

Judgment
6/1964

IN THE PRIVY COUNCIL

Appeal No.33 of 1962

ON APPEAL
FROM THE SUPREME COURT OF GIBRALTAR

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

BETWEEN :-

EDWARD CAMPELLO,
SIMPRESS LIMITED and
VOX PUBLICATIONS LIMITED
(Defendants)

Appellants

78531

- and -

10 JULIUS C. SENE (Plaintiff)

Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal against the Judgment of the Supreme Court of Gibraltar dated 18th November, 1961, in this action for libel in which the Chief Justice of Gibraltar, Mr. Justice Hubert J.M. Flaxman, C.M.G., entered judgment for the Respondent as Plaintiff against the Appellants as Defendants in the sum of £600 damages and costs to be taxed.

20 2. The Plaintiff was at all material times the Departmental Civilian Officer in charge of administration of the War Department Organisation in Gibraltar.

3. The Defendants were respectively the Editor, the publishers and the printers of the Gibraltarian newspaper "Vox", which is published partly in the Spanish language and partly in the English language.

30 4. The case arose out of a claim for damages for libel based on a letter published in the Spanish language in the correspondence column on page 4 of the issue of

Record

"Vox" newspaper dated 7th October, 1960, and signed "G.F.W.U."

5. The English translation relied upon by the Respondent of that part of the letter of which he complained in the action is as follows:-

"These are not the only anomalies existent in this department of R.E. Viney Quarry. There is more. Mr. Sene, chief clerk threatens the workmen and even suspends them simply on any sort of report from the foremen or gangers without pausing to make any investigations as if we were still living in the era of the Torquemadas and the Neroes."

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pp.1-3

6. The Respondent commenced this action by Writ issued on 2nd November, 1960.

7. By his Statement of Claim the Respondent alleged that the words complained of were defamatory of him in their natural and ordinary meaning. No innuendo was pleaded.

pp.4-5

8. The Appellants by their Defence as amended pursuant to leave granted by the learned Chief Justice at the trial:-

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(i) each admitted publication;

(ii) did not admit the translation of the words as set out above, but contended that the following was the true translation of the words complained of:-

"These are not the only anomalies existent in this department of R.E. Viney Quarry. There is more. Mr. Sene, chief clerk threatens the workmen and even suspends them simply on any report from those in charge, without spending time in investigations as if we were still living in era of the Torquemadas and Neroes."

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(iii) alleged that the words were no libel on the Respondent, and that they were not written or published of the character of the Respondent, but merely of the methods employed by him as Civilian officer pursuant to, in the course of and in the discharge of the duties of his employment;

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(iv) pleaded that the words complained of were

fair comment by way of a "rolled-up" plea, contending that the words "Mr. Sene ... time and investigation" were statements of fact, and the remainder comment.

pp.20-22.

10 (v) pleaded that the facts relied upon by the Appellants in support of their contention that the statements of fact in the words complained of were true consisted of a number of specified letters written by the Respondent to workmen under his charge employed by the War Department, allegedly informing the workman in question of reports made against the workman for a deficiency in his work or misconduct and threatening dismissal or suspending the workman.

pp.20-21
p.12.

9. By his Reply the Respondent:-

20 (i) joined issued on the defence of fair comment, and in particular upon the assertion that the statements of fact in the words complained of were true;

(ii) alleged that the Appellants were actuated by malice.

pp.8-10.

10. The action was heard on 13th, 14th, 15th, 16th, 17th and 18th November, 1961, before the learned Chief Justice of Gibraltar sitting with a special jury.

11. The following witnesses were called on behalf of the Respondent:-

30 (i) The Respondent

pp.25-26, 29-31,
33-38

40 A full note of the Respondent's evidence is set out in the Report of Proceedings. The Respondent testified that he never at any time threatened workers. He stated that it was his duty in relation to certain minor offences to send out letters of warning to workers, but never on the strength of reports from gangers or foremen. He explained that the procedure for minor offences was that for the first offence the officer immediately in charge of the worker would administer an oral reprimand or warning; for the second offence the officer immediately in

Record

charge would report the matter to the Respondent, who would discuss the matter fully with the officer, and if satisfied of contravention and a prima facie case would prepare a warning letter to the workman to be signed for and on behalf of the Command Works Officer. The same procedure applied for a third minor offence, in which case the Respondent sent out a final warning letter. After any warning letter the workman had a right which he was expected to exercise of a hearing with the Area Works Officer, at which the workman was entitled to be represented by a friend, usually a trades union official. If no minor offence was committed within six months after the final warning letter, the final warning was treated as lapsed, but if a further minor offence was committed during that six months period, it was treated as a serious offence, upon which only the Command Works Officer had authority to adjudicate. The Respondent then notified the Command Works Officer, and furnished a statement to the workman concerned in which the charge was set out, giving him 48 hours to reply and stating that he could consult his trade union officials before reply. There then followed a hearing before the Command Works Officer at which the workman was allowed to have a friend or colleague to assist or speak for him. At no time during this procedure did the Respondent take action before an Officer had seen and heard the accused workman, and the Respondent always first satisfied himself that the regulations had been broken, after discussion with the officer, before despatching any warning letter.

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The Respondent testified that he never ordered suspension; suspension could only be ordered by the Command Works Officer, and then only when criminal proceedings were pending against the workman concerned. Any letters of suspension were issued by the Respondent over his signature only after discussion and decision by the Command Works Officer. If a suspended workman was acquitted he was reinstated and paid full wages, and

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there was no black mark against him.

10 In connection with the letters and cases relied upon by the Appellants, that of Moreno was a warning letter for a minor offence in relation to low output, that of Lopez was a final warning in relation to persistent lateness for work, and that of Matos was a suspension after notification from the Gibraltar Security Police that Matos was about to be charged with a criminal offence in the Gibraltar Magistrates' Court.

(ii) Mr. C.E. Prescott

pp.27-28

Mr. C.E. Prescott testified that he was an experienced translator, and proved the translation relied upon by the Respondent in the Statement of Claim.

(iii) Mr. S. Cooper

p.39

20 This witness, the Superintendent Engineer Electrical and Mechanical, testified that he was in charge of 120 men, that minor offences were brought to him by his Clerk of Works, that he first saw the workman and heard what he said, that the only time he had asked the Respondent to send a warning the Respondent had pointed out that he (Cooper) had not acted in accordance with the Regulations.

30 (iv) Mr. E. Mor

pp.41-42

40 Mr. Mor, the General Secretary of the Gibraltar Confederation of Labour, testified that his union was the largest union in Gibraltar with a membership of some 2,000 workers. He said that he was acquainted with the system of warning letters in the War Department, that they were not threats, that the workman had a proper opportunity to be heard, that the procedure was quite fair, and that he agreed with the system of warning letters.

12. The Appellants' Counsel made a submission that there was no case to go to the jury, which the learned Chief Justice overruled.

pp.43-45

Record

13. The Appellants called no evidence.

14. After Counsel for the Respondent and the Appellants respectively had addressed the jury, the learned Chief Justice summed up to the jury. The summing up is set out in full in the Record of Proceedings. The learned Judge's directions to the jury in point of law may be summarised as follows:-

pp.46-75

p.52, l.30.

(i) The Appellants were admittedly responsible for the publication complained of. 10

p.53, l.13-42,
p.62, l.1-27

(ii) The question whether the words were libel or no libel depended on whether they would "lower the Respondent in the estimation of right thinking men", they were capable of bearing a defamatory meaning; it was matter for the jury to decide whether or not they were in fact defamatory; and the libel if there was one was contained in the words in the Spanish language and not in the translation. 20

p.54, l.8-
p.58, l.35

(iii) On fair comment the learned Chief Justice

(a) ruled that the subject-matter was one of public interest;

(b) directed the jury that it was common ground between the parties that the words up to "without bothering to make enquiries" were statements of fact, and the remainder comment;

(c) directed the jury that in order to make good the defence of fair comment it was necessary for the Appellants to prove that the statements of fact were true, and that the expressions of opinion were such that a fair minded man albeit holding a strong, obstinate or prejudiced view could have been capable of making. 30

p.58, l.35 -
p.60, l.30

(iv) On malice the learned Chief Justice directed the jury that the burden of proving malice rested upon the Respondent, and summarised the ingredients of malice. 40

p.62, l.27 -
p.63, l.12

(v) On damages the learned Chief Justice directed the jury on the matters they were

entitled to take into account in relation to damages, including the terms of the libel itself, the manner of publication, and the conduct of the Appellants subsequently.

(vi) The learned Chief Justice fully summarised the evidence before the jury.

pp.66-74

(vii) At the conclusion of his summing up the learned Chief Justice stated:-

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"You have had the issues clearly set out for you here. Take these (i.e. the questions) up with you and answer every one of them please and, where the damages are concerned, the amount. Are you satisfied about the questions to be considered? Any damages are not awarded singly."

p.74 1.35-45

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He then invited both Counsel to direct their minds to any point of law on which they felt he should direct or further direct the jury before concluding his summing up.

15. The questions left by the learned Chief Justice to the jury and their answers were as follows:

Questions

Replies

Have you agreed on your verdict?

Unanimously.

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(1) Are the words complained of statements of facts or expressions of opinion or partly one and partly the other?

(1) Partly one and partly the other.

(2) In so far as you find that they are statements of facts are such statements of facts true?

(2) No.

Record

	<u>Questions</u>	<u>Replies</u>	
	(3) In so far as you find that they are expressions of opinion do such expressions of opinion exceed the limits of fair comment?	(3) Yes.	
	(4) Were the Defendants actuated by malice?	(4) Yes.	
	(5) Damages	(5) £600.	
	The questions had been previously agreed by Counsel on both sides.		10
p.77	16. Upon this verdict the learned Chief Justice entered judgment for the Respondent in the sum of £600 with costs to be taxed.		
pp.78-86.	17. On 13th December, 1961, the Appellants presented a Notice of Motion for a new trial on numerous grounds, which said Motion was dismissed with costs by the learned Chief Justice.		
p.86.	18. On 20th February, 1962, the learned Chief Justice granted the Appellants final leave to appeal to Her Majesty's Privy Council.		20
	19. It is submitted that the learned Chief Justice's directions to the jury on matters of law as summarised above were correct, and that his summary of the evidence was fully adequate and accurate.		
	20. It is submitted that any jury, properly directed, could come to no other conclusion than that the words complained of were defamatory of the Respondent, whether read in the Respondent's translation or in the Appellants; but that in fact the jury, save insofar as they applied their own knowledge of the Spanish language in making a translation, had no evidence before them to support the Appellants' translation, the only evidence on this matter being that given by Mr. Prescott.		30
	21. It is submitted that there being no evidence either:-		
	(a) that the Respondent ever threatened any workman whatsoever or		40
	(b) that the Respondent ever issued any warning notice save in the name of the Command Works Officer on the report of, and after discussion with, an officer in charge, or		

(c) that the Respondent ever suspended any workman save in the name of and after discussion with the Command Works Officer upon information from the Gibraltar Security Police.

10 no reasonable jury properly directed could have reached the conclusion that the statements of fact upon which the comment was based were true, and consequently no reasonable jury properly directed could have upheld the plea of fair comment particularly in the light of the fact that Section 26 of the Defamation Ordinance, enacting Section 6 of the Defamation Act 1952 in Gibraltar, was inapplicable in this trial. It is further submitted that the jury were fully entitled to hold that the expressions of opinion exceeded the bounds of fair comment.

22. It is submitted that there was ample evidence to support the jury's finding of malice.

20 23. It is submitted that the quantum of damages was reasonable and in no way excessive.

24. It is submitted that the jury's verdict was in accordance with the weight of the evidence.

30 25. It is submitted that even if and insofar as there was any blemish in either the learned Chief Justice's summing up or in his formulation of the questions for the jury, it would be wrong to grant a new trial since any jury must if rightly directed have inevitably arrived at the same verdict; since the Appellants, when given the opportunity by the learned Chief Justice, made no objection; and since the Appellants had agreed the questions for the jury.

p.74 1.38-45.

40 26. It is submitted that the distinction sought to be drawn in paragraph 4 of the Amended Defence between words concerning the character of the Respondent and words concerning the methods employed by him as a Civilian Officer is quite immaterial, since it is expressly pleaded in paragraph 2 of the Statement of Claim that the words complained of were published inter alia of the Respondent in the way of his office as departmental Civilian Officer and in relation to his conduct therein.

p.21 1.29-34.

27. It is submitted that the appeal should be dismissed and that the Appellants should be directed to bear the Respondent's costs in the Privy Council for the following among other

R E A S O N S

- (1) BECAUSE the learned Chief Justice's direction to the jury upon the law and his summary of the facts was correct, accurate and fair.
- (2) BECAUSE the findings of the jury were correct and were supported by the weight of the evidence.
- (3) BECAUSE the damages awarded by the jury were reasonable and in no sense excessive. 10
- (4) BECAUSE if, contrary to the Respondent's contention, there were any misdirections in the learned Chief Justice's summing up, or any omissions either from his summing up or from the questions formulated by him, the same verdict must inevitably have been found if the jury had been properly directed.

DAVID C-H. HIRST

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B E T W E E N :

EDWARD CAMPELLO,
SIMPRESS LIMITED and
VOX PUBLICATIONS
LIMITED Appellants

- and -

JULIUS C. SENE
... Respondent

CASE FOR THE RESPONDENT

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