

~~CHA. G. 2~~

19, 1958

In the Privy Council

No. 19 of 1956.

ON APPEAL FROM THE WEST AFRICAN  
COURT OF APPEAL  
(NIGERIAN SESSION)

BETWEEN

THE HON. OBAFEMI AWOLowo ... (*Plaintiff*) *Appellant*

AND

(1) ZIK ENTERPRISES LIMITED

(2) A. Y. S. TINUBU ... .. (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS

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# In the Privy Council.

No. 19 of 1956.

## ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (NIGERIAN SESSION)

BETWEEN

THE HON. OBAFEMI AWOLOWO ... (*Plaintiff*) *Appellant*

AND

(1) ZIK ENTERPRISES LIMITED

(2) A. Y. S. TINUBU ... .. (*Defendants*) *Respondents.*

## RECORD OF PROCEEDINGS

No. 1.

Writ of Summons, Suit 270/52.

IN THE SUPREME COURT OF NIGERIA.

Civil Summons U 5677.  
Suit No. 270 of 1952.

In the  
Supreme  
Court of  
Nigeria.

No. 1.  
Writ of  
Summons,  
Suit 270/52,  
21st June,  
1952.

Between

THE HON. OBAFEMI AWOLOWO ... .. *Plaintiff*

and

1. ZIK ENTERPRISES LTD.

10 2. A. Y. S. TINUBU ... .. *Defendants.*

To Zik Enterprises Ltd., (2) A. Y. S. Tinubu of 34, Commercial Avenue,  
Yaba Estate.

You are hereby commanded in His Majesty's name to attend this  
Court at Tinubu Square, Lagos on Monday the 30th day of June, 1952,  
at 9 o'clock in the forenoon to answer a suit by The Hon. Obafemi Awolowo  
c/o His Solicitors, 41, Idumagbo Avenue, Lagos, Nigeria against you.

The Plaintiff's claim is as per particulars attached.

Issued at Lagos the 21st day of June, 1952.

(Sgd.) O. JIBOWU,  
*Ag. Senior Puisne Judge.*

In the  
Supreme  
Court of  
Nigeria.

No. 2.

Particulars of Claim, Suit 270/52, annexed to Writ issued 21st June, 1952

No. 2.  
Particulars  
of Claim,  
Suit 270/52,  
annexed  
to Writ  
issued  
21st June,  
1952.

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

Suit No. 270/1952.

Between

THE HON. OBAFEMI AWOLowo ... .. *Plaintiff*

and

1. ZIK ENTERPRISES LTD.

2. A. Y. S. TINUBU ... .. *Defendants.* 10

The Plaintiff's Claim against the Defendants is for £25,000 being damages for words falsely and maliciously published by the Defendants of and concerning the Plaintiff in the issues of the West African Pilot dated 10th and 11th June, 1952 as per the particulars of claim here-under and also for an injunction restraining the Defendants from publishing the same or similar libel.

PARTICULARS OF CLAIM.

1.—The Plaintiff is by profession a legal practitioner of this Court.

2.—At all material times the Plaintiff was and is the Minister for Local Government in the Western Region and a member of the Executive 20 Council of the Western Region.

3.—The Plaintiff is also the Leader of the Action Group which is the political party in power in the Western Region.

4.—The 1st Defendants are the proprietors, Printers and publishers of the " West African Pilot " which has a very wide circulation throughout Nigeria and also circulates abroad including the British West African Colonies, the United Kingdom and the United States of America.

5.—The 2nd Defendant is the Editor of the " West African Pilot " aforesaid.

6.—In 1949 there was a civil case between the members of the House 30 of Docemo and His Highness Oba Adeniji II (Suit No. 276/49) in which the former claimed against the latter party a declaration of title and recovery of possession of a building and land known as " Iga Idunganran."

7.—The said action was determined on the 18th of January, 1951 when Judgment was entered in favour of Oba Adeniji Adele II.

- 8.—The members of the House of Docemo have lodged an appeal to the West African Court of Appeal and the said appeal is pending.
- 9.—The Defendants have invariably referred to the appeal in the West African Pilot as “ the Iga Idunganran case.”
- 10.—The said appeal is still pending before the West African Court of Appeal.
- 11.—The aforesaid Oba Adeniji Adele is a prominent member and well known supporter of the Action Group.
- 12.—On the 28th of April, 1952 one Sadiku Salami a first cousin to Plaintiff’s wife was convicted of murder and sentenced to death in the Supreme Court of the Ibadan Judicial Division.
- 13.—The alleged murder took place at Ikenne and the case has been referred to in the “ West African Pilot ” as “ the Ikenne Trial.”
- 14.—The said Sadiku Salami has lodged an Appeal to the West African Court of Appeal and the said appeal is still pending.
- 15.—The said Sadiku Salami is a member and supporter of the Action Group in Plaintiff’s constituency i.e. Remo Division of Ijebu Province.
- 16.—On the 10th of June, 1952 the Plaintiff and all the Ministers of the Government of the Western Region as well as the four Ministers of the Central Government appointed from the representatives of the Western Region had a conference with His Excellency the Governor of Nigeria.
- 17.—The said conference was given wide publicity in the Nigerian Press.
- 18.—The purpose of the said conference was to discuss constitutional issues and matters relating to administrative procedure under the new Nigerian Constitution.
- 19.—On Tuesday the 10th of June, the very day the Conference was to be held the Defendants published a front-page article about the said conference entitled :
- 30                   “ ACTION GROUP THREATENS CRISIS TO WIN OVER THE  
                      “ GOVERNMENT.”  
                      “ SECRET BEHIND PLAN DISCLOSED.”
- 20.—In the article referred to in paragraph 19 above the Defendants published *inter alia* :—

In the  
Supreme  
Court of  
Nigeria.

No. 2.  
Particulars  
of Claim,  
Suit 270/52,  
annexed  
to Writ  
issued  
21st June,  
1952—  
*continued.*

In the  
Supreme  
Court of  
Nigeria.

No. 2.  
Particulars  
of Claim,  
Suit 270/52,  
annexed  
to Writ  
issued  
21st June,  
1952—  
*continued.*

“ Political observers believe that the motive behind the  
“ delegation to the Government concerns the Iga Idunganran  
“ Civil Case, the Ilorin boundary and other issues affecting directly  
“ or indirectly, the Action Group. It is believed also that the  
“ party may endeavour to use power politics to enable the  
“ Government to yield to certain demands which the Action  
“ Groupers feel must be conceded in order to avert a constitutional  
“ crisis. Apart from the walk-out threat reliable sources believe  
“ also that Action Group Ministers may resign en bloc in order  
“ to effect the demands of the party over the issues at stake. 10  
“ Meanwhile, it is understood that the Government will be  
“ represented in the proposed parley with Government by Mr. Eric  
“ Himsforth, Financial Secretary and Mr. Harold Cooper Public  
“ Relations Officer, and others including the Governor himself.”

21.—On the 11th day of June, 1952 the Defendants published another front-page article entitled :—

“ GOVERNMENT TURNS BACK ACTION GROUP WITH NO TO  
“ ALL DEMANDS.”

22.—In the said article referred to in paragraph 21 above the Defendants published *inter alia* :— 20

“ The Ikenne trial also re-echoed in the parley, but the  
“ Government felt that it was an issue for the Legal Department  
“ and the court, and not the concern of the Governor. On this  
“ matter the Governor refused to make a statement.”

23.—The Plaintiff avers that the whole of the said publications regarding the Conference between the Governor and the Action Group Ministers are false and malicious.

24.—With regard to the publication quoted in paragraph 20 above the plaintiff avers that the defendants meant and were understood by their readers to mean that the plaintiff and the other Ministers described in paragraph 16 above (a) held the aforesaid Conference with the Governor and other Government Officers in order to get Government to interfere with the course of justice in the aforesaid suit No. 276 of 1949 pending before the West African Court of Appeal and (b) threatened to create a constitutional crisis in order to force the hands of the Governor. 30

25.—With regard to the publication quoted in paragraph 22 above the Plaintiff avers that the Defendants meant and were understood by their readers to mean that the Plaintiff and the other Ministers described in paragraph 16 above had asked the Governor and the other officials present at the conference to interfere in the course of justice namely in the aforesaid conviction of Sadiku Salami pending before the West African Court of Appeal. 40



26.—The Plaintiff has in consequence been seriously injured in his character credit and reputation and in the way of his position as His Excellency's Minister for Local Government in the Western Region and Leader of the Action Group and has been brought into public scandal odium and contempt.

In the Supreme Court of Nigeria.

27.—The Plaintiff will rely on the following facts in aggravation of damages :—

No. 2. Particulars of Claim, Suit 270/52, annexed to Writ issued 21st June, 1952—*continued.*

10

(a) That after the publication referred to in paragraphs 21 and 22 above the Public Relations Officer sent an official release to all sections of the Press including the Defendants setting out the true facts and the subjects discussed but the Defendants did not publish the said release or correct their false publications.

(b) That on the 14th of June the Defendants published the full text of the Judgment of the Supreme Court Ibadan in the murder case against Sadiku Salami which filled 2 pages and ran into 7 columns.

WHEREUPON the Plaintiff claims as per the WRIT OF SUMMONS above. Dated at Lagos this 17th day of June, 1952.

20

(Sgd.) THOMAS, WILLIAMS & KAYODE,  
*Plaintiff's Solicitors.*

No. 3.

Writ of Summons, Suit 273/52.

No. 3. Writ of Summons, Suit 273/52, 21st June, 1952.

IN THE SUPREME COURT OF NIGERIA

Civil Summons U 5680.  
Suit No. 273 of 1952.

Between

THE HON. OBAFEMI AWOLOWO ... .. *Plaintiff*

and

30 1. ZIK ENTERPRISES LTD.

2. MBONU OJIKE ... .. *Defendants.*

To Zik Enterprises Ltd., (2) Mbonu Ojike of 1st Defendants 34, Commercial Avenue Yaba Estate 2nd Defendant, 23, King George Avenue Yaba Estate.

In the  
Supreme  
Court of  
Nigeria.

No. 3.  
Writ of  
Summons,  
Suit 273/52,  
21st June,  
1952—  
*continued.*

You are hereby commanded in His Majesty's name to attend this Court at Tinubu Square Lagos on Monday the 30th day of June, 1952 at 9 o'clock in the forenoon to answer a suit by The Honourable Obafemi Awolowo c/o His Solicitors, 41, Idumagbo Avenue, Lagos, Nigeria against you.

The Plaintiff's claim is as per particulars attached.  
Issued at Lagos the 21st day of June, 1952.

	£	s.	d.	
Summons	27	0	0	(Sgd.) O. JIBOWU, <i>Ag. Senior Puisne Judge.</i> 10
Service	10	0		
Mileage				
	£27 10 0			

No. 4.  
Particulars  
of Claim.  
Suit 273/52,  
annexed  
to Writ  
issued  
21st June,  
1952.

No. 4.

**Particulars of Claim, Suit 273/52, annexed to Writ issued 21st June, 1952.**

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 273/1952.

Between

THE HON. OBAFEMI AWOLOWO ... .. *Plaintiff*

and

20

1. ZIK ENTERPRISES LTD.

2. MBONU OJIKE ... .. *Defendants.*

The Plaintiff's claim against the Defendants is for £25,000 (Twenty-five thousand pounds) being damages for words falsely and maliciously published by the Defendants of and concerning the Plaintiff in the issue of the West African Pilot dated Friday June 13th 1952 as per particulars of claim hereunder and also for an injunction restraining the Defendants from publishing the same or similar libel.

PARTICULARS OF CLAIM.

*(Paragraphs 1, 2, 3 and 4 are identical with paragraphs 1, 2, 3 and 4 30 of the Particulars of Claim in Suit 270/1952.)*

5.—The 2nd Defendant is a regular columnist and contributor to the "West African Pilot" aforesaid.

(Paragraphs 6, 7 and 8 are identical with paragraphs 6, 7 and 8 of the Particulars of Claim in Suit 270/1952.)

In the  
Supreme  
Court of  
Nigeria.

9.—In the article which is the subject matter of this action the 2nd Defendant has referred to the appeal mentioned in paragraph 8 above as “ the Iga controversy case.”

No. 4.  
Particulars  
of Claim,  
Suit 273/52,  
annexed  
to Writ  
issued  
21st June,  
1952—  
*continued.*

(Paragraphs 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 are identical with paragraphs 10, 11, 12, 14, 15, 16, 17 18, 19, 20, 21, 22 and 23 of the Particulars of Claim in Suit 270/1952.)

10 13.—The alleged murder took place at Ikenne and the case has been referred to in the article which is the subject matter of this action as “ the atrocious Ikenne dispute.”

24.—On the 13th of June, 1952 the 2nd Defendant wrote and published an article in the West African Pilot aforesaid as follows :—

“ ACTION GROUP by Mbonu Ojike

20 “ The shallow separatist and selfish policies of the Action Group have now landed the party in a state of confusion disgrace and disaster. This is a political doldrum the beginning of an end to the political chauvinism and machiavellianism of the Action Group leadership. What concerns the nation is not the fate of a party founded in deceit and envy but the retardation element such an ignoble party has precipitated on the road to Nigerian freedom.

“ STUMBLING BLOCK A year ago, I said that the Minister of Local Government, Western Region, by concocting secretly the Action Group dedicated to the cause of a section of Nigeria, constitutes a stumbling block to Nigeria nationalism.

“ Today’s events have abundantly proved me absolutely correct.

30 “ That a party worthy of Nigerians’ support should now attempt to intimidate the Government of Nigeria in which it is represented under the Constitution that Awolowo goaded the now defunct NEC to accept before the texts thereof were published, leaves no one in doubt as to the tragic end of the Action Group and its carpet crossers.

“ BEST BRAINS Does the party wish Government to interfere with the course of justice in relation to the atrocious Kienne dispute ?

40 “ Rightly enough the Council of Ministers selected two of their best brains to go to UK in the interest, not of a party or region, but of Nigeria as a whole. That none of the Groupers was

In the  
Supreme  
Court of  
Nigeria.

—  
No. 4.  
Particulars  
of Claim,  
Suit 273/52,  
annexed  
to Writ  
issued  
21st June,  
1952—  
*continued.*

“ found competent enough to go along is the fault of the Local  
“ Government Minister who built a phony party with non-university  
“ men.

“ Or does he wish Nigeria to send his party men without  
“ academic or experiential qualification to UK to negotiate  
“ technical problems with highly qualified Europeans ?

“ Folly is confounded by the Group chauvinists and machia-  
“ vellinists. And Nigerian freedom is retarded for it all. If  
“ Groupers want Ilorin Province and Kabba is this unholy goal  
“ to be won by threats of a walk-out ? Will the Igo controversy 10  
“ case already in Court be cancelled by the Governor in order to  
“ placate Action Groupers ?

“ Or are we to be exterminated because Groupers want Lagos  
“ in the West or that the old man Lyttelton did not visit Iga ?  
“ How honest men could participate in a legislature that passed  
“ certain bills and turn around to kick against the constitutional  
“ operation of Lead-Zinc and Pioneer Industries laws simply  
“ because they were introduced by NCNC Ministers beats the  
“ nationalists' imagination and shocks world conscience. Western  
“ Local Government ! Minister, behave like a states-man. Stop 20  
“ childish manœuvres for an ant has never defeated an elephant.

“ You cannot stop Nigerian unity and peoples' freedom  
“ march On to freedom, I say, to N.C.N.C. Floreat One Nigeria  
“ Thanks to West African Pilot for unmasking Groupers woes  
“ Shame to Daily Times for calling Groupers' Iniquitous delegation  
“ to Government House a ' Top Secret ' EBUTE METTA.”

25.—The Plaintiff aver that the article referred to in paragraph 24  
above was written by the 2nd Defendant and published by the Defendants  
as a sequel to the articles published by the West African Pilot on the  
10th and 11th of June as described above. 30

26.—The Plaintiff avers that the article meant and was understood  
to mean

- (a) That the Plaintiff and other Ministers mentioned in  
paragraph 16 above had planned to get the Government to  
interfere with the course of justice in relation to the charge  
of murder against Sadiku Salami.
- (b) That the Plaintiff and other Ministers mentioned in  
paragraph 16 above had planned to get Government to  
interfere with the course of justice in relation to the aforesaid  
suit No. 276 of 1949 and 40
- (c) That the Plaintiff and other Ministers mentioned in  
paragraph 16 above are incompetent and unfit to hold their  
respective offices.

(Paragraphs 27 and 28 are identical with paragraphs 26 and 27 of the Particulars of Claim in Suit 270/1952.)

In the Supreme Court of Nigeria.

WHEREUPON the Plaintiff claims as per the WRIT OF SUMMONS above.

Dated at Lagos this 18th day of June, 1952.

(Sgd.) THOMAS, WILLIAMS & KAYODE,  
*Plaintiff's Solicitors.*

No. 4. Particulars of Claim Suit 270/52, annexed to Writ issued 21st June, 1952---  
*continued.*

Plaintiff's Address : c/o His Solicitors, 41, Idumagbo Avenue, Lagos, Nigeria.

1st Defendants' Address : 34, Commercial Avenue, Yaba Estate.

10 2nd Defendant's Address : 23, King George Avenue, Yaba Estate.

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No. 5.

Defence of 1st Defendant, Suit 270/52.

No. 5. Defence of 1st Defendant, Suit 270/52, 14th July, 1952.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 270/1952.

Between

THE HON. OBAFEMI AWOLOWO ... .. *Plaintiff*

and

1. ZIK ENTERPRISES LIMITED

20 2. A. Y. S. TINUBU ... .. *Defendants.*

STATEMENT OF DEFENCE OF 1ST DEFENDANT.

1.—The first Defendants say that they are not the Proprietors printers and Publishers of The West African Pilot and therefore ask that the action be summarily dismissed against them.

2.—That in the alternative the said Defendants admit paragraph 1, 3, 6, 7, 8 and 17 of the Plaintiff's Statement of Claim.

3.—That further the 1st Defendants deny each and every allegation of fact contained in paragraphs 4, 9, 19, 20, 21, 22, 24, 25, 26 and 27 (b) of the Plaintiff's Statement of Claim and put the said Plaintiff to the very  
30 strict proof of each and every allegation of fact therein contained.

In the  
Supreme  
Court of  
Nigeria.

No. 5.  
Defence  
of 1st  
Defendant,  
Suit 270/52,  
14th July,  
1952—  
*continued.*

4.—That with regard to paragraphs 11, 13, 14, 15 and 18 of the Plaintiff's Statement of Claim the 1st Defendants are not in a position to admit or deny same and puts the said Plaintiff to their very strict proof.

5.—That with regard to paragraph 10 of the Plaintiff's Statement of Claim the 1st Defendants say that if by the said Appeal the Plaintiff refers to the Appeal referred to in paragraph 8 of the Plaintiff's Statement of Claim the said Defendants admit same as opposed to any admission as contained in paragraph 9 of the said Statement of Claim.

6.—That with regard to paragraph 12 of the Plaintiff's Statement of Claim the 1st Defendants are in no position to admit or deny that the said 10 Sadiku Salami is a first cousin to the Plaintiff's Wife and while admitting the other statements of fact puts the said Plaintiff to the strict proof of the aforesaid allegation.

7.—That with regard to paragraph 16 of the Plaintiff's Statement of Claim the said 1st Defendants while admitting the said Conference say that they are in no position to admit or deny the Composition of the said Delegation.

8.—That with regard to paragraph 23 of the Plaintiff's Statement of Claim the 1st Defendants say that while denying that the said Publication was malicious aver that they are in no position in view of the above 20 paragraphs to say whether same was false or true.

9.—That the incident referred to in paragraph 12 of the Plaintiff's Statement of Claim came about as a result of the Alakenne dispute and one cannot be divorced from the other.

10.—That the 1st Defendants are an Enterprise whose different constituents have political views favourable to the N. C. N. C. as opposed to the Action Group and as such are interested in all matters concerning the Welfare and good Government of the Country.

11.—That further with regard to paragraph 23 aforesaid the said Defendants say that the whole Conference, the subject matter of the 30 Conference has been clouded in mystery till this day.

12.—That the said 1st Defendants views are allied to those of the National Council of Nigeria and the Cameroons a party representing the opposition and as such are interested in all matters concerning the welfare and Government of the Country.

13.—That further the alleged release of the Public Relations Officer in no way lifted the veil of uncertainty as set out in paragraph 27 (a) of the Plaintiff's Statement of Claim.

14.—The said 1st Defendants deny that the said words bear or are capable of bearing the meaning alleged in the Statement of Claim or that they refer to the Plaintiff.

In the Supreme Court of Nigeria.

15.—That the words complained of were an Article in the West African Pilot and were and are a fair and bona fide comment upon a matter of Public Interest viz the Meeting of the Action Group and the Government.

No. 5. Defence of 1st Defendant Suit 270/52. 14th July 1952—*continued.*

16.—The 1st Defendants further aver that the Action Group being the party in power in the West and the 1st Defendants belonging to the aforesaid N. C. N. C. i.e. the opposition, the aforesaid Publication in a matter affecting the Government of the Country is the subject of privilege.

17.—The 1st Defendants further say that they have always regarded the case mentioned in paragraphs 6, 7 and 8 of the Plaintiff's Statement of Claim as fundamentally a Chieftaincy dispute between Oba Adele and Prince Oyekan.

18.—That by virtue of the appointment and Deposition of Chiefs Ordinance No. 14 of 1930 & 20 of 1945 16/1950 and amended by 47 of 1951 the Power of appointing, approving or deposing any Chief is vested in the Government and or Lieutenant Governors representing such Government.

19.—The said 1st Defendants therefore aver that a Publication that a parley took place with the Government over such an issue even though a case were in Court over same could not bear the innuendo given to it by the Plaintiff in so far as such Power is given to the Government.

20.—The 1st Defendants say that the Words " Action Group " " Delegation " and " Action Groupers " referred to in the said Publication do not refer to any individual but to a Group of people representing themselves as Action Groupers and that the action is therefore speculative and misconceived.

Dated at Lagos this 14th day of July, 1952.

(Sgd.) JOHN TAYLOR,  
*1st Defendants' Solicitor.*

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No. 6.

Defence of 2nd Defendant, Suit 270/52.

(Title as No. 2.)

STATEMENT OF DEFENCE OF 2ND DEFENDANT.

1.—The 2nd Defendant admits paragraphs 1, 3, 6, 7, 8 and 17 of the Plaintiff's Statement of Claim.

No. 6. Defence of 2nd Defendant, Suit 270/52. 14th July, 1952.

In the  
Supreme  
Court of  
Nigeria.

No. 6.  
Defence  
of 2nd  
Defendant,  
Suit 270/52,  
14th July,  
1952—  
*continued.*

2.—The 2nd Defendant denies each and every allegation of fact contained in paragraphs 5, 9, 19, 20, 21, 22, 24, 25 and 26 and 27 (b) of the Plaintiff's Statement of Claim and puts the said Plaintiff to their very strict proof.

*(Paragraphs 3, 4, 5 and 6 are the same as paragraphs 4, 5, 6 and 7 of the Defence of 1st Defendant in Suit 270/1952 with the substitution of 2nd Defendant for 1st Defendant.)*

7.—The Defendant further says with regard to paragraph 22 of the Plaintiff's Statement of Claim that there was a dispute at Ikenne on the 10 question who should become the Alakenne.

8.—That the incident referred to in paragraph 12 of the Plaintiff's Statement of Claim came about as a result of the above dispute and one cannot be divorced from the other.

9.—That with regard to paragraph 23 of the Plaintiff's Statement of Claim the said Defendant says that while denying that the said Publication was malicious avers that he is in no position in view of the above paragraph to say whether same was false or true.

*(Paragraph 10 is the same as paragraph 11 of the Defence of the 1st Defendant in Suit 270/1952.)* 20

11.—That the said 2nd Defendant is a Member of the National Council of Nigeria and the Cameroons a party representing the opposition and as such are interested in all matters concerning the welfare and Government of the Country.

*(Paragraphs 12, 13, 14, 15, 16, 17, 18 and 19 are the same as paragraphs 13, 14, 15, 16, 17, 18, 19 and 20 of the Defence of 1st Defendant in Suit 270/1952 with the substitution of 2nd Defendant for 1st Defendant.)*

Dated at Lagos this 14th day of July, 1952.

(Sgd.) JOHN TAYLOR, 30  
2nd Defendant's Solicitor.

No. 7.  
Defence  
of 1st  
Defendant,  
Suit 273/52,  
21st July, 1952.

No. 7.

Defence of 1st Defendant, Suit 273/52.

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

Suit No. 273 of 1952.

HON. OBAFEMI AWOLowo	Between	...	...	...	...	...	Plaintiff	40
	and							
1. ZIK ENTERPRISES LIMITED		...	...	...	...	...	Defendants.	
2. MBONU OJIKE ...		...	...	...	...	...		



## STATEMENT OF DEFENCE OF 1ST DEFENDANT.

In the  
Supreme  
Court of  
Nigeria.

Save and except as is hereinafter expressly admitted, the 1st Defendants deny each and every allegation of fact contained in the Plaintiff's Statement of Claim as if such allegation were set out seriatim and specifically traversed.

No. 7.  
Defence  
of 1st  
Defendant,  
Suit 273/52,  
21st July,  
1952—  
*continued.*

1.—The first Defendants say that they are not the Proprietors, Printers and Publishers of The West African Pilot and therefore ask that the action be summarily dismissed against them.

2.—That in the alternative the said Defendants admit paragraphs 1, 2, 3, 6, 7, 8, 17 and 24 of the Plaintiff's Statement of Claim.

10 3.—The 1st Defendants deny each and every allegation of fact contained in paragraphs 4, 9, 13, 19, 20, 21, 22, 25, 26, 27, and 28 of the Plaintiff's Statement of Claim and put the said Plaintiff to their very strict proof.

4.—The 1st Defendants say with regard to paragraphs 11, 14, 15 and 18 of the Plaintiff's Statement of Claim and put the said Plaintiff to their very strict proof.

5.—That with regard to paragraph 10 of the Plaintiff's Statement of Claim the 1st Defendants say that if by the "said Appeal" is meant the Appeal in Suit No. 276 of 1949 the said Defendants admit same but not otherwise.

20 6.—That with regard to paragraph 12 of the Plaintiff's Statement of Claim the said Defendants are in no position to admit or deny the allegations as to the relationship between the said Sadiku Salami and Awolowo but admit the other averments therein contained.

7.—That with regard to paragraph 16 of the Plaintiff's Statement of Claim the 1st Defendants admit that a Conference took place but are in no position to admit or deny the composition of the said Delegation and put the Plaintiff to its strict proof.

30 8.—That with regard to paragraph 23 of the Plaintiff's Statement of Claim the said Defendants deny that the said Publication was malicious but are in no position to admit or deny its falsity as it was not written by the said Defendants and in view of paragraphs 10 and 12 below.

9.—That the incident referred to in paragraph 12 of the Plaintiff's Statement of Claim and paragraphs 22 and 24 of same came about as a result of the Alakenne dispute and one cannot be divorced from the other.

10.—That further in addition to paragraph 7 above the said Defendants say that the whole Conference, the subject matter of the Conference has been clouded in mystery till this day.

In the  
Supreme  
Court of  
Nigeria.

No. 7.  
Defence  
of 1st  
Defendant,  
Suit 273/52,  
21st July,  
1952-  
*continued.*

11.—That the 1st Defendants political views are allied to those of the National Council of Nigeria and the Cameroons a party representing the opposition and as such are interested in all matters concerning the welfare and good Government of the Country.

12.—That further the alleged release of the Public Relations Officer in no way lifted the veil of uncertainty as set out in paragraph 28 (a) of the Plaintiff's Statement of Claim.

13.—That the said 1st Defendants deny that the words complained of bear or are capable of bearing the meaning alleged in the Statement of Claim or that they refer to the Plaintiff. 10

14.—That the Words complained of were an Article in the West African Pilot and were and are a fair and bona fide comment upon a matter of Public interest viz the Meeting of the Action Group and the Government.

15.—The said Defendants further aver that the Action Group being the party in power in the West and the said Defendants having political views as aforesaid the aforesaid Publication in a matter affecting the good Government of the Country is the subject of privilege.

16.—The 1st Defendants say that they have always regarded the case mentioned in paragraphs 6, 7 and 8 of the Plaintiff's Statement of Claim as fundamentally a Chieftaincy dispute between Oba Adele and Prince Oyekan. 20

17.—That by virtue of the appointment and Deposition of Chiefs Ordinance No. 14 of 1930 & 20 of 1945 16/1950 and amended by 47 of 1951 the power of appointing approving or deposing any Chief is vested in the Government and or Lieutenant Governors representing such Government.

18.—The 1st Defendants therefore aver that a Publication that a parley took place with the Government over such an issue even though a case were in Court over same could not bear the innuendo given to it by the Plaintiff in so far as such Power is given to the Government.

19.—The 1st Defendants say that the Words " Action Group " 30  
" Delegation " and " Action Groupers " referred to in the said Publication do not refer to any individual but to a Group of People representing themselves as Action Groupers and that the action is therefore speculative and misconceived.

Dated at Lagos this                      day of July, 1952.

(Sgd.) JOHN TAYLOR,  
*1st Defendants' Solicitor.*

No. 8.

Defence of 2nd Defendant, Suit 273/52.

In the Supreme Court of Nigeria.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

Suit No. 273/1952.

No. 8.  
Defence of 2nd Defendant, Suit 273/52, 21st July, 1952.

Between

THE HON. OBAFEMI AWOLOWO ... .. Plaintiff

and

1. ZIK ENTERPRISES LIMITED

10 2. MBONU OJIKE ... .. Defendants.

Statement of Defence of 2nd Defendant.

1.—The 2nd Defendant admits paragraphs 1, 2, 3, 6, 7, 8 and 24 of the Plaintiff's Statement of Claim.

2.—The 2nd Defendant denies each and every allegation of fact contained in paragraphs 4, 9, 13, 19, 20, 21, 22, 25, 26, 27 and 28 of the Plaintiff's Statement of Claim and puts the said Plaintiff to their very strict proof.

3.—The 2nd Defendant says that he is in no position to deny or admit the contents of paragraphs 11, 14, 15, 17 and 18 of the Plaintiff's Statement of Claim and puts the said Plaintiff to their very strict proof.  
20

4.—That with regard to paragraph 5 of the Plaintiff's Statement of Claim the said Defendant admits being a Columnist and Contributor to The West African Pilot but denies the other allegation.

*(Paragraphs 5, 6, 7, 8, 9 and 10 are the same as paragraphs 5, 6, 7, 8, 9 and 10 of the Defence of the 1st Defendants in Suit No. 273/1952 with the substitution of 2nd Defendant for 1st Defendant.)*

11.—That the said Defendant is a Member of the National Council of Nigeria and the Cameroons a party representing the opposition and as such is interested in all matters concerning the welfare and government of the Country.  
30

*(Paragraphs 12, 13, 14, 15, 16, 17, 18 and 19 are the same as paragraphs 12, 13, 14, 15, 16, 17, 18 and 19 of the Defence of the 1st Defendants in Suit 273/1952 with the substitution of 2nd Defendant for 1st Defendant.)*

Dated at Lagos this day of July, 1952.

(Sgd.) JOHN TAYLOR,  
2nd Defendant's Solicitor.

In the  
Supreme  
Court of  
Nigeria.

No. 9.

Consolidation Order.

No. 9.  
Consolidation  
Order,  
2nd  
February,  
1953.

IN THE SUPREME COURT OF NIGERIA.

IN THE LAGOS JUDICIAL DIVISION.

(L.S.)

Suit No. 273/1952.

Between

THE HON. OBAFEMI AWOLOWO ... .. *Plaintiff*

and

1. ZIK ENTERPRISES LTD.

10

2. MBONU OJIKE ... .. *Defendants.*

UPON READING the Affidavit of Frederick Rotimi Alade Williams, Yoruba, British Subject, Barrister and Solicitor of the Supreme Court of Nigeria and of 41, Idumagh Avenue, Lagos, Nigeria, Plaintiff's Counsel in the above matter and in Suit No. 270/1952, sworn to and filed on the 30th day of January, 1953, and after hearing the said Counsel for and on behalf of the Plaintiff and Counsel for the Defendants in both cases in reply on the application :

IT IS ORDERED that Suit No. 273/1952, The Hon. Obafemi Awolowo Vs. Zik Enterprises Ltd. & Anor. be and is hereby consolidated with 20 Suit No. 270/1952, The Hon. Obafemi Awolowo Vs. Zik Enterprises Ltd. & Anor. for the purpose of hearing AND that the cases be listed for hearing on the 11th of February, 1953.

Dated at Lagos this 2nd day of February, 1953.

(Sgd.) O. JIBOWU,  
*Puisne Judge.*



No. 10.

Preliminary Submissions and Ruling.

In the  
Supreme  
Court of  
Nigeria.

IN THE SUPREME COURT OF NIGERIA.  
IN THE LAGOS JUDICIAL DIVISION.

No. 10.  
Preliminary  
Submissions  
and  
Ruling,  
11th  
February,  
1953.

Wednesday the 11th day of February, 1953.

Before The Honourable Mr. Justice OLUMUYIWA JIBOWU,  
Puisne Judge.

Suit No. 270/1952.  
Suit No. 273/1952.

10

Between

THE HON. OBAFEMI AWOLOWO ... .. *Plaintiff*

and

1. ZIK ENTERPRISES LTD.

2. A. Y. TINUBU ... .. *Defendants.*

THE HON. OBAFEMI AWOLOWO ... .. *Plaintiff*

and

1. ZIK ENTERPRISES LTD.

2. MBONU OJIKE ... .. *Defendants.*

F. R. A. WILLIAMS (ADEMOLA with him) for Plaintiff.

20 J. I. C. TAYLOR (IBEKWE and MISS RHODES with him) for Defendants.

J. I. C. Taylor submits that there is no cause of action shown in  
Suit No. 270/52.

He submits that in deciding whether a publication is libellous, the  
whole of the publication must be taken into consideration; that it is  
wrong to take out passages from a publication and say they are libellous  
when if taken together with the surrounding circumstances He refers to  
the pleadings in both cases.

In Suit W270/52 the Plaintiff adopted his particulars of Claim as his  
Statement of Claim. He draws attention to paragraphs 19-22.

30 He says that the whole of the alleged libellous publication has not  
been quoted.

The claim is in reference to publications of the 10th and 11th June,  
1952.

He says in comparison that paragraph 24 of the Statement of Claim  
in 273/52 set out the whole of the publications.

He submits that failing to set out the whole publication in 270 is  
fatal to his case and he therefore asks that the suit be struck out.

In the Supreme Court of Nigeria.

No. 10. Preliminary Submission and Ruling, 11th February, 1953—*continued.*

He refers to Bullen & Leake on Pleadings, 10th Edition, page 365 *et seq.* Libel must be set out verbatim—  
Fraser on Libel & Slander, 6th Edition, page 381. Words used are material facts to be stated.

*Cooke v. Cox*, Vol. I Nelson & Wesby's Reports, page 495, at 501.  
Spenser Bower on Actionable Declaration, 2nd Edition, page 178.  
*Wright v. Clement*, Vol. III Barnewell & Alderson, page 503 at page 506—Words of the libel to be set out.

He says that the whole publication is set out in paragraph 24 of the Statement of Claim in Suit 273/52. 10

He submits with reference to Suit 270/52 that since the Head Note of the Article had been published, the whole publication should have been set out.

He submits that the Writ of Summons is Defective. Williams agrees that the exact word of the libel must be set out verbatim. He says the libellous words have been set out by him.

He says if Mr. Taylor's submission is correct, then a man complaining of a libel in a book must set out the whole book.

Taylor replies that if the Court has any doubt he is prepared to produce authority. 20

RULING. The Court is unable to agree with Mr. Taylor's submission. The Law requires the Plaintiff in a libel action to set out verbatim the words he complained about in a publication. That the Plaintiff in this case has done and, in my opinion, the requirement of the law has been satisfied.

The Court therefore overrules the submission and orders the case to proceed.

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**PLAINTIFF'S EVIDENCE.**

No. 11.

**Hugo Frank Marshall.**

30

Plaintiff's Evidence.

No. 11. Hugo Frank Marshall, 11th February, 1953. Examination.

Xd. by WILLIAMS. 1st P.W. HUGO FRANK MARSHALL, male, sworn on the Bible, states in English Language as follows:—I am the Lieutenant Governor of the Western Region. I remember the Conference held last year June between His Excellency the Governor and other officials with the Action Group Ministers.

By Action Group Ministers I mean the four Members of the Council of Ministers who came from the Western Region and the 9 unofficial members of the Executive Council The Action Group and the Acting Chief Secretary were present at the Conference.

Neither Mr. Himsworth nor Harold Cooper were present. I was present at the Conference. Certain constitutional issues and points arising 40

out of the implementation of the issues were discussed.

Ikenne Murder Trial and Chieftaincy Disputes at Ikenne were not discussed or mentioned.

The Dispute about Idangaran palace and the dispute about the Obaship of Lagos were not discussed.

The Governor was not requested to intervene in any of the matters.

The question of Central Ministers sent to England by the Council of Ministers was not discussed.

10 Xxd. by TAYLOR. No Minutes of the meeting were taken. Notes were taken by a Stenographer. I don't know his name.

There was no release to the P.R.O. during the meeting. I don't know of an official release to the P.R.O. after the meeting. I would not necessarily have hands in a release, the Governor would authorize the release.

NOTE. Taylor now objects to this witness's evidence on the ground that the notes taken by the Stenographer are the best evidence. He says that the witness's evidence is inadmissible so far as there is no proof that the Stenographer's notes are lost.

20 Williams replies that the fact that notes were taken at a meeting does not preclude oral evidence to be given by a person who attended the meeting of what transpired at the meeting.

He submits that if the Stenographer were called, he or she could give evidence of what transpired at the meeting and support his or her evidence with the notes taken.

He says further that a newspaper man who takes notes would be in the same position as the official recorder. Mr. Marshall did not give evidence of what is in the Stenographer's note but of what happened to his own knowledge at the meeting.

NOTE. Ruling is reserved till Court is giving Judgment.

30

No. 12.

Aubley McKisack.

Xd. by WILLIAMS. 2nd P.W. AUBLEY MCKISACK, male, Irish, sworn on the Bible, states in English Language, as follows:—I am the Attorney General of Nigeria—I cannot recall the date but I was certainly present at Conferences at the Government House in June, 1952. I know the Plaintiff. He was present at the Conferences I spoke about. At one conference I was present at a Conference at which the Plaintiff and all the Ministers of the West were present. HE, the Governor, the Lieutenant Governor Western Region, the Acting Chief Secretary were also present.

40 The Ikenne Murder Trial was not discussed nor was any murder trial discussed.

The Iga Idunganran Civil Case or the Obaship of Lagos was not discussed at the conference. The Governor was not asked to intervene in any such matter.

In the Supreme Court of Nigeria.

Plaintiff's Evidence.

No. 11.

Hugo

Frank

Marshall.

11th

February,

1953—

continued.

Cross-examination.

Objection.

No. 12.

Aubley

McKisack.

11th

February,

1953.

Examina-

tion.

In the Supreme Court of Nigeria.

Plaintiff's Evidence.

No. 12.  
Aubley McKisack.  
11th February, 1953—  
*continued.*  
Cross-examination.  
Ex. "A."

Xxd. by TAYLOR. I cannot remember any other conference at which the Plaintiff was present. As far as I can remember I think that was the only conference at which the Plaintiff and I were present together.

Mr. Marshall was present at the meeting—There was a lady Stenographer. I don't know her name. To my knowledge she took notes of the proceedings of the conference.

I saw a written comment on the Conference.

It is something like what is on the paper now shown to me and marked Exhibit "A."

What happened at the Conference is of some—interest to the Public. 10  
The conference lasted a considerable number of hours. The conference was held to discuss matters relating to government. Exhibit "A" is a proper release in respect of a confidential meeting. The press and the public are nose parkers to want to know exactly what transpired at the meeting. The release should not disclose what transpired at the confidential meeting—The release is concise and not vague. Exhibit "A" was to point, it gave an idea of what was discussed. The release covered a lot of matters dealing with constitutional issues and administrative procedure discussed. Constitutional issues in itself covers a vast number of things. Procedure of administration was discussed. I still don't think the release 20 was vague.

Re-examination.

Further Cross-examination. Further Re-examination.

Rxd. by WILLIAMS. Discussion of cases pending with appeal Court does not come under constitutional issues or administrative procedure.

Xxd. by TAYLOR by Order of Court. The appointment and deposition of Chiefs in general may come under the two headings.

Rxd. by WILLIAMS. The appointment and deposition of Chiefs in general were not discussed at the conference.

No. 13.  
Olutayo Ope Odu.  
11th February, 1953.  
Examination.  
Exs. "B," "B1" & "B2."

No. 13.

Olutayo Ope Odu.

Xd. by WILLIAMS. 3rd P.W. OLUTAYO OPE ODU, male, Yoruba, 30 sworn on the Bible, states in English Language as follows:—I am a clerk attached to the Publication Branch in the Chief Secretary's office.

I tender the statutory copies of the West African Pilot of the 10th, 11th and 14th June, 1953, marked Exhibits "B," "B1" and "B2." They were signed on behalf of Zik's Press Limited.

Cross-examination.

Xxd. by TAYLOR. There is a footnote at the bottom of Exhibit "B2" which shows Zik Enterprises Ltd as the publisher of the West African Pilot. There was an affidavit filed at the Secretariat showing the change in the name of the publishers of the West African Pilot. I cannot remember the date.

No Rxn.



No. 14.

Ayodele Lijadu.

In the  
Supreme  
Court of  
Nigeria.

Xd. by WILLIAMS. 4th P.W. AYODELE LIJADU, male, Yoruba, sworn on the Bible, states in English Language as follows:—I am the Press officer at the Public Relation Office's Department. I am in charge of issuing releases to the Press.

Plaintiff's  
Evidence.

A release was issued to the Press by my Department of a conference held on the 10th June, 1952. I tender it, marked Exhibit "C"; It is release No. 1416. The release was sent to all the papers in Nigeria, including the West African Pilot. It was signed for by the West African Pilot. I tender my Despatch Book to prove this, marked Exhibit "D." Exhibit "A" is one of the releases.

No. 14.  
Ayodele  
Lijadu.  
11th  
February,  
1953.  
Examina-  
tion.

Xxd. by TAYLOR. I don't know anything as to what transpired at the conference.

Ex. "C."  
Ex. "D."

The Nigerian Secretariat gave us the release for transmission to the papers. I know nothing more of the conference than what is shown on the release. No one in my Department has verified what had actually happened. I don't know there were notes taken of the proceedings of the Conference. The Release shows what was discussed at the conference. The release gave an idea of what took place at the conference. The release is not vague as it shows what happened as far as the release goes. The release gave a general indication of what was discussed; it is concise, means short and to the point. It is not to the point on any particular matter.

Cross-exam-  
ination.

No Rxn.

No. 15.

Olutayo Ope Odu (recalled)

No. 15.  
Olutayo  
Ope Odu  
(recalled).

Xd. by WILLIAMS. 3rd P.W. OLUTAYO OPE ODU, recalled by leave of Court and warned that he is still on his oath, states as follows:— I now tender the West African Pilot of 13th June, 1952, marked Exhibit "B3." It was signed on behalf of the Zik's Press Limited.

11th  
February,  
1953.  
Further  
Examina-  
tion.

Xxd. by TAYLOR. The Publisher and printer is Zik Enterprises Limited.

Ex. "B3."  
Further  
Cross-exam-  
ination.

No Rxn.

No. 16.

James Okoli

No. 16.  
James  
Okoli.  
11th

Xd. by WILLIAMS. 5th P.W. JAMES OKOLI, male, Ibo, sworn on the Bible, states in English Language as follows:—I am a clerk in the Registrar of Companies Office. I tender certificates of Incorporation of

February,  
1953.  
Examina-  
tion.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 16.  
James  
Okoli.  
11th  
February,  
1953.  
Examina-  
tion—  
*continued.*  
Exs. " E " & " E1. "  
Ex. " F. "  
Ex. " G. "  
Ex. " H. "  
Cross-exam-  
ination.

No. 17.  
Obafemi  
Awolowo  
11th  
February,  
1953.  
Examina-  
tion.

the Ziks' Press Ltd and Ziks Enterprises Ltd., marked Exhibits " E " & " E1. " I tender the Memorandum of Association of Zik's Press Limited, marked Exhibit " F. " I tender also the Resolution passed by Zik's Press Limited on 21st December, 1951, amending paragraph 1 of Exhibit " F. " marked Exhibit " G. " I have not got any record showing the name of Ziks Enterprises Limited.

Xxd. by TAYLOR. I have heard of the Associated News papers of Nigeria Limited. It is now registered in our office. I am not sure of when it was registered. I can produce from our office document showing the date of registration. The Certificate of Incorporation of the Associated News papers of Nigeria Limited now shown to me and Marked Exhibit " H " was issued from our office. The document I said I could produce from the office is the same as Exhibit " H. " I cannot produce any affidavit filed by the Associated News papers of Nigeria Limited unless I go through our files. I don't know what papers they publish. 10

No Rxn.

No. 17.

**Obafemi Awolowo.**

Xd. by WILLIAMS. 6th P.W. OBAFEMI AWOLOWO, male, Yoruba, sworn on Bible, states in English Language as follows:—I am a Legal Practitioner of this Court. I am a member of the Western House of Assembly and also of the House of Representatives. I am the Minister of Local Government in the Western Region. I am a member of the Executive Council of the Western Region. The Action Group controls the Western House of Assembly. I am the Leader of the Action Group. The Action Group has 9 Ministers in the Western Region, including myself. The Ministers are S. O. Awokoya, C. D. Akran, J. F. Odunjo, J. M. A. Akinloye, E. A. Babalola, S. O. Eghodaro. There are two Ministers without Portfolio, namely, Oba Samuel Akinsanya, the Odemo of Ishara, and Olagbegi II, the Olowo of Owo. The Action Group has 4 Central Ministers in the Council of Ministers, namely, Chief Bode Thomas, Chief Arthur Prest, S. L. Akintolla, Ministers with Portfolio, and Oba Aderemi, the Oni of Ife a Minister without portfolio. 20

I know Mbonu Ojike very well. He is a politician, a journalist and a Business Director. He belongs to the National Council of Nigeria and of the Cameroons. He is a regular contributor to the West African Pilot. He writes always under the Week End Catechism published usually on Saturdays. In 1949 there was a Civil case between the House of Docemo and Oba Adeniji Adele II. The action was decided in favour of Oba Adele. The House of Docemo lodged an Appeal to the W.A.C.A. At the time I brought this action the Appeal was pending. 40

In April, 1952, one Sadiku Salami was convicted for murder and sentenced to death at Ibadan. An Appeal was lodged to the W.A.C.A. At the time I brought this action the Appeal was pending.

Oba Adele is a very staunch supporter of the Action Group. Sadiku Salami is a first cousin to my wife. He is a member of the Action Group, Ikenne branch. The murder in respect of which he was convicted took place at Ikenne.

10 On the 10th June, 1952, I had a conference with the Governor. On the official side, H.E. the Governor, the Lieutenant Governor Western Region, Mr. Marshall, the Acting Chief Secretary to the Government and the Attorney General were present. On the unofficial side, the Ministers present were the Central Ministers and the Ministers of the Western Region whose names I mentioned before.

Constitutional Issues and Administrative Procedure were discussed. The conviction of Sadiku Salami was not discussed at the Conference. No Chieftaincy Dispute at Ikenne was discussed at the Conference.

We did not discuss the Iga Idunganran case then pending before W.A.C.A. The Obaship of Lagos was not discussed. The Governor was not requested to intervene in any of the cases.

20 I read a publication in the West African Pilot on the 10th June, 1952. Exhibit " B " is the Pilot of the 10th June, 1952. The publication complained about is headed " Action Group Threatens Crisis to win over " the Government."

The portion complained about begins with the words " Political observers " and ends with " the Governor himself."

By Iga Idunganran Civil Case referred to I understand the appeal then pending in the W.A.C.A. in the case between the House of Docemo and Oba Adele.

30 The Action Group Ministers referred to are the Central Ministers and the Regional Ministers whose names I have already given.

There was no threat of resignation by the Action Group Ministers, to resign *en bloc* as reported.

I read also the publication of the 11th June, 1952, in the West African Pilot, Exhibit " B1," the headline is " Action Group Delegation to Government House fails." This conveys to me the Central and Regional Ministers whose names I have mentioned.

There is a sub-head line " Government turns back Action Group with " No to all demands."

It is not a correct report.

40 *N.B.* The publication is read out.

The whole report is false from beginning to end. " The Ikenne trial " I understand to be a reference to Sadiku Salami murder case then pending in the Appeal Court.

I read also the West African Pilot of the 13th June, 1952, Exhibit " B3."

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

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I read the article at page 2 of Exhibit " B3 " written by Mbonu Ojike, headed " Action Group."

*Note.* The publication is read out.

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My party did not ask the Governor to intervene. We did not request the Governor to intervene in the Iga Idunganran Case.

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By " thanks to West African Pilot for unmasking Groupers woes." I understand him to refer to the reports in the Pilot of the 10th and 11th June, 1952.

Examina-  
tion—  
*continued.*  
Objection.

" Shame to Daily Times for calling Groupers' iniquitous delegation to Government House a ' top Secret ' refers to article in the Daily Times of 10 the 10th June, 1952, dealing with the delegation.

*Note.* Taylor objects to the Times being tendered as it was not pleaded. Williams refers to paragraphs 24 and 25 of the Statement of Claim in Suit No. 270 and says that he is attempting to connect Ojike's publication with the publications of the 10th and 11th in the Pilot as also in the Times and that it is a matter of evidence which needed not to be pleaded.

Taylor replies that the object of pleadings is to apprise the other side of the facts to be proved. He says reference should have been made to the Times of the 10th June, 1952, in paragraph 25 of the Statement of Claim. 20

Examina-  
tion—  
*continued.*

The Court upholds the objection as it is of the opinion that the Times of the 10th June, 1952, should have been mentioned in paragraph 25 of the Statement of Claim in 273. Williams is asked if he would like to amend paragraph 25 of his Statement of Claim. He says No. The Times of the 10th June, 1952, is therefore rejected in evidence. *N.B.* The paper is so marked. " By Groupers Iniquitous Delegation to Government House," I understand Ojike to mean the delegation of Ministers which went to Government House on the 10th June, 1952. The Public Relation Office made a Press Release about the Conference. Exhibit " A " contains the Press Release. The Press Release Exhibit " A " was not published by the 30 West African Pilot.

The West African Pilot did not correct their publications of the 10th and 11th June, 1952, with reference to the Conference. The P.R.O. Release was made to inform the public of the subjects discussed at the Conference.

On the 14th June, 1952, I read the Judgment of Ibadan Supreme Court in *Regina Vs. Sadiku Salami*. Exhibit " B2 " is the Pilot of that date. This was the first time that the full text of the Judgment was published but on two previous occasions the gist of the case had been published. Williams wishes to put in West African Pilot containing previous 40 reference to the case of Sadiku Salami.

Objection.

Taylor objects to the papers being tendered in evidence, he points out paragraph 28 (b) of the Statement of Claim in which publication in

Exhibit " B2 " was referred to ; he contends that reference should have been made also to the two papers now sought to be put in.

Adjourned to 20th instant at 9.30 a.m.

(Sgd.) O. JIBOWU,

*Puisne Judge.*

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tion—  
*continued.*

Williams cites Gatley on Libel and Slander, 3rd Edition, page 510.  
Fraser on Libel and Slander, 7th Edition, page 249. He submits that  
10 matters of aggravation need not be pleaded and, if pleaded, it is *ex abundante*  
*cautela.*

He further states that no privilege is pleaded, the papers are evidence to prove malice—

Taylor replies—he refers to Fraser on Libel and Slander 6th Edition page 284. He says the publication was before the libel was published. He submits that any publication before the libel was published cannot be admitted in aggravation of damages.

Williams replies and refers to page 626 Gatley on Libel and Slander.

RULING—On the authorities, I am of opinion that the two issues of the West African Pilot sought to be put in are admissible in evidence, and  
20 that they need not be pleaded. Ruling.

Xn. by WILLIAMS *continues.* OBAFEMI AWOLOWO, warned that he is still on his Oath, continues :—On the 8th May, 1952, the West African Pilot published something about Sadiku Salami. I tender the issue, marked Exhibit " J." Examina-  
tion—  
*continued.*  
Ex. " J."

(*Note.*—He reads the 3rd and last paragraphs of the publication.)  
I live at Oke Bola, Ibadan.

On the 9th May, 1952, there is another publication referring to Sadiku Salami in which it is said that the murderer alleged he was arrested in the  
30 house of Awolowo. I tender the publication, marked Exhibit " J1." Ex. " J1."

(*Note.*—He reads the subhead note of the publication Exhibit " J1." )  
I am the Awolowo referred to in the publication.

I tender also West African Pilot of the 18th June, 1952, referring to the Ikenne murder, marked Exhibit " J2." Ex. " J2."

(*Note.*—He reads out the head note.) I am the Action Group Leader referred to.

I was 2nd Defence witness in the Sadiku Salami's murder case at Ibadan and I am the D.W.2 referred to in the report of the case Exhibit " B2."

In Exhibit " B1," I understood the phrase " Ikenne Trial " to refer  
40 to the murder trial of Sadiku Salami.

In Exhibit " B3," I understood the phrase " Atrocious Ikenne Dispute " was referring to the trial of Sadiku Salami for murder. By " Iga Controversy

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Case." I understood the phrase to refer to the civil case between the House of Docemo and Oba Adele of Lagos.

In Exhibit " B " I understood " Iga Idunganran Civil Case " to mean the civil case brought by the House of Docemo against Oba Adele.

There was a Chieftaincy Dispute in Ikenne in 1950. The Resident, Ijebu Province, conducted an Inquiry. As a result of the inquiry, he approved the appointment of Gilbert Awonnubi and recognised him as such under the Native Authority Ordinance.

The inquiry was completed round about 1950. I claim £25,000 against the Defendants in each suit. 10

Xxd. by TAYLOR :—I am not the owner of a newspaper—I am a Share holder in a news paper, the Nigerian Tribune. I am the biggest Share holder in that concern. I initiated the paper. The paper supports the Action Group. It is one of the voices of the Action Group. It is allied to the Daily Service.

The West African Pilot is obviously an N.C.N.C. paper. The Tribune to an outsider is obviously an Action Group paper. I direct the policy of the Tribune. I don't see the Tribune before it goes to press. I see it daily after it has been published. The paper goes to press when it is in the 20 process of being published.

Before I became a Minister I used to see articles sent to me direct for publication. Occasionally, I express my opinion when I see an editorial I don't like. I do that when I have the time.

I know Dr. Ikejiani very well ; I don't know if he is a member of the N.C.N.C. I have seen him once or twice accompanying N.C.N.C. members to meetings. I saw him once at Ibadan and once at Ikenne.

The Ikenne meeting took place about August, 1951. From his political views, I believe he belongs to the N.C.N.C. group.

I see the Tribune daily—I don't read it always. 30

I read the Tribune of the 18th October, 1951, now shown to me.

Objection.

(*Note.*—Williams objects to The Tribune being put in evidence on the ground that it is irrelevant to this case. Dr. Ikejiani is no party to this action the Plaintiff is not the Editor of the Tribune.)

Taylor replies—he says that on the question of damages, the conduct of the Plaintiff is relevant. He cites page 159 of Spencer Bower on Actionable Defamation, 2nd Edition.

Williams replies that Taylor has not shown the Court that any libellous matter in the Tribune was written by the Plaintiff. He says he has no doubt that libellous articles published by Awolowo about Ojike and Tinubu 40 be admissible in mitigation of damages.

He says that an article not written by him is inadmissible in this case. He says that he has not by his evidence put the character of the Plaintiff in issue.

Ruling.

RULING. The publication of any libellous matter in the Tribune which has not been shown to have been published by the Plaintiff about

Ikejiani who is not a party to this suit appears, in my view, to be irrelevant to the issue in this case. The Tribune of the 18th October, 1951, is therefore rejected in evidence.

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Xn (*continued*):—In 1951 October I cannot swear who was the Editor of the Tribune as the editorial chair changed so very often. There were two associate editors in 1951, viz. : Lawal and Omole. The present Editor is one Mac-pepple. I was one of the Directors of the Paper in 1951. I was never Managing Director or Chairman of Directors—there were five Directors in 1951, I believe.

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- 10 I was not responsible for the defence of the Tribune in the action brought against it by Dr. Ikejiani. I did not direct the Defence. I did not instruct Counsel for the Tribune. The Inspector General of Medical Services saw me and I promised him I would contact Ikejiani about the matter. I don't remember telling him that I would endeavour to withdraw the publication. I told the Dr. that I would try to effect a settlement out of Court. I did not see Dr. Ikejiani personally up till today, but I contacted him through one or two of his friends for settlement. It was not settled because he asked for an exorbitant compensation. I thought that the matter should be settled out of Court, but if it could not be settled,  
20 it should be fought out in Court.

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ination---  
*continued.*

Mr. Bode Thomas has also sued, in respect of the publications in this case claiming £50,000.

I know about the Oyekan-Adele Case. Adele is a strong supporter of the Action Group. Oyekan is a member of the Democratic Party. There was a dispute who should be Oba of Lagos before the action in Court. I got my information from News papers.

The Government had to intervene in the question of " who should be " the Oba of Lagos."

- 30 I would not complain if I was said to have interviewed the Government about the dispute.

The action in Court was about possession of Iga Idunganran. The Iga is the official residence of the Oba of Lagos.

I read " Iga controversy " along with the " Iga Civil Case " on which the 2nd Defendant in 273 commented.

The question who should be the Oba of Lagos had been settled finally by the Government, so the publication could not relate to the Obaship. The supporters of Oyekan might see the Governor on the Obaship question, but it is superfluous and unnecessary for supporters of Adele to do so.

- 40 There was no position to consolidate as the Government had taken its decision which was final.

Recently on a writ of certiorari the decision of the Governor about the Timi of Ede was set aside by Ibadan Supreme Court.

I would be surprised if an educated layman who reads news papers took Oyekan Adele Case as a chieftaincy case. A lawyer would not consider it as a Chieftaincy Dispute.

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Ex. "K."

Sir Adeyemo Alakija was a highly placed member of the Bar. He was a supporter of the Action Group, but not a member.

(Note. paragraph 14 of the Defence in Suit No. 276/49 is read out.)

I am not surprised that Sir Adeyemo filed that Defence ; it is a lawyer's technique to get the case struck out in p. 190.

The Defence is tendered in evidence, and marked Exhibit "K." (Williams does not object.)

I don't agree with Sir Adeyemo that the case was an attempt to revive the Chieftaincy Dispute. Sir Adeyemo was Counsel for Defence with Mr. Williams and others.

Any intelligent layman should know the case is about the possession of the Iga.

Illiteracy in Nigeria is about 90% of the whole population. Majority of the population is illiterate. I see Exhibit "B." (The top head line is read out.). Action Group consists of several members running into thousands. (The subhead is read). Action Group, referred to there consists of all members.

"The 6 hours Secret Meeting of the Action Group at Garber Square" There Action Group did not refer to all the members of the group. There was a meeting on the morning of the 10th June. There was no meeting at Garber Square on the 9th June.

"Action Group" in this passage denotes People who were present at the imaginary meeting especially myself—Further, there is reference to the party leader and I am that leader. The report is false, hence I came to Court for libel.

The passage suggests that I tried to introduce some personal matters—The passage in itself is not defamatory, in my opinion, but enables readers to connect me with the libellous matter of which I complain. "Ilorin "boundary issue" is the dispute between the North and the West as regards the boundary between them. That in itself is not libellous I complain about reference to the Idunganran case.

We held a meeting with the Governor on the 10th June, 1952. There was a meeting at Garber Square before the 9th June but none on the 9th June.

We met on the morning of the 10th June to discuss what we were going to do at the Government House. It took place in the House of Representatives, in the office of the Minister of Transport. It was a private meeting. We issued no Press Release about it or as to the constitution of the members. The ordinary man in the street would not know who were present at the meeting. It had been decided before then who should form the Delegation. I don't remember if the constitution of the delegates was published in the Tribune. There was, I believe, a publication in The Service of the 10th June about the constitution of the delegates to the Governor on that day. I tender the Daily Service of the 10th June, 1952, marked Exhibit "L." This refers to 13 Ministers of the Action

Ex. "L."

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Group. The Ministers are well known. The names of the Ministers are not mentioned expressly. I complained also of the rest of the publication. I don't admit that it has nothing to do with "Idunganran" matter.

There will be nothing wrong in a "walk out" in connection with a Constitutional issue. I am not complaining of isolated passages but of the whole passage taken as a whole. From "Mean while to" "the Governor himself" is not libellous taken by itself

The "Iga Idunganran Case" is not personal to me. I was not a party to it nor a Counsel in it. Ilorin Boundary dispute is not a matter personal to me. There is a difference between "Motive" and "Action." Action follows Motive but not necessarily *vice versa*. The publication of the 10th June did not say that the Motives had been put into action.

The publication of the 11th, delegation of the Action Group consisted of the 13 Ministers. "Action Group turned back" means the Delegation of the Action Group. "Action Group" does not mean all the members of the Group. I complain about the passage suggesting that I lamented over N.C.N.C. men being sent to England. Lamentation implies deep grief and sorrow. That's an aspersion on my character.

There was a dispute at Ikenne about chieftaincy matter in 1950. I disagreed with Mr. Justice Abbott's Judgment on every issue.

(Note. Taylor reads the opening paragraphs of the Judgment in Sadiku Salami's case in Exhibit "B2." Yes; there were rival parties at Ikenne early in January, 1952. The murder flowed from the rivalry dispute.)

"Ikenne Trial" refers to no other trial than Sadiku Salami's. In 1951 there was a case in the Magistrates' Court against the Oluwo of Ikenne for return of the paraphernalia of office of the Alakenne. It was dismissed—The trial took place at Shagamu.

I was charged with "playing up to the gallery to save my face." I find a lot wrong with the charge. There is nothing wrong about the reference to Lead Zinc Bill.

I am not conversant with the history of Oba Adele's case. I know something about the history of Lagos. I am conversant with the history of Ikenne a little. I know of only one Oba being removed from the Iga by Government. I have heard of Oba Sanusi Olusi. He left Iga for Eshugbayi. The Government who installs an Oba has power to remove him.

I supported Gilbert Awomuti, the present Alakenne. The Action Group supported him.

I see Exhibit "J" and the heading "Salami will be hanged for murder." This is the result of Mr. Justice Abbott's judgment—This reports the Judgment correctly. It is not correct that he was hiding in my house.

I am the most important Action Group member at Oke Bola. Mr. Justice Abbott did not say that he hid in my house. I see Exhibit "J2," I complain of the whole passage under the heading "Votes of no confidence" "awaits Action Group Leader and Ruler." It is defamatory of me and

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of the Alakenne. I am a public man. I am therefore open to criticism in the press. I agree that Mr. Justice Abbott said some damning things about me but they were unfounded. Exhibit "J2" was published before the libels complained of.

The paper should not have published comments on the matter which was then pending in the Appeal Court.

Anybody reading Mr. Justice Abbott's Judgment might think adversely of me. I use the word "might" not "would." Any person who knows me would not form any adverse opinion about me. Those who don't know me personally or by reputation may form adverse opinion about me. 10

I see Exhibit "J1." I complain about the publication here as it is overpublication of the result of the case. The picture on the paper is mine. The alleged murderer was arrested in my house. Mr. Justice Abbott said that I failed to hand over the murderer to the Police. He was wrong in this. It was overpublication as it was published on the 8th, 9th and 14th June, 1952. Mr. Justice Abbott did say that I was seen with a sword stick during election days. It is not true that I denied that the deceased died later as I was not present at the riot. The Judge disbelieved the Alibi put up by the accused. The publication is correct 20 excepting that it is "overpublished."

The publication in Exhibit "J1" is fuller than that in Exhibit "J." Exhibit "J2" published the full texts. It is uncalled for. It is unnecessary for a paper to publish the case thrice. I agree I am news.

Adjourned for a week—to be continued at 9.30 a.m.

(Sgd.) O. JIBOWU,  
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Objection  
to Con-  
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Taylor says that the Court has no right to consolidate these two cases 30 and 2. He says the Court stated at the last hearing that he knew the result of Sadiku Salami's case in the Appeal Court.

Williams says that the application for consolidation was by consent under Order 2 rule 7 and that there was no reference to Libel Amendment Act. Plaintiff asked for consolidation and Taylor, Counsel for Defendants, agreed to consolidation. There was no reference to the Libel Amendment Act. If the Act does not apply to Nigeria, then the Court must follow our own rules. He says that even in England the Court has the power to consolidate in any case.

He refers to Gatley on Libel and Slander, 3rd Edition, page 491. 40

He submits that our Rule of Court must be shown to have been contravened by the consolidation in this case for Mr. Taylor's objection to be upheld. He refers to page 4931, Gatley last paragraph.

[sic]

With regard to 2nd point, he says what happened in the Court of Appeal is utterly irrelevant. All alleged and to be proved are that Appeal was pending at the time of the publication. This Court could have tried

this case before the Appeal was tried, because what happens in the Appeal Court is nothing irrelevant.

Taylor replies and says that the Authorities referred to by Williams relate to conditions obtaining in England after the 1888 Act and that it is a matter of whether or not the Act is an Act of general application.

He says that the English Rule is exactly the same as our Rules of Court. He refers to Order 49 Rule 8. He refers to *Colleridge v. Pike*, 52 L.T. 124, at page 296 Fraser on Libel and Slander.

He asks the Court to apply our Local Law.

- 10 (Note.—He says he will develop his argument later at the close of the case, but the Court asked him to put all his arguments now before the Court. He does so now after the Court had risen for some minutes to enable him to get his authorities from his office.)

He refers to Order 2 rule 7 of our Rules of Court, also to Order 49 rule 8 White Book. He says the provisions are identical excepting for the words “in the manner in use immediately before the 1st November, 1875.”

He says the Law of Libel as to consolidation in England before 1875 is the law to be applied in Nigeria.

- 20 He says provision for consolidating Libel Actions are different to provisions for consolidation in other cases. He refers to Vol. VI Law of Nigeria, Sec. 14 Supreme Court Ordinance, page 203.

He says the question is whether the Libel Amendment Act, 1888, is of general application.

Refers to 4, W.A.C.A., 76 at page 77.

R. V. Coker, 8 N.L.R., 7 at page 13.

If Lord Campbell's Libel Act of 1843 is a statute of general application, then the Libel Amendment Act, 1888 should be applicable also to Nigeria.

- 30 He refers to Halsbury Statute of England, Vol. 13, 2nd Edition page 1127. It applies to Northern Ireland but not to Scotland.

Page 1143 Ibidem from the Libel Amendment Act, 1888. It applies to Northern Ireland and not to Scotland. If the Law of Libel Amendment Act 1888 applies to Nigeria Sec. 5 then applies. Points—(1) applications must be by the Defendants and (2) for the same or substantially the same libel.

These two provisions have not been complied with. He submits that the Law of Libel Amendment Act, 1888 does not apply to Nigeria—

Refers to *Howard vs. Statesman Publishing Co.*, 98, L.J.K.B., page 450, at page 453.

- 40 This is in respect of matters arising out of one publication.

Suits 270 and 273/52 are two separate and distinct publications. The 1st Defendant is the same in both but the 2nd Defendant is not.

Refers to *Colleridge v. Pike*, 56, L.T. 12th, at pages 125 and 126.

He agrees that the facts are not the same as in this case.

Williams is called upon to reply—He says that he has no doubt whatever that the Law of Libel Amendment Act is applicable to Nigeria. He submits

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that the Order for consolidation already made is good whether the Act applies or not.

He says that Taylor is under the erroneous impression that it is only under that Act that this Court can order consolidation. He says that the Act simply extends the powers of the Court to consolidate actions for libel. It does not destroy or limit the common law powers of the Court or the powers vested in the Court by the Rules.

He refers to Article 48 in Fraser on Libel and Slander, 7th Edition, page 190. Two Rules laid down for consolidation, (1) Rules of Court and (2) Law of Libel Amendment Act 1888, Sec. 5. 10

He submits that the Court does not lose the power invested in the Court at Common Law and by Rules of Court. He agrees that the Rules of Court locally should be applied. He says our Rules are under the English Rules.

He refers to Order 49, rule 8, *Note* under Heading Application of Rule. The application was made in this case by the Plaintiff and acquiesced in by the Defendant.

Refers to *Bailey v. Marchioness Curzon of Kedleston* 1932, 2 K.B., 392, at page 400.

Court has discretion to order consolidation.

He says that in Suit 273/1952 the publications complained of in 20  
270/52 were pleaded in the Statement of Claim paragraphs 19-22.

He says there is an irresistible claim for consolidation.

He submits there is nothing in our Rules of Court to prevent him bringing action in respect of the subject matter of the two suits in one writ.

He refers to Order 2, rule 6.

Taylor replies—Says Williams has missed the point he was driving at. He says he is not concerned with who brings the application. He says what principle must apply in consolidating irrespective of who made the application?

He says Williams could not sue the 2nd Defendant in 270 in Suit 273/52. 30  
The publications were the same in the cases cited.

No case has been cited in respect of distinct publications.

He says that the question that the same evidence would be led in both does not affect the case.

He submits that *Colleridge v. Pike* does not support Williams's argument.

Judgment on the arguments is reserved till the 6th March, 1953.  
Case to be continued on the 9th and 10th March, 1953.

(Sgd.) O. JIBOWU,  
Judge.

6th March,  
1953.  
Ruling.

RULING made on the question of Consolidation Mr. Taylor says he 40  
was not convinced that the Judge was not competent to hear the cases hence he did not make a direct application for transfer of the cases to another Judge. He objects to the word "Insinuation." The Court does not agree that "Insinuation" is a wrong word in the circumstances.

XXn. by TAYLOR contd. OBAFEMI AWOLowo, reminded of his Oath, states as follows:—In many instances—the West African Pilot referred to members of the Action Group as Groupers. There were many members of the Action Group Membership runs into thousands. The second Defendant in 273/52 is an N.C.N.C. Member. I don't know the political leaning of the Defendant in 270/52. The West African Pilot is the voice of N.C.N.C.

N.C.N.C. and Action Group are opposed politically

10 N.C.N.Cers and Action Group members are opposed to each other in politics. I agree that Tribune, Service and the West African Pilot contained, at times, within the last three years, abuses against individuals. There are criticisms of each other almost every day in the papers. The criticisms were very strong and pungent. I am on friendly terms with Ojike. He stayed with me in my house whenever he visited Ibadan in 1950 and 1951. Since the end of 1951 he has not stayed in my house. I have had no dealing with Tinubu. I cannot even recognise him. I don't know him.

20 As a man I have nothing against Azikiwe, but he is my opponent politically. I am friendly with him as man to man. I detest the politics of Azikiwe and the policy of the N.C.N.C. and the West African Pilot. The African Press Limited publishes the Tribune. The address of the African Press Limited is at Ibadan. I don't remember the number of shares taken by the Shareholders in the African Press Limited. My wife holds shares in the Company but I don't remember how many. It may be she holds 20 shares. It may be I hold 72 shares. I hold about £2,000 shares in the Company but I don't remember how much a share is. My wife and I have £4,500 in shares in the Company, which should be 90 shares.

I am one of the Directors and one of the two Directors who signed the Bond under News papers Ordinance. My liability under the Bond is that I shall pay any debt incurred by the Press if the Press did not pay.

30 *N.B.* Taylor submits that he has now established sufficiently that the Plaintiff as one of the Directors who gave a bond in case of a libel, in accordance with Sec. 4 of the Newspapers Ordinance and that as Director and publisher of the paper, he is just as liable as if he wrote the article himself.

Williams replies—A ruling has been made on the ground that Ikejiani is not a party to this case and that there was no proof that the article was written by the witness. He agrees that the Plaintiff might be liable to Ikejiani for any libel published but says that the publication may not be admitted in this case. The publication is not against any of the parties.

40 He submits that the submission that Plaintiff is liable to Ikejiani is wrong, because the fact that a man is a Director or Shareholder of a Company does not make him liable for the Tort of the Company. Refers to *Solomon v. Solomon*. The Company is a Distinct personality from the shareholders.

The Bond makes Plaintiff liable in the case the Company fails to pay [*Sic*] damages or penalty imposed on them. That does not make him liable for any tort committed by the Company.

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Submission.

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Ruling.

Taylor replies that Ojike's name appears in the libel. He says that as Director of the Paper he wants to show that the Plaintiffs' papers published libel about Ojike. He submits he has laid a new foundation for his application and the fact that the Court has made a ruling once is immaterial.

RULING. The Court is still of opinion that the papers sought to be put in evidence are not material to the case in point. As Director and Bondsman, the Plaintiff is liable to pay damages or penalties and Costs awarded against the Company of which he is a Director, in case the Company fails to pay. He is not as Director liable to any one libelled in the paper. The submission is therefore overruled. The papers are therefore rejected. 10  
(Note. They are ordered to be marked as rejected by the Registrar). I read the Times generally, in the same way as I read the Tribune. I did not write to the Defendants before I took action.

I told the Court that the 1st Defendant did not publish the P.R.O. Release.

I see the last Editorial in Exhibit "B2." I did not see it before. The heading did not make me read it. I did not expect to find a Release under that heading. The subjects discussed more constitutional issues and Administrative procedure under the constitution.

I was in Court when the Attorney General gave evidence. I was also 20  
in Court when Mr. Marshall and Mr. Lijadu gave evidence. The publication of the P.R.O., in my opinion, is not vague. I admit that constitutional issues cover a large variety of constitutional matters. Administrative procedure covers a large number of subjects covering administrative procedure.

I don't know whether the Times was satisfied with the clarity of the release, by the P.R.O.

Some reporters spoke to me as soon as we left the Conference Room and I spoke to them. I don't know to which papers they belonged. They asked if the interview was satisfactory and I told them "I don't know." 30  
The meeting was on the 10th June, 1952. It was the same day I saw the reporters. I don't remember if the Daily Times Reporters spoke to me on the 11th June, 1952. I possibly was interviewed on the 11th June, 1952, by the Times Reporter. I said what was reported in the first column of the Times of the 12th July 1952, now shown to me and marked Exhibit "M." The Times wanted to know more.

Ex. "M."  
[sic]

I cannot tell you what were discussed because they were confidential and secret. If you stumble upon anything discussed and ask me about it, I would tell you, "No." I would tell you I was sworn not to disclose what was discussed. There was a stenographer at the Conference. 40

Re-examin-  
ation.

Rxd. by WILLIAMS. I see Exhibit "B." I connect Ikenne trial with the trial of Sadiku Salami because it was the case pending in Court at the time and also because a later publication of the 28th June, Exhibit "J," referred to it as Ikenne trial.

I would not interview the Governor about any case pending in Court. The Service of the 10th July, Exhibit "L," does not contain the names

of the Ministers as I said before. (*Note.* He seeks to put in evidence Service of the 9th June which contains the names of the Ministers who interviewed the Governor. Taylor objects on the ground that he is contradicting his previous evidence.

RULING. The Court does not agree the evidence is contradictory but explanatory of the previous evidence. Exhibit "I." refers to 13 Ministers but not by name, the paper sought to be put in shows the names of the Ministers. The question arises from the cross-examination. The objection is therefore overruled and the paper is admitted in evidence and marked  
10 Exhibit "N."

## No. 18.

## Sylvanus Akinbokun Samuel.

Xd. by WILLIAMS. 7th P.W. SYLVANUS AKINBOKUN SAMUEL, male, Yoruba, sworn on the Bible, states in English Language as follows:—Assistant Registrar, W.A.C.A. The Appeal of Sadiku Salami was lodged on the 6th May, 1952. The appeal was pending between June 1952.

The Appeal of *Adeyinka Oyekan & Others Versus Musendiku Adele* was entered on the 6th March, 1952. It was pending in the months of June and July, 1952.

20 No. Xxn.

## No. 19.

## Ernest Ikoli

Xd. by WILLIAMS. 8th P.W. ERNEST IKOLI, male, Ijaw, sworn on the Bible, states in English Language as follows:—I am a Journalist. I have been a Journalist for the last 34 years. I read almost all Nigerian Newspapers. I know the Plaintiff in this case. I know Mbonu Ojike, he is a member of the N.C.N.C. I remember there was a conference between Action Group Ministers and His Excellency the Governor. Publicity was given to the Conference in the Press. I see Exhibit "B," West African  
30 Pilot of the 10th June, 1952. I read it. I saw the front page Article entitled "Action Group Threatens Crises to win over the Government; "Secret behind plan disclosed." (He is asked to read from "Political Observers—Governor himself".) This conveys the impression that leaders of the Action Group were using pressure on the Governor to make him intervene in a case that was pending in Court, namely, "Iga Idungaran Civil Case."

"Delegation to the Government House" means the Action Group Leaders. The publication is a report about the delegation that went to see the Governor.

40 The Ministers of the Action both Central and Regional went to see the Governor.

In the Supreme Court of Nigeria.

Plaintiff's Evidence.

No. 17. Obafemi Awolowo. 6th March, 1953.

Cross-examination—*continued.*

No. 18. Sylvanus Akinbokun Samuel 6th March, 1953. Examination.

No. 19. Ernest Ikoli. 6th March, 1953. Examination.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 19.  
Ernest  
Ikoli.  
6th March,  
1953.  
Examina-  
tion—  
continued.

I see Exhibit "B1." I read the article headed "Government turned  
"back Action Group with No to all Demands." The publication conveys  
to me the impression that the leader of the Action Group had put pressure  
on the Governor to intervene in the Ikenne trial which I knew to be a  
murder case, I was startled that the leader of the Action Group should do  
such a thing.

I understand "the Leader of the Action Group" to mean the Plaintiff  
in this case. The Ikenne trial is a murder case.

I see Exhibit "B3" and the Article of Mbonu Ojike in it. It is headed  
"Action Group." It made reference to the Ikenne Dispute and Iga 10  
Idunganran Case. I connected it with the Ikenne Murder trial and the  
Iga Idunganran Case.

I read Pilot Exhibit "B2." I read the proceedings of the murder case  
right through. Two things occurred to my mind (1) That the Pilot was  
carrying its vendetta too far and (2) That the publication was made to  
discredit Mr. Awolowo. It is scandalous for any Minister of State to see  
the Governor about a case pending in Court. The publications convey to  
me the impression that Mr. Awolowo was guilty of improper conduct in  
using his position to fight his private battles.

Cross-exam-  
ination.

Xxd. by TAYLOR. I am not a member of the Action Group. I am 20  
a supporter of the Action Group. I am a strong supporter of the Action  
Group. I am a Member of the Management Committee of the Lagos Town  
Council. I was appointed by the Government of the Western Region.  
It is a Government of Action Group of which Awolowo is the Leader.

I am a very good friend of Awolowo's. I detest the policy of the other  
side, the N.C.N.C. I don't detest the leader of the N.C.N.C. but his leader.  
I am a member of the Island Club but not an officer. I was once an Officer.  
I initiated the dispute between Dr. Azikiwe and the Island Club and voted  
for his expulsion. I cannot say I like Dr. Azikiwe. I am indifferent to him.  
I can call Ojike a friend. I have always regarded him as such. I know 30  
Tinubu; he is a young man; I take an interest in him. I cannot say if  
I wrote articles for Zik's Papers many years ago. I never contributed any  
articles to Zik's papers. I cannot say if I did. I don't remember doing so.

I remember going to Irving & Bonnar to take action for copyright of  
some articles. They were articles I wrote for the Daily Times. I did not  
compile the articles for Zik's Press.

I have no liking for the N.C.N.C. or for the Zik's group of papers.

(He reads Exhibit "B"). The first "Action Group" refers to the  
whole of the Action Group members. The 2nd "Action Group" means 40  
the same thing. I don't know of any meeting of the Action Group in  
Garber Square. I hear you read "personal matters." Mr. Awolowo is  
connected with Ikenne and my mind runs to the Sadiku Salami's trial.  
(The Pilot of the 10th June, 1952, is handed over to the witness to read).  
The passage I find offensive is from Political observers to directly or  
indirectly the "Action Group." I know there is a difference between  
"Motive" and "Action." There has been a dispute between the Yoruba



elements in Ilorin to be detached from the North and to be made part of the West. This is the Ilorin boundary Dispute. There is nothing wrong in a Minister seeing the Governor over that.

Prince Oyekan and Oba Adele are the parties in the Iga Idunganran Case—they are the principal parties ; there might be others. Oba Adele is the recognised head of Lagos. He is the Oba of Lagos. He is higher than a chief in rank. Oyeken is acclaimed as the head of Docemo Family by some members of the community. I was not aware that the question of who is the head of Docemo Family was one of the major issues in the  
 10 Idunganran case. It is one of the issues. I did not understand the case to be relative to the question “ who is the head of Dosunmu Family.”

When two people lay claim to being Oba of Lagos, that will be a chieftaincy dispute. Possession of the Iga was another issue in the Idunganran case. Possession was claimed as head of the Docemo Family. As far as I am concerned the question of the Oba of Lagos has been settled. I don't know the question of Oba was again involved in the Iga Case.

I shall not be surprised if you suggest that the ordinary man in the street took Oyekan-Adele Case to be a Chieftaincy Case.

I see Exhibit “ B1.” “ The Ikenne trial re-echoed in the parley etc ”  
 20 is in my view, offensive. I drove through Ikenne only once. I heard of the dispute as to who should be Alakanna. I cannot remember if the matter went to Court. I read the early part of the Judgment in Sadiku Salami's case. The murder case and case from the rivalry between the Apena and Alakenno party. The ordinary man in this country don't think of abstract things.—The ordinary man would think of the dispute and the murder case arising therefrom.

I see Exhibit “ B3.” Paragraph under “ Best Brain ” is offensive. The first paragraph is also offensive. The two parties at Ikenne fought each other.

30 At the time the matter could be referred to a dispute between the two parties. It could be referred to as atrocious generally as it ended in the death of a man. The Governor has a right to intervene in Chieftaincy matters.

I thought the Pilot was carrying the vendetta too far by publishing the whole text of Sadiku's Case. The Plaintiff is a public man from whom the public expects a high standard of integrity and his life is open to public criticism.

I have the highest regard for His Majesty's Judges—I don't know Justice Abbott personally but have regard for his judgments. I admit  
 40 Justice Abbott made damning statements in the Judgment against Mr. Awolowo. I agree that people reading the Judgment are bound to form adverse opinion about Mr. Awolowo.

Adjourned to 10.30 a.m. on the 9th instant.

(Sgd.) O. JIBOWU,  
 Judge. 6/3/53.

In the  
 Supreme  
 Court of  
 Nigeria.  
 —  
 Plaintiff's  
 Evidence.  
 —  
 No. 19.  
 Ernest  
 Ikoli.  
 6th March,  
 1953.  
 Cross-exam-  
 ination—  
 continued.

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 19.  
Ernest  
Ikoli.  
9th March,  
1953.

Cross-exam-  
ination—  
*continued.*

Ex. "O."  
Ex. "P."  
Ex. "Q."  
Ex. "R."  
Ex. "S."

Re-examin-  
ation.

Xxn. by TAYLOR continues. ERNEST IKOLI, warned that he is still on his Oath, continues:—I told the Court at the last hearing that I knew of the meeting the Action Group Ministers had with the Governor. I read the P.R.O. Release. I cannot remember the text. It gave me very little information. It was so little that I could not cable it to my people in England. I read the local paper and saw that they abused one another from time to time. I read the Tribune. I might have read the editorial of the Tribune of December, 4, 1951, now shown to me and marked Exhibit "O." That is the sort of thing I speak about. I have read the issue of the Tribune now shown to me and marked Exhibit "P," and seen what is written about Ojike under "Fraudulent Saints of Africa." 10

I have read the Tribune of the 14th June, 1952, shown to me and marked Exhibit "Q" under heading "Journalistic Ruffians" I saw also the editorial under heading "Retributive Judgment, in the Tribune now shown to me and marked Exhibit "R." West African Pilot version obviously refers to the West African Pilot. I have read the editorial of the Tribune now shown to me and marked Exhibit "S" under heading of "Cry Havoc."

Rxd. by WILLIAMS. I know Mr. J. I. C. Taylor to be a member of the Island Club. He was not expelled from the Club. I don't know if he protested against the expulsion of Dr. Azikiwe. 20

No. 20.  
Olujide  
Somolu.  
9th March,  
1953.  
Examina-  
tion.

No. 20.

### Olujide Somolu.

Xd. by WILLIAMS. 9th P.W. OLUJIDE SOMOLU, male, Yoruba, sworn on the Bible, states in English Language as follows:—I am a Practitioner of this Court. I don't belong to any political party. I read the local newspapers. I read Exhibit "B" under Heading "Action Group Threatens Crisis." I read the passage beginning with "Political Observers." It gave me the impression that the Delegation tried to get the Government to intervene in the Iga Idunganran Civil Case. 30

It is not the correct thing for a Minister of a Group of Ministers to try to get Government to intervene in a case pending in Court.

I read Exhibit "N" in which the names of the 13 Ministers who went to form a delegation to the Governor. The delegation was publicised. The Delegation consisted of the Central and Regional Ministers of the Action Group. The Plaintiff is known as the Leader of the Party in power in the Western Region.

I read also Exhibit "B1" under heading "Government turned back Action Group" The leader of the "Action Group" in the publication refers to the Plaintiff. 40

"The Ikenne Trial" in my view, referred to the Ikenne Murder Trial, which was then on Appeal. It is not correct conduct on the part of a Minister or for a group of Ministers to hold a parley with the Governor about the murder trial then on appeal.

I read also Mbonu Ojike's article entitled "Action Group" in Exhibit "B3."

The reference to atrocious Ikenne Dispute, to my mind refers to the Ikenne Murder trial. Iga Controversy Case also refers to the Iga Idunganran Civil Case. The last paragraph refers to the Delegation of the Action Group Ministers to the Governor.

In the  
Supreme  
Court of  
Nigeria.

Xxd. by Taylor. I am not a member of any political party. My sympathy lies with neither the N.C.N.C. nor with the Action Group. I don't know the political views of my family. I have no brother and my father is dead. My children are too young to hold any political view. It is not correct that I sympathise with the Action Group. I don't know what the main policy of the Action Group is. I don't know the main policy of the N.C.N.C. I am not indifferent to politics. I am an independent. I support the Action Group policy about free education. I was a teacher for about 14 years. I was born at Abeokuta. I don't know my age. I cannot remember the year I gave as the year of my birth when I got called to the Bar. I did not give the year of my birth. I had a passport containing the year I was born. I went to England in 1945.

Plaintiff's  
Evidence.

No. 20.  
Olujide  
Somolu.  
9th March,  
1953.  
Examina-  
tion—  
*continued.*  
Cross-exam-  
ination—

Xxd. by COURT. My parents died while I was young. I was told my father died in 1909. I was then at School. I have celebrated my Birth day on the 27th February. I sent out no cards. I did not know when I was 21.

20 Xxn. by TAYLOR contd. I am on subpoena. The head line "Action Group" in Exhibit "B" refers to the whole party. The objectionable part of the publication, in my view, starts with "Political Observers" and ends with "the Action Group."

I followed the report about Adele and Oyekan Case. Possession of the Iga was involved. Adele claimed to be in lawful possession by virtue of his being the Oba of Lagos. I know many people acclaim Oyekan as the rightful person to occupy the Iga.

I knew the late Sir Adeyemo Alakija. I think he knew his Law.

30 I know the Court has no right to try Chieftaincy Matter. I don't know the facts of the case and so could not give any opinion on Sir Adeyemo's pleadings. I was not a Counsel in the case.

I followed the evidence in the papers. I am surprised to hear that Sir Adeyemo said that the case was an attempt to try a chieftaincy matter—In my opinion, it was not a chieftaincy matter. Reference to Ikenne Murder is objectionable in Exhibit "B1."

40 I have been to Ikenne several times. There is no Magistrates' Court or Supreme Court at Ikenne. So far as I am aware there has been no trial in a Magistrates' Court or in the Supreme Court in Ikenne. Cases from Ikenne go to Native Court, Ikenne or to Magistrates' Court Shagamu, Ijobu Ode or Abeokuta. I have conducted some Ikenne Cases at the various Courts. I cannot tell the number of the cases I conducted in June, 1951. I don't know of any dispute between Alakenne parties and Apena parties. I read Tribune, Service, Pilot and Times.

I did not read about the Dispute in the Service. I was told the date of my birth but not the year. I have heard people talking about the

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 20.  
Olujide  
Somolu.  
9th March,  
1953.

Cross-exam-  
ination—  
*continued.*

Ikenne Dispute. I don't know the parties concerned. It could be properly described as Ikenne Dispute. I would refer to a matter that came to Court as a trial.

A layman may call the attempt of a third person to settle a dispute between two parties as a trial. Sadiku Salami's case arose out of a riot at Ikenne. It was a riot between two parties. I don't know the parties.

I see Exhibit "B3." There is an objectionable passage under "Best Brains." The Ikenne dispute might be considered "Atrocious."

I know Justice Abbott very well. I have great respect for Mr. Justice Abbott and same respect for his judgment. I don't think I read the judgment in Sadiku Salami's case. I did not read it as it was too long. I like long judgments but I had no time to read this. I read the questions put to witnesses about Justice Abbott's remarks on Awolowo. People expect very high standard of integrity from a man in Mr. Awolowo's position. His conduct might be criticised according to individual views and standards. I will form a bad opinion of a man who has been found by the Court to be harbouring a murderer in his house. If the murderer used a sword stick which had previously been in possession of the harbourer, I would not form any impression about the harbourer as the sword stick might have been stolen. It makes no difference if the harbourer was a Cousin of the murderer.

I did not read the P.R.O. Release. I did not hear of it until I read the proceedings in this case.

Re-examination.  
Objection.

Rxd. by WILLIAMS. (*Note.* Williams asked the witness where he worked before going to study Law in England—Taylor objects on the ground that he asked him no question about where he worked.

Williams replies that he intended to ask the witness whether he worked with the West African Pilot to show that he is a man with unbiased mind as he had been painted as a liar by Taylor.

Ruling.

**RULING.** The law is that re-examination must be in reference to questions put in cross-examination with a view to explaining answers given in cross-examination. The question therefore of where the witness worked last before going to England does not arise from cross-examination. It is therefore inadmissible. I therefore uphold the objection).

I may be able to find my pass port. I shall then be prepared to bring it to Court.

Cross-  
Examina-  
tion by  
Court.

Xxd. by COURT. I have a fairly good memory. I went to England in 1945 and I had a pass port.

I returned from England in 1947. I had my pass port with me. I have forgotten the year I was born. I was married in 1932. I gave my age when I got married. I have forgotten what age I gave. I am above 45 but under 50 ; might be 46 or 47.

## No. 21.

**Joseph Kosomiola Randle**In the  
Supreme  
Court of  
Nigeria.

Xd. by WILLIAMS. 10th P.W. JOSEPH KOSOMIOLA RANDLE, male, Yoruba, sworn on the Bible, states in English Language as follows :— I am a business man and General Contractor. I am a member of the Action Group. I know that a delegation of Action Group Ministers saw the Governor in June 1952. The delegation consisted of Central and Regional Ministers of the Action Group.

Plaintiff's  
Evidence.

I read news papers. I read the Pilot. I read Exhibit " B " and the article under " Action Group Threatened Crisis." The publication gave me the impression that the Ministers were using undue influence to " distort " the ends of justice. " Iga Idunganran Civil case " refers to Oyekan and Oba Adele Case.

No. 21.  
Joseph  
Kosomiola  
Randle,  
9th March,  
1953.  
Examina-  
tion.

I read also Exhibit " B1 " under heading " Government turned back Action Group etc." Leader of the Action Group means the Plaintiff in this case.

" Ikenne Trial " means the murder case from Ikenne. I read Exhibit " J1." This refers to the Ikenne trial I spoke about.

I consider it Scandalous for a Minister or a Group of Ministers to see the Governor over the Iga Idunganran Case and the Ikenne trial which were then cases pending before the Court.

Confidence in the integrity of the Ministers was affected by the publications.

I read Mbonu Ojike's article in Exhibit " B3."

By "Atrocious Ikenne Dispute," I understood him to refer to the Ikenne murder case I have referred to before. By Iga Controversy Case I understood him to mean Oyekan-Oba Adele's Case.

The iniquitous delegation was the Delegation of Action Group Ministers to the Governor. If it is true they tried to get Governor to intervene in the two Court Cases referred to, then the delegation was iniquitous.

Adjourned to 10th instant.

(Sgd.) O. JIBOWU.

J.

9/3/53.

## No. 22.

**Olujide Somolu (recalled).**

Tuesday, the 10th day of March, 1953.

Williams applies for leave to recall Somolu to put in his pass port. Taylor opposes—The application is granted.

No. 22.  
Olujide  
Somolu  
(recalled).  
10th March,  
1953.  
Further  
Examina-  
tion.

Xd. by WILLIAMS, OLUJIDE SOMOLU, recalled warned that he is still on his Oath, states as follows :—I have found my Passport, which I now tender, marked Exhibit " T."

No Xxn.

## No. 23.

## Joseph Kosomiola Randle (recalled).

In the  
Supreme  
Court of  
Nigeria.

Plaintiff's  
Evidence.

No. 23.  
Joseph  
Kosomiola  
Randle  
(recalled).  
10th March,  
1953.  
Further  
Cross-exam-  
ination.

Xxd. by Miss RHODES. JOSEPH KOSOMIOLA RANDLE, warned that he is still on his Oath, states as follows :—I am a member of the Action Group.

I see Exhibit " B." Action Group in the article means the whole of the Action Group. In this publication it was suggested that the Action Group Ministers were using their influence to make the Governor interfere with the course of justice.

Oyekan and Oba Adele are the parties in the Idunganran Case. Oba Adele is the Oba of Lagos. In the case there was dispute as to the possession of the Iga. The Oba of Lagos is entitled to live at the Iga. A man in the street, if a fool, may think the case refers to the question of " who is the " Oba of Lagos ? " I am not a common man. I don't know how the ordinary man in the street lives. There was already a decision as to who the Oba of Lagos was.

There are some ordinary men in the Action Group but there are more in the other Party. I call a man who shouts about in the street an ordinary man.

I see Exhibit " B1." The suggestion that the Action Group made attempts to influence the Governor about cases in court is objectionable. This publication refers to Ikenne Trial. I knew there was at one time a dispute between the Alakenne and the Apena about the Obaship. May be the murder arose out of the dispute. There is a difference between Trial and Dispute. I cannot assess the mentality of the average man and so cannot say whether an average man will call a Dispute a Trial. In a trial we have a Judge to hear a case. In Dispute both sides lay claim to the same thing. I don't know what an Arbitration is I read Justice Abbott's Judgment in Sadiku Salami's case. I have a hazy idea that he made some uncomplimentary remarks about Awolowo.

I see Exhibit " J1." I read the Judgment at the time. The Plaintiff was said to have harboured a murderer, I read the article by Ojike in Exhibit " B3." In my opinion this article refers to Ikenne Trial.

The word " Dispute " is wrongly used.

I have seen the P.R.O. Release about the Delegation to the Governor. I saw it at the Club.

The Release shows that Court matters were not discussed at the conference with the Governor.

No Rxn.

No. 24.  
Akanbi  
Giwa.  
10th March,  
1953.  
Examina-  
tion.

No. 24.

Akanbi Giwa.

Xd. by WILLIAMS. 11th P.W. AKANBI GIWA, male, Yoruba, sworn on Koran, states in English Language as follows :—I am a Journalist.

40

I am the Editor of the Nigerian Statesman. My paper is published weekly in Lagos. I am familiar with my brother Editors in Lagos. In June 1952, Mr. A. Y. S. Tinubu was the Editor of the West African Pilot, I think.

In the Supreme Court of Nigeria.

Xxd. by TAYLOR. I am about 31. I was born in 1921. My Paper is the Nigerian Statesman. I became Editor about 2 years ago. The paper is published at 7, Kester Lane, Lagos. I am the only Editor during the period. I would not be all sure that Tinubu was the Editor during the period I was Editor of my own paper. I know Tinubu was Editor in 1952. Tinubu used to be my friend. We have had a slight difference. I have

Plaintiff's Evidence.

10 heard of associate editors. In June, 1952, I don't know if the Pilot had associate editors. I cannot be particular as to who was Editor of the Pilot in 1952 June.

No. 24.

Akanbi Giwa. 10th March, 1953. Examination.

Rxd. by WILLIAMS—Tinubu used to be my friend. We became friends when he became Editor.

continued. Cross-examination. Re-examination.

Xxd. by COURT. He has been Editor for about three years. I cannot be sure when the Pilot had only one editor and when it had associate editors.

Examination by Court.

No. 25.

Nathaniel Kotoye

No. 25.

Nathaniel Kotoye.

Xd. by WILLIAMS. 12th P.W. NATHANIEL KOTOYE, male, Yoruba, sworn on the Bible, states in English Language as follows :—I am a Full Time Trade Union Official. I am a General Secretary of the Association of Nigerian Railway Civil Servants. I am a member of the Action Group. I know there was a meeting between Action Group Ministers and the Governor.

10th March, 1953.

Examination.

I read Exhibit " N " containing names of the Ministers on the delegation. The Ministers are well known throughout Nigeria. There are 13 of them. I know the Plaintiff; he was the Leader of the Delegation. I read Exhibit " B " as regards the Delegation. The impression the article gave me was that the Action Group Ministers went to put pressure to

30 bear on the Governor to make him interfere in the Iga Idunganran case and florin boundary, question.

I do not consider it a correct conduct for the Ministers to have behaved as reported.

I read also Exhibit " B1 " relating to the Action Group, Leader of the Action Group means the Plaintiff who is the Leader of the Action Group.

It refers also to Ikenne Murder Trial as having been discussed at the meeting. Ikenne Trial is the Murder Trial. The murder case was then on Appeal to the W.A.C.A. I read Exhibit " J " where it was published that Sadiku Salami was granted leave to appeal within 15 days. I read

40 also Exhibit " B3 " in which I saw Mbonu Ojike's article. The phrase " Ikenne Dispute " conveys to me " the Ikenne murder trial." By Iga Controversy case I understand the Iga Idunganran Possession Case which was then pending in Court.

In the Supreme Court of Nigeria.

Plaintiff's Evidence.

No. 25.  
Nathaniel Kotoye.  
10th March, 1953.  
Examination — continued.  
Cross-examination.

By "Groupers" iniquitous delegation, he refers to the Action Group Ministers' Delegation to the Governor.

I saw Justice Abbott's Judgment in Exhibit "B2." It gave me the impression that the Action Group Ministers had good reason after the other publication to bring the matter up at the meeting.

Xxd. by **IBEKWE**. I am not a full time official of the Action Group. I am the Chairman of Action Group, Youth Section, Lagos Branch.

I read the names of the Ministers who were to attend the Conference. I don't remember the date of the Conference. I read an article on the day the Conference started. The conference was a confidential one. I don't know the composition of the meeting. I knew from the P.R.O. Release what was discussed. They discussed Constitutional and Administrative Problems. I am not in a position to know what was actually discussed, apart from what was in the P.R.O. Release. Oba Adele's matter might be a Chieftaincy Dispute and not a Constitutional Problem. 10

I read the West African Pilot every day.

I see Exhibit "B" referring to Action Group. Action Group means the Party. I was not present at Garber Square. I am not entitled to be there. There was no such meeting to my knowledge.

The Ilorin Boundary question did not bother me. 20

I was in Lagos when the Iga Idunganran case was heard. I don't know the Defence filed by Oba Adele's Counsel. The Iga Idunganran Case did not convey to reasonable man like myself that the case was Chieftaincy Dispute. I see Exhibit "B1"—It refers to Ikenne trial. To a Journalist, a dispute is the same thing as a trial. I knew appeal was pending because leave was given to Sadiku Salami according to Exhibit "J."

The publication says that leave to appeal within 15 days was granted. This conveyed the impression that he was granted leave to appeal. Hence I said the appeal was pending.

I read the Judgment of Justice Abbott in Sadiku Salami. The Judge in his remarks damaged the reputation of Awolowo. I respect each Judge's Judgment according to their merits. I am a law student. 30

No. 26.  
Samuel Shonibare.  
10th and 11th March, 1953.  
Examination.

No. 26.

**Samuel Shonibare.**

Xd. by **WILLIAMS**. 13th P.W. **SAMUEL SHONIBARE**, male, Yoruba, sworn on the Bible, states in English Language as follows:—I am a Business Executive. I am an Office Manager, United Africa Company Technical. I am and official of the Action Group. I am Ag. General Secretary. I know the Plaintiff. He is the Minister of Local Government and Leader of Action Group. I know the West African Pilot. The policy of the Pilot, in my view, is that the paper has been conducting a campaign of abuse and calumny and making vicious and spiteful attacks on Awolowo. I know Mbonu Ojike. He is the Weekly Columnist under "Week end 40



Catechism." He too conducts a campaign of abuses and calumny against Awolowo. I tender West African Pilot of July 12th, August 30th September 13th and October 4 of 1952, containing Catechism by Mbonu Ojike, Marked Exhibit "U-U3." I have underlined in red ink the portions which bear out my impressions.

10 It is not true that Mr. Awolowo's salary is £4000 per annum. (Note he read out the portions in question.) By "visible allowance." I understood him to refer to allowances known to everyone and by "Invisible Allowances." I understand him to mean "Bribe." Perquisites also means "bribe."

Xxd. by TAYLOR. I am not related to Awolowo. Politics brought us together. I am not from Ikenne but from Ijebu Ode Longe is from Ekiti; I am not related to him. I have not resigned my appointment under United Africa Company. I have not handed in my resignation. I don't intend to resign. I have not been offered nor promised the Secretaryship of the Development Board by Awolowo.

I am very close to Awolowo as the Secretary of the Action Group. The Central Executive of which he was President selected me. Awolowo did not propose me or second my appointment. I was appointed acting  
 20 General Secretary. I was present as Assistant Secretary. I swear that Awolowo did not propose me or second the proposal for my appointment. The votes were unanimous. As Acting General Secretary of the Action Group I was interested in what was written against the Leader of the Group and other Ministers of the Group. I kept the papers in my house. I am not on subpoena. I was brought to Court in a car. I was in Court before and went away. Awolowo does not own a press. I don't know if he holds the biggest shares in the African Press. I know he is a shareholder and was a Director. His wife was also a Director. There is no direct connection between the Action Group and the Tribune. The Tribune is  
 30 not an official organ of the Action Group. The Action Group speaks through many papers like The Times. Yes, it speaks through the Tribune. The Daily Service is also a voice of the Action Group. I keep copies of the Tribune.

I don't know for certain that Awolowo directs the policy of the Tribune. As a Director that should be his duty. I see Exhibit "P" and the article headed "Fraudulent Saints of Africa." It means People who pretend to be Saints but are not. I see the reference to Ojike (Note—he reads it out).

The headline applies to Ojike.  
 40 The Service and the Tribune are no organs of Action Group. The article is culled from the Service.

I read the editorial of Exhibit "S" under "the Merited Disaster." It is not very complimentary to Ojike, the Pilot and Zik.

I have read Exhibit "R." It is not a complimentary name. I have read "the Journalistic Ruffians" in Exhibit "Q." The title is not

In the Supreme Court of Nigeria.

Plaintiff's Evidence.

No. 26. Samuel Shonibare. 10th and 11th March, 1953. Examination — continued. Exs. "U"—"U3." Cross-examination.

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Plaintiff's  
Evidence.

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Cross-exam-  
ination—  
*continued.*

complimentary The paper does not refer to any particular paper.

The article might refer to Dr. Azikiwe and to his papers, namely, the Pilot in Lagos, Defender at Ibadan. In other words the Zik's Group of Papers, otherwise the 1st Defendant. It is not complimentary to 1st Defendant if they are not true.

I see Exhibit " O " under " Frustrated Ambition." Portions of it are not complimentary to Ojike and N. C. N. C. " Calumny " means a vicious and malicious attack. " Jolly ride " is a wrong word to use about public person. It shows the trip is unnecessary. " Jolly ride " means a " Pleasure trip." He wants the public to have the impression that the trip was unnecessary. 10

There may be some people who thought the trip unnecessary. I don't object to criticism. A public man is liable to severe criticism and censure if he does wrong. The other party may criticise him fairly and constructively. " Invisible salary " means salary that is not visible, cannot be seen, not come to the open. " Allowance " is something extra to salary but legitimate. " Invisible allowance " has meaning. I know ' kola ' is used for bribe but other words might be used to indicate bribe. " Perquisites " are something extraneous, I have heard of gifts. A gift is not an allowance, visible or otherwise. A bribe is an illegal gift. 20

Adjourned to 11th instant.

(Sgd.) O. JIBOWU. J.

10/3/53.

Wednesday the 11th day of March, 1953.

(Cross-exam-  
ination—  
*continued.*  
11th March,  
1953.

Xxn. by TAYLOR *contd.* SAMUEL SHONIBARE, warned that he is on his Oath, continues :—I know Mr. Ikoli. He is a well known Journalist in Nigeria. He is well read in politics. I agree that for some time there has been paper war between the Pilot, Service and Tribune. The papers put to me yesterday bear up this remark. Exhibits " U-U3 " are not constructive criticism in my view. 30

I read the Pilot every day. I see Exhibit " B2," I have read it. The remarks of the Judge were uncomplimentary. I expect from Mr. Awolowo the highest standard of integrity. I should form a bad opinion of a man who has been found by the Court to harbour a murderer. I should comment on him adversely and in strong terms if I were a newspaper man. If the swordstick which killed the deceased had been in possession of the Local Minister ; if the murderer was found to be a relative of the Minister ; if the murderer found hiding in the house of the local Minister and if he was arrested in the house of the local Minister, I should think adversely of the Local Minister, if the facts are proved. 40  
As a Newspaper man I should comment adversely on him. The four facts are to be found in the inference drawn by the Judge. These, obviously, made the Judge comment adversely on Awolowo.

Rxd. by WILLIAMS. I would reserve my comments if I knew an appeal was pending against the decision of the Judge. In the Judgment the Judge held that the evidence was insufficient whence the Sword came from.

I remember the four facts put to me by Mr. Taylor. If there was insufficient evidence that the Swordstick came from the custody of the Minister and if there is nothing in the judgment to justify the inference that the murderer was hiding in the Minister's house, I would not agree that adverse comments on the Minister was justified.

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Nigeria.

Plaintiff's  
Evidence.

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No. 26.  
Samuel  
Shonibare  
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Re-examin-  
ation.

No. 27.  
Court  
Notes.  
11th March,  
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*Plaintiff's case.*

No. 27.

**Court Notes.**

10

Taylor says he proposes to call three witnesses for the 1st Defendant and no evidence for the 2nd Defendant Tinubu and 2nd Defendant Ojike.

*Note By consent* 3 Affidavits are put in evidence and marked Exhibits "V-V2."

Exs. "V"—  
"V2."

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**DEFENDANTS' EVIDENCE.**

No. 28.

**Olutayo Opeolu.**

20 Xd. by TAYLOR. OLUTAYO OPEOLU, unsworn:—I tender an Affidavit from our office marked Exhibit "W" and letters, marked Exhibits "X" and "XI."

Taylor closes the case for the Defendants.

Defendants'  
Evidence.

—  
No. 28.  
Olutayo  
Opeolu.  
11th March,  
1953.  
Ex. "W."  
Exs. "X"  
& "XI."

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No. 29.

**Plaintiff's Counsel's Address.**

Taylor waives his right to address on behalf of the 1st Defendant.

Williams addresses the Court for the Plaintiff.

Action is for Libel published on the 10th, 11th and 13th June in the West African Pilot. Six points he submits arise from the defence for consideration of the Court.

- 30 (1) Defence alleged that Zik Enterprises Limited were not the proprietors, printers and publishers of the West African Pilot.  
(2) The Defence refuted the innuendo attached to the libel complained of.

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- (3) The Defence pleaded "fair comment."
- (4) The Defence pleaded "privilege."
- (5) The Defence alleged that the publication did not refer to any individual but to a class, and that no action is therefore maintainable.
- (6) The Defence denied that Tinubu was, at the material time, Editor of the West African Pilot.

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With regard to (1), he says that the Plaintiff had proved that the West African Pilot of the 10th, 11th and 13th June, 1952 were delivered and sent to the Chief Secretary to the Government and signed by the Secretary of the Zik's Press Ltd. on the face of each paper. Exhibit " B " was signed on the front page on behalf of the Zik's Press Limited, according to the evidence of Olutayo Opeodu, 3rd P.W. He also testified that the papers were brought to the office on behalf of Zik's Press Limited. He refers to Cap. 148 Law of Nigeria, The Newspapers Ordinance, Vol. V, section 13, (1) & (2). See section 148 (c) Evidence Ordinance, Vol. 3 Law of Nigeria, Cap. 63.

The Zik's Press Limited must therefore be presumed to be the Printers and Publishers of the publications in question see section 12 (1) of Cap. 148. Name and place of abode of the printers and publishers to be at the foot of the last page.

Exhibit " B " shows at the foot—Zik's Enterprises Ltd. etc.

Exhibit " B1 " " " " " " "

Exhibit " B3 " " " " " " "

Zik's Press Limited is another name for Zik's Enterprises Limited—See Okoli's evidence Para. 1 of Memo changed by resolution Exhibit " G."

See Company's Ordinance Section 9 (4-6), (Cap. 38 Vol. 1 Law of Nigeria) Zik's Press Ltd. could have been sued under subsection 6.

He refers to Odgers Libel and Slander, 6th Edition, page 143.

Zik's Enterprises Ltd. liable as printers and publishers—Refers to Exhibits " V-V2," " W," " X " & " X1 " also to Exs. " V-V2 " made under News papers Ordinance, it was sworn on behalf of the West African Pilot Limited, dated 24/4/52. See section 3 News papers Ordinance.

Exhibits " V-V2 " show that West African Pilot Ltd. may have done one of two things to publish the West African Pilot. There is no evidence that they gave a bond or deposited £250.

They may be entitled to publish the West African Pilot any day they choose to, but on 10th, 11th & 13th June 1952, they did not publish the West African Pilot and that the Zik's Press Limited did.

Same argument applies to Exhibit " W " sworn to on behalf of the Associated News paper of Nigeria Limited. The aim of pinning liability must have been present to the mind of the person who drafted the News papers Ordinance, hence, the publisher must show his name daily on the paper and show the name at the foot of the paper published. That aim cannot be deviated by establishing various publishers who are entitled to publish.

Exhibits "V-V2," "W" & "X-X1" are to be disregarded.

*Point* (5). Defamatory words must refer to an ascertained or ascertainable person, who must be the Plaintiff. When words refer to a class of persons of a certain number, each can sue.

Refers to *Jones Vs. Hucton*, 1909, 2 K.B. 444. See Judgment of Farwell J, at 481. ("If the libel—recover.") *Kunpffer Vs. London Express News paper Ltd.*, 1942, 2 All E.R. 555. See page 557 Lord McKinnon laid down the general rule. When the class is small and ascertainable, every member of the class can sue.

- 10 He submits that this case falls within the exception. Action Group Ministers is a small class and persons libelled are ascertainable. "Delegation to Government House" which refers to Central and Regional Ministers of the Action Group.

See page 560 Paragraphs (c) (I) (Q).

If the libel had been against Action Group, no Action would lie, but it is against Action Group Ministers; an action therefore lies.

See 1944, 1 All E.R. 495. Paragraph H page 496—

See page 497. The crux of the matter, is, Does the libel refer to Plaintiff? See judgment Lord Killowen at page 498.

- 20 Refer to Judgment of Lord Porter at 499. ("The question which "words refer to the Plaintiff committed murder.")

(1) Is there any evidence on which a conclusion that the words refer to the Plaintiff could reasonably be reached.

(2) Whether the words in fact, refer to the Plaintiff matter for Jury or Judge sitting alone.

Regarding 1, See Exhibit "B" Indisputable that prior to 10th June, 1952, Many people knew that Action Group Ministers were going to interview Government.

See Exhibit "N"—names of Ministers disclosed.

- 30 Admitted on the pleadings that the delegation was given wide publicity in the Nigerian Press.

The actual discussion was held secret.

The Plaintiff is the Leader of the Action Group, the Leader of the Delegation to Government House.

Publication Exhibit "B" is headed "Action Group threatens crisis to win over the Government," and a sub-heading is "Secret behind plan disclosed." The first Heading appears to apply to unascertainable class of people known as "Action Group."

- 40 When the text is read, it is clear the publication was meant for the Action Group Ministers.

Refers to Action Group Ministers resigning "en bloc."

The heading must therefore be taken to refer to Action Group Ministers who formed the delegation.

What is the secret behind the plan alleged?

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Motive behind the delegation to the Government. Two definite allegations made (1) Iga Idunganran Civil Case etc. and resignation over issues at stake. Each Minister of Action Group was a member of the Delegation. It follows that motives behind the delegation referred to the motives of every member of the delegation.

The most libellous is the reference to Iga Idunganran Civil Case etc. and (2) Resignation over issues at stake.

It is unreasonable to suggest that it did not refer to the Plaintiff, the leader of the Delegation.

The Plaintiff led the Delegation and the publication therefore referred 10  
to him and every other member of the delegation. The necessary  
implication is that every member agreed to force a decision on the issues.

What are the issues at stake? Iga Idunganran Civil Case and other matters.

There is abundant evidence that the words referred to Plaintiff and other Action Group Ministers. The number of the Ministers is not so large as to make the number unascertainable. The charge affects every member of the Group. Williams told the Court that Action Group Ministers were meant by the "Delegation" and there is no contrary evidence. All witnesses said that the publication referred to the Plaintiff and other 20  
Ministers. The Iga Idunganran Civil Case was a case then pending at the W.A.C.A. See the evidence of the Deputy Registrar of W.A.C.A. See *Exhibit "B1."* "Action Group Delegation to Government House fails"—Sub-head "Government turns back Action Group with 'No' to all demands." Both headlines are completely false. "Action Group" in this connection refers to the Delegation"—Publication was in reference to the "Delegation."

"Frustrated Leader of Action Group," he became frustrated because his plan fell through about Ikenne Trial.

Exhibit "B1" makes the libel more scandalous. 30

"B1" refers to Action Group Leaders threat to resign because he would not raise Ikenne issue in Government House.

Every witness told the Court he understood Ikenne trial to mean the Ikenne Murder Case. No evidence to the contrary.

See "B3." 2 complaints in the publications.

Evidence by Plaintiff that the action was published as Sequel to publications in Exhibit "B" & "B1," Ojike has not gone into the Box to deny this.

Groupers Iniquitous Delegation to Government House, is understood by the witnesses to refer to the Action Group Delegation to the Governor. 40  
No contrary evidence. Ojike was clearly commenting on Exhibits "B" & "B1." Reference to the Atrocious Ikenne Dispute is a republication of a Libel; also reference to the Iga Idunganran case in Court.

*Point 2.* Publication said to impute.

(1) That Plaintiff and other Ministers of the Action Group held conference with His Excellency, the Governor, in order to get Government to interfere with the Course of justice in regard to the Iga Idunganran Case and the Ikenne Murder Trial, both pending before the W.A.C.A.

(2) that the Ministers concerned threatened to force the hands of the Governor to achieve these ends.

This innuendo has been proved by the evidence of Okoli and Somolu, who are no party men; and also by evidence of Plaintiff Kotoye and Randle, all members of the Action Group.

N.C.N.C. Ojike also held the same view.

See Exhibit "B3" in reference to Ikenne and Iga Cases—he published the fears which the publication in Exhibits "B" & "B1" must have aroused in his mind. The fears so crudely expressed by Mbonu Ojike shared not only by the witnesses called but by thousands of people who must have read the publications in question.

Submits that the innuendo has been abundantly proved.

It is wrong for Ojike to republish a libel.

*Point 3.* "Fair comment" does not apply to publications in Exhibits "B" & "B1." The greater part is no comment at all but an assertion of facts narrating events.

The narrations are abundantly false—See the evidence of the Lieutenant Governor, the Attorney-General, and the Plaintiff, which show allegations are utterly false. Exhibit "B3," can Ojike plead fair comments?

Refers to *Joyout Vs. Cycle Trade Publishing Co.*, 1904, 2 K.B. 292, at page 294.

Upon what facts did he base his comments? No facts at all.

*Davies Vs. Shepstone*, 1886 App. Cases.

*Campbell Vs. Spottiswoode*, 8, L.T. 201.

If Ojike had gone into the box to say that he believed the facts commented upon to be true, it would have been no defence. See C. J. Cockburn's Judgment at page 202. Agree that Plaintiff is open to criticism but says it must be based on facts. The criticism of Ojike was not based on any fact at all.

*Mcquire Vs. West Morning News*, 190, 2 K.B. 100 at page 109.

He submits that once it is established that the publication is false in fact, the plea of fair comments must fail.

Fraser on Libel and Slander 7th Edition, 110. "The matter commented on must be actual facts."

"A man may not invent facts and comment on them."

See page 111 also 908, 2 K.B. 317.

Comments of Ojike cannot therefore be justified.

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Ojike was not criticising but writing with indirect motive to injure the Plaintiff.

Exhibits " B " & " B1 " cannot support his pleas of fair comments.

*Point 4.* See Article 25, Fraser on Libel and Slander, 7th Edition page 116—He submits that 1st Defendant could not plead " Absolute privilege."

Does the publication enjoy qualified privilege.

Submits that the publications do not fit into any classification.

Says there is proof of Malice which destroys the Defence of Privilege.

Shonibare testified that the West African Pilot conducted a campaign 10 of abuses and calumny against Plaintiff, he said the same of Ojike.

Neither Ojike nor anyone on behalf of the 1st Defendant has dared to go into the box to deny the allegations.

The allegations are uncontradicted and should be accepted as true.

The evidence of Shonibare alone destroys privilege.

The publication being false is a part of the campaign of abuses and Calumny.

*Point 6.* Re Tinubu. See Gatley on Libel and Slander, 3rd Edition, 102, last paragraph.

The evidence of Giwa says that Tinubu was Editor at one time. 20 Assuming there were Associate Editors, each was liable. There was only a traverse in the defence that Tinubu was not Editor. The law says the Editor is liable; is there no liability if there are two Editors? Says no—The singular always includes the plural.

The sum total of Giwa's evidence is that Tinubu has been Editor. During the period, there were associate editors. Giwa said Tinubu has been editor for three years. This has not been denied. He did not say that Tinubu was an Associate Editor, he was editor. He said there were associate Editors, which means " co-editors." He submits that Tinubu must be held liable as editor. He would not dare to show his face in the box. 30

Adjourned to 12th instant.

(Sgd.) O. JIBOWU, J.

11/3/53.

Thursday the 12th day of March, 1953.

12th March,  
1953.

Williams continues—

He refers to Gatley on Libel and Slander, 3rd Edition, pp. 641 & 2. See footnote 19 at page 642.

No one could have given the Pilot information about the secret meeting. Ojike could not say he believed what the Pilot wrote. No information about the conference can be genuine unless it was given by the Government 40 or by one of those present.

Awolowo was the only person who spoke to the Daily Times Reporter; he did not tell the Reporter they discussed Iga Idunganran's case and the Ikenne Trial.

HE wishes to deal now with Plaintiff's consent show that the portions



of the publication's complained of are libellous.

Re Exhibit "B." He says it is less libellous because it opens with the words "Political Observers believe." He refers to Odgers on Libel and Slander 6th Edition, page 121.

The imputation is clear that the delegation went to see the Governor over Idunganran Case. Exhibits "B" & "B1," clearly imputes criminal offence to the Plaintiff and the other twelve Ministers.

One of the Heinous offences in our Criminal Code is under Section 126 (1). Criminal Code. Penalty is 7 years imprisonment.

10 If the Ministers agreed between themselves to see the Governor to make him intervene in cases pending before the W.A.C.A. they are guilty of conspiracy to defect or pervert the cause of justice.

Exhibit "B3" also shows the alleged agreement to interfere with the cause of justice in Iga's case and in the Ikenne murder case then pending before the W.A.C.A. They were also said to have agreed to resign en bloc to make the Governor yield to their demands.

The offence consists in the agreement to prevent the cause of justice.

20 The Ministers are part of the Government and it is a serious crime if they agreed to make the Executive interfere with the Judiciary. See Odgers at page 23. The libel imputes an improper conduct to the Ministers. Exhibits "B," "B1" & "B3" are a wicked and malicious attack on the good name of the Ministers.

It is wicked because it was published without any provocation. Not one of the Tribune papers in evidence can be construed as provocative on the part of the Plaintiff. Not one of them has been proved to have been written by the Plaintiff. If the Action Group attacked N.C.N.C. the N.C.N.C. can retaliate, and no action will lie.

30 The Law protects the integrity and good name of individuals which cannot be impugned without justification. If the Libel attacks any person, that person has right to sue the Printer, Publisher, Editor and/or writer of the libel.

It is not the law to hold the good name of the Plaintiff to nonsense for libels in the Tribune which he did not write.

The publications are reckless, because there is no foundation for any of the facts alleged.

Not one of the subjects said to have been discussed was discussed and not one of the people said to have been present was present. The publications were invented to damage the good name of the Plaintiff.

40 The publications are malicious, not only because they are false, but also because when the P.R.O. Release was issued, they made no efforts to publish a correction. In the pleadings they shamelessly denied receiving the P.R.O. Release.

The Plaintiff proved conclusively that they were furnished with a Copy of the Release and a copy of it came from their own Counsel.

He reads from the 4th editorial of Exhibit "B2" "Daily Anonymous redeems a name." That is how the 1st Defendants used the P.R.O. Release.

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Why did the Pilot refuse to publish the P.R.O. Release. Counsel for Defendants suggested that the Release was vague but their publications are false an official release became necessary.

The Court should consider this failure in aggravation of damages.

Gatley on Libel and Slander, pp. 264-7. No retraction has been published since action was taken.

See pp. 652-3 Gatley's.

Series of publication of the result of *R. v. Sadiku Salami* should be considered in aggravation of damages. The trial of Sadiku Salami for murder is news for any paper to publish. To publish it three times, giving 10 prominence to the events in which Plaintiff's name was mentioned is an indication of malice, wickedness and bad faith. See Exhibit "J" & "J1"; the headlines refer to Awolowo. More than a month after judgment the full text was published. Statement of Claim alleged that it ran into two pages and 7 columns; defence denied it, but Exhibit "B3" proves the Statement of Claim. See Exhibit "J2."

The impression given by the publications is that Awolowo was so involved in the murder case and so went to see the Governor about it.

The whole thing reeks of malice and hatred. In the Judgment the Judge said that Sadiku Salami is a first cousin of Plaintiff's wife. 20

It is dishonourable for a Minister to join in a conspiracy to prevent the cause of justice.

It is more dishonourable for him to do that to save his own skin and his wife's first cousin. He is using his official position to put pressure to bear on the Governor by threatening resignation of all Ministers to gain his own private ends. These are the pictures the Defendants tried to impress on their readers about Plaintiff.

He submits that the Pilot has aggravated damages by emphasizing all uncomplimentary things said by the Judge about Plaintiff.

AGGRAVATION *Re Ojike*. Evidence of Shonibare not contradicted. 30  
Ojike would not go to the witness box.

His article impute bribery to Plaintiff.

Ojike has not denied it.

He imputed mercenary motives to the Plaintiff—it has not been justified. He knew it was not true Plaintiff did not receive more than £4,000 a year and yet he said so. Why did he tell falsehood against Plaintiff?

Answer in Shonibare's evidence that it is part of campaign, of hatred and abuse. The Plaintiff's good name has been seriously damaged and he asked for vindictive damages.

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Defendants'  
Counsel's  
Address.  
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No. 30.

40

#### Defendants' Counsel's Address.

TAYLOR replies :—Re Ojike not going into the box. It is fantastic and absurd to expect Ojike to go into the box to deny every trifle. It is

like going into the box to deny the allegation that black is white. The Court can form its opinion as to the meaning of the words published by Ojike.

Para. 12 Defence in 270—shows submission of Williams to be wrong with regard to the P.R.O. Says that Plaintiff's Counsel alleged that publication in Exhibit "B3" was denied by the Defendants—refers to para. 27 (b) Statement of Claim in 270 and para 28 (b) of 273. Ojike did not publish article of the 14th June, 23. He did not publish, so he denied it. The 1st Defendant denied as not being publisher on the date in question.

10 Tinubu denied publication because he denied not being Editor.

Denials were made on account of the other defences. This is a consolidated action in which the Plaintiff sued three persons. £25,000 damages against Zik Enterprises Ltd., and Tinubu in respect of Exhibits "B" & "B1." In 273, the Plaintiff claims £25,000 damages against Zik's Enterprises Limited and Ojike. Zik is 1st Defendant, Tinubu is 2nd and Ojike, 3rd Defendant. Right of reply waived in case of 1st Defendant.

20 Address therefore in relation to 2nd & 3rd Defendants. The legal defence set up by 2nd & 3rd Defendants are the same as those of 1st Defendant, except the defence that the 1st Defendant is not the publisher of the West African Pilot.

*Re Tinubu.* See Particulars of Claim, Paras. 5, 9 21-25, 27.

*Para. 5* is answered by para. 2 of his Defence.

It is incumbent on Plaintiff to prove 2nd Defendant to be the *Editor*, not in 1934, 50, but in June 10th and 11th, 1952.

30 Only one witness, A. Giwa, was called to prove this. He refers to Giwa's evidence. He asks the Court to read the evidence as a whole. Says the conclusion is that the witness could not swear who was the Editor in June, 1952. The Court is to give ordinary meaning to words of witnesses. Submits that the Court cannot read the evidence he has been Editor "for three years" to mean the last three years up to the time he gave evidence as that would nullify the cross examination. He therefore submits that no case has been made out against 2nd Defendant.

Refers to Phipson on Evidence, 8th Edition, 27. Onus of proof on Plaintiff. It is for Plaintiff to prove 2nd Defendant was Editor, not for 2nd Defendant to deny that he was not.

The affirmative must be proved by preponderance of evidence.

40 Is the Court satisfied that the onus is proved by preponderance of evidence, in view of the denial. Refers to page 417 of Fraser on Libel and Slander, 6th Edition. Plaintiff delivered no interrogatories as he might have done. He cannot succeed against Tinubu.

QUESTION OF ASSOCIATE EDITORS—will not deal with it as the Plaintiff has failed as regard the question of Editor.

Re Exhibit "B." Reference has been made to the heading and the subheading and the publication—He says no reasonable person could have taken them to refer to anybody else but the Action Group. This is the first article.

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Refers to para 1—Meeting of Action Group at Garber Square. See 5th paragraph. Reference made to the party, Action Groupers refer to the whole body. 6th paragraph—Action Group Ministers might resign en bloc to obtain demands of the party. 9th para. previous meeting of the party—Action Group Party. Says reference in all paragraphs save 4 was made to the Party—

*Re Paragraph 4*, he submits (1) that the motive alleged to have been ascribed to the Delegation is the motive of the Political Party meeting held at Garber Square which was responsible for the Delegation to Government House. 10

Submits that the motive is that of the Group as a whole. Says the delegates are only messengers to carry out the motives of the whole Group.

He submits that certain decisions were arrived at at a meeting of the Action Group, certain subjects were discussed, certain motives were ascribed to the meeting. The meeting is of unascertainable body of people. It is therefore not actionable.

The Plaintiff cannot make it actionable because some people were appointed to carry out their demands.

*Re Exhibit "B1."* Agreed that it should be read together with Exhibit "B." See headline of Exhibit "B1." Submits that Exhibit "B1" refers to the whole body. Only Exhibits "B" & "B1" concern the 2nd Defendant. He asks the Court not to take into consideration the evidence tendered in Aggravation. 20

The Plaintiff admitted no cause of action if the publication refers to the whole Group.

Assuming that the publication and motive refer to "the Delegation."

*Re Iga Idunganran Civil Case*:—See 2nd Defendants Defence—Paragraphs 16–18.

The innuendo ascribed is that the Plaintiff was endeavouring to use his influence to pervert the cause of justice. The Court is to bear in mind (1) the Governor and the Government have power to deal with and discuss all matters relating to Chieftaincy and Appointment and Deposition of Chiefs and (2) Ikoli's evidence The ordinary man will take the case as a chieftaincy Dispute. Page 16 of Exhibit "K" supports it. It was not a question of drawing a red herring across the issue. 30

The ordinary man will take the case as a chieftaincy Case. Says Ikoli should be believed.

*Re Somolu*, he did not tell the truth; he lied.

Shamelessly told the Court three deliberate lies about (1) Year of birth (2) Non-remembrance of date of birth in his Passport and (3) he knew when he was 21. 40

J. K. Randle—not to be relied upon; he is not sufficiently literate to understand the English of an Editor. He gave definition of "trial" and "dispute" what a school boy would not give.

*Giwa* did not testify as regards the publications.

*Re Kotoye*, Chairman Youth Section Action Group; he is a Partisan

and came to support his master Awolowo. As Chairman he must be close to Awolowo, where his evidence contradicts Ikoli's it should be rejected. Shonibare is a strong partisan; he is a most biased witness; he has not come to tell the truth; he collected papers read for his Leader. What more can one expect of him? Exhibits "U-U3" are absolutely valueless.

*Re Ikoli*, he is the only independent, honest, truthful and unbiased witness.

He reads Ikoli's evidence on cross-examination.

10 *Note.* He asks the Court to accept Ikoli's words as regards the impression that articles Exhibits "B" & "B1" would make on the common man. He is in touch with the common man and should know the feelings of the common man.

He is a strong supporter of the Action Group, which fact should lend weight to his evidence.

His evidence amount to this—that the reference Iga Idunganran's case can bear reference to chieftaincy matters—Refers to Fraser on Libel and Slander, page 17. Ikoli's evidence shows that more than one interpretation can be put on the words. The Plaintiff therefore fails to prove his innuendo.

20 *Capital V. Verity*, 7 Appeal Case, at pp. 785-6.

*Re Ojike* case against him hangs on Exhibit "B3."

May be the article was a sequel to Exhibit "B" and "B1" or not.

Heading "Action Group" is whole body.

Witnesses said that objectionable portion of the article was under "Best Brain."

Next paragraph—refers to party. What party?

Action Group. Next paragraph refers to party. What party?

Action Group. Refers to Groupers. The next para. refers again to Action Groupers.

30 All the rest of the paragraphs refer to Groupers and to Groupers Woes.

Last para. refers to "Iniquitous Delegation of Groupers." The motives all along were ascribed to Groupers.

There are only two places in which mention was made of the Minister of Local Government. Plaintiff does not Complain about these.

He refers to *Knueffer Vs. The London Express News paper Ltd.*, 1942, 2 All E.R. 555, see head note.

40 Action in that case was brought by Leader of a body consisting of only 24 members in England. As in this case. The publication was held to be Defamatory. Court of Appeal dismissed Knueffer's Appeal. The House of Lords upheld the Decision of the Court of Appeal. Defence is identical with the defence in this case. Here articles were an attack on the Group at Garber's Square and the character of the Group. See 1944, 1 All E.R. 497. Judgment of Viscount Simon. Submits that nothing in Exhibits "B," "B1" & "B3" to show that he was the person, referred to.

In spite of the evidence of the witnesses as regards their impressions

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on reading Exhibits " B," " B1 " & " B3." The Court has to say whether the publication in fact, refer to him.

The Plaintiff's case is that the libel is against 13 ministers and that each of them can sue.

The names of the Ministers were said to be well known on account of publications in the Service on the 9th and 10th June, 1952. They tried to show by evidence of the Lieutenant-Governor and Attorney General and as that the 13 Ministers were present at the Conference. Exhibit " N " may be evidence of people to meet but is not evidence of people actually present.

As to what took place ; several people gave evidence. Their evidence is not admissible—viz :—evidence of Marshall, Attorney General and other witnesses. 10

It was admitted that there was a Stenographer who took minutes of what transpired. The best evidence must be led to prove facts. Refers to vol. 22, English and Empire Digest, page 21, see 31 ; *Tranton Vs. Astor*, 33 T.L.R. 383, at pp. 385 & 386.

The stenographer and her notes are the best evidence. Matter discussed—is not to be proved by what was not discussed. The Stenographer's note is the best evidence to be produced before the Court : Refers to Vol. 3 Law of Nigeria, Cap. 63, see 108. Stenographer's Note is a public document within sec. 108, (2) & (3). 20

How can public documents be proved—see Section 96 (1) (e) & (c).

Private Document can be proved by reference to Sec. 96 (1) Evidence Ordinance.

Refers to 13 Halsbury's Laws, 2nd Edition, p. 420, Sec. 587. The Court is accepting the recollection of the witnesses as to what took place instead of Stenographer's notes. Also to vol. 3, page 47—a list of privileged communications. Only one of them is relevant viz. Secs. 166 & 7.

It is for the Governor to withhold permission for production of the " Notes." 30

If the Court upholds the objection, then there is no evidence of the constitution of the meeting and as to what was discussed, the result will be that Plaintiff's case fails.

Adjourned to 13th instant.

(Sgd.) O. JIBOWU, J.

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Taylor continues.

He refers to Phipson on Evidence, 8th edition at page 43. He refers to paras. 4 in 270 and 273/52. No evidence is led as to the circulation of the West African Pilot. Para. 4 was specifically denied by para. 3 of Defence. 40

Refers to Spencer Bower on Actionable Defamation, 2nd edition, page 157.

Refers to para. 14 Statement of Claim. Denied by para. 4 of Defence. He submits that the best evidence has not been given. The Deputy Registrar did not prove case pending. The best evidence has not been called as the file was not tendered in evidence.

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*Defence of Bona-fide Comment*: Re Tinubu and Ojike: No evidence on record to prove that the facts contained in the publication was false— Plaintiff had to prove the falsity of the publications. No evidence that Tinubu acted maliciously. He submits that the Defence of Bona Fide comment holds so far as Tinubu is concerned.

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10 *Re Ojike*, Exhibits "U-U3" tendered to prove Malice. If the Court finds no malice by reading Exhibits "U-U3" Shonibare's evidence falls to the ground.

He says that it makes not the slightest difference whether the questionnaires in Ojike's Catechism exist or not. No evidence that they were fictitious persons. He submits that the catechisms in "U-U3" contained nothing but criticism and no abuses.

Awolowo is liable to criticism by tax payers on whose money he went to India and other places.

20 The Court knows what "Jolly ride" means. Shonibare does not know enough English to know what a "Jolly-ride" means. He agrees that the person who claims defence of fair comment should show that he commented on facts.

On the evidence before the Court, it is possible that Oba Adele and Alakenne's dispute were discussed. If this is so the publication has not been shown to be false. Their defence of Fair Comment is therefore good and there is no proof of malice.

See para. 14 of Defence. It is not, and cannot be, denied that the matters were matters of public interest. The public had an interest to hear it.

30 Refers to Fraser on Libel and Slander, page 161 (6th Edition), *Walker V. Hodgson*, 1909, L-J. K.B, 201. *Dawson v. Labouchere*, 1908, L.J.K.B., 729.

The defence arises when there has been a defamation Ojike published Exhibit "B3" from Exhibits "B" & "B1"; this will be referred to later when dealing with Damages. He refers to *Merrivell Vs. Carson*, 58 L.T., 331, at pp. 333 & 4, also to Fraser's at p. 164.

40 This allows great latitude given to Journalists. The matter in question is concerned with the good Government of the country. Each of the Defendants belongs to the N.C.N.C. which is in opposition to the Party of which the Plaintiff is Leader. The meeting held secretly which left party in opposition in entire ignorance of what was discussed must make the opposition feel very strongly about the meeting.

He refers to Fraser's at page 176—*Seymour v. Butterworth*, 3 Foster and Finlason Reports, page 376. He submits that it is not necessary to show that the publication was true so far as Ojike was concerned.

Refers *Margera v. Wright*, 1909, L.J.K.B. 887. Ojike commented on what somebody else alleged.

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*Macquire v. Western Morning News*, 1903, L.J.K.B. at 612 or 1903  
2 K.B. 100 (Fraser's 167).

*Defence of Qualified Privilege.* Says Defendants claim this privilege—  
para. 15th Defence.

Refers to Fraser's page 181. Case comes under the 9th head.  
Statement made on a matter common to the writer and to the person to  
whom the statement is made. There is an interest in the Defendants and  
in the public to hear what was discussed at the meeting. See page 236  
under Article 37.

If the good Government of the country concerns the N.C.N.C., the 10  
N.C.N.C. therefore have an interest. If each and every citizen has an  
interest in the good Government of the country, an interest exists. See  
*Hunt v. The Great Northern Railway Company*, 60, L.J. 1891, page 498  
at 499.

*Damages.* Awolowo admitted that neither he nor any of his Counsel  
sent a letter to the Defendants. See Appendix A, page 367 of Fraser's.  
That was not done in this case—Plaintiff's Counsel cannot say that such  
a letter is unnecessary in view of the P.R.O. Release.

There is no evidence of the character, circulation of the 1st  
Defendant's paper. 20

Awolowo gave evidence that he directed the policy of the Tribune.  
He is the largest shareholder in the Tribune; he is one of the bondsmen  
for the Tribune, in case of libel, Okoli told the Court that the policy of the  
Tribune, Service and Pilot has been one of abuse. Awolowo directs that  
policy of libel and slander against Ojike and 1st Defendant; and against  
the N.C.N.C. and Tinubu. See Exhibit "P" Awolowo's photograph is  
next to the libellous publication; also Exhibit "O" in which Ojike,  
N.C.N.C. and people going under the banner of the N.C.N.C. which includes  
the Defendants; also Exhibit "S" under "Cry HAVOC" which refers  
to the N.C.N.C. 30

When the Plaintiff or Defendant endeavours to bring evidence in  
mitigation of damages the Court must take it into consideration.

For about last three years the policy of the Plaintiff was one of abuse  
and libel against the Defendants. This must be taken into consideration  
of damages as Awolowo's conduct shows he does not possess the character  
he claims.

Refers to 5, M. & G. Report, 700, at 719.

*Pearson v. Le-maitre*—Copying libel from a paper.

*Exhibits "J." "J1" & "J2."* The comments made in Exhibit "J"  
is borne out by the Judge's Judgment. Inference from the judgment is 40  
that the murderer was hiding in the house where he was arrested.

The Judgment shows that Awolowo's action did not befit his position.

J1. There is nothing wrong in the publication which would have  
been the same if a murderer was found in Churchill's house.

He refers to Justice Abbott's Judgment in Exhibit "B2" underlined.  
Awolowo failed in his duty to the Government and the public and



preferred the interest of his wife's cousin. He refers to Odgers on Slander, 4th Edition, page 646. Evidence of Plaintiff's bad character admissible to mitigate damages.

He refers to *Ikejiani v. The African Press*, also to *Wood v. Earl of Durham*, 57, L.J. Q.B. 547—1888, Q.B.D. There is an editorial about the P.R.O. Release. Failure to publish the Release cannot be taken in aggravation. Okoli's evidence shows the Release did not give much information.

10 Summonses—no cause of action—Plaintiff not defamed, but Action Group.

If Court holds publications referred to him defences of fair comment and privilege are established.

If the defences were not fully established, the Plaintiff has not that character which he seeks to uphold and that the Court will not assess heavy damages.

Judgment is reserved till the 13th April, next.

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In Suit No. 270/52 the Plaintiff claims against the Defendants £25,000 damages for words falsely and maliciously published by the Defendants of and concerning the Plaintiff in the issues of the West African Pilot dated the 10th and 11th June, 1952, as per the particulars of claim subjoined and also for an injunction restraining the Defendants from publishing the same or similar libel.

The words complained of in the West African Pilot of the 10th June, 1952, are in the article entitled "ACTION GROUP THREATENS CRISIS TO WIN OVER THE GOVERNMENT. SECRET BEHIND PLAN DISCLOSED," and are

30 as follows :—

" Political observers believe that the motive behind the  
" delegation to the Government concerns the Iga Idunganran  
" Civil case, the Ilorin boundary and other issues affecting directly  
" and indirectly, the Action Group.

" It is believed also that the party may endeavour to use  
" power politics to enable the Government to yield to certain  
" demands which the Action Groupers feel must be conceded in  
" order to avert a constitutional crisis. Apart from the walkout  
" threat reliable sources believe also that Action Group Ministers  
" may resign en bloc in order to affect the demands of the party  
" over the issues at stake.

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“ Meanwhile, it is understood that the Government will be  
“ represented in the proposed parley with Government by Mr. Eric  
“ Himsworth, Financial Secretary and Mr. Harold Cooper Public  
“ Relations Officer, and others including the Governor himself.”

With regard to this publication the innuendo alleged is “ that the  
“ Defendants meant and were understood by their readers to mean that the  
“ Plaintiff and other Ministers (a) held the aforesaid conference with the  
“ Governor and other Government Officers in order to get Government to  
“ interfere with course of justice in Suit No. 276 of 1949 pending before the  
“ West African Court of Appeal and (b) threatened to create a constitutional 10  
“ crisis in order to force the hands of the Governor.” The publication of  
the 11th June, 1952, complained of is headed “ GOVERNMENT TURNS BACK  
“ ACTION GROUP WITH NO TO ALL DEMANDS,” and reads : “ The Ikenne  
“ trial also re-echoed in the parley, but the Government felt that it was  
“ an issue for the Legal Department and the Court, and not the concern  
“ of the Governor.

“ On this matter the Governor refused to make a statement.”

The innuendo alleged in respect of this publication is that “ the  
“ Defendants meant and were understood by their readers to mean that  
“ the Plaintiff and the other Ministers had asked the Governor and the 20  
“ other Officials present at the conference to interfere in the course of  
“ justice namely in the aforesaid conviction of Sadiku Salami pending  
“ before the West African Court of Appeal.”

The 1st Defendant was sued as the printer and publisher of the  
libels complained of and the 2nd Defendant was sued as the Editor of the  
West African Pilot in which the alleged libels were published.

In Suit No. 273 of 1952, the Plaintiff claims £25,000 damages for words  
falsely and maliciously published by the Defendants of and concerning  
the Plaintiff in the issue of the West African Pilot dated Friday June 13th,  
1952 as per particulars of claim subjoined and also for an injunction 30  
restraining the Defendants from publishing the same or similar libel.

The words complained of are to be found in an article written by the  
2nd Defendant, entitled “ ACTION GROUP,” and are as follows :—

“ Does the party wish Government to interfere with the  
“ course of justice in relation to the atrocious Ikenne dispute ?

“ Will the Iga controversy case already in Court be cancelled  
“ by the Governor in order to placate Action Groupers ?

“ Thanks to West African Pilot for unmasking Groupers  
“ woes.

“ Shame to Daily Times for calling Groupers iniquitous 40  
“ delegation to Government House a ‘ Top Secret ’.”

The innuendo alleged in respect of this publication is that the article  
meant and was understood to mean

(a) that the Plaintiff and other Ministers had planned to get  
Government to interfere with the course of justice in relation  
to the charge of murder against Sadiku Salami.

- (b) that the Plaintiff and other Ministers had planned to get Government to interfere with the course of justice in relation to the aforesaid Suit No. 276 of 1949 and
- (c) that the Plaintiff and other Ministers are incompetent and unfit to hold their respective offices.

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It was alleged that this article was published as a sequel to the publications of the 10th and 11th June, 1952, referred to above.

The 1st Defendant was sued as proprietor, printer and publisher of the West African Pilot containing the article and the 2nd Defendant was sued  
10 as the writer of the article.

The particulars of claim in each case was adopted as Plaintiff's Statement of Claim and the Defendants in each case each filed a Defence.

The two cases were consolidated for the purpose of trial.

Zik Enterprises Ltd. will hereafter be called the 1st Defendant, A. Y. S. Tinubu, the 2nd Defendant, and Mbonu Ojike, the 3rd Defendant.

The 1st Defendant denied being the proprietor, printer and publisher of the West African Pilot containing the alleged libel.

The 2nd Defendant denied being the Editor of the West African Pilot on the 10th and 11th June, 1952. The Defendants alleged that the  
20 publications did not refer to any individual, but to a class or group of people, and maintained that no action was maintainable by the Plaintiff.

The Defendants denied that the publications could bear the innuendos alleged, and they pleaded "Fair Comment" and "Privilege."

These are therefore the issues to be determined by the Court.

Before dealing with the issues raised on the pleading, I would like to give a ruling on the submissions made by the Learned Counsel for the Defendants that a portion of the Plaintiff's evidence, and the evidence of the 1st and 2nd Prosecution Witnesses, namely, the evidence of the Lieutenant Governor, Western Region, and that of the Attorney General of  
30 Nigeria, were inadmissible because they testified as to what transpired at the conference of the Central and Regional Ministers of the Action Group with his Excellency the Governor, at which they were present. The learned Counsel submitted that the best evidence as to the constitution of the meeting and as to the discussions is the notes taken by the Stenographer who was said to have been present.

The learned Counsel referred to *Tranton versus Astor*, reported in 22, English and Empire Digest page 21, sec 31 and in 33, T.L.R. 383 at pp. 385 and 386. As a general rule, a witness must speak, of facts which happened in his presence or within his hearing. In other words, he must  
40 speak of what is within his own knowledge.

The evidence therefore of what a witness saw or heard is admissible in proof of those facts. Parol evidence cannot be substituted for any instrument required by law to be in writing, nor for the written evidence of any contract which the parties have reduced into writing, nor for any writing, the existence or contents of which are in dispute and which is not material to the issue between the parties, and is not merely the memorandum of some

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other fact. When any writing does not fall within any of these three classes parol evidence of their existence and contents can be given.

A High Court Judge's notes need not be produced in a perjury charge as he is not required by law to keep them. Any witness who was present at the trial in which the perjury was committed can give parol evidence in proof of the perjury, the existence of the Judge's notes notwithstanding. *R. v. Morgan*, 1852, 6 Cox c.c. 107.

Where proceedings of directors, commissioners, public trustees and the like are entered in books, the fact that such books are made admissible evidence does not exclude parol proof of what has taken place at the respective meetings. See *Inglis v. The Great Northern Railway Company*, 10 reported in 93, Revised Reports, 882, at page 891.

Facts of births, baptism, marriage, death or burial may be proved by parol testimony though a narrative or memorandum of these events may have been entered in registers, which the law requires to be kept, for the existence or contents of these registers form no part of the fact to be proved, and the entry is no more than a collateral or subsequent memorial of that fact, which may furnish a satisfactory and convenient mode of proof, but cannot exclude other evidence. See sections 398-418 of Taylor on Evidence 12th edition. Again, although a written receipt may have been given for the payment of money, proof of the fact of payment may be made by any person who witnessed it. 20

See Judgment of Lord Ellenborough in *Rambert v. Cohen*, reported at pp. 695 and 696 of 170, English Reports. In *R. v. Sven Seberg*, 22, L.T.R., 523, parol evidence of three witnesses that a vessel was a British Ship of Shields and that she was sailing under the British flag was held to be sufficient proof that the vessel was British without proof of her having been registered to prove ownership and nationality.

In *Williams v. Taylor* reported in 130 English Reports at page 1250, a shorthand writer was cross-examined at great length and caused to read his notes of what passed at a previous trial. 30

It was held that the notes had been improperly admitted as the witnesses themselves ought to have been called. In the present case the conference with the Government was a special secret meeting. It is not a legislative or executive meeting and no legal provision was made for the mode such a meeting was to be held, and if a memorandum of what transpired at the conference was made by a Stenographer, it was made for the convenience of the Governor.

The notes are not even in the nature of minutes of a meeting which have to be confirmed and signed by the Chairman after its accuracy has been confirmed. In my view, such shorthand notes cannot be of much value until its accuracy has been tested and confirmed. The admissibility of such notes in evidence appears to me doubtful in view of *Williams v. Taylor* above referred to; and if it is admissible, it cannot exclude parol proof of what transpired at the meeting on the authority of *Inglis v. The* 40

*Great Northern Railway Company. Tranton v. Low* cited by the learned Counsel for the Defendants does not apply.

In that case the Plaintiff tried to produce volumes of official debates of the House of Commons commonly called the Hansard to prove that the Defendant spoke on five days in the House of Commons. Low, J., refused this evidence obviously because the books were not dictaphone records of the speeches but reproduction of the speeches taken down in some form originally. The original speeches recorded by the shorthand writers from which the Hansard was prepared were therefore called for.

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10 In view of the foregoing, I hold that the evidence of the Plaintiff and of the Lieutenant Governor, Western Region and of the Attorney General are admissible.

I shall now address myself to the 1st issue.

Section 3 of the Newspapers Ordinance, Cap. 148, Laws of Nigeria, provides that no person shall print or publish or cause to be printed or published any newspaper unless the proprietor, printer and publisher shall each have registered in the office of the Chief Secretary to the Government affidavits containing certain particulars specified in the Ordinance, and given and executed and registered in the office of the Chief Secretary a bond  
20 for £250 or made a deposit of £250. Section 12 of the Ordinance requires that the true and real name and place of abode of the printer and publisher and the true and real description of the place of printing every newspaper and supplement shall be shown at the foot of the last page of the newspaper and supplement on pain of penalty for contravention. Section 13 of the Ordinance requires the printer and publisher of every newspaper to deliver or send to the Chief Secretary a signed copy of every newspaper published on every day of publication.

Olutayo Opeodu, 3rd Prosecution Witness, a clerk in the publication branch of the Chief Secretary's office, produced copies of the West African Pilot of the 10th, 11th, 13th and 14th June, 1952, Exhibits "B," "B1,"  
30 "B2" and "B3" signed in accordance with the provisions of section 13 of the Newspapers Ordinance. The exhibits were signed on behalf of the Zik's Press Ltd., and each of them bears at the foot of the last page the words "Printed and Published by Zik Enterprises Ltd., 14, Commercial "Avenue, Yaba Estate," obviously in compliance with section 12 of the Newspapers Ordinance. James Okoli, clerk in the office of the Registrar of Companies, tendered the certificate of Incorporation of Zik's Press Ltd., Exhibit "E" dated the 5th August, 1937, and the certificate of Incorporation of Zik Enterprises Ltd., Exhibit "E1," dated the 31st March,  
40 1952.

He also tendered in evidence the Memorandum of Articles of Association of Zik's Press Ltd., Exhibit "F," and the Resolution, Exhibit "G," passed on the 21st day of December 1951, whereby paragraph 1 of the Memorandum of Association Exhibit "F" was amended and the name of the Company was changed from Zik's Press Ltd. to Zik Enterprises Ltd. Exhibit "H"

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is the certificate of Incorporation the Associated Newspapers of Nigeria Ltd. on the 30th day of May, 1951.

The name of a Company can be changed according to section 9 (4) of the Companies Ordinance and under section 9(6) the change does not affect any rights or obligations of the Company nor render defective any legal proceedings by or against the Company and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Affidavits Exhibits " V " and " V1," tendered by consent, show West African Pilot, Ltd. as the printers of the West African Pilot and Affidavit, 10 Exhibit " V2," shows the West African Pilot, Ltd., as the proprietors of the West African Pilot.

Affidavit Exhibit " W " shows the Associated Newspapers of Nigeria, Ltd., as the publishers of the West African Pilot.

There is no evidence that either the West African Pilot Ltd. or the Associated Newspapers of Nigeria Ltd. had given, executed and registered a bond as required by section 3 of the Newspapers Ordinance or that they ever made a deposit of £250. Neither of them was, therefore, able to publish the West African Pilot.

The production of exhibits " B-B3 " proves beyond any doubt that 20 neither the West African Pilot Ltd. nor the Associated Newspapers of Nigeria Ltd., in fact, published the issues of the West African Pilot of the 10th, 11th, 13th and 14th June, 1952.

The Zik Enterprises Ltd. having put their names on exhibits " B-B3 " as printers and publishers cannot now be heard to say that they were not the printers and publishers. I accept the submission of the Counsel for the Plaintiff that the Legislature made it compulsory for the printer and publisher to put his name and address and the address of printing at the foot of every Newspaper published by him to enable the public to know whom to sue, should the occasion arise, for libellous matters contained in 30 the Newspaper. I therefore hold that the 1st Defendant was properly sued as the printer and publisher of the alleged libels contained in exhibit " B," " B1 " and " B3."

The second issue is whether the 2nd Defendant was the Editor of the West African Pilot at the time of the publication of exhibits " B," " B1 " and " B3."

Akanbi Giwa, 11th Prosecution Witness, gave evidence about the 2nd Defendant's connection with the West African Pilot.

According to him, he and the 2nd Defendant became friends when the 2nd Defendant became Editor of the West African Pilot. He is the 40 Editor of " Nigerian Statesman," and he testified that he was familiar with " brother Editors " in Lagos. He testified that he knew the 2nd Defendant to be the Editor of the West African Pilot in 1952.

He did not know if the West African Pilot had associate Editors in June, 1952.

He was not sure who was editor of the West African Pilot in June, 1952.

In answer to the question "How long 2nd Defendant has been editor?", put by the Court, he replied that he has been editor for three years. He did not know when the Newspaper had only one editor and when it had associate editors.

From this witness's evidence there can be no doubt that the 2nd Defendant did become Editor of the West African Pilot, and the witness's answer to the question put by the Court shows the period for which he has been editor; that period, according to him is 3 years. The question then arises as to what time the period of 3 years refers.

10 It appears to me that the period of 3 years must be calculated as being up to the time the witness gave his evidence. This construction the learned Counsel for the Defendants asked the Court not to put on the evidence, but the learned Counsel did not suggest any other construction which can be put on the evidence. The witness testified that he did not know if the West African Pilot had associate editors in June, 1952, but he knew the 2nd defendant to be editor in 1952. He, however, contradicted himself when he said that he was not sure who was editor in June, 1952.

20 The evidence of the witness must be considered as a whole. He testified that the 2nd defendant became Editor and his friend; that evidence stands uncontradicted. There was no suggestion that the 2nd defendant ceased to be Editor. Even if there were associate editors, that fact only suggests that there were more editors than one. There was no evidence that there were, in fact, associate editors and there was no suggestion that the 2nd defendant ceased to be editor. I therefore accept the witness's evidence that 2nd defendant has been editor for three years up to the time he gave his evidence.

The alleged libels complained of were published within the period of three years and I therefore hold that the 2nd defendant was liable to be sued as editor.

30 I now come to the next point at issue whether the publications complained of referred to the plaintiff, and whether he could sue in respect of them.

This issue I find bound up with the issue whether the publications are capable of bearing the innuendos alleged. It is abundantly clear from the evidence that the party known as the Action Group is the party running the Government of the Western Region of Nigeria; that the party has 9 Regional Ministers and 4 Central Ministers; that the Plaintiff is the Leader of the Action Group and Minister of Local Government: that he is a member of the Western House of Assembly as also of the House of 40 Representatives, and that he is also a member of the Executive Council of the Western Region.

It is also proved that the National Council of Nigeria and the Cameroons, called, for short N.C.N.C., forms a sort of opposition to the Action Group Government.

The West African Pilot is one of the voices of the N.C.N.C. and the

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Tribune at Ibadan and the Daily Service in Lagos are organs of the Action Group.

It became necessary for a delegation consisting of Action Group Ministers to interview His Excellency the Governor, on the 10th June, 1952.

It is common ground between both parties that the conference with the Governor was given wide publicity in the Nigerian Press.

On the 9th June, 1952, the Daily Service, exhibit " N " published a notice of the impending meeting with His Excellency and gave a list of the names and offices of the 13 Action Group Ministers, who were to meet His Excellency.

10

Reference was also made in the Daily Service of the 10th June, 1952, exhibit " L," to the meeting the 13 Ministers who were to meet the Governor that day.

This is the background to the publication complained of in the West African Pilot of the 10th and 11th June, 1952 and of the 13th June, 1952, exhibits " B," " B1 " and " B3 " respectively.

The headline of the article in exhibit " B " reads : " Action Group " threatens crisis to win over the Government " and the sub-headline reads : " Secret behind PLAN DISCLOSED." The words complained of begin with " Political observers " and end with " the Governor himself." 20

The question then is whether this publication, which the Plaintiff stated to be wholly untrue and malicious, refers to thousands of people who are members of the Action Group or whether it refers to Action Group Ministers whose number is limited and ascertainable. From this follows the next question whether the publication is a reflection on each of the Ministers including the Plaintiff.

The first sentence refers to the motive behind the delegation to the Government. The " Delegation " according to the evidence consisted of the 13 Central and Regional Ministers who had a conference with the Governor and other Government Officials. It cannot by any stretch of the 30 imagination be said to refer to all members of the Action Group.

It went on to say " It is believed also that the party may endeavour to use power politic to enable the Government to yield to certain demands which the Action Groupers feel must be conceded in order to avert a constitutional crisis.

Reference to " Party " and " Action Groupers " in my view refer to the same Ministers of the Action Group and not to all members of the Action Group.

The next sentence mentioned Action Group Ministers specifically and suggested that they might resign *en bloc* in order to effect the demands of 40 the party over the issues at stake.

There is evidence, which I accept, that Oba Adele was, and is, a strong supporter of the Action Group. It is common ground between the parties that in Suit 276 of 1949, Adeyinda Oyekan and others sued Musendiku Adele for possession of the Iga Idunganran which the latter occupied as the Oba of Lagos, and for damages for trespass to the premises, and that



judgment went for the Defendant. It was admitted that the appeal to W.A.C.A. was pending at the time of the conference in question and the evidence of S. A. Samuel, 7th Prosecution Witness, and Deputy Registrar of W.A.C.A., confirms that an appeal in the case was pending between June and July, 1952.

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The publication suggested a very sordid motive for the conference which the Ministers went to have with Government and implied that the Ministers had gone to put pressure to bear on the Governor to make him yield to their demands about the Iga Idunganran civil case which was then  
10 pending before the W.A.C.A. It is, in my view, a clear suggestion, that the Government was asked to interfere in the case, and the interference would be an interference with the course of justice. In my view, the publication bears the innuendo alleged.

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Now with regard to the publication of the 11th June, 1952, Exhibit "B1," the headline is: "Government turns back Action Group with "No to all demands."

This obviously refers again to the delegation of Ministers and not to all the members of the Action Group.

This is borne out by the opening words of the article which reads:  
20 "the conference of the Action Group Delegation to the Government House, "yesterday ended in fiasco." The second paragraph referred in express terms to the leader of the Action Group, which is none other than the Plaintiff.

The fourth paragraph is the one complained of and it referred to "the Ikenne trial" as having re-echoed at the parley.

"The Ikenne trial" is the murder case in which one Sadiku Salami was involved. Exhibit "J2" is quite clear on this point and it reads under "Votes of no Confidence Await Action Group Leader and Ruler" as follows:—

30 "It will be recalled that both of them were witnesses in the "Ikenne trial in which the accused person, Sadiku Salami, was "found guilty of murder."

The West African Pilot referred to the murder trial on the 8th May, 1952, exhibit "J," under the heading "S. SALAMI WILL BE HANGED FOR "MURDER." The article, *inter alia*, reported: "Sadiku was arrested in the house of an Action Group leader at Oke Bola, where the accused was "hiding after the riot."

Further reference was made to the case in the issue of the West African Pilot of the 9th May, 1952, exhibit "J1," under heading: "JUDGE  
40 "REMARKS AWOLowo FAILED TO HAND MURDERER TO POLICE, KILLER "ARRESTED IN HIS HOUSE."

A full text of the judgment in the case was published in the West African Pilot of the 14th June, 1952, exhibit "B2." Both the Plaintiff and S. A. Samuel, Deputy Registrar W.A.C.A. testified that the accused Sadiku Salami appealed to the W.A.C.A. and that his appeal was pending in June, 1952, that is, at the time of the conference and of the publications complained of.

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I am unable to accept the submission of the learned Counsel for the Defendants that S. A. Samuel's evidence was inadmissible because he did not tender the file of Sadiku Salami's case. He gave evidence of his own knowledge and he must know by virtue of his position when an appeal was entered, when pending and when heard.

I am satisfied from the evidence that Sadiku Salami's appeal was pending in June, 1952.

It is abundantly clear from exhibits " B2," " J " and " J1 " and " J2 " that the Plaintiff was connected with Sadiku Salami's case. The implication appears clear that the Ministers including the Plaintiff raised the question about Sadiku Salami's case with a view to getting the Governor to intervene in order to save Sadiku Salami and the Plaintiff. To do that is to attempt to get the Governor to interfere with the course of Justice. 10

In my view, the innuendo alleged arises from the publication.

Now, with regard to the publication of the 13th June, 1952, exhibit " B3," which plaintiff claimed to be a sequel to exhibits " B " and " B1," a perusal of the publication is enough to convince one that it is a comment on the articles of the 10th and 11th June, 1952, in the West African Pilot. This has not been contradicted as no evidence was given by the Defendants. The words complained of are the references to the " Atrocious Ikenne Dispute " ; the " Iga Controversy Case " and the last two paragraphs which read " Thanks to the West African Pilot for unmasking Grouper's woes " " Shame to Daily Times for calling Grouper's iniquitous Delegation to " " Government House a ' Top Secret ' ." 20

Although the article was headed Action Group, there is doubt that it was intended to attack the Action Group Delegation to the Government House.

The Delegation he described as being iniquitous because it had tried to force the Governor to intervene in the " Atrocious Ikenne Dispute and " in the Iga Controversy Case." Although the words " Atrocious Ikenne Dispute " were used, there is no doubt that he was referring to the " Ikenne trial " which was then an appeal before the W.A.C.A. There was no dispute proved to be before any Court and the words " Does the party " wish Government to interfere with the course of justice in relation to the " Atrocious Ikenne Dispute " refer without doubt to the only Ikenne murder case then pending before the W.A.C.A. 30

The only Iga Controversy Case before the Court was the case of *Oyekan & others* versus *Oba Adele*.

In my view, the innuendo alleged is well founded. The Plaintiff called as witnesses Ernest Ikoli, Olujide Somolu, Joseph Kosioniola Randle, Nathaniel Kotoye, all of whom testified as to their reactions to the articles complained of in exhibits " B," " B1 " and " B3 " and then all agreed in their evidence that exhibit " B " refers to the Action Group Ministers who went to the Government House and that they understood it to mean that 40

the Ministers tried to use pressure on the Governor to intervene in the Idunganran Civil Case which was then pending in Court.

They all understood "Ikenne trial" in Exhibit "B1" to refer to the Ikenne murder trial and "Leader of Action Group" to refer to the Plaintiff.

They understood the publication to mean that the Action Group Ministers who held a conference with the Governor tried to make the Governor intervene in the Ikenne murder case which was then on appeal.

10 They understood "Atrocious Ikenne Dispute" to be "Ikenne Murder trial." "Iga Idunganran Case" to be "Iga Idunganran civil case" "between Oyekan and others and Oba Adele." Ikoli testified that the article [in Exhibit "B1" gave him the impression that the leader of the Action Group, which is the Plaintiff, had put pressure on the Government to make him intervene in the Ikenne trial which he knew to be a murder case, and that the Plaintiff was guilty of improper conduct by using his position to fight his own private battles.

Olujide Somolu, J. K. Randle and Nathaniel Kotoye understood "Groupers Iniquitous Delegation" in exhibit "B3" to refer to the Ministers of the Action Group.

Their evidence bear out the innuendos alleged.

20 The learned Counsel for the Defendants asked the Court to ignore the evidence of these witnesses excepting Ikoli.

There is no doubt that Olujide Somolu gave cause for one to doubt his credibility about his own age but I have no doubt he spoke the truth about the impressions the articles complained of gave to him.

With regard to J. K. Randle, he impressed me as a very intelligent man in spite of the thin voice with which he is afflicted. He gave his evidence in a way that impressed me that he was a witness of truth. I regret I don't share the same view at the learned Counsel for the Defendants about the witness's definition of "Dispute" and "Trial."

30 In my view, he gave satisfactory definitions which distinguish the one from the other.

Nathaniel Kotoye and Shonibare are officers of the Action Group but I am satisfied they gave their evidence honestly and truthfully.

I have no reason to doubt their credibility.

40 All the witnesses who testified about the publications complained of are in my view reasonable persons and by their evidence I find the innuendos alleged to have been proved. That they spoke the truth as to the meaning the words complained of conveyed to them is borne out by the words complained of in Ojike's article in exhibit "B3." There can be no doubt that the same meaning have been conveyed to many other reasonable readers of the articles complained of which was the object of the publications.

There is no question that the words complained of are libellous.

Reference was made by Counsel on both sides to *Knupffer v. London Express Newspaper Ltd.*, reported in 1942, 2 All England Reports, 555 and in 1944, 1 All England Reports, 495, in which it was held by both the

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Court of Appeal and the House of Lords that “ when defamatory words are  
“ written or spoken of a class of persons it is not open to a member of that  
“ class to say that the words were spoken of him unless there was something  
“ to show that the words about the class referred to him as an individual.”

In that case there was nothing to show that the words referred to the  
respondent as an individual and his claim, therefore, failed.

In the Court of Appeal MacKinnon, L.J. in his judgment said : “ To  
“ the rule that where there is a defamation of a class a number of that class  
“ cannot bring an action, there are two exceptions and the first is that 10  
“ when the class is so small or so completely ascertainable that what is said  
“ of the class is necessarily said of every member of it, then a member of  
“ the class, being individually aspersed can sue : and therefore any one  
“ of them may sue.” I need not refer to the 2nd exception. The same  
principle was referred to by Viscount Simon, L.C., in his judgment in the  
House of Lords at page 496 in 1944, 1 All England Reports, in the following  
terms : “ where the Plaintiff is not named the test which decides whether  
“ the words used refer to him is the question whether the words used are  
“ such as would reasonably lead persons acquainted with the Plaintiff to  
“ believe that he was person referred to.”

There are cases in which the language used in reference to a limited 20  
class may be reasonably understood to refer to every member of that class,  
in which case every member may have a cause of action. He cited *Browne v.*  
*Thompson & Co.*, 32 Digest 16, 66 iii as a case in point.

At page 498, *Ibidem*, Lord Russell of Killowen said : “ When the  
“ construction of the matter complained of comes under consideration,  
“ there may be something in the defamatory matter, or in the circumstances  
“ in which it is published which indicates, and enables a jury to find, that  
“ particular individuals are defamed, although they are not named.”  
*Le Fanu V. Malcomson* (1848, 1 H.L.C., 637 ; 32 Digest, 12, 34) is an instance  
of this. Or the class or group can be identified, and is such that each member 30  
thereof is necessarily defamed. *Browne V. Thompson & Co.* is an example  
of this. A body of trustees or directors would furnish another instance in  
which Defamation of the body involves defamation of each member thereof.

I am satisfied on the evidence and from my own construction of the  
alleged defamatory words that they referred to the 13 Ministers of the  
Action Group who had a conference with His Excellency the Governor on  
the 10th June, 1952. Their number is small and limited and they can be  
identified. The nature of the charge made against the Ministers, of which  
the Plaintiff was not only one but the leader, is such that every Minister 40  
had been defamed.

I agree with the submission of the learned Counsel for the Plaintiff  
that the charge was tantamount to accusing the Ministers of conspiring to  
interfere with the course of justice by bringing pressure to bear on the  
Governor to interfere with Iga Indunganran Civil Case and the Ikenne  
murder case which were both pending before the Appeal Court.

I therefore hold that each Minister had been defamed and that each can bring an action in respect of the publications.

The Plaintiff has therefore properly brought these actions consolidated for the purpose of trial. The Plaintiff and his witnesses, the Lieutenant Governor and the Attorney General, have testified that Iga Idunganran Civil Case and the Ikenne trial and any chieftaincy dispute were not discussed or mentioned at the conference.

The Public Relations Officer also issued a Press Release Exhibit " A " about the conference to show the nature of the discussions held.

10 There is no evidence to the contrary.

The Plaintiff, the Lieutenant Governor, Western Region, the Attorney General are men of honour and integrity and I am satisfied that their testimony, which I accept, is true.

As it was a secret meeting, the 1st and 2nd Defendants could not have known and they have not shown the Court that they did know what transpired at the conference. There is evidence that the Plaintiff spoke to the Daily Times Reporter ; and I am satisfied that he did not supply the 1st and 2nd Defendants with any information about the conference nor is it suggested that he or anybody else, did furnish them with information as  
20 to what was discussed.

I am satisfied beyond any shadow of doubt that what was published in exhibits " B " and " B1 " as the discussions at the conference is a fabrication and a pure invention. The publications are entirely without foundation and the object was no doubt to damage the reputation and good name of the Plaintiff and of the other Ministers concerned.

The fabrication and publication of the false news are evidence of malice and I find that the 1st and 2nd Defendants acted maliciously in publishing them.

This brings me to the Defence of " fair comments " pleaded by the  
30 1st and 2nd Defendants. I shall deal with the case against the 3rd Defendant later.

It is agreed that a high standard of integrity is expected of the Plaintiff and other Ministers in their official position and that, as public men, their lives are open to criticism. *Seymour V. Butterworth*, 176, English Reports at page 166. Cockburn, C.J., in his judgment in the known case of *Campbell v. Spottiswoode*, 8 L.T.R., 201, at page 202 stated as follows :—

40 " If his scheme was fraudulent and disproportioned to the  
" object he proposed to have in view, it was a fit subject for  
" comment, and was within the scope of fair criticism ; but then  
" it seems to me that the line must be drawn between hostile  
" criticism upon a man's public conduct and the motives by which  
" he may be supposed to have been actuated, and that you have  
" no right to impute base, sordid, dishonest and wicked motives."

At page 203, *Ibidem* he continued as follows :—

" It is said that it is for the interests of Society that man's  
" public conduct should be criticised. True ; but on the other

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“ hand we all have an equal interest in the maintenance of public  
“ character, without which public affairs never could be conducted  
“ with a view to the public welfare, and we ought not to sanction  
“ attacks on public men destructive to their character and honour,  
“ made without a foundation. When the public conduct of a  
“ public man is open to an inadvertion, and a writer makes  
“ imputations on his motives which fairly-arises out of the conduct  
“ itself, so that a jury should believe that they not only arise out  
“ of the conduct itself, but they are honestly made and well  
“ founded, in such a case he would not be liable to an action.” 10

In *Davis & Sons Vs. Shepstone*, 1886, 11, Appeal Cases, 187, Lord  
Herschell, L.C., in his judgment at p. 190, stated :

“ There is no doubt that the public acts of a public man may  
“ lawfully be made the subject of fair comment or criticism, not  
“ only by the press, but by all members of the public. But the  
“ distinction cannot be too clearly borne in mind between comment  
“ or criticism and allegations of fact, such as that disgraceful  
“ acts have been committed, or discreditable language used. It  
“ is one thing to comment upon or criticise even with severity, the  
“ acknowledged or proved acts of a public man, and quite another 20  
“ to insert that he has been guilty of particular acts of  
“ misconduct.”

Vaughan Williams, L.J., in his judgment at page 298 of 1904, 2 K.B. in  
*Joynt v. Cycle Trade Publishing Co.*, said : “ In my opinion it is clear law,  
“ that, when a criticism, whether of a literary production, or of a trade  
“ advertisement, or of a public man includes such an imputation, there  
“ being no facts to warrant it, it is open to the jury to find, not only that the  
“ publication complained of is libellous, but also that the defence of “ fair  
“ comment ” has no application. The truth is that in such a case that which  
“ is called a ‘ criticism ’ causes to be a criticism, and becomes a defamatory 30  
“ libel.”

I have already found as a fact that the allegations made against the  
Plaintiff and other Ministers were a fabrication and an invention. They are  
therefore not based on facts. There can therefore be no “ fair comments ”  
on invented stories. A man cannot invent a story, comment adversely  
on it and call the comment a fair comment.

When the principles enunciated in *Campbell v. Spottiswoode*, *Davis  
& Sons v. Shepstone* and *Joynt v. Cycle Trade Publishing Co.* are applied  
to the facts of this case, no other conclusion can be reached than that the  
defence of “ Fair Comment ” raised by the 1st and 2nd Defendants fails. 40

With regard to their plea of “ Privilege ” the Statements of Defence  
did not disclose the kind of privilege claimed, but the learned Counsel for  
the Defendants informed the Court that the Defendants claimed “ qualified  
Privilege.” It is not disputed that it is the duty of the Press to inform the  
public of the public acts and conduct of public men and to criticise them  
where the facts justify such criticism.

The public, on the other hand, have a corresponding interest to receive information about the doings of public men and to see them criticised when they have gone wrong or when they deserve to be criticised. It is, however, not the duty of the Press to fabricate or invent facts to enable them to attack public men and no right thinking public expect to be fed with lies and baseless allegations against public men and to see the good name and reputation of public men torn to shreds and dragged in the mud without just cause.

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10 The fact that the West African Pilot was interested as the organ of the N.C.N.C. to know what took place at the Conference of the Action Group Ministers with the Governor and other Officials who were at the conference does not justify the printer and publisher and editor of the paper in fabricating and inventing stories about the discussions which took place at the Conference which they knew to be a secret one and in attacking the Daily Times which published the truth. They had no access to the Conference and the discussions, being secret, were not divulged by those present at the meeting.

20 It would have been more honourable to let the public know that the conference was a secret one and that there was no means of knowing what was discussed at the conference instead of alleging that some subjects were discussed which were not in fact, discussed, and taking advantage of the meeting being a secret one to attack the honour and integrity of the Ministers who took part in it.

In my view, there is no duty on the 1st and 2nd Defendants to communicate the fabricated or invented news which reflected very adversely on the Plaintiff and the other Ministers to the public and it is not the duty of the public, including the N.C.N.C., to receive such news.

I therefore hold that the publications complained of in exhibits " B " and " B1 " are not privileged.

30 Even if the publications could have been held to be privileged the privilege is destroyed by the fact that the 1st and 2nd Defendants wilfully published to the world facts invented which they knew to be false. There cannot be any doubt that they acted maliciously, that is, from improper motives.

The result of my findings is that the 1st and 2nd Defendants are liable to pay damages to the Plaintiff for the defamatory publications.

Coming now to the publication in Exhibit " B3," the publication is a repetition of some of the defamatory allegations in exhibit " B " and " B1 " with a defamatory comment by the 3rd Defendant, the writer of the article.

40 This publication affects the 1st Defendant as printer and publisher and the 3rd Defendant as writer. Both the Defendants pleaded " Fair Comment."

The defence must fail in so far as the 1st Defendant is concerned in view of my findings on the publications in Exhibits " B " and " B1 " and for the same reason. I shall now consider the position of the 3rd Defendant. He wrote the article complained of commenting on the Plaintiff and the other Ministers who attended the Conference with the Governor. The

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delegation he described as iniquitous because they tried to force the Governor to intervene in the "Atrocious Ikenne Dispute" and in the "Iga Controversy Case."

The article reflected the impression which exhibits "B" and "B1" had given him which more or less confirmed the impression the articles conveyed to the witnesses called by the Plaintiff.

The article is no less a libel because the 3rd defendant re-published it. His learned Counsel cited *Margena v. Wright*, 1909, L.J.K.B. 887; 1909, 2 K.B. 958, as offering protection to him, the 3rd Defendant, under the plea of "Fair Comment."

10

A study of the case shows that it was not decided on the general principles of law but on a special provision of Parliamentary Papers Act, 1840, Cap. 9, Section 3. This case does not come under the provisions of the Parliamentary Papers Act, 1840, Cap. 9, section 3 as the libel complained of is not an extract from or an abstract of a Parliamentary Paper.

The general principle of law will therefore have to be applied. To succeed on the Defence of "Fair Comment," the 3rd Defendant must show that his comments were based on facts truly stated. He did not give evidence.

20

In the language of Fletcher Moulton, L.J., in *Hunt v. "Star" Newspaper Co.* 1908, 2 K.B., 320; 77, L.J. K.B., 739. "In order to give "room for the plea of fair comment the facts must be truly stated. If "the facts upon which the comment purports to be made do not exist, "the foundation of the plea fails."

As the allegations as to what was discussed and as to what transpired at the conference has been found to be false and without foundation, the bottom is, therefore, knocked out of the 3rd Defendant's plea of fair comment as the comment was not based on facts truly stated.

It is no defence to him that he himself believed what was published in Exhibit "B" and "B1."

30

From the evidence of Ikoli, which the learned Counsel for the Defendants asked the Court to accept as the evidence of an independent, honest, truthful and unbiassed witness and the evidence of Shonibare for the Plaintiff, I am satisfied that for the last three years or so the Nigerian Press, namely, The Service and the Tribune, on the one side, and the West African Pilot, Defender and other papers belonging to the Zik's Press Group on the other, had been waging war against one another and attacking persons connected with the papers and the political parties they support.

40

Exhibits "U-U3" and "O," "P," "Q," "R" and "S" bear this out.

Shonibare further testified that the 3rd Defendant had been carrying on a campaign of abuse and calumny against the Plaintiff and tendered Exhibits "U-U3" in support. I find that the Tribune, whose policy the Plaintiff admitted he was directing as Director, attacked the 3rd Defendant and others in Exhibits "O," "P" and "Q."



The Plaintiff himself testified that he and 3rd Defendant were friendly until the end of 1951 when the 3rd Defendant stopped lodging with him at Ibadan.

I therefore come to the conclusion in view of Exhibits "U-U3" and "O-Q" that the Plaintiff and the 3rd Defendant were no longer friendly and that Exhibit "B3" was part of the campaign of abuse and calumny testified to by Shonibare.

I am satisfied that the 3rd Defendant wrote exhibit "B3" recklessly without caring whether the facts on which he wrote were true or not, and that he wrote from indirect motive. In other words he wrote out of malice and his defence of privilege also fails. He and the 1st Defendant are therefore liable to the Plaintiff in damages.

Now comes the question of assessing damages.

The learned Counsel for the Plaintiff asked the Court to consider the failure of the 1st and 2nd Defendants to publish the P.R.O. Release exhibit "A" so as to correct the libellous publications in aggravation of damages. He also asked the Court to take as matters in aggravation the facts that the 1st and 2nd Defendants published reports on Sadiku Salami's case thrice and made no retraction of the libellous matters even after actions were taken in Court. Against the 3rd Defendant, Plaintiff's learned Counsel asked for vindictive damages because he would not go in to the box to contradict Shonibare's evidence that he had been carrying on a campaign of abuse and calumny against the Plaintiff; because his articles imputed "bribery" and mercenary motives to the Plaintiff and he has not gone into the box to justify them.

On the other hand, the learned Counsel for the Defendants asked the Court to mitigate damages (1) because the Plaintiff has no character to uphold as he had been found by a Judge of the Supreme Court to have hidden a murderer in his house and failed in his duty to the Government and the public and preferred to watch over the interests of his wife's cousin ; (2) because Plaintiff's Counsel did not write to the Defendants about the libellous publications before taking action ; (3) because there is no evidence of the character and circulation of the 1st Defendant's paper ; (4) because the Plaintiff directed the policy of the Tribune in a policy of libel against 1st, 2nd and 3rd Defendants and against N.C.N.C. He submitted that the P.R.O. Release was vague and, according to Ikoli, did not give much information ; and therefore should not be taken in aggravation.

With reference to the P.R.O. Release, No. 1416, it reads :—

"The Action Group Ministers (Central and Regional) led by the Honourable Obafemi Awolowo, leader of the Party, met His Excellency the Governor at the Council of Ministers' Hall yesterday. With the Governor were the Attorney-General, the Acting Chief Secretary and the Lieutenant Governor Western Region. Matters discussed related only to constitutional issues

In the  
Supreme  
Court of  
Nigeria.

No. 31.  
Judgment.  
13th April,  
1953—  
*continued.*

In the  
Supreme  
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Nigeria.

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*continued.*

“ and administrative procedure under the constitution. The  
“ discussions were frank, full and cordial and led to an  
“ understanding of the various issues involved.”

This release clearly contradicted the picture of the conference which  
the West African Pilot painted in Exhibits “ B,” “ B1 ” and “ B3.”

The Release was, according to Lijadu’s evidence which has not been  
contradicted, issued for publication in all Nigerian Papers to give the public  
an idea of what took place at the Conference.

To any one who wishes to know the details of the discussions which  
are matters of secrecy the Release may be described as vague.

The Release confirmed the evidence of the Plaintiff, the Attorney- 10  
General and the Lieutenant with regard to the persons who were present  
at the conference and with regard to the heads under which discussions  
were held.

It appears to me that the Defendants did not publish the Release so  
that the reading public might not know the truth and question the correct-  
ness of the lies dished out to them on the 10th and 11th June, 1952. In  
other words, the Defendants were not willing to undo the damage they had  
done to the reputation and good name of the Plaintiff and the other  
Ministers. Reference to the P.R.O. Release under the editorial heading of  
“ Daily Ananias redeems a name ” in Exhibit “ B2 ” cannot be considered 20  
as publication of the release as it was not intended for the purpose to which  
it was used by the West African Pilot.

In my view, it is a circumstance of aggravation. I don’t see that it  
was necessary for the Plaintiff’s Solicitor to have written to the Defendants  
before taking action. Even when action was taken, did the Defendants  
think of withdrawing the allegations? The answer is “ No.” The time  
the Defendants should have taken steps to retract the allegations they made  
against the Plaintiff and the other Ministers was when the P.R.O. issued the  
Release above referred to, but they would not take advantage of the  
opportunity. With regard to the publication of Sadiku Salami’s case, 30  
I accept the evidence of Ernest Ikoli that when he saw and read the full  
text of the judgment in Sadiku Salami’s case published in exhibit “ B2 ”  
after he had read the publications about the same case in exhibits “ B ” and  
“ B1,” he came to the conclusion that the West African Pilot was carrying  
the vendetta too far against the Plaintiff that it was published to damage  
the Plaintiff’s name : With this view I agree. The case was certainly news  
for the public but there can be no doubt that it was reported thrice for  
reasons other than a desire to bring it to the notice of the public.

In each publication reference was made to the Plaintiff and the full  
text of the judgment contained adverse comments on the Plaintiff. 40

There can be no doubt that the full text of the judgment was published  
to damage the reputation and good name of the Plaintiff and to make  
people who read it form adverse opinions of the Plaintiff’s character.

However, in my view, the publications rather go, to confirm malice in  
the Defendants than to aggravate damages for the unfounded publications  
now the subject matter of these actions. The Plaintiff must have been

known and found to be a man of honour and integrity before he was appointed the leader of the Action Group and the Minister of Local Government.

It will therefore be unjust, in my view, to say that he has no character simply because some adverse comments had been made on him by the Judge in Sadiku Salami's case. The case went on appeal to the West African Court of Appeal whose duty was to review the evidence and confirm or disagree with the views of the learned Judge.

10 However, the proceedings before the W.A.C.A. are not before this Court nor is there evidence that the W.A.C.A. confirmed the learned Judge's views and strictures on the Plaintiff.

It would positively be unfair to hold the Judge's comments in Sadiku Salami's case against the Plaintiff without knowing what the W.A.C.A. thought of them. I consider the articles of the 3rd Defendant in Exhibits "U-U3" as affording evidence of malice rather than as circumstances of aggravation. I have now to assess damages suffered by the Plaintiff as a result of the publications. In doing so I have to consider the rank and position of the Plaintiff in the community, the fact that the reflections made on him were in a public newspaper which might have travelled beyond Nigeria to other lands where the Plaintiff is known personally or by reputation and the damage that the publications might have done to his reputation and good name. I have to consider also the attitude of the Defendants in the matter, not forgetting that the publications were invented for the purpose of damaging the Plaintiff's reputation, and that the Defendants refused to retract when they were given the opportunity of retracting the allegations made in the publications.

Assessing damages done to the reputation and good name of a person, is however, not an easy task as there is no schedule or tariff by which one can go and it is a matter on which there may be difference of opinion.

30 Damages awarded must be such that a reasonable panel of jury may give and it should not be excessive or inadequate. After taking all the circumstances of this case into consideration, I don't feel that vindictive damages are indicated, but I am definitely of the opinion that substantial damages should be awarded to the Plaintiff.

In *Greenlands Ltd. Vs. Wilmshurst & the London Association for Protection of Trade and another*, 1913, 3 K.B., 507, damages of £750 were given against the 1st Defendant and of £1,000 against the 2nd Defendant. This was held to be wrong in principle and that there must be one judgment and one assessment of damages. This principle was confirmed in the  
40 Judgment of Slessor, L.J. in *Chapman Vs. Lord Ellesmere and others*, 1932, 2 K.B. 431, at page 471, in the following terms :

" Damages against joint tort feasons cannot be divided. The  
" jury have no power to apportion the damages, and, if they did  
" so judgment cannot be entered against the several Defendants  
" for the amount so apportioned . . . But this does not dispose  
" of the matters, for though there must be one set of damages  
" against joint tort feasons the authorities go to show that such

In the  
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Nigeria.  
—  
No. 31.  
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1953—  
*continued.*

“ damages are not to be assessed according to the act of the most  
“ guilty or the most innocent of the Defendants, but according to  
“ the aggregate of injury received from their common act (*Clark*  
“ *Vs. Newsam*, 1 Ex 31), as was said by Alderson B. in that case at  
“ page 140 : ‘ The true criterion of damage is the whole injury  
“ ‘ which the Plaintiff has sustained from the joint act of  
“ ‘ trespass ’ .”

This is the principle that has to be applied in awarding damages in this case and the result is that I have to assess one set of damages against the 1st and 2nd Defendants and against the 1st and 3rd Defendants. 10

This brings me to the next question as to whether the Court sitting as Judge and Jury should award damages in respect of each cause of action shown in the Particulars of Claim in Suit No. 270/52 or whether it should consider the two publications complained of as on whole and award damages accordingly.

In *Weber Vs. Birkett*, 1925, 2 K.B. 152, money was paid into Court in respect of each of two causes of actions and the jury returned a verdict for £200 to cover both causes of action. It was held that the verdict was bad and that judgment could not be entered on it for either party.

This case was referred to in *Barber Vs. Pigden*, 1937, 1. K.B. 664, but 20 was distinguished.

At page 683, Scott, L.J., said : “ Apart from *Weber Vs. Birkett* which  
“ is for the reasons I have given distinguishable, and does not govern our  
“ decision I can see nothing in the Judicature Act or Rules of the Supreme  
“ Court as they are today to make separate verdicts and judgments  
“ invariably necessary in respect of separate causes of action contained in  
“ the same writ. . . .

“ The result is that the question whether one or more causes of action  
“ are to be included in one verdict or judgment will depend upon the  
“ exercise of the trial Judge’s judicial discretion upon all the circumstances 30  
“ of the case.”

There are two causes of action on the Plaintiff’s particulars of Claim in Suit No. 270/52 but he claimed damages in respect of the two taken as one. The case was conducted on both sides as though there was only one cause of action. Neither the Counsel for the Plaintiff nor the Counsel for the Defendants has asked the Court to treat them separately and give a separate verdict and judgment on them, so I shall treat them as one and give one verdict on them, on the authority of *Barber Vs. Pigden* above referred to.

The next question that arises is how are damages to be assessed in 40 consolidated action ? Where actions are consolidated under section 5 of the Law of Libel Amendment Act, 1888, “ the jury,” in the language of Lord Lister, M.R., in *Stone Vs. Press Association*, 1897, 2. Q.B. 159 at p. 162, “ must find against the defendants in one sum and then apportion the one  
“ sum which they have found among them.”

If the consolidation was under Order 49 rule 8 different consideration will apply.

The jury may not award a lump sum in respect of the consolidated causes of action and consequently the question of apportionment will not arise.

Acting on the above principles, I assess Plaintiff's damages in 270/52 against the two Defendants at £2000 and his damages in 273/52 against both Defendants at £500.

There will therefore be judgment for Plaintiff against both Defendants in Suit No. 270/52 for £2,000 and 300 guineas costs, and against both Defendants in 273/52 for £500 and 100 guineas costs.

No evidence was led about the claim for injunction which is taken to have been abandoned.

(Sgd.) O. JIBOWU,  
Acting Senior Puisne Judge.  
13/4/53.

In the  
Supreme  
Court of  
Nigeria.

No. 31.  
Judgment.  
13th April,  
1953—  
*continued.*

No. 32.

Notice and Grounds of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL  
20 HOLDEN AT LAGOS, NIGERIA.

Suit No. 270/52.

Between

THE HON. OBAFEMI AWOLowo ... .. *Plaintiff/Respondent*  
and

1. ZIK ENTERPRISES LTD.  
2. A. Y. S. TINUBU ... .. *Defendants/Appellants*

and Between

Suit No. 273/52.

THE HON. OBAFEMI AWOLowo ... .. *Plaintiff/Respondent*  
and

30 1. ZIK ENTERPRISES LTD  
2. MBONU OJIKE ... .. *Defendants/Appellants.*

In the West  
African  
Court of  
Appeal.

No. 32.  
Notice and  
Grounds of  
Appeal.  
1st June,  
1953.

NOTICE OF APPEAL.

TAKE NOTICE that the Defendants/Appellants being dissatisfied with the Whole Decision of the Supreme Court contained in the Judgment of the 13th day of April, 1953 do hereby Appeal to the West African Court of Appeal upon the Grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

And the Appellants further state that the names and addresses of the 40 persons directly affected are those set out in paragraph 5.

In the West African Court of Appeal.

No. 32.  
Notice and Grounds of Appeal.  
1st June, 1953—  
*continued.*

2.—Part of the Decision of the Lower Court complained of:—Whole Decision.

3. GROUND OF APPEAL.

(1) The Learned Trial Judge misdirected himself in receiving in evidence the Oral testimony of witnesses alleged to be at a meeting when better evidence was available.

(2) The Learned Trial Judge misdirected himself in holding —  
“ I am unable to accept the submission of the Learned Counsel for the Defendants that S. A. Samuel’s evidence “ was inadmissible because he did not tender the files of “ Sadiku Salami’s case.” 10

*Error in Law :—*

(3) The Learned Trial Judge erred in Law in holding that the 1st Defendants are the printers and publishers of the West African Pilot.

(4) The Learned Trial Judge erred in Law in that :—  
“ In my view the innuendo alleged is well founded.  
“ and

“ Their evidence bear out the innuendoes alleged.”

(5) The Learned Trial Judge erred in Law in holding :— 20  
“ I am satisfied on the evidence and from my own  
“ Construction of the alleged defamatory words that they  
“ referred to the 13 Ministers of the Action Group who had  
“ a conference with his Excellency the Governor on the  
“ 10th June 1952.”

and

“ The nature of the charge made against the Ministers  
“ is such that every Minister had been defamed.”

(6) The Learned Trial Judge erred in Law in holding that the Defendants acted maliciously. 30

[Sic]

(7) The Learned Trial Judge erred in Law in holding that the defence of fair comment raised by the 1st Defendants fails.

(8) The Learned Trial Judge erred in Law in holding that the defence of qualified privilege fails.

(9) The Learned Trial Judge erred in Law in his assessment of damages.

(10) The Learned Trial Judge erred in Law and also exercised his discretion on wrong principles in the assessment of costs in a Consolidated matter.

(11) The Learned Trial Judge erred in Law in not dismissing 40 the Plaintiff’s case for an injunction instead of holding that it must be taken to be abandoned.

(12) The Judgment is against the Weight of evidence.

4.—Relief sought from the West African Court of Appeal :—

That the Decision be set aside and Judgment entered for the Defendants.

5.—Persons directly affected by the appeal :—

NAME.	ADDRESS :—
HON. OBAFEMI AWOLowo	Oke-Ado Street, Ibadan
Dated at Lagos this 1st day of June, 1953.	
	(Sgd.) D. O. IBEKWE, <i>Appellants' Solicitor.</i>

In the West African Court of Appeal.

No. 32.  
Notice and Grounds of Appeal.  
1st June, 1953—  
*continued.*

10

No. 33.

Court Notes of Hearing of Appeal.

IN THE WEST AFRICAN COURT OF APPEAL,  
HOLDEN AT LAGOS, NIGERIA.

Wednesday the 17th day of November, 1954.

Before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President.  
JOSEPH HENRI MAXIME DE COMARMOND, Ag. Chief Justice Nigeria.  
Sir JAMES HENLEY COUSSEY, Justice of Appeal.

No. 33.  
Court Notes of Hearing of Appeal.  
17th November, 1954—  
*continued.*

20

Civil Appeal  
WACA. No. 112/1954.

1. ZIK ENTERPRISES LTD.  
2. MBONU OJIKE ... .. *Appellants*  
and

HON. OBAFEMI AWOLowo ... .. *Respondent.*

Mr. TAYLOR for Appellants.

Mr. KAYODE for Respondent.

TAYLOR :

Appeal from a judgment of Jibowu, J.

30

Grounds of appeal p. 82. Ground 1—Meeting—oral was secondary evidence. The meeting of the Ministers with the Governor concerned matters of State and no evidence could be given of it except by permission of H.E. and it was not proved that he gave permission.

We ask—did you take this objection in Court below.

Counsel refers to pages 18 and 19 of record. This is a different point.

We rule that—for what it is worth—the point not having been taken in Court below and not being in grounds of appeal—Counsel cannot argue it before us on this appeal—He referred to section 166 of Evidence Ordinance, Cap. 63. (Nothing to do with point “derived therefrom” it cannot be said the witnesses evidence was “derived therefrom”).

40

Ground 9—Error in law in assessing damages.

Judgment line 15 p. 79.

Line 19 to 22—although pleaded para 4 of Statement of Claim—it

Appellant's Counsel.

In the West African Court of Appeal. No. 33. Court Notes of Hearing of Appeal. 17th November, 1954—*continued.*

was denied in para 3 of Statement of Defence that newspaper was published or circulated outside Lagos—and no evidence to the contrary was given. Therefore Judge erred in taking it into consideration as he clearly did. I addressed Court below on point—line 39 p. 58.

Cites *Obaseki v. Osagie* W.A.C.A. Civil Appeal No. 3845, April–May Reports 1953—p. 65, at p. 70—and on.

No evidence here as to extent of circulation of paper concerned either inside or out of Nigeria.

Costs—ground 10. Actions were consolidated. 400 guineas—in a case where out of pocket expenses could not have been more than £30. 10

Same case at p. 39—

Submits costs affected by amount of damages awarded—anyway excessive.

Ground 11—Injunction ought to have dismissed—we are entitled to Costs on that issue. Judge erred in treating the claim as abandoned—they led no evidence.

Ground 12—Only dealing with it so far as 2nd defendant concerned. Plaintiff had to prove he was the Editor—Only evidence p. 43.

No sufficient evidence that 2nd Defendant was Editor. Note—surely 20 it was *prima facie* evidence of fact.—*doubtful*—Not sufficient proof that he was Editor at material time.

Ground 5. Referred to 13 Ministers—This is only other ground I wish to argue.

Even if it can be said to refer to Plaintiff it does not necessarily refer to the other Ministers.

Complains of trial Judge's remarks at p. 73 lines 1 and 2.

*Knupffer v. London Express Newspaper* (1944) A.C. 116.

Facts—Article complained of—says refers to 13 ministers because of Exhibit “N”—and that therefore any person reading exhibit “N” would know of composition of meeting on June 10th, included them— 30

Exhibit “N” was not pleaded—but was given in evidence as furnishing a background to alleged libel. Put in evidence at p. 35, line 10—

Would have had to read “N” to know who was *expected* to attend the meeting.

Refers to p. 28—private meeting—ordinary man in street would not know who was present at meeting—then re-examination witness said would know by virtue of Exhibit “N”—(that is to say if they had read it).

Exhibit “N” is the action group paper and exhibit “L” is the N.C.N.C. You would have to be a person who read papers of both sides before you knew who they were. 40

KAYODE :

We ask him to address us on the following :

(1) Was it satisfactorily proved that 2nd Defendant was in fact the Editor at the material time ;

Appellant's Counsel.



- (2) Did trial Judge misdirect himself when assessing damages ; and
- (3) Can it be said that the alleged libel was of plaintiff as distinct from Group.

In the West African Court of Appeal.

Deals with first point.

To ascertain—must look at whole of evidence—p. 43—Submits lines 15 and 16 show that for *last 3 Years* he was Editor—concedes that evidence is slight ; but evidence can only mean one thing—

10 Admits evidence referred to is only evidence—Although evidence weak trial Judge was entitled to accept it—he saw the witness and he did accept it. 2nd defendant did not give evidence that he was not. Associate Editors—all would be liable unless they proved each had special subject.

No. 33. Court Notes of Hearing of Appeal. 17th November, 1954—*continued.*

(2) Submits that grounds of appeal do not cover the point—Ground 9 not good enough—does not allege misdirection—it would be a misdirection on fact.

20 In assessing quantum of damage trial Judge did not take into consideration extent of circulation of newspaper in Nigeria—that is to say number of circulation—about which there was no evidence—but publication was proved. Concede no evidence of publication overseas. He only used “might” so it could not have affected quantum in any extent. Trial Judge took all matters into consideration and in these circumstances submits damages cannot be said to be excessive. Refers to lines 30 to 34 p. 79. (3) point 5th ground of appeal.

Submits that you are entitled to look at whole article in order to ascertain who it is intended to refer to.

Refers to Exhibit “ B1 ” 11th June “ Pilot ”—1st and 2nd p. 1—clearly refers to Leader of Action Group. “ The delegation then left the Government House. . . . ”

30 They single out “ the Leader ” Exhibit “ B3 ”—2nd column p. 2. “ B2.”  
Adjourned to 18.11.54.

“ Pilot ” of 15th June.

(Intld.) S. F. S. P.

18.11.54. Coram and Counsel as before.

18th November, 1954.

**KAYODE :**

Refers to para 17 of Statement of Claim. p. 3 of record.

Conference was given wide publicity in the Nigerian Press.

This was admitted in defence para 2 of Statement of Defence p. 9 and para 1 of Statement of Defence at p. 11. Para. 16 admitted conference but not composition of it.

40 Where evidence is led that public knew from circumstances at the time that delegation consisted of particular individuals and such evidence is uncontradicted—enough to connect.

Refers to para 20 of Statement of Claim pp. 3 and 4 of record. Page 4 line 2 shows connection between conference and *delegation*. Submits—where words “ Action Group ” are used can only mean delegation.

Exhibit “ B1 ” June 11th. Heading—and Government turns back

In the West African Court of Appeal. No. 33. Court Notes of Hearing of Appeal. 18th November, 1954—*continued.*

Action Group with no to all demands.  
 Action Group “leaders”—The “leader”  
 Only legal issue for Court on grounds of appeal argued is—could accusations made be held by a reasonable man to refer to plaintiff as distinct from group.

Taylor abandoned ground 4—did not argue it.  
 Para. 2 of Statement of Claim at p. 6 of record.  
 Para 1 of defence of 2nd defendant admitted para. 2 of Statement of Claim and 1st defendant also admitted it.  
 Statement of Claim p. 6. 10

Para. 24 p. 7—clearly links up with the Plaintiff.  
 We ask him to address us particularly in addition to other points on question whether anything libellous was directed at *plaintiff*.

Submits on ground 5—grounds of appeal—only onus on him is to connect plaintiff with articles complained of—they have been found to be libel and that finding has not been challenged in ground 5.

Evidence p. 36 —Ernest Ikoli—Witness says “ Iga ” case was pending—that is why he drew inferences stated by him.

But note—witness said “ I read it. . . . ”  
 Lines 1 to 8—p. 36 *Æ* p. 36. Lines 41-42 = p. 36 lines 16 to 19. 20

Note—see evidence lines 17 to 18 p. 37.

P. 38 Somolu : J. K. Randle p. 42—refers to passages in evidence of both. Submits evidence points quite clearly to Plaintiff being member of the small group which visited the Governor.

Refers to *Knupffer v. London Express* (1944) 1 A.E.R. p. 495. *Jones v. Hulton* (1909) 2 K.B. 481.

Adjourned to 19.11.54.  
 18.11.54. (Intld.) S. F. S. P.

19th November, 1954.

Friday the 19th day of November, 1954. 30

CORAM AS BEFORE.  
 COUNSEL AS BEFORE.

TAYLOR :

Point regarding 2nd defendant—Editor—nothing to add.  
 Damages—submits point fully covered by ground of appeal—erred in law in taking something into account that he ought not to have done.

Submits—ground 5 covers two points (1) referred to Plaintiff—(2) defamatory of plaintiff. Submits—did not argue ground 4 because took view that point was covered by second part of ground 5. Anyway submits that innuendoes were not proved.

Suit 270— 40

Statement of Claim paras 20-21 and 22. “ I submitted in lower Court and submit here that it is not defamatory of the Plaintiff—part said to be defamatory refers only to Action Group.”

Suit 273—  
 Statement of Claim paras 19-20-21-22 and 24. The only connection

with Plaintiff is at lines 23 to 26. P. 7 of record. Does not deal with the conference—deals with something quite different.

Cites *Sim v. Stretch* (1936) 2 A.E.R.P. 1237. Lord Atkin 1240. Cannot seize on only bad interp—

Persons called by Plaintiff are not ordinary men in street. Refers to judgment of Lord Porter—p. 499 *Knupffer v. London Express*—(reads editorial note, p. 495)

Lord Porter : “ Nor do I think that the Plaintiff’s case is improved by the allegations of his friends. . . . ”

10 KAYODE :

We invite him if he wishes to add anything to do so on point grounds 4–5 of grounds of appeal—that is to say question whether words defamatory—were innuendoes alleged proved.

“ Submits that Taylor cannot take point of innuendoes—if he wished to argue it he should have taken grounds 4 and 5 together.” Does not wish to add anything.

Note—See Gatley, 4th Edition p. 16—“ Standard of Opinion.”

19.11.54

C.A.V.  
(Intld.) S. F. S. P.

In the West African Court of Appeal.

No. 33.  
Court Notes of Hearing of Appeal.  
19th November, 1954—  
*continued.*

No. 34.  
Judgment.  
11th March, 1955.

20

No. 34.

Judgment.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.

Friday the 11th day of March, 1955.

Before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President.  
JOSEPH HENRI MAXIME DE COMARMOND, Chief Justice, Nigeria.  
Sir JAMES HENLEY COUSSEY, Justice of Appeal.

Civil Suits Nos. 270/52 and 273/52.  
Appeal No. WACA. 112/1954.

30

THE HON. OBAFEMI AWOLOWO	... ..	... Plaintiff
	<i>v.</i>	
ZIK ENTERPRISES LTD., & A. Y. TINUBU	... ..	... Defendants
	and	
THE HON. OBAFEMI AWOLOWO	... ..	... Plaintiff/Respondent
	<i>v.</i>	
ZIK ENTERPRISES LTD., & MBONU OJIKE	... ..	... Defendants/Appellants.

JUDGMENT.

FOSTER-SUTTON, P. : This was an appeal against a judgment of Jibowu, J., in two consolidated actions claiming damages for defamation.

In the West African Court of Appeal.

No. 34.  
Judgment.  
11th March,  
1955—  
*continued.*

In the first case, Suit No. 270 of 1952, the learned trial Judge awarded the plaintiff the sum of £2,000 damages against both defendants, and in the second case, Suit No. 273 of 1952, he awarded £500 damages against both defendants. The first defendant in both cases was the Zik Enterprises Ltd. Proprietors, printers and publishers of a daily newspaper known as the "West African Pilot," the second defendant in the first suit was alleged to be the Editor of the newspaper, and in the second suit he was the writer of the article.

The first suit is a claim in respect of two causes of action, the first being in respect of a portion of a front-page article published in the first defendant's paper on the 10th June, 1952, headed :

"ACTION GROUP THREATENS CRISIS TO

"WIN OVER THE GOVERNMENT.

"SECRET BEHIND PLAN DISCLOSED.",

which reads as follows : "Political observers believe that the motive behind the delegation to the Government concerns the Iga Idunganran Civil Case, the Ilorin boundary and other issues affecting directly or indirectly, the Action Group. It is believed also that the party may endeavour to use power politics to enable the Government to yield to certain demands which the Action Groupers feel must be conceded in order to avert a constitutional crisis. Apart from the walk-out threat reliable sources believe also that Action Group Ministers may resign en bloc in order to effect the demands of the party over the issues at stake. Meanwhile, it is understood that the Government will be represented in the proposed parley with Government by Mr. Erick Himsworth, Financial Secretary and Mr. Harold Cooper Public Relations Officer, and others including the Governor himself," ; and the second cause of action is in respect of a portion of another front-page article published in the same newspaper on the 11th June, 1952, headed :

"GOVERNMENT TURNS BACK ACTION GROUP

"WITH NO TO ALL DEMANDS",

which reads : "the Ikenne trial also re-echoed in the parley, but the Government felt that it was an issue for the Legal Department and the court, and not the concern of the Governor. On this matter the Governor refused to make a statement."

In neither instance was it suggested that the words complained of are defamatory in their primary and natural meaning. The action is based entirely upon the innuendos pleaded in paragraphs 24 and 25 of the Statement of Claim. As regards the article of 10th June, the innuendo alleged reads as follows : "the plaintiff avers that the defendants meant and were understood by their readers to mean that the plaintiff and the other Ministers described in paragraph 16 above (a) held the aforesaid Conference with the Governor and other Government Officers in order to get Government to interfere with the course of justice in the aforesaid suit No. 276 of 1949 pending before the West African Court of Appeal and (b) threatened to create a constitutional crisis in order to force the

“hands of the Governor”; and as regards the article of 11th June the innuendo alleged reads: “the plaintiff avers that the defendants meant “and were understood by their readers to mean that the Plaintiff and the “other Ministers described in paragraph 16 above had asked the Governor “and the other officials present at the conference to interfere in the course “of justice namely in the aforesaid conviction of Sadiku Salami pending “before the West African Court of Appeal.”

In the West African Court of Appeal. — No. 34. Judgment. 11th March, 1955—*continued.*

In these circumstances it was necessary to prove that the matter published in each of the articles conveyed to the mind of a reasonable person cognisant of special facts or circumstances that which it would not convey to the mind of a reasonable person unacquainted therewith.

Mr. J. Taylor who appeared for the appellants in both cases submitted, *inter alia*, that the words complained of were written about a class of persons, that is to say the Action Group as a whole, and that there was nothing to show that they referred to the plaintiff as an individual. Subsequently he also submitted that the innuendos were not proved.

Since the claims are in respect of three causes of action, relating to three publications, I think it is important that each of the articles and the evidence led in respect of them should be examined separately, and this I propose to do.

There are two questions involved in the attempt to identify the plaintiff as the person said to be defamed.

The first question is a question of law—can the article, having regard to its language, be regarded as capable of referring to the plaintiff? The second question is a question of fact, namely, does the article in fact lead reasonable people, who know the plaintiff, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the plaintiff, the second question does not arise, Viscount Simon, L.C., in *Knupffer v. London Express Newspaper, Ltd.* (1944) 1 All E.R. 497.

Taking the article in the West African Pilot of June 10th as a whole, I am unable to agree that, upon a reasonable construction, it can be regarded as referring to the plaintiff. It seems to me that the whole tenor of the article shows that it is the policy of the Action Group as a party which is aimed at, not any particular individual.

It is true that witnesses for the plaintiff gave evidence that the fact that Action Group Ministers were to have a conference with the Governor on June 10th had received wide publicity in the press, and that several of the witnesses testified that they had read the issue of the Daily Service newspaper published on the 9th June, Exhibit “N,” which discussed the proposed conference and gave the names of the thirteen Ministers, including the plaintiff’s, who were to attend it. The learned trial Judge treated this evidence led to support the identification in fact as governing the matter, and I am of the opinion that he erred in so doing.

The article in the issue of the 11th June contains several references to the leader of the Action Group, taken as a whole, I am satisfied that it is

In the West African Court of Appeal.

No. 34. Judgment. 11th March, 1955—  
*continued.*

capable of referring to the plaintiff, and that it was reasonable for the witnesses to think that it did.

The next question which has to be considered is whether the innuendos were proved.

Although, having regard to the conclusion I have reached on the first point in respect of the article of 10th June, the question of the innuendos does not arise in relation to it, I propose to consider this aspect in respect of both the articles complained of in the first action.

In considering this aspect of the case I am of the opinion that the position is as stated by Lord Blackburn in his Judgment in the case of *Capital and Counties Bank v. Henty* (1881-2) 7 A.C. at p. 776 when he said :  
“ Whenever a verdict has passed against a defendant in a case of libel,  
“ and Judgment has been given in the Court below, those who bring their  
“ writ of error on the ground that there is no libel, assert that both the  
“ jury and the Court below have gone wrong : but they are not called  
“ upon to say that the words were incapable of conveying the libellous  
“ imputation ; it is enough if they can make out, to the satisfaction of  
“ the Court in error, that the onus of showing that they do convey such an  
“ imputation is not satisfied.”

As Viscount Haldane said *John Leng and Co. Limited v. Langlands*, 20  
114 L.T. p. 667 : “ The question which we have to deal with we have to  
“ decide as judges of law. It is whether it is possible, if the language  
“ used is read in its ordinary sense, to say that it is such as can reasonable  
“ and naturally support the innuendo. It is not enough for the pursuer  
“ to say: ‘ The language is ambiguous ; it is capable of one of two meanings  
“ ‘ either is equally probable, and it is for the jury to choose which it will  
“ ‘ put on it.’ The pursuer must make out his case, and the pursuer  
“ must therefore, if he wishes to succeed, when he puts forward his innuendo,  
“ put it forward either on the footing that the language taken by itself  
“ supports the innuendo, or that there is extrinsic evidence, extrinsic to 30  
“ the libel itself, which shows that that was the sense in which the words  
“ were intended to be construed.”

The special circumstances alleged are set out in paragraphs 6 to 15 of the Statement of Claim, which read as follows :

“ 6. In 1949 there was a civil case between the members of  
“ the House of Docemo and His Highness Oba Adeniji II (Suit  
“ No. 276/49) in which the former claimed against the latter party  
“ a declaration of title and recovery of possession of a building  
“ and land known as ‘ Iga Idunganran ’

“ 7. The said action was determined on the 18th of January, 40  
“ 1951 when Judgment was entered in favour of Oba Adeniji  
“ Adele II.

“ 8. The members of the House of Docemo have lodged an  
“ appeal to the West African Court of Appeal and the said appeal  
“ is pending.

“ 9. The Defendants have invariably referred to the appeal  
“ in the West African Pilot as ‘ the Iga Idunganran case.’

“ 10. The said appeal is still pending before the West African Court of Appeal.

“ 11. The aforesaid Oba Adeniji Adele is a prominent member and well known supporter of the Action Group.

“ 12. On the 28th of April, 1952, one Sadiku Salami a first cousin to Plaintiff's wife was convicted of murder and sentenced to death in the Supreme Court of the Ibadan Judicial Division.

“ 13. The alleged murder took place at Ikenne and the case has been referred to in the “ West African Pilot ” as ‘ the Ikenne Trial.’

“ 14. The said Sadiku Salami has lodged an appeal to the West African Court of Appeal and the said appeal is still pending.

“ 15. The said Sadiku Salami is a member and supporter of the Action Group in Plaintiff's constituency i.e. Remo Division of Ijebu Province.”

In the West African Court of Appeal.

No. 34. Judgment. 11th March, 1955—  
*continued.*

10

Of the four witnesses called by the Plaintiff to prove the innuendos, two were members, and one a strong supporter, of the Action Group. They all gave evidence to the effect that the article of June 10th gave them the impression that the leaders of the Action Group were bringing pressure to bear on the Governor to interfere with the course of justice in the Iga Idunganran case, not one of them gave evidence that he had knowledge of any special facts or circumstances which caused him to form his opinion. The plaintiff gave evidence that the “ Oba Adele is a very strong supporter of the Action Group,” that before the civil case there had been a dispute as to who should be the Oba of Lagos in which the Government had intervened, and that the Iga is the official residence of the Oba of Lagos, but that does not seem to me to carry the matter any further.

20

The same four witnesses gave evidence regarding the article of 11th June. Mr. Ikoli said “ The publication conveys to me the impression that the leader of the Action Group (plaintiff) had put pressure on the Governor to intervene in the Ikenne trial which I knew to be a murder case,” Messrs. Somolu and Randle gave evidence to the effect that they considered it improper for the delegation to see the Governor over the Ikenne case which was then on appeal, and Mr. Kotoye said that he gained the impression that the Ikenne murder trial had been discussed at the meeting.

30

It seems clear from the evidence that the Ikenne trial was a sequel to an incident which occurred during disturbances at Ikenne in Ijebu Remo Division on the 14th January, 1952, arising out of a dispute between the Alakanne's party and the Apena's supporters over a chieftaincy matter.

40

Mr. Randle testified that he knew of the dispute, and he went on to say “ May be the murder arose out of the dispute.” He also said that he had read the issue of the West African Pilot of the 9th May, 1952, Exhibit “ J1,” which refers to the plaintiff, and to the remarks of Abbott, J., who presided at the murder trial, regarding the plaintiff's alleged failure to hand over the accused man to the police.

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African  
Court of  
Appeal.

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1955—  
*continued.*

The only other witness called by the plaintiff who testified to knowledge of any special circumstance was Mr. Kotoye, who said that he had read the issue of the West African Pilot of the 8th May, 1952, Exhibit "J," which contains an article on the Ikenne trial referring to the fact that the accused man Sadiku Salami "was arrested in the house of an Action Group member," but the article does not contain any direct reference to the plaintiff, and the witness did not aver that he had any other special knowledge when he read the article of 11th June.

On the evidence of these four witnesses can it fairly be said that the plaintiff discharged the onus of proving that the article of 11th June conveyed to the mind of a reasonable person the imputation that "the plaintiff and the other Ministers . . . asked the Governor and the other officials present at the Conference to interfere in the course of justice namely in the . . . conviction of Sadiku Salami pending before the West African Court of Appeal?" After most anxious consideration I have come to the conclusion that the inference suggested by the innuendo is not such as a reasonable person would draw, and I am, therefore, of the opinion that the answer to the question should be in the negative. 10

It seems to me that there might have been a number of matters connected with the Ikenne trial which could quite legitimately have been mentioned at the Conference. As I have already pointed out, only one of the four witnesses, Mr. Ikoli, a very good friend of the plaintiff and a supporter of his party, gave evidence that the article in question gave him the impression that the plaintiff had put pressure on the Governor to intervene in the Ikenne trial, and he did not testify to having knowledge of any extrinsic facts which might have led him to the opinion he says he formed. Because some persons may choose, not by reason of the language itself, but by reason of some fact to which the article refers, to draw an unfavourable inference, it does not follow that a reasonable person would do so. 20

The learned trial Judge held that the article of 10th June "bears the innuendo alleged," and when dealing with the article of 11th June he said, *inter alia*, "The implication appears clear that the Ministers including the plaintiff raised the question about Sadiku Salami's case with a view to getting the Governor to intervene in order to save Sadiku Salami and the plaintiff." The latter remarks seem to me, on any view of the evidence, to be an over-statement of the position, and the implication he draws certainly goes beyond the innuendos pleaded. I cannot help feeling that he might well have taken a different view had consideration of the three articles been more clearly separated in his judgment. 30

The trial Judge seems to have been influenced in reaching his conclusions on the first two articles, by the article of 13th June written by the second defendant in Suit No. 273 of 1952, from which he drew the inference that the author had drawn the same conclusions from the articles of 10th and 11th June as had the witnesses for the plaintiff. In this connection I would observe that the article of 13th June does not contain 40



any reference to the two earlier articles, and so far as I am aware there is no direct evidence to support the conclusion. If the article of 13th June had been shewn to have represented the author's conclusions drawn from the articles of 10th and 11th June, I think the passage in Lord Bramwell's Judgment at page 792 in the case of *Capital and Counties Bank v. Henty*, which reads: "I think that the defamer is he who, of many inferences, chooses a defamatory one," is apposite.

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*continued.*

In paragraph 5 of the Statement of Claim in Suit No. 270 of 1952, the plaintiff alleged that the second defendant was the Editor of the West African Pilot. This allegation was denied in paragraph 2 of the defence filed by the second defendant, and Counsel for the appellants submitted that the plaintiff had failed to prove that he was the Editor. The only evidence on the point was given by Mr. Giwa, Editor of the Nigerian Statesman. Taking his evidence as a whole, including his answer to a question put by the Court, I do not think that it can be put any higher than that the witness was under the impression that the second defendant was the Editor in June, 1952. In these circumstances I am of the opinion that the plaintiff cannot be said to have discharged the onus which was upon him. It follows that I would have given judgment against the plaintiff in favour of this defendant in any event.

The article complained of in Suit No. 273 of 1952, was published in the issue of the first defendant's newspaper of 13th June, 1952. It is set out in paragraph 24 of the statement of claim, and reads as follows:

"ACTION GROUP by Mbonu Ojike

"The shallow separatist and selfish policies of the Action Group have now landed the party in a state of confusion disgrace and disaster. This is a political doldrum the beginning of an end to the political chauvinism and machiavellianism of the Action Group leadership. What concerns the nation is not the fate of a party founded in deceit and envy but the retardation element such an ignoble party has precipitated on the road to Nigerian freedom.

"STUMBLING BLOCK. A year ago, I said that the Minister of Local Government, Western Region, by concocting secretly the Action Group dedicated to the cause of a section of Nigeria constitutes a stumbling block to Nigeria nationalism. Today's events have abundantly proved me absolutely correct.

"That a party worthy of Nigerians' support should now attempt to intimidate the Government of Nigeria in which it is represented under the Constitution that Awolowo goaded the now defunct NEC to accept before the texts thereof were published, leaves no one in doubt as to the tragic end of the Action Group and its carpet crossers.

"BEST BRAINS. Does the party wish Government to interfere with the course of justice in relation to the atrocious Ikenne dispute?

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*continued.*

“ Rightly enough the Council of Ministers selected two of their  
“ best brains to go to UK in the interest, not of a party or region,  
“ but of Nigeria as a whole.

“ That none of the Groupers was found competent enough to  
“ go along is the fault of the Local Government Minister who  
“ built a phony party with non-university men. Or does he wish  
“ Nigeria to send his party men without academic or experiential  
“ qualification to UK to negotiate technical problems with highly  
“ qualified Europeans ?

“ Folly is confounded by the Group chauvinists and 10  
“ machiavellinists. And Nigerian Freedom is retarded for it all.  
“ If Groupers want Ilorin Province and Kabba is this unholy  
“ goal to be won by threats of a walk-out ?

“ Will the Iga controversy case already in Court be cancelled  
“ by the Governor in order to placate Action Groupers ?

“ Or are we to be exterminated because Groupers want Lagos  
“ in the West or that the old man Lyttleton did not visit Iga ?  
“ How honest men could participate in a legislature that passed  
“ certain bills and turn round to kick against the constitutional 20  
“ operation of Lead-Zinc and Pioneer Industries laws simply  
“ because they were introduced by NCNC Ministers beats the  
“ nationalists’ imagination and shocks world conscience.

“ Western Local Government Minister, behave like a states-  
“ man. Stop childish manoeuvres for an ant has never defeated  
“ an elephant.

“ You cannot stop Nigerian unity and peoples’ freedom march  
“ on to freedom, I say, to N.C.N.C. Floreat one Nigeria Thanks to  
“ West African Pilot for unmasking Groupers woes Shame to  
“ Daily Times for calling Groupers’ Iniquitous delegation to  
“ Government House a ‘ Top Secret.’ 30

“ EBUTE METTA.” ;

and paragraph 25 of the Statement of Claim contains an averment that the article was written and published as a sequel to the articles published on 10th and 11th June.

The first question which has to be determined is: Are the words complained of in conjunction with the relevant circumstances reasonably capable of being understood to apply to the plaintiff? In the case now under consideration that question ought, in my view, to be answered in the affirmative. The article contains a reference to “Groupers iniquitous  
“ delegation to Government House,” there are several references to the 40  
plaintiff, and it must, I think, be regarded in the light of the article of 11th June.

I am also of the opinion that the learned trial Judge was justified in his finding of fact that it was reasonable for the witnesses to think that the article did refer to the plaintiff.

The action is based entirely upon the innuendos pleaded in paragraph 26

of the statement of claim to this effect: The article meant and was understood to mean (a) that the plaintiff and other Ministers had planned to get the Government to interfere with the course of justice in relation to the charge of murder against Sadiku Salami, (b), that the plaintiff and other Ministers had planned to get Government to interfere with the course of justice in relation to the Iga Idunganran civil case, and (c), that the plaintiff and other Ministers are unfit to hold their respective offices.

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African  
Court of  
Appeal.

No. 34.  
Judgment.  
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1955—

*continued*

Applying the test laid down by Viscount Haldane in the case of *John Leng and Co. Limited v. Langlands*, to which I have already referred, I am  
10 of the opinion that the language employed in the passages of the article which refer to the "atrocious Ikenne dispute," the "Iga controversy case" and the "Iniquitous delegation to Government House," taken by itself, supports the innuendos alleged, and further, that the articles of 10th and 11th June provide evidence of circumstances sufficient to entitle any reasonable man with knowledge of them to interpret the words in the article now under consideration, in the defamatory sense alleged, *Hough v. London Express Newspaper, Ltd.* (1940), 2 K.B. 507.

In reaching this conclusion I have paid no regard to the matter contained in the issue of the first defendant's newspaper, dated 14th June,  
20 Exhibit "B2," as it could not, I think, properly be treated as evidence tending to give a libelous meaning to the article of 13th June, if the latter publication itself was not otherwise proved to be defamatory, and I am fortified in this view by the remarks of Lord Selborne, L.C., in *Capital and Counties Bank v. Henty*, at page 748.

Counsel for the appellant also submitted that the learned trial Judge erred in taking into consideration the possibility that the newspaper had a circulation outside Lagos, when considering the question of damages, since it was denied in the statement of defence and there was no evidence to support the proposition.

30 The passage in the judgment to which objection would appear to have been taken reads: "I have to consider the rank and position of the plaintiff  
"in the community, the fact that the reflections on him were in a public  
"newspaper which might have travelled beyond Nigeria to other lands  
"where the plaintiff is known personally or by reputation and the damage  
"the publications might have done to his good name."

As Lord Atkin said in his judgment in *Bedwas Navigation Colliery Co.* (1921) v. *South Wales Executive Board*, 153 L.T.R. at p. 386, when discussing the same problem: "It is precisely because the 'real' damage cannot be  
40 "ascertained and established that the damages are at large. It is  
"impossible to track the scandal, to know what quarters the poison may  
"reach: It is impossible to weigh at all closely the compensation which  
"will recompense a man or woman for the insult offered or the pain of  
"a false accusation." The principles upon which a court of appeal acts in considering the finding of a trial Judge as to the amount of damages has often been stated, and was re-stated by Greer, L.J. in his Judgment

In the West African Court of Appeal.

No. 34. Judgment. 11th March, 1955—  
*continued.*

in *Flint v. Lovell* (1935) 1 K.B. at p. 360, where he said “ In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the Judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”

In view of the conclusions I have reached in Suit No. 270 of 1952, the question of damages does not arise in respect of that action, but if I had to determine the matter I should feel bound to hold that the learned trial Judge did not act upon any wrong principle when assessing damages in that suit, and the same applies to his assessment of damages in Suit No. 273 of 1952. 10

Another ground of complaint was that the trial Judge erred in treating the plaintiff's claim for an injunction as abandoned. It was submitted that it ought to have been dismissed with costs on that issue to the defendants. I can find nothing in the record to indicate that the matter was raised in the Court below, but costs are rarely taxed here, it being the usual practice to award a lump sum when all relevant matters are taken into consideration. In these circumstances I do not think there is any real substance in the complaint. 20

Finally, learned Counsel for the appellants took objection to the passage in the judgment which reads : “ I therefore hold that each Minister had been defamed and that each can bring an action in respect of the publications.” It is clear that the remarks go beyond the necessities of the position, and I think, with respect to the learned trial Judge, that it would have been better if they had not been made. I am quite sure, however, that if any further actions are taken in respect of this matter that they will be decided on their merits, and that no regard will be had to the passage in question.

For the reasons given I would allow the appeal of the appellants in Suit No. 270 of 1952, set aside the judgment of the Court below and enter judgment for the defendants with costs in the Court below fixed at 50 guineas ; and I would dismiss the appeal in Suit No. 273 of 1952. 30

I would award the appellants in Suit No. 270 of 1952, £35 10s. 0d. costs on this appeal, and the respondent in Suit No. 273 of 1952, the sum of £19 10s. 0d.

(Sgd.) S. FOSTER SUTTON, P.

DE COMARMOND, C.J. : I concur.

(Sgd.) M. DE COMARMOND,

Ag. C.J. 40

COUSSEY, J.A. : I concur.

(Sgd.) J. HENLEY COUSSEY,

J.A.

J. TAYLOR for the appellants.

KAYODE for the respondent.

West African Court of Appeal Lagos.

No. 35.  
Order on Appeal.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.

Suits Nos. 270/1952.  
and 273/1952.  
W.A.C.A. 112/1954.

In the West African Court of Appeal.  
No. 35.  
Order on Appeal.  
11th March, 1955.

On appeal from the judgment of the Supreme Court in the Lagos Judicial Division.

Between

- 10 1. ZIK ENTERPRISES LTD.
- 2. MBONU OJIKE ... .. Defendants/Appellants
- and
- THE HONOURABLE OBAFEMI AWOLOWO ... .. Plaintiff/Respondent.
- Sgd. S. FOSTER SUTTON.
- President.

Friday the 11th day of March, 1955.

UPON READING the Record of Appeal herein and after hearing Mr. J. I. C. Taylor of Counsel for the Defendants/Appellants and Mr. R. A. Fani-Kayode of Counsel for the Plaintiff/Respondent :

20 IT IS ORDERED that the appeal of the Defendants/Appellants in Suit No. 270/1952 be allowed and that the judgment of the Supreme Court be set aside and judgment entered for the Defendants/Appellants with costs in the Supreme Court fixed at 50 guineas ;

AND THAT the appeal of the Defendants/Appellants in Suit No. 273/1952 be dismissed.

AND THAT the Plaintiff/Respondent do pay to the Defendants/Appellants in Suit No. 270/1952 costs on this appeal fixed at £35 10s. 0d. And that the Defendants/Appellants do pay to the Plaintiff/Respondent in Suit No. 273/1952 costs on this appeal fixed at £19 10s. 0d.

30 (Sgd.) H. O. LUCAS,  
Ag. Deputy Registrar.

No. 36.

Order giving Final Leave to Appeal to Her Majesty in Council.

IN THE WEST AFRICAN COURT OF APPEAL  
HOLDEN AT LAGOS, NIGERIA.

Suit No. 270/1952.  
W.A.C.A. 112/1954.

Application for an order for Final Leave to appeal to Her Majesty's Privy Council.

No. 36.  
Order giving Final Leave to Appeal to Her Majesty in Council.  
20th June, 1955.

Between

- THE HONOURABLE OBAFEMI AWOLOWO ... .. Applicant
- and
- 40 1. ZIK ENTERPRISES LTD.
- 2. A. Y. S. TINUBU ... .. Respondents.
- (L.S.)
- (Sgd.) O. JIBOWU.
- Presiding Judge.

Monday the 20th day of June, 1955.

In the West African Court of Appeal.

No. 36. Order giving Final Leave to Appeal to Her Majesty in Council. 20th June, 1955—*continued.* Plaintiff's Exhibits.

"A." Evidence of Aubley McKisack. Written Comment on the Conference

"E." Certificate of Incorporation of Zik's Press Limited. 5th August, 1937.

"E1." Certificate of Incorporation of Zik Enterprises Limited. 31st March, 1952.

UPON READING the application herein and the affidavit sworn to on the 3rd day of June, 1955, filed on behalf of the Applicant, and after hearing Mr. R. A. Fani Kayode of Counsel for the Applicant, the Respondents not being present nor represented :

IT IS ORDERED that Final Leave to appeal to Her Majesty's Privy Council from the judgment of the Court dated 11th March, 1955, be and is hereby granted to the Applicant.

(Sgd.) H. O. LUCAS,  
*Deputy Registrar.*

**PLAINTIFF'S EXHIBITS.**

10

"A"—Evidence of Aubley McKisack. Written comment on the Conference.

No. 1416.

**A.G. MINISTERS MEET H.E.**

The Action Group Ministers (Central and Regional) led by the Honourable Obafemi Awolowo, leader of the Party, met His Excellency the Governor at the Council of Ministers' Hall yesterday. With the Governor were the Attorney-General, the Acting Chief Secretary and the Lieutenant-Governor Western Region. Matters discussed related only to constitutional issues and administrative procedure under the Constitution. The discussions were frank, full and cordial and led to an understanding of the various issues involved.

JAdel/

"E."—Certificate of Incorporation of Zik's Press Ltd.

(No. 460)

**NIGERIA**

**CERTIFICATE OF INCORPORATION**

I HEREBY CERTIFY that the ZIK'S PRESS LIMITED is this day Incorporated under the Companies Ordinance (Cap. 38) and that the Company is Limited.

Given under my hand at Lagos this Fifth day of August, One Thousand Nine Hundred and thirty seven.

Fees and Deed Stamps           £21. 0s. 0d.  
Stamp Duty on Capital           £12. 10s. 0d.

(Sgd.) E. HALLINAN,  
*Acting Registrar of Companies.*

30

"E1."—Certificate of Incorporation of Zik Enterprises Limited

(No. 460.)

**NIGERIA**

**CERTIFICATE OF INCORPORATION**

I HEREBY CERTIFY that the ZIK ENTERPRISES LIMITED (formerly ZIK'S PRESS LIMITED) was Incorporated on August 5th, 1937 under the Companies Ordinance (Cap. 38) and that the Company is Limited.

40

Date of Special Resolution changing the name 8th December, 1951. Plaintiff's Exhibits.  
 Given under my hand at Lagos this 31st day of March, One thousand  
 Nine Hundred and Fifty two. "E1."  
 Fees and Deed Stamps £21. Certificate  
 Stamp Duty on Capital £12. 10s. of Incorporation of  
 Zik  
 Enterprises  
 Limited.  
 31st March,  
 1952—  
*continued.*

(Sgd.) E. G. FITT,  
*Registrar of Companies.*

**" G. "—Special Resolution of Zik's Press Limited**

No. of Certificate 460.

10 THE COMPANIES ORDINANCE (CAP. 38)  
 COMPANY LIMITED BY SHARES  
 ZIK'S PRESS LIMITED

Special Resolution, pursuant to the Companies Ordinance (Cap. 38),  
 Section 71. and any other Section(s) under which Special Resolution is  
 passed and confirmed.

Passed November 24, 1951. Confirmed December 8, 1951.

At an Extraordinary Meeting of the Members of the above-named  
 Company duly convened and held at 34 Commercial Avenue, Yaba Estate,  
 Lagos, on Saturday, November 24, 1951, the following Special Resolution  
 20 was passed; and at a subsequent Extraordinary General Meeting of the  
 Members of the said Company also duly convened and held at the same  
 place on Saturday, December 8, 1951, such Resolution was duly confirmed  
 as a Special Resolution.

" BE IT RESOLVED :

" (1) That Paragraph 1 of the Memorandum of Association be  
 deleted and the following substituted therefore :

" 1. The Name of the Company is " ZIK ENTERPRISES LIMITED. "  
 Dated at Yaba Estate, Lagos, this 21st day of December, 1951.

30 (Sgd.) J. M. EDEKOBİ,  
*Secretary to the Board of Directors.*

**" H. "—Evidence of James Okoli. Certificate of Incorporation of Associated  
 Newspapers of Nigeria Limited**

No. 863.

NIGERIA

Certificate of Incorporation

I Hereby Certify that ASSOCIATED NEWSPAPERS OF NIGERIA LIMITED  
 is this day Incorporated under the Companies Ordinance (Cap. 38) and that  
 the Company is Limited.

40 Given under my hand at Lagos this 30th day of May, One thousand  
 Nine Hundred and Fifty-One.

Fees and Deed Stamps £8 15s. 0d.

Stamp Duty on Capital £25 0s. 0d.

H. H. MARSHALL,  
*Ag Registrar of Companies.*

" H. "  
 Evidence of  
 James  
 Okoli.  
 Certificate  
 of Incorporation of  
 Associated  
 Newspapers  
 of Nigeria  
 Limited.  
 30th May,  
 1951.

Defendants' Exhibits.

“ V. ”  
Affidavit of Adolphus Kofi Blankson. 23rd April, 1952.

DEFENDANTS' EXHIBITS.

“ V. ”—Affidavit of Adolphus Kofi Blankson.

IN THE MATTER OF THE NEWSPAPER ORDINANCE (CAP. 148)  
AND IN THE MATTER OF THE WEST AFRICAN PILOT LTD.  
AFFIDAVIT.

I, Adolphus Kofi Blankson, a British subject, Director of West African Pilot, Limited, of 34 Commercial Avenue, Yaba Estate, make Oath and say as follows :

1. That I am a Director of West African Pilot, Limited, a company registered and incorporated in Nigeria. 10
2. That the registered address of *West African Pilot*, Limited, is 34 Commercial Avenue, Yaba Estate.
3. That the West African Pilot, Limited, are printers of the *West African Pilot*, a daily newspaper published in Lagos.
4. That the correct title of the newspaper is the *West African Pilot*.
5. That the real names and true places of abode of the proprietors and publishers of the *West African Pilot* are the West African Pilot, Limited, of 34 Commercial Avenue, Yaba Estate.
6. That the true description of the building wherein the said newspaper is intended to be printed is a two storeyed block 20 building at 34 Commercial Avenue, Yaba Estate.

(Sgd.) A. K. BLANKSON.

Sworn at the Magistrate's Court  
Registry Ebute Metta this 23rd day  
of April, 1952.

Before me

(Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

“ VI. ”  
Affidavit of Adolphus Kofi Blankson. 23rd April, 1952.

“ VI. ”—Affidavit of Adolphus Kofi Blankson.

IN THE MATTER OF THE NEWSPAPER ORDINANCE (Cap. 148) 30  
AND IN THE MATTER OF THE WEST AFRICAN PILOT LTD.  
AFFIDAVIT.

I, Adolphus Kofi Blankson, a British subject, Director of West African Pilot, Limited, of 34 Commercial Avenue, Yaba Estate, make oath and say as follows :

1. That I am a Director of West African Pilot, Limited, a company registered and incorporated in Nigeria.
2. That the registered address of West African Pilot, Limited, is 34 Commercial Avenue, Yaba Estate.
3. That West African Pilot, Limited, are publishers of *the West African Pilot*, a daily newspaper published in Lagos. 40



4. That the correct title of the newspaper is the *West African Pilot*.
5. That the real names and true places of abode of the publishers and printers of the *West African Pilot*, are West African Pilot, Limited, of 34 Commercial Avenue, Yaba Estate.
6. That the true description of the building wherein the said newspaper is intended to be printed is a two storeyed block building at 34 Commercial Avenue, Yaba Estate.

Defendants' Exhibits.  
 " V1."  
 Affidavit of Adolphus Kofi Blankson.  
 23rd April, 1952—  
*continued.*

(Sgd.) A. K. BLANKSON.

Sworn at the Magistrate's Court  
 10 Registry Ebute Metta this 23rd  
 day of April, 1952.

Before me

(Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

**" V2."—Affidavit of Adolphus Kofi Blankson**

IN THE MATTER OF THE NEWSPAPER ORDINANCE (Cap. 148)  
 AND IN THE MATTER OF THE WEST AFRICAN PILOT LTD.  
 AFFIDAVIT.

" V2."  
 Affidavit of Adolphus Kofi Blankson.  
 23rd April, 1952—

I, Adolphus Kofi Blankson, a British subject, Director of West African  
 20 Pilot, Limited, of 34 Commercial Avenue, Yaba Estate, make oath and  
 say as follows :

1. That I am a Director of West African Pilot, Limited, a company registered and incorporated in Nigeria.
2. That the registered address of the *West African Pilot*, Limited, is 34 Commercial Avenue, Yaba Estate.
3. That the West African Pilot Limited, are proprietors of the *West African Pilot*, a daily newspaper published in Lagos.
4. That the correct title of the newspaper is the *West African Pilot*.
5. That the real names and true places of abode of the proprietors and printers of the *West African Pilot* are the West African Pilot, Limited, of 34 Commercial Avenue, Yaba Estate.
6. That the true description of the building wherein the said newspaper is intended to be printed is a two storeyed block building at 34 Commercial Avenue, Yaba Estate.

(Sgd.) A. K. BLANKSON.

Sworn at the Magistrate's Court  
 Registry Ebute Metta this 23rd  
 day of April, 1952.

Before me

(Sgd.) OLA SCOTT,  
*Commissioner for Oaths.*

40

Defendants'  
Exhibits.

—  
“ W. ”  
Affidavit of  
Adolphus  
Kofi  
Blankson.  
12th June,  
1952.

“ W. ”—Affidavit of Adolphus Kofi Blankson.

IN THE MATTER OF THE NEWSPAPER ORDINANCE (Cap. 148)  
AND IN THE MATTER OF THE WEST AFRICAN PILOT. LTD.  
AFFIDAVIT.

I, Adolphus Kofi Blankson, a British subject, Director of the Associated Newspapers of Nigeria, Limited, and of 34, Commercial Avenue, Yaba Estate, make oath and say as follows :

1. That I am a Director of the Associated Newspapers of Nigeria, Limited, a company registered and incorporated in Nigeria.
2. That the registered address of the Associated Newspapers of Nigeria, Limited, is 34 Commercial Avenue, Yaba Estate.
3. That the Associated Newspapers of Nigeria, Limited, are the publishers of the *West African Pilot*, a daily newspaper published in Lagos.
4. That the correct title of the newspaper is the *West African Pilot*.
5. That the real names and true places of abode of the proprietors and publishers of the *West African Pilot* are the Associated Newspapers of Nigeria, Limited, of 34 Commercial Avenue, Yaba Estate.
6. That the true description of the building wherein the said 20 newspaper is intended to be printed is a two storeyed block building at 34 Commercial Avenue, Yaba Estate.

Sworn at the Magistrate's Court  
Registry Ebute Metta this 12th  
day of June, 1952.

Before me

*Commissioner for Oaths.*

In the Privy Council.

No. 19 of 1956.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL  
(NIGERIAN SESSION.)

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BETWEEN

THE HON. OBAFEMI AWOLowo  
*(Plaintiff) Appellant*

AND

(1) ZIK ENTERPRISES LIMITED  
(2) A. Y. S. TINUBU  
*(Defendants) Respondents.*

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RECORD OF PROCEEDINGS

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HATCHETT JONES & CO.,  
90 Fenchurch Street,  
London, E.C.3,  
*Solicitors for the Appellant.*

A. L. BRYDEN & WILLIAMS,  
53 Victoria Street,  
London, S.W.1,  
*Solicitors for the Respondents.*