorney General saw the letter. The allegation did not receive at that stage anything like the publicity which must have resulted from the action brought by Sanjaki Bojang, and in which it must be remembered that the present plaintiff was vindicated. Taking all the circumstances into account and I include in these the conduct of the suit by the defendant to which I have already alluded I consider that a fair sum to award would be £1,000. There will be judgment for the plaintiff for £1,000 and costs. 10 15 20

(Sgd.) B. R. MILES,
Judge.

16th November, 1953.

Copies to: Parties, File, Note book.
Civil note book ref. S. C. 29/10, 19-32.

IN THE WEST AFRICAN COURT OF APPEAL.

NOTICE OF APPEAL

Between: P. S. N'JIE.....*Plaintiff/Respondent*

AND

5 C. S. T. EDMONDSON.....*Defendant/Appellant*

TAKE NOTICE that the defendant being dissatisfied with the decision of the Supreme Court of the Colony of the Gambia contained in the judgment of the Honourable Mr. Justice Miles dated the 16th day of November 1953 doth hereby appeal to the West African Court of Appeal upon the
10 grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. Whole decision.

15 3. Grounds of appeal:—

(1) That there was no evidence of malice sufficient to destroy the defence of privilege as the defendant had a duty to make the communication to the Attorney General.

(2) That the learned trial judge misdirected himself in law.

20 PARTICULARS OF MISDIRECTION

25 The learned Trial Judge was wrong in law in holding that the defence of privilege was destroyed because the defendant did not honestly believe the information upon which he acted, the defendant having a duty to make the communication to the Attorney General.

(3) That the letter of the 28th April 1952 and the written statement attached thereto were not published recklessly.

(4) That there was no excessive publication of the libel.

30 (5) That the meaning of the word "Forgery" in the letter complained of has been misconceived by the learned trial judge.

(6) That the defendant had not on any previous occasion libelled the plaintiff in a letter to the then Attorney General or at all.

(7) That the failure of the defendant to forward the copy of the tenancy agreement is no evidence of malice.

- (8) That the failure of the defendant to appear personally in Court or call any evidence is not evidence of malice.
- (9) That the judgment cannot be supported having regard to the evidence.
- (10) That the sum awarded as damages is excessive. 5
4. Relief sought from the West African Court of Appeal: That the judgment of the learned trial judge be set aside and judgment entered for the defendant with costs.
5. Persons directly affected by the Appeal:—

	<i>Name</i>	<i>Address</i>	
(1)	P. S. N'JIE 	7, Buckle Street, Bathurst, Gambia.	10
(2)	C. S. T. EDMONDSON ...	13, Tielawney Street, Freetown, Sierra Leone.	

DATED this 25th day of November, 1953.

15
(Sgd.) CHARLES S. T. EDMONDSON,
Appellant.

IN THE WEST AFRICAN COURT OF APPEAL

BETWEEN:—

P. S. N'JIE,
Plaintiff/Respondent

5

AND

C. S. T. EDMONDSON,
Defendant/Appellant.

ADDITIONAL GROUNDS OF APPEAL

10 That the learned trial judge misdirected himself by holding that the several matters or anyone of them referred to by him showed a malicious intention on the part of the defendant and that they had the cumulative effect of proving malice on the part of the defendant.

DATED this 10th day of March, 1954.

15

(Sgd.) **CHARLES S. T. EDMONDSON,**
Appellant.

EXHIBIT P/1

STATEMENT BY SANJALI BOJANG

I am the owner of No. 7 Denton Street property in (Bathurst Gambia). I bought this property in 1946 from Thomas Collingwood Faye deceased. The title-deeds were in my possession up to December 1950 when I gave them to P. S. N'Jie, B.L. as security for a loan of £100. 5

2. In 1949 P. S. N'Jie loaned me £125 and took my title-deeds as security. That was during the rains. During the Trade Season I paid him back the £125 and he gave me back my title-deeds.

3. In December 1950, I again approached P. S. N'Jie for a loan of £100. I offered my title-deeds as security against payment. P. S. N'Jie drew up a paper which he read and explained to me in the presence of Kari Fofanna. From what we understood this paper was to the effect that he, P. S. N'Jie, was buying my property for £1,000. I did not offer to sell my property and did not receive £1,000 from P. S. N'Jie. Therefore I did not agree to sign that paper. Kari Fofanna also did not agree to sign it. 15

4. P. S. N'Jie then tore the paper in our presence. He made another paper, which he read and explained to us. I believed it was a loan agreement like the one we had signed in 1949. I therefore signed and felt sure that my witness, Kari Fofanna, would also sign it. But Kari Fofanna did not agree to sign. He said that, to him, it was like the sale paper which P. S. N'Jie had torn in our presence, P. S. N'Jie told us we had nothing to fear; that whenever I paid him back the loan of £100 he would return my title-deeds to me. I believed him and so I took the money. 25

5. When I paid back the first loan of £125 to P. S. N'Jie he gave me a receipt together with my title-deeds. This year, before the end of the Trade Season (May/June), I paid back the second loan of £100 to P. S. N'Jie and asked him to give me back my title-deeds. He gave me a receipt, which I could not read. I cannot read or write English. Afterwards I was informed that the receipt said that I paid £100 to P. S. N'Jie for safe-keeping. P. S. N'Jie had never kept any money for me before. I suspected nothing because he told me to come back another time for my title-deeds. 30

6. In two to three days' time I went back. P. S. N'Jie then told me that I had signed to say that he had bought my property for £1,000. We altercation. I asked how could I sell my property to him for £1,000 and ask him at the same time for a loan of £100. He said he had no time to waste; he also told me that he had sold the property. I was upset. But I did not believe it. So I waited patiently to see how he could do that. 35

7. In November last I received a message from one Kabba N'Jie who sent to tell me that P. S. N'Jie had sold my property to him, and that he would like to come and view it. I replied to say he could come. Next day in the afternoon Kabba N'Jie came with some of his friends. 40

He told me that P. S. N'Jie had informed him that I was paying him rent of £15 a month for my property. I denied the allegation. I have never paid a farthing rent to P. S. N'Jie or to any one before since I bought No. 7 Denton Street in 1946. P. S. N'Jie never called for settlement of the 5 loan £100. He never told me that he was selling my property.

his
(Sgd). SANJALI X BOJANG
mark

The above was read over and explained to Sanjali Bojang this 19th 10 day of May, 1953 in broken English when he seemed perfectly well to have understood the same before making his mark thereto as herein appears.

(Sgd.) W. O. MAX-GRANT,
8, Lancaster Street,
Customs Officer,
Bathurst, Gambia.

EXHIBIT P/2

C. S. T. Edmondson
Barrister-at-Law,
13, Trelawney Street,
Freetown, Sierra Leone,
Telephone No. F. 701,
Date. 10th February, 1953.

To:

Mr. Pierre N'Jie
Barrister-at-Law,
7 Buckle Street,
Bathurst, Gambia.

5

Dear Mr. N'Jie,

I have received a complaint from a certain Sanjal of Bathurst Gambia to the effect that in the month of December 1950 he borrowed the sum 10 of £100. 0. 0. from you and signed a paper to that effect after having first refused to sign a paper purporting to be a sale of 7 Denton Street by him to you. His documents of title to No. 7, Denton Street Bathurst were also deposited with you as a security. My client informs me that 15 when he repaid you the amount of £100. 0. 0. you gave him a receipt stating that the amount had been handed to you for safe keeping and that when he applied for his title deeds you informed him that he had sold the house to you. I have the receipt with me. He further informs me that you have sold the house to a certain Mr. Kabba N'Jie who claims 20 rent.

2. My client is at a loss to understand how you claim to have bought the house and has asked me to advise and assist him in retaining the property.

3. In the circumstances I shall be glad if you will let me hear your side of the matter furnishing me with copies of documents in proof of 25 your title.

4. Your early reply will be appreciated.

Yours faithfully
(Sgd.) C. S. T. EDMONDSON

EXHIBIT P/3

P. S. N'JIE,
P. O. Box 63,
Bathurst, Gambia,
West Africa.

5

21st February, 1953.

Dear Mr. Edmondson,

This is my own story of the transaction about which your client, Mr. Sanjally Bojang, has complained to you.

10 In January, 1951, Mr. Bojang sold his property No. 7 Denton Street, Bathurst, to me for £1,000 because, as he then told me, he was expecting to leave Bathurst to go and live at Brikama, a place some twenty two miles away from Bathurst. I agreed to his staying on the property till
15 October 31st, 1951, against which time he expected to complete a house he was to build at Brikama. I found afterwards that he had lied to me and that he wanted the money to pay off certain debts he was then owing. In August, 1952, I required him to pay rent at the rate of £12, 10s. a month and he signed an agreement to that effect. A certified copy of the conveyance is forwarded herewith.

20 I am indebted to Mr. Bojang for his explanation of the note regarding the £100 he once gave me to keep for him and which he afterwards withdrew as I would have found it difficult to explain that I forgot to demand the note from him when he took his money back.

In December, 1952, I sold the property to one MacCoumba N'Jie,
25 a certified copy of the relative conveyance is also forwarded herewith. As Mr. Bojang appeared to appreciate my kindness to him, I informed him, before the sale, that I intended to sell the property to Mr. N'Jie. He begged me not to do so, offering to purchase the property back from me at any price of three yearly instalment payments which I refused.

30 Two days after this, he sent to me a deputation of four local Muslim elders, one of whom was the Imam's deputy, to beg me not to sell the property. He told them a lie by saying that he had mortgaged the property to me for £800. In his presence, for he had followed the deputation, I said this to them: "Sanjally should have told you the truth. He did not
35 mortgage the property to me. He sold it to me for £1,000. I have arranged to sell it". He did not deny my statement.

Before consulting you, Mr. Bojang had consulted a local solicitor who, I suppose, after investigation told him, I understand, that he would not act in the matter. This solicitor had asked him to have a statement
40 of the transaction written for him. Mr. Bojang consulted a local auctioneer,

Counsellor Mr. J. F. Senegal, who searched the Colonial ^{Registry} Regulation and was surprised to find that Mr. Bojang had told him a lie. Mr. Bojang had told him that he had mortgaged the property to me for £500. He afterwards gave Mr. Senegal an explanation of the transaction which is revealing as to his dishonesty. 5

As late as last Christmas, after I had to his knowledge sold the property, he made me a gift of twelve eggs, because he said I was kind to him, because I enabled him to remain on the property as a tenant for Mr. N'Jie.

Before Mr. N'Jie bought the property he inspected it to the know- 10
ledge of Mr. Bojang and after he had bought it he arranged with Mr. Bojang, at Mr. Bojang's request, for Mr. Bojang to continue the tenancy but at a rate of £15 a month. Three respectable local Muslim elders were present.

I am afraid this is all I can properly tell you, since you are his legal 15
adviser, but as a lawyer you may find what I have said here sufficient for your purpose.

Yours sincerely,
(Sgd.) P. S. N'JIE.

P.S. The Registrar has failed to send me the documents and promised 20
to do so on Monday. They will come by next mail.

(Sgd.) P. S. N'JIE.

EXHIBIT P/4

THIS INDENTURE made the 24th day of April in the year of Our Lord One thousand nine hundred and Forty-eight BETWEEN Hannah Martha Fye of 42 Primet Street Bathurst in the Colony of the Gambia John Charles Fye of 39 Primet Street Bathurst in the Colony aforesaid Leah Fye of 42 Primet Street and Moses Fye of the same address Bathurst in the Colony aforesaid (hereinafter called the Vendors) of the one part and San Jally Bojan of 44 Buckle Street Bathurst in the Colony aforesaid (hereinafter called the Purchaser) of the other part WHEREAS Thomas Collingwood Fye late of 5 Saint George's Lane and now known as 7 Denton Street Bathurst in the Colony aforesaid was well possessed of the hereditaments and premises hereby intended to be conveyed AND WHEREAS the said Thomas Collingwood Fye died on the 23rd day of August 1945 intestate AND WHEREAS letters of Administration of all the estate which by law devolves to and vests in the personal representative of the said Thomas Collingwood Fye were granted by the Supreme Court of the Colony aforesaid on the 20th day of April 1948 to Hannah Martha Fye she having had the consent of the other Vendors and Beneficiaries named herein AND WHEREAS the said Vendors have agreed with the Purchaser for the absolute sale to him of the said hereditaments and premises in fee simple in possession at the price of Two hundred and fifty pounds sterling NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Two hundred and fifty pounds sterling paid on or before the execution of these presents by the Purchaser to the execution of these presents by the Purchaser to the Vendors (the receipt of which sum the Vendors hereby acknowledge) the Vendors as Beneficial Owners hereby GRANT and CONVEY unto the Purchaser his heirs executors administrators ALL that lot piece or parcel of land with the buildings thereon erected and the appurtenances thereto situate and being in Denton Street Bathurst aforesaid and numbered Seven (7) in the Register and Plan of Town Lots of land for Bathurst aforesaid TO HOLD the same UNTO AND TO THE USE of the Purchaser in fee simple in possession free from incumbrances for ever IN WITNESS whereof the said Hannah Martha Fye John Charles Fye Leah Fye and Moses Fye have hereunto set their respective hands and seals the day and year first above written

.....

(Sgd.) Hannah M. Faye L.S.
(Sgd.) J. C. Fye L.S.
(Sgd.) Leah M. Fye L.S.
(Sgd.) M. Fye L.S.

Signed sealed and delivered by the
 within-named Hannah Martha Fye
 John Charles Fye Leah Fye and
 Moses Fye in the presence of:—

(Sgd.) A. D. Baker
 81 Perseverance Street
 Bathurst, Gambia
 Solicitor's Clerk

5

This Instrument was proved by the testimony of A. D. Baker of 81 Perseverance Street Bathurst to be the deed of Hannah M. Faye, J. C. Faye Leah M. Fye of Bathurst within-named before me this day of
 in the year one thousand nine hundred and at
 o'clock in the noon.

10

(Sgd.) M.MESSER-BENNETTS.
 for COLONIAL REGISTRAR

15

I hereby certify that this is a true and correct copy of Register of Colony Deeds Volume 12 Pages 299 and 300 extracted this Thirteenth day of July in the year One thousand nine hundred and fifty-three.

(Sgd.) A. C. SPURLING
 COLONIAL REGISTRAR

20

EXHIBIT P/5

APPEAL TO PRIVY COUNCIL ED'SON. V N'JIE

THIS INDENTURE is made the 24th day of November one thousand nine hundred and fifty-two Between PIERRE SARR N'JIE of No. 7 Buckle Street Bathurst in the Colony of the Gambia Barrister-at-Law (hereinafter called "the Vendor") of the one part and MACOUMBA N'JIE of No. 36 Wellington Street Bathurst aforesaid Trader (hereinafter called "the Purchaser") of the other part.

WHEREAS the Vendor is seised of the freehold hereditaments hereinafter described and hereby assured for an estate in fee simple in possession free from incumbrances and has agreed with the Purchaser for the sale to him of the said hereditaments at the price of ONE THOUSAND FIVE HUNDRED POUNDS (£1,500).

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1,500) now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as Beneficial Owner thereof hereby conveys unto the Purchaser ALL THAT piece or parcel of land situate at Denton Street Bathurst in the Colony of the Gambia and numbered SEVEN (7) in the Register and Plan of Town Lots for the Town of Bathurst aforesaid TOGETHER with all buildings fixtures rights easements advantages and appurtenances whatsoever to the said land appertaining or with the same held or enjoyed or reputed as part thereof or appurtenant thereto TO HOLD the same unto the Purchaser in fee simple.

IN WITNESS whereof the Vendor has hereunto set his hand and seal the day and year first above written.

SIGNED SEALED AND DELIVERED

by the above-named PIERRE SARR

N'JIE.....

(Sgd.) P. S. N'JIE.

in the presence of:—

(Sgd.) L. A. CORON,
16, ANGLESEA STREET,
BATHURST.

This Instrument was proved by the testimony of L. A. Coron of 16, Anglesea Street, Bathurst to be the deed of Pierre Sarr N'Jie Barrister-at-Law of 7, Buckle Street, Bathurst aforesaid within-named before me

this Fifth day of December in the year one thousand nine hundred and fifty-two at 11.30 o'clock in the forenoon.

(Sgd.) A. C. SPURLING,
Colonial Registrar.

I hereby certify that this a true and correct copy of the Register of Colony 5
Deeds Volume 16 Serial Registration No. 60/52 extracted this 26th day
of February , in the year one thousand nine hundred and fifty-
three.

(Sgd.) A. C. SPURLING,
Colonial Registrar. 10

EXHIBIT P/6

IT IS HEREBY MUTUALLY AGREED BETWEEN the following parties as under:—

M'Cumba N'Jie Hereby known as the "LANDLORD", and SANJAL
5 BOJANG—Hereby known as the "TENANT"

that

The Town Freehold property known and situate at No. 7 Denton Street,
Bathurst, be hereby and is now let by the Landlord to the Tenant at the
rate of £13 (Thirteen Pounds) per month, payable in arrear at the end of
10 Every Month as from the FIRST day of January 1953; such Rents to be
paid without fail to Messrs Le Commerce Africain for the credit of the
Landlord M'Coumba N'Jie.

The tenancy is for a month to month basis, terminable at any time
on a month's notice on either side.

15 AGREED TO by BOTH the Parties in Bathurst this 26th day of Novem-
ber, 1952.

(Sgd.) M'COUMBA N'JIE (*Landlord*)

(M'COUMBA N'JIE) (*Sgd. in Arabic*)

SANJAL BOJANG (*Tenant*)

20

Witness:—

(Sgd.) MOUSA N'JIE.

EXHIBIT P/7

From:

C. S. T. EDMONDSON
 BARRISTER-AT-LAW,
 13, TRELAWNEY STREET,
 FREETOWN, SIERRA LEONE,
 TELEPHONE NO. F 701.

To: Mr. P. S. N'JIE,
 P. O. BOX, 63,
 BATHURST, GAMBIA,
 WEST AFRICA.

5

DATED 6TH JULY, 1953.

Dear Mr. N'Jie,

10

I have received your letter of the 30th ultimo.

2. I deny entirely what you say in paragraph 2 of your letter.

3. It is true that I showed you at your request Mr. Sanjali Bojang's statement and copy of my letter to the Honourable the Attorney General. It is however untrue that you told me that if I sent a written apology or explanation of my action you would consider my alleged suggestion. 15

4. I return herewith the tenancy agreement forwarded by you and regret my failure to have done so before.

Yours sincerely,
 (Sgd.) C. S. T. EDMONDSON.

20

EXHIBIT P/8

5 C. S. T. EDMONDSON/EWW
BARRISTER-AT-LAW,
SOLICITOR,
PROCTOR, ETC.,
PHONE F. 701.

LINCOLN CHAMBERS,
13, TRELAWNEY STREET,
FREETOWN, SIERRA LEONE,
BRITISH WEST AFRICA.

26th June, 1953.

Dear Mr. N'Jie,

10 Thanks very much for your letter of the 21st February last and the enclosures thereto. I return the enclosures. As you will recollect we have had an interview at Bathurst. I regret my delay in replying.

Yours sincerely,
(Sgd.) C. S. T. EDMONDSON.

15 MR. P. S. N'JIE,
P. O. BOX, NO. 63,
7, BUCKLE STREET,
BATHURST,
GAMBIA.

EXHIBIT P/9

P. S. N’Jie,
 P. O. Box 63,
 Bathurst, Gambia,
 West Africa.
 30th June, 1953.

5

Mr. C. S. T. Edmondson,
 Barrister-at-Law,
 13 Trelawney Street,
 Freetown,
 Sierra Leone.

10

Dear Mr. Edmondson,

Thank you for your letter dated 26th June, 1953.

I agree that we had an interview at Bathurst at which you told me that you did not advise your client, Mr. Sanjali Bojang, to take a civil action to set aside the deed of conveyance from Sanjali Bojang to myself dated the 8th day of January, 1951, because you did not believe him—the actual expression used by you was “Because I did not believe him and in Sierra Leone what we do is that we send the papers to the Attorney General and nothing more would be heard about it”—and at which interview also you suggested that I should withdraw the action against you and proceed instead against the Honourable the Attorney General and you “would back me up”.

20

I told you at the interview, at which you also showed me the original copy of the statement by Mr. Sanjali Bojang which according to you, you had then just had signed by him, and the copy of your letter to the Honourable the Attorney General, that if you sent me a written apology or explanation of your action I would consider your suggestion.

25

You have omitted one document: the copy of the tenancy agreement between Mr. Macoumba N’Jie and Mr. Sanjali Bojang.

30

Yours sincerely
 (Sgd.) P. S. N’JIE.

EXHIBIT P/10

C. S. T. EDMONDSON
 Barrister-at-Law
 SOLICITOR
 5 PROCTOR ETC.,
 Phone F. 701.

Lincoln Chambers,
 13, Trelawney Street,
 Freetown, Sierra Leone,
 British West Africa.
 28th April, 1953.

Sir,

On behalf of my client Mr. Sanjal Bojang of 7, Denton Street,
 Bathurst, Gambia I hereby lay before you his complaint against Mr. Pierre
 10 Sarr N'Jie, a barrister-at-Law, practising in the Gambia.

2. I enclose herewith copy of a statement brought to me by a mes-
 senger sent by Mr. Bojang from Bathurst. The facts of his complaint
 are therein contained. In effect they amount to an allegation of forgery.

3. My instructions were to take proceedings to cancel the alleged
 15 deed of conveyance on the ground that it was not signed by my client
 and was in fact a forgery on the part of Mr. N'Jie. As however civil suits
 involving allegations of crime on any particular matter should as a rule
 be stayed until the complainant has pursued his criminal remedy I am
 20 of opinion that the proper thing for me to do is to lay the matter before
 you for such action to be taken as you may think proper. A copy of
 Mr. N'Jie's letter of explanation to me is enclosed herewith.

4. I shall be grateful if you will cause full investigation to be made
 into the matter and such action taken, if any, as to you may seem proper.
 Mr. Bojang has with him a certified copy of the alleged deed of convey-
 25 ance as well as other papers all of which I have instructed him to submit
 to you when called upon.

The Honourable
 The Attorney General
 30 Bathurst,
 Gambia.

I remain to be,
 Yours faithfully
 (Sgd.) C. S. T. EDMONDSON

EXHIBIT P/11

STATEMENT BY SANJALI BOJANG:

I am the owner of No. 7 Denton Street property in (Bathurst Gambia) I bought this property in 1946 from Thomas Collingwood Faye deceased. The title-deeds were in my possession up to Dec. 1950 when I gave them to P. S. N'Jie B.L. as security for a loan of £100. 5

2. In 1949 P. S. N'Jie loaned me £125 and took my title-deeds as security. That was during the rains. During the Trade Season I paid him back the £125, and he gave me back my title deeds.

3. In Dec., 1950, I again approached P. S. N'Jie for a loan of £100. I offered my title deeds as security against payment. P. S. N'Jie drew up a paper which he read and explained to me in the presence of Kari Fofanna. From what we understood this paper was to the effect that he, P. S. N'Jie, was buying my property for £1,000. I did not offer to sell my property and did not receive £1,000 from P. S. N'Jie. Therefore I did not agree to sign that paper. Kari Fofanna also did not agree to sign it. 10 15

4. P. S. N'Jie then tore the paper in our presence. He made another paper, which he read and explained to us. I believed it was a loan agreement like the one we had signed in 1949. I therefore signed and felt sure that my witness, Kari Fofanna, would also sign it. But Kari Fofanna did not agree to sign. He said that, to him, it was like the sale paper which P. S. N'Jie had torn in our presence. P. S. N'Jie told us we had nothing to fear; that whenever I paid him back the loan of £100 he would return my title-deeds to me. I believed him and so I took the money. 20

5. When I paid back the first loan of £125 to P. S. N'Jie he gave me a receipt together with my title-deeds. This year, before the end of the Trade Season (May/June). I paid back the second loan of £100 to P. S. N'Jie and asked him to give me back my title-deeds. He gave me a receipt, which I could not read. I cannot read or write English. Afterwards I was informed that the receipt said that I paid £100 to P. S. N'Jie for safe-keeping. P. S. N'Jie had never kept any money for me before. I suspected nothing because he told me to come back another time for my title-deeds. 25 30

6. In two to three days' time I went back P. S. N'Jie then told me that I had signed to say that he had bought my property for £1,000. We altercated. I asked how could I sell my property to him for £1,000 and ask him at the same time for a loan of £100. He said he had no time to waste; he also told me that he had sold the property. I was upset. But I did not believe it. So I waited patiently to see how he could do that. 35 40

7. In November last I received a message from one Kabba N'Jie who sent to tell me that P. S. N'Jie had sold my property to him, and that he would like to come and view it. I replied to say he could come. Next day in the afternoon Kabba N'Jie came with some of his friends. He told me that P. S. N'Jie had informed him that I was paying him rent of £15 a month for my property. I denied the allegation. I have never paid a farthing rent to P. S. N'Jie or to any one before, since I bought No. 7 Denton Street in 1946. P. S. N'Jie never called for settlement of the loan of £100. He never told me that he was selling my property. 45

EXHIBIT P/11

P. S. N'JIE
Barrister-at-Law

P. O. Box No. 63
7 Buckle Street,
Bathurst,
Gambia.
West Africa.
21st February, 1953.

5

Dear Mr. Edmondson,

This is my own story of the transaction about which your client,
10 Mr. Sanjally Bojang, has complained to you.

In January, 1951, Mr. Bojang sold his property No. 7 Denton Street,
Bathurst, to me for £1,000 because, as he then told me, he was expecting
to leave Bathurst to go and live at Brikama, a place some twenty two
miles away from Bathurst. I agreed to his staying on the property till
15 October 31st 1951, against which time he expected to complete a house
he was to build at Brikama. I found afterwards that he had lied to me
and that he wanted the money to pay off certain debts he was then owing.
In August 1952, I required him to pay rent at the rate of £12 10. a
month and he signed an agreement to that effect. A certified copy of the
20 conveyance is forwarded herewith.

I am indebted to Mr. Bojang for his explanation of the note regarding
the £100. 0. 0. he once gave me to keep for him and which he after-
wards withdrew as I would have found it difficult to explain that I forgot
to demand the note from him when he took his money back.

25 In December 1952, I sold the property to one MacCoumba N'Jie,
a certified copy of the relative conveyance is also forwarded herewith.
As Mr. Bojang appeared to appreciate my kindness to him, I informed
him, before the sale, that I intended to sell the property to Mr. N'Jie.
He begged me not to do so, offering to purchase the property back from
30 me at any price of three yearly instalment payments which I refused.

Two days after this, he sent to me a deputation of four local Muslim
elders, one of whom was the Imam's deputy, to beg me not to sell the
property. He told them a lie by saying that he had mortgaged the property
to me for £800. In his presence, for he had followed the deputation, I
35 said this to them: "Sanjally should have told you the truth. He did not
mortgage the property to me. He sold it to me for £1,000. I have arranged
to sell it." He did not deny my statement.

Before consulting you, Mr. Bojang had consulted a local solicitor
who, I suppose, after investigation told him I understand, that he would
40 not act in this matter. This solicitor had asked him to have a statement

of the transaction written for him. Mr. Bojang consulted a local auctioneer, Counsellor Mr. J. F. Senegal, who searched the Colonial Registry and was surprised to find that Mr. Bojang had told him a lie. Mr. Bojang had told him that he had mortgaged the property to me for £500. He afterwards gave Mr. Senegal an explanation of the transaction which is revealing as to his dishonesty. 5

As late as last Christmas, after I had to his knowledge sold the property, he made me a gift of twelve eggs, because he said I was kind to him, because I enabled him to remain on the property as a tenant of Mr. N'Jie. 10

Before N'Jie bought the property he inspected it to the knowledge of Mr. Bojang and after he had bought it he arranged with Mr. Bojang at Mr. Bojang's request, for Mr. Bojang to continue the tenancy but at a rate of £15 a month. Three respectable local Muslim elders were present. 15

I am afraid this is all I can properly tell you, since you are his legal adviser, but as a lawyer you may find what I have said here sufficient for your purpose.

Yours sincerely,

(Sgd.) P. S. N'JIE. 20

P.S. The Registrar has failed to send me the documents and promised to do so on Monday. They will come by next mail.

(Sgd.) P. S. N.

21. 11. 1953.

52

EXHIBIT P/12

GAMBIA
CROWN LAW OFFICE

No. 4/53

5 Date 2-5-53

CONFIDENTIAL

SUBJECT

S. BOJANG AND P. S. N'JIE,
7, DENTON STREET.

EXHIBIT P/12

10 Continuation
Sheet

File No.

Page No.

EXHIBIT P/12

The Supt. of Police,

Please see the letter and enclosures opposite from Mr. Edmundson, Freetown, Sierra Leone. I will be grateful if you will investigate this matter and let me have a report in due course.

5

(Sgd.) A. C. SPURLING,
Attorney General.
2-5-53.

No. 4/1953

CONFIDENTIAL:

2nd May, 1953.

10

Sir,

SANJALI BOJANG v. P. S. N'JIE.

The receipt of your letter of 28th April, 1953, and enclosures in the above matter is acknowledged. The matter is being investigated and a further communication will be sent to you in due course.

15

I have the honour to be,
Sir,
Your obedient Servant,
(Sgd.) A. C. SPURLING,
Attorney General.

20

C. S. T. EDMONDSON, ESQ., B.L.,
13, TRELAWNEY STREET,
FREETOWN.

EXHIBIT P/13

C. S. T. EDMONDSON,
 BARRISTER-AT-LAW,
 13, TRELAWNEY STREET,
 5 FREETOWN, SIERRA LEONE,
 TELEPHONE NO. 701.

To:—
 THE HONOURABLE,
 The Attorney General,
 BATHURST,
 GAMBIA.

2nd February, 1950.

Sir,

Re—Estate of JOHANNES DAVIES (*deceased*)

10 I have been consulted by Mrs. LAURA THOMAS with reference to above in which she is interested.

2. She has requested me to communicate with you as she has endeavoured without success to obtain her share through me from the executor Mr. Roach whose Solicitor is Mr. N'Jie.

15 3. I saw Mr. S. J. Forster the former solicitor for the estate who sent a telegram to Mr. N'Jie on Friday the 27th January whilst he was at Freetown.

4. I shall be grateful if you will kindly request Mr. N'Jie to let me know the position and have the money paid in.

20 5. I am sorry to have to ask you to intervene in a matter of this kind.

Yours faithfully,

(Sgd.) C. S. T. EDMONDSON.

EXHIBIT P/14

P. S. N'JIE,
7, BUCKLE STREET,
BATHURST, GAMBIA,
6TH FEBRUARY, 1950. 5

THE HONOURABLE MR. J. P. MURPHY,
ATTORNEY GENERAL,
BATHURST.

Dear Murphy,

Thank you so much for your letter of today's date enclosing a letter 10
addressed to you by one Edmondson, a legal practitioner, of Freetown.

I have never acted as solicitor for the estate of the late Johannes 15
Davies, deceased. I know that Mr. S. J. Forster, the Colonial Magistrate,
was once the solicitor for that estate. In fact, the estate is owing me
£33 16s. 2d. for costs as the result of a suit—Ousman Jah v. Jeremiah 15
Savage (Executor of the Estate of Johannes Davies, deceased). In Decem-
ber last I acted for Mr. Forster only to recover the sum of £28 13s. 4d.
from the same Jeremiah Savage in the Court of Requests for rents collected
by him as such executor and not accounted for and I obtained judgment 20
and costs which also with my retainer of £3 3s. 0d. have not been paid
to me. I have never had anything else to do with that estate and I have
never received any of its property.

I enclose a cablegram I received from Mr. Forster on the 27th 25
January while he was at Freetown. I dont know what to make of it. It
does not say where I should collect the "share" from. I have not replied
to the cablegram.

I return Edmondson's letter.

Yours sincerely,
P. S. N'JIE.

EXHIBIT P/17

THE ATTORNEY GENERAL'S
CHAMBERS,
BATHURST,
7TH FEBRUARY, 1950.

No. 23/3/1947

5

Estate of JOHANNES DAVIES, (*deceased*).

Sir,

With reference to my letter No. 21/3/1947 of the 6th February,
1950, I enclose a copy of a letter which I have received from Mr. P. S. N'Jie
10 which is self-explanatory.

I am Sir,

Your obedient Servant,

J. P. MURPHY,
Attorney General.

15 C. S. T. EDMONDSON, ESQ.,
BARRISTER-AT-LAW,
13, TRELAWNEY STREET,
FREETOWN.

EXHIBIT P/18

No. 4/1953

THE ATTORNEY GENERAL'S
CHAMBERS,
BATHURST,
GAMBIA.
2ND MAY, 1953.

5

CONFIDENTIAL:

Sir,

SANJALI BOJANG V. P. S. N'JIE.

The receipt of your letter of 28th April, 1953, and enclosures in 10
the above matter is acknowledged. The matter is being investigated and
a further communication will be sent to you in due course.

I have the honour to be,

Sir,

Your obedient Servant, 15

(Sgd.) A. C. SPURLING,
Attorney General.

C. S. T. EDMONDSON, ESQ., B.L.,
13, TRELAWNEY STREET,
FREETOWN.

20

EXHIBIT P/19

Registered Postal Packet D 455

D 455

Office of Posting Freetown C 5/6

Address: Hon. Attorney General

5 Bathurst.

Received by A. D. Baker 2/5/53 for Attorney General.

59

EXHIBIT P/20

SIERRA LEONE POST OFFICE

Received a REGISTERED LETTER addressed

THE HONOURABLE
THE ATTORNEY GENERAL
BATHURST, GAMBIA.

28 Ap. 53 5

Postmaster's Signature.....G. O. PEARCE

WEST AFRICAN COURT OF APPEAL

GENERAL SITTINGS HELD AT FREETOWN, 30TH JUNE, 1954.

Cor. Foster Sutton P.
Smith, C. J., (Sierra Leone), &
Coussey J. A.

5

C. S. T. Edmondson

Appellant.

vs.

P. S. N'Jie

Respondent

Mr. Dobbs, with him Miss Wright for Appellant.

10 No appearance on behalf of Respondent.

The respondent addressed a letter to the Deputy Registrar of this Court asking for an adjournment, but in our view it disclosed no good ground for granting one—The appellant's Counsel objected to one being granted.

15 Dobbs: Action for libel—defence was qualified privilege. Court so held, but also held that there was express malice which destroyed the privilege—and awarded £1,000 damages.

Refers to grounds of appeal p. 46 of record.

Gately p. 586—4th Edition.

Extrinsic evidence.

20 Turner vs. Metro. 1950 A.E.R.449—at 454 last paragraph. Each particular item 4 of 1851—10 C.B.583. (Manle J.590). Malice must be examined separately. P. 40 line 7. Judgment.

Malice means some indirect motive other than sense of duty.

P.41. line 3. Gately 595. Communication without telling.

25 Dobbs:

Clark. Molyneaux (1877) 3 Q.B.D. p. 237—at p.244(of way down page).

Botterill vs. Whytehead (1879) 41 L.T.R. (N.S.). 588 at p. 590.

Section 329 of Cap. 24 Gambia Criminal Code—of same nature—
30 In any event letter was sent from one lawyer to another and the statement went with the letter. If he thought a civil action by our statement also described an offence it was his duty to hand to A.G. for investigation he is not alleging that statements are true—merely sending for investigation.

35 A.G. is Public Prosecutor and person to whom complaints against legal practitioners must be sent. If he had really had malice he could have instructed his client to lay an information with the police and he could not be held liable.

Client gave same statement to police p. 28—record, line 5, *Stuart vs. Bell* (1891) 2 Q.B. 341, at p. 351.

Paragraph 4 of letter.

Adjourned to 9. 4. 54.

7. 4. 54, (SGD.) F. S. P. 5

9. 4. 54. Coram and Counsel as before

Dobbs:

Refers to p. 35 of record line 8. Whole of evidence in Civil Case Supreme Court Record book volume 28—Note—It was tendered and accepted in evidence but not marked with any exhibit number. Shows that defendant did investigate. 10

Defendant sent only for investigation.

Defendant forwarded—exhibit P/11 two documents—pages 64 to 68 of record—as enclosures to his letter to the Attorney General Exhibit 10.

He did nothing tenancy agreement and conveyance were referred to in documents sent to the Attorney General. Refers particularly to last paragraph of Exhibit P/10 Judgment p. 44 of record line 5 and on. 15

Reference importation of fabrication line 25 p. 44—the only matter remotely referring to such an accusation is at p. 29. “The interview is all I said it was”. 20

Previous libel referred to in paragraph 4 p. 44. Letter at p. 71 letter P/13—Submits no libel there.

Judgment p. 42—Recklessness—

Submit trial judge overlooked p.2—p.52 and plaintiffs reply. Publication—excessive p.43. Submits—not sufficiently excessive as to the evidence of malice—but in any event as far as privilege is concerned not affected because publication claimed for was the one to the Attorney General. Trial Judge erred in holding the publication excessive and of malice. 25

Submits that each instance of malice must be taken separately. 1050 A.E.R. 449. 30

. Damages are excessive. Belief or lack of belief. (1946) 2 A.E.R.

p. 231.

p. 235.

C.A.V.

9.4.54. 35

(Sgd.) S. FOSTER-SUTTON P.

30th June, 1954.

C. S. T. EDMONSON

— *Appellant.*

P. S. N’JIE

— *Respondent*

O. During for 40

Mr. A. E. Dobbs with him Miss Wright for Appellant

Judgment read

Appeal allowed with costs here and in the court below. Judgment of trial court set aside.

(Sgd.) A. C. SMITH 45

C.J.

WEST AFRICAN COURT OF APPEAL

GENERAL SITTING HELD AT FREETOWN, 30TH JUNE, 1954.

COR: FORSTER-SUTTON, P., SMITH, C. J. (Sierra Leone), & COUSSEY, J. A.

5 P. S. N'JIE, *Plaintiff-Respondent*
 v.
 C. S. T. EDMONDSON, *Defendant-Appellant*

JUDGMENT

FORSTER-SUTTON, P. This is an appeal by the defendant against a judgment of Miles, J., sitting in the Supreme Court of the Colony of the Gambia
 10 by which he awarded the plaintiff the sum of £1,000 damages for libel.

The plaintiff and defendant are legal practitioners carrying on their profession in the Gambia and Sierra Leone, respectively, and the alleged libel is contained in a letter written by the defendant, dated 28th April, 1953, addressed to the Attorney General of the Gambia, and in a written
 15 statement of the defendant's client, one Sanjali Bojang, which was enclosed in the letter.

Before writing his letter to the Attorney General the defendant wrote a letter to the plaintiff, dated 10th February, 1953, in which he set out the gist of his client's complaint and asked the plaintiff to let him know
 20 his "side of the matter", a copy of the plaintiff's letter in reply, dated 21st February, 1953, also formed an enclosure to the defendant's letter to the Attorney General.

It was not disputed that the letter of the 28th February, 1953, and the statement forwarded with it contained matter defamatory of the
 25 plaintiff, but the learned trial Judge, rightly I think, held that the defendant had a duty as solicitor for Sanjali Bojang to take the necessary steps to prosecute his client's claim, that in the circumstances the Attorney-General of the Gambia was the correct authority to refer the matter to for investigation, and that the letter and written statement were, therefore,
 30 published to the Attorney-General on an occasion of qualified privilege, but he went on to find that the defendant had been actuated by malice, which destroyed the privilege.

It was proved that the defendant, at an interview which took place between himself and the plaintiff on the 21st May, 1953, stated that he
 35 did not believe his client's story, and the learned trial Judge came to the conclusion that the fact that the defendant did not honestly believe his client's statement was "strong evidence of malice," which, taken in conjunction with other matters, showed a malicious intention to injure the plaintiff.

It seems to me that the finding that lack of honest belief in his client's statement was strong evidence of malice is fundamental to the judgment and it is, therefore, necessary to determine with some degree of precision the position of a solicitor in circumstances such as arose in this case.

There can be no doubt that the client's statement accused the plaintiff of fraud, and I think the defendant was right in his assumption that the criminal aspect of the case should be investigated before any civil remedy was proceeded with. 5

In my view the question whether or not the defendant believed his client's story is irrelevant, it would be a different matter if it were proved that he knew as a fact that his client's story was false, but that is not the position here. 10

The defendant's letter to the Attorney General is clearly based on his client's instructions, and he did not assert any belief in them. I am unable to accept the proposition that it is the duty of a solicitor to satisfy himself as to his client's veracity before acting for him, to so hold would, in my opinion, place an unduly heavy responsibility on his shoulders, but that does not mean that he will be condoned if he prosecutes a claim which it can be shown he knows to be false or where the circumstances are such that he must be deemed to have known that it was false. 15 20

The defendant might have advised his client to set the criminal law in motion straightaway. It was, presumably, because he felt that the matter ought, in the first instance, to be further investigated that he referred it to the Attorney General with a request that it should be, and it seems to me that he was performing the ordinary duty of a solicitor in so doing. 25

The defendant's failure to enclose in his letter to the Attorney General a copy of the tenancy agreement which the plaintiff had sent to him was held to be a further indication of his desire to injure the plaintiff, because that document was inconsistent with his client's allegations. The existence of such an agreement is explained in the plaintiff's letter of 21st February, 1953, a copy of which the defendant sent to the Attorney General, and I am unable to see how it can fairly be said that there was any attempt at concealment. The defendant instructed his client to submit any documents he had to the Attorney General when called upon to do so, and paragraph 4 of his letter of the 28th April, 1953, to the Attorney General contains a clear intimation that such instructions had been given. The plaintiff could, no doubt, have supplied the Attorney General with a copy of the tenancy agreement if the defendant's client was unable to do so. 30 35

Sanjali Bojang's statement had not been signed by him when a copy of it was sent to the Attorney General, and the plaintiff called a witness, one William Ojago Max Grant, who testified that on the 19th May, 1953, the defendant asked him to read the statement and explain it to Sanjali Bojang and that after he had done so the latter then "signed it." The witness also testified that when he was asked to read and explain the statement to Sanjali Bojang the defendant said "Whether he understands it I can't know." 40 45

When dealing with this aspect of the case the learned trial Judge said:

“Neither the defendant nor Sanjali Bojang gave evidence and the
 “circumstances in which this typed statement was prepared remain shrou-
 5 “ded in mystery. I think however there is an irresistible inference that the
 “defendant had by that time not seen Sanjali Bojang and he therefore
 “had no opportunity to judge whether he was a reliable and trustworthy
 “witness or not.....So far then from believing that the statement
 10 “was true the defendant up to that time did not know whether the state-
 “ment was a statement by Sanjali Bojang or not.”
 and he held that this was further evidence of a malicious intention to injure
 the plaintiff.

The Gambia is a long way from Sierra Leone, and I do not think
 too much significance should be placed on the fact that the defendant had
 15 apparently not seen his client before he addressed his letter to the Attorney
 General. It seems clear that his instructions were received through the
 medium of correspondence. He undoubtedly might have acted with greater
 caution, but I am unable to accept the proposition that his conduct was
 of such a nature as to show a malicious intention, and I cannot help feeling
 20 that the learned trial Judge would not have found that it was had he not
 come to the conclusion that before acting on his client’s instructions it
 was the defendant’s duty to satisfy himself that they were true.

The defendant’s letter to the Attorney General was not marked
 private or confidential, and the trial Judge held that he must have had
 25 sufficient knowledge of office routine to be perfectly aware that a letter
 not so marked “is bound to pass through one or more hands before it
 reaches the addressee.” From this circumstance he held that there had
 been excessive publication which was further evidence of malicious inten-
 tion to injure.

30 It is the case that the Attorney General said in his evidence:

“.....I think if the envelope had been marked confidential” it
 “would have come to me unopened. That is the normal practice.
 “It is not normal practice for correspondence marked “Confiden-
 “tial” to be opened by my clerk.”

35 but I do not think the method of addressing the letter can reasonably be
 said to be so outside the usual procedure as to justify an inference of malice,
 and it follows that I am unable to agree that the defendant’s failure to
 mark the envelope “Confidential” justifies the conclusion that the privilege
 by that omission was abused.

The statement in the first paragraph of the defendant's letter of 28th April, 1953, which reads:

“My instructions were to take proceedings to cancel the alleged deed of conveyance on the ground that it was not signed by my client and was in fact a forgery on the part of Mr. N’Jie.” 5

was also held to be evidence of malice, since Sanjali Bojang’s statement alleges that his signature to the deed was obtained by fraud, not that it was a forgery.

There can be no doubt that the defendant erred in describing the nature of the complaint, but, here again, I am unable to agree that it justifies an inference of malice. The letter was addressed by one lawyer to another and the statement containing the complaint was sent with the letter so there could hardly have been an intention to deceive or mislead the Attorney General regarding the nature of the offence alleged. 10

The learned trial Judge also says in his judgment: 15
 “The defendant had on a previous occasion in 1950 libelled the plaintiff in a letter to the then Attorney General.”

and he held that this was further evidence from which a malicious intention to injure the plaintiff could be inferred. It is true that the plaintiff when giving evidence alleged that the defendant had on a previous occasion published a libel against him, but I can find nothing in the letter, exhibit “13”, which was put in evidence in support of the contention, to justify the plaintiff’s statement or the trial Judge’s finding. 20

Finally, the learned trial Judge held that the defendant’s conduct in relation to the trial of this case was also material on the issue of malice. 25
 The relevant portion of the judgment reads as follows:—

“.....The conduct of the defendant in these proceedings is I think “not immaterial on this issue also. He has not appeared in Court “or called any evidence. He made an application on the first day “of the trial for his evidence to be taken in Sierra Leone. He based 30 “his application on an affidavit from a medical practitioner to the “effect that he was unfit to travel. This application was withdrawn “before I had an opportunity of ruling on it. He then instructs his “Advocate in his absence, to impute to the plaintiff the deliberate “fabrication of evidence.” 35

The imputation of “the deliberate fabrication of evidence” presumably has reference to the dispute as to what took place between them when the parties met in Bathurst on the 21st May, 1953. The incident is referred to in paragraph 2 of the plaintiff’s letter to the defendant, dated

30th June, 1953, exhibit "P9", in the defendant's letter of reply dated 6th July, 1953 exhibit "P7", and in the last line of the cross-examination of the plaintiff on page 29 of the record.

5 There can, I think, be no doubt that the defendant would have been better advised if he had attended the trial and given evidence, but I am unable to agree that, in the circumstances of this case, it would be right to infer that he wrote the letter to the Attorney General with a "malicious intention to "injure the plaintiff", from the fact that he instructed his advocate to contest the correctness of the plaintiff's version of the
10 interview in question.

For the reasons I have given I would allow this appeal, set aside the judgment of the Court below, and enter judgment for the defendant with costs to be taxed. The appellant to have his costs on this appeal to be taxed.

15

(Sgd.) S. FOSTER SUTTON. P.

SMITH, C. J. (Sierra Leone):

I concur.

(Sgd.) A. SMITH.

20

COUSSEY, J. A.:

I concur

(Sgd.) J. N. COUSSEY.